



School Law Review

AUGUST 2017

ESSA requirements for students in foster care	1
Residency and custody refresher .	2
Board of Revision property valuation case law update	3
Budget bill: Uncodified provisions .	4
Budget bill: Changes to graduation requirements	5
Firm news: Ennis Britton attorneys support Law & Leadership Institute	6
Announcement: Fall Special Education Seminar	7
Upcoming deadlines	7
Upcoming presentations	8

ESSA Requirements for Students in Foster Care

Last year the U.S. Department of Education issued guidance to public school districts regarding the services provided to students living in foster care. In an effort to improve educational outcomes for these students, Every Student Succeeds Act (ESSA) requires that school districts designate persons of contact for foster care students and provide special transportation.

Definition

Foster care is defined as 24-hour substitute care for children placed away from their parents or guardians and for whom the child protection agency has placement and care responsibility.

Point of Contact

Once the local child protection agency contacts a school district in writing regarding a specific child or children, the district must designate a point of contact to work with the local agency. The district contact person must collaborate with state and local child welfare agencies, lead the best-interest determination process for school placement, facilitate the transfer of student records, and ensure that students in foster care are enrolled in school and attending on a regular basis.

Districts will need to identify students who are in foster care and coordinate with child welfare agencies to ensure notification in a timely manner when a child enters foster care or experiences a change in living arrangements.

Best-Interest Determination

Children in foster care should remain in their district of origin – that is, the school the child was enrolled at the time of foster care placement – unless it is determined that remaining in that district is not in the student’s best interest. A team familiar with the child’s background and educational needs must make this determination.

If the team decides that remaining in the district of origin is not in the child’s best interest, the district must ensure that the student is immediately enrolled in a different school district. The new district must complete the enrollment process regardless of whether it has the student’s records.

Transportation

For students who remain in their school of origin, the district must provide transportation from the foster home to the school. It is recommended that districts develop a transportation plan to facilitate prompt transportation and

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ensure educational stability for these students. The plan may also include cost sharing when utilizing local agencies for transportation. A written plan should be provided anytime a foster student experiences a change in living arrangements. Districts must have a transportation agreement in place to address how transportation and cost responsibilities will be assigned between a district and a local child protection agency.

Residency and Custody Refresher

Residency

Ohio law provides that all children of school age (at least 5 years old but under age 22, or at least 3 years of age if identified under the Individuals with Disabilities Education Act) are entitled to attend public schools in their parent's district of residence tuition free. The residence of a child's parent is generally the residence of record for school purposes.

A parent can be natural or adoptive. If parents are separated or divorced, *parent* means the residential parent and legal custodian of the child. Regardless of marital or custodial status, the parent-child relationship extends equally to both parents.

Separated or divorced parents: For school district residency purposes, the *parent* is the one who is designated in the court order or decree as the residential parent and legal custodian of the child. The parent who is awarded custody is responsible to notify the district of any custody arrangements by providing the school with a copy of the court order or decree. Additionally, the custodial parent is responsible to update the school of any subsequent changes made to the court order or decree.

Unmarried parents: Unless a court order says otherwise, an unmarried female who gives birth to a child is considered the sole residential parent and legal custodian. As such, residency is determined by her residence alone.

Joint custody or shared parenting: Unless a court specifically orders otherwise, both parents are considered the child's residential parents and legal custodians regardless of where the child resides at a particular point in time. In these circumstances, the child may attend school tuition-free in the district where either parent resides.

Incarcerated parent: Children residing in the district who have at least one parent in a residential or correctional facility and the other parent does not to live in Ohio are entitled to attend school in the district where the incarcerated parent last resided before becoming incarcerated.

Military parents: A student who resides in the district with a person other than his/her parent while the parent serves in the armed forces outside of Ohio is entitled to attend school in the district for up to 12 months. The military parent must provide an affidavit confirming the name and address of the person housing the child and stating the parent's intent to return to Ohio upon return from service.

Grandparents: Under the Grandparent Caretaker Law, a grandparent may acquire the legal status of a parent if certain conditions have been met, which include but are not limited to, an executed power of attorney by parent, guardian, or other legal custodian. This must be filed with the juvenile court and will be reviewed annually. In this case, the residence of the grandparent determines the school district of residence.

Victims of domestic violence: Children residing in a district with a parent under the care of a shelter for victims of domestic violence are entitled to attend school in the district.

Emancipated students: Students between the ages of 18 and 22 who live in the district apart from their parents, who support themselves by their own labor and have yet to complete the high school curriculum or are on student with an IEP are entitled to attend school in the district. Additionally, students under age 18 who are married and reside in the district are entitled to attend school in the district.

Note on tuition: Guardianship itself does not affect tuition. A guardian must also have legal custody for a child to attend school in the district tuition-free.

Custody

When parents are divorced, different custody arrangements will affect the children. Under shared parenting and joint custody, a child may attend school tuition-free in the district where either parent resides. If only one parent is awarded custody by the court, that parent's district is the child's school district of residence.

Proof of custody may be provided by a temporary domestic relations court order, civil protection order, judgement entry and divorce decree, shared parenting plan, or post-decree modification of a previous custody order. Note, however, that schools have no duty to seek out court orders. Parents are responsible to provide the school with a copy of the custody order if schools are expected to follow it.

If a court order does not clearly assign parental rights concerning the child's education, the parent may provide other documentation that clarifies these rights. Schools do not have a duty to investigate court orders concerning parental rights. The burden is on the parents to keep schools apprised of any changes.

Many other scenarios are much more complicated than those mentioned above. Districts should contact legal counsel with specific questions or more complicated issues.

Board of Revision Property Valuation Case Law Update

The Ohio Supreme Court recently issued a decision in a case that will likely have far-reaching implications for Ohio school districts. For many years, Ohio law provided that the price paid in a recent arm's length sale must be utilized as a county auditor's fair market value of real property. In 2013, the General Assembly made revisions to the Ohio Revised Code so that it no longer mandates that a county auditor utilize a recent sale price as the value of real property. A change was also made to require county auditors to value property in the "fee simple" without consideration of "encumbrances."

The recent case of *Terraza 8, LLC v. Franklin County Board of Revision*, Slip Opinion No. 2017-Ohio-4415, involved a fitness center that sold for \$15,403,200. The county auditor valued the property at \$4,850,000. The school district filed a complaint to increase the value of the property to the sale price. The district was successful at the county board of revision as well as at the Ohio Board of Tax Appeals. The property owner appealed to the Ohio Supreme Court and argued that the property sold for an amount above its fair market value because the property was encumbered by a lease that had terms that were above the regular market-based terms found in comparable properties. In other words, the owner argued that the lease (which was undoubtedly a good deal for the property owner) inflated the sale price above fair market value because the lease rate, term, and creditworthiness of the tenant were better than what a hypothetical similar property would command on the open market.

The Ohio Supreme Court held that the General Assembly's revisions in 2013 acted to overrule Ohio Supreme Court decisions that held that a recent arm's length sale price was conclusive evidence of value. The Court clarified that the sale price shall now be presumed to be the best evidence of value. However, that presumption may be rebutted if evidence demonstrates that the sale price did not, in fact, reflect the property's fair market value.

What This Decision Means for Your District

This decision likely has no impact on residential property. However, it will greatly impact commercial property. Commercial property owners are well aware of their right to challenge county auditor values, which in turn can lower their tax bill and reduce school district revenue. In fact, many attorneys in Ohio do nothing but represent commercial property owners who are seeking lower values. Those attorneys will likely increase their efforts to

contest attempts by school districts and county auditors to use a recent sale price as evidence of a property's value. They will increasingly rely upon appraisers to justify a deviation from the sale price. Although it is not yet clear what standard will need to be satisfied to overcome a sale price, Ohio school districts may want to consider hiring appraisers in an attempt to demonstrate that a recent sale price should be used as the value of real property. Please contact Gary Stedronsky or Giselle Spencer if you have further questions or concerns about this or any other matter involving the board of revision process.

Budget Bill: Uncodified Provisions

Our review of the [education-related provisions of the state budget](#) continues with temporary, or uncodified, law. At the end of the five thousand-plus page document that serves as the budget bill, you will find some odd numbering. This is what is referred to as *temporary law* or *uncodified law*.

This is separated as temporary or uncodified law for several reasons. Appropriations are uncodified because they cannot (per the Ohio Constitution) be made for more than two years. Other things found in temporary law may describe how the appropriations will be used (for the establishment and function of committees, task forces, stakeholder groups, preparation of a report, etc.). This temporary law expires at the end of the biennium (in two years).

Several provisions in this somewhat-obscure section of the budget affect Ohio schools, and below is a short summary of those provisions.

- The graduation changes applicable only to the class of 2018 (see article below) are found in the uncodified law because they are intended to apply only to that class. These changes establish additional ways for these students to demonstrate eligibility for a high school diploma. These additional options are presented for both academic and career-technical students.
- A new state workgroup on related services will be tasked with the goal of “improving coordination of state, school and provider efforts to address the related services needs of students with disabilities.” This group and its study will sunset on June 30, 2019.
- Expanding the SNAP program and drawing down federal match dollars for the employment and training of low-income individuals will be the subject of a planning committee, which will be established by the Ohio Department of Job and Family Services and the chancellor of higher education.
- There will be changes to tuition payments for students in private residential treatment centers who are placed by a court or other state agency order (not parental placements). Additional provisions set out who is responsible for providing the educational program when a child is placed in one of those facilities, which include private facilities for the treatment of juvenile sex offenders, mental health and drug addiction, and other severe behavior issues.
- ODE was directed to study the appropriate funding for each category of gifted students and propose a method for funding gifted education courses and programs. A report is due no later than May 1, 2018.
- Under a new “flexible funding” program, school districts, including educational service centers and career-technical centers, may transfer foundation and special education enhancement funding to a new funding pool called the Family and Children First Funding Pool.
- The “Straight A” governing board and committee will cease to exist and records will be transferred to ODE. Straight A grant recipients that received funds in FY 2016 and 2017 and will have remaining funds to spend in FY 2018 may do so in accord with the grant agreement; however, even if grant provisions specify additional funds, these funds will not be paid in future fiscal years. ODE will not pay any additional Straight A grant funds, and ODE’s function will be limited to ensuring districts spend remaining funds in accordance with the agreement. ODE was directed to report to the legislature on the grants awarded, recipients, effectiveness, and recommendations for Straight A grant projects that might warrant repeating in the future.

- An appropriation was made to ODE for a policy analysis service, whose purpose is to develop reports, briefings, and analyses to inform education policymakers of current trends in education practice, efficient and effective use of resources, and evaluation of programs to improve education results.
- An early childhood education program appropriation will fund and monitor existing and new early childhood education programs provided by city, local, exempted village, joint vocational, and educational service centers, community schools sponsored by an exemplary sponsor, chartered nonpublic schools, and other licensed early childhood education providers. The appropriation requires these providers to meet “Step Up to Quality” program standards.
- An Early Childhood Education Pilot Program in two counties of the Appalachian region of the state will be established with funding given to existing or new providers of early childhood education to serve 125 children each fiscal year. The data from the pilot program will be studied.
- In addition, a parental choice early childhood education pilot program will be funded to implement “one or more parent choice models to deliver early childhood education to eligible children.”

The appropriations section of the education department begins in the budget bill on page 4,523. You can see all the appropriations for FY 2018 and 2019, as well as all the uncodified law applicable to the Department of Education. Or, call an Ennis Britton attorney for more information on provisions that interest or concern you.

Budget Bill: Changes to Graduation Requirements

Note: The graduation changes in the budget bill are applicable *only* to the class of 2018, or as the bill states, to students who entered ninth grade for the first time on or after July 1, 2014, but prior to July 1, 2015. These changes are in the uncodified section of the bill because they are temporary, applying only to this year’s graduating class. For this year only, two additional pathways for graduation are available for seniors. In a nutshell, the first option is an academic pathway, and the second is a career-tech pathway. (See also the Ennis Britton blog post on the [new graduation requirements](#).)

1. In addition to meeting other graduation requirements as follows:

- Take all end-of-course exams (or the private charter school assessment)
- Retake at least once any end-of-course exam in English language arts or math on which the student scored *lower* than 3
- Complete the required units of instruction

a student must meet *two* of the following requirements:

- Have an attendance rate of at least 93 percent during 12th grade
- Take at least four full-year or equivalent courses during 12th grade and has at least a 2.5 GPA (on a 4.0 scale) for the 12th-grade courses
- Complete a capstone project during 12th grade
- Complete 120 hours of work in a community service role or in a position of employment, including internships, work study, co-ops, and apprenticeships
- Earn 3 or more transcribed credit hours under College Credit Plus at any time during high school
- Pass an AP or IB course and receives a score of 3 or higher on the corresponding AP exam or 4 or higher on the corresponding IB exam at any time during high school
- Earn at least a Level 3 score in each of the Reading for Information, Applied Mathematics, and Locating Information components of the job skills assessment, or a comparable score on similar components of a succeeding version of that assessment

- Obtain an industry-recognized credential or a group of credential equal to at least 3 points total
- Satisfy the conditions required to receive the OhioMeansJobs-readiness seal

2. In addition to meeting other requirements as follows:

- Take all end-of-course exams (or the private charter school assessment)
- Complete the required units of instruction
- Complete an ODE-approved career-tech training program that includes at least four career-tech courses

a student must meet *one* of the following requirements:

- Attain a cumulative score of at least proficient on required career-tech assessments or test modules
- Obtain an industry-recognized credential or group of credentials worth 12 points
- Demonstrate successful workplace participation, based on a written agreement signed by the student, a district representative, and an employer or supervisor, by completing 250 hours of workplace experience and receiving regular, written, positive evaluations from the employer or supervisor and a district representative

Firm News: Ennis Britton Attorneys Support Law and Leadership Institute

On July 11, 2017, Ennis Britton attorneys teamed up with legal counsel from Cincinnati Public Schools for a lunch meeting with area high school students to discuss college, law school, and the legal profession. Ennis Britton sponsored the Lunch and Learn event through the Law and Leadership Institute (LLI). LLI offers programming in cities throughout Ohio and is dedicated to encouraging under-represented students to pursue higher education. With the support of Ohio's education and legal communities, LLI offers summer enrichment, mentoring, and real-world experiences. Ennis Britton is proud to partner with LLI to promote diversity in the legal profession. Please contact Ennis Britton shareholder [Jeremy Neff](#) if you would like to learn more about opportunities for students to participate in LLI.



Announcement: Fall Special Education Seminar

This October, Ennis Britton's special education team will travel across the state to host a seminar on the Ohio Operating Standards for the Education of Children with Disabilities. With our combined years of special education law practice, we have developed materials that will impart a better understanding of Ohio's Operating Standards to special education staff in Ohio. During two general sessions, our Special Education Team of attorneys will discuss several practical tips to provide a functioning knowledge of the Operating Standards for special education directors and staff. Between the general sessions, participants will have options for hot topics of particular interest during two smaller breakout sessions. This full-day event will be held at four locations throughout the state:

- Thursday, October 19: **Mahoning Valley**
- Friday, October 20: **Cleveland**
- Wednesday, October 25: **Columbus**
- Thursday, October 26: **Cincinnati**

Breakfast and lunch will be provided. This seminar is open to all special education directors and staff in Ohio. Participants must be registered to attend. Details for the seminar, including the cost for participants, will be released shortly. You may register on our [website](#) or contact Hannah via [email](#) or phone at 614-705-1333.

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.

- **August 1:** Deadline to file statistical report with Ohio Department of Education (RC 3319.33)
- **August 4:** Deadline to submit November emergency, current operating expenses or conversion levy to county auditor for November general election (RC 5705.194, 5705.195, 5705.213, 5705.219)
- **August 8:** Special election day (RC 3501.01)
- **August 9:** Deadline for county auditor to certify school district bond levy terms for November election (RC 133.18(C)); Deadline for school district to file resolution of necessity, resolution to proceed and auditor's certification for bond levy with board of elections for November election (RC 133.18(D)); Deadline to certify resolution for school district income tax levy, conversion levy or renewal of conversion levy for November election to board of elections (RC 5748.02(C), 5705.219(C) and (G)); Deadline to file (by 4:00 p.m.) a nominating petition as a board of education candidate for the November general election (RC 3513.254, 3513.255); Deadline to submit continuing replacement, permanent improvement of operating levy for November election to board of elections (RC 5705.192, 5705.21, 5705.25); Deadline to submit emergency levy for November election to board of elections (RC 5705.195); Deadline to submit phased-in levy or current operating expenses levy for November election to board of elections (RC 5705.251(A))
- **August 28:** Deadline to file (by 4:00 p.m.) as a write-in candidate for November general election (RC 3513.041)
- **October 1:** (Sunday) Deadline for board to adopt annual appropriation measure (RC 5705.38(B))

Upcoming Presentations

SAVE THE DATE! 2017–2018 ADMINISTRATOR’S ACADEMY SEMINAR SERIES

September 28, 2017: Take Hold on Public Relations

Live seminar in the Mahoning Valley

January 25, 2018: TBA

Live video webinar produced by the Ohio State Bar Association

April 5, 2018: Special Education Legal Update

Live seminar in Cincinnati

July 12, 2018: Education Law Year in Review

Live video webinar produced by the Ohio State Bar Association

The September and April presentations will be provided at live seminar locations as well as in a live audio webinar option. The January and July presentations will be offered via a live video webinar professionally produced by the Ohio State Bar Association. As always, an archive will be available for all presentations.

Participants must be registered to attend each event. All four webinars will be archived for those who wish to access the event at a later time. You may register on our [website](#) or contact Hannah via [email](#) or phone at 614-705-1333.

OTHER UPCOMING PRESENTATIONS

August 1: Montgomery County ESC

– Bill Deters

August 2: High AIMS Summer Institute

– Bill Deters and Bronston McCord

August 3: Clermont–Brown County Regional Network Team

– Bill Deters

August 3: Northwest Ohio ESC

– Pamela Leist

August 3: Clark–Champaign–Madison County Annual Retreat

– Bronston McCord

August 3: Hamilton County ESC

– Jeremy Neff

August 3: Southern Ohio ESC

– Ryan LaFlamme and Erin Wessendorf-Wortman

August 4: OSBA Attendance, Tuition, and Custody Workshop

– Hollie Reedy

August 8: Ohio School Resource Officers Association

– Hollie Reedy and Giselle Spencer

August 9 & 10: Trumbull County ESC

– Pamela Leist, Erin Wessendorf-Wortman, and Megan Bair Zidian

August 10: Mercer County ESC

– Bill Deters

August 31: BASA Regional Meeting, BASA Office

– Hollie Reedy

September 1: BASA Regional Meeting, Stark County

– John Britton and Hollie Reedy

September 6: BASA Regional Meeting, Montgomery County ESC

– Bronston McCord

September 7: BASA Regional Meeting, Logan Hocking High School

– Hollie Reedy

September 8: BASA Regional Meeting, Wood County ESC

– John Britton

September 13: Elyria–Lorain Association of School Psychologists

– Giselle Spencer

September 14: OASPA Fall Conference

– Bill Deters, Bronston McCord, Pamela Leist

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Want to stay up-to-date about important topics in school law?

Check out Ennis Britton's [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, contact Hannah via [email](#) or phone at 614-705-1333. Archived topics include the following:

- New Truancy and Discipline Laws
- Supreme Court Special Education Decisions
- Employee Licensure
- Transgender and Gender-Nonconforming Students
- Contract Nonrenewal
- Ohio Sunshine Laws
- Managing Workplace Injuries and Leaves of Absence
- Special Education
- Fostering Effective Working Relationships with Boosters
- Requirements for Medicaid Claims
- Effective IEP Teams
- Cyberlaw
- FMLA, ADA, and Other Types of Leave
- Levies and Bonds
- OTES & OPES Trends and Hot Topics
- Tax Incentives
- Prior Written Notice
- Advanced Topics in School Finance
- Residency & Custody
- Student Discipline
- Media and Public Relations
- Gearing Up for Negotiations

Ennis Britton Practice Teams

At Ennis Britton, we have assembled a team of attorneys whose collective expertise enables us to handle the wide variety of issues that currently challenge school districts and local municipalities. From sensitive labor negotiations to complex real estate transactions, our attorneys can provide sound legal guidance that will keep your organization in a secure position.

When you have questions in general areas of education law, our team of attorneys help you make competent decisions quickly and efficiently. These areas include:

Labor & Employment Law

Student Education & Discipline

Board Policy & Representation

There are times when you have a question in a more specialized area of education or public law. In order to help you obtain legal support quickly in one of these areas of law, we have created topic-specific practice teams. These teams comprise attorneys who already have experience in and currently practice in these specialized areas.

Construction/Real Estate

Construction Contracts • Easements •
Land Purchases & Sales • Liens •
Mediations • Litigation

Team Members:

Ryan LaFlamme
Bronston McCord
Gary Stedronsky

Workers' Compensation

Administrative Hearings •
Court Appeals • Collaboration with TPAs •
General Advice

Team Members:

Ryan LaFlamme
Pam Leist
Giselle Spencer
Erin Wessendorf-Wortman

Special Education

Due Process Claims • IEPs • Change of
Placement • FAPE • IDEA • Section 504 •
any other topic related to Special Education

Team Members:

John Britton
Bill Deters
Michael Fischer
Pam Leist
Jeremy Neff
Hollie Reedy
Giselle Spencer
Erin Wessendorf-Wortman
Megan Bair Zidian

School Finance

Taxes • School Levies •
Bonds • Board of Revision

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