



## October 2015

Ohio Supreme Court Overturns Delinquency Conviction for Minor Charged With Carrying a Concealed Handgun ..... 1

A Rise in Peanut Allergies is Causing Some Schools to Enforce Nut-Free Campus Policies ..... 2

Ohio Appellate Court Holds that Teacher’s Grievance is Arbitrable under the Collective Bargaining Agreement ..... 3

Former Athletic Director Files Suit Claiming Violation of Whistleblower Statute in Rhode Island ..... 4

UPDATE: What the Supreme Court Ruling on Same-Sex Marriage Means for Districts ..... 5

Ennis Britton Partners with BASA .. 5

Upcoming Dates ..... 6

Upcoming Presentations ..... 6

## Ohio Supreme Court Overturns Delinquency Conviction for Minor Charged With Carrying a Concealed Handgun

A Cincinnati police officer arrested a minor after finding a loaded handgun in his waistband. The officer charged the minor with a fourth-degree felony of carrying a concealed deadly weapon on his person. After determining that the gun was inoperable, the charge was reduced to a first-degree misdemeanor. A magistrate found the minor delinquent, as evidence proved beyond a reasonable doubt that he possessed the handgun and it was still capable of being used as a deadly weapon even though it was inoperable. After the minor objected, the juvenile court adopted the magistrate’s decision. The First District Court of Appeals affirmed the trial court’s decision.

The Ohio Supreme Court accepted the appeal and overturned the delinquency conviction on the basis that the gun was inoperable. Ohio Revised Code section 2923.12 prohibits carrying a concealed weapon. The Supreme Court held that inoperable handguns are not considered “deadly weapons” under this statute.

The purpose and design of guns is to shoot projectiles from the barrel at a high rate of speed, the court noted. Since the minor’s handgun was incapable of shooting projectiles, the court determined that the gun had lost its sole function for which it had been designed. Therefore, the court held that the inoperable gun was not deadly and the delinquent conviction was overturned.

**Cincinnati:** 1714 West Galbraith Road • Cincinnati, OH 45239 • (513) 421-2540 • Toll-Free Number: 1 (888) 295-8409  
**Cleveland:** 6000 Lombardo Center • Suite 120 • Cleveland, OH 44131 • (216) 487-6672  
**Columbus:** 300 Marconi Boulevard • Suite 205 • Columbus, OH 43215 • (614) 705-1333

[www.ennisbritton.com](http://www.ennisbritton.com) | [www.twitter.com/EnnisBritton](https://www.twitter.com/EnnisBritton) | [www.linkedin.com/company/ennis-britton-co-lpa](https://www.linkedin.com/company/ennis-britton-co-lpa)

### **How this affects your district:**

Under most circumstances, concealed firearms will not be considered “deadly weapons” if they are determined to be inoperable and evidence suggests that they are not used as a bludgeon. However, R.C. 2923.122(C) strictly prohibits firearms on school property, regardless of the gun’s operability. If the minor had been on school property with the broken handgun, this case would likely have ended differently.

---

## **A Rise in Peanut Allergies is Causing Some Schools to Enforce Nut-Free Campus Policies**

---

The Americans with Disabilities Act (ADA) prohibits discrimination against individuals with disabilities. Section 504 of the ADA ensures that children with disabilities have equal access to an education. A person with a disability under these laws is defined as someone who has a physical or mental impairment that substantially limits one or more major life activities. If necessary to access education on an equal basis, children with disabilities may receive accommodations and modifications in school. Often, students with severe allergies and asthma are protected under the ADA since breathing and eating are considered major life activities.

A rise in nut allergies in particular has caused an increasing number of public schools to implement school-wide bans on all peanuts and tree nuts. Some children and adults have peanut allergies so severe that the mere presence of nuts can cause them to go into anaphylaxis and stop breathing. Even casual contact can provoke a reaction.

Here are some recent examples:

A Michigan high school has sent out a notice to all parents and teachers regarding their school-wide ban of peanuts and tree nuts. Administrators have posted signs around campus warning that the school is a nut-free zone. This action was initiated to support a student with a severe peanut and tree nut allergy. In order to accommodate the student’s allergy, the school decided to implement the same policy that was enforced at the student’s elementary and middle schools by banning all nuts from school property, including sporting events held at the school. The student is a member of the school’s marching band that performs at all home games. The administrators of the Michigan high school have stated that any violations of the nut-free policy will result in a “teachable moment.”

Another Michigan school district banned all peanuts and tree nuts from an elementary school building. In response, one student’s mother filed a suit against the school district and staff that approved the implementation of the ban. She claimed that her child was not subject to provisions of Section 504 and the school therefore could not prohibit her from providing her child with proper nutrition. The district argued that federal civil rights law required the implementation of the ban in order to ensure that students with severe nut allergies can safely attend school and receive an education. The suit was dismissed as the student’s mother failed to show that the district’s school-wide ban of nuts was arbitrary and irrational.

Medical experts tend to agree that school-wide bans on peanuts and tree nuts are important to accommodate the dangers of severe nut allergies. As the FDA has not approved any other proactive treatment for severe peanut allergies, strict avoidance and readily accessible epinephrine are some of the only options available to people with nut allergies.

## **How this affects your district:**

School districts have a legal obligation under federal law to provide accommodations for students with severe allergies. In certain circumstances, it may be necessary to ban certain foods or substances from school grounds in order to avoid life-threatening allergic responses. While a school-wide ban on nuts may anger community members, it is important to remember that the main priority of school guidelines is to keep all students safe while at school.

---

## **Ohio Appellate Court Holds that Teacher's Grievance is Arbitrable under the Collective Bargaining Agreement**

---

An Ohio teacher's extended limited contract was set to expire in June of 2013. In May, the Board notified the teacher of its decision not to renew her contract. A hearing was held in June regarding the non-renewal and the Board announced its final decision to not renew the teacher's contract shortly after. The West Branch Education Association and Ohio Education Association ("Association") filed a grievance on the teacher's behalf alleging violations of the collective bargaining agreement between the Board and the Association. The Superintendent denied the grievance stating that it was procedurally and substantively inarbitrable.

In response, the Association submitted a request for arbitration. The Board subsequently sought a temporary restraining order and a preliminary and permanent injunction under the assertion that the grievance was not subject to arbitration. The trial court found that the grievance was not arbitrable and granted the injunction. The Association appealed claiming that the trial court erred by granting the injunction.

The appellate court determined that the trial court incorrectly applied the legal standard for granting the injunction. A permanent injunction may be granted if the moving party demonstrates a right to relief under the applicable law and that the merits of the case have prevailed. The trial court held that the Board was *likely* to prevail based on the merits of the case, which is the test used for preliminary injunctions. As the trial court granted the permanent injunction, it was clear to the appellate court that the trial court felt the Board prevailed.

However, the appellate court concluded that trial courts do not have the authority to rule about the merits of a case when a union claims that the employer has violated the CBA. The merits must be decided exclusively through binding arbitration. The Board claimed that the CBA did not contain a provision allowing teachers to grieve the Board's decision to renew or non-renew a contract. The CBA language followed R.C. 3319.11 that requires a teacher who is not being reemployed to appeal the decision to the common pleas court, thus making it inarbitrable.

However, the appellate court reasoned that R.C. 3319.11 applies when the issue relates to procedural errors and their correction. The appellate court held that the Board followed the correct procedures under the CBA's section regarding teacher evaluations so the issue was therefore substantive. The court held that the CBA's language states that an arbitrator has authority over any alleged violations of a specific section of the CBA. Ohio law is clear that arbitration is the preferred method.

The appellate court held that the grievance filed by the Association is arbitrable under the CBA. The trial court's decision was reversed.

### **How this affects your district**

This case is novel in that most districts do not seek the procedural context of a teacher non-renewal is rare. However, this case stands for the proposition that teacher non-renewals may still be subject to the grievance process in some instances if a CBA is in place and the grounds for nonrenewal.

---

## **Former Athletic Director Files Suit Claiming Violation of Whistleblower Statute in Rhode Island**

---

A former athletic director filed a suit in federal district court alleging a school district violated Title IX regulations and Rhode Island's Whistleblower Protection Act. The athletic director claims that he was wrongfully terminated after reporting concerns that the girls' hockey team was not receiving the same support as the boys' hockey team.

The AD was hired in August 2014 and was given permission to develop protocols for booster club funding. He was faced with resistance from stakeholders with respect to the changes, especially regarding a new protocol that ensured equal opportunities for all students.

The School Committee stated that it had never intended to fund the girls' hockey team while the Superintendent expressed his opposition to funding the team. Invoices for the team were sent to and paid by parents who raised money to support the girls' hockey team. Even with the funds, the Superintendent decided to eliminate the team. The athletic director, who voiced his disapproval about eliminating the team, was ordered to tell the girls' hockey booster club the news. The AD claims that the school's lack of support for the girls' hockey team was in violation of Title IX regulations.

In June 2015 the athletic director's contract was not renewed and it was stated that he was not a "good fit." The AD's suit claims that he was terminated for complaining about the lack of support for the girls' hockey team in violation of Rhode Island's Whistleblower Protection Act.

In response to the suit, the school argued that the athletic director did not exhaust all administrative remedies before filing suit. The school also claimed that they were protected by qualified immunity.

The AD filed his complaint with the U.S. District Court in Rhode Island. As the case is pending, we will keep you posted on the outcome.

In the context and finding, the court may find the allegation has merit. In any event, the court may also find that the athletic director's termination may have been in retaliation for him expressing concerns about the lack of support for the girls' hockey team.

### **How this affects your district:**

Even though this case took place in Rhode Island, many of the same legal principals generally apply to Ohio schools. The premise is that every student regardless of sex must be afforded equal opportunities in school under Title IX regulations. Further, the Office for Civil Rights and a number of courts have concluded that public schools violate Title IX when they fund the athletic programs of one sex to a greater degree than they do the opposite sex team. This issue may also arise when a school district

accepts funds from an outside group to support one team but does not provide an equivalent amount to support a team of the opposite sex. Finally, in Ohio it is unlawful to take adverse employment actions against an employee in response to that employee's report of a possible legal violation.

---

## **UPDATE: What the Supreme Court Ruling on Same-Sex Marriage Means for Districts**

---

With the Supreme Court ruling in June 2015 that same-sex marriage bans are unconstitutional, school districts must make sure that spousal benefits are offered to individuals in a same-sex marriage just as they are offered to individuals of an opposite-sex marriage. Any benefits, including health insurance and retirement plans, must be extended to employees and their same-sex spouses just as they are extended to employees in opposite-sex marriages.

In addition, individuals in same-sex marriages may take FMLA leave under the same circumstances that an individual in an opposite-sex marriage would be allowed to take FMLA leave to care for a spouse. This includes caring for a same-sex spouse with a serious health condition, exigency leave for a same-sex spouse's military service, and caring for a child of the same-sex spouse.

All district policies and guidelines should be reviewed to ensure that same-sex couples are treated and recognized the same as opposite-sex couples in all states which includes the use of gender-neutral language.

For tax purposes, same-sex partners are now defined and classified as married. As Ohio did not previously recognize same-sex marriage, expect a change in definition of "married" for purposes of state income taxes. The new definition cannot exclude same-sex couples from the same tax benefits that opposite-sex couples are entitled to.

*Obergefell et al. v. Hodges, Director, Ohio Department of Health*, No. 14-556 (U.S. June 26, 2015).

### **How this affects your district:**

The Supreme Court's decision requires public school districts and other employers to recognize same sex marriage as equal for benefits purposes to traditional marriage effective immediately. It is recommended that districts review policies to ensure compliance with this new mandate, and also that they notify employees about benefits eligibility. Ennis Britton distributed a sample notice to be used to notify staff of their rights. If you did not receive the notice, please contact our office.

---

## **Ennis Britton Partners with BASA**

---

The attorneys at Ennis Britton are pleased to announce their partnership with the Buckeye Association of School Administrators (BASA). BASA is a non-profit organization that serves school superintendents and other administrators in the state of Ohio. BASA is an advocate for public education and developing exemplary school administration leaders. Ennis Britton is pleased to serve as a Gold sponsor for BASA, and looks forward to supporting their efforts!

---

## Upcoming Dates

---

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.

- **October 1** – Last day for Board to adopt annual appropriate measure (RC 5705.38); Last day to provide emergency medical authorization form to the parent of every student (RC 3313.712)
- **October 5** – Last day for candidates for school board to file financial disclosure forms with the Ohio Ethics Commission (RC 102.02)
- **October 15** – Last day for certification of licensed employees to State Board of Education (RC 3317.061); Last day to file salary schedule and list of job classifications and salaries in effect (RC 3317.12); Last day to report immunization records of new students to director of health (RC 3313.67)
- **October 15** – new bills in effect
- **October 22** – Last day for pre-general campaign finance reports to be filed by candidates, political action committees, caucus committees, and political parties detailing contributions and expenditures from the last day reflected in the previous report through October 14, 2015 (RC 3517.10)
- **October 31** – End of first ADM reporting period (RC 3317.03, 3317.036)
- **November 1** – Last day for classroom teachers to develop online classroom lessons in order to make up hours for which it was necessary to close schools (RC 3313.482); Last day to complete reading skills assessments for kindergarteners (RC 3313.608); Last day to screen first-time pupils (kindergarten or first grade) for hearing, vision, speech and communications, and health or medical problems (3313.673); Last day for superintendent to notify project school district of number of initial scholarships to be awarded for grades K-12 (RC 3313.978)
- **November 3** – General Election Day (RC 3501.01)
- **November 15** – Auxiliary services final expenditure report due (RC 3317.06); Last day to determine district's effective real property value (RC 3317.0211)

---

## Upcoming Presentations

---

### **2015-2016 Administrator's Academy Seminar Series**

#### **October 8 – Discrimination: What Administrators Need to Know**

Ohio State University Golf Club in Columbus, Ohio

Presented by: Bronston McCord, Hollie Reedy, & Lisa Burlison

#### **January 7, 2016 – Ohio Sunshine Laws**

Joyce E. Brooks Conference Center, Mahoning County Career and Technical Center, Youngstown, Ohio

#### **April 7, 2016 – Special Education Legal Update**

Great Oaks Instructional Resource Center, Cincinnati, Ohio

## **July 14, 2016 – 2015-2016 Education Law Year in Review**

Webinar and Archive ONLY!

Participants must be registered to attend each event. Each seminar will be accompanied by a live online webinar. The webinar will be archived for those who wish to access the event at a later time. You can register on our website at [www.ennisbritton.com/client-resources/erf-administrators-academy/](http://www.ennisbritton.com/client-resources/erf-administrators-academy/), contact Sarah Hawkins at 513.421.2540, or send an email to [shawkins@ennisbritton.com](mailto:shawkins@ennisbritton.com).

### **October 1 – OASBA Boot Camp**

Presented by: John Britton, Bill Deters, & Bronston McCord

### **October 2 - Ashland Treasurers Leadership Seminar (ATLAS)**

Presented by: Hollie Reedy

### **October 27 – Law Related Education and Truancy, OSROA**

Presented by: Giselle S. Spencer

### **October 27 – HR Essentials, OASBO**

Presented by: Bill Deters

### **November 8-11 – OSBA Capital Conference**

November 9: Coaches, Athletes and Boundaries – John Britton

November 10: When Passion Becomes a Problem – Bill Deters

November 11: Confessions of a Superintendent – Gary Stedronsky & Chad Hilliker

**Follow Us On Twitter: @EnnisBritton**

**Want to stay up-to-date about important topics in school law? Check out Ennis Britton's Education Law Blog at [www.ennisbritton.com/education-law-blog](http://www.ennisbritton.com/education-law-blog).**

### **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 Sarah Hawkins at [shawkins@ennisbritton.com](mailto:shawkins@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

## *Ennis Britton Practice Teams*

### **Construction/Real Estate**

Construction Contracts, Easements, Land Purchases and Sales, Liens, Mediations, and Litigation

#### **Team Members**

Bronston McCord  
Ryan LaFlamme  
Gary Stedronsky

### **Workers' Compensation**

Administrative Hearings, Court Appeals, Collaboration with TPA's, General Advice

#### **Team Members**

Ryan LaFlamme  
Pam Leist  
Giselle Spencer  
Erin Wessendorf-Wortman

### **Special Education**

Due Process Claims, IEP's, Change of Placement, FAPE, IDEA, Section 504, and any other topic related to Special Education

#### **Team Members**

John Britton  
Lisa Burleson  
Bill Deters  
Michael Fischer  
Pam Leist  
Jeremy Neff  
Giselle Spencer  
Erin Wessendorf-Wortman

### **School Finance**

Taxes, School Levies, Bonds, Board of Revision

#### **Team Members**

John Britton  
Lisa Burleson  
Bill Deters  
Bronston McCord  
Gary Stedronsky  
Jeremy Neff  
Hollie Reedy  
Megan Bair Zidian



# Attorney Directory

**John Britton**

6000 Lombardo Center, Suite 120  
Cleveland, Ohio 44131  
P: 216.487.6673  
C: 216.287.7555  
Email: jbritton@ennisbritton.com

**Lisa M. Burleson**

300 Marconi Boulevard, Suite 205  
Columbus, Ohio 43215  
P: 614.705.1331  
C: 614.406.1969  
Email: lburleson@ennisbritton.com

**William M. Deters II**

1714 West Galbraith Road  
Cincinnati, Ohio 45239  
P: 513.421.2540  
C: 513.200.1176  
Email: wmdeters@ennisbritton.com

**J. Michael Fischer**

1714 West Galbraith Road  
Cincinnati, Ohio 45239  
P: 513.421.2540  
C: 513.910.6845  
Email: jmfischer@ennisbritton.com

**Ryan M. LaFlamme**

1714 West Galbraith Road  
Cincinnati, Ohio 45239  
P: 513.421.2540  
C: 513.310.5766  
Email: rlaflamme@ennisbritton.com

**Pamela A. Leist**

1714 West Galbraith Road  
Cincinnati, Ohio 45239  
P: 513.421.2540  
C: 513.226.0566  
Email: pleist@ennisbritton.com

**C. Bronston McCord III**

1714 West Galbraith Road  
Cincinnati, Ohio 45239  
P: 513.421.2540  
C: 513.235.4453  
Email: cbmccord@ennisbritton.com

**Jeremy J. Neff**

1714 West Galbraith Road  
Cincinnati, Ohio 45239  
P: 513.421.2540  
C: 513.460.7579  
Email: jneff@ennisbritton.com

**Hollie F. Reedy**

300 Marconi Boulevard, Suite 205  
Columbus, Ohio 43215  
P: 614.705.1332  
C: 614.915.9615  
Email: hreedy@ennisbritton.com

**Giselle Spencer**

6000 Lombardo Center, Suite 120  
Cleveland, Ohio 44131  
P: 216.487.6674  
C: 216.926.7120  
Email: gspencer@ennisbritton.com

**Gary T. Stedronsky**

1714 West Galbraith Road  
Cincinnati, Ohio 45239  
P: 513.421.2540  
C: 513.886.1542  
Email: gstedronsky@ennisbritton.com

**Erin Wessendorf-Wortman**

1714 West Galbraith Road  
Cincinnati, Ohio 45239  
P: 513.421.2540  
C: 513.375.4795  
Email: ewwortman@ennisbritton.com

**Megan Bair Zidian**

6000 Lombardo Center, Suite 120  
Cleveland, Ohio 44131  
P: 216.487.6675  
C: 330.519.7071  
Email: mzidian@ennisbritton.com

**Cincinnati Office:** 513.421.2540

**Cleveland Office:** 216.487.6672

**Columbus Office:** 614.705.1333