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# School Law Review

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## U.S. Department of Education Weighs In on Handling of Transgender Student Complaints

On February 12, 2018, [BuzzFeed News](#) issued an article detailing an interview with U.S. Department of Education (USDOE) officials wherein the USDOE spokesperson outlined the department's policy on how it would handle transgender student complaints. The details of this article, and statements made by the USDOE spokesperson, were later confirmed by [NPR's Education News Desk](#). (Please note that although BuzzFeed is not typically a news source for Ennis Britton, the details of the interview and the fact that the details were confirmed by another news source renders this information useful and informative.)

Essentially, the USDOE spokesperson has said that the USDOE will not investigate or take action on any complaints filed by transgender students who are banned from restrooms that match their gender identity. If the complaint alleges that the transgender student has been bullied, harassed, or punished due to his or her gender nonconformity, the USDOE will investigate and possibly take action against a school district.

Substance of Complaint	USDOE Action
Alleges harassment, bullying, or punishment for failing to conform to sex-based stereotypes	Will be accepted and possibly investigated by the USDOE
Alleges transgender student was denied access to accommodations such as restrooms and locker rooms	Will not be accepted by the USDOE

The USDOE has been noticeably silent on issues dealing with transgender students since it withdrew the May 13, 2016, [Dear Colleague Letter on transgender students](#) on February 22, 2017. The withdrawal letter can be found

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[here](#). This recent interview with the USDOE spokesperson does nothing other than lay out how the USDOE will handle complaints from transgender students. This does not mean that transgender students can never bring a claim for discrimination based on their gender identity or their failure to conform to sex-based stereotypes, but it does mean that such claims will be filed in the courts as opposed to the USDOE.

This is a rather strange parsing for the USDOE and a fine line to walk in terms of what will be classified as bullying, harassment, and punishment. (See the Seventh Circuit Court case discussed below.) Districts need to be aware that if a student claims that he or she has been bullied, harassed, or punished because of being transgender or because of failure to conform to sex-based stereotypes, such a complaint must be processed and investigated pursuant to the school district's bullying and/or anti-discrimination policies. Failure to do so or to take such complaints seriously could result in complaints filed with and investigated by the USDOE.

The remaining issue is accommodations – specifically, bathroom and changing/locker room access. The USDOE's statement has made it clear that this battle will occur in courts around the country as opposed to the USDOE. Therefore, it is important to see where the courts' decisions are falling with respect to this issue around the country. In the meantime, despite USDOE's stance, districts may wish to continue to process and investigate disputes regarding bathrooms and changing/locker room access under anti-discrimination policies because these disputes may be pursued through federal litigation.

Remember, the U.S. Supreme Court canceled oral arguments in *G.G. v. Gloucester County School Board*, 82 F.3d 709 (4th Cir. 2016), *vacated and remanded*, 137 S. Ct. 1239 (U.S. 2017), *remanded*, 869 F.3d 286 (4th Cir. 2017), after the U.S. Departments of Education and Justice revoked the May 13, 2016, guidance from the previous administration. Based on the rescission, the U.S. Supreme Court remanded the case back down to the Fourth Circuit Court of Appeals to be reconsidered. The student in that case graduated in June 2017 and has since withdrawn his motion for a preliminary injunction and filed an amended complaint for nominal damages. The former student seeks a declaration that the school board violated his rights under Title IX and the Equal Protection Clause, as well as a permanent injunction preventing the school board from excluding him from using the restrooms when he is on school grounds.

In December 2016, the Sixth Circuit Court of Appeals, relying on the now-rescinded advice, [agreed with a lower court decision](#) from the United States District Court for the Southern District of Ohio regarding how an Ohio school district treated an eleven-year-old transgender student. The courts found that the eleven-year-old student had a strong likelihood of success in her claims against the Ohio school district and therefore should be allowed to use the school restrooms that correspond to her gender identity and otherwise be treated like other female students during the pendency of the lawsuit. However, please note although these courts have great impact and control in Ohio, they relied on the now-rescinded guidance from the USDOE, and how these courts will rule on the same issue in the future is uncertain. Further, this case still remains to be fully and finally litigated; both the Southern District of Ohio and the Sixth Circuit ruled only on motions for an injunction; they have not yet ruled on the substantive issues at hand.

Additionally, although not controlling in Ohio, the Seventh Circuit Court of Appeals issued a [decision](#) in May 2017 (after the USDOE rescinded its previous guidance) that may be informative both in Ohio and around the country. The Seventh Circuit Court found that a school district was sex stereotyping a transgender student when it required the transgender male student to use the girls' restroom or a private restroom. In its decision, the court held that a "policy that requires an individual to use a bathroom that does not conform with his or her gender identity *punishes* that individual for his or her gender non-conformance, which in turn violates Title IX" (emphasis added). The school district filed a petition for a writ of certiorari with the U.S. Supreme Court requesting that the Court overturn the lower court's decision. The U.S. Supreme Court granted this petition; however, the parties have since settled their dispute, agreeing on a payment of \$800,000 to the student (and presumably the attorneys for fees), as well as permission for the student to use the men's restroom if he returns to the district as an alumnus (the student graduated and no longer would be in daily attendance). As a result, although the U.S. Supreme Court will not be

ruling on this case, the Seventh Circuit Court’s decision in favor of accommodating the transgender student stands.

### What This Means for Your School District

In sum, the “new” information out of the USDOE does not change anything for school districts. The USDOE has simply communicated how it will handle complaints from transgender students. If the complaint deals with accommodations (restrooms, locker rooms, etc.), the USDOE will not accept the case; but if the complaint involves bullying, harassment, or punishment based on transgender status, it will.

Instead, the question of whether and how to provide accommodations to transgender students will be a matter to be litigated through the court system in the years to come. For additional advice on handling requests for accommodations for transgender students or working through complaints of discrimination, please contact an Ennis Britton attorney for assistance.

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## Ohio Senate Adopts Substitute Education “Deregulation” Bill

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On January 31, the Senate Education Committee accepted a substitute bill for SB 216, which was initially introduced on October 10 by Sen. Matt Huffman. More amendments are expected in the coming weeks, as this bill is engendering plenty of discussion by proponents and opponents alike.

The original version of the following chart was initially published in the November 2017 issue of School Law Review. Below is an updated version of this chart, which includes a summary of the substitute bill provisions as well.

Topic / R.C. §	As Introduced	Substitute Bill
State assessments R.C. § 3301.078	Adds language that would force the American Institutes for Research to explain how questions on all prescribed state assessments for all grade levels relate to the academic content standards starting with 2018–19. Also requires AIR to provide districts with practice tests, study guides, and other prep materials.	Same, but expands the requirement to every assessment vendor contracted by ODE.
State assessments R.C. § 3301.079	Eliminates the kindergarten readiness diagnostic assessment (KRA) for reading, writing, and math, and eliminates the inclusion of kindergarteners in identification and intervention for the Third-Grade Reading Guarantee.	Reinstates the KRA and the inclusion of kindergarteners in the Third-Grade Reading Guarantee and requires ODE to approve a list of comparable assessments that may be used in lieu of the KRA and to provide them at no cost.
State assessments R.C. § 3301.0711	Adds language that prohibits requiring districts to administer assessments for grades 3, 4, and 5 online, and permits districts to choose paper format for the assessments or any combination of online and paper assessments on a student-by-student basis. Adds language defining “other public school” as a community school, STEM school, or college prep boarding school.	Same.
EMIS R.C. § 3301.0714	Eliminates the need to report kindergarten assessments in EMIS after the effective date of the statute amendments (since the kindergarten assessment will be eliminated).	Provision deleted (retains the current law in this section).
Kindergarten readiness assessment R.C. § 3301.0715	Eliminates the ODE-provided KRA. Eliminates the ability of ODE to use the kindergarten readiness assessment data to calculate the district’s letter grade for improving literacy in K–3. Adds a new requirement for this school year (2017–18) for	Retains the KRA, adds comparable assessments, and includes the provision in the previous version of the bill regarding less than 80% of

	any district in which less than 80% of students score proficient or higher on the third-grade English language arts assessment to establish a reading improvement plan supported by reading specialists. The district board of education shall approve it before it is implemented.	students scoring proficient or higher on the third-grade English language arts assessment.
Kindergarten diagnostic assessment R.C. § 3301.163	Eliminates requirement for chartered nonpublic schools to administer kindergarten diagnostic assessments.	Generally retains the current law in this section, but adds language allowing use of comparable assessments approved by ODE for kindergarten students.
Compliance checklist R.C. § 3301.68	Requires ODE to establish, distribute, and monitor a “school mandate report” for districts, which would complete and file the report annually. Districts would note compliance with mandates by checking “yes” or “no”. If not in compliance, a district will provide an explanation to its board of education within 30 days as to why the item is not completed along with a written action plan to address the problem. The checklist will include whether the district is in compliance with <ul style="list-style-type: none"> <li>➤ training on use of physical restraint or seclusion,</li> <li>➤ training on harassment, bullying, and intimidation,</li> <li>➤ CPR and AED training,</li> <li>➤ crisis prevention training,</li> <li>➤ establishing wellness committees,</li> <li>➤ establishment and review of school emergency management plan, and</li> <li>➤ compliance with nutritional standards.</li> </ul>	Labels this report as a “consolidated school mandate report” and requires that it be submitted by November 30 each year. Adds that the report must include information about pupil screening for hearing, vision, speech and communication, health or medical problems, and developmental disorders. Requires districts to provide additional information at ODE’s request.  ODE may not require a second report for any items listed in this section except for the public presentation of nutrition standards.
State report card R.C. § 3301.02	Eliminates requirement that districts where less than 5% of students have scored below grade level on the kindergarten assessment receive no letter grade in K–3 literacy.	Not included (retains the current law in this section).
State report card R.C. § 3302.03	NA	Eliminates the requirement for a gifted student indicator in the state report cards. Increases the minimum number of students in a group before ODE may report student performance data from 10 to 30. Eliminates the requirement for ODE to report “highly qualified” teacher data in the state report cards.
Educational choice scholarship program R.C. § 3310.03	Changes eligibility for scholarship to students in buildings where a D or F on was received on improving K–3 literacy in the last 2 of 3 years to grade 1–3 improving literacy.	Provision deleted (retains current law).
Teacher evaluations R.C. § 3311.80	NA	This section is only applicable to Cleveland Metropolitan School District: Adds that the board of education and the teachers’ labor organization “jointly shall decide” by July 1, 2018 whether to update the district’s evaluation procedures to conform with the changes in R.C. 3319.112.
Third-grade reading guarantee R.C. § 3313.608	Eliminates kindergarten reading assessment for purposes of third-grade reading guarantee.	Does not eliminate the KRA but adds a comparable assessment for this purpose.



Highly qualified teachers R.C. § 3319.074	NA	Eliminates references to this ORC section and the requirement that a teacher of a “core subject area” be “highly qualified.” (Note: Former federal law included this requirement for schools that receive Title I funds. ESSA does not include this requirement.)
Professional development standards R.C. § 3319.075	Adds language as to what professional development standards are to be used to guide development of professional growth plans and improvement plans resulting from teacher evaluations.	No changes.
Nonteaching employee continuing contract R.C. § 3319.081	Modifies the contract sequence for nonteaching employees and delays eligibility for a continuing contract. A new hire first receives a 1-year contract, <b>followed by three 2-year contracts</b> . At the end of the third 2-year contract, if the contract is renewed, the nonteaching employee would receive a continuing contract.	No changes.
Educational assistant and educational paraprofessional license/permits R.C. § 3319.088	Changes to educational assistant and educational paraprofessional license/permits: <ul style="list-style-type: none"> <li>➤ Adds language to the definition of “educational assistants”: nonteaching employees <i>working in a federally funded program</i> that directly assist a teacher.</li> <li>➤ Requires ODE to issue educational aide permits and educational paraprofessional licenses for educational assistants who undergo a criminal background check without any of the offenses listed in current law (3319.31(B) and (C)).</li> <li>➤ <b>Removes</b> language that allowed ODE to prescribe minimum qualifications including special training of education courses and qualifications for education, health, and character. Retains the language that the ODE rules may provide for licenses of several types.</li> <li>➤ Provides that nonteaching employees that substitute as educational assistants are not required to hold an educational aide permit or educational paraprofessional license.</li> </ul>	No changes.
Teacher evaluations R.C. § 3319.111	Changes to teacher evaluations: <ul style="list-style-type: none"> <li>➤ Provides that boards must update their standards-based teacher evaluation policy by July 1, 2018, to conform to the framework adopted under 3319.112, which will become operative when the collective bargaining agreement in effect on the effective date of the amendment expires (and must be included in renewal or extension of such agreements).</li> <li>➤ Eliminates requirement to use value-added data and provides that student performance data used as evidence in a teacher’s evaluation must be considered “high quality student data.”</li> <li>➤ Teachers rated “accomplished” on their most recent evaluation may still be evaluated once every 3 years as long as they submit a self-directed professional growth plan which focuses on specific areas identified in the observations and evaluations AND the evaluator determines that progress is being made on the plan. <b>Removes</b> language that states that the student academic growth measure must be average or higher for the most recent year that data is</li> </ul>	Same, except adds one provision that applies only to the Cleveland Metropolitan School District.

	<p>available for the teacher to remain eligible for the evaluation exemption.</p> <ul style="list-style-type: none"> <li>➤ Skilled teachers may still be evaluated once every 2 years as long as the teacher and evaluator jointly develop a professional growth plan which focuses on specific areas identified in the observations and evaluations AND the evaluator determines that progress is being made on the plan. <b>Removes</b> language that states that the student academic growth measure must be average or higher for the most recent year that data is available for the teacher to remain eligible for the evaluation exemption.</li> <li>➤ For accomplished or skilled teachers, in any year the teacher is not formally evaluated, the teacher will receive one observation and one conference with a qualified evaluator. Adds language that the conference must include discussion on progress on the teacher's professional growth plan.</li> <li>➤ <b>Removes</b> language that allows a board by resolution to require only one formal observation of accomplished teachers as long as the teacher completes a project to demonstrate continued growth and practice at the accomplished level.</li> </ul>	
<p>Standards-based evaluation framework R.C. § 3319.112</p>	<p>Changes to standards-based evaluation framework:</p> <ul style="list-style-type: none"> <li>➤ Requires ODE to revise the state framework based on the ESB recommendations, and the state board to adopt an updated framework by May 1, 2018.</li> </ul> <p><b>Removes</b> from the framework:</p> <ul style="list-style-type: none"> <li>➤ The student growth measure as a component of the final evaluation rating</li> <li>➤ The requirement to use the value-added progress dimension as a component of the final evaluation rating for teachers who teach value-added courses</li> <li>➤ ODE's list of student assessments that measure mastery of course content for grade levels and subject for which the value-added progress dimension or alternative student academic progress measure do not apply</li> </ul> <p><b>Adds</b> to what the framework must include:</p> <ul style="list-style-type: none"> <li>➤ Use of student assessment instruments approved by the board of education</li> <li>➤ A prohibition on use of shared attribution of student performance data among all teachers in a district, building, grade, content area, or other group</li> <li>➤ A professional growth or improvement plan for a teacher that is based on the results of the evaluation and is aligned to the district or building improvement plan created in accordance with ESSA</li> </ul> <p><b>Adds to what ODE must do</b> to assist districts with the evaluation framework:</p> <ul style="list-style-type: none"> <li>➤ Provide guidance on how high-quality student data may be used to attribute student learning to a particular teacher with examples of appropriate use of the data under the framework</li> <li>➤ Provide guidance on how student surveys, peer review evaluations, teacher self-evaluation, and other</li> </ul>	<p>No changes.</p>

	<p>components “determined appropriate by the district” may be used as part of the evaluation process</p> <ul style="list-style-type: none"> <li>➤ Requires ODE to update the framework by July 1, 2018</li> </ul>	
<p>Teacher licensure R.C. § 3319.22</p>	<p>Adds language that the resident educator license, professional educator license, senior professional educator license, and lead professional educator license shall state whether the license is K–8 or 6–12.</p>	<p>Same but changes the grade band licenses to grades preK–6 or grades 5–12.</p>
<p>Substitute teaching educator licenses R.C. § 3319.226</p>	<p>Requires ODE to issue substitute educator licenses only under new section of the Revised Code. ODE is to adopt rules on the standards and requirements for issuing a substitute license and renewing the license, but the rules for obtaining a substitute license <b>may not require</b> an applicant to hold a post-secondary degree in any specified subject area and <b>may not restrict</b> the number of school days a substitute teacher may work. Existing substitute licenses would remain in effect until expiration, after which they would be subject to the terms of this new section.</p> <p>This means that short- and long-term substitute licenses would no longer be used.</p>	<p>Requires the applicant for a license to have a post-secondary degree, but not in any specified subject area. Bases the duration that a substitute may teach under the license on whether the post-secondary degree is related to the subject area taught. Those holding post-secondary degrees in education or the subject area taught may substitute an unlimited number of days. Otherwise, the license is valid for one semester.</p>
<p>Career-tech educator licenses R.C. § 3319.229</p>	<p>NA</p>	<p>Replaces the current career-tech professional license with two new renewable licenses, a Two-Year Initial license and a Five-Year Advanced license, for career-tech and workforce development in grades 4–12. (Current career-tech teaching licenses may be renewed for the remainder of the educator’s teaching career.)</p>
<p>Licensure and employment R.C. § 3319.361</p>	<p>Permits superintendents to employ a licensed teacher to teach a subject area and/or grade level for which the person is not licensed.</p>	<p>Same, but requires the superintendent to submit a written request to the board of education, which may approve the teacher to work in that position for up to one school year. This may be repeated for a maximum of four consecutive years.</p>
<p>Truancy law R.C. § 3321.191</p>	<p>Change to new truancy law (HB 410)</p> <ul style="list-style-type: none"> <li>➤ Only <b>unexcused</b> absences would count toward requirement to provide parental notification of excessive absence (38 hours in one school month, 65 or more in one school year). Removes excused absences from being counted toward the threshold level for parental notification.</li> </ul>	<p>Same.</p>
<p>Preschool staffing ratios for children with disabilities R.C. § 3323.022</p>	<p><b>Reduces the staffing ratio</b> requiring a full-time staff member from 16 to 12 for half-day preschool children with disabilities (retains the ratio of 8 full-day preschool children with disabilities to one full-time staff member).</p> <p>Adds new language that a minimum of 10 hours of services per week will be provided for each child served by a center-based teacher unless an IEP specifies otherwise.</p>	<p>No provision (retains the current law in this section) except as provided below.</p> <p>Same new language added regarding a minimum of 10 hours per week..</p>
<p>Gifted education R.C. § 3324.07</p>	<p>NA</p>	<p>Includes international baccalaureate as an option for the type of programs that may be included in a service plan for gifted students.</p>

Gifted education R.C. § 3324.12	<b>Prohibits ODE</b> , in a new section of the Revised Code, from adopting any rule that would require a person with an educator license who is designated as a provider of gifted services but does not have a license or endorsement for gifted education from having to complete professional development related to gifted education.	Requires that professional development hours needed for teaching AP and IB courses count as hours for gifted professional development, and prohibits the State Board from requiring AP or IB teachers to complete gifted professional development unless they will be teaching gifted students.
College Credit Plus R.C. § 3365.03	If a course is available on the secondary school campus that a student attends, the student would not be able to enroll in a comparable course on the college campus at another location or online. If the course on the high school campus exceeds maximum capacity for enrollment, the school superintendent may approve the student to attend the course on the college campus, at another location operated by the college, or online.	Not included.
College Credit Plus R.C. § 3365.07	<p>Changes for the provision and arrangements for the payment of textbooks begin in 2018–19.</p> <p>Removes the requirement that the school district must pay for textbooks, and removes textbooks from the list of items that school districts and colleges may enter into an agreement for an alternative fee structure.</p> <p>New Revised Code Section 3365.072: Requires students from public, nonpublic, or nonchartered nonpublic schools to <b>pay for 50% of the cost of all required textbooks</b>, and requires the student's secondary school to pay for 50% of the cost of all required textbooks.</p> <p>Requires ODE to adopt rules that define economically disadvantaged students, and provides that for students defined as such, the secondary school will pay 100% of the cost of the required textbooks.</p> <p>Requires that home-instructed students participating in CCP be responsible for <b>100% of the costs</b> of the required textbooks.</p>	<p>Same except as below.</p> <p>New Revised Code Section 3365.072 provides that the textbook cost-sharing provisions are an exception from the current law, which requires that high school textbooks be provided.</p>
Uncodified section Section 3	Section 3 requires ODE to conduct a study of the results and cost-effectiveness of the College Credit Plus program and to present a report to all school districts, ESCs, the governor, the Chancellor of Higher Education, and every member of the General Assembly. The study must include information on whether participants save money on college tuition and reduce the time to complete a degree and whether it is cost-effective for school districts.	Same.

## House Bill Proposes New Education Department

House Bill 512 proposes to dissolve three of Ohio's current state agencies – the school, university, and workforce development systems – and combine them into one. Under HB 512, the Department of Education, Department of Higher Education, and Governor's Office of Workforce Transformation would be consolidated into a single agency called the Department of Learning and Achievement.



The new legislation would limit the State Board of Education's decision-making authority and that of the State Superintendent of Public Instruction. The governor would have direct authority over the single combined cabinet-level agency.

Supporters of the bill state that it is intended to better align Ohio's public education system with the state's workforce needs. Rep. Bill Reineke, the sponsor of the bill, says that this realignment will ensure that Ohio is better able to meet the needs of schools and prepare students for the future. "We're leaving too many kids behind," he said. Reineke asserted that the new department would be more efficient and that the single agency would be more responsive to Ohio's workforce needs, better enabling students to succeed educationally and professionally in the 21st-century economy.

Opponents of the bill are many, including key lawmaker Sen. Peggy Lehner, chair of the Senate Education Committee. Sen. Lehner is concerned that those affected by the bill were not consulted before drafting the bill. Others have raised concerns that the "mega-department" would not sufficiently handle the needs of the PreK–12 schools, that the bill dramatically reduces the power of the elected State Board of Education, and that a larger department would lead to less accountability and a slower response time.

So, what's in the bill? Below are highlights:

- Creates the Department of Learning and Achievement with the following appointments:
  - Director of Learning and Achievement – appointed by the governor
  - Assistant Director of Higher Education – appointed by the director
  - Assistant Director of Workforce Transformation – appointed by the director
  - Other assistant directors – as appointed by the director
- Provides the department with *most* powers and duties of the following offices and transfers their rule-making authority to the newly created department:
  - State Board of Education
  - Superintendent of Public Instruction
  - Department of Education
- Provides the department with *all* powers and duties of the following offices:
  - Chancellor of Higher Education
  - Department of Higher Education
  - Governor's Office of Workforce Transformation
- Transfers the responsibility for emergency management planning to the Department of Public Safety

The Department of Learning and Achievement would be responsible for the following duties:

- Issuing school report cards
- Assessing student achievement through standardized assessments
- Adopting the teacher evaluation system
- Calculating and distributing foundation funding payments
- Developing school operations policies

Below are some of the powers and duties that the State Board of Education, Superintendent of Public Instruction, and Department of Education would retain:

- Educator licensure
- Transfer of territory
- Community school sponsor appeals
- Certain transportation request appeals
- Permanent exclusion from school
- School district of residence and tuition responsibility
- Student textbook purchases

Under the bill, many of the powers and duties currently held by the Department of Education would be transferred to the Superintendent of Public Instruction, such as the following:

- Awarding certificates of high school equivalence
- Authorization of community schools
- Certain educator licensing duties

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### Special Education Spotlight: Where Is the *Endrew F.* Case Now?

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As many in education are aware, on March 22, 2017, the U.S. Supreme Court published an opinion in a significant special education case: *Endrew F. v. Douglas County School District RE-1*, 580 U.S. \_\_\_\_ (2017). This decision clarified the standard for a free appropriate public education (FAPE) for students with disabilities:

To meet its substantive obligation under IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.

This decision confirmed that the standard of “merely more than the minimum” was too low. Essentially, the Court established two standards:

Supreme Court Decision	Student Circumstances	FAPE Standard
<i>Rowley</i>	Student who is fully integrated in the regular classroom and able to achieve on grade level	IEP must be reasonably calculated to enable the student to receive passing marks and advance from grade to grade
<i>Endrew F.</i>	Student who is not fully integrated and not able to achieve on grade level	IEP must be appropriately ambitious / reasonably calculated to enable the student to make progress appropriate in light of the student’s circumstances

However, when the U.S. Supreme Court issued its decision on March 22, the case was not finished. The case was remanded back down to the lower court to apply the new standard and determine whether Endrew’s parents were entitled to tuition reimbursement for the unilateral placement of their son in a private school.

On February 12, 2018, in relying on the new standard from the Supreme Court, Judge Babcock of the United States District Court for the District of Colorado held that Endrew’s parents were entitled to tuition reimbursement for the unilateral placement of their son in a private school. The judge decided that the IEP did not satisfy the Court’s revised FAPE standard. Minor changes in Endrew’s IEP were noted throughout the years – including updating and making minor or slight increases in the objectives, carrying over the same goals from year to year, or abandoning goals if they could not be met – but these minor changes were unacceptable as they provided the basic floor of opportunity, not progress appropriate in light of Endrew’s circumstances. (Note: Prior to the Supreme Court’s *Endrew F.* decision, these same IEP changes were found to meet the FAPE standard in Colorado by the same judge.)

Additionally, the judge determined that the school district could not hide behind the fact that the student's severe behavioral problems prevented him from making appropriate progress because the school district failed to conduct a functional behavior assessment; to implement appropriate positive behavioral interventions, supports, or strategies; or to develop an appropriate behavior intervention plan. This failure on the school district's part to appropriately address Endrew's behaviors "cuts against the reasonableness of [his] IEP." The court held that Endrew could have made greater progress had the school district implemented appropriate behavioral supports.

Although following *Endrew F.* back through the court system allows us to see how courts around the country will apply this new legal standard, in our opinion the legal standard applied by the Sixth Circuit Court of Appeals (controlling in Ohio) of "meaningful benefit" has not changed and is similar to "progress appropriate in light of the child's circumstances." Ohio school districts should likely not see a significant change in their IEPs and services.

Ohio school districts should, however, take away additional learning opportunities from this recent *Endrew F.* decision:

- Review IEPs to ensure that each is reasonably calculated to enable the student to make appropriate progress in light of the student's circumstances.
- IEPs should change from year to year as the student changes, learns and grows.
- IEPs should be specifically tailored to the student's needs and geared for progress.
- Goals should be measurable annually, reflecting appropriate achievements for the student given his/her unique situation.
- IEP teams should be reminded that behavior management can play an incredibly important role in providing FAPE to students.
- When a student's behaviors are so severe that they impede progress toward IEP goals, the behaviors should be addressed through timely functional behavior assessments, behavior intervention plans, and, when appropriate, behavior goals.

– *Endrew F. v. Douglas Cty. Sch. Dist. RE-1*, No. 12-cv-2620, 2018 WL 828019 (D. Colo. Feb. 12, 2018).

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## Webinar on Guns in Schools

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### Ennis Britton Webinar: What You Should Know about Guns in Schools

March 2, 2018

12:00 p.m. – 1:00 p.m.

Join Ennis Britton attorney Ryan LaFlamme on March 2 for a special one-hour webinar to discuss the issue of guns in schools and the many topics that schools should consider regarding arming school staff, including the following:

- Legal Framework for Arming Staff
- Security Alternatives
- Liability Concerns
- Legislation

You must be registered to attend the event. An archive will be available for those who cannot attend the live webinar. To register, call Hannah at our Columbus Office (614.705.1333) or send an email to [hreichle@ennisbritton.com](mailto:hreichle@ennisbritton.com). Please specify whether you plan to attend the live event and/or would like to receive a link to the archived presentation.

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## Announcing: OASBO Spring Conference Reception

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**OASBO presents ...**



# Totally 80s Party!

**Complimentary drinks**

**April 19, 2017**  
**Party begins at 7:30 p.m.**



**live music**

**Park Street Cantina**  
**491 N. Park St.**  
**Columbus, OH**

**featuring**  
**John Stone & the**  
**Trailer Park All-Stars**

Sponsored by:



**GRADYBENEFITS**

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### Save the Date: Section 504 Seminars Slated for October

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Based on the overwhelming feedback we received following the 2017 Special Education Seminars, Ennis Britton has developed a Section 504 Seminar for October 2018! Our Special Education Team will travel throughout Ohio to present this professional development opportunity in five different locations. Each seminar will consist of two general sessions and two breakout sessions with our Special Education Team. The general sessions will cover the basics of Section 504 and compliance officer training. Additionally, participants will choose from breakout sessions topics including accommodations, trauma and mental health, service animals, and extracurriculars.

Our Special Education Team has developed materials and practical tips that are designed to help your special education team members confidently and knowledgeably tackle difficult compliance issues.

This full-day seminar will be held at five locations across Ohio:

- October 15: **Cincinnati**
- October 16: **Columbus**
- October 17: **Mahoning Valley**
- October 18: **Cleveland**
- October 19: **Northwest Ohio/Toledo**

The cost of the seminar is \$150 per attendee. The cost includes materials to be added to the custom Ennis Britton binders from the October 2017 seminars. Participants who do not have the Ennis Britton binder with the Ohio Operating Standards may purchase one for \$50. Lunch and complimentary beverage service will be provided at all locations. This seminar is open to all special education directors and staff in Ohio, but space is limited. An announcement will be sent when registration for the seminars opens.

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## Upcoming Deadlines

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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:** Deadline to take action and deliver written notice of nonrenewal of superintendent's contract and of treasurer's contract (RC 3319.01, 3313.22)
- **March 31:** End of second ADM reporting period (RC 3317.03)
- **April 9:** Deadline for voter registration for May election – 30 days before election (RC 3503.01)
- **April 30:** Deadline to submit certification for August income tax levy to Ohio Department of Taxation (RC 5748.02)
- **May 4:** Deadline to submit August emergency or current operating expenses tax levy to county auditor for August election (RC 5705.194, 5705.195, 5705.213)

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## Upcoming Presentations

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### SAVE THE DATE!

### 2017–2018 ADMINISTRATOR'S ACADEMY SEMINAR SERIES

September 28, 2017: Low-Stress Solutions to High-Tech Troubles – [Archive available](#)

January 25, 2018: Take Hold on Public Relations – [Archive available](#)

April 5, 2018: [Special Education Legal Update](#)  
Live seminar in Cincinnati

July 12, 2018: [Education Law Year in Review](#)  
Live video webinar

The September and April Administrator's Academy 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**

#### **March 2: Ohio School Boards Association Special Education Law Workshop**

– Jeremy Neff

#### **March 3: Ashland Leadership Academy Seminars**

– John Britton

#### **March 9: BASA Workshop at Summit County ESC**

– Collective Bargaining 2018 and Beyond

#### **March 16: Ohio School Boards Association: Cyberlaw**

– Ryan LaFlamme and Hollie Reedy

#### **March 21: Trumbull County ESC Resident Educators**

– Giselle Spencer

#### **March 23: Ashland Treasurers Leadership Academy Seminars (ATLAS)**

– Giselle Spencer

#### **April 10: Brown County ESC & Southern Ohio ESC**

– Ryan LaFlamme and Hollie Reedy

#### **April 13: Southwest Ohio Personnel Administrators**

– Bronston McCord

#### **April 13: Ohio School Boards Association: Diversity and Inclusion in the Law Workshop**

– Pamela Leist

#### **April 19: Ohio Association of School Business Officials – Spring Conference**

– John Britton, Giselle Spencer, Erin Wessendorf-Wortman

#### **April 27: Ohio School Boards Association Board Leadership Institute**

– John Britton

#### **May 8: Ohio Association of EMIS Professionals**

– Hollie Reedy

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Follow Us on Twitter: [@EnnisBritton](#)

Want to stay up-to-date about important topics in school law?  
Check out Ennis Britton's [Education Law Blog](#).

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### 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:

- Three Hot Topics in Special Education
- School Employee Nonrenewal
- New Truancy and Discipline Laws
- Supreme Court Special Education Decisions
- Employee Licensure
- Transgender and Gender-Nonconforming Students
- Contract Nonrenewal
- Ohio Sunshine Laws
- School Employee Leave and Benefits
- Managing Workplace Injuries and Leaves of Absence
- Special Education: Challenging Students, Challenging Parents
- Fostering Effective Working Relationships with Boosters
- Low-Stress Solutions to High-Tech Troubles
- Requirements for Medicaid Claims
- Effective IEP Teams
- Discrimination: What Administrators Need to Know
- Levies and Bonds
- OTES & OPES Trends and Hot Topics
- Tax Incentives
- Prior Written Notice
- Advanced Topics in School Finance
- Student Residency, Custody, and Homeless Students
- Student Discipline
- Crisis, 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  
Giselle Spencer  
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

#### Team Members:

John Britton  
Bill Deters  
Ryan LaFlamme  
Bronston McCord  
Jeremy Neff  
Hollie Reedy  
Giselle Spencer  
Gary Stedronsky  
Megan Bair Zidian

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