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Northwest Ohio ESC Administrators Conference 2026 Summer Legal Update

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SCHOLARS IN EDUCATION LAW

Today's Agenda

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

Ohio Legislation

HB 455 - Finance and District Operations

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

HB 455- Finance and District Operations

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 - Tutor Ohio Kids: ESC tutoring- remedial education repealed.

HB 455 - Student-Related Changes

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

HB 455 - Student-Related Changes

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

HB 455 - Student-Related Changes

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

HB 455 - Board Member Vacancy

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



HB 455 - Teachers, Licensure, and Employment Issues

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

Patriotic Youth Organizations

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

Patriotic Youth Organizations

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



Patriotic Youth Organizations

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

SB 276 (effective early October 2026)

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

SB 276 - Student Athlete Mobility Act

■ For 2026-27 school year:

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

Questions?



Federal Agencies & Regulations

USDOE Dear Colleague Letter July 10, 2026

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

Marijuana Reclassification

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

USDOL Opinion on FMLA

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

EEOC Notice-Posting Penalty

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

EEOC Rescinded 2024 Workplace Harassment Guidance

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

Questions?



Ohio Agencies & Regulations

OHSAA (not really a State Agency...), but NIL

- The OHSAA adopted new bylaws in late November 2025 permitting high school student-athletes to earn compensation from their NIL.
 - The emergency referendum was passed following a temporary restraining order against the OHSAA based on the previous prohibition of NIL.
 - Information on the current bylaws can be found at ohsaa.org/Eligibility/NIL-Resource-Center.
- District considerations:
 - Use of District NIL
 - Notice of the NIL contracts
 - Updating policies to prohibit coaches, athletic directors, employees, etc. from being involved in or receiving money from NIL.
 - Prohibiting booster organizations from being involved in NIL deals.
 - Relationships of players to players.
 - Relationships of players to coaches.

OAG Opinion 2026-006: Virtual Meeting Opinion

- The OAG addressed when certain public bodies may hold virtual meetings and identified circumstances requiring in-person action, particularly for:
 - major expenditures,
 - significant hiring decisions, and
 - tax-related actions.
- This is NOT for public school boards of education but does reflect the continuing focus on meeting requirements and governance procedures.

Questions?



Federal Court Cases

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

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

Mirabelli v. Bonta (US Supreme Court 2026)

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

Defending Education v. Olentangy—the 6th Circuit Reverses Itself on Pronouns

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

Olentangy – Pronouns, Picking Sides and Policy

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

Olentangy – Pronouns, Picking Sides and Policy

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

Tumbleson v. Lakota Local Sch. Dist. (6th Cir. 2026)

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

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

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

Gaines v. Cross

■ Gaines said:

- She was fired for political campaign speech, which should be protected.
- She was speaking as a candidate, not as a court employee.
- She never disobeyed a direct order, so she wasn't insubordinate.
- Judicial candidates should be free to speak unless they violate ethics rules.

■ Court held:

- Some government jobs require trust, loyalty, and discretion. People in those roles have fewer free-speech protections when their speech undermines the workplace.

■ Gaines's firing did not violate the First Amendment. Her role required trust and loyalty. Her campaign speech publicly undercut court leadership and policy decisions. The court affirmed the dismissal of her lawsuit

C.S. v. McCrumb (6th Cir. 2025)

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

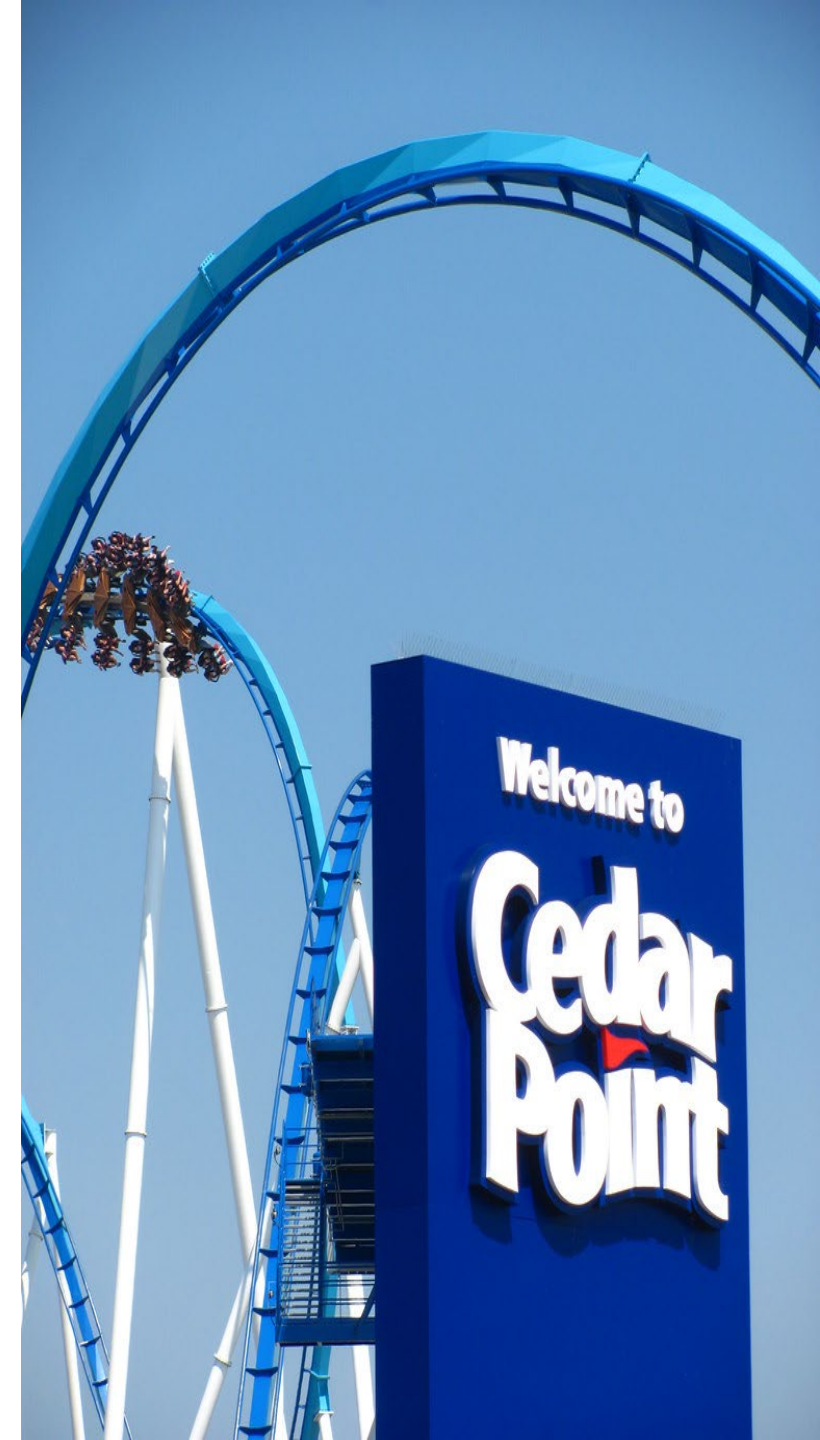


C.S. v. McCrumb Ruling

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

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

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



Conrad v. Madison Local Sch. Dist. Ruling

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

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

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

Cahall v. New Richmond

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



B.A. v. Tri Cnty. Area Schs. (6th Cir. 2025)

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

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

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

Halasz v. Cass City Pub. Schs., (6th Cir. 2025).

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

Questions?



Ohio Court Cases

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

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

Bossart v. Brecksville-Broadview Hts. City Sch. Dist. (8th App. Dist. 2026)

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

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

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

State ex rel. Zimmerman v. Avon Lake

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

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

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



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

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

State ex rel. Ames v. Vermilion Local School District Board of Education (6th App. Dist. 2026)

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

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

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

Questions?





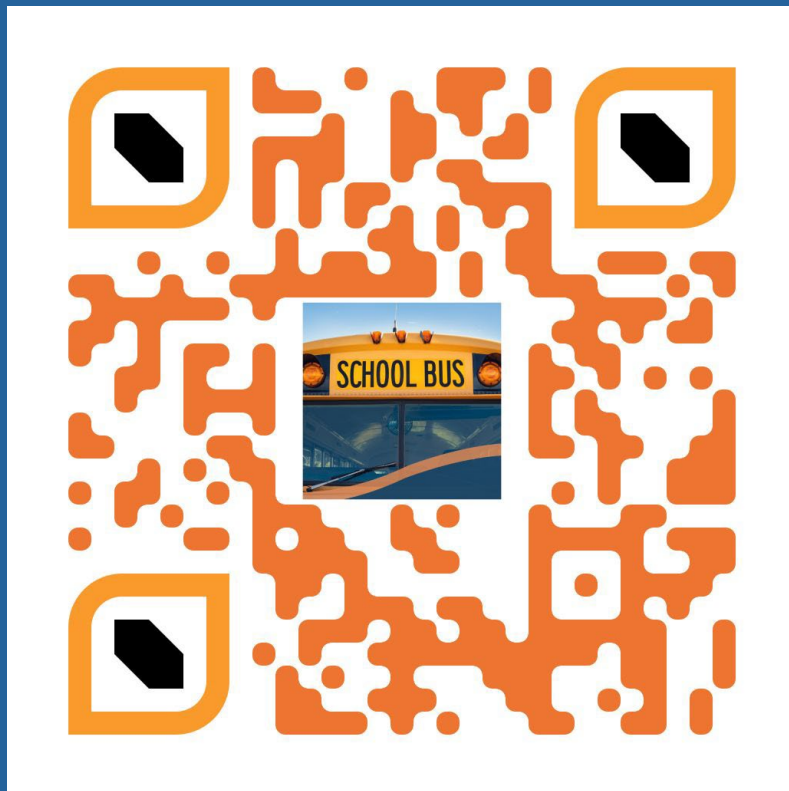
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- Registration opens at the end of July!

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AROUND THE MOON AND BACK



Special Education Roadshow 2026

MISSION CONTROL: STRATEGIC DECISION-MAKING IN TODAY'S SPECIAL EDUCATION LANDSCAPE

Fast-paced training on emerging trends & day-to-day problem solving.

Mark your calendar!

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

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

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

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



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