

Legal Update

Trumbull County Administrators
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Kyle Wheeler – kwheeler@gingobair.com



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Title IX

How to Identify and Report Sexual Harassment



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Title IX

- Title IX is the Federal civil rights law that protects against discrimination on the basis of sex (including sexual orientation or gender identity) in education programs and activities.
- Covers sexual harassment that occurs within the District's education programs and activities.
- Applies to students, employees and third parties (vendors, contractors, guests, members of the school community).
- Sexual harassment is considered sex discrimination under Title IX – e.g., **conduct on the basis of sex.**



Identifying Sexual Harassment

- Sexual harassment is any conduct on the basis of sex that is:
 - Unwelcome as determined by a reasonable person
 - To be so severe, pervasive and objectively offensive that it effectively denies a person's equal access to the district's education program and/or activities.
- Examples
 - Physical Harassment (unwanted touching; invasion of personal space; leering/staring).
 - Verbal Harassment (sexual jokes, innuendos; speculation about a person's sexual history; asking about sexual preference or fantasies).
 - Visual Harassment (gestures; sexual suggestive objects, pictures, posters, memes, screen savers, emails).



Identifying Sexual Harassment

- Unwanted sexual conduct (sexual advances, requests for sexual favors, other verbal, physical or visual conduct) when:
 - Submission to the conduct is made (or threatened to be made) a term or condition of employment or education;
 - Submission to or rejection of such conduct is used (or threatened to be used) as a basis for academic or employment decisions;
 - Conduct constitutes sexual assault (including fondling), dating violence, domestic violence or stalking.



Reporting Sexual Harassment

- A school with actual knowledge of sexual harassment in a program or activity against a person in the United States must respond promptly and in a manner that is not deliberately indifferent.
- Actual knowledge means notice of sexual harassment or allegations of sexual harassment to any Board employee.
- *ALL* district employees are required to promptly report allegations of sexual harassment to a Title IX Coordinator.
- Take all complaints or rumors of inappropriate behavior seriously;
 - Maintain confidentiality – only discuss with those who have a NEED to know .
- If a Board employee fails to report an incident of Sexual Harassment of which they are aware, the employee may be subject to disciplinary action, up to and including termination.



Title IX - Discipline

- **It is critical you are aware that Title IX regulations require that the school district follow the Title IX grievance process BEFORE imposing any disciplinary sanctions or taking other actions against the respondent.**
- Based on this, it is imperative that school staff, including administrators, report incidents involving alleged sexual harassment to the district's Title IX Coordinator.
- Once a Title IX Coordinator is notified of these allegations, they are responsible for making a determination of whether the alleged conduct rises to the level of sexual harassment, requiring implementation of the District's Title IX grievance process; or whether the allegations of sex-based discrimination or harassment do not rise to that level.
- If a Title IX Coordinator determines the allegations do not meet the definition of sexual discrimination/harassment and, therefore, do not warrant initiation of the district's Title IX grievance process, the Administration may proceed with evaluating the allegations pursuant to other Board policies and/or the student code of conduct.



Transfer Student Records and Non-Payment Exception



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Transfer Student Records

- Public and chartered nonpublic schools are now required to transmit student school records within five school days of receiving a request from the student's new school.
 - If the school has no record of the student's attendance, the school must provide a statement of that fact to the new school within five school days.
- Defines "school records" as any academic records, student assessment data, or other information for which there is a legitimate educational interest.



Non-Payment Exception

- The school district may now withhold a student's school records if there is \$2,500 or more of outstanding debt attributed to the student.
- Once the debt is paid, the school district must transmit the records within five school days.



Home Education Changes



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Home Education Changes

- The process of Home Education (new term used in place of “home instruction”) in Ohio has completely changed.
- The bill now *exempts* (rather than *excuses*) from the compulsory school attendance law any child between 6 and 18 years old that is directed by the child's parent, excluding education provided to a child who is enrolled full time in a public or chartered nonpublic school, in certain subject areas.



Home Education Changes

- The child's parent must transmit a *notice of intent* to the superintendent of the child's school district of residence within 5 calendar days of commencing home education, moving into a new school district, or withdrawing from a public or nonpublic school and by August 30 of each year thereafter.
- The notice must provide the parent's name and address, the child's name, and an assurance that the child will receive an education in the required subject areas.
 - This is all the information that the parent must provide (a major change from prior law)



Home Education Changes

- The superintendent must provide the parent with a written acknowledgement of the superintendent's receipt of the notice within 14 calendar days after receiving the notice.
 - The child's exemption is effective immediately upon receipt of the notice submitted by the parent.



Home Education Changes

- There are fewer required subjects (now just English language arts, mathematics, science, history, government, and social studies)
- There are no assessment requirements to demonstrate academic proficiency
- There are no teacher qualifications or required number of hours.
- **However, if there is evidence that a child who has received an exemption is not receiving an education in the required subject areas, that child may be subject to state truancy law.**



Home Education Changes

- The bill now **removes** the requirement that a student who received home education in the preceding grading period meet academic requirements to participate in extracurricular activities at the district where the student otherwise would have attended.
- The bill also **permits** a parent of a child over 16 years old who is home educated, instead of the resident district superintendent, to issue the child an age and schooling certificate (i.e., a minor work permit).



Third-Grade Reading Guarantee and Retention



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Third-Grade Reading Guarantee and Retention

- Beginning in the 2023-2024 school year, the student retention portion of the Third Grade Reading Guarantee has been removed. Starting this school year, a student's parent or guardian, in consultation with the student's reading teacher and principal, may request that a student be promoted to fourth grade regardless of the student's score on Ohio's State Test for grade 3 English language arts.
 - Students promoted to 4th grade through this exemption must continue to receive intensive reading instruction until the student is able to read at grade level.
- Districts must now also include the following information in the written communication to parents of students in grades K-3 who are not reading on grade level according to the reading diagnostic:
 - A statement that connects the child's proficiency level in reading to long-term outcomes of success related to proficiency in reading.



Third-Grade Reading Guarantee and Retention

- The following are additional requirements for reading improvement and monitoring plan (RIMPs) beginning in the 2023-2024 school year:
 - High-dosage tutoring opportunities aligned with the student's classroom instruction through either a state-approved vendor or locally approved vendor that aligns with high-dosage tutoring best practices. Tutoring starts in the 2023-2024 school year for all K-4 students with RIMPs. High-dosage tutoring must include additional instruction time either:
 - Three days per week, or
 - At least 50 hours over 36 weeks.
 - Intervention services must be aligned to the science of reading.
 - Districts and schools must continue to provide the RIMP until the student is reading proficiently at their current grade level.



Third-Grade Reading Guarantee and Retention

PROMOTION OF 2022-2023 SCHOOL YEAR THIRD GRADE STUDENTS FOR THE 2023-2024 SCHOOL YEAR

- Under House Bill 33, any district that would have retained students who did not meet the promotion score on Ohio's State Test for grade 3 English language arts during the 2022-2023 school year **MUST** promote those students to fourth grade for the 2023-2024 school year **UNLESS** a student's parent or guardian requests otherwise.



Science of Reading



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Science of Reading

- DEW is required to establish a list of high-quality core curriculum and instructional materials in English language arts and a list of evidence-based reading intervention programs that are aligned with the “science of reading” and strategies for effective literary instruction.



Science of Reading

- The bill defines the “science of reading” to mean an interdisciplinary body of scientific evidence that meets all of the following conditions:
 - 1. Informs how students learn to read and write proficiently;
 - 2. Explains why some students have difficulty with reading and writing;
 - 3. Indicates that all students benefit from explicit and systematic instruction in phonemic awareness, phonics, vocabulary, fluency, comprehension, and writing to become effective readers;
 - 4. Does not rely on any model of teaching students to read based on meaning, structure and syntax, and visual cues, including a three-cueing approach.



Science of Reading

- Prohibits a district from using any core curriculum, instructional materials, or intervention program that uses the "three-cueing approach" to teach a student in pre-kindergarten through fifth grade to read.
 - Defines the "three-cueing approach" as any model of teaching students to read based on meaning, structure and syntax, and visual cues.



Science of Reading

- A district or school may apply for a waiver on an individual student basis to use curriculum, instructional materials, or an intervention program in grades pre-kindergarten through five that uses the three-cueing approach to teach students to read, except as follows:
 - (1) No student for whom a reading improvement and monitoring plan has been developed can be eligible for a waiver.
 - (2) If a student has an individualized education program that explicitly indicates the three-cueing approach is appropriate for the student's learning needs, the student shall not be required to have a waiver.
- In determining whether to approve a waiver, the department shall consider the performance of the student's district or school on the state report card, including on the early literacy component.



Science of Reading

- Beginning in the 2024-2025 school year, school districts are required to use core curriculum and instructional materials in English language arts and evidence-based reading intervention programs only from the lists established by DEW.
- School districts are also required to report in EMIS their English language arts curriculum and instructional materials used in each of grades pre-K-5, and their reading intervention programs being used in each of grades pre-K-12.



Science of Reading

- Provides \$43 million to schools in reimbursement payments for paying stipends to teachers to complete DEW-provided professional development in the Science of Reading and evidence-based strategies for effective literacy instruction
 - \$1,200 stipends for all K-5 teachers, grades 6-12 ELA teachers, intervention specialists, EL teachers, reading specialists, and preK-12 instructional coaches; \$400 stipends for non-ELA teachers in grades 6-12



Seizure Action Plans



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Students with Seizure Disorders

- New procedures and processes will now be in place for students with seizure disorders.
- First, a school nurse, or another district or school employee if a district or school does not have a school nurse, acting in collaboration with a student's parents or guardian, must create an **individualized seizure action plan** for each student enrolled in the district who has an active seizure disorder diagnosis.
 - “Seizure disorder” means “epilepsy or involuntary disturbance of brain function that may manifest as an impairment, loss of consciousness, behavioral abnormalities, sensory disturbance or convulsions.”



Students with Seizure Disorders

- The seizure action plan must include all of the following components:
 - (1) a written request signed by the parent, guardian, or other person having care or charge of the student, to have one or more drugs prescribed for a seizure disorder administered to the student;
 - (2) a written statement from the student's treating practitioner providing the drug information for each drug prescribed to the student for a seizure disorder;
 - The “drug information” must include the following:
 - (a) The name and address of the student;
 - (b) The school and class in which the student is enrolled;
 - (c) The name of the drug and the dosage to be administered;
 - (d) The times or intervals at which each dosage of the drug is to be administered;
 - (e) The date the administration of the drug is to begin;
 - (f) The date the administration of the drug is to cease;
 - (g) Any severe adverse reactions that should be reported to the prescriber and one or more phone numbers at which the prescriber can be reached in an emergency;
 - (h) Special instructions for administration of the drug, including sterile conditions and storage.
 - (3) any other component required by the state board of education



Students with Seizure Disorders

- The seizure action plan is only effective for one school year and has to be renewed at the beginning of each school year. The plan has to be maintained in the office of the school nurse or school administrator if the district does not employ a full-time school nurse.
- The school nurse or a school administrator if the district does not employ a school nurse, must notify a school employee, contractor, and volunteer in writing regarding the existence and content of each seizure action plan in force if the employee, contractor, or volunteer does any of the following:
 - (a) Regularly interacts with the student;
 - (b) Has legitimate educational interest in the student or is responsible for the direct supervision of the student;
 - (c) Is responsible for transportation of the student to and from school.



Students with Seizure Disorders

- School districts must designate at least one employee at each school building, aside from a school nurse, to be trained on the implementation of seizure action plans every two years. The district must provide or arrange for the training of the employee.
- The training must include and be consistent with guidelines and best practices established by a nonprofit organization that supports the welfare of individuals with epilepsy and seizure disorders, such as the Epilepsy Alliance Ohio or Epilepsy Foundation of Ohio or other similar organizations as determined by the department of education, and address all of the following:
 - (1) Recognizing the signs and symptoms of a seizure;
 - (2) The appropriate treatment for a student who exhibits the symptoms of a seizure;
 - (3) Administering drugs prescribed for seizure disorders.
- The training may not exceed one hour and will qualify as a professional development activity for the renewal of educator licenses.
- The school nurse or a school administrator if the district does not employ a school nurse, must identify each individual who has received this training.



Students with Seizure Disorders

- Generally, the school nurse, or another district employee if a district does not employ a school nurse, must coordinate seizure disorder care at that school and ensure that all staff that regularly interact, have legitimate educational interest in or responsibility for the direct supervision, or transport the student are trained in the care of students with seizure disorders.
- The Board must require each person it employs as an administrator, guidance counselor, teacher, or bus driver to complete a minimum of one hour of self-study training or in-person training on seizure disorders not later than twenty-four months after the effective date of this section (after October 2023).
 - Any such person employed after that date must complete the training within ninety days of employment.
 - The training qualifies as a professional development activity for the renewal of educator licenses
- Provides qualified immunity in a civil action for claims arising from performance under these provisions unless the performance constitutes willful or wanton misconduct.



Blizzard Bags and Calamity Days



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New Calamity Day Virtual Make-Up Option

- Adopt a plan to provide instruction through a virtual education delivery model during calamity school closures (formerly known as “blizzard bags”).
- Online instruction for a maximum number of hours that are equivalent of three (3) school days.
- Must have the written consent of the teachers’ union.



New Calamity Day Virtual Make-Up Option

Virtual education delivery model plan ***must*** include:

- A statement that the school, to the extent possible, will provide for teacher-directed synchronous learning in which the teacher and students are interacting in real time on a virtual learning platform during the closure.
- The qualifying school's attendance requirements, including how the school will document participation in learning opportunities and how the school will reach out to students to ensure engagement during the closure.
- A description of how equitable access to quality instruction will be ensured, including how the school will address the needs of students with disabilities, English learners, and other vulnerable student populations.



New Calamity Day Virtual Make-Up Option

Virtual education delivery model plan **must** include, cont'd:

- The process the school will use to notify staff, students, and parents that the school will be using online delivery of instruction.
- Information on contacting teachers by telephone, electronic mail, or a virtual learning platform during the closure.
- A description of how the school will meet the needs of staff and students regarding internet connectivity and technology for online delivery of instruction.





(Parents') First Amendment Right to Criticize



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Sixth Circuit Protects Parent's Right to Criticize

McElhaney v. Williams (August 25, 2023)

- A parent, whose child played on the high school softball team at a school district in Tennessee, sent two lengthy texts to the coach discussing his frustration after the coach had benched his child.
- Subsequently, the school banned the parent from attending any softball games the following week after finding that the text messages were inappropriate and violated team policy.
- The parent sued the district, arguing that the district retaliated against him for exercising his constitutionally protected right to free speech.



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Sixth Circuit Protects Parent's Right to Criticize

McElhaney v. Williams (August 25, 2023)

- The Sixth Circuit stated that the First Amendment has long protected citizen's right to criticize public officials. The Sixth Circuit elaborated that that protection extends to parents, meaning that "schools cannot regulate the content of the parents' speech about their child to a school employee who interacts with the child."
- The school district argued that schools have an interest in avoiding disruption, and the Sixth Circuit agreed; however, it stated that the school's interest does not apply **"to run-of-the mill adult speech targeting school officials."**
- In the end, the Sixth Circuit found the speech was critical of a coach's actions, **but the speech was not threatening, harassing or disruptive, and, therefore, was protected by the First Amendment.**



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Gender Issues



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Important Case Updates

- Two major cases were decided in Ohio during the summer of 2023
 - One relates to a parent’s concern that their child could potentially be disciplined for harassing or bullying a transgender student by intentionally misgendering the student, and that this violated the child’s Constitutional rights
 - One relates to students’ and parents’ claims that a school district’s decision to allow students to use bathrooms that align with their gender identity violated their Constitutional rights



Parents Defending Edn. v. Olentangy Local School Dist. Bd. of Edn., S.D.Ohio No. 2:23-cv-01595 (July 28, 2023).

Key takeaways:

- Districts may have a policy that prohibits discriminatory harassment or bullying based on a student's gender identity when the policy's goal is to maintain a safe and civil learning environment.
- Misgendering a student when it is deemed to be harassment, bullying, or discrimination, can serve as the basis for discipline.
- Parents also do not have a fundamental right to exempt their kids from district policies.
- One thing the court did acknowledge that may have future impact is that, if the policies had violated the First or 14th Amendments, they must be enjoined even if the district was compelled by Title IX to combat harassment on the basis of gender identity. Meaning following Title IX requirements does not automatically protect a district, if the means in which the district is following Title IX otherwise impacts other constitutional rights.



Doe v. Bethel Local School Dist. Bd. of Edn., S.D.Ohio No. 3:22-cv-337 (Aug. 7, 2023).

Key takeaways:

- Religious infringement claims related to a non-transgender student's use of a bathroom free from a transgender student using the same restroom fails when a district has a neutral policy and there is no evidence that the policy was adopted to suppress religious beliefs.
 - While parent certainly have the right to make decisions concerning the care, custody and control of their child, parents may not dictate what or how a public school teaches its students (including curriculum choices) or how it operates its facilities.
- Although not specific to transgender student situations, the Court also added language confirming that a parent's 14th Amendment right does not require schools to answer every demand made of them from parents.



Political Speech/Attire



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Regulation of On-Campus Student Speech

- A District may regulate on-campus student political speech:
 - Vulgar, lewd, indecent, or plainly offensive speech.
 - Speech related to the promotion of drug use.
 - Speech in a school-sponsored publication that is inconsistent with pedagogical concerns.
 - Speech that is reasonably likely to substantially and materially interfere with the District's educational mission.



Relevant Case Law

- B.A.P. v. Overton Cnty. Bd. of Educ.
 - Student wore a shirt stating, “homosexuality is a sin.”
 - Principal informed the student that her shirt violated the dress code because it was “sexually connotative.”
 - Student would not be released from the office until she changed her shirt. If the student refused to change, she would be sent home.
 - The student’s parent picked her up from school.



Relevant Case Law

- B.A.P. v. Overton Cnty. Bd. of Educ.
 - Court applied the *Tinker* standard.
 - In applying this standard, courts evaluate the circumstances to determine if a district's forecast of substantial disruption was reasonable.
 - Court denied the District's motion for summary judgment.



Regulation of Staff Speech

- Districts may regulate staff speech:
 - Made pursuant to the employee's official duties.
 - Concerns purely private matters.
 - District's interests outweigh the employee's interests to freedom of speech (i.e., substantial disruption to the educational mission).



Relevant Case Law

- Dodge v. Evergreen School District No. 114
 - A middle school teacher arrived to school in a MAGA hat.
 - The trainer informed the Principal and stated that she felt intimidated and traumatized by the hat. Other teachers indicated they were also upset.
 - Principal perceived the hat as a symbol of “hate and bigotry” and stated that he should “use better judgment in the future.”
 - The teacher wore his MAGA hat to training the following day.
 - The Principal told the teacher that he would need union representation if he wore the hat to school again.
 - The teacher sued the District alleging a violation of his right to freedom of speech.



Relevant Case Law

- Dodge v. Evergreen School District No. 114
 - Court determined that a MAGA hat was speech that touched on a “matter of public concern.”
 - The court also determined that because the teacher wore his hat at teacher training sessions, he did so as a private citizen and not pursuant to his official job duties.
 - Court also determined that the District did not provide sufficient evidence that the teacher’s hat disrupted the District’s training sessions.
 - The fact that other employees were outraged or offended by the MAGA hat was not enough to show actual or tangible disruption.



Questions?



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