



# PDQ

## Quarterly

### Policy Development Services

Ohio School Boards Association

August 2011

## Budget bill update: policies to consider

by Megan Greulich  
policy consultant

Unless you have been living under a rock, you have probably heard a lot about House Bill (HB) 153, the biennial budget bill. Recently, OSBA's legislative services division sent out several articles summarizing some of the important provisions that affect school districts. Additionally, OSBA's legal services division recently put out a Legal Alert describing the specific requirements for online makeup time for calamity days. With all of the information and recent changes, you may be left wondering how your board policy manual will be affected. The language from the budget bill is relatively new, but here is a summary of some of the provisions that may affect board policy in the future.

### Teacher evaluations/merit pay

One provision that has been on everyone's mind deals with mandatory teacher evaluations/merit pay. Below is a summary of the requirements for this system outlined by the OSBA legislative services division.

First, the Ohio Department of Education (ODE) is required to develop a "standards-based" framework for evaluating teachers and principals by Dec. 31, 2011. The framework for evaluations must do all of the following:

- use multiple factors, including 50%

consideration of student academic growth;

- be aligned with the Educator Standards Board's standards for teachers;
- require at least two 30-minute classroom walk-throughs and teacher observations;
- require teachers to be provided with a written report of evaluation results;
- implement classroom level value-added programs;
- provide for professional development to accelerate teacher growth and allocate the financial resources to support it.

Criteria also must be developed for the evaluation categories, which include "accomplished," "proficient," "developing" and "ineffective."

Districts are then required to adopt a teacher evaluation policy that complies with ODE's framework by July 1, 2013. The policy takes effect after the district's current collective bargaining agreements expire. These policy implications will need to be addressed *after* ODE's framework has been released.

Additionally, the evaluation provision requires that teachers be

## Free policy webinar



OSBA is hosting a free webinar on Friday, Aug. 19, to review the new policies available with this issue of *PDQ*. The webinar will be offered at 12:30 p.m. Policy consultants will explain the changes to policies, review the required policies and answer any questions you may have on the materials.

You can register for the session by accessing the online *PDQ* at [www.ohioschoolboards.org/PDQ](http://www.ohioschoolboards.org/PDQ) and clicking on the "Webinar" link.

evaluated annually, unless the teacher is rated accomplished, in which case the teacher may be evaluated every two years. The provision prohibits using seniority for reductions in force and hiring except when evaluations are comparable. Also, districts using federal Race to the Top (RttT) funds must use pay-for-performance criteria under a schedule based on licensure and evaluations. Districts not using federal RttT funds must use either a performance-based salary schedule or current law.

In late July, ODE released a FAQ regarding HB 153, evaluations and performance-based salary schedules. Once ODE releases the evaluation framework, OSBA will draft sample policies to guide districts in developing and coding district-specific teacher and principal evaluation policies. Those sample policies will be available to *PDQ* subscribers in future editions.

### Home-schooled student participation in extracurricular activities

The provision requiring districts to

allow home-schooled students to participate in extracurricular activities was removed from the final version of the budget bill. This will allow districts to continue to choose whether to allow home-schooled students to participate in extracurricular activities. Although there is no need to update your policy language, you may want to review your current policy language and consider whether it is appropriate for your district or needs to be updated. Our current sample language for policy JECBC, Admission of Students from Nonchartered or Home Schooling, gives districts several options for handling home-schooled student participation in extracurricular activities. If your district would like to review its current policy and possible options, look at sample policy JECBC, available online for *PDQ* subscribers.

### Definition of “mobility impaired” revised to include individuals with autism

HB 153 also adds autism to the definition of “mobility impaired

persons” for the purposes of service animals. Therefore, along with other qualified disabilities, autistic students have been added to the list of people whom the district must allow to use service animals in the schools. This does not necessitate any change to policy ING, Animals in the Schools, or the regulation that goes with it, but it is important for districts to know that students with autism must be allowed to use service animals in the schools. It might be a good idea to take a look at policy ING and the accompanying regulation, which are available for *PDQ* subscribers, for a review of how the district is required to handle service animals in the schools.

### Community school right of first refusal

Districts are required to offer community schools the right of first refusal on sales of real property. HB 153 makes some changes to this requirement. First, the property being sold is no longer required to be qualified as “suitable for use as a classroom space” in order to fall under the right of first refusal requirement.

Additionally, districts are now required to offer to sell *or lease* real property to community schools located in the district if the real property has been used for classroom operations since July 1, 1998, but not for the last two years. Under the change:

- If the community school notifies the district of its intent to buy the property, the district must sell the property to the community school for its appraised fair market value.
- If two or more community schools notify the district of their intent to purchase the property, the district must conduct a public auction open to all community schools in the district. The district is not required to accept a bid for less than the property’s appraised fair market value.
- If two or more community schools notify the district of their intent to lease the property, the district must conduct a lottery to select which community school will be granted the lease. Also,



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### Ohio School Boards Association

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*A one-year subscription to PDQ is \$400. For more information, contact Jeannette Radcliff at the address or fax number above or email to [jradcliff@ohioschoolboards.org](mailto:jradcliff@ohioschoolboards.org).*

*PDQ is published quarterly by the Ohio School Boards Association. Postage paid at Westerville, Ohio. Postmaster: Send address changes to: PDQ, Attn.: Mailroom, Ohio School Boards Association, 8050 N. High St., Suite 100, Columbus, OH 43235-6481.*

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leases to community schools cannot be for higher than the fair market value of such lease.

- If no community school offers to buy or lease within 60 days of the district's offer to sell or lease, the district may dispose of the property in accordance with law.

As you can see, many changes have been made that will affect disposal of property in regards to community schools. Although policy DN School Properties Disposal is not a required policy, districts are required to follow this procedure when disposing of property whether they adopted policy language on the topic or not. If your district has a policy on this topic, it would be a good idea to update the language to reflect the changes to the right of first refusal requirements. *PDQ* subscribers can download updated sample language for policy DN.

### **Making up calamity days online**

Districts may now choose to make up as many as three calamity days via online lessons. If your district was able to submit the plan in time for this year, or even if your district is considering taking advantage of this provision in future school years, it is important to consider whether you should add policy language and, if so, where it belongs. Language noting that your district will be participating in the online makeup program may be added to your current policy EBCD, Emergency Closings. Currently, districts are not required to adopt policy language on this topic, but if your district opts into the program, you may want to consider adding the components of the plan to your board policy manual as a regulation accompanying policy EBCD. Again, this is not required, but it may serve as a useful tool if you choose to participate in the program.

Here is a summary of the information provided by the OSBA legal services division regarding online makeups. ODE also issues guidance regarding deadlines on July 15, 2011. A copy of ODE's guidance is available at <http://links.ohioschoolboards.org/>

**58918.** The deadline to submit a plan and written teachers' union consent to ODE for the 2011-12 school year was Aug. 1, 2011. Even if your district did not get the required plan submitted to ODE in time for this school year, it is important to understand what must be included in the plan so you can be prepared if you choose to take advantage of the opportunity for the 2012-13 school year. ODE released a letter dealing with deadlines for online makeups, which districts may access on ODE's website.

Under Ohio Revised Code Section 3313.88, the district's plan must include:

- The number of days the school plans to make up via online courses (maximum of three).
- A statement requiring each classroom teacher to develop enough lesson plans to cover the number of makeup days specified in the plan. These lesson plans must be developed by Nov. 1 of each school year and may need to be updated throughout the year based on instructional progress.
- A statement requiring the district to make designated lessons available to students on the district's website as soon as practicable after a school closure.
- A statement granting students two weeks from the date of the lesson's posting to complete the lesson.
- A statement specifying that the student's classroom teacher will grade the lesson in the same manner as other lessons and that the student may receive an incomplete or failing grade if the lesson is not completed on time.
- A statement allowing students to work on posted lessons at school after it reopens if the student does not have access to a computer at his or her residence. This access may be provided before, during or after the regularly scheduled school day, or the district may provide a lesson plan that is substantially the same in a paper format. If the online lessons were made available prior to reopening, students using the paper version will be granted two weeks from the date of reopening, rather than from the date of posting, to

complete the lesson.

- A statement indicating whether the district will use blizzard bags in addition to online lessons. Blizzard bags are paper copies of the online lessons. Using the bags requires teachers to prepare paper copies in conjunction with the posted lessons and to update them as the online lessons are updated. The plan submitted to ODE also must detail the method of distributing the blizzard bags, which can be done prior to an anticipated school closure or by a specified deadline.

There are many changes that will go into effect at different times over the next few years. These are just a few of the many provisions from HB 153 that will affect districts and board policy. At OSBA, we are working diligently to keep you updated on all of the changes and associated requirements. We are continuously updating and creating new sample policies to address the changes from current legislation, and our legal and legislative services divisions are working to keep you updated on the budget bill and other legislative changes that affect school districts. More updates regarding these and many other budget bill provisions will be included in upcoming issues of *PDQ*.

### **Sample policies available online**

OSBA offers an enhanced policy service. *PDQ* subscribers can access *PDQ* sample policies electronically. This enables districts to easily review and edit these sample policies to fit their needs. See the back page for instructions on using this feature designed to streamline your policy development process.

# 2011 OHSAA changes

by Donna J. Williams  
policy consultant

Preparation for the fall sports season is under way. Along with the fall sports season come changes from the Ohio High School Athletic Association (OHSAA). Let's take a look at some of the Constitution and Bylaw changes.

**Continuing membership** — Adds a statement to clarify that when a new school opens within a multi-school district, the district's board of education or similar governing body may add that school to its membership card. Also, an exception was added that permits those schools that are geographically isolated or are single-gender schools to continue membership, even though the schools do not sponsor two sports per season.

**Vacancy on a district athletic board** — Adds a statement that action by the board of directors to appoint an interim representative on a district athletic board when a vacancy occurs for reasons other than expiration of a term shall occur at the next meeting of the board of directors.

**Classification and organization** — Adds a bylaw that says, "Each school shall be placed into tournament divisions based on its sport-by-sport athletic count. The formula for determining athletic counts and to which sports the counts shall be applied will be determined by the board of directors and approved on a biennial basis. The formula for athletic counts and the sports to which they are applied for the current school year are listed in the General Sports Regulations — Tournaments." The phrase "and representation to tournaments" is eliminated since that regulation is covered in this new bylaw. Effective no later than Aug. 1, 2013.

**Administrative responsibility and institutional control** — Adds "institutional control" to the heading to emphasize that administrators have a responsibility to assert control over all aspects of their schools' athletics

programs. Also, it revises the bylaw to provide more flexibility for school administrators to conduct the mandatory preseason meetings more than two weeks prior to the beginning of each sports season, but not later than two weeks after the season begins, and notes that the preseason meetings shall include a review of issues concerning concussions and steroids. Effective June 1, 2011.

In this section, "whistleblower protection" was added for those individuals who provide information in connection to any OHSAA investigation. Any retaliation or threat of retaliation shall be regarded as a major violation and a school will be subject to the penalties outlined in the bylaws, which could include suspension of membership. Effective June 1, 2011.

**Student eligibility** — Adds a statement that says that the same penalty should be applied for an *attempt* to establish eligibility due to deceptive practices as is required when eligibility has *indeed* been established via falsified means.

This section also clarifies that the status of a student as a member of a school squad continues until the start of the next school season in that sport. This is necessary to support the sports regulation that determines how many students from the same school squad may participate together on a non-interscholastic squad.

**Enrollment and attendance** — Adds a note that a student who does not attend school due to truancy should not be rewarded by regaining eligibility for the semester or semesters of eligibility that the student remained out of school.

**Residence and transfers** — Amends the one-year period of residency as it relates to the decision relative to the transfer to coincide with the submission of the Affidavit of Bona Fide Residence. The amendment also clarifies the circumstances upon which OHSAA will approve such transfers. In addition, the revision also would authorize rescinding

eligibility if OHSAA determines any falsification during the one-year period. Effective June 1, 2011.

Also added was that the student must live with the new custodian "for a minimum of one year" to reinforce this notion when the change results in a change of school districts. Another clause gives the OHSAA office some discretion when a change of custody takes place after the transfer, or when it is clear that the custody change is being sought to circumvent the transfer bylaw.

In a case where a student is a ward of a government agency and is placed in foster care or a group home, at such time that the student is released back into the custody of his or her parents or original custodians, the student now may have the choice to remain in the school where eligibility was established under this exception or be declared eligible at the school where the parents and/or new custodians reside. Effective June 1, 2011.

**International and exchange students** — Amends and clarifies the definition of an "international student" by stating that such student is not a U.S. citizen and is in Ohio for the purpose of attending school at an Ohio member high school.

**Recruiting** — Provides clarity as to what contact coaches can and cannot make with prospective seventh- and eighth-grade students. Adds new language to penalize a school that employs a coach that has been found to have violated the recruiting bylaws. The school would be prohibited from OHSAA tournament competition for a minimum of one year.

This section also adds language that describes what can be done to mass market a school's programs to the general population; replaces the word "transfer" with the concept of "enrollment"; and permits coaches to talk with parents and prospective students via approved activities consistent with OHSAA bylaws.

**Protests and forfeitures** — Revises

the bylaw by removing the provision that no requests will be considered concerning the eligibility of a player on a competing team that are filed more than 42 days following the last day of the state championship in that sport.

In addition to the Constitution and Bylaw changes, the OHSAA Board of Directors approved the divisional breakdowns of all fall sports, except cross-country, for the 2011-12 and

2012-13 school years. The board also approved the 2011-12 general sports regulations and the sport-by-sport regulations.

Among the general sports regulations are two new items that further clarify and designate a penalty in two areas. First is a penalty for schools whose coaches do not have the Pupil Activity/Coaching Permit mandated by the Ohio Department of Education.

Second is a penalty for schools that do not conduct preseason meetings for student-athletes and parents as mandated by OHSAA.

There are a number of changes that may affect the fall sports season. Administrators are encouraged to share this information with athletic directors and coaches. Compliance with these and all OHSAA provisions will help to ensure a successful athletic program.

## Limitations on academic freedom in the classroom

by Jessica L. Spears  
staff attorney

In general, the First Amendment protects the right of teachers to express themselves freely inside *and* outside the classroom. Selection of teaching methods and subject matter for classroom discussion are two types of expressions protected inside the classroom.

What do school boards need to know about academic freedom? It is not an absolute right. What does this mean? A teacher's right to academic freedom must be balanced against the school district's interest in providing a sound, well-balanced education program. So when can a teacher's selection of teaching methods or right to teach certain topics be restricted by the board? When the subjects and teaching methods are educationally unsound, inappropriate for the age or maturity level of the students or irrelevant to any valid educational objective.

Because there is no clear standard by which to measure a teacher's conduct to determine if it is within the realm of academic freedom, the courts have opted for a case-by-case inquiry that takes into consideration the totality of the circumstances. This case-by-case analysis can be tricky based on the 2006 United States Supreme Court decision in *Garcetti v. Ceballos* (2006), 547, US 410. In *Garcetti*, the court

held that no constitutional protection is accorded to speech rendered by public employees in the course of performing their official duties. In its ruling, the court acknowledged that the concept of academic freedom might require the development of an exception for classroom instruction, but declined to address the issue.

Why are we discussing academic freedom in this issue of *PDQ*? Because we have new case law in Ohio. In October 2010, the United States Sixth Circuit Court of Appeals rendered a decision in a First Amendment case out of Tipp City. In *Shelley Evans-Marshall v. Bd. of Edn. of the Tipp City Exempted Village Sch. Dist.* (Oct. 21, 2010), C.A.6 No. 09-3775, unreported, a high school language arts teacher was the subject of complaints from parents to the school board about books she assigned. As part of a unit on the novel *Fahrenheit 451*, **Shelley Evans-Marshall** assigned groups of students to choose an often-challenged book and lead an in-class debate on it. Following complaints to the board of education, a series of poor evaluations and nonrenewal of her contract, Evans-Marshall sued the board and district administrators, alleging retaliation for exercising her First Amendment right to select class materials.

A Sixth Circuit panel concluded that the teacher did not overcome the

hurdle presented by the United States Supreme Court's ruling in *Garcetti* because the right to free speech protected by the First Amendment does not extend to the in-class curricular speech of teachers in primary and secondary schools, made "pursuant to" their official duties.

In reviewing OSBA model policy IB, Academic Freedom, in light of the *Garcetti* and *Evans-Marshall* decisions, school boards should update board policy language to include the proposed edits available for *PDQ* subscribers to download. Specifically, OSBA recommends adding the following language:

*"The right of teachers to teach certain subjects or to employ certain teaching methods may be restricted by the Board where such subjects or methods are deemed by the Board and/or District administrators to be educationally unsound, inappropriate for the age or maturity level of the students or irrelevant to any valid educational objective. All instruction must conform to state academic content standards and the District's adopted courses of study. The right to free speech protected by the First Amendment does not extend to the in-class curricular speech of teachers made pursuant to their official duties. Accordingly, teacher speech in the classroom may be subject to reasonable controls as to appropriateness."*

# What documents are necessary for establishing residency?

by Greta Gardner  
deputy director of policy services

A rapidly approaching school year has many administrators dealing with the issues of residency requirements and enrollment documents. Every year, students move in and out of school districts through interdistrict open enrollment, school-choice options under Title 1, intradistrict open enrollment, residency with grandparents, admission of nonchartered or home-schooled students and placement of homeless students.

The most frequently asked question is, "What paperwork must a student provide to the district upon enrollment?" The answer is, "that depends!"

New students enrolling in a district

must provide at the time of enrollment:

- any records given the student by the public or nonpublic elementary or secondary school that the student most recently attended;
- a certified copy of an order or decree, or modification of the order or decree, allocating parental rights and responsibilities for the care of a child and designating a residential parent and legal custodian of the child;
- a certification of birth or a comparable certificate or certification issued pursuant to the statutes of another state, territory, possession or nation.

Any of the following documents are accepted in lieu of a certificate or certification of birth by the person in charge of admission:

- a passport or attested transcript of a passport filed with a registrar of

passports at a point of entry into the United States showing the date and place of birth of the child,

- an attested transcript of the certificate of birth;
- an attested transcript of the certificate of baptism or other religious record showing the date and place of birth of the child;
- an attested transcript of a hospital record showing the date and place of birth of the child;
- a birth affidavit.

In addition, if a student is requesting admission to a school that the student is entitled to attend and has been discharged or released from the custody of the Ohio Department of Youth Services (DYS) just prior to requesting admission to the school, then the school official shall not admit the student until all of the following



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records have been received:

- an updated copy of the student's transcript;
- a report of the student's behavior in school while in DYS custody;
- the student's current individualized education program (IEP), if developed;
- a summary of the institutional record of the student's behavior.

DYS has 14 days to send the documents to the district superintendent.

Districts also might face the issue of proving residency. Despite a district's

best efforts to prevent unauthorized nonresident students from enrolling in the district, some parents and/or legal guardians give addresses within the district when the student actually resides in another district. Because of the falsification of addresses, many districts are requiring one or more of the following proofs of residency:

- purchase contract or rental agreement with all occupants listed;
- notarized oath of residency;
- proof of bank loan approval;
- property tax statement showing

address and taxes being paid;

- IT4 form from employer or pay stub showing district taxes being withheld;
- one piece of official mail, such as a utility bill.

Documentation is often difficult to acquire and is an ongoing problem for districts. But just think: your school district must be doing something right if individuals are willing to falsify documents to get their children enrolled.

Related sample policies are available for *PDQ* subscribers.

## Rights of noncustodial parents

by Greta Gardner  
deputy director of policy services

Divorce is common in our society. It is frequently accompanied by strong emotions that play out in court battles. Unfortunately, these divorce wars are occasionally carried out in public schools. The good news is that state law provides guidelines on how to deal with these family issues when they overflow into school settings.

### Enrollment of a child by a divorced parent

A child has the right to a free and appropriate public education in the public school district where the custodial parent resides. Ohio law defines "parent" as "the residential parent and legal custodian of the child." (When a child is in the legal custody of a government agency or a person other than his or her natural or adoptive parent, "parent" means "parent with residual parental rights, privileges and responsibilities.")

Parents have a duty under law to notify the school district of any changes in their marital status that affect the custody of their children. The district must be notified when the court issues an order or decree allocating parental rights and responsibilities for the care of a child and designates a

residential parent and custodian of a child.

If the divorce, dissolution or annulment results in joint custody or a shared parenting plan, both parents are deemed to be custodial parents. In such cases, either parent could enroll the child tuition-free in the district in which either parent resides.

### Who is authorized to pick up the child from school?

The custodial parent has the authority to pick up the child. The custodial parent also can authorize other persons to transport his or her child to and from school. Noncustodial parents, by definition, generally have the right to pick up their children at school. However, it is possible that the court order or decree may not permit the noncustodial parent to have any contact with the child. School personnel must make sure that children are getting on the right buses or are driven home by authorized persons.

### Noncustodial parents attending student activities

Generally, a noncustodial parent has the right to attend his or her child's student activities under the same terms and conditions as custodial parents. However, the courts can prohibit the noncustodial parent from attending any

school activities or can set specific terms and conditions delineating how and when the noncustodial parent can attend these activities.

School officials must have a copy of the most recent court order or decree that addresses the noncustodial parent's rights to attend student activities. Failure to comply with the decree or order can result in school officials being held in contempt of court.

### Access to student records

Ohio law provides noncustodial parents the same right of access to their children's student records as custodial parents. However, the domestic relations court can limit the noncustodial parent's access to their children's student records if it is in the best interests of the children.

If the noncustodial parent lives out of town and has not had his or her right to access student records limited by an Ohio court, then federal law allows them to inspect the student records of their children.

State law places a premium on knowing the rights and restrictions placed on noncustodial parents. Make sure that all decrees or orders are the most recent versions and consult them before deciding the rights of the noncustodial parent. If in doubt, consult your board attorney.



The last page of every issue of *PDQ* contains information on updating your policy manual. **The sample policies may be different from the policies you have in your manual. Please check the samples against any existing policies you have in place. If your district also subscribes to the**

**Policy Update Service, let us know if you want to use your policy with the recommended changes or all the language in the new sample, along with an adoption date.**

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4. A box will drop down, “OSBA Online *PDQ* Updates.”
5. Select the month(s) you would like to access.
6. Select the link to register for the free policy webinar if you want to attend that session.

**New policies/regulations/exhibits** (*provided for information only*)

EBCD-R, Emergency Closings

**Revised policies/regulations** (*add new language shown in bold type and delete language in italic type*)

DN, School Property Disposals

\*EBCD, Emergency Closings

FL, Retirement of School Facilities

\*IB, Academic Freedom

**Other policies** (*provided for information only; feel free to use if interested*)

INB, Teaching about Controversial Issues

ING, Animals in the Schools

ING-R, Animals in the Schools

JEC, School Admission

\*JECOA, Admission of Homeless Students

JECBC, Admission of Students from Nonchartered or Home Schooling

\*JEE, Student Attendance Accounting (Missing and Absent Children)

Note: Policies and/or regulations marked with an \* are required. Check to confirm that you have a policy and/or regulation.