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August 5, 2022

### NW Ohio ESC Administrative Retreat

### **LEGAL UPDATE**

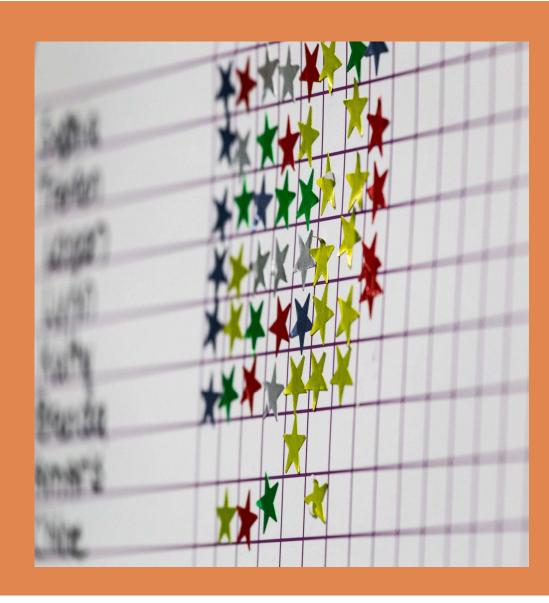


Bronston McCord <a href="mailto:cbmccord@ennisbritton.com">cbmccord@ennisbritton.com</a>

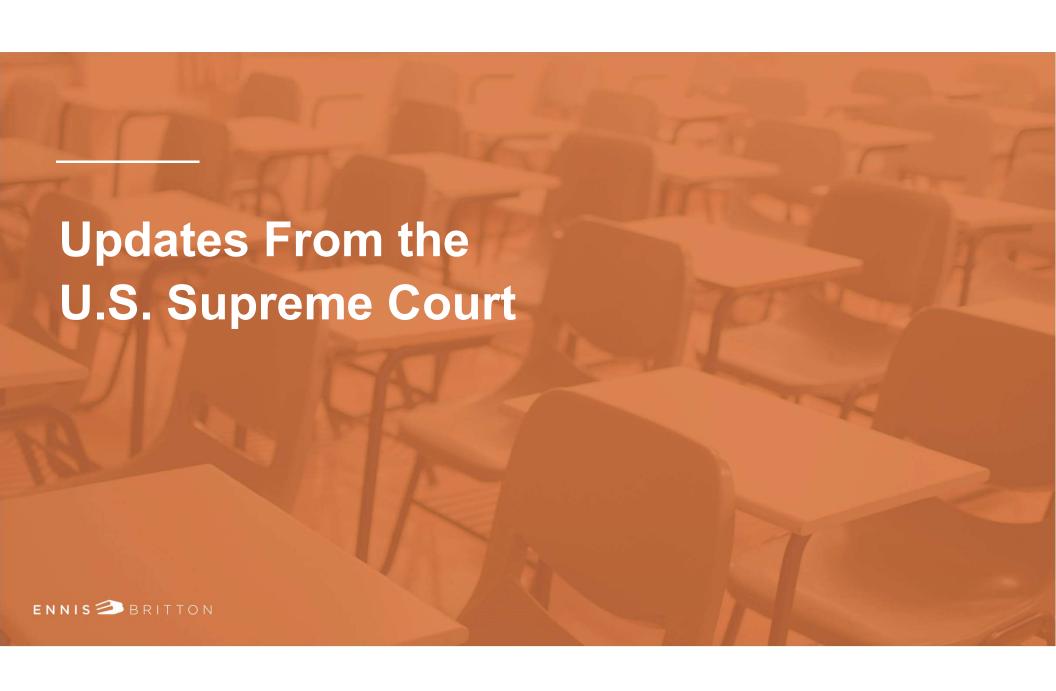


### Agenda

Updates from the U.S. Supreme Court
Updates from federal circuit courts
Updates from the federal government
Updates from Ohio courts
Legislation Update
Transportation law update







Kennedy v. Bremerton School District (2022) 139 S. Ct. 634, 635, 203 L. Ed. 2d 137 (2019)

The facts adopted by the majority of the Court were:

- Coach knelt at midfield after games to offer a quiet personal prayer
- Only three games were in question
- Postgame period where coaches were free to attend briefly to personal matters and students were engaged in other activities
- Coach was not praying while acting within the scope of his duties even though still on duty
- No evidence students were coerced to pray with the Coach
- He did not seek to direct any prayers to students
- His plan was to wait to pray until athletes were occupied and told everyone that's what he wished to do.



Kennedy v. Bremerton School District (2022) 139 S. Ct. 634, 635, 203 L. Ed. 2d 137 (2019)

The majority of the Court expressly rejected the argument that the Coach served as a role model "clothed with the mantle of one who imparts knowledge and wisdom," and instead stated this gives the Coach an excessively broad job that would "treat everything teachers and coaches say in the workplace as government speech subject to government control."

The Court specifically stated that "learning how to tolerate speech or prayer of all kinds is 'part of learning how to live in a pluralistic society,' a trait of character essential to 'a tolerant citizenry."

It refused to "undermine a long constitutional tradition under which learning how to tolerate diverse expressive activities."



Kennedy v. Bremerton School District (2022) 139 S. Ct. 634, 635, 203 L. Ed. 2d 137 (2019)

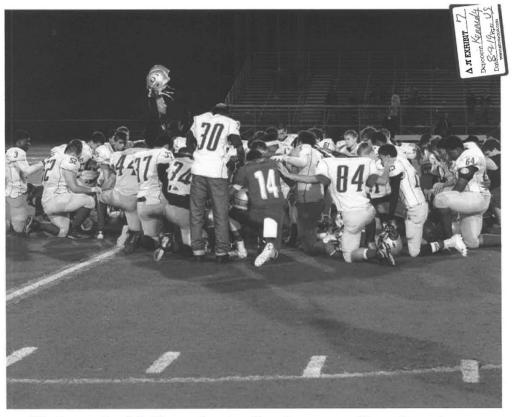
The facts laid out by the minority, though, painted a different picture of the situation:

- Coach had a long-standing practice of conducting demonstrative prayers on the 50-yard line.
- Coach consistently invited others to join his prayers, including the other teams.
- Coach would delivery speeches with overly religious references.
- Coach used social media after being told not to pray out loud on the field to gather support for his cause.
- Coach made multiple media appearance to publicize his plans to pray at the 50-yeard line.
- District was forced to make security arrangements for future games after one game the coach prayed on the field and members of the public jumped fences to join him knocking over student band members.
- · State lawmakers joined him on the field to pray.
- Head coach resigned after 11 years expressing fears he would be shot or attacked based on Kennedy's media appearances.





Photograph of J. Kennedy in prayer circle (Oct. 16, 2015).



Photograph of J. Kennedy standing in group of kneeling players.



Kennedy v. Bremerton School District (2022) 139 S. Ct. 634, 635, 203 L. Ed. 2d 137 (2019)

Court ruled in a 6-3 opinion that a high school football coach's post-game prayers at midfield were protected by the 1<sup>st</sup> Amendment's free speech and free exercise of religious clauses.

#### Questions left open:

- Will this be equally applied to all people?
- Will student be protected from pressure or coercion?

#### **Key takeaways**

- This will be fact specific!
- Finding the line between protected private speech and religious activity when the action taken could be seen as coercive for non-religious students or minority religious student groups.



### U.S. Supreme Court: Impacts of *Mahoney* (2021)

C1.G v. Siegfried, 38 F.4th 1270 (10th Cir. 2022)

The 10<sup>th</sup> Circuit Court was one of the first courts to use the *Mahoney* case decided by the U.S. Supreme Court in 2021. *Mahoney* dealt with a cheerleader's vulgar messages on social media, where the U.S. Supreme Court found that schools may not discipline off-campus student speech when the speech does not constitute a true threat, fighting words or obscenity.

In this case, the student posted a picture in Snapchat with a caption "Me and the boys bout [sic] to exterminate the Jews." The post was removed after 2 hours, and the student apologized. Other students took screenshots of the snap and provided them to the police and the school. The image spread among the high school community and the school expelled the student for 1 year for violating a policy regulating "behavior on or off school property which is detrimental to the welfare, safety or morals of other students or school personnel."



### U.S. Supreme Court: Impacts of *Mahoney* (2021) continued...

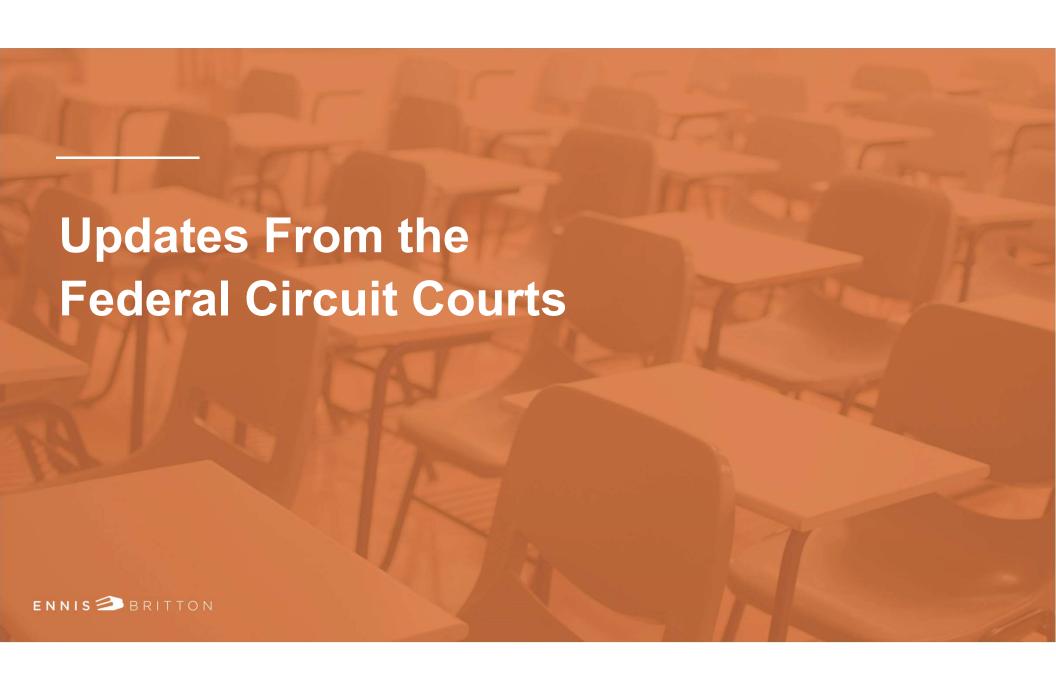
C1.G v. Siegfried, 38 F.4th 1270 (10th Cir. 2022)

The 10<sup>th</sup> Circuit Court stated that this case was similar to *Mahoney* because the speech happened outside of school hours and off campus, did not identify the school or target any member of the school with vulgar or abusive language, and was transmitted to a private circle of Snapchat friends.

The School attempted to show that there was a reasonable expectation of substantial disruption due to the multiple emails regarding the post, the circulation in the Jewish community, and that the post frightened a family who had a child in a class with the posting student. The Court stated that the school needed more--- "Impact" does not necessarily equal substantial disruption."

The Court also provided that the posting did not involve weapons, a specific threat or speech directed toward the school or students. It did not find the speech to constitute harassment, and while it was hateful in nature, it was "not regulable in context."





### 6<sup>th</sup> Circuit Court: Applying Title IX

### Doe v. Metropolitan Gov. of Nashville Davidson County, 35 F.4<sup>th</sup> 459 (6<sup>th</sup> Cir. 2022)

A panel from the 6<sup>th</sup> Circuit allowed two Title IX sexual harassment cases to move forward alleging that a Nashville school district failed to respond adequately to incidents where videos were circulated on social media showing female high school students engaged in sex acts with male students.

Where did the school go wrong? The Court found that:

- The District did not involve the Title IX coordinator and let the principals handle all responses to the incidents.
- Over a 4-year period there were 950 instances of sexual harassment and 1,200 incidents of inappropriate sexual behavior, including students taking and/or distributing sexually explicit photographs or videos of themselves or other students.



### 6<sup>th</sup> Circuit Court: Applying Title IX

### Doe v. Metropolitan Gov. of Nashville Davidson County, 35 F.4<sup>th</sup> 459 (6<sup>th</sup> Cir. 2022)

The decision comes at a time when legal and regulatory guidance is in flux for Title IX of the Education Amendments of 1972, which bars sex discrimination in federally funded schools. The Biden administration is rewriting regulations through the rulemaking process on Title IX, including how schools should respond to sexual assaults and harassment.

And just this week, the U.S. Supreme Court asked the administration to submit its views in a pending appeal by a Virginia school district in a Title IX case involving the district's response to alleged sexual assault of a student by another student on a school bus trip.

To hold that the district was not liable under a separate 6th Circuit precedent about isolated sex harassment incidents "would defeat Title IX's purpose of eliminating systemic gender discrimination from federally funded schools."



### Title IX Circuit Courts: 4th Circuit Actual Notice/Knowledge

### Doe v. Fairfax County School Board, 1 F.4th 257 (4th Cir. 2021)

On December 30, 2021, the Fairfax County School Board filed a petition for certiorari to the U.S. Supreme Court in case arising out of the 4<sup>th</sup> Circuit Court of Appeals. While not currently applicable in Ohio, the school district is asking the Court to review the following questions:

Whether a recipient of federal funding may be liable in damages in a private action in cases alleging student-on-student sexual harassment when the recipient's response to such allegations did not itself cause any harassment actionable under Title IX; and

Whether the requirement of "actual knowledge" in a private action is met when a funding recipient lacks a subjective belief that any harassment actionable under Title IX occurred.

The Court found that "actual notice" under Title IX was established when a school received a report or complaint alleging sexual harassment.

The Solicitor general was invited to file a brief in this case expressing the views of the United States. The petition has not yet been granted.

\*Writ of certiorari filed with the U.S. Supreme Court.







### **Title IX Changes on the Horizon**

On June 27, 2022 the U.S. Department of Education issued notice that it was proposing changes to the Title IX regulations that were just updated in 2020.

The changes were uploaded to the Federal Register on July 12<sup>th</sup> with a comment period open for 60 days. Review of the comments will occur once the comment period closes, with a final rule anticipated thereafter.

https://www.federalregister.gov/documents/2022/07/12/2022-13734/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal?utm\_source=federalregister.gov&utm\_medium=email&utm\_campaign=subscription+mailing+list



# Title IX Summary of Proposed Changes:

- Adds more definitions
- · All employee training requirement
- Set requirements for responding to sex discrimination involving a student with a disability – consult with IEP or 504 team.
- Clarify that sex discrimination includes on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation and gender identify.
- Removes off-campus or out-of-country exception to applicability.





# Title IX Summary of Proposed Changes:

- Would require adoption of a grievance process. Would not require a formal complaint process for allegations of sex harassment.
- Discretion to offer informal resolution in some circumstances.
- Required preponderance of the evidence standard.
- Decision-maker may be the same person as the Title IX coordinator or investigator.

# U.S. Department of Education and EEOC Guidance on Sexual Orientation and Identity

On July 15, 2022, a judge in Tennessee has temporarily barred two federal agencies from enforcing directives issued by President Joe Biden's administration that extended protections for LGBTQ people in schools and workplaces, namely:

The Department of Education guidance from June 2021 said discrimination based on a student's sexual orientation or gender identity would be treated as a violation of Title IX, the 1972 federal law that protects sex discrimination in education.

The Equal Employment Opportunity Commission released guidance that month about what could constitute discrimination against LGBTQ people and advised the public about how to file a complaint.

A temporary injunction was granted until the matter can be resolved by the courts.

The complaint was brought by the following States Attorneys General: Alabama, Alaska, Arizona, Arkansas, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, <u>Ohio</u>, Oklahoma, South Carolina, South Dakota, Tennessee and West Virginia.



### Title VII: Employment Discrimination Cases post-Bostock

### Eller v. Prince George's Cnty. Pub. Sch., No. CV TDC-18-3649, 2022 WL 170792 (D. Md. Jan. 14, 2022)

- A transgender teacher who alleged that she was frequently harassed by staff, students
  and parents brought a successful action against her employer on the theory that the
  pervasive harassment and the employer's response to her complaints constituted sexual
  harassment under Title VII.
- The employer transferred her to different buildings when she complained, and again when the harassment continued. The teacher took medical leave for treatment of PTSD.
- The Court looked upon the fact that the transfers were necessary as a means of mitigating a hostile environment as evidence that the harassment altered the conditions of employment. The nature and extent of the harassment was deemed to be sufficiently severe and pervasive for liability to attach.



#### Meriwether v. Hartop, 992 F.3d 492 (6th Cir. 2021)

- An Ohio university professor received a written reprimand after failing to use a student's preferred pronouns in class. He brought an action against the university alleging a violation of rights to his free speech and religious freedom.
- In the court's decision it highlighted the special place that <u>universities</u> hold in constitutional law, underscoring how strong the right to free speech is in such classrooms. It held that the professor's refusal to use a student's preferred pronouns was speech on a matter of public interest and his free speech rights outweighed the state's stated interest in "promoting the efficiency of the public services it performs through its employees."
- The court found that given the facts alleged in the complaint, it was plausible that the university was not religiously neutral in its treatment and remanded the case for fact-finding at the trial level.
- **UPDATE**: case settled this April 2022. Shawnee State agreed to rescind the reprimand and pay Meriwether \$400k in damages & attorney fees.



### Kluge v. Brownsburg Community School Corporation, 548 F.Supp.3d 814 (S.D. Ind. July 2021)

- High school music teacher was forced to resign after refusing to refer to transgender students by the names selected by the students, their parents, and their healthcare providers due to the teacher's religious objections.
- Initially, the school district allowed the teacher to have the option of referring to students using only their last names, but rescinded that accommodation after complaints were received of the negative impact that was having on transgender students.
- A district court judge found there was no Title VII violation in the forced resignation of the teacher.
- The court found that this case was distinct from Meriwether for two important reasons:
  - First, a high school teacher has different rights in their classroom than a university professor.
  - Second, in this case, the teacher did not assert their free speech rights but rather asserted a violation of Title VII for discrimination based on their religious beliefs.



Kluge v. Brownsburg Community School Corporation, 548 F.Supp.3d 814 (S.D. Ind. July 2021)

- Even though the teacher showed a prima facie case for discrimination, the court found that any accommodation would create an interference with the school's ability to educate students, and that is an undue burden.
- Court concluded "so, what's in a name?" it "is ill-equipped to answer that question definitively," but for the reasons the Court articulated in the Order, it concluded that a "...name carries with it enough importance to overcome a public school corporations' duty to accommodate a teacher's sincerely held religious beliefs against a policy that requires staff to use transgender students' preferred names when supported by a parent and health care provider."

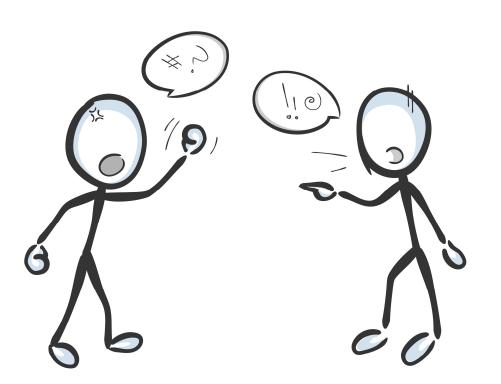


### Ricard v. USD 475 Geary Cnty., KS Sch. Bd., No. 522CV04015HLTGEB, 2022 WL 1471372 (D. Kan. May 9, 2022)

- A middle school math teacher filed suit because she was suspended for 3 days following her refusal to call a student by their <u>preferred pronouns</u>. This case was filed March 7th, 2022.
- The teacher asserts that her free speech rights, religious freedom rights, and due process rights were violated.
- Currently, the Court granted an injunction in May 2022 to allow the teacher to refer to students by their preferred name when communicating with the student's parents.
- The policy for the school district required staff to address students by their preferred names, but then when referring to students while speaking to parents, the staff were directed to use the student's legal names and biological pronouns.
- **Key point in this case** is that the teacher's attorneys state they are fighting for the rights of parents to know– making it clear that the school district cannot hide important information from parents.







# Transgender Students and Staff Impacts

This is not an issue that is going quietly, but it is also an issue that cannot be resolved with a one-size-fits-all approach due to the complexity of concerns from students, staff, board of education members and community members.

Call your legal counsel.

Train your staff. Open dialogue of expectations is important

### **Title IX: Athletic Participation**

#### Soule et al. v. CT Association of Schools et al. (District Conn. 2020)

- Students and their parents sued the Connecticut High school Athletic Conference, several school boards to prohibit them from allowing transgender students to participate in sports in accordance with the gender they identify with and to remove them from the records of races they had participated in while students.
- The two transgender students named in the suit intervened as defendants represented by the ACLU.
- The Trump administration intervened in the suit in support of the Plaintiffs. The Biden administration later withdrew from the suit.
- The District Court dismissed the case, which is now before the Court of Appeals. The dismissal
  was based on issues related to justiciability and whether money damages could be awarded, but
  the court directly noted that every appeals court so far that it reviewed has held that Title IX
  requires schools to treat transgender students consistent with their gender identity.



### Title IX: Athletic Participation

- "Save Women's Sports Act" Ohio Senate Bill 132 (3/16/21 In Committee) and Ohio House Bill 61 (2/4/21 In Committee, next scheduled hearing June 24th) both propose to ban transgender students at all school levels from playing on the sports teams that align with their gender identity.
  - About 35 similar bills have been introduced at the state level across the country. Eight bills have been signed into law this year.
- Hecox v. Little, Case 1:20-cv-00184-DCN (District Court, Idaho)
  - Judge granted an injunction in favor of a college student against an Idaho law prohibiting transgender athletes from participating in sports based on the gender with which they identify.
- **FINA**, the World swimming's governing body, voted on June 19<sup>th</sup> to approve new eligibility rules that restrict participation of transgender athletes in women's competitions. Other sports may soon follow.





## SECRETARY CARDONA ISSUES LETTER ON NEW CDC RECOMMENDATIONS

Letter to Educators and Parents Regarding New CDC Recommendations and Their Impact on Children with Disabilities (March 24, 2022)

- Reminds districts to mitigate the spread of COVID-19 in schools and ensure all students can safely learn in person to <u>the maximum extent possible</u>
- Urges schools to ensure that all students including students with disabilities have access to in person learning alongside their peers
- Emphasizes the obligation to includes students with disabilities, including those experiencing long COVID, in compliance with the IDEA, Section 504, and the ADA
- Stresses the importance of extra precautions dependent on the COVID-19 community levels
- Bottom line we need to start looking at this longer term!





### **Expected Federal Regulation Changes**

USDOE will propose to amend FERPA to update, clarify and improve the regulations by addressing outstanding issues, clarifying the definition of "educational records, update enforcement, etc. Notice of Proposed Rulemaking expected August 2022.

USDOE will propose to amend PPRA with Notice of Proposed Rulemaking expected April 2023.

USDOE will propose to amend regulations implementing Section 504 with Notice of Proposed Rulemaking expected May 2023.



#### WATCH – American Data Privacy and Protection Act (in U.S. House)

In early June 2022, a draft of this bill was shared in the U.S. House which could move the U.S. towards having a comprehensive privacy law. This bill contains new child privacy provisions as well as pieces from previously introduced standalone child privacy proposals.

Main takeaways for student privacy:

- Preservation of COPPA and FERPA: bill would not directly amend or alter the federal frameworks set forth under COPPA or FERPA, and the bill's section on preemption preserves state laws that govern privacy rights for students and protections for student information. Compliance with FERPA is also considered in compliance with this bill if a covered entity is regulated by FERPA.
- Sensitive data: The definition of sensitive covered data includes, among other things, "information of an individual under the age of 17" and any other covered data collected, processed, or transferred for the purpose of identifying sensitive data. Covered entities cannot collect, process, or transfer sensitive covered data without "the affirmative express consent of an individual."
- Covered entities include non-profits: The proposal would regulate commercial entities, common carriers, and non-profits, while largely exempting small businesses.



#### WATCH – American Data Privacy and Protection Act (in U.S. House)

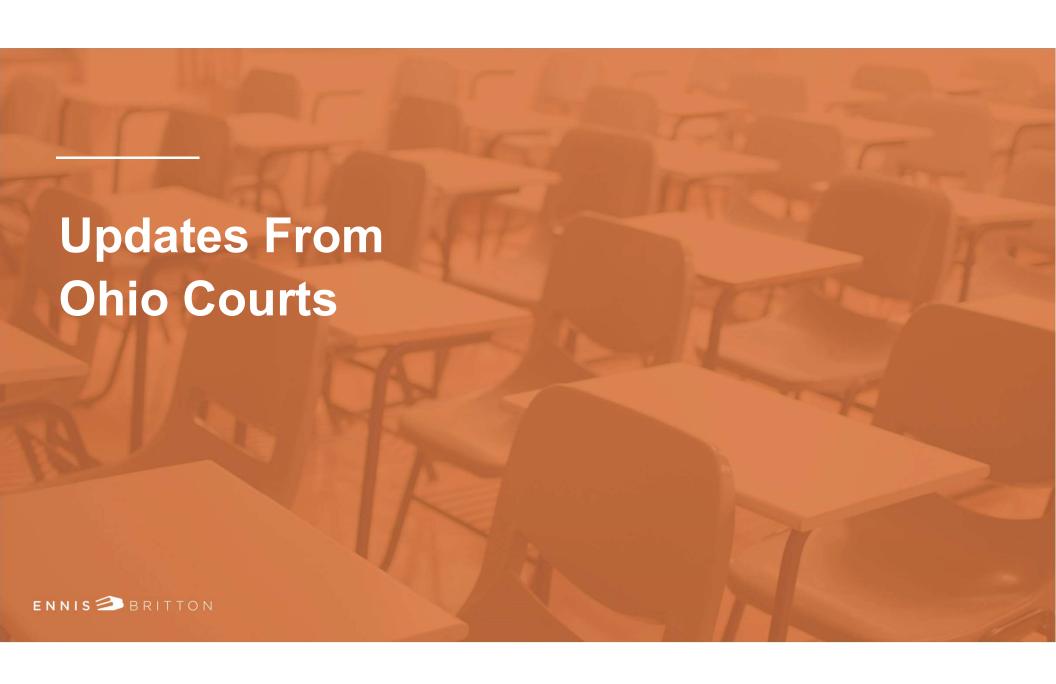
Age thresholds for children and minors: The bill prohibits targeted advertising where the covered entity has actual knowledge that an individual is under 17. This would mark a significant shift from COPPA's under-13 threshold.

The bill also requires "affirmative express consent from the individual or the individual's parent or guardian" if the covered entity has actual knowledge that the individual is between 13 and 17 years of age.

Private Right of Action: provides a limited private right of action under which consumers would have to seek compensatory damages, injunctive relief, declaratory relief, and reasonable attorney's fees and litigation costs. However, consumers under the age of 13 would not receive this right as the bill does not preempt COPPA, which does not extend a private right of action.

FTC Youth Privacy & Marketing Division: The bill would establish a new division of the FTC's Bureau of Consumer Protection staffed by experts in data protection, digital advertising, data analytics, and youth development. The Youth Privacy & Marketing Division would be responsible for enforcing the bill's new prohibitions against targeted advertising to minors and transferring a minor's data to a third party without affirmative express consent.





# Ohio Appellate Court: Confidentiality of ODE Educator Investigations

Bennett v. Ohio Dept. of Edn., 2022-Ohio-1747 (4th Dist. Ct. App. 2022)

Court recognized that a subpoena for the Ohio Department of Education's Office of Professional Misconduct's files in a licensure investigation could be quashed under state law.

Judge indicated that statute in question clearly provides that "all information obtained during ODE's investigation is confidential."

He did nod to the "disdain" for this procedure from ODE as well as the "truncated nature of the administrative agency determination process in Ohio," but also clearly stated that this is the system the Ohio legislature has chosen, and the Court was not in a place to question these policy concerns.





# What Has The Ohio General Assembly Been Up To?

SCHOLARS IN EDUCATION LAW

### The History of Arming School Staff - Background on This Topic

- Gabbard v. Madison Local Sch. Dist. Bd. Of Edn., Slip Op. No 2021-Ohio-2067
   In June 2021, the Ohio Supreme Court ruled that state law, specifically R.C. 109.78, required any school employee authorized by a board of education to be armed while on duty to either complete the 700+ hour Ohio basic peace officer training or alternatively have previously served at least twenty years of active duty as a peace officer.
- School districts that had previously authorized teachers, administrators and other staff to carry firearms onto school property while at work were forced to abruptly change course.
- Court recognized in the majority opinion that the General Assembly had full authority to modify the requirements by simply changing the wording of the applicable statutes.
- Legislators took this advice: shortly after the decision was issued, proposed House Bill 99 with the intent to reduce the requirements for staff to go armed on campus.



- HB 99 was signed by the Governor on June 13, 2022 and the financial provisions become effective immediately.
- Other provisions have an effective date of Sept. 12, 2022.
- Creates a framework for school employee training to carry guns and outlines the obligations/processes.
- Allows districts to authorize employees to carry weapons when:
  - The Board acts by resolution to authorize employees to voluntarily go armed in a school safety zone.
  - The Board **notifies the public** in whatever way it ordinarily communicates with the public that it has taken such action.
  - Employees must complete a minimum of 24-25 hours of training.
  - Employees must undergo annual criminal background checks.



- Creates a new public records exception for the training records of a school employee who is trained to carry a deadly weapon, but exempts the public notification that the Board has authorized employees to carry weapons from the definition of a security or infrastructure record.
- New exceptions in the general rule of conveying a deadly weapon or dangerous ordnance into a school safety zone to now include both of the following:
  - Persons authorized by the Board provided the person has completed the curriculum, instruction, and training provided in this new law, or they are a law enforcement officer, or have completed a basic peace officer training program, and
  - The Board has notified the public that it has authorized one or more employees to go armed within the school.



- The Mobile Training Team's purpose is to provide services to Ohio public and nonpublic schools regarding school safety and security.
- Ohio Department of Public Safety will administer the newly-created Ohio School Safety and Crisis Center and Mobile Training Team.
  - Funded by a \$12m appropriation.
  - Creates a Chief Mobile Training Team officer who will hire 16 regional mobile training team officers.
  - These officers will not have authority over local incident response management.
  - Administrative rules governing the process will be adopted.
  - Schools may involve the mobile training team officer in their emergency management plan development and updating.
  - Schools must upon request provide a copy of the emergency management plan to the mobile training team officer.



- The Regional Mobile Training Team Officer role includes:
  - Assisting (upon request) with the development of an emergency management plan.
  - Assisting (upon request) school administrators with with security protocols for activities of events outside the school during or after school hours.
  - Offering tactical emergency medical services training for schools.
  - New Ohio Department of Public Safety will administer the Ohio School Safety and Crisis Center and Mobile Training Team.
  - Promoting use of the SaferOH tip line in the region.
  - Enforcing rules and doings duties as assigned.
  - Providing instruction and training through the Ohio school safety and crisis center.
  - Overseeing training and offering training to school employees, observing emergency management plan tests, providing weapons manipulation instruction and other appropriate activities.



### HB 99 – A Little More on the Training

- MTT is tasked with creating curriculum and providing instruction
- Will include maximum of 24 hours of initial training, and up to 8 hours for recertification annually thereafter (board will require more)
- Training must follow the private investigator and security guard firearms training guidelines
- **Must** include the following topics:
- Mitigation techniques
- Communications capabilities and coordination and collaboration techniques
- Neutralization of potential threats and active shooters
- Accountability
- Reunification

- Psychology of critical incidents > At least 4 hours of training in
- De-escalation techniques
- Crisis intervention
- > Trauma and first aid care
- ➤ The history and pattern of school shootings
- ➤ Tactics of responding to critical incidents in schools

- At least 4 hours of training in scenario-based or simulated training exercises
- Completion of tactical live firearms training
- Realistic urban training



#### **HB 99 – Interested?**

#### Here's what a board needs to do:

- 1. Board **acts by resolution** to authorize employees to voluntarily go armed in a school safety zone.
- 2. Board **notifies the public** in whatever way it ordinarily communicates with the public that it has taken such action.
- 3. Eligible employees complete required training at board expense
  - Training must be provided by the NEW Mobile Training Team ("MTT" more on this later), or alternatively the board must adopt alternative curriculum approved by the Ohio School Safety and Crisis Center ("OSSCC" - more on this later also).
- 4. Employees undergo annual criminal background checks.
- 5. Board submits current list of qualified individuals who have received authorization to the OSSCC.
  - ❖ <u>BTW</u>: creates a **new public records exception** for the training records and lists of school employees authorized to carry, but exempts the public notification that the Board must provide in #2



### **Initial Thoughts On HB 99**

- Includes an actual training requirement for designated staff (schools who designated staff under prior law before *Gabbard* did not always require training).
- Security guards and SROs still must complete basic peace officer training. (700+ hours)
- Insurance may be problematic- talk to your insurance carrier.
- It remains problematic to force staff to do this (unions are involved here).
- There are elements that need to be carefully considered (safety of students during an active shooter situation, response time, ability of teachers and nonteaching staff to make life and death decisions, mental stability of those selected, securing weapons properly, first responder responses).



### HB 215 concealed carry bill and HB 99

- HB 215 changes concealed carry requirements in some ways that impact schools
- R.C. 2923.122 conveying a weapon in a school safety zone:
  - Language conveying carrying into a school safety zone appears to continue to require a
    concealed carry license valid at the time of conveyance.
- For purposes of carrying concealed and being on school property or bringing a weapon onto school property and leaving in a car:
  - Language appears to continue to require a concealed carry license valid at the time of conveyance, leaving the weapon in the motor vehicle, and, if the person leaves the vehicle, the vehicle is locked.
  - Conveying in a school safety zone: Not enumerated as an included statute in R.C. 2923.111(C)(1) and the context appears to indicate (since the language was amended in the bill) the intent was for people conveying in a school safety zone to have a CHL.



### HB 583: Substitute Teacher Bill, Turned Random Topics in Education

### Introduced in House

Emergency bill introduced February 2, 2022

Bill was initially introduced in the House to provide temporary solutions for the substitute teacher shortage

### Various Additions and Deletions from Senate

As it journeyed through the House and Senate, it became much more.

Dyslexia, community school sponsorship ratings, career-technical tax credit, scholarship funding, tutoring program all added to the mix.

#### **Effective**

9/23/22 for provisions, appropriations 6/24/22



### HB 583 –What's in there?

### **Uncodified tidbits:**

Transportation funding changes

#### Substitute teacher licenses:

Extended the initial one-year provision for a school district to hire a substitute teacher without a postsecondary degree for 2022-23 and 2023-24. ODE has issued a clarification on this regarding licensure because the bill doesn't become effective until 9/23/22.

Creates the Substitute Teacher Shortages Study Committee will study that and the temporary substitute licensing provision. Report due Dec 31, 2022.





### Changes to License Requirements for Substitute Teachers

Allows a board to continue to employ an individual who does *not* hold at least a bachelor's degree as a substitute teacher, provided the individual meets the following requirements:

- 1. Meets the district's or school's own **set of educational requirements**;
- 2. Is deemed to be of good moral character;
- 3. Successfully completes a criminal records check.

# **New Holiday for School Employees, Version 2.0** ENNIS = BRITTON



### Juneteenth Declared a Holiday ... Again

- SB 11 recently was signed into law and went into effect on **June 8**, **2022**.
- Previously applied to 9- & 10-month employees, but *not* 11- and 12-month employees, oddly enough.
- Correction to the law now requires schools to grant June 19th as a paid holiday for all regular nonteaching school employees who are employed on an 11- and 12-month basis.
- As a result of these changes, nonteaching employees employed on an 11- or 12-month basis now receive Juneteenth Day as a paid holiday along with New Year's Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

<sup>&</sup>quot;Juneteenth Statue / Former State Rep. Al Edwards" by סיביקולס licensed under CC BY-SA 2.0

## Who is Eligible Under the Law?

R.C. 3319.087

- Regular nonteaching employees who work at least 11 months out of the school year, whether salaried or hourly
- Must be in paid status (including sick, vacation, etc.) the day immediately preceding and the day following the holiday
- Board may declare any other day a holiday, except days approved for teachers' attendance at an educational meeting
- Employee receives regular rate of pay for the holiday.
- Employees required to work receive compensatory time at regular rate of pay or established premium pay

**REMINDER:** the statute, R.C. Section 3319.087 <u>does</u> <u>not apply</u> to administrative employees – however, you should check your contracts and/or handbooks for these employees.

### Transportation law issues



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We've been telling you about the changes to payment in lieu, with extensive resources to assist, including webinars.

We have been following the lawsuits filed by some school districts to challenge ODE's "compliance" process resulting in removal of transportation funding for the period of "noncompliance."

### R.C. 3327.021

The department of education shall monitor each city, local, or exempted village school district's compliance with sections 3327.01 and 3327.016 and division (B) of section 3327.017 of the Revised Code. If the department determines a consistent or prolonged period of noncompliance on the part of the school district to provide transportation as required under those sections, the department shall deduct from the district's payment for student transportation under Chapter 3317 of the Revised Code the total daily amount of that payment, as computed by the department, for each day that the district is not in compliance.







### **Transportation funding litigation**



### **Columbus City case**

ODE fined Columbus City Schools \$11m under these new provisions for failing to provide transportation, Columbus City sued.

Judge has enjoined ODE withholding funds based on rule that was not properly promulgated.

Lawsuit states that ODE "...unilaterally inserted its own definitions without proper rule-making..."

Early stages of litigation Focused on rule-making issue.

## Update on the lawsuits



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**Groveport Madison v. ODE-** This case was voluntarily dismissed by the plaintiff at the end of May without prejudice. The motion for a TRO preventing ODE from withholding funding was denied by the court as well.

There was a motion to consolidate the Columbus City case and the Groveport-Madison case, which Columbus City opposed and the State supported.

Columbus City Schools v. ODE- This is pending on a motion to dismiss filed by ODE on May 16, 2022. The hearing scheduled for July 19, 2022 on the temporary injunction was continued to Sept 13-14, 2022, and a trial date is scheduled in April 2023. The temporary injunction preventing ODE from fining Columbus City \$11m remains in effect.



### The legislature may be involved...

A work group is exploring the issues and presenting to state legislators to obtain additional clarity as to the intent and impact of the provisions.





### What Has The Ohio General Assembly Laid on the Table?

SCHOLARS IN EDUCATION LAW



### **Teaching "Divisive Concepts"**

SCHOLARS IN EDUCATION LAW

### **HB 616**

- Introduced 4/4/22, assigned to House State & Local Government Committee (why) and almost had one hearing (scheduled but continued).
- Would prohibit public schools and nonpublic schools that enroll students who are
  participating in state scholarship programs (educational choice scholarship pilot
  program; autism scholarship program; Jon Peterson special needs scholarship
  program; pilot project scholarship program) from teaching or providing training that
  promotes or endorses "divisive or inherently racist concepts."
- Would prohibit school district boards of education from selecting any textbook, instructional material, or academic curriculum that promotes divisive or inherently racist concepts. (also prohibits teachers from getting credits required for renewal that involve divisive or inherently racist concepts
- "Divisive or inherently racist concepts" include (1) critical race theory, (2) intersectional theory, (3) the "1619 Project," (4) diversity, equity, and inclusion learning outcomes, (5) inherited racial guilt, and (6) any other concept that the State Board of Education defines as divisive or inherently racist.



### **HB 616**

- With regard to sexual orientation and gender identity, the bill prohibits:
  - Teaching, using, or providing any curriculum or instructional materials on sexual orientation or gender identity to a student in any of grades K-3
  - Teaching, using, or providing any curriculum or instructional materials on sexual orientation or gender identity to a student in any of grades 4-12 that is not age-appropriate or developmentally appropriate in accordance with state standards.
  - State Board is to develop rules whereby a parent can complain to ODE if
    they believe the prohibitions of the bill have been violated. This could result
    in licensure consequences for an individual teacher, administrator or
    Superintendent as well as funding consequences for the District.



### HB 290 "Backpack Bill" (as introduced)

- To express the intent of the General Assembly to establish a school funding formula that allows families to choose the option for all computed funding amounts associated with students' education to follow them to the public and nonpublic schools they attend.
- Sponsors say purpose at this point is not to lay out a specific plan but rather to spark conversations about "universal vouchers" in Ohio
- Sponsors circulated a letter in support of the Bill provided some rationale which included:
  - "Families often send their children to their local school district because they have no other funded option, and the schools, guaranteed to have classrooms full of students, lack the incentive to produce higher standards"
  - "it seems every day, another story comes out of a rural, suburban, or urban school pushing harmful political agendas in the classroom."



### HB 105 – Sexual Abuse Prevention Education

This bill would require schools to provide ageappropriate sexual abuse prevention education to all students in grades K-6 and sexual violence prevention education to all students in 7-12.

The bill passed the House with broad bipartisan support, but has been held up in the Senate by members demanding prohibitions on promoting birth control, transgender health care, and the simulation of sex in classes, and an amendment to require the education program to emphasize abstinence before marriage.





### **HB 123 – Passed House, In Senate Committee**

- Increases, from 50% to 75%, the percentage of a proposed CRA exemption for a commercial or industrial project that requires obtaining permission from a school district encompassing the project.
- Modifies the requirement that municipalities share municipal income tax revenue generated by new employees at a large CRA commercial or industrial project with the school district encompassing that project. The limit has been increased from 1 million to 3 million.
  - If the CRA project results in a new employee payroll of at least \$3 million in any year and the municipality is unable to negotiate a voluntary compensation agreement with the school board, then the municipality is required to make annual payments to the school board equal to 50% of the difference of the amount of municipal income taxes collected from new employees involved in the project minus infrastructure costs the municipality incurs for the benefit of the project.



### HB 497- Eliminate 3<sup>rd</sup> Grade Reading Retention Guarantee

This bill passed the House in June, so it may be awaiting lame duck action in the Senate.

It would administer the 3<sup>rd</sup> grade ELA assessment only once per year and end retention if the student fails to meet the required scores on the assessment.

Districts will be required to continue to offer intervention and remediation to student found to be reading below grade level.

Parent notification of scores on ELA assessment and strategies for intervention will still be required, but the requirement to notify parents of the possibility of retention based on scores is eliminated.

ODE is currently discussing setting the promotion score for 2022-23 on the way to a required 700 by 2024-25. They may keep it where it is (683) or raise it.



### **HB 554- Reinstatement license changes**

Current law offers a 1-year, nonrenewable "reinstatement license" for those educators who have a professional or associate licenses that has lapsed for at least one year.

Reinstatement licenses are at the **same grade and subject matter** as the expired licensure.

It may be given upon request of the employing Board, and the reinstatement licensee must pursue coursework (9 semester hours or 27 CEUs) over the year.

Fun fact: Reinstatement rule is applicable to treasurers per ODE.







### I call the question.

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