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# GCSSA “Spring Cleaning” Legal Update

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SCHOLARS IN EDUCATION LAW

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## Agenda

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Welcome and Introductions

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Payment-in-Lieu Update

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Ethics and Board Relations

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Non-Renewals

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Q&A



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## Payment in Lieu Update

## Transportation Update

- New rules changes proposed
- DRIVES updates
- Nonpublic/community school communication and impracticality determination season
- Vans

## OAC Chapter 3301-83 Proposed Rules Changes

Some are simply grammar edits

### 3301-83-06 Personnel qualifications

- Establishes new requirements for companies that contract with Ohio schools to provide transportation.

### 3301-83-10

- Removes ability to receive a temporary certificate for a new driver.
- Adds van drivers to 4 hours of annual in service training
- Removes substitute ways to complete classroom and driving skills recert

### 3301-83-11

- Changes stationary inspections for vans

### 3301-83-12

- Changes RR crossing procedures for vans and buses.

### 3301-83-17

- Authorized and unauthorized passenger changes for vans

## DRIVES Updates

- Is it working?
- Accuracy testing
- Data available?
- RAPback
- Driver abstracts

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## Impracticality Determination Season

## Impractical to Transport – The Basis for Payment-In-Lieu

- The **first step** is to determine if transportation is practical or not.
- Payment-in-lieu of transportation is an option only if transportation of a pupil is impractical.
  - The **district** determines what is practical or impractical.
  - A parent does not have the right to insist on payment-in-lieu of transportation. They may only ask for transportation service.
  - If the district determines transportation is practical, that is what you offer, and there is no further need to offer payment-in-lieu.
  - The parent is not entitled to payment-in-lieu of transportation just because they do not like the transportation service you have offered.

## Are you where you need to be to start the process for declaring a student impractical?

- If you had an appropriate routing plan cycle in place, as discussed previously, you have gone through your route planning process and identified those students for whom transportation is not practical.

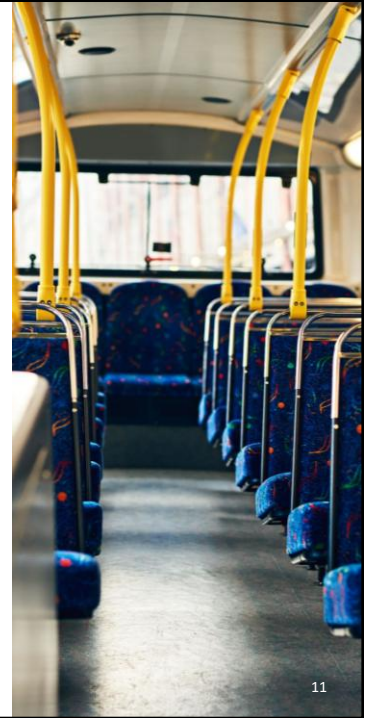


## In General, Try to Figure Out How to Provide Transportation First

### Consider:

- Your own routes
- Routes from neighboring district
- Contractor service
- Public transit (if appropriate and an agreement with the school exists)

If none of these options exist, or if the cost seems out of range when compared with other student services that you provide, **consider a determination of “impractical to transport.”**



## R.C. 3327.02 Sets The Standard for Impracticality

- Any determination of impracticality for transportation of students must be done on a **case-by-case** basis.
- It is possible that transportation of some students is impractical to a given school, while other students may be transported.
- School buildings are NOT impractical.
- The procedures to be followed when declaring transportation impractical should be followed only after a careful consideration of the reasons for impracticality codified in RC 3327.02.

## Factors That Must Be Considered Before Declaring Transportation Impractical

- 1) **Time and distance** required to provide transportation.
- 2) **Number of pupils** to be transported.
- 3) **Cost** of providing transportation in terms of equipment, maintenance, personnel, and administration.
- 4) Is a **similar or equivalent service** provided to other pupils?
- 5) To what extent does the additional service **unavoidably disrupt** existing transportation schedules?
- 6) Is **another reimbursable service** available?

## *“Danger Will Robinson!!!!” courtesy of Lost in Space*

- Arbitrary and generalized rules are dangerous!

“A bus must have at least 25 riders before we schedule it”

“Transportation cannot cost more than 150% of our average”

“Students must ride every day to be considered eligible”

“Transportation for any school outside the district is impractical”



## What is the process you need to follow to get through this?

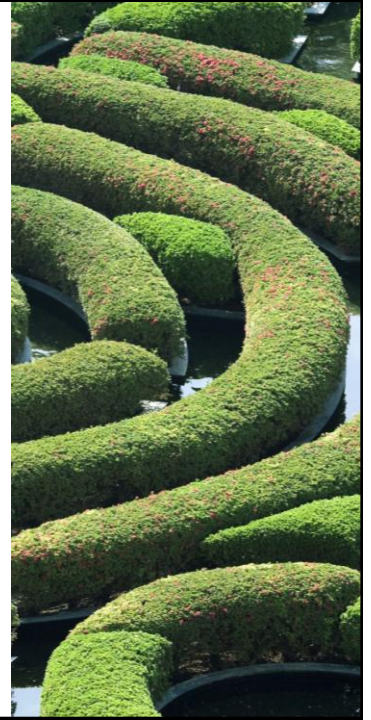
- In accordance with ODEW’s posted guidance, parents of students attending nonpublic or community schools shall request transportation. *(in other words – it is incumbent upon them to ask, you do not need to reach out.)*
- R.C. 3327.02 deadlines:
  - A determination of impracticality must be made not later than **30 calendar days** prior to the district’s or school’s first day of instruction
  - If a student enrolls within 30 calendar days prior to the first day of instruction, or on or after the first day of instruction, the district must make a determination within **14 calendar days** after the student’s enrollment.
- The determination may be made by the superintendent and formalized at the next following meeting of the board, IF the Board has adopted an authorizing resolution.

## Clarifying An Important Step – Do Not Miss This

- Ohio Revised Code now allows the board to authorize your superintendent to declare transportation of a student “impractical”. This must be followed up by board consideration at their next scheduled meeting.
- This is a critical step that allows you to act within the state’s new timelines for declaring students impractical to transport.
  - If you learn of a new student less than 30 days before the start of school, you have an obligation to provide a transportation plan within 14 days
  - If your board has not authorized your superintendent to declare transportation impractical, you have to wait for the next board meeting to obtain a resolution of impractical. That would likely exceed the 14-day window.
  - Notifying a parent that their child’s transportation is impractical without a superintendent’s declaration or a board resolution will result in a procedural error that results in a district loss if the parent asks for mediation.

## How does this work in the field?

- For any new students:
  - Typically, a request comes to your transportation office.
  - If that request is at least 30 days **before** school starts, you must notify them of impracticality before their school year begins.
  - If that request is **within** 30 days of school starting, you must notify them of impracticality within 14 days.
- **How do you get this done?**
  - Immediately notify the superintendent (or designee) of the request.
  - Determine eligibility of the student
  - If transportation does not seem possible, consider the reasons in 3327.02.
  - If appropriate, recommend a determination of impractical to transport and why to the superintendent.
  - Provide complete documentation to your superintendent so the detailed letter may be prepared and sent to the parent.



## Vans

June 30, 2025 effective date of HB 54

Alternative vehicles

NHTSA definition of nonconforming vehicles

Liability concerns

## To Share With the Board or Not To Share?

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## Confidentiality of Student Information

- FERPA and Ohio Confidentiality law
- Both protect the confidentiality of students' **education records**
- FERPA defines student education records as those records that are:
  - **Directly related** to a student
  - **Maintained by an educational agency/institution** or by a party acting on behalf of the educational agency/institution
- However, the following are not considered educational records and/or are exempt:
  - Personal logs
  - Treatment records
  - Directory information
  - Personal observation or knowledge

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## Personnel Records

- For the most part, personnel files are public records.
- Certain information is exempt from disclosure:
  - medical information
  - Social Security numbers
  - criminal background checks
  - possibly home addresses \*\*\*
- “Confidential Settlement Agreements” are likely subject to disclosure as a public record
- Teacher misconduct reports must be kept in the personnel file
- Investigation notes – depends
- Notes kept by a public official strictly for their personal use are not public records

## What Do/Can You Tell the Board?

- Student Discipline – Remember that the Board may be presented with an appeal. Only disclose what they need to know in advance. Need to have a **legitimate educational reason** for receiving confidential student information.
- Employee Discipline – Again, the Board may be presented with an appeal. You don’t want to create more public records because of what is shared.

## Board Policy and You!

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## Governance and Implementation

- The Board of Education sets the vision and governing structure for the school district. It is responsible for (this isn't everything):
  - Drafting and adopting policy
  - Set priorities – educationally, financially, etc.
  - Supporting and building an organization
  - Providing direction for students, administrators and other staff
  - Setting curriculum
  - Monitor the inner workings of the organization
- The Superintendent (and Treasurer) and her/his team are responsible for:
  - Implementing the above.
  - Day-to-day management

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## Where to Look in Policy

- Member Powers
- Code of Ethics / Code of Conduct
- Public Expressions of Members
- Board-Staff Communications
- Access to Records
- School Board Powers and Duties
- Board member Authority
- Board Member Code of Ethics
- Special Information
- Board-Staff Communications

### BCJ

#### Special Information

The Board or an individual Board member may, from time to time, need additional research before completing a policy, or need information about school operation and problems. To gather the information, the Board may ask the Superintendent/Designee to report findings and make recommendations.

The following guidelines may apply:

1. individual Board members requesting information or special reports make the request to the Board President who presents the request to the Board for consideration;
2. the Board votes on the action to be taken;
3. the Superintendent appoints an individual to perform the task and/or
4. the information is distributed at a regular Board meeting to the entire Board.

Requests that would require an employee of the District to utilize their time or District resources for a purpose that would not serve the interests of the District shall not be considered.

#### 0148 - PUBLIC EXPRESSIONS OF

The Board President functions as the

From time-to-time, however, individual local or State officials.

Board members should, when writing, clear that their views do not necessarily

#### 0122.1 - MEMBER POWERS

Board members as individuals do not separately possess the powers that reside in the Board of Education, except when and as expressly authorized by law or this Board but no Board member shall be denied facts or materials required for the proper performance of his/her duties to which s/he is legally entitled.

If in the opinion of the Superintendent or Treasurer, a Board member's request for information is administratively unreasonable, and/or represents significant expense in time or material cost to the District, said request shall be referred to the Board for disposition. The Superintendent and/or Treasurer shall be directed by the Board's ruling.

## Agenda Do's and Don'ts

- **Do** use your **goals and expectations** and **strategic plan** for the year to plan the agenda- and then line up how to get the personnel, resources, and community organizations in place to achieve over the year.
  - Time these things out over the course of the year.
  - Think strategically about when things should be done.
  - Earlier is better than later...usually.
  - Getting people on board and pointed in the right direction.
- **Don't** allow members of the public (or a last-minute free-for-all on adding items) to add things to the agenda- review your policy and practice on this.
- **Do** review policy and practice – Superintendents new to a district have a great reason to review/change the policies and practices on agenda preparation.

## Non-Renewal of Administrator Contracts

## Superintendent's Recommendation

- ORC 3319.02(C) states that the superintendent must nominate all assistant superintendents, principals, assistant principals, and other administrators before they may be employed or re-employed.
- If a superintendent refuses to nominate an administrator who the board wishes to re-employ, the board may nonetheless re-employ the individual by  $\frac{3}{4}$  vote of its full membership.

## Superintendent's Recommendation

- If a board of education chooses not to accept a superintendent's recommendation for re-employment, it may do so by a simple majority vote.
- Once the board rejects the superintendent's recommendation, the superintendent may recommend another candidate for the position.
- However, pursuant to statutory law, no new administrator may be employed in a position absent a superintendent's recommendation.

## Renewal & Nonrenewal Procedures

- The procedures for renewal and non-renewal of an administrator's contract are as follows:
  - Notice by June 1 of the date when the contract expires.
    - Notice must also include a statement that the employee may request a meeting with the board in executive session before the board votes.
  - Evaluations – more on this later!
  - Meeting in executive session.



## Evaluations are Critical!

- The board **must** also complete evaluations mandated by ORC §3319.02(D)(2)(c)(i) or (ii) before it may non-renew a contract and **must consider** those evaluations before making a decision to renew/non-renew.
- Timeline for Evals:
  - Not final year of contract - at least 1 evaluation
    - Written copy provided before end of contract year
  - Final year of contract:
    - Preliminary evaluation with written copy provided at least 60 calendar days before action taken on employment contract
    - Final evaluation with written copy provided at least 5 calendar days before the board's action to renew or not renew the contract
      - Must include Superintendent's intended recommendation to the board regarding the employment contract.
- Need to get this right for the entire term of the contract.

## Consequences of Mistakes

- **Failure to provide notice, evaluations, or an opportunity to appear in executive session** will automatically result in re-employment for a **period of 1 year** unless the administrator has served in the district for 3 years or more, in which case the administrator will be **automatically re-employed for 2 years**.
- However, keep in mind that if these procedural aspects are covered, non-renewal only requires a notice/opportunity to meet with the board prior to action on non-renewal.
- No reasons are required, and the board is the final word on renewal or non-renewal (in the absence of discrimination, etc.).

## Non-Renewal of Teaching Contracts

## Non-renewal of Limited Contract Teacher

- Not eligible for continuing contract
  - Deemed re-employed at same salary plus the next step unless:
    - Evaluation procedures have been complied with per R.C. 3319.111;
    - The Superintendent recommends non-renewal;
    - The Board of Education accepts the Superintendent's recommendation; and
    - The Board delivers written notice of non-renewal by June 1st.
  - If these requirements are not met, the teacher is presumed to have accepted employment for next year unless he/she notifies the Board otherwise by June 15<sup>th</sup>

## Contract Options – Eligible for Continuing Contract

- Once the continuing contract eligibility requirements have been met, there are several possibilities that can occur at the end of a teacher's limited contract:
  - Continuing contract
  - Renewal of limited contract
  - Extended limited contract
  - Non-renewal



## Extended Limited Contract

- Superintendent must recommend continuing contract
  - Board rejects the recommendation of the superintendent, then the superintendent may recommend an extended limited contract not to exceed 2 years.
- This is only an option if the teacher has not obtained tenure elsewhere, and written notice has been provided to the teacher prior to June 1<sup>st</sup> of the Superintendent's intention to so recommend, with reasons directed at the professional improvement of the teacher.
- Any subsequent re-employment after this extended limited contract must be under a continuing contract.

## Extended Limited Contract

- A district must comply with notice and evaluation procedures to grant only an extended limited contract.
- If the board fails to supply written notice of its intention to grant only an extended limited contract prior to June 1<sup>st</sup>, the teacher is deemed re-employed under a continuing contract at the same salary plus any increment provided by the salary schedule.

## Non-renewal - Eligible for Continuing Contract

- If Superintendent recommends re-employment:
  - The board may reject the recommendation and non-renew the teacher's limited contract.
  - A  $\frac{3}{4}$  vote of the board will be required to override the recommendation of the superintendent.
- Attainment of eligibility for a continuing contract does not alter the nature of the teacher's current limited contract and therefore that contract may be non-renewed as any other limited contract may be. *State ex rel. Yobe v. Ravenna City School Dist. Bd. of Educ., 2002 Ohio App. LEXIS 777 (Portage Co. 2002).*

## Non-renewal - Eligible for Continuing Contract

- If the district fails to provide the teacher with notice of non-renewal **by June 1st**, or the district failed to comply with teacher evaluation procedures, the teacher is deemed re-employed under an **extended limited contract** for 1 year at the same salary (plus any increment due to salary schedule)
- Any future teaching contracts would be under continuing contract status.



## Challenging a Teacher Non-renewal

- Teacher who has been non-renewed may:
  - File, within 10 days of receipt of written notice of non-renewal, a demand for a written statement describing the circumstances that led to the board's decision not to re-employ
- Next, the treasurer must provide a statement within 10 days.
- Thereafter, the teacher may file a demand for a hearing before the board of education.
- Board's decision after the hearing may be appealed to the court of common pleas within 30 days
  - Court is limited to consideration of procedural defects.
  - If the court finds procedural defects, it *may* order reinstatement as a remedy.

## Non-Renewal of Classified Staff Contracts

## Nonrenewal for Classified Employees

- R.C. 3319.083:
  - In all non-civil school districts, each board of education shall cause notice to be given of its intention not to re-employ said non-teaching employee, at the expiration of his contract.
  - If such notice is not given to the non-teaching school employee on or before the first day of June, said employee shall be deemed re-employed.
  - Automatic re-employment means that the employee continues down his/her contract sequence
- Question – do evaluations play into non-renewal for classified staff?

## Nonrenewal of Classified Employees

- Beware a mid-year contract!
  - If a classified employee is hired mid-year, that constitutes the first contract.
    - Any subsequent contract must be for two years per R.C. 3319.081
  - Failure to follow this sequence may result in the employee obtaining a continuing contract sooner than you realize



## Non-Renewal of Supplemental Contracts

## Renewal/Non-renewal of Supplemental Contracts for Teachers

- Supplemental contracts for teachers expire automatically when the contract period concludes; however, the employment contract should state that it automatically concludes at the end of the specified term.
- Re-employment of a teacher on a supplemental contract where the superintendent has failed to recommend the employee requires a  $\frac{3}{4}$  vote.
- Where the superintendent recommends a teacher's supplemental contract be renewed, the contract is non-renewed when the contract fails to obtain a majority vote. RC 3313.18

## Non-renewal of Non-Licensed Coaches

- A nonteaching employee who is hired to coach a pupil activity does not receive a true “supplemental contract.”
- Instead, they receive a type of contract which is very similar, often called a pupil activity contract.
- This contract usually has the same terms as a teacher’s supplemental contract.
- The difference is the legal status of the contract under Ohio law, i.e., the creation and non-renewal of such contract.



## Non-renewal of Non-Licensed Coaches

- The law accords the same rights to non-teaching coaches as other non-teaching employees.
- Thus, they are entitled to notice of contract non-renewal in same manner as non-teaching employees and are automatically re-employed if such notice is not provided on or before June 1.
- However, unlike other non-teaching employees, non-licensed coaches may not be employed for a term greater than one year and may not attain continuing service status.

## Practical Strategies

- Pay careful attention to timing of limited contracts for all employees.
- Be aware of implications of contract sequence for staff hired mid-year.
- If an employee is not working out, take the exit ramp off the highway rather than risk a continuing contract outcome for teachers and non-teaching employees!
- Prepare for negotiations and identify language that might be in your way.

## Questions?



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