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School Law Review

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Workers' Compensation – Voluntary Abandonment

Workers' Compensation practitioners and school benefits employees alike know that temporary total disability, and particularly the concept of voluntary abandonment of employment, are difficult areas of Workers' Compensation law in Ohio. The Tenth Appellate District could not have framed the difficulty more succinctly than it did in a recent decision wherein the Court stated the issue of the case as follows:

"Can you be accused of assaulting your boss, get fired, be convicted (by plea, no less) of the assault, be at least preliminarily barred by court order from even setting foot in that workplace, and then still gain subsequent temporary disability status under Workers' Compensation in connection with your (former) job?"

The Court's answer: Maybe.

Temporary total disability (TTD) is a benefit provided by the Bureau of Workers' Compensation (BWC) to compensate for wage loss due to an injury. Voluntary abandonment is a defense an employer may assert against a claim for TTD. An employee who is terminated for violation of a written work rule may be considered to have abandoned his or her employment. If the employer is successful in raising the defense, the TTD will be denied because the disability due to the workplace injury is not the sole reason the employee is unable to return to the former position of employment. The concept was first used in a case wherein an employee had voluntarily retired. The court held that "If the employee has taken action that would preclude him from returning to his former position of employment, even if medically able to do so, the employee is not entitled to continue to receive temporary total disability compensation, because it was the employee's own action rather than the industrial injury which prevented him from returning to his former position of employment." The concept has been applied to employees who are incarcerated as well as those that voluntarily retire.

However, not all separations from employment will constitute voluntary abandonment. Involuntary retirement due to the workplace injury will not preclude payment of TTD nor, to the surprise of many employers, getting a new job. The Ohio Supreme Court has held that the abandonment of employment defense applies only to claimants who

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voluntarily leave the labor market, not to claimants who quit their former position of employment. Employee discipline situations can fall both ways, which brings us to the importance of this case.

Termination from employment can be considered voluntary abandonment if the employee willingly engaged in acts that lead to the termination. The Supreme Court allowed the defense in a case involving the violation of a policy that prohibited the accumulation of three consecutive unexcused absences. If those absences had been due to the industrial injury that was the basis of the claim, the defense would not have been accepted.

Turning back to the case at hand, here, the employee got into a heated exchange with his supervisor which lead to a physical altercation. The employee reportedly lunged at the employer, pushing him and causing him to fall back. The employee was terminated and arrested for assault. The employer had a policy against fighting and a policy against criminal convictions other than minor traffic offenses. The employer asserted those policies as the basis for his termination and in turn, attempted to use the termination as grounds to cut off TTD benefits due to voluntary abandonment. At the first hearing, the District Hearing Officer granted TTD for the employee finding that the employer had not set forth sufficient evidence as to when or why the employee was terminated. On appeal, the staff hearing officer agreed and again, found in favor of the employee.

The employee testified that he did not assault the supervisor. Rather, he acted in self-defense when the supervisor came towards him. When the supervisor approached, he put his arms up to stop him and the supervisor said, “you just assaulted me.” The employee testified that he plead guilty to avoid excessive legal fees and jail time. The staff hearing officer rejected the employer’s position that the employee had willingly engaged in fighting. It appears the employer did not bring any witnesses other than the supervisor to testify and the hearing officer found the employee to be more credible than the supervisor. The staff hearing officer also rejected the argument that the termination was based on a criminal conviction because the conviction came long after the termination.

The employer appealed the matter to court but by then, it was too late to improve its case. Once on appeal, the court must accept the findings of the hearing officer unless the decision is an abuse of discretion because the hearing officer did not have “some evidence” to reach its conclusion. It is a high bar to overcome. The court noted that the hearing officer is charged with assessing the weight of evidence and the credibility of witnesses and is entitled to deference by the court. The employer lost the appeal.

What this means for your District:

The moral of the story is to never underestimate the importance of the BWC hearing. These hearings are brief and informal and it can lull an unwary employer into essentially “winging it” when they think they have a strong case. Any and all documentary evidence should be prepared and submitted, and any and all witnesses should be brought to testify. The employer has only one, perhaps two, chances to influence what goes into the record of proceedings (the hearing officer’s decision) and that record sets the basis for a court’s review in the future. Make sure that "maybe" becomes a "yes." If you have any BWC related questions, please reach out to one of our Workers’ Compensation team members.

State ex rel. Welsh Ents., Inc. v. Indus. Comm., 2020-Ohio-2801

Schwendeman v. Marietta City Schools

The United States District Court for the Southern District of Ohio recently ruled in favor of a school district when an employee brought disability discrimination and retaliation claims after he was terminated for working for the local police department while being out on sick leave. *Schwendeman v. Marietta City Schools*, S.D. Ohio No. 2:18-CV-588, 2020 WL 519626 (Jan. 31, 2020).

The Plaintiff was a bus driver employed by the School District, who also worked as a noon duty supervisor throughout the school day. In August of 2016, the Employee was required to have surgery on his foot. Following surgery, the

Employee requested sick leave in order to recover. The Employee's sick leave request was granted, and the Employee returned to work on October 27, 2016.

When the Employee returned to work, the District set up a meeting because an employee's wife had seen the Employee walking around in a Belpre Police Department uniform while out on sick leave. The District called the Chief of Police and discovered that the Employee was a volunteer for the police department, hired through a local subcontracting company. The Employee acknowledged that he was volunteering with the police department but was not specific as to what days he was working and whether or not he was getting paid. After holding two subsequent meetings, the District was unable to determine which days the Employee was working with the police department or whether he was receiving compensation. Shortly thereafter, the Employee sent the District an email asking about the status of the investigation. The District replied stating the investigation was closed because of their inability to confirm whether the Employee was paid by the police department or by their subcontractor or the exact dates in which the Employee was working while out on leave.

Unsatisfied with the District's response, the Employee filed Charges of Discrimination against the District with the EEOC and OCRC for the events that transpired throughout the investigation. The Employee's claims were denied along with his appeals. Shortly after the discrimination charges were filed, the District reopened the investigation to defend the allegations stated within the charge. At that time, the District received records from the police department indicating that the Employee had been paid for working six days for four hours a day during the time he was on sick leave.

Upon learning this information, the District sent the Employee a Notice of Suspension and a Notice of Proposed Discharge for working with the police department during his sick leave. The grounds for termination included violation of O.R.C. § 2921.13 "falsification for the purpose of obtaining governmental benefits", and O.R.C. § 3319.141 "falsification of an application for sick leave from public school employment." The notices also stated that the Employee was being disciplined for his dishonesty during the school's investigation. The District ultimately terminated the Employee's employment for the reasons stated above.

The Employee then filed Charges of Retaliation against the District with the EEOC and OCRC. Again, these charges and the appeals thereof were ultimately denied. The Employee then filed a grievance in accordance with the collective bargaining agreement. The grievance was ultimately withdrawn in order for the Employee to seek legal help. This suit followed.

Disability Discrimination under the ADA and Ohio Law

The Court found that the Employee had established a prima facie case of disability discrimination and considered the Employee as "disabled" considering the fact that the Employee had foot surgery and was impaired for three weeks while recovering.

However, the Court agreed that the District had legitimate non-discriminatory reasons for their employment action: falsification of sick leave, falsification of benefits, and dishonesty were legitimate reasons for termination. Further, the Court found that the District had an "honest belief" in the non-discriminatory reason it made in its employment decision and therefore the Employee's claims were unsupportable. The key inquiry in this regard is to determine whether the employer made a reasonably informed decision before taking action. (Michael v. Caterpillar Fin. Servs. Corp., 496 F.3d 584, 598-99 (6th Cir. 2007).) In this case, the District reopened their investigation into the Employee after receiving charges of discrimination on an honest belief and in pursuit of new information: that the Employee worked with the Belpre PD on six days while on sick leave and had received payment from the subcontractor as a result of working with the Belpre PD while on leave. Upon learning this information, the District sent notices of termination based on these grounds.

The Court rejected the Employee's argument that he did not mislead the District nor did he falsify any documentation regarding his surgery or his need for sick leave. The Court determined that a reasonable jury could not doubt the District's explanation that they terminated him for falsifying sick leave. Additionally, the Court noted that even if the

District was mistaken in believing that the Employee had been dishonest of falsified leave, such a mistake is not a sufficient reason to doubt the District's honest belief. (Clay v. United Parcel Serv., Inc., 501 F.3d at 713-15.) Moreover, the Employee's assertion that the District wrongly assumed he could perform his duties because he was working during sick leave is insufficient to cast doubt on the District's honest belief. Furthermore, the Employee also failed to establish any evidence that would establish discrimination as the real reason for the District's employment decision. Thus, summary judgment on the Employee's ADA and Ohio law discrimination claims were appropriate.

Retaliation Under the ADA

The Employee also brought retaliation claims under the ADA. However, the Court found that there was not temporal proximity between the Employee's protected activity (filing charges with the EEOC and OCRC) and the adverse employment action (termination). When there is a time-lapse between the activity and the adverse employment action, the Employee must couple that with some other evidence of retaliatory conduct in order to show causation. (Little v. BP Expl. & Oil Co., 265 F.3d 357, 365 (6th Cir. 2001).) In this case, the Employee was terminated three months after he filed Discrimination Charges with the EEOC and OCRC. Thus, he must point to some other evidence of retaliatory conduct in order to show causation. The Employee attempted to show this retaliatory conduct by the fact that the District reopened the investigation into the Employee because he filed the Discrimination Charges. However, the Court had already previously determined the District properly reopened the investigation in order to respond to the allegations therein and not as a general response to the charges being filed. The Court ultimately concluded that the Employee failed to establish a causal connection between his protected activity and his termination. Therefore, his ADA retaliation claim failed.

What this means for your District:

Ultimately, all of the Employee's claims failed and were dismissed. This case is support for school districts taking action based on an employee's dishonest actions, even when such action appears in close proximate time to certain protected actions of an employee (e.g. filing charges of discrimination with EEOC and/or OCRC). If a district learns new information it is not prohibited from acting on the new.

Constitutional Right to a Basic Minimum Education?

Does a Constitutional right to a basic minimum education exist? The question has been repeatedly discussed by the Supreme Court of the United States, but never decided. For states under the jurisdiction of the Sixth Circuit Court of Appeals, which includes Ohio, Michigan, Kentucky, and Tennessee, the Sixth Circuit recognized such a right for twenty-six days. A panel of the Sixth Circuit recognized the existence of such a right on April 23, 2020 and the decision remained in place until it was vacated on May 19, 2020. Prior to an en banc panel of the Court providing definitive guidance on the issue, the case settled and has been dismissed. Thus, presently, no such constitutional right is recognized. It is anticipated, nonetheless that this argument will be made in future cases with the vacated decision serving as a roadmap for making such a claim.

In Gary B. v. Whitmer, Nos. 18-1855/1871 (6th Cir. 2020), students in several of Detroit's worst-performing public schools claimed that the conditions in their schools deprived them of a basic minimum education, meaning one that provided a chance at foundational literacy. The plaintiffs attributed the substandard performance to poor conditions within their classrooms, including missing or unqualified teachers, physically dangerous facilities, and inadequate books and materials. Plaintiffs based all of their claims on the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution. Plaintiffs argued that while other students receive an adequate education, they did not in violation of their Constitutional rights.

In a 2-1 split opinion authored by Judge Clay and joined by Judge Stranch, the panel agreed that the Plaintiffs had "been denied basic minimum education, and thus have been deprived of access to literacy." The majority opinion observed:

The recognition of a fundamental right is no small matter. This is particularly true when the right in question is something that the state must affirmatively provide. But just as this Court should not supplant the state's policy judgments with its own, neither can we shrink from our obligation to recognize a right when it is foundational to our system of self-governance.

Access to literacy is such a right. Its ubiquitous presence and evolution through our history have led the American people universally to expect it. And education—at least in the minimum form discussed here—is essential to nearly every interaction between a citizen and her government. Education has long been viewed as a great equalizer, giving all children a chance to meet or outperform society's expectations, even when faced with substantial disparities in wealth and with past and ongoing racial inequality.

Where, as Plaintiffs allege here, a group of children is relegated to a school system that does not provide even a plausible chance to attain literacy, we hold that the Constitution provides them with a remedy. Accordingly, while the current versions of Plaintiffs' equal protection and compulsory attendance claims were appropriately dismissed, the district court erred in denying their central claim: that Plaintiffs have a fundamental right to basic minimum education, meaning one that can provide them with a foundational level of literacy.

After a judge in the Sixth Circuit requested a poll of the other judges in the circuit, on May 19, 2020, a majority of the Judges in the Sixth Circuit in regular active service voted for a rehearing of the case, en banc, or in front of all the judges in the Circuit. By rule, the grant of a rehearing en banc vacated the April 23, 2020, decision by Judge Clay. Thus, the recognition of the fundamental right to a basic minimum education proved to be short-lived.

Prior to the en banc review of the case, on June 10, 2020, the Court granted a motion to dismiss the appeal on the basis that the case had settled. As part of the settlement, Governor Whitmer of Michigan agreed to:

- Propose legislation providing Detroit Public Schools with $94.4 million for literacy programs.
- Send $280,000 for seven students to participate in "high-quality literacy programs.
- Pay $2.7 million to Detroit schools for literacy programs.
- Have the state department of education advise districts on literacy programs to improve reading proficiency and reduce economic, racial, and ethnic disparities.

What this means for your District:

While the Gary B. case is settled with the underlying decision vacated, the issue of the existence of a Constitutional right to basic minimum education is not. We expect this issue to be raised in future litigation with reliance upon the reasoning from the 2-1, albeit vacated, decision.

Special Education Spotlight: OCR Reviews OHSAA Rule Applications to Students with Disabilities

The Office for Civil Rights (OCR) recently released details regarding a resolution agreement that directly impacts the application of the rules of the Ohio High School Athletic Association (OHSAA) to students with disabilities, determining that OHSAA must revise its policies for wheelchair competitions.

A wheelchair-bound middle school student sought to compete as a member of the school's track team as a sprinter. The School contacted OHSAA, who determined that the student could not participate due to "competitive inequity." After several appeals, OHSAA opined that while the student could race against other athletes in wheelchairs, he would not be permitted to compete on the same track and at the same time as "footed athletes." The student was only allowed to race in a separate heat, alone on the track, and could not earn points for his school's team. The next year the parent requested that the student be permitted to race along with the other athletes on the same track, but

not against the footed athletes, meaning his time would not be compared against the other athletes. Again, OHSAA refused to allow such "mixed heat" races. As a compromise, the District permitted the student to practice alongside his teammates while competing separately. Nonetheless, the student could not earn points for his team.

The parent filed a complaint with OCR who investigated the matter. During its review, OCR directly initiated its own investigations into separate but related concerns. It opened a direct investigation against OHSAA, believing that its exclusionary rules discriminated against the student-athlete on the basis of his disability. OCR also opened direct investigations against four school districts in the Ohio Cardinal athletic conference, namely Madison, Ashland, Lexington, and Mansfield schools for their competitive practices. OHSAA defended its policies, declaring that such mixed heats are not allowed under their rules, the student would have an unfair advantage over footed athletes and allowing the student to complete on the same track as footed athletes posed a danger to the student and other competitors.

OCR concluded that the School District, Athletic Association, and the Athletic Conference discriminated against the student by denying him an equal opportunity to participate in track meets. Districts must provide students with disabilities an equal opportunity to participate in all athletic events unless they can show necessary modifications to allow their participation would fundamentally alter the nature of the activity or create a safety issue. The investigation revealed the following:

1. **Competitions routinely allowed mixed heats.** OCR found that many competitions use mixed heat races with male and female athletes at the same time, while only scoring females against other females and males against other males. The Parent simply requested the same option for her son. Furthermore, OCR rejected the claim by OHSAA that wheelchair racing was not a sport under its rules and therefore OHSAA would have to fundamentally alter its rules to allow such. In response, OCR compared the U.S. Olympic Committee's Paralympic track and field rules, finding that since those rules are almost identical to those of its non-disabled athletes, certain allowances must be made to accommodate those with disabilities.
2. **The student's wheelchair did not give him an advantage over footed athletes.** OHSAA believed that a mixed heat scenario would provide an unfair advantage to athletes in wheelchairs. Yet it was discovered that the student at issue competed in sprinting races, thus delaying his ability to pick up speed.
3. **The student's race times could be separately scored.** Despite its lack of wheelchair racing, OHSAA believed that the student should earn points for his team only when competing against another wheelchair racer. OCR instead found that under the National rules, points can be awarded to athletes in uncontested events. Therefore, OHSAA's practice was discriminatory.
4. **The student was not a danger to himself or other athletes.** OHSAA additionally justified its stance by claiming that a competitor in a wheelchair posed a safety hazard to other competitors on the same track. This position neglected to account for the fact that, according to the District's coaches, the student routinely practiced alongside his fellow team members without incident.

The School District and OHSAA entered into a resolution agreement in which both agreed to review their competition policies and, to remedy the Section 504 and Title II violation, the district and athletic association resolved to revise their policies and procedures. Notwithstanding this resolution, the districts in the Conference, voted to deny the student the right to compete on the same track as other runners, or earn points for his team, at any meets other than home meets. This caused the final set of directed investigations by OCR, resulting in an agreement by the Conference to revoke the decision and to work collaboratively with the School District to permit the student to fairly compete.

What this means for your District:

When districts operate on generalizations or assumptions about certain disabilities, they discriminate against such impacted students. Even though districts are compelled to follow the rules of their governing bodies, they remain obligated to provide equal opportunity for disabled students to participate in extracurricular activities. Moreover, as was seen here, schools must expressly advocate for their students when the governing rules are discriminatory, even if they have limited power to effectuate change.

OSEP Issues Timeline Guidance on Dispute Resolution

The Office of Special Education Programs (OSEP) of the U.S. Department of Education's Office of Special Education and Rehabilitative Services (OSERS) issued a Q & A in response to questions about the timelines for dispute resolution during COVID-19. In essence, the documents emphasize that the pandemic in and of itself is not justification for abandoning or extending the timelines associated with the three dispute resolution processes - mediation, state complaints, or due process requests. The guidance, although issued in two separate documents covering IDEA Part B and IDEA Part C matters, is largely the same in its content.

State Complaints

The documents reiterate that under the regulations, States have sixty days to resolve State complaints. Those who have dealt with State complaints under normal circumstances would agree that this limitation leaves little time to review and collect relevant documents, submit a thoughtful response, and answer any follow-up questions from the State's investigator. Accordingly, the question was asked if states can extend the sixty-day time limit for resolution due to COVID-19. In response, OSEP cautiously advised that a state educational agency can extend the sixty-day limit during the pandemic if circumstances related to the pandemic in a particular case justify the extension. This could include the availability of staff due to illness or quarantine, the status of the school building's closure, the ability to access requested information, etc. As always, OSEP agreed that an extension of timelines is warranted when the parties so request in order to engage in mediation.

For Part C services, a State lead agency can extend the sixty-day complaint resolution time limit for the reasons noted above or in such extreme circumstances as a government-wide shut down.

Mediation

OSEP affirmed that parents and schools can mediate while school facilities are closed or during restrictions on face-to-face meetings. While noting that there is no defined timeframe for voluntary mediation, OSEP reminded that the mediation process cannot be used to delay dispute resolution. However, because mediation is voluntary, parties have the flexibility to decide when to meet and how the meeting will take place. Likewise, there is nothing in the IDEA that prevents parties from agreeing to conduct mediation through alternative means like video conferencing or conference calls, and unless a SEA restricts such meeting methodologies (Ohio does not), the parties are free to meet in their preferred fashion.

Due Process Complaints

The guidance in this area involves two time considerations – resolution meetings and due process hearings.

Resolution meetings: There was little doubt or concern that resolution meetings can be held virtually rather than face to face. However, OSEP clarified that if parents and/or schools cannot meet through virtual or in-person means, the parent and school can agree to extend the time for the resolution meeting or extend the resolution period until such time as a resolution meeting is possible. For obvious reasons, this does not apply to expedited hearings and only applies to regular track due process matters. OSEP did not address the irregular option of the parties' agreement to remove from the expedited track to give more time if needed.

Due process hearings: The impartial hearing officer can extend timelines at the request of either party or by agreement of the parties. Additionally, since the timelines for expedited hearings cannot be extended, such hearings can be conducted virtually.

What this means for your District:

Again, the occasion of this pandemic is not a justification on its own to extend dispute resolution timelines. Therefore, when seeking to deviate from these deadlines district personnel should reference fact-specific reasons for the extended timelines.

U.S. Supreme Court: Title VII Prohibits Termination Based on Sexual Orientation

On June 15, 2020, in the consolidated matters of Bostock v. Clayton County, Georgia, Altitude Express v. Zarda, and R.G.& G.R. Harris Funeral Homes v. EEOC, et al, the United States Supreme Court ruled in a 6-3 decision that an employer who fires an individual employee merely for being gay or transgender violates Title VII of the Civil Rights Act of 1964. Bostock began participating in a gay recreational softball league. Shortly thereafter, Bostock received criticism for his participation in the league and for his sexual orientation and identity generally. Soon afterward, Clayton County terminated his employment. In Altitude Express, Zarda was fired days after mentioning he was gay. In Harris, an employee was fired after the employee informed the employer that the employee planned to live and work full time as a woman.

The U.S. Supreme Court held that Title VII prohibits employers from discriminating against any individual "because of such individual's race, color, religion, sex, or national origin." Looking to the ordinary public meaning of each word and phrase comprising that provision, the Court interpreted it to mean that an employer violates Title VII when it intentionally fires an individual employee based, at least in part, on sex. Discrimination on the basis of homosexuality or transgender status requires an employer to intentionally treat employees differently because of their sex—the very practice Title VII prohibits in all manifestations. While it was argued that Title VII was never intended to be read with such a broad brushstroke, the Court found that the use of the word sex was unambiguous and supported its holding.

House Bill 164

Signed into law on June 19, 2020, HB 164 will impact Ohio public school district operations in the following ways.

School Funding

- Requires ODE to make an additional payment to each school district that receives (for FY 2020) funding that is less than 94% of its foundation funding for FY 2020, calculated before state budget reductions.
- Estimated that the bill will appropriate $24 million to partially offset the $300 million in cuts made to K-12 in May.
- Directs ODE to make payments for FY 2020-2021 to districts including JVSDs who received more than a 10% decrease of utility TTP and/or experienced deduction in state foundation funding due to an increase in taxable value of all utility TTP between 2017 and 2020.

Student Religious Freedom – The Ohio Religious Liberties Act

- Reverses the law limiting student exercise of religion to lunch or other noninstructional time.
- Several new statutes have been adopted which are intended to protect student religious expression to the same extent as secular activities.
- Religious expression includes prayer, religious gatherings, distribution of materials and literature, and "any other activity of religious nature, including wearing symbolic clothing or expression of a religious viewpoint," however, it must not be vulgar, obscene, indecent, or offensively lewd.

Teacher and Principal Evaluations

- Indicates that teachers who did not have a student growth measure included in their evaluations this past year will remain at the same place as the 2019-2020 school year for the 2020-2021 school year.
- Authorizes boards to complete principal evaluations for the 2019-2020 school year without a student growth measure.
- Declares a board of education may not use student growth measures or high-quality student data including value-added data to measure student learning attributable to a teacher or principal for evaluations conducted during the 2020-2021 school year. Teacher or principal evaluations will be comprised of the remaining performance measures.

Third Grade Reading Guarantee

- Mandates that in the upcoming school year, schools may not retain a student in the third grade because of failing the fall administration of the ELA assessment, unless the principal and reading teacher agree.
- For the 2020-2021 school year, teachers are exempt from meeting the criteria of R.C. 3313.608, who is assigned to provide intense reading remediation.
- Criteria of R.C. 3313.608: At least one year of experience and fulfill one or more of the following:
    - Hold a reading endorsement;
    - Have a master's degree with a major in reading;
    - Be rated "most effective" for reading instruction consecutively for two years;
    - Be rated "above expected value-added" in reading;
    - Earn a passing score on a rigorous test of scientifically based reading instruction as approved by the State Board; or
    - Hold an educator license for teaching grades pre-k to 3 or 4 to 9 issued on or after July 1, 2017.
- Temporarily exempts public schools and community schools from two provisions that require establishment of a building/district-wide reading improvement plan.

End of Course Examinations & Graduation

- Establishes that students unable to take end-of-course examinations will receive their final course grade from the corresponding course in place of the examination. If the student is retaking the exam, a prior year's grade may be used.
- A student may elect to take end-of-course exams in a subsequent school year.
- Competency scores are determined as followed:
    - "A" = advanced
    - "B" = accelerated
    - "C" = proficient
    - "D" = basic
    - "F" = limited

Remote Learning

- Remote learning plans, if not yet approved by ODE by the effective date of the bill, must include:
    - How student instructional needs will be determined and documented;
    - The method for determining competency, granting credit, and promoting students to a higher grade level;
    - The school's attendance requirements, including how the school will document participation in online learning;
    - How student progress will be monitored;
    - How equitable access to quality instruction will be ensured; and
    - The professional development activities that will be offered to teachers.
- Plans must be adopted by July 31 and submitted to ODE. Plans are not subject to ODE approval.

Other Provisions Impacting School Employees

- Indicates that non-classroom personnel (e.g. speech pathologists, counselors, occupational therapists, and school psychologists) can offer services via telehealth communication to students with disabilities until the end of the 2020-2021 school year.
- Grandfathers in some preschool teachers who don't meet new administrative rules for licensure for teaching in a public school classroom where 50% of students have disabilities.
- Authorizes a superintendent to employ or reassign a teacher for a subject or grade level (within two grades of licensure) they are not licensed for.
- Requires ODE to develop online bus driver training that satisfies the classroom section of pre-service and in-service training. All on-bus training must still occur in person.

Storm Shelters

- Delays a law passed in 2018 prohibiting the board of building standards from requiring public or private districts to build a storm shelter in a new or existing building that begins construction before November 30, 2020.

Homeschool Students

- Temporarily exempts parents from being required to submit an academic assessment record for next year.

Community School Changes

- Prohibits ODE from issuing sponsor ratings for 2019-2020.
- Changes criteria to be designated as a "community school of quality" if its operator operates a community school in another state by requiring the school to be in its first year of operations in Ohio.
- Permits a person to serve on a governing authority of more than five start-up community schools under certain conditions.

Upcoming Deadlines

As your school district prepares for the next couple of months, keep in mind the following upcoming deadlines.

- **July 1** – 2020-21 school year begins (RC 3313.62). Last day 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(A) and (B)). Treasurer must certify available revenue in funds to county auditor (RC 5705.36(A)(1)).
- **July 6** – Last day for voter registration for August election (RC 3505.01, 3503.19) (30 days prior to the election).
- **July 10** – Last day for termination of teaching contract by a teacher without consent of the board of education (RC 3319.15).
- **July 15** – Last day to adopt school library district tax budget on behalf of a library district (RC 5705.28(B)(1).
- **July 27** – Last day to submit certification for November income tax levy to Ohio Department of Taxation (RC 5748.02(A)) (100 days prior to election).
- **July 31** – Last day for board of education to adopt a plan to require students to access and complete online classroom lessons ("blizzard bags") in order to make up hours for which it is necessary to close schools (RC

3313.482(A)(1). Semiannual campaign finance reports must be filed by certain candidates (by 4 p.m.) detailing contributions and expenditures made through June 30, 2020 (RC 3517.10(A)(4)).

Upcoming Presentations

Special Education Coffee Chats

The Ennis Britton Special Education Team invites you to join a facilitated conversation with student services personnel and Ennis Britton attorneys to discuss the COVID-19 educational impacts. We know that as educational leaders, you are great collaborators, and if there was ever a time for sharing your insights on how to serve students, it is now.

Ennis Britton's Special Education Team is offering a new way to serve our clients during this ongoing COVID-19 pandemic. We will be hosting three coffee chats over the summer. During the chats, our special education team of attorneys will provide a quick overview of hot topics – then turn things over to you and your colleagues across the state. We will help facilitate discussions and encourage you to take your conversations in the direction that best serves your students and school district.

If you are interested in joining us for this coffee chat, please contact our paralegal, Kayla Browning, at kayla@ennisbritton.com to receive the Zoom conference link (it will be sent Thursday morning). If you have already signed up, you are on the list and do not need to sign up again. The general logistics are as follows:

- Our final scheduled summer Zoom conference is set for July 9th from 1:00 p.m.to 2:00 p.m. (following our Administrator's Academy year in review). Attendees will be placed in a virtual waiting room until the meeting begins. After brief introductions, you will be prompted to join a breakout room.
- The Zoom chat feature will be available throughout this session. You may send messages to all participants or send "private" messages to facilitators.
- Special Education Team members will be available by email or cell phone if you have follow-up questions.

We encourage you to continue sending us your suggestions for future chats! We would also appreciate your feedback about whether you like this format and would like us to schedule future chats into next school year. When we get through this – and we will – we expect that the focus of compliance and accountability efforts will have far more to do with our clients demonstrating good faith efforts to serve children in an extremely difficult situation than concerns about technical compliance, precise calculation of service minutes, meeting timelines, etc.

We're here to help you with the technical side of compliance, but we also want to make sure we are also helping you with the bigger picture. If there is any profession up to the challenge of creatively solving problems and adjusting to ever-changing government directives, it is the educational leaders. We are inspired by your efforts and honored to be a part of your team. Thank you again!

The information presented during our coffee chats is intended to be used for general information only and is not to be considered specific legal advice. If specific legal advice is sought, please consult with an attorney.

2019–2020 Administrator's Academy Seminar Series

July 9, 2020: 2019–20120 Education Law Year in Review

The Education Law Year in review will cover important legal updates for schools, including a review of mid-biennial budget changes, new Title IX regulations, COVID-19 challenges, legislative and case law updates, and more. We encourage you to forward this invitation to your administrative teams.

Ennis Britton's Administrator's Academy Seminar Series is offered via a live video webinar professionally produced by the Ohio State Bar Association and is free of charge to clients. Participants must be registered to attend each event. All webinars will be archived for those who wish to access the event at a later time. You may register on our website or contact Kayla via email or phone at 513-674-3451.

Other Presentations

We are currently scheduling administrator retreats for the 2020-2021 school year (in person or via videoconference). Contact us soon if you would like to schedule a retreat for your administrators!

July 17: Ohio Council of School Board Attorneys Workshop
"Special Education in 2020"
Presented by Pamela Leist and Jeremy Neff

July 28: BASA New Superintendent Transitions
"Pitfalls of the Sunshine Law and Board Meetings"
Presented by Hollie Reedy

August 6: OSBA Attendance and Tuition Workshop
"Highly Mobile Students"
Presented by Hollie Reedy

August 7: Ashtabula County Administrator Retreat
"What's Happening in Special Education"
Presented by Pamela Leist

"FMLA Challenges"
Presented by John E. Britton

August 7: Northwest Ohio Educational Service Center Administrator Retreat
Year in Review Legal Update
Presented by Bronston McCord III, Erin Wessendorf-Wortman, and Jeremy Neff

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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.

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 Kayla via email or phone at 513-674-3451. Archived topics include the following:

Labor and Employment

- School Employee Nonrenewal
- Employee Licensure
- School Employee Leave and Benefits
- Managing Workplace Injuries and Leaves of Absence
- Requirements for Medicaid Claims
- Discrimination: What Administrators Need to Know

Student Education and Discipline

- New Truancy and Discipline Laws – HB 410
- Transgender and Gender-Nonconforming Students
- Student Discipline
- Student Privacy

School Finance

- School Levy Campaign Compliance

School Board Policy

- What You Should Know about Guns in Schools
- Crisis, Media, and Public Relations
- Low-Stress Solutions to High-Tech Troubles
- Ohio Sunshine Laws

Special Education

- Three Hot Topics in Special Education
- Supreme Court Special Education Decisions
- Special Education Scramble (2018)
- Special Education Legal Update (2017)
- Special Education Legal Update (2016)
- Effective IEP Teams

Legal Updates

- 2017–2018 Education Law Year in Review
- 2016–2017 Education Law Year in Review
- 2015–2016 Education Law Year in Review

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
Robert J. McBride
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

School Finance
Taxes • School Levies • Bonds • Board of Revision

Team Members:
John Britton
Bill Deters
Ryan LaFlamme
Robert J. McBride
Bronston McCord
Jeremy Neff
Hollie Reedy
Giselle Spencer
Gary Stedronsky

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