



OSBA Legal Assistance Fund turns 40 this year

Sara C. Clark, director of legal services

The OSBA Legal Assistance Fund (LAF) was established in November 1976 to support school districts defending legal challenges with the potential to affect public schools statewide.

Support may come in the form of legal research, amicus curiae briefs, financial assistance and any other assistance the fund's trustees approve. A three-member board of trustees made up of OSBA's president, president-elect and executive director manages LAF.

In many cases, the fund provides assistance through an amicus curiae, or "friend-of-the-court" brief. An amicus brief explains to the court why the school district should win its case and how the court's decision will affect other Ohio school districts. LAF trustees select highly qualified school attorneys from across the state to write briefs on behalf of the trust.

Financial assistance also may be provided to help districts minimize the financial hardship of costly litigation to individual boards. This assistance is provided to districts as a percentage of the total cost of litigation or other matter of controversy incurred by the board. The trust is prohibited from incurring the total cost of litigation in any case in which assistance is provided.

Requesting assistance

LAF trustees may consider any legal dispute that pertains to the classification, organization, regulation, maintenance, operation, financing and management of school districts in Ohio. However, the trust is prohibited from participating in disputes between school districts,

disputes between individual school board members and disputes in which participating would be contrary to any current legislative position assed by the OSBA Delegate Assembly.

To initiate a request, a school board must adopt a resolution requesting assistance from the fund and complete an application. A sample resolution and the application may be found on OSBA's website at <http://links.ohioschoolboards.org/44419>. The application requests background information about the case, including details about the factual situation, procedural history and current status of the case, as well as why the case would be proper for LAF to consider. Frequently, the board, in consultation with its attorney, completes the application.

Once OSBA receives the application and resolution, trustees will determine if the issues and litigation involved meet the criteria for assistance under the trust.

Recent trust activity

In 2015, LAF was active in eight matters of statewide significance, including two cases heard by the U.S. Supreme Court. These cases involved issues such as school funding, child abuse reporting, property tax exemptions, Ohio's open meeting laws, construction contract provisions and community school accountability. Following are brief summaries of the cases.

Ohio v. Clark — In November 2014, LAF joined National Education Association, American Federation of Teachers and National School Boards Association (NSBA) and submitted an amicus brief asking the U.S. Supreme

Court to overturn the Ohio Supreme Court's decision in a case involving a preschooler's statements of child abuse. In a victory for Ohio's schools, the U.S. Supreme Court unanimously overturned the Ohio Supreme Court in June, finding that the admission of a teacher's testimony regarding the student's answers to her inquiries about suspicious injuries was not a violation of the Sixth Amendment's Confrontation Clause. A copy of the decision is available online at <http://links.ohioschoolboards.org/79774>.

Schott v. Wenk — In August 2015, LAF joined NSBA and 15 other national organizations to file an amicus brief in the U.S. Supreme Court, urging the court to protect teachers and other school officials from lawsuits arising from reports of suspected child abuse they make under Ohio's mandatory reporter laws. The brief asked the court to hear and overturn a ruling by the 6th U.S. Circuit Court of Appeals that makes mandatory reporters of suspected child abuse vulnerable to federal claims brought by an alleged abuser. Unfortunately, in January, the U.S. Supreme Court found there was no reason to hear the case after the parties settled it, leaving in place the unfortunate case precedent rendered by the circuit court.

Stewart v. Lockland — In September 2014, LAF filed an amicus brief in this case in which the underlying issue was whether a district could conduct an executive session to consider the termination of an employee when the employee requests that the deliberations remain public. Agreeing with the position set forth in LAF's brief, the

Ohio Supreme Court upheld the lower court's decision in September 2015 and held that a public employee can have a public hearing about his or her employment status only when the employee is otherwise entitled to a public hearing. In this case, the court held that the employee was entitled to a hearing, but not a public one. A copy of the decision is available online at <http://links.ohioschoolboards.org/70423>.

Hope Academy v. White Hat — The Ohio Supreme Court issued an important opinion in September 2015 in a case stemming from ongoing litigation between 10 Cleveland community schools and their operator, White Hat Management. LAF filed an amicus brief in June 2014 in support of the schools. Among other things, the brief argued that White Hat owed a fiduciary duty to the schools it operated and their boards. The court agreed, finding that because White Hat agreed to act on behalf of the schools to help them carry out their purpose, advance the schools' interests and operate "all functions" of their day-to-day operations, a fiduciary relationship was created. However, the court rejected LAF's argument that the management agreements between the parties were unenforceable, finding that because the schools were represented by their own legal counsel and had agreed to the provisions in the contracts, they were enforceable. A copy of the decision is available online at <http://links.ohioschoolboards.org/15993>.

Talawanda v. Ohio Dept. of Taxation — In January 2015, LAF filed an amicus brief arguing that the statute that generally provides for an exemption of school-owned property exempted real property broadly and did not place any restrictions on use. In December 2015, the Ohio Supreme Court agreed with this position and overturned a prior Ohio Board of Tax Appeals ruling that denied a tax exemption to a school district that leased a parcel of its property to a farmer and did not use the property exclusively for school purposes. A copy of the decision is available online at: <http://links.ohioschoolboards.org/21520>.

School Choice Ohio v. Springfield — In February 2015, LAF filed an amicus brief in this case in which the underlying issue is whether districts may adopt board policies that allow them to distinguish to whom a student's directory information is released. LAF's amicus brief argues that districts retain the discretion to decide what information it considers "directory information," which, in turn, governs the information that may be released in response to a public records request. Oral arguments were held in late January, and we continue to await the court's decision.

Boone Coleman Construction Inc. v. Village of Piketon — In December 2014, LAF joined the County Commissioners Association of Ohio, Ohio Municipal League and Ohio Township Association to file an amicus brief in a case dealing with the enforceability of liquidated damages clauses in construction contracts. Oral arguments were held in June 2015 and we continue to await the court's decision.

Toledo et al. v. Ohio Dept. of Edn. — In

September 2015, LAF filed an amicus brief on behalf of the **Toledo City**, **Dayton City** and **Cleveland Municipal** school districts in a case involving the question of whether Ohio's General Assembly may constitutionally enact a law retroactively shielding the Ohio Department of Education from liability for its unauthorized adjustments that resulted in the districts losing funding. Oral arguments were held in December 2015 and we continue to await the court's decision.

OSBA hopes that through LAF's efforts, courts and the community at large will gain a better understanding of how these fundamental issues affect education in our state. If you have questions about LAF or would like to request assistance, please contact OSBA's division of legal services. ■

"According to Law" is designed to provide authoritative general information, sometimes with commentary. It should not be relied upon as legal advice. If legal advice is required, the services of an attorney should be obtained.



OSBA strategic planning — the road map for decision making

Let OSBA put you on the path to success. OSBA can help your district create a comprehensive, long-term strategic plan to ensure you always know which road to take. OSBA consultants will help you identify critical issues, set comprehensive goals for the district and determine priorities for the future.

Call the OSBA Division of School Board Services at (614) 540-4000 or (800) 589-OSBA to get moving in the right direction today.