



ODE Issues Guidance on Serving Incarcerated Students

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On February 3, 2016, the Office for Exceptional Children issued guidance to school districts concerning students with disabilities who are, or may be, confined to community corrections facilities or juvenile detention centers.

Generally, the law provides that the school district of residence (the district in which the student’s parent(s) reside) maintains the ultimate responsibility to provide a free appropriate public education (“FAPE”) to the student and remains responsible for the student’s access to appropriate special education and related services while the student is confined. Absent a specific exception, the school district of service (defined as the school district in which the facility is located) provides the special education and related services and charges the cost of those services to the district of residence. Keep in mind, however, that it remains the ultimate responsibility of the district of residence to ensure that students with disabilities are receiving the services to which they are entitled pursuant to their individualized education programs (“IEP”).

The guidance further emphasizes that school districts must identify, locate and evaluate students in community corrections facilities and juvenile detention centers who may have a disability and may need special education and related services under the Individuals with Disabilities Education Act (“IDEA”). In short, if there is a suspicion that a student has a disability and is in need of special education and related services, the district of residence must evaluate that student in a timely manner.

School districts should review their special education policies and procedures to ensure that they provide FAPE in a timely and appropriate manner to all students with disabilities, including students in these facilities, and in accordance with the *Ohio Operating Standards for the Education of Children with Disabilities*.

For additional information and access to ODE's guidance, please visit:

<http://education.ohio.gov/Topics/Special-Education/Federal-and-State-Requirements/Operational-Standards-and-Guidance/Education-of-Students-in-Correctional-Facilities>

How this affects your district:

ODE's guidance demonstrates the state's increased focus on whether districts are providing required services to incarcerated students. It is therefore important that your district should have an accurate accounting of students incarcerated both *from* your district and if applicable, *in* your district. You should also verify that the district has current IEP information for all incarcerated IEP students from or in your district, and your EMIS reporting is regularly reconciled and reviewed.

Public Records Case for “All Personnel Files Considered in Executive Session” Decided

A citizen requested public records concerning employees the board had discussed in executive session over a period of six months. The board responded that the request was overbroad and requested clarification to determine what public records were being requested. The requester submitted a response asking for many additional records beyond the original request, including drug test results for principals, all personnel files of all employees, all check stubs and cancelled checks used to pay district lawyers, food bills for board meetings, signed copies of the oath of office for the board members, and “...all memos, letters and documents” pertaining to the contract between the teacher’s union and the board.

The Board, through its legal counsel, agreed to produce records in response to the request. It notified the requester that there were no drug tests (in any event, drug test records are confidential) but denied the request for all the personnel files on the basis that it was overbroad, and invited the requester to identify specific files that he wanted. The requester then responded that he did not actually want copies of the records, but rather he wanted to review, inspect and copy them himself. He made requests for many more records than he had originally requested in his response back to the district.

The district responded by denying the additional requests, and the requester filed a mandamus action. Representing himself, he alleged that he did not get the documents he requested despite the fact that the document themselves showed up on a website linked to the requester and court filings indicated records had been received.

The district filed the sworn affidavit of its treasurer that the records *had* been provided, and the requester filed a sworn affidavit that they had *not* been provided.

The court decided the case by ordering the district to make available the personnel files of all adult persons that were the subject of executive sessions for the six month time period, finding that the request was sufficiently limited in scope. The court found that the request for all the personnel files of the district was overly broad and would place “quite a burden” on the district because it had to redact confidential information and so would have to go through each file to remove confidential documents and redact documents that are partially confidential.

Even though the court granted summary judgment in favor of the requester on the limited issue of producing the personnel files of those adults who were the subject of a board executive session for a six-month period, the court did not find that the board acted unreasonably and did not order statutory damages. The court ordered the parties to share costs equally.

How this affects your district:

State law provides a means by which vexatious, repeat public records requesters may file mandamus actions in court if the requester believes a request has been unlawfully denied. To prevent such a lawsuit, public records requests received by the district should be carefully reviewed and documented. Records custodians should seek clarification for vague or overly broad requests. Districts should also be careful to ensure all private information is properly redacted, and any denials are documented with a legal citation supporting the denial. Schools are encouraged to contact legal counsel early in the process to develop a proactive response to lengthy requests.

State ex rel. Strothers, Jr., v. Keenon, (Ct. App. Cuyahoga, 2016) 2016-Ohio-405

Maryland School District Sued for Promoting Islam

The Thomas Moore Law Center, on behalf of John and Melissa Wood and their minor daughter, filed suit against the Charles County Public School District Board of Education and the High School Principal and Vice-Principal, alleging that the La Plata High School “promoted Islam” by implementing a pro-Muslim lesson plan in its World History class. The Woods claim that the school concealed that it promoted Islam by leaving the topic out of a course syllabus and that students were forced to use a separate textbook for the segment on Islam but were not permitted to take it home. To that end, the Woods allege that their daughter was forced to profess and to write out the Shahada, the Islamic creed, in worksheets and quizzes.

By way of background, the lawsuit alleges that after the Woods learned of the Islamic subject matter being taught, Mr. Woods immediately contacted the school to voice his objections and to obtain an alternative assignment for his daughter. He maintains that the school ultimately refused to allow his daughter to “opt-out” of the assignments and subsequently enforced its “No Trespass” policy so that he was no longer permitted to enter onto school premises.

In a statement, President and Chief Counsel of the Thomas More Law Center Richard Thompson said the school “forced Wood’s daughter to disparage her Christian faith by reciting the Shahada, and acknowledging Mohammed as her spiritual leader.”

“The Woods believe that it is a sin to profess commitment in word or writing to any god other than the Christian God,” the Thomas Moore Society says on its website. “Thus, they object to their daughter being forced to deny the Christian God and to her high school promoting Islam over other religions.”

The Woods seek a court declaration that the school, the principal and vice-principal violated their constitutional and statutory rights, a temporary and permanent injunction barring the school from endorsing Islam or favoring Islam over Christianity and other religions, and from enforcing the no trespassing order issued against Mr. Wood. A U.S. District Court in Maryland will hear the case and issue a decision.

How this affects your district:

This lawsuit serves as a reminder that schools should be cognizant of the parameters under state and federal law for instructing in religion. Generally, districts may teach *about* religion, but may not practice or promote a specific religion in school. For example, in a world religion class, it would be appropriate to teach about the menorah, explaining its function and meaning to the Jewish holiday of Chanukah, but it would not be appropriate to light the menorah and recite the prayers in a Jewish religious ceremony. Districts are also encouraged to review their policies about how they must handle parent/student requests not to participate in certain curriculum, and should seek legal counsel about how to respond when requests arise.

Legislation in the Works

SB 3, being called an “educational deregulation” bill, was pulled from the House Education Committee hearing schedule and postponed until March 10, when changes will be made. It contains a “Christmas tree” of miscellaneous provisions, including but not limited to:

- Changing the competitive bidding threshold for school building and repair contracts from \$25,000 to \$50,000.
- Requiring OFCC to develop a legislative proposal that would assist high-performing schools with safety and security by purchasing technology, expanding buildings and physically altering buildings.
- Exempting high-performing schools from some laws, including but not limited to any laws regarding minimum or maximum class sizes, having teachers licensed in the grade levels they are teaching, and more.
- Permitting school districts to contract with entities for health services, such as hospitals, doctors and ESC’s.

HB 212 on achievement tests and teacher and administrator evaluations was continued twice in the House Education Committee. It would prevent the State Board of Education from using common core academic content standards or use any assessment related to or based on common core, and would

void any action to adopt or implement common core state standards taken previously. It would instead require content standards as close to Massachusetts' standards as possible.

HB 399 would expand funding for College Credit Plus for home-schooled students, from \$500,000 now to \$1.5 million. A hearing on February 10 was continued.

HB 425, a bill that would allow students to express their faith in school, was approved by the House Community and Family Advancement Committee. Called "The Ohio Student Religious Liberties Act," it removes a sentence that allows school districts to limit student religious expression to lunch periods or other non-instructional time when students are free to associate. It creates new sections of Ohio law defining "religious expression" as:

- Prayer,
- Religious gatherings like prayer groups,
- Religious clubs, and
- "See you at the pole" gatherings,
- Distributing religious literature or other materials,
- Wearing symbolic clothing,
- And any other activity of a religious nature.

Additionally, the bill would allow public school students (and charter school students) to engage in religious expression during, before and after school in the same manner as students are allowed secular (nonreligious) activities or expression.

It would require schools to give students wishing to have a meeting for religious expression the same access to facilities as is given to secular student groups.

Finally, it would require schools to allow students to complete homework, artwork, or other written or oral assignments by engaging in religious expression. Schools could not penalize or reward a student for including religious expression in their assignments.

How would HB 425 affect your district?

There is a large body of case law interpreting the U.S. Constitution's guarantee of the separation of church and state. There may be constitutional issues with the requirement that students be allowed to give a religious presentation in class while other students, whose attendance is compulsory, must listen. It could give rise to a claim that the school district endorses religion by allowing proselytizing during instructional time. Consider the article on p.3, above, in which a Maryland school district was sued for "promoting Islam" by offering a lesson in a world religions class for which students had to write the Islamic creed. A district that allows students to proselytize about their faith during instructional time could be viewed as promoting or endorsing religion, and this could result in litigation. Ohio districts are subject to all the U.S. Supreme Court rulings on religion in schools, and state law cannot alter or waive those directives.

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.

- **March 1** – action and written notice of nonrenewal for superintendent, treasurer must be received (RC 3319.01, 3313.22)
- **March 1**– Deadline to provide students information about College Credit Plus (R.C. 3365.04)
- **March 15** – Presidential Primary, special election day (R.C. 3501.01)
- **April 1**- Letters of intent from students to participate in College Credit Plus due
- **April 25**- Deadline to certify income tax levy for August 2016 to Ohio Department of Taxation
- **April 29**- Deadline for certification to county auditor for operating or emergency levies for August 2016

Upcoming Presentations

SAVE THE DATE! 2015-2016 Administrator's Academy Seminar Series

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 or 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/, contact Hannah Reichle at 614.705-1333, or send an email to hreichle@ennisbritton.com

Other Upcoming Presentations

March 4, 2016- Jeremy Neff, Progress Monitoring Pitfalls

Special Education Law workshop, OSBA, 8050 N. High St., Columbus, OH 43235

March 6, 2016 - John Britton, Giselle Spencer, Megan Bair Zidian, Legal Update

Ashland Leadership Academy, Sheraton Suites, Cuyahoga Falls

March 9, 2016 - Pam Leist, Guns and Schools: School Safety and Gun Laws

Ohio State Bar Association Quick Webcasts

March 18, 2016- Gary Stedronsky, Legal issues relating to today's hottest tech toys

Cyberlaw workshop, OSBA 8050 N. High St., Columbus OH 43235

April 14, 2016- Bronston McCord, Rob Giuffre on Strategic Compensation

OASBO annual conference, Greater Columbus Convention Center (Columbus)

April 14, 2016- Pam Leist, Hollie Reedy on Booster Group Management and the Law

OASBO annual conference, Greater Columbus Convention Center (Columbus)

April 22, 2016- Pam Leist, Jeremy Neff on Special Education Laws Made Simple

NBI Live Seminar, Holiday Inn & Suites Conference Center, Mansfield, OH 44902

July 29, 2016- Lisa Burleson- Legal Hot Topics Heading into the New Year

Madison-Champaign and Clark County ESC Administrator retreat



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.

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 Hannah Reichle at hreichle@ennisbritton.com or 614-705-1333. Archived topics include:

- Managing Workplace Injuries & Leaves of Absence
- Special Education: Challenging Students, Challenging Parents
- Fostering Effective Working Relationships with Boosters
- Effective IEP Teams
- Levies & Bonds
- OTES & OPES Trends & Hot Topics
- Tax Incentives
- Cyberlaw
- FMLA, ADA and Other Types of Leave

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 helps 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 are comprised of attorneys who already have experience in and currently practice in these specialized areas.

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

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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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