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August 6, 2021

# NW Ohio ESC Administrative Retreat

## 2020-21 Year in Review (Best. Year. Ever.)

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# Today's Agenda

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- **Recent Cases of Note** – It has been a busy year (pandemic notwithstanding)!
- **State Budget** – What Came Out in the Wash
- **Other Legislation Worth Noting**
- **Title IX** – What We've Learned, Where We Are Headed



## HB 244

# No Discrimination Against the Unvaccinated?



- Signed by the governor July 14<sup>th</sup>
- Prohibits a public school or college from:
  - Requiring an individual to receive a vaccine for which the USDA has not granted full approval
  - “Discriminate” against individuals who have not received a vaccine from doing anything or taking any special precautions that those who have received a vaccine do not have to do (maybe, like wear masks??)
- Also lets the DOH quarantine or isolate someone who visits from a high-risk country for 48 hours, all expenses paid

# HB 244

## Education Options for Military Families



- Requires school districts to permit children of military families to participate in technology-based educational opportunities to minimize disruptions when the families receive permanent change of station orders that will take them to Ohio, a change of assignment within the state, or transfer out of state until such time as the children enroll in a new school
- Requires districts to permit school-age children of active-duty uniformed service members who are relocating to Ohio but are not yet district residents to apply for enrollment in the same manner and at the same time as regular district students
  - Must accept electronic applications
  - Families must present residency documentation within 10 days after moving in





# Recent Cases of Note

# *Mahanoy Area Sch. Dist. v. B.L*

- SCOTUS issued a decision on **June 23, 2021**
- **Facts:** A student/cheerleader named BL posted a snapchat with one of her friends with their middle fingers raised with the caption “F\*&^ school f \*&^ softball f \*&^ cheer f \*&^ everything.” The post was brought to the attention of the cheerleading coaches and administration who determined that it violated school policies, and as a result, removed BL from the cheerleading team for the remainder of the year.
- **Legal argument:** BL sued the school district claiming that her suspension violated the First Amendment, the school’s policies were overbroad and viewpoint discriminatory, and unconstitutionally vague.

"University of Wisconsin Cheerleaders" by Prayitno / Thank you for (12 millions +) view is licensed under CC BY 2.0





# *Mahanoy Area Sch. Dist. v. B.L*

- **Held:** School districts may have a special interest in regulating some off-campus student speech. However, that interest primarily exists only when the *Tinker* test is applied, and it is determined that the student speech **materially disrupts** classwork or **involves substantial disorder or invasion of the rights of others**. However, unrestricted regulation of any speech that may relate to the school is unauthorized. In this case, the Court opined that the student's speech was **not disruptive** to the school environment and therefore was subject to First Amendment protection.





# *Mahanoy Area Sch. Dist. v. B.L*

- **Bottom line:** While the media may portray this case as a victory for the student, in reality it is largely a carefully-worded affirmation that, especially in the present technology age, actions away from school may have a disruptive impact at school. Yet the onus remains with the school to show how that disruption is manifested. The Court also affirmed a school's authority to apply discipline to extracurricular activities only. Districts are advised to **review their board policies, codes of conduct and extracurricular guidelines** for the necessary support of disciplinary consequences and notice of the possibility of corrective action for violations of school rules.





## ***Gabbard v. Madison Local Sch. Dist. Bd. of Edn.***

- The Ohio Supreme Court published the decision on **June 23, 2021**
- **Facts:** Parents challenged a board policy that authorized the superintendent to designate up to 10 staff to carry a gun onto campus. The policy was adopted after the school experienced an active shooter incident where four students were injured.
- **Legal Argument:** Ohio law permits a board of education to designate individuals to carry concealed guns onto campus, and prior attorney general letter indicated that only those who are hired as security staff must complete peace officer training.



## ***Gabbard v. Madison Local Sch. Dist. Bd. of Edn.***

- **Held:** Two applicable statutes, R.C. 109.78 & R.C. 2923.122, collectively require any school staff whom the board wishes to carry a concealed gun during the workday to complete the peace officer training (737+ hours) or alternatively have 20 years experience as a police officer.
- **Bottom Line:** Absent a change in the law, staff who do not meet the requirements should not carry a gun onto school grounds even if they have previously been designated/approved to do so.
- *NOTE: HB 99, introduced in February 2021, includes the most recent effort to reduce requirements to arm school staff.*





## ***Bostock* in One Slide**

- ***Bostock v. Clayton County***, decided **June 15, 2020** - 3 cases consolidated; 6-3 decision
- SCOTUS held that an employer who fired an employee who expressed interest in a gay softball league at work engaged in unlawful discrimination under Title VII
- Discrimination on the basis of homosexuality or transgender status requires an employer to intentionally treat employees differently because of their sex
- Even though this was not considered in 1964 when Title VII was written, the plain meaning of the statute “unambiguously prohibits” discrimination on the basis of sex
- “An individual’s homosexuality or transgender status is not relevant to employment decisions. That’s because it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual on the basis of sex.” -Gorsuch



# *Ison, et al. v. Madison Local Sch. Dist. Bd. of Edu.*

- Decided by the Sixth Circuit Court of Appeals on **July 7, 2021**
- **Facts:** Students were disciplined for protesting the resolution to arm school staff that was at issue in *Gabbard*. Irked by the discipline and the board resolution, several parents attended a few board meetings to voice their discontent. The board had adopted a policy on **public participation**, and used the policy to prevent or stop the parents from speaking on a number of occasions. The parents filed suit, claiming the policy was vague and imposed content-based restrictions in violation of the First Amendment.
- **Legal Argument:** The board has the right to **regulate time, place and manner** of speech in a limited public forum as long as the regulations are narrowly tailored to serve a significant government interest and there are alternative channels of communication.







## *Ison, et al. v. Madison Local Sch. Dist. Bd. of Edu.*

- **Held:** Policy language which regulates speech described as “abusive,” “antagonistic”, or “personally directed” were **unconstitutional viewpoint-based restrictions**; but the **two-day pre-meeting registration requirement and the requirement that a person must register themselves** are valid.
- **Bottom Line:** Be careful with rules that regulate the content of speech and be consistent when you do so.



# *State ex rel. Unterbrink v. Elida Local Sch. Dist. Bd of Edu.*



- Decision issued by the Third District Court of Appeals in Allen County, Ohio on **November 23, 2020**
- **Facts:** A teacher who was granted an extension to complete resident educator requirements was offered a one-year contract pending results of his reexaminations, which were not released until June 30 (after the date to non-renew).
- When the board of education discovered that the teacher had failed one of the requirements, it held a special meeting and terminated the teacher without following the termination procedures under R.C. 3319.16. Subsequently, the RESA program rules were changed and the teacher was issued a retroactive license. The board **refused to reemploy him**. The union filed a grievance, and lost the arbitration. The teacher then filed a mandamus action in court seeking a declaration that the board must either reinstate him for one year, or alternatively, be required to comply with the statutory termination procedures.



# *State ex rel. Unterbrink v. Elida Local Sch. Dist. Bd of Edu.*



- **Legal argument:** Under R.C. 3319.16, a board is required to follow very specific termination procedures to terminate a teacher contract. However, it is less clear whether these procedures must be followed when a teacher loses his/her license and is no longer qualified to perform contracted employment duties.
- **Held:** The case was dismissed on grounds that the teacher failed to file a proper challenge to his termination under 3319.16 in a timely manner. The court cited to the fact that the teacher knew the board had terminated him as of the special board meeting date because he heard it from a third party, and therefore the time to appeal began to toll.
- **Bottom Line:** A teacher may be put on notice of his termination when he learns about board action to terminate even absent a formal written notice. That said, it is important to note that the court did not examine whether the board should have used termination procedures – so be cautious!

# *A.J.R. v. Board of Education of the Toledo City School District et. al.*

- Ohio Supreme Court Decision issued **November 10, 2020**
- **Facts:** The case was brought by the parents of a kindergarten student against a teacher, principal, assistant principal, and the Toledo Public School District Board of Education. The complaint alleged that the defendants were liable for **failing to effectively respond to multiple incidents of bullying** against their daughter while she attended school.
- **Legal argument:** Under state law, school officials and boards receive broad statutory immunity. There are three exceptions: acts outside the scope of employment; acts or omissions made with malicious purpose, in bad faith, or in wanton or reckless manner; or when liability is expressly imposed by law. This case focused on whether the school employees acted recklessly or “in perverse disregard of a known risk.”



# *A.J.R. v. Board of Education of the Toledo City School District et. al.*

- **Held:** There could be no finding of reckless behavior where the record establishes that **staff took actions** such as responding consistently to complaints of bullying, speaking promptly with students about teasing, frequently asking how students are doing, and actively monitoring students in the classroom and lunchroom.
- **Bottom Line:** This case illustrates the importance of promptly taking action when complaints are filed and just as important, **following up** after the completion of the investigations, not only in cases of bullying but also in all other cases where allegations of harassment may have been made.







## *State ex rel. Cable News Network, Inc. v. Bellbrook-Sugarcreek Local Schools, 2020-Ohio-5149 (Ohio 2020)*

- Ohio Supreme Court Decision issued **November 5, 2020**
- **Facts:** CNN and other local and national media organizations sought student records from the Bellbrook-Sugarcreek Local School District regarding a deceased adult former student who killed nine people and injured 27 others in a mass shooting in Dayton, Ohio on August 4, 2019.
- **Legal argument:** A school district is prohibited by state confidentiality laws to release student records or personally identifiable information even after a student or former student is deceased.



**'TOP  
SECRET'**



## *State ex rel. Cable News Network, Inc. v. Bellbrook-Sugarcreek Local Schools, 2020-Ohio-5149 (Ohio 2020)*

- **Held:** The Ohio Supreme Court specifically found that school districts are “prohibited from releasing any personally identifying information about [a student] without ... consent.” The Court determined that there was no exception provided for in Ohio’s Student Privacy Act, R.C. 3319.321, to permit the release of personally identifiable information even when the student is deceased. While the Court mentioned the Family Educational Rights and Privacy Act (FERPA), it found that it did not need to consider the federal law as state law prohibited the disclosure of the requested record.
- **Bottom Line:** State student confidentiality law provides confidentiality protections even after death.



**'TOP  
SECRET'**

## *Ray v. McCloud*

- U.S. Southern District Court decision issued on **December 16, 2020**
- **Facts:** A group of transgender plaintiffs filed a lawsuit after their request to change the sex marker on their birth certificate was denied by the State of Ohio. Ohio's statute on birth certificates was silent on the issue, but Ohio has been enforcing a policy enacted in 2016 that prohibited these changes.
- **Legal argument:** The Plaintiffs claimed that the policy violated their substantive due process right to privacy as well as their right to equal protection under the law.



## *Ray v. McCloud*

- **Held:** The court found that the state's justifications for its policy were insufficient to meet the high standard of strict scrutiny. Therefore, the court held that the Plaintiffs had a substantive due process right to informational privacy, and that Ohio's policy forcing disclosure of their personal information identifying their biological sex at birth was a violation of that right. Further, the Court found that the State's policy to prevent an individual from changing his/her birth sex was unconstitutional on equal protection grounds because the policy was applied in an "arbitrary and capricious manner."
- **Bottom Line:** If you have students or staff that have transitioned into another gender or sex, you may be presented with replacement birth certificates. The replacement documents should be treated as official records.



# The Budget

## What Came Out in the Wash?



"Washing Machine Details" by dejankrmanovic is licensed under CC BY 2.0



# HB 110 Becomes Law

- Budget bill codified in HB 110
- Signed by the governor on **June 30, 2021**
  - 14 line-item vetoes
- Operating appropriations effective June 30, 2021; other provisions effective September 30, 2021
  - Some provisions subject to special/different effective dates





# Juneteenth Declared a Holiday

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- Ohio followed recent federal law declaring Juneteenth a holiday
- Under 3319.087, applies to 9- & 10-month employees governed by RC 3319.087 (but not 11- and 12-month employees, oddly enough)
- Included in 124.19 as state holiday

# Employers and Medical Marijuana

- Declares that an employer does not engage in an unlawful discriminatory practice under RC 4112.02 (Civil Rights Commission statute) by discharging, refusing to hire, or “otherwise discriminating” against an individual because of their use of medical marijuana if the use is prohibited by zero-tolerance/drug free workplace policies, or some other type of formal program/policy



# Increase in Scholarship Funds

- EdChoice/Cleveland Scholarship Programs
  - \$5,500 for grades K-8 and \$7,500 for 9-12
- Autism Scholarship Program
  - \$31,500 for FY22 and \$32,445 for FY23
- Jon Peterson Scholarship formula amount with base of \$6,217 for FY22 and \$6,414 for FY23 plus additional per disability category



# EdChoice Performance Scholarship Eligibility Expansion

- Eliminates 60k cap on scholarships (now simply limited to the number that may be funded that school year per approval of the GA)
- Buildings in lowest 20% as follows:
  - 23-24: for each of 18-19 and 21-22 Sys
  - 24-25: for each of 21-22 and 22-23 Sys
  - 25-26: for two of three most recent consecutive rankings
- Significantly expands eligibility to include:
  - Qualifying HS students enrolled in public/non-public/homeschooled the prior year
  - Siblings (loosely defined)
  - Students in foster or kinship care or other alternative placements
  - Students who once received but are no longer eligible for ASP or JPSP (regardless of building ranking)

## EdChoice Performance Scholarship Eligibility Expansion

- Phases out requirement that students must be enrolled in a resident or community school, starting with K-2 this year and fully implemented in 2025-26
- Declares that a student who receives a scholarship remains eligible in subsequent school years through grade twelve, provided they continue to meet the required conditions
  - Those who received an ESC before March 2, 2021 will remain eligible until 12<sup>th</sup> grade
- Declares ODE may now ask for “appropriate” documentation of eligibility

## EdChoice Performance Scholarship Eligibility Expansion

- ODE must create a system by **February 2022** where any parent/student may submit address and be notified within 10 days of eligibility (schools may not contest the eligibility)
- School district with buildings eligible for scholarships must provide attendance zones for students assigned to the building by **January 1** each year
- Eliminates priority application window; specifies that window opens **February 1** in year prior; ODE must notify no later than 45 days after submission of application and must prorate for applications approved after start of the school year



## EdChoice Performance Scholarship Eligibility Expansion

- Requires ODE to notify students within 14 days if application contains a deficiency or error
- Requires ODE to conditionally approve scholarships within five days for eligible students for the current or next school year
- Requires ODE, ODJFS, and ODT to enter into a data sharing agreement to assist ODE with verifying eligibility for ECS
- Schools are prohibited from having access to applications
- **Yikes! Estimated increase in cost of \$43.0 million in FY22 and \$55.7 million in FY23**

## 2021-22 FY Eligibility Changes for EdChoice

- Expands qualifications for performance-based ECS based on designation list from FY 2019-20 or 21-22
- Requires ODE to provide guidance to non-publics by **July 15, 2021** about eligibility and to begin processing/accepting applications
- Requires that applications submitted **by August 15** be notified of acceptance/denial **by September 15**

# Cupp-Patterson “Fair School Funding”

- Made it into HB 110. These will be addressed in extensive analysis, but some highlights include:
  - Career awareness and exploration funds payments
    - Outside funding formula: 4.2M in FY22 & 8.4M in FY23
  - State share index now = per pupil local capacity amount
  - “Formula ADM” now = “enrolled ADM”
  - Transitional aid in FY22 (\$71.6) and FY23 (\$177.8)
- Base cost
  - Base cost per pupil in an amount equal to the formula amount for FY22 & FY23
  - Base cost amount TBD for General Assembly for 2024;
  - Estimated average statewide base cost per pupil \$7,202, and
  - Estimated average statewide career-technical cost per pupil \$8,334
  - Phase-in 16.67% FY22; 33.33% FY23



# HB 110 Cupp-Patterson Funding Provisions

- Other structural changes:
  - **Opportunity Grant** formula changes for FY22 and FY23
  - **Targeted assistance** and **capacity aid** formula changes
    - Targeted assistance is based on weighted wealth per pupil and capacity based on aggregate weighted wealth
    - **Supplemental tier added** to support lower-wealth qualifying districts
  - Replace **per pupil special education funding** based on categories with weights multiplied by state avg. cost per pupil
    - 10% of district funds for special education reserved for catastrophic costs
  - **Going, going, gone:** performance bonuses and K-3 literacy funds

# HB 110 Cupp-Patterson Highlights

- Other structural changes
  - Direct state payments to community schools, STEM and Ed Choice, ASP, Jon Peterson, with direct funding units for each one (and JVS)
  - “Economically disadvantaged funds” now = “disadvantaged pupil impact aid” with changes to calculation of amount
    - Increase (**\$272 to \$422 per pupil**)
    - Adds specific purposes for which these funds must be spent
    - Requires collaboration and reports to ODE and in annual report for FY22 & FY23 only
    - Phase in percentage 0% FY22; 14% FY23

# HB 110 Cupp-Patterson Highlights

- Changes **gifted funding** (limited to FY23-24) to \$24/pupil using enrolled ADM
  - New funding for gifted referrals and gifted PD
  - ODE to publish report based on district-submitted data
- Similar changes to **English learner funding**; also with the FY22-23 limitations
  - Limitations on use of funds



# Cupp-Patterson Highlights

- Special education transportation payment changes
  - Changes the way impossible/impractical special education transportation amount is calculated
  - Deadline for reporting actual costs for purposes of the formula
  - Costs subject to random audit by ODE
  - Provisions applicable only in FY22-23
- Regular transportation funding
  - FY22-23; each district will receive same transportation funding it did in 2019
  - Future transportation calculations determined by future GA's
  - Bus purchase grants to districts not less than \$45,000 to replace oldest, highest mileage buses
    - ODE transportation info collection system will collect age, mileage, condition data

# Cupp-Patterson Highlights

- **Transportation Collaboration Fund**

- \$250,000K appropriation for districts, 10K grant in each fiscal year for work to consolidate routing, share resources, regional collaboration (FY22-23 only)

- **ESC Funding**

- Tiered state payment formula based on size, phased in and only for FY22-23

- **JVS Funding**

- New funding formula like traditional schools with some tweaks, guarantee not to fall below funding base of 2021
  - Creates a JVS funding unit just like for traditional schools, community schools, STEM, etc.



# Educator and ODE changes

# Educator Licensure and Employment Changes

- Adds human trafficking to list of prohibited offenses for educators
- **Permits a district to ask ODE for any misconduct reports it has received for an employment candidate;** requires ODE to respond and provide content of reports
- Prohibits a school representative from knowingly helping another get a school job **if they are aware that the person committed a sex offense involving a student** unless an exception applies
- Prohibits a person from using prior knowledge about a test to assist a student on an assessment, or from violating ODE testing protocols
- Personnel who assist a student in cheating on assessments by obtaining prior knowledge of the assessment may now face suspension, revocation, or limitation of a license instead of a 1-year suspension



# Educator Licensure and Employment Changes

- Requires school employers to include a statement on an employment application that falsification of information in the application is a **first-degree misdemeanor**
- **Requires public schools to consult with ODE's educator profile database before hiring certified staff**
- Permits a school to require applicants or volunteers to undergo additional background checks



## Educator Licensure and Employment Changes

- Qualifies an individual with a certificate of high school equivalence for a two-year initial or five-year advanced CTC teaching license
- Requires Educator Standards Board to include knowledge of the “Career-Technical Assurance Guide” in the Board’s standards for school counselors



# Transportation Changes

- Changes deadline for an existing community school to unilaterally accept responsibility to provide transportation for its students to **August 1** (rather than Jan. 1 of prior FY)
- Requires districts/ESCs/private school contractors to deliver students no sooner than 30 minutes prior to the start of school and pick up no later than 30 after school
- States that schools must provide transportation to community and non-public students on each day in which the schools are open for instruction **even if the public school isn't open**



# Transportation Changes

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- Prohibits schools from using mass transit for K-8 students unless there is a contract between the district and the non-public/community school; requires that students 9-12 using mass transit have **no more than one transfer**
- Requires community & non-public schools to **declare start and end times by April 1**, which triggers a district's requirement to develop a transportation plan for eligible students and submit the plan to the community/non-public **within 60 days**



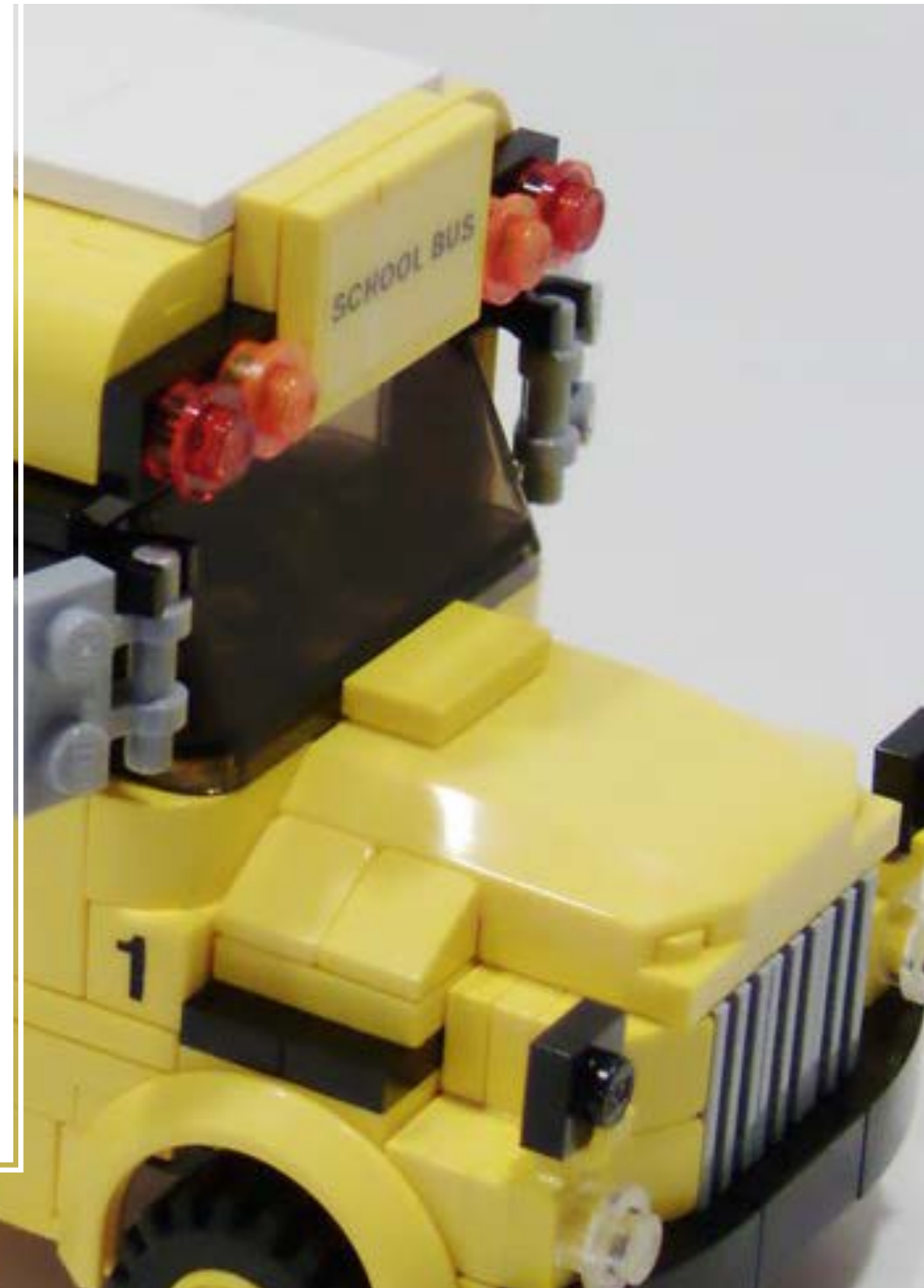
# Transportation Changes

- Requires **ODE to monitor compliance** with responsibilities to provide transportation services
- Requires ODE to **deduct a portion of a district's state transportation funding** if they determine the district has “consistently” or “for a prolonged period” been non-compliant with student transportation obligations
- Requires ODE to develop an **online training program** to satisfy classroom requirements for pre-service and annual in-service training for bus drivers (on-the-bus training must still be in person)



# Transportation Changes

- Requires schools to make a determination about payment in lieu (“PIL”) **no later than 30 days before the start of school**, or 14 calendar days if student is enrolled later
- Authorizes superintendent to make PIL decisions, but requires the board to approve them at the next scheduled meeting
- Requires a district to issue a letter to parents, non-public/community school, **and** the State Board with a “**detailed explanation**” of why a PIL determination was made



# Transportation Changes

- Permits a parent to authorize a community/non-public school to act on their behalf after submitting a request for transportation, including in mediation proceedings
- Requires the minimum amount for PIL to be **at least 50% of the average cost of pupil transportation** from previous year, **up to the max of 100%** of that average cost
- Requires that PIL for school which has failed to provide transportation be equal to 50% of cost of transporting students, up to \$2,500





# Transportation Changes

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- Authorizes a district to **contract with federal or state agencies or municipalities, political subdivisions or other public or private non-profit entities** to assist them with fulfillment of legitimate activities in times of emergency
  - Drivers must be properly certified; district must procure liability insurance coverage for vehicles and persons
  - Board may recover expenses (not to exceed cost of operation and insurance)





# ESC Provisions

- Declares that an ESC is considered a LEA for the purpose of eligibility for any state/fed competitive grants (rather than all grants under current law)
- **Permits** ESC governing boards to **delay reorganizing its subdistricts** (when applicable) until July 1, 2022; If ESC fails to do so, ODE will redistrict by August 1, 2022
- This also means election for redistricted board members will not be until **November 2023**

## Change to Definition of “Unused” School Building

- Modifies definition of “unused” school buildings to one in which **less than 60% of the building was used for direct academic instruction during the preceding school year**; definition still includes building that has not been used for instruction in over a year
- Definition triggers involuntary sale/lease of unused property under state law to community/STEM, or college prep schools

# Instruction and Student Changes



# Online Learning is Back On!

- Authorizes schools to offer online learning programs upon approval of the Superintendent of Public Instruction, defined as models where “students work primarily from their residences on assignments delivered via an internet or other computer-based method”
- **Must notify ODE by July 1** if starting/stopping an online program
- If school is currently operating an online school as of the bill’s effective date, must notify ODE within 60 days after





# Online Learning is Back On!

- Requirements for online learning include the following:
  - Must assign all students to a single school which ODE will designate as a district online school
  - Must provide all students with a computer at no cost, as well as a device or software that filters inappropriate material
  - Must provide all students access to the internet at no cost
  - Must provide a “comprehensive orientation” before enrollment/within 30 days for students enrolled as of the effective date of the bill
  - Must have a learning management system that tracks student participation and time spent online
  - Activities completed off-line must be recorded and approved by the teacher of record

# Online Learning is Back On!

- State board is tasked with revising operating standards for online learning:
  - Maximum teacher to student ratio of 1:125
  - Ability for students to advance grade levels or earn credits by demonstrating mastery of knowledge/skills through competency-based learning models (credit/advancement cannot be based on minimum number of days or hours in a classroom)
  - Minimum instructional calendar of not less than nine hundred ten hours (ODE will adjust funding for students enrolled in programs with less than 910 hours)
  - Requirements for licensure, qualification and training of teachers, administrators, and other professionals
  - Effective materials, equipment and facilities including library facilities
  - Proper organization, administration and supervision of schools
  - Regulation for submitting reports, documentation necessary
  - Admissions and pupil advancement
  - Graduation requirements

## Blended Learning Tweaks

- Changes definition of blended learning to specify that delivery of instruction “primarily” should be in a supervised physical location away from home
- Requires districts operating blended learning programs to operate for at least 910 hours

A close-up photograph of a hand holding a yellow pencil, pointing at a multiple-choice question on a test paper. The paper has several questions numbered 15 through 19, each with four options labeled A, B, C, and D. The pencil is positioned over the 'C' option of question 17. The background is slightly blurred, showing more of the test paper.

# Parent Right to Refuse ACT/SAT

- Beginning with students who enter ninth grade after July 1, 2022 – parents have the right to refuse administration of ACT/SAT



## College Credit Plus

- Requires any student as a condition of eligibility for CCP to meet one of the following:
  - Be remediation free by meeting established standards;
  - Meet an alternative remediation-free eligibility option (defined by the chancellor of Higher Ed); or
  - Prior to effective date, qualified for/participated in CCP under prior version of the law where they scored within one standard error of measurement of the remediation-free threshold.

# College Credit Plus

- Requires ODE and DHE to jointly develop a permission slip disclaiming that CCP students may be exposed to “mature subject matters” in CCP; districts must provide the permission slip and info during student orientation; **parents must sign slip as condition of participation**; higher ed participants must post a disclaimer on websites as well
- Districts/colleges must include in enrollment materials **a maturity questionnaire**, guidance about reviewing course materials before enrolling in a course, information about withdrawing/dropping a course; info about a student’s right to speak to counselors
- The Governor vetoed a provision that would exempt non-public schools from participating in CCP



## Education on Vape Risks, Venereal Diseases

- **Vape risks:** Schools must include instruction on harmful effects of electronic smoking devices/vape machines in health education
- **Venereal Diseases**
  - If school offers additional instruction in venereal diseases beyond state course materials, they must:
    - Notify parents and include name of instructor, vendor name (if applicable), and name of curriculum;
    - Obtain written permission from parents to opt in;
    - Provide instruction materials upon request by a parent/guardian.
  - ODE required to conduct annual audit to obtain names of organizations/programs providing materials on venereal disease instruction, and post audit findings on its website in a prominent location





# Other Legislation



## “Collin’s Law” – Ohio Anti-Hazing Act

- **SB 126** – This bill has passed and was signed by the Governor, effective early October
- **Changes definition of hazing** to add not only initiation but also anything to retain or renew membership in, or affiliation with, a student or other group, as well as hazing involving coercion to consume alcohol or a drug of abuse

## Collin's Law – SB 126

- No public or private school teacher, administrator, volunteer, consultant, alumnus, faculty member or employee shall:
  1. **Recklessly permit** hazing of any person associated with the organization, (M2) or:
  2. **Recklessly permit** hazing of any person associated...when it includes coerced consumption of alcohol or drugs of abuse that causes serious physical harm (F3)
- Any of the above-named persons who have knowledge of hazing **must report immediately to law enforcement**
  - (M4, or M1 if serious harm results)



## Collin's Law – SB 126

- No private right of action against any individual or institution of higher education

# Title IX

What We've  
Learned;  
Where We Are  
Headed







# 7 Lessons Learned from the *\*New\** Title IX Regulations



# 1. Choose Wisely and Train

- **Choosing and training your staff is key**
- There are new players in your Title IX grievance procedures
- You must have an investigator, a Title IX coordinator, a “round one” decision maker, and an “appeal” decision maker
  - Note - the investigator may also be the Title IX coordinator, but is this a good idea?
- However, the other roles must be fulfilled by separate individuals. All of these individuals should be trained on how to carry out and be successful in their roles

## 2. Good Work Takes Time

- Processing complaints and completing the grievance process will take a lot time
- Make sure your key players have time to dedicate to this process because it can be very time consuming and overwhelming
- Consider some back ups for those times when our regular picks are not available (because of medical leave, overwhelming duties, etc.)



## 3. Do Not Delay

- Be quick about starting the process
- Your policies will likely specify deadlines
- Your team needs to follow these to the extent possible and be prompt about exploring and offering supportive measures
- Team members should document any reasons for delay



## 4. Make Sure Title IX Policies Apply

- Jurisdiction considerations are a big deal; the regulations are very specific about when the Title IX grievance procedures do and do not apply
- A complaint **must** be dismissed when:
  - The alleged conduct, even if proven, would not constitute sexual harassment as defined by the Title IX regulations
  - The alleged conduct did not occur in the District's education programs or activities.
    - **Example:** A student sexually assaults another student at the student's house on Saturday night
  - The alleged conduct did not occur against a person in the United States
    - **Example:** The Spanish teacher takes students to Spain over winter break and a student is subject to actions that would clearly violate Title IX

## 4. Make Sure Title IX Policies Apply

- A complaint **may** be dismissed when:
  - The complainant has withdrawn the formal complaint
    - **Example:** The student changes his/her mind and notifies the compliance officer that they wish to withdraw the complaint
  - The respondent is no longer enrolled/employed in the District
    - **Example:** Shortly before graduation, a student engages in actions which clearly violate the policy; the district does not find out about the acts until after school is out and the student has graduated
  - The District cannot gather evidence sufficient to reach a determination because of some circumstance(s)
    - **Example:** A student files a complaint and then adamantly refuses to meet with the investigator to provide any information

## 5. Don't Forget About Other Policies!

- If you do not have jurisdiction to apply your Title IX grievance procedures and policy, that doesn't mean you are off the hook
- You may need to follow through with other policies, including discrimination, anti-harassment, bullying, etc

## 6. Be Prepared to Work with (and Around) Other Agencies

- Think through how your processes may be changed if other agencies such as the police or child services are investigating allegations
- Many of the acts that trigger your grievance procedures constitute crimes
- The policy cannot delay your obligation to report these crimes, potential child abuse, etc; you should work with police to coordinate timing
- Also note that you must remain timely regardless of who is involved (in other words, don't sit back and ignore a complaint while you await something like a criminal investigation to be completed)



## 7. OCR Means Business!

- OCR is investigating any complaints filed after August 14 under the new regulations - you will find no COVID-sympathies here!
- On September 28, 2020, OCR issued Questions and Answers for K-12 Public Schools addressing how civil rights laws are impacted by the pandemic
- OCR concluded that schools must investigate Title IX complaints under the new policy even if incidents occurred during remote learning



- Ennis Britton has created two training modules for your staff – a two-hour in depth training for key players, and a short module for all staff
- Access the registration page and additional information about costs on our website – <https://ennisbritton.com/client-resources/title-ix-training>



A landscape photograph showing rolling hills. The foreground is dominated by tall, green grasses. The middle ground features several fields of golden-brown crops, possibly wheat or barley, with distinct furrows or paths cutting through them. The background shows more rolling hills under a cloudy, overcast sky. The overall scene is a rural, agricultural landscape.

# Changes on the Horizon?



# OCR Announces Review of Title IX Regulations (again!)

- OCR is in the middle of a “comprehensive” review of Title IX
- Hearings held on June 7 - 11 to receive feedback from students, parents, educators, school staff, administrators, etc. on what additional changes may be necessary to fulfill Pres. Biden’s Executive Orders
- When can we expect changes?



# OCR Weighs In by Issuing Notice of Interpretation

- OCR issued notice on June 16
- Notice interprets application of SCOTUS decision in *Bostock* to Title IX for schools and others
- Declared that they will enforce Title IX's prohibition against discrimination on the basis of gender to include:
  - Discrimination based on sexual orientation
  - Discrimination based on gender identity
- So what does this mean for us?

# SCOTUS Declined to Hear Appeal on Transgender Case

- ***Grimm v. Gloucester County School Board***, Appeal No. 20-1163
- On June 28, SCOTUS declined to hear an appeal brought by a Virginia school district which sought to reinstate a policy prohibiting transgender students from using bathrooms of their opposite birth sex
- Brought by student named Gavin Grimm who was forced to use the girls bathroom and nurse's bathroom during high school
- The Fourth Circuit Court of Appeals previously concluded that the policy violated the Equal Protection Clause & Title IX
- Second time that case went before SCOTUS and was dropped
- SCOTUS's refusal essentially affirms the Fourth Circuit decision



# Questions?

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# Thank you!

The information in this handout and presentation was prepared by Ennis Britton Co., L.P.A. It is intended to be used for general information only and is not to be considered specific legal advice. If specific legal advice is sought, please consult an attorney.



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