



Ohio School Boards Association Capital Conference and Trade Show

November 13 – 16, 2011

Greater Columbus Convention Center
Columbus, Ohio

You're a new superintendent — now what?

Administration

Wednesday, November 16, 2011

9:00 a.m.

C 120—122

Kelly Spivey, superintendent, Talawanda City

Gary Stedronsky, Esq., Ennis, Roberts & Fischer, Co., LPA

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OSBA Mission

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

Ohio School Boards Association

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ERF

You're a new Superintendent, now what?

Presented by:

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New Superintendents

- ▶ 61 new Superintendents hired in Ohio for the 2011-2012 school year
- ▶ Enjoy the moment without taking it too seriously
- ▶ Superintendent has a lot of hats to wear
- ▶ Must be a good problem solver and prioritize work
 - Delegation is key
- ▶ Have to make challenging decisions - **safety** of children must be taken seriously

Topics of Discussion

- A. Vision, Continuous Improvement and Focus of District Work
- B. Communication and Collaboration
- C. Policies and Governance
- D. Instruction
- E. Resources

Vision, Continuous Improvement and Focus of District Work

Vision, Continuous Improvement and Focus of District Work

- › Develop a shared vision for the district
- › Expect, model and support the effective use of data
- › Create a coherent plan with limited goals
- › Implement and evaluate district plan
- › Communicate the district's vision, goals and focused plan

Vision, Continuous Improvement and Focus of District Work – Legal Lessons

Media and Public Relations



Media and Public Relations

- › Importance of information management
 - Public entities must grapple with a number of legal restrictions in terms of what can and cannot be said, and when.
 - There could be some significant consequences if districts get it wrong!

Student Records and Privacy

- › Federal and State Law
 - Family Educational Rights and Privacy Act (20 USC 1232g, 34 CFR Part 99).
 - Federal law that protects the privacy of student education records.
 - Applies to all schools that receive funds under a Department of Education program.
 - Ohio Revised Code §3319.321.
 - Prohibits disclosure of names or any other personally identifiable information about students to any person or group for use in a profit-making activity.
 - Restricts disclosure of such information for other purposes.

Student Records and Privacy

- › FERPA Parent and Student Rights
 - Inspect and review the student's education records.
 - Challenge the accuracy of information contained in the records.
 - Prohibit the disclosure of the records in some circumstances.

Student Records and Privacy

- › Under state and federal law, schools can disclose records without consent to the following:
 - School officials with legitimate educational interest;
 - Other schools to which a student is transferring;
 - Specified officials for audit or evaluation purposes;
 - Appropriate parties in connection with financial aid to a student;
 - Organizations conducting certain studies for or on behalf of the school;
 - Accrediting organizations;
 - To comply with judicial order or lawfully issued subpoena;
 - Appropriate officials in cases of health and safety emergencies;
 - State and local authorities, within a juvenile justice system, pursuant to specific laws;
 - Directory Information.

Student Records and Privacy

- › Districts cannot release "personally identifiable information" other than directory information **without prior written consent** from parent or student over the age of 18.

Student Records and Privacy

- › Directory information may be released without prior written consent unless the requester is engaged in profit-making activities.
- › Includes student's name, address, telephone number, date and place of birth, honors and awards, dates of attendance, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, date of graduation.
- › Schools must annually notify parents and eligible students over the age of 18 about directory information and allow opportunity to "opt out" under FERPA.

Student Records and Privacy

- ▶ The Public Records Act provides that a person may require the disclosure of a requestor's identity or the intended use of directory information concerning any students attending a public school to ascertain whether the directory information being sought is intended for use in a profit-making plan or activity.

Student Records and Privacy

- ▶ Video Surveillance Tapes
 - State and Federal Law prohibits release of videotape that shows any personally identifiable information such as facial features without prior written consent.
 - *Rome City School District Disciplinary Hearing v. Crifasi*
 - New York appeals court granted a judicial subpoena directing a district to release surveillance video to parents of a suspended student which captured images of the altercation in question.
 - The court reasoned that FERPA legislators meant only to prevent release of information that related to a student's performance.
 - *WFTV, Inc. v. The School Board of Seminole*
 - Florida appeals court denied release of bus surveillance video to a television station on grounds that the video constituted education records under FERPA which provided identifiable facial features of several students.
 - Video could not be released unless the district obtained written consent for all students depicted in the video.

Student Records and Privacy

- ▶ Video Surveillance Tapes, cont.
 - District should comply with court orders requesting release of video.
 - However, the district should provide notice to parents and an opportunity to object.
 - Any other requests can only be granted if all students depicted in the video consent.

Information Management on the Web

- › District Websites
 - Appoint a staff website administrator to oversee the website and review content on a regular basis.
 - Limit the number of staff that may post website content.
 - NEVER let a student post content directly to a district website. Consider:
 - Copyright and trademark violations
 - Threats, bullying, harassment
 - Inappropriate or offensive content

Information Management on the Web

- › Social Networking Websites
 - Facebook, Twitter, Myspace
 - Should a district become involved?
 - If a district does participate in these websites, keep in mind:
 - Only a select few should be allowed to post information.
 - Review content and posts on a regular basis.
 - Closely monitor groups that become affiliated with the district.

Information Management on the Web

- › What about Internet content not generated by the district that nonetheless directly involves district employees, students, or school business?
- › Schools may always request that a website like Facebook remove offensive or threatening content from the site without violating the First Amendment.
 - In fact, the Communications Decency Act provides website content managers with virtually limitless discretion to remove any information posted to the site by another party without facing the threat of liability.
- › Possible defamation/libel actions

Information Management on the Web

- › Schools may discipline students that generate offensive Internet content off school premises as long as the school proves that the content materially disrupted the educational process or school operations, or presented a reasonable risk of disruption.
 - This is a high standard to meet. Document everything.

Information Management on the Web

- › Schools may discipline students that post true threats against either students or staff provided that the school has a reasonable belief the student will act upon the threat.
 - "True threat" is defined as "those statements where the speaker means to communicate a serious expression of intent to commit an act of unlawful violence to a particular individual or group of individuals."

Communication and Collaboration

Communication and Collaboration

- › Demonstrate communication competence
- › Implement and evaluate effective communication
- › Communicate effectively and openly
- › Have to tell the good stories – this is an era that educators are measured and tested in the media

Communication and Collaboration

- › Frequent communication is imperative:
 - Weekly updates
 - Phone calls
 - Website
 - Messenger system
- › Have to practice listening skills
- › Don't always have to have an answer, need to listen and ask reflective questions
- › It is okay to schedule a follow up in order to collect data and problem solve the best solution

Communication and Collaboration - Legal Lessons

Open Meetings – Open Records



Open Meetings

- › All School Board meetings must be open to the public at all times
- › Includes work sessions and off-site meetings
- › Includes committee meetings if committee created by the Board of Education
- › To go into executive session, the Board must pass a resolution specifying the grounds for the session.

Executive Sessions

- › Executive session is only allowed to discuss:
 - Various actions regarding public employees,
 - Purchase of property where secrecy is important,
 - Impending court action with an attorney,
 - Negotiations or bargaining with public employees,
 - Matters legally required to be confidential, or
 - Special details of security arrangements.

Public Records Policy

- › All public offices must have a public records policy
- › Public offices must distribute the public records policy to the records custodian or records manager or the employee who otherwise has custody of the records of that office
 - That employee must acknowledge receipt of the copy of the public records policy
- › The public records policy must be posted in a conspicuous place in all branches of the public office as well as it may be posted on the internet.
- › The public records policy must be included in any employee manual or handbook.

Records Retention and Disposal

- › All school districts must have a records commission and that group must meet at least once every 12 months.
- › Purpose of Records Commission: Review applications for one-time disposal of obsolete records and schedules of records retention and disposition.
- › The records commission may only dispose of records pursuant to the procedures outlined in ORC §149.41
 - At any time the commission may review any schedule it has previously approved and revise it

Records Requests

- › All public records must be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours
- › Exemptions:
 - If a public record contains information that is exempt from disclosure, the public office must make available all of the information within the public record that is not exempt
 - The public office must notify the requester of any redaction or make the redaction plainly visible
 - A redaction is deemed a denial of a request to inspect or copy the redacted information, except if federal or state law authorizes or requires a public office to make the redaction.

Records Requests

- › Maintenance of Records
 - Public offices are required to organize and maintain public records in a manner so that they can be made available for inspection or copying promptly or within a reasonable period of time
- › Ambiguous/Overly Broad Requests
 - If the public office cannot reasonably identify the public records that were requested, the request may be denied
 - The public office must inform the requester of the manner in which records are maintained and accessed in the ordinary course of the public office's duties so that an amendment to the request can be made

Records Requests

› Denials

- If a request is denied, in whole or in part, the public office must provide the requester with an explanation with the reasons for the denial
- If the initial request was provided in writing, the explanation must also be provided in writing
- The explanation does not preclude the public office from relying upon additional reasons or legal authority when defending an action in court

Emails

- › ORC §149.43 – any record kept by any public office, including a school district, is a public record which must be open to the public at all reasonable times for inspection
- › The physical form of an item does not matter, so long as it can record information
- › Email messages must be analyzed like any other items to determine if they meet the definition of a record

Emails

- › Email records, like all other records, must be maintained in accordance with the office's relevant records retention schedules
 - Deciding how long a record should be kept is based on the content of the record, not on the medium in which it exists
 - All records – including emails – should be stored based on content categories
 - i.e. legal, administrative, fiscal, or historic value
- › Email messages that do not meet the definition of a record may be deleted at any time, unless they become part of an official record as a result of special circumstances.

Instruction

Instruction

- › Require district wide use of curriculum
- › Require the use of researched based instruction
- › Set expectations of a balanced assessment program
- › Monitor the data
- › Provide high quality professional development around instructional needs
- › Evaluate Teachers Effectively

Instruction – Legal Lessons

Teacher Evaluations – HB 153 Ramifications



Teacher Evaluations

- **State Board Responsibilities:** No later than December 31, 2011 the state board must develop a standards based state framework for teacher evaluations, which must:
 - 1) Provide for multiple evaluation factors, including student academic growth (which will count for 50% of each evaluation).
 - 2) Be aligned with standards for teachers adopted under § 3319.61.
 - 3) Require observation of teacher being evaluated, including at least two formal observations by the evaluator of at least 30 minutes each and classroom walkthroughs.

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Teacher Evaluations – State Board Responsibilities

- 4) Assign a rating on each evaluation of:
 - a) Accomplished;
 - b) Proficient;
 - c) Developing; or
 - d) Ineffective

*Board will develop standards to distinguish between these four levels
- 5) Require each teacher to be provided with a written report of teacher evaluation results
- 6) Identify measures of student academic growth for grade levels/ subjects for which value-added progress dimension does not apply

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Teacher Evaluations – State Board Responsibilities

- 7) Implement classroom-level, value-added program
- 8) Provide for professional development to accelerate/continue teacher growth and provide support to poorly performing teachers
- 9) Provide for allocation of financial resources to support professional development

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Teacher Evaluations – District Responsibilities – § 3319.111

- › No later than July 1, 2013 each board of education must adopt a standards-based teacher evaluation policy that conforms to the framework developed by the state (just discussed).
- › The policy will become operative at the expiration of any collective bargaining agreement covering teachers in effect on the effective date of this section
- › The policy must be included in any renewal or extension of any collective bargaining agreement

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Teacher Evaluations – District Responsibilities – § 3319.111

- › When using measures of student academic growth as a component of a teacher's evaluation, those measures must include the value-added progress dimension, unless not applicable and then the board must administer assessments developed under § 3319.112 (just discussed)
- › Each teacher must be evaluated by the board at least once each school year except:
 - Each teacher with a limited contract must be evaluated twice in any year in which the board may wish to not re-employ the teacher
 - The board may decide to evaluate once every two years each teacher with a rating of accomplished on the most recent evaluation

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Teacher Evaluations – District Responsibilities – § 3319.111

- › The yearly evaluations must be completed by April 1 and each teacher must receive a written report of his/her results by April 10
- › Evaluations must be conducted by one or more of the following:
 - A person under contract with the board and holds a license designated for being a superintendent, assistant superintendent, or principal;
 - A person under contract with the board and holds a license designated for being a vocational director or supervisor in any education area;
 - A person designated to conduct evaluations under an agreement providing for peer review entered into by the board and representatives of teachers employed by the board.

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Teacher Evaluations – District Responsibilities – § 3319.111

- ▶ The board policy must include any procedures for using the evaluation results for retention and promotion decisions and for removal of poorly performing teachers.
- ▶ Seniority shall not be the basis for a decision to retain a teacher, except when making a decision between teachers who have comparable evaluations.

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What does this mean for you?

- ▶ If your CBA expires:
 - Before December 31st, 2011
 - Before July 1st, 2013
 - After July 1st, 2013

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What does this mean for you?

- ▶ Remember:
 - Every teacher in your district must be evaluated at least once per year before April 1st
 - Evaluation = two 30-minute observations + walkthroughs
 - All teachers must have their written evaluations provided to them by April 10th of each school year
 - Takes evaluations "off the table" in collective bargaining agreements – whatever policy is developed by the district will be included in all agreements from this point forward

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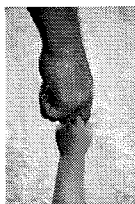
Policy and Governance

Policies and Governance

- › Recommend policies to the board
- › Review and evaluate policies
- › Advocate for children and families
- › Model and expect professional and competent conduct of staff

Policies and Governance – Legal Lessons

Abuse Reporting & Employment Decisions



Child Abuse & Neglect Reporting

- ▶ Mandatory duty to report when know or have reasonable cause to suspect that a person under 18 or a special education student under 21 has suffered or faces a threat of suffering any injury or condition which reasonably indicates abuse or neglect
- ▶ When in doubt – report!
 - Provided immunity
- ▶ Report immediately
 - Includes cases of abuse by school officials

Non-Renewals

- ▶ Be sure evaluations have been conducted according to law or CBA, whichever applies
- ▶ Board must adopt resolution to non-renew and provide written notice to teacher on or before April 30th of each year
- ▶ Teacher entitled to statement of circumstances leading to non-renewal and a hearing, upon request
 - Have attorney prepare

Extended Limited Contracts

- ▶ Used when a teacher is eligible for a continuing contract but the school district does not wish to award the continuing contract
- ▶ Very strange statutory procedure necessary to properly award an extended limited contract
- ▶ R.C. 3319.11(C)
 - Teacher must be eligible for continuing contract and has not attained continuing service status elsewhere

Extended Limited Contracts

- Superintendent must recommend to the Board that a continuing contract be awarded
- Board must reject continuing contract recommendation with a $\frac{3}{4}$ vote
- Superintendent must recommend extended limited contract of one or two years and Board must accept recommendation.
 - Provide written notice with reasons directed at professional improvement on or before April 30th
- › Must work this out with your Board prior to meeting
- › Would be a good idea to try to simplify this process through collective bargaining

Termination

- › Consult with legal counsel regarding likelihood of success if challenged and available options
- › Teachers
 - R.C. 3319.16 & 3319.161
 - Provide pre-disciplinary hearing/consider paid administrative leave
 - Board must adopt resolution to initiate termination proceedings
 - Can suspend without pay at this point
 - Treasurer provides teacher with notice that Board adopted resolution

Termination

- › Teachers continued
 - Teacher can request hearing before the Board or a state referee within 10 days of receipt of notice
 - Teachers always choose state referee
 - Request list of referees from ODE and parties select referee
 - Hearing scheduled within 30 days after receipt of request for hearing
 - Teacher must be given at least 20 days notice of hearing date
 - Often continued
 - Case is presented and referee makes decision within 10 days of conclusion of hearing/briefs

Termination

▸ Teachers continued

- Bound by referee's findings of fact
 - If recommends against termination because finds facts do not support reasons for termination, Board cannot override recommendation
 - However, if finds facts do support reasons for termination, but decides against termination for mitigating reasons, Board can override recommendation

Termination

▸ Non-Teaching Employees

- R.C. 3319.081
 - Statute is deceptively simple
 - Need to provide pre-discipline hearing before the Board or a responsible administrator
 - Board adopt resolution to terminate
 - Treasurer sends written notice upon employee by certified mail
 - Employee can appeal or file grievance and proceed to arbitration

Termination

▸ Negotiating Release & Separation Agreements

- Usually involve a form of severance (e.g. 2 months pay)
- Neutral letters of recommendation
- Agreement to be kept confidential, unless records request made
- Movement of damaging personnel documents to another file
- Will employer contest unemployment benefits?
- In exchange, employee agrees to waive any and all claims against a board of education
 - Often cheaper solution – guarantees desired result

Resources

Resources

- › Recruit, develop and sustain quality staff
- › Organize schedules based on district goals
- › Manage and prioritize resources aligned to district goals
- › Oversee district facilities and operations

Resources - Legal Lessons

Recent Operational and Facility Changes to Law



Contracting for Transportation

► O.R.C. § 3319.081 – The board of education of any school district may terminate any of its transportation staff positions for reasons of economy and efficiency so that the board may enter into a contract with an independent agent for student transportation services if:

- 1) Any collective bargaining agreement for terminated employees has expired or will expire within 60 days and has not been renewed OR the agreement in force contains provisions permitting termination of positions for reasons of economy and efficiency; and
- 2) The board permits any terminated employee to fill any vacancy within the district for which the employee is qualified; and

Contracting for Transportation

- 3) The board permits any terminated employee to fill the employee's former position in the event the board reinstates the position within one year after the date the position was terminated; and
- 4) The board permits any terminated employee to appeal the board's decision to:
 - a) Terminate the employee's position
 - b) Not hire that employee for another position the employee may be qualified for
 - c) Not rehire employee for reinstated position within one year after the position was terminated; and
- 5) The contract entered into by the Board and independent agent for transportation services contains a stipulation requiring the agent to consider hiring any former employees of district whose positions were terminated due to this contract for similar positions within the agent's organization; and

Contracting for Transportation

- 6) The contract between the board and the independent agent contains a stipulation requiring the agent to recognize any employee organization that represented the terminated employees in collective bargaining with the board at the time of the termination provided:
 - a) A majority of all employees in the bargaining unit agree to such representation
 - b) Such representation is not prohibited by federal law, including any ruling of the NLRB
 - c) The employee organization is not prohibited from representing nonpublic employees by other provisions of law or its own governing instruments

Note: any terminated employee shall not be compelled to be included in such bargaining unit if there is another bargaining unit within the agent's organization that is applicable to the employee

Contracting for Transportation

- If the board does not comply with its obligations as numbered 1-6 in O.R.C. § 3319.0810(A), then all terminations are void and the board must reinstate all positions and fill them with the employees who filled the positions before.
- Reinstated employees would be paid at the rate paid just prior to termination plus any increases paid to other non-teaching employees since the terminations
- Reinstated employees would also be entitled to back pay at the rate stated above from the date of termination to the date of reinstatement minus any pay received during any time the board was in compliance with the provisions of this statute

School Building and Land Changes

- R.C. 3313.41
 - Prior law required districts to offer property suitable for use as classroom space to start-up community schools in district
 - Now required to offer all real property to start-up community schools prior to selling property
 - Includes vacant land and space not suitable for use as classroom space
- R.C. 3313.411
 - School facilities that have been unused for two years must be offered for lease or sale to community schools located within district

Lessons Learned First Three Months on the Job

- Fiscal Resources
 - Negotiations
 - Budget Reductions
- Communication
 - Personnel – Compliance Issues
 - Crisis Planning and Communication – Death of a sibling at the bus stop
- Policies and Governance
 - Update policies and procedures to align with new legislation and current procedures
