



# PDQ *Quarterly*

## Policy Development Services

Ohio School Boards Association

November 2011

## Teacher reductions in force ... before and after the budget bill

by Renee L. Fambro  
*deputy director of labor relations*

In the past few years, many school boards have been forced to make personnel cuts as they struggle with balancing their budgets. For some boards, it was the first time in years they had to deal with a reduction in force (RIF).

In theory, the RIF process works something like this. First, the board, with recommendations from its administrators, determines the need to RIF a designated number of positions due to reasons determined by the collective bargaining agreement and/or the Ohio Revised Code. At a board meeting, the superintendent makes a recommendation to the board to RIF the predetermined number of positions, cites the reasons for the RIF and sets an effective date. The board then takes action on this recommendation.

Next, those individual employees whose positions are being RIF'd are notified, and pursuant to the collective bargaining agreement, exercise their bumping rights. This is the part of the RIF process that often takes the most time. Bumping rights can be tricky, especially if there is a dispute on seniority issues. Ideally, the seniority list should have been posted and verified each year before any RIF decisions need to be made. In addition,

bumping creates a domino effect, so it takes a while to sort through seniority and then licensure issues, in order to finally determine which employees will be RIF'd. Once bumping is completed, the superintendent then recommends suspending the specific individual teacher contracts, again referring back to the reasons cited at the earlier board meeting. After the board takes action, the individual teachers who will be RIF'd are notified of the action in a letter citing both board actions.

Moving forward, some of the RIF process should be easier for districts, although they might not see the benefits for two or three years, depending on the length of their current collective bargaining agreement. In July, House Bill (HB) 153, the biennial budget bill, was passed, and its provisions concerning RIFs became effective Sept. 29. It only affects RIFs for teachers, not classified staff or administrators. Under HB 153, preference is still given to those teachers

### Free policy webinar



OSBA is hosting a free webinar on Nov. 28, 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.

on continuing contracts. However, Ohio Revised Code Section (RC) 3319.17 now prohibits giving preference based on seniority in determining the order of layoffs, except when choosing between teachers who have comparable evaluations. Simply stated, the only time that seniority will prevail in a layoff is when a district must decide between teachers with comparable evaluations.

The budget bill also prohibits giving preference to seniority in rehiring tenured teachers, again, except when

choosing between teachers with comparable evaluations. It is important to note that all of the new RIF language in the Ohio Revised Code specifically supersedes conflicting collective bargaining language entered into after the bill's effective date. In other words, this language is not something that can be negotiated away in a subsequent labor agreement.

Lastly, the budget bill affected RC 3319.18 as it relates to teacher RIFs when two districts merge. The new language states that after two districts

merge, the new district may consider years of service in the previous district if such consideration is part of its administrative suspension policy under RC 3319.171.

OSBA's sample RIF policy is general enough that no changes are required to comply with the new budget bill. However, districts should review their own policy language to make sure nothing needs to be changed in order to comply with the new language in the Ohio Revised Code.

## Changes for intradistrict open enrollment, graduation requirements and more

by Jessica L. Spears  
staff attorney

Amended Substitute House Bill (HB) 153 contained several policy changes affecting open enrollment, graduation requirements, ESCs and

local district relationships. This article will address each change separately, all of which became effective Sept. 29.

### Intradistrict open enrollment

Each district is required to have board policy governing intradistrict

open enrollment. This policy allows students who attend school in the district to enroll in an alternative school in the district (i.e., a school building other than the one to which a student is assigned). HB 153 amended the intradistrict open enrollment statute to provide that each board's policy may permit a student to permanently transfer to an alternative school so that the student need not annually reapply for permission to attend the alternative school. The decision to permanently transfer a student under the intradistrict open enrollment policy is left up to the



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### Sample policies available online

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local school board.

Should your board wish to permit the permanent transfer of students without an annual application, the board's policy should be updated to reflect this change. Please see updated policy JECBD, Intradistrict Open Enrollment, available for download with this issue of *PDQ*.

### **Graduation requirements**

The previous biennial budget bill, HB 1, which became effective on Oct. 16, 2009, required the enactment of the college- and work-ready assessment system. The purpose of the assessment system is to replace the Ohio graduation tests as the measure of student academic performance and prerequisite for obtaining a high school diploma. The State Board of Education, the superintendent of public instruction and the chancellor of the Ohio Board of Regents are required to develop a system of college- and work-ready assessments to determine whether each student, upon graduating from high school, is ready to enter college or the workforce.

HB 153 removed the senior project as a component of the assessment system. Accordingly, students are not required to complete senior projects to graduate and obtain a diploma Ohio Revised Code Section (RC) 3301.0712. Please review the board's policy on graduation requirements to make sure there is no reference to required senior projects. While there are no updates to OSBA model policy IKF, Graduation Requirements, OSBA wanted to make sure that members were aware of this change in the law.

On a related note, HB 153 also removed the 21st century skill development requirements, previously added by HB 1 (2009), from Ohio's academic standards and model curriculum. Consequently, the academic standards no longer require the development of skill sets as they relate to creativity, innovation, critical thinking, problem solving, communication and collaboration, or the development of skill sets that promote personal management, productivity and accountability, and leadership and

responsibility (RC 3301.079). There are no policy changes on this issue.

### **Age and schooling certificates**

The law (RC 3301.01) regarding the issuance of an age and schooling certificate changed with respect to who may issue the certificate. HB 153 removed the language from the statute that specifically stated that a local school district could appoint the ESC superintendent as the local superintendent's designee for the issuance of the age and schooling certificate. However, this does not mean that a local superintendent cannot use the ESC superintendent or another individual as a designee. The board retains discretion in appointing the ESC superintendent as his/her designee. Again, there are no board policy changes; we just wanted to bring everyone up to speed on this issue.

### **Textbook adoption**

HB 153 changed the law governing the selection and adoption of textbooks (RC 3329.08). Prior to Sept. 29, local boards of education were required to adopt textbooks from lists adopted by the ESC governing board. This is no longer the case. Local boards of education are now required, like city and exempted village boards, to adopt textbooks to be used in the district's schools. This requires a majority vote of the board. While OSBA's model policy IIAA, Textbook Selection and Adoption, does not currently reference the ESC lists as previously required,

your district's board policy may make such a reference. Please make sure to remove any reference regarding ESC textbook lists from the policy.

### **ESCs and teacher salary schedules**

Teacher salary schedules have been affected by HB 153 and Senate Bill (SB) 5, Ohio's collective bargaining bill. The law governing the annual adoption of teachers' salary schedules (RC 3317.14) has been repealed, subject to the SB 5 referendum. Additionally, HB 153 removes the requirement that the annual salary schedule be submitted to the superintendent of public instruction. Under previous law, school districts and ESCs were required, on or before Oct. 15 of each year, to file the adopted annual salary schedule with the superintendent of public instruction. Per HB 153, the salary schedule is not required to be submitted to the superintendent of public instruction; it only needs to be filed by the local board of education with the ESC superintendent, who shall then certify to the local district treasurer that the salary to be paid to each teacher is correct. If SB 5 does not survive a referendum on Nov. 8, then RC 3317.14 will not be repealed and the HB 153 change will be controlling. Stay tuned for additional information on teacher salary schedules following November's election.

If you have any questions on these issues, please contact OSBA policy services at (614) 540-4000 or (800) 589-OSBA.

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# OAG issues opinion on superintendents' annual vacation payout

by Greta Gardner  
former deputy director of policy services

In July 2011, the Ohio attorney general (OAG) released OAG Opinion No. 2011-025 regarding annual payment of a superintendent's accrued, unused vacation leave. The opinion originated out of a request by the Ohio auditor of state for guidance on the widespread practice of annually paying out accrued, unused vacation leave to superintendents.

Ohio Revised Code Section (RC) 3319.01 states that districts may

provide for the payment of a superintendent's accrued, unused vacation leave upon the superintendent's death or separation from employment, but the statute does not specifically provide for the issue of annual payment. Given this information, the auditor of state requested that OAG issue an opinion as to whether districts may allow the annual payment of a superintendent's accrued, unused vacation leave.

The current law does not touch on annual payments, but RC 3319.01 provides that accrued, unused vacation

leave may be paid to a superintendent upon separation from employment as a fringe benefit, or upon death in accordance with RC 2113.04 or to the superintendent's estate. In considering this issue, OAG noted that RC 3319.01 is not specific as to payment of accrued, unused vacation leave at times other than the two stated above. OAG did go on to discuss the fact that boards may grant superintendents extra benefits above the fringe benefits provided for in RC 3319.01.

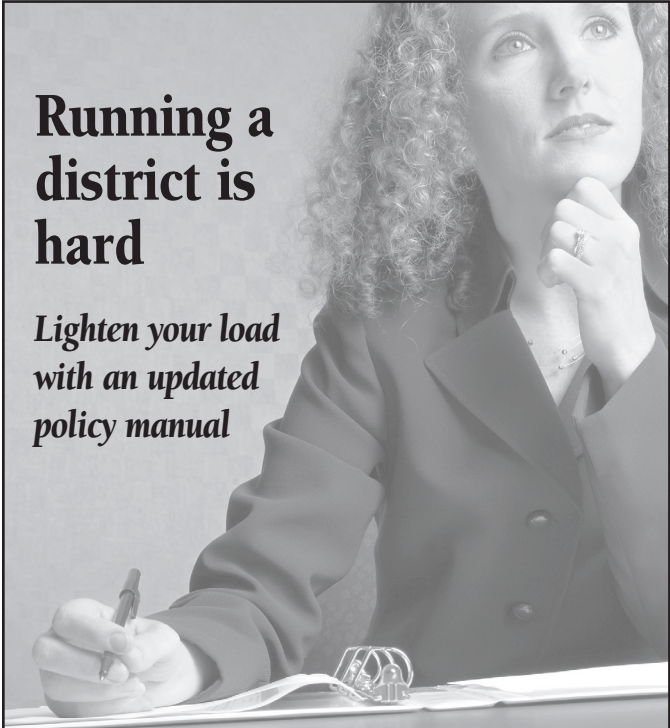
Essentially, OAG noted that a practice is acceptable as long as it is not statutorily mandated or restricted. And where a practice is explicitly restricted, districts

should follow the statute for guidance on how to proceed in compliance with that restriction. Here, OAG found no mandatory or prohibitory language that would interfere with a district's ability to make this payment annually, in addition to the two instances set forth in the revised code.

In fact, OAG went on to note that RC 3319.01 also does not limit the instances when a board may provide for this payment, prohibit this payment at other times or place a limit on the total amount a superintendent may receive. Therefore, OAG found that a board may choose to provide the benefit of annual payment of accrued, unused vacation leave to a superintendent if it so chooses.

OAG then went one step further and noted that districts must have a board-approved guideline if they choose to make this payment annually. Therefore, OAG found that it is not enough that the annual payment is provided for in the superintendent's contract, but that some board-approved guideline must be present, as well. OAG noted that boards may choose to adopt policy language to meet this requirement, but that policy language is not required as long as the board approves a guideline providing for the annual payment. The power to adopt policy language providing for annual payment is granted to boards under RC 124.39(C).

Although districts may choose to adopt formal guidelines separate from the board policy manual, adding the language to policy CBC, Superintendent's Contract, makes more sense. A simple statement that the board authorizes the annual payment of the superintendent's accrued, unused vacation leave is sufficient to meet the requirement set forth by OAG. Districts using OSBA sample policy language also should update this policy's legal references section as noted



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in the sample language available for download with this issue.

OAG's discussion on the issue stopped there, but OSBA has received many questions about treasurers who also receive an annual payment of accrued, unused vacation leave under their contracts. The OAG opinion dealt specifically with superintendents. There was no mention of treasurers in regards to this payment. This means that

currently, similar language is not legally required for treasurers who receive an annual payment of accrued, unused vacation leave.

Many treasurers are concerned about this, and for that reason, although it is not currently required under the law, if your district feels more comfortable, you may use the same statement, replacing the term "superintendent" with "treasurer," in policy BCCC,

Treasurer's Contract.

So there you have it. A district may provide for the annual payment of accrued, unused vacation leave as long as it is set forth in both the superintendent's contract and a board-approved guideline, which may be placed in your board policy manual as a policy. A sample of the appropriate language is available for download with this issue of *PDQ*.

## An update on family and civic engagement committees and business advisory councils

by Megan Greulich  
policy consultant

House Bill (HB) 30 and the biennial budget bill both dealt with family and civic engagement committees and business advisory councils. Once the legislative dust has settled, districts may be left wondering what is required. Let's clear up the confusion and look at the current requirements.

### Family and civic engagement

#### committees

HB 30 eliminated family and civic engagement committees, with one exception. Districts receiving federal Race to the Top (RttT) funds may still be required to maintain this committee. Under this exception, the district's RttT scope of work is controlling, so the requirement will vary among districts. This is an important exception to know, and districts should review their current policies on family and civic engagement committees and their RttT scopes of work to be sure that both

documents are compliant.

The only budget bill change was that the State Board of Education's development of operating standards governing family and civic engagement committees has become permissive under Ohio Revised Code (RC) section 3301.07. While this will not affect board policy, it is good to have a firm understanding of the remaining requirements and regulations on family and civic engagement committees.

### Business advisory councils

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From a policy standpoint, the requirement for business advisory councils has not changed. Under RC 3313.82, city and exempted village districts and ESCs are required to appoint business advisory councils. The appointment of a business advisory council remains permissive for local districts.

Similar to family and civic engagement committees, the budget bill changed RC 3301.07, making the State Board of Education's development of operating standards governing business advisory councils permissive. Again, this

change does not require any updates to current policy language, but it is important for districts to understand that their business advisory councils requirements have not changed.

### **Putting it all together**

If your RttT scope of work includes a family and civic engagement committee, you may choose to either keep the combination policy BCFA/BCFB, Business Advisory Councils to the Board/Family and Civic Engagement Committees, or keep the individual policies. Just be sure to review the

language dealing with family and civic engagement committees for compliance with the requirements in your scope of work. If your district does not receive RttT funds or a family and civic engagement committee is not included in your scope of work under your RttT plan, and you are in a city or exempted village school district or an ESC, you may keep the individual policy BCFA, Business Advisory Council. Since there have been no changes to districts' requirements for business advisory councils, this policy need not be changed.

## **Teacher performance pay affects salary schedule**

*by Megan Greulich  
policy consultant*

Teacher performance pay has been a hot button issue for quite some time. The topic is dealt with in both House Bill 153, the biennial budget bill, and Senate Bill (SB) 5. Both bills make changes to the current salary schedule system and replace it with a performance-based system. Although both seem to have a similar goal, the language and requirements between the two bills differs, and creates potential conflicts if SB 5 survives the referendum in November. To complicate matters further, there will not be a definitive answer as to how those conflicts will be remedied until after the Nov. 8 election.

Neither bill requires districts to adopt policy language, but boards will

be required to adopt guidelines setting forth district-specific performance pay systems. Districts may want to consider putting language in their board policy manuals setting forth the basis of their performance pay systems for reference and informational purposes. Once the election is over and there is clarification on how any inconsistencies will be dealt with if SB 5 survives referendum, OSBA will provide sample language to address any changes.

At this point, there is not much clarification on what the final teacher performance pay system will look like due to the potential conflicts between the two bills. But it is still important for districts to know what the current requirements are, and what the potential outcomes may be after the election. The Ohio Department of Education (ODE) is a great resource for

more information on this and many other topics relating to budget bill changes.

To provide districts with a basic foundation on some of the many budget bill changes, a ODE's HB 153 Frequently Asked Questions document is available for download with this issue of *PDQ*. The document includes questions on the new budget bill requirements, including specific information about the effect the budget bill will have on teacher performance pay. Although the outcome of teacher performance pay will be based on the outcome of the Nov. 8 election, it is a good idea for boards to familiarize themselves with the budget bill requirements, which represent the current requirements and will remain as such if SB 5 does not survive referendum.

## **Other budget bill policy implications to know**

*by Megan Greulich  
policy consultant*

The majority of the policy changes in this issue of *PDQ* stem from changes

in Amended Substitute House Bill (HB) 153, the biennial budget bill. Apart from the larger topics discussed throughout, there are some odds and ends that districts need to know about.

Following are some policy implications from the budget bill that you should consider when updating your board policy manual.

## **Textbook and materials fund**

HB 30 eliminated the textbook and materials fund. Additionally, HB 153 provisions allowed for any remaining money in the textbook and materials fund to be transferred to the general fund. If your district is still using policy DIB, Types of Funds, that policy should be removed, as it deals specifically with the textbook and materials fund that no longer exists.

Additionally, exhibit BDDF-E, Voting Method, makes reference to the textbook and materials fund on its last page. Be sure to remove the language referring to this fund, as well. A sample exhibit with relevant language marked for removal is available for download with this issue of *PDQ*.

## **Gifted education instructors**

The budget bill provides that any person employed by a school district and assigned to a school as a principal or any other position also may serve as the district's gifted education coordinator, if qualified to do so pursuant to the rules adopted by the State Board of Education.

This change does not require additional policy language, but the legal references for policy IGBB, Programs for Gifted and Talented Students, may be updated to indicate the change. Sample language is available for download with this issue.

## **Rent or lease to universities**

HB 153 permits districts to rent or lease their facilities to any public or nonpublic university for evening or summer classes. Policy language is not required; however, districts wishing to use this new language may want to add a general statement reflecting this in policy KG, Community Use of School Facilities (Equal Access).

Permissive language for districts wishing to take advantage of this provision is available for download. However, it is important to note that policy language is not required for districts to take advantage of this new permissive budget bill language.

## **Free lunch fees**

The budget bill made two changes relating to fees for students eligible for the free lunch program. First, HB 153 added the word "any" to one of the exceptions from the prohibition against charging fees to students eligible for the free lunch program. This means that districts may charge fees to students eligible for the free lunch program for *any* materials needed for the student to participate fully in extracurricular activities or pupil enrichment programs that are not a part of the course of instruction. This addition simply clarifies the existing exception. The exception is not new.

Additionally, HB 153 added another exception to the prohibition against charging fees to students eligible for the free lunch program. This provision provides that districts are permitted to charge fees to students on the free lunch program for any tools, equipment and materials necessary for workforce-readiness training with a career-technical education program that, to the extent the tools, equipment and materials are not consumed, may be retained by the student upon course completion.

Districts using OSBA sample language should update policy JN, Student Fees, Fines and Charges, to reflect this change. The language currently states that districts do not charge fees to students in the free lunch program. It also is important to note that these changes do not require districts to charge such fees to students on the free lunch program, but rather that districts are permitted to do so should they so choose. Updates to this language reflecting the budget bill changes are available for download with this issue.

## **Criminal records checks**

HB 153 prohibits school districts, community schools, STEM schools, ESCs and chartered nonpublic schools from requiring an adult education instructor applicant to submit to a criminal records check if that applicant has already had a criminal records check within the previous two years as a condition of being hired for short term employment with that same district, community school, STEM school, ESC

or chartered nonpublic school.

New language is not required, but districts may choose to add a general statement reflecting the change. If your district is interested in adding general language, it is best coded under policy GBQ, Criminal Records Check. Whether or not you choose to add permissive language to this policy, it is a good idea to check your existing language to ensure that it does not conflict with the legal changes.

## **Caloric value of milk**

The budget bill also removed the provisions restricting the caloric and fat levels of milk sold a la carte in public and chartered nonpublic schools. OSBA sample language makes no specific reference to these requirements, so no policy revision is required. Districts should, however, take a look at their individual policies to be sure that their specific language does not contradict this new change. This language would most likely appear in policy EFF, Food Sale Standards. Sample language for this policy is available via download for reference.

There are additional budget bill provisions that have not been covered here or in other articles in this issue. There are some budget bill policy implications that also are dealt with in Senate Bill (SB) 5, and, in some cases there are conflicts between those provisions. As soon as there is a determination on the SB 5 referendum and the procedure for implementing any conflicting provisions if SB 5 survives the referendum, OSBA will have information available for *PDQ* subscribers. Any information on immediate action by districts on board policy will be made available immediately to *PDQ* subscribers and all other information will be available in the February 2012 issue of *PDQ*.

As you can see, HB 153's provisions greatly affect board policy. Although there are circumstances in which language changes are not required, districts should still be aware of the changes and informed about how to appropriately implement them to comply with the changing legal requirements.



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**

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**New policies/regulations/exhibits** (*provided for information*)  
ODE HB 153 Frequently Asked Questions

**Revised policies/regulations** (*add new language shown in bold type and delete language in italic type*)  
BDDF-E, Voting Methods  
CBC, Superintendent’s Contract  
\*JECBD, Intradistrict Open Enrollment (Version 1)  
\*JN, Student Fees, Fines and Charges  
\*KG, Community Use of School Facilities (Equal Access)

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

BCFA, Business Advisory Council to the Board  
BCFB, Family and Civic Engagement Committee  
BCFA/BFCB, Business Advisory Council to the Board/  
Family and Civic Engagement Committee  
DIB, Types of Funds  
\*EFF, Food Sale Standards  
\*GBQ, Criminal Records Check  
\*GCPA, Reduction in Professional Staff Workforce  
\*IGBB, Programs for Gifted and Talented Students  
\*IAA, Textbook Selection and Adoption  
\*IKF, Graduation Requirements  
JK, Employment of Students

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