

CONTENTS

CHAPTER 1: AN OVERVIEW

Section

- 1.01 The legal underpinning of public elementary and secondary education in Ohio
- 1.02 The nature of public schools
- 1.03 State regulation of non-public schools
- 1.04 Use of public funds for non-public schools; vouchers
- 1.05 Desegregation of the public schools
- 1.06 —Authority of federal courts

CHAPTER 2: SCHOOL DISTRICT ORGANIZATION

Section

- 2.01 Organization
- 2.02 Types of school districts
- 2.03 Chartering of schools and school districts
- 2.04 City school districts
- 2.05 Local school districts
- 2.06 Exempted village school districts
- 2.07 Educational service centers
- 2.07.1 —Joint educational service centers
- 2.08 Joint high school districts
- 2.09 Joint vocational school districts
- 2.09.1 Cooperative education school districts
- 2.10 Changes in classification of districts
- 2.11 Transfer of school district territory: an overview
- 2.12 The role of the educational service center board in territorial changes
- 2.13 Judicial interference with territorial changes
- 2.14 The need for contiguity in district territory
- 2.15 Procedures for the transfer of school territory, local school districts (ESC involvement)
- 2.16 —Consummating the transfer
- 2.17 Division of property and indebtedness following transfer of territory
- 2.18 Status of employees following transfer of territory
- 2.19 Creation of new local school districts within ESC
- 2.20 Territorial changes initiated by the State Board of Education
- 2.21 Transfer of territory from a city, exempted village, or local school district (no ESC involvement)
- 2.22 Municipal annexation of school territory
- 2.23 Transfer and taxation
- 2.24 Community (charter) schools
- 2.25 — Creation and types
- 2.25.1 —Internet-or computer-based community schools
- 2.26 — Required elements of sponsor contract
- 2.27 — Exemption from state laws; laws retained
- 2.28 — Facilities
- 2.29 — Admission of students
- 2.30 — Transportation

- 2.31 — Funding
- 2.31.1 —Borrowing authority
- 2.32 — Employees
- 2.33 — Fiscal officer
- 2.34 — Report cards
- 2.35 — Suspension, nonrenewal, or termination of sponsor contract
- 2.36 — Immunity of sponsor and officials

CHAPTER 3: MANAGEMENT AND CONTROL OF SCHOOL DISTRICTS

A. THE NATURE AND OPERATION OF BOARDS OF EDUCATION

Section

- 3.01 An overview
- 3.02 Source of authority
- 3.03 The scope of power
- 3.04 Implied powers
- 3.05 Board exercise of its power
- 3.06 Delegation of discretionary authority
- 3.07 The board's power to manage and control
- 3.08 Membership of boards and removal of members
- 3.09 Organization, meetings and compensation
- 3.10 Vacancies on the board
- 3.11 Quorum and voting
- 3.13 Public character of board meetings; Sunshine Law
- 3.14 —Scope and application of Sunshine Law
- 3.15 —Procedural requirements
- 3.16 —Executive sessions
- 3.17 —Duty of board where employee or student "requests a public hearing"
- 3.18 —Sanctions
- 3.19 Public participation at board meetings
- 3.20 Use of cameras and recorders at board meetings
- 3.21 Control of board of education meetings
- 3.22 Access to school records; Ohio Privacy Act
- 3.23 Destruction of school records
- 3.24 Conflict of interest; contracts
- 3.24.1 —Financial disclosure; honorariums
- 3.25 Legal counsel for boards of education
- 3.26 Annual report on litigation
- 3.26.1 Employment of consultants
- 3.27 Board membership in organizations
- 3.27.1 Business advisory councils
- 3.28 Board's authority to purchase insurance; self-insurance
- 3.29 Board's power to regulate
- 3.30 Board's authority over student activities: an overview
- 3.31 Textbooks, supplies, and materials
- 3.31.1 School publications
- 3.32 Sharing of services and salaries of supervisory and special teachers

B. COLLECTIVE BARGAINING*Section*

- 3.33 Collective bargaining in Ohio public schools—a historical sketch
- 3.33.1 Ohio’s public sector collective bargaining law
- 3.34 The State Employment Relations Board (SERB)
- 3.34.1 Appeal of SERB orders
- 3.34.2 SERB procedures; remedies
- 3.35 Employee right to form and join labor unions; protected activity
- 3.35.1 Excluded public employees
- 3.35.2 The bargaining unit
- 3.35.3 The exclusive representative
- 3.35.4 Certification of the exclusive representative
- 3.35.5 Scope of bargaining—good faith defined
- 3.35.6 Mid-term bargaining; management rights
- 3.36 The labor contract; grievance procedures
- 3.37 Agency shop or fair share fee; rebate procedures
- 3.38 Contract prevails over law; exceptions
- 3.39 Unfair labor practices
- 3.39.1 Unfair labor practices— procedures
- 3.40 Impasse resolution
- 3.41 The right of public employees to strike; picketing
- 3.41.1 Illegal strikes and lockouts; remedies

C. EXECUTIVE OFFICERS AND EMPLOYEES*Section*

- 3.42 Employment of superintendent
- 3.43 —Compensation
- 3.44 —Status
- 3.45 —Duties
- 3.46 Incapacity of superintendent; superintendent pro tempore
- 3.47 Employment of assistant superintendent and other administrators
- 3.48 —Evaluation procedures
- 3.49 —Right to appear in executive session of the board
- 3.50 The treasurer of the board
- 3.51 The business manager
- 3.52 School principals
- 3.53 Employment of supervisors and special teachers by educational service center
- 3.54 Employment of school personnel: an overview

D. SPECIAL PROGRAMS*Section*

- 3.55 Driver education
- 3.56 Industrial arts, home economics, agriculture, business, vocational, and trade schools; vocational education
- 3.57 Extracurricular activities
- 3.58 Adult high school continuation programs
- 3.59 Evening schools

- 3.60 Summer schools; classes for adults and out-of-school youth; technical and postgraduate instruction
- 3.61 [Reserved.]
- 3.62 Americanization schools
- 3.63 Recreational programs
- 3.64 Participation in symphony association, area arts council, or similar organization
- 3.65 School libraries
- 3.66 School lunchrooms
- 3.67 School lunch and breakfast programs
- 3.68 Catered and cooperative food services
- 3.69 Instructional program or workshop for school personnel
- 3.70 Cooperative education programs
- 3.71 Preschool programs
- 3.72 Teacher education loan programs
- 3.73 Latchkey programs
- 3.74 Parental involvement policies
- 3.75 Community service education

CHAPTER 4: THE ROLE OF THE STATE, COUNTY, AND REGIONAL ENTITIES

A. STATE REGULATION AND CONTROL

Section

- 4.01 The Department of Education
- 4.02 Membership and election, State Board of Education
- 4.03 Terms of office of State Board of Education members
- 4.04 Organization, meetings, and compensation of the State Board
- 4.05 Vacancy in Board
- 4.06 Quorum and voting
- 4.07 Special meetings
- 4.08 Public character of Board meetings; Sunshine Law
- 4.09 Duties of State Board of Education
- 4.09.1 —Education Management Information System
- 4.10 Appointment, qualifications, and duties of the State Superintendent of Public Instruction
- 4.10.1 Ohio School Facilities Commission
- 4.10.2 Ohio SchoolNet Commission
- 4.11 Auditor of State
- 4.12 Teachers and school employees retirement systems
- 4.13 Workers' compensation
- 4.14 Unemployment compensation
- 4.15 Anti-discrimination law
- 4.16 Health, safety, building, and welfare measures
- 4.16.1 —State OSHA

B. EDUCATIONAL SERVICE CENTERS

Section

- 4.17 Election of board members
- 4.18 Organization, meetings, and compensation
- 4.19 Territory of educational service center; joint ESCs

- 4.19.1 —Annexation of local to adjacent ESC
- 4.20 County school financing districts
- 4.20.1 —Cooperative education school districts
- 4.21 Duties and powers of ESC board
- 4.22 Employment, compensation, contract rights, and status of ESC superintendent
- 4.23 —Duties
- 4.24 Teachers and other employees
- 4.25 Service fund
- 4.26 ESC governing board fund
- 4.27 —Duties of fiscal officer
- 4.28 Educational meetings; all-local meeting
- 4.29 Office facilities
- 4.30 Supplies and equipment for local boards

C. REGIONAL COUNCILS OF GOVERNMENTS

Section

- 4.31 Overview
- 4.32 Organization and funding of council.
- 4.33 Employment and status of personnel
- 4.34 Powers

D. COUNTY BOARDS OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

Section

- 4.35 An overview
- 4.36 Membership of board
- 4.37 Organization and procedures
- 4.38 Powers and duties of board
- 4.38.1 —Service and support administration; Medicaid services
- 4.38.2 —Abuse and neglect reports
- 4.39 Duties and employment of superintendent
- 4.39.1 Other employees
- 4.40 Duties of the Director of the Department of Mental Retardation and Developmental Disabilities
- 4.41 Funding

CHAPTER 5: SCHOOL FINANCE

A. THE SCHOOL DISTRICT BUDGET

Section

- 5.01 School fiscal year
- 5.01.1 The school district budget
- 5.02 Adoption of a tax budget
- 5.03 Contents of the tax budget
- 5.04 Submission to the budget commission; approval of tax levies
- 5.05 The annual appropriations measure
- 5.06 Amended or supplemental appropriations measures
- 5.07 Certification of adequate revenues

B. SCHOOL DISTRICT FUNDS*Section*

- 5.08 Required funds
- 5.08.1 —“Set-aside” funds
- 5.09 Permissible funds
- 5.10 The general fund
- 5.11 The bond retirement fund
- 5.12 Student activity fund
- 5.13 Transfer of funds

C. SOURCES OF REVENUE*Section*

- 5.14 Unvoted tax levies; the ten-mill limitation
- 5.15 Voted tax levy millage
- 5.16 —Resolution of necessity
- 5.16.1 —Certification to county auditor
- 5.17 —Certification to board of elections
- 5.18 School district property tax levies
- 5.19 —Emergency tax levies
- 5.19.1 —Replacement levies
- 5.19.2 —Phased-in levies
- 5.19.3 —Dual purpose levies
- 5.20 —Joint vocational school district levies
- 5.20.1 —County school financing district levies
- 5.20.2 Tax exemptions, tax abatements, and valuation issues
- 5.20.3 School district income tax levies
- 5.20.4 [Reserved for future use]
- 5.20.5 —Combined income tax/bond issue

D. REDUCTIONS IN VOTED TAX LEVIES*Section*

- 5.21 Voted decrease in the rate of a tax levy
- 5.22 Reduction by county budget commission
- 5.23 Reduction by board of education
- 5.24 Tax reduction factor
- 5.25 —The “20-mill floor”

E. BORROWING*Section*

- 5.26 Overview
- 5.27 Debt limitations
- 5.28 Advance payment of taxes collected
- 5.28.1 Borrowing in anticipation of deferred school foundation payments
- 5.29 Borrowing against anticipated tax receipts
- 5.29.1 Short-term tax anticipation notes when tax settlement delayed
- 5.30 Multi-year tax anticipation notes
- 5.31 Notes in anticipation of bonds

- 5.32 Bonds—general discussion
- 5.33 —Purposes for which bonds may be issued
- 5.33.1 Bonds to pay judgments and to satisfy other liabilities
- 5.33.2 Combination bond issue and tax levy
- 5.34 —Resolution of necessity
- 5.35 —The single purpose rule
- 5.36 —Maximum maturity of bonds
- 5.37 Election on the question of issuing bonds
- 5.38 Sale of bonds
- 5.39 —Validation and incontestability

F. STATE FUNDING OF PUBLIC EDUCATION

Section

- 5.40 The school foundation program: overview and history
- 5.41 Eligibility
- 5.42 State basic aid; 3.3-mill limit
- 5.42.1 —“Phantom revenue” and “gap aid”
- 5.43 Additions/reductions in basic aid
- 5.43.1 —DPIA funding
- 5.43.2 —Parity aid
- 5.44 —Recalculation of state aid
- 5.45 Guarantees
- 5.46 Payments for special programs
- 5.46.1 Lottery profits education fund

G. STATE LOANS

Section

- 5.47 School district solvency assistance fund
- 5.48 State loans from lottery profits education fund
- 5.49 Repayment of lottery fund loans
- 5.50 Prohibition on expenditures; financial reporting

H. FISCAL CAUTION/FISCAL WATCH/FISCAL EMERGENCY

Section

- 5.50.1 Declaration of fiscal caution
- 5.50.1.1 Declaration of fiscal watch
- 5.50.2 —Financial plan
- 5.50.3 Declaration of fiscal emergency
- 5.50.4 —Financial planning and supervision commission
- 5.50.5 Powers and duties
- 5.50.6 —Financial recovery plan
- 5.50.7 —Improvements in financial accounting and reporting
- 5.50.8 —Compliance and cooperation with commission
- 5.50.9 —Termination of commission
- 5.50.9.1 —Dissolution of commission; fiscal arbitrator

I. DEPOSITS AND INVESTMENTS

Section

- 5.51 The Uniform Depository Act—general discussion
- 5.52 Public moneys and public deposits
- 5.53 Eligibility requirements for depositories
- 5.54 Designation of public depositories
- 5.55 Cash reserves and service charges
- 5.56 Transfer of deposits
- 5.57 Evidence of deposits
- 5.58 Discrimination and conflict of interest
- 5.59 Investment of public moneys; safeguards
- 5.60 Interest on public deposits
- 5.61 Security for public deposits
- 5.62 Liability for undeposited moneys

CHAPTER 6: SCHOOL BUILDINGS AND PROPERTY

A. ACQUIRING AND DISPOSING OF PROPERTY

Section

- 6.01 Acquiring property
- 6.02 —Joint ventures prohibited
- 6.03 —Purchase, lease, and appropriation of real property for school purposes
- 6.04 —Selection of sites and grounds; school closings
- 6.05 Methods of payment for real and personal property
- 6.06 —Bequests, gifts, and endowments
- 6.07 —Equipment and furnishings for schools
- 6.08 Loss of title by reversion or adverse possession
- 6.09 Lease of mineral rights; oil and gas
- 6.10 Disposal of real and personal property
- 6.11 —Sale at public auction
- 6.12 —Sale at private sale
- 6.13 —Terms of sale
- 6.14 —Proceeds of sale
- 6.15 —Trade or exchange of school property

B. CONSTRUCTION, RENOVATION, AND REPAIR OF SCHOOL BUILDINGS

Section

- 6.16 In general
- 6.17 Location and selection of buildings
- 6.17.1 —Architects, engineers, and construction managers
- 6.18 Approval of plans
- 6.19 Competitive bidding: where required
- 6.20 —General statutory procedure
- 6.21 Procedure for purchase of school buses
- 6.22 —Deviation from required procedures
- 6.23 —Urgent necessity, or protection and security of school property
- 6.24 —Submission of bids; award of contract
- 6.25 Lowest responsible bidder
- 6.26 Waiver of defect in bids
- 6.27 Changes in specifications
- 6.28 Withdrawal of bids

- 6.29 Payments to contractor; delay costs
- 6.30 —Additional payments in case of new legislation
- 6.31 —Performance of contract; prevailing wage rates
- 6.31.1 —Mechanics’ Lien Law
- 6.32 Attachment of fiscal certificate
- 6.33 Non-bid items generally
- 6.34 Classroom Facilities Law
- 6.34.1 Expedited Local Partnership Program
- 6.34.2 Emergency programs
- 6.34.3 Energy conservation measures
- 6.34.4 Joint school building projects

C. PUBLIC USE OF SCHOOL PROPERTY

Section

- 6.35 In general
- 6.36 Rental by board of school property not needed for school purposes
- 6.37 Educational, civic, and recreational uses of school property
- 6.38 Use of school property for vocational education
- 6.39 Discretion of board

CHAPTER 7: TEACHERS

A. QUALIFICATION AND EMPLOYMENT

Section

- 7.01 Teacher defined
- 7.01.1 —“Highly qualified” teachers
- 7.02 Necessity for license
- 7.03 Licensure standards; LPDCs
- 7.03.1 —Nontraditional licensure methods
- 7.03.2 Internship certificate
- 7.03.3 Alternative educator license
- 7.03.4 Former military instructors
- 7.03.5 Conditional teaching permits
- 7.03.6 12-hour permits
- 7.03.7 “Two-year transfers”
- 7.04 —Revocation or suspension of license
- 7.05 Selection and appointment by board; “no-spouse” rules
- 7.05.1 —Criminal record checks
- 7.06 —Nomination of superintendent
- 7.07 —Employment of relative of board member
- 7.08 Types of teacher contracts
- 7.09 —Limited contract
- 7.10 Supplemental contracts
- 7.11 Supplemental-type contracts awarded to nonlicensed personnel
- 7.12 —Continuing contract generally
- 7.13 Waiver or postponement of eligibility
- 7.13.1 Limitations in negotiated agreements
- 7.14 Part-time service
- 7.15 Administrative service

- 7.16 Continuing contract attained “elsewhere”
- 7.17 Right to a particular assignment
- 7.18 “Cross-certification”
- 7.18.1 Date and filing of license
- 7.19 Health examinations; TB tests
- 7.20 Teacher personnel records
- 7.21 Substitute teachers
- 7.22 Anti-discrimination laws generally; posting requirements
- 7.23 —Title VII of Civil Rights Act of 1964
- 7.24 Sex discrimination
- 7.24.1 Sexual Harassment
- 7.25 Religious discrimination
- 7.26 —Title VI of Civil Rights Act of 1964
- 7.27 —Rehabilitation Act of 1973
- 7.27.1 —Americans with Disabilities Act of 1990
- 7.28 —Age Discrimination in Employment Acts of 1967 and 1975
- 7.29 —Equal Pay Act of 1963
- 7.30 —Title IX of Education Amendments of 1972
- 7.31 —Ohio FEP laws
- 7.32 Ohio Civil Rights Act
- 7.33 Ohio equal pay statute
- 7.34 Ohio age discrimination statute
- 7.35 Juvenile arrest records
- 7.35.1 Ohio Whistleblower Law
- 7.36 Constitutional rights generally
- 7.37 —Liberty and property interests
- 7.37.1 —Equal protection
- 7.38 —Freedom of speech and association
- 7.39 Academic freedom
- 7.40 Union membership and activities
- 7.41 —Teacher dress and appearance

B. COMPENSATION AND FRINGE BENEFITS

Section

- 7.42 Compensation generally
- 7.42.1 —“Pick-up” of STRS contributions
- 7.42.2 —Annuities; deferred compensation plans
- 7.43 Salary schedule
- 7.44 —Placement of teacher on salary schedule
- 7.44.1 —Tutor compensation
- 7.45 Fringe benefits
- 7.46 Unemployment compensation
- 7.47 Professional meetings
- 7.48 Jury duty
- 7.49 Lunch periods
- 7.50 Compensation when school closed
- 7.51 Increasing and decreasing compensation; salary notices
- 7.52 Retroactive pay
- 7.53 Written contracts for supplemental services

- 7.54 Leaves of absence generally; professional leave
- 7.55 —Sick leave
- 7.56 Advancement
- 7.57 Accumulation
- 7.58 Status if sick leave exhausted
- 7.59 Payment on retirement; severance pay
- 7.60 —Military leave
- 7.61 —Maternity, child care, and family leaves (FMLA)
- 7.62 —Personal leave
- 7.63 —Involuntary leave
- 7.64 —Assault leave; other disability leave
- 7.65 Retirement benefits generally
- 7.66 —Membership in State Teachers Retirement System
- 7.67 —Service credit
- 7.68 —Military service credit
- 7.69 —Service retirement benefits
- 7.70 Optional benefit plans
- 7.71 —Death benefits
- 7.72 —Disability retirement
- 7.73 —Medicare equivalent benefits
- 7.73.1 —Health care benefits
- 7.74 —Employment of retired teacher
- 7.75 Mandatory retirement
- 7.75.1 Early retirement incentive plans

C. SUSPENSION, TERMINATION, AND NONRENEWAL OF TEACHING CONTRACTS

Section

- 7.76 Termination by teacher
- 7.77 Termination by board for cause
- 7.78 —Procedure
- 7.79 —Appeals
- 7.80 Nonrenewal of limited contract; “fair dismissal”
- 7.80.1 —Evaluation procedures
- 7.80.2 —Notices to and from teacher
- 7.81 —Hearing on nonrenewal
- 7.82 —Appeals
- 7.83 —Nonrenewal for both lawful and unlawful reasons
- 7.84 Reduction in force
- 7.85 Suspensions

CHAPTER 8: NONTEACHING SCHOOL EMPLOYEES

A. QUALIFICATION AND EMPLOYMENT

Section

- 8.01 Employment of nonteaching personnel in general
- 8.01.1 —“Contracting out”
- 8.02 Employment in city school districts
- 8.03 Employment in other types of school districts

- 8.04 Educational assistants
- 8.04.1 Nonlicensed supervisors

B. COMPENSATION AND FRINGE BENEFITS

Section

- 8.05 Standard work week; overtime
- 8.06 Vacation leave
- 8.07 Military leave
- 8.08 Sick leave
- 8.09 —Advancement
- 8.10 —Accumulation; transfer
- 8.11 —Status if sick leave exhausted
- 8.12 —Payment on retirement; severance pay
- 8.13 Personal leave
- 8.14 Unpaid leave
- 8.15 Involuntary leave
- 8.16 Maternity, child care, and family leaves
- 8.17 Assault leave; other disability leave
- 8.18 Jury duty
- 8.19 Paid holidays for nonteaching personnel
- 8.20 Wages paid during school closings
- 8.21 Salaries
- 8.22 Group insurance benefits
- 8.23 Workers' compensation
- 8.24 Unemployment compensation
- 8.25 Public school employees retirement system
- 8.25.1 —Disability retirement
- 8.26 Liability insurance—motor vehicles
- 8.27 Liability insurance—personal
- 8.28 Tax-sheltered annuities

C. TERMINATION, NONRENEWAL, AND SUSPENSION OF NONTEACHING EMPLOYEES

Section

- 8.29 Termination of employment generally
- 8.30 —Civil service
- 8.31 —School employees under contract
- 8.32 Nonrenewal of contracts
- 8.33 Suspension of contracts; discipline
- 8.34 Layoffs; job abolishment

CHAPTER 9: PUPILS

A. FREE SCHOOLING

Section

- 9.01 Generally
- 9.02 Residents of "home"
- 9.02.1 Homeless children

- 9.03 Assessment and collection of tuition—nonhandicapped children
- 9.03.1 Assessment and collection of tuition—handicapped children
- 9.04 Contracts for attendance of nonresident pupils
- 9.05 Optional admission of tuition students
- 9.06 Out-of-school youths or adults
- 9.07 Exceptions to free education
- 9.08 Assignment of students
- 9.08.1 Open enrollment
- 9.08.2 —Federal “school choice” requirements

B. SPECIAL EDUCATION

Section

- 9.09 Special education programs required
- 9.10 Operation of programs
- 9.11 Procedural safeguards

C. ATTENDANCE

Section

- 9.12 Generally
- 9.13 Compulsory school age; early admission
- 9.14 Children subject to compulsory education
- 9.15 Responsibility of parents
- 9.16 Excuses from school attendance; home instruction
- 9.17 Age and schooling certificates
- 9.18 —Requirements for issuance
- 9.19 —Record-keeping requirements
- 9.20 —Revocation of certificates
- 9.21 School attendance officers
- 9.22 Enforcement of school attendance laws
- 9.22.1 —Loss of driving privileges

D. TRANSPORTATION

Section

- 9.23 Generally
- 9.24 Duty to provide transportation
- 9.25 —Nonpublic school pupils
- 9.26 —Vocational pupils
- 9.27 —Measurement of distance or time
- 9.28 Depots, collection points, and turn-around points
- 9.29 Coordinators of transportation
- 9.30 Purchase of school buses; state subsidy
- 9.31 —Bidding requirements
- 9.32 Transportation contracts
- 9.33 Qualifications of drivers; CDLs
- 9.34 “School bus” defined; school vans
- 9.35 Construction, design, equipment, and inspection of school buses
- 9.36 Operation of school buses
- 9.36.1 Student safety and discipline on buses

- 9.37 Insurance for bus drivers, buses, and pupils
- 9.38 Nonroutine use of school buses

E. INSTRUCTIONAL PROGRAMS

Section

- 9.39 Generally
- 9.40 Elementary school and high school defined
- 9.41 Minimum school year
- 9.42 —School calendar; contingency plan
- 9.43 Courses of study; moral and patriotic observances
- 9.43.1 Academic standards; grades
- 9.44 Promotion and graduation requirements
- 9.44.1 Achievement and graduation testing
- 9.44.2 Federal testing requirements; “AYP”
- 9.45 Graduation ceremonies and diploma
- 9.45.1 —Adult education diploma
- 9.45.2 Competency guarantees
- 9.45.3 School district performance standards; “report cards”
- 9.45.4 —“Right to know” provisions
- 9.46 Free textbooks
- 9.47 —Supplementary reading books and school supplies
- 9.48 Book selection
- 9.49 —Legal issues in textbook selection
- 9.50 —Removing books from library
- 9.51 —School personnel prohibited from acting as sales agents
- 9.51.1 Post-secondary enrollment options
- 9.51.2 —Participation by nonpublic school students

F. HEALTH AND WELFARE OF PUPILS

Section

- 9.52 Immunization
- 9.53 Examinations by school physician; TB testing; AIDS
- 9.53.1 —Health screening; “Healthcheck”
- 9.54 Emergency medical authorization
- 9.54.1 Dispensing medication
- 9.54.2 —Asthma inhalers
- 9.55 Eye protective devices
- 9.55.1 Child abuse prevention and reporting
- 9.55.2 Drug abuse programs
- 9.55.3 Missing Child Law
- 9.55.4 Sex offender notification
- 9.56 School breakfast and lunch programs
- 9.57 Student records and privacy
- 9.58 —Ohio law
- 9.59 —Federal law
- 9.60 Anti-discrimination laws
- 9.61 —Race, color, and national origin discrimination
- 9.62 —Sex discrimination

- 9.63 —Discrimination based on handicap
- 9.63.1 Anti-smoking laws
- 9.63.2 Gun-free schools provisions
- 9.63.3 School safety plans

G. PUPIL REGULATION AND DISCIPLINE

Section

- 9.64 General authority to regulate pupil conduct
- 9.65 Corporal punishment
- 9.65.1 Alternative schools
- 9.66 Suspension and expulsion
- 9.66.1 —Weapons violations; bomb threats; serious criminal offenses
- 9.66.2 —Pagers and other electronic devices
- 9.67 —Emergency removal of student
- 9.67.1 —Permanent exclusion
- 9.67.2 —Exclusion of students suspended or expelled elsewhere
- 9.68 —Notice to parent or guardian following suspension or expulsion
- 9.68.1 —Notice to Registrar of Motor Vehicles; loss of driving privileges
- 9.68.2 —Notice to post-secondary institutions
- 9.68.3 —Parental education programs
- 9.69 —Appeals to board of education and common pleas court
- 9.69.1 —Denial of participation in extracurricular activities
- 9.69.2 —Suspension of bus riding privileges
- 9.70 Search and seizure generally
- 9.71 —Body searches
- 9.72 —Locker and automobile searches
- 9.72.1 —Drug testing
- 9.73 —Application of exclusionary rule
- 9.74 —Liability of school officials
- 9.75 Freedom of speech
- 9.76 —Student newspapers and plays
- 9.76.1 Freedom of religion
- 9.77 Dress and appearance regulations
- 9.77.1 —School uniforms
- 9.78 Married students
- 9.79 Control of out-of-school conduct
- 9.80 Parental liability for conduct of minor

CHAPTER 10: LIABILITY OF SCHOOL DISTRICTS, OFFICERS, AND EMPLOYEES

A. LIABILITY OF BOARD AS A CORPORATE ENTITY

Section

- 10.01 Liability of board to suit
- 10.02 Liability on contract
- 10.03 —Ratification of unauthorized contracts
- 10.04 —Collective bargaining agreements
- 10.05 Taxes and assessments
- 10.06 Liability for injuries to persons and property

- 10.07 Limitations under federal law
- 10.08 —Attractive nuisance doctrine
- 10.09 [Reserved for future use]
- 10.10 Liability for violation of federally-protected rights
- 10.11 Enforcement of judgments against board

B. PERSONAL LIABILITY OF OFFICERS AND EMPLOYEES

Section

- 10.12 Personal liability of board members
- 10.13 —For contracts
- 10.14 —For unlawful expenditure of public funds
- 10.15 —For torts
- 10.15.1 Federal protections
- 10.16 Libel and slander
- 10.17 —For violation of constitutional or federal statutory rights
- 10.18 —Reliance on counsel
- 10.19 —Punitive damages; attorney fees
- 10.20 Personal liability of superintendents, principals, and other administrative personnel
- 10.21 Personal liability of teachers
- 10.22 Personal liability of bus drivers and other nonlicensed employees
- 10.22.1 Volunteers
- 10.23 Corporal punishment and physical restraint of students

INDEX TO OHIO SCHOOL LAW

CHAPTER 1:

AN OVERVIEW

- 1.01 The legal underpinning of public elementary and secondary education in Ohio.
- 1.02 The nature of public schools.
- 1.03 State regulation of non-public schools.
- 1.04 Use of public funds for non-public schools; vouchers.
- 1.05 Desegregation of the public schools.
- 1.06 —Authority of federal courts.

1.01 The legal underpinning of public elementary and secondary education in Ohio.

Although there is a considerable degree of uniformity in matters of curriculum, funding, management, and control of public elementary and secondary education throughout the nation, essentially there is not a single system of public education in the United States but rather a composite of fifty state systems. Education, per se, is not a federal power granted under the Constitution of the United States, but rather one reserved to the several states. Therefore, the exact nature of public education in Ohio is determined by the Constitution of Ohio and the various statutes enacted by the Ohio General Assembly implementing the Constitutional mandate.

In 1785, the Congress set aside lot number sixteen of every township in the western territory for the maintenance of the public schools. The Ordinance of 1787, which established a government of the territory of the United States northwest of the Ohio River, declared “Religion, morality, and knowledge being necessary to a good government and the happiness of mankind,

schools and the means of education shall forever be encouraged.”

The bill of rights of the Constitution of Ohio, 1802 provided:

that no law shall be passed to prevent the board in the several counties and townships within this state from an equal participation in the schools, academies, colleges and universities within this state which are endowed in whole or in part and from the revenue arising from donations made by the United States for the support of schools and colleges; all doors of the said schools, academies and universities shall be opened for the reception of scholars, students and teachers of every accord, without any distinction or preference whatever contrary to the intent for which said donations remain.

When Ohio’s Constitution was revised in 1851, the state’s commitment to public education was further strengthened when it was declared that:

Religion, morality and knowledge, however, being essential to good government, it shall be the duty of the General Assembly to pass suitable laws, to protect every religious denomination in the peaceful employment of its own mode of public worship and to encourage schools and the means of instruction.”¹ The Constitution imposes the duty upon the General Assembly to pass suitable laws to encourage schools and the means of instruction, and directs it to make such provision, by taxation or otherwise, as will secure a “thorough and efficient system of common schools throughout the State. . . .”²

¹ Ohio Const., Art. I, § 7.

² Ohio Const., Art. VI, § 2.

The very broad power and discretion vested in the General Assembly in fulfilling the constitutional mandate to establish a thorough and efficient system of public schools in Ohio has been recognized by the Ohio Supreme Court. It has noted that “Because this constitutional grant reenforces the ordinary discretion reposed in the General Assembly in its enactment of legislation, the judicial department of this state should exercise great circumspection before declaring public school legislation unconstitutional as a violation of article VI, § 2.”³ The Court has also asserted, however, that “the General Assembly’s discretion in this area is [not] absolute and not without limits.”⁴ As if to underscore this point, the Court acted in 1997 to declare the system of public education created by the General Assembly unconstitutional as violative of the “thorough and efficient” clause.⁵ In so doing, the Court emphatically rejected the argument that it should not intervene in the “political question” of public school finance:

Under the long-standing doctrine of judicial review, it is our sworn duty to determine whether the General Assembly has enacted legislation that is constitutional. . . . The judiciary was created as part of a system of checks and balances. We will not dodge our responsibility by asserting that this case involves a nonjusticiable political question. To do so is unthinkable. We refuse to undermine our role as judicial arbiters and to pass our responsibilities onto the lap of the General Assembly.⁶

³ Bd. of Educ. v. Walter, 58 OS2d 368, 385, 12 OO3d 327, 390 NE2d 813 (1979) (quoting from lower court ruling).

⁴ Bd. of Educ. v. Walter, 58 OS2d 368, 385, 12 OO3d 327, 390 NE2d 813 (1979).

⁵ DeRolph v. State of Ohio, 78 OS3d 193, 677 NE2d 733 (1997). This holding was reaffirmed in DeRolph v. State of Ohio, 89 OS3d 1, 728 NE2d 993(2000). For additional history on *DeRolph*, see § 5.40 *infra*.

⁶ DeRolph v. State of Ohio, 78 OS3d 193, 198, 677 NE2d 733 (1997).

The General Assembly is vested with the authority and discretion to pass laws for the “organization, administration, and control of the public school system of the state supported by public funds.”⁷ In exercising this authority and discretion, the General Assembly is limited by the admonition of the Constitution that “no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state.”⁸

1.02 The nature of public schools.

The traditional concept of a school is a place where instruction is given to the young, an institution for learning, an educational establishment, a place for acquiring knowledge and mental training. The number of persons, whether one or many, does not make a place where instruction is imparted any more or less a school, although the word usually implies plurality.

Generally the term “school” includes all schools or institutions, whether elementary, secondary, trade and vocational, or at the college and university level. It includes private as well as public institutions of learning, the only difference between the two being the financing and regulatory foundation of the institution.

A public school is one supported by taxation and by money raised by the state, either in whole or in part, and regulated by statutory law, and open to all persons, otherwise qualified, regardless of creed, race, or color.¹ Such schools constitute institutions of the state established for the purpose of protecting and defending the state, for it is well recognized that an enlightened and educated citizenry constitutes an integral part of the foundation on which the state is preserved, defended, and advanced, and such schools are the

⁷ Ohio Const., Art. VI, § 3.

⁸ Ohio Const., Art. VI, § 2.

¹ See, 68 AmJur 2d *Schools* § 2.

agencies of the state to accomplish such purposes.¹⁻¹

Ohio's public schools are divided into elementary and high schools. An elementary school is one in which instruction and training are given in accordance with RC §§ 3301.07 and 3313.60 from kindergarten through the eighth grade and which offers such other subjects as may be approved by the state board of education. In districts wherein a junior high school is maintained, the elementary schools in that district may be considered to include only the work of the first six school years inclusive. A high school ordinarily contains grade levels nine through twelve and is one in which instruction and training are given in accordance with RC §§ 3301.07 and 3313.60 and which also offers other subjects of study more advanced than those taught in the elementary schools and such other subjects as may be approved by the state board of education.

The specific grade levels contained in an elementary or high school differ among school districts and will be determined by the charter issued to the individual school by the State Board of Education pursuant to RC § 3301.16.

Community schools (commonly referred to as "charter" schools) were first authorized in Ohio in 1997 and constitute the most recent addition to Ohio's "public school" offerings.² Like the traditional public schools, community schools are supported by taxation and must be open to all students without regard to race, sex, creed, color, or disabling condition,³ free of any tuition charge.⁴ Unlike traditional public schools, community schools do not have the authority to impose taxes or issue bonds.⁵

¹⁻¹ See 82 OJur3d *Schools* § 5.

² See RC Chapter 3314 and §§ 2.24–2.36 *infra*.

³ RC § 3314.06(D).

⁴ RC § 3314.08(I).

⁵ RC § 3314.08(H).

1.03 State regulation of non-public schools.

The State Board of Education is required by statute¹ to formulate and prescribe minimum standards to be applied to all elementary and secondary schools in the state for the purpose of requiring a general education of high quality. These standards apply to public and non-public schools alike, although, with respect to non-public schools, the State Board must take into consideration the particular needs, methods and objectives of the school.² Parents of school-age children may be subjected to criminal penalties for failure to send their children to a school conforming to these minimum standards.³

The application of these state-promulgated minimum standards may, in certain circumstances, be limited by the constitutional rights of parents to direct the upbringing and education of their children. Parents who send their children to a religious non-public school which does not comply with state minimum standards may not be criminally prosecuted if they can show that the minimum standards infringe upon the exercise of their religion and their religious beliefs are truly held.⁴

1.04 Use of public funds for non-public schools; vouchers.

The provision of state aid to private religious schools, and whether such aid violates the establishment clause of the First Amendment,¹ has been the subject of a continuing constitutional debate during the last quarter of the 20th century. In 1975 and 1977, the United States Supreme Court issued a pair of decisions which established the general proposition that public funds could not be used to purchase

¹ RC § 3301.07(D).

² RC § 3301.07(D).

³ RC §§ 3321.03, 3321.38.

⁴ *State v. Whisner*, 47 OS2d 181, 1 OO3d 1, 351 NE2d 174 (1976); *State ex rel. Nagle v. Olin*, 64 OS2d 341, 18 OO3d 503, 415 NE2d 279 (1980).

¹ "Congress shall make no law respecting an establishment of religion"

equipment and materials for a religious school if such equipment and materials were “capable of diversion to a religious use.”² Thus, while secular textbooks and standardized testing materials could be purchased or subsidized for religious schools, audio-visual equipment and transportation for field trips could not. In 2000, however, the United States Supreme Court reversed these earlier rulings, opting instead for a more relaxed constitutional standard.³ Under this new standard, the fact that the materials being purchased with public funds are “capable of diversion to a religious use” will no longer be viewed as an impermissible state advancement of religion. Rather, it is only when the actual content of the materials advances religion that the expenditure will be deemed unconstitutional.⁴

It should be noted that in the intervening years, the Ohio General Assembly has greatly expanded the permitted use of “auxiliary services” funds⁵ to include not only electronic textbooks⁶ but also various other forms of electronic media including “wide area connectivity.”⁷ The current version of the statute also allows the purchase and loan of any “instructional materials”

in general use in the public schools as long as they are “secular, neutral, and non-ideological in character” and are “incapable of diversion to a religious use.”⁸ This language appears to have been designed to conform to an earlier constitutional standard for the use of public funds in religious schools. More recent rulings of the United States Supreme Court relaxing the restrictions on such expenditures⁹ would appear to make this language unnecessary, and indeed, the General Assembly, in subsequent legislation expanding programs for the purchase and loan of computer-related equipment to religious schools, has not felt compelled to include the “incapable of diversion” qualifier.¹⁰

Under another statute,¹¹ chartered non-public schools are entitled to reimbursement from the state for administrative and clerical expenses actually incurred in preparing, filing, and maintaining records and reports which are required by state law or by a public school district. In order to obtain this reimbursement, the non-public school must make application to the superintendent of public instruction and submit such records or reports as the Department of Education may require. Reimbursement payments to a non-public school may not exceed \$250.00 per pupil.

State tax credits for parents of children enrolled in non-public schools have the primary effect of advancing religion and are unconstitutional.¹² However, tax deductions for school tuition and expenses, if available to both public and private school parents, are permissible.¹³

The utilization of public school teachers in the parochial schools to perform various services for students presents constitu-

² *Meek v. Pittenger*, 421 US 349, 44 LEd2d 217, 95 S Ct 1753 (1975); *Wolman v. Walter*, 433 US 229, 53 LEd2d 714, 97 S Ct 2593 (1977) (declaring an Ohio funding statute constitutional in part and unconstitutional in part).

³ *Mitchell v. Helms*, 530 US 793, 147 LEd2d 660, 120 S Ct 2530 (2000).

⁴ The specific type of aid approved in *Mitchell* was the loan of certain nonreligious materials, such as books, computer hardware, and software by a public school in New Orleans to the New Orleans Catholic archdiocese. The basic rationale of *Mitchell* is that the existence of private choice on the part of parents is a kind of “intervening cause” which insulates the state from any responsibility for religious indoctrination.

⁵ State funds for textbook loans and certain diagnostic, therapeutic, and remedial services for nonpublic school children are provided pursuant to RC § 3317.024(L) and are generally referred to as “auxiliary services funds.”

⁶ This is a defined term which includes CD-ROMs and a wide array of electronic media, including online services. See RC § 3317.06(A)(2).

⁷ RC § 3317.06(K).

⁸ RC § 3317.06(K).

⁹ See *Mitchell*, note 3 *supra*.

¹⁰ See current version of RC § 3317.06(L).

¹¹ RC § 3317.063.

¹² *Committee for Public Education and Religious Liberty v. Nyquist*, 413 US 756, 37 LEd2d 948, 93 S Ct 2955 (1973).

¹³ *Mueller v. Allen*, 463 US 388, 103 S Ct 3062, 77 LEd2d 721 (1983).