

Legal Update

February 2022

Sunshine Law Training

It's difficult to believe that it's time again to think about getting trained on Ohio's Open Meetings and Public Records laws, but it is indeed!

As you may have heard, the Ohio Auditor of State issued a Bulletin in October 2021 stating that for the 2023 year-end audits of charter schools the AOS will begin testing compliance with Ohio Rev. Code § 3314.03 by considering whether the training completed by community school officials has been approved by the Attorney General. The AOS bulletin carries no legal authority and the interpretation is legally erroneous. Nonetheless, our office on behalf of clients will continue to pursue resolution of the ambiguity in time for the FY23 audits.

In the meantime, moving forward with sunshine law training as has occurred in the past is advisable so that you meet compliance requirements for FY 22 audits and sponsorship compliance.



This Edition

House Bill 51

Updated School COVID Tracing
OSHA Vaccine Requirement

Virtual Meetings – House Bill 51

In late January the Ohio Senate amended House Bill 51 to allow public bodies to meet virtually through June 30, 2022.

This temporary adjustment to Ohio Open Meetings Act's requirement that members of a public body must attend in-person to count toward quorum and voting mirrors the previous law passed earlier in the COVID pandemic. Under HB 51 members of bodies such as community school boards may hold and attend meetings by teleconference, video conference, or any other similar electronic technology.

Public bodies are still required to provide notification of meetings as under existing law: "by reasonable methods by which any person may determine the time, location, and the manner by which the meeting or hearing will be conducted".

The public must be provided access to the meeting in a manner "commensurate with the method in which the meeting or hearing is conducted."

The bill provides examples of public access mediums such as livestreaming by means of the internet, local radio, television, cable, or public access channels, call in information for a teleconference, or by means of any other similar electronic technology. The public body shall ensure that the public can observe, when applicable, and hear the discussions and deliberations of all the members of the public body, whether the member is participating in person or electronically.

If the Ohio House passes the substitute bill it will be sent to the Governor for signature after which it would take immediate effect as emergency legislation.

As of the date of this publication, the bill is anticipated to pass into law. This office will promptly notify client boards of the passage and will arrange virtual meetings as requested.



Updated Contact Tracing Guidance for Schools

As COVID-19 has evolved, public health mitigation strategies have had to adjust periodically to new challenges. The quick spread of the Omicron variant and its rapid clinical course have made universal contact tracing, case investigation and exposure notification impractical when combined with newly reduced timelines for quarantine and isolation.

As such, the Ohio Department of Health recently released new contact tracing and case investigation guidance for K-12 schools.

ODH recommends that local health departments

shift from universal contact tracing, case investigation and exposure notification to a cluster or outbreak-based model. This strategy prioritizes people in high-risk settings, such as congregate residential settings (i.e. shelters, correction facilities, and nursing homes) or for certain circumstances such as outbreaks or clusters in specific settings or in relation to initial cases or clusters associated with new variants, as appropriate.

K-12 schools should continue to follow “Mask to Stay, Test to Play,” protocol which allows asymptomatic students to attend school while wearing a mask if they have been

exposed to someone with COVID-19 in a school setting.

ODH reduced the school case reporting timing to weekly. Starting February 4th, schools should report positive student and staff cases to local departments of health each Friday rather than daily. Local health departments will continue to report on the same weekly basis.

The complete guidance can be accessed at:

<https://odh.ohio.gov/static/docs/memo-contact-tracing-final-012622.pdf>

New School Employee Hiring Requirements

The Ohio General Assembly recently updated hiring requirements for school employees. Schools must now check the Educator Profile database regarding licensure and professional conduct/discipline status of an individual before making a hiring decision.

The update also requires that the following notice be included in capitalized letters and boldface lettering on each school employment application:

“Any person who knowingly makes a false statement is guilty of falsification under section 2921.13 of the Revised Code, which is a misdemeanor of the first degree.”

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Q & A

Q: What is the status of OSHA’s vaccine mandate?

A: After the U.S. Supreme Court halted the enforcement of much of it, the Occupational Safety and Health Administration (OSHA) has withdrawn its emergency temporary standard (ETS), which would have required large businesses to ensure employees are vaccinated or undergo weekly COVID-19 testing. Rather, the agency is moving forward with its proposal to issue a permanent standard.

Issuance of an ETS serves as a proposal for a permanent standard, which OSHA still intends to pursue. Likely the agency will narrow the scope of the standard and focus on high-hazard work places. What this means for schools remains to be seen. But, for now, schools need not implement the temporary standard of requiring employees to be vaccinated or take weekly tests. Again, it is notable that OSHA does not have jurisdiction over public employers, so it’s questionable whether this would at all impact workers who are employed in schools by private management.