



## Section XII

# education law

*“All who have meditated on the art of governing mankind have been convinced that the fate of empires depends on the education of youth.”*

– Aristotle

## Public Education In Ohio

**I**n Ohio, a child may attend school in the school district in which his or her parent lives. The parent is not responsible for paying tuition (though the parent may be responsible for other school-related fees). A child who does *not* live with parents can attend a public school without paying tuition if:

- the child is in the legal or permanent custody of a government agency or a person other than the child’s natural or adoptive parent;
- the child resides in a “home” for children within the school district;
- the child receives special education.

Also, if the parents’ residential district participates in open enrollment, they may send their child to a *contiguous* school district without tuition payment as long as the contiguous district also has an open enrollment policy. Each district determines its own policy and must make the policy available to district residents upon request.

In 2004, Ohio adopted a rule to allow grandparents to get physical custody of their grandchildren. This rule entitles grandchildren to attend school near the grandparent’s home without paying tuition and without requiring a legal change in custody. Instead, the child’s parent, guardian or custodian completes a power of attorney document that allows the child to attend school in the grandparent’s school district. If the child’s parent cannot be located, the grandparent can create a *child caretaker authorization affidavit* to provide the same benefit.

In addition, students may attend school without paying tuition under certain circumstances.

### Compulsory Attendance

Ohio mandates compulsory education for all children living in Ohio who are between six and 18 years of age. Attendance is required until the student meets the state’s minimum standard and receives a diploma.

### Valid Medical Excuse

Children who have a physical or mental disability and a valid excuse may be excused from compulsory school attendance. A valid excuse can be written by a certified licensed physician or clinical psychologist, or by a school psychologist. A properly excused child may be entitled to have the school district provide home instruction if the child will be out of school for a lengthy period of time.

### Home Schooling

Parents may wish, for a variety of reasons, to educate their children at home. This is known as *home schooling*. A parent who wishes to home school a child must apply to the county or state superintendent. In the application, the parent must agree to educate the child in all areas prescribed by state standards, and must provide details about how this will be done, who will teach, and what textbook courses, or teaching materials will be used. Also, the parent must provide assurance that the child will receive a minimum of 900 hours of home education for the school year. The parent must be a high school graduate, but need not be a certified teacher to teach his or her own child.

## Truancy

Truancy is considered a major juvenile offense that subjects the parents to court action. According to Ohio law, parents must make sure their children are not truant from school.

A child who is absent 10 or more consecutive days without a valid excuse is considered truant and subject to the juvenile legal system. The juvenile legal system may impose penalties on either the parent, the child or both. However, a school district may choose to notify the parent and student before referring the student to juvenile court. The district may require the parents and the student to appear at school. If the parents and student do not respond to the school's summons, the school may refer the case to the court as well as to the registrar of the Ohio Bureau of Motor Vehicles (BMV).

If the case is referred to the BMV, the BMV registrar may suspend the student's driver's license permanently until the student reaches the age of 18 or satisfies the BMV that he or she is attending school.

# Alternatives to Public Education

## Voucher Programs

*Voucher programs*, also known as scholarship programs, were established by the state for students who live in a public school district that has been classified as "needing improvement" and has been placed under a federal court order requiring the state superintendent to manage the district. Students may use these scholarships to help pay tuition costs for private schooling. Currently, only six states have instituted voucher programs. While Ohio is included among these six states, Cleveland is the only city in the state to have a voucher program.

Voucher programs give priority to low-income families who cannot afford to pay private school tuition costs or move to another school district. To receive scholarships, which may cover up to 90 percent of private school tuition, students must apply.

## Charter schools

A *charter school* is a nonsectarian public school that is frequently established to meet students' various learning styles. Agencies established by the Ohio legislature supervise Ohio's charter schools. Charter schools may be started *only* in school districts the state has determined to be "challenged school districts" and in Ohio's major urban districts. However, a student need not live within a "challenged" district to attend a charter school.

## Ohio School Funding & Management

Both traditional public schools and charter schools are funded on a per-pupil basis by the state according to certain formulas. Local school districts also receive funding through local property taxes. These taxes may not be passed on to charter schools. Public schools, both traditional and charter schools, are eligible for grant programs through state, federal and private foundations. Public schools must adhere to federal and state regulations regarding school districts' operation and management, and are governed by local, elected, boards of education. All students residing within the boundaries of a school district are eligible for enrollment and cannot be denied an education unless expelled.

Private schools are funded through tuition costs, fundraising, donations, and private grants. They also receive money from state grants and by meeting certain federal and state requirements. Because private schools are subject to fewer state and federal regulations than public schools, their administrators can create specialized programs, alter the curriculum of instruction, and hire a teacher who holds a bachelor's degree, but not necessarily a teaching degree. Private schools can set admission standards and may refuse admission to any student for non-discriminatory reasons. Private school students must, however, take the Ohio Graduation Test or meet a state-approved alternative requirement.

*Parochial schools* are private schools that incorporate religious education into their curriculum. Students who enroll in parochial

schools are not required to belong to any particular religious organization, but they are expected to participate in the school's religious classes and services.

## Student Rights

### First Amendment Rights

Students do not lose their First Amendment right to freedom of speech when they enter school, but public, private and parochial schools may limit students' rights to express opinions when the expressions are vulgar or offensive, or interfere with the educational instruction of other students. Also, school administrators may censor student expressions in speech and in writing if they are produced as part of a school activity or curriculum (such as an article for a school newspaper), and if there is a legitimate reason for doing so (for example, if school officials determine that the subject matter is inappropriate). A school official may not, however, censor only one side of a debated issue.

School officials may exercise censorship control over the speech and written materials of organizations, including religious and political organizations, that are not affiliated with the school, but only if the materials cause a disruption and interfere with the education and environment of the school. School administrators also may ban the distribution of materials that are vulgar, offensive, or coercive, and they may limit when and where these materials are distributed.

The First Amendment requires public schools to remain neutral with respect to religion. Teachers and administrators may not force students to pray, read religious text for which there is no approved educational purpose, or lead students in prayer. However, public school students *do* have a right to voluntarily pray before, during, or after school, and schools may not ban religious clothing. If a public school allows student-run clubs to meet outside of class time, a student-formed religious club also must be permitted to meet. Public schools also may implement a moment of silence, but may not require students to pray. In addition, courts have ruled that reciting the Pledge of Allegiance must be a voluntary act,

and it is a violation of First Amendment rights for schools to require students to recite the pledge.

Regulations on dress and hairstyles have caused students to voice concerns over their rights to freedom of speech as guaranteed by the First Amendment. Courts, however, generally have upheld any school dress regulation as long as the adopted codes are specific, do not discriminate and have some basis, such as to promote appropriate behavior and avoid unruly conduct. Hair codes are more difficult to enforce, but may be permitted when implemented for safety or other legitimate reasons. Each state follows its own regulations on hair and dress code enforcement.

Student rights also include the freedom of association. This is the right to form clubs and groups and to meet during non-instructional time without any school administration interference. If a school allows any student-initiated groups to form, administrators may not discriminate against and prohibit the formation of a particular student-run group. School officials and staff members also may not lead, participate in, or control these groups.

### Student Discipline

In Ohio, school officials generally may discipline a student for conduct that disrupts the school day or endangers the health or welfare of the student or others. Typically, a local school district will, through its Board of Education, circulate a student code of conduct. A school official typically determines consequences for unacceptable behavior. These may vary greatly and include warnings, corporal punishment (with limitations), detention, in-school suspensions, Saturday school, out-of-school suspensions and expulsions.

Some school disciplinary codes include broad prohibitions against "willful misconduct," "disobedience" and "intentional disruption." Increasingly, schools are using these more general prohibitions to impose discipline for actions that occur outside school.

Out-of-school *suspensions* and *expulsions* are the most severe of the possible consequences. For out-of-school suspensions lasting up to and including 10 days, the student must receive oral or written notice of the charges. If the student denies the charges, school administrators must provide

an explanation and evidence and offer the student a chance to present his/her side of the story at an informal hearing. Frequently, the notice and hearing will take place at the same time in the disciplinarian's office. If a student poses a risk or ongoing threat, the student may be immediately removed from the school, even though notice and the chance to explain must be given before consequences are determined. If a student is suspended for 10 or fewer days, the school need not give the student an opportunity to retain legal counsel, cross-examine witnesses, or call his/her own witnesses. However, parents who disagree with a suspension of 10 or fewer days may appeal the decision to the school's superintendent according to the district's policies.

In Ohio, any out-of-school suspension of more than 10 days is considered an expulsion. Students who face being excluded from school for longer than 10 days have certain rights. For example, the school must provide a written notice of the intent to expel to the student's parents (or to the student, if 18 years of age). This initial notice must outline the infraction and set a date for a hearing not longer than 10 days after the student's removal from school, to be conducted by the superintendent or representative. The student must be allowed to hear evidence against him/her, present his/her own evidence, and bring legal counsel. The hearing must be recorded to create a permanent, verbatim transcript of the proceeding.

If, at the hearing, it is decided that the student should be expelled, the district must send a second notice to the student outlining the length of the expulsion and his/her right to appeal to the Board of Education and state court. In Ohio, a student generally may be expelled for no more than 80 school days (which may extend into the next school year). For specific infractions, including drug or weapon offenses, a student over age 16 may be permanently expelled. A student, unless disabled, is not eligible to receive educational services from the expelling school; nor does the student have a chance to make up missed work. Nevertheless, the student may apply to receive educational services from another public or private school in the state during the period of the expulsion. The other school *may*, but is not obligated to, accept the student into regular

classes or provide educational services until the student fully serves the expulsion term. However, any grade or credit earned at the other school during the time of the expulsion will not be applied to the student's record in the expelling school. Due to state and local school boards' zero tolerance policies, expulsions occur more frequently than in the past. Under the zero tolerance policy, anyone bringing drugs, fire-arms, knives, or other weapons to school may be expelled. School districts may decide to include medicines or pocket knives in this list.

These general provisions are modified for students that have been identified as or suspected of having a disability. For such a student, educational services must be continued, according to the *Individualized Education Plan (IEP)*, during periods of discipline beyond 10 days. If the student's conduct: 1) was caused by, or was directly and substantially related to, the disability; or 2) was the direct result of the school's failure to implement the IEP, then the behavior is considered a "manifestation" of the disability. Schools now may remove a student with disabilities who possesses drugs or weapons in school, or inflicts serious bodily injury on another person, even if the infraction is a manifestation of a disability, for up to 45 days. If the disabled student is removed from school, the district must continue to educate the student in an interim alternative educational setting.

## **Student Right to Privacy**

Increasingly, school districts are turning to traditional law enforcement techniques to secure their buildings and prevent drug or weapon use on school grounds. In Ohio, only law enforcement officials may carry guns onto school grounds. Also, no person may enter a school building with a concealed weapon, even if certified to carry a concealed weapon. Schools may use metal detectors to help ensure student safety.

Similarly, locker searches conducted by school officials are permitted in emergency situations. A district's board of education may authorize random locker searches, as long as notice is posted in a conspicuous location. School boards also may specifically grant school administrators the authority to search a locker

when there is reasonable suspicion that the locker contains evidence of violations of law or school rules.

Searches of other personal property or persons are more strongly regulated, although they do not require a warrant. A school administrator may search a student or a student's belongings if there is good reason to believe an inappropriate item will be found. School officials must be especially careful about justifying a search of a student's person, and about conducting the search so that it is limited in scope and not overly intrusive.

## Harassment

*Harassment* refers to severe, pervasive, or objectively offensive conduct based upon a student's actual or perceived race, color, national origin, gender, disability, sexual orientation, religion, or other identifying characteristic. Harassment includes physical, emotional, and/or sexual conduct that causes harm to the targeted student, often affecting a child's performance in educational or social activities. *Bullying* (using power inappropriately to intimidate or harm another) also may affect a student's school performance, but is not necessarily related to the target's race or other identifying characteristic.

Federal laws prohibit particular types of harassment, but no comprehensive law addresses all forms of harassment in schools. At this time, there is no law specifically prohibiting bullying, though most schools prohibit all forms of harassment, bullying, hazing, and other behavior that interferes with learning. Also, the No Child Left Behind Act of 2001 requires school districts receiving federal money to provide a plan for making classroom environments conducive to learning and schools safe and drug free.

In Ohio, schools and teachers who are acting appropriately and seeking to help students develop their skills are protected from liability (civil or criminal responsibility) for ordinary school situations. Typically, schools and teachers are held liable for only the most severe cases of intentional misconduct. However, Ohio students must be supervised, and schools and their teachers may be held liable for foreseeable injuries if supervision is inadequate. Also, schools must respond to code

of conduct violations and respond in a timely manner to harassment complaints.

## Child Abuse Reporting Obligations

Ohio has laws aimed at protecting children from abuse and neglect. *Child abuse* is actual, deliberate physical or mental injury or death or the threat of injury to a child's health or welfare. Abuse includes inappropriate sexual behavior. The definition of *child neglect* is broader and includes situations where parents refuse to provide proper or necessary subsistence, education, or either physical or mental health care.

Under Ohio law, *mandatory reporters* must immediately report child abuse or neglect to local law enforcement or human services agencies. Mandatory reporters include teachers and other authorized school employees, counselors, health care professionals, child care workers, attorneys, priests and others who work closely with children or are charged with protecting children. Mandatory reporters must report any known or suspected abuse or neglect and cannot be sued for following through on this obligation. If they *fail* to report known abuse or neglect, they may face both criminal and civil liability.

## Special Education

### General Provisions

In general, the federal *Individuals with Disabilities Education Act* (IDEA) was passed to ensure that: 1) all children with disabilities a free, appropriate public education that meets their unique needs and prepares them for employment and independent living; 2) the rights of children with disabilities and parents of such children are protected; and 3) states and localities receive support in educating disabled students. Also, the Act provides for assistance to states in developing early intervention services and educational assessment tools.

### Early Intervention Programs

IDEA provides for early intervention services for children from birth until age three if they: 1) are experiencing a developmental delay in one or

more areas or 2) have a diagnosed physical or mental condition that is likely to result in developmental delay. *Developmental delay* is a delay in one or more areas of development (cognitive; physical, including vision, hearing and nutrition; communication; social or emotional; and/or adaptive behavior).

In Ohio, the Ohio Department of Health (ODH) provides early intervention services under the “Help Me Grow” (HMG) system. The ODH makes IDEA funds available to county Family and Children First Councils (FCFC), which administer Ohio’s early intervention programs. These funds may be used to maintain a system of services for eligible infants and toddlers, provide direct services for eligible children if not already provided by other public agencies or private sources, and to expand services for eligible children.

For more information on Ohio’s Early Intervention Program (age 0-3), visit the Ohio Department of Health’s Web site at <http://www.odh.ohio.gov/odhPrograms/ei/ein/earlyint1.aspx>

### **Free Appropriate Public Education**

The IDEA also requires school districts to provide all eligible students with a *Free Appropriate Public Education* (FAPE). Free Appropriate Public Education is special education and related services that: 1) have been provided at public expense, under public supervision and direction, and without charge; 2) meet the standards of the state’s educational agency; 3) include an appropriate preschool, elementary or secondary school education in the state involved; and 4) meet the IEP requirements. Each school district must adopt and implement written procedures ensuring FAPE to all children with disabilities, aged three through 21 years.

### **Evaluations and Re-evaluations of Students with Special Needs**

Under IDEA, school districts must conduct evaluations and re-evaluations to determine initial and ongoing eligibility for special education and related services. Before conducting such an evaluation, a district must get consent from parents or

legal guardians, and must explain, in writing, the district’s proposed evaluation procedures.

Following an initial evaluation to determine the educational needs of a child with a disability, the district must re-evaluate the child at least once every three years, or at the request of a parent or teacher, or if conditions warrant a re-evaluation. However, re-evaluations may not require new assessments in all educational areas. The Individualized Education Plan (IEP) team may waive additional testing of the student if it finds that existing evaluation data is sufficient. A re-evaluation is required before a district can determine that a student no longer qualifies as a student with a disability. Parents who disagree with the results of the districts evaluation can request an *Independent Educational Evaluation* (IEE) at public expense.

## **Federal Legislation and Education**

A number of federal acts or amendments affect any U.S. educational programs. Many of these acts or amendments apply to all schools in the state that receive federal funds, including all public schools and most private schools. Religious schools, however, may not be subject to some of the requirements of the federal acts or amendments listed below.

### **Title IX**

Established to promote gender equality in schools, Title IX of the Educational Amendments of 1972 prohibits any federally funded educational programs or activity from discriminating based upon sex. Title IX extends to all areas of public schooling and protects all students and employees of educational institutions that receive federal funds.

Each school must have a Title IX Coordinator who works with the Office of Civil Rights within the U.S. Department of Education to enforce Title IX policies. The Office of Civil Rights protects the anonymity

of anyone who files a complaint, and the institution that is the subject of the complaint must not retaliate against someone who complains. Any school that does not comply with Title IX may have to pay money, including any attorney fees, to the person who brought the complaint. Also, violations of Title IX may jeopardize the school's federal funding.

## Section 504 of the Rehabilitation Act of 1973 / Americans with Disabilities Act

### Section 504 of the Rehabilitation Act of 1973

The Rehabilitation Act of 1973 made it unlawful to discriminate against individuals with disabilities in activities funded by federal subsidies or grants. Section 504 of the Act covers all public or private programs or activities that receive federal assistance, and therefore includes all public elementary and secondary schools and most colleges and universities. According to Section 504, schools may not discriminate against students with disabilities and must provide such students with reasonable accommodations and, in some cases, services. Section 504 protects individuals with impairments that substantially limit a major life activity, such as learning. Unlike IDEA, which covers students in public schools until age 22, Section 504 covers all individuals no matter the age. For example, college students are covered, as are employees if they work for a company that receives federal funds.

### Americans With Disabilities Act of 1990 (ADA)

In 1990, Congress enacted the American with Disabilities Act (ADA), a civil rights statute extending the concepts of Section 504 to: 1) employers with 15 or more employees; 2) all activities of state and local governments, inclu-

ding employment and education; and 3) all places that offer goods and services to the public. The Act requires public places to make reasonable modifications to policies, practices, and buildings unless those modifications would fundamentally alter the nature of the services or be an undue burden.

### No Child Left Behind

The aim of the federal No Child Left Behind Act of 2001 was to improve schools nationwide by addressing standards and accountability, providing more choices for parents, increasing local control and flexibility, and using teaching methods that scientific research supports.

No Child Left Behind requires schools to implement a statewide accountability system to ensure continual and substantial academic improvement for all students. This accountability system (*Adequate Yearly Progress*, or AYP), seeks to narrow the achievement gaps among students by requiring schools and districts to report achievement ratings of state-developed annual goals to the state. The achievement ratings, gathered through the use of a statewide assessment, determine how well schools are performing.

The statewide assessments are based upon annual measurable goals for reading and mathematics. The state determines what percentage of students must test as proficient on these assessments for a school or district to be "adequately progressing." Also, 95 percent of all students must participate in the statewide assessment based upon these annual objectives for a school to meet AYP. Elementary and middle schools also must maintain a certain attendance level, and secondary schools must maintain a certain graduation rate.

A school district that does not have the necessary percentage of proficient students still may meet the AYP standard if it has reduced the number of non-proficient students by at least 10 percent from the previous year's report.

If a school and/or district fails to meet the state's AYP standard, the state will apply sanctions (such as requiring implementation of a school improvement plan) to bring about improvement. If a school fails to meet the AYP standard

for two years in a row, the school will earn “School Improvement Status.” Students enrolled in such a school can choose to enroll in another of the district’s schools that is *not* under “improvement” status. This is known as *school choice*. Schools that continue to fail to make AYP will receive supplemental services from the state and other arrangements may be made for the school’s management. For example, such a school may be closed and reopened as a charter school, or school staff may be replaced.

### **Family Educational Rights and Privacy Act / Student Records**

The federal Family Educational Rights and Privacy Act (FERPA) protects the confidentiality of educational records maintained by any educational institution receiving federal funds (or by someone acting for the institution). FERPA provides parents and eligible students (those beyond age 18 or in a post-secondary program) certain rights regarding records, files, documents, or other materials containing personal information about the student. Some information (such as name, address, phone, degree, etc., as might be found in a directory) can be disclosed without the student’s consent, but affected parents and students must be notified first.

There are some exceptions to the general rule that the school cannot disclose information without parent consent. For example, the school

may release educational records to other school officials who have a legitimate educational interest in the information, or information may be shared in an emergency to protect the health or safety of the student or others. Each school must comply with FERPA and notify parents and eligible students annually of their rights. For more information about FERPA, visit the U.S. Department of Education’s Web site at: <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>.

## **Covering Education Law**

Journalists covering legal education issues are often faced with considerable access challenges in the reporting of specific education stories. Educational records containing personally identifiable information about students is not subject to disclosure except under very limited circumstances. Journalists should be aware of these concerns for student privacy rights. Because the educational and legal systems often protect the release of information about minors in an effort to safeguard their development, journalists are advised to consult with their own counsel on their rights of access to student records that contain personally identifiable information, which is not generally accessible to public viewing.

## Web Links:

### **OSBA's "Law You Can Use" articles:**

(go to <http://www.ohiobar.org/pub/lycu> and search for article by title or by topic)

“No Child Left Behind Act’ Aims To Foster School Accountability”

“Circumstances Say Whether Minors Are ‘Emancipated’”

“Grandparents Can Get Authority To Make School Decisions for Grandchildren”

“Mediation Program Helps Prevent Truancy in Ohio”

“Ohio Law Says Where Students Can Attend School Tuition-Free”

“Ohio To Ensure ‘No Child Left Behind’”

“Parents Must Take Responsibility for Truant Students”

“Public Schools May Test Students for Drugs under Certain Circumstances”

“Schools Must Follow Procedures To Suspend or Expel Students”

“What You Should Know about Home Instruction”

“What You Should Know about Home Schooling”

### **U.S. Department of Education's Web site:**

<http://www.ed.gov/index.jhtml>

### **Ohio Department of Education's Web site:**

<http://www.ode.state.oh.us/>