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2019

LEGAL UPDATE

Presented By

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

A. **Senate Bill 107 – Campaign finance statements** (signed July 18, 2019)

Expands the list of entities that may file campaign finance statements electronically, including (but not limited to):

1. A campaign committee of a candidate for an office other than a statewide office, the office of member of the general assembly, or the office of judge of a court of appeals;
2. A political action committee or political contributing entity whose contributions whose contributions and expenditures pertain only to local candidates and issues;
3. Candidates for member of the State Board of Education. (R.C. 3517.106)

The amendments described above take effect one year after January 1, 2020 (Jan. 1, 2021). (Section 3.)

B. **Senate Bill 57 – Hemp** (signed and effective July 30, 2019)

This bill legalizes hemp (by excluding hemp from the definition of marijuana) and permits any person to possess, buy, or sell hemp or a hemp product. A hemp product is defined as any product made with hemp that contains not more than 0.3 percent delta-9 tetrahydrocannabinol (THC), the psychoactive component of the plant. Hemp products include cosmetics, personal care products, dietary supplements or food intended for animal or human consumption, cloth, cordage, fiber, fuel, paint, paper, particleboard, and any other product containing one or more cannabinoids derived from hemp, including cannabidiol (CBD).

The State Department of Agriculture will establish a Hemp Cultivation and Processing Program that will issue licenses to persons seeking to cultivate or process industrial hemp or hemp products. Land used to cultivate hemp by a licensed person will qualify for property tax reduction under the current agricultural use valuation (CAUV) program.

Note that while products containing CBD may now be legal in Ohio, this does not alter employers' obligations to drug-test certain employees under federal law (such as school bus drivers). Consuming a high enough quantity of CBD oil could result in a positive drug test, and even hemp-based CBD products can contain traces of THC. Also note that at this time, the only FDA-approved product that contains CBD is Epidiolex, used for the treatment of certain seizure disorders. For more information, see https://www.bricker.com/insights-resources/publications/ohio-legalization-of-hemp-cbd-oil-may-mean-relief-for-some-but-more-headaches-for-employers.

C. **House Bill 491 – Pupil services personnel substitute license; Treasurer liability; Teacher licensure verification; School work during suspensions; Graduation options; SRO training clarification** (effective March 20, 2019)

Substitute Pupil Services Personnel Licenses

1. The State Board of Education is required to issue substitute licenses to speech-language pathologists, audiologists, registered nurses who hold bachelor's degrees in nursing; physical therapists; occupational therapists; physical therapy assistants; occupational therapy assistants; and social workers. Applicants must submit a copy of the currently valid occupational license and materials required for a background check and enrollment in the retained applicant fingerprint database. (New R.C. 3319.2210.)

2. School districts that employ someone under this section are prohibited from employing them in a non-substitute capacity unless the person satisfies applicable licensure or permit requirements. (New R.C. 3319.2210(E).)

School Treasurer Liability

3. Limits school treasurer liability for loss of public funds when the treasurer has performed required duties with reasonable care, and states that a treasurer will be liable only when the loss results from the treasurer's negligence or other wrongful act. (R.C. 3313.25(B)(1).)

4. The department of education shall not consider the loss of public funds not resulting from the treasurer's negligence or other wrongful act a violation of the treasurer's professional duties, provided the treasurer has performed all duties required of the treasurer with reasonable care. (R.C. 3313.25(B)(2).)

5. No treasurer shall be liable for a loss of public funds that results from a treasurer's reliance on the accuracy of nonfinancial information or data of the school district, including reports in EMIS, pupil transportation reports, and licensure or other credentialing information unless the loss results from the treasurer's negligence or other wrongful act. (R.C. 3313.31.)

6. Amends R.C. 3319.36 concerning requirements for the payment of teachers. The teacher must file necessary reports and licenses with the superintendent (or designee) rather than the treasurer. The treasurer may pay a teacher upon receipt of a written statement from the superintendent (or designee) that the teacher has filed any necessary reports with the district including a license to teach the subject or grades taught and dates of validity. (R.C. 3319.36(A).)

7. No treasurer shall be liable for a loss of public funds for any payment made to a teacher pursuant to the law, unless the loss results from the treasurer's negligence or other wrongful act. (R.C. 3319.36(D).)

8. No superintendent shall be liable for a loss of public funds for any payment made to a teacher pursuant to the law, unless the loss results from the superintendent's negligence or other wrongful act. (R.C. 3319.36(E).

9. An uncodified provision (Section 6) specifies that amendments to R.C. 3313.25, 3313.31, and 3319.36 apply to any proceeding, investigation, or citation involving a school treasurer that has not reached final adjudication as of the act's effective date.

Graduation Requirements

10. Alternative graduation options are extended to the classes of 2019 and 2020. However, for the class of 2020: (1) attendance may not be used as an option; (2) a student must have a cumulative grade point average of 2.5 for courses taken in grades eleven and twelve (rather than just grade 12); (3) a capstone project must comply with guidance to be issued by the Ohio Department of Education; and (4) community service must comply with guidance developed by ODE in consultation with the Governor's Office of Workforce Transformation. ODE must develop and issue the guidance by May 31, 2019.[1] (Uncodified Section 3.)

11. Note: The budget bill (Ohio H.B. 166) enacted graduation changes for students entering ninth grade on or after July 1, 2019.

School work during suspensions – Strikes the language that was effective November 2, 2018 and makes the intent more clear:

12. Boards shall adopt a policy establishing parameters for completing **and grading assignments** missed during a suspension.

13. The policy shall allow the student to make up the work AND receive at least partial credit for completed assignments.

14. The policy may permit grade deductions as a result of the suspension.

15. The policy shall prohibit receipt of a failing grade on a completed assignment solely on account of the suspension. (R.C. 3313.66.)

School Resource Officer training clarification

16. Clarifies which entities are approved training providers, and modifies the duties of the Ohio peace officer training commission. (R.C. 3313.951)

D. **House Bill 477 – Remove outdated K-12 laws; Paraprofessional certification; Civil immunity regarding mental health services; other** (effective April 8, 2019)

1. Repeals numerous outdated education laws: R.C. 3301.073, 3301.0722, 3301.111, 3301.21, 3301.25, 3301.86, 3301.88, 3301.95, 3301.96, 3302.037, 3302.30, 3311.061, 3313.206, and 3313.711.

2. Specifies that the requirement that a paraprofessional must be a "properly certified paraprofessional" (see S.B. 216 summary) to provide academic

[1] See http://education.ohio.gov/Topics/Ohio-s-Graduation-Requirements/Earning-an-Ohio-High-School-Diploma-for-the-Cl-1/Work-and-Community-Service-Experience-and-Capstone for the guidance.

support in a core subject area only applies to paraprofessionals in a program supported with Title I funds. (R.C. 3319.074.)[2]

3. Provides civil immunity regarding decisions not to procure mental health services for a suspended or expelled student. (R.C. 3313.668(C); see H.B. 318 summary below for additional information.)[3]

E. **House Bill 66 – Student absence notification; Teacher preparation** (effective April 5, 2019)

1. **Student absence notification** (R.C. 3313.205; new 3321.141)

a. Within two hours after the beginning of each school day, the attendance officer or his/her assistant or designee shall make at least one attempt to contact the parent/guardian of a student absent without legitimate excuse by:

- Telephone call placed in person;
- Automated telephone call via a system that includes verification that each call was actually placed, and either the call was answered by its intended recipient or a voice mail message was left by the automated system relaying the required information;
- Notification through automated school student information system;
- A text-based communication system;
- A notification sent via email;
- A visit, in person, to the student's residence of record; or
- Any other notification procedure that has been adopted by resolution of the board of education.

b. If the parent/guardian initiates a telephone call or other communication notifying the school of the student's excused or unexcused absence within two hours after the beginning of the school day, the school is under no further obligation described above.

c. School personnel are not liable for civil damages for using this system in good faith.

d. The law does not apply to students who are in home-based online, or internet or computer–based instruction or instances where a

[2] Under continuing law, a "properly certified paraprofessional" (1) holds an educational aide permit and (2) either: (a) has an "ESEA qualified" designation on the permit, (b) has completed at least two years of coursework at an accredited institution of higher education, (c) holds an associate degree or higher, or (d) has attained a qualifying score on an academic assessment specified by the ODE.

[3]Under law enacted earlier in 2018, the school principal, whenever possible, must consult with a mental health professional prior to suspending or expelling a student in any of grades Pre-K through 3.

student was not expected to be in attendance due to that student's participation in off-campus activities (i.e., participation in a college credit plus program).

2. Qualifies public and private institutions of higher education as covered entities for the cybersecurity program safe harbor (other eligible organizations are businesses and associations). (R.C. 1354.01.)

3. Establishes the Subcommittee on Standards for Teacher Preparation of the Educator Standards Board. (R.C. 3319.613.)

4. Establishes the Undergraduate Mission Study Committee to evaluate each state university's efforts to secure participation in the undergraduate mission by its tenured faculty. (Uncodified Section 3.)

D. **House Bill 291 – Insurance in lieu of surety bonds** (effective March 20, 2019)

1. The new law includes school district in the list of political subdivisions allowed to forego surety bonds as protection against employee dishonesty, if the district instead obtains an insurance policy that includes employee dishonesty and faithful performance coverage. (R.C. 3.061 (new), 3313.23, 3313.25, and 3319.05.)

2. The board must pass a policy to this effect.

   a. The policy must cover the employee before the employee begins duties.

   b. The policy must be in the amount of any bond required by law, or if there is no amount set by law, in an amount determined by the governing body. (R.C. 3.061.)

E. **House Bill 58 – Cursive Writing** (effective March 20, 2019)

1. ODE is required to include supplemental instructional materials on the development of handwriting, including cursive handwriting, in the English language arts model curriculum for K-5. The materials must be designed to ensure that students develop the ability to print letters and words legibly by third grade and to create readable documents using legible cursive handwriting by the end of fifth grade.

2. The materials must be incorporated into the model curriculum by July 1, 2019, and must be updated periodically. (R.C. 3301.0726(B).)

F. **House Bill 338 – Expansion of list of medical professionals qualified to conduct bus driver annual exams** (effective March 20, 2019)

Revises O.R.C. 3327.10 to expand the list of medical professionals who can conduct school bus drivers' required annual exams from medical doctor, physician assistant, nurse practitioner, clinical nurse specialist, and certified nurse midwife, to include chiropractor and medical examiner certified by the federal motor carrier safety administration.

G. **House Bill 502 – Educator inservice training on youth suicide awareness** (effective March 22, 2019)

1. Specifies that required in-service training in youth suicide awareness and prevention must be completed once every two years. (R.C. 3319.073.)

2. This requirement applies to nurses, teachers, counselors, school psychologists, administrators, and any other appropriate personnel employed by a school district, educational service center, community school, or STEM school.

H. **House Bill 137 – Child abuse reporting** (effective March 20, 2019)

1. Identifies peace officers as mandatory reporters and requires that peace officers must make reports of abuse to children services unless there is an immediate arrest. (R.C. 2151.421.)

2. Allows other mandatory reporters to report suspected abuse or neglect to children services or any peace officer in the county in which the child resides or in which the abuse or neglect occurred, not just municipal or county peace officers. (R.C. 2151.421.)

3. For purposes of R.C. 2151.421, defines "peace officer" to include sheriff, deputy sheriff, constable, police officer of a township or joint police district, marshal, deputy marshal, municipal police officer or state highway patrol. (R.C. 2151.421(P)(4).)

I. **House Bill 139 – Public Records** (effective April 8, 2019)

1. Specifies that a permanently retained record that is exempt from disclosure under the Public Records Law becomes a public record 75 years after it was created, with certain exceptions. If another provision of the Revised Code establishes a period for disclosing a record that conflicts with the 75-year period, the time period in the other provision prevails. (R.C. 149.43(A)(1).)

2. However, if a record is confidential under federal law, the act does not make it public.

3. Exceptions include public school district security and infrastructure records.

J. **House Bill 425 – Body cameras; Infrastructure records of public schools are not public records** (effective April 8, 2019)

1. Provides that a record created by a body camera worn by a peace officer or a dashboard camera used by a peace officer is a public record, subject to certain exceptions. (R.C. 149.43.)

2. Specifies that an infrastructure record of a public school is not a public record subject to mandatory release or disclosure under the Public Records Law. (R.C. 149.433.)[4]

[4] This bill also addresses sealing, rather than expunging, certain protection orders.

K. **House Bill 158 – Unemployment compensation for military spouses** (effective March 20, 2019)

Employees who quit work to move and accompany a military spouse may be eligible for unemployment compensation. (R.C. 4141.29.) To be eligible:

1. The spouse must be a member of the armed forces, on active duty, or a member of a commissioned corps of the national oceanic and atmospheric administration or public health service, and must be the subject of a transfer.

2. The employee must have left employment to accompany the spouse to a location from which it is impractical to commute; and upon arrival at the new place of residence, the individual is able and available for suitable work.

L. **House Bill 497 – Nonconsensual dissemination of private sexual images** (effective March 22, 2019)

1. Prohibits nonconsensual dissemination of private sexual images. This prohibition applies if the person in the image is 18 years of age or older, and there are certain exceptions (law enforcement, medical treatment, reporting unlawful conduct, etc.). (R.C. 2917.211(B) and (C).)

2. Creates the offense of "nonconsensual dissemination of private sexual images." A first violation is a 3rd degree misdemeanor. Prosecution under this section is prohibited if the offender is under 18 years of age and the person in the image is not more than 5 years older than the offender. (R.C. 2917.211(F).)

3. Creates a civil action that allows for an injunction, damages, attorney fees and punitive damages. Damages are presumed. (R.C. 2917.211(G); 2307.66.)

4. No student enrolled in (or applicant to) institution of higher education in Ohio who is victim of 2917.211 shall lose any financial assistance for sole reason of being a victim, and no disciplinary action (including academic penalties) shall be taken. (R.C. 3345.49.)

5. No licensing authority of a public office shall refuse to issue or renew, limit, suspend, or revoke the license of a person solely on the basis that the person is a victim of 2917.211. (R.C. 9.74.)

M. **House Bill 572 – Pension system omnibus – technical changes; service credit for non-teaching DD Board employees** (effective March 22, 2019)

1. Requires the Public Employees Retirement System (PERS) Board to grant a full year of service credit to a PERS member employed as a nonteaching school employee of a county board of developmental disabilities if the member performs full-time services in the position for at least nine months of the year and is paid earnable salary in each month of that year. (R.C. 145.018.)

2. Removes the five-year limit on the amount of prior STRS defined contribution plan service credit that a member can purchase in the defined benefit plan. (R.C. 3307.74.)

3. STRS is now permitted, but not required, to have a disability benefit recipient submit to an annual medical examination. After an examination, the examiner shall report to the board whether the disability benefit recipient is no longer incapable of resuming the service from which the recipient was found disabled. If the examiner determines that the disability benefit recipient is no longer incapable of resuming the service from which the recipient was found disabled, the retirement board shall appoint a medical review board composed of at least three disinterested physicians to evaluate the examiner's report. The medical review board shall report its finding to the retirement board. If the retirement board concurs in a finding by the medical review board that the disability benefit recipient is no longer incapable, the board shall order termination of payment of a disability benefit as prescribed by the statute. (R.C. 3307.48.)

4. Removes a retirant's or disability benefit recipient's sponsored dependents from being eligible for health care coverage under a STRS policy or contract. (R.C. 3307.39.)

5. There were several other technical changes made to PERS/STRS statutes not listed herein.

N. **Senate Bill 51 – Lake Erie bill with appropriations** (effective March 20, 2019; appropriations effective December 19, 2018)

A non-profit hospital was mistakenly assessed valuation for tax year 2016 (which negatively affected several school districts' state aid). This legislation is making a state foundation aid adjustment to correct the mistaken valuation. (This is an example of how a school district can address a specific situation where there is otherwise no legal remedy.) (Uncodified Section 18.)

O. **House Bill 271 – Accessibility Law** (effective March 20, 2019)

Permits an alleged aggrieved party claiming a violation of an accessibility law to notify the owner, agent, or other responsible party of the property (responsible party) of the alleged violation before filing a civil action. A decision by an alleged aggrieved party to file a civil action without serving notice affects the party's ability to recover attorney's fees. (R.C. 4112.16.)

P. **Senate Bill 263 – Notary Public Modernization Act** (most provisions effective September 20, 2019)

If district employees are notaries public, they should be aware of upcoming changes to requirements for notary commissions.

Q. **House Bill 318 – School Resource Officers; Supporting Alternatives for Education Act (SAFE Act)** (effective Nov. 2, 2018; appropriations effective Aug. 2, 2018)

School Resources Officers - The bill enacts R.C. 3313.951 to establish qualification and training requirements for school resource officers (SROs).

1. Defines "school resource officer" as a peace officer appointed through a memorandum of understanding between a law enforcement agency and a school district to provide services described in the section. (R.C. 3313.951(A).)

2. **Training requirements**: A school resource officer who provides services to a school district or school on or after the effective date must:

   a. Complete a basic training program approved by the Ohio peace officer training commission (R.C. 3313.951(B)(1)(a)); and

   b. Complete at least forty hours of SRO training within one year after appointment from specified providers approved by the Ohio peace officer training commission.[5] The training must include topics specified in the section. (A resource officer appointed to provide services to a school district or school prior to November 2, 2018 is exempt from the SRO training requirement.) (R.C. 3313.951(B)(1)(b), (B)(2), and (B)(3).)

3. **Memorandum of understanding** - School districts that decide to utilize school resource officer services must first enter into a memorandum of understanding (MOU) clarifying the program purpose and roles and expectations between participating entities. If a district is already utilizing SRO services on the bill's effective date, an MOU must be entered into within one year. (R.C. 3313.951(C).) The MOU must address:

   a. Clearly defined set of goals for the program;

   b. Background requirements or suggested expertise for employing law enforcement in the school setting, including an understanding of child and adolescent development;

   c. Professional development, including training requirements that focus on age-appropriate practices for conflict resolution and developmentally informed de-escalation and crisis intervention methods;

   d. Clearly defined roles, responsibilities, and expectations of the parties involved, including school resource officers, law enforcement, school administrators, staff, and teachers;

[5] Note: Additional amendments to R.C. 3313.951 made by H.B. 491 (eff. 3/20/2019) clarify which entities are approved training providers, and modify the duties of the Ohio peace officer training commission.

e. A protocol for how suspected criminal activity versus school discipline is to be handled;

f. The requirement for coordinated crisis planning and updating of school crisis plans; and

g. Any other discretionary items determined by the parties to foster a school resource officer program that builds positive relationships between law enforcement, school staff, and the students; promotes a safe and positive learning environment; and decreases the number of youth formally referred to the juvenile justice system.

h. A school district may give students an opportunity to provide input during the MOU drafting process.

4. **School resource officer services** - School resource officers may work in one or more school districts or schools providing the following services (R.C. 3313.951(D)):

a. Assistance with the adoption, implementation, and amendment of the comprehensive emergency management plan (the SRO must consult with local law enforcement officials and first responders when assisting in the development of a plan);

b. Carrying out any additional responsibilities assigned to the SRO under the employment engagement, contract, or MOU, including, but not limited to: providing a safe learning environment, providing valuable resources to school staff, fostering positive relationships with students and staff, and developing strategies to resolve problems affecting youth and protecting all students.

c. The school district or school administrator shall have final decision-making authority regarding all matters of school discipline. (R.C. 3313.951(E).)

5. **School safety study** - Requires the Department of Public Safety to conduct a study of school security in existing school buildings, including the types of physical security measures used, options for security upgrades, cost-effective physical security changes, the number of buildings with a school resource officer or other security personnel, and recommendations for improving school security. (Section 8.)[6]

Supporting Alternatives for Education Act (SAFE Act) provisions:

1. **Positive Behavior Intervention and Supports (PBIS)**

a. **PBIS framework requirements** - Defines PBIS, and clarifies that school districts must implement a PBIS framework on a system-wide basis that complies with any policy and standards adopted by the state board. School district PBIS frameworks may focus on

[6] See https://ofcc.ohio.gov/Portals/0/Ohio%20School%20Security%20Report%20and%20Recommendations_1.pdf for a copy of the study.

data systems, evidence-based curricula and instructional strategies matched to students' needs, an expectation by school administrators that classroom practices be linked to and aligned with the school-wide system, and improving staff climate and culture regarding the role of discipline in the classroom. (R.C. 3319.46(B) and (C).)

b. Requires the state board of education to amend or update OAC 3301-35-15 to reflect changes to PBIS made by the bill, and to oversee school compliance.[7] (R.C. 3319.46(A) and (D).)

c. **PBIS Professional development** - Within three years after the effective date, school districts must provide professional development or continuing education in PBIS as part of the school-wide implementation. (R.C. 3319.237(B).) This must be provided to:

i. Teachers who teach in buildings that serve students in any of grades Pre-K to 3 and who completed a teacher preparation program prior to the bill's effective date; and

ii. All district administrators who serve students in any of grades Pre-K to 3, including the superintendent, building principals, and assistant principals who have not already completed a course of instruction, professional development, or continuing education in PBIS.

iii. Local professional development committees must monitor compliance and establish model professional development courses.

iv. Institutions that provide teacher preparation programs must include a semester course for all students pursuing a license to teach in grades Pre-K through five that includes instruction on PBIS and related topics specified in the bill. (R.C. 3319.237(A).)

d. Requires ODE to indicate on state report cards whether a school district or building has implemented a PBIS framework in compliance with the bill (no letter grade assigned). (R.C. 3302.03(C)(2)(h).)

e. Appropriates $2 million in FY 2019 to provide competitive grants to schools (Section 5).

2. **Student Discipline**

a. **Suspensions** – If a student is issued an out-of-school suspension, the school district must (rather than may under current law) permit the student to complete any classroom assignments missed because of the suspension. Students serving an in-school suspension must

[7] ODE posted proposed amendments to OAC 3301-35-15 for public comment in August 2019.

also be permitted to complete any missed assignments, and the student must serve the suspension in a supervised learning environment. The bill specifies that a suspension is an "in-school suspension" only if the student will serve all of the suspension in a supervised learning environment within a school setting. (R.C. 3313.66(A) and (K).)

Note: HB 491 made additional changes to R.C. 3313.66(A) effective March 20, 2019. The bill requires boards of education to adopt a policy establishing parameters for completing and grading assignments missed because of a suspension. The policy must provide a student the opportunity to complete missed classroom assignments and to receive at least partial credit for a completed assignment. The policy may permit grade reductions on account of a pupil's suspension, but must prohibit receipt of a failing grade on a completed assignment solely on account of the pupil's suspension.

b. **Knives** - Under current law, boards of education may adopt a resolution authorizing a school superintendent to expel a pupil from school for bringing a knife to school. If adopted, board policy must define the term "knife." The bill specifies that this provision applies only to a knife capable of causing serious bodily injury. (Boards should review and amend policies defining the term "knife" as needed.) (R.C. 3313.66(B)(3); 3313.661(A).)

c. **Emergency removals** - If a student is removed from a curricular activity or school premises because the student's presence poses a continuing danger or ongoing threat of disrupting the academic process, a hearing must be held on the next school day (rather than within three school days). (As explained below, a hearing is not required for a Pre-K to grade 3 student if the student is returned to classes and activities on the next school day.) (R.C. 3313.66(C)(3).)

d. **Pre-K through grade 3 emergency removals** - If a student in grades pre-kindergarten through grade 3 (PK-3) is removed from curricular activities or school premises, the student may be removed only for the remainder of the school day. The PK-3 student must be permitted to return to curricular and extracurricular activities on the following school day. If districts comply with this requirement, they are not required to hold a hearing for these removals. Districts are prohibited from initiating a suspension or expulsion proceeding for a PK-3 student who was removed unless the student committed certain violations described in R.C. 3313.668(B)(1)(a) or (b). (These violations are explained in the following paragraph). (R.C. 3313.66(C)(2).)

e. **Pre-K through grade 3 out-of-school suspension or expulsion** – (*Note: Compliance with the following provisions in R.C.*

3313.668(B) is delayed according to the implementation schedule described in item #3 below.)

A school district is prohibited from issuing an out-of-school suspension or expulsion to PK-3 students except as follows (R.C. 3313.668(B)(1):

i. The student engaged in behaviors described in R.C. 3313.66(B)(2) to (5) (bringing a firearm, or a knife capable of causing serious bodily injury, to school or to school activities, extracurricular events, etc.; committing an act while at school or school activities that is a criminal offense when committed by an adult and results in serious physical harm to persons or property; or making a bomb threat). (R.C. 3313.668(B)(1)(a).)

ii. For students who have not engaged in behaviors described in R.C. 3313.66(B)(2) to (5), only as necessary to protect the immediate health and safety of the student, the student's classmates, the classroom staff and teachers, or other school employees. (R.C. 3313.668(B)(1)(b).)

iii. Prior to suspending or expelling a PK-3 student, the principal must consult with a mental health professional under contract with the district or school whenever possible. If the behavior indicates a need for additional mental health services, the principal or district mental health professional must assist the student's parent with locating providers or obtaining those services, including referral to a mental health professional, in any manner that does not result in a financial burden to the district. (R.C. 3313.668(B)(2).)

Note: H.B. 477 (effective April 8, 2019) added a provision that provides civil immunity to a school district, board of education member, or district employee for injury, death, or other loss arising from a district employee's decision not to provide or procure mental health services for a suspended or expelled PK-3 student unless the decision is made with malicious purpose, in bad faith, or in a wanton or reckless manner. (R.C. 3313.668(C).)

iv. PK-3 students who are suspended or expelled must be afforded the same due process prescribed under R.C. 3313.66. (R.C. 3313.668(B)(3).)

v. A school's authority to issue an in-school suspension to a PK-3 student is not limited by these provisions, provided that any in-school suspension is served in a supervised learning environment. (R.C. 3313.668(B)(4).)

3. **Delayed implementation** - An uncodified provision of the bill (Section 9) delays full implementation of the PK-3 prohibition on out-of-school suspensions or expulsions for minor offenses.

   a. For school years 2018-2019 through 2021-2022, school districts must report out-of-school suspensions and expulsions for PK-3 students to the Ohio Department of Education by three specified categories: serious offenses described in R.C. 3313.66(B)(2) to (5); immediate health and safety; and any other offense ("minor offense").

   b. Schools are exempt from compliance with R.C. 3313.668(B) (PK-3 out-of-school suspension or expulsion) for the 2017-2018 and 2018-2019 school years, and must issue suspensions and expulsions in accordance with R.C. 3313.66 as amended.

   c. **For the 2019-2020 and 2020-2021 school years, schools must comply with R.C. 3313.668(B)(2) (mental health consultation and assistance/referral) and (B)(3) (due process).** Schools will be considered to be in compliance with R.C. 3313.668(B)(1) (out-of-school suspension or expulsion prohibition) if they reduce out-of-school suspensions and expulsions for minor offenses by 25% in 2019-2020, and by 50% for 2020-2021, using numbers reported in 2018-2019 as a baseline. Full compliance is required for the 2021-2022 school year and thereafter.

4. **Treasurer notice** - A superintendent or principal must notify the board treasurer in writing of an expulsion (rather than an expulsion or suspension) within one school day. (R.C. 3313.66(D).)

5. **School district zero tolerance policies** must comply with PK-3 suspension and expulsion limitations (R.C. 3313.668) and PBIS (R.C. 3319.46) provisions. (*Boards of education should review and amend their policies as needed.*) (R.C. 3313.534(A).)

R. **Senate Bill 216 – Ohio Public School Deregulation Act** (effective Nov. 2, 2018)

1. **Note**: In April 2019, the Ohio Department of Education (ODE) issued a SB 216 question and answer document that addresses reading improvement plans, licensure grade band changes, OTES changes, and properly certified or licensed teacher requirements. See http://education.ohio.gov/Topics/Teaching/Questions-and-Answers-about-Ohio-Senate-Bill-216#FAQ3465.

2. **Assessment information** - Beginning with the 2019-2020 school year, the Ohio Department of Education (ODE) must request certain assessment vendors contracted by ODE to provide an analysis explaining how questions are aligned to academic content standards. The analysis must be provided to school districts and schools. ODE must also request that vendors provide

information and materials to school districts and schools for assistance with state achievement assessments. Such materials must include practice assessments and other preparatory materials. (R.C. 3301.078.)

3. **Paper assessments** - Beginning with the 2019-2020 school year, a school district or other public or chartered nonpublic school may administer the third-grade English language arts or mathematics assessment, or both, in a paper format in any school year for which the district board of education or governing body adopts a resolution indicating the district or school chooses to administer the assessment in paper format. The resolution must be submitted to ODE not later than May 1 prior to the school year for which it will apply. If submitted, the assessment must be administered in paper format to all students in the third grade, except as specified in an IEP or Section 504 plan. ODE must submit a report to the General Assembly comparing the results of state assessments administered online and in a paper format using data from the 2019-2020 and 2020-2021 school years. (R.C. 3301.0711(G)(4). Section 9.)

4. **Reading improvement plans** - Beginning in the 2019-2020 school year, a school district in which less than 80% of its students score at the proficient level or higher on the 3rd grade English language arts assessments must establish a reading improvement plan supported by reading specialists. Prior to implementation, the plan must be approved by the school district board of education. (R.C. 3301.0715. Note that a separate section of current law not changed by the bill (R.C. 3302.13) already requires reading improvement plans in certain circumstances.)

5. **Report card changes** - Changes the minimum subgroup size for the calculation of the annual measurable objectives (AMO) measure of the state report card. The minimum is 25 students for 2017-2018, 20 students in 2018-2019, and 15 students in 2019-2020 and each subsequent school year. (R.C. 3302.03(C)(1)(a).)

6. **School mandate report** - ODE is required to establish a consolidated school mandate report for school districts. Districts must complete and file the report by November 30 each year. (New R.C. 3301.68.)

    a. If a school district indicates it is not in compliance with any item, it must provide its board of education, within 30 days, a written explanation for why that item was not completed and a written plan of action for addressing the problem.

    b. The consolidated mandate report must contain: training on the use of physical restraint and seclusion (R.C. 3319.46); training on harassment, intimidation, or bullying (R.C. 3313.666, 3313.667, and 3319.073); training on the use of CPR and AED (under R.C. 3313.60, 3313.6023, 3313.717, and 3314.16); training on crisis prevention intervention; the establishment of a wellness

committee[8]; reporting of school district's compliance with nutritional standards prescribed under R.C. 3313.814; screening of pupils for hearing, vision, speech and communications, and health or medical problems and any developmental disabilities pursuant to R.C. 3313.673; and compliance with intra-district and inter-district open enrollment provisions in R.C. 3313.97 and 3313.98.

c. ODE must not require a separate report for any of the items listed, except as provided in R.C. 3313.814(D) (nutrition standards compliance report).

7. **Ohio Teacher Evaluation System (OTES) changes** - The state board of education is required to revise the standards-based state framework for teacher evaluations based on recommendations of the educator standards board. The state board must hold at least one public hearing on the revised framework and must make the full text of the revised framework available at each hearing it holds on the subject. **The state board must adopt the revised framework by May 1, 2020.**[9] (R.C. 3319.112(A).)

a. The framework must establish an evaluation system that:

i. Provides for multiple evaluation factors (with changes to student academic growth factors, as described below).

ii. Must use at least two measures of high-quality student data (as defined by the state board) to provide evidence of student learning attributable to the teacher being evaluated. (**New**.) When applicable to the grade level or subject area taught, high-quality student data must include the value-added progress dimension, but the teacher or evaluator shall use at least one other measure of high-quality student data to demonstrate student learning. (**New**.)

iii. High-quality student data may be used as evidence in any component of the evaluation related to knowledge of the students, use of differentiated instruction, assessment of student learning, use of assessment data, and professional responsibility and growth. (**New**.)

iv. Prohibits the use of shared attribution. (**New**.)

v. Prohibits the use of student learning objectives. (**New**.)

vi. Is aligned with standards for teachers. (**No change**.)

[8] The budget bill, HB 166, removed training on crisis prevention intervention and wellness committees from the consolidated mandate report (eff. Oct. 2019).

[9] According to an April 2019 Ohio Department of Education presentation, the first State Board of Education committee review is scheduled for February 2020.

vii. Requires observation of the teacher being evaluated, including at least two formal observations of at least 30 minutes each and classroom walk-throughs. (**No change**.)

viii. Requires each teacher to be provided with a written report of the results of the evaluation. (**No change**.)

ix. Includes development of a professional growth plan or improvement plan for the teacher that is based on results of the evaluation and is aligned to any school district or building improvement plan required under the Every Student Succeeds Act. (**New**; conforming amendment to R.C. 3319.075.)

x. Provides for professional development to accelerate and continue teacher growth and provide support to poorly performing teachers. (**No change**.)

xi. Provides for the allocation of financial resources to support professional development (**No change**; R.C. 3319.112(A).)

b. ODE must provide guidance to districts on how high-quality student data may be used as evidence of student learning attributable to a particular teacher, and how information on student surveys, student portfolios, peer review evaluations, teacher self-evaluations, and other components determined appropriate by the district may be used as part of the evaluation process. (R.C. 3319.112(D).)

c. Boards of education must update their standards-based teacher evaluation policies to conform with the framework no later than July 1, 2020. As under current law, boards must consult with teachers. The policy will become operative at the expiration of any collective bargaining agreement covering teachers that is in effect on the effective date of the amendment. (R.C. 3319.111(A).)

i. When using measures of student performance as evidence in a teacher's evaluation, those measures must be high-quality student data. Boards may use data from assessments on the list developed by the state board as high-quality student data. (R.C. 3319.111(B).)

ii. Boards must continue to conduct an evaluation of each teacher at least once each school year, except:

a) The board may evaluate a teacher rated accomplished on the most recent evaluation once every three years so long as the teacher submits a self-directed professional growth plan to the evaluator that focuses on specific areas identified in the observations and evaluation and the evaluator

determines that the teacher is making progress on that plan.

b) A teacher rated skilled may be evaluated once every two years so long as the teacher and evaluator jointly develop a professional growth plan for the teacher. (The requirement that an accomplished or skilled teacher's student academic growth measure is average or higher is removed.)

c) Districts must still complete at least one observation and hold at least one conference in any year that a teacher is not formally evaluated, but the conference must now include a discussion of progress on the teacher's professional growth plan. (R.C. 3319.111(C).)

iii. A provision permitting a board to elect to require only one formal observation of a teacher rated accomplished provided the teacher completes a project approved by the board is **removed**. (Former R.C. 3319.111(E)(2).)

iv. The alternative framework for teacher evaluations (R.C. 3319.114) is **repealed**.

d. For the 2019-2020 school year, ODE must establish a pilot program to guide implementation of the revised framework for teacher evaluations. ODE may designate a district to participate only with the approval of the district's board of education. (Section 6.)

e. For the 2018-2019 and 2019-2020 school years, school districts not participating in the pilot program shall conduct teacher evaluations in accordance with R.C. 3319.111, 3319.112, and 3319.114 as those sections existed prior to the effective date of S.B. 216. (Section 7.)

8. **Teacher retesting repealed** - Provisions of law that require teacher retesting based on low teacher ratings or low school building academic performance rankings is repealed. (R.C. 3319.58 repealed.)

9. **Highly qualified teachers** - The state law requirement that teachers of core subject areas must be "highly qualified" is repealed. (R.C. 3319.074 repealed and replaced.) In place of the "highly qualified" requirement, beginning July 1, 2019[10] school districts are prohibited from employing any

[10] ODE approved new OAC 3301-24-28 for an interim license to assist educators as they transition from highly qualified to the new requirements. The new rule is effective Aug. 22, 2019. See http://codes.ohio.gov/oac/3301-24-28.

classroom teacher to provide instruction in a core subject area, to any student, unless such teacher is a properly certified or licensed teacher.[11]

Schools are also prohibited from employing a paraprofessional to provide academic support in a core subject area unless the paraprofessional is a properly certified paraprofessional. Note: H.B. 477 (effective April 8, 2019) specifies that this restriction only applies to paraprofessionals in a program supported with Title I funds. (R.C. 3319.074 enacted; conforming amendments to R.C. 3302.03(J), 3311.78(D)(2), 3311.79(A)(3), 3313.603(C), 3317.141(B), 3319.283(B), 3323.11, and 3326.13.)

a. A "core subject area" means reading and English language arts, mathematics, science, social studies (rather than government, economics, history, and geography), foreign language, and fine arts.

b. A "properly certified or licensed teacher" is defined as a classroom teacher who has successfully completed all requirements for certification or licensure applicable to the subject areas and grade levels in which the teacher provides instruction and the students to whom the teacher provides the instruction.

c. A "properly certified paraprofessional" is defined as a paraprofessional who holds an educational aide permit and (1) has a designation of ESEA-qualified on the permit; (2) has completed two years of coursework at an accredited higher education institution; (3) holds an associate degree or higher from an accredited higher education institution; or (4) meets a rigorous standard of quality as demonstrated by attainment of a qualifying score on an academic assessment specified by the ODE.

10. **Teacher license grade band changes** - Resident educator, professional educator, senior professional educator, and lead professional educator licenses issued on and after the amendment's effective date must specify whether the educator is licensed to teach grades pre-kindergarten through five, grades four through nine, or grades seven through twelve[12]. The grade band specification changes shall not apply to a person who holds a license

[11] On Feb. 14, 2019, the Ohio Department of Education issued guidance concerning proper certification or licensure for teachers in a core subject area. The guidance states that classroom teachers instructing out of their licensed teaching field or grade band, those teaching under substitute licenses, or those who do not hold a teaching license issued by the State Board of Education are not considered to be properly certified or licensed to provide instruction in a core subject area. See http://education.ohio.gov/getattachment/Topics/Teaching/Licensure/Licensure-Update/Proper-Certification-Guidance.pdf.aspx?lang=en-US.
The May 2019 properly licensed toolkit is at http://education.ohio.gov/getattachment/Topics/Teaching/Educator-Equity/Highly-Qualified-Teacher-HQT-Toolkit/Properly-Certified-or-Licensed-Toolkit-2019-2020.pdf.aspx?lang=en-US.

[12] Current law does not specify grade bands for educator licenses, but OAC 3301-24-05 requires teaching licenses to be issued for early childhood (prekindergarten through grade three); middle childhood (valid for teaching in grades four through nine); and adolescence to young adult (valid for teaching in grades seven through twelve). Proposed amendments to OAC 3301-24-05 were filed on August 15, 2019, with a public hearing scheduled for Sept. 16, 2019.

prior to the effective date, and shall not apply to any license issued to teach in the area of computer information science, bilingual education, dance, drama or theater, world language, health, library or media, music, physical education, teaching English to speakers of other languages, career-technical education, or visual arts, or to any license issued to an intervention specialist, including a gifted intervention specialist, or to any other license that does not align to the grade band specifications. (R.C. 3319.22(A).)

11. **Substitute teacher license** - The bill requires the state board of education to adopt rules establishing standards and requirements for obtaining a license for substitute teaching.[13] (R.C. 3319.226 repealed and replaced.)

    a. The rules must require an applicant to hold a post-secondary degree, but not in any specified subject area.

    b. The holder of a substitute teaching license may work for an unlimited number of school days if the teacher has a post-secondary degree in either education or a subject area directly related to the subject of the class.

    c. If the substitute teacher license holder has a post-secondary degree in a subject area not directly related to the subject of the class, the substitute teacher may only work for one full semester, subject to the approval of the employing school district board of education. The district superintendent may request that the board approve one or more additional subsequent semester-long periods of teaching for the license holder.

    d. The state board must begin issuing educator licenses for substitute teaching under these rules on July 1, 2019.

    e. Any license issued or renewed under former R.C. 3319.226 that was still in force on the section's effective date shall remain in force for the remainder of the term for which it was issued or renewed. Upon expiration, the license holder will be subject to licensure under rules adopted under this section.

    f. Prohibits the state board from requiring an individual who holds a career-technical workforce development license to hold a post-secondary degree if that applicant is applying for a license to work as a substitute teacher for career-technical education classes. (R.C. 3319.229(F).) [*Note: House Bill 98 (effective June 29, 2018) made additional changes to career-technical teaching licenses*.]

12. **Supplemental teaching license** - Codifies rules established by the state board of education for supplemental teaching licenses. A licensee who has filed an application may work in the supplemental licensure area for up to 60 school days while completing examination requirements. If the

[13] The State Board of Education approved amendments to OAC 3301-23-44 during its January 2019 meeting. The new rule went into effect April 25, 2019.

requirements are not completed within 60 days, the application must be declined. (The state board currently issues supplemental licenses under OAC 3301-24-14.) (R.C. 3319.361.)

13. **Early college high school educator license** - Requires the state board of education to adopt rules establishing standards and requirements for a non-renewable four-year initial early college high school educator license for teaching grades 7 through 12 at an early college high school.[14] An applicant for an initial license must have a graduate or terminal degree in a related field, obtain a passing score on an examination in the subject area to be taught, have experience teaching students at any grade level, including post-secondary students, and have proof that an early college high school intends to employ the applicant. After four years of teaching, the individual may apply for a renewable five-year professional educator license in the same subject area. (R.C. 3319.262.)

14. **Non-teaching employee tenure** - Regular nonteaching school employees who are newly hired by a non-civil service school district must be employed under three subsequent two-year contracts (rather than one) after the initial contract (which must be for not more than one year under continuing law) before receiving a continuing contract. (R.C. 3319.081.)

15. **Staffing ratios for programs with preschool children with disabilities** – Specifies that State Board of Education rules for staffing ratios for programs with preschool children with disabilities must require a minimum of ten hours of services per week be provided for each child served by a center-based teacher unless otherwise specified in the child's individual education program. (R.C. 3323.022.)

Note: The State Board of Education approved amendments to the standards for preschool children eligible for special education (OAC 3301-51-11) at its May 2019 meeting.[15]

16. **Gifted education** - International baccalaureate is added as an option for a district's gifted student services plan. (R.C. 3324.07.)

17. **Professional development for gifted service providers** - An uncodified provision of the bill (Section 4) requires the state board to revise its rules for professional development for general education teachers designated as providers of gifted services. (*These requirements were incorporated into revisions made to OAC 3301-51-15 effective July 27, 2018.*)

18. **Academic distress commissions** (R.C. 3302.101) - The superintendent of public instruction must review policies and procedures regarding academic distress commissions and prepare a report of its findings. The report must

[14] The State Board of Education approved new OAC 3301-24-27 during its January 2019 meeting. The new rule went into effect April 25, 2019.

[15] The rule change will need to go through the JCARR process before going into effect. See ftp://ftp.ode.state.oh.us/StateBoardBooks/May%202019/Voting%20Items/Item%2010-%20Updated.pdf for the rule changes.

include recommendations to improve certain aspects of current commissions, and was due by May 1, 2019. The joint education oversight committee must review the report and hold at least one public meeting. (R.C. 3302.101 and 3302.102.)

19. **Five-year forecasts** - Rules adopted by ODE and the auditor of state shall not require a board of education to submit its five-year forecast prior to November 30 (rather than October 31) of any fiscal year. (R.C. 5705.391.)

20. **College Credit Plus study** - ODE must conduct a study on the results and cost-effectiveness of the College Credit Plus Program not later than one year after the effective date. (Section 3.)

21. **Kindergarten readiness assessment** - The Early Childhood Comprehensive Assessment Advisory Group must submit recommendations to the State Superintendent regarding ways to improve the use and administration of the kindergarten readiness assessment. The State Superintendent must review the recommendations and report final recommendations to the General Assembly by September 1, 2019. (Section 5.)

22. **Excessive absence -** Note: The final version of SB 216 does <u>not</u> include a provision changing the triggers for excessive absence so that only unexcused absences, rather than excused or unexcused absences, are considered.[16]

S. **House Bill 87 – Community school public moneys returned to the state; other provisions** (effective Nov. 2, 2018)

1. **Return of community school funds** – Requires the Ohio Department of Education to ensure that any public moneys returned to the state as a result of a finding for recovery pursuant to an audit of community school enrollment records are credited to the state education aid of the school districts from which the funding was deducted. The amount credited must be equal to the amount that was deducted. (R.C. 3314.53.)

2. **School district treasurer employment documents** – Requires employment contracts, salary notices, and other employment-related documents of the school district treasurer or any member of the school district treasurer's family to be signed by the district superintendent or board president. (R.C. 3313.241.)

3. **School board meeting minutes** – Clarifies that the treasurer's attestation of board minutes is to the accuracy of the information in the record, and shall not be construed to serve as authorization or execution of any action taken or not taken during any meeting. (R.C. 3313.26.)

[16] Note: The FY 2020-2021 budget bill, HB 166, excludes absences with a medical excuse for purposes of triggering an excessive absence notification (R.C. 3321.191).

4. **Substitute levies** – Authorizes a school district that has an emergency levy to propose a ballot question to substitute the levy at an election held in the year after the last year the levy is imposed. (R.C. 5705.194.)

5. **Five-year forecasts** – Specifies that rules adopted by the department of education and state auditor shall not require a board of education to submit its five-year forecast prior to November 30 of any fiscal year. (R.C. 5705.391.)

6. **Joint health and medical insurance programs** – Permits political subdivisions and county boards of developmental disabilities to join with other political subdivisions or county boards to procure or contract for providers of medical or health services or for policies to provide health care benefits. (R.C. 9.833)

7. **E-schools** – Requires the Superintendent of Public Instruction to establish standards for e-school learning management software. (R.C. 3314.232.)

8. **Safe harbor** – Contingent upon the enactment of Senate Bill 216, amends the safe harbor in that bill for schools enrolling displaced e-school [ECOT] students. The Senate Bill 216 safe harbor applied to community schools and school districts that experienced an increase in enrollment of more than 10% in the 2017-2018 school year as a result of the enrollment of displaced enrollees. House Bill 87 increases it to 20%, and adds a stipulation that if a community school would be subject to closure even if the displaced enrollees scores are omitted, the school is still subject to closure. The school district safe harbor exempts the district from being considered a "challenged" school district where new start-up community schools may be located. (Sections 3, 4 and 5.)

T. **House Bill 312 – Political Subdivision Spending** (effective Nov. 2, 2018)

Political subdivision credit cards.

1. Enacts R.C. 9.21, a general provision that applies to all political subdivisions except counties, to regulate the use of credit card accounts (defined in the section) by political subdivisions. The bill also amends and enacts specific provisions that apply to certain types of political subdivisions. R.C. 3313.311 applies to school districts, educational service centers (ESCs), and information technology centers (ITCs).[17]

2. Within three months after the bill's effective date (or before first holding a credit card account), a board of education must adopt a written policy for the use of credit card accounts that must include certain specified provisions.

[17] Note: The Ohio Auditor issued Bulletin 2018-003 on Nov. 30, 2018 to provide guidance to political subdivisions concerning the requirements of HB 312. See https://ohioauditor.gov/publications/bulletins/2018/Bulletin%202018-003%20HB312%20credit%20card%20bulletin%20final.pdf.

Political subdivision debit cards

3. Political subdivisions are prohibited from holding or utilizing a debit card account, except for law enforcement purposes. Possession or use of a debit card account by a political subdivision except for law enforcement purposes is a violation of section 2913.21 of the Revised Code. This section does not apply to debit card accounts related to the receipt of grant moneys. (R.C. 9.22; 3313.291.)

Fraud reporting

4. The auditor of state shall not log a complaint regarding an ongoing criminal investigation in the fraud report log maintained by the auditor under current law. Such complaints must be logged not later than 30 days after the investigation is complete. (R.C. 117.103.)

Electronic public records requests

5. Allows a requester who transmits a public records request by electronic submission to recover statutory damages if the public office failed to comply with the Public Records Law. (R.C. 149.43.)

U. **House Bill 34 – Public Notices** (effective Nov. 2, 2018)

1. Permits certain official notices to be provided by means of a combination of ordinary mail and "internet identifier of record."

2. Under continuing law, if a state agency or political subdivision is required by law or by an ordinance or resolution to award a contract to the lowest responsive and responsible bidder, an apparent low bidder found not to be responsive must be notified in writing by certified mail. Under the bill, notice may be given by certified mail, or, if a political subdivision has record of an internet identifier of record associated with the bidder, by ordinary mail and by that internet identifier of record. An "internet identifier of record" means an electronic mail address or any other designation used for self-identification or routing in internet communication or posting. (R.C. 9.312)

3. An internet identifier of record may be used in additional circumstances as set forth in the bill, but such circumstances are not applicable to boards of education.

4. Permits a future official (a person who has received a certificate of election to a local or statewide office but has not yet taken office) to complete public records and open meetings training before taking office. A future official may not send a designee to the training in the official's place. (R.C. 109.43, 149.43.)

V. **Senate Bill 239 – Regional Council of Governments** (effective Oct. 29, 2018)

This bill enacts additional accountability provisions for regional council of governments (COG).

II. Special Education

A. **Medical marijuana** – *Albuquerque Public Schools v. Sledge*, No. 18-1029, 2019 WL 3755954 (U.S. Dist. Ct. D. New Mexico, Aug. 8, 2019)

A school district denied FAPE to a kindergarten student with Dravet syndrome who has life-threatening seizures by not allowing home instruction with optional socialization opportunities. The parent administered cannabidiol (CBD) and cannabis oil to the student in accordance with New Mexico's Compassionate Use Act, and requested that the student attend full-time kindergarten and receive cannabis from trained school personnel. However, the hearing officer found (and the court agreed) that the district could not legally administer the cannabis. Therefore, the least restrictive environment was a homebound setting with socialization opportunities.

The court rejected the district's argument that the hearing officer lacked jurisdiction over the parent's request because she did not have the authority to determine that cannabis, an illegal substance, was required for a student's FAPE. However, the court agreed that the IDEA cannot required the administration of cannabis to be included in a student's FAPE. The administration of cannabis violates federal law, and "the IDEA, a federal statute, cannot reasonably be interpreted to require APS to accommodate a federal crime to satisfy its obligation to provide Student with a FAPE; such a result would be absurd." (Note: This decision does not consider April 2019 amendments to New Mexico's medical cannabis law allowing medical cannabis in schools.)

B. **Action plan to address peanut allergy, other alleged procedural violations, did not violate IDEA** – *Barney v. Akron Bd. of Educ.*, No. 17-4116, 2019 WL 919839 (Ct. App. 6th Cir., Feb. 25, 2019)

The parent of a student with cognitive disabilities and a peanut allergy alleged the school board violated the IDEA when it decided how to address her child's peanut allergy without her input and failed to educate him in the least restrictive environment. The complaint stemmed in part from an incident in which school employees accidentally included sealed containers of peanut butter on breakfast carts taken to the student's classroom. The student was then brought to the office to eat his breakfast. The parent contended the student's IEP should have addressed his peanut allergy. The court found the district did note the student's allergy in his IEP and had a separate medical plan to address his allergy. "The Act does not require more." Concerning her "least restrictive environment" complaint, the parent insisted on driving her son for a field trip out of fear he might be exposed to peanut butter on the bus. "She cannot blame the school district for her own decision to separate [the student] from his peers."

The parent also alleged the school delayed the student's reevaluation, failed to provide copies of educational records, and failed to consider an extended school year for her son. The court found no violation of IDEA's procedural provisions, as the parent failed to explain how these alleged violations affected her son's educational program or caused "substantive harm." Furthermore, the parent did attend a meeting where an extended school year was discussed and said nothing when it was decided the student was not eligible for these services, and the parent conceded during an administrative hearing that she had received her son's records.

Concerning the parent's argument that the school should have revised her son's IEP mid-year because he was not meeting his goals, the court found the IDEA guarantees access to education—not that a student will achieve a particular outcome. Nor did the parent show that his progress was so deficient that the school should have revised his goals in the middle of the school year. Addressing the parent's complaint that the student's IEP should have addressed bullying, the parent never told the school about bullying, even when explicitly asked about it in a questionnaire for the student's reevaluation.

C. **Exhaustion of administrative procedures not required for service dog complaint** – *E.F. by Fry v. Napoleon Cmty. Sch.*, No. 12-15507, 2019 WL 1002355 (E.D. Mich. Mar. 1, 2019)

In 2017, a U.S. Supreme Court ruling clarified when the IDEA's administrative procedures must be exhausted prior to filing suit under the ADA or the Rehabilitation Act (*Fry v. Napoleon Commty. Sch.*, 137 S.Ct. 743). The case was then remanded to the district court to determine whether the parents' complaint seeks relief for a denial of a free, appropriate public education (FAPE). The complaint alleged the school district violated Section 504 and the ADA when it refused to allow a child to have her service dog with her at school. On remand, the district court ruled the IDEA's exhaustion requirement does not bar the parents' disability discrimination claims; therefore, they do not have to seek relief in an administrative proceeding before suing the school district for alleged Section 504 and ADA violations. The court found the essence of the complaint was equality of access to public facilities, not the adequacy of special education. The court also considered the history of the proceedings and found there was no evidence the parents filed suit in federal court under the ADA/Section 504 as a strategic calculation to maximize the prospect of a remedy for the denial of a FAPE.

D. **Exhaustion of administrative remedies not required for complaint arising from physical restraint of a special education student** – *D.M. v. Board of Education Toledo Public Schools*, No. 3:18-cv-1307, 2019 WL 266321 (U.S. Dist. Ct. N.D. Ohio, Jan. 18, 2019)

The parent of a student who was restrained face down on the floor with three employees holding the student down filed suit against the district alleging discrimination under the Americans with Disabilities Act and the Rehabilitation

Act, a violation of constitutional rights under 42 U.S.C. § 1983, and state common law claims of assault, battery, and intentional infliction of emotional distress.

The court refused to dismiss the complaint based on a failure to exhaust administrative remedies. The court found that while the use of restraint concerned the denial of a "free appropriate public education" (FAPE), exhaustion of administrative remedies would be futile. According to the complaint, the parent filed a complaint with the Ohio Department of Education's Office for Exceptional Children (OEC), and was informed that the matter was outside the scope of the office's responsibilities. Because OEC declined to investigate, a second attempt to pursue redress with that office would be futile.

The court also refused to dismiss the § 1983 constitutional claims against individual school district employees involved in the restraint. "[T]o establish *personal* liability in a § 1983 action, it is enough to show that the official, acting under color of state law, caused the deprivation of a federal right." [Citations omitted.] (The court did not address whether individual defendants may be entitled to qualified immunity.)

E. **Use of a body sock did not violate student's rights** – *Crochran v. Columbus City Schs.*, No. 17-4110, 2018 WL 4922973 (U.S. Ct. App. 6th Cir., Oct. 10, 2018)

A student with autism was acting in a disruptive manner, and typical behavior management techniques that normally worked with the student were not helping the student to regulate his behavior. On the advice of a fellow teacher, the teacher used a body sock with the student to help calm him. (A body sock is a sensory tool used to put pressure on a child. It is a four-way breathable lycra band that the child steps into.) After the student stepped into the body sock, he fell and hit the floor with his face. The child's parent filed suit against a special education teacher and the school district for violations of her child's right to equal protection, substantive due process rights, the IDEA, Section 504 of the Rehabilitation Act, the ADA, and various state law claims.

The district court granted the defendants' motion for summary judgement on the federal claims, and the Sixth Circuit affirmed. While finding the use of the body sock constituted a "seizure" under the Fourth Amendment, the Sixth Circuit determined the seizure was reasonable. The student had been acting out, and other methods of behavior correction had failed. In addition, the student stepped into the sock voluntarily. "Although the use of the body sock may have been negligent (a matter for the state court to determine), [the parent] has not pointed to any evidence creating a genuine issue of fact that [the teacher's] use of the body sock was not justified in a constitutional sense."

The Sixth Circuit also determined that use of the sock did not violate the student's due process rights. "When determining whether actions shock the conscience in the public-school context, we consider, among other factors: (1) whether there was a pedagogical justification for the use of force; (2) whether the force used was excessive to meet the legitimate objective in this situation; (3) whether the force was applied in a good-faith effort to maintain or restore discipline or was instead applied maliciously and sadistically for the very purpose of causing harm; and (4) whether there was serious injury." [Citation omitted.] In this instance, a legitimate

pedagogical reason justified use of the sock, the student was not forced into the sock, and while the student was seriously injured (root canal therapy was needed on his front teeth), "the factors taken together compel a finding that [the teacher's] actions did not shock the conscience." Whether use of the sock was negligent is a matter for the state court to decide.

F. **Reports of suspected child abuse were not retaliatory** – *M.L.; J.L. v. Williamson County Board of Educ.*, No. 18-5671, 2019 WL 2244720 (6th Cir. May 24, 2019)

The parents of a student with an IEP and behavior intervention plan filed suit against the school district, alleging that school officials made reports of suspected child abuse in retaliation for the parents' advocacy for special education services for their son. The court found the parents produced no evidence of a causal connection between the first report of abuse and the parents' advocacy, as they failed to show that the first employee to make a report (a teacher's assistant) even knew about the parents' complaints regarding their child's education. Regarding the other two reports of suspected child abuse, the board put forth a legitimate, nondiscriminatory reason for the reports—the teachers' duty to report suspected child abuse pursuant to state law. The court concluded this reason was not a pretext for retaliation.

First, there was a "basis in fact" for the reports. The day before the second report, the child had touched his friend inappropriately, and then told a teacher that his father was in trouble for spanking him and pulling his hair. This report also mentioned an incident at the beginning of the school year when the child thrust his pelvic area into his friend's bottom. The third report was made after the child repeatedly pressed his face into another boy's bottom. While children's services declined to investigate one report, and made no finding of abuse in the other, "just because a report ultimately proves false does not mean that the concerns motivating the report were fictitious."

In addition, the "sexual overtones" of the incidents were sufficient to trigger the teachers' duty to report suspected abuse. Even if school staff had been aware that the child's hypersexual behavior could result from his disabilities, this would not negate the possibility that the child was also being sexually abused and later acting out. The court also found that although the reports were made within weeks of IEP meetings, the school held eight IEP meetings for the student throughout the school year, such that any report would have been within weeks of a meeting.

G. **Safety concerns justify continued placement at separate facility** – *N.L., individually & on behalf of C.L. a child with a disability v. Springboro Community City School Dist*., No. 1:19-CV-334, 2019 WL 2252433 (S.D. Ohio May 26, 2019)

A student with disabilities was removed from his placement at an elementary school after multiple behavioral incidents, including: leaving the school building, threatening a staff member with a large piece of wood and threatening to hurt and kill the staff member, standing on desks and other furniture, hitting his head against a window, throwing chairs at staff members, and striking himself in the jaw. Initially the student was served in the home setting by a tutor. The student was then placed at a separate facility dedicated to teaching students with autism.

After an Impartial Hearing Officer denied plaintiff's request to have the student placed at the elementary school while due process proceedings were pending, the plaintiff filed an emergency motion for statutory injunction. The court determined that the IDEA's stay-put provision applied, but that the school district met its burden to show that maintaining the student at the elementary school "is substantially likely to result in injury to either himself . . . or to others." The student's behavioral issues raise serious concerns regarding the safety of the student, school staff members, and potentially other students.

H. **Initiative to Address Inappropriate Use of Restraint and Seclusion** – U.S. Department of Education (Jan. 17, 2019)

The U.S. Department of Education announced it will launch an initiative to reduce the inappropriate use of restraint and seclusion in schools. The Office for Civil Rights ("OCR") and the Office of Special Education and Rehabilitative Services (OSERS) will oversee the approach by providing technical assistance and support to schools. The initiative will include compliance reviews, data quality reviews, and technical assistance on the legal requirements of Section 504 of the Rehabilitation Act. According to the press release:

1. OCR will provide technical assistance to public schools on the legal requirements of Section 504 of the Rehabilitation Act relating to the use of restraint and seclusion on children with disabilities.
2. OCR will partner with OSERS to provide joint technical assistance to support recipients in understanding how Section 504, Title II, and the Individuals with Disabilities Education Act (IDEA) informs the development and implementation of policies governing the use of restraint and seclusion.
3. OSERS will support recipients identified by OCR through compliance reviews or through the complaint resolution process to ensure they have access to appropriate technical assistance and support.
4. OSERS will support schools to ensure they have access to technical assistance and available resources as they establish or enhance environments where the implementation of interventions and supports reduces the need for reliance on less effective and potentially dangerous practices.
5. OSERS will consider how current investments may be utilized to provide support and training to schools, districts, and states.
6. OSERS and OCR will jointly plan and conduct webinars for interested parties related to the use of appropriate interventions and supports for all students.

See https://www.ed.gov/news/press-releases/us-department-education-announces-initiative-address-inappropriate-use-restraint-and-seclusion-protect-children-disabilities-ensure-compliance-federal-laws for a copy of the press release.

I. **Memo 2019-1: Addressing Shortages of School Psychologists** (Ohio Department of Education, April 26, 2019)

This memo identifies short-term solutions to the shortage of licensed school psychologists. The suggestions include designating administrative support staff to school psychologists; designating a staff member as an educator on special assignment to assist with delegated school psychology duties; and applying for a waiver of caseload requirements. The memo cautions that these solutions do not relieve "a district's responsibility for adhering to the requirements of the Individuals with Disabilities in Education Act (IDEA), Ohio Revised Code and the requirements that only a licensed school psychologist can provide, such as an individually administered intelligence test."

http://education.ohio.gov/getattachment/Topics/Special-Education/Federal-and-State-Requirements/Operational-Standards-and-Guidance/School-Psych-Memo.pdf.aspx?lang=en-US.

J. **Memo 2018-1: Observations as part of a three-year reevaluation for a student with a disability** (Ohio Department of Education, Nov. 2, 2018)

This memo addresses the legal questions ODE has received concerning the legal requirements of the evaluation team to conduct an observation during a reevaluation. The memo clarifies that a new observation is not necessarily required for every reevaluation, and provides guidance on when a new observation is required. The memo is available at https://education.ohio.gov/getattachment/Topics/Special-Education/Federal-and-State-Requirements/Operational-Standards-and-Guidance/Observation-Memo-Final-11-13-18.pdf.aspx?lang=en-US.

K. **Connecting Students with Work** – Ohio Opportunities for Ohioans with Disabilities (Jan. 2019)

Opportunities for Ohioans with Disabilities (OOD) has developed a new flyer, Connecting Students with Work, to help educate students and families about OOD services and to implement a more streamlined referral process for educators. See https://www.ood.ohio.gov/Transition-Students for a copy of the flyer.

L. **Court vacates U.S. Department of Education's delay of significant disproportionality rule** – *Council of Parent Attorneys and Advocates, Inc. v. Devos*, No. 18-cv-1636, 2019 WL 1082162 (U.S. Dist. Ct. D.C., March 7, 2019)

The U.S. District Court for the District of Columbia ruled that the U.S. Department of Education violated the Administrative Procedures Act when, in July 2018, it delayed implementation of the 2016 significant disproportionality regulations by two years. The court found the Department failed to provide a reasonable explanation for the delay, and failed to consider the costs of delay, thus rendering the delay arbitrary and capricious. On May 20, 2019, the Department issued a statement that it "expects States to calculate significant disproportionality for the 2018–2019 school year using the 2016 rule's standard methodology, or to recalculate using the 2016 rule's standard methodology if a different methodology has already been used for this school year."

Note: The U.S. Department of Education filed a notice of appeal to the D.C. Circuit Court on May 6, 2019. However, the Notice of Appeal does not stay the district court order.

The regulations at issue in this case are Final regulations and Dear Colleague Letter (81 FR 92376, effective Jan. 18, 2017); compliance date postponed by 83 FR 31306 (published July 3, 2018).

M. **OSEP Letters** (2019)

The Office of Special Education Programs posted informal guidance letters issued in 2019 addressing the following topics:

1. Letters addressing a state educational agency's complaint procedures process, enforcement actions, and due process hearing procedures. (Letters to Zirkel, May 13, 2019 and July 3, 2019)
2. Whether a district may invite an observer to an IEP team meeting. (Letter to Heller, May 2, 2019)
3. Questions that resulted from a request for a functional vision assessment by an optometrist. (Letter to Mills, May 2, 2019)
4. Letter addressing a parent's right to an independent educational evaluation when a child has been evaluated and found not to be a child with a disability in need of special education and related services. (Letter to Zirkel, May 2, 2019)
5. Letter addressing whether parental consent is required prior to conducting "age appropriate transition assessments." (Letter to Olex, Feb. 22, 2019)
6. Letter regarding IEP transfer provisions and whether a new LEA is required to hold an IEP team meeting prior to the start of the school year. (Letter to Siegel, Feb. 21, 2019)
7. Letter regarding further discussions on a local educational agency's (LEA's) obligation to a parentally placed private school child with a disability when the child's parent does not request a free appropriate public education (FAPE) for the child. (Letter to Joshua Wayne, Jan. 29, 2019)
8. Letter to provide clarification on a series of questions regarding the protections for children not yet determined eligible for special education and related services under IDEA (as it relates to manifestation determinations). (Letter to Judy Nathan, Jan. 29, 2019)
9. Students with disabilities in correctional facilities – Asks whether the Florida Department of Corrections fails to provide a free appropriate public education (FAPE) under the IDEA to students with disabilities when the State offers such students only a General Education Development credential rather than the opportunity to earn a regular high school diploma because the students are incarcerated in a particular adult corrections facility. (Letter to Duncan, Jan. 29, 2019)

10. Letter regarding implementation of response to intervention and multi-tiered systems of support, including whether IDEA funds can be used for same. (Letter to Zirkel, Jan. 29, 2019)

See https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/index.html#2018 for the letters.

III. Student Issues

A. **Court troubled by school officials' response to bullying allegations** – *A.J.R., et al. v. Bd. of Educ. of Toledo City School Dist., et al*., 2019-Ohio-3402, 2019 WL 3997419 (Ct. App. 6th Dist. Lucas County, Aug. 23, 2019)

The parents of a kindergarten student filed suit against their child's teacher, the school principal, and the assistant principal for allegedly failing to stop the bullying of their child, and for failing to prevent their child being injured by another student when the classmate punctured their daughter's cheek with a sharpened pencil. The trial court granted defendants' motion for judgment on the pleadings for all claims except recklessness or reckless negligence. The teacher and principals argued they were immune from the recklessness claim as they had no knowledge of the classmate harming other students and no reason to suspect the classmate posed a risk of harm to other students.

The court refused to dismiss the claims, finding there were genuine issues of material fact with respect to whether the school officials' conduct was reckless. The child's parents presented evidence that the classmate's bullying of their daughter was ongoing and involved pushing in the bathroom line, teasing, and demanding that the student consume odd combinations of food. The father asserted that over a six month time frame he notified school officials on at least four occasions of specific bullying and harassment by the classmate and of his concern about his daughter's safety. The court found that with this knowledge, it might seem reasonable to keep the two children separate, but there is nothing to suggest that this was done. Instead, there was evidence they were still eating together in the lunchroom, being taught in the same classroom, and, more troubling, sitting at the same classroom table on the day the student was injured despite the ongoing bullying.

B. **Student failed to show coach's conduct was harassment based on sex** – *Chisholm v. St. Marys City School Dist. Bd. of Educ*. No. 3:16-cv-2853, 2018 WL 6788491 (N.D. Ohio, Dec. 26, 2018; appealed to 6th Circuit on Jan. 10, 2019)

Following his removal from the football team, a student complained to his father about his coach's behavior. The student complained that the coach regularly yelled at the players using inflammatory, vulgar language; called players names such as "cancer," "dumb-ass," "loser," and "pussy"; and pressured players to play with injuries. After being informed of the complaints, the board hired a former school superintendent to conduct an investigation. The investigator concluded the allegations were not substantiated. While finding that swearing did occur, the investigator concluded it was not out of line by most standards, and the evidence

showed that coaches properly administered the injury protocol. A then-attorney for the coach obtained the report and posted it on Facebook, and identified the parents who filed complaints.

The student who was dismissed from the team then filed a complaint alleging sexual harassment based on gender stereotypes and retaliation for participating in Title IX-protected activity. The court dismissed the claim, finding the student did not suffer sex-based harassment. While the coach used terms like "pussy" and "bitch," there was no evidence indicating the student exhibited gender non-conforming characteristics. In addition, the coach insulted "on an equal opportunity basis: he spray-shot his name-calling randomly at anyone or, sometimes, at the whole team…" and did not single out the dismissed player for unique, observable, gender non-conforming characteristics. The student's retaliation claim was also dismissed as the student did not engage in protected activity. The student complained to the board generally of harassment, but did not mention sex or Title IX rights. "Such general complaints of harassment do not earn Title IX protection."

Addressing the student's due process claim, the court found the coach's language did not shock the conscience. The student interacted with the coach "in an ultra-competitive, highly physical sport, not in the nurturing classroom environment." The due process claims against the school board and administrators were also dismissed. The board engaged a competent independent investigator in response to the complaints. Even if the investigation was imperfect, it did not shock the conscience. And while the coach's disciplinary history contained complaints about his behavior, his record also contained recommendations from other districts that handles those complaints. State law claims against the board and administrators also failed. (**Note**: This decision and a related case, *Lininger v. St. Marys* (2019 WL 188050), have been appealed to the Sixth Circuit Court of Appeals, Nos. 19-3034 and 19-3100.)

C. **U.S. Department of Education to investigate athletic conference's transgender athlete policy** – U.S. Department of Education Office for Civil Rights (Aug. 7, 2019)

The U.S. Department of Education Office for Civil Rights (OCR) will investigate a complaint concerning the Connecticut Interscholastic Athletic Conference's (CIAC) policy that permits transgender athletes to participate in interscholastic athletics based on their gender identification in school records and daily life. The complaint was filed by the Alliance Defending Freedom (ADF) on behalf of three girls, and includes allegations that a school district discriminated against the girls by denying them equal athletic benefits and opportunities, and by not requesting that CIAC changes its transgender participation policy.

In an August 7 letter to ADF, OCR indicated it will consider whether CIAC and the school district have denied equal athletic benefits and opportunities to the girls, and whether CIAC and the district retaliated against them for their advocacy.

D. **Guidance counselor denied immunity for failure to report suicide threat** – *Baab v. Medina City Schools Bd. of Edn.*, 2019-Ohio-510, 2019 WL 612891 (Ct. App. 9th Dist. Summit County, Feb. 13, 2019)

After learning from her son that a friend was sending him text messages stating that he was going to kill himself, the parent contacted the school guidance counselor to inform her of the situation. According to the complaint, the guidance counselor did not report the parent's call to anyone, did not meet with the student to assess his mental state, and did not contact the student's father to inform him of the suicide threat. Several days later, the student committed suicide. The father sued the school and the guidance counselor for wrongful death. The trial court granted summary judgment to the school board after concluding the board was immune, but denied immunity to the guidance counselor because there was an issue regarding whether the counselor's conduct was reckless. The appeals court upheld the denial. Given the student's history of cutting, the counselor's alleged failure to call the student's father despite the father's instructions to the counselor to tell him if she heard anything more regarding his son (so he could take him back to the hospital), and the call from a friend's parent relaying a suicide threat, a reasonable juror could find that a reasonable person under this fact pattern would recognize that failure to act or report additional incidents could result in the student's death. (On June 12, 2019, the Ohio Supreme Court declined to review the case.)

E. **Court refuses to dismiss complaint against school district following student's suicide** – *Estate of Grace v. Fairfield City School District Board of Education,* No. 1:15cv787, 2018 WL 4539440 (U.S. Dist. Ct. S.D. Ohio, Sept. 21, 2018)

A court refused to dismiss claims made against a board of education and district employees (including the superintendent, principals and assistant principals, a teacher, and a counselor) following the suicide of a student. The parents alleged their daughter's suicide was the result of bullying and harassment she suffered at school and online and that school officials failed to stop the bullying despite the parents' request for help. The parents said other students told their daughter to kill herself, that other students pushed, hit, and tripped her on multiple occasions, she was verbally harassed, and racist messages were written about her on bathroom walls and stalls and were not removed. Other bullying took place on social media.

The parents alleged they contacted school officials multiple times during the 2014-2015 school year to report the bullying but that district officials did not investigate the harassment or discipline the students involved. The district also refused the parents' request that their daughter be placed in a different student subgroup for the following year, and that the harassment continued as a result. The court concluded that the allegations, it taken as true, support a plausible claim that district officials knew about the ongoing bullying, harassment, cyberbullying, and physical assaults and took little or no action to remedy it.

The court also refused to dismiss a state law claim for wrongful death. The student's suicide "was a reasonably foreseeable result of the bullying suffered by [the student]." News outlets consistently report instances of students harming themselves after being bullied. In addition, the parents alleged that in the months

prior to their daughter's death two other district students had attempted suicide as a result of bullying.

F. **Lawsuit against school district following student's suicide can proceed** – *Meyers v. Cincinnati Board of Education*, No.1:17-cv-521, 2018 WL 4566271 (U.S. Dist. Ct. S.D. Ohio, Sept. 24, 2018)

The parents of an eight-year-old student who committed suicide filed a lawsuit against the school district and school officials alleging that defendants fostered and covered up bullying and other aggressive behavior at the school and created an unsafe environment for students. The parents stated their child was knocked unconscious by a violent bully in the school bathroom and then kicked and taunted by other students, but that school staff did not call 911 and misrepresented to his mother that he had fainted. Two days later two students took the child's water bottle and flushed it down the toilet. The parents also alleged that other incidents in which their son was assaulted were concealed from them by district officials, and that school officials failed to report bullying incidents as required by law (ORC 3313.666).

Addressing the state-created danger claim, the court found that if true, the district's misrepresentation about the bathroom incident and concealment of bullying at the school constituted affirmative acts by district officials that placed the child in more danger. A reasonable juror could also find that district officials acted with recklessness and deliberate indifference as defendants should have known that misrepresenting that a student had fainted, not been knocked unconscious, could result in serious harm. In addition, the Sixth Circuit has found that suicide is a foreseeable consequence of bullying. The court also refused to dismiss the equal protection claim, stating the "complaint is rife with examples of bullying victims not receiving appropriate medical treatment and their parents not being informed of bullying incidents," whereas other students who were injured at school were given appropriate medical attention.

The court dismissed claims against school officials for failing to report child abuse. Defendants noted that no court has ever defined an altercation between elementary students as child abuse, and the court agreed that "[p]laintiffs' proposed reading of the child abuse statute is over-expansive and leads to absurd results." **Note**: This decision was appealed to the Sixth Circuit (No. 18-3974). On March 26, 2019, the Sixth Circuit denied the petition for interlocutory review of state-created danger, conscience-shocking behavior, and equal protection claim questions. In May 2019, the district court lifted a stay of discovery.

G. **U.S. Supreme Court declines to review transgender case** – *Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518 (3d Cir. 2018), cert. denied (U.S. May 28, 2019)

The Alliance Defending Freedom (ADF) filed suit against the Boyertown Area School District (BASD) in federal court on behalf of a male student challenging the school district's policy of allowing transgender students access to sex specific facilities on the basis of gender identity. In 2018, the Third Circuit affirmed the lower court's decision to deny a motion for preliminary injunction, finding the plaintiffs had failed to show they were likely to succeed in their case or that they

would be irreparably harmed if the policy remained in place. "[T]he school district's policy served a compelling interest—preventing discrimination against transgender students—and was narrowly tailored to that interest." This decision was appealed to the U.S. Supreme Court, presenting two questions:

> 1. Given students' constitutionally protected privacy interest in their partially clothed bodies, whether a public school has a compelling interest in authorizing students who believe themselves to be members of the opposite sex to use locker rooms and restrooms reserved exclusively for the opposite sex, and whether such a policy is narrowly tailored.
>
> 2. Whether the Boyertown policy constructively denies access to locker room and restroom facilities under Title IX "on the basis of sex." 20 U.S.C. 1681.

On May 28, 2019, the U.S. Supreme Court declined to review the decision (No. 18-658, 2019 WL 2257330).

IV. Sunshine Law / Records

A. **Personal cell phone call/text logs were not public records** - *Paule v. Woodmore Local Schools*, No. 2018-01385PQ, 2019-Ohio-2626 (Ct. of Claims, March 20, 2019)

The special master in this public records case determined that cell phone call/text detail logs of district administrators were not "records" of the district; therefore, the school district did not violate Ohio's Public Records Act when it did not produce the records. The special master determined the cell phone stipend the district provided to certain administrators was not contingent on any particular cell phone use, and the district did not require submission of cell phone records to receive the stipend. Nor was there any quasi-agency relationship between the district and the cellular service providers, as there was no evidence cellular service providers prepared call/text logs in order to carry out the district's responsibilities, or that the district was able to monitor the provider's performance in this respect.

Furthermore, there was no evidence that the call/text logs were "records." The district's records retention schedule does not include call or text message logs, nor does district policy require such logs to be submitted to the office. There was no evidence that the district required the individuals named in the request to use information from their personal mobile telephone provider to document the identity or timing of business calls, or that such information was necessary to document the organization, functions, policies, decisions, procedures, operations, or other activities of the district. Accordingly, the call/text logs are not "records" or "public records." (Adopted by the Court of Claims on May 15, 2019.)

B. **City ordered to disclose text records** – *Sinclair Media III, Inc. v. Cincinnati*, No. 2018-01357PQ, 2019-Ohio-2342507 (Ct. of Claims, May 20, 2019)

The Court of Claims determined that a request for all text messages from city council members and two other named individuals was not overbroad as it was

limited to a specific six-week period, limited the subject matter of the request to discussion of a certain individual's employment status, and was limited to messages sent by certain individuals. However, another request for *any* text messages sent between certain dates in which votes on an individual's employment was discussed was overbroad as it was not limited by reference to the author or recipient of the messages.

The Court rejected the city's argument that text messages on the personal, privately-paid for cell phones of city council members are not "records." The operative question is not whether the text message were sent from or stored on personal or private devices, but whether they document the functions, policies, procedures, operations, or other activities of the city. Records reflecting employment decisions of the public office clearly document the activities of that office.

C. **Public participation policy for school board meetings** – *Ison, et al. v. Madison Local School Board*, No. 1:19-cv-155, 2019 WL 3254094 (July 19, 2019)

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. A series of 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. The plaintiffs then sought a temporary restraining order and preliminary injunction barring the school board from enforcing portions of its public participation policy. The portions of the policy challenged include: restricting participation to those with a legitimate interest in the board's actions; requiring attendees to register their intent to participate and provide proof of residence in the district; and permitting the presiding officer to interrupt, warn, or terminate a participant's statement when it is too lengthy, personally directed, abusive, off-topic, antagonistic, obscene, or irrelevant.

The court denied the motion for temporary restraining order and preliminary injunction, finding plaintiffs were unlikely to succeed on the merits of their challenge. School board meetings are a limited public forum, and the government may regulate the time, place, and manner of speech so long as the regulation is content-neutral, narrowly tailored, and leaves open ample alternative channels for communication of information. The court found the policy's prohibition on "antagonistic" speech is not content-based—it is not based on the subject of the speech, but on conducting orderly, productive meetings. The policy was narrowly tailored to prohibit only that speech which interferes with conducting meetings in a productive and efficient manner. Addressing plaintiffs' prior restraint argument, the court concluded the registration requirement is not a "prior restraint," but a reasonable regulation of time, place, and manner. (The court did not consider the residency challenge as the party asserting this claim did not have standing. The record showed he was barred from speaking because someone else submitted his public participation form, not because of the residency requirement.)

D. **The use of secret ballots in a public meeting violates the Open Meetings Act** – *State ex rel. Bratenahl v. Village of Bratenahl* , No. 2018-0440, 2019 WL 3806295 (Aug. 14, 2019)

The Ohio Supreme Court ruled that a village council may not elect a council officer by way of secret ballot. The court explained that although the Open Meetings Act does not prescribe particular voting procedures, the act does require that any official action must take place in an open meeting. "We read this to mean that that portion of the meeting in which the formal action is taken—here, the vote—must be open." The court also found that even though the secret-ballot slips were maintained as a public record, "the availability of concealed information through a public-records request does not retroactively make a meeting with secret votes 'open to the public.'"

E. **School Resource Officers, School Law Enforcement Units, and the Family Educational Rights and Privacy Act** – U.S. Department of Education Privacy Technical Assistance Center (PTAC-FAQ-11; Feb. 2019)

A report by the Federal Commission on School Safety noted that "substantial misunderstanding remains at the local level among officials and educators concerning the *Family Educational Rights and Privacy Act* (FERPA), and, in particular, its application to school-based threats." The U.S. Department of Education issued this set of thirty-seven frequently asked questions to help school officials understand how FERPA applies to disclosure of personally identifiable information from student education records to school security units, outside law enforcement entities, School Resource Officers, and other schools.

The guidance is available at https://studentprivacy.ed.gov/resources/school-resource-officers-school-law-enforcement-units-and-ferpa.

F. **Improving the Effectiveness and Efficiency of FERPA Enforcement** (U.S. Department of Education, Dec. 20, 2018)

The U.S. Department of Education issued guidance in December 2018 concerning the modification of its approach to processing and resolving FERPA complaints. The Department will make a case-by-case determination for every complaint to determine the best mechanism for resolving the underlying situation. This could include a formal investigation or acting as an intermediary or providing resolution assistance. According to the Department, a large number of the complaints it receives involve isolated incidents of inadvertent or accidental disclosure of student records or personally identifiable information. In this situation, the most effective response may involve assisting the educational agency to improve its policies, practices, and security controls, and these complaints may be referred to the Privacy Technical Assistance Center. "Only in those instances where an educational agency or institution is unwilling or unable to come into voluntary compliance with the law and it is otherwise appropriate will the Department withhold federal funds." The

guidance is available at https://studentprivacy.ed.gov/FERPA-Enforcement-Notice.

G. **School facilities task force tour did not violate Open Meetings Act** – *Esrati v. Dayton City Commission*, 2019-Ohio-1021, 2019 WL 1313220 (Ct. App. 2nd Dist. Montgomery County, March 22, 2019)

A district resident claimed the school board violated the Open Meetings Act when members of a facilities task force toured a school building. The tour was not open to the public. The court found there was no evidence that the task force conducted anything other than information-gathering during the tour. Because the task force did not engage in deliberations during the tour, the board's subsequent action to close an elementary school was not invalid. The court declined to consider whether the trial court erred in determining that the task force was a public body because the board did not file a notice of cross-appeal on this point.

H. **Is a community college foundation subject to public records act?** – *Sheil v. Horton*, 2018-Ohio-5240, 2018 WL 6818547 (Ct. App. 8th Dist. Cuyahoga County, Dec. 20, 2018)

This case involves the analysis of when records of a private entity are public records. While a 2006 Supreme Court case, *State ex rel. Oriana House, Inc. v. Montgomery*, provided a framework for analysis of records of a private entity, the "functional-equivalency test" mandated by the Court was not followed by the court of appeals in *Sheil*.

In *Sheil*, a private foundation raised funds for a community college and brought in a renowned speaker to speak at a luncheon to raise funds. A local television station made a request for a copy of the contract between the foundation and the speaker. The "Special Master" in the Court of Claims, as well as the court of appeals found that solicitation and receipt of funds for an institution are government functions. They further found that the foundation and the community college are "closely intertwined," to a degree that the foundation records are public records.

The case was appealed to the Ohio Supreme Court (No. 2018-1816), but on April 3, 2019, it declined to accept jurisdiction of the appeal. Depending on the particular circumstances of each relationship, the records of a booster group, education foundation, or parent-teacher organization could be characterized as public records.

I. **Attorney-client privilege** – *Chillicothe Gazette v. Chillicothe City Schools*, 2019-Ohio-965 (Ohio Ct. of Claims, Feb. 5, 2019)

A school district objected to a special master's determination that the school must produce a copy of a letter from the board's attorney to the superintendent, arguing the letter was protected by attorney-client privilege. The Court of Claims found the special master erred, as the letter contained a communication between a lawyer and her client that facilitated the rendition of legal services or advice. However, the court found that part of the letter, the Statement of Insured Client's Rights, was verbatim from the Ohio Rules of Professional Conduct, and that this portion of the letter must be produced.

Concerning an email from the board's insurer to the superintendent, the court did not address the district's argument that this letter falls within the scope of attorney work product. Instead, the court found that after the special master determined that this part of the request was improperly ambiguous and overbroad, the analysis should have ended. Therefore, the special master erred when he ordered production of this email.

J. **2019 "Yellow Book" released** – Ohio Attorney General (March 2019)

The Ohio Attorney General announced the release of the 2019 edition of the Sunshine Laws Manual. The manual reflects the past year's changes in law and legal decisions affecting Ohio's open government laws. A model public records policy for local governments has also been posted. The manual and model policy are available at www.ohioattorneygeneral.gov/Sunshine.

V. Employment Issues

A. **Post-Janus Litigation: Dues Revocation Policy** – *Smith et al v. American Federation of State County and Municipal Employees* (S.D. Ohio, 2:18-cv-01226; case voluntarily dismissed Jan. 18, 2019)

A class action complaint was filed seeking a judgment that the union's revocation policy is unconstitutional by collecting and having the public employer deduct union dues from public employees who do not consent. After the *Janus* decision, seven union members notified AFSCME that they resigned their union membership and did not consent to any further deduction of union dues or fees from their wages. AFSCME responded that the dues deduction would not be stopped because the request was not made within the window period set forth in bargaining agreement or the dues authorization card.

The employees were represented by the National Right to Work Legal Defense Foundation, who announced that the parties reached a settlement in early January. As part of the settlement, the union agreed to refund the dues collected from those employees who requested to resign between June 27, 2018 and the date of the settlement agreement. Following the agreement, the case was dismissed voluntarily.

C. **Exclusive Representation** – *Uradnik v. Inter Faculty Org*., No. 0:18-cv-01895-PAM, 2018 WL 4654751 (D. Minn. Sept. 27, 2018)

In this case, the plaintiff argues that the exclusive representation provisions of Minnesota's Public Employment Labor Relations Act ("PELRA") violate her First Amendment rights to freedom of speech and freedom of association. The plaintiff claims Minnesota law forces her to associate with the union even though she is not a member and disagrees with many of the union's positions and issues. The district court denied the Motion for Preliminary Injunction, finding that even if exclusive representation by a union rose to a First Amendment violation, Minnesota's PELRA would survive First Amendment scrutiny. This decision was upheld by the Eighth Circuit Court of Appeals, and then appealed to the U.S. Supreme Court (No.

18-719). On April 29, 2019, the U.S. Supreme Court announced it would not accept the case.

D. **Employee not entitled to refund of fair share fees** – *Lee v. Ohio Education Association*, No. 1:18-cv-1420, 2019 WL 1323622 (N.D. Ohio, March 25, 2019)

An employee filed a complaint against a union, a school district, and State Employment Relations Board members seeking to enjoin the collection of fair-share fees and to recoup damages based on prior collection of those fees. Joining a number of courts in other states, the court dismissed the complaint. There is no dispute that the NEA immediately ceased collecting fair-share fees. Concerning fair-share fees collected in the past, the court found: "The facts are undisputed that NEA collected fees under the binding precedent of *Abood* and the subsequent state statutes it spawned. As a matter of law, therefore, those collections efforts were done in good faith that they did not violate the United States Constitution." (Note: This decision has been appealed to the Sixth Circuit Court of Appeals.)

In July 2019, the Southern District of Ohio likewise dismissed a case seeking an injunction to prevent a union from collecting fair share fees, a declaration that Ohio's Public Employees' Collective Bargaining Act is unconstitutional, and a refund of the fair share fees collected by the union before *Janus* was decided. (*Ogle v. Ohio Civil Service Employees Association, AFSCME, Local 11*, No. 2:18-cv-1227, 2019 WL 3227936 (S.D. Ohio, July 17, 2019).)

E. **Decision not to hire applicant was not age-based discrimination** – *Romano v. Hudson City Sch. Dist.*, No. 18-3969, 2019 WL 1994555 (6th Cir. May 6, 2019)

The plaintiff in this case alleges she was not hired for a teaching position because of age discrimination and retaliation. The plaintiff had applied at the school district every year from 2012 to 2016. While she was interviewed several times, and was hired as a substitute teacher (once for a one-semester assignment, and then for a one-year assignment), she was never selected for a permanent teaching position.

This Sixth Circuit upheld the district court's grant of summary judgment to the school district, as the school district had legitimate, non-discriminatory reasons not to hire the plaintiff. Interviewers at the school district identified numerous common issues with the plaintiff's interview responses, including that she gave vague answers, that she would not be able to manage her classroom proficiently, and that she planned to teach literacy and math in a way that differed from the district's preferred methods. In addition, it could not be shown that the district's reasons were pretextual. While the plaintiff had some qualifications the other candidates did not, she was not an "appreciably-better candidate" than the others. "Given the qualifications of each candidate, a reasonable employer could have chosen" the other candidates over the plaintiff." As for the plaintiff's claim that the district's refusal to interview her after she filed an age-discrimination complaint was

retaliatory, the district proffered legitimate, non-discriminatory reasons for this decision.

F. **Case alleging assignment to teach French was discriminatory can proceed** – *McGriff v. Beavercreek City Sch. Dist.*, No. 3:18-cv-00372, 2019 WL 3719409 (S.D. Ohio, May 6, 2019)

A teacher with a fifty percent hearing deficiency and fibromyalgia alleged her transfer to teach only French, a subject she had not taught for nearly twenty years, was discriminatory. In her complaint, she claimed the district provided younger and non-disabled employees more favorable teaching assignments. The district moved to dismiss the complaint, but the court allowed the case to proceed. To survive a motion to dismiss, the complaint must contain enough facts to state a claim that is plausible on its face. The court found that although the teacher did not allege that she was terminated, received a decrease in her salary, had a less distinguished title, or was subject to a significant diminishment in material responsibilities, she did plead that the district's actions resulted in lost pay, benefits, and attorney fees. She also alleged facts "unique to [this] particular situation," such as an aggravation of her fibromyalgia condition, anxiety, emotional distress, and depression. These claims could support a finding of a materially adverse employment action.

G. **Constructive discharge claim** – *Rashida King v. Cincinnati Public Schools*, No. 1:17-cv-794, 2019 WL 1275230 (March 13, 2019)

A teacher claimed she was subject to a hostile work environment based on a disability and was constructively discharged when a school principal disclosed confidential medical information about her. According to the complaint, the principal met with the teacher's entire teaching team and informed them the teacher was taking leave for "psychological reasons." The principal also allegedly told the team that for her, "personally, with my upbringing, my background, it was hard for me to understand somebody taking time off for psychological reasons," questioned whether the teacher was mentally ill, informed the team she did not have to bring the teacher back the next year because she exceeded allowable leave time, and implied the teacher was malingering.

The court denied the school district's motion for summary judgment. Considering the evidence in the light most favorable to the teacher, there were genuine issues of material fact concerning: (1) whether the harassment was sufficiently severe and pervasive so as to interfere with the teacher's work, and (2) whether a reasonable person would feel compelled to resign under these circumstances.

H. **"Just cause" does not apply to nonrenewal decision** – *United Elec. Radio & Mach. Workers of Am. v. Highland Local Sch. Dist. Bd. of Educ.*, 2018-Ohio-5307, 2018 WL 6825450 (Ct. App. 5th Dist. Morrow County, Dec. 14, 2018)

After receiving notice that their one-year limited contracts were not being renewed, two bus drivers filed a complaint seeking a declaratory judgment that: (1) the dispute over the termination of their employment is subject to the grievance and arbitration provisions of the collective bargaining agreement ("CBA"), and (2) that their employment may only be terminated for "just cause" as set forth in the CBA.

The court determined that because the CBA made no specification about the issuance, sequence, renewal, or non-renewal of limited contracts, there is no conflict with state law and R.C. 3319.081 and 3319.083 apply. The court also found the legal presumption in favor of arbitration was rebutted based upon the statutory language in R.C. 3319.081 and 3319.083, and that the just cause provision of the CBA did not apply to non-renewal of limited contracts on a no-fault basis.

I. **EEOC takes final step to rescind wellness program incentive** (83 FR 65296, published Dec. 20, 2018, effective Jan. 1, 2019)

In May 2016, the Equal Employment Opportunity Commission (EEOC) published a final rule describing the extent to which employers may use incentives to encourage employees to participate in wellness programs that ask them to respond to disability-related inquiries and/or undergo medical examinations without violating the Americans with Disabilities Act (ADA) or Genetic Information Nondiscrimination Act (GINA). The rule allowed employer-sponsored wellness plans to offer employees discounts of up to 30 percent of the cost of self-only health coverage for divulging certain private medical information or to impose penalties of up to 30 percent for not doing so. In response to the incentive rules, AARP filed a lawsuit, and the court concluded that the EEOC did not provide sufficient reasoning to justify the 30 percent mark.

As a result of the court's decision, the EEOC rescinded the incentive section of the rule regarding the 30 percent discount (29 CFR 1635.8(b)(2)(iii)) effective January 1, 2019. For more information, see https://www.bricker.com/insights-resources/publications/eeoc-takes-final-step-to-rescind-wellness-program-incentive.

J. **FMLA opinion letter: Employee may take intermittent FMLA leave to attend child's IEP meetings** – FMLA2019-2-A (Aug. 8, 2019)

An employee may take intermittent leave under the Family and Medical Leave Act (FMLA) to attend IEP meetings addressing her children's educational and special medical needs. The employee's children have serious health conditions as certified by a health care provider, and the employee's attendance at these meetings is "care for a family member . . . with a serious health condition." The employee attends these IEP meetings to help participants make medical decisions concerning her children's medically-prescribed speech, physical, and occupational therapy; to discuss the children's well-being and progress with the service providers; and to ensure the school environment is suitable to their medical, social, and academic needs. The children's doctor does not need to be present at the IEP meetings in order for the employee to qualify for intermittent leave.

K. **FMLA opinion letter regarding designation of leave** – FMLA2019-1-A (March 14, 2019)

The U.S. Department of Labor (DOL) issued a new opinion letter addressing how employers should designate Family and Medical Leave Act (FMLA) leave when an employee has both paid sick time and FMLA leave available. The guidance letter

states that an employer may not delay designating FMLA-qualifying leave as FMLA leave, even if the employee would prefer that the employer delay the designation. An employer is also prohibited from designating more than 12 weeks of leave as FMLA leave. While an employer must observe any employment benefit program or plan that provides greater family or medical leave rights to employees than the rights established by the FMLA, such additional leave cannot expand the employee's 12-week entitlement. "Therefore, if an employee substitutes paid leave for unpaid FMLA leave, the employee's paid leave counts toward his or her 12-week (or 26-week) FMLA entitlement and does not expand that entitlement." See https://www.bricker.com/insights-resources/publications/dol-issues-opinion-letter-regarding-employers-designation-of-fmla-leave for more information and a link to the opinion letter.

L. **Overtime Rules: Notice of Proposed Rulemaking** – U.S. Department of Labor, 84 FR10900; RIN 1235-AA20 (announced March 7, 2019)

The U.S. Department of Labor's Wage and Hour Division (Department) issued proposed amendments to 29 CFR Part 541: "Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees." The Department proposes to formally rescind rules issued in May 2016 that were declared invalid by the U.S. District Court for the Eastern District of Texas, and to adopt new rules.

The proposed rules govern exemption from minimum wage and overtime pay requirements for executive, administrative, professional, outside sales, and computer employees. To meet this "white collar" exemption, an employee must be paid on a salary basis (the "salary basis test"), the salary must meet a specified minimum amount (the "salary level test"), and the employee's duties must primarily involve executive, administrative, or professional duties (the "duties test"). The Department is proposing to:

1. Increase the weekly salary level test from $455 per week to $679 per week ($35,308 annually);
2. Increase the total compensation requirement needed to exempt highly compensated employees from $100,000 annually to $147,414 annually; and
3. Allow employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10% of the standard salary level if the payments are made on an annual or more frequent basis.

The proposed rules do not make any changes to the duties test, and teachers continue to be exempt from the salary level test. Academic administrative employees in educational establishments would need to be paid on a salary or fee basis of at least $679 per week, or on a salary basis which is at least equal to the starting salary for teachers in the educational establishment.

While the Department anticipates updating the standard salary level periodically, future updates would be subject to notice and comment rulemaking. See https://www.dol.gov/whd/overtime2019/ for a copy of the proposed rules and additional information.

M. **Proposed Rule – Joint Employment Status Under the Fair Labor Standards Act** – 84 FR 14043 (April 9, 2019)

The U.S. Department of Labor published proposed amendments to regulations regarding joint employer arrangements under the FLSA. The Department proposes a four-factor test to determine joint employment status, specifically, whether the potential joint employer:

1. Hires or fires the employee;
2. Supervises and controls the employee's work schedule or conditions of employment;
3. Determines the employee's rate and method of payment; and
4. Maintains the employee's employment records

For additional information, visit https://www.bricker.com/insights-resources/publications/dol-proposes-four-factor-test-to-determine-joint-employment-status.

N. **Proposed Rule - Regular and Basic Rates Under the Fair Labor Standards Act** – 84 FR 11888 (March 29, 2019)

The U.S. Department of Labor is proposing to amend 29 CFR parts 548 and 778 to clarify, update, and define basic and regular rate requirements under the Fair Labor Standards Act. The regular rate defines what forms of payment employers must include when determining an employee's overtime rate. The Department proposes clarifications to confirm that employers may exclude the following from an employee's regular rate of pay:

- the cost of providing wellness programs, onsite specialist treatment, gym access and fitness classes, and employee discounts on retail goods and services;
- payments for unused paid leave, including paid sick leave;
- reimbursed expenses, even if not incurred "solely" for the employer's benefit;
- reimbursed travel expenses that do not exceed the maximum travel reimbursement under the Federal Travel Regulation System and that satisfy other regulatory requirements;
- discretionary bonuses, by providing additional examples and clarifying that the label given a bonus does not determine whether it is discretionary;
- benefit plans, including accident, unemployment, and legal services; and
- tuition programs, such as reimbursement programs or repayment of educational debt.

The proposed rule also includes additional clarification about other forms of compensation, including payment for meal periods, "call back" pay, and others. See www.dol.gov/whd/overtime/regularrate2019.htm for more information.

VI. Board Issues

A. **School district not liable for sexual assault of student on school bus** – *Jane v. Jackson Local School District Board of Education*, No. 5:17-cv-1931, 2018 WL 6590615 (U.S. Dist. Ct. N.D. Ohio, Dec. 14, 2018; appealed to 6th Circuit on Jan. 7, 2019)

The parents of a kindergarten student who was sexually assaulted on the school bus by a student in the fifth grade filed suit against the school board and various district employees alleging violations of substantive due process, liability under § 1983, Title IX, and state tort law.

The court found no substantive due process violations by the school board. To establish such a claim, state actors must have a "special relationship" with an individual, or the conduct must result in a "state-created danger." The Sixth Circuit has determined that transporting students by a school bus does not create a special relationship. Nor was it shown that the school board or district employees knew or should have known that their actions specifically endangered the kindergarten student. While assigning the fifth-grade student to a seat in the front of the bus increased the risk that the older student would harm the kindergarten student, the older student's prior behavior (lighting a match on the school bus) did not put district employees on notice that he posed a risk of sexually assaulting other students.

Addressing the Title IX claim, an educational institution can be held liable for student-on-student sexual harassment only when the harassment is sufficiently severe, the institution had actual knowledge of the harassment, and the institution was deliberately indifferent to the harassment. In this case, there is no question that the harassment was sufficiently severe. However, it is undisputed that the board did not have actual knowledge of the assaults until receiving an email from the parents. In addition, the board acted quickly and decisively once it was aware of the assaults by immediately launching an investigation, suspending the older student, and then later expelling the student. The older student never rode the bus after district officials learned of the incident, and never again came into contact with the kindergartener. The court also ruled the board and its employees were entitled to statutory immunity on the state law claims.

B. **Court refuses to dismiss negligence claims against school administrators** – *Jane Doe 1 v. Licate*, 2019-Ohio-412, 2019 WL 495507 (Ct. App. 11th Dist. Ashtabula County, Feb. 8, 2019)

Three school children alleged they were victims of sexual assault by a former bus driver employed by the school district, who is now deceased. They filed suit against former superintendents, business/operations officers, and transportation supervisors of the district, alleging that the administrators failed to investigate the driver's criminal background, failed to monitor and investigate his conduct, and failed to report alleged sexual abuse. The complaint alleges that if the administrators had investigated the driver's background, it would have revealed a

domestic violence conviction, prior arrests for domestic violence, disorderly conduct, and incident reports filed with the police accusing the driver of sexually abusing his grandchildren and threatening to assault a neighbor.

The appeals court refused to dismiss the claims filed against the administrators in their individual capacities. Construing the allegations as true, there may be a set of facts that would show the administrators acted with malicious purpose, in bad faith, wantonly, or recklessly. Any defenses to individual liability must be established through the discovery process and will not be assumed to determine whether dismissal is appropriate.

C. **Exclusive vendor policy did not violate First Amendment** – *West Michigan Band Instruments v. Coopersville Area Public Schools*, No. 18-1583, 2019 WL 211392 (U.S. Ct. App. 6th Cir., Jan. 16, 2019)

A musical instrument vendor alleged the school board's exclusive vendor policy—in which an invitation to bid process was used to select a company to serve as the district's instrument repair vendor and to become the exclusive vendor at Band Night—constituted viewpoint discrimination in violation of the First Amendment. Band Night is held by the district to provide information to students and parents about the band program and renting or purchasing instruments, and to fit students to their instruments. The Sixth Circuit upheld the lower court's dismissal of the complaint. In a limited public forum or nonpublic forum, government restriction on speech must be viewpoint neutral and reasonable in light of the purpose served by the forum.

First, the court found the school district's policy was viewpoint neutral. The vendor "was excluded from a school forum, not because of its viewpoint, but because of its status as a non-preferred vendor who lost to [another vendor] in the bidding process." Every time a governmental entity chooses a private company after competitive bidding, it is "discriminating." The court also found the preferred-vendor policy was reasonable in light of the purpose served by the Band Night—which is to educate students and parents about the program and assist them in getting properly fitted to their instruments. Restricting vendor attendance minimizes competition for the attention of parents and students, reduces crowding, and ensures that the vendor present at the meeting meets the school district's standards.

D. **Arbitrator must decide if grievance is "arbitrable"** – *Toledo Federation of Teachers v. Board of Education of the Toledo City School District*, 2019-Ohio-3025, 2019 WL 3381803 (Ct. App. 6th Dist. Lucas County, July 26, 2019)

A school board refused to arbitrate a grievance concerning professional development leave for teachers, citing a provision in the collective bargaining agreement ("agreement") that prohibited arbitration of grievances that are similar to grievances denied or sustained by a decision of an arbitrator. In this case, the board argued that in 2016 an arbitrator decided a grievance concerning professional development leave and found it was within the board's authority to deny a request for professional leave and that, given staffing difficulties, the board did not exercise its authority in a manner that was arbitrary, capricious, discriminatory, or

unreasonable. The trial court ruled the grievance was not arbitrable because it was similar to the 2016 grievance.

The court of appeals reversed, finding the broad arbitration provision in the agreement created a presumption of arbitrability. The board failed to produce any evidence showing that factual disputes over whether two grievances are "similar" are not subject to arbitration. The agreement did not operate to exclude already-pending grievances that may be impacted by an intervening arbitration decision, and "even if it did, it would be the responsibility of the arbitrator to determine whether two grievances are 'similar'."

E. **School personnel authorized to carry firearms on school property do not need to complete basic peace officer training program** – *Gabbard v. Madison Local School District Bd. of Educ.*, No. CV 2018 09 2028 (C.P. Butler County, Feb. 28, 2019)

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 sought a permanent injunction barring the board from implementing its decision to arm employees unless those employees completed a basic peace officer training program. The parents argued a provision of R.C. 109.78(D)—that 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 judge ruled that R.C. 109.78(D) did not apply to teachers, administrators, custodians, and other such school employees. The statute, read in context, refers to persons employed in a police capacity. "These are employees whose position is such that by its very nature mandates the person holding it to go armed while on duty," according to the opinion. Most teachers and other school employees are not employed in such capacity, unlike school resource officers, who are. Therefore, the peace officer training requirements do not apply to these school employees. (Note: On March 26, 2019, this decision was appealed to the Twelfth District Court of Appeals, No. CA2019-03-0051.)

F. **Authorized school staff not employed as special police officers or security guards may carry weapons** – Ohio Attorney General Opinion 2019-023 (July 12, 2019)

This Ohio Attorney General opinion addresses the application of R.C. 2933.122—which permits individuals to convey or possess deadly weapons in a school safety zone if they have written authorization from the board of education—and 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 the person goes armed while on duty unless the person has received a certificate of having

satisfactorily completed an approved basic police officer training program or has completed twenty years of active duty as a police officer.

The opinion concludes that a person employed by a school and acting in a security capacity (as a special police officer, security guard, or another similar security position) may not bear a deadly weapon on school premises unless the person is in compliance with R.C. 109.78(D). Any person not employed by an educational institution as a special police officer or security guard, or in a similar security position in which the individual goes armed on duty, may convey or possess deadly weapons in a school safety zone on the basis of the written authorization of the board so long as the conveyance or possession is compliance with the authorization. Application of these provisions to particular positions (such as a supervisor of safety and security at issue in the letter) is subject to interpretation based not only on the position's title, but on the duties and responsibilities of the position, and is not appropriate for determination as part of the opinion-rendering function of the Attorney General.

G. **Sick leave donation program if no CBA** - Ohio Attorney General Opinion 2019-014 (April 17, 2019)

The Ohio Attorney General issued an opinion finding that the board of a joint vocational school district has no authority to establish a sick leave donation program for nonteaching employees of the district who are not members of a collective bargaining unit. Because R.C. 3319.141 limits the acceptable uses of sick leave to an employee's personal illness or injury, or to an illness, injury, or death of a member of the employee's immediate family, the board has no authority to permit employees to use sick leave for another purpose.

H. **Released time religious instruction** - Ohio Attorney General Opinion 2019-015 (April 17, 2019)

This opinion addresses board policies adopted under R.C. 3313.6022 that authorize released time religious instruction, and legal issues boards should consider concerning publicizing the availability of these courses. If a board's policy permits or prohibits certain activities to publicize the availability of a religious instruction course, the policy must comply with Ohio law, the Ohio Constitution, and the Free Speech and Establishment Clauses of the First Amendment to the U.S. Constitution.

The opinion letter addresses: permitting entities to host tables and displays at orientation or open house-type events, and to distribute materials to provide information about the courses; sending consent forms home with students for parents to sign; including a description of the course in the district's course description materials; prohibiting students from inviting other students or distributing literature; prohibiting community members from encouraging enrollment; and prohibiting school employees from encouraging or discouraging enrollment. See https://www.ohioattorneygeneral.gov/Files/Legal/Opinions for a copy of the opinion.

VII. **The Every Student Succeeds Act** – Pub.L. 114-95, 129 Stat. 1802 (signed Dec. 10, 2015)

A. **Title I, Part A: Final rule with request for comments** 84 FR 31660 (July 2, 2019)

The U.S. Department of Education (Department) published a final rule making technical amendments to align regulations in 34 CFR Parts 200 and 299 with the Elementary and Secondary Education Act (ESEA) as amended by the Every Student Succeeds Act (ESSA). These regulations go into effect July 2, 2019. The changes include: modifying language concerning a state's alternate academic achievement standards to align with ESEA; schoolwide programs; revising parents' right to know regulation to align with ESEA (including removing references to "highly qualified"; providing services to private school children; reservation and allocation of funds by an LEA; clarifying applicability of Uniform Guidance (2 CFR Part 200) to ESEA programs; maintenance of effort; supplement, not supplant; and equitable services.

Amendments to §200.64(b)(3)(ii)(A) permit a local education agency to enter into a contract with a religious organization to provide equitable services on the same basis as any other entity, in accordance with the Supreme Court's decision in *Trinity Lutheran Church of Columbia, Inc. v. Comer* (137 S. Ct. 2012 (2017)). Because the rule changes are technical, the Department waived notice and comment rulemaking for these amendments. However, there is a 30-day comment period, and the Department may conduct additional rulemaking based on the comments.

B. **Title I, Part A: Supplement Not Supplant – Non-Regulatory Informational Document** (June 2019)

On July 17, 2018, the U.S. Department of Education withdrew regulations proposed in 2016 relating to the supplement not supplant requirements in ESSA. New regulations have not been proposed, but on Jan. 25, 2019, draft "significant guidance" was released by the Department (with a 30-day public comment period).

The guidance includes some examples of methodologies that could be used to allocate funds, as well as a frequently asked questions section. FAQ number 21 lists other programs with supplement not supplant requirements that are not covered by this guidance. The guidance is available at https://www2.ed.gov/policy/elsec/leg/essa/snsfinalguidance06192019.pdf.

C. **U.S. Department of Education will no longer enforce ESEA restriction on religious organizations as contract providers of equitable services** (March 11, 2019)

The U.S. Department of Education announced that it will no longer enforce portions of sections 1117(d)(2)(B) and 8501(d)(2)(B) of the Elementary and Secondary Education Act of 1965 (ESEA), Public Law 89-10, codified as amended at 20 U.S.C. §§ 6320(d)(2)(B) and 7881(d)(2)(B). These sections require that State and local educational agencies provide equitable services to certain private school students under specific ESEA programs. The statute requires the employee or third-party provider that is providing these services must be "independent of the private school and of any religious organization." The Department has concluded that this

restriction impermissibly excludes a class of potential providers based solely on their religious status, similar to a State policy that was struck down in the U.S. Supreme Court's decision in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017). See https://www2.ed.gov/policy/elsec/guid/secletter/190311.html for a copy of the announcement.

D. **Draft Updated Title I, Part A Equitable Services Non-Regulatory Guidance** (March 11, 2019)

This draft guidance document addresses changes ESSA made to Title I, Part A equitable services requirements. It consolidates and updates information previously included in multiple documents. Topics covered include consultation; allocations and notice, timeframe for obligations, and administrative and other expenditures; delivery of equitable services; program evaluation and modification; and complaints, state provision of equitable services, and bypass. See https://www2.ed.gov/policy/elsec/leg/essa/index.html for the guidance and a crosswalk between this document and prior non-regulatory guidance.

E. **Draft Opportunities and Responsibilities for State and Local Reports Cards Guidance** (March 11, 2019)

This draft guidance addresses requirements for state and local report cards under ESSA, and includes information specific to local educational agencies such as what information must be included on report cards, dissemination requirements (posting on LEA's website), and accessibility. See https://www2.ed.gov/policy/elsec/leg/essa/rptcardpubliccomment3282019.pdf.

VIII. Federal and State Guidance and Regulations

A. **Licensure Code of Professional Conduct for Ohio Educators** – Ohio Department of Education (July 2019)

The Ohio Department of Education is in the process of updating the Licensure Code of Professional Conduct ("Code"). In July 2019, the Teaching, Leading, and Learning Committee of the State Board of Education voted unanimously to recommend adoption of the revised Code to the State Board. The revised Code will appear on the State Board's September 2019 voting agenda.

As of the July 2019 draft, the changes include a new section on the appropriate and responsible use of technology; language concerning incapacity and impairment (physical or mental); harassing colleagues, peers, or other school personnel; negligently failing to verify educator credentials; academic dishonesty; grooming behavior; alcohol abuse; accounting for school funds and school-related funds; and changes to disciplinary penalty ranges. For more information, see http://education.ohio.gov/Topics/Teaching/Educator-Conduct/Licensure-Code-of-Professional-Conduct-for-Ohio-Ed.

B. **Business Advisory Councils Operating Standards and Planning Template** – Ohio Department of Education (July 2019)

The Ohio Department and the Governor's Office of Workforce Transformation updated their guidance for the operation of business advisory councils in Ohio school districts and educational service centers. (Development of these standards is required by ORC 3313.821.) Updated sections include submitting the annual plan to ODE (by September 30th of each school year), and submitting a joint statement (by March 1 of each year). ODE has also developed a template to guide districts in developing or revising their plans. For more information, see http://education.ohio.gov/Topics/Career-Tech/Career-Connections.

C. **School Safety**

1. **Ohio School Safety Center** – Gov. DeWine Executive Order 2019-21D (Aug. 21, 2019)

Gov. DeWine announced the creation of the Ohio School Safety Center, located within the division of Ohio Homeland Security, and the Ohio School Safety Working Group. The safety center is to create and implement threat assessment team training; promote and expand use of the SaferOH Tip line; scan social media and websites for threats to schools, notifying local law enforcement and school officials when a threat is identified; review and assess emergency management plans, provide technical assistance to strengthen safety strategies, and provide a model policy and training; consolidate safety resources via an enhanced website, saferschools.ohio.gov; and host an annual school safety summit.

2. **Final Report of the Federal Commission on School Safety** – U.S. Departments of Education, Homeland Security, Health and Human Services, and Justice (Dec. 18, 2018)

The Federal Commission on School Safety was established by the President of the United States following the school shooting in Parkland, FL. The Commission's report includes recommendations for preventing school violence, protecting students and teachers and mitigating the effects of violence, and responding to and recovering from attacks.

Prevention recommendation topics include character education, creation of a positive school climate, mental health, threat assessments, and others. The report also recommends rescinding the Obama Administration's "Rethink School Discipline" Guidance (which was subsequently withdrawn on Dec. 21, 2018). Another recommendation from the report was to provide technical assistance to school officials on FERPA exceptions in health and safety emergencies. (FERPA technical assistance was issued in Feb. 2019 and is addressed elsewhere in this handout.) To obtain a copy of the report, see https://www2.ed.gov/documents/school-safety/school-safety-report.pdf.

3. **Parent and Educator Guide to School Climate Resources** – U.S. Department of Education (April 10, 2019)

   The Guide includes best practices and resources to achieve a positive school climate, lower disciplinary issues, and enhance school safety. It also includes information on how teachers and school leaders can receive support from the National Center of Safe and Supportive Learning Environments (https://safesupportivelearning.ed.gov), and the Technical Assistance Center on Positive Behavioral Interventions and Supports (www.pbis.org). See www2.ed.gov/policy/elsec/leg/essa/essaguidetoschoolclimate041019.pdf.

D. **Dear Colleague Letter on Updates to Department of Education and Department of Justice Guidance on Title VI; Questions & Answers on Radical Discrimination and School Discipline** – U.S. Department of Education's Office for Civil Rights and U.S. Department of Justice Civil Rights Division (Dec. 21, 2018)

This letter announces the withdrawal of the statements of policy and guidance in the Jan. 8, 2014 Dear Colleague Letter on Nondiscriminatory Administration of School Discipline; and the Jan. 8, 2014 Overview of the Supportive School Discipline. Related documents have also been withdrawn, including:

- Guiding Principles: A Resource Guide for Improving School Climate and Discipline, dated January 8, 2014;
- Appendix 1: U.S. Department of Education Directory of Federal School Climate and Discipline Resources, dated January 8, 2014;
- Appendix 2: Compendium of School Discipline Laws and Regulations for the 50 States, Washington D.C., and Puerto Rico, dated January 8, 2014; and
- School Discipline Guidance Package FAQs, dated January 8, 2014

The letter indicates that "the Guidance and associated documents advance policy preferences and positions not required or contemplated by Title IV or Title VI."

The Q&A provides guidance on factors OCR will examine when conducting a Title VI discipline investigation, such as:

- Direct evidence of racial motive or animus (for example, statements by decision-makers expressing racial bias).
- Circumstantial evidence of racial bias, including, for example:
  - comparative evidence regarding the treatment of similarly situated students;
  - departures from the school's standard disciplinary procedures/norms; and
  - a history of discriminatory actions.

If OCR finds a student was treated differently compared to similarly situated students, OCR will consider whether there is a non-pretextual, nondiscriminatory

reason for the different treatment. OCR will apply a preponderance of the evidence standard when determining if there was a violation of statute or regulation. For a copy of the guidance, see: https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/raceorigin.html.

E. **Title IX - Notice of Proposed Rulemaking** – U.S. Department of Education, 83 FR 61462 (Nov. 29, 2018)

The U.S. Department of Education issued proposed amendments to regulations implementing Title IX of the Education Amendments of 1972 (Title IX). The proposed regulations describe what constitutes sexual harassment for purposes of Title IX, what triggers a school's legal obligation to respond to incidents or allegations of sexual harassment, and how a school must respond.

Under the proposal, sexual harassment actionable under Title IX is defined as:

- An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- Unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
- Sexual assault, as defined in 34 CFR 668.46(a) [Clery Act regulations].

Other proposed amendments address when a school would be held liable for violations under Title IX, and due process protections for those involved in the grievance process. For more information on these proposed amendments, see https://www.ed.gov/news/press-releases/secretary-devos-proposed-title-ix-rule-provides-clarity-schools-support-survivors-and-due-process-rights-all.

F. **OAC 3301-35 Operating Standards for Ohio Schools** – Ohio Department of Education (August 2019)

The Ohio Department of Education posted proposed changes to the Operating Standards for Ohio Schools (OAC 3301-35-01 to 3301-35-15) for public comment. (These edits have not yet been formally proposed for adoption by the State Board of Education.) Comments are being accepted until September 9, 2019. Changes include:

1. Clarifying that school districts shall engage in strategic planning and implement a strategic plan. (3301-35-02)
2. Require schools to comply with all applicable obligations under the Operating Standards in schools or classrooms with blended learning environments. (3301-35-03)
3. Clarifies that credentialed staff members must hold the appropriate credential prior to performing any activities or duties related to the assigned position, except as otherwise provided in R.C. 3302.151, 3319.36, and

3319.361. Clarifies that professional development for credentialed staff shall be provided. (3301-35-05)

4. Clarifies language concerning student attendance reporting by non-chartered, non-tax supported schools. (OAC 3301-35-08)

5. **Positive behavior intervention supports and the use of restraint and seclusion** – Adds definitions for behavioral intervention plans and de-escalation techniques; clarifies general rules for the use of restraint and seclusion; adds information on what must be included in district's implementation of PBIS; training requirements for student personnel (must be completed at least every three years) and crisis management and de-escalation techniques (annually); clarifies complaint procedures and requirements; and provides detail on district reporting requirements. (OAC 3301-35-15; comments due Sept. 20, 2019.)

G. **Home Education rule** – Ohio Department of Education, OAC 3301-34-03 (effective July 1, 2019)

Amendments to OAC 3301-34-03 establish a deadline for parents electing home education to supply the required information to the school superintendent. The information must be submitted no later than the first week of the start of the public school building the child would attend, within one week of the date on which the child begins to reside in the district, or within one week from the child's withdrawal from a school. Another provision requires that if a district of residence transfer and request for information occurs during the school year excused, the forward of information request satisfies notice requirements and should be honored by the new district of residence for the remainder of that school year.

H. **School Transportation Rules** – Ohio Department of Education, OAC 3301-83 (April 2019)

The Ohio Department of Education recently revised a number of transportation rules. While many of the changes are minor, note that OAC 3301-83-19 (authorized vehicles for transportation of pupils) was amended effective April 25, 2019 to specify that vehicles designed and constructed for nine or fewer passengers (not including the driver) may be used to transport foster children or for work programs. It also specifies that restrictions on the use of vehicles other than school buses do not apply to parental transportation as set forth in OAC 3301-83-04 (which states that the transportation rules do not apply to parental transportation provided outside the authority of a school or education program, or by any parent for their own children). See http://codes.ohio.gov/oac/3301-83 for the recently amended rules.

OAC 3301-83-12 (safety procedures) was refiled with JCARR to reflect removal of proposed language defining "immediate vicinity." The revised rule goes into effect May 13, 2019.

Amended OAC 3301-83-16 (non-routine use of school buses) is effective July 22, 2019. The amendment requires passengers participating in non-routine use of

school vehicles to receive specified safety instructions as the beginning of the non-routine trip.

OAC 3301-83-05 is to be refiled following public feedback concerning official timing language changes. There was concern that the proposed rule does not include all of the current procedures followed by the Department in performing official timings. Also to be refiled are 3301-83-10, -14, and -22 (personnel training, records and reports, and vehicle maintenance). These three rules were re-posted for public comment – the deadline to submit feedback was May 13, 2019.

The State Board's Continuous Improvement Committee approved other rule amendments at its June 2019 meeting, including:

1. 3301-83-07 (driver physical qualifications – amending to clarify requirements, to include drivers of vehicles other than school buses, and to update list those who may perform medical exams);
2. 3301-83-08 (pupil transportation management policies – amending to require (vs. suggesting) adoption of policies, allows eating and drinking on the bus for non-routine trips if permitted by school district and if supervised by a chaperone or school personnel, and prohibits use of nicotine (vs. tobacco) products on the bus; and
3. 3301-83-13 (school bus routes and stops – amending to require adoption of policies and procedures for bus stop locations and bus stop procedures, and to add requirements from 3301-83-20 that pertain to bus stops and routes).

As of June 11, 2019, revisions to 3301-83-11 (school bus inspections – ODE staff recommends amending to require a post-trip check and clarify requirements) and 3301-83-20 (general rules – ODE staff recommend add language concerning responsibility to transport students attending chartered nonpublic, community, or JV schools on days school district is not in session) are still pending to allow for additional discussion between ODE staff and stakeholders.

The Ohio Department of Education requested public comment on OAC 3301-51-10 (transportation of children with disabilities) in early 2019, and the State Board considered the rule at its June 2019 meeting. A supplemental document was created to outline the governing federal and state statutes.[18]

I. **FMCSA Drug and Alcohol Clearinghouse** – U.S. Department of Transportation (2019)

In 2016, the Federal Motor Carrier Safety Administration (FMCSA) published final rules (81 FR 87686) to establish requirements for the Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse). While the rules were effective January 4, 2017, compliance was not required until January 6, 2020 to give the agency time to design the system.

[18] See ftp://ftp.ode.state.oh.us/StateBoardBooks/June-2019/Voting%20Items/Item%2008%20-%203301-51-10%20-%20Transportation%20of%20Children%20with%20Disabilities%20-Backup%20Materials.pdf for changes.

The Clearinghouse will contain information about violations of FMCSA's drug and alcohol testing program for holders of commercial driver's licenses. Beginning January 6, 2020, employers are required to:

1) Conduct pre-employment queries for drug and alcohol program violations – both electronically within the Clearinghouse, as well as manual inquiries with previous employers. (Beginning in 2023, only Clearinghouse inquiries will be required.) These must be full queries, for which drivers must submit electronic consent through the Clearinghouse.

2) Conduct annual queries for all drivers. This may be satisfied by conducting a limited query (rather than a full query), and drivers may give consent to conduct limited queries that is effective for more than one year. (Limited queries only tell the employer whether there is information about the driver in the Clearinghouse; full queries release the information in the Clearinghouse to the employer.)

3) Report drug and alcohol program violations in the Clearinghouse within three days.

4) Comply with record-keeping requirements.

Employers will also need to update their CDL drug and alcohol testing policies and educational materials to include the requirement that certain personal information will be reported to the Clearinghouse.

Additional details and information about the Clearinghouse are now available at https://clearinghouse.fmcsa.dot.gov/. Users may establish accounts this fall, and there is an option to sign up for email updates to receive notification once registration is open. If employers would like to designate service agents to conduct Clearinghouse inquiries or to report violations, this can be done as part of the employer's registration process.

Employers are required to purchase a query plan to enable employers and their consortia/third-party administrators to conduct queries. In August 2019, pricing information was posted at https://clearinghouse.fmcsa.dot.gov/Query/Plan.

IX. Fiscal Year 2020-2021 Budget Bill (HB 166)

Note: This summary includes provisions that primarily impact public school districts.

Signed: July 18, 2019

Effective: Non-appropriation items generally effective around October 17, 2019 unless indicated otherwise below. Appropriations/sections prefixed with numbers in the 200s, 300s, 400s, and 500s (except 501s) effective July 18, 2019.

A. Funding

1. School district funding – For fiscal years 2020 and 2021, ODE must pay each district the same amount of foundation aid the district received for

FY 2019. ODE must also pay an enrollment growth supplement based on the average annual percentage change in "enrolled ADM" between fiscal years 2016 and 2019. The amount is the average annual enrollment change percentage x 100 x the district's enrolled ADM for FY 2019 x $20 for FY 2020 and $30 for FY 2021. (Section 265.220.)

2. Student wellness and success funding (R.C. 3317.0219, 3314.088, 3317.163, 3317.26, 3326.42).

   a. Provides per pupil student wellness and success funding based on the number of students enrolled for the immediately preceding fiscal year ("enrolled ADM").

   b. Districts are ranked into quintiles based on the district's poverty percentage, and FY 2020 "base per pupil amount" funding for each quintile is $250 (highest quintile), $200, $110, $50, and $20 per pupil. FY 2021 funding amounts range from $360, $290, $155, $70, and $30.

   c. Also provides an additional scaled amount of funding for districts not in the highest quintile.

   d. Each district and community/STEM school will receive at least $25,000 for FY 2020, and $36,000 for FY 2021. (E-schools will receive $25,000 for FY20 and $36,000 for FY21.)

   e. Amounts for JVSDs, brick-and-mortar community schools, and STEM schools are based on the per pupil amount of funding paid to each student's district of residence (on an FTE basis).

3. Student wellness and success enhancement funds (R.C. 3317.0219, 3314.088, 3317.163, 3317.26, 3326.42).

   a. Provides student wellness and success enhancement funds to districts that received supplemental targeted assistance funding for FY 2019.

   b. Amounts for JVSDs, brick-and-mortar community schools, and STEM schools are based on the per pupil amount of funding paid to each student's district of residence (on an FTE basis).

4. Student wellness and success funds are made in two payments (one-half of the amount by October 31, and one-half by February 28.) No reconciliations or adjustments will be made once paid. (R.C. 3317.0219.)

5. Student wellness and success funds spending requirements[19] – Funds (including enhancement funds) must be spent in compliance with R.C. 3317.26.

[19] Ohio Department of Education guidance is at http://education.ohio.gov/Topics/Student-Supports/Student-Wellness-and-Success. This includes funding estimates, resources to develop a spending plan, best practices, and frequently asked questions.

a. This section requires these funds to be spent on any (or a combination of any) of the following initiatives: mental health services; services for homeless youth; services for child welfare involved youth; community liaisons; physical health care services; mentoring programs; family engagement and support services; city connects programming; professional development regarding the provision of trauma informed care; professional development regarding cultural competence; student services provided prior to or after the regularly scheduled school day or any time school is not in session.

b. Districts and community/STEM schools must develop a plan for utilizing the funds it receives in coordination with at least one of the community partners listed in the Section.

c. Districts and schools must submit a report to ODE after the end of each fiscal year describing the initiative or initiatives on which funds were spent during that year.

6. State aid adjustment for districts with TPP value changes – Eliminates the state foundation aid deduction for districts that experience an increase in utility tangible personal property value. Requires ODE to credit districts for funds deducted due to such value increases between tax years 2017 and 2018. (R.C. 3317.028; Section 733.10.)

7. Chapter 3317 suspension – ODE shall make no payments under Chapter 3317 for fiscal years 2020 and 2021 (except as provided under Section 265.215 and Section 265.220).

   a. ODE will continue to make payments under various provisions of Chapter such as ESC transfers and other adjustments, preschool special education, catastrophic costs, excess costs nonpublic schools, etc. (Section 265.215.)

   b. For any payments that are made under Chapter 3317, the state share percentage is the amount computed for FY 2019. The formula amount (for purposes of open enrollment, College Credit Plus, community school payments, etc.) is $6,020 for FY 2020 and 2021. The special education catastrophic cost threshold is $27,375 for categories 2-5 and $32,850 for category 6. (Section 265.215.)

8. Provides a funding adjustment for school districts that provided a career-technical education program in FY 2019 but enter into an agreement to become a member of a JVSD beginning in FY 2020. (Section 265.227.)

9. Simulations – See http://www.ohiohouse.gov/committee/conference-committee-on-hb-166.

10. Gov. DeWine vetoed a provision that would have guaranteed each district receive at least as much funding per pupil as the statewide per-pupil amount paid for chartered nonpublic schools Auxiliary Services funds and administrative cost reimbursement.

B. Scholarships

1. Traditional EdChoice Scholarship – Expansion of number of scholarships available. If the number of applications for scholarships exceeds 90% of that maximum number of scholarships permitted by statute (60,000 under current law), ODE must increase the maximum number of scholarships permitted for the following year by 5%. ODE must make this increased number of scholarships available each subsequent school year until it is again required to increase the number. (This could increase deductions from school districts if demand triggers an increase in the number of scholarships. Around 23,000 traditional EdChoice scholarships were awarded in FY 2019.)

2. Traditional EdChoice Scholarship – Eligibility. Beginning with the 2019-2020 school year, students who were enrolled in a public or nonpublic school or who were homeschooled in the prior school year, and completed any of grades eight through eleven in that school year, are eligible if the student would be assigned to a building that qualifies the student for EdChoice as described in current law (based on graduation rates or other performance metrics). (R.C. 3310.03(A)(6).)

3. EdChoice Expansion Scholarships (income-based) – Expansion of grade levels. Beginning with the 2020-2021 school year, students entering any of grades kindergarten through twelve for the first time. (Currently, students entering grades K-6 for fall 2019 are eligible.) (This scholarship is paid directly by the state.) (R.C. 3310.032.)

4. EdChoice Scholarship amounts – Tuition discounts deducted. Scholarship amounts for both traditional and expansion (income-based) scholarships is the lesser of (1) the base tuition minus the total amount of any applicable tuition discounts for which the student qualifies, or (2) the scholarship amount prescribed under current law. Applicable tuition discounts are defined in the amended statute. (This provision is similar to current rules, but items subtracted from tuition are defined more narrowly.) (R.C. 3310.08.)

5. EdChoice Scholarship – Year-round application period. Beginning with the 2020-2021 school year, there will be one priority application window. The second application window is removed. Instead, ODE must continue awarding scholarships after the priority window, and applications awarded after the beginning of the school year will be prorated. (R.C. 3310.06.)

C. Teachers

1. Increases the minimum base teacher salary to $30,000 (from $20,000) and modifies other dollar amounts on the minimum salary schedule accordingly. (R.C. 3317.13.)

2. Alternative resident educator licenses - Changes the summer training institute to the preservice training institute, and removes requirement that program be operated by a nonprofit organization. Participants must have either a 2.5 undergraduate GPA (current law) or a 3.0 graduate school GPA (new). (R.C. 3319.26.)

3. Computer science courses may be taught by a teacher with an educator license in any of grades 7 through 12 if the teacher completes a professional development approved by the district superintendent or school principal that provides content knowledge specific to the course. The superintendent or principal must approve any professional development program endorsed by the organization that creates and administers the national Advanced Placement examinations as appropriate for the course. This provision applies for the 2019-20 and 2020-21 school years only, and is limited to the district or school that employed the teacher at the time the professional development was completed. Beginning July 1, 2021, computer science courses can only be taught by teachers who meet the requirements of current law (R.C. 3319.236). (Uncodified Section 733.61.)

4. For principals who complete the "bright new leaders for Ohio schools program," ODE must issue a professional administrator license for grades pre-k through 12, rather than an alternative principal license or administrator license. (R.C. 3319.272; conforming change in 3317.25, 3319.271 repealed.)

5. A provision that would have repealed the requirement in R.C. 3319.074 that teachers and paraprofessionals be properly certified or licensed was vetoed by Gov. DeWine. (A provision exempting community schools from this requirement remains.)

D. Students

1. Excessive absence notification – Only absences with a nonmedical excuse or without legitimate excuse (rather than all absences) are included for determining whether a student has been absent for 38 or more hours in a school month or 65 or more hours in a school year and triggering the notice requirement. (R.C. 3321.191.)

2. Athletic transfer rules – A school district, interscholastic conference, or organization that regulates interscholastic athletics must have the same pupil transfer rules for public schools and nonpublic schools and may not adopt a rule, bylaw, or other regulation to the contrary. (R.C. 3313.5316.)

3. International students athletics – Permits an international student attending an elementary or secondary school in Ohio to participate in interscholastic athletics. (The requirement that the student's school began operating a dormitory prior to 2014 is repealed.) (R.C. 3313.5315.)

4. Industry-recognized credentials for high school students – Schools must inform students enrolled in career-technical education courses that lead to an industry-recognized credential about the opportunity to earn these credentials. The educating entity must pay for the cost of the credential and may claim and receive reimbursement based on ODE's reimbursement schedule. Appropriates up to $8,000,000 in each fiscal year to support these payments, as well as Innovative Workforce Incentive Program (IWIP) payments. (Under IWIP, schools will be paid $1,250 for each qualifying credential, subject to proration.) (Section 265.145.)

E. Assessments, Curriculum, Graduation, and Report Cards

1. Curriculum

   a. Computer coding - If a school district requires a foreign language as an additional graduation requirement, a student may apply one unit of instruction in computer coding to satisfy one unit of foreign language. Additional coding courses applied to this requirement must be sequential and progressively more difficult. (R.C. 3313.603.)

   b. Physical education - School districts may adopt a policy to allow students to use two full seasons of show choir to fulfill high school physical education requirements. (R.C. 3313.603.)

2. End-of-course exams

   a. If ODE receives a federal waiver, eliminates the geometry end-of-course exam for students entering ninth grade on or after July 1, 2019. The English language arts I end of course exam is also eliminated for this Class. This will reduce the number of end-of-course exams from seven to five. (R.C. 3301.0712.)

   b. For students entering ninth grade on or after July 1, 2019, only end-of-course examinations in English language arts II and Algebra I shall be required for graduation. Even if ODE does not receive a waiver for geometry, the geometry exam will not be required for graduation. (R.C. 3301.0712.)

   c. ODE is prohibited from setting a new minimum cumulative performance score necessary to earn a diploma under R.C. 3313.618(A)(2) (for the class of 2018 through the class of 2022) after the amendment's effective date. (R.C. 3301.0712(B)(5)(c).)

   d. By March 1, 2020, ODE must consult with the chancellor and the governor's office of workforce transformation to determine a competency score for Algebra I and English language arts II end-of-course exams for purposes of graduation eligibility. (R.C. 3301.0712(B)(10).)

e. A student in grades nine through twelve must not be required to retake an in English language arts II and Algebra I -of-course examinations if the student demonstrates at least a proficient level of skill, or achieves a competency score, in an administration of the exam prior to grade nine. (R.C. 3301.0711.)

3. Alternate assessments – Permits a chartered nonpublic school to excuse a child with a disability from taking a state assessment if the school develops a written plan in which the school determines that an assessment or alternative assessment with accommodations does not accurately assess the student's academic performance. (Current law permitting a student to be excused if a plan developed in accordance with state board rules excuses the student is retained.) (R.C. 3301.0711.)

4. Graduation Requirements

Establishes new graduation requirements for students entering ninth grade on or after July 1, 2019. For students in the classes of 2018 through 2022, the new requirements are optional. (R.C. 3313.618.)

To qualify for a diploma under the new requirements, students must (1) pass (or demonstrate competency in) the end-of-course exams and (2) earn two state diploma seals. For the end-of-course exams, the student must:

a. Attain a competency score on Algebra I and English language arts II end-of course exams. Districts must offer remedial support to students who fail to attain a competency score, and students must retake a failed exam at least once. If the student fails the retake exam, the student can demonstrate competency by:

i. Earning course credit in the failed subject through the college credit plus program.

ii. Subject area competency may also be demonstrated by completing at least one "foundational option," and one other "foundational" or "supporting" option. Foundational options include various career/technical metrics, and supporting options include work-based learning, the OhioMeansJobs-readiness seal, or attaining a workforce readiness score on the WorkKeys assessment.

iii. The third option for demonstrating competency is providing evidence that the student has enlisted in a branch of the armed services.

iv. For students receiving special education and related services, the IEP must specify the manner in which the student will participate in these assessments.

b. For the two state diploma seals, students must earn at least two seals prescribed under R.C. 3313.6114(A). At least one of the seals must be the biliteracy seal, the OhioMeansJobs-readiness seal, or one of the new R.C. 3313.6114(C)(1) to (7) seals (industry-recognized credential, college-ready, military enlistment, citizenship, science, honors diploma, and technology seals).

5. Graduation plans and policy **– By June 30, 2020, school boards must adopt a policy** regarding students who are at risk of not qualifying for a high school diploma. (R.C. 3313.617 (new).)

    a. The policy must require the district to develop criteria and procedures for identifying at-risk students, and a notification process for parents, guardians, and custodians.

    b. The policy must also require the district to assist at-risk students with additional instructional or support services to help them qualify for a diploma. This support can include mentoring or tutoring programs, high school credit through demonstrations of subject area competency, adjusted curriculum options, career-technical programs, mental health services, physical health care services, and family engagement and support services.

    c. **Graduation plan**: The policy must also require the district to develop a graduation plan for each student enrolled in grades nine through twelve in the district, and to update it each year until the student qualifies for a diploma. The graduation plan must be developed jointly by the student and district representative, and districts must invite a student's parent or guardian to assist in developing and updating the plan. The plan shall supplement a district's policy on career advising adopted under R.C. 3313.6020, and an IEP may be used in lieu of developing a graduation plan if the IEP contains academic goals similar to the graduation plan.

6. Diploma Seals – The state board of education must establish a system of state diploma seals for allowing a student to qualify for graduation (as described above). (R.C. 3313.6114 (new).)

    a. For graduation, students must earn at least two diploma seals. At least one of the seals must be the biliteracy seal, the OhioMeansJobs-readiness seal, or one of the R.C. 3313.6114(C)(1) to (7) seals (industry-recognized credential, college-ready, military enlistment, citizenship, science, honors diploma, and technology seals).

    b. Other diploma seal options include community service, fine arts and performing arts, and student engagement seals. **Districts must develop guidelines for at least one of these three seal options**.

    c. Students cannot be charged fees to be assigned a state seal on the student's diploma and transcript.

7. Report Cards

    a. ODE must submit preliminary report card date for overall academic performance and for each separate performance measure by July 31st each year. (R.C. 3302.03.)

b. Value-added - Modifies the grading scale used to determine the overall letter grade under the value-added progress dimension. (R.C. 3302.03.)

c. Value-added - Prohibits the state board from assigning an "A" for the overall value-added score unless the district's or building's value-added progress grade for all subgroups is a "C" or higher (rather than a "B" or higher.) (R.C. 3302.03.)

F. Academic Distress Commissions

1. Prohibits the Superintendent of Public Instruction from establishing any new academic distress commission for the 2019-2020 school year. Beginning October 1, 2020, the state superintendent must resume establishing commissions for districts that meet the conditions prescribed in R.C. 3302.10. This provision has no effect on commissions established prior to July 18, 2019. (Section 265.520.)

G. Operations

1. Unused school facilities – To be considered an unused school facility (triggering the requirement to offer the property for sale or lease to community and STEM schools), real property the district has used for school operations must have been unused for school operations for one year, rather than two. (R.C. 3313.411.)

2. Busing reductions prohibition – School districts are prohibited from reducing transportation provided to students the district is not required to transport, but that the district chooses to transport, during a school year after the first day of that school year. (R.C. 3327.015 (new).)

3. Bus driver medical exams – Permits listed medical professionals to perform school bus driver medical exams as required by State Board of Education rules. (R.C. 3327.10.)

4. Behavioral prevention initiatives – Beginning in the 2019-2020 school year, school districts must report to ODE the types of prevention-focused programs, services, and supports used to assist students in developing the knowledge and skills to engage in healthy behaviors and decision-making and to increase their awareness of the dangers and consequences of risky behaviors (including substance abuse, suicide, bullying, and other harmful behaviors). The information to be reported is listed in the statute. ODE may use this information as a factor in the distribution of any funding available for prevention-focused programs, services, and supports. (R.C. 3313.6024 (new).)

5. School breakfast program (R.C. 3313.818).

   a. Beginning with the 2020-2021 school year, requires high-poverty public schools to offer breakfast to all students either before or during the school day. The program applies to schools with the following percentages of enrolled students who are eligible for free

or reduced-price breakfast or lunches: 70% or more in year one, 60% or more in year two, and 50% or more in year three and thereafter. ODE must publish a list of schools that meet these conditions.

b. If a school board determines a school cannot comply because of financial reasons, or if the board already has a successful breakfast program or partnership in place, a school board may choose not to comply.

c. ODE must prepare an annual report on the implementation and effectiveness of the program.

d. If a school board is required to offer breakfast under current R.C. 3313.813(C)(1) or (2) and 3313.818, the program must be operated in accordance with R.C. 3313.818.

6. Consolidated school mandate report – No longer includes training on crisis prevention intervention and the establishment of a wellness committee. (R.C. 3301.68.)

7. Territory transfers - Creates a new territory transfer procedure for electors residing in a school district with territory in an "eligible township." An "eligible township" is a township that contains the territory of two or more school districts. (R.C. 3311.242.)

H. Educational Service Centers

1. School district grants - Permits an ESC, as part of a service agreement, to apply for state or federal grants on behalf of a school district. Specifies that an ESC is considered a school district for the purposes of applying for state or federal grants. (R.C. 3312.01.)

2. Competitive bidding requirements (R.C. 3313.843).

a. Permits an ESC to enter into a contract to purchase supplies, materials, equipment, and services on behalf of a school district or political subdivision that has entered into an agreement with ESC under R.C. 3313.844, 3313.845, or 3313.846. Such purchases are exempt from competitive bidding required by law for the purchase of supplies, materials, equipment or services. A political subdivision cannot make a purchase under this provision when it has received bids for such purchase unless the same terms, conditions, and specifications at a lower price can be made for such purchase. (R.C. 3313.843(I).)

b. Specifies a school district that has entered into an agreement with an ESC under R.C. 3313.843, 3313.844, or 3313.845 is in compliance with federal law and exempt from competitive bidding requirements for personnel-based services pursuant to the authority granted to ODE under federal law. However, the ESC must be in compliance with service posting requirements, must be “high-

performing," and must have been found to be substantially in compliance with audit rules and guidelines in its most recent audit. (R.C. 3313.843(J).)

3. Permits ESCs to participate in the school component of the Medicaid Program. (R.C. 5162.364, 5162.01.)

4. Establishes a moratorium on additional school districts joining ESCs during FY 2020 and FY 2021. (Section 265.360.)

5. ESC Funding – The per pupil state payment amount in each fiscal year is $26 for high-performing ESCs and $24 for others (pro-rated if earmark is not sufficient). (Section 265.360.)

I. Taxes and ballot issues

1. Moves the day for holding a presidential primary from the second Tuesday after the first Monday in March to the third Tuesday after the first Monday in March. (R.C. 3501.01, 3513.01, 3513.12, and Section 735.15.)

2. Authorizes a board of education to propose a tax levy for school safety and security and share the proceeds of the tax with chartered nonpublic schools. (R.C. 5705.21(F).)

3. School District Income Tax Base - If "earned income" is used as the tax base, amounts subject to the state business income deduction must be added back when computing taxable income. (R.C. 5748.01.)

4. On and after January 1, 2021, county auditor and treasurer websites must show the percentage of property taxes charged by each taxing unit. (R.C. 323.131, 757.210.)

5. Authorizes municipalities, townships, and counties to extend the term of a tax increment financing property tax exemption by up to 30 additional years under certain conditions. The property owner must compensate the school district for its property tax loss. (R.C. 5709.40, 5709.41, 5709.51, 5709.73, 5709.78, and Section 757.291.)

6. Gov. DeWine vetoed provisions that would have modified property tax election notices and ballot language, granted a property tax reduction for residents from a community within the Orange CSD, and exempted from property tax the value of land subdivided for residential development in excess of the fair market value of the property from which that land was subdivided.

J. Studies and Pilots

1. Graduation: The Superintendent of Public Instruction must establish a committee to develop policy recommendations regarding methods to assist high school students who completed the twelfth grade but did not meet

graduation requirements to obtain a diploma. A report must be issued by October 1, 2020. (Section 733.51.)

2. Early learning: ODE must complete a report that reviews early childhood initiatives in Ohio and includes information on how other states support early learning. ODE must submit its findings by Dec. 31, 2020. (R.C. 3317.60(A)(2) (new).)

3. Economically disadvantaged students – ODE must conduct a study that reviews criteria used in current school funding formula to define "economically disadvantaged students" and must submit its findings by December 31, 2020. (R.C. 3317.60(A)(1) (new).)

4. Report cards – Establishes a committee to study state report cards under R.C. 3302.03. The committee must submit a report to the General Assembly by December 15, 2019. (Section 265.510.)

5. STEM Public-Private Partnership Pilot - shall operate for fiscal years 2020 and 2021. (Section 733.30.)

6. Career-tech post-secondary credit plan – The chancellor, in consultation with the superintendent of public instruction, must develop a statewide plan that permits a high school student enrolled in a career-technical planning district to receive post-secondary credit on a college transcript for the completion of an approved course. The plan must be completed by June 30, 2020, and shall be implemented if determined appropriate by the chancellor and superintendent. (R.C. 3333.167.)

K. Miscellaneous

1. FAFSA Completion Program – Requires ODE to establish a program to award grants to ESCs and school districts for the purposes of organizing activities to encourage and assist students in grade twelve with completing the Free Application for Federal Student Aid. Earmarks up to $75,000 in each fiscal year for this program. (Section 733.23; 265.20.)

2. School bus purchase program – Requires ODE and the Dept. of Public Safety to develop a program to provide school bus purchase assistance. ODE and DPS must submit a report to the General Assembly by Jan. 31, 2020 that describes how the program will operate. (Section 265.324.)

3. School climate grants – Requires ODE to administer and award competitive school climate grants to implement PBIS, evidence- or research-based social and emotional learning initiatives, or both, in eligible buildings. Establishes priority categories for awarding grants, and limits grants to $5,000 per eligible school building and $50,000 per eligible applicant. (Section 265.325.)

4. School safety training grants – Grants for school safety and school climate programs that can be used for school resource officer certification training,

active shooter and school safety training and equipment, educational resources, training to identify and assist students with mental health issues, school supplies or equipment related to school safety or for implementing the school's safety plan, and any other training related to school safety. Participating schools and county boards must work with or contract with the county sheriff's office or appropriate local police department to develop programs and training. (Section 221.30.)

5. School facilities

   a. Specifies that a school district retains its percentile ranking that was determined at the time the district entered into its initial agreement under the Expedited Local Partnership Program if the district satisfies certain conditions. (R.C. 3318.037, 3318.036.)

   b. Maintenance set-aside requirement – "Half-mill" maintenance funds set aside for a state-funded classroom facilities project may be used for "upgrades," but specifies that such uses are subject to approval by OFCC. (R.C. 3318.05, 3318.051, 3318.06 to 3318.063, 3318.36, 3318.361.)

   c. Permits a district that received assistance under CFAP and segmented its project to participate in ELPP for a discrete portion of one or more of its future segments. (R.C. 3318.36.)

   d. Storm shelter moratorium extended to September 15, 2020. Requires a study to be completed by December 31, 2019. (R.C. 3781.1010.)[20]

   e. Requires OFCC to provide assistance to at least one JVSD each fiscal year for the acquisition of classroom facilities. (Section 287.70.)

   f. Increases school building program assistance by $100,000,000 for the FY 2019-2020 capital biennium and increases Commission's bonding authority by the same amount. (Sections 601.15, 601.16, 601.10, 601.11.)

6. Publicly funded preschool and school child programs – Amends background check requirements for directors, applicants, and employees. (R.C. 5104.013, 109.572.)

7. LEP – Changes references of "limited English proficient student" to "English learner" in various sections to align with federal law. (R.C. 3301.0711 and others.)

[20] Note: In Opinion 2019-027, the Ohio Attorney General opined that as used in R.C. 3781.1010, the phrase "financing has been secured" does not require a school to demonstrate that, as of September 15, 2020, it has available and on hand all of the funds necessary to cover the anticipated costs of the construction project, but does require that the school provide assurances that it has arranged for the necessary funding and is able to guarantee the availability of the same. The opinion also discusses methods a school may use to satisfy its obligation to secure financing.

8. Regulatory restrictions – Requires certain state agencies, including the department of education, to review and identify existing rules having one or more regulatory restrictions that require or prohibit an action and prepare a base inventory of the restrictions. This review must be completed by December 31, 2019. Beginning on the section's effective date and through June 30, 2023, a state agency may not adopt new regulatory restrictions unless it simultaneously removes two or more other existing regulatory restrictions. (R.C. 121.95.)

9. JEOC – Eliminates the Joint Education Oversight Committee on October 1, 2019. (R.C. 103.44 to 103.50 repealed, Section 733.40.)

10. Telemedicine services – Requires health benefit plans to provide coverage for telemedicine services on the same basis and to the same extent as in-person services. (R.C. 3902.30, 4723.94, and 4731.2910.)

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.