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Montgomery County Administrator's Retreat

2018-2019 Education Law Year in Review

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What we will discuss today . . .

- House Bill 166 – Biannual Budget Bill
- Other Legislation on the Horizon
- Hot Topics to Tackle in 2019-2020 School Year
- Case Law Year in Review



House Bill 166 – Ohio's Biennial Budget Bill



Funding Changes



Budget – General Information

- Provisions become effective 90 days after filed with Secretary of State, unless a later effective date (or emergency provision) is specified.
 - Emergency provision – effective immediately
- Overrides of additional provisions may occur until the end of 2019.
- 25 vetoes by new Governor, some educational.
- Fun Fact – budget bill was 2,602 pages. Chapter 33 takes up nearly 300 pages of that!

Student Wellness and Success Funds

- Per pupil funding to schools based on # enrolled in preceding fiscal year.
- FTE funding to JVS, STEM and community schools (not e-schools) based on per pupil funding of student's residence district. At least 25K in FY 2020 and 30K in FY 2021.
- May be used for:
 - Mental health services
 - Services for homeless youth, child welfare-involved youth
 - Community liaisons
 - Physical health services
 - Mentoring programs, services for child nutrition, fitness and wellness (SENATE)
 - Student services provided before or after regularly scheduled school day or when school is not in session
 - Family engagement
 - PD for cultural competence and trauma-informed care
 - City Connects programming

Student Wellness and Success Funds

- Requires report to ODE on initiatives on which money was spent by end of each fiscal year.
- Each district, JVSD, STEM, community (other than e-school) will get \$25,000 in FY 2020 and \$30,000 in FY 2021
- Schools must develop a plan to use the money in coordination with one or more community organizations.

Per Pupil Funding Guarantee, Additional Funds

- Increases state foundation aid for some districts beginning FY 2022.
- Guarantees districts will get as much per pupil funding as the statewide per pupil amount paid to chartered nonpublic schools in auxiliary services and for administrative cost reimbursement.
- The statewide per pupil amount is about \$1,305 in FY 2019

Vetoed

Operating Funding

- Suspends 3317 funding payments in FY 2020 and 2021 except for:
 - Foundation aid to school districts
 - Certain foundation aid adjustments
 - Special education transportation reimbursements
 - Auxiliary services
 - Nonpublic school administrative cost reimbursement
 - Preschool special education
 - Payment to nuclear power plant districts
 - Payment for school-age special education students at county DD's and institutions

Operating Funds

- For city, local and exempted village school districts, FY 2019 state share is to be used for calculation of FY 2020 and 2021 payments for which the state share is a factor.
- For open enrollment, College Credit Plus, and other payments for which formula amount is used, FY 2019 formula amount (\$6,020) is the amount for FY 2020 and 2021.
- JVSJs will also receive same amount of foundation aid as in 2019.
- Special education catastrophic cost threshold =
 - Students in categories 2-5, \$27,375
 - Students in category 6, \$32,850
 - For FY 2020 and 2021

Traditional School District Funding

- Suspends foundation aid funding formula for FY 2020 and 2021.
- Instead, every district, including JVSD's, will receive the same amount of foundation funding as received in FY 2019.
- Final budget states that these payments will be based on the final reconciliation amount for 2019- not the aggregate annualized payments of the second June 2019 payment.
- Provides for additional money for an enrollment growth supplement, which is calculated by determining percentage increase in enrollment x 100 times the # of enrolled students in 2019 x \$20, in 2020 x \$20, and in 2021 x \$30.
- # of enrolled students determined by for FY 2019.

JVSD Funding Adjustment

- If district operated a JVSD program in FY 2019, then joined a JVSD beginning FY 2020, adjust FY 2020 and 2021 CTE funding paid to district to account for decrease in students serviced by district and increase at JVSD.
- Amount equals:
 - Amt paid to district for FY 2019 – CTE funds deducted from district for community and STEM students for FY 2019 (based on final reconciliation amount and not 2nd June payment)
 - ODE may not increase aggregate amt. of foundation aid paid to districts and JVSD's when making adjustment.

ESC Funding

- High performing ESC- \$26 per pupil
- Other ESC's- \$24 per pupil
- If necessary, ODE to prorate payment amounts to meet state earmark for the payment of ESC's.
- \$40 million each fiscal year to fund ESC's.
- Moratorium on additional school districts joining ESC's in FY 2020 and 2021.

STEM Funding

- Per pupil deductions from districts and transfers as FY 2019 dollar amounts.
 - Targeted assistance and economically disadvantaged funds will be the same as deducted and paid for FY 2019.
 - ODE will pay 3rd grade reading guarantee bonuses and recalculate each FY using a formula amount of \$6.020
- Payment to STEM schools operated as group will go to the governing board and be distributed to each school in the group.
- Schools operated as part of a STEM group will each get own IRN number.

Utility Tangible Personal Property Valuation

- No more deductions in state aid for districts that had more than 10% increase in value compared to its total taxable value in 2nd preceding tax year, which results in lower foundation aid when recalculated.
- ODE will credit districts that had such deductions in tax years 2017 and 2018.

Interesting Miscellaneous Funding

- Appropriations granted for traditional districts, ESCs and JVSDs to support activities that encourage and assist seniors with completing FAFSA apps.
- Appropriation for School Climate Grants for city, local, exempted village and community schools to implement PBIS, research-based social and emotional learning initiatives for k-3 buildings
- Appropriation to support Adaptive Sports Programs in school districts
- Appropriation for administration and support of teacher certification and licensure activities; portion may also be used for implementation of teacher and principal evaluations

Community Schools



Community Schools

- Deduction: 2019 dollar amounts used to calculate per pupil deductions from school districts and transfers to community schools for FY 2020 and 2021.
 - Final conference committee specified that for community schools that agree to transport their own students, the deduction will be the same as in 2019. (not a fixed number in prior versions)
- Community school sponsor evaluations for effective/exemplary schools with that rating for 3 years = 1x/ 3 years.
 - Sponsors may review ratings on academic performance component, may request adjustment.
 - Lots more on dropout prevention and recovery school report cards and school closings but...

Community Schools

- Conversion schools that later get a sponsor that is not a school district (or ESC) will be viewed as “start up community schools.”
 - Effect of this is that conversion students factored into sponsoring district’s accountability calculation while a start up school student’s are not included in those calculations.
- Community school mergers- 2 or more may merge by resolution of governing authority of each school and surviving community school must enter into new contract with sponsor. May not transfer existing contract.
- Many new e-school laws
- Some new closure changes and dropout recovery closure changes.

Last Word on Community Schools

- ODE will be doing a study to evaluate costs of operating community schools on a per pupil basis or other as replacement for fixed per pupil formula amount.
- Findings due by 12/31/2020
- ODE will also recommend funding for e-schools (this is due 12/31/19)
- Will include stakeholders

Educational Choice Scholarship Program Changes

- If scholarship applications reach more than 90%, ODE is required to make 5% more available the following school year, new maximum used each year until ODE must increase again.
 - If applications exceed scholarships priority will be given as in current law.
- Added to eligible students are those who were enrolled in a public/nonpublic/homeschooled in prior year and completed any grade 8-11 that year, AND school to which student would be assigned 9-12 has D or F on cohort graduation rate.
- Students who got scholarships as entering HS students may continue to receive the scholarship as long as they meet other eligibility requirements.
- Amount of scholarship computed as the lesser of base tuition amount of the student's nonpublic - tuition discounts OR scholarship amount set out by law.

Educational Choice Scholarship Program Changes

- Expands eligibility for income-based EdChoice scholarship to K-12 students beginning 2020-21.
 - Pre-budget law required phase in of one grade a year
 - Currently students k-5 are eligible FY 2019
- For 2020-2021, ODE will accept, process and award scholarships during a priority application period beginning Feb. 1 for 75 days. ODE shall award by June 30.
 - ODE shall continue to award continuously until funds are depleted (no 2nd application period anymore).
 - Scholarships awarded after start of school year are prorated.

Teacher Salary & Licensure Changes

Teacher Salary

- Raised minimum salary to \$30,000 from \$20,000 for bachelors step 0.
- Raises steps by same percentage as under current law based on the new minimum amount.
- Alternative resident educator license K-12 change:
 - Allows preservice training approved by higher ed and conditions for that approval.

Teacher Licensure

- Computer science teachers
 - Person with 7-12 educator license + PD program approved by superintendent/principal may teach computer science.
 - Supt must approve College Board courses
 - May teach computer science *only* in the district that approved
 - This lasts until July 1, 2021, then only in accord w/ current law.
- Licensed/certified teachers in core subject areas
 - Senate *would have* removed requirement that teachers and paraprofessionals in community, STEM and traditional school districts be properly licensed/certified in *core* subject areas.
 - Governor VETOED, so law will remain

Substitute Teachers

- House attempted to add flexibility
- Senate repealed 3319.074 (removing requirement teachers and paras be licensed)
- Governor vetoed that.
- End result, no changes!

Alternative Resident Educator License Changes

- Applicants may now meet training requirements not only by summer institute but also by preservice training program which Chancellor of Higher Ed may approve.
 - Preservice training program must meet same requirements as summer institute
 - Also allows participants in preservice training program to have
 - Undergrad 2.5 cumulative avg, or grad school cumulative avg. of 3.0

Student Changes

Smoking Under 21

- Smoking now prohibited for anyone under age 21. Governor vetoed a phase in/grandfathering period.
- Applies to cigarettes, other tobacco products and alternative nicotine products.
- Check your policies and student handbooks.

LEP to EL: New Acronym Alert

- All references to “Limited English proficient” have been changed to “English Learner” throughout the Revised Code.

Student Attendance

- Changes the notification to parents of student absence without excuse for purposes of truancy to *exclude* those students with a medical excuse for absence (38 hours/month, 65 or more/school year).

OHSAA Transfer Rules- Senate

- Transfer Rules- Senate
 - Requires OHSAA and schools to have same transfer rules for nonpublic and public school students, and prohibits adoption of any other regulation or bylaw contrary to the section.
- International Students
 - Permits any international student with an F-1 visa who is attending an elementary or secondary school in Ohio to participate in interscholastic athletics.
 - No longer required to attend a school with a dormitory as specified under current version of the law.

JVSD Post-Secondary Credit

- State Superintendent and Chancellor for Higher Ed will consult to determine whether a statewide plan for awarding post-secondary credit to JVSD students enrolled in approved courses, like CCP program.
- Statewide plan will:
 - Include all criteria, policies, procedures timelines necessary for awarding credit for completion of approved courses.
 - Recommend a date and method to implement if appropriate
 - Stakeholder group will be convened.
 - June 30, 2020 is the date for completed plan.

Computer Coding Instruction = 1 unit Foreign Language

- If districts require foreign language for HS graduation beyond minimum curriculum requirements, must accept one-unit for computer coding instruction toward meeting that requirement.
 - Additional coding courses must be more difficult.

Show Choir = Physical Education

- 2 full seasons of show choir **may** be used to fulfill physical education requirements.

Graduation Requirements

- For students entering **July 1, 2019 (Class of 2023)**, new requirements. Students must:
 - Complete the minimum number of hours mandated by the state and their district; **and**
 - Still take 5 end of course exams, but only attaining a competency score on Algebra I and ELA II end of course exams are required for diploma; **and**
 - Earn **at least two** state diploma seals.
 - At least one must be seal of biliteracy, OhioMeansJobs workforce readiness seal, or one of the seals for which the state board establishes requirements.

Graduation Requirements

- Districts must offer remedial support to those who do not attain competency score on 1 or both end of course exams.
- ODE, in consultation with the Governor's executive workforce board and Higher Ed Chancellor will determine competency score.
- End of course exams:
 - ODE shall seek waiver from USDOE to make Algebra I the end of course primary HS math assessment.
 - Student cannot be compelled to retake Algebra I and ELA II end of course exams if they got a proficient or competency score prior to HS on the exam.

Graduation Requirements

- Students may retake Algebra I and ELA II, but if they fail again, students may use alternative demonstration of competency.
- Ways to demonstrate:
 - Taking CCP courses
 - Provide evidence student has enlisted in the military
 - Completing at least one 'foundational option'- i.e.,
 - Proficient scores on 3 or more state technical assessments in a single career pathway,
 - Earning industry credential, complete pre- or apprenticeship program or evidence of acceptance into apprenticeship program after HS, and either:
 - Completing one additional foundational option or supporting option.

Graduation Requirements

- Supporting options include:
 - 250 hours of work-based learning experience
 - Obtain OhioMeansJobs work readiness seal
 - Attaining score on WorkKeys assessment.
- IEPs for students who require special education will need to detail how the student will participate in assessments on the new graduation requirements.

New State Diploma Seals to Meet Graduation Requirements

- **Biliteracy Seal (current law)**
- **OhioMeansJobs-readiness seal (current law)**
- **College-ready Seal-** student gets remediation free score on nationally standardized assessment.
- **Industry-recognized Credential Seal-** student earns industry credential aligned to job determined to be in demand in the state.
- **Military Enlistment Seal-** one of either-
 - Student provides evidence of enlistment,
 - Participates as junior reserve officer training program

New State Diploma Seals to Meet Graduation Requirements

- **Citizenship Seal-** may do any of the following:
 - Proficient level on both American history and American government end of course exams
 - Score of proficient equivalent in AP on IB exams in American history and American government end of course exams
 - “B” or higher in CCP appropriate courses in lieu of American history and American government end of course exams
- **Science Seal-** any of the following
 - Proficient level on science end of course exam
 - Score of proficient equivalent in AP on IB exams in appropriate end of course exams
 - “B” or higher in CCP course in lieu of science course

New State Diploma Seals to Meet Graduation Requirements

- **Honors Diploma Seal**- meet criteria for honors diploma under 3313.61(B)
- **Technology Seal**- any of the following
 - Score of proficient equivalent in AP or IB exams in appropriate end of course exams
 - “B” or higher in CCP course in appropriate course
 - Completing a course that meets ODE guidelines in the district, but district does not have to offer such a course.
- **Community Service Seal**
 - Completing a project as developed by guidelines of the district or governing authority.
- **Fine/performing Arts Seal** (guidelines developed by district)
- **Student Engagement Seal** (guidelines developed by district)

Graduation Requirements

- Schools must develop guidelines for at least one state seal from 10-12.
 - (community service, fine and performing arts, student engagement)
- Schools must keep records on students who meet the requirements for a state seal.
- ODE will develop mechanism for assigning state diploma seal.
- Students may not be charged fees for state seal.

Graduation Plans

- **New section requires adoption of a policy regarding students at risk of not graduating.**
 - Requires criteria and procedures for identifying at risk students, including:
 - Lack of progress on graduation plan,
 - Other factors such as excessive absence or misconduct.
 - Procedures for identifying at risk students, if they are not making progress in meeting terms of a graduation plan.
 - Must include plan to notify parent each year student at risk, written notice must include:
 - Statement that student may not graduate,
 - Describe requirements or IEP,
 - Additional instructional or support services available.

Graduation Plans

- Policy must provide for student assistance, which may include:
 - Mentoring or tutoring
 - Demonstration of competence through adjusted curriculum
 - Career tech, mental health services, physical health care services, family engagement or support services.
- **Must develop a “graduation plan” for all students 9-12.**
 - Plan developed with student and district and **update each school year** student enrolled in high school until student qualifies for HS diploma.
 - Parent/guardian/custodian to be invited to help develop/update plan.
 - Lack of progress on plan to be used as criteria for identifying at risk students and procedure for same.
 - The graduation plan supplements the career advising policy under 3313.6020.
 - IEP’s may be used in lieu of graduation plan if they contain similar academic goals.

Graduation Plans

- Stakeholder group to student and issue report by 10/1/2020 on recommendations for student who completed 12th grade but did not qualify for a high school diploma.
 - Recommendations must include what additional supports might be necessary and amount of state funding needed, reducing stigma of not graduating on time, and may include any OAC or RC changes needed.
- EMIS reporting on student earning diploma seals, students demonstrating competence by completing CCP classes, enlisting in the military, completing foundational and support options, and which options completed.

Facilities, Transportation, Operations

School Facilities

- Disposal of unused school buildings- offer to community schools
 - Changes definition of “unused school facility” to those that have not been used for **ONE year** (instead of previous two years)

Transportation

- If a district is providing transportation it is not legally obligated to provide under 3327.01, it will be prohibited from reducing that transportation after the first day of the school year.

Bus Driver Physicals

- Authorizes the following individuals to conduct annual physical examinations for bus drivers:
 - Physician's assistant
 - Certified Nurse Practitioner
 - Clinical Nurse Specialist
 - Certified Nurse-midwife
 - Medical examiner who is listed on the national registry of certified medical examiners established by the federal motor carrier safety administration
- Additional changes implemented previously this year in HB 338 (chiropractors)

School Breakfast Programs

- If district meets conditions established in section, must offer school breakfast *before or during* school day (*before or during* is a Senate addition).
 - 70% or more eligible for free and reduced school lunch in 1st year after effective date.
 - In 2nd year, 60% or more eligible for f/r lunch.
 - In 3rd year. 50% or more eligible for f/r lunch.

School Breakfast Programs

- District superintendent or bldg. principal shall consult w/ building staff and determine method – must meet federal guidelines and standards.
- District may make a charge for each meal per federal requirements to cover all/part of costs of operating the program.
- ODE will publish a list of eligible schools and offer technical assistance. ODE will produce a report by 12/31 each year with disaggregated data for schools and buildings for those participating in breakfast program. Includes community and STEM schools.
- Senate added provision that permits schools to elect not to establish a breakfast program for financial reasons, or if it already has a successful program or partnership in place.
- ODE must provide report to GA no later than December 31st each year on implementation and effectiveness of program.

Bright New Leaders Program

- Administrators of program will now be OSU's Fisher College of Business & College of Education and Human Ecology
- May issue a professional administrator license pre-K-12 (not alternative principal license as in prior law) to those who successfully complete program.
- ODE will adopt rules, using rules currently in place as guidance.

EMIS Reporting

- Beginning 2019-2020, districts must report to ODE:
 - Behavioral prevention programs, services and supports that assist students in developing knowledge and skills for healthy behaviors and decision-making.
 - Includes topics such as substance abuse, suicide, bullying, other harmful behaviors.
- Must report for each building K-12:
 - Curriculum and instruction, programs and supports outside classroom or school day;
 - PD for teachers, admins, other staff;
 - Partnerships with community organizations to provide prevention services and resources;
 - Efforts to engage school community and parents;
 - Efforts to communicate with other schools or professionals in prevention education.
- ODE may use as a factor in distributing funding for prevention focused programs, services and supports.
- Additional provision added to final version of the bill that requires ODE to accept an amendment to data reported by a district if there are extenuating circumstances and the district provides evidence of such no later than August 10, 2019.

ESCs and Competitive Bidding

- ESCs may purchase services, supplies, materials or equipment on behalf of districts or political subdivisions that have entered into a service agreement with the ESC.
- Exempts district from compliance with competitive bidding under this section.
- May not use if district has received bids unless same terms, specs, conditions may be made at a lower price under this division.
- School districts with .843, .844, or .845 contracts are exempt from competitive bidding under federal law for personnel services if ESC is:
 - High-performing;
 - In compliance with posting requirements for services menu on website; and
 - In substantial compliance with audit rules and guidance of AoS.

ESC's May Apply for Grants on Behalf of Districts

- An ESC may apply for state and federal grants on behalf of school district client or community school
 - An ESC is a school district for purposes of eligibility in applying for the grants.

Tax Levied for General Permanent Improvements

- For OSFC construction projects, may use tax for permanent improvements not only to maintain but to upgrade classroom facilities.
 - Proceeds of tax may not be used for upgrades unless the district board submits to the OSFC a proposal regarding the use of those proceeds, and the commission approves it.
- New ballot language will recognize upgrades subject to commission approval.

Report Cards



Report Cards

- By 7/31 each year, ODE must do both:
 - Submit preliminary report card data on academic performance and each performance measure for school districts, buildings, and community schools; and
 - Preliminary data on community schools that are at risk of permanent closure.

Report Cards

- Value-added progress scale
 - Changes the way letter grades are determined for the value-added progress dimension through the ‘gain index’:
 - 1 or greater score (was 2 or greater) is an A
 - Less than 1 but greater than -1 (was at least 1 but less than 2) is a B.
 - Less than or = to -1, but greater than -2 is a C
 - Less than or = to -2, but more than -3 is a D
 - Less than or = to -3... is an F
- Districts may not get an “A” on value-added progress dimension *unless* district/building subgroups get a C or higher (was in prior law a “B”)

Miscellaneous Budget Fun

Miscellaneous Provisions

- ODE would be authorized to use the services of volunteers “to accomplish any of the purposes of ODE.”
- Joint legislative task force authorized for nonpublic and community school transportation to determine methods of greater efficiency and less cost.
- ODE and JEOC to study ELL student funding amounts and required services- report by 12/31/2020
- ODE and JEOC to conduct a study that reviews criteria in the state funding formula for determining economically disadvantaged students, and also reviews how other states define and use the factor in funding. Report due 12/31/2020

Miscellaneous Provisions

- District responsible for tuition for student in residential centers must pay tuition to the educational provider; district may not include in ADM.
- ODE to report at end of December in 2020/21 on ways in which it partnered with ESC to deliver services for which state funding was provided to the ESC.
- Report card student committee to look at report card components, performance measures, letter grade, will include 3 superintendents appointed by BASA representing rural, urban and suburban schools. Report due 12/15/19

Miscellaneous Provisions

- ODE will be required to use a portion of funding to develop and deliver professional development in partnership with ESCs.
- ESCs will also receive a portion of funds to support training on value added progress dimension and data re: student achievement.
- ESCs: \$1 million development grants earmarked in each FY for ESC's to train educators on models of prevention for risky or harmful behavior.
- ESCs: \$3 million to support grants for graduate work for credentialing of high school teachers to teach CCP courses.

Miscellaneous Provisions

- Preschool education study: ODE to report on review of early childhood initiatives in Ohio, including preschool, Head Start, other early learning and also how other states support early learning.
 - ODE to determine stakeholders
 - Study due 12/31/2020
 - Recommendations will be basis for legislation for FY 2022.

Territory Transfer Changes

- Electors residing in school district within township split between 1 or more districts may petition for transfer to an adjacent school district.
- Placed on next ballot (general, primary, special election 90 days after certification) if 10% of electors voting in last general election in the area proposed to be transferred sign petition.
- If majority approves, district notifies ODE of the vote and township trustees negotiate a formal agreement with BOE in district to which territory will be transferred- BOE not required to enter into formal agreement.
- Transfer complete when map filed with county auditor and legal title of school property in the territory must be vested in new district.
 - State Board must approve agreement and notify in writing to board affected by transfer.
 - Districts and township trustees must equitable divide funds and indebtedness.

Academic Distress Commissions Temporarily on Hold

- House proposed dissolving existing ADCs and repealing current law providing for them
- Senate removed from HB 166
- Temporary deal was struck in the final bill that temporarily prohibits Superintendent of Public Instruction from establishing new ADCs during 2019-2020 school year
- SPI further directed to resume ADCs beginning October 1, 2020 that meet conditions of R.C. 3302.10
- Section does not affect any academic commission established prior to effective date of bill



Passed and Pending Legislation on the Horizon This Year



House Bill 58 – Cursive Handwriting

- This new law requires the Ohio Department of Education (ODE) to include supplemental instructional materials on cursive handwriting in the English language arts model curriculum for grades K–5.
- These materials must be included by July 1, 2019, and must be updated periodically.
- Use of the supplemental instructional materials is not mandatory.
- Became **effective March 20th, 2019**

House Bill 66 – Parent Phone Calls for Student Absences

- New law requires school attendance officers or their designees to notify parents of a student's unexcused absence **within 120 minutes** of the start of the school day.
- This notification may be made by a number of methods:
 - An in-person phone call
 - An automated phone call
 - A notification through the schools automated student information system
 - A text message
 - An email
 - An in-person visit
 - Any other notification procedure that has been adopted by the board of education
- Schools are **not** required to notify a parent who already has notified the school of the student's absence or if the student has been excused for an off-campus activity.
- Contains an immunity provision for good faith compliance.
- Became **effective April 5, 2019.**

House Bill 158 – Unemployment Comp for Military Spouses

- Allows participation in unemployment compensation for an individual who quits their job to accompany their military spouse who was transferred to a location that makes commuting impractical, provided the spouse is in one of the following categories:
 - An active-duty member of the U.S. armed forces
 - A member of the Commissioned Corps of NOAA
 - A member of the Commissioned Corps of public health service
- Upon arrival at the new place of residence, the individual receiving unemployment compensation must in all respects be able and available for suitable work.
- Effective **March 20th, 2019**

House Bill 291 – Insurance in Lieu of Bond

- Enacts a new section of the Revised Code to allow school districts and other political subdivisions to adopt a policy, by ordinance or resolution, authorizing the use of an “employee dishonesty and faithful performance of duty policy” (i.e., an insurance policy or self-insurance coverage) rather than obtaining a surety bond to cover losses from fraud, dishonesty, or failure to perform duties for employees who otherwise would be covered by a surety bond.
- The amount of coverage must be equal to or greater than the maximum amount of the bond required by the Board.
- The policy must be in effect prior to the employee’s assuming his or her duties.
- A political subdivision that does not adopt such a policy must continue to require employees to obtain surety bonds.
- **Effective March 20th, 2019**

House Bill 338 – School Bus Driver Exams

- This bill allows licensed chiropractors and federally certified medical examiners to be among those authorized to provide school bus driver medical exams.
- Exams still must be completed annually.
- **Effective March 20th, 2019**
- UPDATE – HB 166 change – See Previous Slide!

Sub. House Bill 343 – Property Tax Assessment Challenges

- Would require a board of education to pass a resolution approving a property tax complaint before filing it.
- Would limit the circumstances under which a board of education may file an initial property tax complaint against a residential property.
- States that a board of education may file a counter-complaint to an initial complaint only if the initial complaint alleges a change in the fair market value of \$75k or more .
- Introduced Sept. 2017, passed the House March 21, 2018, currently in Senate Ways and Means Committee.

House Bill 491 – Student Discipline

- Requires school boards to adopt a policy that establishes parameters for completing and grading assignments during suspension.
- Policy must provide student with opportunity to complete assignments and receive at least partial credit for completed assignments.
- District may reduce grades because of student's suspension but cannot fail the student.
- Became **effective March 20th, 2019**

House Bill 491 – Treasurer Liability

- Declares treasurer will not be liable for loss of public funds when treasurer “has performed all official duties required of the treasurer with reasonable care.”
- Will be liable only if loss of public funds results from negligence or other wrongful act.
- ODE may not consider loss of public funds a violation of treasurer’s professional duties UNLESS negligence or wrongful acts are involved.
- Treasurer will not be liable for loss of public funds if treasurer relied on accuracy of nonfinancial information such as that published in EMIS, etc.
- Became **effective March 20th, 2019**

House Bill 491 - Pupil Services Substitute Licenses

- The state board is required to issue a license for pupil services personnel to be employed as substitutes.
 - PTs and Assistant PTs, SLPs, Audiologists, OTs and Assistant OTs, Social Workers, Nurses
- To be eligible for the license, an individual must complete a background check and hold a currently valid license issued by their state occupational board, but do not need to obtain a separate credential from ODE.
 - A school nurse must also hold a bachelor's degree in nursing.
- The license will be issued upon request of the superintendent. Schools may not employ these professionals in a non-substitute capacity without the appropriate ODE license. ODE may not adopt any rules with additional qualifications.
- **Effective March 20th, 2019**

House Bill 491 – Graduation Requirements

- Uncodified section of the bill granted relief for graduation requirements that apply for classes of 2019 and 2020.
- Class of 2020 options are modified.
- ODE was tasked with providing guidance no later than May 31, 2019.
- **Effective March 20th, 2019**

House Bill 502 – Youth Suicide Prevention

- Requires that the following school employees have youth suicide prevention training included in their in-service training once every two years:
 - Psychologists
 - Counselors
 - Teachers
 - Administrators
 - Nurses
 - “any other personnel the board determines appropriate”
- **Effective March 22, 2019**

Senate Bill 214 – Public Records Exemptions

- Excludes from public records photos, videos, other digital depictions “dealing with a victim’s bodily privacy.”
- Images that show a victim of a sexually oriented offense or someone committing a sexually oriented offense that would be “an offensive and objectionable intrusion into the victim’s expectation of bodily privacy and integrity” will be exempt from public records law.
- The victim, however, may obtain a copy of the footage.
- **Effective April 5, 2019**

Senate Bill 268 – Theft in Office

- Would increase the penalty for theft in office when the value of property or services stolen is \$150,000 or more (becomes second or first degree felony).
- Allows for restitution of audit costs, which must be “reasonable” and cannot exceed the value of the property or services stolen or damaged.
- Introduced in the senate March 2018, passed the senate May 2018, “informally” passed the House December 13, 2018, amended version also passed the House that same day.



Hot Topics to Tackle in 2019-2020





Sick Leave Bank Limitations for Non-bargaining Unit Members

AG Issues Opinion on Sick Leave Banks for Those Not Covered by a CBA

- The Attorney General released a formal opinion which concluded a joint vocational school district board of education has no authority to establish a sick leave donation program for employees who are not covered by a collective bargaining agreement.
- A sick leave donation program requires sick leave contributions from other staff members who may not be using the leave themselves.
- The AG determined that a board of education is limited by language in the sick leave statute which permits an employee to use sick leave only for the employee's illness or illness of a family member.
- Since a board is a creature of statute, it cannot do anything without being granted authority to do so by law.
- The AG stated that the opinion does not apply to those covered by a CBA.

Practical Strategies

- Be cautious about permitting sick leave donation programs outside of the confines of a CBA.
 - What do you do if you already have this?
- It is possible that this opinion could be the basis for a finding for recovery?!?



New Contract Sequence for Nonteaching Employees

New Contract Sequence for Nonteaching Employees

- Changes adopted in SB 216 and became effective November 2nd, 2019.
- Mandates new sequence for nonteaching employees: 1 year contract, three two-year contracts, continuing
- Language states “Newly hired regular nonteaching school employees”
- How does this new language apply to limited contract employees who were hired before November 2nd?

Practical Strategies

- Pay careful attention to timing of limited contracts.
- Be aware of implications of contract sequence for staff hired mid-year.
- If an employee is not working out, take the exit off the highway rather than risk a continuing contract outcome!

DOL Opinion Recognizes Limits on FMLA Entitlement

DOL Weighs in on FMLA Entitlement

- Department of Labor's Wage and Hour Division released an opinion on March 14th, 2019.
- Opinion was in response to an inquiry by an employer asking the following questions:
 - Can an employer delay designating leave as FMLA leave if the employee has some type of paid leave available?
 - Is an employer authorized to lengthen FMLA-qualifying leave beyond the 12-week/26-week entitlement?
- In short, the answer to both questions was "no."

Practical Strategies

- Review your board policies and procedures in light of this guidance.
- Make sure your FMLA administrator is aware of DOL's guidance (by the way, how important is this guidance anyway??).
- Remember that failure to follow the proper procedure for notice of designation may result in claim of interference with, restraint on, or denial of the exercise of an employee's FMLA rights.
- Also note that there is nothing which prohibits an employer from providing its own type of job-protected leave (and don't forget what state law entitles an employee to for paid and unpaid leaves).



Planning for Data Breaches



Another Year, Another Billion Data Breaches

- Schools are especially vulnerable to data breaches and the data you have makes for a great target . . .
 - Privacy Rights Clearinghouse reports 11.5 billion records released due to breaches (almost impossible to accurately report the number of data breaches)
 - Data included SSN, health information, educational records, financial records, government and criminal records
- Schools are real targets on an ongoing basis.
 - Your antivirus and spam filters can't protect you from the human factor!

Data Breaches

- 3rd party and 4th party vendors represent a real, potential risk to your data.
 - Rsync is a file transfer protocol that backs up large data sets and mirror files.
 - In July 2018, an rsync server that was not restricted to an IP address or user of a 3rd party vendor allowed 10 years of schematics, robotics, internal ID's and machinery commands to be accessed by anyone connecting to that data port. It affected Toyota, Ford, GM, VW, Chrysler and Tesla. The hackers could have stolen the data OR manipulated it. They could have replaced bank account numbers for direct deposits, etc.
 - “Companies that spend many millions a year on cybersecurity can still be exposed by a vendor who handles their data.” UpGuard.com

Phishing Expeditions Cause Trouble

- Random emails trying to get you to click and/or download.
- A malicious website might ask you to update a common application.
- An isolated computer can scan and check the file.
- Spear Phishing
 - Targeted attack that looks like it is from someone you know.
 - May be urgent or ask for quick action.
 - Perhaps may contact them separately.
 - Whaling- a big target!
 - Ohio Auditor of State issued a warning about spear phishing scam on March 5, 2019.

More About Spear Phishing

- Example: email is sent from superintendent or principal to payroll department requesting a change be made to the direct deposit bank info of the supt/principal. The new information is linked to an account of the criminal and the money disappears. (whaling).
- Verification steps outside of email are highly recommended.
- This is illegal - report to law enforcement!

Practical Strategies

- Have a plan and a policy in place to be proactive and reactive.
- Keep updating apps, software, operating systems.
- Do not put personal email on the web page.
- Maintain up-to-date protections (pop-up blockers, anti-malware, anti-virus programs, phishing filters).
- Train staff on how to survive the phishing attempts and data breaches:
 - If it is from an organization with which you have business, go to the website separately or call them.
 - Look for spelling and grammar errors.
 - Hover over the link it wants you to click on to see where it would send you.
 - Look at the website address. Ex. www.chase.com. Nothing else! Look it up on Internet if unsure of what it should be.
 - Be wary of fake invoices.
 - Don't automatically trust attachments- the bad ones might look like a Word or Excel file, .pdf, .jpeg or other image.

Technology a Clear Focus in Proposed Amendments to ODE's Licensure Code of Professional Conduct

Amendments to Licensure Code of Professional Conduct for Ohio Educators

- Applies to all individuals licensed by the State Board of Education, such as teachers, principals, superintendents, school nurses, coaches and substitute teachers.
- Review and comment period for initial proposed rule amendments ended **March 12, 2019**. ODE posted a second draft and invited public comment through **May 1, 2019**.
- Introduces a new technology-related principle, among other changes

REVISED LCPCOE Technology Use/Misuse

- Brand new section 9:
 - “Educators shall always ***use technology in a responsible manner*** and appropriately safeguard the unauthorized use or access to electronic devices and data entrusted to them. Educators ***shall maintain separation*** between personal/private and school/professional use of technology, electronic communications, and social media.”
 - An educator responsibly creates, uses, consumes, distributes, and protects information and data across all technologies. Educators shall ***maintain appropriate boundaries*** with colleagues, students, and the school community when using technology and electronic communications.

Other Amendments to LCPCOE

- a) **Negligently failing to prevent others from unauthorized use of professional electronic devices** to access improper or inappropriate material or confidential data.
- b) **Negligently failing to prevent students from unauthorized use of the educator's personal electronic devices** to access improper or inappropriate material or confidential data.
- c) **Accessing inappropriate, non-school-related material on a school-owned device** not in accordance with local board policy.
- d) **Presenting inappropriate, non-school-related media** to students.

Amendments to Licensure Code of Professional Conduct for Ohio Educators

- e) Using technology, social media, or other electronic communications to **promote inappropriate communications with students** (for example, excessively, for non-educational purposes, or requesting students or minors to conceal communication).
- f) Knowingly **failing to report and/or address instances of electronic or online harassment, bullying, or intimidation** of a student.
- g) Knowingly **failing to appropriately intervene when made aware of inappropriate or illegal images or material** involving students or minors in electronic forms.

Amendments to Licensure Code of Professional Conduct for Ohio Educators

- h) Using technology to host, post, or distribute improper or inappropriate material that could reasonably be accessed by the school community:
 - includes, but is not limited to:
 - pornography, obscene material, promotion of drug use or underage consumption of
 - alcohol, promotion of violence, disparagement of students, disparagement based upon race
 - ethnicity or religion, and the use of profane or offensive language).
- i) Using school technology to run, manage, or **promote a personal business venture.**

Penalties

- Letter of admonishment up to suspension (1-5 years) of license for:
 - Failing to prevent others or students from unauthorized, inappropriate access to district or to teacher personal devices.
 - Using district tech to run or operate a business.
- Suspension (1-5 years) for:
 - Presenting inappropriate, non-school-related media to students.
 - Violations involving the use of technology to host, post, or distribute inappropriate material.
 - Violations involving use of technology for promoting and/or engaging in inappropriate communication with students.
 - Failing to report or address instances of electronic or online harassment, bullying, or intimidation of a student.
 - Failing to appropriately intervene when made aware of inappropriate or illegal materials involving students or minors appearing in electronic forms.

Practical Strategies

- Discuss this with your staff, preferably each year.
- Make sure your administrators are aware of new expectations.
- Make sure you file reports when required!

A Note on Medical Marijuana

Ohio's Law on Medical Marijuana

- Ohio became 26th state to legalize use of medical marijuana in 2016.
- Revised Code Chapter 3796 permits use of medical marijuana after patient/caregiver registers with state (requires physician statement to accompany registration).
- What does this mean for schools?



Qualifying Medical Conditions (at least for now – this list is likely to grow)

- AIDs/HIV
- Alzheimer's Disease
- ALS
- Cancer
- Chronic Traumatic Encephalopathy
- Crohn's Disease
- Epilepsy/Seizure Disorder
- Fibromyalgia
- Glaucoma
- Hepatitis C
- Inflammatory Bowl Disease
- Multiple Sclerosis
- Chronic, severe or Intractable Pain
- Parkinson's Disease
- Post-traumatic Stress Disorder
- Sickle Cell Anemia
- Spinal Cord Disease/Injury
- Tourette's Syndrome
- Traumatic Brain Injury
- Ulcerative Colitis
- Any other disease or condition added by the state medical board under section 4731.302 of the Revised Code.

Acceptable Forms of Medical Marijuana

- Oils
- Tinctures
- Plant Material
- Edibles
- Patches
- Vaporized Marijuana
- Smoking is NOT permitted



Activities Prohibited Near Schools

R.C. 3796.30

No medical marijuana cultivator, processor, retail dispensary, or laboratory that tests medical marijuana shall be located within five hundred feet of the boundaries of a school.

Employers and Medical Marijuana

- Are employers required to permit employees to use medical marijuana at work? What about after hours?
- Can an employee still be terminated for use of marijuana on or off campus?
- Can employers continue drug testing programs for marijuana?
- Must employers permit use of medical marijuana as an accommodation under the ADA?
- Must employees be granted FMLA leave for use of medical marijuana for the treatment of a serious health condition?
- Can an employer continue maintain a drug free/zero tolerance policy?
- How does this impact unemployment compensation and worker's compensation?

Students and Medical Marijuana

- Are schools required to permit students to use medical marijuana at school? What about after hours?
- Can a student still be disciplined for use of marijuana on or off campus?
- Can school continue to implement drug testing programs for marijuana?
- Must schools permit use of medical marijuana as an accommodation under Section 504 or the IDEA?

Practical Strategies

- Determine how the district will handle employee and student requests to use medical marijuana.
 - Keep safety in mind when you do this!
- Modify policy if/where appropriate.
- Be consistent and prepare administrative staff for the conversation

Case Law Year in Review

Title IX Access to Athletic Programs

- Two female athletes filed a complaint against Eastern Michigan University claiming violations of Title IX and the Equal Protection Act. They alleged that the University failed to provide sufficient athletic opportunities for women.
- The lawsuit was filed after the University decided to eliminate four teams: men's wrestling, men's swimming and diving, women's softball and women's tennis.
- The University had 12,700 students enrolled, 59.5% were women. Of the 729 undergraduate student-athletes, 55.7% were men.
- A preliminary injunction was granted and ordered the University to re-create the two women's athletics teams they cut.

Mayerova v. E. Michigan Univ., 6th Cir. No. 19-1177, 2019 U.S. App. LEXIS 9373 (Mar. 28, 2019)

Title IX Mandates

- “[n]o person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.”

OCR Three Part Test

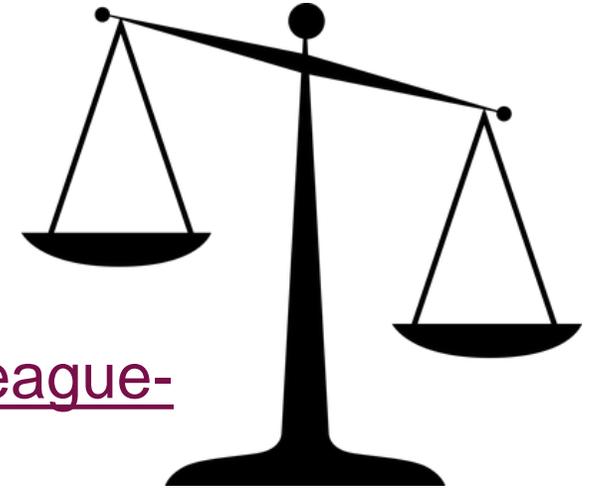
- (1) The number of male and female athletes is substantially proportionate to their respective enrollments; or
- (2) The institution has a history and continuing practice of expanding participation opportunities responsive to the developing interests and abilities of the underrepresented sex; or
- (3) The institution is fully and effectively accommodating the interests and abilities of the underrepresented sex.

Title IX Athletic Program Factors Considered by Court (and OCR!)

- Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes
- The provision of equipment and supplies
- Scheduling of games and practice time
- Travel and per diem allowance
- Opportunity to receive coaching and academic tutoring
- Assignment and compensation of coaches and tutors
- Provision of locker rooms, practice and competitive facilities
- Provision of medical and training facilities and services
- Provision of housing and dining facilities and services
- Publicity

Practical Strategies

- How do your programs “weigh” on the scales?
 - Check out OCR’s survey to help you with this:
<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-20100420.pdf>
- Pay close attention to facilities, equipment, game schedules and coach salaries in particular



Two Boys File Claim to Challenge Participation in Dance

- In 2018, two boys from Minnesota sued the Minnesota State High School League (the “League”) contending that they were denied their 14th Amendment right to Equal Protection under the U.S. Constitution, and their rights under Title IX of the Civil Rights Act.
- The boys alleged that the League unlawfully discriminated against them on the basis of sex by prohibiting them from competing on the girl’s competitive dance team.
- The boys filed a motion for injunctive relief to require the League to let the boys try out and compete on the team. The District Court denied the motion and the boys appealed to the Eighth Circuit Court of Appeals.

D.M. v. Minnesota State High School League, No. 18-3077 (8th Cir. 2019)

Two Boys File Claim to Challenge Participation in Dance

- Minnesota State High School League's Bylaw 412 limits competitive dance to female students.
- The bylaw states “[g]irls’ Dance Team, in its current form, may not rise to the level of a gender equity activity for the purpose of Title IX. Schools may individually seek approval from the Minnesota Department of Educations [sic] to have Girls’ Dance Team programs recognized as a sport.”
- The League claimed that the purpose of the bylaw is to address previous limitations in girls’ athletic opportunities. This bylaw is supported by Minnesota state law.

Two Boys File Claim to Challenge Participation in Dance

- The appeals court reversed and remanded the decision of the district court with instruction to issue a preliminary injunction in favor of the boys.
- The court concluded that the bylaw violated the Constitution's prohibition against discrimination based on sex.
- Since female participation in athletics remained proportional to the number of female students enrolled in Minnesota schools, there was no legitimate interest to uphold the otherwise discriminatory rule.

Practical Strategies

- Educate coaches and ADs about Title IX requirements and implications for athletic programs in particular.
- Review OHSAA rules on transgender student participation.
- Contact legal counsel **before** you deny a student access to an athletic or extracurricular based on gender.

Stay Tuned for SCOTUS Decision on Protection of Sexual Orientation

- The U.S. Supreme Court has agreed to hear a trio of cases involving alleged sexual discrimination.
- This present consideration will allow the Court to determine if Title VII of the Civil Rights Act of 1964 (Title VII) prohibits discrimination on the basis of sexual orientation or an individual's transgender or transitioning status.
- The issue revolves around Title VII's definition of "sex" and whether or not that encompasses sexual orientation and/or gender identity, an issue hotly debated in judicial and administrative forums.

Bostock v. Clayton County, Ga., and Altitude Express Inc. v. Zarda

Stay Tuned for SCOTUS Decision on Protection of Sexual Orientation

- Specifically, the Equal Employment Opportunity Commission (EEOC) and the U.S. Court of Appeals for the Second and Seventh Circuits have determined that the definition of “sex” does encompass sexual orientation.
- Conversely, the U.S. Court of Appeals for the Eleventh District has held that it does not prohibit discrimination based on sexual orientation.
- The SCOTUS’s grant of certiorari signals that the Court is prepared to extensively address the issue during its next term beginning in October.
- Title VII addresses discrimination in the employment context. Title IX addresses sex discrimination in the school setting (e.g. students). Many cases in this area invoke the 14th Amendment’s equal protection clause, also.
 - Student transgender law is in a similarly uncertain state

Recall Recent Change to USDOE Complaint Processing

- In February 2018, U.S. Department of Education (USDOE) spokesperson Elizabeth Hill reported that USDOE will handle complaints from transgender students as follows:

Will *not* investigate or take action on:

- Complaints filed by transgender students who are banned from using restrooms that match their gender identity

Will investigate or take action on:

- Complaints alleging that a transgender student has been bullied, harassed, or punished due to his or her gender nonconformity

Practical Strategies

- Review board policies with administrators and discuss options for staff and students about things like use of restrooms.
- Plan ahead with input from students about how to deal with situations such as participation in athletic programs.
- Prepare for a community response with student and staff privacy in mind.
- What litigation may come your way?

Federal Court Declares Dress Code Violates Constitution

- A North Carolina Federal District Judge recently ruled that a charter school dress code policy which required girls to wear skirts and prohibited girls from wearing pants or shorts violates the equal protection clause of the U.S. Constitution.
- Many challenges in the past have rested on First Amendment grounds regarding freedom of expression - this case was brought on a theory of gender discrimination.
- The Defendant, the Charter Day School, argued the dress code was designed to garner mutual respect between the boys and the girls, particularly in that the skirts represented visual cues to promote respect between the two sexes. Striking down the policy, the school argued, would remove those visual cues and hinder a sense of respect for the opposite sex.

Peltier v. Charter Day School (Eastern Dist. North Carolina, March 28, 2019)

Federal Court Declares Dress Code Violates Constitution

- The court found that the Plaintiffs established that “the girls are subject to a specific clothing requirement that renders them unable to play as freely during recess, requires them to sit in an uncomfortable manner in the classroom, causes them to be overly focused on how they are sitting, distracts them from learning, and subjects them to cold temperatures on their legs.”
- The Court noted that even if these were legitimate interests of the state, the school failed to show how the policy advanced such interests.
- The Court further noted that school dress code policies have been upheld by numerous courts and that the state does have legitimate interests in the grooming and dress of students attending schools supported by the state. However, these interests must be addressed in a uniform, gender-neutral way that does not penalize a student simply for being one sex or the other.

Board of Education's Authority to Regulate Dress

- Board of education has some authority to regulate dress and appearance of students (R.C. 3313.665)
- Courts have recognized limits to this
 - On the one hand, boards have authority to prohibit certain types of clothing that disrupt the education process or threaten safety/health of students
 - On the other, the First and Fourteenth Amendments mandate various protections (freedom of speech, privacy, freedom of religion, equal protection of the laws, etc.) which have been raised to challenge dress codes
- Do athletic programs justify more rigorous limits?

Courts on Regulations about Hair Length

- Sixth Circuit in 1971 ruled that hair length regulations do not per se infringe upon constitutional rights of students (*Gfell v. Rickelman*- ACLU on behalf of a senior who attended West Geauga High School lost challenge to rules that required male students to be clean shaven and have shorter hair on grounds that the rule was reasonably related to school's need for discipline and safety)
- Ohio courts are more divided
 - Second District Court of Appeals upheld hair length rule because the school presented evidence that the rule was necessary to promote discipline, maintain order, secure student safety, and provide healthy environment (*Royer v. Bd. of Edu. Of C.R. Coblentz Local School Dist.* – 1977)
 - First District Court of Appeals declared that hair regulations were not necessary for the government of the schools, and because they did not apply to girls but only boys, were discriminatory on the basis of gender (*Jacobs v. Benedict* – 1973)

Practical Strategies

- Be strategic about dress code and pick your battles wisely
- Understand that many groups such as the ACLU will represent students FOR FREE in these legal battles.
 - They will make as much of a public spectacle as they can in the process.
- Be prepared to defend your legitimate government interest (i.e. – be willing to stand before a judge with a straight face and explain why you have a legit reason for establishing a particular restriction).
- Be extra cautious establishing rules for just one gender.

Favoritism in Hiring Does Not Violate Title VII

- The 6th Circuit Court of Appeals affirmed a decision in favor of a school district with regard to a custodian's Title VII gender discrimination claim.
- The custodian was hired in 1997. She applied for three openings as a Plant Engineer in March and June 2013 and again in June 2014.
- She was not chosen for any of the positions, and sued the District claiming gender discrimination in violation of Title VII.
- The District contended that their hiring decisions were motivated by members of the hiring committee having a stronger familiarity and personal relationship with the candidates they ended up hiring.

Paula McDaniels v. Plymouth-Canton Community Sch., No. 17-2412 (6th Cir. 2018)

Favoritism in Hiring Does Not Violate Title VII

- The 6th Circuit Court determined that the employee did establish a prima facie case of discrimination because she was able to show: 1) she was a member of a protected class; 2) she applied for and was qualified for the position; 3) she was denied the position, and 4) was rejected in favor of someone with similar qualifications who is outside of the protected class.
- However, when the burden shifted to the District to show a legitimate, nondiscriminatory reason for its actions, the District was able to prevail.
- The Court explained that Title VII does not prevent employers from favoring employees because of personal relationships.
 - Favoritism may violate Title VII if it is based on a person's status as a member of a protected class, e.g., the person's gender.
 - Because the District's hiring decision was not based on a gender and the employee was unable to prove that the District's stated reason for the hiring decision was merely a pretext for discrimination, the 6th Circuit Court upheld the decision in favor of the District.

Practical Strategies

- Under the three part test, remember that the bar is low for a disgruntled employee or former employee to walk through the courthouse door. Train hiring staff to recognize what discrimination is (and is not!).
- Respond promptly to any allegations of discrimination, and follow all the procedures in your policy.
- Understand how to defend your decisions when the burden shifts.
 - Document decisions(?)
 - Anticipate claims

Post-*Janus* Case in Ohio Resolved

- In a 5-4 decision made last June, the U.S. Supreme Court ruled that the extraction of agency fees from Illinois State’s nonconsenting employees of the public-sector violates their First Amendment rights.
- SCOTUS stated that, “States and public-sector unions may no longer extract agency fees from nonconsenting employees. ... employees must choose to support the union before anything is taken from them.”
- In Ohio, *a lawsuit was* filed by several employees across Ohio who are employed by local government agencies.
- The employees claimed that they were each denied their First Amendment rights when union officials continued to extract dues after they attempted to withdraw from the union.
- Union officials relied on the “15-day window period” that only allowed employees to withdraw from the union 15 days prior to the expiration of the collective bargaining contract.

Smith v. AFSCME

Post-*Janus* Case in Ohio Resolved

- At the end of January 2019, the case was finally settled.
- Under the terms of the settlement agreement, AFSCME agreed to pay back all union dues that were extracted after the employees attempted to withdraw their consent.
- The union will not deduct any agency fees or dues that were previously subject to the window policy. This is a significant case because it is the first class action lawsuit since the *Janus* ruling in which union officials have reversed their policy on the window period.
- The employees were represented by the National Right to Work Legal Defense Foundation, who also represented Mark Janus in *Janus*. As of January 24th, Foundation was litigating 20 cases nationwide to enforce employee rights.

Practical Strategies

- The *Janus* and *Smith* cases are important for your district because it is no longer legal to require a fair share fee from non-member's and may not be legal to enforce any version of the "15-day window policy" on withdrawing union membership.
- Not every school in Ohio has agency fee provisions or window policies in their collective bargaining contracts. For those that do, it is essential that you contact your union regarding information about those provisions.

Court Upholds Bus Driver Non-Renewals Where CBA is Silent

- On December 14, 2018, the Fifth District Court of Appeals (Morrow County) upheld Highland Local School District Board of Education's decision to non-renew two first year bus drivers.
- The Union filed a grievance in response to the Board's notice of intent not to renew the limited contracts of the bus drivers. The grievance claimed there was no showing of "just cause" and proceeded to arbitration based upon the language of the collective bargaining agreement – only a "just cause" provision for discipline and discharge and silent on the issue of the non-renewal of limited non-teaching contracts.
- The agreement also included a general statement that the contract "supersedes" all applicable state law.

United Elec. Radio & Machine Workers of Am. v. Highland Local School Dist. Bd. of Edn. 2018 Ohio 5307 (Fifth District Court of Appeals, Morrow County, December 14, 2018)

Court Upholds Bus Driver Non-Renewals Where CBA is Silent

- While arbitration hearing dates were being scheduled, the union's attorneys filed a declaratory judgment action in court that was decided in favor of the Board on the basis that because the contract did not address the issue of non-renewal, state law applies.
- The Court of Appeals of Ohio's Fifth District agreed with the trial court, rejecting the union's claim that a general statement in the contract that the collective bargaining agreement "supersedes applicable state law" somehow preempted the application of Ohio's non-renewal statutes.
- The Court stated that such overrides can only occur "when a provision specifically addresses a matter and evinces a clear intent to override the statutory law relating to that matter."
- Since the contract made no specification about the issuance, sequence, renewal, or non-renewal of limited non-teaching contracts, there was no discernible conflict between the labor agreement and the statutes, therefore, "both R.C. 3319.081 and 3319.083 apply in the case."

Practical Strategies

- Be meticulous in CBA language.
- Contact legal counsel if you question whether an article sufficiently overrides state law.
- Keep in mind that some laws cannot be superseded (OTES, OSCES to name a few).

Questions?

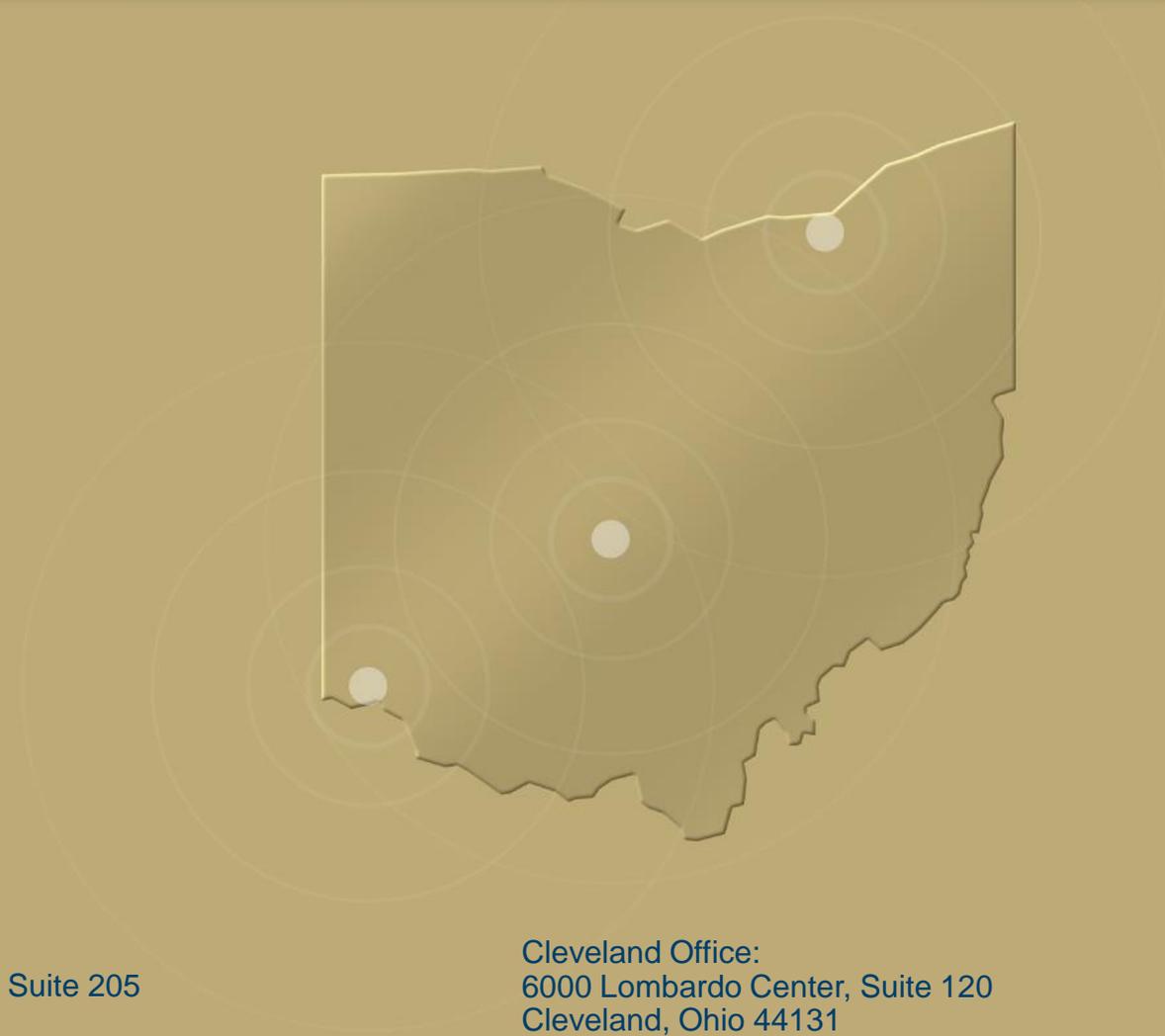
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Thank you!

The information in this handout and presentation was prepared by Ennis Britton Co., L.P.A. It 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 an attorney.



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