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How OTES Is Shaping Up in the General Assembly

Since Ennis Britton last reported on the dueling OTES legislation in the January 2018 issue of *School Law Review*, another bill has entered the mix on teacher evaluations, this one in the House. HB 540 was introduced on March 6 as a companion bill to SB 240. The language in the teacher evaluation provisions is identical to that in SB 240.

Initially the two Senate bills contained key differences, both of which were drafted to bring about significant changes to OTES. However, in March when the Senate amended SB 216 (which includes other education-related provisions), much of the OTES language was revised to align with SB 240. SB 216 passed in the Senate on March 21.

HB 540 had two hearings before Am. Sub SB 216 passed. Now, both Am. Sub SB 216 and HB 540 are in the House Education and Career Readiness Committee. SB 240 remains in the Senate but will likely not be scheduled for hearings at this point since almost all of its provisions were incorporated into the amended SB 216. It now appears that Am. Sub SB 216 is the bill to watch for OTES updates. Below are the identical OTES provisions in Am. Sub SB 216, SB 240, and HB 540 – and the one lone provision from SB 240/HB 540 that differs.

R.C. 3319.111

- Removes student growth measures
- Requires use of “high-quality” student performance measures
- Tweaks requirements of professional growth plans for *skilled* and *accomplished* teachers on off-year cycles
- Deletes option permitting *accomplished* teachers to submit a project in order to reduce the number of formal evaluations
- Requires local board to adopt modified OTES policy by July 1, 2019

R.C. 3319.112

- Mandates that evaluators use at least two measures of “high-quality” student data, which must incorporate value-added data when applicable, as well as at least one other measure that demonstrates student learning
- Specifies that this data may be used as evidence in the following domains:

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- Knowledge of students
- Teacher’s use of differentiated instructional practices
- Assessment of student learning
- Teacher’s use of assessment data
- Professional responsibility/growth
- Prohibits use of *both* shared attribution *and* student learning objectives as high-quality data
- Requires ODE to develop a list of student assessments that measure mastery of course content and adds that the data from these assessments may be used as high-quality student data
- Requires ODE to provide guidance on how high-quality student data may be used as evidence in OTES evaluations
- Requires ODE to develop guidance on how information obtained from previously developed alternative framework tools – student surveys and portfolios, peer review evaluations, teacher self-evaluations, other locally determined tools – may be used as evidence

R.C. 3319.114

- Repeals the alternative framework in its entirety, which is currently codified in R.C. 3319.114
- Incorporates a change in R.C. 3319.112 regarding use of the alternative framework tools as evidence

One Difference – R.C. 3319.112

SB 240 and HB 540

- Retains the requirement for ODE to develop a list of student assessments that measure mastery of course content where value-added data is not available

SB 216

- Charges ODE to develop a list of student assessments that measure mastery of course content but removes the clause that this is only when value-added data is not available
- Adds that data from this list of student assessments may be considered high-quality student data

**Special Education Spotlight:
Special Transportation and When to Check “Yes”**

When developing an individualized education plan, IEP teams are required to consider annually whether a student with a disability requires specialized transportation as a related service. The team’s decision dictates the answer to the following question:

Does the child have needs related to their identified disability that require special transportation? Yes No

Although only one small part of a special education student’s schooling, transportation sometimes generates more questions than the education process itself. This Special Education Spotlight article will examine when an IEP team should check Yes, when it should check No, and when special transportation is warranted.

When to Check No

Do not check Yes if your only reason is any of the following:

- The student has a disability
- The student is entitled to special education
- The district provides transportation to all students
- The student lives in an area where the district provides bus transportation to the general student population
- To communicate information regarding the student’s individual needs to the bus driver

- To accommodate a need of the parent, such as after-school care unrelated to the student's disability, or to accommodate a parent's work schedule

Transportation is not a related service in any of the above scenarios. Transportation is not a related service when a child with a disability has no need for special arrangements or accommodations with his or her transportation. If the district can use the same transportation that it provides for the general student population, then transportation most likely will not be considered a related service for this student.

When is special transportation warranted?

If a student's disability requires that the student be transported at a different time or in a different manner than students without disabilities, special transportation is warranted.

Check Yes when a student cannot use the district's regular bus transportation without being provided an accommodation that is related to the student's disability. In this case, the student's disability prevents him or her from using the district's regular bus transportation. The special transportation is appropriate when a student's disability requires an accommodation to ensure the safe transportation and well-being of the student.

Case Law Examples

A court in Michigan held that a school district must provide specialized transportation to a student who needed specific care and positioning to accommodate a wheelchair-dependent student with a tracheostomy. *Macomb County Intermediate Sch. Dist. v. Joshua S.*, 441 IDELR 600 (EHLR 441:600) (E.D. Mich. 1989).

A California school district determined that a 13-year-old student with sensory integration and social/adaptive behavior deficits was able to ride the general education school bus. The parent argued that the student could not travel safely to and from his home, located six to seven blocks away from the closest bus stop. According to the district's evaluation, the student had no physical impairment that would prevent him from reaching the bus stop, and his cognitive ability was such that he could learn and remember his walking route. Although the student was shy, his speech and language skills enabled him to communicate with others. A hearing officer agreed with the school district, finding that the student's disability would not prevent him from traveling to and from the bus stop. *Modesto City Elem. Sch. Dist.*, 38 IDELR 88 (SEA CA 2002).

U.S. Department of Labor Issues Opinion regarding Athletic Coaches

The U.S. Department of Labor (DOL) has issued an official statement of the Wage and Hour Division policy concerning athletic coaches for public schools. Opinion Letter FLSA2018-6, issued on January 5, 2018, is an exact reproduction of a previous Wage and Hour Division opinion that was issued in 2009 and then rescinded less than two months later.

This Opinion Letter states that community members who coach public school athletic teams qualify as teachers under the Fair Labor Standards Act (FLSA) and are therefore exempt from FLSA's minimum wage and overtime pay provisions.

It is important to note that this exemption applies only to coaches who are not employees of the school district. It does not apply to coaches who are employed in another, nonteaching capacity by the school district. In the latter case, these coaches must meet other requirements not addressed in this opinion to be exempt from the FLSA's minimum wage and overtime pay provisions.

The DOL explains that coaches spend most of their time instructing student athletes in the rules and fundamentals of their respective sports. When not instructing players, coaches recruit students, supervise them during trips to and from games, discipline them when necessary, and account for their equipment. "Coaches qualify for the exemption if their primary duty is teaching and imparting knowledge to students in an educational establishment."

Furthermore, a teaching certificate is not required to qualify for this FLSA exemption, nor is a certain minimum education or degree. “Thus, coaches whose primary duty is teaching qualify for the exemption whether or not they hold a teaching certificate or an academic degree.”

Therefore, based upon this new guidance, a school may hire a community member to serve as a coach without triggering FLSA overtime and minimum wage requirements.

What This Means for Your School District

Many school districts rely on community members, such as parents, to coach their athletic teams. This guidance affirms that schools are not required to pay these coaches according to federal minimum wage and overtime requirements. However, districts must also be careful not to apply this opinion letter to nonteaching employees who also serve as coaches. Separate rules and considerations must be given to these individuals. Contact legal counsel for additional information.

Court Finds Public Records Request Overly Broad and Ambiguous

In a dispute filed against a Columbus area school district, the Ohio Court of Claims found one part of a four-part public records request overly broad and ambiguous. The other three parts were dismissed as moot.

Upper Arlington Schools received a public records request in September 2017 asking, in part, for “any pictures, video surveillance, written correspondence, notes from phone conversations, emails, texts, records of calls made involving the investigations launched by the school.” The treasurer replied to the requester, Matthew Frank, that the request was overly broad and ambiguous and that any responsive records were enclosed. Frank then filed a complaint in the court of claims, in accordance with Ohio’s new process to challenge the denial of a public records request. A Special Master with the Ohio Court of Claims made a determination based on the merits of the case.

With regard to the assertion that the public records request was overly broad and ambiguous, the court noted, “In making a request, ‘it is the responsibility of the person who wishes to inspect and/or copy records to identify with reasonable clarity the records at issue.’” *State ex rel. Zidonis v. Columbus State Cmty. College*, 133 Ohio St.3d 122, 2012-Ohio-4228, 976 N.E.2d 861. Frank’s request was not time-limited, and a request for an entire category of records is improper. The court found Frank’s request overly broad, noting that it would require an “unbounded search” through many different categories of school records.

Furthermore, the court noted, “A records request is also unenforceable if it is too vague or indefinite to be properly acted on by the records holder.” A court cannot order compliance with a request if it is vague and unclear. Therefore, the court found Frank’s request improperly ambiguous.

Finally – and importantly – “a public office is not obliged to ‘seek out and retrieve those records which would contain the information of interest to the requester.’” Because Upper Arlington Schools does not maintain its records in such a way that Frank requested, it would be required to seek out and retrieve the responsive records. Based on this, the court found Frank’s request improper because it required the school district to “conduct research to seek out and retrieve” responsive records.

The court’s report and recommendation does note one fault of the school district. When a public office denies a public records request as overly broad and ambiguous, it must inform the requester of the manner in which the records are maintained and accessed, and provide the requester with an opportunity to revise the request accordingly. In this case, the school district failed to communicate this information to Frank. Although the court found that this violates the Ohio Revised Code, it did not order Upper Arlington to inform Frank of the way the district maintains its records, simply because Frank did not make this request of the court.

– *Frank v. Upper Arlington Schools*, 2018-Ohio-1554.

Lawsuit Alleges Reckless Disregard for Athlete's Repeated Concussions

On Friday, April 13, the Ohio Supreme Court heard arguments in a case where a former University of Notre Dame football player died after being diagnosed with chronic traumatic encephalopathy (CTE), a progressive, degenerative brain disease attributed to receiving numerous concussions. The lawsuit alleges that the NCAA and the university showed “reckless disregard” for the player’s safety and failed to educate and protect players from concussions.

Steven Schmitz suffered numerous head injuries as a running back and receiver for the University of Notre Dame from 1974 to 1978. In December 2012 he was diagnosed with CTE. He was suffering from dementia and early-onset Alzheimer’s disease in October 2014 when he filed a lawsuit against the NCAA and the university. He died in February 2015, and his widow is now continuing the lawsuit.

The suit was initially filed in the Cuyahoga County Court of Common Pleas, which dismissed the case. The court determined that the two-year statute of limitations began when Schmitz stopped playing football for the university. On appeal, the Eighth District Court of Appeals overturned the previous ruling. This court held that the two-year statute of limitations began when Schmitz learned of his diagnosis, in December 2012, not when he stopped playing football in the 1970s.

If the Supreme Court rules in favor of Schmitz, she will be allowed to return to the Cuyahoga County Court of Common Pleas to argue the merits of her case. Discussion during the arguments included that Schmitz did not know he was injured at the time he was playing football and became aware of it only in 2012 upon his diagnosis of CTE, and concerns that these arguments are occurring 40 years after the incidents that gave rise to the trial.

Of note, about 100 cases have been consolidated into a single class-action lawsuit in the Northern Illinois District federal court in Chicago.

In 2015, the NFL settled a class-action lawsuit related to concussions for \$1 billion. However, this suit was not about personal injuries to the players but dealt with concussion protocol, medical monitoring, and disclosing the risks of concussions.

What This Case Means for Your District

Districts should be aware that schools and athletic organizations are subject to increasing accountability for injuries to players. Coaches and referees must know the signs of a concussion, as courts have held that coaches may be liable if a player who is exhibiting signs of a concussion is required to continue playing and is exposed to violent hits. Under the Ohio Revised Code, school districts are required to provide concussion and head injury information to student athletes each year and for each sport. Any student who exhibits signs of a concussion or head injury must be removed from the practice or event by the coach or referee and evaluated by a physician or other health care professional.

Legislation in the Works

HB 318 – School Resource Officers and Safety Training Grants

House Bill 318 enacts a new section of the Revised Code, R.C. 333.951, to cover SRO responsibilities. School resource officers would be required to complete a basic training program approved by the Ohio Peace Officer Training Commission and to complete at least 40 hours of SRO training within one year after appointment to provide SRO services. Those serving as SROs before the effective date would be exempt from this requirement. After this bill passed in the House Education and Career Readiness Committee, it was referred to the House Finance Committee, which appropriated \$10 million from the general revenue fund to be used for school safety

training grants. Use of the grants, if approved, includes the support of SRO certification training, any type of active shooter and school safety training, “all grade level type educational resources,” training to identify and assist students with mental health issues, and “any other training related to school safety.” Schools will be required to work or contract with the county sheriff’s office or local police department to develop programs and training.

The bill passed in the House on April 11 by a vote of 89-1. It was introduced in the Senate on April 12 but has not yet been assigned to a Senate committee for hearings.

HB 343 – Property Tax Valuation Complaints

House Bill 343 seeks to curtail property valuation complaints by anyone except the owner of the property. This bill imposes a requirement that local governments such as school boards formally approve a resolution that provides advance written notice to property owners before filing a complaint or counter-complaint with the board of revision to adjust property values. In March, HB 343 passed in the House by a vote of 59-35. It was referred to the Senate Ways and Means Committee on April 11; however, the committee has yet to schedule a hearing for this bill.

HB 360 – Bullying, Harassment, and Intimidation

The purpose of House Bill 360 is to enact the Ohio Anti-Bullying and Hazing Act regarding school discipline and bullying and hazing policies. The House Education and Career Readiness Committee accepted and approved a substitute bill, which passed in the House on April 11 by a vote of 68-26.

HB 491 – Substitute Pupil Services Personnel License

House Bill 491 creates a license for individuals to serve as substitute pupil services personnel. The bill enacts a new section of the Revised Code (3319.2210) that would require the state board of education to issue a substitute license to individuals who meet certain criteria and wish to serve as substitutes in eight specific pupil services personnel positions. HB 491 passed in the House Education and Career Readiness Committee on March 21 by a vote of 16-0. The bill currently awaits the House floor vote.

HB 512 – Consolidated Education Department

House Bill 512 proposes to dissolve Ohio’s Department of Education, Department of Higher Education, and Governor’s Office of Workforce Transformation and consolidate them into a single agency called the Department of Learning and Achievement. The bill has had five hearings in the House Government Accountability and Oversight Committee. A substitute bill is under consideration but has not yet been accepted by the committee. Proponents include career-tech superintendents, Fordham Institute, Ohio Restaurant Association, and Ohio Home Builders Association. Opponents include the Buckeye Association of School Administrators (BASA), Ohio School Boards Association (OSBA), Ohio Association of School Business Officials (OASBO), State Board of Education, and Ohio Education Association.

HB 591 – State Report Cards

House Bill 591 revises the state report card rating system for school districts and public schools. It removes the A–F grading system. This bill has support from BASA, OASBO, and OSBA.

HB 594 – Payments for Lost Revenue

House Bill 594 provides for payments to school districts for their lost income tax revenue after a business lays off 50 or more employees within the district’s territory.

SB 82 – Parent Notification of School Absences

Senate Bill 82 was amended in the Senate Education Committee to require schools to call parents within 90 minutes if a student is absent without legitimate excuse. Legislators discussed that a call within 60 minutes, as the bill initially required, would be very difficult for schools. The bill passed in the Senate on April 11 by a vote of 33-0.

SB 170 – Commercial Driver’s Licenses

Senate Bill 170 seeks to implement a temporary pilot program to waive the skills test for a commercial driver’s license for present and former military personnel. The Director of Public Safety must seek approval from the U.S.

Federal Motor Carrier Safety Administration to implement this program. The bill has passed in both Senate and House with amendments. This may affect school bus drivers.

SB 276 – Expulsions

This new bill legislates expulsions of students for actions that endanger the health and safety of other students or school employees.

SB 287 – Health Education Standards

Senate Bill 287 requires the State Board of Education to develop and adopt K–12 health education standards and requires only venereal disease education standards and curriculum to be approved by concurrent resolution of the General Assembly.

SB 289 – Expulsions

This new bill legislates expulsions of students for communicating a threat of violence on school grounds.

Section 504 Seminars Coming in October

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: **Northwest Ohio/Toledo**
- October 18: **Cleveland**
- October 19: **Mahoning Valley**

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.

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.

- **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)
- **May 8:** Special election day; primary election day (RC 3501.01)

- **May 9:** Deadline for county auditor to certify school district bond levy terms for August election (RC 133.18(C)); Deadline for school districts to file resolution of necessity, resolution to proceed, and auditor's certification for bond levy with board of elections for August election (RC 133.18(D)); Deadline to certify resolution for school district income tax levy for August election to board of elections (RC 5748.02(C)); Deadline to submit continuing replacement, permanent improvement, or operating levy for August election to board of elections (RC 5705.192, 5705.21, 5705.25); Deadline to submit emergency levy for August election to board of elections (RC 5705.195); Deadline to submit phased-in levy or current operating expenses levy for August election to board of elections (RC 5705.251(A))
- **May 15:** Deadline for certain board members and all administrators to file financial disclosure forms with the Ohio Ethics Commission (RC 102.02)
- **June 1:** Deadline to take action on and give written notice of intent not to reemploy nonteaching employees (RC 4141.29(l)(1)(f)); Deadline to take action on and give written notice of intent not to reemploy teachers (RC 3319.11(D)); Deadline to take action to nonrenew contracts of administrators other than superintendent and treasurer (RC 3319.02)
- **June 30:** End of 2017–2018 school year (RC 3313.62); End of third ADM reporting period (RC 3317.03(A))
- **July 1:** Beginning of 2018–2019 school year (RC 3313.62); Deadline for board to notify teaching and nonteaching employees of succeeding year salaries (RC 3319.12, 3319.082); Board may begin to adopt appropriation measure, which may be temporary (RC 5705.38(B)); Treasurer must certify available revenue in funds to county auditor (RC 5705.36(A)(1))

Upcoming Presentations

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 – [Archive available](#)

July 12, 2018: Education Law Year in Review

Live video webinar

The final Administrator's Academy of the school year will be provided 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. You may register on our [website](#) or contact Hannah via [email](#) or phone at 614-705-1333.

OTHER UPCOMING PRESENTATIONS

May 8: Ohio Association of EMIS Professionals

– Hollie Reedy

May 30: Southwest Ohio Personnel Administrators

– Bronston McCord

June 15: Ohio School Boards Association – Sports Law and Title IX Compliance

– Erin Wessendorf-Wortman

June 22: Mercer County ESC – Legal Update

– Pamela Leist

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

Webinar Archives

Did you miss a past webinar or would you like to view a webinar again? If so, we are happy to provide that resource to you. To obtain a link to an archived presentation, contact Hannah via [email](#) or phone at 614-705-1333. Archived topics include the following:

- What You Should Know about Guns in Schools
- 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

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