

# HR Desktop Reference Guide to School Law



*A complimentary quick reference prepared for school board members and school administrators by the Ohio Council of School Board Attorneys' Executive Committee and the Ohio School Boards Association's Legal Services Division*



The idea to offer a helpful, complimentary desktop reference guide for school board members and school administrators originated with the members of the 2011 Ohio Council of School Board Attorneys (OCSBA) Executive Committee. Members of the 2014 and 2017 OCSBA executive committees reviewed and revised the content, which is current through April 2017. This reference guide seeks to provide concise information describing the employment laws directly related to public school employment in Ohio.

The information in this guide is not legal advice, nor should it be relied upon as such. Please consult legal counsel for specific legal advice. OSBA thanks the OCSBA members who worked on and contributed to this resource.

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This text is intended to serve as a general overview of the statutory requirements provided for by the Ohio Revised Code and does not take into account any district-specific modifications or variations that may have been made pursuant to board policies, procedures, or applicable collective bargaining agreements. This guide is not a substitute for competent legal counsel. If legal advice is needed with respect to a specific factual situation, readers are encouraged to seek professional assistance.

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# *Hiring process*

## **Applications**

Job applications should be reviewed prior to use to ensure that they do not ask questions that could be interpreted as referring to race, age, sex, marital status, religion, national origin, citizenship or disability. Discrimination on the basis of race, color, national origin, ancestry, religion, sex, pregnancy status, age, disability and/or military status is prohibited by law. Questions not facially discriminatory still may indirectly cause discrimination.

If questioned by the [U.S. Equal Employment Opportunity Commission](#) (EEOC) or [Ohio Civil Rights Commission](#) (OCRC), an employer should be able to show that all of the questions it requires applicants to answer are related to any job for which the applicant could reasonably be applying. This includes the requirements for the job and the applicant's ability to perform the essential job functions.

Words written on applications can be interpreted in many ways. Jotting down notes that have strange or discriminatory meanings may lead to trouble if EEOC audits the school district's records. The person who reviews applications needs to think about what he or she is writing down and how it can be interpreted before putting it to paper. Immediately following an interview, review and clarify the notes to make sure that they do not have the appearance of discriminatory conduct.

Ohio public employers, including school districts, are prohibited from including any question concerning the criminal background of the applicant on any form or application for employment. Schools may include in the application a statement advising applicants of state or federal laws that automatically disqualify applicants with a particular criminal history from employment for specific positions.

## Interviews

Questions asked during an interview need to follow the same guidelines as those asked on applications. Employers often get into trouble by asking questions they think are harmless, yet have discriminatory connotations. EEOC has issued guidelines on questions that cannot be asked during the interview process with respect to race, national origin, sex, age, disability, marital status and family status. Any pre-employment interview question about race, national origin or sex is impermissible. Below is a sample list of other questions that may be troublesome:

- How old are you?
- When did you graduate from high school or college?
- Do you have any serious medical condition or disability?
- Would you require an accommodation to complete this job?
- Are you married?
- Are you planning on having children?

Because of the conversational nature of interviews, a seemingly harmless question — for example about an applicant's family or background — can have significant consequences with regard to possible discrimination claims. While an interviewer may have a genuine interest in an applicant's answer, employers must be aware of the possible legal consequences of such questions. The above list of problematic questions is not exhaustive. Employers should consult legal counsel to ensure their interviewing practices do not implicate violations of anti-discrimination laws.

## Background and credit checks

### Background checks

Criminal records checks from the [Ohio Bureau of Criminal Investigation \(BCI\)](#) and the [Federal Bureau of Investigation \(FBI\)](#) are required for all applicants under final consideration for employment by a school district. Volunteers are not required by law to complete criminal background checks but may be required under a local board of education policy. At a minimum, volunteers must be put on notice that the district may require volunteers who have routine, unsupervised access to students to complete a criminal records check at anytime.

## **Credit checks**

At the outset, it is important to note that pre-employment credit checks have recently been challenged. EEOC has filed a lawsuit against an employer, challenging the use of pre-employment credit checks because they have a discriminatory impact. School districts should exercise caution in making employment decisions based on credit reports.

However, many employers obtain consumer credit reports (CCRs) on prospective employees as part of the candidate evaluation process. Prior to obtaining CCRs, employers should be aware of two requirements set forth by the Fair Credit Reporting Act (FCRA).

First, an employer must unmistakably inform the applicant that a report may be obtained for employment purposes. This disclosure must be in its own separate document. The applicant must authorize, in writing, that the employer may obtain the report. A CCR agency may not provide a consumer report to an employer unless the employer certifies that it has given the required disclosure and obtained the written authorization. An employer also must certify that it will comply with FCRA's requirements if the information is later used in an adverse employment decision regarding an employee or applicant.

Second, an employer cannot take any adverse action based on the CCR without providing the applicant with a "pre-adverse action disclosure," including a copy of the CCR and a written description of the applicant's legal rights. The CCR agency generating the report is required to provide the document containing the summary of rights. The applicant must be provided with an actual copy of the report obtained by the employer.

If an employer makes any adverse decision based in whole or in part on information from a consumer credit report, the employer must provide oral, written or electronic notice of the adverse action to the applicant; provide the name, address and telephone number of the agency that provided the report including a statement that the agency did not take the action nor can it provide specific reasons for the adverse action; and provide the applicant a notice of his or her right to receive a free copy of the credit report and dispute information in the report.

## Reference checks

The reference process should be uniform for all applicants or interviewees. Employers should require references from every applicant or every applicant for certain positions. Employers should not use spot judgment calls as the basis of a decision to request references. If the employer calls interviewees' references, he or she should call all of the listed references. Employers should not deviate from the school district's reference policy, regardless of the applicant.

Employers should document their decisions to hire or not to hire applicants. A good practice is using a form that tracks applications consistently. By checking off the steps that were taken, employers can show that the same steps were taken for each individual. This documentation will help show that a decision was made without regard for the applicant's race, national origin, gender, marital status, religion, etc., and that the applicant was not hired for legitimate reasons.

With regard to social networking sites, there are some risks of which districts should be aware. The risk of reviewing these items is that an applicant may argue that the employer invaded his or her right to privacy. Public records are widely available to the public. As a result, the expectation of privacy in these sites is small. Similarly, if material on a social networking site is readily accessible, it is difficult for an applicant to argue that there is a reasonable expectation of privacy for material on these sites. However, information discovered from social networking sites can be problematic if it implicates information related to a protected classification of an applicant such as race, age, sex, marital status or military status, etc. It is important to use caution when accessing social media sites to ensure that consistent hiring practices are being followed.

## Pre-employment testing and drug testing

Using employment tests to help select employees is permitted. Employment tests include any written or performance measures used as a basis for an employment decision. Employment tests are invalid when they disqualify members of protected groups at a substantially higher rate than others unless the employer can demonstrate that the



test is job-related. When using tests, employers should use only those tests that are absolutely necessary and should consider consulting with an attorney before implementing any new tests. Some forms of pre-employment testing have a risk of exposing employers to liability that does not outweigh the benefits gained from using the test. Therefore, it is generally advisable to consult your attorney before using a pre-employment test.

Some employers may desire to drug test applicants for a specific position. One of the main objections to requiring pre-employment drug testing is that testing is an unreasonable search and seizure violating the Fourth Amendment. The courts usually decide these cases by determining which tests or regulations are reasonable. Reasonableness is found when the governmental interests in testing outweigh the intrusions upon individual privacy interests. The Sixth Circuit Court of Appeals (which binds Ohio) has held that pre-employment drug tests of applicants for “safety sensitive positions” are constitutional. However, the courts are still exploring the application of this holding. For bus drivers, pre-employment drug and alcohol testing is required by the Ohio Department of Transportation. School administrators also should determine whether pre-employment drug testing complies with any applicable collective bargaining agreements.

## **Employment of retired employees**

A school district must follow certain procedures before hiring retirees of the State Teachers Retirement System (STRS) and School Employees Retirement System (SERS) who seek to be rehired into the same position and by the same school district from which they retired.

A board that proposes to rehire a retiree to the same position must give public notice not less than 60 days before the board acts to re-employ the retiree. This notice must indicate that the person is or will be retired and is seeking employment with the employer. Between 15 and 30 days before the employment begins, the board must hold a public meeting on the issue of the person being re-employed. The notice provided must include the time, date and location at which the public meeting will occur.

# *Employment contracts*

Ohio law generally provides that all employees of a school district, from the superintendent to teachers and nonteaching staff, are employed pursuant to employment contracts. Excluded from this requirement are certain employees employed by school districts governed by the Ohio Civil Service laws. From a human resources perspective, various statutes and regulations must be reviewed to ensure your school district complies with the law when employing staff members. This chapter discusses each of the employment contracts used by districts and sets out the requirements and limitations provided under each statute. As the law is ever evolving, human resource personnel must be constantly aware and informed of changes with respect to employment contracts. Best practices dictate that human resource personnel review and update, if necessary, employment contracts on an annual basis.

## **Administrators**

### **Superintendents**

Superintendents are appointed by a board of education pursuant to [Ohio Revised Code \(RC\) 3319.01](#). They are required to hold a superintendent's license issued by the [Ohio Department of Education](#) (ODE) or an alternative administrator license and shall possess all the qualifications to act as superintendent. The superintendent shall be employed for a term not longer than five years, with their term of contract running from Aug. 1 to July 31.

A board of education is required to execute an employment contract with the superintendent when he or she is appointed. At that time, a board also is required to establish the superintendent's

compensation. Said compensation may be increased or decreased during the term of the contract, but any decrease only may occur as part of a uniform plan affecting the salaries of all district employees. Additionally, a superintendent may be required to reside within the boundaries of the district.

Contracts for superintendents may include provisions for sick leave, vacation leave, professional leave, personal leave, compensation for accrued but unused sick and/or vacation leave, the number of work days, expenses, health care benefits, life insurance, payment of the board's share of STRS contribution, cellphone, laptop and other fringe benefits as negotiated by the parties. Superintendent contracts also may include and outline evaluation procedures, as established by board policy.

The termination of a superintendent's contract shall be in accordance with [RC 3319.16](#). If the board decides not to re-employ a superintendent, it must provide written notice of its intention by March 1 of the calendar year of expiration of the contract. If the board fails to provide such notice, the superintendent is deemed re-employed under the same terms and conditions for one year.

### **Assistant superintendents, principals, assistant principals and other administrators**

In accordance with [RC 3319.02](#), a board of education may appoint assistant superintendents, principals, assistant principals and other administrators in its schools as it deems necessary. The term "other administrator" refers to: certain employees licensed by ODE, such as a professional pupil services employee or an administrative specialist; nonlicensed supervisor or management-level employees; and business managers, which are discussed in greater detail below.

A nomination from the superintendent is required for the employment or re-employment of any assistant superintendent, principal, assistant principal or other administrator. A board of education is required to execute a written contract whose term shall not exceed three years. An assistant superintendent, principal, assistant principal or other administrator who has previously been employed for three years or more shall be granted a contract for

not less than two years, but not more than five years. Such contract only may be suspended pursuant to law, and no contract may be terminated except in accordance with [RC 3319.16](#).

The contract shall specify: the administrative position; the duties as set forth under the employee's job description; the salary and other compensation paid; the number of days to be worked; the number of days of vacation leave, if any; and the number of paid holidays in a contractual year. Current law provides that when the employee is separated from employment, a board may compensate the administrator at his or her current rate of pay for all accrued and unused vacation leave, not to exceed the amount accrued within three years before the date of separation. The administrator and the board may negotiate additional provisions in the individual employment contract. An assistant superintendent, principal, assistant principal or other administrator cannot be transferred to a position of lesser responsibility during the life of the contract except by mutual agreement. Compensation may not be reduced except as part of a uniform plan affecting the entire district.

### **Business managers**

Boards of education may create the position of business manager and appoint or confirm an individual to fill that position. A business manager is an "other administrator" under [RC 3319.02](#), and thus all the contract provisions discussed above apply. To serve as a business manager, an individual must hold a valid business manager's license issued by ODE. Any business manager who fails to maintain his or her license shall be removed by the board. The business manager can be directly responsible to either the board or superintendent. If directly responsible to the board, the board shall appoint the business manager, but if directly responsible to the superintendent, the business manager shall be appointed by the superintendent and confirmed by the board.

### **Treasurer**

A treasurer shall be appointed by a board of education no later than May 1 for a term not to exceed five years. The term shall begin on

Aug. 1 and end July 31. The treasurer shall hold a valid license issued by ODE, and any failure to maintain said license will disqualify the treasurer from employment. However, if the treasurer does not possess a valid license but is otherwise qualified as a treasurer, he or she may continue to be employed. An individual who is otherwise qualified as a treasurer must demonstrate to the board of education that he or she meets all qualifications for the license and that he or she has applied to the State Board of Education for issuance or renewal of the license. Termination of a treasurer's contract shall be in accordance with [RC 3319.16](#). If the board decides not to re-employ the treasurer, it must provide written notice of its intention by March 1 of the calendar year of expiration of the contract.

[RC 3313.22](#) and [3313.24](#) govern the appointment of the treasurer by a board of education. At the time the treasurer is appointed, the board shall fix the compensation of the treasurer, which shall not be decreased during the term of office unless such decrease is part of a uniform plan affecting the salaries of all district employees. Additionally, the board may establish vacation leave for the treasurer, and upon separation from employment, the board may provide compensation to the treasurer for accrued but unused vacation leave, not to exceed the amount accrued during the three years before the date of separation.

## Teachers

A board of education is required to enter into written contracts for the employment and re-employment of teachers in its district. Contracts may be either continuing or limited. Additional duties performed by a teacher outside of his or her regular teaching duties shall be performed under a supplemental contract, which shall be a limited contract.

All teaching contracts shall be in writing and shall set forth the teacher's duties, salary and compensation to be paid for such duties. Once the board takes action to employ a teacher under a limited or continuing contract and the teacher accepts such employment, a contract is recognized. The failure of the parties to execute a written contract does not void the employment contract. Teacher salaries may be increased during the contract term but may not be decreased

unless the decrease is a part of a uniform plan affecting the entire district. In addition, teachers may not receive a lower salary than that received in the previous school year.

Pursuant to Ohio collective bargaining law, school district public employees may bargain collectively with the board of education to determine wages, hours, and terms and conditions of employment. Most collective bargaining agreements cover: health insurance benefits, severance pay, sick leave, professional leave, maternity leave, personal leave, holidays, layoff and discipline. Accordingly, those provisions generally are not contained or negotiated in individual teacher employment contracts.

### **Limited contracts**

A limited contract is one for a specific period, not to exceed five years, that the board enters into with a teacher who is not eligible for continuing service status.

Upon expiration of the limited contract, a teacher who is not eligible at that time for a continuing contract may be deemed re-employed at the same salary plus any increment provided under the salary schedule. When the procedural requirements are met, the teacher may be nonrenewed. Alternatively, if the procedural requirements are not met, the teacher automatically will be re-employed under an extended limited contract for a term not to exceed one year at the same salary plus any increment provided under the salary schedule. If the teacher is re-employed at the conclusion of the extended limited contract, he or she shall be employed only under a continuing contract.

When the board rejects a recommendation for re-employment of a teacher on an extended limited contract, the superintendent may recommend re-employment of the teacher on an extended limited contract for a period not to exceed two years so long as the teacher has not attained continuing contract status elsewhere. The written notice from the superintendent recommending this re-employment must be made for reasons directed at professional improvement of the teacher. These types of contracts are sometimes referred to as “probationary.” If the teacher is re-employed at the conclusion of

this two-year extended limited contract, he or she shall be employed under a continuing contract.

### **Continuing contracts**

Continuing contracts are employment contracts that continue from year to year until the teacher resigns, retires, is terminated or suspended. Such contracts only may be terminated for the reasons and under the conditions set forth in [RC 3319.16](#) or suspended pursuant to [RC 3319.17](#).

A continuing contract is awarded to a teacher who meets the following qualifications:

- (1) Holds a professional, permanent or life teacher's certificate;
- (2) Meets the following conditions:
  - (a) Was issued a teacher's certificate or educator license prior to Jan. 1, 2011; or
  - (b) Holds a professional educator license, senior professional educator license or lead professional educator license; or
  - (c) Has completed one of the following:
    - (i) If the teacher did not hold a master's degree at the time of initially receiving a teacher's certificate or an educator license, 30 semester hours of coursework in the area of licensure or in an area related to the teaching field since the initial issuance of such certificate or license; or
    - (ii) If the teacher held a master's degree at the time of receiving such certificate or license, six semester hours of graduate coursework in the area of licensure or in an area related to the teaching field since the initial issuance of such certificate or license.
- (3) Any teacher who meets the following conditions:
  - (a) The teacher never held a teacher's certificate and was initially issued an educator license on or after Jan. 1, 2011.
  - (b) The teacher holds a professional educator license, senior professional educator license or lead professional educator license.
  - (c) The teacher has held an educator license for at least seven years.

- (d) The teacher has completed one of the following:
- (i) If the teacher did not hold a master's degree at the time of initially receiving an educator license, 30 semester hours of coursework in the area of licensure or in an area related to the teaching field since the initial issuance of that license; or
  - (ii) If the teacher held a master's degree at the time of initially receiving an educator license, six semester hours of graduate coursework in the area of licensure or in an area related to the teaching field since the initial issuance of that license.

Once a teacher qualifies for a continuing contract as described above, he or she may be eligible if he or she has taught in the district for three of the last five years; or if he or she has attained continuing contract status elsewhere and has taught in the district for two years. The superintendent shall recommend to the board that a teacher eligible for continuing contract status be re-employed under a continuing contract.

If the board rejects the superintendent's recommendation, it may declare its intention not to re-employ the teacher. Should the board not follow specific statutory procedures, the teacher may be deemed re-employed under an extended limited contract, as set forth in the section on limited contracts. Similarly, if the superintendent recommends that a teacher eligible for continuing contract status not be re-employed, the board may declare its intention not to re-employ.

### **Supplemental contracts**

A supplemental contract is a limited contract issued to a certified employee of the district. The term of the contract is generally for one year. A supplemental contract must be entered into when a teacher performs additional duties beyond those contained in his or her limited or continuing contract. Examples of supplemental contracts are: coaching an athletic team; academic advisers; choir and band advisers; drama directors; safety patrol advisers; yearbook advisers; and other similar positions. In addition, a supplemental contract must be issued when a teacher is required to perform services during



periods which have been designated as “planning periods.”

Each written supplemental contract shall state the duties to be performed and the compensation to be paid for those duties. As with other teaching contracts, the failure to execute a supplemental contract does not void the contract, and the rate of pay may be increased but not decreased except pursuant to a uniform plan affecting the entire district.

Supplemental contracts are generally only given to a teacher as a result of the existing employment contractual relationship between the parties. If the teacher’s employment contract is terminated, suspended or nonrenewed, it would appear that the supplemental contract also must be terminated, suspended or nonrenewed. Termination or suspension of a supplemental contract alone must be done in accordance with the termination procedures applicable to regular teaching contracts.

A supplemental contract is specifically excluded from the evaluation and nonrenewal statutory procedures governing the limited contracts of teachers. However, many boards provide annual written notice of nonrenewal of supplemental contracts in the same manner as limited employment contract nonrenewal.

Supplemental contracts may be awarded to nonteaching employees serving in the same roles discussed above. However, different procedures apply to these employees, which are outlined under the heading “Pupil activity contracts.”

## **Nonteaching staff**

### **Contracts**

In all school districts except civil service school districts, a board of education shall enter into employment contracts with every newly hired regular nonteaching employee pursuant to [RC 3319.081](#). The initial written employment contract shall not be for a term more than one year and shall include the employee’s regular hourly or per diem rate. If a nonteaching employee is rehired, his or her subsequent employment contract shall be for a period of two years.

When the two-year employment contract has expired and if the term of employment for the nonteaching employee is renewed, the

employee shall receive a continuing contract. The salary stated in the contract may be increased but not decreased unless it is part of a uniform plan affecting the nonteaching employees of the entire district. Ohio law requires every board of education to provide an annual salary notice to its nonteaching employees by July 1 for the succeeding school year.

Nonteaching employees may bargain collectively with the board of education to determine wages, hours, and terms and conditions of employment. Currently, most collective bargaining agreements contain information such as: health insurance benefits, severance pay, sick leave, maternity leave, vacation leave, military leave, personal leave, holidays, discipline and layoff. Thus, those provisions are not contained or negotiated in individual nonteaching employment contracts.

For districts other than city districts that follow the civil service law, a nonteaching employee is considered re-employed unless notified by June 1 of the board's intention not to re-employ ([RC 3319.083](#)).

A board of education may terminate a nonteaching employee in accordance with state law by a majority vote of the board. However, the contracts only may be terminated for violations of written board rules and regulations or for reasons specifically enumerated in [RC 3319.081](#). A nonteaching employee may terminate his or her employment contract with the district by submitting a written 30-day notice of termination to the treasurer of the board. Reductions or layoffs shall be pursuant to [RC 3319.172](#).

### **Pupil activity contracts**

Pupil activity contracts are similar to supplemental contracts but are given to individuals not licensed to teach. Boards of education may employ a nonlicensed individual to direct, supervise or coach a pupil activity program as long as that individual holds a valid pupil activity permit issued by the State Board of Education ([RC 3319.303](#) and [Ohio Administrative Code \(OAC\) 3301-27-01](#)). Boards must comply with the Fair Labor Standards Act (FLSA) with respect to nonteaching employees who are given pupil activity contracts.

The initial hiring procedure for a pupil activity contract is governed by Ohio law ([RC 3313.53](#)). Before a board is permitted to employ a nonlicensed individual under a pupil activity contract, the board must pass a resolution that it has first offered the position to licensed individuals in the district and no one qualified has applied for and accepted the position, and then it offered the position to licensed individuals not employed by the district and no one qualified has accepted the position. Courts have concluded that a board's decision as to who is "qualified" is subject to deference and will not be overturned absent an abuse of discretion.

Once an individual has been granted a pupil activity contract, the board is permitted to renew the contract without first offering the contract to a qualified licensed person and without adopting the resolution required for the initial award of such contract ([RC 3313.53\(D\)\(2\)](#)).

A nonteaching employee employed under a pupil activity contract automatically will be re-employed if the board fails to provide written notice of nonrenewal on or before June 1 ([RC 3319.083](#)). Where the superintendent does not recommend the re-employment of a pupil activity supervisor, the board may re-employ by a majority vote of the entire board ([RC 3313.18](#)).

## **Civil service school districts**

The civil service laws under [RC Chapter 124](#) apply to all city school districts. Generally, the city's civil service commission serves as the commission for the school district. A city may enact an ordinance limiting the jurisdiction of its civil service commission to city employees only. Such an ordinance may exclude the employees of city school districts, thereby eliminating the authority of the civil service law. When this occurs, the employees of the city school districts are governed under the same statutes applying to other school district employees.

In a civil service district, employees are divided into two classifications: unclassified and classified. Unclassified employees include superintendents, treasurers, assistant superintendents, business managers, principals, all other administrators, teachers,

instructors, other employees engaged in educational or research duties connected to the school district, four clerical and administrative support employees may be included and students employed in student or intern classifications. Classified service employees are all nonteaching employees of the district and other employees not included in the unclassified service. The unclassified employees of a city school district are governed under the authority of [RC Title 33](#), as other school district employees.

Civil service applicants are required to take and pass an examination given by the civil service commission. Applicants are ranked on an eligibility list. The list is presented to the board of education, which must appoint an applicant from the top four names on the list.

The applicant appointed by the board of education is hired under a probationary period of not less than 60 days and not more than one year. The civil service commission determines the probationary period. An employee serving under a probationary period may be removed or reduced by the board at any time during the probationary period if the board provides written notice to the commission of the reasons for its decision.

Upon serving the required probationary period, a classified employee becomes a permanent employee who only may be terminated, removed or suspended in accordance with the civil service laws.

## **At-will employment**

At-will employment is an employment arrangement entered into without a contract that may be terminated at any time by either the employer or employee without cause. Almost every individual employed by a board of education is required to be employed through an employment contract and thus is not subject to the at-will employment doctrine. One primary exception appears to be educational assistants and other unclassified employees who are employed by a civil service school district.

Generally, an educational assistant has the same rights, benefits and legal protections available to other nonteaching employees in the district. However, in a civil service school district, educational

assistants are specifically excluded from the provisions of the civil service statutes governing nonteaching classified employees. As such, an educational assistant has all the rights, benefits and legal protections available to other nonteaching unclassified employees of the district under [RC 3319.088\(D\)](#). Unless there is specific statutory guidance requiring a contract of employment, unclassified employees serve at the discretion of the board of education and are at-will employees. Educational assistants fall into this area where there exists no statutory guidance requiring a contract of employment.

# *Employment compensation*

## Salary schedule — notice/placement

### Teachers

Boards of education are required to fix the salaries of their teachers. School districts participating in Race to the Top (RttT) annually must adopt a salary schedule for teachers based on performance in accordance with the time line contained in the board's RttT scope of work ([RC 3317.141](#)). [RC 3317.141](#) provides that for purposes of the schedule, a board shall measure a teacher's performance by considering all of the following: the level of license issued under [RC 3319.22](#) that the teacher holds; whether the teacher is a highly qualified teacher as defined in [RC 3319.074](#); and ratings received by the teacher on performance evaluations conducted under [RC 3319.111](#). [RC 3317.141](#) further provides for annual adjustments based on performance on the annual evaluations required under [RC 3319.111](#). The annual performance-based adjustment for a teacher rated as accomplished are to be greater than the adjustment for a teacher rated as skilled under [RC 3319.111](#) evaluation requirements. The board also may determine duties, which warrant additional compensation not otherwise provided under a supplemental contract.

Traditional public schools not receiving RttT funds may choose to implement performance-based compensation per [RC 3317.141](#) or maintain the minimum salary schedule for teachers per [RC 3317.13](#) and [3317.14](#). A teacher must receive at least the minimum annual salary established by [RC 3317.13](#). The minimum salaries are exclusive of sick leave and retirement. While boards have the discretion to adopt regulations allowing the advancement of sick

leave, [RC 3319.08](#) requires the equivalent of at least five days paid leave for time lost due to illness or otherwise. Boards of education are required to recognize increments for academic training and years of service on their salary schedules. Under the statute, teachers who complete training that would qualify them for a higher salary bracket must file evidence of this training with the treasurer by Sept. 15 ([RC 3317.14](#)). The treasurer then immediately places the teacher in the proper salary bracket pursuant to [RC 3317.13](#). A board of education is permitted to establish its own guidelines on compensation as long as the minimum salaries are paid. Boards may approve compensation in addition to the base salary for the performance of supplemental duties.

According to [RC 3319.12](#), not later than July 1 of every year, boards of education must notify each teacher of the salary to be paid during the next school year. The salary to be paid to each teacher must be set forth in the teacher's written contract or the annual salary notice ([RC 3319.08](#) and [3319.12](#)). Under [RC 3319.12](#), the salary may not be lower than the salary paid during the preceding school year unless the decrease is part of a uniform plan affecting the entire school district. Similarly, the compensation stated in the contract may not be decreased during the contract term except under a uniform plan throughout the district. A salary increase, in whatever amount, is permitted after the notice has been given.

### **Nonteaching employees**

Pursuant to [RC 3317.12](#), boards of education are required to adopt a salary schedule for all nonteaching personnel. The salary schedule is based upon training, experience and qualifications. Under [RC 3317.12](#), annually on Oct. 15, each board of education must file with the superintendent of public instruction the salary schedule and list of job classifications and salaries in effect at that time. If such salary schedule and classification plan is not filed, the superintendent of public instruction shall order the board to file them. If this condition is not corrected within 10 days after receipt of the order, no money is distributed to the district under [RC Chapter 3317](#) until the superintendent has satisfactory evidence of the board of education's

full compliance with such order.

Under [RC 3319.082](#), non-civil service school districts must, by July 1, give each nonteaching employee with a contract for the next school year notice as to the salary to be paid during the year. This salary may not be lower than that paid in the prior school year unless such reduction is part of a uniform plan affecting the entire district. Salary increases may be provided after annual notice is provided.

Ohio law requires the compensation of school district employees to be uniform for like positions, but salary increases are permitted based on length of service. According to [RC 3319.082](#), the salary offered to each nonteaching employee must not be lower than the preceding year's salary unless a reduction is part of a uniform plan affecting nonteaching personnel of the entire district.

## School closures

### Teachers

[RC 3319.08](#) requires boards of education to pay teachers for all time lost when the schools in which they are employed are closed due to “an epidemic or other public calamity.” These days cannot be charged against a teacher's sick leave. Closings due to epidemics typically result from schools being closed by the board of health because of the dangers associated with a rapidly spreading communicable disease and schools being temporarily closed by a school district based on a high absence rate of its students and teachers. The term “public calamity” is not defined in [RC 3319.08](#), but its meaning appears to be fairly broad.

Ohio law, absent a change in legislation, allows schools to be closed due to public calamities. When school is closed enough that the district falls below the minimum number of statutorily required hours, the school must extend its scheduled year. The issue sometimes arises as to whether a board of education must pay teachers for the makeup days. This becomes a contractual issue to be decided by the parties' collective bargaining agreement. In districts where the collective bargaining agreement does not address makeup days, a court or arbitrator decides, based on the parties' history and intent, whether teachers are required to work on makeup days without



additional compensation.

### **Nonteaching employees**

[RC 3319.081](#) requires boards of education to pay nonteaching school employees for all time lost when the schools are closed because of an epidemic or other public calamity. Because some hourly employees are required to report to work on “snow days,” the question sometimes arises as to perceived unfairness that some hourly employees are allowed to stay home. This situation is sometimes addressed in collective bargaining agreements that provide premium pay for employees required to report to work on calamity days.

### **Fair Labor Standards Act (FLSA) overview**

FLSA is a federal law that establishes standards that govern minimum wage, overtime, record keeping and the employment of minors. These standards apply to full-time and part-time workers in the private sector and federal, state and local governments, including school districts.

### **Minimum wage and overtime**

FLSA generally requires covered employers to pay employees at least the federal minimum wage (\$7.25 per hour effective July 24, 2009) for all hours actually worked. Covered nonexempt employees also are entitled to receive overtime pay at time-and-one-half the regular rate of pay for all hours worked more than 40 hours in a workweek. Covered nonexempt employees include hourly or salaried employees who do not qualify for a professional, executive, administrative, computer or any other exemption under FLSA. The act does not require overtime pay just because work was performed on a Saturday, Sunday, holiday or a regular day of rest, as an employee’s “fixed” workweek may not be Monday through Friday. In particular, a “fixed” workweek is defined as a fixed and regularly recurring period of 168 hours, such as seven consecutive 24-hour periods. Time spent on paid or unpaid leave, whether approved or unapproved, and days canceled due to inclement weather are not counted as “hours worked,” unless otherwise provided by a collective

bargaining agreement. In lieu of overtime compensation, an employee may receive compensatory time, so long as the employee agrees to accept the time either through a collective bargaining agreement or another agreement or understanding. Although it is commendable that an employee may want to put in extra time and effort to complete assignments, working overtime without being compensated by pay or leave time at the rate of time-and-one-half is not permitted under FLSA.

If an employee performs two or more different duties during the workweek with differing regular compensation rates, such as the employee's regular duty and a supplemental contract assignment, overtime compensation is normally computed using one of the following methods:

- **Weighted average method** — To find the weighted average, determine the employee's total earnings for the week and divide this total by the total number of hours worked on all jobs. Once the weighted average has been determined, overtime is calculated at one-and-one-half times this average.

- **Separate rates method** — The overtime rate is based on the type of work performed during the hours in excess of 40 hours per week. For example, suppose an employee receives a lower rate for cutting the grass than he or she receives for working as a custodian. If the hours worked in excess of 40 hours were spent cutting the grass, the overtime premium would be based on the lower rate of pay. Conversely, if all hours worked beyond 40 hours were worked as a custodian, the overtime premium would be based on the higher rate. If the hours worked beyond 40 hours consisted of a combination of both jobs, then the overtime premium would have to be based on the appropriate rate for each task actually performed during the hours worked beyond 40 hours.

FLSA provides exemptions from both minimum wage and overtime pay for employees employed as executive, administrative, professional, outside sales and certain computer employees. To qualify for an exemption, employees must be paid on a salary basis at not less than the weekly rate established by the U.S. Department of Labor (DOL). However, teachers and academic administrative employees

are specifically exempt from the minimum salary requirement so long as they are compensated on a salary basis at a rate at least equal to that of the entrance salary for teachers in the district in which they are employed.

To qualify for an exemption, employees also must meet certain tests regarding their job duties. Job titles do not determine exempt status. For an exemption to apply, an employee's specific job duties and salary must meet all of DOL's regulations requirements. If you have questions about whether your employees qualify for a FLSA exemption, you should consult with your board counsel.

### **Posting and record keeping requirements**

School districts are required to post, and keep posted, a notice explaining FLSA in a conspicuous place in each of their job sites. Although there is no size requirement for the post, employees must be able to readily read it.

Under FLSA, school districts are required to keep certain records for each covered, nonexempt employee. FLSA does not require a particular form for the records but does require that they include certain identifying information about the employee. Documentation includes records on wages, hours and other information as set forth in the regulations, most of which are kept in the ordinary course of business and can be found in payroll records. School districts must preserve records relevant to employee wages such as payroll records, collective bargaining agreements and sales and purchase records for at least three years. Records on which wage computations are based should be retained for two years, including time cards or work tickets, wage rate tables, work and time schedules, and records of additions to or deductions from wages.

For a full list of the basic records school districts must maintain, see the ["Wage and Hour Division Fact Sheet #21: Record keeping Requirements"](#) under FLSA.

### **Employment of minors**

School districts also are required to follow FLSA standards for youth employment. The FLSA provisions for child labor are designed

to protect the educational opportunities of minors and prohibit their employment in jobs that have conditions detrimental to their health or well-being. If the school district employs a minor, a written agreement indicating the agreed remuneration for the minor must be on file.

FLSA allows a district to pay a youth minimum wage of not less than \$4.25 per hour to employees who are under 20 during the first 90 consecutive calendar days (not workdays) after initial employment. After the 90-day period, a school district must pay minor employees at least the federal minimum wage.

Under Ohio law, every minor age 14 to 17 must have a work permit, unless otherwise stated in [RC Chapter 4109](#). The school district must keep all work permits at the superintendent's office until three days after termination of the minor. If a school district employs a minor student to work more than five consecutive hours, the district must provide the student with at least a 30-minute rest period. Minors also are restricted from working in occupations that are considered hazardous or detrimental to their health. See [OAC 4101:9-2](#) for a list of such occupations.

There are several restrictions that apply for the hours worked by a minor:

- Minors who are 14 or 15 are prohibited from working: before 7 a.m. or after 7 p.m. from June 1 to Sept. 1 or during a school holiday of five or more days; more than three hours in a school day; more than 18 hours in a school week; more than eight hours a day when school is not in session; and more than 40 hours per week when school is not in session unless employment is incidental to bona fide programs of vocational cooperative training, work-study or other work-oriented programs with the purpose of educating students, and the program meets the standards established by the state board of education ([RC 4109.07](#)).
- Minors ages 16 and 17 are prohibited from working: before 7 a.m. on a day when school is in session (such as Monday through Friday); before 6 a.m. when school is in session if they did not work after 8 p.m. the previous night; and after 11 p.m. on any night preceding a day that school is in session (such as Sunday through Thursday).

## **Other law and collective bargaining agreement**

FLSA provides minimum standards that may be exceeded but cannot be waived or reduced. School districts must comply with FLSA as well as other federal, state or municipal laws, regulations or ordinances that establish a higher minimum wage or lower maximum workweek than those established under FLSA. Similarly, employers may, on their own initiative or under a collective bargaining agreement, provide a higher wage, shorter workweek or higher overtime premium than provided under FLSA.

Additional information on FLSA can be obtained from the DOL Wage and Hour Division's website at [www.dol.gov/whd](http://www.dol.gov/whd).

# *Employment benefits*

## **During employment**

### **Deferred compensation plans**

Boards of education may procure tax-sheltered annuities for their employees. If the board does so, the employee has the right to designate the licensed agent, broker or company through whom the annuity will be purchased. The board, however, may require that the designated agent, broker or company be selected by at least five employees or 1% of the board's full-time employees, whichever is greater, not to exceed 50 employees. The designated agent, broker or company also may be required to execute a reasonable agreement protecting the school district from any liability as a result of procuring the annuity.

Each board of education that makes tax-sheltered annuities available to its employees is required to adopt a written plan document that describes matters relating to eligibility, benefits, limitations on contributions and the types of investments that are available. All plans must satisfy the "universal availability rule," meaning that all employees generally must be allowed to participate. Federal regulations also impose duties and responsibilities on boards of education when providing annuities. The Internal Revenue Service (IRS) has approved a model plan for public schools and declared that school districts adopting model plan provisions will be deemed to comply with the 403(b) plan regulations with respect to such provisions. The board of education may pay any or all (or none) of the costs associated with tax-sheltered annuities. An employee may pay for an annuity directly or by means of payroll deductions, if

authorized in writing. The Internal Revenue Code (IRC) establishes specific limits on the amount of income that may be “sheltered” through the purchase of annuities in any one tax year. Any board “pickup” of the employee’s share of STRS contributions will decrease the total amount of annuities that will be treated as tax-sheltered.

School employees are entitled to participate in the Ohio Deferred Compensation Plan, which is a plan designed to conform to the requirements of [IRC Section 457](#). These plans, often referred to as “457 plans,” offer an additional means for public employees to obtain favorable tax treatment on their earnings for retirement purposes. One reason 457 plans are attractive is that the contribution limits for these plans are independent of — and thus in addition to — the contribution limits that exist for Section 403(b) annuities.

### **Retirement plan — employer contribution**

The contribution rates a board pays to the retirement systems are set by the appropriate retirement board, subject to certain statutory limitation. The employers’ contribution rate is currently subject to a maximum of 14%.

### **Insurance/group insurance**

Boards of education may provide various types of insurance benefits for their employees. These benefits may be provided through insurance plans or other types of coverage. Health care benefits may be provided through self-insurance and joint purchasing programs, as well as more traditional methods. In conjunction with any joint self-insurance plan or other risk-pooling arrangement for health care, boards of education are authorized to join other political subdivisions to participate in a joint health care cost-containment program. Such programs may include employing risk managers, health care cost-containment specialists and other consultants. If authorized in writing by the employee, premiums for insurance or coverage may be paid by payroll deduction.

Health insurance plans for school employees must conform to best practices established by the Ohio Department of Administrative Services. They also must satisfy the minimum requirements

established by federal law.

Under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA), an employee who is nonrenewed or laid off is entitled to continued participation in the district's group health plan or plans for a period of 18 months, provided the layoff or nonrenewal is not due to the employee's gross misconduct. The spouse and any children of a covered employee also are entitled to continued participation in the plan or plans for a period of up to 36 months when the covered employee dies, when a divorce or legal separation would cause a loss of coverage under the district's plans or when a child loses his or her dependency status. Continued coverage must be provided even if the former employee has access to health care through a spouse's employer. In each instance, the premiums for continued coverage must be paid by the employee, spouse or child involved, unless the board of education has agreed to pay such premiums itself. The premiums paid by the employee, spouse or child for continued coverage may be up to 102% of the regular group rate.

### **Fringe benefits**

In the absence of a statute to the contrary, a board of education may provide its employees with such fringe benefits as it chooses, because boards are vested with broad discretionary powers in the management of the public schools, and boards are given the power to employ and compensate teachers. As a result, a board may provide a wide range of incidental benefits to its employees without running afoul of the laws governing the expenditure of public funds. Likewise, it would seem to be fully within the authority of a board of education to provide plaques, awards, recognition banquets or reimbursement for moving or travel expenses to its employees.

### **Leave**

#### *Sick leave*

Generally, each employee is entitled to 15 days sick leave with pay. Sick leave is not required for substitutes, adult education instructors who are scheduled to work the full-time equivalent of less than 120 days per school year or persons who are employed on an as-needed,



seasonal or intermittent basis ([RC 3319.141](#)). Regular part-time employees are entitled to accrue sick leave at the civil service rate of 4.6 hours for every 80 hours of service.

Each sick day is credited at the rate of 1.25 days per month. As long as the employee receives approval from the responsible administrator, he or she may use sick leave for absences due to personal illness, pregnancy, injury, exposure to contagious disease which could be communicated to others and absences due to illness, injury or death in the employee's immediate family. The employer may, through collective bargaining, limit the number of days which may be used for illness, injury or death in the employee's immediate family.

Unused sick leave can be accumulated up to 120 workdays. Under certain circumstances, a person who accumulated sick leave during previous employment with a public employer may have his or her current sick leave account credited with the previously accumulated sick leave. Collective bargaining agreements and board policies can be used to modify the sick leave allowance.

A board of education must require the employee to furnish a written, signed statement on prescribed forms to justify the use of sick leave. If medical attention is required, the employee's statement shall list the name and address of the attending physician and the dates when he or she was consulted. Falsification of a statement is grounds for suspension or termination of employment. No sick leave shall be granted or credited to a teacher after his or her retirement or termination of employment.

In city school districts, sick leave is governed by [RC 124.38](#), which requires a physician's statement, which includes the nature of the illness if medical attention is required. In addition, employees of city school districts are allowed a credit of 4.6 hours of sick leave for every 80 hours of service completed.

In non-civil service districts, each newly hired regular nonteaching and each regular nonteaching employee of any board of education who has exhausted his or her accumulated sick leave is entitled to an advancement of at least five days of sick leave each year, as authorized by rules adopted by the board. These days are then charged against

the sick leave that the teacher subsequently accumulates.

### *Maternity/parental leave*

School districts should refer to the board's policy with regard to maternity/parental leave entitlements. Although there is no statute that specifically addresses maternity leave, boards of education may adopt policies to cover such situations. It is important to treat women affected by pregnancy the same as employees on regular sick leave and not impose special restrictions on pregnant employees. The employer may not determine when the employee is to take leave but may require advanced notification. The Family and Medical Leave Act (FMLA) mandates that eligible employees be allowed up to 12 weeks in a 12-month period for caring for a newborn or adopted child. Also, under federal law, employers must allow for reasonable unpaid breaks for nursing mothers to express milk for at least one year after the child's birth. The area made available to a mother for this purpose must be a private place — not a bathroom — shielded from view and free from intrusion by co-workers and the public.

### *FMLA*

FMLA is a federal law that sets minimum standards for child care and family leave. FMLA entitles employees to unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. Employees who have not worked at the district for at least 12 months and at least 1,250 hours during the previous year are not eligible to take leave. Eligible employees are entitled to 12 workweeks of leave in a 12-month period for:

- the birth of a child and to care for the newborn child within one year of birth;
- the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
- to care for the employee's spouse, child or parent who has a serious health condition;

- a serious health condition that makes the employee unable to perform the essential functions of his or her job;
- any qualifying exigency arising out of the fact that the employee's spouse, son, daughter or parent is a covered military member on covered active duty.

An employee is entitled to 26 workweeks of leave during a single 12-month period to care for a service member with a serious injury or illness who is the spouse, son, daughter, parent or next of kin to the employee.

A "serious health condition" is defined as an illness, injury, impairment or physical or mental condition that involves one of the following:

- inpatient care;
- absence of more than three calendar days plus treatment;
- pregnancy or parental care;
- chronic conditions requiring treatments;
- permanent long-term conditions requiring treatment;
- multiple treatments of non-chronic conditions.

FMLA contains strict notification provisions. Generally, employers are required to inform employees about their FMLA rights and obligations. In turn, an employee must provide notice of his or her intent to take leave before the leave is to begin or, in emergencies, as soon as practicable. The board may request medical certification for FMLA leave that is taken to care for an employee's spouse, son, daughter or parent who has a serious health condition or for the serious health condition of the employee. Full-time teachers are presumed to meet the 1,250 hours of work in a year requirement; this presumption can be overcome by evidence showing that the employee did not actually work that amount. If an employee fails to meet the service requirements, he or she is not eligible for FMLA leave, even if there is a serious health condition. The employer must notify the employee if the leave is not designated as FMLA leave due to insufficient information or a nonqualifying reason.

Generally, FMLA leave is in addition to other paid time off available to an employee. Employees may take or employers may require employees to use accrued paid leave for all or part of their

12-week FMLA entitlement. FMLA gives employees the right to use accrued paid leave during FMLA leave as long as they follow the employer's leave policy when requesting the accrued paid leave.

Under certain conditions, an employee may use the 12 weeks of FMLA leave intermittently. Although a medical determination usually prevails, FMLA requires the employee to make a reasonable effort to schedule leave to reduce the risk of an undue hardship on the district's operations.

Upon return from FMLA leave, an employee must be returned to the same position or an equivalent position with equivalent benefits, pay, status and other terms and conditions of employment. If the employee is no longer able to perform his or her previous job, then an alternative position with the same benefits, salary and work hours must usually be provided to the disabled employee. After FMLA leave has been granted for an employee's health condition, the employee must specifically reference either the qualifying reason or the need for FMLA leave when making future requests for leave.

Under FMLA, the board may require an employee seeking FMLA leave to submit a certification form completed by the relevant health care provider or employee. While the employer is not required to use any particular form, district representatives may not ask the employee to provide more information than allowed under the FMLA regulations. DOL's FMLA forms are available on its website: [www.dol.gov/whd/fmla/index.htm](http://www.dol.gov/whd/fmla/index.htm). New forms are required for each new condition and FMLA leave request.

FMLA recognizes the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its impact on medical privacy. Like all medical information, all FMLA forms and information about an employee's FMLA leave and condition must be kept confidential and separate from other personnel files. In addition, it is a FMLA violation for an employer to share information about an employee's FMLA condition with others. If an employee submits a complete and sufficient certification signed by the health care provider, the employer may not request additional information from the health care provider. However, the employer may contact the health care provider for purposes of clarification and authentication

of the medical certification (whether initial certification or recertification) after the employer has given the employee an opportunity to cure any deficiencies as set forth in [29 Code of Federal Regulations \(CFR\) § 825.305\(c\)](#). To make such contact, the employer must use a health care provider, human resources professional, leave administrator or management official. Under no circumstances, however, may the employee's direct supervisor contact the employee's health care provider.

### *Vacation days*

Pursuant to [RC 3319.084](#), after one year of service, each full-time, nonteaching employee is entitled to vacation leave with full pay for a minimum of two calendar weeks, excluding legal holidays. Employees receive three weeks of vacation after 10 years of service and four weeks of vacation after 20 years of service. This statutorily allotted vacation applies to full-time employees who work at least 11 months in each calendar year. A board of education typically establishes prorated vacation leave for employees who are in service less than 11 months in each calendar year.

Upon separation from employment, a nonteaching school employee is entitled to compensation at his or her current rate of pay for all unused vacation leave that does not exceed the amount accrued to his or her credit for the two years immediately preceding his or her separation and the prorated portion of his or her earned but unused vacation leave for the current year.

With respect to superintendents, treasurers and other administrators, vacation leave should be addressed in the individual's employment contract and/or board policy ([RC 3319.01](#), [3319.02](#) and [3313.22](#)).

### *Professional leave*

After receiving approval from the superintendent and board, a teacher who has completed five years of service may be allowed a leave of absence with partial pay for one or two semesters but not longer than a school year. The teacher must present a plan for professional growth prior to approval and then provide evidence showing that the

plan was followed. If the teacher has completed 25 years of teaching, he or she is not necessarily required to return to teach for another year.

The board of education may not grant a teacher professional leave unless a satisfactory substitute is available. In addition, the board may not grant professional leaves to more than 5% of its professional staff at a time, nor permit the partial salary to be in excess of the difference between the substitute's pay and the teacher's expected salary. A teacher is not allowed to take professional leave a second time when other members of the staff have filed a request for such leave.

### *Military leave*

Serving in the military reserves entitles an employee to a paid leave of absence for up to one month in each calendar year of service. If the employee is called to active duty that exceeds one month, the board must pay the employee the difference between the employee's salary and the sum of the employee's gross uniformed pay and allowances or \$500, whichever is less. This amount could be supplemented by a board resolution.

A nonteaching employee must enter service within eight weeks of leaving the district and must return with an honorable discharge or certificate of service. If the employee applies within 90 days of his or her discharge, the board is to re-employ him or her under the same type of contract as that which he or she last held in the district. The right to reinstatement is generally limited to five years. For purposes of seniority and placement on the salary schedule, years of absence on extended active duty shall not exceed four years.

Similar rules apply to teachers, but a teacher must enter military service within 40 school days of leaving the district. The employee returning from military service resumes the contract status held prior to entering the military and may not be discharged without cause for a period of one year. The contract resumes at the beginning of a semester.

An employee on military leave is protected from discrimination and receives other special benefits, including the right to continue health insurance at the group rate, an indefinite extension of his or

her educator license, retirement system credit and special benefits under FMLA. A collective bargaining agreement also may govern military leave, but the benefits shall not be less than those provided by the general Ohio military leave statutes.

Employers, including school districts, must be cognizant of the Uniformed Services Employment and Re-employment Rights Act (USERRA) in dealing with employees who serve or have served in the armed forces, reserves, National Guard or other “uniformed services.” USERRA is a federal law intended to ensure that persons in uniformed services:

- Are not disadvantaged in their civilian careers.
- Are promptly re-employed in their civilian jobs upon their return.
- Are not discriminated against in employment based on military service. Ohio also has enacted an analogous law pertaining to uniformed service members ([RC 5903](#)).

Under USERRA, an individual may be absent from work for military duty and retain employment rights for five cumulative years. Employers should be aware that there are several exceptions to this time limitation. USERRA requires that returning service members be re-employed in the job that they would have attained had they not been absent for military service, with the same seniority, status and pay as well as other rights and benefits determined by seniority. Reasonable efforts, such as training or retraining, must be made to enable returning service members to enhance their skills to help them qualify for re-employment. Alternative re-employment positions are required if the service members cannot qualify for the positions that they would have attained absent military service.

Service members must provide advance written or verbal notice to their employers for all military duty unless giving notice is impossible, unreasonable or precluded by military necessity. Additionally, service members may — but are not required to — use accrued vacation or annual leave while performing military duty.

USERRA provides protection for disabled veterans, requiring employers to make reasonable efforts to accommodate disabilities.

DOL, through the Veterans’ Employment and Training Service, assists all persons having claims under USERRA. If resolution is

unsuccessful following an investigation, the service member may have his or her claim referred to the U.S. Department of Justice for consideration of representation in the appropriate district court at no cost to the claimant. In the alternative, individuals may pursue their own claims in court.

### *Involuntary leave*

If the board determines that an employee is mentally or physically disabled, then an employee may be required to take involuntary leave. A teacher is entitled to a hearing under these circumstances in accordance with [RC 3319.16](#), while a nonteaching school employee may request a hearing on an unrequested leave of absence pursuant to [RC 3319.081\(C\)](#).

A board of education may require the employee to take an involuntary leave of absence for a period of up to two consecutive school years, although the board may renew such leave. An involuntary leave of absence may be paid or unpaid. Upon returning to service, the employee shall resume the contract status the employee held prior to the leave of absence.

### *Personal leave*

Under [RC 3319.142](#), a board of education must adopt rules entitling a regular nonteaching employee to a minimum of three days of personal leave at the employee's regular compensation during each school year. While the adopted rules must govern the use and administration of personal leave, the rules do not have to specify each occasion or purpose that personal leave may be taken.

Personal leave of nonteaching employees must be administered by the superintendent or the superintendent's designee. Personal leave days cannot be charged against sick leave earned by the nonteaching employee.

Boards of education are authorized to adopt personal leave policies for teachers and administrators. Under this authority, boards may adopt personal leave policies similar to the personal leave policy adopted for state employees under [RC 124.386](#), which provides for 32 hours of personal leave per year, which may be used for mandatory



court appearances, legal or business matters, family emergencies, unusual family obligations, medical appointments, weddings, religious holidays or any other matter of a personal nature. The district's collective bargaining agreement also may provide guidance regarding personal leave days permitted for teachers.

### *Assault/disability leave*

Boards of education may adopt an assault leave policy “by which an employee who is absent due to physical disability resulting from an assault which occurs in the course of board employment will be maintained on full pay status during the period of such absence” ([RC 3319.143](#)).

A board that chooses to have an assault leave policy must establish rules for the entitlement, credit and use of such assault leave. The rules must include a requirement that the employee provide a signed statement on forms prescribed by that board to justify the use of assault leave. The board must file a copy of its assault leave rules with the State Board of Education and uniformly apply them. If an employee wants to use assault leave and he or she requires medical attention, the board of education must receive a certificate from a licensed physician stating the nature of the disability and its duration before the assault leave can be approved for payment. Falsification of either an employee's signed statement or a physician's certificate is grounds for suspension or termination of employment under [RC 3319.16](#).

If a board authorizes the use of assault leave, it may not charge employees who take such leave for earned or earnable sick leave or other leave granted by a board.

### *Bereavement/funeral leave*

State law is silent in regards to bereavement leave for school district employees. Please consult your district's collective bargaining agreement for negotiated bereavement leave. Also see any relevant board policies regarding funeral leave for nonunion employees and district administrators.

### *Jury duty/court leave*

Under [RC 2313.19](#), a school district must not discharge, threaten to discharge or take any disciplinary action that could lead to the discharge of any permanent employee who is summoned to serve as a juror, so long as the employee gives reasonable notice to the employer of the summons prior to the commencement of the employee's service as a juror and the employee is absent from employment because of the actual jury service. Additionally, the district may not require or request an employee to use vacation or sick leave for time spent responding to a summons for jury duty, participating in the jury selection process or actually serving on a jury.

### *Unpaid leave — extended leave of absence or unpaid leave*

Under [RC 3319.13](#), a teacher or a regular nonteaching school employee may request in writing that a board of education grant him or her a leave of absence for a period of not more than two consecutive school years for educational, professional or other purposes. The school board must grant such leave where illness or other disability is the reason for the request. Such leave may be renewed by the school board at the request of the employee.

When the employee returns to service after his or her leave of absence, he or she must resume the contract status that the employee held prior to the leave of absence.

A teacher who leaves a teaching position for service in the uniformed services and who returns from service must resume the contract status held prior to entering the uniformed services, unless he or she was terminated from uniformed service for dishonorable discharge; other than honorable discharge; sentencing by a court martial; penitentiary confinement; or like circumstances. The returning teacher must pass a physical examination. Written documentation of the physical examination must be completed by the individual who conducted the examination. Such contract status resumes at the first day of the school semester or the beginning of the school year following return from the uniformed services.

Upon the return of a nonteaching school employee from a leave of absence, the board may terminate the employment of a person

hired exclusively for the purpose of replacing the employee who was on leave. If the person employed exclusively for the purpose of replacing the employee while the employee was on leave continues in employment as a regular nonteaching school employee after the employee on leave returns, or if the person is hired by the board as a regular nonteaching school employee within a year after their employment as a replacement is terminated, the person must receive credit for the person's length of service with the school district during such replacement period as prescribed by law.

### *Disability retirement*

Under [RC 3307.63](#), a member participating in STRS who has elected disability coverage, has not attained age 60 and is determined by the STRS board to qualify for a disability benefit must be retired on disability. The disability retirement amount will not be less than 30% nor more than 75% of the member's final average salary, except that it must not exceed any limit to which the retirement system is subject under IRC. If the employee is receiving a disability benefit from SERS, such member will not be eligible for service credit based on the number of years and fractions of years between the date of disability and the date the member attained age 60. A disability retiree under this section, whose disability retirement has been terminated, may apply for service retirement provided by [RC 3307.58](#).

Under [RC 3309.40](#), a member participating in SERS who has elected disability coverage is determined by the School Employees Retirement Board (SERB) to qualify for a disability benefit and has not attained age 60 must be retired on disability.

A member shall not be eligible for service credit based on the number of years and fractions of years between the effective date of disability and attained age 60 if the member is not receiving a disability benefit under [RC 3309.35](#) and is receiving a disability benefit from either SERS or STRS.

Such disability retirement amount must not be less than 30% nor more than 75% of the member's final average salary, except that it must not exceed any limit to which the retirement system is subject

under IRC. The school employees' retirement board is the final authority in determining the eligibility of a member for disability retirement.

## **Holidays**

School districts are required to provide certain holidays. A school district may dismiss schools under its control on the holidays designated for employees and on days approved by the board for teachers' attendance at educational meetings.

Holiday pay is required by statute for certain holidays for nonteaching school district employees. These holidays include: New Year's Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. If any day designated as a legal holiday falls on Sunday, the next succeeding day is a legal holiday. The holidays to which nonteaching employees are entitled are dependent on the number of months the employee works in the year.

School districts may declare any other day to be a paid holiday for nonteaching school district employees, except days approved for teachers' attendance at educational meetings. A nonteaching school district employee who is required to work on a holiday must be granted compensatory time off with regular plus holiday pay. The board also may establish a premium rate for work performed on a holiday.

School districts may provide more holidays than what is provided by statute under a collective bargaining agreement or on their own initiative.

## **Local professional development committees (LPDC)**

School districts are required to establish LPDCs to oversee and determine whether continuing education coursework that a teacher proposes to complete meets standards established by the State Board of Education for license renewal.

In districts with collective bargaining agreements, LPDCs are established in accordance with the terms of the agreement. If a collective bargaining agreement is silent on the subject of LPDCs, the district board of education shall establish the structure of district

LPDCs. Although a single LPDC is sufficient, multiple LPDCs may be established. These LPDCs may have a building-level scope of operation or may be established separately for ages or grade levels.

Each LPDC must consist of at least five individuals, at least three of which must be classroom teachers employed by the district. Each LPDC also must include one principal and one other employee appointed by the superintendent. An LPDC may have more than five members, but a majority of the committee must be classroom teachers.

If teachers are represented by a bargaining unit, the selection of the teacher members is made by the bargaining unit representative or as indicated in the collective bargaining agreement. If no bargaining unit exists, committee members are selected by majority vote of the classroom teachers within the scope of the committee. For example, if the committee has a building-level scope, the teacher and principal members must be assigned to that building, and the teacher members must be elected by majority vote of the classroom teachers in that building. If the committee has a district-level scope, the teacher members are elected by majority vote of the classroom teachers, and the principal member must be elected by majority vote of the principals in the district.

The terms of office of LPDC members are established by the district board of education. The district superintendent is responsible for appointing replacements to fill any administrative vacancy. The remaining members of the committee fill any vacancy by a classroom teacher by majority vote. Any member appointed to fill a vacancy shall hold the position for the remainder of the term.

A chairperson and other officers are selected at the first meeting, and the committee adopts rules for the conduct of its meetings. Thereafter, the committee meets at the call of the chairperson or upon filing of a petition signed by a majority of the committee. Whenever an administrator's coursework plan is being discussed or voted upon, the LPDC shall, at the request of one of its administrative members, cause a majority of the committee to consist of administrative members by reducing the number of teacher members voting on the plan.

## Post-employment

### Severance pay

Severance pay for school district employees is paid as a percentage of unused sick leave. This payment of the percentage of sick leave eliminates the employee's entire balance of accrued and unused sick leave.

Severance pay for retiring employees is governed by [RC 124.39\(B\)](#). Upon retirement, an employee with a total of 10 or more years in any public employment may elect to receive payment for one-fourth of the employee's unused sick leave, up to a total of 30 days. Payment may be made in a lump sum or in multiple payments and must be paid based on the employee's rate of pay at the time of retirement.

"Retirement" is defined as the time at which the employee begins to receive benefits from STRS, including any disability retirement. The rate of "severance pay" is the rate of pay at the time of retirement and eliminates the teacher's entire sick leave accrual at the time the payment is made.

Boards of education also are permitted to adopt local policies granting payment of more than one-fourth an employee's accumulated sick leave or for more than 30 days. The board also may allow for qualifying years of service to be less than 10. As a result, it is important to refer to board policy to determine district practices.

Boards of education may adopt a policy allowing a non-retiring employee to receive payment for unused sick leave upon termination of employment other than retirement ([RC 124.39\(C\)](#)).

### Employee death

#### *Payroll*

All wages and personal earnings due to a deceased employee should be paid to the following individuals under [RC 2113.04](#) in order of preference as available:

- surviving spouse;
- any one or more children 18 years of age or older;
- the deceased's father or mother.

No testamentary letter or letter of administration issued by the estate of the employee is required if the wages and earnings are paid to

any of the referenced individuals. However, if none of the individuals are available, a testamentary letter or letter of administration is required to release any wages or personal earnings due to a deceased employee. The payment of wages or personal earnings in this manner results in immunity to the employer from any subsequent claim for wages or personal earnings.

### *Benefits*

STRS and SERS create provisions for beneficiaries of a deceased employee that substitute payment of the accumulated account of the deceased employee for a monthly benefit calculated based upon the deceased employee's length of employment and final average salary. See the charts in [RC 3307.66](#) and [RC 3309.45](#) respectively to determine the exact amount of monthly benefit. Payments shall begin on the first day of the month the individual becomes a qualified survivor.

### **Post-employment health care benefits**

The State Teachers Retirement Board (STRB) is authorized to procure health care, hospitalization and surgical care coverage for STRS retirees. These benefits also are available for the retiree's spouse, dependents and surviving beneficiaries. STRB may determine the cost of such coverage and may pay all or part of the coverage from STRS funds. STRB also may establish a program for members to obtain coverage for long-term health care benefits and the cost thereof for retirees.

For retirees over 65 receiving a monthly benefit from STRS, STRB is required to provide benefits equivalent to Medicare if the retiree is not eligible for Medicare. Such insurance coverage also must be available to the retiree's spouse or widow if the spouse or widow is over the age of 65 and is not eligible for Medicare. One-half of the premium is paid by STRS and the other half is paid by the beneficiary.

If the STRS retiree continues working for an employer — public or private — that offers a medical plan to employees working in “comparable positions,” STRS only provides secondary medical

coverage to the retiree. However, if the employees in “comparable positions” are required to pay more for health care coverage than full-time employees, the retiree may participate in primary coverage of the STRS plan.

### **COBRA continuation health coverage**

COBRA entitles certain former employees, retirees, spouses, former spouses and dependent children to temporarily continue health coverage at group rates. Individuals are entitled to elect COBRA continuation coverage when the group health plan is covered by COBRA, a qualifying event occurs and the individual is a qualified beneficiary for that event.

#### *Who is entitled?*

An individual entitled to receive health insurance under COBRA, referred to as a “qualified beneficiary,” is anyone currently covered by a group health plan offered by the employer. A qualified beneficiary is typically a former employee, employee’s spouse or employee’s dependent child. “Qualifying events” are specific events that would cause an individual to lose health coverage.

The following are “qualifying events” for employees:

- voluntary or involuntary termination for reasons other than gross misconduct;
- reduction in the number of hours of employment that result in the employee no longer being entitled to health insurance.

The following are “qualifying events” for spouses of employees:

- voluntary or involuntary termination of the covered employee’s employment for any reason other than gross misconduct;
- reduction in the hours worked by the covered employee;
- covered employee becoming entitled to Medicare;
- divorce or legal separation of the covered employee;
- death of the covered employee.

The following are “qualifying events” for dependent children of employees:

- loss of dependent child status under the plan rules;
- voluntary or involuntary termination of the covered employee’s



- employment for any reason other than gross misconduct;
- reduction in the hours worked by the covered employee;
  - covered employee's becoming entitled to Medicare;
  - divorce or legal separation of the covered employee;
  - death of the covered employee.

### *Notice and election procedures*

Generally, when an employee leaves employment — resigns, quits, is laid off or terminated — for any reason other than an act that constitutes “gross misconduct,” the employee must be offered COBRA health insurance coverage. All qualified beneficiaries must be offered coverage identical to coverage available to similarly situated beneficiaries who are not receiving COBRA coverage. Generally, the beneficiary must receive the same health coverage that he or she had immediately before qualifying for COBRA coverage.

When a qualifying event occurs which would no longer allow a beneficiary to receive health insurance, the employer must notify its COBRA administrator within 30 days. This is typically following an employee's death, termination, reduction of hours or the beneficiary becomes entitled to Medicare.

All beneficiaries must be sent an election notice within 14 days after the plan administrator learns that a qualifying event has occurred. The beneficiary has 60 days to elect COBRA coverage. If elected, coverage is generally available up to 18 months, although a divorced spouse may remain on COBRA coverage for up to 36 months. The person electing COBRA has 45 days after the election to pay the initial premium.

The entire premium for COBRA coverage may be charged to the beneficiary electing coverage, but costs may not exceed 102% of the costs for insurance coverage of similarly situated individuals who have not incurred a qualifying event. In other words, a former employee or other beneficiary electing COBRA coverage can be charged an amount for the COBRA premium equal to the costs of health insurance for current employees plus an additional 2% for an administration fee.

### *Early termination*

Coverage may be terminated before the end of the maximum period of coverage for any of the following reasons:

- premiums are not paid in full on a timely basis;
- the employer no longer maintains any group health plan;
- a qualified beneficiary begins coverage under another group health plan;
- a qualified beneficiary becomes entitled to Medicare benefits after electing COBRA coverage;
- a qualified beneficiary engages in conduct that would justify the plan in terminating coverage of a similarly situated participant or beneficiary not receiving continuation coverage (e.g., fraud).

# *Employment issues*

## **Discipline**

The employment relationship between a school board and its employees is generally governed by state law and also may be subject to board policy and/or the provisions of a collective bargaining agreement.

### **Letters of reprimand**

Letters of reprimand are not regulated by law but may be required in a progressive discipline policy or provisions of a collective bargaining agreement dealing with discipline. Letters of reprimand fall within the general category of prior warnings of improper conduct. A prior warning typically advises the offender that future conduct of a similar nature will result in specific disciplinary action. Warnings do not always need to be in writing unless so required by the district's collective bargaining agreement or board policy. When warnings are required to be written, the requirements should be firmly and consistently enforced. A letter of reprimand also may be a form of discipline which sets forth the employee's improper conduct and the possible consequences of further improper conduct.

Failure to issue the required letter of reprimand or give the required prior warning may be grounds for an arbitrator's refusal to sustain disciplinary action, especially if such disciplinary action is discharge. Generally, however, no letter of reprimand or warning is required by an arbitrator if the offense is serious and legally and morally wrong.

Letters of reprimand should be provided to the employee and a copy should be placed in the employee's personnel file. Further, the employee should be put on notice that the reprimand will be placed in his or her personnel file. The easiest way to accomplish this is by

including a copy to the personnel file on the letter of reprimand. Employers are cautioned to review any applicable collective bargaining agreements and board policies prior to issuing a letter of reprimand and to strictly adhere to any applicable provisions.

### **Last chance agreements**

Last chance agreements are not governed by law but may be provided for in collective bargaining agreements or board policy. Last chance agreements are typically entered into between an employer and employee in lieu of the employer pursuing termination. Last chance agreements set forth special terms, conditions and commitments as to future conduct an employee must meet in order to continue his or her employment. These agreements also contain consequences if the employee fails to comply with the terms of the last chance agreement or engages in further misconduct. Typically, if an employee violates the terms of a last chance agreement, he or she automatically is terminated and does not have recourse to grievance procedures. Last chance agreements are most often used when an employee has engaged in serious misconduct but is believed to be a good candidate for rehabilitation, such as an individual with a drug or alcohol problem who has sought or received treatment.

### **Suspensions**

#### *Nonteaching employees in civil service school districts*

In civil service school districts, suspension or demotion of nonteaching employees is permitted by [RC 124.34](#), and the board of education must comply with the notice procedures therein. In such districts, the procedures that govern removal are the same procedures that must be followed when a suspension is for more than 24 hours of pay for nonexempt employees and 40 hours of pay for employees exempt from overtime laws. A district may require a civil service employee to work during a suspension provided the suspension is paid.

In city school districts applying civil service rules, if the suspension is for a period of more than 24 hours of pay for nonexempt employees and 40 hours of pay for employees exempt from overtime

laws, the employee must be given written reasons for the suspension and has the right to appeal the suspension to the [Civil Service Commission](#). No appeal is provided for suspensions of less than 24 or 40 hours of pay, nor does the statute require that reasons for the suspension be given. However, some minimal form of due process, usually an informal meeting or discussion, must be provided prior to any suspension. Layoff or displacement appeals by nonteaching employees in civil service districts are governed by [RC 124.328](#).

The decision of the [Civil Service Commission](#) may be appealed to the common pleas court of the county in which the district is located pursuant to [RC 2506.01](#).

### *Nonteaching employees in non-civil service school districts*

In non-civil service school districts, including local, exempted village and joint vocational school districts and educational service centers, boards of education and governing boards also are authorized to take disciplinary action, including suspensions, against nonteaching school employees but must follow the procedure prescribed by [RC 3319.081](#).

The statute permits the school district to suspend or demote an employee for the same specified infractions for which his or her contract may be terminated. The type of infractions for suspension, demotion or termination include violation of written rules of the board of education, incompetence, inefficiency, dishonesty, drunkenness, immoral conduct and insubordination, discourteous treatment of the public, neglect of duty or any other acts of misfeasance, malfeasance or nonfeasance. In addition, the commission of sexual battery in violation of [RC 2907.03\(A\)\(7\)](#) is grounds for termination.

Unlike the civil service procedure, any suspension or demotion must be accompanied by a written notice served upon the employee by certified mail regardless of the length of time of such suspension. The employee also has the right of appeal to the court of common pleas.

There is no express statutory requirement that a board of education afford a nonteaching employee a hearing prior to suspension.

However, some courts have implied one on constitutional due process grounds. Thus, at a minimum, a meeting or discussion should be provided prior to suspension.

### *Suspension of teachers*

State law does not provide for the suspension of a teacher as an ordinary disciplinary measure. This is in direct contrast to laws governing nonteaching employees that provide for short-term disciplinary suspensions in both civil service and non-civil service districts. The absence of a provision permitting boards to suspend teachers has led to mixed results in the courts. Suspension of a teacher with pay may be used as a disciplinary measure having the same basic effect as the issuance of a reprimand because it does not deprive the teacher of pay or position.

However, a board may suspend a teacher pending final action to terminate the contract if, in the board's judgment, the character of the charges warrants such action under [RC 3319.16](#). The statutes impose no requirements of notice and reasons in such a suspension action. A federal court in Ohio has held that the portion of [RC 3319.16](#) dealing with suspension — which does not require notice or a hearing — is not facially unconstitutional. However, the U.S. Supreme Court's decision in *Cleveland Bd. of Edn. v. Loudermill*, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d. 494 (1985), requiring a pretermination hearing as a matter of constitutional due process for the discharge of a public employee, clearly suggests that a hearing may be required before a suspension without pay. Accordingly, the prudent course would be to provide a pre-suspension hearing notice of the charges, along with an explanation of the evidence, and an opportunity to respond. Such action should satisfy the due process requirements as *Loudermill* does not require a full evidentiary hearing or the appointment of a neutral hearing officer in a pre-disciplinary context.

No pre-suspension hearing is required when the suspension is based on the employee's arrest and charge or indictment for a felony and there is no opportunity for a post-suspension hearing.

Under [RC 3319.40](#), a board of education is required to suspend

a teacher from all duties that require the care, custody or control of a child during the pendency of certain kinds of criminal charges against the teacher specified in [RC 3319.31](#). It is not a suspension of the teacher's contract but rather a suspension of duties during the pendency of the criminal action against the person. In these situations, the teacher can be reassigned to administrative duties that do not involve the care, custody or control of children.

## **Termination**

### *Teacher/administrator terminations*

Under [RC 3319.16](#), a board of education may terminate the contract of a teacher, superintendent or other administrator at any time for "good and just cause" regardless of whether the contract is continuing, limited or extended limited. The "good and just cause" standard for teacher terminations prevails over any conflicting standard found in a collective bargaining agreement entered into after October 2009. The same statute applies by reference to administrators' contracts. See [RC 3319.01](#) and [3319.02](#).

Prior to the change in the law in 2009, the teacher termination statute was more explicit in identifying the specific reasons for terminating a teacher's contract. These reasons included gross inefficiency, morality and willful and persistent violations of reasonable board regulations as grounds for termination, along with "other good and just cause." Ohio courts decided a number of cases interpreting each of these statutory grounds for termination.

Presumably, many of the situations that have been interpreted under the prior reiteration of the termination statute will recur over time and will cause boards of education to seek termination because legal precedent under the prior statutory formulation may inform decisions under the current law's more general wording. Some of the major cases may be instructive in cases where the reasons for termination are defined using similar reasons.

However, they do not provide an ironclad guarantee that termination based on similar acts or omissions will be upheld in the future. Teacher and administrator terminations are decided on a case-by-case basis. Decisions often turn on the reliability of the

evidence that specific conduct occurred rather than on the nature of the conduct itself. Moreover, termination cases often involve multiple derelictions rather than a single act of omission and, in such cases, the decisions typically do not indicate whether any one dereliction by itself would justify termination.

In addition, [RC 3319.16](#) expressly states that the commission of sexual battery in violation of [RC 2907.03\(A\)\(7\)](#) is grounds for termination of a teacher's contract.

### *Teacher/administrator termination procedure*

The termination of a teacher or administrator for cause is a serious matter and the statutes mandate various procedural safeguards including a requirement for specific written charges, a hearing and an opportunity for the employee to appear to defend him or herself. The procedure is provided in [RC 3319.16](#) and [3319.161](#) and includes the following steps:

1. Before terminating the contract, the board sends written notice, signed by the treasurer, to the teacher of its intent to consider termination. Such notice must contain the full specification of the grounds for such consideration.
2. Within 10 days after receipt of notice, the teacher may file with the treasurer a written demand for a hearing before the board or a referee.
3. If the teacher does not request a hearing 10 days after receipt of the notice from the board, the board proceeds with a resolution to terminate the teacher's contract. A majority vote is required.
4. If the teacher requests a hearing, the board sets a time frame for the hearing which must be within 30 days of board's receipt of the teacher's demand for hearing and must give the teacher at least 20 days written notice of the time and place of the hearing. If a referee is demanded, the treasurer also must give 20 days notice to the superintendent of public instruction. No hearing can be held during summer vacation, unless the teacher consents.

Under [RC 3319.16](#), the board may suspend a teacher pending final action to terminate if it determines such action is warranted given the charges against that teacher. No statute requires notice



and explanation of charges for suspensions, but this course of action is highly recommended, along with an informal hearing before the board, especially if the conduct at issue would allow the State Board of Education to revoke the teacher's license. Per [RC 3319.40](#), no pre-suspension hearing is required for suspending a teacher facing criminal charges.

If the termination concerns conviction of a statutorily specified crime or conduct unbecoming to the teaching profession ([RC 3319.31](#) and [RC 3319.39](#)), the superintendent or, in some circumstances the board president, must notify the superintendent of public instruction. While boards of education are required to report certain specific teacher misconduct to the superintendent of public instruction, they can proceed with their own investigations and initiate suspension or termination proceedings without waiting for the State Board — or prosecutor, in cases of criminal misconduct — to complete its investigation and take action.

#### *Termination of nonteaching non-civil service employees*

A nonteaching employee may be terminated for a violation of written rules of the board of education, incompetence, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, conviction of a felony or any other acts of misfeasance, malfeasance or nonfeasance. In addition, the commission of a sexual battery in violation of [RC 2907.03\(A\)\(7\)](#) is grounds for termination.

In determining whether to terminate a nonteaching employee's contract, a board of education may consider an employee's conduct in previous years as long as it is used in conjunction with evidence of misconduct in the immediate past. Excess absenteeism, tardiness and insubordination are cause for termination. However, where a board's decision is not supported by a preponderance of the evidence, it likely will be reversed. A court may affirm, disaffirm or modify the board's action, but some cases have held that a court has no authority to remand the case to the board for further proceedings.

### *Termination of nonteaching civil service employees*

In any school district, a nonteaching employee may be terminated for incompetence, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty or other acts of misfeasance, malfeasance or nonfeasance. In addition, the commission of sexual battery in violation of [RC 2907.03\(A\)\(7\)](#) is grounds for termination.

In city school districts where civil service rules are applicable, a nonteaching employee also may be terminated for violating the Civil Service rules and any other failure of good behavior or a violation of the Ohio Ethics Code. Nonteaching employees of city school districts where civil service rules apply are governed by [RC 124.34](#), and any change in employment must be made pursuant to such statute, notwithstanding the fact that original contracts of employment may have been drawn pursuant to [RC 3319.081](#).

Prior to removal, the employee must be given oral or written notice of the charges, an explanation of the employer's evidence and an opportunity to present his or her side of the story, either orally or in writing. Courts have emphasized that the pre-termination hearing need not be elaborate. Thus, a full evidentiary hearing is unnecessary. Employees should, after notice and an explanation of the evidence, be allowed to tell their side of the story. The nonteaching employee must be furnished with a written copy of the order stating the reason for his or her removal. The order must be sufficiently detailed so that the employee is afforded an opportunity to refute the case made against him or her. Court decisions have reversed affirmations of terminations by the [Civil Service Commission](#) when employees were not afforded *Loudermill* rights.

The removal order must be filed with the [Civil Service Commission](#). The employee has 10 days to file a written appeal with the commission. A civil service appeal must be heard within 30 days by the commission or by a trial board appointed by the commission.

The [Civil Service Commission](#) hearing is to determine whether there are statutory grounds for the employer's actions. A party may seek review of the [Civil Service Commission's](#) decision in the court of common pleas.

## **License revocation**

### *Revocation or suspension of certificate or license generally*

Under [RC 3319.31](#), the State Board of Education may refuse to issue or may limit, suspend or revoke an educator's license for engaging in an immoral act, incompetence, negligence or conduct unbecoming to the profession. Several courts have required a showing of a nexus between the teacher's conduct and duties before revoking a teaching license.

Before acting under [RC 3319.31](#) and pursuant to [RC 3319.311\(B\)](#), the State Board must notify the person of the charges and provide an opportunity for a hearing under [RC Chapter 119](#). In assessing the level of discipline, the State Board should give considerable deference to the findings and recommendations of the hearing officer. If a final order is not timely issued, the suspension order is dissolved, but such dissolution does not invalidate any subsequent final order of the State Board. The superintendent of public instruction may enter into a consent agreement on behalf of the State Board with any person against whom action is being taken under [RC 3319.31](#). No surrender of a license is effective until accepted by the State Board unless the surrender is pursuant to a consent decree. A court reviewing a State Board order must review the record and determine if the order is based on reliable, probative and substantial evidence. If so, the court must defer to the State Board and not simply substitute its judgment for that of the board. However, a court may reverse the State Board's order if it contradicts the manifest weight of evidence in the record.

Under [RC 3319.151](#), the State Board must suspend an employee's license if it finds that the employee revealed to a student any specific question known to be part of a state-required achievement assessment or otherwise assisted a student to cheat on such a test.

### *Discretionary license revocation*

In addition to the mandatory license revocation for specified offenses, the State Board may initiate a license suspension, revocation or limitation for any felony offense of violence, theft offense or drug offense other than a minor misdemeanor that is not on the

mandatory revocation list. As with mandatory revocations, eligibility for “intervention in lieu of conviction” or a pretrial diversion program for any specified crime also triggers the State Board’s discretion to initiate proceedings. If the State Board decides to take action based on a crime giving it discretionary license revocation authority, the usual due process procedures under [RC 3319.311](#) apply.

A variety of reporting requirements ensure that the State Board will receive notification of a license holder’s criminal conduct, including mandatory reports from the school’s chief administrator and the prosecutor on the case and from the BCI-retained applicant fingerprint database.

### *Suspension of license*

The suspension of an educator’s license may be required when the holder of the license has defaulted on his or her legal obligation to pay child support ([RC 3319.312](#)). When a court or child support agency has made a final determination to such effect, it must notify the license holder and inform him or her of the potential loss of licensure which may result from continued nonpayment. If and when the court or enforcement agency notifies the State Board of Education of such nonpayment, the State Board must suspend all licenses held by the individual and refuse any application for new licenses or renewals. The educator’s licensure privileges will be reinstated when the State Board receives notification from the court or child enforcement agency that the teacher has made the required payments, the arrearage is being collected through wage withholding or a new or modified child support order is in effect and the teacher is in compliance with such order.

The State Board is authorized, but not required to, suspend or revoke the license of any educator found to have willfully reported erroneous, inaccurate or incomplete data for use by the Education Management Information System under [RC 3301.0714\(N\)](#).

Any teacher, who without the consent of the board of education terminates his or her contract with such board after July 10 of any school year or during the school year, may have his or her educator’s license suspended for not more than one year upon complaint by the

employing board and investigation by the State Board of Education. If, prior to July 10, a teacher wishes to voluntarily terminate his or her contract, the teacher must provide five days written notice to the employing board. The failure to provide such notice also may result in a one-year suspension of the teacher's license.

Ohio law makes clear that a person without a valid license is prohibited from receiving any compensation for performing duties as a teacher in an Ohio public school. Additionally, having a valid license is an implied condition of employment with an Ohio board of education. Thus, the suspension of a valid license results in no legal obligation on the part of a board to maintain an educator in employment. School districts that wish to continue to employ an employee whose license has been suspended should consult with their board counsel about potential available options.

### **Investigations related to license revocation**

The State Board or superintendent of public instruction is authorized by [RC 3319.311](#) to investigate any information about a person that reasonably appears to be a basis for action under [RC 3319.31](#). Any information obtained during an investigation is confidential and not a public record under [RC 149.43](#). If no action is taken within two years after completion of an investigation, all records of the investigation must be expunged.

The superintendent of public instruction is to review the results of each investigation and determine, on behalf of the State Board, whether action under [RC 3319.31](#) is warranted. He or she is to advise the State Board of his or her determination at a meeting of the board. Within 14 days of the next meeting of the State Board, any State Board member may ask that the question of initiating action under [RC 3319.31](#) be placed on the State Board's agenda for the board's next meeting. Prior to initiating such action against a person, the person's name and any other personally identifiable information must remain confidential. Before acting under [RC 3319.31](#), the State Board must notify the person of the charges and provide an opportunity for a hearing under [RC Chapter 119](#).

## **Mandatory license revocation for criminal conduct**

The State Board of Education is required under [RC 3319.31](#) to revoke a teacher's existing or expired license and refuse to issue or renew a license on application for any person who has been convicted of, found guilty of or pled guilty to a number of specified crimes. Mandatory revocation and refusal to issue or renew also applies to a teacher who is eligible for "intervention in lieu of conviction" or a pretrial diversion program for any of the specified crimes. The State Board may designate the revocation authority to the superintendent of public instruction.

The list of offenses requiring mandatory license revocation or nonissuance is extensive and includes, but is not limited to: murder, manslaughter, reckless homicide, felonious and aggravated assault, kidnapping, abduction, extortion, various weapon offenses, various child abuse and endangerment offenses, arson, terrorism-related offenses, various theft offenses, several incitement and riot offenses, unlawful abortion, intimidation, retaliation, escape, a panoply of sexually oriented offenses and a wide variety of drug trafficking offenses. Consult [RC 3319.31](#) and board counsel for a complete list of offenses. Board action is required for substantially similar crimes that have been committed in jurisdictions outside Ohio.

License revocation or nonissuance for a specified offense is mandatory, does not require investigation and is effective immediately at the date and time the State Board issues the written order. The teacher has no right to an administrative hearing and the State Board's action is not subject to appeal under [RC Chapter 119](#). Revocation remains in force during the pendency of an appeal on a guilty plea, finding of guilt or a conviction. If the conviction, guilty plea or finding of guilt is subsequently overturned, the State Board must initiate proceedings to reconsider the license revocation or denial within 30 days after receiving notification of the reversal. The person whose license was revoked or denied also may file a petition with the State Board for reconsideration along with the appropriate court documents. The State Board must determine whether the person committed the criminal act in question, regardless of the overturned conviction. The board must offer the former license

holder or applicant an adjudication hearing under [RC Chapter 119](#) but need not apply criminal procedures at the hearing. Instead the board may base its decision on the grounds and evidentiary standards it employs for other licensure adjudications under [RC 3319.31](#) and [RC 3319.311](#). The former license holder or applicant may appeal the State Board's decision to court.

A person whose license is automatically revoked or denied based on criminal behavior is prohibited from applying for any license the state board issues.

## **Reporting teacher misconduct**

### *Nonrenewal and termination reporting obligations*

Under [RC 3319.313](#), a superintendent must report a licensed employee's misconduct to the state superintendent of public instruction if the superintendent knows that the employee has been convicted of or pleaded guilty to a crime that would disqualify the employee from employment under [RC 3319.39](#) or licensure under [RC 3319.31](#). A report also is required if the board has initiated termination or nonrenewal proceedings or has terminated or nonrenewed a licensed employee based on a reasonable determination that the employee has committed an act unbecoming to the teaching profession or an offense that would disqualify the employee from employment or licensure.

The Ohio Licensure Code of Professional Conduct for Ohio Educators lists a number of acts that constitute "conduct unbecoming the teaching profession" in eight different categories: professional behavior in general; professional relationships with students; accurate reporting of information submitted to government entities or to the board of education, including reasons for leaves of absence; criminal acts; confidentiality violations; drug, alcohol and tobacco-related violations; improper acceptance of compensation for self-promotion or personal gain; and improper abandonment of or refusal to perform contractual obligations.

The superintendent must file a report if the employee resigns under a threatened termination or nonrenewal, or due to an investigation into whether the employee committed the act.

A superintendent's failure to make a required report is grounds for the State Board to take action against the superintendent's license. Failure to make a required report is a fourth-degree misdemeanor, rising to a first-degree misdemeanor if the report is for child abuse or neglect and additional abuse or neglect occurs after the superintendent's failure to report. A good faith report to the superintendent of public instruction entitles the reporter to civil immunity, while knowingly false reports may lead to civil and criminal penalties.

The report should be submitted to the superintendent of public instruction and include the employee's name, social security number and a factual statement regarding the conditions that led to the report. The board must maintain, in the employee's personnel file, the reports of any investigation. If, after the investigation, the superintendent of public instruction determines not to initiate any action against the employee's license, the report must be moved from the personnel file into a separate public file.

A school employee or other person who in good faith reports information about a license holder's misconduct to the State Board is entitled to confidentiality and is immune from civil liability that might otherwise be imposed as a result of providing that information.

A school employee who in good faith reports misconduct to his or her superintendent or designee also is entitled to civil immunity. However, knowingly making a false report alleging misconduct is a first-degree misdemeanor. In addition to criminal sanctions, a knowingly false report can result in civil liability. The maker of the report also is liable for attorneys' fees and restitution of any attorneys' fees incurred in defending against the false report.

The superintendent of public instruction must review the results of each investigation and determine on behalf of the State Board whether action under [RC 3319.31](#) is warranted. He or she is to advise the State Board of his or her determination at a meeting of the board. Within 14 days of the next meeting of the State Board, any State Board member may ask that the question of initiating action under [RC 3319.31](#) be placed on the State Board's agenda for that next meeting. Prior to initiating such action, the person's name and any



other personally identifiable information must remain confidential.

Under [RC 3319.52](#), the prosecutor is required to notify the State Board of Education and employing school district board of education, if known, on forms prescribed and furnished by the State Board of certain crimes by licensed school district employees. The obligation applies when a licensed employee is convicted, found guilty or found eligible for intervention in lieu of conviction or agrees to participate in a pretrial conversion program for the specified crimes. The obligation applies to any crime that either automatically would require the State Board to revoke a license or give the State Board discretion to revoke a license under [RC 3319.31](#). Under [RC 3319.20](#), the prosecutor has a similar reporting requirement for nonlicensed school district employees, with respect to any of the following:

- any felony;
- any offense of violence which includes a wide variety of assaultive conduct;
- any felony theft offense which includes a broad range of violations involving some element of larceny or fraud;
- any felony drug abuse offense which includes a majority of the offenses involving controlled substances;
- unlawful sexual conduct with a minor;
- sexual imposition;
- sexual solicitation/importuning of a person based on that person's age;
- employee found eligible for intervention in lieu of conviction or agreed to participate in a pre-trial diversion program for one of the listed offenses.

In addition to the prosecutor's duty to notify the State Board of any licensed employee's conviction of a crime, any school district may request that BCI be notified when any of its employees are arrested for or convicted of any offense. The notification would apply to employees in the retained applicant fingerprint database who were initially screened for employment after the database was required.

### **Driver reporting requirements**

Bus drivers are subject to various local, state and federal

requirements, which are governed primarily by ODE rules under [OAC 3301-83-06](#) (personnel qualifications), [OAC 3301-83-07](#) (physical qualifications) and [OAC 3301-83-10](#) (training programs). The requirements have been adopted with the advice of the director of public safety.

Bus drivers must be certified, and the certification must state that the person employed is at least 21 years of age, of good moral character and qualified physically and otherwise for the position. Annual physical examinations must be provided and paid for by the certifying authority, and those examinations must conform to regulations adopted by the State Board of Education found in [OAC 3301-83-07](#). The employing board of education also must verify a satisfactory criminal records check, satisfactory driving abstract and negative pre-employment drug test [RC 3327.10\(I\)](#). Drivers are disqualified if the background check reveals any criminal conviction that would disqualify a teacher for licensure under [RC 3319.31\(C\)](#). In addition, reviews of driving records are to be conducted semiannually through ODE and may not show any of the following:

- more than six points during the past two years;
- a conviction of driving under the influence of alcohol and/or a controlled substance during the past six years;
- two or more serious traffic violations within the past two years or any railroad crossing violation during the past year ([OAC 3301-83-06\(B\)](#)).

A new criminal record check must be conducted at least every six years per [RC 3327.10\(I\)](#), along with driver recertification per [OAC 3301-83-10](#). Additionally, drivers must report, in writing to the superintendent, convictions of traffic violations and suspensions of their commercial driver's license (CDL) ([RC 3327.10\(D\)](#)).

[RC 3327.10](#) provides that a bus driver's certificate may be revoked by the certifying authority if the bus driver fails to comply with the [RC 3327.10\(D\)](#) reporting requirements or is convicted of or pleads guilty to any offense resulting in the loss or suspension of driving privileges. Prior to such revocation, the bus driver should be provided with an opportunity to correct any misunderstandings since the statute permits revocation only on proof of the driver's guilt

when prior traffic violations of a sufficient number or seriousness are discovered. It often happens that the bus driver is uninsurable. In such cases, the courts have generally viewed insurability as an independent basis for disciplinary action up to and including termination.

### **Drug testing**

Drug and alcohol testing is mandated by the U.S. Department of Transportation pursuant to the Omnibus Transportation Employee Testing Act for all bus drivers, applicants and other employees required to have a CDL. The drug and alcohol testing is required pre-employment, post-accident, at random, upon return to duty following a violation or when the employer has a reasonable suspicion that the employee is under the influence of drugs or alcohol.

Random alcohol testing also is required at a minimum annual rate of 10% of all positions and random drug testing is required at a minimal annual rate of 50% of all positions. These minimum annual testing rates may be adjusted by the Federal Highway Administration according to certain experience criteria. The procedures for testing also are governed by the federal regulations and include a requirement for split sample testing on all urine tests for controlled substances. Employers having actual knowledge of certain alcohol violations are required by the Federal CDL regulations immediately to remove the driver from service. If, for example, the employer has actual knowledge that the driver has used alcohol within the last four hours or actual knowledge that the driver has a blood alcohol concentration of 0.04 or higher, the employer cannot allow the driver to perform or continue to perform any safety sensitive functions.

Under [RC 4506.15](#) and [4506.16](#), a person who has any detected level of alcohol or drugs in his or her blood, breath or urine while operating a school bus must be put out of service for 24 hours. Refusing to submit to a blood alcohol or urine test will result in the loss of the CDL for one year, as will leaving the scene of an accident. Driving a school bus with a blood alcohol content of .04% or less or driving any type of motor vehicle, including a personal vehicle, while under the influence of alcohol or drugs, will result in suspension of

the CDL for one year upon the first conviction, and upon the second conviction of either offense, the CDL will be revoked for life. Leaving the scene of an accident as a second conviction also will result in the loss of the CDL for life. If two serious traffic offenses involving any type of motor vehicle are committed within a three-year period, the CDL will be suspended for 60 days. If three such offenses are committed within a three-year period, the CDL will be suspended for 120 days. A serious traffic violation in this context is defined as speeding (in an amount determined by the director of highway safety in accordance with federal standards), reckless operation, a violation that results in a fatal accident or a violation otherwise designated to be a serious traffic violation by the director of highway safety in accordance with federal standards.

### **Progressive discipline**

The question of whether discipline is to be imposed on an employee — whether administrator, teaching or nonteaching — is a question generally addressed by board policy or in a collective bargaining agreement. Ohio law provides no requirement for progressive discipline and does not regulate progressive discipline except to the extent that a termination may be preceded by a suspension pending further investigation or action by a board of education.

The progressive discipline policy typically begins with a warning that may be oral or written. It may contain a letter of reprimand as a next step, indicating future disciplinary action and ending with discharge.

A progressive discipline procedure that provides for the issuance of a warning for the first offense must be followed before a more severe discipline can be imposed for the misconduct. However, previous warnings, even for violations of the same offense, may not be relied on for the imposition of greater penalties if the provisions of the collective bargaining agreement limit the time in which an employer may look back to consider previous discipline.

School boards are permitted to bypass progressive discipline steps and proceed directly to termination when an employee commits a

serious offense that is legally and morally wrong. Some conduct may be so egregious, and the offense of such a serious nature, such as stealing, fighting or persistent refusal to obey legitimate orders, that it justifies summary discharge without prior warnings or attempts at corrective discipline.

### **Off-campus versus on-campus conduct**

#### *Misconduct generally*

The right of an employer to discharge an employee for conduct that occurs away from the operation of a school depends on the effect of that conduct on the school district and school operations generally. The connection between the off-duty misconduct and the injurious effect must be reasonable and discernable and not merely speculative. It must logically be expected to cause some harm to the employer's affairs. Each case is judged on its own merits.

Off-duty misconduct of public employees that might be found to have no bearing in the private sector workplace may justify the imposition of discipline by a public employer. Employees in specific types of public service are held to a higher standard of conduct than that of most other employees in light of a public employer's interest in maintaining the public trust.

#### *Social media*

With the proliferation of social media, like Facebook, Twitter and blogs, there is a potential that the image of the school district may be damaged by various postings on the social media. Examples include descriptions, pictures or videos of employees engaged in inappropriate activities. Additionally, teachers may want to incorporate social media, such as blogs, into class activities; however, such actions raise concerns about student privacy rights and the propriety of teachers "friending" or connecting with students online.

School districts are encouraged to develop policies addressing social media use by employees with the caveat that such policies must be drafted in such a way that they do not infringe on employees' First Amendment rights or rights granted by the National Labor Relations Act. Social media use in the employment context is a developing area

of law. Consult legal counsel in specific situations.

## Potential claims

### Free speech

#### *Academic freedom of teachers*

Because the classroom is not generally a “public forum” during instructional time, teachers engaged in their official duties are not speaking as citizens. Because teachers enjoy a “captive audience” of schoolchildren, a teacher’s audience is distinctively different than one would find on the corner of Main Street. Therefore, a teacher’s right to free speech under the First Amendment does not extend to in-class curricular speech.

In the context of academic freedom, when a teacher teaches, the school system does not “regulate” that speech as much as it hires that speech. That is, it is the board of education that hires that speech that has a right to academic freedom, not an individual teacher. [RC 3313.60\(A\)](#), authorizes the board of education to prescribe the educational curriculum. Therefore, any right of students to receive information or be exposed to ideas arguably could affect a board of education’s control over curricular decisions. As a teacher’s speech is connected and intertwined with the curriculum, it carries with it implicit approval of the board of education. For example, teachers do not enjoy the academic freedom to engage in inappropriate speech that is irrelevant to the subject being taught, for example, allowing students to use profanity in their writing assignments or showing a rated R film to a high school class.

Because the school board has the ultimate responsibility for what goes on in the classroom, the school board can regulate the content of what is or is not expressed on its behalf as long as there exists a reasonable pedagogical reason for doing so.

#### *Free speech restraints for specific topics within the health curricula*

Two specific topics contained within Ohio’s health curricula often are challenged by parents, students, teachers and other outside organizations due to various religious, moral, ethical and other deeply-held beliefs by families. Before responding to such complaints,

it is critical that school officials understand exactly what is required to be covered in Ohio’s health curriculum and ensure that the “opt-out” provisions properly are communicated to parents.

[RC 3313.60](#) requires that the health education curriculum include instruction on:

- the nutritive value of foods, including natural and organically-produced foods, the relation of nutrition to health and the use and effects of food additives;
- the harmful effects of and legal restrictions against the use of drugs of abuse, alcoholic beverages and tobacco;
- venereal disease education, except that, upon written request of the student’s parent or guardian, a student shall be excused from taking instruction in venereal disease education.

[RC 3313.6011](#) and [OAC 3301-80-01](#) further clarify the minimal standards for venereal disease instruction as follows:

- ◆ Venereal disease instruction must emphasize that abstinence from sexual activity is the only protection that is 100% effective against unwanted pregnancy, sexually-transmitted disease and the sexual transmission of a virus that causes acquired immunodeficiency syndrome, and also teach the potential physical, psychological, emotional and social side effects of such sexual activity along with the consequences of conceiving children out of wedlock.
- ◆ The curriculum additionally must advise students of the laws regarding financial responsibility for children born out of wedlock, emphasizing the option of adoption for unwanted pregnancies and the circumstances under which criminal law forbids having sexual contact with an individual under 16 years old.

[RC 3313.60](#) also requires instruction on both of the following:

- personal safety and assault prevention for students in grades kindergarten through six, except that upon written request of the student’s parent or guardian, a student shall be excused from taking instruction in personal safety and assault prevention;
- dating violence prevention education for students in grades seven through 12, which shall include age-appropriate instruction

in recognizing dating violence warning signs and characteristics of healthy relationships.

If the parent or legal guardian of a student less than 18 years of age submits to the principal of the student's school a written request to examine the dating violence prevention instruction materials used at that school, the principal, within a reasonable period of time after the request is made, shall allow the parent or guardian to examine those materials at that school.

It is a good idea to have the health instructors communicate the "opt-out" provisions as indicated and allow parents to opt out. If any outside speaker is brought into the class to communicate the required information concerning sexually-transmitted diseases and dating violence, such individuals should be required to provide the instructor a copy of their lesson plans or outlines. The instructor also should provide any outside speaker a copy of the curriculum requirements before addressing the health class.

### *Signage on board property*

Regulating speech is dependent on whether the place or "forum" is designated as a "public forum," a "limited public forum" or a "nonpublic forum." Generally, schools are not public forums. As a result, speech in schools reasonably may be regulated.

School districts usually face many different First Amendment challenges during the months and weeks leading up to an election. Generally, once a board of education allows the posting of signage on school property that supports a particular ballot issue, it effectually creates a designated public forum. Once this happens, the board of education must then allow the opposition equal access to that same forum. A board of education's policy should provide very specific procedures and regulations that must be followed before any organization is permitted to place signage on board property. Regardless of the issue or content of the proposed signs, the board of education should apply the same procedures and regulations to all signage requests regardless of whether the board itself is in agreement with the message.

Challenges to a board of education's refusal to allow the posting



of signage may be easily eliminated as long as the board routinely follows a specific viewpoint-neutral policy and procedure and does not discriminate based on the sign's content or message.

[RC 3313.77](#) authorizes boards of education to permit the use of their property in accordance with board policy, as long as it does not interfere with the operation of the district. The board may allow signs to be posted on district property if it determines that the message “promotes the welfare of the community.” A board of education also may create a policy prohibiting all signage on its property if it so chooses.

1991 Ohio Atty.Gen.Ops. No. 91-064 specifically addresses the issue of signage as it relates to equal access to school board property and reiterates that signs may be permitted on school property subject to reasonable regulations by the board of education. However, board policies and regulations cannot prohibit the posting of signs solely on the basis that the signs communicate a viewpoint not favored by the board.

### **Search and seizure in the public-school setting**

A search conducted in a public school must comply with the restrictions imposed by the Fourth Amendment, which require it to be “reasonable in its inception and reasonable in its scope.” The need to maintain a safe educational environment must be balanced with the constitutional rights of students and school employees to be free from unreasonable searches and seizures. To determine the “reasonableness” of searches and seizures in the school setting, the U.S. Supreme Court established the following two-part test. The search must be justified (reasonable) at its inception. Reasonable suspicion must be based on specific, articulable facts and, based on these facts, it is reasonable to assume that a particular search will turn up evidence that the student is violating either the law or school rules. For example, where money is stolen, the decision to search a specific student must be based on specific, articulable facts, which point to that specific student. In those circumstances, the search of the student’s belongings probably is justified. The decision to search numerous other students in that same scenario becomes diluted and

less reasonable as the facts relating to other students, individually, may not carry enough reasonable suspicion to warrant the search.

Second, the actual search must be reasonable in its scope. The scope of a search is considered reasonable if the search is reasonably related to the objective and not excessively intrusive. For example, a search of a student's wallet is not reasonably related to the objective of locating a stolen basketball. However, a more intrusive search may be justified if a weapon or other dangerous ordnance is the object of the search.

The reasonableness of a search depends on the intrusiveness of the search. As such, strip searches of students, an extraordinary intrusion, generally are not found to be reasonable unless they are to prevent serious harm.

Searches of student lockers, under [RC 3313.20\(B\)\(1\)\(b\)](#), are viewed differently. A school board may adopt a written policy that authorizes principals or their designees to search a student's locker and its contents if there is reasonable suspicion that it contains evidence of a student's violation of a crime or school rule. A student's locker also may be searched without reasonable suspicion so long as a notice indicating that lockers are school property and subject to random searches without cause is posted in a conspicuous place in each building. Note, however, that in 1997, the Court of Appeals of Ohio, Eleventh District, held that allowing random searches of lockers by posting a sign, pursuant to [RC 3313.20](#), violated students' Fourth Amendment rights.

A person is seized pursuant to the Fourth Amendment when, by a show of authority or the use of physical force, his or her freedom of movement is restrained. Detaining or "seizing" a student also is analyzed under the reasonableness standard. Courts are willing to give latitude to school officials when circumstances warrant detaining or questioning a student. For example, a student who is alleged to be planning an attack on the school is more likely to be lawfully detained and questioned than one who is accused of a more benign infraction.

### *Consent to search*

Generally, an individual's voluntary consent to a search functions as

a “waiver” of the individual’s Fourth Amendment rights. Regardless, do not solely rely on a student’s consent in any decision to search, especially younger children. There most likely will be an argument that the consent was coerced. Always consult the board’s search-and-seizure policy before searching students.

### **Child abuse and neglect**

[RC 2151.421](#) imposes upon those acting in an official or professional capacity a mandatory duty to report knowledge or suspicion of child abuse or neglect. All school employees and authorities, including teachers and licensed school psychologists are mandatory reporters of child abuse and neglect, which means that *each employee* has a statutory duty to report physical or psychological abuse.

School districts are required to provide training on personal safety, assault prevention and sexual abuse awareness to all students in grades K-12. Furthermore, all newly employed professional staff are required to complete at least four hours of in-service training within two years of the date of employment and an additional four hours of in-service training must occur every five years thereafter.

A report is required to be made to children’s services or law enforcement when a school employee knows or has reasonable cause to suspect a child under the age of 18 or age 21 if the student is disabled is being abused or neglected. A report must be made when a “reasonable person” would suspect that a child has suffered or faces a threat of suffering child abuse or neglect.

The report must be made by the original observer. This obligation to report cannot be delegated to any other individual school official. In this regard, a board of education may require, through board policy, that the employee making the report also notify his or her supervisor to ensure that the report was made.

In incidents where a child appears to be in imminent danger, the case involves sexual abuse, a child is being exploited for pornographic purposes or prostitution, and for incidents of severe physical abuse, the report always should be made first to law enforcement officials.

When another school employee or student is suspected of abuse or

neglect, the mandatory reporting requirements do not change. This is true even in instances of suspected sexual assault.

Failing to report child abuse or neglect is a crime — a fourth degree misdemeanor — punishable by up to 30 days in jail and/or a fine up to \$250. Civil liability also may exist against any mandatory reporter who fails to report suspected abuse or neglect.

Mandatory reporters who report suspicion of suspected abuse or neglect in good faith are granted immunity from both civil and criminal liability.

### **Teacher dress/appearance**

Generally, boards of education may enforce reasonable rules and regulations relating to the dress, grooming and general appearance of teachers without infringing on the teachers' rights to due process, equal protection or freedom of expression. Regulations governing teacher appearance are valid and enforceable if the regulations are reasonably related to the legitimate educational interest of the school board and administered in a non-biased manner that does not create an impression that one sex holds an inferior job status or imposes additional costs on employees of a particular sex (a violation of Title VII).

When developing an employee dress code, it is appropriate and generally more effective to provide a list of specific items of clothing or insignias that are considered "inappropriate" at school.

Any policy regarding teacher dress code should provide for various exceptions, such as sincerely held religious beliefs, cultural heritage, nature of the employee's duties and/or medical/physical accommodations.

### **Title VII Civil Rights Act**

Title VII of the Civil Rights Act of 1964 is a federal statute prohibiting discrimination by covered employers on the basis of race, color, religion, sex or national origin. Title VII also prohibits discrimination against an individual because of his or her association with another individual of a particular race, color, religion, sex or national origin, or because of his or her opposition to unlawful

discriminatory practices prohibited by the act. The sex discrimination prohibited by Title VII includes sexual harassment.

Under Title VII, it is unlawful for a school district to fail or refuse to hire or discharge any individual or otherwise discriminate against any individual with respect to his or her compensation, terms, conditions or privileges of employment because of the individual's race, color, religion, sex or national origin. Nor can a school district limit, segregate or classify its employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee if it is because of such individual's race, color, religion, sex or national origin.

The only exception to this rule is where a bona fide occupational qualification (BFOQ) exists. To use the BFOQ defense, an employer must prove that a direct relationship exists between the protected class and the ability to perform the duties of the job, that the BFOQ relates to the "essence" or "central mission of the employer's business" and that there is no less restrictive or reasonable alternative. To bring a claim under Title VII, an individual first must file a Charge of Discrimination with EEOC. That requirement does not apply to a person who brings a claim under Ohio law, where individuals are permitted to bring their claims directly to court. As discussed in later pages, Title IX of the Education Amendments Act of 1972 is enforced by the Office for Civil Rights, which is a division of the U.S. Department of Education and renders school districts subject to sex-based claims in courts as well.

### **Americans with Disabilities Act (ADA)**

The federal Americans with Disabilities Act (ADA) prohibits discrimination against people with disabilities.

"Disabled person," as defined by ADA, is one who has an actual physical or mental impairment that substantially limits one or more major life activities, has a record or past history of such an impairment or is regarded as having a disability.

"Substantially limits" is to be construed broadly in favor of expansive coverage and requires an individualized assessment. With

the exception of ordinary glasses or contacts, the determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, such as medicine or hearing aids. An episodic disability or a disability in remission — if it would substantially limit a major life activity when active — also is covered under the definition of a disability. The name given to a condition does not necessarily make it a disability under the law. Similarly, the fact that a condition does not have a specific name will not prevent it from being deemed a protected disability.

Disability discrimination under ADA occurs when a school district or other entity covered by ADA treats a qualified individual with a disability who is an employee or applicant unfavorably because the individual has a disability. Disability discrimination also occurs when a school district treats an applicant or employee less favorably because the individual has a history of a disability or because the individual is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if he or she does not have such an impairment).

An individual currently using illegal drugs is not protected by ADA and may be denied employment or fired on the basis of such use. However, a recovered addict is protected by ADA. ADA does not prevent school districts from testing applicants or employees for current illegal drug use or from making employment decisions based on verifiable results. A test for the illegal use of drugs is not considered a medical examination under ADA; therefore, it is not a prohibited pre-employment medical examination, and districts will not have to show that the administration of the test is job-related and consistent with business necessity.

For those who are regarded as having a disability, the focus is on how that individual has been treated rather than what the school district may have believed about the nature of the individual's impairment. However, only those employees with an actual disability or those with a record of disability qualify for a reasonable accommodation.

### *Reasonable accommodation and undue hardship*

The law requires school districts to provide a reasonable accommodation to an otherwise qualified employee or job applicant with a disability unless doing so would cause an undue hardship for the school district.

A “reasonable accommodation” is any change in the work environment or in the way things are usually done) to help a person with a disability apply for a job, perform the duties of a job or enjoy the benefits and privileges of employment. Reasonable accommodations might include, for example, making the workplace accessible for wheelchairs or providing a reader or interpreter for someone who is blind or hearing impaired. An employee does not need to use the words “reasonable accommodation” when asking for a modification at work. A school district must communicate with the employee to determine what accommodations may be appropriate when the employee indicates a disability may be interfering with his or her ability to perform essential job duties.

While the federal anti-discrimination laws do not require an employer to accommodate an employee who must care for a disabled family member, FMLA may require an employer to take such steps.

“Undue hardship” means that the accommodation would be too difficult or too expensive to provide in light of the school district’s size, financial resources and needs. A school district may not refuse to provide an accommodation just because it involves some cost, nor does a school district have to provide the exact accommodation the employee or job applicant wants. If more than one accommodation works, the school district may choose which accommodation to provide. The school district also may consider the rights of the employee’s coworkers under a collective bargaining agreement in evaluating whether an accommodation is reasonable.

### *Inability to perform essential job functions*

“Essential functions” are the basic job duties that an employee must be able to perform with or without reasonable accommodation. The school district carefully should examine each job to determine which functions or tasks are essential to a job. This is particularly

important before taking an employment action such as recruiting, advertising, hiring, promoting or firing.

Factors to consider in determining if a function is essential include:

- whether the reason the position exists is to perform that function;
- the number of other employees available to perform the function or among whom the performance of the function can be distributed;
- the degree of expertise or skill required to perform the function.

The school district's judgment as to which functions are essential and a written job description prepared before advertising or interviewing for a job are considered by EEOC as evidence of essential functions. Other kinds of evidence that EEOC considers include:

- the actual work experience of present or past employees in the job;
- the time spent performing a particular function;
- the consequences of not requiring that an employee perform a function;
- the terms of a collective bargaining agreement.

[RC 4112.02](#) prohibits disability discrimination and places similar obligations on school districts. To bring a claim for disability discrimination under ADA, an individual first must file a Charge of Discrimination with EEOC. [RC 4112.02](#), however, does not require that a charge be filed before a lawsuit is pursued under state law.

### *Section 504 of the Rehabilitation Act*

Section 504 of the Rehabilitation Act of 1973 is a federal law that prohibits discrimination based on disability in programs or activities receiving federal financial assistance, including most public school districts. This law covers all programs of a school, including academics, extracurricular activities and athletics both on and off campus. Also, the law protects all participants in a program from discrimination, including parents, students and employees.

Section 504 states (in part):

“No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any



program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency ...” (29 USC 794).

The U.S. Department of Education, Office for Civil Rights (OCR) is responsible for enforcing the regulations implementing Section 504 in public education programs that receive federal funding.

Section 504 defines a “person with a disability” as one who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such an impairment ([34 CFR 104.3\(j\)\(1\)](#)). With the exception of ordinary glasses or contacts, determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures. Episodic disabilities or disabilities in remission — if they would substantially limit a major life activity when active — also are covered under this definition. For example, a student with bipolar disorder would be covered if, during manic or depressive episodes, the student is substantially limited in a major life activity, such as thinking, concentrating, neurological functions or brain function.

Major life activities, as defined in the Section 504 regulations, include functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. Additional examples of general activities that are major life activities, including eating, sleeping, standing, lifting, bending, reading, concentrating, thinking and communicating. Congress also provided a non-exhaustive list of examples of “major bodily functions” that are major life activities, such as the functions of the immune system, normal cell growth and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions. The Section 504 regulatory provision’s list of examples of major life activities is not exclusive, and an activity or function not specifically listed in the Section 504 regulatory provision can nonetheless be a major life activity.

Section 504 requires that buildings constructed after 1977 be fully accessible. The law also requires that a program or activity be made accessible, even if it means relocating the program to another building

designated for access.

School districts must affirmatively seek out, identify and evaluate students with disabilities and provide them with appropriate educational services designed to meet their individual needs to the same extent as the needs of students without disabilities are met. In order for a school district to satisfy this obligation, a student first must be evaluated to see if he or she is qualified under Section 504. If so, the school district must develop a plan to meet the student's individualized needs. Section 504 also requires school districts to provide a free appropriate public education (FAPE) to students qualified as disabled under Section 504.

Individualized education programs (IEPs) that provide for FAPE to students who qualify for protection under the Individuals with Disabilities Education Improvement Act (IDEA) meet the Section 504 FAPE requirement. There may be an issue when a parent revokes consent to the implementation of an IEP. The question that usually arises is whether the revocation under IDEA equates to an automatic revocation under Section 504, or if the school district is obligated to offer a 504 plan? If the school *does* offer a 504 plan, should it include the FAPE that was offered in the IEP or something less? This particular situation warrants a consultation with your board's legal counsel.

Students qualified as disabled may require a Section 504 plan, which can include education in regular classrooms, education in regular classes with supplementary services and/or special education and related services. After a Section 504 plan is put into place, the regulations require periodic re-evaluations and mandate that re-evaluation occur prior to a significant change of placement. OCR considers exclusion from the educational program for more than 10 school days, the transfer of a student from one type of program to another or the termination and significant reduction of a related service to be significant changes in placement.

Each school district must have Section 504 grievance procedures in place and appoint a school employee to serve as the Section 504 grievance coordinator. The coordinator may hear employment concerns as well as student issues ([34 CFR 104.7](#)). Students and

parents do not have to exhaust this local process before pursuing remedies with OCR or bringing a private lawsuit ([34 CFR 104, Appendix A](#)). Except in extraordinary circumstances, OCR only addresses procedural grievances. Substantive complaints over educational plans or discipline should be handled through a due process hearing.

A student with a disability and who is eligible for special education and related services under IDEA cannot also receive Section 504 services. Once a student with a disability is eligible under IDEA, the IEP team is responsible for the whole child. The student however retains his or her protections under Section 504 against discrimination and equal access. Districts do not have the flexibility or discretion to provide services and accommodations under Section 504 when a student is eligible under IDEA. OCR has indicated that there is no provision in either statute that requires or allows either an IDEA eligible student or a district to “choose” between IDEA and Section 504.

In August 2013, the U.S. Department of Education’s Office of Special Education and Rehabilitative Services issued a Dear Colleague Letter about bullying of students with disabilities, in which it stated, “[w]hether or not the bullying is related to the student’s disability, any bullying of a student with a disability that results in the student not receiving meaningful benefit constitutes a denial of a free appropriate public education (FAPE) under the IDEA that must be remedied.”

In January 2013, OCR issued a Dear Colleague Letter focusing on the school districts’ responsibilities to serve students with disabilities in extracurricular athletic programs under Section 504. According to OCR guidance, a student with a disability has an equal opportunity to participate in or enjoy the benefits of athletic programs.

## **Age discrimination**

### *Federal law*

Under federal law, age discrimination claims can be asserted under either the Age Discrimination in Employment Act of 1967 (ADEA) or the Age Discrimination Act of 1975.

ADEA protects individuals over 40 years of age from

discrimination because of their age with respect to any term, condition or privilege of employment, which would include hiring, firing, promotion, layoff, compensation, benefits, job assignments and training. This protection is afforded to both employees and job applicants. In addition to hiring and firing, actionable age discrimination also may include harassment such as offensive remarks about a person's age.

There are two types of age discrimination claims under ADEA: disparate treatment and disparate impact. Disparate treatment refers to adverse treatment undertaken due to the employee's age. Disparate impact refers to an otherwise neutral policy in operation that negatively affects a specific class, for example, the result of the policy is to place one class at a disadvantage. Disparate treatment claims are more common, as disparate impact claims usually require statistical data to support the claim.

When a plaintiff alleges disparate treatment discrimination, liability depends on whether the plaintiff's age actually played a role in the employer's decision-making process. The alleged purported age bias need not be the only reason for the adverse decision for the employee to be permitted to file a complaint. However, an employee who claims he or she was discriminated against must prove that the adverse action would not have occurred but for his or her age.

An employee may prove disparate treatment with either direct or circumstantial evidence. If there is no direct evidence of age discrimination, the courts still would allow a claim of discrimination to proceed if the employee can establish that he or she:

- was a member of a protected class (over 40);
- was qualified for the position in question;
- suffered an adverse employment action despite his or her qualifications;
- was replaced by a person of substantially younger age.

Once this burden is met, the employer then must articulate a legitimate, nondiscriminatory justification for the employment action. The employee then is required to demonstrate that the justification articulated by the employer is a pretext for discrimination. In other words, the real reason for the adverse

employment action was age discrimination.

ADEA is one area of discrimination law that allows for different treatment of persons of a certain age in certain circumstances. Specifically, ADEA allows age distinctions based on certain bona fide occupational qualifications reasonably necessary to the normal operation of the particular business; for instance, age limits for firefighters. It also allows for age distinctions made pursuant to seniority systems or employee benefit plans.

Schools districts should be cognizant of the broad reach of ADEA. There are various specific requirements imposed by ADEA. For example, an individual cannot contractually waive a claim under ADEA unless the contract — or more commonly known as a release — specifically refers to rights arising under ADEA. The employer then must provide the employee 21 days in which to consider the contract and execute it. If a school district's actions affect multiple employees and it seeks a release of age-related claims, it must provide those employees detailed information about the group affected by the employment decision and allow them 45 days to consider the separation agreement and release of claims. Under either scenario, an individual who has signed a release may revoke that signature during the seven-day period following execution.

### *State law*

Ohio law also prohibits employers from discrimination based on age. Age discrimination claims in Ohio primarily arise under two different sections of the Ohio Fair Employment Practices Act, specifically [RC 4112.02](#) and [RC 4112.04](#). In interpreting these provisions, Ohio courts often rely on the federal cases interpreting age discrimination claims and, typically, the same elements must be proven to succeed in a state law age discrimination claim as are required to succeed in a federal claim. A person can file a civil action without first filing a charge of discrimination under [RC 4112.02](#), which provides identical rights and remedies as the federal age discrimination statute.

## **Title IX**

Title IX of the Education Amendments of 1972 is a federal law that prohibits schools from denying students and employees participation in an educational program or activity based on sex. The law applies to any academic, extracurricular (student organizations and athletics), research, occupational training and other educational program from preschool to graduate school that receives or benefits from federal funding. This law is applied to remedy instances of sexual harassment and sexual assault and to provide protections to individuals in relation to gender identity issues. The entire school district falls under Title IX as long as one program or activity receives federal funds. Title IX requires a district to evaluate its policies and practices to ensure the institution is in compliance. Districts are required to appoint at least one employee to coordinate their Title IX compliance efforts.

Although the purpose of Title IX is to prohibit any type of sex discrimination in schools, it is most commonly referred to in the context of athletics. Title IX requires that schools offer male and female students nondiscriminatory opportunities to play sports and treat both male and female student athletes fairly, offering female athletes the same treatment and benefits offered to male athletes.

In determining whether a school treats male and female athletes fairly, a variety of factors must be examined, such as:

- equipment and supplies;
- locker rooms, and practice and competitive facilities;
- game schedules and practice times;
- coaching staff;
- travel and related expenses;
- publicity;
- access to tutoring, and medical and training facilities and services;
- recruitment of student athletes.

Claims under Title IX also commonly arise in the context of sexual harassment. This includes harassment occurring between students, as well as that which may occur between staff and students. A school district only is liable for sexual harassment where the district knows or should have known of the harassment, and the district fails to take

immediate and appropriate steps to remedy it. School districts also must have a sexual harassment policy, which includes a grievance procedure.

Enforcement of Title IX is delegated to OCR, which is a division of the U.S. Department of Education. OCR resolves complaints of discrimination and initiates assessments of school districts' compliance, typically called compliance reviews. OCR also provides technical assistance to help school districts achieve voluntary compliance with Title IX. If a school fails to abide by Title IX, OCR can withdraw federal funding. A person aggrieved under Title IX also can file a lawsuit directly in court.

## **Equal Pay Act**

### *Federal — The Equal Pay Act of 1963 (EPA)*

EPA, which is part of FLSA, is a federal law that prohibits sex-based wage discrimination between men and women in the same establishment who perform jobs that require substantially equal skill, effort and responsibility under similar working conditions. In addition to equal wages, EPA mandates that employees who do equal work receive equal fringe benefits such as equal health and life insurance coverage, retirement plans or pensions, pre-tax medical or dependent care savings accounts, use of company equipment, vacation time, profit sharing and bonuses. EPA covers virtually all workers, including employees of school districts.

Jobs do not have to be identical to be considered equal. Instead, the focus is on the duties that the employees actually perform. Two jobs are equal when both require equal levels of skill, effort and responsibility and are performed under similar conditions.

EPA does allow pay differentials between men and women in the same job title, as long as the pay differentials are due to: an established seniority system; a merit system; a system which measures earnings by quantity or quality of production; or differentials based on any other factor other than sex. Additionally, EPA only requires equal rates; it does not require that employees receive the same total amount of compensation. For instance, if one worker earns more than another because of higher productivity, it would not violate EPA.

EPA is administered and enforced by EEOC. However, an employee can file a lawsuit under EPA without first filing a complaint with EEOC. To successfully raise a claim, the employee must show that the employee and an employee of the opposite sex are working in the same place and doing equal work but receiving unequal pay. Also, EPA does not require proof that the employer acted intentionally to discriminate against women.

### *Ohio Equal Pay Act*

Ohio's Minimum Fair Wage Standard Act (MFWSA) prohibits employers from discriminating in the payment of wages on the broader bases of race, color, religion, sex, age, national origin or ancestry ([RC 4111.17](#)).

Under Ohio law, an employer cannot pay different rates for equal work on jobs which require equal skill, effort and responsibility and are performed under similar conditions. Employers also must ensure that these employees receive equal fringe benefits, such as employee pension plans, vacation time, profit sharing and insurance coverage. An employer is permitted to pay an employee at a different rate than another employee for the performance of equal work when the payment is made pursuant to: a seniority system; a merit system; a system which measures earnings by the quantity or quality of production; or a wage rate differential determined by any factor other than race, color, religion, sex, age, national origin or ancestry.

The Ohio statute expressly prohibits an employer from reducing the wage rate of any employee in order to comply with the statute. In addition, a party asserting a claim under this statute cannot point to the wages of a replacement, as it is to be expected that inflationary pressures will cause wages to rise over time.

MFWSA generally is administered and enforced by the Ohio director of commerce. No agreement to work for a discriminatory wage constitutes a defense from an action to enforce this section. Ohio courts look to judicial interpretations of the federal EPA when interpreting this statute.



## Ohio Fair Employment Practices Act

The Ohio Fair Employment Practices Act ([RC Chapter 4112](#)) is Ohio's version of Title VII, ADEA, EPA and the Age Discrimination Act of 1975 all rolled into one. "Chapter 4112," as it generally is called, prohibits employers from discriminating against employees on the basis of race, color, religion, sex, military status, national origin, disability, age or ancestry. This prohibition as to discrimination applies to any matter directly or indirectly related to employment, including hiring, tenure and the terms, conditions or privileges of employment. The act further gives specific protections for pregnant women and those individuals who have opposed unlawful discriminatory practice under this act. It also applies to school districts in the context of public accommodation.

Under [RC Chapter 4112](#), a school district may not request any information or keep records of a potential employee's race, color, religion, sex, national origin, disability, ancestry or age. The only exception to this rule is where a bona fide occupational qualification exists, which has been approved in advance by OCRC.

OCRC is responsible for the administration of this law. In investigating discrimination complaints, OCRC should take one of the following steps within 100 days of receiving a charge:

- Issue a "no probable cause determination" stating its finding that discrimination probably did not occur. The complainant then has 30 days to file a petition for review.
- Initiate a complaint against the employer and attempt to settle the matter through conciliation.
- Initiate a complaint and refer the matter to the office of the state attorney general with a recommendation that it file a complaint in a court and seek a temporary or permanent injunction or temporary restraining order.

In practice, however, this process rarely is completed within 100 days. In this process, complainants are entitled to seek compensatory damages such as back pay, front pay and other economic damages, as well as punitive damages. Issuance of punitive damages by OCRC is expressly limited by statute.

If the individual alleging discrimination under state law does not

file a complaint with OCRC, he or she still can file a civil action in court. The complaint must be filed within six years of the alleged unlawful discriminatory act.

### **Whistleblower law**

A whistleblower is a person who reports to the public or someone in authority about alleged illegal, dishonest or unsafe activities of which he or she becomes aware within the course of his or her employment. While there are numerous federal laws providing protection for whistleblowers, Ohio's Whistleblower Law is found in [RC 4113.52](#).

In Ohio, public employees are required to report any criminal offense by the employer or other employees. Employees also are required to report any violation of a work rule or company policy "that is likely to cause an imminent risk of physical harm to persons or a hazard to public health or safety, a felony or an improper solicitation for a contribution." Nonetheless, before the statute will apply, these certain requirements must be satisfied:

- the employee must provide oral notification to the employee's supervisor or other responsible officer of the employer;
- the employee must file a written report with the supervisor or other responsible officer;
- the employer must fail to correct the violation or to make a reasonable and good faith effort to correct the violation.

Employers are prohibited from taking any disciplinary or retaliatory action against an employee for making any report under this statute as long as the employee acted reasonably and in good faith. If an employer takes any disciplinary or retaliatory action against an employee because the employee filed a report under this statute, the employee has 180 days to bring a civil action.

If the court renders judgment against the employer for a violation of the whistleblower protections, it may order reinstatement of the employee, payment of back wages, full reinstatement of fringe benefits and seniority rights or any combination of remedies. The court also may award the prevailing party all or a portion of the litigation costs.

## **Sexual harassment**

Both students and employees can be victims of sexual harassment in a school context. Such harassment occurs when there is unwanted and unwelcome behavior of a sexual nature by a school district employee, another student or a third party. Two federal laws come into play when dealing with sexual harassment in a school district: Title IX and Title VII.

Title IX of the Education Amendments of 1972 prohibits discrimination against any person, based on sex, in an educational program or activity. Title VII of the Civil Rights Act of 1964 prohibits sexual harassment in the workplace.

There are two kinds of sexual harassment: quid pro quo and hostile environment. Quid pro quo (in Latin meaning “this for that”) sexual harassment occurs when one explicitly or implicitly conditions another’s advancement, participation or evaluation on another’s submission to unwelcome sexual advances. Hostile environment sexual harassment occurs when an individual faces unwelcome sexual advances, requests for sexual favors and other verbal, nonverbal or physical conduct of a sexual nature. In order to create a hostile environment, the harassment must be sufficiently severe, persistent or pervasive to limit the individual’s ability to perform or participate within the school setting. Sexual harassment between members of the same gender is actionable if the conduct occurred because of the victim’s sex.

Under Title IX, a district is required to have and distribute a policy that it does not discriminate on the basis of sex in its education programs and activities. A district also must adopt and publish grievance procedures for students to file complaints of sexual discrimination, including complaints of sexual harassment. These policies must be widely distributed and available on an ongoing basis. The policies should be written in language appropriate to the age of the school’s students. Additionally, every district must have a Title IX coordinator. The district must notify all students and employees of the name and contact information of the Title IX coordinator.

If a complaint is raised, the district promptly must investigate to determine what occurred and then take appropriate steps to resolve

the situation. A criminal investigation into allegations of sexual harassment does not relieve the school of its duty under Title IX to promptly resolve complaints. Assuming the district complies with the foregoing requirements, the district is liable only for a sexually hostile environment where the district knows or should have known of the harassment, and the district fails to take immediate and appropriate steps to remedy it.

Title VII of the Civil Rights Act of 1964 prohibits sexual harassment in the workplace. A school district is liable under Title VII for sexual harassment when the harassment was committed by a supervisor or when the employer, through its agents or supervisory personnel, knew or should have known of the harassment and failed to take immediate and appropriate corrective action. EEOC handles complaints as to violations of Title VII. Complaints usually must be filed within 180 days from the date of the alleged sexual harassment.

## **Constitutional rights**

### *Federal*

The U.S. Constitution applies equally to everyone. However, minors are a special category, and in many cases, the rights of minors can be suppressed in ways that the rights of adults simply may not be suppressed. [42 U.S. Code Section 1983](#) — enacted as part of the Civil Rights Act of 1871 — is the primary vehicle for imposing liability on a school district or school district employee for violations of the rights afforded under the U.S. Constitution. It is intended to provide a private right of action for violations of federal law and the U.S. Constitution.

The most common Section 1983 actions against schools arise under the following portions of the amendments to the U.S. Constitution:

First Amendment (free speech, assembly and association)	Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances.
Fourth Amendment (search and seizure)	The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated ...
Fifth Amendment	No person shall be deprived of life, liberty or property without due process of law ...
14th Amendment (due process, equal protection)	No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Individual liability under Section 1983 only arises when an employee or official acts under the color of state law and deprives another of rights, privileges or immunities secured by the U.S. Constitution or laws of the United States. Alleged abuse cast as a deprivation of a student’s constitutionally-guaranteed rights is generally not actionable unless the conduct is so egregious that it “shocks the conscience.” Individuals may claim immunity for acts performed in the scope of their employment and also may seek the protections of the Paul D. Coverdell Teacher Protection Act, a federal law that provides additional protections to teachers and administrators.

A school district is liable under Section 1983, however, only if the alleged unconstitutional act occurred pursuant to a specific policy or custom of the district. Indeed, lawsuits against a school district often

allege an unconstitutional act occurred pursuant to an “unofficial policy or custom.” Accordingly, school district officials must be cognizant of this argument and cannot ignore potential constitutional violations. If they do not address events as they occur, they could face the argument that the acts occurred pursuant to unofficial custom.

### *Ohio*

While Ohio has a number of rights afforded to its population in addition to those set forth in the U.S. Constitution, there currently is no legal cause of action available to impose civil liability (damages) for violating those rights. An individual alleging a violation of the Ohio Constitution may bring an action asking the courts to outline the rights he or she has under the Ohio Constitution, but he or she is not afforded the various remedies available under Section 1983 for violations of the U.S. Constitution.

The majority of the declaratory judgment lawsuits brought against school districts under the Ohio Constitution relate to Ohio’s school-funding system. These lawsuits cite Article VI, Section 2 of the Ohio Constitution, which provides that the General Assembly shall make such provisions, by taxation, to secure a thorough and efficient system of common schools throughout the state. The courts have issued multiple declarations regarding those rights but have no means to enforce those rights absent legislation.

## **Unions**

### **Unfair labor practices**

Certain acts, set out in [RC 4117.11](#), are labeled as “unfair labor practices” and are prohibited. These acts include interfering with, restraining or coercing employees in exercising of their collective bargaining rights as well as conduct relating to the employees’ selection of a representative for purposes of collective bargaining or refusing to bargain collectively with the exclusive bargaining representative.

In addition, a public employer may not initiate, create, dominate or interfere with the formation or administration of any employee organization or support that organization financially or otherwise.

There are three exceptions to the prohibition on offering support, including that a public employer may:

- confer with employees during working hours without loss of time or pay;
- permit the union to use the public facilities of the employer for meetings;
- permit the union representative to use the internal mail system or other internal communications systems.

It is an unfair labor practice to discriminate against any employee in regards to hiring, tenure or the inclusion of any term or condition of employment when that decision is based on the employee exercising his or her rights under [RC Chapter 4117](#). Further, any employee who has filed charges or given testimony related to collective bargaining activities may not be discharged or otherwise discriminated against on the basis of that testimony or the filed charges.

When an employee files a grievance, it is the public employer's responsibility to timely process the grievance and request for arbitration. Not responding in a timely manner to a grievance or request for grievance arbitration also may be an unfair labor practice.

Public employers are prohibited from refusing to bargain collectively or use other tactics, such as an employee "lockout" to pressure employees or the employee organization to compromise or agree to the employer's terms. There is a bargaining process that calls for employees and employers to work together to come up with a compromise so that all parties feel as if they have been accommodated.

Public employees and the employee organizations also have to follow certain rules, or they may commit an unfair labor practice. For example, employee organization representatives cannot coerce or use any other type of force to get an employee to bend to the will of the organization. In addition, as is the case for the employer, the organization representative may not refuse to bargain with the public employer. The employee organization must represent all of the employees fairly and may not induce any employee to picket or strike without giving the proper notice required by law. It also is an

unfair labor practice to encourage employees to picket the residence or private workplace of any public official.

Neither the employer nor the employee or its organization may cause or attempt to cause the other party to violate the unfair labor practices outlined in [RC 4117.11](#), because that type of action is an unfair labor practice in and of itself.

## **Strikes**

A strike is defined as the “continuous concerted action in failing to report to duty; willful absence from one’s position; or stoppage of work in whole from the full, faithful and proper performance of the duties of employment, for the purpose of inducing, influencing or coercing a change in wages, hours, terms and other conditions of employment.” The reason behind a strike must be for the change of employment conditions. A strike will not include any stoppage of work because of dangerous or unhealthful working conditions at the place of employment that are abnormal to the place of employment. For example, if there is a gas leak in a school and the employees evacuate the building, it would not be considered a strike. Strikes are purposeful actions by all employees to object to and influence conditions within the workplace.

Any intermittent or partial stoppage or slowdown from work is an unauthorized strike. This means that when a group of people refuse to do a particular part of their job, such as extra duties, that does not constitute a lawful strike. The only time a lawful strike occurs is when employees are abstaining from all of their mandatory duties, not just the particular ones they are protesting.

In order to have a lawful strike, the employee organization representing the employees must give a 10-day prior written notice of its intent to strike to both the employer and the State Employment Relations Board (SERB). A failure to give this notice constitutes an unfair labor practice on the part of the employee organization.

Picketing may be considered a strike, but it is not a definite strike within the meaning of the statutes. If picketing is done during the workday, when employees otherwise would be working, then the picketing is a strike. However, picketing may occur almost anywhere



and at any time that is not during the workday; in that case, picketing is not a strike.

A strike is not lawful if it occurs during the settlement procedures outlined in [RC 4117.14](#) or if it occurs during the term or extended term of a collective bargaining agreement. Therefore, if an employee organization strikes during these prohibited times, the public employer may seek an injunction against the strike to stop it.

If the public employer believes that a strike is unauthorized, the public employer may notify SERB of the strike and request it to make a determination as to whether the strike is authorized. Within 72 hours of the request, SERB must make a decision. If SERB determines the strike is not authorized, the public employer has options for how to handle the employees. The public employer may remove or suspend the striking employees who continue to strike after being given one day's notice of the SERB decision. If an employee is reinstated within the same school district, the district may freeze the employee's salary for a period of one year. If SERB verifies that the public employer did not provoke the strike, the district must deduct from each employee's salary two days' wages for each day the employee remains on strike after receiving the notice of SERB's decision. Further, during any strike — authorized or not — the public employer is not required to pay the employees for the period of time that the employees are on strike.

## **Lockouts**

A lockout by a public employer is considered an unfair labor practice. The statutes prohibit this type of tactic by a public employer in an effort to pressure employees into accepting the employer's terms.

## **Collective bargaining agreements**

### *Negotiations*

Any matter that deals with wages, hours or terms and conditions of employment may be a part of the collective bargaining agreement. Therefore, all parties should be prepared to negotiate on these topics.

Before beginning the negotiation process, parties should review the prior collective bargaining agreement and statewide school

comparable agreements and salary and benefits settlements. School districts should look at the history of raises in the district and the history of other benefits, including medical, that may be up for discussion. The key to the negotiations process is to understand what the employees are going to be asking to modify from the prior collective bargaining agreement, and how those potential proposals compare with the history within the district and with what other districts are providing for employees throughout the state.

After assessing the topics that will be on the table for discussion, the school board should set goals for what they would like to achieve in the negotiations. When those goals have been set, the board should develop proposals it plans to present to the employee organization representatives.

When the negotiations begin, it is important to first decide which issues may be decided quickly. Generally, employee organization representatives will have only a few issues that will actually need to be negotiated, and there will be other issues about which it will be easier to make decisions. By making quick decisions about those issues that are not problematic, the negotiations will shift to hammering out the more challenging concerns.

Remember that it is an unfair labor practice to refuse to bargain with the employee organization representatives. In any negotiation there will have to be give and take, and it is the responsibility of both parties to set goals and understand that compromise is imperative.

### *Grievances*

All collective bargaining agreements must provide for a grievance procedure. That grievance procedure is allowed to end with a final and binding arbitration of any unresolved grievances, but arbitration is not a mandatory piece of the grievance process. Any public employer that establishes a pattern or practice of failing to timely process grievances and requests for arbitration of grievances is committing an unfair labor practice.

### **State Employment Relations Board (SERB)**

SERB is in charge of investigating unfair labor practices. If any

party to a collective bargaining agreement believes that the other party has committed an unfair labor practice, that party may file a charge with SERB within 90 days of the alleged violation. This 90-day window begins when the damaged party has knowledge of an unfair labor practice and there is actual damage caused by that practice.

If SERB finds probable cause for believing there is a violation, it will issue a complaint and follow up with a hearing on the charge. If, however, SERB finds that there is no probable cause and decides to dismiss the charge, it must give an explanation as to why the unfair labor practice claim is dismissed. The third option SERB has is to find probable cause but defer the matter for grievance arbitration where a grievance has been filed relating to the incident in question.

If a hearing is granted, an administrative law judge hears the case and makes a proposed decision. If neither party files an exception within 20 days, the proposed decision will be finalized into an order. If exceptions are filed, SERB may rescind or modify the proposed order, or it may decide that the exceptions do not raise substantial issues of fact or law and the proposed order becomes effective.

Prior to the hearing, SERB also may offer the parties the chance to mediate their dispute with a SERB mediator. If an acceptable agreement is reached before the hearing, the charges are generally dropped by the parties.

Should there be a situation in which the complainant will suffer substantial and irreparable harm if temporary relief is not granted, SERB may petition the court of common pleas in order to receive injunctive relief.

### **Contracting out**

“Contracting out” generally is allowed, as long as privatization of the contract is not politically motivated and does not violate any current collective bargaining agreement or [RC Chapter 4117](#). Issues surrounding the contracting out of employees subject to a collective bargaining agreement, however, may require mandatory or permissive bargaining. The operation of management rights clauses and other language in collectively bargained agreements may affect districts

contemplating outsourcing work to contractors in ways that are not easily generalized. Questions on contracting out certain operations of the district when there is an affected bargaining unit must be made within the context of the facts presented and analysis of the agreement and should be made in consultation with counsel.

When a school district wishes to privatize transportation, the district is subject to restrictions and conditions related to that privatization before a private contract may be implemented. These conditions are laid out in [RC 3319.0810](#), and include the:

- collective bargaining agreement must have expired or will expire within 60 days or the agreement must permit termination for reasons of economy and efficiency;
- board must permit any employee whose position is terminated to fill any vacancy within the district for which the employee is qualified;
- board must permit any employee whose position is terminated to fill the employee's former position in the event the board reinstates the position within one year of termination;
- board must allow any person whose position is terminated to appeal the board's decision;
- private company must consider laid-off employees as potential hires;
- private agent must recognize any employee organization, for purposes of collective bargaining, that represented the employees in their public positions as long as a majority of the employees in the bargaining unit agree to the representation.

All other privatization of district services is permissible without express statutory conditions. It is important to be sure not to break any agreement made as a part of the collective bargaining process. There are situations in which contracting out may violate terms and conditions of employment that must be bargained. It is recommended the board consult with counsel to determine how the law applies to particular facts at hand.

## **Substitutes**

Substitute teachers may be employed to take the place of regular

teachers who are absent because of illness or leaves of absence, or to temporarily fill positions created by emergencies. A substitute teacher's employment may end when the services are no longer needed. Persons employed as substitute teachers must have:

- proper licensure for the grade and subject taught or have substitute licensure for short term service (up to five days in one assignment) or long-term service;
- a criminal record check;
- a written limited contract less than one year in length;
- evaluations conducted if serving 120 days or more during a given school year.

A substitute teacher is not entitled to sick leave or other fringe benefits granted to regular teachers unless he or she has been assigned to one specific position for a period of 60 days. After 60 days, the substitute teacher must be provided with those benefits. If a substitute teacher has served 120 days or more in a school year, regardless of whether such service is in a single position, and that teacher is re-employed for the succeeding school year, he or she must be awarded a contract as a regular teacher as long as he or she meets the district's employment requirements for regular teachers.

## Evaluations

Boards of education must fully implement standards-based teacher, principal and guidance counselor evaluation systems that are aligned with a statewide framework. The procedures for evaluation of principals must be based on principles comparable to the teacher evaluation policy.

Administrators, including assistant superintendents and other administrators, must be evaluated once during the initial year and other years prior to the final year of their contract, which may occur at any time during the contract year. A written copy of the evaluation must be given to the administrator no later than the end of the administrator's contract year. In the final year of an administrator's contract, two evaluations are required. The first evaluation must be completed and a copy given to the administrator at least 60 days prior to any board of education action on the contract. The second

evaluation must be completed and delivered to the administrator at least five days prior to any board of education action and must set forth the superintendent's recommendation to the board of education. The evaluator must be the superintendent or his or her designee.

The board of education is required to adopt procedures for evaluations of administrators, which should measure the administrator's effectiveness in performing his or her job duties listed in his or her job description.

## **Contract renewal/nonrenewal**

Teachers must be given written notice by June 1 of the year in which their contract expires of the board of education's intent to renew or nonrenew their contract. Any teacher who receives a notice of the board of education's intention not to renew his or her contract is entitled to a hearing before the board of education and must receive a written statement from the treasurer describing the circumstances leading to the intent not to re-employ.

An administrator must be given written notice prior to June 1 of the year in which his or her current contract expires. The administrator may request a meeting with the board of education. It is advisable that the board of education issue the right-to-appear notices with the written evaluations in January to give the administrator a basis for his or her decision on whether to appear before the board of education regarding his or her contract.

Other employees must be given written notice on or before June 1 of the board of education's intent to renew or nonrenew their contracts.

If any of the above notices are not given, that teacher, administrator or employee automatically will be re-employed for the following year. All notices discussed above for teachers, administrators and employees should be given by both of these methods: personal service upon the teachers; and delivery of the notice by certified mail, return receipt requested, addressed to the employee at his or her school or other place of employment with a copy also sent via certified mail, return receipt requested, addressed to the employee at

his or her personal residence.

Contract renewal/nonrenewal procedures also may be subject to other provisions negotiated in applicable collective bargaining agreements. It also is recommended that when any notice of nonrenewal is sent out, it should be accompanied by a notice advising the employee of his or her rights under COBRA.

# *End of employment*

## Retirement

### STRS requirements

[RC 3307.26](#) requires that each teacher contribute not greater than 14% of the teacher's compensation to STRS depending on when the compensation was earned. The contribution percent is 14% for compensation earned after June 30, 2016, but the STRS board may reduce the rate to less than 14% for compensation earned after June 30, 2017.

A teacher is defined as a person paid from public funds and employed in the public schools in a position that requires a license issued pursuant to [RC 3319.22](#) through [RC 3319.31](#). [RC 3307.01](#) also defines other very specific employment positions as teachers. Teachers employed by a community school or a STEM school pursuant to [RC 3314](#) or [RC 3326](#) also must be a member of STRS. [RC 3307.28](#) requires employers to make contributions to STRS at an actuarially established rate, not to exceed 14%. The current employer contribution rate is 14%.

[RC 3307.58](#) provides a schedule indicating when participating members may be granted service retirement after filing a completed application with the STRS board. The schedule is based on the combination of the participating member's age and service credit. The requisite combination of age and service credit changes on several predetermined dates. Service retirement becomes effective on the first day of the month following either the last day for which compensation was paid or the attainment of minimum age or service credit eligibility for benefits, whichever is later.



## **SERS requirements**

[RC 3309.23](#) requires that all public school employees, with limited exceptions, in positions for which a license is not required, contribute to SERS. [RC 3309.47](#) provides that each contributor must contribute 8% of the contributor's compensation to the employees' savings fund, except that the SERS board may raise the contribution rate to a rate not greater than 10% of compensation. The current employee contribution rate is 10%. [RC 3309.49](#) requires employers to make contributions to SERS at an actuarially established rate, not to exceed 14%. The current employer contribution rate is 14%.

[RC 3309.34](#) provides a member of SERS is eligible for service retirement before Aug. 1, 2017, if that person has at least five years of total service credit and is 60 years of age; if the member has at least 25 years of service and is 55 years of age; or if the member has at least 30 years of service credit at any age. Additionally, a member is able to retire under one of the above options so long as the member has at least 25 years of total service credit on or before Aug. 1, 2017, or if the member has less than 25 years of total service credit on or before Aug. 1, 2017, but, no later than that date, pays to the retirement system an amount equal to the additional liability to the system resulting from the member's retirement. A member of SERS who is not eligible under one of the above options on Aug. 1, 2017, will be eligible for service retirement if the member meets one of the following requirements:

- has 10 years of service credit and is at least age 62;
- has 25 years of service credit and is at least age 60;
- has 30 years of service credit and is at least age 57.

## **Layoffs/reductions in force**

### **Teachers**

[RC 3319.17](#) authorizes boards of education to reduce the number of teachers employed in the district by reason of:

- regular teachers having returned from a leave of absence;
- a decrease in enrollment of pupils in the district;
- a suspension of schools;
- territorial changes affecting the district;

- financial reasons.

Educational service centers also may reduce teachers when contracted services to other district public entities are discontinued.

In making reductions, the board of education must suspend contracts in accordance with the recommendation of the district superintendent who shall, within each teaching field affected, give preference to teachers on continuing contracts. Seniority shall not be the basis of rehiring a teacher except when making a decision between teachers who have comparable evaluations. On a case-by-case basis, in lieu of suspending a contract in whole, a board may suspend a contract in part so that an individual is required to work a percentage of the time the employee otherwise is required to work under the contract and receives a commensurate percentage of the full compensation the employee otherwise would receive under the contract.

A teacher whose continuing contract is suspended shall have the right of restoration to continuing service status if and when a teaching position becomes vacant or is created for which the teacher is or becomes qualified.

### **Administrators**

[RC 3319.171](#) authorizes boards of education to adopt an administrative personnel suspension policy. If a board does not adopt such a policy, no such contract may be suspended by the board except pursuant to [RC 3319.17](#). The policy shall include:

- the reasons a board may consider suspending an administrative contract;
- procedures for determining the order of suspension within the employment service areas affected;
- provisions requiring a right of restoration (recall) for suspended administrators if positions become vacant for which they are or become qualified.

### **Nonteaching employees**

Ohio law permits the layoff or reductions in force of nonteaching school employees. In civil service school districts, [RC 124.321](#) governs and permits layoffs for lack of funds, lack of work and due to

the abolishment of positions. Ohio law sets the order in which layoffs must occur, as well as employee displacement rights. Any reductions should be made in accordance with civil service commission guidelines.

In non-civil service districts, [RC 3319.172](#) governs and permits layoffs for the same reasons teacher reductions can be made.

In making such reductions, the board of education must suspend contracts in accordance with the recommendation of the superintendent who must, within each pay classification affected, give preference first to employees under continuing contracts and then to employees on the basis of seniority. On a case-by-case basis, in lieu of suspending a contract in whole, a board may suspend a contract in part so that an individual is required to work a percentage of the time the employee otherwise is required to work under the contract and receives a commensurate percentage of the full compensation the employee otherwise would receive under the contract.

Any nonteaching employee whose continuing contract is suspended has the right of restoration to continuing service status by the board of education in order of seniority of service in the district if and when a nonteaching position for which the employee is qualified becomes vacant or is created.

## **Resignation**

[RC 3319.15](#) provides that no teacher is permitted to terminate his or her contract after July 10 of any school year or during the school year before the annual session concludes, without the consent of the board of education. A teacher may terminate his or her contract at any other time by giving five days' written notice to the board. After receiving a report, ODE has discretion to determine that a teacher's license may be suspended for up to a year if a teacher terminates his or her contract in any other manner.

The resignation of nonteaching employees in both civil service and non-civil service districts generally is governed by the same principles that apply to teachers, although the July 10 deadline does not apply. In non-civil service districts governed by [RC 3319.081](#), nonteaching employees are required to give 30 days' written notice of a resignation

to the treasurer.

## Miscellaneous

Under [RC 3307.37](#), if a county prosecutor notifies STRS of theft in office or certain sex offense charges against a teacher, that person cannot withdraw funds until the charge has been dismissed or the member has been convicted and a post-conviction decision has been made about restitution. [RC 3309.67](#) contains similar provisions for nonteaching employees.

# *Public records and personnel files*

## **Public records**

School districts are subject to Ohio's Public Records Law under [RC Chapter 149](#). A "public record" is a record kept by a public office that contains information stored on a fixed medium; is created, received, stored or sent under the jurisdiction of a public office; and documents the organization, functions, policies, decisions, procedures, operations or other activities of the office. A record that meets this definition is a "public record" and is subject to disclosure unless the record is otherwise exempt. [RC 149.43](#) sets forth the public records exceptions.

School districts are required to have public records available for inspection at reasonable times during regular business hours. Each board of education is required to adopt a board policy for responding to public records requests. [RC 149.43\(E\)](#) sets out the public records training requirements for board members. In general, the following rules govern requesting records, responding to requests, denying requests and redacting information from requested information:

- Anyone may make a public records request.
- A public records request may be directed to anyone in the district.
- A person making a public records request may choose the medium in which they want to receive the response.
- The district is not required to create new records to respond to a request.
- If a record contains information that is prohibited from being disclosed, the district should redact the information and explain the legal authority for the redaction.
- If any redactions are made, the district must disclose that fact or

make the redactions plainly visible.

- A district does not need to produce records in response to vague or overbroad requests.
- The district must provide an explanation, including legal authority, when a records request is denied.
- The district may charge its actual costs in making copies of documents but may not charge the requestor for staff time.

Ohio law also requires each school district to have a School District Records Commission comprised of the board president, treasurer and superintendent, who must meet at least once every 12 months ([RC 149.41](#)). The district's creation, maintenance, destruction and preservation of records must comply with Ohio law and the district's record retention schedule.

## Personnel files

In addition to Ohio's Public Records Law, school districts are required to comply with the Ohio Privacy Act under [RC Chapter 1347](#) as it pertains to personnel records. Generally speaking, districts must maintain accurate personnel records and make them available for inspection by the employee subject to those records. Ohio law requires each district to appoint an individual to supervise its personal information system and adopt procedures to ensure that the information is accurate, timely, relevant and complete.

Regarding the Ohio Privacy Act, central office staff should know that:

- All employees have a right to view their own records and to know who accessed their information.
- An employee has the right to compel the district to confirm that any records containing personal information are accurate, timely, complete and relevant to the operation of the district.
- If an employee raises an inquiry or complaint regarding their personal information, the district has 90 days to investigate and notify the employee as to the results of the investigation and the corrective action planned, if necessary.
- Following an investigation, any information that cannot be verified must be deleted. If the employee does not agree with the district's

findings following an investigation, the employee may prepare a note of protest or a statement as to why the record(s) is deficient.

- A note of protest and statement by an employee must be maintained as part of the employee's personnel record for the same length of time as the record to which it pertains must be retained.

# Miscellaneous

### Required board policies

Developing and implementing board policy is a school board's primary responsibility. Board policy:

- provides insight on where the district is and where it hopes to be in the future;
- builds consensus for the district's educational mission and philosophy;
- sets goals, resolves issues and defines and aligns administrative responsibilities;
- establishes oversight and evaluation procedures.

Effective policy development includes consideration of federal law and administrative guidelines, state law and administrative guidelines, and federal and state agency rules and regulations. For a list of policies required at the state and federal level, contact your board's policy services provider and/or your board's legal counsel.

In addition to the required board policies, school districts must comply with numerous federal and state laws requiring annual posting of notices to students, parents and/or the public.

### Employee handbooks

In addition to board policies, employee handbooks are another important communication tool between districts and their employees. A well-written handbook sets forth the district's expectations for its employees and describes what those employees can expect from the district. In most cases, the handbook is neither a contract nor a substitute for the district's official policies; rather it is a guide to, and brief explanation of, those policies.

Many districts include information on the following topics in their



employee handbooks:

- anti-discrimination policies;
- compensation;
- work schedules, including attendance;
- standards of conduct such as dress code, drugs and alcohol and conflicts of interest;
- general employment information, including job classifications, job postings, probationary periods, termination and resignation procedures;
- safety and security expectations;
- employee benefits;
- leave policies;
- employee relations and communications.

While not required by law, districts should consider asking employees to sign an employee handbook acknowledgement form at the time of hiring and whenever the handbook is updated. The purpose of the signed acknowledgement is to demonstrate that the employee has not only received the handbook but also understands the information contained within it. Districts that have proof that an employee received a handbook may find that it becomes critical in legal disputes.

## **Additional resources**

This HR Desktop Reference was created by the 2011 Ohio Council of School Board Attorneys (OCSBA) executive committee and has been updated by the 2014 and 2017 OCSBA executive committees. OCSBA was established in 1976 as an affiliate of the Ohio School Boards Association. The council's purposes are to provide a statewide forum on the practical legal problems faced by school attorneys, to promote a closer relationship between school attorneys and their client school board members and to improve legal services available to boards of education through the collection and dissemination of school law information. If you would like additional information about OCSBA, please contact Lenore Winfrey at [lwinfrey@ohioschoolboards.org](mailto:lwinfrey@ohioschoolboards.org).

The following links can assist central office staff in compiling

information regarding the subjects addressed in this publication:

- Ohio Revised Code and Ohio Administrative Code, <http://codes.ohio.gov>
- Ohio Department of Education, <https://education.ohio.gov/>
- Ohio School Boards Association, [www.ohioschoolboards.org](http://www.ohioschoolboards.org)
- OCSBA Membership Directory, [www.ohioschoolboards.org/ocsba-directory](http://www.ohioschoolboards.org/ocsba-directory)



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