



Ennis Roberts Fischer SCHOOL LAW REVIEW



1714 West Galbraith Rd.
Cincinnati, Ohio
45239

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Governor Signs SB 316—How Does it Affect Schools?

On Monday, June 25, 2012, Governor Kasich signed SB 316 into law. This bill supplements last year's HB 153 in terms of giving more specifications regarding evaluations and making new rules regarding other education issues, including third grade reading standards.

Evaluations

While HB 153 specified that each board of education must adopt a teacher evaluation policy in accordance with the statewide teacher evaluation framework adopted by the State Board of Education, SB 316 goes further to state that the requirements set forth in R.C. 3319.111 will prevail over conflicting provisions of a collective bargaining agreement entered into on or after the effective date of SB 316 (effective date still to be determined). Therefore, from the effective date of SB 316 forward, the requirements of 3319.111, which is evaluation of teachers, cannot be bargained.

The next change deals with which employees are "teachers" for the purposes of evaluations. SB 316 specifies that for evaluation purposes, a teacher is any person who has a state approved educator's license or a professional or permanent teacher's certificate and spends at least 50% of his or her time employed providing student instruction. This may change who districts are required to evaluate. Af-

ter completing all of the evaluations and assigning each teacher a rating of (1) Accomplished; (2) Proficient; (3) Developing; or (4) Ineffective, each district must annually report to the Ohio Department of Education ("ODE") the number of teachers evaluated and the ratings received, aggregated both by the teacher preparation programs and the year in which the teachers graduated. ODE will provide guidance on how to report this data and no personally identifiable data will be reported. Therefore, if only one teacher in your district graduated from a particular undergraduate institution, the district will probably not be able to report that teacher's evaluation rating in the aggregation of data based on undergraduate institutions.

SB 316 has also changed some important dates related to evaluations and non-renewals. All evaluations of teachers and administrators must be completed by May 1st of each year. Written copies of the evaluations must be provided to the teacher or administrator by May 10th. As part of HB 153, it is required that student growth make up at least half of each teacher's evaluation. However, SB 316 stipulates that any student who has more than sixty (60) unexcused absences should not be included in the calculation of student academic growth.

In addition to moving the

dates by which evaluations must be completed, SB 316 has moved the dates by which decisions must be made regarding non-renewal. All non-renewal decisions for teachers and administrators now must be made by June 1st.

Districts may have a policy stating that teachers rated "accomplished" need only be evaluated once every two years. In addition, SB 316 allows a Board to require only one formal observation for an evaluation for any "accomplished" teacher, so long as that teacher completes a board approved project that demonstrates the teacher's continued growth and practice at the accomplished level. It is important to note that in both of these situations, the district must pass a resolution stating that it is district policy to only evaluate "accomplished" teachers once every two years and only do one observation per evaluation for these teachers.

Beginning in the 2015-2016 school year, teachers who teach core subject areas and receive a rating of "ineffective" for two of their last three years must take all written examinations of content knowledge selected by ODE. The core subjects include reading, English language arts, mathematics, science, foreign language, government, economics, fine arts, history, and geography. The

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Ennis, Roberts & Fischer's School Law Review has been developed for use by clients of the firm. However, the review is not intended to represent legal advice or opinion. If you have questions about the application of an issue raised to your situation, please contact an attorney at Ennis, Roberts, & Fischer for consultation

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examinations must be taken at the district's expense. Once the teacher has passed the examination, the teacher must, at his or her own expense, complete professional development targeted at the deficiencies identified in the teacher's evaluations. If, after completing the professional development, the teacher receives "ineffective" on his or her next evaluation, or if the teacher fails to complete the professional development, he or she may be subject to termination.

For teachers employed under a limited contract, it is no longer required that the teacher be evaluated twice in any school year where the board may wish to not re-employ the teacher. Rather, only one evaluation is needed, but as part of that evaluation, there must be at least three formal observations.

Evaluators must be credentialed by ODE, which means that each evaluator must have completed state training and completed a new online assessment. Each board of education must approve a list of credentialed evaluators and may include outside agencies, including ESCs. There are many educators who have received "certificates" from the state and now they believe they are credentialed. However, ODE has added the new online assessment requirement and educators must go back and complete the online assessment in order to finish the credentialing process.

Third Grade English Language Arts

Beginning in the 2013-2014 school year, any 3rd grade student must achieve at or above the level prescribed by the state board on the language arts assessment in order to move on to 4th grade. The state board must designate a level of achievement that is no lower than the "limited level of skill" and each year the level must be adjusted upward until the level of achievement required for promotion to 4th grade is at least "proficient."

There are a few exceptions to the rule that students not meeting the pre-

scribed level on the language arts assessment cannot move to the 4th grade. First, if a student is limited English proficient, has been in school in the United States for less than two full school years and has had less than two years of instruction in English as a second language, the student is exempt from this provision. Second, if a student is a child with a disability and is receiving services, the child's IEP may exempt the student from retention on the basis of a score that is lower than it needs to be. The third type of exception occurs when a student has demonstrated an acceptable level of performance on an alternative standardized reading assessment, as determined by ODE. The fourth exception occurs when a student with a disability has an IEP or 504 plan that shows that the student has received intensive remediation in reading for two school years, but there is still a deficiency and the student has been previously retained in any of the grades K-3. The last exception occurs when any student, regardless of IEP or 504 status, has received intensive remediation for reading for two school years and has previously been retained in any of the grades K-3. If the last situation occurs, the student must continue to receive intensive reading instruction in 4th grade.

Any student that is retained in the third grade, after achieving a non-satisfactory score on the English language arts assessment, must be provided intense remediation that is designed to lift the student to the appropriate reading level. This remediation must include intensive interventions in reading that address each student's specific deficiencies and must include at least ninety (90) minutes of reading daily. Also, these students must be provided with a high performing teacher, as determined by the teacher's student performance data and performance reviews. The student and the student's parents must be provided with information regarding the student's option to receive applicable services from one or more providers other than the district. If the student's only deficiency is in reading or if the student is not deficient in some other core subject (i.e. math, science, and social

studies), then the student must be provided with instruction that is appropriate with the student's achievement level in those core subjects. Therefore, if a student achieves scores that prove he or she is proficient in one or more of the core subjects, but is retained in third grade for reading deficiency, then the district must provide fourth grade level work for the subjects the student is already proficient in at the third grade level.

If a student participates in the remediation services and demonstrates reading proficiency prior to starting fourth grade, then the district must promote the student to fourth grade, even if it is in the middle of the year. Therefore, because of the requirement that students who are now achieving at the appropriate level must be promoted, districts must establish a policy for the mid-year promotion of those students.

In order to assess student language arts achievement levels, each district's board of education must adopt policies and procedures for annually assessing the reading skills of each K-3 student enrolled in its schools. The policy must provide that annual assessment is completed by September 30th of each year, and the policies and procedures must be developed for use during the 2012-2013 school year. The assessments must be designed in order to identify students who are reading below grade level. Each district must use the diagnostic assessment appropriate for the particular grade level being assessed that is adopted under 3301.079 or a comparable tool approved by ODE.

Any student that is identified as deficient must be provided with certain services and the parents of these students must be provided with notice. The notice provided to the parents must be in writing and must notify the parents that their child has been identified as having a substantial deficiency in reading. Further, the notice must give a description of the current services that are being provided to the student and the proposed supple-

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mental instructional services and supports that will be provided to the student. Then, the parents must be notified that if the student does not attain the score prescribed by the state board as appropriate to move forward to fourth grade, by the end of third grade, then the student will be retained unless one of the exemptions applies.

As for services, districts must provide intensive reading instruction to any student who is deficient in reading immediately following identification of the reading deficiency. The intervention services plan must include both a plan for reading improvement and monitoring and must be completely developed within sixty (60) days of receiving the diagnostic results. When developing the plan, the district must involve the student's parents and classroom teacher.

Any student who needs a reading improvement and monitoring plan and is entering third grade after July 1, 2013 must be assigned to a teacher who has either received a passing score on a rigorous test of principles of scientifically based reading instruction approved by the state board or has a reading endorsement on his or her teacher's license.

The plan itself must include: identification of the student's specific reading deficiencies; a description of the additional instructional services and support that will be provided to the student; opportunities for the student's parent to be involved in the instructional services and support; a process for monitoring the extent to which the student receives the instructional services and support; a reading curriculum that provides certain requirements; and a statement providing that if the student attains a below satisfactory score on the English language arts assessment at the end of third grade, the student may be retained in the third grade. The reading curriculum must assist the student to read at grade level, provide scientifically based and reliable assessment, and provide initial and ongoing analysis of each student's reading progress.

Then, each district must report annually to ODE on the district's implementation of and compliance with the new requirements associated with third grade reading.

Other Important Changes from SB 316

School Report Cards – The parents of all newly enrolled students must be provided, during the admissions process, with a copy of the school's most recent report cards. Also, joint vocational schools ("JVS") will begin receiving report cards by September 1, 2013.

Body Mass Index Screening – This is now optional. However, if a district does choose to do the BMI screening, that district must report the aggregated BMI data to the Ohio Department of Health.

Blended Learning – Any local, city, exempted village, or JVS district can now operate all or part of a school using a blended learning model. Blended learning means the delivery of instruction in a combination of time in a supervised physical location away from home and online delivery whereby the student has some control over time, place, path, or pace of learning. Schools who choose to begin using blended learning or discontinue the use of blended learning, must notify ODE by July 1 prior to the year the change will take place.

Ed Choice Scholarship – Students enrolled in a nonpublic school at the time the school is granted a charter may now be eligible to receive an Ed Choice Scholarship.

Disposing of Property – Districts may now sell property to a nonprofit institution of higher education or to the governing authority of a chartered nonpublic school, when property is valued greater than \$10,000. Further, districts have always had to offer right of first refusal to any governing authorities of start-up community schools located within the territory of the district, but now must offer that same right of first

refusal to the board of trustees of any college-preparatory boarding school located within the territory. The appraisal used to decide the value for these purposes, can be no more than one year old.

Disposing of "Unused Property" – Unused property means any real property that has been used by the district for school operations since July 1, 1998, but has not been used in that capacity for two years. If a district has any unused property, the district must offer the property for lease or sale to the governing authorities of community schools and the board of trustees of any college-preparatory boarding school located within the district territory. In addition, districts may, but are not required to, offer the property to a community school with plans to relocate or add facilities in the district.

District Reporting on Students in Community Schools – Each month the board of education of each city, exempted village, and local school district must review enrollment for students enrolled in a community school and entitled to attend in its school district. For each student, the district must verify to ODE the community school in which the student is enrolled and that the student is entitled to attend school in the district.

Special Education – For students with disabilities, transition plans must be done for students on their first IEP to be in effect when they turn 14, rather than 16. Also, each time a student with a disability is evaluated or the district develops, reviews, or revises the child's IEP, the district must notify the parent, by letter or electronic means, about both the autism scholarship program and the Jon Peterson special needs scholarship. The notice must include specific language regarding the scholarship programs and the contact information and website information of the ODE section administering the scholarship programs.

Educational Service Centers – There is no longer a July 1 deadline by which a fee-for-service agreement between an

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ESC and a school district must be filed with ODE. Also, starting in the 2012-2013 school year, districts with more than 16,000 students, that enter into an agreement with an ESC for services which the state provides per-pupil funding, may opt out of receiving supervisory services from the ESC. In situations where an ESC is providing services for a child who is in custody of the county or district juvenile detention facility the ESC may submit the bill for those services directly to the school district responsible for paying the cost of educating the child.

Kindergarten Admission – Districts may admit a child to kindergarten or first grade, even if he or she is not of the requisite age, if the child is recommended for early admission in accordance with the district's acceleration policy. Further, if a child is referred for early admission by either a parent or guardian, an educator employed by the district, or a preschool teacher, pediatrician, or psychologist who knows the child, the district must evaluate the child for early admission. If a student needs to transfer into the district and has been admitted in another district or charter school, then the dis-

trict cannot deny the transferring student admission based on the student's age.

Calamity Days – Schools may now use a calamity day when there is a law enforcement emergency.

Beverages – At least half of the beverages available for sale from the food service programs, vending machines, or school stores that are not milk must consist of water or other beverages that contain no more than ten calories per eight ounces.

New Public Records Mediation Program

On June 20, 2012 Attorney General Mike DeWine announced that the Ohio Public Records Mediation Program is now available to local government entities, including school districts, and parties requesting public records from those public entities. DeWine is hopeful that the new mediation program will help to “protect the rights and interests of both Ohioans and their local officials by helping resolve disputes before parties turn to time consuming and costly litigation.”

Any person disputing the denial or delay of requested public records from a local public office, or the local public office itself, may apply for mediation. The only caveat is that mediation cannot be requested if a lawsuit has already been filed. The request for mediation may be done either online, by mail, or fax. After receipt of the request, the Attorney General's Public Records Unit will notify the other party

that mediation has been requested, at which point the other party may make a decision regarding whether it is willing to participate in the mediation process. Consent by both parties is required in order for the mediation to take place and mediation is not required prior to a lawsuit being filed. Therefore, this program serves as an alternative to filing a lawsuit, but does not have to be used at all.

A member of the Public Records Unit, who is professionally trained as a mediator, will serve as the mediator. The mediator will take neither party's side, but will instead help each party negotiate a settlement that both parties can be happy with. Also, the mediator will not make a decision regarding who is correct. Rather, he or she will help both parties work through the issues keeping them from coming to an agreement regarding the release of public records.

One of the benefits to public entities of participating in mediation prior to moving forward with a lawsuit, is that the Attorney General's Office is offering this service free of cost, which is much lower than the cost of litigation. Further, in some situations a school district, or other local government entity, has to deal with a repeat requester, or a person who is constantly making requests for public records. By participating in mediation, the public entity may have the opportunity to reach an agreement with a repeat requester that will end up saving the public entity time and money.

While not every dispute can be solved by going to mediation, it is a good first step in trying to resolve difficult situations dealing with the proper release of public records.

Recent Movement of Other Legislation

HB 437—Governor Signed (6/26/12)

Increases the number of miles that a school district may authorize its motor vehicles to travel out of state. The increase is from 240 miles to 1000 miles, roundtrip.

HB 143—Sent to the Senate for Consideration (6/19/12)

Would require school districts to obtain a form signed by the parent or

guardian of any student wishing to participate in interscholastic athletics stating that the parent or guardian has received the concussion and head injury information sheet. The injury information sheet will be created by the Ohio Department of Health. The parent confirmation form would have to be submitted each school year for each sport in which the student wishes to practice or compete. Further, any student who exhibited signs of a concussion would not be able to participate

until a physician or other health care provider stated that the student was okay to do so.

HB 543—Sent to Senate for Consideration (5/29/12)

This is the “Jason Flatt Act” and would require public schools to train staff in youth suicide awareness and prevention.

Education Law Speeches/Seminars

Administrator's Academy Dates at Great Oaks Instructional Resource Center

You can enroll in an Administrator's Academy session using the form on our website or by emailing Pam Leist at pleist@erflegal.com.

July 12, 2012 — *Education Law Legal Update*

Other Upcoming Presentations

Mercer ESC Administrative Retreat on August 2, 2012
Legal Update

NWOESC Administrative Retreat on August 2, 2012
Legal Update

Hopewell SERCC/SOESC on August 3, 2012
Legal Update

Erin Wessendorf-Wortman
OSBA Attendance, Tuition and Custody Workshop on August 3, 2012
Territory Transfer Troubles

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@erflegal.com or 513-421-2540. Archived topics include:

- Effective IEP Teams
- FMLA, ADA and Other Types of Leave
- Tax Incentives
- Prior Written Notice
- Student Residency, Custody and Homeless Students
- Ohio Budget Bill/House Bill 153
- Student Discipline
- Media and Public Relations
- Gearing Up for Negotiations

Need to Reach Us?

William M. Deters II
 wmdeters@erflegal.com
 Cell: 513.200.1176

C. Bronston McCord III
 cbmccord@erflegal.com
 Cell: 513.235.4453

J. Michael Fischer
 jmfischer@erflegal.com
 Cell: 513.910.6845

Gary T. Stedronsky
 gstedronsky@erflegal.com
 Cell: 513.674.3447

Jeremy J. Neff
 jneff@erflegal.com
 Cell: 513.460.7579

Ryan M. LaFlamme
 rlaflamme@erflegal.com
 Cell: 513.310.5766

Pamela A. Leist
 pleist@erflegal.com
 Cell: 513.226.0566

Erin Wessendorf-Wortman
 ewwortman@erflegal.com
 Cell: 513.375.4795

ERF 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
 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:
 Bill Deters
 Pam Leist
 Jeremy Neff
 Erin Wessendorf-Wortman
 Michael Fischer

School Finance

Taxes, School Levies, Bonds, Board of Revision

Team Members:
 Bill Deters
 Bronston McCord
 Gary Stedronsky
 Jeremy Neff