



Board member compensation, benefits and expense reimbursement

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This fact sheet is designed to address the most frequently asked questions about board member compensation and other benefits. The information is of a general nature. Readers should seek the advice of legal counsel regarding specific legal problems or questions.

Can school board members be paid?

Under the applicable statutes, city, local, exempted village and joint vocational (JVSD) school board members may be compensated for their service up to \$125 per meeting as provided by the board's resolution (Ohio Revised Code Sections (RC) 3311.19 and 3313.12). Educational service center (ESC) governing board members can be paid the compensation provided by the board's resolution, provided that it does not exceed \$125 dollars a day for attendance at any meeting of the board. Boards are not required to pay the statutory maximum but may choose to compensate at any rate up to the statutory maximum. The statute also provides that all board members except for JVSD board members are prohibited from receiving more than \$5,000 per year in total compensation (RC 3313.12). In addition to being compensated for their attendance at meetings, ESC and JVSD board members may be reimbursed for mileage to and from board meetings at a rate set by the board (RC 3311.19).

How can board compensation be increased or decreased?

The Ohio Constitution prohibits increases or decreases in compensation for public officials during a term of office (Ohio Constitution Article II, Section 20). This prohibition precludes public officials from using their influence to obtain a legislative salary increase and protects officials from a reduction in their compensation by the appointing authority or the public after their term of office begins (*Musser v. Morton*, 639 F.2d 309 (6th Cir.1981)).

A board may pass a resolution or change board policy to adjust board compensation amounts at any time, but those changes will apply only to board members beginning new terms or for those appointed to a vacancy after the change is made.

For example, assume three board member positions are up for election in November 2023. The remaining two board members' terms do not expire until December 2025. In October 2023, the board votes to increase each board member's pay from \$80 per meeting to \$125 per meeting. Each of the three board members elected or reelected at the November 2023 election will be paid \$125 per meeting for all meetings beginning in January 2024. The two members who continue in office will receive \$80 per meeting through the end of their terms. The individuals elected or reelected to those two positions in November 2025 will be compensated \$125 per meeting beginning in January 2026.

The best time to change compensation is in September or October of odd years, prior to board elections. This way, the changes will take effect when new board members take office in January of even years. An Ohio Ethics Commission (OEC) opinion held that public officials are prohibited from enacting or receiving increases in compensation for a position after their reelection to the position and *prior* to the beginning of their new term. Ohio Ethics Laws prohibit these actions because the increase in compensation, to

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which the public officials are entitled solely by their own actions, may manifest an improper influence upon the officials and impair their independence of judgment on behalf of the public interest (OEC Advisory Opinion No. 96-001).

What constitutes a meeting for which board members can receive compensation?

A meeting is defined by the Ohio Open Meetings Act (RC 121.22) as “any prearranged discussion of the public business of the public body by a majority of its members.” There is no statutory limitation on the number of meetings for which a board member may be compensated, although any board may impose such a restriction by policy. However, as previously stated, all board of education members except for JVSD board members are prohibited from receiving more than \$5,000 per year in total compensation under RC 3313.12.

Board committee meetings are considered “meetings” under RC 121.22, but RC 3311.19 and 3313.12 do not clarify whether “meetings” for which a city, local, exempted village, ESC or JVSD board member can be compensated includes meetings of board committees. Before paying board members for attending meetings of the board’s committees, boards should consult with their legal counsel for guidance on whether such payments are permitted and ensure that their current policy does not limit compensation to meetings of the full board. If the policy must be amended to allow for such compensation, see the discussion below regarding increasing the number of meetings for which board members may be compensated.

Can a board member receive compensation for attending a meeting via telephone or some other remote method?

Some boards have policies that allow one or two board members to attend meetings via telephone or by some other remote method. This is permissible, although a quorum of the members must be present in person at the public meeting site in order to hold the meeting. Also, a board member who is attending via a remote method cannot be counted as part of the quorum or vote on matters before the board at the meeting.

Whether to compensate a board member for attending a meeting virtually is a matter within the discretion of the board of education. The Ohio auditor of state has informally confirmed a board’s ability to compensate a board member for attending a meeting virtually but would expect to see that the board has adopted a resolution or policy that specifically authorizes such compensation. The auditor of state also has encouraged districts to evaluate the following conditions prior to adopting

such a policy: whether any virtual attendance will be eligible for compensation or whether virtual attendance will only be compensated for certain reasons (e.g. due to the illness of the board member) and whether there is a limit on the number of times per year that a board member may receive compensation for their virtual attendance.

Can a board member be compensated for attending more than one board meeting on the same day?

For members of ESC governing boards, compensation is capped at \$125 a day for attendance at meetings (RC 3313.12). However, for members of other boards, the statutes allow for compensation of \$125 a meeting without reference to whether the meetings occur on the same day (RC 3313.12, 3311.19)

Before compensating members for more than one meeting on a day, boards should review their policies and consult with their legal counsel to make sure that paying board members for more than one meeting on the same day is permissible and would not constitute an unlawful increase in compensation. If a board’s policy allows for compensation of \$125 per day for attending meetings, it would have to amend its policy before paying board members for more than one meeting on the same day. This may also constitute an increase in compensation that would have to be phased in over time as discussed above.

Can the maximum number of meetings for which board members are compensated be increased or decreased?

If the board has adopted a policy that limits the number of meetings per year for which board members may be compensated, that number must remain static during the board member’s term. Of course, a board may change the number of meetings it holds at any time; the issue is whether members can receive compensation for those additional meetings.

A policy change to increase the number of meetings for which a board member may be paid has been interpreted as an increase in compensation. As a result, a board may pass a resolution or change its policy to increase the number of meetings per year for which board members may be compensated, but the change will not become effective until board members begin new terms after the effective date of the board’s action.

Can board members be compensated for attending training?

Each board of education may authorize its members to be compensated for attending approved training programs (RC 3313.12 and RC 3311.19). The rate of compensation authorized by law is up to \$60 a day for attendance at a training program of three hours or fewer and up to \$125 per day for attendance at a training program longer than three hours.

Just as boards may choose the rate of compensation up to the statutory maximum for attending meetings, they also are authorized to set the amount for attending a training program provided that the amount does not exceed the statutory maximum. If a board amends its policy to increase the amount provided to board members for attending a training program, that increase would become effective for board members as they begin new terms.

Board members also should check their board policies to see whether there are requirements to seek prior approval for attending training programs in order to be compensated for that attendance.

Can I be reimbursed for my expenses?

RC 3315.15 permits districts to create a "service fund," which can be used to pay those expenses actually incurred by board members in the performance of their official duties. The fund also can be used to pay the expenses actually incurred by board members-to-be for training and orientation to the performance of their duties that occurs between the date of election or appointment and the date of the administration of the oath of office. The board's policy and regulations should set forth the permissible expense reimbursement amounts, limits and procedures. This fund can be used to pay for registration, travel and other expenses and is different from board member compensation for attending training. Board members should check their board policies to see whether there are any requirements to seek prior approval for attending training programs in order to be reimbursed for registration and other expenses from the service fund. Some boards ask members who attend training programs to share what they learned at the training with their fellow board members.

Can the board increase the rate of reimbursement?

The Ohio attorney general has held the constitutional prohibition against compensation increases and decreases for public officials during their terms of office not only prevents public officials from receiving an increase in their fixed salaries but also prevents them from receiving an increase in the

amount allowed for expenses incurred in performing their official duties. Therefore, a board may pass a resolution or change board policy to increase rates of reimbursement, but any changes will not become effective until board members begin new terms after the effective date of the board's action (1985 Ohio Atty.Gen.Ops. No. 85-036).

Can a board member waive compensation or request that their compensation be given to the school district?

Nothing prohibits a board member from individually and voluntarily waiving all or a portion of their compensation or "donating" compensation back to the school district. In these cases, neither the appointing authority nor the public has decreased the board member's compensation, so the principal mischief at which the constitutional prohibition is aimed is not present.

However, board members should be aware that there might be tax implications associated with declining compensation. Since the income is made available to the board member without restrictions, the IRS may find that the board member is in constructive receipt of the compensation and may tax the board member accordingly. Board members should consult with a tax adviser on the tax consequences of waiving compensation.

To avoid the tax issue, the school district could issue the board member a check with the appropriate tax withholdings. The board member then may choose to make a donation of the remaining compensation back to the school district. Donations from board members should be handled in the same manner as other gifts or donations made to the district.

Can I accept additional compensation from vendors or other groups for my board service?

No. The Ohio Ethics Laws (RC Chapter 102 and RC 2921.42 and 2921.43) prohibit a public official, including a school board member, from:

- soliciting, accepting or using the authority of their public position to secure a gift, meal, entertainment or other thing of value if it is of a substantial nature and provided by someone that is regulated by, interested in matters before or doing or seeking to do business with the agency they serve;
- accepting anything, regardless of its value, if the item is provided to the official as compensation for the performance of their public duties.

Does board service qualify for State Teachers Retirement System (STRS), School Employees Retirement System (SERS) or Ohio Public Employees Retirement System (PERS) service credit?

Yes, it qualifies for SERS credit. Within 30 days of taking office, board members must choose whether to participate in SERS. The choice must be made in writing and must be given to the school district's treasurer. Failure to choose is deemed a rejection of membership. The choice cannot be changed after it is made. If a board member does not become a member of the retirement system, the board member is prohibited from making a claim for service credit from the system later in their service (RC 3309.012). A board member who joins SERS will receive credit for their years of service as a board member in accordance with SERS rules and may be able to transfer those credits to other state retirement systems, such as STRS and PERS. Board members who are interested in transferring credits should contact their retirement system.

Can a board member obtain health benefits from the district?

RC 3313.202 permits board members, their spouses and dependent children to elect to participate in the health care plan provided to employees of the district. Board members who elect to participate are required to pay the full amount of the premiums, which may be deducted from amounts owed to the board member as compensation. Participation in the district's health care plan must be made in writing, announced at a regular public board meeting and recorded in the minutes of the board.

The information in this fact sheet is designed to provide authoritative general information. It should not be relied upon as legal advice. If legal advice is required, the services of an attorney should be obtained.