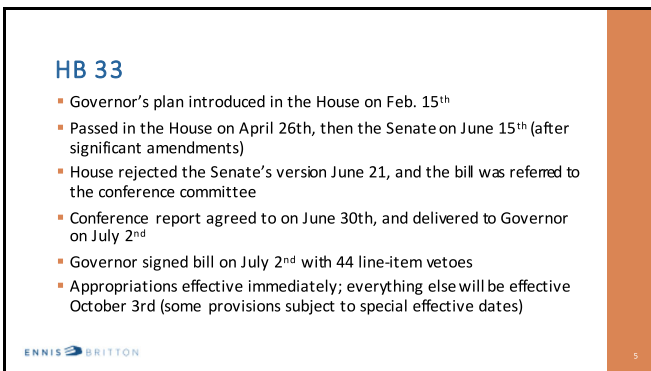


Quick Recap: Procedural background of HB 33

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HB 33

- Governor's plan introduced in the House on Feb. 15th
- Passed in the House on April 26th, then the Senate on June 15th (after significant amendments)
- House rejected the Senate's version June 21, and the bill was referred to the conference committee
- Conference report agreed to on June 30th, and delivered to Governor on July 2nd
- Governor signed bill on July 2nd with 44 line-item vetoes
- Appropriations effective immediately; everything else will be effective October 3rd (some provisions subject to special effective dates)

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Funding Lite (Excluding Foundation Formula)

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EdChoice Scholarship Programs

- There is new language throughout that limits nonpublics and DEW from obtaining too much income documentation from parents.
- Expands eligibility for an income-based EdChoice scholarship to any student entering grades K-12 in the school year for which the scholarship is sought.
- Subject scholarship amounts to means testing for first-time recipients, and any recipient whose parent elects to do so, as follows:
 - Provides a "base" scholarship amount equal to the amount that a student would receive if enrolled in the traditional EdChoice program (estimated at \$6,165 for students in grades K-8 and \$8,407 for students in grades 9-12) for a student whose household income is at or below 450% of the federal poverty level (FPL) for the fiscal year.

EdChoice Scholarships

- For FY 2024, the following reduced scholarship amounts based on a student's household income-to-poverty ratio for students with household incomes above 450% FPL:
 - Above 450% FPL but at or below 500% FPL: \$5,200 for grades K-8 and \$7,050 for grades 9-12.
 - Above 500% FPL but at or below 550% FPL: \$3,650 for grades K-8 and \$5,000 for grades 9-12.
 - Above 550% FPL but at or below 600% FPL: \$2,600 for grades K-8 and \$3,550 for grades 9-12.
 - Above 600% FPL but at or below 650% FPL: \$1,850 for grades K-8 and \$2,500 for grades 9-12.
 - Above 650% FPL but at or below 700% FPL: \$1,300 for grades K-8 and \$1,750 for grades 9-12.
 - Above 700% FPL but at or below 750% FPL: \$900 for grades K-8 and \$1,250 for grades 9-12.
 - Above 750% FPL, \$650 for grades K-8 and \$950 for grades 9-12.

EdChoice Scholarships

- Prescribes, beginning with FY 2025, a logarithmic function formula that calculates reduced scholarship amounts based on a student's household income-to-poverty ratio for students with household incomes above 450% FPL, such that, for example, a student with a household income of 550% FPL receives 50% of the base amount and a student with a household income of 650% FPL receives 25% of the base amount.
- Prescribes, beginning with FY 2025, a minimum scholarship amount of 10% of the base amount.
- Requires DEW, in calculating a student's EdChoice scholarship amount using the logarithmic function formula, to use the family income documentation submitted for the first school year the student has an amount calculated under the formula for that school year and subsequent school years, unless the student's parent requests that DEW recalculate the amount based on updated documentation for a subsequent school year.

Scholarship Providers

- Modified to reduce requirements for entities that seek approval to be scholarship providers for students.
 - No longer need to be located within certain city boundaries, etc.
 - Private schools are required to submit tuition by June 30th.

Special Ed Scholarships

- Jon Peterson
 - Increases to the Jon Peterson scholarship amounts. Highest tier of scholarships increased by several thousand to \$30k in FY 24 and \$32.4K for 2025.
 - Providers must submit tuition by June 30 each year.
- Autism scholarship:
 - Now eligible if medical professional diagnoses a student with autism, or student has IEP and receives services "related to autism."
 - Can get services under scholarship for BCBA and registered behavior technician, AND these individuals do not need permits to serve child at facility or in home and receive scholarship money.
 - School district must develop an "education plan" if the student does not have an IEP.
 - Providers must submit cost of tuition by June 30 each year to DEW.

Student Wellness and Success Funds

- Maintains formula for FY 2023, which guarantees a JVSD's funding does not fall below base FY 2021 levels (increases allocation to JVSDs to \$433.6 million in FY 24 and \$465.7 million in FY 25)
- Requires schools to create a plan for use of funds in coordination with 1) a community MH provider/local bd of alcohol and drug addiction; 2) a community partner identified under continuing law
- Plan must be shared at public board meeting and posted on website within 30 days of finalizing it
- Requires schools to spend at least 50% of SWSF for either physical or mental health-based initiatives. Other restrictions placed on funds in BB as well.
- Unused funds at end of FY 25 returned to DEW.
- School must submit report by end of year describing the initiatives they used the funds for. DEW authorized to issue corrective action; withhold funds.

Auxiliary Services

- Permits newly chartered nonpublic schools, within 10 days of receiving charter, to elect to receive ASFs directly.
- Language added that states districts shall not deny a nonpublic school's request for personnel who are properly licensed by the state board.
- Provision that states only an ESC will receive payment for administrative costs if a local district contracts with the ESC for AS.

Cash Requirement

- Schools must allow individuals to pay in cash for any school related activity that requires an admission fee, or alternatively give them a free ticket if there are tickets available if they can demonstrate they have enough cash to cover the full cost of the ticket.
- If concessions are sold, must also have at least one concession at a school activity that accepts cash.
 - If you sell concessions on multiple floors of a building, must have one cash concession per level/floor.

Uncodified Appropriations Notes

- Reduction in OEEN funding, adult education, large decrease in literacy improvement appropriations, and of course, federal coronavirus relief funds go to 0 from 1.8b
- Increase in transportation funding.
- Part of accountability/report card funding will be used to put a statewide value-added progress dimension into performance ratings for districts.
- 120.3m for awards to support grad coursework for HS teachers to teach CCP credit classes in high school. Application process and criteria for awards
- 5.5m to support payments to school districts for students earning an industry-recognized credential or journeyman certification in the preceding school year preceding the fiscal year in which funds are appropriated. Educating entity pays the cost and then applies for reimbursement for testing fees.



HR and Employment Updates

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License Bands

- Changes teacher license bands governed by RC 3319.22 to the following:
 - pre-kindergarten through eight, and grades 6 through 12 (old grade bands were PreK to 5, four to 9, and 7 to 12).
 - The new grade bands do not apply to teachers who hold licenses issued prior to November 2, 2018.
- An additional change in the law removes computer science teachers from the list of licenses that are not approved by grade bands (more on this in a later change in a minute).
- In addition, schools may now employ a teacher to teach outside of their designated grade band as long as they are not more than two grade levels away from their license and do not teach for more than two years in this position.
- A superintendent may renew the teacher's eligibility to teach outside of their grade band on a biennial basis.

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Additional Licenses

- Consistent with the new changes in grade bands and the fact that computer science licenses will now be issued by grade bands, the state board shall adopt rules to create a CS professional teaching license for industry professionals that allows them to teach up to forty hours in a week in computer science.
 - Licenses issued for CS will specify the following grade bands: K-12, PreK to 5, 49, or 7-12.
- NEW law: An applicant for a one-year nonrenewable out-of-state educator license who successfully completes Ohio's foundations of reading exam on the first attempt is not required to have completed 6 of 12 semester hours of coursework in the teaching of reading as otherwise required by law.

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Additional Licenses

- State board must adopt rules for alternate educator license that is in addition to the resident educator license, is for two years in length, and is renewable as long as the candidate makes progress on professional development and takes an assessment in the second year.
 - There is an option to allow a resident educator to obtain a professional license after completing requirements listed in the law.
 - The holder of an alternative resident educator license may teach preschool students under the license.
- NEW law: State board in consultation with the chancellor of higher ed shall adopt rules to establish an alternative military educator license for active or veteran military or their spouses.
 - The rules "shall ensure" that eligible individuals can work on an expedited timeline to teach in a public school.
 - The rules will also grant credit for leadership or prior experience toward the license.

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Substitute Teachers

- Creates "new" law (R.C. 3319.102) that permanently authorizes a board to utilize a substitute teacher who does not hold a post-secondary degree
- Just as was required under the temporary law, the individual must meet the following:
 - Teacher is of good moral character;
 - Meets the district's or school's own set of educational requirements; and passes a
 - Completes background check.
- State board is directed to create criteria for the one-year temporary substitute license

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Student Teacher Requirements

- State board must adopt rules that establish standards/requirements for obtaining a pre-service teacher permit.
- The permit must be obtained by student teachers in order for them to participate in any student classroom teaching or other training experience that involves students in pre-k to 12.
 - Permit is valid for three years.
 - Student teacher must submit to a background check to get the permit.
- On the plus side, school districts may employ these individuals as substitute teachers on a semester-to-semester basis upon approval by the board.

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Student Teacher Requirements

- The law strikes language that exempted students who are preparing to become licensed teachers or aides from holding an educational aide permit while they are working with a teacher in the district as part of their educational program.
- It also strikes language that says they may not be paid while serving as student teachers/aides.
 - Seems like they now must get permits, but also can be paid.

Counselor Training

- NEW law: State board is required to enter into an agreement with a construction trade organization such as affiliated construction trades (ACT) to develop a training program to educate school counselors about building and construction trades career pathways.
- Training must be completed at a trades training facility and include information about:
 - 1) pay and benefits available to people in the building and construction trades; and
 - 2) job opportunities and apprenticeships available.
- Counselors who work with students in grades 7-12 must complete training.
- Required four hours of training, which shall qualify toward CE requirements.

Resident Educator Program

- Changes to resident educator: mentoring may now be provided online or in person.
- State superintendent will provide participants and mentors with access to online professional development resources and sample videos of Ohio classroom lessons at no cost.
- If a participant does not receive a passing score on any resident educator assessment, the state superintendent must also provide at no cost the opportunity to meet online with an instructional coach who is a certified assessor of the assessment to review the participant's score results and discuss improvement strategies as well as professional development.
 - The participants pick from among a pool of coaches.

Resident Educator Program

- DEW will include the following information about the coaches so that the participants may elect to choose someone in their similar situation (although not required to):
 - their own school or district,
 - its size,
 - typology and
 - demographics.
- Resident educators who have not taken the assessment may also access the coaches, but only if their school agrees to pay for costs associated with the meetings.
- The state board is now prohibited from limiting the number of times a candidate takes the assessment, which must be submitted between the first Tuesday of October and first Friday of April in the second year of the RA program.

Rapback and Criminal Violations

- Modifies state law to declare that state board will be notified about criminal violations of individuals who do not get a license from them, including specifically bus drivers and van drivers.
- State board is in turn required to follow up with school employers and notify them of violations.



Computer Science

- Chancellor of higher ed shall adopt rules for "Teach Computer Science" grant program.
- The program will fund coursework, materials, and exams to support increasing number of existing teachers who qualify to teach computer science.

Required Training for Coaches

- NEW law declares coaches of OHSAA sports must complete mental health training approved by Dept. of Mental Health and Addiction Services.
- Must complete training each time a pupil activity permit is applied for or renewed.
- May be combined with other training course.

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Grow Your Own Teacher Scholarship Program

- Scholarship designed for school buildings that have a hard time attracting and maintaining licensed teachers.
- Low-income HS seniors who commit to teaching in a qualifying school for a minimum of four years after graduation from a teacher prep program in an Ohio college are eligible for up to \$7500 per academic year.
- Need to pay back as a loan if individual leaves employment.

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Method of Notice For Nonteaching Termination

- Changes method of notice of termination of employment.
- Non-teaching employees notice of termination may be given by regular mail with a certificate of mailing, electronic mail with proof of delivery, or other method with proof of delivery.

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Teacher Termination and Nonrenewal

- Termination of teachers:
 - a *stenographic* record no longer required of hearing.
 - Still must have complete record.
- Non-renewal of teachers:
 - Notice may be given by regular mail with a certificate of mailing, electronic mail with proof of delivery, or other method with proof of delivery.
 - Teacher challenging termination may give notices under the statute the same way.

Student-related Provisions

School Records Law Update

- **NEW law:** When any school or nonpublic school receives a request from another school/nonpublic for the records, must respond within five days with either the records, or a note declaring there is no record that the student has attended school in the district.
- Defines school records to include academic records, student assessment data, or "other information for which there is a legitimate educational interest."
- Last minute add by CC that school has authority to withhold a student's records if there is a debt of \$2500 or more. Must transfer records once debt is paid.
 - Does not modify statute that still exists about school fees (which still permits a district to withhold grades and credits for outstanding fees – R.C. 3313.642).

Computer Science

- Creation of the **Ohio Computer Science Promise Program**.
- Beginning 2024-2025 school year, an Ohio resident student in grades 7-12 may, at no cost to the student, enroll in and receive high school credit for **one computer science course per academic year that is not offered at their school**, provided the student is accepted and there are sufficient funds to support enrollment.
- Eligible courses will be approved by DEW in consultation with chancellor of higher ed.
- Public schools must participate, and public school students are eligible as long as they meet enrollment requirements, whereas nonpublic students are eligible only if the nonpublic chooses to participate.
- Governing bodies must grant credit toward high school.
- If school offers a comparable course, then that is the amount of credit the student earns.
 - If there are no comparable courses, then the school must award a "comparable" amount of credit.
 - Evidence of successful completion will be included on the transcripts.

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Third Grade Reading Guarantee

- Third grade reading guarantee survived.
- However, parents now may require their child be promoted to 4th grade after consulting with teachers and principal- child must continue to receive intensive reading instruction until they are at grade level.
- As part of the required notifications under the third-grade reading guarantee, now must provide a statement that connects the child's proficiency level in reading to long-term outcomes of success related to proficiency in reading.
- **Adds** requirement that intensive reading instruction must align with science of reading as further defined in R.C. 3313.6028.
- RIMPs must now include "high dosage" tutoring in addition to the other requirements, defined as additional instructional time of at least 3 days/ week, or at least 50 hours over 36 weeks.
 - Must continue to provide RIMP services until student receives required level of reading for their current grade.

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ELA and Science of Reading

- Districts must report core curriculum and instructional materials for ELA in PreK-5, and reading intervention programs in PreK-12.
- Definition of "science of reading", includes declaration that all students benefit from phonetic reading.
 - **DOES NOT** rely on any model of teaching students to read based on meaning, structure and syntax, and visual cues, including "three-cueing approach."
 - **Waivers** may be granted on an individual student basis for three-cueing approach, but students on a RIMP are not eligible.
 - SPED students whose IEP calls for three-cueing instruction **do not need** waivers.
 - DEW will establish a PD committee for reading and identify approved vendors.
- DEW must establish list of high-quality core curriculum and instruction materials in ELA, and a list of evidence-based reading intervention programs aligned to the new science of reading.
 - **Schools must use these starting in 2024-25.**

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State Testing Requirements

- **NEW law:** Schools must provide parents with a student's score on any state assessment administered to the student by June 30 each year.
- May send either by mail or email, or post in district's online portal.

Feminine Hygiene Products

- Each school building that serves grades 6 through 12, whether owned or leased by a school, must provide free feminine hygiene products for use on school premises.
- An appropriation of \$5 million for FY 24 has been provided to support an initial investment of dispensers and products.
- School districts are responsible for the costs after that.

Home Education Exempt from Compulsory Education

- **New law-** Children must go to school unless age and schooling certificate or exempt from compulsory education under this new section.
- **Language change:** Supt may excuse from attendance student enrolled in the district-not any resident in the district.
- Home education is defined as a child 6-18 receiving instruction from his/her parent.
 - Exempt from compulsory attendance if receiving ELA, math, science, history, govt and social studies.
 - Parent must notify school supt. within 5 days of withdrawing from school and by Aug. 30 each year thereafter.
 - Parent name, address and assurance child will receive that education must be included.
 - Child is exempt from compulsory ed immediately upon notice.
 - No requirement to be excused.
 - Supt. must acknowledge notice within 14 days.
 - If child re-enrolls must be placed "without discrimination or prejudice" in appropriate grade level.
 - Not subject to DEW or director rules.
 - If there is evidence child is not receiving required education, they may be truant.

Serving Special Student Populations

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Student Seizure Plans

- School nurse or other designated school employee must develop a **seizure action plan** for any student who has an active seizure disorder diagnosis from a medical professional.
- School nurse must notify employees, contractors and volunteers of existence of the plan if they regularly interact with student or transport them.
- Nurse/designated official must oversee training and ensure all staff who are required to be notified of plan are also trained in care.
- Must make sure at least one staff in each building is trained in general seizure action plans every two years.
 - Training must include guidelines and best practices from Epilepsy Alliance Ohio, Epilepsy Foundation of Ohio, or other similar organization.

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Student Seizure Plans

- All admin, guidance counselors, teachers and bus drivers **must complete a minimum of one hour of self-study training or in person training within 24 months of bill's effective date** or 90 days after hire.
- Law includes some additional civil liability protection in addition to current immunity. Plan must include:
 - Written request signed by parent to have one or more drugs prescribed for a seizure disorder;
 - Written statement from treating medical provider with drug information for each drug prescribed;
 - Any other component as required by the state board

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Dyslexia Law: Training

- Updates language on required professional development by distinguishing training requirements for those teachers hired before April 12, 2021 and still employed versus teachers hired after April 12th, 2021.
- For the former, training must be completed by the start of this school year for K-1st grade, by Sept. 15 2024 for second and third grade, and by Sept. 15, 2025 for fourth through 12th grade special ed teachers.
- New hires must complete the training within two years of the date of hire unless they completed it in a prior district.

Dyslexia Law: Transfer Student Screening

- Adds requirement that in 2023-24 (the transition year), schools must screen transfer students who enroll mid-year
 - All grades k-3, plus students grades 4-6 if the parent requests it or the teacher requests it and obtains parent permission.
- For 2024-25 and beyond, must screen all kindergarteners including transfer students who enroll mid-year, and all students in grades 1-6 students including transfers if parent or teacher requests it (with parent permission).
- Screeners for all students must be aligned to the appropriate grade level.
- Transfer students must be assessed within 30 days of enrollment (or after parent permission provided if teacher requests the assessment).
- School is not required to assess if the prior district already completed one during that school year.

Transportation Changes

Transportation funding

- **Regular education** continues based upon the existing formula
Calculation is adjusted by the greater of state share or new percentage in budget:
37.5% in FY 24 and 41.67% in FY 25
- **Special education** is based upon your actual cost
Actual amount spent adjusted by the greater of state share or budget percentage
37.5% in FY 24 and 41.67% in FY 25
- **Bus Purchase:** you may carry grants from FY23 into FY24 or FY25...but no new money is coming.
- **Payment in Lieu:** The reimbursement rate remains at 50% of state average minimum, ranging up to 100% of average maximum
For FY23, this is \$539 for the minimum, and \$1077 for the maximum

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Nonpublic Special Education Transportation

- Public schools will now be required to provide transportation as a related service to students with disabilities who live in the district but attend a nonpublic school.
- In most cases, these have been ASP or Jon Peterson Grant recipients.
 - ODE stipulated that parents forfeit FAPE when they accepted the grant
 - ODE's guidance was that these students were eligible for transportation only at the same level as regular education students
 - **This guidance from ODE is no longer valid under the new law.**
- This creates the need for increased special education transportation accommodations that public schools have not had to provide in the past.

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Van use by public schools

- A public school district may use a conforming van (9 passengers + driver or less) to transport students who attend a nonpublic or community school for which the district provides transportation.
- This law change does not address public school sessions – therefore, the existing Administrative Code 3301-83-19 that limits the use of vans to certain students **remains in effect.**
- This law change **supersedes certain parts of the existing language in 3301-83-19** and will require ODE/DEW to amend, revise, or repeal that code as it addresses van use.

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Van operations

Drivers:

- The new law has the effect of **overriding ODE's existing Administrative Code** pertaining to van driver certification.
- On the effective date of the bill (October 3, 2023), van drivers are subject only to the requirements in R.C. 3327.10, which include:
 - » an annual certificate,
 - » a valid operator's license,
 - » a valid physical,
 - » a motor vehicle records check,
 - » and a criminal background check.
- ODE/DEW will have to amend, revise or repeal its current rules pertaining to van drivers.

Vehicles:

- The vehicle requirements identified in the bill require **only** that the van be inspected **two times per year** by a qualified mechanic, and that the **driver is not permitted to stop on the roadway to load or unload students**.
- All passengers in the van are required to use approved passenger restraints.
- The applicability of **other** vehicle requirements (including safety equipment and signage) as set forth in Administrative Code 3301-83-19 is questionable and will have to be addressed by ODE/DEW.

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Compliance

- The new language in code redefines "out of compliance" as **5 consecutive days or 10 days total** within a school year.

§ This is different from the standard ODE has been using.

- The impact: All days now count, even if scattered throughout the school year.



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Compliance Violations:

- Students transported to and from a school by a school bus arrive **more than thirty minutes late** to school.
- Students transported to and from a school by a school bus are **picked up more than thirty minutes after the end of the school day**.
- Students scheduled to be transported to and from a school by a school bus are **not transported by school bus at all due to the failure of the bus to arrive**.
- A school district has been noncompliant with **any other transportation requirements under chapter 3327** of the Revised Code.

Disruption in transportation due to inclement weather shall not be counted towards the determination of noncompliance.

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Compliance Penalties

- DEW is required to resolve all complaints within 30 days. They can extend this to 45 days by serving notice to all parties.
- First occurrence:** the district has one week to create a corrective action plan.
- Subsequent occurrence:** DEW withholds **25% of the district's transportation funding for each day** of noncompliance.
- Two more occurrences are allowed before further action.
- Fifth occurrence:** DEW then **withholds 100% of the district's transportation funding** until DEW determines the district is back in compliance.
- The count of noncompliance days resets with each school year.

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Flex Career Path Model

- DEW is required to create a bus driver flex career path model
- This will create a pathway for bus drivers to work as educational aides or student monitors at school districts in addition to being a bus driver.
- DEW must ensure that drivers work an 8-10 hour shift by doing either a morning or afternoon bus route and then spending the remainder of the workday as an aide/monitor.
- DEW must also make recommendations on how to seamlessly implement the model, including who would be responsible for paying wages in an efficient way, whether proportional share or not, and make sure that the model does not adversely impact bus driver's pension.

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Let us help . . . Chats From the Bus Stop

- Look for upcoming information about our transportation support offerings this coming school year.
- We are planning an in-person training along with a series of webinars well-spaced during the school year to keep your transportation administrative team "in-the-know".
- Planned topics include:
 - Transportation finance, emergency planning, survival tactics for the front line, transportation advisory committees, driver handbook essentials, driver qualifications, and routing and essentials for managing payment in lieu of transportation (for when you just can't route them).



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Collective Bargaining Quick Hit

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HB 33 Teacher Minimum Salary

- Change to teacher minimum salary.
 - Increased base amount by \$5k across the board (rather than the 10k proposed by the House).
 - » Some of the steps and columns actually increase by more than 5k.
- Step 1: check salary schedules for this
- Anticipate union requests to negotiate if below the new thresholds

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HB 33 Online Instruction Plan (Goodbye Blizzard Bags)

- Requires all schools to **develop a plan by August 1st** to provide for online instruction to make up hours when school is closed for disease, epidemic, hazardous weather conditions, law enforcement emergencies, inoperability of school buses or other necessary equipment, damage to school building, or other circumstances due to utility failure rendering school building unfit.
- For online learning, schools may make up three days.
- JVS schools may make up an unlimited number of hours.
- Union must sign off on plan. Plan must be designed to ensure continuity of learning, and must also include:
 - A statement that to the extent possible, the school will use teacher-directed synchronous learning in which students and teachers are interacting in real time on virtual platform;
 - School attendance requirements, and how school will reach out to ensure engagement;
 - Description of how equitable services will be provided to special populations, such as ELL students and special education students;
 - Process of notifying staff, students and parents when online learning will take place;
- Information about how teachers may be contacted by telephone, email and/or a virtual platform.

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What else is going on with collective bargaining?



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Title IX Regulations (Coming Fall 2023 to a Theatre Near You)



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Revised Title IX Regulations, Take 2

- Biden-Harris Administration released new regulations in July 2022, with an initial expected final release date of May 2023
- Received over 240k public comments in response (supposedly twice as many as the last round received)
- Update released by the U.S. DOE on May 26 which estimated a revised release time of October 2023
- **Question: Will this impact the upcoming school year, or the following?**



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Title IX Proposed Rules: Introductory Comments

- The Department's review of the current regulations . . . suggest that the current regulations **do not best fulfill the requirement of Title IX** of the Education Amendments of 1972 (Title IX) that schools and institutions that receive Federal financial assistance **eliminate discrimination on the basis of sex in their education programs or activities**.
- The Department therefore proposes that the current regulations should be amended to provide **greater clarity regarding the scope of sex discrimination**, including recipients' obligations not to discriminate based on **sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity**.
- Further, the Department proposes that the current regulations could better account for the **variety of education programs or activities** covered by Title IX, which include recipients' education programs or activities serving students in elementary schools, secondary schools, and postsecondary institutions.

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Title IX Proposed Rules: Definitions

- Expands sex-based discrimination to specifically include:
 - Sex stereotypes;
 - Sex characteristics;
 - Pregnancy or related conditions;
 - Sexual orientation; and
 - Gender identity.
- Adds word "otherwise" to the following:
 - *Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient. . . .*

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Title IX Proposed Rules: Obligations for Equality

- Clarifies that schools may have an obligation to address sex-based hostile environment even if the harassment occurred outside of the education program/activity.
 - Current regulations limit this, and also do not provide protections for actions that occur outside of the U.S.
- Recognizes that different treatment or separation on basis of sex may be permitted but cannot cause more than "de minimis harm."
 - Proposed regs suggest that de minimis harm would occur if a recipient adopts a policy or engages in a practice that prevents a person from participating in an education program or activity consistent with that person's gender identity.

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Title IX Proposed Rules: Response to Harassment

- Current regs require schools to respond to possible sexual harassment in a manner that is **not deliberately indifferent** only when it has actual knowledge of the harassment.
- Proposed regs require more active response, and declare that schools must take **prompt and effective action** to:
 - End any sex discrimination that has occurred;
 - Prevent its recurrence; and
 - Remedy its effects.
- Under new rules, unreasonable delays are violations of Title IX.

Title IX Proposed Rules: Response to Formal Complaint

- Replaces current provision regarding formal complaints, where complainants are only considered to be those who file formal complaints.
- Under the new rules, any of the following has a right to make a complaint and request that the grievance procedures be initiated:
 - Student or employee who have been subjected to discrimination;
 - A person other than an employee/student who has been subjected to discrimination and was participating or attempting to participate in a program or activity;
 - Person who has a right to make a complaint on behalf of a complainant (parent, guardian, legal representative);
 - Title IX coordinator.

Title IX Proposed Rules: Emergency Removal

- Can remove someone under new rule as long as school:
 - Undertakes an individualized safety and risk analysis;
 - Determines there is an **immediate and serious threat to the health and safety** of students, employees, or other persons arising from the allegations; and
 - Provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.
- Prior regs required immediate threat to the physical health or safety of an individual.
- Proposed rules acknowledge that employee can be placed on administrative leave as well.
 - Question: couldn't we do this already?



Title IX Proposed Rules: Confidential Employees

- Schools would be required to identify or designate one or more employees as "confidential employees" whose communications are privileged under federal or state law.
- Person serves as confidential resource for purpose of providing services to individuals in connection with sex discrimination.
- Schools must notify all participants of who the confidential employees are.
- Confidential employees are obligated to explain their status and also provide contact info for coordinator.

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Title IX Proposed Rules: Coordinator Response

- Burden on Respondent:
 - New rules permit supportive measures that place a burden on respondent, such as changing their schedule.
 - However, must also provide respondent with an opportunity to seek modification of the measure before or as soon as possible after it is implemented.
- May now be able to offer an informal resolution process when appropriate, but must be voluntary for all involved.

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Title IX Proposed Rules: Revisions to Grievance Process

- Proposed rules would establish basic requirements for process.
- Requires a presumption that the respondent is not responsible for violations until a determination is made at the conclusion of the process.
- Requires that timeframes be established for steps in grievance process "to help parties understand the approximate length of each step."
- Requires schools to use "preponderance of evidence" standard of proof unless the school uses "clear and convincing evidence" standard in all other comparable proceedings equally.
- Can add additional provisions to grievance process as long as they are applied equally.

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Title IX Proposed Rules: Revisions to Grievance Process

- Decision maker may determine what evidence is relevant and what cannot be considered (current regs provide that schools may not restrict what either party discusses related to the regulations).
- Eliminates the prohibition that the decision maker cannot serve as the coordinator or investigator.
- New rules state that when conducting grievance procedures, a school cannot disclose the identity of a party, witness or other participant unless:
 - The party has provided written consent;
 - Disclosure is permitted under FERPA;
 - Disclosure is required by law; or
 - Disclosure is necessary to comply with Title IX.

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Title IX Proposed Rules: Record Keeping

- Must keep the following for seven years:
 - Records documenting informal resolution process or grievance process, and the outcome for each complaint.
 - Documents regarding the actions the school took in response to each complaint.
 - All employee training materials regarding Title IX rules and requirements, not just those used to train Title IX coordinators/investigators/decisionmakers.
 - All records about actions taken to prevent and address sex discrimination against staff and employees.

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Title IX Proposed Rules: Training

- Would be required to train all staff on the following:
 - Obligations to address sex discrimination in your education programs and activities.
 - Scope of conduct that constitutes sex-based discrimination, including definition of sexual harassment.
 - Notification and information requirements triggered when an employee hears that a student is pregnant.
 - Actions taken to ensure school programs are operated free from sex discrimination.

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Title IX Proposed Rules: Training

- Additional, "more robust" training for investigators, decisionmakers, and other persons who are responsible for implementing the grievance procedures or have authority to modify or terminate supportive measures.
- States that staff training must cover more than just the grievance procedures to ensure that each staff member **understands their specific role** and what they must do to **ensure compliance**.



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Title IX Proposed Rules: SpEd Students

- Specifically defines special education students to include those on an IEP or Section 504 plan.
- When student with a disability is either the complainant or respondent, the Title IX coordinator must notify and consult with the Section 504 or IEP team to ensure that the school complies with IDEA/504 throughout the grievance process.
 - For adult education/post-secondary programs, Title IX coordinator "may consult, as appropriate, with the individual or office that the recipient has designated to provide support for students with disabilities."
- The commentary cautions that procedural safeguards and FAPE requirements must be met throughout!
 - Don't forget about Appendix B while you are at it!

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Title IX Proposed Rules: Pregnancy and Related Conditions

- Definition of discrimination on the basis of sex specifically references pregnancy or related conditions.
 - New regs replaces "pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery" with "pregnancy or related conditions or any temporary disability resulting therefrom."
- When any employee hears from the student or parent/guardian that the student is pregnant, the employee must provide information about how to notify the Title IX coordinator for assistance, and must provide the contact information for Title IX coordinator.

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Title IX Proposed Rules: Pregnancy and Related Conditions

- Once notified, the Title IX coordinator must take the following steps:
 - Notify about the school's obligation to prohibit sex-based discrimination.
 - Provide the student with notification that the school offers modifications to policies, procedures, practices because of pregnancy or related conditions (works very similarly to what takes place with employee who is disabled under ADA).
 - Inform student the school will allow access, on a voluntary basis, to any separate and comparable portion of the recipient's education program or activity.
 - Inform student that the school will also allow voluntary leave of absence.
 - Indicate that the school will ensure availability of lactation space if needed (to the same extent it is provided to staff).
 - Specify that the school maintains grievance procedures for prompt response to complaints about sex discrimination.

Title IX Proposed Rules: Pregnancy and Related Conditions

- Recipients may **voluntarily** allow a student to participate in a separation portion of a program/activity, take leave of absence.
 - **Question: can we force/dictate this, based on what the proposed regs say?**
- Proposed rules no longer permit a district to require a student who is pregnant or has a related condition to provide certification from a physician that she is physically able to participate in a class, program, or activity, unless:
 - Certified level of physical ability or health is necessary for participation in the class, program or activity;
 - The recipient requires this of all students; and
 - The information obtained is not used as a basis for discrimination.
- **Question: what about labs that are very physically demanding? Heavy equipment and machinery, auto mechanics, etc.?**

Additional Resources

Ennis Britton Education Law Blog and School Law Reviews: A monthly resource for administrators and educators to learn about noteworthy school law topics including special education. Find it at ennisbritton.com.

Ennis Britton's Short Series Podcast: In this 6-episode series of The Ennis Britton Short Series Podcast, Transgender K-12, attorney's Erin Wessendorf-Wolman and Giselle Spencer take a deep dive into the ever-changing landscape of K-12 schools and transgender students. They will cover the history and impacts of laws and regulations affecting transgender students and educators at both the state and federal levels, as well as provide information you can use every day during the school year. Look for a new episode on the first and third Thursdays starting in June! Listen using the QR Code or wherever you get your podcasts.



Administrators' Academy: A series of interactive, virtual presentations, each covering a specific topic or area of education law. Our experienced attorneys provide a legal overview as well as real-life examples to help administrators navigate and understand the complicated legal environment. Participants have the opportunity to ask questions and to hear different perspectives on topics pertinent to school management. Register at ennisbritton.com.

Additional Resources

Ennis Britton Special Education Team "On the Call" Podcasts. New episodes published every second and fourth Tuesday of the month. Season 2 starts August 8. Episodes start with a mock "client call" move on to a discussion of the law, analysis of a related case, and review of practical tips to keep your schools in compliance with IDEA and Section 504. Listen using this QR code or wherever you get your podcasts. All episodes of Season 1 currently available.



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2023 SPECIAL EDUCATION ROADSHOW



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ATTORNEYS IN EDUCATION LAW

Additional details to follow!


- October 11, 2023
Cleveland, OH
- October 12, 2023
Westerville, OH
- October 13, 2023
Hamilton, OH
- October 19, 2023
Archbold, OH

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