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School Law Review

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Defining the Scope of Employment in Workers' Comp Cases

Oberhauser, et al v Ohio Bureau of Workers' Compensation

Ennis, Roberts, & Fischer attorney Dave Lampe has successfully argued another workers' compensation claim that could have implications for school employees. In this case, the relatives of a teacher who tragically died in a car accident while traveling to a continuing education seminar filed a workers' compensation claim. Although allowed by the Ohio Bureau of Workers' Compensation (BWC), the claim was denied on appeal to court, after it was determined that the injury did not occur within the scope of the teacher's employment.

The facts giving rise to this tragic accident were very important to the court's decision. The teacher was involved in the fatal accident while driving to a teaching workshop sponsored by, and held on, the Middletown campus of Miami University. The workshop was held on a Saturday, outside of normal school hours. The school district's administrative personnel did not direct the teacher to attend the workshop, and were unaware that she planned to attend. The purpose of the workshop was to develop prototype lesson plans for high school teachers. The teacher was not compensated by the district for attending the workshop; rather she received a stipend from the university and credit hours of tuition-free graduate credit. She could, however, have used the graduate credits she earned from the workshop toward the renewal of her teaching certificate.

The relatives of the teacher filed the worker's compensation claim following the accident. The BWC and the Industrial Commission allowed the claim and the school district appealed to the common pleas court. The trial court reversed the decision of the Industrial Commission and determined that the fatal injuries were not compensable under the workers' compensation fund. The decision was subsequently appealed to the Twelfth Appellate District of Ohio.

In its analysis, the appellate court noted that Revised Code section 4123.01(C) requires a compensable injury to be suffered in "the course of, and arising out of, the injured employee's employment." The phrase "in the course of employment" limits compensation to injuries that are sustained by an employee while performing a required duty in the employer's service. The individual does not necessarily have to be injured in the actual performance of work, but the injury must stem from an activity that the employee engages in that is consistent with the contract for hire and logically related to the employer's business. The court noted that when an injury occurs away from the employer's premises, the employee must have been engaged in the promotion of the employer's business and in the furtherance of its affairs. The Court then noted that the phrase "arising out of" suggests that there must be a causal connection between the injury and the employment. Three factors that are examined when determining whether this causal connection exists include: (1) the proximity of the scene of the accident to the place of employment; (2) the degree of control the employer had over the scene of the accident; and, (3) the benefit the employer received from the injured employee's presence at the scene of the accident.

The court noted that it is not enough that the employer would indirectly benefit by an individual attending a seminar or workshop; rather the employer must have had some influence on the individual's attendance. The clearest example of a compensable injury occurring in this scenario is when an employer directs an individual to attend a seminar or workshop. An injury may also be compensable if the employer expected attendance, but not if the individual's attendance was merely encouraged.

The court then compared the principles of the law to the specific facts of the case to determine that the teacher was not engaged in the promotion of the school district's business or acting in furtherance of the Board's affairs at the time of the accident. The court noted that the teacher

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was not instructed to attend the workshop, nor were any school administrators actually aware of her attendance. The workshop was held at the university campus outside of the teacher's regularly scheduled work week. Furthermore, the purpose of the workshop was to develop prototype lesson plans to be delivered over to the university, and not to directly benefit the school district. Although attendance at the workshop would allow the teacher to earn credits towards renewing her teaching certificate, the court determined that the teacher was furthering a personal interest in maintaining her certification, which was a prerequisite to continuing her employment at any public school in Ohio.

How this impacts your district:

The court in this case found that a chemistry teacher who sustained a fatal injury while in route to a chemistry workshop in order to earn college credit to renew her teaching certificate was not in the scope of her employment with the Board. While this may have indirectly benefited the school district, the facts supported the trial court's decision that the injury was not compensable under the law. Because certificated and administrative staff regularly attend conferences, seminars, and other professional development activities to renew their certificates/licenses, this case helps to define whether such persons are within the scope of employment while pursuing professional development activities. The Local Professional Development Committee's approval (or lack thereof) of such professional development activities, reimbursement of travel and professional development expenses, and whether such activities are held during normal school hours are highly relevant to the analysis of whether an employee is within the scope of employment. In light of this case, it may prove beneficial to review your district's evaluation instruments (i.e., are staff evaluated for their efforts to pursue professional development activities) and master contract to determine whether such materials may have a bearing on this issue. If your district is preparing for workers' compensation litigation, or has any questions pertaining to this law, please contact Ennis, Roberts, & Fischer.

IDEA, FERPA, and Student Privacy Issues

Baltimore County Pub. Schs., 51 IDELR 201 (SEA MD 2008).

Despite a provision in the Individuals with Disabilities in Education Act (IDEA) requiring a school district to provide copies of a student's special education and disciplinary records when the district reports a crime committed by a special ed student, a Maryland court recently determined that a local school district did not violate the Act when the district reported a teenager's criminal conduct to a school resource officer without providing the officer a copy of the records. The courts' decision involved a careful analysis of student privacy rights based on the interplay between the IDEA and the Family Educational Rights and Privacy Act (FERPA).

The seventeen-year-old student in this case who engaged in criminal conduct suffered from a hearing impairment and ADHD. Under the IDEA, school districts are required to transmit student records when reporting a crime by a student with a disability. The school district, however, was faced with conflicting provisions in FERPA that caused it to withhold the education records from the school resource officer investigating the incident. In general, FERPA requires that a school district obtain written parental consent before disclosing certain student records containing personally identifiable information. The Act does provide for an exception to the general rule, which allows disclosure of records to school officials who have a legitimate educational interest in the student education records without first obtaining parental consent. According to the district's policy, the school resource officer was not among the positions identified with a legitimate interest in the records. As such, FERPA required parental consent before the district could turn the records over to the school resource officer. The court determined that because there was no evidence that parental consent was given, the district did not violate the IDEA when it failed to provide the records to the officer.

How this impacts your district:

While this case does not control future decisions by Ohio courts, it does highlight the interplay between IDEA and FERPA presented by this factual scenario. Under IDEA, if a school district reports a crime committed by a student with a disability, it must provide authorities with a copy of the student's special education and disciplinary records. As this case illustrates, however, the disclosure of student records must still comply with FERPA. A school district may not release any student records without first obtaining parental consent unless an exception within FERPA applies. One exception that schools should be aware of is whether the records are being disclosed to a school official with a legitimate educational interest in the student education records. In this case, the exception did not apply and the school district was required to obtain parental consent before disclosing the records as required by the IDEA. If your district has any questions pertaining to the IDEA, FERPA, or student privacy rights in general, please contact Ennis, Roberts, and Fischer for consultation.

Public Records Law and Kept Records

State Ex. Rel. Johnson v. Oberlin City School District Bd of Educ. (2009-Ohio-3526)

The Ninth District Court of Appeals of Ohio, recently rendered a decision involving a public records request for documents created by individual members of the Oberlin City School District Board of Education ("the Board"). In its opinion, the appellate court decided that the documents were not subject to disclosure under the Ohio public records law because they were not "kept" by the Board, as defined by the relevant statutes.

This case stemmed from a denial of a public records request in which an individual sought access to written documents compiled by members of the Board. According to the school district's policy, the Board was required to evaluate the Superintendent of Schools and provide the Superintendent with a written copy of the evaluation. Individual members of the Board compiled their own evaluations of the Superintendent, which were then provided to the Board's president who used the evaluations to compile a composite evaluation of the Superintendent. This composite evaluation was used to determine whether or not to renew the Superintendent's contract with the Board. The public records request sought access to the individual evaluations, but the Board denied the request. The individual seeking the documents subsequently filed a writ of mandamus with the trial court, requesting the court to compel the Board to produce the evaluations under Ohio public records law.

The trial court allowed the parties to present arguments for why the writ should be granted or denied. After reviewing the arguments, the trial court decided to deny the writ of mandamus as it determined that the documents sought in the request did not constitute public records under Ohio Revised Code section 149.41. The trial court's holding relied on a previous case from the Seventh District, *Vindicator Printing Co. v. Julian*, decided on July 26, 1994. In this case, individual evaluation forms of school board members were sought pursuant to a writ of mandamus. The Seventh District denied the writ, reasoning that the individual evaluations created by the school board members were not public records because they were only made for the purpose of preparing for the board's meeting and were not required to be turned in or even completed. The Seventh District concluded that only the Superintendent's composite evaluation was a public record that served to document the decision of the public office.

On appeal, the Ninth District Court of appeals focused on a different aspect of the public records law. It noted that pursuant to R.C. 149.43(A)(1), a public record is a record "*kept* by any public office, including, but not limited to, state, county, city, village, township, and school district units." The appellate court noted a prior Ohio Supreme Court decision, *State el rel. Cincinnati Enquirer v. Cincinnati Bd. of Edn.*, which found that "Kept is the past participle of keep, which in this context means preserve, maintain, hold, detain, or retain or continue to have in one's possession or power especially by conscious or purposive policy." The Ohio Supreme Court further noted that when no law or policy requires a public office to retain certain materials, and neither the public office, nor its agents, keep the materials, those materials are not public records subject to disclosure under R.C. 149.43.

The facts in this case indicated that the Board only kept the Superintendent's composite evaluation, which it was required to compile and place in the personnel file pursuant to the District's bylaws and policies. The individual evaluations compiled by the Board members were not retained as part of the evaluation process. Therefore, the appellate court determined that the records requested were not "kept" by the Board, and as a result, there was no legal right to obtain these evaluations.

How this impacts your district:

School districts are subject to Ohio's public record laws and as such must be sure to comply with the relevant statutes when determining whether requested documents must be disclosed. This case highlights an important aspect of the public records statutes, which defines whether a document is a public record subject to disclosure. As the statute indicates, a document must be "kept" in order to be subject to disclosure. School districts should be familiar with the public records statutes in order to appropriately draft retention and disclosure policies and to avoid unnecessary litigation. Please do not hesitate to contact Ennis, Roberts, and Fischer if your district is confronted with a request for public records or is attempting to draft a public records policy.

House Bill 1

House Bill 1 was recently passed by the Ohio General Assembly , signed by the Governor, and enacted into law. The Bill is over three thousand pages long, but in the bullet points that follow we have attempted to provide some highlights of the major provisions affecting education in the State of Ohio. The list that follows is by no means exhaustive, but we will continue to provide your district with updated information on House Bill 1 and all other legal matters that may affect your district. In the meantime, please do not hesitate to contact Ennis, Roberts, and Fischer with any questions pertaining to this new legislation.

Academic Matters

- Requires the State Board of Education to adopt standards for business education in grades 7 to12 by July 1, 2010, which any school district or community school may utilize.
- Requires the State Board, by January 29, 2010, to develop a list of best practices for improving parental involvement in schools for optional use by public and nonpublic schools.

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House Bill 1

- Permits a school district to waive the requirement to complete an eighth-grade American history course for promotion to high school for academically accelerated students who demonstrate mastery of the course content.

Educator Licensure

- Requires the State Board of Education to issue the following educator licenses beginning January 1, 2011:
  - a resident educator license,
  - a professional educator license,
  - a senior professional educator license, and
  - a lead professional educator license.
- The Bill also prescribes minimum qualifications for each of the new educator licenses.
- Repeals the prohibition on the State Board requiring an educator license for teaching children two years old or younger.
- Requires the State Board of Education to accept applications for the current types of educator licenses through December 31, 2010, and to issue the licenses in accordance with existing requirements, and specifies that those licenses remain valid until they expire.
- Renames the alternative educator license as the "alternative resident educator license" and makes it a four-year renewable license for teaching in grades 4 to 12 (instead of a two-year nonrenewable license for teaching in grades 7 to 12, as in current law).
- Requires the Superintendent of Public Instruction and the Chancellor of the Ohio Board of Regents to develop an intensive pedagogical training institute for applicants for the alternative resident educator license.
- Eliminates the one-year conditional teaching permit for teaching in grades 7 to 12 and the one-year conditional teaching permit for teaching as an intervention specialist.

Teacher Tenure

- Revises the qualifications for a continuing contract (tenure) for regular classroom teachers who become licensed for the first time on or after January 1, 2011, so that a teacher is eligible for tenure if the teacher:
  - holds a professional, senior professional, or lead professional educator license,
  - has held an educator license for at least seven years, and
  - has completed 30 semester hours of coursework in the area of licensure since initially receiving a license, if the teacher did not have a master's degree at the time of initial licensure, or six semester hours of graduate coursework in the area of licensure since initially receiving a license, if the teacher had a master's degree at that time.
- Stipulates that the tenure qualifications for teachers initially licensed on or after January 1, 2011, override any conflicting collective bargaining agreement entered into on or after the provision's effective date.
- Clarifies that, for classroom teachers licensed for the first time prior to January 1, 2011, the continuing education coursework required for tenure under current law must have been completed since initial receipt of an educator license other than a substitute teaching license.

Termination of Educator Employment Contracts

- Changes the statutory grounds for dismissal for a school district teacher to "good and just cause."
- Specifies that this provision overrides any conflicting collective bargaining agreement entered into after the effective date of the bill.

Fiscal matters

- Replaces the current school funding method with a new method that calculates an "adequacy amount" for each city, local, and exempted village school district.
- In FY 2010 the transitional aid is changed to limit decreases in state aid to 1% and in FY 2010 and 2011 the cap is changed to limit growth in state aid to .75%. The bill appropriates $6.79 billion in FY 2010 and $6.79 billion in FY 2011 for formula aid for school districts, community schools, STEM schools, and joint vocational school districts.
- In FY 2010 and FY 2011, each joint vocational school district be paid the amount the district received in the previous year, inflated by .75%.
- Establishes the Student-Centered Evidence-Based Funding Council to develop a funding model that prescribes a per pupil level of funding that will follow a student to the school that best meets the student's individual learning needs, and to report its recommendations by December 1, 2010.
- Specifies that school districts must spend portions of their federal stimulus funds on services for students in nonpublic schools as prescribed by federal law.
- Revises and expands current law by prohibiting all school districts from charging students who are eligible for free lunch programs any fees for materials necessary to participate in a course of instruction, instead of prohibiting only districts receiving poverty-based assistance from charging such fees to students from families receiving Ohio Works First or state disability assistance as under current law.

Miscellaneous Provisions

- Requires boards of health to inspect the sanitary condition of schools semiannually (rather than annually, as in current law). Repeals Jarod's Law.
- Requires school districts to establish policies to protect students with peanut or other food allergies.
- Requires school districts annually to inform students and parents of the parental notification procedures in the school's protocol for responding to threats and emergency events.

Education Law Speeches/Seminars

Ennis, Roberts & Fischer regularly conducts seminars concerning education law topics of interest to school administrators and staff.
Popular topics covered include:

Cyber law
School sports law
IDEA and Special Education Issues
HB 190 and Professional Misconduct

To schedule a speech or seminar for your district, contact us today!

UPCOMING SPEECHES

Bill Deters and Jeremy Neff at the Clermont County ESC on September 11, 2009
Special Education Law Update

Jeremy Neff at the National Business Institute Seminar on October 7, 2009
Special Education Law

C. Bronston McCord III at the OSBA Capital Conference on November 9, 2009
Student Homelessness

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