




School law year in review

Sara Clark, director of legal services
Megan Greulich, staff attorney
Jennifer Hardin, deputy director of legal services

© 2016 Ohio School Boards Association
All Rights Reserved


OSBA leads the way to educational excellence by serving Ohio's public school board members and the diverse districts they represent through superior service, unwavering advocacy and creative solutions



Today's Topics


- Heroin and the Opioid Epidemic
- Medical Marijuana
- Copyright and Teacher Work Product
- Transgender Students
- Address Confidentiality
- Special Education
- Website Accessibility

© 2016 Ohio School Boards Association
All Rights Reserved



HEROIN AND THE OPIOID EPIDEMIC


© 2016 Ohio School Boards Association
All Rights Reserved



Opioid Abuse Prevention

- Governor's Cabinet Opiate Action Team (GCOAT)
- Start Talking! statewide youth drug prevention initiative
- Creating pathways to addiction treatment and recovery
- Expansion of Naloxone (Narcan) availability/use:
 - HB 170 (14)
 - HB 4 (15)
 - HB 462 (16)


© 2016 Ohio School Boards Association
All Rights Reserved



Naloxone (Narcan)

- Ohio Revised Code (RC) section 2925.61
 - (B) "A family member, friend, **or other individual** who is in a position to assist an individual who is apparently experiencing or at risk of experiencing an opioid-related overdose, is not subject to criminal prosecution for a violation of section 4731.41 of the Revised Code or criminal prosecution under this chapter if the individual, acting in good faith..."
 - (D) A peace officer employed by a law enforcement agency, acting in good faith...


© 2016 Ohio School Boards Association
All Rights Reserved



Naloxone in Schools


- Talk with board counsel
 - Written procedures for handling, storing, administering, etc.
- Consider naloxone side effects
- Meet with first responders
 - Consider including in school safety plan

© 2016 Ohio School Boards Association
All Rights Reserved



MEDICAL MARIJUANA


© 2016 Ohio School Boards Association
All Rights Reserved



Medical Marijuana

- Ohio House Bill (HB) 523 (Eff. 9/8/16)
 - Allows a registered patient, on recommendation of a physician, to use medical marijuana to treat a qualifying medical condition
 - Establishes the Medical Marijuana Control Program
 - Requires criminal records checks for entities seeking to cultivate or dispense, and employees of those entities
 - Allows for zoning regulations on locations of medical marijuana cultivators, processors or retail dispensaries


© 2016 Ohio School Boards Association
All Rights Reserved



Medical Marijuana

- Federal law still prohibits sale, cultivation, processing or use of marijuana, for any purpose.
 - Ohio Supreme Court: Lawyers only can advise clients as to legality of conduct either permitted under state law or prohibited under federal law.


© 2016 Ohio School Boards Association
All Rights Reserved



Medical Marijuana: Employees

- State law provides that employers:
 - Are not required to permit or accommodate
 - Are permitted to terminate or discipline an employee or refuse to hire an applicant
 - Are permitted to establish and enforce drug policies
 - May obtain worker's compensation premium discounts for participation in the Ohio BWC drug-free workplace program
 - Have "just cause," to terminate an employee for unemployment compensation purposes

© 2016 Ohio School Boards Association
All Rights Reserved



Medical Marijuana: Employees

- State law provides that employees:
 - are not entitled to receive workers' compensation benefits if:
 - the employee was under the influence of marijuana and
 - marijuana use was the proximate cause.
 - and applicants are not permitted to sue an employer for refusing to hire, terminating, disciplining, discriminating, retaliating, "or otherwise taking an adverse employment action"


© 2016 Ohio School Boards Association
All Rights Reserved



Medical Marijuana: Employees

- Work with board counsel
 - Employment practices
 - Drug-related policies and procedures
- Review your policies
 - Clear prohibition against drug use
 - Disciplinary action for violations
- Keep an eye out for:
 - More guidance from Ohio BWC
 - Program administration rules


© 2016 Ohio School Boards Association
All Rights Reserved



Medical Marijuana: Students


- Student and community use and possession on school property
- Remember, federal law has not changed!
- Review your Board policies
- Keep an eye out for program administration rules

© 2016 Ohio School Boards Association
 All Rights Reserved



COPYRIGHT IN THE CLASSROOM

© 2016 Ohio School Boards Association
 All Rights Reserved



Copyright basics

- Copyright
 - Right of a creator to control the reproduction, derivative works, distribution, performances and display of an original work of authorship
- Original work of authorship
 - Some “creative spark” [*Feist*, 1991]
- Fixed in a tangible medium
 - Perceived as fixed
 - Communicated with aid of machine/device

© 2016 Ohio School Boards Association
 All Rights Reserved



Legally using copyrighted materials

- Face-to-face teaching
- Fair use
- TEACH Act
- Permission

© 2016 Ohio School Boards Association
All Rights Reserved



Fair use

Four factors:

1. The purpose and character of the use
2. The nature of the work
3. The amount and substantiality of the portion used
4. The effect of the use on the potential market for or value of the copyrighted work

© 2016 Ohio School Boards Association
All Rights Reserved



TEACH Act


School must:

- Have a policy regarding copyright
- Provide informational materials about copyright to faculty, students and relevant staff members
- Provide notice to student that the materials used are subject to copyright protection

Teacher/school must use technological controls to:

- Limit access to materials to students in class
- Control retention and further dissemination of the works by students

© 2016 Ohio School Boards Association
All Rights Reserved




Copyright ownership for teacher work product

The author (creator) of a work is the owner of the copyright unless the work is a “work made for hire.”


Employee + scope of employment = work made for hire

© 2016 Ohio School Boards Association
All Rights Reserved




TRANSGENDER STUDENTS


© 2016 Ohio School Boards Association
All Rights Reserved



Legal Framework




© 2016 Ohio School Boards Association
All Rights Reserved



Executive Branch

- U.S. Departments of Education and Justice
- Dear Colleague Letter – May 13, 2016
- Statements of Interest
 - *G.G. v. Gloucester*
 - *Tooley v. Van Buren Public Schools*
- Amicus briefs


© 2016 Ohio School Boards Association
 All Rights Reserved



Legislative Branch

- No federal law explicitly protecting transgender students from discrimination.
- 19 states and DC have laws that provide protection for individuals on the basis of gender identity or expression.
- Recent legislation re: bathroom access
 - California – AB 1266
 - South Dakota – HB 1008
 - North Carolina – HB 2
 - Tennessee – HB 2414


© 2016 Ohio School Boards Association
 All Rights Reserved



Judicial Branch

- Cases against U.S. DOJ
 - *Texas et al v. U.S.*
 - *Students and Parents for Privacy v. U.S.*
 - *Bd. of Edn. of Highland v. U.S.*
- Gloucester Cty. School Board v. G.G.*


© 2016 Ohio School Boards Association
 All Rights Reserved



Practical Issues


- Student privacy
- Student records
- Restrooms/locker rooms
- Athletics
- Dress codes
- Bullying/harassment

© 2016 Ohio School Boards Association
All Rights Reserved



ADDRESS CONFIDENTIALITY


© 2016 Ohio School Boards Association
All Rights Reserved



Address Confidentiality

- Safe at Home Program (HB 359)
 - Victims of domestic violence, stalking, human trafficking, rape or sexual battery
 - Applicants work with an applicant assistant to apply to the secretary of state
 - School districts **MUST** use confidential address upon participant's request


© 2016 Ohio School Boards Association
All Rights Reserved



Address Confidentiality


- District cannot disclose:
 - Confidential address
 - School address
 - Business or place of employment
- Violation = first-degree misdemeanor
- Issues for schools
 - Enrollment
 - Records
 - Day-to-day

© 2016 Ohio School Boards Association
 All Rights Reserved



KEY SPECIAL EDUCATION CASES-2016

© 2016 Ohio School Boards Association
 All Rights Reserved



Educational performance- *Q.W. v. Bd. of Edn. of Fayette Co.*

- Parents challenged a district's conclusion that student was no longer eligible for services because his condition did not adversely affect his educational performance.
- Sixth Circuit concluded that educational performance could include consideration of all school-based performance, rather than merely academic achievement, but does not include behavior at home.

© 2016 Ohio School Boards Association
 All Rights Reserved

FED.App. No. 0752N (6th Cir.2015)



Due Process-

Domingo v. Kowalski

- Parents claimed teacher's use of force violated their children's due process rights.
- The court used a four-part test to evaluate conduct:
 1. Was there a pedagogical justification for it?
 2. Was it excessive to meet the legitimate objective?
 3. Was it in good faith or malicious and sadistic?
 4. Was there a serious injury?
- Court stated that the, while teacher's actions were "offensive," "unorthodox," and "insensitive," and "improper," they were not a violation of rights.

© 2016 Ohio School Boards Association
All Rights Reserved

6th Cir. No. 14-3957 (Jan. 7, 2016).



Denial of FAPE-

Greenwich BOE v. G.M.

- Parents asked board to pay for the private placement of their child on the basis that board was not providing a FAPE.
- Court applied *Burlington/Carter* test.
- If the board of education failed to adhere to Child Find requirement in the IDEA, by prematurely and improperly cutting off the disability review process, it amounted to a denial of FAPE.
- Case discusses whether the education must be "specially designed" or "specifically designed" to meet the needs of the disabled child.
- District ordered to pay the parents the amount they spent for tuition at the private school for the entire year.

© 2016 Ohio School Boards Association
All Rights Reserved

D. Conn. No. 3:13-cv-00235 (June 22, 2016).




Expert witness credibility-

Maple Hts. City SD v. A.C.

- After district concluded that a student's behaviors were not a manifestation of her disability, IHO held that parent provided sufficient evidence that they were. SLRO affirmed.
- The court concluded that the SLRO properly gave deference to the IHO's assessments of witness credibility and upheld SLRO's finding.
- The court also upheld the SLRO's finding that the district was capable of providing the student a FAPE going forward.

© 2016 Ohio School Boards Association
All Rights Reserved

N.D. Ohio No. 1: 2014 cv 1033 (June 27, 2016)




Cases to watch

US Supreme Court:

Fry v. Napoleon Public Schools - Must parents exhaust administrative avenues under IDEA before filing suit under ADA or Rehab Act (service dog) [Oct. 31 arguments]

Endrew F. v. Douglas Co. School Dist. – What level of educational benefit (some v. meaningful) is necessary to establish FAPE?

© 2016 Ohio School Boards Association
All Rights Reserved



WEBSITE ACCESSIBILITY

© 2016 Ohio School Boards Association
All Rights Reserved




What is website accessibility?

- Website can be used by the widest possible audience, including people with disabilities.
- Motor impairments
- Cognitive impairments
- Hearing impairments
- Visual impairments



© 2016 Ohio School Boards Association
All Rights Reserved



Legal Framework

- DOJ Guidance
- DOJ Supplemental Advance Notice of Proposed Rulemaking (SANPRM)
 - April 2015
 - Posed more than 120 questions for public comment
 - Appropriate technical standards
 - Compliance time frames
 - Potential exemptions
 - Applicability to mobile devices


© 2016 Ohio School Boards Association
All Rights Reserved



OCR Resolution Agreements

- Policies and procedures
- Audit existing content
- Corrective action plan
- Notice
- Training
- Reporting


© 2016 Ohio School Boards Association
All Rights Reserved



Questions?

**OSBA's legal hotline
is available to
member districts.**

855-OSBA-LAW



© 2016 Ohio School Boards Association
All Rights Reserved



Questions?



Sara C. Clark,
Director of Legal Services
sclark@ohioschoolboards.org

Megan E. Greulich
Staff Attorney
mgreulich@ohioschoolboards.org

Jennifer Hardin,
Deputy Director of Legal Services
jhardin@ohioschoolboards.org

© 2016 Ohio School Boards Association
All Rights Reserved



#OSBACC



Like us on
Facebook

Ohio School Boards Association

follow us on



twitter

@OHSchoolboards

Visit our website at:

www.ohioschoolboards.org

© 2016 Ohio School Boards Association
All Rights Reserved
