



M *School* Management *News*

Ohio School Boards Association

October 2011

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Supplemental compensation: student teacher mentoring

*by Megan Greulich
policy consultant*

In June 2011, the Ohio Ethics Commission (OEC) released an advisory opinion dealing with the ethical considerations of public and private colleges and universities providing compensation to school district employees for student teaching activities. OEC considered whether it is appropriate for a public or private college or university to provide, and a district employee to accept, compensation and whether a public or private college or university may provide compensation to the school district as opposed to an individual employee.

The opinion was approved by OEC and became effective on June 17, 2011. OEC noted that the opinion does not apply to any compensation offered or accepted prior to the opinion's effective date due to the fact that these questions had not previously been considered. Let's take a look at OEC's determinations and reasoning.

OEC began by considering whether a school district employee is permitted to accept compensation from a public or private college or university for serving as a classroom mentor for a student teacher, hosting a college or university employee who's doing required field experience or administering the district's student teacher program.

In its consideration, OEC noted that while mentoring student teachers is not a part of a school teacher's usual duties, it is still a function within the scope of a school teacher's employment. OEC also relied on the Ohio Revised Code (RC), noting that school

district employees are public servants, and public servants are prohibited from accepting compensation, and no person is permitted to offer compensation to a public servant for performing duties of the public official's office or employment, or as a supplement to the public servant's public compensation.

OEC also noted that compensation includes anything of value given for services, which would include money and also fee waivers for college or university courses. Under RC Chapter 2921.43, payment or other gain or benefit given by any person to a public school teacher or school district employee for the performance of his or her official duties or as a supplement to public compensation for performing those duties is prohibited.

Precedent also was considered. In Advisory Opinion No. 2008-01, OEC determined that, "for the performance of their public duties, school district employees can receive only the compensation that is provided by the district pursuant to the terms of the employment relationship, and any lawful supplemental contract." OEC also noted that its purpose in coming to this conclusion was to "protect the public by ensuring that a public servant would serve only the public, and performance of his or her job duties would not be influenced by the public servant's obligation to any other source of compensation."

Additionally, OEC noted that mentoring situations, such as the ones in question, happen at school, on school time and with the use of school materials. While these activities are not necessarily part of a teacher's

primary role, they are a part of a teacher's scope of employment and should be considered part of his or her position as a public servant.

Therefore, OEC determined that state law and OEC precedent prevent any person from providing compensation and any school district employee from accepting compensation. This answers the initial question of employee permission to accept, as well as the second question of whether a public or private college or university can offer compensation to district employees for their involvement in student teaching/mentorship programs.

OEC points out that nothing in state law prohibits "a college or university from providing payments, fee waivers or other benefits to the *district* in return

for allowing students from the educational institution to student teach or do field experience in district schools," and that once compensation has been provided to the district, it has the authority to use the benefit in any way it sees fit. Therefore, districts may be compensated for participating in student teaching programs and may choose to pass along the benefits to individual employees, even though public or private colleges or universities could not directly provide the compensation to district employees.

Districts must comply with these ethical guidelines, but are not required to adopt board policy on the topic. However, if your district would like to add language on the topic, the proper location would be in either policy LEA,

Student Teaching and Internships, or your staff ethics policy. General language may be added to indicate that district employees are prohibited by state law from accepting compensation in any form from a public or private college or university for participating in a student teaching program.

Whether you add language to your board policy manual or not, be sure to communicate to district staff members that this type of compensation is prohibited by state law and that all district employees should refrain from accepting compensation and report any offers of compensation to the appropriate member of the administration. It is important that all district employees are aware of the proper, ethical way to handle this common occurrence.

Defining exigent circumstances

by Van D. Keating
director of management services

Over the years, the State Employment Relations Board (SERB)

has introduced me to several new words or phrases that end up becoming extremely important in the world of collective bargaining. Historically, when SERB surprises us with new

terminology, it is because it is using it as a basis for a decision, such as a ruling on an unfair labor practice charge. The new jargon is then studied by management and labor to guide their future strategies and actions.

This would all make some degree of sense if SERB actually defined the new phrase so all parties could clearly understand and apply it in a prospective manner. Unfortunately, that doesn't seem to happen. For example, "ultimate impasse" is a phrase that is not strictly defined by Ohio law, yet is required to have been met by SERB when an employer seeks to implement terms and conditions of employment. To make matters worse, while SERB has created and applied some standards to this phrase, it has often used a "we'll know it when we see it" rationale and made decisions on a "case-by-case" basis. This leaves employers and employees alike with very little guidance on implementations, but ultimately favors unions, because if ultimate impasse was clearly defined and understood, then employers would know exactly what steps to take to make it work every time and in every situation.



SMN

Ohio School Boards Association
8050 N. High St., Suite 100
Columbus, OH 43235-6481
(614) 540-4000 or (800) 589-OSBA
fax: (614) 540-4100 • www.ohioschoolboards.org

OSBA President: **Cathy Johnson, South-Western City**

OSBA Executive Director: **Richard Lewis, CAE**

Editor: **Renee L. Fambro**, deputy director of labor relations

Layout and design: **Angela Penquite**, communication design manager

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A similar situation is evolving with another phrase new to Ohio's schools: "exigent circumstances." Again, it is a phrase neither defined nor required by Ohio law, but has begun to figure prominently in several recent SERB decisions, most notably the Rootstown Decision (SERB Opinion 2011-004). I strongly suggest everyone get a copy of this decision, available at www.serb.state.oh.us/opinions.html, read it and consider its implications.

Simply stated, the crux of the situation involved the **Rootstown Local (Portage)** Board of Education taking action to freeze employees' salaries and wages due to exigent financial circumstances. This action would have prohibited employees not only from receiving a base salary increase, but also step increases unless increased through the collective bargaining process.

As many schools have experienced, steps automatically occur every year, regardless of negotiations, usually during the summer. In a negotiations year, many boards have proposed an absolute wage freeze (no base increase and no step advancement), but because of long-standing SERB precedent, the terms and conditions of an expired contract must continue until there is either a new contract or ultimate impasse has been reached and the employer implements terms and conditions. Unions appreciate this, and by simply drawing out negotiations, they know (and tell their members) they can and will receive their steps, regardless of the board's proposals.

Rootstown's board anticipated this strategy and took action to preempt the union from getting anything automatically. Since the district could not afford steps or base salary increases, the board based its action on "exigent circumstances," which SERB previously had allowed in a decision involving **Toledo City** (SERB Opinion 2011-001). But in Rootstown's situation, SERB decided to once again defy predictability and eschew clarity by overruling the hearing officer's recommendations which had been in favor of the board, instead finding an unfair labor practice had been committed and ruling in favor of the

union.

In reading the opinion, it becomes evident that SERB chose to reinforce the sanctity of the collective bargaining process above all else. SERB relied on its own precedent and insisted that the *status quo ante* rule prevails until the parties reach a successor agreement or until ultimate impasse. SERB then carefully stated that exigent circumstances can exist only in mid-term bargaining situations and that an employer could not be held to the terms of an expired contract *ad infinitum* by a union because the status quo exists only until ultimate impasse is reached.

Undoubtedly unions will applaud this decision because it maintains their practical upper hand when it comes to negotiating wages. If unions can manipulate the tempo of negotiations, then time tends to work in their favor. Long negotiations may not always result in base salary increases, but it usually will result in step increases, thanks to the requirement of maintaining the status quo. School boards will lose any proposal on step freezes if they do not reach ultimate impasse (or implementation) before the automatic advancement date. And once steps have been granted to employees, it is extremely difficult to take them away later and be repaid the excess monies.

Arguably, SERB addressed the issue of unions holding negotiations hostage until their members receive steps by stating that *status quo ante* cannot continue forever: presumably, if a board could actually prove that a union was doing so, it would be an unfair labor practice. However, solid proof is hard to come by and unions are very adept at disguising this motive among a hundred others as to why a settlement can't be reached. No union representative in his or her right mind would ever tell the board that he or she is just holding things up so the members get steps and "then we can settle."

Another troubling aspect of this decision is that SERB seems to be revising its earlier theories — and practicalities — when it comes to exigent circumstances. If you were to consider the realities of school finances,

exigent circumstances have and will occur at many times other than at mid-term. Schools have subscribed to the theory that negotiations are the best opportunity to discuss budget situations with unions, but if a union is simply going to say "no," then what other choice does a board have to quickly resolve its personnel costs? I daresay there are numerous school districts that would argue that exigent circumstances have nothing to do with "mid-term" bargaining or any other type of bargaining. But in both the *Toledo* and *Rootstown* decisions, SERB appears to carefully restrict exigent circumstances to narrow situations that, again, provide little guidance to practitioners.

The only solace a board can find in this decision is that, like in the definition of ultimate impasse, there is no clear-cut way a board can count on using exigent circumstances to its advantage in negotiations, which I think is really what SERB intends. Both concepts could be used as shortcuts in negotiations that would place unions at a disadvantage, and Ohio's current collective bargaining law is still to be interpreted liberally and in favor of unions. However, the terms exist and SERB will continue to deal with interpretations and clever applications until they are precisely defined. So, study the decisions and put your thinking caps on.

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Construction reform in a nutshell

by Jack Rosati, Sylvia Gillis
and Ben Hyden
Bricker & Eckler LLP

Monumental changes are coming to public construction in Ohio to address owner dissatisfaction with multiple prime contracting. School districts soon will be able to choose among several project delivery models for construction projects. Key elements of construction reform included in Amended Substitute House Bill 153, the biennial budget bill recently signed into law by Gov. **John Kasich**, are general contracting, construction manager at-risk and design-build delivery models. Below is a summary of the key changes.

General contracting (GC)

Ohio's multiple prime contracting law (Ohio Revised Code (RC) 153.50) has been rewritten to define GC as the "means of constructing and managing an entire public improvement project, including the branches or classes of work specified in division (B) of this section, under the award of a *single aggregate lump sum contract*." The work defined in division (B) is mechanical, electrical and plumbing trades.

The GC model allows school boards to solicit bids for a single contract to construct the project. This approach shifts risk away from the board by reducing the chance for gaps in the work scopes of multiple contractors, shifts the risk of coordination and related delays to one contractor and reduces finger pointing between contractors regarding defective work. It does not eliminate disputes about whether a defect was caused by design or construction.

Construction manager at-risk (CMAR)

School boards may now hire a CMAR (defined in RC 9.33 as "a person with substantial discretion and authority to plan, coordinate, manage, direct and construct all phases of a

project for the construction, demolition, alteration, repair or reconstruction of any public building, structure or other improvement and *who provides the public authority with a guaranteed maximum price (GMP)*." CMARs differ from GCs in that CMARs typically provide pre-construction services. As the project design progresses, CMARs provide schedules and estimated construction costs, advise on constructability and value engineering, and provide a GMP for construction costs when the design is sufficiently complete. CMARs contract with subcontractors to perform the work.

Construction manager at-risk selection largely mimics the current construction manager (CM) process. RC 9.331 requires the school board to advertise its intent to employ a CMAR and receive proposals after a minimum 30-day period. The new RC 9.334 requires the board then to rank the top three CMAR candidates.

A common complaint in the CM and design professional (DP) selection process has been the inability to ask for price. While price cannot be considered when ranking the top CMAR

candidates, boards may request pricing from these candidates *after* the ranking; pricing includes a statement of general conditions and contingency costs, and preconstruction and construction fees.

The school board provides ranked candidates with a description of the project, statement of the available design detail, description of how GMP will be determined and the form of contract to be used for the project. Based on proposed pricing, the board re-ranks the candidates and begins contract negotiations with the top-ranked company.

A CMAR may self-perform work, but only if authorized by the school board; it must submit a signed and sealed bid for the self-performed work prior to receiving and opening bids for the same work. All subcontractors must

be pre-qualified based on criteria established by the CMAR and approved by the board. The Ohio Department of Administrative Services (ODAS) must prepare administrative rules to establish standards for pre-qualification criteria.

Design-build (DB)

Design-build allows owners to contract with a single entity for both design and construction services. The school board issues a public announcement for DB services and ranks the top three candidates. The board provides the ranked candidates with more detailed information about the project — description, design criteria, preliminary project schedule, requested pre-construction and design services, GMP description and time frame for GMP development and proposed contract form. The board also requests a pricing proposal that includes design services, pre-construction services and DB fee.

The top candidates are re-ranked after reviewing the pricing proposals, and the board then begins negotiations with the top-ranked firm. The board is not required to accept the lowest proposal when evaluating either DB or CMAR candidates. RC 153.693(A)(4) requires that the board "rank the selected firms based on the public authority's evaluation of the value of each firm's pricing proposal, with such evaluation considering each firm's proposed cost *and qualifications*."

If using DB, new RC 153.692 requires school boards to engage the services of a "criteria architect" or "criteria engineer" (CA/CE), who may be an outside consultant or a properly qualified employee of the board. This individual's role is to develop baseline design criteria and requirements for the project and to work with the board to evaluate proposals from the candidates. The CA/CE may not work for the DB once the DB has been selected.

Because of the effort required to develop DB pricing proposals, the

owner may choose to provide a stipend for preparing these proposals.

Other changes in the law

The budget bill included modified advertising requirements. The definition of newspaper of general circulation (RC 7.12) was changed. RC 3313.46(A)(2) includes a reference to new RC 7.16(A), which allows the second advertisement to be an abbreviated format if it includes certain information.

The threshold for the qualification-based selection process for DPs was increased from \$25,000 to \$50,000. This option applies only if the school district maintains a file with current statements of qualifications from DP and DB firms and those statements are updated at regular intervals. The school district may only select from DPs that have submitted a

current statement of qualifications within the immediately preceding year. This change may prove meaningless for many public authorities.

None of these revisions takes effect until at least 90 days after the bill is signed into law, which will be Sept. 29, 2011. In addition, ODAS must do certain things before the changes can be implemented:

- prescribe procedures and criteria for determining the best value selection of a CMAR or DB firm;
- create standards to be followed by CMAR and DB firms when establishing prequalification criteria for subcontractors;
- prescribe the construction contract forms for CMARs, DBs or GCs to use for subcontracts;
- prescribe the construction contract forms to be used by public owners for CMARs and DBs;

- create bonding requirements for CMARs and DBs.

The Ohio School Facilities Commission (OSFC) will be involved in the development of the procedures and documents for these project-delivery model options as they apply to co-funded OSFC projects.

The construction reform measures will dramatically affect public construction in Ohio. School boards will be challenged to become familiar with the new models and determine which will work best for projects. Experienced guidance will be a key to avoiding problems.

Editor's note: Jack Rosati is a partner and chair of the Bricker & Eckler LLP Construction group; Sylvia Gillis is a partner in the Construction group; and Ben Hyden is a member of the Construction group.

Get ready, get set, get organized!

by Cheryl W. Ryan
deputy director of school board services

One of the things many of us in the education or “school” business often say they most enjoy about their work is that it begins anew every year. Some students stay the same, and certainly much of the staff remains constant, but there’s always a feeling of starting over. Every student has a clean — or at least *cleaner* — slate, and every staff member seems ready to make this year better than the one before.

Maintaining that positive outlook, given the sudden onslaught of fall activities, meetings and conferences, can be tough. One person told me recently, “My life is getting in the way of my trying to stay positive!” I understand completely. For me, staying organized is a major key to keeping all I have to do and think about at work and home a reality.

It’s an ongoing battle. I find that getting some pieces and parts organized seems to make room for other pieces

and parts to become less so. Maintaining an “organized life” is a moving target. Isn’t there some cute anecdote about how a tidy desk or a tidy house is the sign of a mind that doesn’t have enough to think about? Perhaps this is a great time of year to renew the quest to be organized ... or at least *more* organized. Some things to consider:

- A place for everything. This one is crucial. If everything you own or work with (including tools, paper and electronic devices) has a spot to call its own, your chances for organizational success are much better. Then, commit to putting things back where they belong *every* time. At my house, hanging a simple board with small hooks for everyone’s keys (even the extra ones or the ones the neighbor loans you “just in case”) was like winning a Pulitzer Prize. I can’t remember the last time anyone in my house couldn’t find his or her keys. Seems simple, but it’s true.
- A time for everything. An easy way to be more organized and less hurried is to

create routines. This goes against the grain for many of us who pride ourselves on spontaneity or being able to “live in the moment.” But even a few routines make life easier. For me, having an early morning routine makes it easier for me to judge how long I have before I absolutely, positively need to be in the car and on my way to work. Even if you divert from your routine occasionally, it may help you minimize meaningless decisions (Where should I go for lunch? When should I work out?).

- Rome wasn’t conquered in a day. Start small. Consider organizing your desk or (gasp!) your computer desktop. Move on to larger sources of disorganization from there. Perhaps by the end of the year you’ll have your whole office (or garage) in the kind of shape that would make Martha Stewart weep with envy.

- Capture the thoughts. I don’t know whether this one is tough because of the sheer quantity of things we have to think about or because I’m at the age where what used to be my brain

sometimes acts more like a sieve. Perhaps it's a combination of both. I find that a few simple places for everything in my actual or virtual inbox are helpful. An inbox on my desk. A note pad mounted to the dash of my car. A note pad application on my phone. A note pad stuck to the fridge. Next thing I know, I'll forget where all the note pads are.

- Deal with it once. This one is

sometimes the hardest. I like to handle the paper in my inbox a minimum of times — hopefully just once. I read it, forward it, act on it, file it, mail it or throw it away. It's kind of the same thing with my email inbox. Open it, act on it, answer it, file it, forward it to a better expert or throw it away. Despite receiving lots of email in several different places, my email inbox is usually fairly “thin.” For me, an inbox

with dozens (or hundreds) of messages is an open invitation for something major to fall through the cracks. I know that if it's still in my inbox, it needs action soon, if not today.

Perhaps one or more of these ideas will help you on your quest to get and *stay* more organized this year. It's one of those things where improvement — even “at the margins” — could help decrease your stress levels. Good luck!

School district contract settlements

Certified contracts

District: Tri-County Career Center

Settlement date: March 2011

Contract term: two-year contract extension

Contract particulars: 0% base salary increase and no step increases in both years; employee share of health insurance premium increased to 15%; employees moved to a new health insurance plan on Sept. 1, 2011.

District: Cedar Cliff Local (Greene)

Settlement date: June 2011

Contract term: two years

Contract particulars: 0% base salary increases in both years; employee share of health insurance premium increased to 12.5% for single coverage, 18% for employee plus one coverage and 22% for employee plus family coverage.

District: Ross Local (Butler)

Settlement date: June 2011

Contract term: two years

Contract particulars: 0% base salary increases and no step increases in both years; higher co-pay option added to health insurance; employee share of health insurance premium increased 2%.

District: Morgan Local (Morgan)

Settlement date: July 2011

Contract term: three years

Contract particulars: 0% base salary increases in all three years, no step increases in years one and two; employee share of health insurance premium increased to 15% in year three.

District: Northridge Local (Licking)

Settlement date: July 2011

Contract term: two years

Contract particulars: 0% base salary increases and no step increases in both years; \$250 lump-sum payment in both years; employees will continue to pay 30% of their health insurance premium.

District: River Valley Local (Marion)

Settlement date: July 2011

Contract term: three years

Contract particulars: 0% base salary increases in all three years, no step increase in year one, step increases reduced by a half for second and third years; new language requiring the placement of an aide in any elementary classes that go above 28 students; no changes to health insurance.

District: Shelby City

Settlement date: July 2011

Contract term: two years

Contract particulars: 0% base salary increases in both years; employee share of health insurance premium increased from 12% to 12.5% in year one and to 15% in year two; employees will participate in two 45-minute team meetings each month with no additional cost to the district.

District: Genoa Area Local (Ottawa)

Settlement date: August 2011

Contract term: three years

Contract particulars: 0% base salary increases and no step increases in years one and two, salary re-opener in year

three; one-time \$200 lump-sum payment.

District: Groveport Madison Local (Franklin)

Settlement date: August 2011

Contract term: two years retroactive to July 1

Contract particulars: 0% base salary increase and no step increase in year one, 0% base salary increase in year two; employees not eligible for a step increase in year two will receive a one-time \$500 stipend; employee share of health insurance premium will increase from 3.5% to 10% in year two.

District: Lakewood Local (Licking)

Settlement date: August 2011

Contract term: one-year contract extension

Contract particulars: 0% base salary increase, employees not eligible for a step increase will receive a one-time \$1,500 payment; increase in health insurance deductibles, co-pays and out-of-pocket maximums; opt-out payment for employees who do not take health insurance.

District: Southwest Licking Local (Licking)

Settlement date: August 2011

Contract term: three years

Contract particulars: 0% base salary increase and no step increases in all three years; co-pay for prescription drugs doubled; married couples who both teach in the district must now pay the cost of a single insurance premium

in order to get family coverage where before they didn't pay the premium; new provision that allows the district to add one additional student per class above the maximum if any grade level is filled and compensate the affected teacher \$10 per day.

District: Riverdale Local (Hardin)

Settlement date: August 2011

Contract term: one-year implementation of last, best offer

Contract particulars: 0% base salary increase and no step increase; employee share of single health insurance premium increased from 0% to 15%, employee share of family health insurance premium increased from 10% to 15%.

District: Yellow Springs EV

Settlement date: August 2011

Contract term: two years

Contract particulars: 0% base salary increases and no step increases in both years; 2% reduction in supplemental contract pay in year one; \$300 stipend in December of years one and two; employee share of health insurance premium increased to 15%; elimination of the \$500 flexible spending account.

Classified contracts

District: Tri-County Career Center

Settlement date: March 2011

Contract term: two-year contract extension

Contract particulars: 0% base salary increase and no step increases in both years; employee share of health insurance premium increased to 15%; employees moved to a new health insurance plan on Sept. 1, 2011.

District: Cedar Cliff Local (Greene)

Settlement date: June 2011

Contract term: two years

Contract particulars: 0% base salary increases in both years; employee share of health insurance premium increased to 12.5% for single coverage, 18% for employee plus one coverage and 22% for employee plus family coverage.

District: Cuyahoga Falls City

Settlement date: July 2011

Contract term: three years

Contract particulars: 0% base salary increases and no step increases in all three years; one-time lump-sum payment of 2% of each employee's salary in year two; employee share of health insurance premium will increase from \$20 to 7% in year one, 10% in year two and 12% in year three.

District: Stow-Munroe Falls City

Settlement date: July 2011

Contract term: two years

Contract particulars: 0% base salary increases and no step increases in both years; full-time employees will receive a one-time \$1,000 stipend in year two, part-time employees will receive a one-time \$500 stipend in year two; employee share of health insurance premium increased from 5% to 10% in year one and to 15% in year two.

District: West Branch Local (Mahoning)

Settlement date: July 2011

Contract term: two years

Contract particulars: 1% base salary increase in year one, 0% base salary increase and no step increase in year two; increase in employees' share of health insurance premium in year two.

District: Genoa Area Local (Ottawa)

Settlement date: August 2011

Contract term: one year

Contract particulars: 0% base salary increase; one-time \$162.50 lump-sum payment.

District: Yellow Springs EV

Settlement date: August 2011

Contract term: two years

Contract particulars: 0% base salary increases and no step increases in both years; \$600 one-time stipend in year one; employee share of health insurance premium increased to 15%; elimination of the \$500 flexible spending account.

Other salary news

Administrators and exempt staff at the **Tri-County Career Center** will have a two-year wage freeze, will pay 15% of their health insurance premium and moved to a new health insurance plan on Sept. 1, 2011.

Cuyahoga Falls City school administrators, supervisors and exempt employees will have a two-year wage freeze and receive a one-time payment of 2% of their salary in September 2012.

Administrators and exempt employees at **Triad Local (Champaign)** will have a one-year wage freeze.

Source: Newspaperclips.com

If your school has recently settled a contract and you would like *School Management News* to report the settlement information, please contact **Renee L. Fambro** at rfambro@ohioschoolboards.org or (614) 540-4000, ext. 243.

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New public record protections benefit school districts

by Sara C. Clark
deputy director of legal services

The city of New Philadelphia received a public records request for police dispatch tapes in 2007 that were recorded through the now-antiquated “Dictaphone-Dictatape Logger” from 1975 through 1995. The requestor made similar requests to other municipalities in the area and specifically indicated he wanted only the records if the city did not have an approved record disposal schedule. New Philadelphia, which did not have an approved schedule, responded that the police department had disposed of the records. The requestor filed a lawsuit against the city, alleging that the city had illegally destroyed the recordings without approval, that he was aggrieved by the city’s violations and that he was entitled to a \$1,000 forfeiture for each improperly destroyed 24-hour recording. The city argued that the requestor was not an aggrieved party because he did not actually want the records and merely made the request to make money.

In July 2011, the Ohio Supreme Court agreed with the city, stating that

“a party is not aggrieved by the destruction of a record when the party’s objective in requesting the record is not to obtain the record, but to seek a forfeiture for the wrongful destruction of the record” (*Rhodes v. City of New Philadelphia*, Slip Op. No. 2011 Ohio 3279). In this case, because the requestor did not actually want the records, he was not “aggrieved” by the destruction of the tapes and was not entitled to collect damages.

Also in July, the General Assembly made amendments to Ohio Revised Code Section 149.351 that results in additional benefits for school districts in this area. Specifically, the statute has been amended to provide that “a person is not aggrieved ... if clear and convincing evidence shows that the request for a record was contrived as a pretext to create potential liability.” Although the “clear and convincing” standard is a difficult standard to meet, the statute provides that by filing a complaint against a school district, a requestor waives his or her right to decline to identify the purpose of the request. This allows a school district to question the investigator to show that the request was made with the goal to

collect damages.

The amended statute also provides additional protections for school districts, including the following:

- caps the civil forfeiture at \$10,000 and limits an award of attorney’s fees to the amount of the forfeiture,
- awards attorney’s fees to a school district that can demonstrate the request was simply a pretext to create potential liability,
- prevents other aggrieved persons from obtaining damages on the same record once an aggrieved person obtains a civil forfeiture for a record,
- imposes a five-year statute of limitations for actions based on the illegal destruction of records or allegation of such a violation.

Although the best way to avoid potential litigation is to comply with the laws that govern public records requests and retention, the law now provides school districts with new resources designed to prevent requests and lawsuits specifically aimed at creating liability. If you have any additional questions about either of these developments, please contact your board counsel or the OSBA legal services division at (614) 540-4000.