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August 3, 2026

## 2026 Summer Legal Update

*(What has happened in the last year?)*  
Montgomery County Educational Service Center



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SCHOLARS IN EDUCATION LAW

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## Today's Agenda



- 1) Federal Legislation
- 2) Ohio Legislation
- 3) Federal Executive & Regulatory Action(s)
- 4) Federal Court Cases
- 5) Ohio Court Cases

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## Federal Legislation



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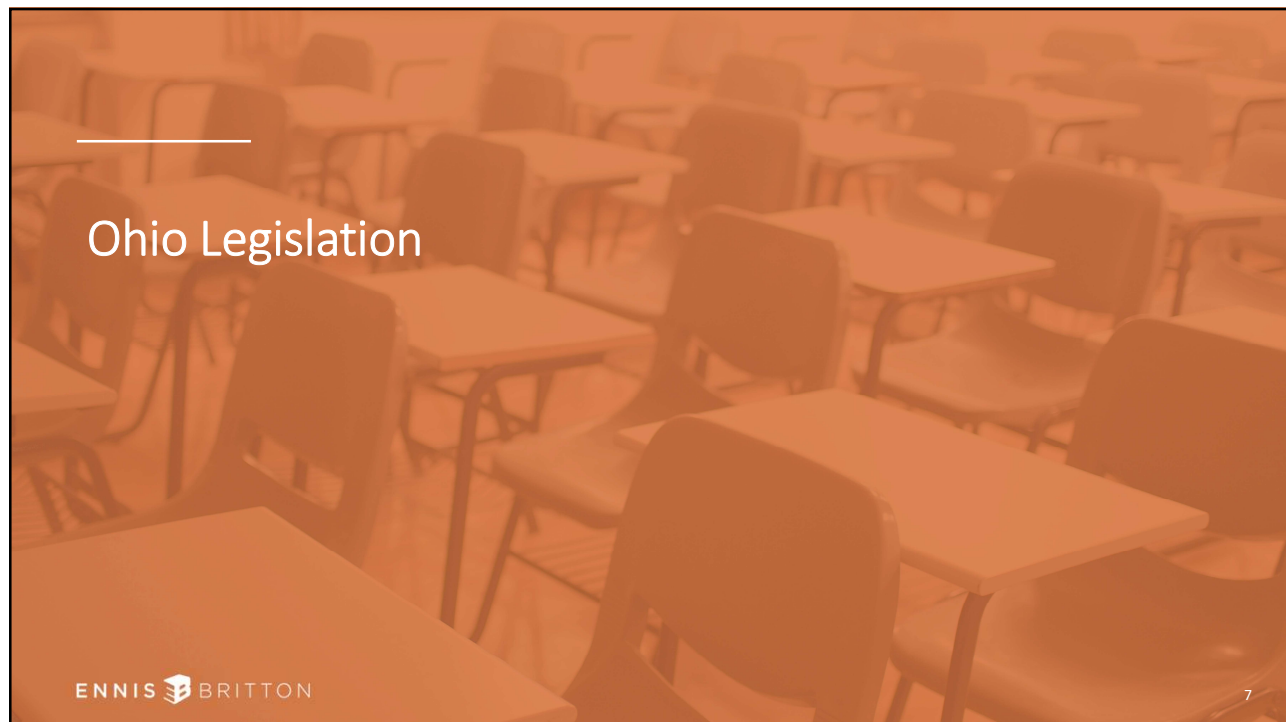
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## Whole Milk for Healthy Kids Act of 2025

- January 14, 2026, President Trump signed this into law which amended National School Lunch Act revising requirements for milk provided through USDA's National School Lunch Program.
- Current:
  - Require milk to be fat-free / skim or low-fat / 1% and can be un / flavored
  - Only offer nondairy beverages nutritionally equivalent to fluid milk upon request
- New
  - May offer fluid milk options:
    - » Whole, reduced fat / 2%, low-fat / 1%, and fat-free milk and lactose-free fluid milk, and
    - » Non-dairy beverages that are nutritionally equivalent to fluid milk and meet the USDA nutritional standards for fluid milk substitutes

## Special Education Funding Change

- Changes were made through appropriations provisions in 20 USC 1411, which allowed for a state's federal allocation of IDEA Part B funding to be reduced for certain triggering compliance reasons:
  - State failing to maintaining its own financial support for special education (MOE) (dollar for dollar impacts)
  - Federal enforcement of sustained or severe noncompliance from the state (partial or total withholding)
- Not an immediate change, but a potential change for Ohio that could have trickle down impacts to schools.



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## Legislature Acts Before Summer Recess

- Ohio Legislature passed several education-related bills before leaving for summer break.
- HB 455, SB 19, SB 276 became vehicles for numerous last-minute education provisions.
- Data center legislation did not pass...but may return during lame duck session.
- HB 455, SB 19, SB 276 have been signed by the Governor.

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## HB 455 - Finance and District Operations

- District treasurers no longer need to submit the August 31 investment report to ODEW or to the State Auditor, but must still provide it to the board of education.
- Statutory provisions addressing schools unable to open due to financial emergency were removed.
- Related levy provisions involving deficit-certified anticipation notes were revised.
- Certain school district fiscal emergency designations were removed from the law.
- ODEW will develop a new method for districts to report DPIA funding and expenditures.

## HB 455- Finance and District Operations

- Districts may appoint **designees** to the records commission (Board President, Superintendent, Treasurer are the statutory members).
- Allows districts to post student code of conduct and various policies (truancy program, extracurricular-suspension, cell-phone, bus-riding-privilege policies) online instead of physically in schools.
- No more:
  - Required diabetes reporting to the Department.
  - Phys ed/BMI report card reporting: PE benchmarks, WIC compliance, and activity-pilot reporting on report cards
  - The entire college prep board schools program removed from statutes. (no schools in Ohio).
  - Tutor Ohio Kids: ESC tutoring- remedial education repealed.

## HB 455 - Work Permits

- Allows a 14 / 15 year-old to be employed 7:00 p.m. - 9:00 p.m. any night preceding a day school is not in session if the minor has approval to do so from a parent / guardian.
- Requires a minor who wishes to receive an age and schooling certificate (commonly referred to as a “work permit”) to submit a minor work hour notification form that is signed by the child’s parent / guardian.
  - Created by Department of Commerce.

## HB 455 - Student-Related Changes

- Scholarship eligibility expands to any student entering K-12 without requiring enrollment in the resident district or a community school.
- Online community schools may administer state assessments remotely with remote proctoring if conditions are met.
- Ohio’s five high school graduation tests and related statutory references were removed, though other assessments remain.
- Attendance and tuition laws now clarify the meaning of “parent” when parents were never married.

## HB 455 - Student-Related Changes

- Habitual truants
  - Allows court supervision for an additional school year to monitor attendance of students adjudicated unruly due to habitual truancy.
  - Parents may be convicted of the offense of contributing to the unruliness or delinquency of a student for habitual truancy without an adjudication of the student as unruly or delinquent.
- Attendance and tuition
  - Added to the definition of “parent” for attendance and tuition purposes that for parents never married to each other, parent means the parent who is the residential parent and legal custodian of the child.
    - » Will reduce flexibility regarding enrollment for unmarried parents.

## HB 455 - Student-Related Changes

- Graduation tests and end of course exams
  - Removes the five high school achievement assessments and related language on practice tests from the law.
  - Removes the requirement that districts with a 3-year average graduation rate of 75% or less have to provide intervention services to 9<sup>th</sup> graders who do not pass the graduation tests.
  - Removes exemption language regarding end of course exams.
    - » Students who were previously able to avoid end of course exams will no longer be able to do so.

## HB 455 - Student-Related Changes

### ■ Preschool

- Students will be eligible to participate in the early childhood education grant program if:
  - » a slot is available
  - » If the child has exited Part C early childhood intervention services as documented by the ISP,
  - » The child is a Medicaid recipient, or
  - » Part of a family group that participated in Ohio Works First or receives SNAP benefits.
- Families may choose to use this grant program rather than other sources for state funding for childcare.

## HB 455 - Board Member Vacancy

- Revises the period within which a school district board of education must vote on whether to declare a board member's reason for a 90-day absence as insufficient.
  - Must vote not *more* than 45 days after absence, instead of not *less* than 30 days after.
- Changes the deadline for a board of education to fill a vacancy.
  - Current law requires the vacancy at the next meeting held by the Board.
  - HB 455 would require the vacancy to be filled within 45 days of the vacancy during a special or regular meeting.



## HB 455 - State-Level Accountability and Governance

- The State Board of Education will include seven Governor-appointed members, with terms beginning January 1, 2027.
- ODEW no longer required to submit an annual school status report with ten-year enrollment projections.
- ODEW no longer required to employ a full-time physical education coordinator.
- Preliminary report card data will no longer be required by July 31 each year.
- EMIS manual will be subject to public comment (supplemental guidance, urgent updates implementing law changes, and data-item removals exempt)



## HB 455 - State Report Cards

- ODEW no longer required to provide preliminary report card data by July 31 of each year.
- Removes letter grades.
- Students with IEPs who have satisfied the requirements for a diploma but have deferred graduation will be included as graduates on the 4 and 5 year adjusted graduation cohort.
- Removes requirement that JCARR approve college, career, workforce and military readiness rules each year.

## HB 455 - State Report Cards

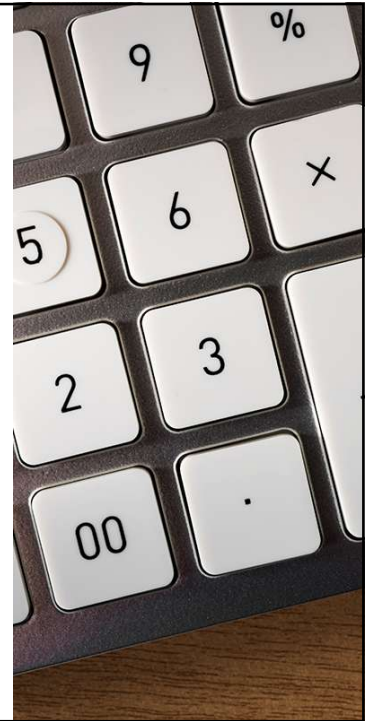
- Post-secondary readiness measures
  - Will now include attaining remediation free scores in ELA and math by either achieving accomplished or advanced on the end of course exams in ELA and Algebra II and geometry.
  - Calculation also includes changes to earning twelve college credits through advanced standing CCP programs.
    - » A score of 3 or more AP and 4 or more IB course equals 3 college credits for this calculation.
- District ranking and waiver
  - Removed value added performance growth and other student growth measures from the public school ranking calculation.
  - Only districts with a five-star rating may be removed from specified state mandates.

## HB 455 - Teachers, Licensure, and Employment Issues

- Alternative resident educator licensure expands to any grade level if statutory conditions are met.
- Strangulation, grooming, and domestic violence were added to license revocation or renewal denial offenses and criminal background check restrictions.
- The STRS definition of “teacher” was revised to remove certain ESC tutors.

## SB 19 (September 23, 2026)

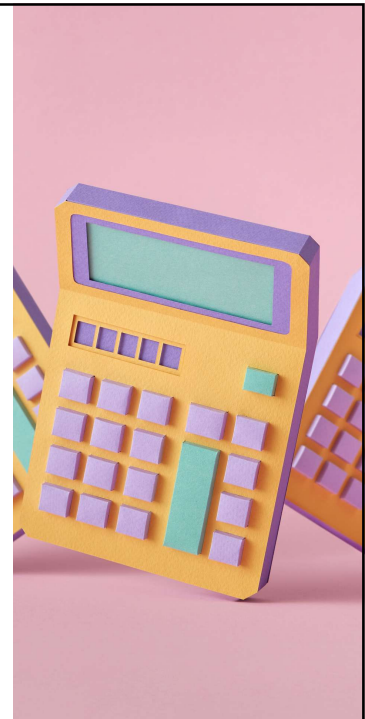
- Will require Districts to:
  - Administer Department-approved diagnostic assessments in reading and math.
  - Implement reading and mathematics achievement improvement plans for students showing limited proficiency.
  - Provide free, evidence-based academic intervention services in math and English language arts to qualifying students.
  - Report detailed data to the ODEW



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## SB 19

- K-3 diagnostic assessments: 6 for reading and 5 for math
- New enactment: Requires ODEW by 4/27 to establish a list of **high-quality core math curricula and instructional materials** and evidence-based math intervention programs, with a scoring rubric.
- Core math curricula/instructional materials, interventions will be reported through EMIS (will mirror ELA reporting)
- New state report card data point for whether District adopted curricula is high quality math and reading curricula.



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## Academic Intervention Services

- Requires each district to provide evidence-based academic intervention services, **free of cost**, to students who demonstrate a limited level of skill in either a prescribed state diagnostic assessment or a state assessment, in math, English language arts, or both (“qualifying student”).
  - A qualifying student is not a student with an IEP that includes services related to a TBI or significant cognitive disability unless team determines otherwise or a student in a drop out prevention and recovery community school.
- District’s must provide new annual information to ODEW through EMIS of numbers of qualifying students and how they receive academic intervention.

## Academic Intervention Services

- Services provided may encompass:
  - High-dosage tutoring opportunities aligned with classroom instruction through a state-approved vendor or a locally approved opportunity that aligns with high dosage best practices;
    - » High-dosage tutoring opportunities shall include instruction time delivered at least three days per week, or at least fifty hours over thirty-six weeks.
  - Additional instruction time;
  - An extended school calendar;
  - Participation in a learning support program; or
  - Any other academically centered support service that the district determines will improve the student’s academic performance.

## Academic Intervention Services

- English language arts instruction still aligns with the Science of Reading.
- Intervention services do not supplant core instructional time except that in K-3, instruction aligned with science and social studies standards may be integrated into core mathematics and reading instruction rather than being taught in separate instructional periods.
- Exiting:
  - Students in 9-12 who fails to demonstrate a level of skill that is proficient or higher on a diagnostic assessment or an EOC in mathematics or English language arts, or both, and is not required to retake the examination, continues to qualify for intervention services under this section.
    - » Intervention services need to be aligned with the student's selected graduation pathway

## Academic Intervention Services Notice and Updates

- Districts are required to notify the parent/guardian prior to providing academic intervention services.
  - Notification shall include a description of which intervention or interventions the qualifying student will receive and who will provide services to the student.
- Districts are required to provide periodic updates on
  - the academic intervention services provided and
  - shall provide resources and recommendations for ways the parent or guardian may assist the qualifying student.

## ODEW Review, Eligibility, and Parent Notification

- Beginning with the 2027-2028 school year, ODEW will randomly select up to 5% of all schools in the state for a review of their academic intervention services.
  - The review will be included as part of the student opportunity profile measure on the district's state report card and must be posted on the District's website.
- Students are eligibility for intervention services until they receive a level of skill higher than proficient on a state assessment or diagnostic assessment.
- Districts must notify the parent/guardian of a qualifying student that they will receive academic intervention services prior to providing the services.
  - Notification must include a description of which intervention(s) the student will receive and who is providing them.

## Achievement Improvement Plans

- District's must establish a math achievement improvement plan for any school building in which 51% or less of the building's students scored at least proficient in math on the third grade state assessment.
  - At a minimum, the plan should include:
    - » an analysis of student performance data,
    - » measurable performance goals,
    - » strategies to meet specific student needs,
    - » a professional development plan, and
    - » instructional strategies for improving student performance.
- ODEW will develop a template and post on their website for use.

## Advanced Learning Opportunities

- Replaces current law.
- A “qualifying student” for this section is either:
  - A student who achieves an advanced level of skill on a math achievement assessment; or
  - A student who meets a district’s choice of multiple measures under one of the following:
    - » An accomplished level of skill on a math achievement assessment and the student holds an average class grade of A or B in a math course; or
    - » The student achieves a designated score, determined by ODEW, on a math diagnostic assessment and an accomplished level of skill on a math achievement assessment.

## Advanced Learning Opportunities

- By December 22, 2026, Districts are required to adopt a comprehensive math placement and promotion policy creating a timeline and explanation of advanced learning opportunities will be provided.
- Notification:
  - Each school district shall notify the parent or guardian of a student who is a qualified student.
  - The parent/guardian of any qualifying student may submit a written opt out that must be honored.

## Advanced Learning Opportunities

- Beginning on July 1, 2027, each district must enroll each qualifying sixth grade student in both of the following:
  - A math course in seventh grade that combines in one school year seventh and eighth grade math standards; and
  - Algebra I in the eighth grade and must take EOC (But only if the student receives a proficient or higher on state assessment in 7<sup>th</sup> grade.)



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## Advanced Learning Opportunities

- Beginning on July 1, 2027, each district must enroll each qualifying student in grades 3-5 in an advanced learning opportunity in math.
  - Defined as a course that exceeds the standard math curriculum for the student's grade level, or services or curricula modifications that provide additional rigor or challenge.
  - May include differentiated instruction in which the depth, breadth, complexity, pacing, and acceleration is tailored to the student's particular needs and readiness.

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## SB 19 Miscellaneous

### Teacher licensure and math:

- Requires the State Board to **assess math proficiency** of new PreK-8 educator license applicants who may teach math; non-proficiency doesn't block licensure but bars the district from assigning that person to teach math until they pass a retake.
- Directs the Department to develop a **math-focused professional development course** (foundational knowledge + life skills) and a pilot professional development series (due Dec. 31, 2026).

### Gifted Students:

- DEW's existing model acceleration policy (which districts may adopt or use as a template) must now incorporate the new advanced-math learning-opportunity provisions the bill creates under §3313.6032.

## SB 19 Miscellaneous

### STEM Schools:

- Must also must comply with the bill's new math improvement plans, math acceleration pathway, academic intervention services, and math educator-licensure proficiency screening.

### Career Tech:

- Extends access **without tuition charge** to students who are **home-educated** under §3321.042 (previously nonpublic school students only), counting them in district enrolled ADM proportionally.

### Disadvantaged Pupil Impact Aid:

- Expands allowable spending categories to include **professional development in evidence-based math instruction** and implementation of the §3301.0734 high-quality math curriculum.

## Patriotic Youth Organizations

- A qualifying organization may request that a board of education permit its representatives to speak with and distribute informational materials to students during school hours in order to:
  - Encourage participation in the youth organization and its activities; and
  - Inform students of how the organization may further the student's educational interests, readiness for the workforce, and civic involvement.
- Not required to provide equal access to an organization that is not defined as a youth organization under the law.

## Patriotic Youth Organizations

- Who qualifies?
  - Big Brothers-Big Sisters of America
  - Boy Scouts of America
  - Boys & Girls Clubs of America
  - Civil Air Patrol
  - Future Farmers of America
  - Girl Scouts of the United States of America
  - Little League Baseball
  - Marine Corps League
  - Naval Sea Cadet Corps
- "any youth membership organization listed in 36 U.S.C. 30101, 30901, 31101, 40301, 70901, 80301, 130501, 140101, and 154101, that serves young people under twenty-one years of age and has an educational purpose that promotes patriotism, workforce readiness, and civic involvement"



## Patriotic Youth Organizations

- Upon request, the board must provide:
  - at least one opportunity per school year for the organization to provide displays on school property within the district, including informational flyers and the use of other existing digital communication channels;
  - A specific date and time for the organization to speak with students at schools in the district for up to ten minutes during the school day, *but not during instruction for a core curriculum subject*; and
  - Notification to parents/guardians of each organizations expected presentation and the option to withhold consent for their child to participate.

## SB 276 (effective early October 2026)

- Bundles 4 education-related measures plus 2 unrelated health-licensure compacts
- **Interstate School Psychologist Compact**
  - Ratifying Ohio's entry into the compact.
  - Creates a licensure pathway: Ohio recognizes "Equivalent Licenses" for school psychologists licensed in other member states.
  - Establishes governing Interstate Commission; requires qualifying national exam + 1,200 supervised internship hours (600 in-school) for initial home-state licensure.
  - Addresses workforce shortages/mobility for military spouses.

## SB 276 - Success Sequence Curriculum

- Defines "success sequence" (Complete high school, obtain full-time work, marry before having children) as a research-based framework.
- Requires DEW to review/maintain a list of grades 6–12 curriculum and resources aligned to it.
- Requires each school district board to provide instruction aligned with the success sequence — either from ODEW's list, an alternative aligned curriculum, or integrated into existing health curriculum

## SB 276 - Statewide Hybrid Assessment System Report

- DEW must report to Education committees by November 15, 2026, on replacing diagnostic/achievement/end-of-course exams with a single hybrid assessment.
- Report must address:
  - criterion- vs. norm-referenced alignment,
  - national percentile ranks,
  - computer-adaptive design,
  - turnaround time (results within 1 week),
  - ESEA compliance,
  - independent psychometric review,
  - cost comparison
- ODEW barred from requiring a separate norm-referenced test alongside existing assessments unless federal law or the General Assembly requires it.

## SB 276 - Student Athlete Mobility Act

- **For 2026-27 school year:**
  - Requires district operating a high school offering an extracurricular activity (and belongs to OHSA) to adopt a policy allowing a student from a neighboring school that doesn't offer the activity the ability to petition to participate.
  - Petition requires approval from both the superintendents
  - Student must first try to participate at another school within their own district (if multi-high-school district) before petitioning a neighboring district.
  - Limitations: One activity per school per year; no petition may be based solely on competition-level preference (varsity/JV/freshman); schools may partner on a combined team if neither has enough participants.
- Existing extracurricular-activity access provision for community/STEM school students; cross-references new ORC 3313.5321 as an exception for interscholastic athletics/music/drama/forensics eligibility

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## Federal Agencies & Regulations

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## USDOE Dear Colleague Letter July 10, 2026

- USDOE issued this letter stating the following:
  - There is an “epidemic of nationwide sexual abuse in ... schools”
  - Reminds schools of the ESEA requirement that schools are not permitted to help an employee/contractor obtain a new position when there is knowledge or probable cause to believe that the individual engaged in sexual misconduct with a minor.
  - Reminds schools of Title IX protections and obligations.
    - » Follow your policies.
  - Federal funding could be at risk if schools allow sexual misconduct to occur.

## Marijuana Reclassification

- In April 2026, the U.S. Department of Justice and Drug Enforcement Administration officially reclassified state-licensed medical marijuana and FDA-approved cannabis products from Schedule I to Schedule III under the Controlled Substances Act. This acknowledges marijuana's medical value but does **not** federally legalize the drug
- Q&A states:
  - Marijuana is not compatible with safety sensitive functions, like driving a school bus or van.

## USDOL Opinion on FMLA

- January 5, 2026, USDOL issued an opinion letter for schools providing that days school is closed do not count as FMLA days for employees who planned to be on FMLA leave during those days but for less than the full week.
- Holidays do not count against leave when an employee takes leave for only part of a workweek. Instead, only the days of leave actually taken are counted.
  - U.S. labor laws prohibit the reduction of an employee's leave beyond days actually taken when FMLA leave is used on an intermittent or reduced schedule basis.
- Compared to: when a holiday falls during a week that an employee has planned to take a full workweek of leave, the entire workweek counts as FMLA leave.
  - An employer may deduct a full workweek of leave for an employee taking FMLA leave for one or more full workweeks at a time, even if there are some closure days during that week.

## EEOC Notice-Posting Penalty

- September 30, 2025, the EEOC issued a final rule increasing the civil penalty for employer's who fail to post the required workplace notices under Title VII, the ADA, GINA and the PAFA.
  - Maximum penalty is \$698 per violation.
- Post to prominent and accessible places where employers customarily maintain notices to employees, applicants and members.

## EEOC Rescinded 2024 Workplace Harassment Guidance

- The 2024 Harassment Guidance covered all types of harassment: race, color, religion, sex, national origin, age, disability, and genetic information (under the review of the EEOC).
- A Texas court found the 2024 Guidance's definition of "sex" was contrary to law.
  - The Guidance took the position that denial of access to a bathroom or other sex-segregated facility consistent with an individual's gender identity was harassment under the law. The Guidance also considered the use of a name and pronouns inconsistent with an individual's gender identity to be harassment.
- The 2024 Guidance is no longer the standard from the EEOC. There is no change in the federal antidiscrimination laws. Courts will be left to interpret and consider *Bostock*.

## Federal Court Cases

## *West Virginia v. B.P.J.* (US Supreme Court 2026)

- The U.S. Supreme Court ruled on June 30, 2026, that states can exclude transgender athletes from women's and girls' sports team without violating Title IX and the Equal Protection Clause.
  - Title IX bars discrimination "on the basis of sex" and the regulations implementing the law permit schools to maintain separate teams for "members of each sex."
    - » The Court held that "sex" means biological sex for Title IX purposes because that was the ordinary meaning of the word when the law was enacted, and that the Title IX regulations were initially implemented because of the biological differences between the sexes.
  - While some judges recognized that some transgender athletes may not pose the same risks to fairness and safety as others, Justice Kavanaugh held that the state legislatures and schools are better equipped to assess these considerations and draw the appropriate line.

## *Mirabelli v. Bonta* (US Supreme Court 2026)

- Supreme Court held that Parents likely have a right to be informed by schools if their child requests to be referred to as a different gender than their biological sex.
  - California Department of Education adopted a policy requiring student consent prior to disclosure
  - Found the policy protected transgender children from abusive parents.
- Siding with the parents, the Court held the policy likely imposed greater intrusion on the parents' free exercise rights than what would legally be permitted.
  - Policy was not narrowly tailored, because it prohibited disclosure even to parents who would not engage in abuse.
    - » Vacated a previous stay, allowing a lower court's injunction to go into effect against the policy while California's appeal proceeds.

## Defending Education v. Olentangy – the 6<sup>th</sup> Circuit Reverses Itself on Pronouns

- On November 6, 2025, the Sixth Circuit Court of Appeals “en banc” reversed its prior ruling and held that an Ohio school district's policy which would (hypothetically) allow students to be punished for intentionally using pronouns consistent with another’s biological sex (rather than a transgender classmate's preferred pronouns) violates the First Amendment by compelling speech and forcing ideological conformity.
- The Court ruled that students have the right to speak according to their beliefs, especially when speech isn't substantially disruptive (i.e., these are just pronouns).

## Olentangy – Pronouns, Picking Sides and Policy

- **Free Speech Violation:** The court determined that forcing students to use pronouns contrary to their deeply held beliefs (often religious) is compelled speech, violating the First Amendment.
- **No Compelled Ideology:** Schools cannot force students to "mouth allegiance" or agree with an ideological stance, such as gender identity overriding biological sex. (No picking sides in the culture war).
- **Lack of Disruption:** The school district failed to show that using biological pronouns would cause a "substantial disruption" to the educational environment, a key standard from *Tinker*. (Despite the parents’ concession that transgender or non-binary students would likely view the use of biological pronouns by their children as “insulting,” “humiliating,” “dehumanizing,” “derogatory,” and “unwanted.”)

## Olentangy – Pronouns, Picking Sides and Policy

- **Distinction from Harassment:** The ruling differentiated between general anti-harassment policies and compelling speech on controversial topics like gender identity, noting the district's policy went too far in regulating speech.
- **Parental Rights:** The decision upheld parental rights to guide their children's speech and beliefs in school.

## *Tumbleson v. Lakota Local Sch. Dist.* (6<sup>th</sup> Cir. 2026)

- 6<sup>th</sup> Circuit Court of Appeals ruled that the district did not violate the ADA or the FMLA by requiring a teacher to use unpaid leave to attend a training course with her guide dog.
  - Initially allowed to use sick leave for a five-day orientation, but her request to use paid leave for a three-week training course was denied.
    - » District argued that employees were only required to fill out paperwork for “extended absences” of ten or more days.
  - The Court found that the use of unpaid leave was a reasonable accommodation and dismissed the employee’s claims for failing to show paid leave was normally provided for those in her situation or that nondisabled employees were treated more favorably by the district.

## *Gaines v. Cross, No. 25-3233 (6th Cir. 2026)*

- This case involves Jacqueline Gaines, a court magistrate who ran for judge, and Denise Cross, the administrative judge who supervised her.
- While still working as a magistrate, Gaines ran for a judgeship and sent out campaign mailers criticizing:
  - How much work a fellow magistrate did, and
  - Whether that magistrate was qualified to decide child-custody cases because she did not have children.
- After Gaines lost the election and returned to work, Judge Cross fired her. Gaines sued, arguing that firing her violated her First Amendment free-speech rights.

## *Gaines v. Cross*

- Gaines said:
  - She was fired for political campaign speech, which should be protected.
  - She was speaking as a candidate, not as a court employee.
  - She never disobeyed a direct order, so she wasn't insubordinate.
  - Judicial candidates should be free to speak unless they violate ethics rules.
- Court held:
  - Some government jobs require trust, loyalty, and discretion. People in those roles have fewer free-speech protections when their speech undermines the workplace.
- Gaines's firing did not violate the First Amendment. Her role required trust and loyalty. Her campaign speech publicly undercut court leadership and policy decisions. The court affirmed the dismissal of her lawsuit

## C.S. v. McCrumb (6<sup>th</sup> Cir. 2025)

- An elementary school was celebrating “hat day” as part of the district’s “great kindness challenge” and a 3<sup>rd</sup> grader wore a hat picturing an AR-15 and the phrase “come and take it”
  - Administrators asked the student’s father to bring a different hat to school but he refused.
- The family went on to sue the district, arguing the student had a right to wear the hat under the Supreme Court’s decision in *Tinker v. Des Moines*.



## C.S. v. McCrumb Ruling

- Both the federal district court and the 6<sup>th</sup> Circuit Court sided with the school district.
  - Citing to *Tinker*, the court noted that considerations must be made “in light of the special characteristics of the school environment.”
  - They acknowledged that the hat alone would usually be protected speech.
  - But the hat’s messaging, the elementary school setting, the proximity to the Oxford school shooting, and the presence of former Oxford students were all relevant factors that supported the restriction.
- Ultimately, the school’s actions were determined to be based on a “well-founded fear of disruption in the school environment.”

## *C.S. v. McCrumb* Disagreement Over Rehearing

- The court later denied a request for a full en banc rehearing on August 12, 2025 but the judges were split on the issue.
  - One judge indicated there was protected speech, arguing the administrators' reasoning was pretextual and that they were simply uncomfortable with the viewpoint being displayed.
    - » Also questioned the impact the school shooting, which took place in a high school, would have on elementary school students.
  - The other judges disagreed, arguing that *Tinker* does not require a school's reasoning to be "meticulously detailed" in order for school officials to act.

## *Conrad v. Madison Local Sch. Dist.* (N.D. Ohio 2025)

- A student was asked to cover up his "Let's Go Brandon" shirt at school after being informed it violated the school's dress code against vulgar expression.
  - Parents disagreed with the school, and the student wore the shirt twice more.
- Student was eventually prohibited from going to Cedar Point with class.
  - His parents sought an injunction that would have allowed him to attend the field trip



## Conrad v. Madison Local Sch. Dist. Ruling

- The court denied the preliminary injunction holding that vulgar or profane speech is not entitled to absolute protection.
  - Although the parent argued the shirt was intended to “communicate criticism of certain media outlets for misreporting facts” they also acknowledged that the phrase was a euphemism for f\*\*\* Joe Biden.
- Note: while this case has not yet been decided on the merits, the 6<sup>th</sup> Circuit has since upheld a Michigan district’s restriction against “Let’s go Brandon” shirts. *D.A. v. Tri County. Area Schs.*
  - “[T]he protection for political speech doesn’t give a student carte blanche to use vulgarity at school—even when that vulgarity is cloaked in innuendo or euphemism. Here, the school administrators reasonably interpreted the “Let’s Go Brandon” slogan as being vulgar speech that “a school may categorically prohibit” despite its political message.  
***Requesting that students remove clothing with that slogan didn’t violate the First and Fourteenth Amendments.***

## B.A. v. Tri Cnty. Area Schs. (6<sup>th</sup> Cir. 2025)

- Two middle school students were disciplined for violating the district’s dress code policy for wearing “Let’s Go Brandon” sweatshirts to class.
  - The dress code policy prohibited attire with “messages or illustrations that are lewd, indecent, vulgar, or profane.”
  - Administrators initially asked the students to remove the sweatshirts since the slogan had a “profane double meaning.”
- The families responded by sending the district a cease-and-desist letter, arguing that the students were entitled to wear the sweatshirts under the First Amendment.

## *B.A. v. Tri Cnty. Area Schs.*

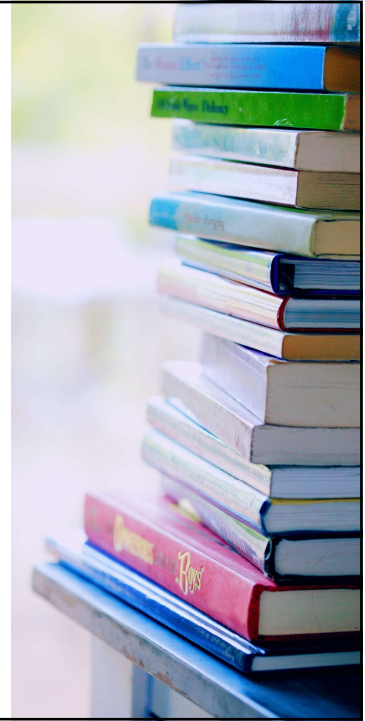
- While students are entitled to some First Amendment protections, there are several recognized exceptions to the freedom of speech in the school context.
  - One of these exceptions is a school's ability to prohibit "indecent, lewd, and vulgar speech."
  - Although the phrase itself was not profane, the 6<sup>th</sup> Circuit held that schools could regulate speech that *conveys* a vulgar message.
  - The court went on to hold that school administrators, not judges, were better equipped to decide what is or is not profane and the district's decision in this case was not unreasonable.

## *Cahall v. New Richmond Exempted Village Sch. Dist. Bd. of Edn. (S.D. Ohio 2025)*

- 3<sup>rd</sup> grade math and science teacher maintained a small library in her classroom, making the books available for students to read in their free time.
  - Several books dealt with LGBTQ+ characters and themes
  - Cahall had previously stated that her decision to add the books to her classroom came from a previous "controversy" in the district about LGBTQ+ policies
- The principal eventually received a complaint about the books, and Cahall was disciplined for violating the District's "Controversial issues" policy.

## *Cahall v. New Richmond*

- Cahall sued, arguing the policy was unconstitutionally vague.
  - The policy required staff to receive prior approval before discussing topics that were “likely to arouse both support and opposition in the community.”
- But the court found that there was no question that Cahall knew the books were related to a controversial issue.
  - Cahall herself had acknowledged that there was controversy in the community surrounding LGBTQ+ topics.
  - Based on the facts, she should have known her actions could have led to discipline, even if the exact definition of a “controversial issue” was not clear under the policy.



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## *Halasz v. Cass City Pub. Schs., (6<sup>th</sup> Cir. 2025).*

- 8<sup>th</sup> grade student made various comments in class relating to guns shortly after Oxford High School shooting.
  - The superintendent, district behavioral office, and a state police officer interviewed the student in connection with the alleged comments.
  - He was not read his Miranda rights and was not informed that a criminal investigation was being conducted.
- During the interview, the student was also searched by one of the officers, as was his backpack and locker.
  - The district determined that he made the remarks in violation of the student code of conduct, and although no gun was ever found, the district recommended a 180 day expulsion.

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## *Halasz v. Cass City Pub. Schs.*

- First 6<sup>th</sup> circuit decision determining how the 4<sup>th</sup> Amendment's guarantee against unreasonable seizures applied in the public school context.
  - According the court, a "seizure" occurs in the school context when a public school official limits the student's "freedom of movement in a manner that significantly exceeds that inherent in everyday, compulsory attendance."
  - A "reasonable seizure" must be (1) justified at its inception and (2) reasonably related in scope to the circumstances.
    - » In this case the court found that there was clear justification to hold him based on the comments, and he was not held longer than necessary to investigate.

## Ohio Court Cases

## *Columbus City School District v. State of Ohio* (Franklin Cty. Ct. C.P. 2025)

- A coalition of Ohio public school districts (Vouchers Hurt Ohio) filed a lawsuit challenging the constitutionality of EdChoice vouchers in 2022.
- On June 24, 2025, the trial court found in favor of the schools concluding that the Ohio Constitution requires a “thorough and efficient system of common schools” and that the EdChoice program violates this requirement and undermines the state’s system of public schools.
  - The trial judge stayed her decision, which means it has not taken effect pending appeal.
- The 10<sup>th</sup> District Court of Appeals heard arguments on May 12, 2026.
  - Regardless of the appellate decision, it is widely assumed that the decision will be appealed to the Ohio Supreme Court and that the EdChoice program will remain in operation pending the Supreme Court’s decision.

## *Bossart v. Brecksville-Broadview Hts. City Sch. Dist.* (8<sup>th</sup> App. Dist. 2026)

- While schools are usually immune from liability, they can be held responsible for injuries “caused by the negligence of their employee” and “*due to physical defects*” occurring on school grounds.
  - Ohio’s 8<sup>th</sup> Appellate District allowed a lawsuit to proceed against the district after an athlete was injured jumping into a sand pit during a track meet.
    - » Student argued that “unusually cold weather” made the sand harden and claimed that the district did not rake or inspect the pit before the event.
    - » The district argued it would have been impossible for the track officials to perceive the “hardness” of the sand based solely on the air temperature.
  - According to the court, a physical defect is a “tangible imperfection that impairs the function of an object.”
    - » But that defect need not be “immediately perceivable” to the naked eye in order to hold a government entity accountable.

## *State ex rel. Zimmerman v. Avon Lake* (Ohio Supreme Court 2026)

- Ohio Supreme Court reaffirmed that committees and subcommittees of a public body are also public bodies under Ohio's Open Meetings Act
  - The City of Avon Lake initially refused to turn over the meeting minutes of an advisory committee related to the City's redevelopment projects in response to a public records request.
    - » The City argued that the committee was merely an "advisory group without delegated authority to act" on behalf of the city and that the group lacked decision-making authority.
    - » The court disagreed. While delegated authority is one of the factors considered, it is not dispositive. The advisory group was created directly by a city committee, and O.R.C. 121.22(B)(1)(b) does not require that a committee be a formal decision-making body.

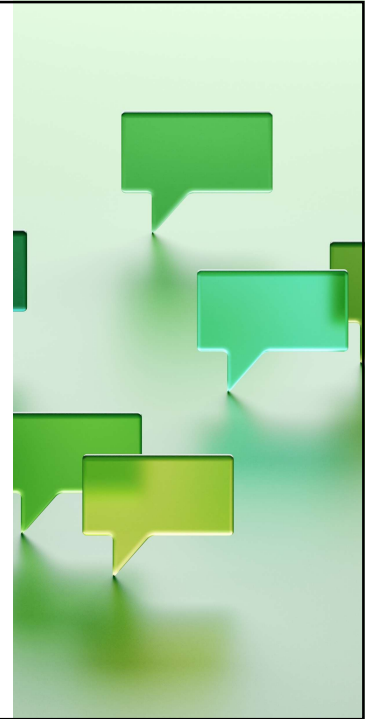
## *State ex rel. Zimmerman v. Avon Lake*

- Reminder that any committee or subcommittee created by the Board, even if they lack decision-making authority, is still considered a "public body."
  - Meetings generally must be open to the public, and
- Minutes of the meeting must be prepared and maintained

## *State ex rel. Platt v. Montgomery Cty. Bd. Of Elections* (Ohio Supreme Court 2025)

- Plaintiff sought an action compelling the Board and its deputy director to produce various emails as public records.
- The Supreme Court of Ohio held that an email from the deputy director's board email to his personal email that documented board activity is a public record.
- The Court held, however, that an email from the deputy director's private email forwarding a memo to the chairman of the Democratic Party is not a public record because it is not a record "kept" by the board of elections.

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## *Boddy v. Xenia Community School District* (Ohio Supreme Court 2026)

- Ohio Supreme Court decision clarifying the scope of public records.
- A public record request was made for the superintendent's email distribution list which was used to send the school newsletter.
- The district denied the request, stating the list contained the PII of students and that it didn't fit the definition of a public record.
  - Acknowledging the list likely contained significant amounts of PII (such as parent addresses, email addresses, and even student information), the Court ruled that the list was a public record.
  - The district was ordered to release the list after redacting PII and statutory damages, court costs, and attorney fees were awarded to the plaintiff.
- Consider your school newsletter distribution list and whether other methods may serve your needs.

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## *State ex rel. Ames v. Vermilion Local School District Board of Education (6<sup>th</sup> App. Dist. 2026)*

- Brian Ames loses appeal over the use of consent agendas during board meetings, forced to pay costs.
- Case stemmed from the Board's agenda during a regular meeting, which included a consent agenda with 14 items for approval.
  - The Board VP read aloud all 14 items on the consent agenda and asked if any member wanted to remove an item for separate consideration.
  - When no member moved to remove an item, the Board passed the consent agenda with one vote for the 14 items.
  - Minutes for the meeting were taken and published by the Board reflecting that the 14 items were approved.

## *State ex rel. Ames v. Vermilion Local School District Board of Education*

- Consent agendas, while generally permissible, cannot be used in a way that constructively closes the public meeting.
- The key requirement of the Open Meetings Act is that the public has meaningful access to any discussions that take place (barring an exception).
  - Ames main argument here was that the board did not engage in a sufficient amount of deliberation on the individual items on the consent agenda.
  - However, the Board was not required to engage in discussion.
  - The Court found that the Board took sufficient steps before the meeting to ensure public access was protected, and without alleging the existence of an improper private discussion, Ames' argument lacked merit.

## *Kidd v. Wilmington* (12<sup>th</sup> App. Dist. 2026)

- The Court of Claims has broad discretion to dismiss cases that would thwart the law's purpose of "quickly and efficiently resolving public records disputes."
  - A special master appointed to the case found that the excessive number, frequency, and duplicative nature of the records requests suggested that Kidd was abusing the public-records laws.
  - Kidd made approximately 390 public-records requests to the city and filed 16 complaints alleging denial of access to public records.
- The court of appeals upheld the dismissal, arguing that individuals are not permitted to object to the special master's recommendation for dismissal under R.C. 2943.75(D)(2).

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## Questions?

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**Wednesday, October 14: Central** / North Central Ohio ESC, Marion

**Thursday, October 15: Northeast** / Summit ESC, Cuyahoga Falls

**Wednesday, October 21: Northwest** / Northwest Ohio ESC, Archbold

**Thursday, October 22: Southwest** / Butler County ESC, Hamilton

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