



School Law Review



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The FFCRA Leave Questions Keep Coming

School administrators are overseeing a challenging return to school and are facing many questions about how to apply the Families First Coronavirus Response Act (FFCRA), which established two new types of leaves for public employees. While it is always necessary to apply the individual facts of the situation to the law to determine an answer, below are some clarifications about the law and how it is to be administered.

The Emergency Paid Sick Leave Act (EPSLA) provides two weeks (eighty hours) of paid sick leave to employees who have one of six reasons to use it. This leave is not part of FMLA leave. This can be confusing because the Emergency Family Medical Leave Expansion Act (EFMLEA) allows the ESPLA to be used for the first ten days (two weeks) of the EFMLEA leave. Those first ten days are unpaid under the EFMLEA.

The ESPLA provisions provide eighty hours of paid sick leave for full-time employees (part-time employees are pro-rated based on an average of their hours). This is a one-time entitlement. This means that even if an employee has another reason that is on the list of eligible reasons for EPSLA in the future, there will be no more granted under that law if the employee has already used the two weeks of EPSLA.

What if the employee still needs to use leave? Employees may be eligible for regular FMLA and its qualifying reasons as they existed prior to the expanded provisions (unpaid leave), or may be eligible for the EFMLEA. This leave is available for only one reason; that the employee’s child’s school or child care is closed or unavailable due to COVID-19 related reasons. This expanded leave is the only type of paid FMLA leave. The employee’s first ten days (two weeks) of EFMLEA for the single purpose of child care is unpaid; the next ten weeks are paid at two-thirds the employee’s regular rate of pay. Finally, the employee could use any other type of existing leave for which the employee is eligible.

There are many questions about how the different types of leave may be layered. For example, the first two weeks of EFMLEA leave are unpaid; however, an employee may use the ESPLA leave for that same two weeks if they meet any of the eligible reasons. Employers also may require that employees who are using the child care leave under EFMLEA use their other available paid leaves concurrently after the first two weeks of paid emergency sick

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leave (EPSLA). This means personal days, vacation days, or any other paid leaves, although sick leave may not be used if the employee is not sick (and use of the child care leave would of course not qualify for use of sick leave.)

For the paid EFMLEA leave for child care, the district may require that the employee provide the name of your child, the name of the school or place of care that is closed or unavailable due to COVID-19, and a statement that no other suitable person is available to care for the child.

Districts also may allow intermittent use of leave for both the EPSLA and the EFMLEA, but it is not required that they do so. If a district chooses to allow intermittent leave, then the increments of the leave should be agreed upon, meaning that the employer may determine what increment of leave is available. The FAQ, explained below, encourages collaboration and flexibility to meet mutual needs.

The EFMLEA and other leaves under FMLA are for a total of twelve weeks of leave available in the FMLA calendar year, however that year is measured by the district (calendar, fiscal, rolling, etc.). For example, if an employee had used some FMLA leave earlier in the FMLA year for two weeks, their entitlement for the remainder of this FMLA year is ten weeks total, under regular FMLA or EFMLEA.

The U.S. Department of Labor has produced a FAQ on the EPSLA and EMFLEA about the operation of this law and how they do and do not interact with other leaves. That FAQ is available here: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions#12>

What this means for your District:

The good news is that the EPSLA and the EFMLEA are currently set to expire on December 31, 2020; that means no more of these types of leave will be processed unless the law is extended. Employees must be on an approved leave status at all times. If they exhaust FMLA and all other paid leave options, unpaid medical leaves of absence are available with board approval for up to two years. Districts should review collective bargaining agreements and district leave policies, and may wish to discuss with union representatives the leave options available and how they will be applied. There are many questions about how the new law applies to individual situations; contact us to discuss.

Special Education Spotlight: Repeated Unsuccessful Attempts at Parent Inclusion in IEP Meeting Does Not Excuse Late Review

At the end of 2019, a school district in Ohio was found to be in violation of IDEA and 34 CFR 300.324(b)(i), for completing its annual IEP review several months after the deadline. The District made numerous attempts to include the Parent of the Student in the review meetings, but to no avail. Ultimately, the meeting took place seven months after the IEP review was due.

The deadline for completing the Student's IEP annual review was April 6, 2019. The District began preparations in December 2018 for arranging the review meeting. Throughout the 2018-2019 school year, the District made numerous attempts to schedule the IEP annual review meeting. The Parent consistently changed the dates of the scheduled meetings or did not attend meetings, as detailed on the District's "Documentation of Attempts to Obtain Parent Participation." Ultimately, the District held the IEP team meeting without the Parent on April 2, 2019. The Parent requested a follow-up meeting for May 1, 2019, so the District did not finalize the IEP, did not submit an accompanying Prior Written Notice, or send the Parent a copy after the April 2 meeting. The Parent rescheduled the May 1 meeting several times as well.

On August 19, 2019, the District sent a Prior Written Notice to the Parent. It stated that the "Annual IEP Meeting" would be held on August 30, 2019. This was the sixth meeting that had been scheduled; the Parent did not attend any. Additionally, the District scheduled an absence intervention meeting of September 9, 2019, which the Parent

did not attend. The Parent continued to cancel and reschedule the IEP annual review meetings. Ultimately, the District held the IEP annual review meeting on November 15, 2019, at which the Parent attended and signed the IEP. November 18, 2019 is when the District submitted a Prior Written Notice that gave a summary of the IEP.

The District was found to be out of compliance with 34 CFR 300.324(b)(i) that states a school district must ensure the IEP team meets and reviews the student's IEP periodically, but not less than annually. Documentation showed that the IEP annual review deadline was April 6, 2019, and the District did not complete the review until November 15, 2019. Due to noncompliance, the District had to provide professional development to the director on the regulation above. It was also required to develop written procedures that outlined how to hold compliant annual review IEP team meetings and include provisions on how to address parents who fail to respond and do not cooperate in arranging meetings.

What this means for your District:

Districts are required to make reasonable and documented efforts to include parents in IEP annual review meetings. A parent's absence, unavailability, or refusal to cooperate does not excuse the district's obligation to complete the review on time. Districts should make every reasonable effort to include parents in the meeting, including providing participation through alternate means such as phone or video. If all efforts are unsuccessful, districts must hold the meeting without the parent in order to comply with IDEA. With virtual meetings becoming the norm during the COVID-19 pandemic the issue of accommodating parental participation should be a focal point of planning for the coming school year.

Appeals Court Holds That a Public Official Must Exercise Control Over Public Funds in Order to be Held Liable for Misappropriation

The Second District Court of Appeals has overturned a finding of liability against a former CEO of the now-closed, New City Community School. Among the CEOs was the authority to approve budget expenditures on behalf of New City through the Ohio Department of Education's electronic accounting system, the authority that he shared with New City's chief fiscal officer. Once a budget expenditure was approved, state and federal grants would be deposited into New City's bank accounts. New City received \$432,989.57 of state and federal funding during the 2009- 2010 school year.

On May 31, 2012, the Ohio State Auditor completed an audit of New City for the 2009-2010 school year, revealing that more than \$50,000 had been misappropriated. The State initiated an against Burns and three other defendants, including New City's chief fiscal officer, alleging the defendants were jointly and severally liable for the funds.

Ohio law places a duty on all public officials who collect or receive money in their official capacity. This duty is imposed by R.C. 9.39 which reads in part, "All public officials are liable for all public money received or collected by them or by their subordinates under color of office."

The CEO conceded that he was a public official during the term of his employment at New City, but he argued that his responsibility for authorizing the deposit of grant money into New City's bank accounts was insufficient, without more, to hold him liable for any subsequent misappropriation. The Court of Appeals agreed.

Liability for the CEO turned on whether he "received or collected" public funds as described in R.C. 9.39. The terms are not defined by the statute. The trial court construed the phrase in reliance on the ordinary definitions of the words "collect" and receive," finding that the word "'collect' [means] 'to bring together into one body or place' or 'to gather or exact from a number of persons or sources,' " and that the word "'receive' [means] 'to come into the possession of'" or "'acquire.'" However, the court of appeals noted that there are other meanings to the individual words receive and collect and thus found the phrase "received or collected" to be ambiguous. Because the phrase

is ambiguous the Appeals Court analyzed the intent of the legislature in drafting the statute to determine the meaning of the phrase.

The court found that the concept that a public official is strictly liable for a loss of public funds under his or her control is long entrenched in Ohio law. Strictly liable here means that the public official is liable for the loss even without “illegal or otherwise blameworthy” conduct or that the loss is due to the acts of the public official’s subordinates. The statute represents a codification of the common law and thus a public official must have a duty of exercising control over public funds in order to be liable for a loss. The funds at issue here were not under the direction or control of the CEO, but rather the fiscal officer, over whom, the CEO had no supervisory authority.

State ex rel. Ohio Atty. Gen. v. Burns

Title IX Reminders

Remember, the new Title IX regulations go into effect on August 14, 2020. We know how busy you are, but these regulations are enforceable upon becoming effective. It’s important to adopt your new Title IX policy, which policy providers are releasing at your August board meeting, and get your staff trained. The regulations require that school districts post the training materials on their websites. Ennis Britton is providing live training for coordinators on August 6, 2020, which will be archived. In addition, a recorded module will available by August 7 for all other staff. All staff need to know what Title IX is, what conduct may be a Title IX issue, that potential and actual violations must be reported, and to whom any complaints or observations should be reported (your Title IX compliance officers.)

Here is a short checklist of things to get done now:

- Update Title IX policy at the August board meeting
 - Train compliance officer staff and all staff on their reporting obligations
 - Update district website with Title IX compliance officer information- name, email, address, and phone number.
 - Post that reports may be made in person, by phone, by email, and by regular mail.
 - Post a statement that reports may be made 24 hours a day at email, phone, or mail
 - Post the training materials for your staff on the website (we suggest the same place as your Title IX compliance officer’s information)
-

OSBA Education Law Committee Chair

Ennis Britton is excited to announce that shareholder Pamela A. Leist has been appointed by the Ohio State Bar Association to serve as the Education Law Committee Chair! She will serve a two-year term in this role. Pam has been the Vice Chair of the Education Law Committee for the last two years. The committee includes nearly 300 attorney members who practice education law in a variety of ways. Members represent K-12 public and private schools, post-secondary institutions, and families. The committee facilitates professional engagement and development in the field of education law to help keep members apprised of important legal challenges, case law changes, legislative initiatives, and more. The committee also serves as a resource for other Ohio State Bar committees and members who are not as familiar with the practice of education law. Pam is looking forward to this new challenge.

Law and Leadership Institute Goes Virtual

Ennis Britton has sponsored an annual Lunch and Learn event through the Law and Leadership Institute (LLI) for the past several years. LLI offers programming in cities throughout Ohio and is dedicated to encouraging under-represented students to pursue higher education. With the support of Ohio's education and legal communities, LLI offers summer enrichment, mentoring, and real-world experiences. Due to the pandemic, this year LLI moved to a virtual platform. Undeterred, on July 24th LLI students from across the state held a day of competitions on Zoom. Ennis Britton attorney Jeremy Neff judged rising 10th graders in the "We the People" Congressional hearing simulation. Ennis Britton is proud to partner with LLI to promote diversity in the legal profession. Please contact Ennis Britton shareholder Jeremy Neff if you would like to learn more about opportunities for students to participate in LLI.



Ennis Britton Title IX Training and Module

In May, the U.S. Department of Education approved new Title IX regulations which significantly changed the expectations for how K-12 schools handle sexual misconduct and sexual harassment incidents on campus. Schools must be prepared to implement the new changes by August 14th, 2020. As policy providers begin to release revised policies and guidelines in the coming weeks, it is critical for school employees to understand what this important law requires of them.

To help you meet this challenge, Ennis Britton has developed two unique training opportunities for your staff. The first training will be offered on August 6th, 2020, in both live and archived formats. During the seminar, our experienced team of attorneys will provide an in-depth review of Title IX regulations, including the following:

- Understanding your district's obligations under Title IX
- Receiving and handling Title IX complaints
- Managing the grievance process

- Conducting effective investigations
- Developing a measured response to Title IX violations

The training is specifically designed as an advanced-level training for compliance officers and administrators. The cost of the training is \$150 per attendee. Certificates of attendance will be issued to those who attend. The training will take place online from 10:00 a.m. to 12:00 p.m. on August 6th. You must be registered in advance to receive the link to either the live or archived event.

In addition to this training, Ennis Britton will also offer a recorded Title IX training module that is designed as a professional development opportunity for all of your employees district-wide. It will be available on August 7th. The module will help your employees understand what Title IX requires and the role that they play in compliance, which has become even more important because of the recent regulation changes. The cost of the module is \$150 per district. Districts are encouraged to share the module with all employees, especially those who will work with students. It is also encouraged that Districts develop an attendance list for those who view the module for future reference.

You may register to attend the live event or receive a link to either the archived presentation or training module on our website. Click [here](#) to access the registration page.

We hope you can join us for these events!

Upcoming Deadlines

As your school district prepares for the next couple of months, keep in mind the following upcoming deadlines. For questions about these requirements, please contact an Ennis Britton attorney.

- **August 5** – Deadline to submit November emergency, current operating expenses, or conversion levy to county auditor for November general election (RC 5705.194, 5705.195, 5705.213, 5705.219)
- **August 6** – Special Election (RC 3501.01, 3501.32)

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.

We began this innovative program in the spring, and offered a reduced schedule over the summer. With the most unusual return to school of our careers upon us, we're returning to an every other week schedule starting this Thursday, August 6th. 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 (including last spring or over the summer), you are on the list and do not need to sign up again. If you have changed positions, please forward this email to the appropriate people in your district. The general logistics are as follows:

- Our first 2020-2021 school year Zoom conference is set for August 6th starting at 9:00 AM. We aim to be done in less than an hour because we know you are very busy. 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.
- Topics for the August 6th breakout rooms are:
 - Preparing for changes in the delivery of services: What steps can we take now to be ready for another school facilities closure and/or for providing services in a virtual model option?
 - Anticipating staffing challenges: When your staff, or those at outside placements, are not available how will you minimize service disruptions?
- 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! When we get through this – and we will – we know that there will be formal disputes about compliance. However, we are confident that in most cases moving forward amicably will have far more to do with our clients demonstrating good faith efforts to serve children in an extremely difficult situation than with 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 helping you with the bigger picture. If any professionals are up to the challenge of creatively solving problems and adjusting to ever-changing government directives, it is educators. We are inspired by your efforts and honored to be a part of your team. Thank you again!

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!

August 7: Ashtabula County Administrator Retreat
“What’s Happening in Special Education Law”
 Presented by Pamela Leist

August 7: Trumbull County Administrator Retreat
“What’s Happening in Special Education Law”
 Presented by Pamela Leist

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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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:

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Bronston McCord
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