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School Law Review

State Board of Education Votes to Eliminate '5 of 8' Rule

May 2015

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Vote to Eliminate '5 of 8'
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On April 13th, 2015, the State Board of Education voted to amend a rule which previously mandated that school districts employ a minimum number of elementary art, music and physical education teachers, as well as a minimum number of nurses, library media specialists, social workers and visiting teachers. The standard was commonly referred to as the "5 of 8 rule," and was originally adopted in 1983. The rule specifically required schools to have at least five of the eight positions mentioned above for every 1,000 enrolled students.

Members of the State Board had considered elimination of the rule for a number of years before passing a resolution on December 9th to formally reconsider it. The State Board conducted a public hearing before it voted on April 13th to officially amend the rule. On that day, the State Board rejected a proposal to refer the rule back to committee for further review before passing the final resolution to amend.

The new rule adopted by the State Board provides school districts with much more discretion to determine what the appropriate number of these positions may be. The rule, codified in OAC 3301-35-03, as amended states "[t]he local board of education shall be responsible for the scope and type of educational services in the district. The district shall employ educational service personnel to enhance the learning opportunities of all students. Educational service personnel assigned to elementary fine arts, music and physical education shall hold the special teaching certificate or multi-age license in the subject to which they are assigned."

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State Board of Education Approves Vote to Eliminate '5 of 8' Rule, Cont.

Opponents of the rule change argued that schools may use the new rule to eliminate important programs such as art and music, especially in lower income districts with high numbers of poor and minority students. However, many districts and proponents view the change as an opportunity to provide school administrators with more autonomy and control over staffing and programming. School administrators believe that they can more effectively tailor the programs to the unique needs of a particular school through the new rule.

The amended rule became effective on April 24th, 2015. You may view copies of both the new and old versions of OAC 3301-35-03 at <http://www.registerofohio.state.oh.us>.

Pregnant Workers Entitled to Accommodations if Given to Other Employees

In a decision issued March 25, 2015, the U.S. Supreme Court decided that the Pregnancy Discrimination Act mandates that employers must provide accommodations to pregnant employees when needed if the employer provides accommodations to other employees with similar work restrictions.

In the underlying case, Ms. Young was a part-time driver for United Parcel Service (UPS) who was advised by her doctor, when she became pregnant, that she could not lift more than 20 pounds. UPS required drivers to be able to lift up to 70 pounds. UPS informed Ms. Young that she could not work while under a lifting restriction, and refused to provide Ms. Young with an accommodation for her pregnancy-related lifting restriction. Ms. Young consequently stayed home without pay during most of her pregnancy, eventually lost her employee medical coverage, and sued UPS alleging violations of the Pregnancy Discrimination Act.

The U.S. Supreme Court, though sending the case back to the trial court, held that policies may have the effect of discriminating against pregnant workers if the policies treat pregnant women different than similarly situated non-pregnant workers. For example, if a policy only permits on-the-job injured workers with accommodations, but does not provide pregnant workers with accommodations even though the pregnant workers have the same restrictions, the policy will run afoul of the Pregnancy

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Discrimination Act. Employers should be cautious when applying policy to ensure that the effects of the policy are not discriminatory towards pregnant workers.

This decision should be read in conjunction with the Equal Employment Opportunity Commission's guidance regarding pregnant employees that was released on July 14, 2014. This guidance was discussed in Ennis Britton's September 2014 School Law Review Newsletter. Together, the U.S. Supreme Court's decision and the Guidance from the EEOC serve as reminders to employers that pregnancy conditions may be protected, and employers may be required to provide reasonable accommodations for pregnancy-related conditions.

Young v. United Parcel Service, No. 12-1226 (Mar. 25, 2015).

HB 178 - Changes to School Drills

As building principals finalize this school year and begin to plan out their required drills for the 2015-2016 school year, they should make note of recent changes to the number and type of drills that are now required under state law. House Bill 178, which codified recent changes, passed both houses of the legislature and was signed into law in the final days of 2014. It became effective March 23, 2015.

Drills or Rapid Dismissals:

While the number of certain types of drills has changed, all district schools will still be required to complete nine overall drills, rapid dismissals, or school safety drills per school year. For most schools with newer infrastructure, HB 178 reduces the number of regular drills or rapid dismissals required for schools to six, but increases the number of safety drills that must be performed from one to three for a total of nine. If a school does not have smoke detectors or a sprinkler system in all classroom buildings, the drills/dismissals must be conducted at least nine times during the school year. However, the new law permits schools that fall in to this second category to count the three safety drills toward the nine required.

Additionally, instruction regarding tornado warning precautions must still be provided in conjunction with the drills/rapid dismissals, and tornado drills must be conducted at least once per month during tornado season (April 1- July 31).

School Safety Drills:

As indicated above, the bill increases the number of safety drills, such as lockdowns and evacuations, from one drill to three safety drills per school year. Safety drills provide students with instruction in responding to situations in which students must either rapidly evacuate or be secured in the building in response to a threat caused by an act of violence. The law mandates that at least one of these three drills require students to be secured in the building.

The new law also requires that each of these three drills be planned and executed in conjunction with "the police chief or other similar chief law enforcement officer, or designee, of the municipal corporation, township, or township or joint police district in which the school or institution is located, or, in absence of any such person, the county sheriff of the county, or designee, in which the school or institution is located." Principals must continue to provide law enforcement with 72 hours advanced

written notice of the safety drills. The safety drills must also be conducted pursuant to the school's emergency management plan. HB 178 removed the December 1st deadline for completing a school safety drill.

Theoretical School Safety Drill:

Schools must also conduct one staff safety planning exercise, called a theoretical school safety drill, at some point during the school year. The purpose of this planning exercise is to provide staff and faculty with instruction regarding procedures to be followed in response to a threat of violence. The planning exercise does not require student participation and may be completed during the annual school safety drill training session required under ORC 3737.73(D)(3).

Timing of Drills:

At least one drill/rapid dismissal or school safety drill must be conducted every month of the school year. Additionally, the first drill or rapid dismissal must be within 10 days of the start of classes, and drills/rapid dismissals must be conducted at varied times of the day.

Documentation Requirements:

Principals are still required to keep documentation of the date and time of each drill conducted. The deadline for providing this documentation to law enforcement from the prior school year has not changed (December 5th each year), but what documentation must be submitted has changed. Under the new law, principals must provide both the date and time of each school safety drill conducted during the previous school year, and the date and time each drill will be conducted during the current school year. The law expanded the options for submitting this document to include not only regular mail, but also facsimile or electronic submission.

The Department of Commerce created a Technical Bulletin with FAQ about the new requirement titled "Drills or Rapid Dismissals and School Safety Drills." You can access the bulletin at the following web address: <https://saferschools.ohio.gov/sites/default/files/HB178-TB15-001%20-%20FAQ%20-%20final.pdf>

How this Affects your District:

Because this legislation became effective March 23, 2015, the changes to school drills are in effect for the remainder of this school year. The only change that will impact schools this year is an increase in the number of safety drills a school must complete. Schools will need to add two safety drills to the one already scheduled in order to remain compliant. Since schools were previously required to complete nine drills per school year, there is no need to increase other types of drills for this year.

New Professional Standards for School Nutrition Employees

The United States Department of Agriculture (USDA) has recently approved the final rule which establishes the minimum professional standards for School Nutrition Professionals. The final rule is effective July 1, 2015.

Hiring Standards for New School Nutrition Program Directors

As of July 1, 2015 and after, all newly hired School Nutrition Program Directors (“Directors”) are subject to the new hiring standards established by the USDA. The Director is defined as the person responsible for the operation of all the school district’s school nutrition programs. All Directors employed prior to July 1, 2015 will be grandfathered into their current positions; however, training will be required as set forth below.

New Directors must meet the following minimum education standards based on the student enrollment count served.

Student Enrollment = 2,449 or less

- Bachelor’s degree or equivalent educational experience with major in one of the required areas*
OR
- Bachelor’s degree in any major and State-recognized certificate for school nutrition directors
OR
- Associate’s degree or equivalent educational experience with major in one of the required areas* and at least one year of relevant school nutrition programs experience
OR
- High school diploma/GED and at least three years of relevant experience in school nutrition programs (with an exception for the years of experience required for Directors serving a district with less than 500 students)

Student Enrollment = 2,500-9,999

- Bachelor’s degree or equivalent educational experience with major in one of the required areas*
OR
- Bachelor’s degree in any major and State-recognized certificate for school nutrition directors
OR
- Bachelor’s degree in any major and at least two years of relevant school nutrition programs experience
OR
- Associate’s degree or equivalent educational experience with major in one of the required areas* and at least two year of relevant school nutrition programs experience

New Professional Standards for School Nutrition Employees, Cont.

Student Enrollment = 10,000 or more

- Bachelor's degree or equivalent educational experience with major in one of the required areas*
- OR
- Bachelor's degree in any major and State-recognized certificate for school nutrition directors
- OR
- Bachelor's degree in any major and at least five years experience in management of school nutrition programs

* Required areas for academic major or area of concentration

- Food and nutrition
- Food service management
- Dietetics
- Family and consumer sciences
- Nutrition education
- Culinary arts
- Business
- Related field

In addition to these educational requirements, new Directors must also have at least 8 hours of food safety training either within the 5 years prior to the Director's starting date or completed within 30 days of the Director's starting date.

Training Requirements for All School Nutrition Program Employees

Regardless of the size of the school district, all school nutrition program employees must complete the following training requirements.

Directors:

- For the 2015-2016 school year, Directors must complete at least 8 hours of annual continuing education/training.
- Beginning the 2016-2017 school year, Directors must complete at least 12 hours of annual continuing education/training.

* These annual training requirements are in addition to the 8 hours of required food safety training for new Directors.

Managers:

- For the 2015-2016 school year, Managers must complete at least 6 hours of annual continuing education/training.
- Beginning the 2016-2017 school year, Managers must complete at least 10 hours of annual continuing education/training.

New Professional Standards for School Nutrition Employees, Cont.

Other Staff:

- For the 2015-2016 school year, all other staff must complete at least 4 hours of annual continuing education/training.
- Beginning the 2016-2017 school year, all other staff must complete at least 6 hours of annual continuing education/training.

Part-Time Staff:

- Beginning the 2015-2016 school year, part-time staff (staff working less than 20 hours per week) must complete at least 4 hours of annual continuing education/training.

* For any employee hired after January 1st, the minimum annual training requirements are reduced by half for the school year hired.

Board of Education's Disposal of Real Property

The Ohio Court of Appeals, Eleventh Appellate District recently decided a case brought by a resident and taxpayer against an Ohio township and school board. The two issues resolved by the case were: 1) whether the Board of Education was allowed to sell real property valued at over \$10,000 to the Township for less than the valuation amount; and 2) whether selling that property for half of the amount of a party's costs in the survey and lot split of the property constituted a gift.

In 2012, the Board of Education agreed to sell the property at issue to the Township for a purchase price of \$1,379.57. This price was agreed upon to be one-half of the Township's costs associated with the lot split and survey of the property. The Board of Education stated that the school did not have a use for the property, nor the funds to upgrade the fixtures on the property. Subsequent to the sale by the Board of Education, the Township entered into an oil and gas lease of the property with BP American Production Company. The price that the Township received for this lease was \$17,121, plus a royalty.

A resident challenged the sale claiming that it was sold for a value lower than that allowed by law and constituted a gift. During the proceedings, the resident produced an appraisal of the property, which valued the land, building, and lease at \$49,971, over \$48,500 more than the price paid by the Township. The resident argued that because the property was valued at more than \$10,000 it should have been sold for at least that amount, pursuant to R.C. § 3313.41.

The decision came down to a review of R.C. §3313.41(C), which allows a board of education to "dispose of real or personal property that it owns in its corporate capacity and that exceeds in value ten thousand dollars." The statute next lists to whom the property may be sold, which was not at issue in this case. Finally, the statute says that the property may be disposed of "upon such terms as are agreed upon." Thus, the statute does not set forth a minimum sale price above which the property must be sold, rather it states that property exceeding ten thousand dollars in value, may be sold for terms as agreed upon between the parties. The final sale price of the property disposed of is not addressed anywhere in the statute.

Board of Education's Disposal of Real Property, Cont.

The purpose of R.C. §3313.41 is clearly to restrict the types of sales that may be conducted for property valued at greater than \$10,000. If the property at issue in this case was valued at less than \$10,000, then the Board of Education could have sold the property in a manner not set forth by R.C. §3313.41. The sale requirements of the statute are triggered by a valuation greater than \$10,000, but none of those requirements set forth a minimum sale price.

Additionally, the Court held that the sale did not constitute a gift. The purchase price was far less than the valuation provided by the resident; however, the court held that the \$1,379.57 paid by the Township was still valid consideration. In order for the sale to be a gift it would have to be a voluntary transfer of property made without consideration. Although the purchase price was heavily discounted, there was still consideration and thus could not be characterized as a gift.

State ex rel. Allen v. Southington Local School Dist. Bd. Of Edn., 2015-Ohio-959.

How this Affects your District:

The Court's holding reiterates that boards of education are permitted to act under certain authority provided to them by relevant statutes with regard to the sale of property. If a board of education decides to sell property in its corporate capacity, and that property is valued greater than \$10,000, then it must follow the language of R.C. §3313.41. However, the statute does not restrict a Board's action to sell the property for a certain minimum price at its discretion.

New HDHP and HSA Limits for 2016

On May 4, 2015, the IRS released the Health Savings Accounts (HSA) limits for 2016, which reflect inflation adjustments for some, but not all, limits.

Employees with High Deductible Health Plans (HDHPs) will have the following HSA limits for the 2016 calendar year:

- Individual with self-only coverage= \$3,350.
- Individual with family coverage= \$6,750.

The minimum deductible for an HDHP will remain the same for 2016.

- Self-only coverage= \$1,300
- Family only coverage= \$2,600

Employees with HDHPs will have the following maximum annual out-of-pocket expenses (including deductibles, co-payments, etc., but not including premiums) for the 2016 calendar year:

- Self-only coverage= \$6,500
- Family coverage= \$13,100

The IRS's publication, Revenue Procedure 2015-30, can be viewed at the following web address <http://www.irs.gov/pub/irs-drop/rp-15-30.pdf>

Upcoming Deadlines

As your school district prepares for the next couple of months, please keep in mind the following upcoming deadlines. For questions about these requirements, please contact an Ennis Britton attorney.

- May 1—Deadline to complete teacher evaluations (RC 3319.111)
 - In year contract expires: At least 3 observation cycles plus periodic walkthroughs
 - In year contract does not expire: At least two observation cycles plus periodic walkthroughs
- May 1—Deadline to submit August emergency levy or current operating expenses levy to the county auditor (RC 5705.194, 5705.195, 5705.213)
- May 6—Deadline to file or submit the following with the board of elections for August election: resolution of necessity, resolution to proceed, auditor's certification for bond levy, continuing replacement levy, permanent improvement levy, operating levy, emergency levy, phased-in levy, current operating expenses levy (RC 133.18, 5705.192, 5709.195, 5705.21, 5705.25, 5705.251)
- May 6—Deadline to certify resolution for August income tax levy with the board of elections (RC 5748.02)
- May 10—Deadline to provide teachers with a copy of the report of their evaluation results (RC 3319.111)
- May 31—Deadline to provide notice of nonrenewal for administrators (RC 3319.02)
- June 1—Deadline to provide notice of nonrenewal for teachers (RC 3319.11), nonteaching staff, except municipal employees (RC 4141.29), and administrators (3319.02)
- June 30—End of ADM reporting period (RC 3317.03)

Upcoming Presentations

SAVE THE DATE! 2014-2015 Administrator's Academy Seminar Series

Seminars will take place at the Great Oaks Instructional Resource Center or via live webinar from 9:00 a.m. to 11:30 a.m. unless otherwise noted. Additional registration information will be provided in the near future!

July 16 – 2014-2015 School Law Year in Review (webinar only!)

Other Upcoming Presentations:

May 13—The Affordable Care Act and You at the Bargaining Table, NKU Labor-Management Conference
Panel Speaker: Bill Deters

June 30—2015 School Law Update, Ohio School Resource Officers & D.A.R.E. Officers Annual Conference
Presented by: Bill Deters

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Webinar Archives

Did you miss a past webinar or would you like to view a webinar again? If so, we are happy to provide that resource to you. To obtain a link to an archived presentation, send your request to Pam Leist at pleist@ennisbritton.com or 513-421-2540.

Archived topics include:

- Managing Workplace Injuries & Leaves of Absence
- Special Education: Challenging Students, Challenging Parents
- Fostering Effective Working Relationships with Boosters
- Effective IEP Teams
- Cyberlaw
- FMLA, ADA and Other Types of Leave
- Levies & Bonds
- OTES & OPES Trends & Hot Topics
- Tax Incentives
- Prior Written Notice
- Advanced Topics in School Finance
- Student Residency, Custody and Homeless Students
- Student Discipline
- Media and Public Relations
- Gearing Up for Negotiations

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