
Legal Update

Presented By

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TABLE OF CONTENTS

Page No.

I.	Fiscal Year 2022-2023 Budget Bill (H.B. 110)	1
A.	School District Funding	1
B.	Transportation	5
C.	Educational Service Centers	8
D.	Educational Options	8
E.	Employment	9
F.	Teachers/Licensed Employees	10
G.	Assessments	11
H.	Curriculum	12
I.	Graduation	13
J.	College Credit Plus	14
K.	School Facilities	15
L.	Scholarship Programs	15
M.	Community Schools	16
N.	Auxiliary service funds	17
O.	STEM schools	17
P.	Early Childhood Education	18
Q.	Miscellaneous	18
R.	Vetoed	19
II.	Summary of Recent Legislation	19
A.	S.475 – Juneteenth National Independence Day Act	19
B.	House Bill 82 – Report Cards, College Tests	19
C.	House Bill 244 – COVID-19 vaccination in schools; children of military families	22

D.	Senate Bill 126 – Hazing	23
E.	House Bill 6 – Health Professionals	23
F.	Senate Bill 30 – Ohio Overdose Awareness Day	24
G.	House Bill 170 – Covid-19 School Assistance	24
H.	Senate Bill 57 – Property Taxation.....	24
I.	House Bill 74 – Transportation budget.....	25
J.	House Bill 436 – Dyslexia	25
K.	Senate Bill 68 – Police interaction instruction.....	27
L.	House Bill 123 – Safety and Violence Education Students Act (SAVE Students Act).....	28
M.	House Bill 442 – Occupational licenses	30
N.	House Bill 263 – “Fresh Start Act”.....	31
O.	House Bill 444 – Township law; levy renewal.....	32
III.	Special Education.....	33
A.	Student who settled IDEA claims barred from bringing similar claims in court	33
B.	District’s IEP provided FAPE to student with reading deficiencies.....	33
C.	Section 504 plan must address behavior outside of school.....	34
D.	Ohio’s Operating Standards for the Education of Children with Disabilities: OAC 3301-51	34
E.	Preschool children eligible for Special Education OAC 3301-51-11	35
F.	Each Child Means Each Child: Ohio’s Plan to Improve Learning Experiences and Outcomes for Students with Disabilities	35
G.	Medical Marijuana: Autism; panic disorder with agoraphobia not approved	35
H.	OSEP Letters.....	35
IV.	Student Issues.....	36
A.	U.S. Supreme Court rules on off-campus speech case	36

B.	Student suspension appeal moot	36
C.	Discriminatory discipline claims can proceed	37
D.	Title IX claims against school district governed by Ohio’s 12-year statute of limitations	37
E.	U.S. Supreme Court declines to take up school bathroom policy case.....	38
F.	Eleventh Circuit rules school bathroom policy violated equal protection rights of transgender student.....	38
G.	West Virginia court enjoins state law that prohibits transgender girl from joining girls’ track team	38
H.	Ohio’s policy prohibiting transgender individuals from amending birth certificates ruled unconstitutional.....	39
V.	Sunshine Law / Records.....	39
A.	2021 Ohio Sunshine Laws Manual	39
B.	Ohio Supreme Court to consider whether documents disclosed to a legal adversary lose attorney-client privilege protection.....	39
C.	Quasi-Agency test requires public office to produce records based on its delegation of its public duty to a private entity.....	40
D.	Use of consent agenda may violate Open Meetings Act	40
E.	Open Meetings Act: Executive session.....	41
VI.	Employment Issues	41
A.	Post-Janus Litigation – Exclusive Representation	41
B.	School board not obligated to bargain COVID-19 issues.....	42
C.	Picketing restriction unconstitutional	42
D.	U.S. Supreme Court to consider whether First Amendment restricts board’s authority to censure member’s speech.....	43
E.	Professor’s refusal to use gender-identity-based pronouns entitled to constitutional protection.....	43
F.	Title VII did not require school to accommodate teacher’s religious objections to using transgender students’ preferred names	43
G.	Teacher’s work-related speech not entitled to constitutional protection	44

H.	Principal’s speech not entitled to constitutional protection	45
I.	Substitute teacher alleges she was dismissed in retaliation for complaining of harassment	45
J.	Constructive discharge and reasonable accommodation	45
K.	School secretary was not constructively discharged.....	46
L.	Custodian’s termination not retaliatory	46
M.	Termination based on prior drug trafficking conviction was not discriminatory	47
N.	FLSA Independent Contractor Status rule withdrawn.....	47
VII.	Board Issues	48
A.	School personnel must complete a basic peace officer training program to go armed while on duty.....	48
B.	School board’s public participation policy constituted impermissible viewpoint discrimination	48
C.	District not liable under federal law for abuse perpetrated by someone impersonating a police officer	49
D.	School board entitled to immunity in school bus mix up	49
E.	Court refuses to dismiss negligence action stemming from student injuries during science experiment	50
F.	Parent alleges denial of access to football game discriminatory	50
G.	U.S. Supreme Court rules request for nominal damages satisfies redressability element necessary for Article II standing.....	51
VIII.	Federal and State Guidance and Regulations.....	51
A.	Executive Order on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity	51
B.	Notice of Interpretation: Enforcement of Title IX with Respect to Discrimination Based on Sexual Orientation and Gender Identity.....	52
C.	Dear Educator letter on available Title IX resources.....	52
D.	Questions and Answers on the Title IX Regulations on Sexual Harassment	52

E.	Review of Title IX regulations	53
F.	Request for Information: Nondiscriminatory administration of school discipline.....	53
G.	School Nutrition Programs: Waiver update for school year 2021-2022.....	54
H.	OAC 3301-91 Standards for School Lunch and Breakfast Programs.....	54
I.	OAC 3333-1-65 to 3333-1-65.9 College Credit Plus rules.....	54
J.	OAC 3301-24-11 and -12 Alternative principal license; alternative superintendent and administrative specialist license	54
K.	OAC 3301-23-41 Twelve hour or forty hour temporary teaching permit for qualified nonlicensed individuals	55
L.	OAC 3301-24-16 and -17 Senior and lead professional educator licenses	55
M.	OAC 3301-24-08 Professional or associate license renewal	55
N.	OAC 3301-16 Graduation rules	55
O.	OAC 3301-42-01 Criteria for enrolling eligible adults in public secondary education programs.....	56
P.	OAC 3301-35 Operating Standards for Ohio Schools.....	56
Q.	PBIS and restraint and seclusion rule	56
R.	School Child Program and Child Day-Care Programs rule amendments.....	57

I. Fiscal Year 2022-2023 Budget Bill (H.B. 110) Note: This summary includes provisions that primarily impact public school districts.

Signed: June 30, 2021

Effective: Non-appropriation items generally effective September 30, 2021 unless indicated otherwise below. Appropriations/sections prefixed with numbers in the 200s, 300s, 400s, and 500s effective June 30, 2021.

A. School District Funding

This summary includes an overview of the funding changes made by H.B. 110. The final budget implements the Fair School Funding Plan (with some modifications). The Ohio Department of Education indicated it hopes to implement the new funding calculations by October.

Note: HB 110 implements the Fair School Funding Plan for fiscal years 2022 and 2023. Calculations for future years will be determined by the General Assembly.

1. Direct funding – Rather than counting students in their district of residence and then deducting funding for students attending community schools, STEM schools, scholarship programs, and open enrollment, students are counted and funded where they are educated. (R.C. 3317.02, 3317.022, 3313.981 and others.)
 - a. Enrolled ADM – The funding formula uses “enrolled ADM” rather than “formula ADM.” (The legislative service commission indicates statewide formula ADM for traditional districts was 1.66 million FTE in FY 2020, whereas enrolled ADM was 1.51 million FTE.)
 - b. Base cost enrolled ADM – The base cost calculation for district funding uses “base cost enrolled ADM” which is the greater of the district’s enrolled ADM for the previous fiscal year or the average of enrolled ADM for the previous three fiscal years.
2. School district state core foundation funding consists of the following funding components: the district’s state share (base cost), targeted assistance, special education, disadvantaged pupil impact aid (DPIA), English learner, gifted, career-technical education and associated services, and supplemental targeted assistance. (R.C. 3317.022.)
 - a. **State Share** – Generally, a district’s state share is the district’s “base cost per pupil” less its per-pupil capacity amount multiplied by its enrolled ADM. (R.C. 3317.017(B).)
 - i. Base Cost - Rather than a set formula amount that applies to all districts (currently \$6,020), each district’s base cost is unique and variable. It consists of costs for teachers, student support, leadership and accountability, building leadership, and athletic co-curricular activities. Note: The student support component includes student success and wellness, along with co-curriculars, high school guidance, safety and

security, supplies, and library and media operations. (R.C. 3317.011, 3317.012, and 3317.018 enacted, 3317.02(D).)

- ii. **Capacity** – Replaces the state share index with a formula to equalize payments based upon a school district’s ability to raise revenues. The per-pupil local capacity amount uses property values (60%) and two measures of income (40%). The state share range is 5% for the wealthiest districts, with no maximum. The state share is updated each year of the biennium. (R.C. 3317.017.)
 - iii. **State share percentage** is a district’s “state share” divided by the aggregate base cost. The state share percentage is applied to funding components such as special education, English language learner funds, career-technical education, special education transportation, and preschool special education funding. (R.C. 3317.017(C), 3317.02(EE).)
- b. **Phase-In** – (R.C. 3317.022, 3317.02(X), Sections 265.215 and 265.220.)
- i. The full amount of a district’s calculated state core foundation funding is not paid out. It is subject to a phase-in percentage.
 - ii. Most funding components have a phase-in percentage of 16.67% in FY 2022 and 33.33% in FY 2023. However, DPIA is phased-in at 0% for FY 2022 and 14% for FY 2023.
 - iii. Phase-in funding is calculated before application of the guarantee. Transportation funding and supplemental targeted assistance are outside the phase-in.
- c. **Temporary Transitional Aid (guarantee)** – (R.C. 3317.019 enacted.)
- i. For FY 2022 and 2023, guarantees each district a total amount of state core foundation funding equal to its “funding base” as defined in R.C. 3317.02(N). The funding base, generally, is the district’s FY 2020 foundation funding (excluding transportation funding and net of transfers for community, STEM, scholarship, and open enrollment).
 - ii. If a district has a decrease in incoming open enrollment students that is the greater of 20 students or a 10% decrease, its guaranteed funding must be reduced. The reduction is the statewide average base cost per pupil times the reduction in the number of students in excess of the minimum.
- d. **Formula Transition Supplement** – (Section 265.225.)
- i. For FY 2022 and 2023, a formula transition supplement is provided to guarantee each district a total amount of funding

(including state core foundation funding, transitional aid, transportation funding, and supplemental targeted assistance) equal to its “funding base for FY 2021.”

- ii. This ensures that a district does not receive less for FY 22 and 23 than its combined funding for FY 2021, including foundation aid before state funding reductions (net of transfers), 2021 student wellness and success funds, and enrollment growth supplement funds.
3. Categorical aid – The formulas for calculating funding for various categorical components (additional funding beyond the base cost for components such as special education, career-technical, English learners, and gifted) differ from current law. (R.C. 3317.022.)
 - a. **Special education** uses multiples (weights) instead of dollar amounts for the six categories. Funding is the category ADM x the specified multiple x the statewide average base cost per pupil for that year x the district’s state share percentage. (R.C. 3317.013, 3317.0213, 3317.0214, and 3317.022(A)(3).)
 - i. ODE must withhold 10% of the funds for catastrophic costs. (R.C. 3317.0214, 3317.0215.)
 - b. **Career-technical and English learners** – Similar formulas are used for career-technical and English learners. (R.C. 3317.014, 3317.016, and 3317.022(A)(5), (A)(7) and (A)(8).)
 - c. **Gifted funding** is provided for identification, referral, professional development, and unit funding. These funds must be spent on specified services, and ODE must reduce a district’s payments by any amount not spent in accordance with this requirement. (R.C. 3317.051, 3317.022(A)(6) and (J), and 3324.05.)
 - d. **Spending restrictions** – Funding for special education, English learners, career-technical, gifted, and DPIA must be spent on specified services. (R.C. 3317.014, 3317.022(B), (C), (I), and (J).)
4. DPIA (wellness and success) – Wellness and success funding was moved into DPIA. The base cost also includes a student wellness and success and component.
 - a. **DPIA funding** is \$422 x district’s economically disadvantaged index x the number of students who are economically disadvantaged. These funds must be spent in accordance with R.C. 3317.25. (R.C. 3317.022(A)(4) and (C).)
 - i. Note: DPIA funding is phased-in at 0% for FY 2022 and 14% for FY 2023. (Section 265.220.)

- b. **DPIA Spending requirements** – DPIA funds must be spent on any of the following (or combination of any of the following) initiatives:
- i. R.C. 3317.25(B)(1)(a) to (i): Extended school day/year, reading improvement and intervention, instructional technology or blended learning, professional development in reading instruction for K-3 teachers, dropout prevention, school safety and security measures, community learning centers that address barriers to learning, academic interventions for students in grades 6-12, or employment of a principal or assistant principal who completed the bright new leaders for Ohio schools program; or
 - ii. R.C. 3317.25(B)(1)(j) to (q): Mental health services, including telehealth services; culturally appropriate, evidence-based or evidence-informed prevention education, including youth-led programming and social and emotional learning curricula to promote mental health and prevent substance use and suicide [new]; services for homeless youth; services for child welfare involved youth; community liaisons or programs that connect students to community resources, including city connects, communities in schools, and other similar programs; physical health services, including telehealth services; family engagement and support services; or student services provided prior to or after the regularly scheduled school day or any time school is not in session, including mentoring programs. [These are the same initiatives listed in former R.C. 3317.26 for student wellness and success. Prior law also included mental health and physical health care services, but the new law specifies this may include telehealth. Initiatives from 3317.26 not included in the revised 3317.25 include professional development regarding the provision of trauma informed care and cultural competence.]
- c. **DPIA spending plans** – Each district must develop a plan for utilizing the DPIA funding it receives in coordination with at least one of the following community partners: a board of alcohol, drug, and mental health services; an ESC; a county board of developmental disabilities; a community-based mental health treatment provider; a board of health of a city or general health district; a county department of jobs and family services; a nonprofit organization with experience serving children; or a public hospital agency. [These are the same partners as those listed for former Student Wellness and Success funds.] (R.C. 3317.25(C).)
- d. **DPIA spending reports** – After the end of each fiscal year, each district must submit a report to ODE describing the initiative(s) on

which DPIA funds were spent. The report shall describe the amount of money spent on each initiative (new). (R.C. 3317.25(D).)

- e. **Wellness and success component of the base cost** – ODE must notify school districts and other schools of the portion of the district’s state share of the base cost calculated under 3317.022 (or 3317.16 for JVS) that is attributable to the staffing cost for the student wellness and success component of the base cost. Districts must spend that amount for any initiatives described in 3317.25(B)(1)(j) to (q) [listed above]. District must submit a report to ODE describing the initiative(s) on which the district’s funds were spent. Wellness and success funds a district received for FY 2020 or 2021 must be spent in accordance with former law. (Section 265.323.)
- f. Former student wellness and success law repealed. (R.C. 3317.0219, 3314.088, 3317.163, 3317.26, and 3326.42 repealed.)
5. Transportation – see separate transportation summary herein.
6. Career awareness and exploration funds – The amount (outside of the funding formula) is the district’s enrolled ADM multiplied by \$2.50 in FY 2022 and \$5.00 in FY 2023. These funds are transferred to the lead district which then disperses them. Funds must be spent on specified services. (R.C. 3317.014(E), 3317.023(I).)
7. JVS funding – The new funding formula for joint vocational school districts is substantially similar to the formula for traditional school districts, with some JVSD-specific changes. (R.C. 3317.16, 3317.0122, 3317.014, 3317.02, 3317.162, Sections 265.215, 265.220, and 265.225.)

B. **Transportation**

1. Transportation mandates for students attending Community/nonpublic schools
 - a. **Days required** – School districts must provide transportation to students enrolled in community and nonpublic schools on each day in which that school is open with students in attendance, regardless of whether district schools are open on that day. (Saturday/Sunday exception remains.) (R.C. 3327.01.)
 - b. **Time limit** – Students must be delivered to their respective public and nonpublic schools not sooner than 30 minutes prior to the beginning of school, and must be available to pick them up not later than 30 minutes after the close of their respective schools. (R.C. 3327.01.)
 - c. **Transportation plans** – Community and nonpublic schools must establish the school’s start and end times for a school year by April and provide them to the district responsible for providing transportation services. Districts must use those times to develop a

transportation plan, including routes and schedules. The plan must be provided to the community/nonpublic school within 60 days after receiving start and end times. If start/stop times are provided to the district after April 1 but before July the district shall attempt to provide the plan by August 1. If a student enrolls in a community/nonpublic school after July 1, the district must provide a transportation plan for that student within 14 business days of receiving a request for transportation services from the student's parent/guardian. (R.C. 3327.016 enacted; conforming change in 3313.48.)

2. Mass transit

- a. **Grades K-8** – School districts are prohibited from using mass transit to transport community/nonpublic school students in grades K-8 unless the district enters into an agreement with the school authorizing such transportation. Both the school district and community/nonpublic school must approve the agreement. (R.C. 3327.017(B) enacted.)
- b. **Grades 9** – If a school district elects to use mass transit to transport community/nonpublic school students in grades 9-12, the district must ensure the student is assigned to a route that does not require the student to make more than one transfer. (R.C. 3327.017(C) enacted.)

3. Impracticality of transportation (R.C. 3327.02, Section 265.150)

- a. **Timing** – Impracticality determinations must be made at least 30 calendar days prior to the district's first day of instruction. If a student enrolls later, the determination must be made within 14 days of the student's enrollment. The superintendent may make the determination, with formalization at the next meeting of the board.
- b. **Letter** – In addition to reporting the determination to the state board, the district must issue a letter to the student's parent/guardian, the community/nonpublic school, and the state board with a detailed description of the reasons such determination was made.
- c. **Proxy** – A parent/guardian may authorize the community/nonpublic to act on their behalf during mediation proceedings or at any time after the parent/guardian requests transportation.
- d. **Payment** – The payment in lieu of transportation must be at least 50% (rather than the amount determined by the general assembly), and not more than, the amount determined by ODE as the average cost of pupil transportation for the previous year. The payment amount for failing to provide transportation as required or ordered is 50% of the cost as determined by the district, but not more than \$2,500. Per Section 265.150, a payment in lieu may be prorated if the time period involved is only part of the school year.

4. Compliance monitoring – ODE must monitor each district’s compliance with R.C. 3327.01 (students required to be transported and 30-minutes prior to/after school time limit), 3327.016 (transportation plans), and 3327.017(B) (K-8 mass-transit restriction). If ODE determines there is a consistent or prolonged period of noncompliance, ODE must deduct the total daily amount of the district’s transportation payment for each day the district is not in compliance. (R.C. 3327.021 enacted.)
5. Bus driver training – ODE must develop an online bus driver training program for the classroom portion of pre-service and annual in-service training for school bus driver certification. (R.C. 3327.101 enacted.)
6. Contract to assist local governments and nonprofits – A school district may contract with a public or private non-for-profit agency, group, or organization, a municipal corporation or political subdivision, or an agency of the federal government to operate its buses to assist these groups in times of emergency. Drivers must hold a certificate issued by an ESC or school superintendent, regulations governing the operation of school buses continue to apply, and the school district must procure liability and property damage insurance covering vehicles and passengers. The school district may recover expenses from contracting entities. (R.C. 3327.018 enacted.)
7. Transportation Funding – Changes to funding include, but are not limited to:
 - a. **Qualifying riders** – For funding purposes, includes preschool students, and removes the requirement that a student must live more than one mile from the school they attend to be counted as a “qualifying rider.” In addition, the greater of the average number of qualifying riders counted in the morning or in the afternoon is used. (R.C. 3317.0212(A).)
 - b. **Community/STEM school students** are funded in the transportation base at 1.5 times the statewide transportation cost per student, and 2.0 times for nonpublic school students. Also requires districts to report in EMIS the average number riding on buses that are routed to community/STEM/nonpublic schools. (R.C. 3317.0212(E), and 3301.0714.)
 - c. **State share** of base transportation is the greater of the district’s state share percentage or 29.17% in FY22, and 33.33% in FY23 (vs. 25% in FY19). Also provides an efficiency adjustment payment for transporting more than the target number of students per bus and modifies the transportation supplement for low density districts. (R.C. 3317.0212(E) and (F).)
 - d. **Transportation guarantee** (“temporary transitional transportation aid”) provided for FY 2022 and 2023. (R.C. 3317.019 enacted.)
 - e. **Special education transportation payment** amount is the actual costs incurred times the greater of the district’s state share

percentage or 29.17% in FY22, and 33.33% in FY23. Costs reported by a district are subject to periodic, random audits by ODE. (R.C. 3317.024.)

- f. **Grants** - Bus purchasing grant program for FY 2022 and 2023 to distribute grants of not less than \$45,000 to replace the oldest and highest mileage buses. Transportation collaboration grants, with rules to be adopted by ODE. (R.C. 3317.071 and 3317.072 enacted; Section 265.150.)

C. Educational Service Centers

1. Grant eligibility – Clarifies that an ESC is considered a local education agency (in addition to a school district) for purposes of eligibility in applying for any state or *competitive* federal grant (rather than any federal grant). (R.C. 3312.01(D).)
2. Redistricting delay – Permits an ESC with subdistricts to delay its next redistricting until July 1, 2022, and delays the first election under the new organization to November 2023. (Section 733.50.)
3. Funding – ESC funding is also subject to the phase-in. The funding formula is tiered based on the ESC’s student count. The base amount is \$356,250, with additional amounts of \$24.72 for each student above 5,000, and additional amounts (\$30.90) for each student above 35,000. (R.C. 3317.11 enacted.)

D. Educational Options

1. Blended/online learning definition – Modifies the definition of “blended learning” to specify that delivery of instruction must take place primarily in a supervised physical location away from home. “Online learning” is defined as students working primarily from their residences on assignments delivered via an internet- or other computer-based instructional method. (R.C. 3301.079(J).)
2. Blended learning – Removes the exemption from minimum school year or school day requirements for schools operated using a blended learning model. Instead, requires blended learning schools to have an annual instructional calendar of at least 910 hours. (R.C. 3302.41.)
3. Online learning – Permits a school district to operate a school using an online learning model with approval of the state superintendent. (R.C. 3302.42 enacted.)
 - a. **Notice** – The school district superintendent must notify ODE if a school is operating, or is to cease operating, using an online learning model. The notification must be made by July 1 of the school year for which the change is effective. If a school is currently operating using an online learning model, ODE must be notified within 60 days of this section’s effective date.

- b. Districts must assign all students engaged in online learning to a single school which ODE must designate as district online school.
- c. **Equipment** – Districts must provide students a computer at no cost. The computers must have a filtering device or software to protect against access to obscene or harmful materials.
- d. **Internet access** – District must provide students access to the internet, at no cost, for instructional use.
- e. **Orientation** – Districts must provide a comprehensive orientation to students and parents/guardians prior to enrollment, or within 30 days for students enrolled as of this section’s effective date.
- f. **Learning management system** – Online learning schools must implement a learning management system that tracks the time students participate in online learning activities. Off-line activities must be documented, and participation records must be checked and approved by the teacher of record.
- g. **State board of education requirements** – The state board must revise operating standards for school districts to include standards for the operation of online learning. The standards must provide for a student-teacher ratio of not greater than one teacher for every 125 online learning students; the ability of students to earn credits or advance grade levels based upon demonstrating mastery of knowledge or skills through competency-based learning models; credits or grade level advancement must not be based on a minimum number of days or hours; a requirement that online schools have an instructional calendar of not less than 910 hours; adequate provisions for other aspects of school operations such as teacher licensure, library facilities, student admission, etc.
- h. **Funding** – If a student participates less than 910 hours, ODE must reduce the full-time equivalence proportionally for funding purposes.

E. Employment

- 1. Pre-employment applications and screening
 - a. Permits school hiring officers to request any report of misconduct received by ODE regarding an individual who is under consideration for employment. Any report provided to the school is confidential and may not be disseminated to any other person or entity. (R.C. 3319.319 enacted.)
 - b. Requires school districts and chartered nonpublic schools to include a notice on employment applications, in boldface type, that any person who knowingly makes a false statement is guilty of falsification under R.C. 2921.13, a misdemeanor of the first degree. (R.C. 3319.393(A) enacted.)

- c. Requires schools to consult the “educator profile” database on ODE’s website prior to making any hiring decision. After consulting the database, a school may consult ODE’s office of professional conduct to determine whether the individual has been the subject of any notice of misconduct or discipline, or any disciplinary actions by ODE. A school may also consult an applicant’s prior education-related employers, and may require additional background checks other than those already required for any applicant or potential volunteer. Schools may conditionally employ an individual pending receipt of this information, and may release the individual if the information indicates the person engaged in conduct unbecoming to the teaching profession or committed an offense that prevents, limits, or otherwise affects the applicant’s employment. (R.C. 3319.393(B) and (C) enacted.)
- 2. “Pass the Trash” prohibition – Prohibits a school representative (including employees, contractors, and board members) from knowingly engaging in any activity intended to assist another individual in obtaining employment with a school district, chartered nonpublic school, or DD Board (in a position responsible for providing educational services to children ages 6 through 21), if the school representative knows or has reasonable cause to believe that the individual committed a sex offense (listed in R.C. Chapter 2907) or a comparable offense involving a student. Provides an exception in certain instances (lack of indictment, acquittal, or exoneration). (R.C. 3319.318 enacted, R.C. 3314.03, 3326.11, and 3328.24.)
- 3. Juneteenth established as a legal state holiday. Adds Juneteenth as a holiday for which regular nonteaching school employees employed on a nine or ten month basis (but not eleven or twelve months) are entitled to be paid (R.C. 3319.087). (Boards of education may also dismiss school on this day (R.C. 3313.63).
- 4. Medical marijuana – Specifies that an employer does not violate R.C. 4112.02(A), (D), or (E) [unlawful discriminatory practices] if the employer discharges, refuses to hire, or otherwise discriminates against a person because of that person’s use of medical marijuana if the person’s use is in violation of the employer’s drug-free workplace policy, zero-tolerance policy, or other formal program or policy regulating the use of medical marijuana. (R.C. 3796.28(C).)

F. Teachers/Licensed Employees

- 1. License revocation – Requires the state board of education to revoke or deny renewal of a license for a violation of R.C. 2905.32 (trafficking in persons). Note: School districts must suspend teachers from all duties that require the care, custody, or control of a child upon arrest, summons, or indictment for violations listed in R.C. 3319.31(C). (R.C. 3319.31(C); Section 110.12.)
- 2. Career-technical educator licenses – To qualify for a two-year initial or five-year advanced career-technical workforce development educator license, an

individual may hold a certificate of high school equivalence (in addition to a high-school diploma as required under current law). (R.C. 3319.229.)

3. Computer science licenses

- a. Current law requires an individual to hold a valid educator license in computer science or other specified credentials to teach computer science courses. An amendment to this section clarifies that for purposes of this licensure requirement, “computer science courses” are any courses reported in EMIS as computer science courses and which are aligned to computer science standards adopted by the state board of education. (R.C. 3319.236.) ODE must update these standards within 1 year. (R.C. 3301.079.)
- b. Extends through the 2022-2023 school year the current computer science license/endorsement exemption that permits schools to have a teacher licensed in grades 7-12 teach a computer science course if the teacher completes a professional development program. (Sections 610.10 and 610.11.)

4. Teach for America – Requires ODE to inactivate (rather than revoke) a resident educator license issued to a teach for America participant if the participant resigns or is dismissed from the program prior to completion. Clarifies that such inactivation is not a license suspension or revocation and that an opportunity for a hearing is not required. (R.C. 3319.227.)

5. Educator standards board – The state board must appoint a person who represents community schools. The speaker of the house of representatives and president of the Senate shall each appoint two persons. Permits, rather than requires, the state board to appoint teachers from a list of nominees from the OFT and OEA. (R.C. 3319.60.)

6. School counselor standards – Requires school counselor standards to include career-technical education credit transfer criteria, policies, and procedures established under R.D. 3333.162. (R.C. 3319.61.)

G. Assessments

1. ACT/SAT opt-out – Permits a parent or guardian to opt their child out of the required ACT/SAT assessment. This applies to students entering 9th grade for the first time on or after July 1, 2022. Schools must not administer the test to those who opt out. (R.C. 3301.0712.)

2. Assessment administration prohibitions – In addition to prohibiting a person from revealing any specific question that is part of a state assessment (required by R.C. 3301.0711), the bill also prohibits a person from: 1) obtaining prior knowledge of the contents of an assessment; (2) using prior knowledge of the contents of an assessment to assist students in preparing for it; and 3) failing to comply with any security protocol rule adopted by ODE. If an employee violates these prohibitions, ODE may take any action it considers appropriate (rather than suspending a license for one year).

Violations continue to be grounds for termination. (R.C. 3319.151, 3319.99.)

3. Kindergarten readiness assessments must be administered from July 1 to the 20th day of instruction of that school year (rather than between July 1 and November 1). Kindergarten reading skills assessments must also be administered by the 20th day of instruction. (R.C. 3301.0715, 3313.608.)

H. Curriculum

1. Vaping – Requires school districts to include in their health education curriculum the harmful effects and legal restrictions against the use of electronic smoking devices (in addition to drugs, alcohol, and tobacco). (R.C. 3313.60(A)(5)(b).)
2. Venereal disease education (R.C. 3313.6011.)
 - a. **Notice** – If a school district or school chooses to offer additional instruction in venereal disease or sexual education not specified in R.C. 3313.6011(C), the district or school must notify parents/guardians of that instruction, including the instructor's name, vendor name, if applicable, and the name of the curriculum being used.
 - b. **Permission required** – Districts are prohibited from offering the additional instruction to a student unless the student's parent/guardian has submitted written permission.
 - c. **Materials** – Districts or schools must provide any materials associated with venereal disease education (statutory topics and any additional instruction) to a parent/guardian upon request.
 - d. **Audit** – At the start of each school year, ODE must conduct an annual audit of districts' compliance with this section as well as R.C. 3313.60(A)(5)(c) (that requires venereal disease education and excuses a student from taking instruction in venereal disease education upon written request of a parent/guardian). ODE must publish the audit and prominently post it on their website.
 - e. **Model** – Prohibits the state board of education from adopting a separate model education program for health education.
3. Advanced standing programs – Current law requires school districts and chartered nonpublic schools to provide information about advanced standing programs offered by the district or school to students in grades 6-11. The bill specifies that such information must be provided annually. (R.C. 3313.6013.)
4. Computer science education – Requires ODE in consultation with the Chancellor of Higher Education to establish a committee to develop a state plan for primary and secondary computer science education. The plan, which must be completed in one year, must include a number of specified

items, including the collection of data regarding computer science courses offered by school districts. (R.C. 3301.23 enacted.)

I. **Graduation**

1. Alternative demonstrations of competency – Under continuing law, a student must attain a competency score on Algebra I and English language arts II end-of-course examinations. Students who do not attain a competency score must be offered remedial support and must retake the respective examination at least once. If a student fails to attain a competency score on a retake exam, the student may demonstrate competency through other options. The bill makes the following changes/clarifications to these alternative options (R.C. 3313.61, 3313.618; conforming change in 3301.0714):
 - a. Being remediation free in the failed subject area on a nationally standardized assessment (ACT or SAT); for English language arts II must be remediation-free in the subjects of English and reading;
 - b. For a student with an IEP, the student may be awarded a diploma without demonstrating competency if 1) the student’s IEP exempts the student from meeting that requirement; 2) the student took the Algebra I and English language arts II end-of-course exams (or alternate assessments) and failed to attain the required scores; 3) the school district offered and the student received remedial support in the applicable subject area; and 4) the student retook the applicable assessment and did not attain the required score on retake;
 - c. Foundational option: Earning a cumulative score of proficient or higher (rather than a score of proficient or higher) on three or more state technical assessments;
 - d. Foundational option: Obtaining an industry-recognized credential, or group of credentials, that is at least equal to the total number of points established under R.C. 3313.6113 to qualify for a diploma;
 - e. Foundational option: Obtaining a license approved under R.C. 3313.6113 that is issued by a state agency or board for practice in a vocation that requires an examination for issuance of that license;
 - f. Foundational option: Clarifies, for completion of a pre-apprenticeship, that the pre-apprenticeship is aligned with options established under R.C. 3313.904, and for an apprenticeship, that the apprenticeship is registered with the apprenticeship council established under R.C. 4139.02.
2. Transferring students – Generally requires students transferring into a public or chartered nonpublic high school from another state, or after receiving home instruction (or attending a nonchartered school) in the previous school year, to demonstrate competency and earn state diploma state seals. If a student transfers or enrolls after the start of the student’s 12th grade year and fails to attain a competency score on the required exams, that

student is not required to retake the exam prior to using alternative demonstrations of competency. For the citizenship, science, and technology state diploma seals, permits use of course grades of B or higher that correspond with end-of-course exams (or an appropriate course for technology) that the student completed prior to transferring. This exception does not apply if the student takes a course that has a corresponding end-of-course exam after enrolling in the high school. (R.C. 3313.618, 3313.6114.)

3. Diploma seals (R.C. 3313.6114.)
 - a. **Citizenship and science seals** – In addition to current options, permits students to substitute a grade of “B” or higher in specified courses offered by the student’s high school to obtain a citizenship seal or a science seal. Students who take an alternate assessment may earn the citizenship or science seal by attaining a score established by the state board on the alternate assessments in social studies or science.
 - b. **Industry-recognized credential seal** – Specifies that an industry-recognized credential (or group of credentials) earned by a student must equal at least the total number of points established under R.C. 3313.6113. Adds as an option for earning the seal obtaining a license issued by a state agency or board for practice in a vocation that requires an examination for issuance of a license.
 - c. **Locally-defined seals** – Districts and schools must recognize locally defined seals earned by a student at the district or school from which the student transfers, regardless of whether the district has developed guidelines for that seal. For locally-defined seals, districts must include a method to give transfer students proportional credit for progress the student was making towards earning that seal.
4. FAFSA data system – School district boards of education and school governing authorities must enter into a data sharing agreement with the chancellor of higher education for purposes of operating the free application for federal student aid (FAFSA) data system established under R.C. 3333.301. District must provide principals and school counselors with access to the data system to assist with efforts to support and encourage students to complete the application. (R.C. 3333.301 requires the chancellor and management council of the Ohio education computer network to establish a data system to track the FAFSA completion rate of school students in the state and permits publication and sharing of aggregate data.) (R.C. 3313.6026 and 3333.301 enacted; conforming changes in 3314.03, 3326.11, and 3328.34.)

J. **College Credit Plus**

1. Mature subject matter notice
 - a. **Participating colleges** – ODE and the department of a higher education must develop a permission slip regarding the potential for

mature subject matter in a course taken through CCP. A student's parent and the student must sign and include this permission slip with the student's application. Participating colleges must also include specified information in enrollment materials, orientation, and on their websites. (R.C. 3365.035 enacted.)

- b. **Secondary schools'** counseling information must include information about the potential for mature subject matter in CCP courses and notification that courses will not be modified based upon program enrollee participation regardless of where course instruction occurs. The information must include the permission slip described in R.C. 3365.035. (R.C. 3365.04.)
2. Remediation-free alternative – A student who is not remediation-free must meet an alternative option to be defined by the chancellor in consultation with the state superintendent. Students who qualified prior to the effective date of this amendment are grandfathered. (R.C. 3365.03.)
3. Formula Amount – The formula amount remains at \$6,020. Payments continue to be deducted from a school district's foundation payments. (R.C. 3365.01, 3365.04.)

K. **School Facilities**

1. Definition of “unused school facility” – For purposes of the requirement to offer unused school facilities for lease or sale to community, STEM, and college-preparatory boarding schools, modifies the definition of “unused school facility” to include any school building that has been used for direct academic instruction but less than 60% of the building was used for that purpose in the preceding school year. (R.C. 3313.411; effective July 1, 2022 per Section 812.10.))
2. Water bottles – Districts and schools **must permit students, teachers, and staff to carry and use water bottles** that are not easily breakable, have lids, and are filled exclusively with water. Water bottles may be prohibited from a library, computer or science lab, or other location where a district board determines it is dangerous. School boards may issue discipline for misuse of a water bottle. Water bottle filling stations must be accessible in compliance with the ADA. Stations may be integrated into a drinking fountain. Modifications to drinking fountain/water bottle stations in classroom facilities projects. (R.C. 3318.038.)

L. **Scholarship Programs**

1. Direct funding for EdChoice, Autism, and Jon Peterson scholarship programs. Increases scholarship amounts. (R.C. 3317.022, 3310.41, 3310.52, repeals 3310.08, 3310.09, 3310.55, and 3310.56.)
2. School building attendance zones – Requires school districts with an EdChoice-designated building to submit to ODE, by January 1 of each year, the attendance zone for students assigned to that building. By February 1, 2022, ODE must create a system under which a parent provides ODE with

the student's address and, within 10 days, ODE must notify the parent whether the student is eligible for an EdChoice scholarship. The student's resident district is not permitted to object if ODE's system determines the student is eligible. (R.C. 3310.07.)

3. Performance-based EdChoice building eligibility
 - a. Changes the criteria by which buildings are designated EdChoice eligible. (R.C. 3310.03(A)(1)(a)(ii) to (iv) effective immediately per Section 812.20.)
4. Performance-based EdChoice student eligibility
 - a. Eliminates the cap on the number of EdChoice Scholarships. (R.C. 3310.02, 3310.035.)
 - b. Extends eligibility, regardless of if they would be enrolled in a designated building, to those whose sibling received a scholarship in the prior year; foster children; children placed with a guardian, legal custodian, or kinship caregiver; prior autism or special needs scholarship recipients who no longer qualify; and others. (R.C. 3310.033 and 3310.034 enacted.)
 - c. Makes eligible high school students (including incoming 9th graders) who would otherwise be assigned to an eligible school (even if enrolled in a nonpublic school or homeschooled in the prior year). (R.C. 3310.03(A)(5).)
 - d. Phases out requirement that a student first be enrolled, or enrolling, in a building operated by the student's resident district or a community school to qualify for a performance-based EdChoice scholarship. (R.C. 3310.03(G).)
5. 2021-22 EdChoice eligibility – Establishes additional eligibility criteria for the 2021-2022 school year. (Section 733.70, effective immediately per Section 812.23.)
6. EdChoice administrative procedures – This section includes procedures ODE must follow in awarding scholarships. It also prohibits school districts from having access to EdChoice scholarship applications. (R.C. 3310.16 (partially vetoed), 3313.978.)

M. Community Schools (not all community school provisions are included in this summary)

1. Direct funding of community schools. (R.C. 3314.08, 3317.022(D), 3317.0110, 3317.026, Sections 265.215 and 265.225; repeals 3314.085.)
2. Location outside challenged school district – Permits new community schools to be established in any school district (not just challenged school districts). For community schools located in two school districts, permits the school's governing authority to designate one of those districts as the primary location and the district in which the school is located for purposes

of the school’s admission policy and all other purposes of Chapter 3314. (R.C. 3302.036, 3314.02, 3314.021, 3314.05, and 3314.353.)

3. Transportation – The deadline for a community school to notify a school district that the school is accepting responsibility for transportation is extended from January 1 to August 1. (R.C. 3314.091.)
4. Exception to limit on number of new E-schools – Sponsors rated “exemplary” may open up to two new dropout recovery internet- or computer-based community schools each year (not exceeding six new schools in a five-year period). (R.C. 3314.013.)

N. Auxiliary service funds

1. Permits all chartered nonpublic schools, instead of only nonreligious affiliated schools, to elect to receive auxiliary funds directly from ODE. Such election may only be rescinded in each odd-numbered year. (R.C. 3317.024; Section 265.170.)
2. Clarifies that services provided and materials purchased with auxiliary service funds may be acquired under contract with school districts, ESCs, health departments, or private entities. (R.C. 3317.062, 3317.064.)
3. Permits ESCs to apply to ODE for money from the auxiliary services reimbursement fund for payment of early retirement incentives and severance for personnel assigned to provide services at chartered nonpublic schools. (R.C. 3317.064.)

O. STEM schools

1. Direct funding for STEM schools. – (R.C. 3317.022, 3317.0110, 3317.026, 3326.31, 3326.32, 3326.34 to 3326.36, 3326.39, 3326.40, and 3326.51; R.C. 3326.44 enacted; Sections 265.215 and 265.225; repeals R.C. 3326.33.)
2. JVSDs and ESCs – Eliminates the authority for a JVSD or ESC to apply for STEM school designation. (Grandfathers schools operated by a JVSD that were designated as a STEM school prior to the amendment.) Schools operated by a JVSD, a comprehensive CTE, and a CTE compact may receive a STEM school equivalent designation, and may apply for distinction as a STEM program of excellence. ESCs may also apply for distinction as a STEM program of excellence. (R.C. 3326.03(B) and (H), 3326.032, and 3326.04.)
3. Grants – Repeals the requirement that the STEM committee award grants to STEM schools and STEM programs of excellence. (R.C. 3326.03, 3326.04.)
4. Proposals – Makes various changes to proposal requirements. Schools designated as a STEM school, a STEM school equivalent, or a STEM program of excellence will maintain the designation for five years unless the STEM committee revokes the designation. (R.C. 3326.03, 3326.032 and 3326.04.)

P. Early Childhood Education

1. Step up to quality program (SUTQ) – Maintains the requirement that providers generally must be rated through the SUTQ program to provide publicly funded child care, but removes the requirement that ODJFS ensure a certain percentage of providers are rated in the third highest tier or above by certain dates, with 100% rated in the third tier or higher by June 30, 2025. (R.C. 5104.29, 5104.31.)
2. Early childhood education program – Continues the GRF-funded early childhood education program. This program requires providers licensed by the Department of Education to be highly rated under the SUTQ program (or meet specified other specified requirements). Providers licensed by ODJFS must meet the third highest tier in SUTQ. ODE must require school districts, ESCs, DD Boards, and institutions to participate and rate in SUTQ and adhere to Ohio’s early learning program standards. (Section 265.20, 265.190.)

Q. Miscellaneous

1. Victims of sexual harassment – Permits public and chartered nonpublic schools to provide counseling to any victim of sexual harassment or sexually-related conduct. (R.C. 3319.47 enacted.)
2. Broadband – Appropriates funding for Broadband Development Grants. (Section 259.30.)
3. Academic distress commission moratorium – Prohibits the establishment of new academic distress commissions for the 2021-22 and 2022-23 school years. (Section 265.520.)
4. Academic distress commissions districts – Establishes a process under which districts currently subject to an academic distress commission may be relieved from commission oversight. (R.C. 3302.103 enacted; Section 812.20 (effective immediately).)
5. Educational savings accounts – Establishes the afterschool child enrichment (ACE) educational savings account program for students ages 6 to 18 whose families meet specified income limits. Upon request, \$500 will be credited to the account for FY 2022, with another \$500 in FY 2023. Appropriates federal coronavirus relief funds to support the accounts. (R.C. 3310.70 enacted, Section 733.60)
6. Ohio Code-Scholar Pilot Program – Requires Southern State Community College to establish the Ohio code-scholar pilot program to address technical workforce needs. (R.C. 3313.905 (effective immediately).)
7. Career Promise Academy Summer Demonstration Program to provide one grant to an eligible city school district to operate the academy in the summers of 2021 and 2022. (R.C. 3302.043 enacted, Section 812.20; effective immediately.)

8. Interscholastic athletic transfer rules – Repeals R.C. 3313.5316 that requires school districts, interscholastic conferences, or organization that regulate interscholastic athletics to have the same pupil transfer rules for public and nonpublic schools. (R.C. 3313.5316 repealed.)
9. Adult Diploma Pilot Program – Lowers the minimum age to participate from 22 to 20 year of age. (R.C. 3313.902.)
10. Regional council of governments – Specifies that a regional council of governments with an ESC serving as its fiscal agent that is established to provide health care benefits may acquire, establish, manage, or operate a separate business entity, including a corporation, company, organization, partnership, or trust, and utilize its unencumbered reserve funds in the acquisition, establishment, management, or operation of the business entity to cover the potential cost of health care benefits. (R.C. 167.03.)
11. Income tax credits for private school tuition, homeschooling expenses, and donations to nonprofit scholarship granting organizations for primary and secondary school students. (R.C. 5747.72, 5747.08, 5747.73, 5747.75, 5747.98; Sections 803.97 and 803.180.)

R. Vetoed

1. JCARR Review of EMIS Changes (R.C. 3301.85)
2. Changing community school sponsors (R.C. 3314.034)
3. Court of Claims Procedure for Open Meetings Law Violations
4. College Credit Plus – private secondary school participation (parts of 3365.02)

II. Summary of Recent Legislation – Note: Not all provisions of new laws are included.

A. S.475 – Juneteenth National Independence Day Act (effective June 17, 2021)

President Biden signed legislation to designate the Juneteenth National Independence Day as a legal public holiday. Note: The budget bill (HB 110) includes a provision designating Juneteenth a state holiday.

B. House Bill 82 – Report Cards, College Tests (effective Sept. 30, 2021)

This bill revises Ohio’s report card system as described below, and allows a parent or guardian of a high school student to opt their child out of required college admissions tests. (Note: This summary provides an overview of the changes to Ohio’s report card system, but does not include all changes.)

1. State report card revisions - Revises the state report card system for school districts and buildings, community schools, and STEM schools. It does not amend the separate report card system for joint vocational school districts/career-technical planning districts or dropout prevention and recovery community schools. The new report card system will be used beginning with report cards issued for the 2021-2022 school year.

- a. A star rating system of one to five stars will replace the A to F letter grades. (R.C. 3302.03(D)(3).)
 - b. The overall performance rating will include the following components: gap closing; achievement; progress; graduation; early literacy (formerly called K-3 literacy); and college, career, workforce, and military readiness (formerly called prepared for success). (R.C. 3302.03(D)(3)(a) to (f).)
 - i. For the 2021-2022 school year, no overall rating will be issued. However, ODE must determine a method to meaningfully differentiate between school districts and buildings to comply with any reporting or accountability provisions prescribed under state and federal law. ODE may also calculate an overall grade or performance rating for the 2021-2022 school year to identify buildings for support and improvement, and for community school sponsor ratings. (R.C. 3302.03(D)(3)(g)(i), Section 4.)
 - ii. The college, career, workforce, and military readiness component will not be rated for 2021-22, 2022-23, and 2023-24 school years. It may be rated beginning with the report card issued for the 2024-2025 school year if JCARR approves rules to be developed by ODE. (R.C. 3302.03(D)(3)(f).)
 - iii. The overall performance rating will assign one to five stars, including one-half star intervals. Equal weight must be given to achievement and progress. The weight given to gap closing, graduation, early literacy (and college, career, and military readiness when applicable) must also be equal, but these components must be equal to one-half the weight given to achievement. (R.C. 3302.03(D)(3)(g).)
 - c. There are changes to the performance measures used to calculate ratings for the six components. Additional data may also be incorporated into the components but must not factor into component performance ratings or the overall rating. (R.C. 3302.03(D)(1), (2), and (3).)
 - d. ODE must adopt rules by March 31, 2022 to establish performance criteria, benchmarks, and rating systems and the method to assign performance ratings to components and the overall performance rating. (R.C. 3302.03(D)(4).)
2. Performance index score – Additional end-of-course examinations are included (science, American history, and American government, or any approved substitute examinations (R.C. 3302.01.)
 3. Performance indicators – There are changes to performance indicators, including establishing a chronic absenteeism indicator. The gifted

performance indicator is modified. Performance indicators for state assessments must not require attainment of a proficiency percentage to meet an indicator. Instead, the performance indicators only must report proficiency percentages, trends, and comparisons. (R.C. 3302.02.)

4. Provisions contingent on letter grades – The bill substitutes the use of performance ratings for letter grades on various provisions that are contingent on report card results, such as the improvement system, exemption from certain rules and statutes, establishment of academic distress commissions, reading achievement improvement plans, right of first refusal in the disposal of school district property, etc.
5. Report card notifications (R.C. 3302.037 enacted).
 - a. Not more than 30 days after ODE issues report cards, school districts and buildings must notify parents that the report card has been released and how parents can access the report card. Notification may include mailed letters, emails, newsletters, or any other proactive notification method used by districts and buildings to contact parents.
 - b. Districts and buildings must also include a link to the report card on the district’s or school’s web site.
 - c. Superintendents must present the results of the district’s report cards to the board of education not later than thirty days after the report cards are issued.
6. Reading improvement plans – In addition to changing from letter grades to stars one of the criteria used to determine those districts that must submit a reading achievement improvement plan, the bill also lowers the percentage of students that attained at least a proficient on the 3rd grade English language arts assessment. Under current law, a plan must be developed if less than 60% attained a proficient score. The bill lowers this to 51% or less attaining at least a proficient score. (R.C. 3302.13.)
7. All-day kindergarten EMIS reporting – Districts must report the number of students enrolled in all-day kindergarten. (R.C. 3301.0714(B)(1)(s).)
8. High school diploma; diploma seal – See budget bill summary. Changes made by this bill were also part of the state budget bill. (R.C. 3313.6113, 3313.6114.)
9. College admissions assessments opt-out option (this provision is also included in the HB 110 budget bill) – Permits a parent or guardian to opt their child out of the required ACT/SAT assessment. This applies to students entering 9th grade for the first time on or after July 1, 2022. Schools must not administer the test to those who opt out. (R.C. 3301.0712.)
10. Community school sponsor evaluation system posting deadline for 2021-2022 delayed to August 15, 2021. (Section 5)

C. **House Bill 244 – COVID-19 vaccination in schools; children of military families** (signed July 6, 2021; effective October 13, 2021)

1. COVID-19 vaccines¹ (R.C. 3792.04 enacted) – Prohibits public schools and state institutions of higher education from:
 - a. Requiring an individual to receive a vaccine which has not been granted full approval by the U.S. food and drug administration; and
 - b. Discriminating against an individual who has not received such a vaccine, including by requiring the individual to engage in or refrain from engaging in activities or precautions that differ from the activities or precautions of an individual who has received such a vaccine.
 - c. Excludes hospitals or other health care facilities owned by or affiliated with a state institution of higher education.
2. Children of military families
 - a. **Technology-based educational opportunities** – Local education agencies (LEAs, meaning public school districts and schools) must permit children of military families to participate in technology-based educational opportunities when those students’ families receive permanent change of station orders to or within the state to transition from one military installation to another. LEA’s must also permit such students to participate when the students’ families receive permanent change of station orders out of the state until such time as the students are enrolled in the schools of a new LEA. (R.C. 3301.601 enacted.)
 - b. School district boards of education must permit the school-aged child of a member of the uniformed services who is relocating to or within the state on active duty and who is not a resident of the district during the enrollment period to apply for enrollment in the same manner and at the same time as students residing in the district. Districts must accept applications for enrollment by electronic means, including enrollment in a specific school or program within the district. The parent/guardian must provide proof of residence in the district within 10 days after establishing residence in the district. Acceptable forms of residency include a temporary on-base billeting facility, a purchased or leased home or apartment, or federal government or public-private venture off-base military housing. (R.C. 3301.65.)

¹ For more on this bill, see <https://www.bricker.com/insights-resources/publications/ohio-law-prohibits-covid-19-vaccination-mandates-for-public-schools-outlaws-mandates-of-vaccines-without-%E2%80%9Cfull%E2%80%9D-fda-approval-and-%E2%80%9Cdiscrimination%E2%80%9D-against-unvaccinated>.

D. **Senate Bill 126 – Hazing** (signed July 6, 2021; effective Oct. 7, 2021)

Also known as “Collin’s Law: The Ohio Anti-Hazing Act,” this legislation primarily concerns hazing policies at colleges and universities. Some changes to note:

1. Amends the definition of hazing to include coercing another to consume alcohol or a drug of abuse, and include acts to continue or reinstate membership in specified organizations (in addition to initiation into any student or other organization). (R.C. 2903.31(A).)
2. In addition to an administrator, employee, or faculty member, also prohibits a teacher, consultant, alumnus, or volunteer of any organization from recklessly permitting the hazing of any person associated with the organization. Under current law, this prohibition applies to primary, secondary, and post-secondary schools and other educational institutions. An amendment also applies the prohibition to any organization, defined in the act as including a national or international organization with which a fraternity or sorority is affiliated. (R.C. 2903.31(B).)
3. Prohibits any person from recklessly participating in the hazing of another when the hazing includes coerced consumption of alcohol or drugs of abuse resulting in serious physical harm to the other person. Also prohibits administrators, employees, faculty members, teachers, consultants, alumnus, or volunteers of any organization, including any primary, secondary, or post-secondary school or any other educational institution, from recklessly permitting the same. (R.C. 2903.31(C).)
4. Increases criminal penalties for those guilty of hazing. (R.C. 2903.31(D).)
5. Also prohibits administrators, employees, faculty members, teachers, consultants, alumnus, or volunteers of any organization, including any primary, secondary, or post-secondary school or any other educational institution, from recklessly failing to immediately report knowledge of hazing to a law enforcement agency. (R.C. 2903.311 enacted.)
6. Other provisions of the bill apply to institutions of higher education. (R.C. 3333.0417 and 3345.19 enacted.)

E. **House Bill 6 – Health Professionals** (effective May 14, 2021)

1. School nurse qualifications – HB 442, enacted late last year, established registration requirements in lieu of requiring a pupil services license for certain licensed professionals who work in schools, such as physical therapists and school nurses. To be eligible to register to work in schools, HB 442 required a nurse to hold a bachelor’s degree in nursing in addition to having a valid registered nurse license. This bill eliminates the requirement that a nurse’s bachelor’s degree be in nursing. (R.C. 3319.221.)
2. Educator preparation programs – An uncodified provision requires educator preparation programs to develop and implement plans to provide students with alternative experiences, assignments, or instruction in the 2021-2022

academic year to make up any hours or weeks of clinical experiences, including field experiences, student teaching, and internship placements, that students miss due to any COVID-19 related school closures. Students who complete the alternative experiences are eligible for licensure and endorsement recommendations in the same manner as a student who completes clinical experiences. (Section 8.)

F. **Senate Bill 30 – Ohio Overdose Awareness Day** (effective Sept. 7, 2021)

Designates August 31st as “Ohio Overdose Awareness Day.” On this day, a state flag displayed at a state building or public institution shall be flown at half-staff from sunrise until sunset. (R.C. 5.2269.)

G. **House Bill 170 – Covid-19 School Assistance** (signed June 2, 2021; effective immediately)

This bill appropriates federal coronavirus school relief funds and requires the Ohio Department of Education to receive controlling board approval prior to spending certain funds. (Section 203.10.) It also permits the Auditor of State to audit spending of these funds by the Ohio Department of Education and school districts. (Section 733.20.)

H. **Senate Bill 57 – Property Taxation** (effective August 3, 2021)

This bill makes several changes that may affect school district property values, including:

1. **COVID-19 property value reductions**

a. Permits filing a property valuation complaint for tax year 2020 to request the value of the property be determined as of October 1, 2020, instead of the tax lien date, if the value reduction is due to a circumstance related to the COVID-19 pandemic or a state COVID-19 order. Complaints that allege a general decline in economic or market conditions in the area or region shall be dismissed. Complaints must be filed within 30 days of the effective date, and an adjusted value will apply to subsequent tax year in accordance with R.C. 5715.19. A complaint may be filed regardless of whether a complaint was filed for any preceding tax year in the same interim period. (Section 3.)

b. COVID-19 valuation complaints may also be filed for tax year 2021 or 2022, regardless of whether a complaint was filed for any preceding tax year in the same interim period. (Section 4.)

2. **Property valuation complaints** – Specifies that valuation complaints or counterclaims may be filed by tenants of commercial or industrial property if the lease requires the tenant to pay the entire amount of taxes charged and the lease allows, or the property owner otherwise authorizes, the tenant to file such a complaint. (R.C. 5715.19.)

3. **Property tax exemption** for housing for individuals with mental illness or substance use disorder that meets specified requirements. Applies to tax

year 2021 and thereafter, and exemption applications or appeals pending as of the provisions effective date. (R.C. 5709.121(F) and Section 5.)

4. **Tax increment financing obligations** – Specifies that minimum service payment obligations are a covenant running with the land. “Minimum service payment obligation” does not include service payments or service charges in lieu of taxes. (R.C. 5709.91 and Section 6.)

I. **House Bill 74 – Transportation budget** (effective June 30, 2021; certain provisions effective March 31, 2021)

1. **Specialty license plates** – Eliminates the annual report that certain school districts and schools are required to submit to the Department of Mental Health and Addiction Services and to the Registrar of Motor Vehicles regarding the use of the contributions derived from that district or school’s specialty license plate. (R.C. 4503.772 repealed.)
2. **Preschool school zones** – Adds preschool programs operated by educational service centers that are located on streets or highways with a speed limit of 45 miles per hour or more to the definition of a school for purposes of the school zone speed limit law. An educational service center must request in writing that the county engineer create a school zone at the location of the program. The county engineer must then create the school zone by erecting the appropriate signs. (R.C. 4511.21(B).)

J. **House Bill 436 – Dyslexia** (effective April 12, 2021)

1. **Dyslexia guidebook and committee** – Requires the Ohio Department of Education (ODE) to establish the Ohio dyslexia committee. By December 31, 2021, the committee must develop a guidebook regarding the best practices and methods for universal screening, intervention, and remediation for children with dyslexia or children displaying dyslexic characteristics and tendencies using a multi-sensory structured literacy program. The guidebook is subject to final approval by the state board of education and developed and issued to districts and schools in an electronic format. (R.C. 3323.25 enacted.)
2. **Other dyslexia committee duties** – By December 31, 2021, the Ohio dyslexia committee must provide multi-sensory structured literacy program professional development for teachers in evidence-based dyslexia screening and intervention practices; assist districts and school in establishing multidisciplinary teams to support the identification, intervention, and remediation of dyslexia; develop reporting mechanisms; develop academic standards for kindergarten in reading and writing that incorporate a multi-sensory structured literacy program; and provide information about dyslexia training for teachers that is available at minimal or no cost. The committee may also recommend appropriate staff ratios personnel that should receive certification in identifying and addressing dyslexia, and whether professional development should require completion of a practicum. (R.C. 3323.25.)

3. **Dyslexia screening requirements (R.C. 3323.251 enacted)**
 - a. **Tier one dyslexia screening** – For the 2022-2023 school year, each district and school must administer a tier one dyslexia screening measure to students in grades K-3. For students in kindergarten, the screening must be administered after Jan. 1, 2023 but prior to Jan. 1, 2024). Screenings must also be administered to students in grades 4-6 if requested by the student’s parent/guardian/custodian, or a classroom teacher requests screening and parental permission is granted. For the 2023-2024 school year and thereafter, all kindergarten students must be screened, and students in grades 1-6 must be screened upon request. Tier one screening must also be administered to students transferring into the district or school midyear. (R.C. 3323.251(A)(1), (A)(2), and (B).)
 - b. **Tier two dyslexia screening** – A district or school may administer a tier two dyslexia screening measure to a student administered a tier one screening measure. If a tier two screening is administered, the school is not required to conduct six-week monitoring. Transfer students identified as at-risk of dyslexia must be administered a tier two screening in a timely manner. (R.C. 3323.251(A)(2) and (B)(2).)
 - c. **At-risk identification and monitoring** – Districts and schools must identify students at risk of dyslexia based on tier one screening and notify parents/guardians if a student is identified as being at risk. Progress must be monitored for six weeks. If no progress is observed, parents must be notified and a tier two screening must be administered. Tier two screening results must be reported to a student’s parent/guardian within 30 days. If the student is identified as having dyslexic tendencies, information on reading development, dyslexia risk factors, and evidence-based interventions must be provided to the parent. If students demonstrate dyslexia markers, parents must be provided with a written explanation of the district’s or school’s multi-sensory structured literacy program. (R.C. 3323.251(A)(3) to (A)(6).)
 - d. **Other district/school duties** – Districts and schools must comply with the dyslexia guidebook, select screening and intervention measures from those identified by ODE, establish a multidisciplinary team to administer screening and intervention measure, and report screening results to ODE. (R.C. 3323.251(C)).
4. **Professional development requirements** – By the beginning of the 2023-2024 school year, each teacher employed by a school district or other public school who provides instruction for students in kindergarten and first grade, including those providing special education instruction, must complete the number of professional development courses required by the Ohio dyslexia committee. (The committee must prescribe 6 to 18 clock hours.) In 2024-

2025, the requirement expands to teachers for grades two to three. In 2025-2026, the requirement includes special education teachers for students in grades four through twelve. Professional development completed prior to the effective date of this section that is then included on the approved list of courses will count toward the course requirement. (R.C. 3319.077 enacted; conforming amendment in R.C. 3323.11.)

5. **Multi-sensory structured literacy certification process** – Beginning in the 2022-2023 school year, school districts and other public schools must establish a multi-sensory structured literacy certification process for teachers providing instruction for students in grades K-3. The process must align with the dyslexia guidebook. (R.C. 3319.078 enacted.)
6. Community, STEM, and college prep boarding schools must comply with R.C. 3319.077, 3319.078, and 3323.251. (R.C. 3314.03, 3326.11, and 3328.24.)
7. **Scholarship programs** – Clarifies the testing requirements for a student attending a nonpublic school to maintain eligibility for an Educational Choice Pilot, Jon Peterson Special Needs, or the Pilot Project scholarship programs. (R.C. 3310.03, 3310.522, and 3313.976.)
8. **Cost study** – By Dec. 31, 2021, ODE must complete a report regarding the financial costs incurred by a sampling of not more than four school districts that have implemented screening, identification, and remediation services similar to those described in the bill. The report must include recommendations regarding how to effectively address the costs. (Section 4.)
9. **Repeals** R.C. 3323.25 (pilot project to provide early screening and intervention services for children with risk factors for dyslexia).

K. Senate Bill 68 – Police interaction instruction (effective April 12, 2021)

In addition to amendments concerning driver’s licenses and other motor vehicle statutes, this bill establishes certain standards and requirements for instruction on police and driver interactions.

1. **Model curriculum** – Directs the state board of education, in collaboration with the director of public safety, to develop a model curriculum for instructions in grades 9-12 on proper interactions with peace officers during traffic stops and other in-person encounters with peace officers. The statute sets forth topics that must be included. (R.C. 3301.0721(B).)
2. **School instruction** – Requires boards of education to provide instruction on proper interactions with peace officers during traffic stops and other in-person encounters using the model curriculum developed by the state board. This instruction must be included in one or more courses offered under R.C. 3313.603(C) for students in grades 9-12. Districts may modify the instruction as appropriate for the district’s community, but must solicit input from local law enforcement agencies, driver training schools, and the

community when doing so. (R.C. 3313.6025 enacted; conforming amendments to 3314.03, 3326.11, and 3328.24.)

L. **House Bill 123 – Safety and Violence Education Students Act (SAVE Students Act)** (signed Dec. 21, 2020; effective March 24, 2021)

1. **Suicide prevention, violence prevention, and social inclusion instruction**

a. Enacts R.C. 3301.221 to require ODE to maintain a list of approved training programs for instruction in suicide awareness and prevention, violence prevention, and social inclusion. The Act specifies training topics that must be included. (R.C. 3301.221 enacted.)

b. An amendment to R.C. 3319.073 specifies that school in-service training in youth suicide awareness and prevention must adopt or adapt the curriculum developed by ODE under R.C. 3301.221. (R.C. 3319.073.)

c. Requires school districts to include in their curriculum for grades six through twelve at least one hour or one standard class period per school year of each of the following topics: (1) evidence-based suicide awareness and prevention, (2) safety training and violence prevention, and (3) evidence-based social inclusion instruction. Districts must use a training program approved by ODE under R.C. 3301.221. Student assemblies may be used to satisfy these instructional requirements. A student's parent or guardian may submit a written request to have their child excused. Districts must begin providing this instruction beginning with the next school year that begins at least two years after the bill's effective date. (R.C. 3313.60.)

2. **Threat assessment plans, teams, and team training** (enacts R.C. 3313.669)

a. **Model threat assessment plans and training programs** – The Department of Public Safety (DPS) must develop a model threat assessment plan within two years of this section's effective date. DPS must also develop and maintain a list of approved training programs for completion by school threat assessment team members. (R.C. 5502.263 (enacted).)

b. **School threat assessment plans** – Administrators must incorporate into emergency management plans a threat assessment plan and a protocol for school threat assessment teams. Plans must be submitted to the director of public safety, rather than the state board

of education.² (R.C. 5502.262 (renumbered, formerly R.C. 3313.536).)

- c. **Threat assessment teams** – Not later than two years after the effective date of this section, school districts must create a threat assessment team for each school building serving grades six through twelve. Team members must complete an approved threat assessment training program upon appointment and once every three years thereafter. (R.C. 3313.669(A).)

If a building already has a similarly constituted safety team as of the bill's effective date, that team may also serve as the threat assessment team provided the team and its members comply with this section's requirements. Team members that completed a training program in the year preceding the required team implementation date that is later approved by DPS do not need to complete the training program for two years after the implementation date. New team members must complete training upon appointment. (R.C. 3313.669(B).)

- d. **Proof of training** – District buildings must include proof that each team member completed an approved training program in the building's emergency management plan submission. (R.C. 3313.669(C).)
- e. **Team composition** – Threat assessment teams must be multidisciplinary, when possible, and may include school administrators, mental health professionals, school resource officers, and other necessary personnel. (R.C. 3313.669(C).)
- f. **Liability** – Schools, school districts, members of boards of education or governing authorities, or district or school employees are not liable in damages in a civil action for injury, death, or loss to person or property allegedly arising from a team member's execution of duties related to school safety unless the team member's act or omission constitutes willful or wanton misconduct. (R.C. 3313.669(D).)

3. **SaferOH tip line registration or other reporting program required**
(enacts R.C. 3313.6610)

- a. Schools districts must register with the SaferOH tip line or enter into an agreement with an anonymous reporting program beginning with the first full school year that begins after this section's effective date. Alternative reporting programs must meet specified requirements. (R.C. 3313.6610(A).)

² H.B. 123 shifts administrative and rulemaking responsibilities related to school emergency management plans from ODE to DPS. (R.C. 3313.536, renumbered as R.C. 5502.262 by the bill; Section 7; conforming changes in R.C. 149.433, 3313.951, 3319.31, 3314.03, and 3737.73.)

- b. School districts must submit specified data to ODE and DPS at the end of the first full school year of the district’s participation. The data must include the following actions taken as a result of anonymous reports: the number and type of disciplinary actions taken in the previous school year; the number and type of mental wellness referrals; the race and gender of students subject to disciplinary actions and mental wellness referrals; and any other information ODE or DPS determines necessary. (R.C. 3313.6610(B).)
 - c. Tip line data and data reported to ODE or DPS pursuant to this section are security records and are not public records. (R.C. 3313.6610(C).)
 - 4. **Student-led violence prevention clubs** – Schools and school districts may designate a student-led violence prevention club for each school building serving grades six through twelve. If created, clubs must be open to all members of the student body, have an identified adult advisor, implement and sustain suicide and violence prevention and social inclusion training and awareness activities, and foster opportunities for student leadership development. (R.C. 3313.6611 (enacted).)
 - 5. **School safety training grants** – Specifies that educational service centers may receive school safety training grants. (Section 3.)
 - 6. **Pilot program for dropout recovery e-schools** – Requires ODE to establish a pilot program to provide additional funding for students enrolled in grades eight through twelve in eligible internet- or computer-based community schools for fiscal year 2021. Appropriates \$2.5 million in fiscal year 2021 to provide supplemental payments. (Sections 3 and 5.)³
 - 7. **Note:** The Ohio Department of Education has posted information on House Bill 123 at <http://education.ohio.gov/Topics/Student-Supports/Safety-and-Violence-Education-Students-SAVE-Stude>.
- M. **House Bill 442 – Occupational licenses** (effective April 12, 2021; certain provisions effective April 2023)

This bill amends various state occupational regulations and includes several provisions relevant to boards of education.

1. **Pupil services licenses** –

- a. This bill eliminates several occupational licenses, including pupil services license holders (school speech language pathologists, audiologists, school nurses,⁴ physical therapists, occupational therapists, and social workers, and a related substitute license). Instead, these positions must receive a registration from the Ohio Department of Education. The registration is valid for five years and

³ This section goes into effect immediately.

⁴ Note: HB 6, effective May 14, 2021, modified the requirements for registration as a school nurse.

costs \$150 for registration and renewal. To be registered, an individual must undergo a criminal records check and be enrolled in the rapback program. (R.C. 3319.221 enacted; prior version of R.C. 3319.221 (school nurse license) repealed; R.C. 3319.2210 (substitute pupil services licenses) repealed.)

- b. Various provisions amended to conform to this change. R.C. 3307.01 amended to include positions for which registration is required in the State Teachers Retirement System. (R.C. 3307.01, 3307.24, 3309.01, 3309.011, 3313.68, 3313.7110, 3313.7113, 3313.721, and 3319.222.)

c. Note: In May 2021, STRS Ohio posted a notice indicating that STRS Ohio membership would continue for these positions, but that there would be a change regarding school nurses. While only nurses holding an ODE School Nurse license are currently STRS members, a registered nurse with a bachelor's degree will also be considered an STRS Ohio member.⁵

2. **Ohio Teacher Residency Program (OTR)**

- a. In two years, the OTR will be reduced from four years to two years. The Resident Educator Summative Assessment and mentoring and counseling components remain. During the next two years, the State Board of Education must determine a method to condense the four-year program, including a timeframe by which individuals enrolled in the program prior to April 2023 must complete the program. (R.C. 3319.223, Section 4; conforming changes in R.C. 3319.227.)
 - b. The resident educator license will be valid for two years rather than four (effective April 2023). (R.C. 3319.22.)
 - c. Sections 3319.22, 3319.223, and 3319.227 of the Revised Code take effect two years after the effective date of this section. (Section 4.)
3. Repeals R.C. 3319.225 concerning temporary educator licenses for principals, superintendents, and other administrators (was superseded by the alternative administrator license).

N. **House Bill 263 – “Fresh Start Act”** (certain provisions effective April 12, 2021; others effective Oct. 9, 2021)

This bill revises initial occupational license restrictions on individuals convicted criminal offenses.

Note: The budget bill (HB 110), as introduced in February 2021, proposed to modify the applicability of some of the provisions below to the Department of Education. However, the enacted version of the bill did not include this provision.

⁵ See <https://www.strsoh.org/employer/news/2021/legislation-change-updates-membership-eligibility-for-registered-nurses.html> for the notice.

1. **List of disqualifying offenses for initial licensure** – The “Fresh Start Act” requires licensing authorities (including the Ohio Department of Education) to establish a list of criminal offenses for which a conviction, judicial finding of guilt, or plea of guilty may disqualify an individual from obtaining an initial license. The list must include only criminal offenses that are directly related to the duties and responsibilities of the licensed occupation. (R.C. 9.78; R.C. 9.79 enacted.)
 2. **Effect of criminal convictions on initial licensure** – An agency cannot refuse to issue an initial license based solely or in part on convictions, judicial findings of guilt, guilty pleas, criminal charges, “moral turpitude” or “lack of moral character,” or a disqualifying offense if specified time periods have elapsed. The provision specifies time periods within which a licensing authority may take a disqualifying offense into account. (There is no time limitation for an offense of violence or a sexually oriented offense.) (R.C. 9.79 enacted.)
 3. The bill does apply to educator licenses, school bus drivers, and others. Statutes governing permits or licensure of various educational employees are amended to eliminate “character” or “good moral character” as one of the minimum qualifications the state board of education may specify in rules. (R.C. 3310.43, 3319.088, 3319.225, 3319.30, 3319.31, 3319.39, 3327.10,
 4. The certificate from a school district superintendent or ESC for bus drivers no longer must include certification that the person “is of good moral character.” (R.C. 3327.10.)
 5. Criminal records checks for teachers must include any offense specified on the list adopted by the licensing authority (in addition to any offense on a list of offenses specified in the law governing educators’ licenses). (R.C. 109.572(A)(1).)
 6. Takes effect 180 days after the effective date (except for the enactment of R.C. 9.79). (Section 4.)
- O. **House Bill 444 – Township law; levy renewal** (most provisions effective April 12, 2021)
- H.B. 444, a bill addressing Ohio township laws, includes an amendment to R.C. 5705.25 that allows a levy renewal with an increase to be immediately placed on the tax duplicate rather than requiring the last year of the previous levy to run before imposing the new one. (R.C. 5705.25.)
- The amendment of R.C. 5705.25 applies to property tax questions considered at any election held on or after the 100th day after the effective date of this section. (Section 3.)

III. Special Education

- A. **Student who settled IDEA claims barred from bringing similar claims in court** – *Perez v. Sturgis Public Schools*, No. 20-1076, 2021 WL 2621117 (6th Cir., June 25, 2021)

A deaf student alleged his school district violated the Americans with Disabilities Act and Michigan law by not providing him the resources necessary for him to fully participate in class. Before filing this lawsuit, the student had filed a complaint with the Michigan Department of Education. The administrative law judge had scheduled a hearing on the IDEA claim, but the parties settled before the hearing and the IDEA claim was dismissed with prejudice. The Sixth Circuit considered whether settlement of the IDEA claim before completion of the administrative process barred the student’s current ADA lawsuit.

First, the court ruled the ADA claims were subject to the IDEA’s exhaustion provision. The crux of his complaint—that the school failed to provide the resources necessary for him to participate in and benefit from classroom instruction, misrepresented his academic achievement, and led him to believe he would graduate with a regular diploma—could not have been brought against a facility with no responsibility to educate him. The fact that the student requested a remedy which the IDEA does not allow, compensatory damages for emotional distress, does not make a difference. The court also determined that because the student settled his IDEA claim, he did not satisfy the IEA’s exhaustion requirement. There was never a determination that the student did not receive an appropriate education under the IDEA, so the student was not eligible to pursue his IDEA claim or any other corresponding statutory claim in court.

- B. **District’s IEP provided FAPE to student with reading deficiencies** – *C.K., a minor, by and through his parent, S.R. v. Board of Education of Sylvania City School*, No. 3:19 CV 2753, 2021 WL 463187 (N.D. Ohio, Feb. 9, 2021)

A district court agreed with a school district that a state-level review officer (SLRO) erred in determining the school district’s IEP for a student did not provide him a free appropriate public education (FAPE). The court held the parent was not entitled to reimbursement for private tutoring the student received for several school years and during summer breaks. First, the court found the SLRO erred in finding that the district failed to comply with procedural requirements by not considering private evaluations of the student. The district’s IEP did incorporate one of the evaluations, and the parent did not share a second evaluation report with the district. “The District is only obligated to consider private evaluations it possesses.”

Considering whether the student received FAPE, the court found the SLRO’s opinion was not entitled to deference as she did not display the requisite expertise. Her ultimate conclusion required the school district to violate court precedent by ordering the district to “fully and expeditiously remediate [the student’s] ongoing two-year reading deficit to close the gap and enable him to appropriately participate in grade level education.” As recent decisions make clear, the IDEA does not promise specific educational outcomes for any child, and the court cannot enforce this order upon the district.

The SLRO's opinion also concluded that "[t]he mainstreaming preference to educate in the least restrictive environment must be secondary to the educational benefits of learning to read and write." The SLRO's opinion "so grievously misstates the least restrictive environment standard" that the court could not defer to her finding that the intensive tutoring program satisfied the least restrictive environment standard for this student. The tutoring program ignored and actively harmed the student's other IEP goals by taking him out of the classroom for significant parts of the day, and the student's results did not show the reading tutoring far outweighed benefits toward other goals the student could receive through fuller classroom integration.⁶

C. **Section 504 plan must address behavior outside of school** – *E.P. v. Twin Valley School District*, No. 20-2078, 2021 WL 365878 (E.D. Pennsylvania, Feb. 3, 2021)

A federal district court in Pennsylvania upheld a hearing officer's determination that a school district failed to provide a free appropriate public education (FAPE) to a student in violation of Section 504 of the Rehabilitation Act ("Section 504"). From kindergarten through grade four, the student's mother repeatedly expressed concerns to the school district concerning the student's frequent meltdowns at home. The district, however, claimed it did not see evidence of the student's limitations at school, and that the student was regulating his emotions during the school day. The court concluded this was accurate to the extent the student was not acting out and disrupting the classroom. However, independent evaluations showed the student "was not actually 'regulating his emotions in school.' Rather, he was simply not directly expressing his dysregulation to his teachers, causing both physical symptoms in school and an even greater level of dysregulation at home."

The court concluded that "[u]nlike his peers who did not suffer from the same impairments, [the student's] exposure to the standard classroom without adequate accommodation exacerbated his conditions and led to a spiral of worsening outcomes..." By failing to provide reasonable accommodations, the district violated its Section 504 Child Find duty beginning in kindergarten and denied the student access to a FAPE throughout elementary school. The court also upheld the hearing officer's compensatory education award that required the district to pay for an independent evaluator to identify the compensatory services needed.

D. **Ohio's Operating Standards for the Education of Children with Disabilities: OAC 3301-51** (June 2021)

The Ohio Department of Education is amending Ohio's Operating Standards for the Education of Children with Disabilities.⁷ The State Board of Education approved the amendments during its June 2021 meeting, and the rules will now go to the Joint Committee on Agency Rule Review (JCARR).

⁶ Appealed to 6th Cir. Court of Appeals March 11, 2021 (No. 21-1250).

⁷ See <http://public.education.ohio.gov/StateBoardBooks/June%20-%202021/Voting%20Items/Item%2009%20-%203301-51-01%20thru%20-10%20and%20-20%20thru%20-21%20-%20Op.%20Stds.%20for%20Children%20with%20Disabilities%20-Backup%20Materials/>.

Note: Changes to 3301-35-15 (PBIS and restraint and seclusion) are included elsewhere in this document.

E. **Preschool children eligible for Special Education OAC 3301-51-11** (effective July 1, 2021)

Ohio Department of Education revisions to OAC 3301-51-11 go into effect July 1, 2021. The revised rule updates staffing ratios to be accordance with R.C. 3323.022. It also details requirements for delivery of services/least restrictive environment, including the requirement that a school district annually prepare and post a list of available preschool education service options in the community. Definitions of setting types and service provider workload requirements are also included. For a copy of the rule, see <http://www.registerofohio.state.oh.us/pdfs/3301/0/51/3301-51-11 PH FF N RU 20210616 1058.pdf>.

F. **Each Child Means Each Child: Ohio’s Plan to Improve Learning Experiences and Outcomes for Students with Disabilities** (Ohio Department of Education, March 2021)

The Ohio Department of Education (ODE) issued Each Child Means Each Child: Ohio’s Plan to Improve Learning Experiences and Outcomes for Students with Disabilities. According to ODE, the plan “outlines recommendations, tactics and action steps to improve the educational experiences of Ohio’s 270,000 students with disabilities enrolled in public schools.” See <http://education.ohio.gov/Topics/Special-Education/Improving-Educational-Experiences-and-Outcomes> for the report.

G. **Medical Marijuana: Autism; panic disorder with agoraphobia not approved –** (Ohio Medical Marijuana Control Program, June 2021)

At its June 2021 meeting, the State Medical Board declined to add autism and panic disorder with agoraphobia to the list of qualifying conditions for Ohio’s Medical Marijuana Control Program. The Board did approve three new conditions: spasticity, Huntington’s disease, and terminal illness.

H. **OSEP Letters** (2021)

The Office of Special Education Programs issues written guidance and clarification regarding implementation of the IDEA. For 2021 policy letters, see <https://sites.ed.gov/idea/policy-guidance/>.

1. Letter to Tymeson (May 12, 2021) – This letter addresses the provision of physical education, including adapted physical education, to children with disabilities under the IDEA, as well the qualifications/licensure required to teach specially designed physical education included in the IEP.

IV. Student Issues

A. **U.S. Supreme Court rules on off-campus speech case** – *Mahanoy Area School District v. B.L.*, No. 20-255, 141 S.Ct. 2038 (S. Ct., June 23, 2021)

The U.S. Supreme Court ruled that a school district violated a student’s First Amendment free speech rights when it suspended her from the junior varsity cheerleading team in response to a vulgar photo the student posted on Snapchat. The Court found the student’s post—that was made off-campus outside of school hours—did not cause a substantial disruption at school. The discussion of her Snapchat post took five to ten minutes of an Algebra class for “a few days,” and some members of the cheerleading team were “upset.”

Nevertheless, the Supreme Court simultaneously acknowledged that in certain circumstances, schools still have a significant interest in regulating off-campus speech. These include serious or severe bullying or harassment targeting particular individuals; threats aimed at teachers or other student; failure to follow academic rules related to lessons, writing papers, use of computers, or participation in other online school activities; and breaches of school security devices.⁸

B. **Student suspension appeal moot** – *Stanford v. Northmont City Schools*, No. 28884, 2021 WL 1054123 (Ct. app. 2nd Dist. Montgomery County, March 19, 2021)

A staff member reported that a student smelled of marijuana upon arriving at school, in violation of school policy. The assistant principal removed the student from study hall to confirm whether he had the odor of marijuana on his person and searched the student for marijuana. No marijuana was found. The student refused to respond to questioning, and was told he would be suspended for ten days and given the opportunity to make up any missed work. During his suspension, his parents removed him from the school and enrolled him in another district. A district designee affirmed the suspension. The student appealed his suspension to the court and alleged he was subjected to an unjustified search.

The court ruled the suspension appeal was moot because the student was no longer enrolled in the district and the case did not involve a matter of great general interest. While the authority of local school boards to make rules and regulations is a matter of public or great general interest, the student did not challenge the rules, only that the suspension was not supported by sufficient evidence. In addition, none of the exceptions to the mootness doctrine applied. The student did not suffer any delay or interruption in his education and was permitted to make up work and receive credit. The suspension did not appear in the student’s permanent record or on his official transcript. Because the suspension appeal was moot, the court did not address the merits of the unjustified search claim.

⁸ For more on this case, see <https://www.bricker.com/insights-resources/publications/what-happens-at-the-cocoa-hut-stays-at-the-cocoa-hut-us-supreme-court-determines-school-districts-discipline-of-cheerleader-violates-first-amendment>.

C. **Discriminatory discipline claims can proceed** – *Stanford v. Northmont City School District*, No. 3:19-cv-399, 2021 WL 2952777 (S.D. Ohio, July 14, 2021)

The parents of two students alleged the school district and school principal applied certain school policies to discipline students in a racially discriminatory manner. The court denied the defendants’ motion to dismiss the case. It found that accepting the parents’ factual allegations in their complaint as true, the complaint was sufficient to raise plausible constitutional claims. They contended with sufficient particularity that the district and principal violated the students’ rights under the Equal Protection Clause by suspending them in a racially discriminatory manner. The court explained that given the fact-intensive nature of the claims, and in light of the plausible equal protection claims, the best approach to resolving the case was for the parties to conduct discovery and for the court to review the claims on summary judgment.

D. **Title IX claims against school district governed by Ohio’s 12-year statute of limitations** – *Doe 1 v. Cleveland Metropolitan School District*, No. 1:20-cv-01695, 2021 WL 1334199 (N.D. Ohio, April 9, 2021)

Former students alleged they were sexually assaulted and abused by a former dance instructor, with the allegations spanning more than a decade. The students claimed that school administrators failed to conduct a Title IX investigation after criminal charges were brought against the teacher in 2002 when a student (not a party to this case) reported an incident to the Cleveland Aids Taskforce. (The teacher was acquitted of unlawful sexual conduct with a minor in 2004.) The plaintiffs in this matter did not come forward with allegations of abuse until 2020, when one of the plaintiffs posted his allegations on his Facebook page. Others then began sharing their stories. Plaintiffs brought claims against the school district, school principals, and the former teacher. The school defendants filed a motion to dismiss which the court granted in part and denied in part.

Citing Ohio Rev. Code 2305.111(C), the court first determined that the applicable statute of limitations for the claims brought under Title IX was twelve years, rather than Ohio’s general two-year limit for personal injury claims. “Here, the gravamen of Plaintiffs’ claims arises from claimed sexual assault and abuse, even though pled under Title IX.” The plaintiffs ages ranged from 21 to 29 when they filed suit, within the twelve-year limitation from when they turned eighteen.

The court ruled the school district was entitled to immunity for the negligent hiring, supervision, and retention claim. However, the negligence allegations against the former principal and assistant principals, sued in their individual capacities, included sufficiently specific detail to state a plausible claim of wanton or reckless conduct. The complaint alleged the administrators failed to implement corrective measures despite having knowledge of a substantial likelihood that the former teacher was abusing students, failed to conduct a Title IX investigation, and failed to investigate the teacher’s conduct despite having knowledge that the teacher shared hotel rooms with students on school-sponsored trips. “[T]he Court cannot say that individuals with actual knowledge of a demonstrated risk of sexual assault

who failed to take any action to address that risk does not as a matter of law meet the standard of wanton or reckless conduct under Ohio law.”

- E. **U.S. Supreme Court declines to take up school bathroom policy case – Gloucester County School Board v. Grimm**, Docket No. 20-1163 (U.S. Supreme Court, June 28, 2021)

The U.S. Supreme Court denied a petition for a writ of certiorari in this long-running case concerning a school board’s policy that required a transgender student to use either a unisex restroom or a restroom assigned to members of the student’s biological sex. The Supreme Court’s denial leaves in place a Fourth Circuit ruling that the school board’s restroom policy constituted sex-based discrimination.

- F. **Eleventh Circuit rules school bathroom policy violated equal protection rights of transgender student – Adams v. School Board of St. Johns County, Florida**, No. 18-13592, 2021 WL 2944396 (11th Cir., July 14, 2021)

The Eleventh Circuit Court of Appeals ruled that a school’s policy that barred a transgender student from the boys’ restroom violated the student’s equal protection rights. The court found the district’s method of assigning students to sex-specific bathrooms was arbitrary as it focused exclusively on the sex indicated on documents provided at the time of enrollment. A transgender student who updates his documents prior to enrolling in the district could use the bathroom matching the sex on his legal documents. A student who updates his documents after enrolling could not. The district also failed to show how its policy advances student privacy interests. There was no evidence of any “exposure” in the bathrooms as they contain separate stalls with doors that close and lock.

- G. **West Virginia court enjoins state law that prohibits transgender girl from joining girls’ track team – B.P.J. v. West Virginia State Board of Education**, No. 2:21-cv-00316, 2021 WL 3081883 (S.D. West Virginia, July 21, 2021)

A transgender girl entering sixth grade was told she would not be able to join the girls’ track team because of a recently enacted state law that prohibits “biological males” from participating on girls’ sports teams. The court found the state’s proffered objective for the statute—to provide equal athletic opportunities for female athletes and to protect female athletes while they participate in athletics—was not supported as applied to the student in this case. She has not undergone endogenous puberty, and will not have any inherent physical advantage over other girls. Furthermore, permitting her to participate on girls’ teams would not deprive other girls of athletic opportunities given the small number of transgender people who wish to participate in school-sponsored athletics. Given these facts, the court found the student was likely to succeed on the merits of her equal protection claim and issued a preliminary injunction to enjoin the state law.

The court also found the student was likely to succeed on the merits of her Title IX claim. She was excluded from athletics on the basis of her sex, she was harmed by the law, and she will be treated worse than girls with whom she is similarly situated because she is the only one who cannot join the team corresponding to her gender identity.

H. **Ohio’s policy prohibiting transgender individuals from amending birth certificates ruled unconstitutional** – *Ray v. McCloud*, No. 2:18-cv-00272, 2020 WL 8172750 (S.D. Ohio, Dec. 16, 2020)

Four transgender individuals who wished to amend their Ohio birth certificates to reflect their gender identity filed suit against the Ohio Department of Health and other agency officials (“Ohio”) for their categorical refusal to make the change. In December 2020, the court ruled that Ohio’s policy is unconstitutional and enjoined the state from enforcing it. The court found Ohio’s policy violates plaintiff’s substantive due process rights to informational privacy and discriminates against them in violation of the equal protection clause of the 14th amendment. Ohio’s policy “prohibits transgender people the ability to change the sex on their birth certificate in an arbitrary and unequal manner” and “a blanket prohibition against transgender people changing their sex marker is unconstitutional.”⁹

Note: The Ohio Department of Health has now put in place a method by which transgender people born in Ohio may obtain corrections to the sex marker on their birth certificate. A court-ordered correction of a birth certificate must be obtained from a probate court for correction of a birth certificate.

V. **Sunshine Law / Records**

A. **2021 Ohio Sunshine Laws Manual** – Ohio Attorney General (March 2021)

The 2021 Ohio Sunshine Laws manual is now available. The Manual and appendices can be found at <https://www.ohioattorneygeneral.gov/Legal/Sunshine-Laws>.

B. **Ohio Supreme Court to consider whether documents disclosed to a legal adversary lose attorney-client privilege protection** – *Hudson v. Greater Cleveland Regional Transit Authority*, No. 2021-0478, 2021 WL 2805737 (Ohio S. Ct., July 6, 2021)

The Ohio Supreme Court has agreed to hear a case concerning whether records voluntarily disclosed to a legal adversary no longer enjoy the protection of the attorney-client privilege and must be produced in response to a public records request. The records requestor, Hudson, had filed an internal discrimination complaint against the transit authority’s police chief. The transit authority retained outside counsel to provide legal advice and recommendations regarding the allegations, and provided a report and executive summary to the authority. The transit authority’s COO and CEO provided the police chief with a copy of the report to view, as the chief was responsible for the design and implementation of measures that would be taken in response to the recommendations. The chief shared the report with lieutenants and sergeants. Hudson was permitted to view the report but was

⁹ For more on this case, see <https://www.bricker.com/industries-practices/schools/insights-resources/publications/transgender-legal-update>.

not permitted to retain a copy. He then submitted a public records request for the report. The transit authority denied the request, citing attorney-client privilege.

The Eighth District Court of Appeals ruled the transit authority did not waive attorney-client privilege by disclosing the report to higher-level employees that would be responsible for implementing the policies and changes recommended in the report.

- C. **Quasi-Agency test requires public office to produce records based on its delegation of its public duty to a private entity** – *State ex rel. Armatas v. Plain Twp. Bd. Of Trustees*, No. 2020-0479, 2021-Ohio-1176 (Ohio S. Ct., April 8, 2021)

The appellant in this case sent an email to the township’s administrator requesting copies of certain invoices for legal services performed on the township’s behalf. The township denied the request, claiming it did not possess the invoices and did not have a duty to provide them because a claims administrator for the risk-management pool to which the township belonged hired and supervised the attorneys.

The Ohio Supreme Court disagreed, ruling that an invoice for legal services performed on a township’s behalf constituted a “public record” under the Public Records Act pursuant to the quasi-agency theory. While the Court has usually applied the quasi-agency test to determine whether a private entity may be required to produce public records, in this case it determined the test requires the township itself to produce records based on its delegation of its public duty to a private entity. If a requestor proves that a private entity prepares records in order to carry out a public office’s responsibilities, the requestor has met its burden without needing to establish whether the public office is able to monitor the private entity’s performance and has access to the records. “[A] requestor fulfills his burden once he sufficiently shows that the public office delegated the public duty to which the requested records relate. When such a delegation has been proved, contractual impediments to the public office's ability to monitor a contractor's performance and to access documents in the contractor's possession do not affect the office's public-records responsibilities.”

- D. **Use of consent agenda may violate Open Meetings Act** – *State ex rel. Ames v. Portage County Board of Commissioners*, 2021-Ohio-2374, 2021 WL 2944137 (Ohio S. Ct., July 14, 2021)

Nothing in the Open Meetings Act specifically prohibits the use of consent agendas to streamline certain routine items. A recent decision by the Ohio Supreme Court, however, may limit the use of consent agendas moving forward. In this case, the court considered a meeting of the Portage County Solid Waste Management District, which happened to occur during a recess of a meeting of the Portage County Board of County Commissioners. During the solid waste management district meeting, the only action item the board took was to adopt the consent agenda—which consisted of approving the prior meeting’s minutes and three separate resolutions. Because there was no regular agenda, the board adjourned after one minute and returned to the Board of County Commissioners meeting. The appellant contended the board did not state or make available the specific

resolutions being voted on, “effectively resulting in the board voting on the individual resolutions in secret.”

The court reasoned that, in this case, the board’s use of a consent agenda “constructively close[d] its public meetings,” which is an impermissible way to not comply with the Open Meetings Act. While the court does not suggest that consent agendas are a per se violation of the Open Meetings Act, the court does acknowledge that facts may exist where the use of this tool may not be permissible. For more on this case, see <https://www.bricker.com/insights-resources/publications/local-governments-be-careful-using-consent-agendas>.

- E. **Open Meetings Act: Executive session** – *State ex rel. Christopher Hicks v. Clermont County Board of Commissioners*, 2021-Ohio-998, 2021 WL 1169845 (Ct. App. 12th Dist. Clermont County, March 29, 2021)

A Clermont County resident filed a complaint alleging the county board of commissioners violated the Open Meetings Act when it conducted executive sessions improperly. The commissioners appealed the trial court’s ruling that the board violated the Act, contending the court erred by putting the burden on the board to prove that a violation did not occur. The commissioners argued it should be the resident’s burden to provide evidence that the executive session deliberations were noncompliant.

The appellate court disagreed, ruling the board must produce evidence not only that its minutes reflect it went into executive session for a permissible purpose, but also that the discussions during the meeting were consistent with the motion authorizing executive session. “The inability to produce any evidence of what was considered during the Nine Executive Sessions – whether it be by a claimed lack of memory or lack of adequate record-keeping – does not satisfy BCC's burden of production to show that the challenged meetings fell under one of the exceptions of R.C. 121.22(G) and was consistent with the motion to convene executive session.”¹⁰

VI. Employment Issues

- A. **Post-Janus Litigation – Exclusive Representation** – *Thompson v. Marietta Education Association*, No. 2:18-cv-00628, 2019 WL 6336825 (S.D. Ohio, Nov. 26, 2019); aff’d, 2020 WL 5015460 (6th Cir. Aug. 25, 2020); cert. denied, 2021 WL 2301972 (S. Ct. June 7, 2021)

On June 7, 2021, the U.S. Supreme Court denied review of a Sixth Circuit opinion upholding Ohio’s exclusive representation law. A teacher, who was not a member of the union, sued the Marietta Education Association and the Board of Education alleging that Ohio Revised Code sections 4117.04 and -06 violate her First and Fourteenth Amendment rights to free speech and free association. The U.S. Court of Appeals for the Sixth Circuit affirmed the district court’s decision upholding Ohio’s exclusive representation law, finding *Knight* controlled. “To be sure, *Knight's* reasoning conflicts with the reasoning in *Janus*. But the Supreme Court

¹⁰ Note: On July 20, 2021, the Ohio Supreme Court accept this decision for review (No. 2021-0611.)

did not overrule *Knight in Janus*. And when an earlier Supreme Court decision ‘has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to [the Supreme] Court the prerogative of overruling its own decisions.’” [Citations omitted.]

The Sixth Circuit also rejected the teacher’s First Amendment claims. The U.S. Supreme Court has held the First Amendment does not impose an affirmative obligation on the government to listen, to respond, or to bargain. Likewise, in *Knight*, the Court found a “person’s right to speak is not infringed when government simply ignores that person while listening to others.”

B. School board not obligated to bargain COVID-19 issues – *In the Matter of Eastern Local Teachers’ Association v. Eastern Local School District Board of Education*, No. 2020-ULP-10-0194 (State Employment Relations Board, March 11, 2021)

A teachers’ association alleged the board of education violated R.C. 4117.11(A)(5) by refusing to bargain over terms and conditions of employment. The union argued the school board had a duty to bargain issues related to the COVID-19 pandemic, whereas the employer believed the issues in the union’s MOU did not materially change the terms and conditions of employment and were within its management rights in dealing with issues surrounding the pandemic. SERB found no probable cause to believe the employer violated R.C. 4117.11. The employer met with the union to discuss its concerns, but the union “failed to show that the actions of the Employer have materially changed the terms and conditions of its members employment and why the Employer must agree to midterm bargaining with the Union regarding the issues set forth in its proposed MOU.”

C. Picketing restriction unconstitutional – *Portage County Educators Assoc. for Developmental Disabilities-Unit B, OEA/NEA v. State Employment Relations Board*, 2020-Ohio-7004, 2020 WL 7863314 (Ct. App. 11th Dist. Portage County, Dec. 31, 2020)

The Ohio Court of Appeals for the 11th District held that Ohio Revised Code 4117.11(B)(7)—which states that is an unfair labor practice to induce or encourage picketing at a public official’s residence or place of private employment during a labor relations dispute—is an unconstitutional restriction on speech. The State Employment Relations Board found the union committed an unfair labor practice when it induced members to picket at board members’ residences and places of private employment during a strike. The union appealed, arguing R.C. 4117.11(B)(7) is an unconstitutional content-based restriction on speech. The court agreed, finding that a violation of the statute “depends on the content of the message on the picket sign.” Furthermore, the state did not demonstrate the statute was necessary to serve a compelling state interest and was narrowly tailored to achieve that interest.

Note: On April 28, 2021, the Ohio Supreme Court certified a conflict between the holding in this case and the decision of the Seventh Appellate District in *Harrison*

Hills Teachers Assn. v. State Employment Relations Board (2016-Ohio-4661). (Ohio Supreme Court case nos. 2021-0191 and 2021-0190 consolidated.)

- D. **U.S. Supreme Court to consider whether First Amendment restricts board’s authority to censure member’s speech** – *Houston Community College System v. Wilson*, No. 20-804, 2021 WL 1602636 (April 26, 2021)

The U.S. Supreme Court agreed to hear a case concerning whether the First Amendment restricts the authority of an elected body to issue a censure resolution in response to a member’s speech.¹¹ This case involves a board of trustees of a community college district that censured one trustee for inappropriate conduct. The trustee filed suit, alleging the censure violated his First Amendment right to free speech. The Fifth Circuit Court of Appeals held that “a reprimand against an elected official for speech addressing a matter of public concern is an actionable First Amendment claim under § 1983.”

- E. **Professor’s refusal to use gender-identity-based pronouns entitled to constitutional protection** – *Meriwether v. Hartop*, No. 20-3289, 2021 WL 1149377 (6th Cir. March 26, 2021)¹²

The Sixth Circuit Court of Appeals ruled a professor plausibly alleged a university violated his free speech rights when it punished him for refusing to refer to a student using her preferred pronoun. The court determined *Garcetti*, a case that sets forth a general rule regarding government employees’ speech, did not apply as the First Amendment protects the free speech rights of professors at public universities when teaching. “Simply put, professors at public universities retain First Amendment protections at least when engaged in core academic functions, such as teaching and scholarship.”¹³ The court also found the professor’s refusal to use gender-identity-based pronouns was speech involving a matter of public concern, and the university’s interests did not outweigh the professor’s speech rights.

The professor also plausibly alleged the university’s application of its gender-identity policy was not religiously neutral in violation of the Free Exercise Clause. University officials purportedly exhibited hostility to the professor’s religious beliefs, and irregularities in its adjudication and investigation processes “permit a plausible inference of non-neutrality.”

- F. **Title VII did not require school to accommodate teacher’s religious objections to using transgender students’ preferred names** – *Kluge v. Brownsburg Community School Corp.*, No. 1:19-cv-2462, 2021 WL 2915023 (S.D. Indiana, July 12, 2021)

What’s in a name? A federal court in Indiana considered that question when deciding whether a public school discriminated against an orchestra teacher in violation of Title VII by failing to accommodate his religious beliefs. School policy

¹¹ See <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/20-804.html>.

¹² A petition for rehearing en banc was denied on July 8, 2021.

¹³ In a footnote, the court noted its decision in *Evans-Marshall v. Board of Education of Tipp City*, holding that “the First Amendment does not extend to the in-class curricular speech of teachers in primary and secondary schools,” distinguished college and university professors. 624 F.3d. 332 (6th Cir. 2010).

required teachers to refer to transgender students by their names and pronouns listed in the PowerSchool database. The school initially accommodated a teacher with religious objections by permitting him to refer to students using their last names, but withdrew that accommodation after receiving complaints from students and staff. The teacher had to either follow the name policy, resign, or be terminated.

The court agreed with the school that the last names only accommodation resulted in undue hardship to the school. Declarations of several transgender students showed that the teacher's use of last names only made them feel targeted and uncomfortable. One of the students dreaded going to the teacher's class and did not feel comfortable speaking to the teacher directly. Another student quit orchestra entirely. This evidence shows that the teacher's use of last names only "burdened BCSC's ability to provide an education to all students and conflicted with its philosophy of creating a safe and supportive environment for all students." The court also found that continuing to allow the last-name only accommodation that resulted in complaints could subject the school to a discrimination lawsuit brought by a transgender student, and that this liability risk also constituted an undue hardship.

Note: The teacher urged the Court to follow the Sixth Circuit's decision in *Meriwether v. Hartop*, 992 F.3d 492 (6th Cir. 2021), and conclude that using names and pronouns is more than a ministerial act and carries a specific message affirming an individual's gender identity. The court observed that *Meriwether* was not binding precedent in the Indiana court, involved a First Amendment claim rather than Title VII, and that courts have emphasized the distinction between public K-12 schools and universities in speech and other constitutional issues.

G. Teacher's work-related speech not entitled to constitutional protection – *Bushong v. Delaware City School Dist.*, No. 20-3847, 2021 WL 1040493 (6th Cir. March 18, 2021)

Following an incident with a student, a guidance counselor assigned to teach ESL students was reprimanded and reassigned to five periods of study-hall duty, work-credit counseling, and lunch duty. The teacher alleged her involuntary reassignment was in retaliation for expressing concerns about classroom discipline and control, communicating to school administration that rearranging class rosters would foster a better educational environment, requesting curriculum materials, and requesting an administrative presence at a meeting with a parent that she was required to attend. The court found the teacher's First Amendment claim was without merit, as her speech was made within the scope of her employment and pursuant to her official duties.

The court also ruled the teacher's age discrimination were without merit. Her complaint lacked "any factual allegations showing that the new position was so intolerable that a reasonable person would feel compelled to resign. A tolerable transfer, even if discriminatory, is simply not actionable under O.R.C. § 4112.14."

- H. **Principal’s speech not entitled to constitutional protection** – *Cherry Davidson v. Arlington Community Schools Board of Educ.*, No. 20-5954, 2021 WL 776735 (6th Cir. March 1, 2021)

A school principal alleged her termination was in retaliation for statements she made during a school board work session concerning a proposed change to the school’s mascot. The court found the principal’s speech was not protected under the First Amendment because she spoke as a public employee, not as a private citizen. The principal was invited to speak at the work session because her school’s mascot was at issue. At the session, the principal described polling parents and students to pick the mascot, that the mascot was a point of school pride, and that her staff would prefer the mascot not be changed. The principal admitted she would not have addressed the board at the work session without the permission of the superintendent, her immediate superior, and that she avoided saying anything critical about the superintendent. While the session was held after school hours, the principal’s contract notes she will be required to perform additional duties outside of regular school hours.

- I. **Substitute teacher alleges she was dismissed in retaliation for complaining of harassment** – *Meribethe Ingram v. Joseph Regano*, No. 1:19-cv-2926, 2021 WL 1214746 (N.D. Ohio, March 31, 2021)

A school volunteer, who also worked as a substitute teacher, alleged she was stripped of her substitute teaching employment and volunteer opportunities in retaliation for making a complaint that she was harassed by another teacher. The court dismissed the plaintiff’s procedural due process claims, as “Ohio law expressly holds substitute teachers do not possess a property interest in their positions.” Courts have also found that volunteers do not have a property interest in their volunteer positions.

The court did not dismiss the plaintiff’s equal protection, sex discrimination, or retaliation claims. Plaintiff plausibly alleged that the superintendent/compliance officer and the business manager treated female employees differently than male employees and afforded them less protection under the district’s anti-harassment policy. Her allegation that she lost her employment because of this discrimination in violation of Title VII was also sufficient to survive a motion to dismiss. The court also allowed plaintiff’s civil conspiracy claims to proceed against the two administrators in their individual capacities based on plaintiff’s allegation that they “improperly participated and directed the investigation into her retaliation complaint even though they were respondents to the complaint.”

- J. **Constructive discharge and reasonable accommodation** – *Caldwell v. Niles City School District*, No. 2020-T-0074, 2021 WL 1745824 (11th Dist., Trumbull County, May 3, 2021)

A teacher alleged she was constructively discharged based on her disability. The teacher had requested several accommodations, including the use of a scooter to travel between classes and to use while in the classroom. The district permitted the teacher to use the scooter between classes, but allegedly denied the request to use the scooter while teaching. The teacher continued to have difficulty with mobility,

prolonged standing, and walking while working in the classroom. Ultimately, she exhausted her leave and took several unpaid leaves of absence. After her STRS disability claim was denied, a meeting was held with district officials. During deposition, the treasurer testified the superintendent told the teacher she must either resign or return to work and that she would not be allowed to use the scooter in the classroom. The teacher then submitted her resignation.

The court ruled the trial court erred in granting summary judgment to the district. There were genuine issues of material fact as to whether the district constructively discharged the teacher based on her disability, and whether the district made a good faith effort to provide a reasonable accommodation. There is evidence in the record that the teacher made more than one request to use her scooter in the classroom, the district denied the requests, and the district made no alternative accommodation that would allow her to continue working. The court found one could reasonably infer this denial made the teacher's working conditions intolerable to a person with physical disabilities and that the teacher was compelled to resign as a result. Given the issue of fact as to whether the teacher resigned or was constructively discharged, there is also an issue of fact as to whether the teacher terminated the interactive process by resigning.

K. **School secretary was not constructively discharged** – *Miranda Guy v. Rock Hill Local School District*, No. 1:18-cv-893, 2021 WL 1146111 (S.D. Ohio, March 25, 2021)

A school secretary claims that she was denied procedural due process for her property rights (i.e. her employment contract) when the board interfered with her employment by forcing her to resign without just cause and without rational basis. The secretary alleged she was “tricked” into resigning because the school board misrepresented that it would lift the ban against her presence on school grounds if she resigned. The court found no evidence that the secretary was “tricked.” She was represented by counsel from the time she was placed on administrative leave to the time of her resignation three months later. She was offered a pre-disciplinary hearing but rejected it in favor of resignation, and there was no evidence the school board agreed her resignation was contingent on lifting the ban from school property. She was also granted additional time to submit her resignation and had at least 24 hours to negotiate the terms of resignation. Given the lack of evidence that her resignation was procured by coercion or duress, the board's motion for summary judgment was granted.¹⁴

L. **Custodian's termination not retaliatory** – *Grant v. Gahanna-Jefferson Public School District*, No. 20-3926, 2021 WL 1564333 (6th Cir., April 21, 2021)

Following his termination, a school custodian sued the school district claiming his termination was in retaliation for voicing concerns over various working conditions. The custodian's complaints included allegations of unpaid overtime. The district court granted summary judgment to the school district. It determined the custodian failed to establish a prima facie case of retaliation. Even if he had

¹⁴ This decision was appealed to the Sixth Circuit on April 23, 2021 (No. 21-3387).

established a prima facie case, he did not demonstrate that the district’s reasons for terminating him—a decline in his performance, accusations of harassing a coworker, and falsifying overtime—were pretextual.

On appeal, the Sixth Circuit considered whether the custodian’s termination was retaliatory in violation of the Fair Labor Standards Act. Affirming the district court’s decision, the Sixth Circuit found that even if the custodian could establish a prima facie case of FLSA retaliation, he did not establish pretext. The custodian claimed a video provided by the district did not prove the district’s allegation that he stole time. However, the district was also alerted to possible time theft when the employee reported overtime on a day that did not require much work. This fact with the video could support an honest belief that the custodian stole time. Likewise, allegations that the custodian harassed a coworker were supported by an honest belief as the coworker emailed the superintendent and complained to the superintendent in person. Nor did the custodian dispute the evidence of ongoing complaints about his proficiency in cleaning the restrooms.

M. Termination based on prior drug trafficking conviction was not discriminatory – *Stacey S. Williams v. Northeast Ohio Educational Service Center*, No. 1:21-cv-216, 2021 WL 2227746 (N.D. Ohio, June 2, 2021)

The plaintiff, a former non-licensed employee working in a school in Cleveland, was dismissed from his position after his employer learned he had an expunged conviction for drug trafficking. Plaintiff sued, alleging violations of Title VII, the Fair Chance Act (HR 1076), and Ban the Box laws. The district argued Ohio law (R.C. 3319.39 and OAC 3301-20-03) requires that those convicted of a violation of R.C. 2925.03 (drug trafficking) must be released from employment.

The court dismissed the complaint as it failed to identify a federal claim upon which relief may be granted. “Title VII prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin. 42 U.S.C. § 2000e–2(a). It does not prevent discrimination on the basis of prior criminal record.” Furthermore, the Fair Chance Act is only applicable to federal agencies and contractors, not local school districts, and state and local Ban the Box laws do not provide a basis for federal court jurisdiction.

N. FLSA Independent Contractor Status rule withdrawn – 86 FR 24303 (May 6, 2021)

The U.S. Department of Labor withdrew a final rule that was to go into effect March 8, 2021 addressing how to determine whether a worker is an employee or independent contractor under the Fair Labor Standards Act (FLSA).

The Department cited the following reasons for the withdrawal:

- The rule adopted a new “economic reality” test to determine whether a worker is an employee or an independent contractor under the FLSA.
- Courts and the department have not used the new economic reality test, and FLSA text or longstanding case law does not support the test.

- The rule would narrow or minimize other factors considered by courts traditionally; making the economic test less likely to establish that a worker is an employee under the FLSA.

The Department also filed a final rule on July 30, 2021 (86 FR ____) to rescind an earlier final rule entitled “Joint Employer Status Under the Fair Labor Standards Act” that went into effect March 16, 2020.

VII. Board Issues

A. **School personnel must complete a basic peace officer training program to go armed while on duty** – *Gabbard v. Madison Local School District Bd. of Educ.*, No. 2020-0612, 2021-Ohio-2557315 (Ohio S. Ct., June 23, 2021)

A coalition of parents challenged a school board’s decision to arm district employees in response to a school shooting incident at the high school. The parents argued R.C. 109.78(D)—which prohibits educational institutions from employing a person as a “special police officer, security guard, or other position in which such person goes armed while on duty” unless the person completed an approved basic peace officer training program—applied. The school board argued the General Assembly carved out an exception to this requirement when it enacted R.C. 2923.122(D)(1)(a), which prohibits deadly weapons in school safety zones unless the board of education provides written authorization to a person to convey or possess a deadly weapon in the zone.

The Ohio Supreme Court held that R.C. 109.78(D) applies to persons employed by schools as teachers, administrators, or other staff members if they go armed while on duty. The employee must complete an approved peace officer training program or have 20 years of experience as a peace officer, and this requirement cannot be circumvented by a school board authorization under R.C. 2923.122. For more on this case, see <https://www.bricker.com/industries-practices/schools/insights-resources/publications/ohio-supreme-court-increases-requirements-for-arming-school-staff>.

B. **School board’s public participation policy constituted impermissible viewpoint discrimination** – *Ison v. Madison Local School District Board of Education*, No. 20-4108, 2021 WL 2820989 (6th Cir., July 7, 2021)

Following a school shooting incident in the school’s cafeteria, the board of education began discussing arming some of its administrators, teachers, and support staff. Public meetings were held concerning the board’s decision to allow armed staff, and several members of the public (plaintiffs) contended they were prohibited from speaking. Plaintiffs filed suit, claiming the board’s public participation policy violates their First Amendment right to free speech. The Southern District of Ohio ruled the policy did not violate the First Amendment.

On appeal, the Sixth Circuit affirmed in part and reversed in part. Addressing the participation policy’s restrictions on “abusive,” “personally directed,” and “antagonistic” statements, the court found “[t]hese terms plainly fit in the ‘broad’

scope of impermissible viewpoint discrimination because. . . they prohibit speech purely because it disparages or offends.”

However, the court upheld the board’s preregistration requirement (that requires speakers to register in person prior to board meetings) as it narrowly served a significant government interest. The court cited the board’s argument that this requirement allows the board to reserve time for individuals most likely to participate in the meeting, and that the board experienced problems in the past with individuals registering to speak but then not appearing. The court also noted that those who cannot comply with pre-registration have ample alternative means of communicating with the board through e-mail or other school functions.

C. **District not liable under federal law for abuse perpetrated by someone impersonating a police officer** – *M.J. v. Akron City School District Board of Education*, No. 20-3461/3462, 2021 WL 2426620 (6th Cir., June 15, 2021)

A person hoping to restart the city’s Scared Straight Program impersonated a police officer and convinced school administrators and teachers that he worked for the Akron police department. Because they believed the impersonator was a police officer, school officials allowed him to roam an elementary school. The impersonator placed children in handcuffs, forced students to exercise, and even battered and verbally assaulted one child. Some of his victims sued the school board and several school employees. The court granted summary judgment in favor of the board and school officials, noting “[t]he Constitution does not guarantee a remedy for every wrong. That is unfortunately true in this strange case.”

The court held that under the state-created danger doctrine, the plaintiffs did not show that school officials were aware of a substantial risk of harm, that they took affirmative actions that created or increased this risk of harm, and that they responded to this risk with deliberate indifference. While one of the school officials, a principal, directed the impersonator to a room so he could discipline a student (an affirmative act), the principal had no knowledge of the impersonator ever attacking students and could not have inferred that the impersonator would throw a student against a wall, tables, and chairs and use racial epithets against the student. As for the claims against the school board alleging it failed to train employees in spotting dangers to students, the board could not be held liable as there was no underlying constitutional violation by the employees.

D. **School board entitled to immunity in school bus mix up** – *Cline v. Tecumseh Local School District Bd. of Educ.*, No. 2020-CA36, 2021 WL 1501499 (Ct. App. 2nd Dist. Clark County, April 16, 2021)

This lawsuit stemmed from an incident in which the children’s mother informed the school she would be picking up her children that day, but upon arriving at the school the mother discovered her children had already boarded the school bus and were en route to latchkey. When the bus driver returned the children to the school about 20 minutes later, an argument allegedly ensued between the driver and the mother.

The court held the school board and various school employees were entitled to statutory immunity. The parents asserted the employees' actions were manifestly outside the scope of their employment and were done with malicious purpose, in bad faith, or in a wanton or reckless manner such that immunity did not apply. However, the court ruled the allegations in the complaint were bare assertions that failed to rise to the level of actions done outside the scope of employment. While the driver's arguing with the parent was not professional, it could not be construed as having been done with malice, bad faith, or in a wanton or reckless manner. The intentional infliction of distress claim "reads almost like [the driver] kidnapped the children." The factual section of the complaint tells a less dramatic story: the children had been taken to latchkey.

E. **Court refuses to dismiss negligence action stemming from student injuries during science experiment** – *Doe v. Greenville City Schools*, No. 2020-CA-4, 2021 WL 2627493 (Ct. App. 2nd Dist. Darke County, June 25, 2021)

Two students were injured when a bottle of isopropyl alcohol caught fire and exploded during an experiment in their science class. The students alleged several school employees failed to provide proper safety equipment, such as a fire extinguisher, and failed to enact appropriate protocols for the supervision and protection of students during classroom activities. The court denied the employees' motion to dismiss, finding that whether they "consciously disregarded or were indifferent to the risk, and whether such disregard or indifference was a substantially greater deviation from the standard of care than ordinary negligence, are questions of fact."

The court also refused to dismiss claims against the school board. The board argued it was entitled to immunity because the absence of safety equipment cannot constitute a physical defect within or on the grounds of the building. The court disagreed, citing an Ohio Supreme Court ruling that indicated the absence of safety equipment could constitute a physical defect if the equipment were a legal or regulatory requirement. The case was remanded to the trial court for further proceedings.

F. **Parent alleges denial of access to football game discriminatory** – *Bonds v. Berne Union Local Schools*, No. 2:20-cv-5367, 2021 WL 1960463 (S.D. Ohio, May 17, 2021)

A parent filed suit against an athletic director (in his personal capacity) after the director denied the parent access to a football game in which his son was playing. The parent's claims included discrimination, retaliation, civil conspiracy, and intentional interference with custody. Addressing the athletic director's motion to dismiss the discrimination claims, the court found the parent adequately alleged the athletic director's decision to deny the parent entry, allegedly animated by race, interfered with the parent's fundamental right to parent his child. Therefore, the court refused to dismiss the race discrimination claims.

The court dismissed the Ohio law claim alleging intentional interference with custody. Ohio law permits a civil action to be brought where deprivation of custody results from a "child stealing crime." Because the parent did not allege the athletic

director denied him access to his son by way of a child-stealing crime, this claim could not proceed.

G. **U.S. Supreme Court rules request for nominal damages satisfies redressability element necessary for Article II standing** – *Uzuegbunam et al. v. Preczewski*, No. 19-968, 2021 WL 850106 (U.S. Supreme Court, March 8, 2021)

This case was brought by students at a public college who alleged the college’s speech policies—which designated speech areas on campus and prohibited speech that disturbed the peace and/or comfort of person(s)—violated the First Amendment. A student threatened with disciplinary action for allegedly violating this policy and another student who decided not to speak because of these events filed suit. They sought injunctive relief and nominal damages. After the suit was filed, the college changed its policy rendering the request for injunctive relief moot. The parties disputed whether the students maintained standing to sue based on the claim for nominal damages. The Eleventh Circuit held they did not.

The U.S. Supreme Court, resolving a circuit split, held that “[a] request for nominal damages satisfies the redressability element necessary for Article III standing where a plaintiff’s claim is based on a completed violation of a legal right.” As applied to this case, the student threatened with disciplinary action experienced a completed violation of his constitutional rights when the college enforced their speech policies against him. Nominal damages can redress this student’s injury. The lower court must determine whether the student who refrained from speaking established a past, completed injury.

VIII. Federal and State Guidance and Regulations

A. **Executive Order on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity** – Presidential Actions (March 8, 2021)

President Biden issued an Executive Order¹⁵ expressing the policy of his Administration that all students should be guaranteed an educational environment free from discrimination on the basis of sex, including discrimination in the form of sexual harassment, which encompasses sexual violence, and including discrimination on the basis of sexual orientation or gender identity.

He ordered the Secretary of Education to review all existing regulations, orders, guidance documents, policies, and any other similar agency actions that may be inconsistent with this policy within 100 days. The review must include the new Title IX regulations that went into effect August 14, 2020, and the Secretary must consider “suspending, revising, or rescinding—or publishing for notice and comment proposed rules suspending, revising, or rescinding—those agency actions

¹⁵ See <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/03/08/executive-order-on-guaranteeing-an-educational-environment-free-from-discrimination-on-the-basis-of-sex-including-sexual-orientation-or-gender-identity/> for the Order.

that are inconsistent with the policy set forth in section 1 of this order as soon as practicable.”

B. Notice of Interpretation: Enforcement of Title IX with Respect to Discrimination Based on Sexual Orientation and Gender Identity – U.S. Department of Education’s Office for Civil Rights, 86 FR 32637 (June 22, 2021)

In this notice, the U.S. Department of Education’s Office for Civil Rights (OCR) clarified its enforcement authority over discrimination based on sexual orientation and gender identity under Title IX in light of the Supreme Court’s decision in *Bostock v. Clayton County*. “OCR will fully enforce Title IX to prohibit discrimination based on sexual orientation and gender identity in education programs and activities that receive Federal financial assistance from the Department.”¹⁶

On June 30, 2021, the Biden administration issued the [White House Toolkit on Transgender Equality](#) that highlights steps that key agencies are taking to advance equity and justice for transgender individuals, and describes how schools can support transgender students.¹⁷ These documents and other resources are available at <https://www2.ed.gov/about/offices/list/ocr/lgbt.html>.

C. Dear Educator letter on available Title IX resources – U.S. Department of Education’s Office for Civil Rights (June 23, 2021)

The U.S. Department of Education’s Office for Civil Rights (OCR) issued a Dear Educator letter to highlight resources available to assist educators in providing an environment free from sex discrimination in all forms. These resources include the June 22, 2021 Notice of Interpretation described above; a fact sheet on confronting LGBTQI+ harassment in schools;¹⁸ OCR’s website with resources for LGBTQ+ students,¹⁹ an overview of Title IX law,²⁰ and frequently asked questions about sex discrimination.²¹

D. Questions and Answers on the Title IX Regulations on Sexual Harassment – U.S. Department of Education’s Office for Civil Rights (July 2021)

The U.S. Department of Education’s Office for Civil Rights (OCR) released a question and answer document on the Title IX regulations on sexual harassment. The topics include general obligations, the definition of sexual harassment, settings covered by the 2020 amendments, notice of sexual harassment, how schools must respond, formal complaints, witnesses and virtual appearances, supportive measures, length of investigations, live hearings and cross-examination, standard

¹⁶ For more information, see https://www.ed.gov/news/press-releases/us-department-education-confirms-title-ix-protects-students-discrimination-based-sexual-orientation-and-gender-identity?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=

¹⁷ See https://www.whitehouse.gov/wp-content/uploads/2021/06/WH-Toolkit-on-Transgender-Equality.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=.

¹⁸ <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-tix-202106.pdf>.

¹⁹ <https://www2.ed.gov/about/offices/list/ocr/lgbt.html>.

²⁰ <https://www2.ed.gov/policy/rights/guid/ocr/sexoverview.html>.

²¹ <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/sex.html>.

of proof, informal resolution, retaliation and amnesty, forms of sex discrimination other than sexual harassment, and religious exemptions.

The document also has an appendix that includes example policies used by elementary, secondary, and postsecondary schools. The Q&A is available at <https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf>.

E. **Review of Title IX regulations** – U.S. Department of Education’s Office for Civil Rights (June 2021)

In early April, the U.S. Department of Education (DOE) announced in a Letter to Students, Educators, and other Stakeholders that it would be undertaking a comprehensive review of all Title IX guidance and regulations.²² The hearing was held from June 7, 2021, to June 11, 2021.²³ Topics covered during the hearing include the definition of sexual harassment; actual knowledge; trauma-informed approach to responding to allegations of Title IX misconduct; addressing sexual orientation, gender identity, and gender expression; live hearings and cross-examinations; and the grievance process.

The Unified Agenda²⁴ for the U.S. Department of Education indicates they expect to issue their NPRM for new Title IX regulations in May 2022. Therefore, the current regulations will remain in effect for the coming 2021–2022 school year, and perhaps longer. For additional information on the topics discussed during the hearing, see <https://www.bricker.com/industries-practices/schools/insights-resources/publications/public-hearings-on-title-ix-raise-questions-for-coming-guidance-and-regulatory-changes>.

F. **Request for Information: Nondiscriminatory administration of school discipline** – U.S. Department of Education’s Office for Civil Rights, 86 FR 30449 (June 8, 2021)

The U.S. Department of Education’s Office for Civil Rights (OCR) issued a notice requesting information, research, and suggestions regarding the administration of discipline in pre-K-12 schools. OCR indicated it was soliciting comments “to inform determinations about what policy guidance, technical assistance, or other resources would assist schools that serve students in pre-K through grade 12 with improving school climate and safety, consistent with the civil rights laws that OCR enforces, to ensure equal access to education programs and activities.” The comment deadline was July 23, 2021.²⁵

²² For the hearing announcement, see <https://www.ed.gov/news/press-releases/department-educations-office-civil-rights-launches-comprehensive-review-title-ix-regulations-fulfill-president-bidens-executive-order-guaranteeing-educational-environment-free-sex-discrimination>.

²³ A transcript of the hearing is available at https://www2.ed.gov/about/offices/list/ocr/docs/202106-titleix-publichearing-complete.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=.

²⁴ <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1870-AA16>.

²⁵ See <https://www.federalregister.gov/documents/2021/06/08/2021-11990/request-for-information-regarding-the-nondiscriminatory-administration-of-school-discipline>.

G. **School Nutrition Programs: Waiver update for school year 2021-2022** – U.S. Department of Agriculture (April 20, 2021)

The U.S. Department of Agriculture announced the extension of nationwide waivers through the 2021-2022 school year, including the Seamless Summer Option, summer food service program reimbursement rates, non-congregate meal service, meal time requirements, allowing parents/guardians to pick up meals, specific school meal pattern flexibility, offer versus serve flexibility for high schools, and area eligibility for afterschool programs. The school meal pattern waiver allows states to grants requests from program operators for various nutrition standards such as sodium, whole grains, milk, and vegetable subgroup offerings. See <https://www.fns.usda.gov/cn/child-nutrition-response-90> for additional information.

H. **OAC 3301-91 Standards for School Lunch and Breakfast Programs** – Ohio Department of Education (May 12, 2021)

The Ohio Department of Education accepted comments on rules governing standards for school lunch and breakfast programs. Proposed changes address requirements from R.C. 3313.813 concerning an extension of time to establish a breakfast program when statutorily required to do so. A proposed new rule concerns the R.C. 3313.813 requirement to establish meal programs to support intervention services. Another proposed amendment addresses the requirement to prepare an annual report and presentation regarding compliance with nutrition standards. The comment deadline was June 14, 2021.²⁶

I. **OAC 3333-1-65 to 3333-1-65.9 College Credit Plus rules** – Ohio Department of Higher Education (effective May 10, 2021)

The Department of Higher Education recently amended the College Credit Plus rules. See <https://codes.ohio.gov/ohio-administrative-code/chapter-3333-1> to review the rules. Changes include requiring secondary schools to include the intent to participate form as part of the informational session (3333-1-65.1), and clarification of the thirty credit hour limit and effect of school policies that may cause student to exceed same (3333-1-65.2). R.C. 3333-1-65.2 also includes the addition of language that a secondary school may not adopt a policy that purposely limits a student's ability to fully participate in the program.

J. **OAC 3301-24-11 and -12 Alternative principal license; alternative superintendent and administrative specialist license** – Ohio Department of Education (adopted by State Board April 2021; filed with JCARR May 10, 2021; to be refiled status June 2021)

The Ohio Department of Education filed proposed changes to these rules with JCARR in May 2021. However, in light of public testimony during the Chapter 119 in June, the board decided to return the rules to its committee for further consideration. To address concerns raised during public testimony, in July 2021, the committee recommended amending the rules to clarify and reinforce the

²⁶ See <http://education.ohio.gov/About/Ohio-Administrative-Code-OAC-Rule-Comments> for more information.

Credential Review Board’s authority to review educators on a case-by-case basis to develop an individualized plan leading to alternative or professional administrator licensure, and to establish a process through which individuals interested in pursuing an alternative license can verify eligibility prior to employment. See <http://public.education.ohio.gov/StateBoardBooks/July-2021/Teaching,%20Leading%20and%20Learning%20Committee/> for more information.

Revisions proposed earlier include changes to mentorships and who may serve as a mentor, and a change to 3301-24-12 would require courses in school law and school finance as part of the required semester hours for advancement.

K. OAC 3301-23-41 Twelve hour or forty hour temporary teaching permit for qualified nonlicensed individuals – Ohio Department of Education (changes proposed March 2021)

The Ohio Department of Education posted proposed revisions to this rule to reflect recent revisions to R.C. 3319.301 made by S.B. 89.²⁷ A State Board of Education vote was scheduled for June 15, 2021.

L. OAC 3301-24-16 and -17 Senior and lead professional educator licenses – Ohio Department of Education (changes proposed March 2021)

The Ohio Department of Education proposes amending the above rules to better align with definitions outlined in OAC 3301-24-01, remove references to the eight-year professional teaching certification, and streamline and clarify the language. Comments were due April 17, 2021.²⁸

M. OAC 3301-24-08 Professional or associate license renewal – Ohio Department of Education (changes proposed March 2021)

The Ohio Department of Education posted proposed revisions to OAC 3301-24-08 to “reduce the number of continuing education hours required to renew a license that has lapsed for more than five years; more closely align with the language in OAC 3301-24-23 regarding licensure renewal processes and procedures; and create a new licensure option for educators whose licenses have lapsed for more than one year to re-enter the education profession more easily.” A State Board of Education vote was scheduled for June 15, 2021.²⁹

N. OAC 3301-16 Graduation rules – Ohio Department of Education (changes proposed June 2021)

The State Board of Education is considering amendments to OAC 3301-16-01, -05, -06, and 07 that address high school graduation and assessments for high school

²⁷ See http://public.education.ohio.gov/StateBoardBooks/May-2021/Teaching,%20Leading%20and%20Learning%20Committee/02_OAC_3301-23-41_Twelve_or_Forty_Hour_Temporary_Teaching_Permit_May2021.pdf.

²⁸ See <http://public.education.ohio.gov/StateBoardBooks/July-2021/Voting%20Items/Item%2004%20-%203301-24-16,%20-17%20-%20Educator%20License%20-Backup%20Materials.pdf>.

²⁹ See http://public.education.ohio.gov/StateBoardBooks/May-2021/Teaching,%20Leading%20and%20Learning%20Committee/03_OAC_3301-24-08_Professional_or_Associate_License_Renewal_May2021.pdf.

students. No changes are proposed to 3301-16-01 (GPA calculation chart for alternative pathway), 3301-16-06 (retaking end-of-course examinations) .

Revisions to OAC 3301-16-05 would amend the performance level for Algebra I and English language arts II from proficiency to competency to align with long-term graduation requirements in R.C. 3313.618. 3301-16-07 amendments would remove the reference to physical science as it is no longer available.³⁰

O. **OAC 3301-42-01 Criteria for enrolling eligible adults in public secondary education programs** – Ohio Department of Education (changes proposed June 2021)

This rule addresses the admission of individuals without tuition under R.C. 3313.645 for participation in vocational education. Proposed changes to this rule remove the requirement that the amount of instruction per individual does not exceed 2,000 hours and to remove certain admission considerations. A provision was added addressing the requirement to keep participants separated from the K-12 population.³¹

P. **OAC 3301-35 Operating Standards for Ohio Schools** – Ohio Department of Education (effective May 24, 2021)

Revisions to the Operating Standards for Ohio Schools contained in OAC 3301-35-01 to 3301-35-10 were filed with JCARR on March 9, 2021. The revised rules (with the exception of 3301-35-04) went into effect May 24, 2021.³²

1. ODE proposed amending OAC 3301-35-04 to eliminate the requirement that schools provide for the study of foreign language, technology, family and consumer science, and business education. The Ohio Common Sense Initiative recommended maintaining this requirement, stating it would “have a direct and adverse impact on businesses who depend on Ohio’s education system to train workers to fill its workforce needs.” At its April 12th meeting, a State Board of Education committee recommended refileing the rule as adopted by the Board last July (retaining elimination of the above curriculum requirements).³³

Q. **PBIS and restraint and seclusion rule** – Ohio Department of Education, OAC 3301-35-15 (effective June 24, 2021)

At its November 2020 meeting, the State Board of Education approved revisions to OAC 3301-35-15 “Standards for the implementation of positive behavior

³⁰ See <http://public.education.ohio.gov/StateBoardBooks/July-2021/Performance%20and%20Impact%20Committee/>.

³¹ See http://public.education.ohio.gov/StateBoardBooks/July-2021/Teaching,%20Leading%20and%20Learning%20Committee/02_OAC_3301-42-01_Criteria_for_Enrolling_Eligible_Adults_in_Public_Secondary_Education_Programs_July2021.pdf.

³² See www.registerofohio.state.oh.us for proposed changes.

³³ See http://public.education.ohio.gov/StateBoardBooks/April-2021/Emerging%20Issues%20and%20Operational%20Standards%20Committee/2_3301-35-04%20Materials%20v2.pdf.

intervention supports and the use of restraint and seclusion.” The rules were filed with JCARR on April 9, 2021, and are effective June 24, 2021.

ODE’s summary of changes: “New paragraphs have been added to provide for additional definitions, professional development requirements for the implementation of positive behavioral interventions and supports, to account for students with multiple incidents of restraint and/or seclusion, and to provide a restraint and seclusion complaint process for parents who believe a school district has violated certain provisions of the rule.” Other changes include requiring districts to ensure there is a support plan in place for substitute teachers. See <https://codes.ohio.gov/ohio-administrative-code/rule-3301-35-15> for the rule.³⁴

R. School Child Program and Child Day-Care Programs rule amendments – Ohio Department of Education, OAC 3301-32 and 3301-37 (filed April 2021; effective July 1, 2021)

At its November 2020 meeting, the State Board of Education voted to approve changes to OAC 3301-32 and 3301-37 (rules for child day-care and school child programs licensed by ODE). The rules were filed with JCARR on April 9, and go into effect July 1, 2021. The amendments ensure the regulations meet or exceed R.C. 5104 (as required by R.C. 3301.53) and comply with the federal Child Care Development Block Grant. Other revisions were made to reduce confusion or inconsistency between programs licensed by ODE and the Ohio Department of Job and Family Services, and to eliminate words, definitions, or programs that are duplicative or no longer exist.³⁵

The foregoing is a summary of legal developments, and this document and the accompanying presentation are not intended to offer legal advice. Please be sure to consult the full text of legislation and cases. Also, please be sure to consult competent legal counsel for specific legal issues.

³⁴ Additional information is available at <http://education.ohio.gov/Topics/Student-Supports/PBIS-Resources>.

³⁵ Note: Emergency rules addressing the COVID-19 pandemic are not included in this summary.