



STUDENT SERVICES LEGAL UPDATES & HOT TOPICS

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Things to do



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AGENDA

ODEW/SBE Updates

USDOE/OCR Updates

Lame duck Legislation 2025

Recent Court Cases

Trends from My Practice

Q&A

**UPDATES FROM
THE OHIO
DEPARTMENT OF
EDUCATION AND
WORKFORCE (DEW)
& STATE BOARD OF
EDUCATION (SBE)**



The background of the image is a wall covered with numerous colorful sticky notes in various colors including yellow, blue, green, orange, pink, and purple. The notes are scattered and overlapping, creating a vibrant and busy visual texture.

OEC SDI MEMO

OEC-SDI MEMO #2025-1



- OEC Memo issued October 3, 2025, effective immediately.
- Released in response to questions related to the provision of high-quality language and literacy instruction and interventions.
- Can literacy specialists and/or general education teachers deliver SDI?

OEC-SDI MEMO # 2025-1



- 34 C.F.R. 300.156 and OAC 3301-51-09(H) require that personnel be properly trained and licensed if they are assigned to implement special education services.
- OAC 3301-51-09(G) requires that an intervention specialist and/or a related service provider be assigned to students with disabilities.
 - Both are responsible for ensuring services and supports are in place for students.
- The IEP team makes the decision about who will deliver SDI based on the unique needs of the student and the content-level expertise of the qualified personnel.
- General education teachers (listed under support for school personnel in the IEP) may collaborate with Intervention Specialists and related service providers to deliver SDI when the Intervention Specialist or Related Service Provider does the following:
 - Ensures implementation of SDI service minutes and that instructional strategies align with the student's IEP;
 - Assesses and monitors, with the SDI provider, progress toward IEP goals and makes necessary instructional adjustments;
 - Maintains oversight and compliance with SDI implementation requirements.



What is Specially Designed Instruction?

- SDI means adapting, as appropriate to the needs of an eligible child, the content, methodology, or delivery of instruction to address the unique and individual needs of a child with a disability and ensure access to the general curriculum, allowing them to meet the educational standards applicable to all children.
- SDI goes beyond general education instruction to provide specialized support and accommodations to address specific challenges faced by students with disabilities.

ODEW ADMINISTRATIVE RULES UP FOR REVIEW



OAC CHAPTER 3301-51 EDUCATION OF STUDENTS WITH SPECIAL NEEDS

Deadline: Thursday, February 19, 2026, 5pm

Rule:

- » OAC 3301-51-11 Preschool children eligible for special education.
 - View the draft rule here: [3301-51-11-Rule-1.pdf](#) 

Draft Business Impact Analysis:

- » OAC 3301-51-11 Preschool children eligible for special education.
 - View the draft BIA here: [3301-51-11-Draft-BIA.pdf](#) 

STATE COMPLAINTS GENERAL UPDATES



- Letter of Allegations contains District interview date/time.
- Many new investigators.
- Major uptick state-wide on complaints.
- Extension requests for documentation submission.
- No longer publishing outcomes.

The image shows the exterior of a building with a light-colored stone or concrete facade. Several windows with dark frames are visible. The words "PARTMENT OF EDUCATION" are carved into the stone above a glass entrance. A dark blue rectangular overlay is positioned on the left side of the image, containing white text.

PARTMENT OF EDUCATION

U.S.DOE/OCR
UPDATE

DISMANTLING U.S. DEPARTMENT OF EDUCATION



- Trump campaign pledge to abolish the U.S. Department of Education.
- Secretary McMahon on has acknowledged it would take Congressional approval.
- November 18, 2025 – U.S. Department of Education announced new interagency agreements “to break up the federal education bureaucracy.”
- Partnerships with HHS, DOL, DOI.
- Currently two court cases pending on the issue.
- Bipartisan federal appropriations legislation was introduced this week that keeps funding levels at current levels and includes language that seeks to prevent transfer of USDOE funds and functions to other agencies.

EXECUTIVE ORDERS & ACTIONS CHALLENGED IN FEDERAL COURTS

■ K-12 Executive Orders

- Ending and fighting DEI programs
- Recognizing sex based only on biological definitions
- Ending and fighting biological male participation in female sports and spaces
- Ending birthright citizenship for children of undocumented or temporarily-present mother and non-citizen/permanent resident father
- More review of discretionary grants – esp. DEI focus
- Facilitate closure of the Department of Education

Reductions-in-Force in Agencies

Funding Reductions, Withdrawals, Reviews and Terminations

Agency Rulemaking and Guidance

- HHS -- Interpreting Head Start as a “federal public benefit” inaccessible to undocumented immigrants under the PRWORA
- DHS -- Rescission of “Sensitive Locations” policy

WHAT IS AN EXECUTIVE ORDER?



- Written and published directive from the President regarding management of the federal government.
- Have the force of law for administrative agencies.
- Do not create individual rights, typically describe the enforcement priorities or the interpretation of the law of the current administration.
- Courts may enjoin their implementation or enforcement based on a lack of authority or constitutionality.
- Congress may enact legislation to negate or overturn or remove funding.

PRESIDENTIAL EXECUTIVE ORDERS

*Compiled by W.P.A.
HISTORICAL RECORDS SURVEY*

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Volume One
LIST
—

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OFFICE FOR CIVIL RIGHTS (OCR) REDUCTIONS



- *New York v. McMahon*, 145 S.Ct. 2643 (2025): The Supreme Court allowed the U.S. Department of Education to continue with its mass layoffs while litigation continues.
- *Victim Rights Law Center v. United States Dept. of Educ.*, 788 F.Supp.3d 70 (D. Mass. 2025): The District Court judge issued an injunction blocking the OCR layoffs.
- The First Circuit granted a stay of the injunction on September 29, 2025, allowing OCR layoffs to resume.
- *American Fed'n of State County and Mun. Employees v. U.S. Office of Management and Budget*, 125 LRP 34573 (N.D. Cal. 12/17/25): A judge issued an injunction preventing federal agencies, including the Department of Education, from continuing layoffs until January 30, 2026.

OCR TRENDS

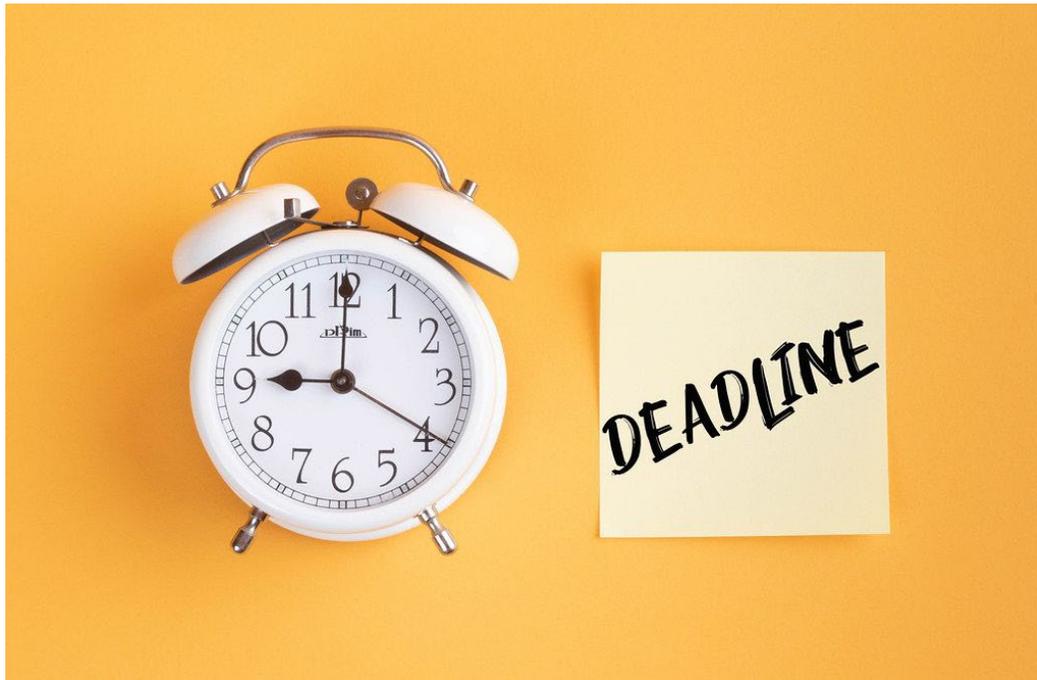


- Closure of Cleveland, other regional offices.
- After a reported “staggering increase of Title IX complaints” partnered with the DOJ to create the Title IX Special Investigations Team to streamline investigations and expedite enforcement.
- Enforcement priorities seem to be around race (anti-DEI), Title IX (challenging gender inclusive policies and practices) and antisemitism.

**“Lame Duck”
Legislation 2025**



HB 114 – KINDERGARTEN ADMISSION CHANGES



- Effective March 20, 2026.
- Eliminated August 1/September 30 deadlines for kindergarten admission.
- “Each school district board of education shall admit to kindergarten any student who is five or, for a student who has not completed first grade, six years of age by the first day of instruction of the school year of admittance.”
- **What is the “first day of instruction”?**

RELEASED TIME FOR RELIGIOUS INSTRUCTION

- HB 57; Effective January 19, 2026.
- O.R.C. 3313.6022 was changed last year to make released time mandatory.
- Contained constraints. By policy, a student could not be excused for more than:
 - Elementary-Middle: More than 2 periods/week.
 - High School: More than the amount of time that is equivalent to attending two units of high school credit per week.
- **New:** Policy may permit students to be excused for longer.
- **Watch:** Statute requires collaboration, but watch for promotion/entanglement concerns. Many records requests for communication with LifeWise.



OVERDOSE REVERSAL DRUGS



- O.R.C. 3313.7119; Effective January 19, 2026.
- ODEW must develop a model policy regarding maintenance and use of overdose reversal drugs.
- If a district elects to obtain and maintain a supply of an overdose reversal drug for emergency use, it must adopt and implement a policy. Adoption of ODEW policy is sufficient.
- **Policy must cover:**
 - Compliance with O.R.C. 3715.50 (C)(1) (provide instructions for anyone using, including requirement to summon emergency services; establish a process for replacing within a reasonable time; storage requirements consistent with manufacturer/distributor instructions)
 - Amount to be maintained;
 - Requirement to store in a secure location accessible to employees/contractors;
 - A description of any training required for employees or contractors.

OVERDOSE REVERSAL DRUGS



- School board may accept donations of money to purchase overdose drugs.
- **New Reporting Requirements:**
 - Any time used, Superintendent must notify the Board of Education and the parent/guardian of the student.
 - If the superintendent determines that a persistent pattern of overdoses at the district's schools has emerged, the superintendent shall notify the parent or guardian of each student enrolled in the district.

HB 10 – PROHIBITS “CULTIVATED-PROTEIN FOOD”



- O.R.C. 3313.8110.
- Effective March 20, 2026.
- Boards of education must adopt a policy to prevent the purchase of a food that is either of the following:
 - Misbranded as a meat product or an egg product as prohibited in section 3715.602 of the Revised Code;
 - A cultivated-protein food product as defined in section 3715.601 of the Revised Code.
- ODEW shall adopt a policy to prevent the purchase of a food that is either of the following:
 - Misbranded as a meat product or an egg product as prohibited in section 3715.602 of the Revised Code;
 - A cultivated-protein food product.

DEFINITIONS



Egg product: Food derived from egg processing in which eggs or egg parts are the primary ingredient.

Meat product: The handling, preparation, and slaughter of an agricultural food animal; the dressing of its carcass; or the cutting, storage, and packaging of its tissue or other parts as a food.

Cultivated-protein food product: A food having one or more sensory attributes that resemble a type of tissue originating from an agricultural food animal, but that, in lieu of being derived from meat processing, is derived from manufacturing cells in which one or more stem cells are initially isolated from an agricultural food animal, are grown in vitro, and may be manipulated, as part of a manufacturing operation.

CONGRESS
ENACTED A
LAW!



WHOLE MILK FOR HEALTHY KIDS ACT OF 2025



- Signed January 14, 2026.
- Amends the National School Lunch Act, 42 U.S.C. 1758(a)(2) to allow schools to offer whole milk as part of the school lunch program.
- Schools participating in the program must provide milk that is consistent with the most recent Dietary Guidelines for Americans; USDA regulations require milk to be fat-free or low-fat and allow milk to be flavored or unflavored. The bill modifies these restrictions and instead permits schools to offer students whole, reduced-fat, low-fat, and fat-free flavored and unflavored milk. The milk that is offered may be organic or nonorganic.
- Schools currently must provide a substitute for fluid milk, on receipt of a written statement from a licensed physician, for students whose disability restricts their diet. Under the bill, a parent or legal guardian may also provide the written statement.
- Schools currently participating in the program must provide meals that meet certain nutrition requirements; USDA regulations require that the average saturated fat content of the meals offered must be less than 10% of the total calories. Under the bill, fluid milk is excluded from the saturated fat content calculation; milk fat included in any fluid milk provided by the program must not be considered saturated fat for the purposes of measuring compliance with USDA regulations.

RECENT
COURT
CASES



LITTLE V. HECOX & WEST VIRGINIA V. B.P.J.



- Idaho banned transgender women and girls from competing on women's and girls' sports teams in 2020. West Virginia enacted a similar ban in 2021.
- Idaho was sued and the 9th Circuit Court of Appeals found in favor of Hecox, a transgender woman who wanted to try out for the women's track and cross-country teams at Boise State University. The federal court found that the law violated the 14th Amendment's Equal Protection Clause because it categorically banned transgender women and girls from public sports teams that correspond with their gender identity.
- In West Virginia, the mother of B.P.J. sued. B.P.J. is a transgender high school student who has publicly identified as a girl since 3rd grade. B.P.J. has competed on track and cross-country teams. The 4th Circuit Court of Appeals found on behalf of B.P.J. that West Virginia's law violated Title IX because it discriminates against B.P.J. on the basis of sex.
- Oral arguments held last week.
- Decision expected in June.

STATUS OF THE LAW IN OHIO



- HB 68 enacted in 2024.
- O.R.C. 3313.5319 in bill; subsequently renumbered to O.R.C. 3313.5320.
- “No school, interscholastic conference, or organization that regulates interscholastic athletics shall knowingly permit individuals of the male sex to participate on athletic teams or in athletic competitions designated only for participants of the female sex.”

PARENTS DEFENDING EDUCATION V. OLENTANGY

158 F.4TH 732 (6TH CIR. 2025)



- Membership organization of parents of school-aged children brought action against school district board and administrators alleging that school district's policies prohibiting students from referring to transgender and nonbinary classmates using biological pronouns violated First Amendment Free Speech Clause.
- The Southern District of Ohio denied organization's motion for preliminary injunction, and it appealed.
- A panel of the Court of Appeals affirmed. Rehearing en banc was granted.
- Court of Appeals granted a “tailored injunction” that covers the speech plaintiffs sought to protect but permits the School District to discipline bullying and harassment separate from that speech.
- Injunction bars school districts from punishing students for misgendering other students based on their honest belief that only two genders exist and that individuals cannot change their genders.
- School districts can continue to enforce their bullying and harassment policies, but context of the speech becomes very important.

Foote v. Ludlow Sch. Comm., 128 F.4th 336 (1st Cir. 2025)

Littlejohn v. Sch. Bd. Of Leon Cnty., Fla., 132 F.4th 1232 (11th Cir. 2025)



- **Foote**: Parents filed § 1983 action alleging that school committee's protocol requiring its staff to use student's requested name and gender pronouns within school without notifying parents of those requests unless student consented violated their fundamental parental rights protected by Due Process Clause. The United States District Court for the District of Massachusetts, , J., 2022 WL 18356421, dismissed complaint, and parents appealed. First Circuit Affirmed.
- **Littlejohn**: Middle school student's parents filed § 1983 action against school board and school officials alleging that school officials violated their right to direct upbringing of and medical and mental health decision-making for their child, their right to familial privacy, and their substantive due process rights when they met with student outside of their presence to discuss support plan for student's gender confusion and desire to use self-identified name and pronouns at school. The United States District Court for the Northern District of Florida dismissed the complaint and the parents appealed. The Eleventh Circuit Affirmed.
- Both cases have been appealed to the Supreme Court and those petitions are pending.

Niblock v. Univ. of Kentucky, No. 24-6060 (6th Cir. Jan. 20, 2026)



- Several female students at a public university alleged that the school violated Title IX by failing to offer varsity-level women's teams in equestrian, field hockey, and lacrosse. Although the university provided club-level opportunities for these sports, the plaintiffs contended that this did not satisfy the school's obligation to offer equal athletic opportunities. Over the previous decade, the percentage of female students and female varsity athletes at the university increased, but women still comprised a smaller share of varsity athletes than of the total student body. The university periodically surveyed students to assess interest and ability for new varsity teams and maintained a review committee to monitor athletic opportunities.
- The District Court for the Eastern District of Kentucky held a three-day bench trial, considering testimony from students, coaches, and university staff, as well as survey data regarding student interest and ability in the relevant sports. The district court found that while women were underrepresented relative to the student body, the plaintiffs failed to show there were enough female students with the requisite interest and ability to compete at the Division I varsity level in equestrian, field hockey, or lacrosse. The court concluded the university had sufficiently accommodated the athletic interests and abilities of its female students and denied relief to the plaintiffs.

Niblock v. Univ. of Kentucky, No. 24-6060 (6th Cir. Jan. 20, 2026)



- On appeal, the United States Court of Appeals for the Sixth Circuit reviewed the district court's factual findings for clear error and its legal conclusions de novo. The appellate court held that the district court did not clearly err in finding insufficient interested and able female students to form viable varsity teams in the disputed sports. The court also upheld the exclusion of an expert witness who lacked relevant survey design expertise. The Sixth Circuit affirmed the judgment in favor of the university, holding that Title IX does not require the creation of new varsity teams in the absence of demonstrated unmet demand and ability.

***B.A. V. TRI CNTY. AREA SCHOOLS*, 156 F.4TH 782
(6TH CIR. OCT. 14, 2025)**



- Middle school students, through their mother, brought § 1983 action against school district and school administrators for declaratory and injunctive relief, alleging violation of First Amendment free speech rights for being prohibited from wearing, at school, sweatshirts with political slogan “Let's Go Brandon” to express their disapproval of the President's administration and policies.
- The District Court for the Western District of Michigan, , J., 746 F.Supp.3d 447, granted school district and administrators' motion for summary judgment and denied students' cross-motion for summary judgment. Students appealed.
- The Court of Appeals, , Circuit Judge, held that (1) school administrators reasonably classified the sweatshirt slogan as vulgar, and (2) vulgarity trumped politics to allow ban on sweatshirts consistent with First Amendment.

CAHALL V. NEW RICHMOND EXEMPTED VILLAGE SCHOOL DIST. BD. OF EDN., (S.D.OHIO SEPT. 29, 2025.)



- Plaintiff Karen Cahall is a third-grade math and science teacher in the New Richmond Exempted Village School District (the District). The District’s Superintendent imposed a three-day unpaid suspension on Cahall, asserting that she had violated the District’s “controversial issues” policy based on certain reading materials she made available to the students in her classroom. Cahall had various LGBTQ+ books in her classroom that she claimed not to have used in instruction, but rather were available for students to read or borrow.
- Cahall sued the district alleging violations of the 14th and 1st Amendments. She argued the policy was unconstitutionally vague and she argued that her conduct in adding the books to her classroom was based on her sincerely held moral and religious beliefs. She argued that the district had tolerated other religious or faith-based expression that was similar to hers.
- The Court found Cahall’s arguments unpersuasive and granted the Board’s motion for judgment on the pleadings and dismissed the suit.

TRENDS FROM MY PRACTICE



TREND – GENERATIONAL CHURN



- As the workforce has evolved in the last few years, we have seen an increase in staff who are new or have less experience in their role.
- The result is a need for more thorough training.
- Triage and focus on priorities.
- Examples:
 - Seclusion and restraint training.
 - Proper physical contact with students.
 - Design and delivery of specially designed instruction.
 - IEP drafting.
 - Prior written notice writing.
 - Student discipline investigations and due process.

TREND – DISCONNECT ON SECLUSION/RESTRAINT TRAINING



- Ohio regulations (O.A.C. 3301-35-15) highly regulate how restraint and seclusion are defined, they may be used and what must happen if it does.
- Crisis intervention training often focuses on the branded strategy (Handle with Care, CPI, Marcus, etc.)
- Must make sure that administrators and staff who are being trained are also trained on the Board policy and regulation to ensure that notice, reporting and debriefing are occurring, too.

TREND – DISCONNECT ON SECLUSION/RESTRAINT TRAINING



- Seclusion and restraint used by someone without training or experience.
- Lack of awareness of definitions and what is and is not restraint/seclusion.
- No immediate report to administration and parent.
- No written report or not given to parents.
- No follow up or debrief related to the incident.
- Multiple incidents without convening a team or discussion of suspected disability.

TREND – INCREASED BEHAVIORS



- More intensive behavior cases
 - Need for specialized expertise?
 - Need for creative problem-solving approach.
 - More possible district-initiated due process cases regarding LRE.
- Increase in staff misconduct related to student treatment
 - How are you training staff about what is appropriate for physical intervention?
- Uptick in student discipline cases
 - Ensure that processes, forms, and procedures are up to date and consistently used.
 - Ensure administrators have training on due process, statutory requirements for discipline.
 - Rushing an investigation and lack of communication both can lead to lawyers.
 - Suspension/expulsion in grades pre-K-3 are still severely limited.

STUDENT EXPULSION FOR ACTIONS DANGEROUS TO OTHERS



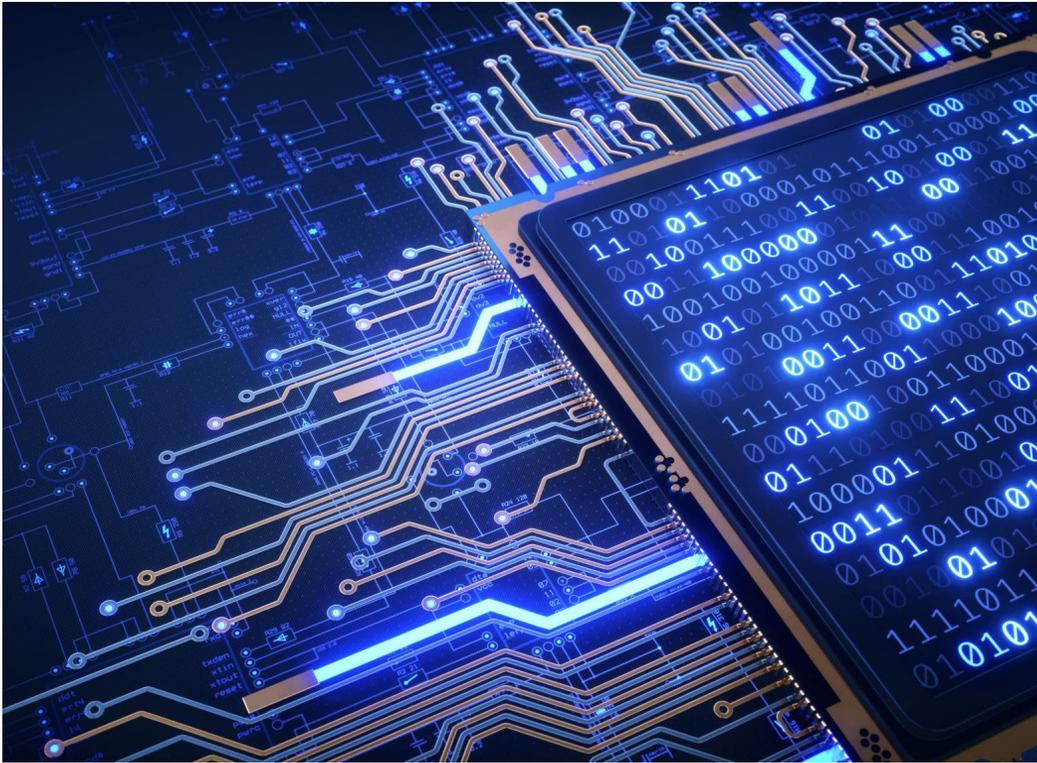
- O.R.C. 3319.66 updated. Effective April 9, 2025.
- Permits a board of education to establish a policy that authorizes the superintendent to expel a student for a period not to exceed 180 school days for actions the superintendent determines pose imminent and severe endangerment to the health and safety of other pupils or school employees, even though the pupil's actions may not qualify for permanent exclusion.
 - In doing so, superintendent shall develop conditions for the student to satisfy prior to the student's reinstatement and must provide a copy of those conditions in writing to the board, student, and student's parent/guardian at time of the expulsion. Board must establish guidelines for appropriate conditions that the superintendent may develop.
 - One of the conditions must be an assessment to determine whether the student poses a danger to themselves or others. Must be completed by a psychiatrist, licensed psychologist, or licensed school psychologist employed or contracted by the district agreed upon by the district and the pupil's parent/guardian. This assessment may include recommendations for contingent conditions on the student's reinstatement.
 - Expulsion may be extended another 90 days if student does not show sufficient rehabilitation. The same process above happens again and the student will be reinstated, or the expulsion may be extended another 90 days. There is no limit to extending the expulsion by 90 days again and again...
 - Expulsion may be reduced before the time is up if it is determined that the student has met the conditions.
 - Within the first 10 days (if student has an IEP) or 15 days otherwise, must develop a plan for the continued education of the pupil including home instruction, an alternative setting, or any other form of instruction that complies with Chapter 3321 of the Revised Code.
 - The same appeal rights apply as to other student discipline.

TIPS ON IMMINENT & SEVERE ENDANGERMENT OPTION



- Must have this option in policy to use it.
- Must continue student's education.
- First time, work with counsel to get the procedure and documentation right under the statute.
- Consider that the “danger assessment” is different from “threat assessment.”
- Will need a threat assessment to help support conclusion that student presents an imminent and severe danger.

TREND – ARTIFICIAL INTELLIGENCE



- Complaints are more articulate, take more time to respond.
- AI hallucinations.
- Students use; staff use; parent use.
- Raises issues of privacy.
- Policy required by August 1, 2026.
- ODEW Model Policy published December 30: <https://education.ohio.gov/getattachment/Topics/Al-in-Ohio-s-Education/Model-Policy/Al-In-Education-Model-Policy-2.pdf.aspx?lang=en-US>

WILLIAM A. V. CLARKSVILLE-MONTGOMERY COUNTY SCH. SYS., 127 F.4TH 656 (6TH CIR. 2025)



- The Sixth Circuit found that the District denied William FAPE by failing to include appropriate IEP goals to allow him to learn how to read.
- William's parents filed a due process complaint in March 2023 of William's junior year.
- The ALJ found that William was denied FAPE and ordered that the District provide 888 hours of dyslexia tutoring from a trained reading intervention specialist. The ALJ also found that the District had violated William's rights under the ADA.
- William's parents filed a subsequent action in federal court, seeking an order that the compensatory education be provided by the dyslexia specialist they had previously hired. The District filed a counterclaim, seeking a reversal of the ALJ's order.
- The district court affirmed the ALJ's order but declined to order that the District provide dyslexia tutoring from the parents' preferred specialist.

WILLIAM A. V. CLARKSVILLE-MONTGOMERY COUNTY SCH. SYS., 127 F.4TH 656 (6TH CIR. 2025)



- William was found eligible for special education shortly after enrolling in the District when he was in fifth grade because he had a learning disability that impaired his skills in reading, writing, and math.
- In middle school, William failed to make progress on his reading fluency goals. When he initially transitioned to high school, one teacher emailed a school administrator and said, “This kid can’t read.”
- William was diagnosed with dyslexia in his junior year of high school. His parents then arranged for him to receive private tutoring from a dyslexia specialist. She focused on skills like alphabetic sequencing and syllable recognition using a twelve-step program designed to help dyslexic persons learn to read.
- The District rejected the parents’ and tutor’s proposal that William continue the program as part of his IEP, and instead had William continue with his existing reading fluency goals.
- The Sixth Circuit noted that William did not receive FAPE in regards to his reading and writing goals because his accommodations masked his inability to read.
- “To write a paper, for example—as the ALJ described—William would first dictate his topic into a document using speech-to-text software. He then would paste the written words into an AI software like ChatGPT. Next, the AI software would generate a paper on that topic, which William would paste back into his own document. Finally, William would run that paper through another software program like Grammarly, so that it reflected an appropriate writing style.”

POWHATAN COUNTY SCH. BD. V. SKINGER, 125 LRP 17324 (E.D. VA 2025).



- A special education advocate used ChatGPT and other AI tools to draft her responses in an IDEA action.
- The use of AI resulted in 42 cases that were either hallucinations or not remotely related to the subject matter of the case.
- “The pervasive misrepresentations of law in Lucas’ filings cannot be tolerated. It serves to make a mockery of the judicial process. It causes an enormous waste of judicial resources to try to find cited cases that do not exist and to determine whether a cited authority is relevant or binding, only to determine that most are neither.”
- The court sanctioned the advocate by striking all pleadings that were overly long, lacked clear and concise statements, and included irrelevant or nonexistent case citations.
- However, because the advocate was proceeding pro se, the court allowed her to submit replacement filings that complied with the Local Rules and Federal Rules of Civil Procedure.

TREND – FIRST AMENDMENT RIGHTS

- More staff and student commentary and conduct about the current political environment.
- More partisan perspectives on school boards.

FOUNDATION FOR STUDENT SPEECH ISSUES



- **Starting point:** Students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969).
- **But:** The U.S. Supreme Court has also stated that “[t]he constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings, and the Constitution does not compel school officials to surrender control of the American public school system to public school students.” *Bethel Sch. Dist. No. 403 V. Fraser*, 478 U.S. 675 (1986).

WHEN IS REGULATION PERMITTED?



Student speech occurring while in school, on school property, or at a school sponsored event can be disciplined as follows:

- A public school may categorically prohibit **vulgar, lewd, indecent, or plainly offensive speech**. See *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986);
- A public school may regulate speech related to the **promotion of drug use**. See *Morse v. Frederick*, 551 U.S. 393 (2007);
- A public school may regulate speech appearing in a school-sponsored forum or a forum that **appears school-sponsored (e.g., post to school's twitter) when the speech is inconsistent with pedagogical concerns**. See *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988); and
- A public school may regulate speech that is **reasonably likely to substantially and materially interfere with schoolwork or discipline**. See *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969).

APPLYING TINKER



While the government generally cannot place viewpoint restrictions on adult content, *Tinker* permits schools to restrict student speech on the basis of viewpoint in two sets of circumstances:

- (1) If the speech might reasonably lead school authorities to forecast substantial disruption of or material interference with school activities; or
- (2) If the speech interferes with the rights of other students to be secure and to be let alone.

Tinker, 393 U.S. 508, 514 (1969)

STUDENT SPEECH TIPS



- Use extra caution with political or religious speech.
- Gather evidence of disruption or likely disruption if that is the rationale for discipline.
- Train staff and administrators on the law (including coaches).

MAHANAY AREA SCHOOL DISTRICT V. B.L.



- In general, the Court’s opinion emphasized that public schools have a diminished interest in disciplining out-of-school speech as compared to in-school speech.
- Despite this general message, the Court did acknowledge that there are certain situations where a public school district has a significant interest in disciplining out-of-school behavior and/or speech. The Court’s list included:
 - “serious or severe bullying or harassment targeting particular individuals;”
 - “threats aimed at teachers or other students;”
 - “the failure to follow rules concerning lessons, the writing of papers, the use of computers, or participation in other online school activities;” and
 - “breaches of school security devices, including material maintained within school computers.”

STAFF USE OF SOCIAL MEDIA

CONSTITUTIONAL RIGHTS



- Generally, public employees maintain their First Amendment rights to freedom of speech while at school.
- Public employees have more extensive First Amendment rights in their online activities when they are off-duty.
- However, a public employee's First Amendment rights are not absolute.

EMPLOYEE SPEECH - SUPREME COURT CASES

- Speech is generally protected if:
 - The speech is made in the employee's capacity as a **private citizen**;
 - The speech involves a matter of **public concern** or interest: and
 - The **employee's interest in speaking freely is greater** than the government employer's interest in efficiently fulfilling its public services.

Connick v. Myers, 461 U.S. 138 (1983); *Pickering v. Board of Educ.*, 391 U.S. 563 (1967).

- When public employees make statements pursuant to their official duties, they are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline. *Garcetti v. Ceballos*, 547 U.S. 410 (2006).



Regulating Speech

STAFF USE OF SOCIAL MEDIA

Districts have authority to regulate speech:

- Concerning purely private matters with a nexus to school;
- Occurring pursuant to the employee's official duties;
- Stating deliberate or reckless falsehoods; or
- Causing disruption to school activities.

Regulating an employee's speech means that a District can:

- Request that current posts be removed;
- Restrain similar posts in the future; and
- Discipline or terminate.

STAFF USE OF SOCIAL MEDIA



- Districts can regulate speech that disrupts school activities.
- Speech disrupts school activities if it:
 - Interferes with the performance of the employee's duties;
 - Undermines a legitimate goal or interest of the district;
 - Creates disharmony among coworkers; or
 - Destroys the relationship of loyalty and trust required of confidential employees.
- Example:
 - District can forbid a custodian from having further contact with a coworker after the coworker complained that the custodian had made threatening phone calls due to a recent shift assignment.

Licensure Code
of Professional Conduct
for Ohio Educators



LICENSURE CODE OF PROFESSIONAL CONDUCT FOR EDUCATORS

Conduct unbecoming includes, but is not limited to, the following actions:

- Using technology, social media or other electronic communications to host, post, or distribute improper or inappropriate material that could reasonably be accessed by the school community (includes, but is not limited to, pornography, obscene material, promotion of drug use or underage consumption of alcohol, promotion of violence, disparagement of students, and disparagement based upon gender, gender identity, race, sex, ethnicity, sexual orientation, disability, military status, or religion).

OPC CONDUCT TIP SHEET

- https://education.ohio.gov/getattachment/Topics/Teaching/Educator-Conduct/ABConduct/SocialMedia_TipSheet1.pdf.aspx?lang=en-US

Office of Professional Conduct

Social Media TIP SHEET 1

#ABCConduct

To download other tip sheets, visit education.ohio.gov/abconduc

Educators have a visible place in their communities. The choices they make, even when not intended, can affect their families, jobs, schools and professions. The Ohio Department of Education, Ohio Education Association and Ohio Federation of Teachers offer this series of tip sheets supported by OADE, OADEA and OAFED to recognize situations which can get great educators in trouble.



Most educators carry smart phones that give them photos, video and texting opportunities and the instant ability to post, like or snap. But these social media opportunities can blur the line between work and personal life.

Be smarter than your smart phone

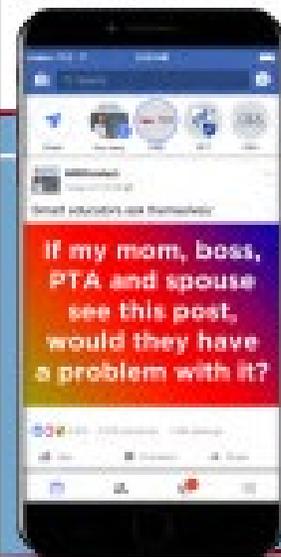
Tip 1: Remember, the Classroom Code of Professional Conduct for Ohio Educators applies all day, every day, even in your personal social media accounts. If someone would have a problem with your placement post, it could mean a problem for you.

Tip 2: Privacy settings don't guarantee privacy, but using maximum settings may lower your risk. If you use social media platforms such as Facebook or Twitter, have two accounts for work.

Personal account - Post content only for friends and family, and use maximum privacy settings that block your posts from students, parents and the school community. Keep in mind that someone still could print, copy or take a screenshot of your post.

Professional account - Post content only for students, parents, administrators and the school community. No party pictures or pet photos from.

Tip 3: Remember, if a comment or photo is inappropriate in the school or classroom, it's inappropriate on social media.



TODAY'S SMART EDUCATORS...

Recognize every electronic communication is a record - If you document your work, school, family or community, it's on a record. Would you really post it?

Keep those profiles PG-rated - Only post content to your personal, family, educational, professional or organizational groups.

Know there is no such thing as an only "private" - Even the personal accounts with high privacy settings, anyone can post, copy or take a screenshot of your post.

De-identify their students' social media profiles - If a family member, school administrator and the Ohio Department of Education/Office of Professional Conduct will offer help on your social media profiles.

Monitor their online presence - Periodically post, edit, delete, using links or use search engines that minimize you online. If a friend tagged you personally in a community post, inform the tag and use your privacy settings about the photo.

Check their privacy settings high - Turn on the "lock" on the privacy settings and deactivate your work or your personal accounts. Consider making a note that students could add or follow, friend or add you.

Never post their business online - Avoid using photos, about photos, colleagues or students. What if you provided identifiable information like student grades, health conditions or full names.



Q&A



THANK YOU!

