

**IN THE SUPREME COURT OF OHIO**

<b>STATE OF OHIO EX REL.</b>	<b>:</b>	<b>CASE NO. 2023-0699</b>
<b>BRIAN M. AMES,</b>	<b>:</b>	<b>ORIGINAL ACTION IN MANDAMUS</b>
<b>Relator,</b>	<b>:</b>	
<b>v.</b>	<b>:</b>	
<b>THREE RIVERS LOCAL SCHOOL</b>	<b>:</b>	
<b>DISTRICT RECORDS COMMISSION,</b>	<b>:</b>	
<b>Respondent.</b>		

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**RESPONDENT'S MERIT BRIEF**

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## **STATEMENT OF FACTS**

On April 29, 2023, Relator submitted a public records request to the “Three Rivers Local School District Records Commission.” REL\_EVID\_001. Ohio Revised Code §149.41 creates “school district records commission[s]” in each school district. The records commissions are composed of the president, the treasurer of the board of education, and the superintendent of schools. R.C. 149.41. The purpose of the records commission is to review applications for disposal of records and records retention schedules. Id. The records commission is to meet at least once every twelve months. Id.

The Three Rivers Local School District’s records commission has historically operated like a committee of Three Rivers Local School District Board of Education (the “Board” or “District”). RESP. EVID. 002, at ¶8. For example, there is no address for the records commission separate from the Board address. Id. Records commission meetings are held at a District office. Id. The Board Treasurer keeps the minutes of the records commission meetings as she does for Board meetings. Id. The records commission has no liability insurance separate and apart from that of the Board. Id. The records commission is referred to as the “Three Rivers Local School District Records Retention Committee” in its minutes. Id. At the time of Relator’s public records request, the records commission did not have a meeting notification policy separate and apart from the Board’s meeting notification policy, which is Policy BDDA and is titled, “Notification of Meetings.” Id.; REL\_EVID\_004; RESP. EVID. 006.

Operation of the records commission in this manner is consistent with Board Policy EHA, which is titled, “Data and Records Retention.” RESP. EVID. 002, at ¶8; RESP. EVID. 004-005. The policy states, in pertinent part, “[a]ll records are the property of the District and are not

removed ... except as provided by law or under the rules adopted by the District Records Commission ... .” RESP. EVID. 004.

Board Policies BDDA and EHA were prepared and provided to the District by the Ohio School Boards Association (“OSBA”), which is one of two services that school districts in Ohio generally use to obtain their policies. RESP. EVID. 002, at ¶¶2-3. District Treasurer Teri Riesenbergs has always understood that OSBA policies comply with all legal requirements. Id., ¶4.

In his April 29, 2023 public records request, Relator requested the following documents:

1. The rule(s) for notification of meetings required by R.C. 121.22(F) in effect for the years 2021, 2022, and 2023.
2. The meeting minutes for the years 2021, 2022, and 2023.
3. The notices of meetings for the years 2021, 2022 and 2023.
4. The records retention schedules approved in the years 2021, 2022 and 2023.

REL EVID 001.

On May 23, 2023, Treasurer Riesenbergs provided Relator with the following documents:

1. Three Rivers Local School District Board of Education Policy BDDA. The Policy indicates it was last revised on April 12, 2023. REL EVID 002; REL EVID 004.  
As noted above, at the time of Relator’s request, the records commission did not have a meeting notification policy separate and apart from Board Policy BDDA. RESP. EVID. 002, at ¶8.
2. A link to an unsigned copy of the minutes of the June 28, 2022 “Three Rivers Local School District Records Retention Committee.” REL EVID 002; REL EVID 061.

3. Records retention schedules from January 2021 and June 2022. REL EVID 002; REL EVID 005-060.

This lawsuit was filed on May 31, 2023. See, Docket. Shortly thereafter, on June 15, 2023, Relator was provided with the version of Policy BDDA in place during 2021 and 2022 and a signed copy of the June 28, 2022 meeting minutes. RESP. EVID. 008-012.

As of June 15, 2023, Relator had been provided with all documents responsive to his request that existed at the time the request was made. RESP. EVID. 003, at ¶13. Specifically, request number one was completely fulfilled. With respect to request number two, Relator was provided with minutes of the 2022 meeting. There are no minutes of a 2021 meeting. RESP. EVID. 002, at ¶10. At the time of Relator's request, the 2023 meeting had not yet been held, so there were no 2023 meeting minutes in existence. Id. With respect to request number three, no responsive documents exist. RESP. EVID. 003, at ¶11. With respect to request number four, Relator was provided with the 2021 and 2022 records retention schedules. As noted above, the 2023 meeting had not yet been held at the time of Relator's request so there was no 2023 records retention schedule in existence to produce. RESP. EVID. 002, at ¶12.

## **LAW AND ARGUMENT**

### **Relator's Proposition of Law No. I:**

#### **School district records commissions are distinct from boards of education.**

Ohio Revised Code §149.41 creates "school district records commissions." Specifically, the statute states:

There is hereby created in each city, local, joint vocational, and exempted village school district a school district records commission, and in each educational service center an educational service center records commission. Each records commission shall be composed of the president, the treasurer of the board of education or governing board of the educational service center, and



the superintendent of schools in each such district or educational service center. The commission shall meet at least once every twelve months.

The function of the commission shall be to review applications for one-time disposal of obsolete records and schedules of records retention and disposition submitted by any employee of the school district or educational service center. The commission may dispose of records pursuant to the procedure outlined in section 149.381 of the Revised Code. The commission, at any time, may review any schedule it has previously approved and, for good cause shown, may revise that schedule under the procedure outlined in that section.

(Emphasis added.)

The statute plainly states school district records commissions are created *in* school districts and not as separate entities. School district records commissions would not exist without a corresponding school board. The members of a school district records commission are only members by virtue of their membership on, or employment by, the board of education. Thus, school district records commissions are not distinct legal entities with the capacity to sue or be sued. Rather, pursuant to R.C. 3313.17, “[t]he **board of education** of each school district shall be a body politic and corporate, and, as such, capable of suing and being sued . . . .” (Emphasis added.)

By way of analogy, courts routinely dismiss cases filed against “school districts” because they are not capable of being sued. See, e.g., McGath v. Hamilton Local Sch. Dist., 848 F. Supp. 2d 831, 838 (S.D. Ohio 2012) (“As an initial matter, the Hamilton Local School District is not an entity which can be sued. Accordingly, the School district is dismissed with prejudice.”) This is true even though school districts, like records commissions, are specifically provided for by statute (R.C. 3311.03), and even though school districts, like records commissions, are given statutory responsibilities and mandates. See, e.g., R.C. 3323.02 (no school district shall receive funds for special education unless certain requirements are met), R.C. 3313.64(B)(1) (school districts shall admit children whose parent resides in the district), R.C. 5705.412 (no school district shall make certain financial transactions without certifying it has sufficient funds). If a school district is not

capable of being sued, then neither is a school district records commission, which is specifically created by statute in a school district. See, R.C. 149.41. Rather, it is the board of education in either case that is vested with the statutory capacity to sue and be sued. This makes sense because it is the “board of education” that is granted statutory authority to procure liability insurance that might provide a defense in a case like this, and it is the “board of education” that is granted a statutorily appointed legal adviser and the authority to employ other legal counsel to defend a case like this. R.C. 3313.201; R.C. 3313.35; R.C. 309.10.

The conclusion that a school district records commission is not an entity capable of being sued also makes sense in light of how school district records commissions operate. There is no address for the records commission separate from the Board address. RESP. EVID. 002, at ¶8. Records commission meetings are held at a District office. Id. The Board Treasurer keeps the minutes of the records commission meetings as she does for Board meetings. Id. The records commission has no liability insurance separate and apart from that of the Board. Id. At the time of Relator’s public records request, the records commission used the Board’s meeting notification policy. Id.; REL EVID 004; RESP. EVID. 006.

In short, regardless of whether the school district records commission is “distinct” from a board of education, it is not an entity capable of being sued and Relator’s request for a writ of mandamus should be denied on that basis.

**Relator’s Proposition of Law No. II:**

**Respondent failed to provide responsive records.**

The only Count set forth in Relator’s Complaint for Writ of Mandamus is “Failure to Provide Public Records.” Complaint, p. 3. Relator goes on to identify the documents he does not believe he has received in paragraphs 21 through 27 of the Complaint. Relator must establish his

entitlement to the requested extraordinary relief of a writ of mandamus by clear and convincing evidence. State ex rel. McCaffrey v. Mahoning Cty. Prosecutor's Office, 133 Ohio St.3d 139, 2012-Ohio-4246, ¶16 (citations omitted). He cannot meet that heavy burden here because even if the records commission is capable of being sued, Relator has been provided with all of the requested records that existed at the time he made the request.

It is axiomatic that a court cannot order the production of items that do not exist. State ex rel. Lanham v. Smith, 112 Ohio St.3d 527, 2007-Ohio-609, ¶1 (“Because these records do not exist, we deny the writ.”); State ex rel. Hedenberg v. North Central Correctional Complex, 162 Ohio St.3d 85, 2020-Oho-3815, ¶7 (“... a writ of mandamus will not issue when the uncontroverted evidence shows that the requested documents do not exist.”); Jones v. Thompkins, 9th Dist. No. 16937, 1995 WL 434353 (July 14, 1995), at \*2 (citing State ex rel. Walborn v. Erie Cty. Care Facility, et al., 6th Dist. No. E-94-19, 1994 WL 590496 (Oct. 21, 1994); State ex rel. Fant v. Mengel, 10th Dist. No. 90AP-531, 1990 WL 106090 (July 26, 1990)); State ex rel. Moore v. Brown, 2nd Dist. No. 16831, 1997 WL 779902 (Dec. 19, 1997), at \*3.

Here, whether a document *should* exist (e.g., a separate meeting notification policy for a school district records commission or meeting minutes) is not the issue. Rather, the issue, as stated by Relator in his Complaint, is whether Respondent has fully responded to Relator's public records request. The uncontroverted evidence shows that it has. RESP. EVID. 003, at ¶13. Any documents Relator has not received did not exist at the time he made his request.

**Relator's Proposition of Law No. III:**

**Relator is entitled to statutory damages.**

In his Merit Brief, Relator states he is entitled to statutory damages of up to \$1,000. Relator's Merit Brief, p. 8. Respondent acknowledges that Relator was not provided with the prior

version of Policy BDDA until after this lawsuit was filed. Interestingly, however, Relator alleges the document would not be responsive to his request for various reasons in any event. Complaint, ¶21. For that reason, the Court should decline to award statutory damages pursuant to R.C. 149.43(C)(2).

Respondent also acknowledges that an unsigned copy of the 2022 meeting minutes was initially made available to Relator, but that a signed copy was not provided until after this lawsuit was filed. Relator's request sought "authentic copies of the following official records ... 2. The meeting minutes for the years 2021, 2022, and 2023." REL\_EVID\_001. Relator did not define what he meant by "official records" in his request. Id. Relator could have requested "signed meeting minutes" if that is what he wanted. He did not make that specific of a request. Rather, he simply requested "meeting minutes." He was provided with meeting minutes. Accordingly, the Court should decline to award statutory damages based on this document as well.

### **CONCLUSION**

Relator's request for a writ of mandamus should be denied for two reasons. First, "Three Rivers Local School District Records Commission" is not an entity capable of suing or being sued. Rather, by statute, the records commission is an entity created within the Three Rivers Local School District. As such, the only proper Respondent in this case would be the Three Rivers Local School District Board of Education. Because the Board is not a party, the writ must be denied. Even if it is appropriate to name the "Three Rivers Local School District Records Commission" as the Respondent in this case, the request for a writ of mandamus must be denied because all records responsive to Relator's request that existed at the time of the request have been produced.

Respectfully submitted,



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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing was served  
on this 26th day of October, 2023 by electronic mail upon the following:

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## **APPENDIX**

Baldwin's Ohio Revised Code Annotated  
Title I. State Government  
Chapter 121. State Departments (Refs & Annos)  
Administrative Provisions

R.C. § 121.22

121.22 Meetings of public bodies to be open; exceptions; notice

Effective: April 7, 2023

[Currentness](#)

(A) This section shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law.

(B) As used in this section:

(1) “Public body” means any of the following:

(a) Any board, commission, committee, council, or similar decision-making body of a state agency, institution, or authority, and any legislative authority or board, commission, committee, council, agency, authority, or similar decision-making body of any county, township, municipal corporation, school district, or other political subdivision or local public institution;

(b) Any committee or subcommittee of a body described in division (B)(1)(a) of this section;

(c) A court of jurisdiction of a sanitary district organized wholly for the purpose of providing a water supply for domestic, municipal, and public use when meeting for the purpose of the appointment, removal, or reappointment of a member of the board of directors of such a district pursuant to [section 6115.10 of the Revised Code](#), if applicable, or for any other matter related to such a district other than litigation involving the district. As used in division (B)(1)(c) of this section, “court of jurisdiction” has the same meaning as “court” in [section 6115.01 of the Revised Code](#).

(2) “Meeting” means any prearranged discussion of the public business of the public body by a majority of its members.

(3) “Regulated individual” means either of the following:

(a) A student in a state or local public educational institution;

(b) A person who is, voluntarily or involuntarily, an inmate, patient, or resident of a state or local institution because of criminal behavior, mental illness, an intellectual disability, disease, disability, age, or other condition requiring custodial care.

(4) “Public office” has the same meaning as in [section 149.011 of the Revised Code](#).

(C) All meetings of any public body are declared to be public meetings open to the public at all times. A member of a public body shall be present in person at a meeting open to the public to be considered present or to vote at the meeting and for purposes of determining whether a quorum is present at the meeting.

The minutes of a regular or special meeting of any public body shall be promptly prepared, filed, and maintained and shall be open to public inspection. The minutes need only reflect the general subject matter of discussions in executive sessions authorized under division (G) or (J) of this section.

(D) This section does not apply to any of the following:

(1) A grand jury;

(2) An audit conference conducted by the auditor of state or independent certified public accountants with officials of the public office that is the subject of the audit;

(3) The adult parole authority when its hearings are conducted at a correctional institution for the sole purpose of interviewing inmates to determine parole or pardon and the department of rehabilitation and correction when its hearings are conducted at a correctional institution for the sole purpose of making determinations under [section 2967.271 of the Revised Code](#) regarding the release or maintained incarceration of an offender to whom that section applies;

(4) The organized crime investigations commission established under [section 177.01 of the Revised Code](#);

(5) Meetings of a child fatality review board established under [section 307.621 of the Revised Code](#), meetings related to a review conducted pursuant to guidelines established by the director of health under [section 3701.70 of the Revised Code](#), and meetings conducted pursuant to [sections 5153.171 to 5153.173 of the Revised Code](#);

(6) The state medical board when determining whether to suspend a license or certificate without a prior hearing pursuant to division (G) of either [section 4730.25](#) or [4731.22 of the Revised Code](#);

(7) The board of nursing when determining whether to suspend a license or certificate without a prior hearing pursuant to [division \(B\) of section 4723.281 of the Revised Code](#);

(8) The state board of pharmacy when determining whether to do either of the following:

(a) Suspend a license, certification, or registration without a prior hearing, including during meetings conducted by telephone conference, pursuant to Chapters 3719., 3796., 4729., and 4752. of the Revised Code and rules adopted thereunder; or



- (b) Restrict a person from obtaining further information from the drug database established in [section 4729.75 of the Revised Code](#) without a prior hearing pursuant to [division \(C\) of section 4729.86 of the Revised Code](#).
- (9) The state chiropractic board when determining whether to suspend a license without a hearing pursuant to [section 4734.37 of the Revised Code](#);
- (10) The executive committee of the emergency response commission when determining whether to issue an enforcement order or request that a civil action, civil penalty action, or criminal action be brought to enforce Chapter 3750. of the Revised Code;
- (11) The board of directors of the nonprofit corporation formed under [section 187.01 of the Revised Code](#) or any committee thereof, and the board of directors of any subsidiary of that corporation or a committee thereof;
- (12) An audit conference conducted by the audit staff of the department of job and family services with officials of the public office that is the subject of that audit under [section 5101.37 of the Revised Code](#);
- (13) The occupational therapy section of the occupational therapy, physical therapy, and athletic trainers board when determining whether to suspend a license without a hearing pursuant to [division \(E\) of section 4755.11 of the Revised Code](#);
- (14) The physical therapy section of the occupational therapy, physical therapy, and athletic trainers board when determining whether to suspend a license without a hearing pursuant to [division \(F\) of section 4755.47 of the Revised Code](#);
- (15) The athletic trainers section of the occupational therapy, physical therapy, and athletic trainers board when determining whether to suspend a license without a hearing pursuant to [division \(E\) of section 4755.64 of the Revised Code](#);
- (16) Meetings of the pregnancy-associated mortality review board established under [section 3738.01 of the Revised Code](#);
- (17) Meetings of a fetal-infant mortality review board established under [section 3707.71 of the Revised Code](#);
- (18) Meetings of a drug overdose fatality review committee described in [section 307.631 of the Revised Code](#);
- (19) Meetings of a suicide fatality review committee described in [section 307.641 of the Revised Code](#);
- (20) <sup>1</sup> Meetings of the officers, members, or directors of an existing qualified nonprofit corporation that creates a special improvement district under Chapter 1710. of the Revised Code, at which the public business of the corporation pertaining to a purpose for which the district is created is not discussed;
- (21) <sup>1</sup> Meetings of a domestic violence fatality review board established under [section 307.651 of the Revised Code](#).

(E) The controlling board, the tax credit authority, or the minority development financing advisory board, when meeting to consider granting assistance pursuant to Chapter 122. or 166. of the Revised Code, in order to protect the interest of the applicant or the possible investment of public funds, by unanimous vote of all board or authority members present, may close the meeting during consideration of the following information confidentially received by the authority or board from the applicant:

(1) Marketing plans;

(2) Specific business strategy;

(3) Production techniques and trade secrets;

(4) Financial projections;

(5) Personal financial statements of the applicant or members of the applicant's immediate family, including, but not limited to, tax records or other similar information not open to public inspection.

The vote by the authority or board to accept or reject the application, as well as all proceedings of the authority or board not subject to this division, shall be open to the public and governed by this section.

(F) Every public body, by rule, shall establish a reasonable method whereby any person may determine the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings. A public body shall not hold a special meeting unless it gives at least twenty-four hours' advance notice to the news media that have requested notification, except in the event of an emergency requiring immediate official action. In the event of an emergency, the member or members calling the meeting shall notify the news media that have requested notification immediately of the time, place, and purpose of the meeting.

The rule shall provide that any person, upon request and payment of a reasonable fee, may obtain reasonable advance notification of all meetings at which any specific type of public business is to be discussed. Provisions for advance notification may include, but are not limited to, mailing the agenda of meetings to all subscribers on a mailing list or mailing notices in self-addressed, stamped envelopes provided by the person.

(G) Except as provided in divisions (G)(8) and (J) of this section, the members of a public body may hold an executive session only after a majority of a quorum of the public body determines, by a roll call vote, to hold an executive session and only at a regular or special meeting for the sole purpose of the consideration of any of the following matters:

(1) To consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official, or the investigation of charges or complaints against a public employee, official, licensee, or regulated individual, unless the public employee, official, licensee, or regulated individual requests a public hearing. Except as otherwise provided by law, no public body shall hold an executive session for the discipline of an elected official for conduct related to the performance of the elected official's official duties or for the elected official's removal from office. If a public body holds an executive session pursuant to division (G)(1) of this section, the motion and vote to hold that executive session shall state which one or more of the approved purposes listed in division (G)(1) of this section are the purposes for which the executive session is to be held, but need not include the name of any person to be considered at the meeting.

(2) To consider the purchase of property for public purposes, the sale of property at competitive bidding, or the sale or other disposition of unneeded, obsolete, or unfit-for-use property in accordance with [section 505.10 of the Revised Code](#), if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest. No member of a public body shall use division (G)(2) of this section as a subterfuge for providing covert information to prospective buyers or sellers. A purchase or sale of public property is void if the seller or buyer of the public property has received covert information from a member of a public body that has not been disclosed to the general public in sufficient time for other prospective buyers and sellers to prepare and submit offers.

If the minutes of the public body show that all meetings and deliberations of the public body have been conducted in compliance with this section, any instrument executed by the public body purporting to convey, lease, or otherwise dispose of any right, title, or interest in any public property shall be conclusively presumed to have been executed in compliance with this section insofar as title or other interest of any bona fide purchasers, lessees, or transferees of the property is concerned.

(3) Conferences with an attorney for the public body concerning disputes involving the public body that are the subject of pending or imminent court action;

(4) Preparing for, conducting, or reviewing negotiations or bargaining sessions with public employees concerning their compensation or other terms and conditions of their employment;

(5) Matters required to be kept confidential by federal law or regulations or state statutes;

(6) Details relative to the security arrangements and emergency response protocols for a public body or a public office, if disclosure of the matters discussed could reasonably be expected to jeopardize the security of the public body or public office;

(7) In the case of a county hospital operated pursuant to Chapter 339. of the Revised Code, a joint township hospital operated pursuant to Chapter 513. of the Revised Code, or a municipal hospital operated pursuant to Chapter 749. of the Revised Code, to consider trade secrets, as defined in [section 1333.61 of the Revised Code](#);

(8) To consider confidential information related to the marketing plans, specific business strategy, production techniques, trade secrets, or personal financial statements of an applicant for economic development assistance, or to negotiations with other political subdivisions respecting requests for economic development assistance, provided that both of the following conditions apply:

(a) The information is directly related to a request for economic development assistance that is to be provided or administered under any provision of Chapter 715., 725., 1724., or 1728. or [sections 701.07, 3735.67 to 3735.70, 5709.40 to 5709.43, 5709.61 to 5709.69, 5709.73 to 5709.75, or 5709.77 to 5709.81 of the Revised Code](#), or that involves public infrastructure improvements or the extension of utility services that are directly related to an economic development project.

(b) A unanimous quorum of the public body determines, by a roll call vote, that the executive session is necessary to protect the interests of the applicant or the possible investment or expenditure of public funds to be made in connection with the economic development project.

If a public body holds an executive session to consider any of the matters listed in divisions (G)(2) to (8) of this section, the motion and vote to hold that executive session shall state which one or more of the approved matters listed in those divisions are to be considered at the executive session.

A public body specified in division (B)(1)(c) of this section shall not hold an executive session when meeting for the purposes specified in that division.

(H) A resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body. A resolution, rule, or formal action adopted in an open meeting that results from deliberations in a meeting not open to the public is invalid unless the deliberations were for a purpose specifically authorized in division (G) or (J) of this section and conducted at an executive session held in compliance with this section. A resolution, rule, or formal action adopted in an open meeting is invalid if the public body that adopted the resolution, rule, or formal action violated division (F) of this section.

(I)(1) Any person may bring an action to enforce this section. An action under division (I)(1) of this section shall be brought within two years after the date of the alleged violation or threatened violation. Upon proof of a violation or threatened violation of this section in an action brought by any person, the court of common pleas shall issue an injunction to compel the members of the public body to comply with its provisions.

(2)(a) If the court of common pleas issues an injunction pursuant to division (I)(1) of this section, the court shall order the public body that it enjoins to pay a civil forfeiture of five hundred dollars to the party that sought the injunction and shall award to that party all court costs and, subject to reduction as described in division (I)(2) of this section, reasonable attorney's fees. The court, in its discretion, may reduce an award of attorney's fees to the party that sought the injunction or not award attorney's fees to that party if the court determines both of the following:

(i) That, based on the ordinary application of statutory law and case law as it existed at the time of violation or threatened violation that was the basis of the injunction, a well-informed public body reasonably would believe that the public body was not violating or threatening to violate this section;

(ii) That a well-informed public body reasonably would believe that the conduct or threatened conduct that was the basis of the injunction would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

(b) If the court of common pleas does not issue an injunction pursuant to division (I)(1) of this section and the court determines at that time that the bringing of the action was frivolous conduct, as defined in [division \(A\) of section 2323.51 of the Revised Code](#), the court shall award to the public body all court costs and reasonable attorney's fees, as determined by the court.

(3) Irreparable harm and prejudice to the party that sought the injunction shall be conclusively and irrebuttably presumed upon proof of a violation or threatened violation of this section.

(4) A member of a public body who knowingly violates an injunction issued pursuant to division (I)(1) of this section may be removed from office by an action brought in the court of common pleas for that purpose by the prosecuting attorney or the attorney general.

(J)(1) Pursuant to [division \(C\) of section 5901.09 of the Revised Code](#), a veterans service commission shall hold an executive session for one or more of the following purposes unless an applicant requests a public hearing:

- (a) Interviewing an applicant for financial assistance under [sections 5901.01 to 5901.15 of the Revised Code](#);
  - (b) Discussing applications, statements, and other documents described in [division \(B\) of section 5901.09 of the Revised Code](#);
  - (c) Reviewing matters relating to an applicant's request for financial assistance under [sections 5901.01 to 5901.15 of the Revised Code](#).
- (2) A veterans service commission shall not exclude an applicant for, recipient of, or former recipient of financial assistance under [sections 5901.01 to 5901.15 of the Revised Code](#), and shall not exclude representatives selected by the applicant, recipient, or former recipient, from a meeting that the commission conducts as an executive session that pertains to the applicant's, recipient's, or former recipient's application for financial assistance.
- (3) A veterans service commission shall vote on the grant or denial of financial assistance under [sections 5901.01 to 5901.15 of the Revised Code](#) only in an open meeting of the commission. The minutes of the meeting shall indicate the name, address, and occupation of the applicant, whether the assistance was granted or denied, the amount of the assistance if assistance is granted, and the votes for and against the granting of assistance.

### CREDIT(S)

(2022 H 45, eff. 4-7-23; 2022 H 254, eff. 4-3-23; 2020 H 263, eff. 10-9-21; 2021 H 110, eff. 9-30-21 (See Uncodified Law); 2020 H 341, eff. 12-16-20; 2019 H 166, eff. 10-17-19; 2018 S 201, eff. 3-22-19; 2016 H 158, eff. 10-12-16; 2016 H 413, eff. 9-28-16; 2015 H 64, eff. 9-29-15; 2013 H 59, eff. 9-29-13; 2012 S 314, eff. 9-28-12; 2011 H 153, eff. 9-29-11; 2011 H 1, eff. 2-18-11; 2007 H 194, eff. 2-12-08; 2004 S 222, eff. 4-27-05; 2002 S 184, eff. 5-15-02; 2000 H 506, eff. 4-10-01; 2000 S 172, § 3, eff. 2-12-01; 2000 S 172, § 1, eff. 2-12-01; 2000 H 448, § 3, eff. 12-24-00; 2000 H 448, § 1, eff. 10-5-00; 2000 S 111, eff. 12-24-00; 1999 S 55, eff. 10-26-99; 1998 H 606, eff. 3-9-99; 1998 H 26, eff. 5-6-98; 1996 H 670, eff. 12-2-96; 1995 H 98, eff. 11-9-95; 1994 H 571, eff. 10-6-94; 1994 S 238, eff. 4-19-94; 1993 H 111, eff. 2-9-94; 1992 S 326; 1988 S 367, S 150, H 529; 1986 H 769, S 74, S 279; 1985 H 201; 1983 S 227; 1980 H 440; 1975 S 74; 129 v 582; 126 v 303; 125 v 534)

### Footnotes

<sup>1</sup> Division designation is a result of harmonization of [2022 H 45](#) and [2022 H 254](#).

R.C. § 121.22, OH ST § 121.22

Current through File 12 of the 135th General Assembly (2023-2024).

Baldwin's Ohio Revised Code Annotated  
Title I. State Government  
Chapter 149. Documents, Reports, and Records (Refs & Annos)  
Records Commissions

R.C. § 149.381

149.381 Review by Ohio history connection of applications for one-time disposal of obsolete records or schedule of records retention and disposal

Effective: September 29, 2015

[Currentness](#)

(A) As used in this section, “records commission” means a records commission created under [section 149.39 of the Revised Code](#), a school district records commission and an educational service center records commission created under [section 149.41 of the Revised Code](#), a library records commission created under [section 149.411 of the Revised Code](#), a special taxing district records commission created under [section 149.412 of the Revised Code](#), and a township records commission created under [section 149.42 of the Revised Code](#).

(B) When a records commission has approved an application for one-time disposal of obsolete records or any schedule of records retention and disposition, the records commission shall send that application or schedule to the Ohio history connection for its review. The Ohio history connection shall review the application or schedule within a period of not more than sixty days after its receipt of it. During the sixty-day review period, the Ohio history connection may select for its custody from the application for one-time disposal of obsolete records any records it considers to be of continuing historical value, and shall denote upon any schedule of records retention and disposition the records for which the Ohio history connection will require a certificate of records disposal prior to their disposal.

(C) Upon completion of its review, the Ohio history connection shall forward the application for one-time disposal of obsolete records or the schedule of records retention and disposition to the auditor of state for the auditor of state's approval or disapproval. The auditor of state shall approve or disapprove the application or schedule within a period of not more than sixty days after receipt of it.

(D) Before public records are to be disposed of pursuant to an approved schedule of records retention and disposition, the records commission shall inform the Ohio history connection of the disposal through the submission of a certificate of records disposal for only the records required by the schedule to be disposed of, and shall give the Ohio history connection the opportunity for a period of fifteen business days to select for its custody those public records, from the certificate submitted, that it considers to be of continuing historical value.

(E) The Ohio history connection may not review or select for its custody any of the following:

(1) Records the release of which is prohibited by [section 149.432 of the Revised Code](#).

(2) Records containing personally identifiable information concerning any pupil attending a public school other than directory information, as defined in [section 3319.321 of the Revised Code](#), without the written consent of the parent, guardian, or custodian of each such pupil who is less than eighteen years of age, or without the written consent of each pupil who is eighteen years of age or older.

(3) Records the release of which would, according to the “Family Educational Rights and Privacy Act of 1974,” 88 Stat. 571, [20 U.S.C. 1232g](#), disqualify a school or other educational institution from receiving federal funds.

**CREDIT(S)**

(2015 H 141, eff. 9-29-15; 2011 H 153, eff. 9-29-11)

R.C. § 149.381, OH ST § 149.381

Current through File 12 of the 135th General Assembly (2023-2024).

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Baldwin's Ohio Revised Code Annotated  
Title I. State Government  
Chapter 149. Documents, Reports, and Records (Refs & Annos)  
Records Commissions

R.C. § 149.41

149.41 School district records commissions

Effective: September 29, 2011

[Currentness](#)

There is hereby created in each city, local, joint vocational, and exempted village school district a school district records commission, and in each educational service center an educational service center records commission. Each records commission shall be composed of the president, the treasurer of the board of education or governing board of the educational service center, and the superintendent of schools in each such district or educational service center. The commission shall meet at least once every twelve months.

The function of the commission shall be to review applications for one-time disposal of obsolete records and schedules of records retention and disposition submitted by any employee of the school district or educational service center. The commission may dispose of records pursuant to the procedure outlined in [section 149.381 of the Revised Code](#). The commission, at any time, may review any schedule it has previously approved and, for good cause shown, may revise that schedule under the procedure outlined in that section.

**CREDIT(S)**

([2011 H 153](#), eff. 9-29-11; [2006 H 9](#), eff. 9-29-07; [1995 H 117](#), eff. 9-29-95; 1986 H 428, eff. 12-23-86; 1985 H 238, H 201; 1980 H 466; 1979 H 1; 125 v 417)

R.C. § 149.41, OH ST § 149.41

Current through File 12 of the 135th General Assembly (2023-2024).

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Baldwin's Ohio Revised Code Annotated  
Title I. State Government  
Chapter 149. Documents, Reports, and Records (Refs & Annos)  
Records Commissions

R.C. § 149.43

149.43 Availability of public records; mandamus action; training of public employees; public records policy; bulk commercial special extraction requests

Effective: October 3, 2023

[Currentness](#)

(A) As used in this section:

(1) “Public record” means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in this state kept by the nonprofit or for-profit entity operating the alternative school pursuant to [section 3313.533 of the Revised Code](#). “Public record” does not mean any of the following:

(a) Medical records;

(b) Records pertaining to probation and parole proceedings, to proceedings related to the imposition of community control sanctions and post-release control sanctions, or to proceedings related to determinations under [section 2967.271 of the Revised Code](#) regarding the release or maintained incarceration of an offender to whom that section applies;

(c) Records pertaining to actions under [section 2151.85 and division \(C\) of section 2919.121 of the Revised Code](#) and to appeals of actions arising under those sections;

(d) Records pertaining to adoption proceedings, including the contents of an adoption file maintained by the department of health under [sections 3705.12 to 3705.124 of the Revised Code](#);

(e) Information in a record contained in the putative father registry established by [section 3107.062 of the Revised Code](#), regardless of whether the information is held by the department of job and family services or, pursuant to [section 3111.69 of the Revised Code](#), the office of child support in the department or a child support enforcement agency;

(f) Records specified in [division \(A\) of section 3107.52 of the Revised Code](#);

(g) Trial preparation records;

(h) Confidential law enforcement investigatory records;

- (i) Records containing information that is confidential under [section 2710.03](#) or [4112.05 of the Revised Code](#);
- (j) DNA records stored in the DNA database pursuant to [section 109.573 of the Revised Code](#);
- (k) Inmate records released by the department of rehabilitation and correction to the department of youth services or a court of record pursuant to [division \(E\) of section 5120.21 of the Revised Code](#);
- (l) Records maintained by the department of youth services pertaining to children in its custody released by the department of youth services to the department of rehabilitation and correction pursuant to [section 5139.05 of the Revised Code](#);
- (m) Intellectual property records;
- (n) Donor profile records;
- (o) Records maintained by the department of job and family services pursuant to [section 3121.894 of the Revised Code](#);
- (p) Designated public service worker residential and familial information;
- (q) In the case of a county hospital operated pursuant to Chapter 339. of the Revised Code or a municipal hospital operated pursuant to Chapter 749. of the Revised Code, information that constitutes a trade secret, as defined in [section 1333.61 of the Revised Code](#);
- (r) Information pertaining to the recreational activities of a person under the age of eighteen;
- (s) In the case of a child fatality review board acting under [sections 307.621 to 307.629 of the Revised Code](#) or a review conducted pursuant to guidelines established by the director of health under [section 3701.70 of the Revised Code](#), records provided to the board or director, statements made by board members during meetings of the board or by persons participating in the director's review, and all work products of the board or director, and in the case of a child fatality review board, child fatality review data submitted by the board to the department of health or a national child death review database, other than the report prepared pursuant to [division \(A\) of section 307.626 of the Revised Code](#);
- (t) Records provided to and statements made by the executive director of a public children services agency or a prosecuting attorney acting pursuant to [section 5153.171 of the Revised Code](#) other than the information released under that section;
- (u) Test materials, examinations, or evaluation tools used in an examination for licensure as a nursing home administrator that the board of executives of long-term services and supports administers under [section 4751.15 of the Revised Code](#) or contracts under that section with a private or government entity to administer;

- (v) Records the release of which is prohibited by state or federal law;
- (w) Proprietary information of or relating to any person that is submitted to or compiled by the Ohio venture capital authority created under [section 150.01 of the Revised Code](#);
- (x) Financial statements and data any person submits for any purpose to the Ohio housing finance agency or the controlling board in connection with applying for, receiving, or accounting for financial assistance from the agency, and information that identifies any individual who benefits directly or indirectly from financial assistance from the agency;
- (y) Records listed in [section 5101.29 of the Revised Code](#);
- (z) Discharges recorded with a county recorder under [section 317.24 of the Revised Code](#), as specified in division (B)(2) of that section;
- (aa) Usage information including names and addresses of specific residential and commercial customers of a municipally owned or operated public utility;
- (bb) Records described in [division \(C\) of section 187.04 of the Revised Code](#) that are not designated to be made available to the public as provided in that division;
- (cc) Information and records that are made confidential, privileged, and not subject to disclosure under divisions (B) and (C) of [section 2949.221 of the Revised Code](#);
- (dd) Personal information, as defined in [section 149.45 of the Revised Code](#);
- (ee) The confidential name, address, and other personally identifiable information of a program participant in the address confidentiality program established under [sections 111.41 to 111.47 of the Revised Code](#), including the contents of any application for absent voter's ballots, absent voter's ballot identification envelope statement of voter, or provisional ballot affirmation completed by a program participant who has a confidential voter registration record; records or portions of records pertaining to that program that identify the number of program participants that reside within a precinct, ward, township, municipal corporation, county, or any other geographic area smaller than the state; and any real property confidentiality notice filed under [section 111.431 of the Revised Code](#) and the information described in division (C) of that section. As used in this division, "confidential address" and "program participant" have the meaning defined in [section 111.41 of the Revised Code](#).
- (ff) Orders for active military service of an individual serving or with previous service in the armed forces of the United States, including a reserve component, or the Ohio organized militia, except that, such order becomes a public record on the day that is fifteen years after the published date or effective date of the call to order;
- (gg) The name, address, contact information, or other personal information of an individual who is less than eighteen years of age that is included in any record related to a traffic accident involving a school vehicle in which the individual was an occupant at the time of the accident;

(hh) Protected health information, as defined in [45 C.F.R. 160.103](#), that is in a claim for payment for a health care product, service, or procedure, as well as any other health claims data in another document that reveals the identity of an individual who is the subject of the data or could be used to reveal that individual's identity;

(ii) Any depiction by photograph, film, videotape, or printed or digital image under either of the following circumstances:

(i) The depiction is that of a victim of an offense the release of which would be, to a reasonable person of ordinary sensibilities, an offensive and objectionable intrusion into the victim's expectation of bodily privacy and integrity.

(ii) The depiction captures or depicts the victim of a sexually oriented offense, as defined in [section 2950.01 of the Revised Code](#), at the actual occurrence of that offense.

(jj) Restricted portions of a body-worn camera or dashboard camera recording;

(kk) In the case of a fetal-infant mortality review board acting under [sections 3707.70 to 3707.77 of the Revised Code](#), records, documents, reports, or other information presented to the board or a person abstracting such materials on the board's behalf, statements made by review board members during board meetings, all work products of the board, and data submitted by the board to the department of health or a national infant death review database, other than the report prepared pursuant to [section 3707.77 of the Revised Code](#).

(ll) Records, documents, reports, or other information presented to the pregnancy-associated mortality review board established under [section 3738.01 of the Revised Code](#), statements made by board members during board meetings, all work products of the board, and data submitted by the board to the department of health, other than the biennial reports prepared under [section 3738.08 of the Revised Code](#);

(mm) Except as otherwise provided in division (A)(1)(oo) of this section, telephone numbers for a victim, as defined in [section 2930.01 of the Revised Code](#) or a witness to a crime that are listed on any law enforcement record or report.

(nn) A preneed funeral contract, as defined in [section 4717.01 of the Revised Code](#), and contract terms and personally identifying information of a preneed funeral contract, that is contained in a report submitted by or for a funeral home to the board of embalmers and funeral directors under [division \(C\) of section 4717.13](#), [division \(J\) of section 4717.31](#), or [section 4717.41 of the Revised Code](#).

(oo) Telephone numbers for a party to a motor vehicle accident subject to the requirements of [section 5502.11 of the Revised Code](#) that are listed on any law enforcement record or report, except that the telephone numbers described in this division are not excluded from the definition of "public record" under this division on and after the thirtieth day after the occurrence of the motor vehicle accident.

(pp) Records pertaining to individuals who complete training under [section 5502.703 of the Revised Code](#) to be permitted by a school district board of education or governing body of a community school established under Chapter 3314. of the Revised

Code, a STEM school established under Chapter 3326. of the Revised Code, or a chartered nonpublic school to convey deadly weapons or dangerous ordnance into a school safety zone;

(qq) Records, documents, reports, or other information presented to a domestic violence fatality review board established under [section 307.651 of the Revised Code](#), statements made by board members during board meetings, all work products of the board, and data submitted by the board to the department of health, other than a report prepared pursuant to [section 307.656 of the Revised Code](#);

(rr) Records, documents, and information the release of which is prohibited under [sections 2930.04 and 2930.07 of the Revised Code](#);

(ss) Records of an existing qualified nonprofit corporation that creates a special improvement district under Chapter 1710. of the Revised Code that do not pertain to a purpose for which the district is created.

A record that is not a public record under division (A)(1) of this section and that, under law, is permanently retained becomes a public record on the day that is seventy-five years after the day on which the record was created, except for any record protected by the attorney-client privilege, a trial preparation record as defined in this section, a statement prohibiting the release of identifying information signed under [section 3107.083 of the Revised Code](#), a denial of release form filed pursuant to [section 3107.46 of the Revised Code](#), or any record that is exempt from release or disclosure under [section 149.433 of the Revised Code](#). If the record is a birth certificate and a biological parent's name redaction request form has been accepted under [section 3107.391 of the Revised Code](#), the name of that parent shall be redacted from the birth certificate before it is released under this paragraph. If any other section of the Revised Code establishes a time period for disclosure of a record that conflicts with the time period specified in this section, the time period in the other section prevails.

(2) "Confidential law enforcement investigatory record" means any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of any of the following:

(a) The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality has been reasonably promised;

(b) Information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose the source's or witness's identity;

(c) Specific confidential investigatory techniques or procedures or specific investigatory work product;

(d) Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.

(3) "Medical record" means any document or combination of documents, except births, deaths, and the fact of admission to or discharge from a hospital, that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient and that is generated and maintained in the process of medical treatment.

(4) “Trial preparation record” means any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, including the independent thought processes and personal trial preparation of an attorney.

(5) “Intellectual property record” means a record, other than a financial or administrative record, that is produced or collected by or for faculty or staff of a state institution of higher learning in the conduct of or as a result of study or research on an educational, commercial, scientific, artistic, technical, or scholarly issue, regardless of whether the study or research was sponsored by the institution alone or in conjunction with a governmental body or private concern, and that has not been publicly released, published, or patented.

(6) “Donor profile record” means all records about donors or potential donors to a public institution of higher education except the names and reported addresses of the actual donors and the date, amount, and conditions of the actual donation.

(7) “Designated public service worker” means a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, county or multicounty corrections officer, community-based correctional facility employee, designated Ohio national guard member, protective services worker, youth services employee, firefighter, EMT, medical director or member of a cooperating physician advisory board of an emergency medical service organization, state board of pharmacy employee, investigator of the bureau of criminal identification and investigation, emergency service telecommunicator, forensic mental health provider, mental health evaluation provider, regional psychiatric hospital employee, judge, magistrate, or federal law enforcement officer.

(8) “Designated public service worker residential and familial information” means any information that discloses any of the following about a designated public service worker:

(a) The address of the actual personal residence of a designated public service worker, except for the following information:

(i) The address of the actual personal residence of a prosecuting attorney or judge; and

(ii) The state or political subdivision in which a designated public service worker resides.

(b) Information compiled from referral to or participation in an employee assistance program;

(c) The social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of, or any medical information pertaining to, a designated public service worker;

(d) The name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to a designated public service worker by the designated public service worker's employer;

(e) The identity and amount of any charitable or employment benefit deduction made by the designated public service worker's employer from the designated public service worker's compensation, unless the amount of the deduction is required by state or federal law;

(f) The name, the residential address, the name of the employer, the address of the employer, the social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of the spouse, a former spouse, or any child of a designated public service worker;

(g) A photograph of a peace officer who holds a position or has an assignment that may include undercover or plain clothes positions or assignments as determined by the peace officer's appointing authority.

(9) As used in divisions (A)(7) and (15) to (17) of this section:

“Peace officer” has the meaning defined in [section 109.71 of the Revised Code](#) and also includes the superintendent and troopers of the state highway patrol; it does not include the sheriff of a county or a supervisory employee who, in the absence of the sheriff, is authorized to stand in for, exercise the authority of, and perform the duties of the sheriff.

“Correctional employee” means any employee of the department of rehabilitation and correction who in the course of performing the employee's job duties has or has had contact with inmates and persons under supervision.

“County or multicounty corrections officer” means any corrections officer employed by any county or multicounty correctional facility.

“Designated Ohio national guard member” means a member of the Ohio national guard who is participating in duties related to remotely piloted aircraft, including, but not limited to, pilots, sensor operators, and mission intelligence personnel, duties related to special forces operations, or duties related to cybersecurity, and is designated by the adjutant general as a designated public service worker for those purposes.

“Protective services worker” means any employee of a county agency who is responsible for child protective services, child support services, or adult protective services.

“Youth services employee” means any employee of the department of youth services who in the course of performing the employee's job duties has or has had contact with children committed to the custody of the department of youth services.

“Firefighter” means any regular, paid or volunteer, member of a lawfully constituted fire department of a municipal corporation, township, fire district, or village.

“EMT” means EMTs-basic, EMTs-I, and paramedics that provide emergency medical services for a public emergency medical service organization. “Emergency medical service organization,” “EMT-basic,” “EMT-I,” and “paramedic” have the meanings defined in [section 4765.01 of the Revised Code](#).

“Investigator of the bureau of criminal identification and investigation” has the meaning defined in [section 2903.11 of the Revised Code](#).

“Emergency service telecommunicator” means an individual employed by an emergency service provider as defined under [section 128.01 of the Revised Code](#), whose primary responsibility is to be an operator for the receipt or processing of calls for emergency services made by telephone, radio, or other electronic means.

“Forensic mental health provider” means any employee of a community mental health service provider or local alcohol, drug addiction, and mental health services board who, in the course of the employee's duties, has contact with persons committed to a

local alcohol, drug addiction, and mental health services board by a court order pursuant to [section 2945.38, 2945.39, 2945.40, or 2945.402 of the Revised Code](#).

“Mental health evaluation provider” means an individual who, under Chapter 5122. of the Revised Code, examines a respondent who is alleged to be a mentally ill person subject to court order, as defined in [section 5122.01 of the Revised Code](#), and reports to the probate court the respondent's mental condition.

“Regional psychiatric hospital employee” means any employee of the department of mental health and addiction services who, in the course of performing the employee's duties, has contact with patients committed to the department of mental health and addiction services by a court order pursuant to [section 2945.38, 2945.39, 2945.40, or 2945.402 of the Revised Code](#).

“Federal law enforcement officer” has the meaning defined in [section 9.88 of the Revised Code](#).

(10) “Information pertaining to the recreational activities of a person under the age of eighteen” means information that is kept in the ordinary course of business by a public office, that pertains to the recreational activities of a person under the age of eighteen years, and that discloses any of the following:

(a) The address or telephone number of a person under the age of eighteen or the address or telephone number of that person's parent, guardian, custodian, or emergency contact person;

(b) The social security number, birth date, or photographic image of a person under the age of eighteen;

(c) Any medical record, history, or information pertaining to a person under the age of eighteen;

(d) Any additional information sought or required about a person under the age of eighteen for the purpose of allowing that person to participate in any recreational activity conducted or sponsored by a public office or to use or obtain admission privileges to any recreational facility owned or operated by a public office.

(11) “Community control sanction” has the meaning defined in [section 2929.01 of the Revised Code](#).

(12) “Post-release control sanction” has the meaning defined in [section 2967.01 of the Revised Code](#).

(13) “Redaction” means obscuring or deleting any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of a “record” in [section 149.011 of the Revised Code](#).

(14) “Designee,” “elected official,” and “future official” have the meanings defined in [section 109.43 of the Revised Code](#).

(15) “Body-worn camera” means a visual and audio recording device worn on the person of a correctional employee, youth services employee, or peace officer while the correctional employee, youth services employee, or peace officer is engaged in the performance of official duties.



(16) “Dashboard camera” means a visual and audio recording device mounted on a peace officer's vehicle or vessel that is used while the peace officer is engaged in the performance of the peace officer's duties.

(17) “Restricted portions of a body-worn camera or dashboard camera recording” means any visual or audio portion of a body-worn camera or dashboard camera recording that shows, communicates, or discloses any of the following:

(a) The image or identity of a child or information that could lead to the identification of a child who is a primary subject of the recording when the department of rehabilitation and correction, department of youth services, or the law enforcement agency knows or has reason to know the person is a child based on the department's or law enforcement agency's records or the content of the recording;

(b) The death of a person or a deceased person's body, unless the death was caused by a correctional employee, youth services employee, or peace officer or, subject to division (H)(1) of this section, the consent of the decedent's executor or administrator has been obtained;

(c) The death of a correctional employee, youth services employee, peace officer, firefighter, paramedic, or other first responder, occurring while the decedent was engaged in the performance of official duties, unless, subject to division (H)(1) of this section, the consent of the decedent's executor or administrator has been obtained;

(d) Grievous bodily harm, unless the injury was effected by a correctional employee, youth services employee, or peace officer or, subject to division (H)(1) of this section, the consent of the injured person or the injured person's guardian has been obtained;

(e) An act of severe violence against a person that results in serious physical harm to the person, unless the act and injury was effected by a correctional employee, youth services employee, or peace officer or, subject to division (H)(1) of this section, the consent of the injured person or the injured person's guardian has been obtained;

(f) Grievous bodily harm to a correctional employee, youth services employee, peace officer, firefighter, paramedic, or other first responder, occurring while the injured person was engaged in the performance of official duties, unless, subject to division (H)(1) of this section, the consent of the injured person or the injured person's guardian has been obtained;

(g) An act of severe violence resulting in serious physical harm against a correctional employee, youth services employee, peace officer, firefighter, paramedic, or other first responder, occurring while the injured person was engaged in the performance of official duties, unless, subject to division (H)(1) of this section, the consent of the injured person or the injured person's guardian has been obtained;

(h) A person's nude body, unless, subject to division (H)(1) of this section, the person's consent has been obtained;

(i) Protected health information, the identity of a person in a health care facility who is not the subject of a correctional, youth services, or law enforcement encounter, or any other information in a health care facility that could identify a person who is not the subject of a correctional, youth services, or law enforcement encounter;

- (j) Information that could identify the alleged victim of a sex offense, menacing by stalking, or domestic violence;
- (k) Information, that does not constitute a confidential law enforcement investigatory record, that could identify a person who provides sensitive or confidential information to the department of rehabilitation and correction, the department of youth services, or a law enforcement agency when the disclosure of the person's identity or the information provided could reasonably be expected to threaten or endanger the safety or property of the person or another person;
- (l) Personal information of a person who is not arrested, cited, charged, or issued a written warning by a peace officer;
- (m) Proprietary correctional, youth services, or police contingency plans or tactics that are intended to prevent crime and maintain public order and safety;
- (n) A personal conversation unrelated to work between correctional employees, youth services employees, or peace officers or between a correctional employee, youth services employee, or peace officer and an employee of a law enforcement agency;
- (o) A conversation between a correctional employee, youth services employee, or peace officer and a member of the public that does not concern correctional, youth services, or law enforcement activities;
- (p) The interior of a residence, unless the interior of a residence is the location of an adversarial encounter with, or a use of force by, a correctional employee, youth services employee, or peace officer;
- (q) Any portion of the interior of a private business that is not open to the public, unless an adversarial encounter with, or a use of force by, a correctional employee, youth services employee, or peace officer occurs in that location.

As used in division (A)(17) of this section:

“Grievous bodily harm” has the same meaning as in [section 5924.120 of the Revised Code](#).

“Health care facility” has the same meaning as in [section 1337.11 of the Revised Code](#).

“Protected health information” has the same meaning as in [45 C.F.R. 160.103](#).

“Law enforcement agency” means a government entity that employs peace officers to perform law enforcement duties.

“Personal information” means any government-issued identification number, date of birth, address, financial information, or criminal justice information from the law enforcement automated data system or similar databases.

“Sex offense” has the same meaning as in [section 2907.10 of the Revised Code](#).

“Firefighter,” “paramedic,” and “first responder” have the same meanings as in [section 4765.01 of the Revised Code](#).

(B)(1) Upon request by any person and subject to division (B)(8) of this section, all public records responsive to the request shall be promptly prepared and made available for inspection to the requester at all reasonable times during regular business

hours. Subject to division (B)(8) of this section, upon request by any person, a public office or person responsible for public records shall make copies of the requested public record available to the requester at cost and within a reasonable period of time. If a public record contains information that is exempt from the duty to permit public inspection or to copy the public record, the public office or the person responsible for the public record shall make available all of the information within the public record that is not exempt. When making that public record available for public inspection or copying that public record, the public office or the person responsible for the public record shall notify the requester of any redaction or make the redaction plainly visible. A redaction shall be deemed a denial of a request to inspect or copy the redacted information, except if federal or state law authorizes or requires a public office to make the redaction. When the auditor of state receives a request to inspect or to make a copy of a record that was provided to the auditor of state for purposes of an audit, but the original public office has asserted to the auditor of state that the record is not a public record, the auditor of state may handle the requests by directing the requestor to the original public office that provided the record to the auditor of state.

(2) To facilitate broader access to public records, a public office or the person responsible for public records shall organize and maintain public records in a manner that they can be made available for inspection or copying in accordance with division (B) of this section. A public office also shall have available a copy of its current records retention schedule at a location readily available to the public. If a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records under this section such that the public office or the person responsible for the requested public record cannot reasonably identify what public records are being requested, the public office or the person responsible for the requested public record may deny the request but shall provide the requester with an opportunity to revise the request by informing the requester of the manner in which records are maintained by the public office and accessed in the ordinary course of the public office's or person's duties.

(3) If a request is ultimately denied, in part or in whole, the public office or the person responsible for the requested public record shall provide the requester with an explanation, including legal authority, setting forth why the request was denied. If the initial request was provided in writing, the explanation also shall be provided to the requester in writing. The explanation shall not preclude the public office or the person responsible for the requested public record from relying upon additional reasons or legal authority in defending an action commenced under division (C) of this section.

(4) Unless specifically required or authorized by state or federal law or in accordance with division (B) of this section, no public office or person responsible for public records may limit or condition the availability of public records by requiring disclosure of the requester's identity or the intended use of the requested public record. Any requirement that the requester disclose the requester's identity or the intended use of the requested public record constitutes a denial of the request.

(5) A public office or person responsible for public records may ask a requester to make the request in writing, may ask for the requester's identity, and may inquire about the intended use of the information requested, but may do so only after disclosing to the requester that a written request is not mandatory, that the requester may decline to reveal the requester's identity or the intended use, and when a written request or disclosure of the identity or intended use would benefit the requester by enhancing the ability of the public office or person responsible for public records to identify, locate, or deliver the public records sought by the requester.

(6) If any person requests a copy of a public record in accordance with division (B) of this section, the public office or person responsible for the public record may require the requester to pay in advance the cost involved in providing the copy of the public record in accordance with the choice made by the requester under this division. The public office or the person responsible for the public record shall permit the requester to choose to have the public record duplicated upon paper, upon the same medium upon which the public office or person responsible for the public record keeps it, or upon any other medium upon which the public office or person responsible for the public record determines that it reasonably can be duplicated as an integral part of the

normal operations of the public office or person responsible for the public record. When the requester makes a choice under this division, the public office or person responsible for the public record shall provide a copy of it in accordance with the choice made by the requester. Nothing in this section requires a public office or person responsible for the public record to allow the requester of a copy of the public record to make the copies of the public record.

(7)(a) Upon a request made in accordance with division (B) of this section and subject to division (B)(6) of this section, a public office or person responsible for public records shall transmit a copy of a public record to any person by United States mail or by any other means of delivery or transmission within a reasonable period of time after receiving the request for the copy. The public office or person responsible for the public record may require the person making the request to pay in advance the cost of postage if the copy is transmitted by United States mail or the cost of delivery if the copy is transmitted other than by United States mail, and to pay in advance the costs incurred for other supplies used in the mailing, delivery, or transmission.

(b) Any public office may adopt a policy and procedures that it will follow in transmitting, within a reasonable period of time after receiving a request, copies of public records by United States mail or by any other means of delivery or transmission pursuant to division (B)(7) of this section. A public office that adopts a policy and procedures under division (B)(7) of this section shall comply with them in performing its duties under that division.

(c) In any policy and procedures adopted under division (B)(7) of this section:

(i) A public office may limit the number of records requested by a person that the office will physically deliver by United States mail or by another delivery service to ten per month, unless the person certifies to the office in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes;

(ii) A public office that chooses to provide some or all of its public records on a web site that is fully accessible to and searchable by members of the public at all times, other than during acts of God outside the public office's control or maintenance, and that charges no fee to search, access, download, or otherwise receive records provided on the web site, may limit to ten per month the number of records requested by a person that the office will deliver in a digital format, unless the requested records are not provided on the web site and unless the person certifies to the office in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes.

(iii) For purposes of division (B)(7) of this section, "commercial" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

(8) A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult, unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.

(9)(a) Upon written request made and signed by a journalist, a public office, or person responsible for public records, having custody of the records of the agency employing a specified designated public service worker shall disclose to the journalist the address of the actual personal residence of the designated public service worker and, if the designated public service worker's spouse, former spouse, or child is employed by a public office, the name and address of the employer of the designated public service worker's spouse, former spouse, or child. The request shall include the journalist's name and title and the name and address of the journalist's employer and shall state that disclosure of the information sought would be in the public interest.

(b) Division (B)(9)(a) of this section also applies to journalist requests for:

(i) Customer information maintained by a municipally owned or operated public utility, other than social security numbers and any private financial information such as credit reports, payment methods, credit card numbers, and bank account information;

(ii) Information about minors involved in a school vehicle accident as provided in division (A)(1)(gg) of this section, other than personal information as defined in [section 149.45 of the Revised Code](#).

(c) As used in division (B)(9) of this section, "journalist" means a person engaged in, connected with, or employed by any news medium, including a newspaper, magazine, press association, news agency, or wire service, a radio or television station, or a similar medium, for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating information for the general public.

(10) Upon a request made by a victim, victim's attorney, or victim's representative, as that term is used in [section 2930.02 of the Revised Code](#), a public office or person responsible for public records shall transmit a copy of a depiction of the victim as described in division (A)(1)(ii) of this section to the victim, victim's attorney, or victim's representative.

(C)(1) If a person allegedly is aggrieved by the failure of a public office or the person responsible for public records to promptly prepare a public record and to make it available to the person for inspection in accordance with division (B) of this section or by any other failure of a public office or the person responsible for public records to comply with an obligation in accordance with division (B) of this section, the person allegedly aggrieved may do only one of the following, and not both:

(a) File a complaint with the clerk of the court of claims or the clerk of the court of common pleas under [section 2743.75 of the Revised Code](#);

(b) Commence a mandamus action to obtain a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section, that awards court costs and reasonable attorney's fees to the person that instituted the mandamus action, and, if applicable, that includes an order fixing statutory damages under division (C)(2) of this section. The mandamus action may be commenced in the court of common pleas of the county in which division (B) of this section allegedly was not complied with, in the supreme court pursuant to its original jurisdiction under [Section 2 of Article IV, Ohio Constitution](#), or in the court of appeals for the appellate district in which division (B) of this section allegedly was not complied with pursuant to its original jurisdiction under [Section 3 of Article IV, Ohio Constitution](#).

(2) If a requester transmits a written request by hand delivery, electronic submission, or certified mail to inspect or receive copies of any public record in a manner that fairly describes the public record or class of public records to the public office or

person responsible for the requested public records, except as otherwise provided in this section, the requester shall be entitled to recover the amount of statutory damages set forth in this division if a court determines that the public office or the person responsible for public records failed to comply with an obligation in accordance with division (B) of this section.

The amount of statutory damages shall be fixed at one hundred dollars for each business day during which the public office or person responsible for the requested public records failed to comply with an obligation in accordance with division (B) of this section, beginning with the day on which the requester files a mandamus action to recover statutory damages, up to a maximum of one thousand dollars. The award of statutory damages shall not be construed as a penalty, but as compensation for injury arising from lost use of the requested information. The existence of this injury shall be conclusively presumed. The award of statutory damages shall be in addition to all other remedies authorized by this section.

The court may reduce an award of statutory damages or not award statutory damages if the court determines both of the following:

(a) That, based on the ordinary application of statutory law and case law as it existed at the time of the conduct or threatened conduct of the public office or person responsible for the requested public records that allegedly constitutes a failure to comply with an obligation in accordance with division (B) of this section and that was the basis of the mandamus action, a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records did not constitute a failure to comply with an obligation in accordance with division (B) of this section;

(b) That a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

(3) In a mandamus action filed under division (C)(1) of this section, the following apply:

(a)(i) If the court orders the public office or the person responsible for the public record to comply with division (B) of this section, the court shall determine and award to the relator all court costs, which shall be construed as remedial and not punitive.

(ii) If the court makes a determination described in division (C)(3)(b)(iii) of this section, the court shall determine and award to the relator all court costs, which shall be construed as remedial and not punitive.

(b) If the court renders a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section or if the court determines any of the following, the court may award reasonable attorney's fees to the relator, subject to division (C)(4) of this section:

(i) The public office or the person responsible for the public records failed to respond affirmatively or negatively to the public records request in accordance with the time allowed under division (B) of this section.

(ii) The public office or the person responsible for the public records promised to permit the relator to inspect or receive copies of the public records requested within a specified period of time but failed to fulfill that promise within that specified period of time.

(iii) The public office or the person responsible for the public records acted in bad faith when the office or person voluntarily made the public records available to the relator for the first time after the relator commenced the mandamus action, but before the court issued any order concluding whether or not the public office or person was required to comply with division (B) of this section. No discovery may be conducted on the issue of the alleged bad faith of the public office or person responsible for the public records. This division shall not be construed as creating a presumption that the public office or the person responsible for the public records acted in bad faith when the office or person voluntarily made the public records available to the relator for the first time after the relator commenced the mandamus action, but before the court issued any order described in this division.

(c) The court shall not award attorney's fees to the relator if the court determines both of the following:

(i) That, based on the ordinary application of statutory law and case law as it existed at the time of the conduct or threatened conduct of the public office or person responsible for the requested public records that allegedly constitutes a failure to comply with an obligation in accordance with division (B) of this section and that was the basis of the mandamus action, a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records did not constitute a failure to comply with an obligation in accordance with division (B) of this section;

(ii) That a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

(4) All of the following apply to any award of reasonable attorney's fees awarded under division (C)(3)(b) of this section:

(a) The fees shall be construed as remedial and not punitive.

(b) The fees awarded shall not exceed the total of the reasonable attorney's fees incurred before the public record was made available to the relator and the fees described in division (C)(4)(c) of this section.

(c) Reasonable attorney's fees shall include reasonable fees incurred to produce proof of the reasonableness and amount of the fees and to otherwise litigate entitlement to the fees.

(d) The court may reduce the amount of fees awarded if the court determines that, given the factual circumstances involved with the specific public records request, an alternative means should have been pursued to more effectively and efficiently resolve the dispute that was subject to the mandamus action filed under division (C)(1) of this section.

(5) If the court does not issue a writ of mandamus under division (C) of this section and the court determines at that time that the bringing of the mandamus action was frivolous conduct as defined in [division \(A\) of section 2323.51 of the Revised Code](#), the court may award to the public office all court costs, expenses, and reasonable attorney's fees, as determined by the court.

(D) Chapter 1347. of the Revised Code does not limit the provisions of this section.



(E)(1) To ensure that all employees of public offices are appropriately educated about a public office's obligations under division (B) of this section, all elected officials or their appropriate designees shall attend training approved by the attorney general as provided in [section 109.43 of the Revised Code](#). A future official may satisfy the requirements of this division by attending the training before taking office, provided that the future official may not send a designee in the future official's place.

(2) All public offices shall adopt a public records policy in compliance with this section for responding to public records requests. In adopting a public records policy under this division, a public office may obtain guidance from the model public records policy developed and provided to the public office by the attorney general under [section 109.43 of the Revised Code](#). Except as otherwise provided in this section, the policy may not limit the number of public records that the public office will make available to a single person, may not limit the number of public records that it will make available during a fixed period of time, and may not establish a fixed period of time before it will respond to a request for inspection or copying of public records, unless that period is less than eight hours.

The public office shall distribute the public records policy adopted by the public office under this division to the employee of the public office who is the records custodian or records manager or otherwise has custody of the records of that office. The public office shall require that employee to acknowledge receipt of the copy of the public records policy. The public office shall create a poster that describes its public records policy and shall post the poster in a conspicuous place in the public office and in all locations where the public office has branch offices. The public office may post its public records policy on the internet web site of the public office if the public office maintains an internet web site. A public office that has established a manual or handbook of its general policies and procedures for all employees of the public office shall include the public records policy of the public office in the manual or handbook.

(F)(1) The bureau of motor vehicles may adopt rules pursuant to Chapter 119. of the Revised Code to reasonably limit the number of bulk commercial special extraction requests made by a person for the same records or for updated records during a calendar year. The rules may include provisions for charges to be made for bulk commercial special extraction requests for the actual cost of the bureau, plus special extraction costs, plus ten per cent. The bureau may charge for expenses for redacting information, the release of which is prohibited by law.

(2) As used in division (F)(1) of this section:

(a) "Actual cost" means the cost of depleted supplies, records storage media costs, actual mailing and alternative delivery costs, or other transmitting costs, and any direct equipment operating and maintenance costs, including actual costs paid to private contractors for copying services.

(b) "Bulk commercial special extraction request" means a request for copies of a record for information in a format other than the format already available, or information that cannot be extracted without examination of all items in a records series, class of records, or database by a person who intends to use or forward the copies for surveys, marketing, solicitation, or resale for commercial purposes. "Bulk commercial special extraction request" does not include a request by a person who gives assurance to the bureau that the person making the request does not intend to use or forward the requested copies for surveys, marketing, solicitation, or resale for commercial purposes.

(c) "Commercial" means profit-seeking production, buying, or selling of any good, service, or other product.



(d) “Special extraction costs” means the cost of the time spent by the lowest paid employee competent to perform the task, the actual amount paid to outside private contractors employed by the bureau, or the actual cost incurred to create computer programs to make the special extraction. “Special extraction costs” include any charges paid to a public agency for computer or records services.

(3) For purposes of divisions (F)(1) and (2) of this section, “surveys, marketing, solicitation, or resale for commercial purposes” shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

(G) A request by a defendant, counsel of a defendant, or any agent of a defendant in a criminal action that public records related to that action be made available under this section shall be considered a demand for discovery pursuant to the Criminal Rules, except to the extent that the Criminal Rules plainly indicate a contrary intent. The defendant, counsel of the defendant, or agent of the defendant making a request under this division shall serve a copy of the request on the prosecuting attorney, director of law, or other chief legal officer responsible for prosecuting the action.

(H)(1) Any portion of a body-worn camera or dashboard camera recording described in divisions (A)(17)(b) to (h) of this section may be released by consent of the subject of the recording or a representative of that person, as specified in those divisions, only if either of the following applies:

(a) The recording will not be used in connection with any probable or pending criminal proceedings;

(b) The recording has been used in connection with a criminal proceeding that was dismissed or for which a judgment has been entered pursuant to [Rule 32 of the Rules of Criminal Procedure](#), and will not be used again in connection with any probable or pending criminal proceedings.

(2) If a public office denies a request to release a restricted portion of a body-worn camera or dashboard camera recording, as defined in division (A)(17) of this section, any person may file a mandamus action pursuant to this section or a complaint with the clerk of the court of claims pursuant to [section 2743.75 of the Revised Code](#), requesting the court to order the release of all or portions of the recording. If the court considering the request determines that the filing articulates by clear and convincing evidence that the public interest in the recording substantially outweighs privacy interests and other interests asserted to deny release, the court shall order the public office to release the recording.

#### CREDIT(S)

(2023 H 33, § 130.60, eff. 10-3-23; 2023 H 33, § 101.01, eff. 10-3-23; 2022 H 45, eff. 4-7-23; 2022 H 343, eff. 4-6-23; 2022 H 558, eff. 4-6-23; 2022 S 288, eff. 4-4-23; 2022 H 254, eff. 4-3-23; 2022 H 99, eff. 9-12-22; 2022 H 93, eff. 4-29-22; 2021 H 110, eff. 9-30-21; 2021 S 4, eff. 9-7-21; 2020 S 284, eff. 3-24-21; 2019 H 166, eff. 10-17-19; 2018 H 425, eff. 4-8-19; 2018 H 139, eff. 4-8-19; 2018 H 341, eff. 4-5-19; 2018 S 214, eff. 4-5-19; 2018 S 201, eff. 3-22-19; 2018 S 229, eff. 3-22-19; 2018 H 34, eff. 11-2-18; 2018 H 312, eff. 11-2-18; 2018 H 8, eff. 9-28-18; 2016 H 471, eff. 12-19-16; 2016 H 317, eff. 9-28-16; 2016 S 321, eff. 9-28-16; 2016 H 359, eff. 9-8-16; 2015 H 64, eff. 9-29-15; 2014 H 663, § 1, eff. 3-23-15; 2014 H 663, § 3, eff. 3-23-15 (See Historical and Statutory Notes); 2013 S 23, eff. 3-20-15; 2013 H 59, eff. 9-29-13; 2012 S 314, eff. 9-28-12; 2012 H 487, eff. 9-10-12; 2011 H 64, eff. 10-17-11; 2011 H 153, eff. 9-29-11; 2009 H 1, eff. 10-16-09; 2008 S 248, eff. 4-7-09; 2008 H 214, eff. 5-14-08; 2006 H 9, eff. 9-29-07; 2006 H 141, eff. 3-30-07; 2004 H 303, eff. 10-29-05; 2004 H 431, eff. 7-1-05; 2004 S 222, eff. 4-27-05; 2003 H 6, eff. 2-12-04; 2002 S 258, eff. 4-9-03; 2002 H 490, eff. 1-1-04; 2002 S 180, eff. 4-9-03;

2001 H 196, eff. 11-20-01; 2000 S 180, eff. 3-22-01; 2000 H 448, eff. 10-5-00; 2000 H 640, eff. 9-14-00; 2000 H 539, eff. 6-21-00; 1999 H 471, eff. 7-1-00; 1999 S 78, eff. 12-16-99; 1999 S 55, eff. 10-26-99; 1998 H 421, eff. 5-6-98; 1997 H 352, eff. 1-1-98; 1996 S 277, § 6, eff. 7-1-97; 1996 S 277, § 1, eff. 3-31-97; 1996 H 438, eff. 7-1-97; 1996 S 269, eff. 7-1-96; 1996 H 353, eff. 9-17-96; 1996 H 419, eff. 9-18-96; 1995 H 5, eff. 8-30-95; 1993 H 152, eff. 7-1-93; 1987 S 275; 1985 H 319, H 238; 1984 H 84; 1979 S 62; 130 v H 187)

R.C. § 149.43, OH ST § 149.43

Current through File 12 of the 135th General Assembly (2023-2024).

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Baldwin's Ohio Revised Code Annotated  
Title III. Counties  
Chapter 309. Prosecuting Attorney (Refs & Annos)

R.C. § 309.10

309.10 Provisions for other counsel

Effective: April 4, 2023

[Currentness](#)

[Sections 309.08](#) and [309.09 of the Revised Code](#) do not prevent a school board from employing counsel to represent it, but when counsel is employed, the counsel shall be paid by the school board from the school fund. [Sections 309.08](#) and [309.09 of the Revised Code](#) do not prevent a county board of developmental disabilities from employing counsel to represent it, but that counsel shall be employed in accordance with division (C) of section 305.14 and paid in accordance with [division \(A\)\(7\) of section 5126.05 of the Revised Code](#).

[Sections 309.08](#) and [309.09 of the Revised Code](#) do not prevent a board of county hospital trustees from employing counsel with the approval of the county commissioners to bring legal action for the collection of delinquent accounts of the hospital, but when counsel is employed, the counsel shall be paid from the hospital's funds. [Sections 309.08](#) and [309.09 of the Revised Code](#) do not prevent a board of library trustees from employing counsel to represent it, but when counsel is employed, the counsel shall be paid from the library's funds. [Sections 309.08](#) and [309.09 of the Revised Code](#) do not prevent the appointment and employment of assistants, clerks, and stenographers to assist the prosecuting attorney as provided in [sections 309.01 to 309.15 of the Revised Code](#), or the appointment by the court of common pleas or the court of appeals of an attorney to assist the prosecuting attorney in the trial of a criminal cause pending in that court, or the board of county commissioners from paying for those services.

**CREDIT(S)**

(2022 S 16, eff. 4-4-23; 2009 S 79, eff. 10-6-09; 2000 H 400, eff. 8-29-00; 1996 H 629, eff. 3-13-97; 1994 H 694, eff. 11-11-94; 1990 H 569, eff. 11-11-90; 1988 S 155; 128 v 597; 127 v 440; 1953 H 1; GC 2918)

R.C. § 309.10, OH ST § 309.10

Current through File 12 of the 135th General Assembly (2023-2024).

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Baldwin's Ohio Revised Code Annotated  
Title XXXIII. Education--Libraries (Refs & Annos)  
Chapter 3311. School Districts (Refs & Annos)  
Classification and Definitions

R.C. § 3311.03

3311.03 Local school district defined

Currentness

Each school district, other than a city school district, exempted village school district, joint vocational school district, or district then known as a county school district, in existence on September 16, 1943, shall be known as a “local school district” and shall continue to be known as a “local school district” until it has lost its identity as a separate school district or has acquired a different styling as provided by law. All school districts created after September 16, 1943 and prior to July 1, 1995, other than city school districts, exempted village school districts, districts then known as county school districts, or joint vocational school districts, shall be known as “local school districts.” After July 1, 1995, no school districts other than city, joint vocational, local, and cooperative education districts may be created. In addition to school districts, educational service centers may be created after such date.

**CREDIT(S)**

(1995 H 117, eff. 9-29-95; 1993 H 152, eff. 7-1-93; 125 v 903; 1953 H 1; GC 4830-2)

R.C. § 3311.03, OH ST § 3311.03

Current through File 12 of the 135th General Assembly (2023-2024).

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Chapter 3313. Boards of Education (Refs & Annos)  
Powers and Duties

R.C. § 3313.17

3313.17 Corporate powers of the board

[Currentness](#)

The board of education of each school district shall be a body politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing, and disposing of real and personal property, and taking and holding in trust for the use and benefit of such district, any grant or devise of land and any donation or bequest of money or other personal property.

**CREDIT(S)**

(1953 H 1, eff. 10-1-53; GC 4834)

R.C. § 3313.17, OH ST § 3313.17

Current through File 12 of the 135th General Assembly (2023-2024).

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Title XXXIII. Education--Libraries (Refs & Annos)  
Chapter 3313. Boards of Education (Refs & Annos)  
Powers and Duties

R.C. § 3313.201

3313.201 Purchase of motor vehicle insurance; self-insurance programs

[Currentness](#)

(A) The board of education of each school district shall procure a policy or policies of insurance insuring officers, employees, and pupils of the school district against liability on account of damage or injury to persons and property, including insurance on vehicles operated under a course in drivers education approved by the state department of public safety and including liability on account of death or accident by wrongful act, occasioned by the operation of a motor vehicle, motor vehicles with auxiliary equipment, or all self-propelling equipment or trailers owned or operated by the school district. Each board of education may supplement the policy or policies of insurance with collision, medical payments, comprehensive, and uninsured motorists insurance. Before procuring such insurance each board of education shall adopt a resolution setting forth the amount of insurance to be purchased, the necessity of the insurance, together with a statement of its estimated premium cost. Insurance procured pursuant to this section shall be from one or more recognized insurance companies authorized to do business in this state.

(B) This section shall not be construed to affect the ability of any school district to establish and maintain self-insurance programs under the authority conferred by any other section of the Revised Code. Such programs may be established and maintained in combination with, or as an alternative to, any policy or policies of insurance procured under division (A) of this section.

**CREDIT(S)**

(2002 H 407, eff. 10-11-02; 2001 H 94, eff. 9-5-01; 1979 H 44, eff. 1-16-80; 1976 H 607; 128 v 620; 126 v 73)

R.C. § 3313.201, OH ST § 3313.201

Current through File 12 of the 135th General Assembly (2023-2024).

Baldwin's Ohio Revised Code Annotated  
Title XXXIII. Education--Libraries (Refs & Annos)  
Chapter 3313. Boards of Education (Refs & Annos)  
Miscellaneous Powers and Duties of Board

## R.C. § 3313.35

## 3313.35 Counsel for board

## Currentness

Notwithstanding [division \(D\) of section 3311.19](#) and [division \(D\) of section 3311.52 of the Revised Code](#), the provisions of this section that apply to a city school district do not apply to a joint vocational or cooperative education school district unless otherwise specified.

Except in city, joint vocational, and cooperative education school districts, the prosecuting attorney of the county shall be the legal adviser of all boards of education and the governing board of an educational service center in the county in which the prosecuting attorney is serving. The prosecuting attorney shall prosecute all actions against a member or officer of a board for malfeasance or misfeasance in office, and he shall be the legal counsel of such boards or the officers thereof in all civil actions brought by or against them and shall conduct such actions in his official capacity. In the case of educational service centers created under [section 3311.053 of the Revised Code](#), the legal adviser shall be the prosecuting attorney of the county in which the largest number of pupils supervised by the governing board of the educational service center reside. In joint vocational and cooperative education school districts the legal adviser shall be the prosecuting attorney of the most populous county containing a school district which is a member of the joint vocational or cooperative education school district. When such civil action is between two or more boards in the same county, the prosecuting attorney shall not be required to act for either of them. In city school districts, the city director of law shall be the legal adviser and attorney for the board thereof, and shall perform the same services for such board as required of the prosecuting attorney for other boards of the county. Such duties shall devolve upon any official serving in a capacity similar to that of prosecuting attorney or city director of law for the territory wherein a school district is situated regardless of his official designation. In a district which becomes a city school district pursuant to [section 3311.10 of the Revised Code](#), the legal adviser shall be the solicitor or director of law of the largest of the municipal corporations all or a part of which is included within the school district boundaries. No compensation in addition to such officer's regular salary shall be allowed for such services.

**CREDIT(S)**

(1995 H 117, eff. 9-29-95; 1992 S 195, eff. 4-16-93; 1989 S 140; 1977 H 219; 132 v H 447; 131 v H 286; 1953 H 1; GC 4834-8)

R.C. § 3313.35, OH ST § 3313.35

Current through File 12 of the 135th General Assembly (2023-2024).

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 Title XXXIII. Education--Libraries (Refs & Annos)  
 Chapter 3313. Boards of Education (Refs & Annos)  
 Administration of Schools

## R.C. § 3313.64

3313.64 Definitions for RC 3313.64 and 3313.65; admission based on residency; tuition payments and waivers; exceptions

Effective: October 3, 2023 to December 31, 2024

Currentness

<This section effective until 1-1-25. See, also, [section 3313.64](#) effective 1-1-25.>

(A) As used in this section and in [section 3313.65 of the Revised Code](#):

(1)(a) Except as provided in division (A)(1)(b) of this section, “parent” means either parent, unless the parents are separated or divorced or their marriage has been dissolved or annulled, in which case “parent” means the parent who is 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 the child's natural or adoptive parent, “parent” means the parent with residual parental rights, privileges, and responsibilities. When a child is in the permanent custody of a government agency or a person other than the child's natural or adoptive parent, “parent” means the parent who was divested of parental rights and responsibilities for the care of the child and the right to have the child live with the parent and be the legal custodian of the child and all residual parental rights, privileges, and responsibilities.

(b) When a child is the subject of a power of attorney executed under [sections 3109.51 to 3109.62 of the Revised Code](#), “parent” means the grandparent designated as attorney in fact under the power of attorney. When a child is the subject of a caretaker authorization affidavit executed under sections 3109.64 to [3109.73 of the Revised Code](#), “parent” means the grandparent that executed the affidavit.

(2) “Legal custody,” “permanent custody,” and “residual parental rights, privileges, and responsibilities” have the same meanings as in [section 2151.011 of the Revised Code](#).

(3) “School district” or “district” means a city, local, or exempted village school district and excludes any school operated in an institution maintained by the department of youth services.

(4) Except as used in division (C)(2) of this section, “home” means a home, institution, foster home, group home, or other residential facility in this state that receives and cares for children, to which any of the following applies:

(a) The home is licensed, certified, or approved for such purpose by the state or is maintained by the department of youth services.

(b) The home is operated by a person who is licensed, certified, or approved by the state to operate the home for such purpose.



(c) The home accepted the child through a placement by a person licensed, certified, or approved to place a child in such a home by the state.

(d) The home is a children's home created under [section 5153.21](#) or [5153.36 of the Revised Code](#).

(5) "Agency" means all of the following:

(a) A public children services agency;

(b) An organization that holds a certificate issued by the Ohio department of job and family services in accordance with the requirements of [section 5103.03 of the Revised Code](#) and assumes temporary or permanent custody of children through commitment, agreement, or surrender, and places children in family homes for the purpose of adoption;

(c) Comparable agencies of other states or countries that have complied with applicable requirements of [section 2151.39 of the Revised Code](#) or as applicable, [sections 5103.20 to 5103.22](#) or [5103.23 to 5103.237 of the Revised Code](#).

(6) A child is placed for adoption if either of the following occurs:

(a) An agency to which the child has been permanently committed or surrendered enters into an agreement with a person pursuant to [section 5103.16 of the Revised Code](#) for the care and adoption of the child.

(b) The child's natural parent places the child pursuant to [section 5103.16 of the Revised Code](#) with a person who will care for and adopt the child.

(7) "Preschool child with a disability" has the same meaning as in [section 3323.01 of the Revised Code](#).

(8) "Child," unless otherwise indicated, includes preschool children with disabilities.

(9) "Active duty" means active duty pursuant to an executive order of the president of the United States, an act of the congress of the United States, or [section 5919.29](#) or [5923.21 of the Revised Code](#).

(B) Except as otherwise provided in [section 3321.01 of the Revised Code](#) for admittance to kindergarten and first grade, a child who is at least five but under twenty-two years of age and any preschool child with a disability shall be admitted to school as provided in this division.

(1) A child shall be admitted to the schools of the school district in which the child's parent resides.

(2) Except as provided in [division \(B\) of section 2151.362](#) and [section 3317.30 of the Revised Code](#), a child who does not reside in the district where the child's parent resides shall be admitted to the schools of the district in which the child resides if any of the following applies:

(a) The child is in the legal or permanent custody of a government agency or a person other than the child's natural or adoptive parent.

(b) The child resides in a home.

(c) The child requires special education.

(3) A child who is not entitled under division (B)(2) of this section to be admitted to the schools of the district where the child resides and who is residing with a resident of this state with whom the child has been placed for adoption shall be admitted to the schools of the district where the child resides unless either of the following applies:

(a) The placement for adoption has been terminated.

(b) Another school district is required to admit the child under division (B)(1) of this section.

Division (B) of this section does not prohibit the board of education of a school district from placing a child with a disability who resides in the district in a special education program outside of the district or its schools in compliance with Chapter 3323. of the Revised Code.

(C) A district shall not charge tuition for children admitted under division (B)(1) or (3) of this section. If the district admits a child under division (B)(2) of this section, tuition shall be paid to the district that admits the child as provided in divisions (C) (1) to (3) of this section, unless division (C)(4) of this section applies to the child:

(1) If the child receives special education in accordance with Chapter 3323. of the Revised Code, the school district of residence, as defined in [section 3323.01 of the Revised Code](#), shall pay tuition for the child in accordance with [section 3323.091](#), [3323.13](#), [3323.14](#), or [3323.141 of the Revised Code](#) regardless of who has custody of the child or whether the child resides in a home.

(2) For a child that does not receive special education in accordance with Chapter 3323. of the Revised Code, except as otherwise provided in division (C)(2)(d) of this section, if the child is in the permanent or legal custody of a government agency or person other than the child's parent, tuition shall be paid by:

(a) The district in which the child's parent resided at the time the court removed the child from home or at the time the court vested legal or permanent custody of the child in the person or government agency, whichever occurred first;

(b) If the parent's residence at the time the court removed the child from home or placed the child in the legal or permanent custody of the person or government agency is unknown, tuition shall be paid by the district in which the child resided at the time the child was removed from home or placed in legal or permanent custody, whichever occurred first;

(c) If a school district cannot be established under division (C)(2)(a) or (b) of this section, tuition shall be paid by the district determined as required by [section 2151.362 of the Revised Code](#) by the court at the time it vests custody of the child in the person or government agency;

(d) If at the time the court removed the child from home or vested legal or permanent custody of the child in the person or government agency, whichever occurred first, one parent was in a residential or correctional facility or a juvenile residential placement and the other parent, if living and not in such a facility or placement, was not known to reside in this state, tuition shall be paid by the district determined under [division \(D\) of section 3313.65 of the Revised Code](#) as the district required to pay any tuition while the parent was in such facility or placement;

(e) If the department of education and workforce has determined, pursuant to [division \(A\)\(2\) of section 2151.362 of the Revised Code](#), that a school district other than the one named in the court's initial order, or in a prior determination of the department, is responsible to bear the cost of educating the child, the district so determined shall be responsible for that cost.

(3) If the child is not in the permanent or legal custody of a government agency or person other than the child's parent and the child resides in a home, tuition shall be paid by one of the following:

(a) The school district in which the child's parent resides;

(b) If the child's parent is not a resident of this state, the home in which the child resides.

(4) Division (C)(4) of this section applies to any child who is admitted to a school district under division (B)(2) of this section, resides in a home that is not a foster home, a home maintained by the department of youth services, a detention facility established under [section 2152.41 of the Revised Code](#), or a juvenile facility established under [section 2151.65 of the Revised Code](#), and receives educational services at the home or facility in which the child resides pursuant to a contract between the home or facility and the school district providing those services.

If a child to whom division (C)(4) of this section applies is a special education student, a district may choose whether to receive a tuition payment for that child under division (C)(4) of this section or to receive a payment for that child under [section 3323.14 of the Revised Code](#). If a district chooses to receive a payment for that child under [section 3323.14 of the Revised Code](#), it shall not receive a tuition payment for that child under division (C)(4) of this section.

If a child to whom division (C)(4) of this section applies is not a special education student, a district shall receive a tuition payment for that child under division (C)(4) of this section.

In the case of a child to which division (C)(4) of this section applies, the total educational cost to be paid for the child shall be determined by a formula approved by the department of education and workforce, which formula shall be designed to calculate a per diem cost for the educational services provided to the child for each day the child is served and shall reflect the total actual cost incurred in providing those services. The department shall certify the total educational cost to be paid for the child to both the school district providing the educational services and, if different, the school district that is responsible to pay tuition for the child. The department shall deduct the certified amount from the state basic aid funds payable under Chapter 3317. of the Revised Code to the district responsible to pay tuition and shall pay that amount to the district providing the educational services to the child.

(D) Tuition required to be paid under divisions (C)(2) and (3)(a) of this section shall be computed in accordance with [section 3317.08 of the Revised Code](#). Tuition required to be paid under division (C)(3)(b) of this section shall be computed in accordance with [section 3317.081 of the Revised Code](#). If a home fails to pay the tuition required by division (C)(3)(b) of this section, the board of education providing the education may recover in a civil action the tuition and the expenses incurred in prosecuting the action, including court costs and reasonable attorney's fees. If the prosecuting attorney or city director of law represents the board in such action, costs and reasonable attorney's fees awarded by the court, based upon the prosecuting attorney's, director's, or one of their designee's time spent preparing and presenting the case, shall be deposited in the county or city general fund.

(E) A board of education may enroll a child free of any tuition obligation for a period not to exceed sixty days, on the sworn statement of an adult resident of the district that the resident has initiated legal proceedings for custody of the child.

(F) In the case of any individual entitled to attend school under this division, no tuition shall be charged by the school district of attendance and no other school district shall be required to pay tuition for the individual's attendance. Notwithstanding division (B), (C), or (E) of this section:

(1) All persons at least eighteen but under twenty-two years of age who live apart from their parents, support themselves by their own labor, and have not successfully completed the high school curriculum or the individualized education program developed for the person by the high school pursuant to [section 3323.08 of the Revised Code](#), are entitled to attend school in the district in which they reside.

(2) Any child under eighteen years of age who is married is entitled to attend school in the child's district of residence.

(3) A child is entitled to attend school in the district in which either of the child's parents is employed if the child has a medical condition that may require emergency medical attention. The parent of a child entitled to attend school under division (F) (3) of this section shall submit to the board of education of the district in which the parent is employed a statement from the child's physician certifying that the child's medical condition may require emergency medical attention. The statement shall be supported by such other evidence as the board may require.

(4) Any child residing with a person other than the child's parent is entitled, for a period not to exceed twelve months, to attend school in the district in which that person resides if the child's parent files an affidavit with the superintendent of the district in which the person with whom the child is living resides stating all of the following:

(a) That the parent is serving outside of the state in the armed services of the United States;

(b) That the parent intends to reside in the district upon returning to this state;

(c) The name and address of the person with whom the child is living while the parent is outside the state.

(5) Any child under the age of twenty-two years who, after the death of a parent, resides in a school district other than the district in which the child attended school at the time of the parent's death is entitled to continue to attend school in the district

in which the child attended school at the time of the parent's death for the remainder of the school year, subject to approval of that district board.

(6) A child under the age of twenty-two years who resides with a parent who is having a new house built in a school district outside the district where the parent is residing is entitled to attend school for a period of time in the district where the new house is being built. In order to be entitled to such attendance, the parent shall provide the district superintendent with the following:

(a) A sworn statement explaining the situation, revealing the location of the house being built, and stating the parent's intention to reside there upon its completion;

(b) A statement from the builder confirming that a new house is being built for the parent and that the house is at the location indicated in the parent's statement.

(7) A child under the age of twenty-two years residing with a parent who has a contract to purchase a house in a school district outside the district where the parent is residing and who is waiting upon the date of closing of the mortgage loan for the purchase of such house is entitled to attend school for a period of time in the district where the house is being purchased. In order to be entitled to such attendance, the parent shall provide the district superintendent with the following:

(a) A sworn statement explaining the situation, revealing the location of the house being purchased, and stating the parent's intent to reside there;

(b) A statement from a real estate broker or bank officer confirming that the parent has a contract to purchase the house, that the parent is waiting upon the date of closing of the mortgage loan, and that the house is at the location indicated in the parent's statement.

The district superintendent shall establish a period of time not to exceed ninety days during which the child entitled to attend school under division (F)(6) or (7) of this section may attend without tuition obligation. A student attending a school under division (F)(6) or (7) of this section shall be eligible to participate in interscholastic athletics under the auspices of that school, provided the board of education of the school district where the student's parent resides, by a formal action, releases the student to participate in interscholastic athletics at the school where the student is attending, and provided the student receives any authorization required by a public agency or private organization of which the school district is a member exercising authority over interscholastic sports.

(8) A child whose parent is a full-time employee of a city, local, or exempted village school district, or of an educational service center, may be admitted to the schools of the district where the child's parent is employed, or in the case of a child whose parent is employed by an educational service center, in the district that serves the location where the parent's job is primarily located, provided the district board of education establishes such an admission policy by resolution adopted by a majority of its members. Any such policy shall take effect on the first day of the school year and the effective date of any amendment or repeal may not be prior to the first day of the subsequent school year. The policy shall be uniformly applied to all such children and shall provide for the admission of any such child upon request of the parent. No child may be admitted under this policy after the first day of classes of any school year.

(9) A child who is with the child's parent under the care of a shelter for victims of domestic violence, as defined in [section 3313.33 of the Revised Code](#), is entitled to attend school free in the district in which the child is with the child's parent, and no other school district shall be required to pay tuition for the child's attendance in that school district.

The enrollment of a child in a school district under this division shall not be denied due to a delay in the school district's receipt of any records required under [section 3313.672 of the Revised Code](#) or any other records required for enrollment. Any days of attendance and any credits earned by a child while enrolled in a school district under this division shall be transferred to and accepted by any school district in which the child subsequently enrolls. The department of education and workforce shall adopt rules to ensure compliance with this division.

(10) Any child under the age of twenty-two years whose parent has moved out of the school district after the commencement of classes in the child's senior year of high school is entitled, subject to the approval of that district board, to attend school in the district in which the child attended school at the time of the parental move for the remainder of the school year and for one additional semester or equivalent term. A district board may also adopt a policy specifying extenuating circumstances under which a student may continue to attend school under division (F)(10) of this section for an additional period of time in order to successfully complete the high school curriculum for the individualized education program developed for the student by the high school pursuant to [section 3323.08 of the Revised Code](#).

(11) As used in this division, "grandparent" means a parent of a parent of a child. A child under the age of twenty-two years who is in the custody of the child's parent, resides with a grandparent, and does not require special education is entitled to attend the schools of the district in which the child's grandparent resides, provided that, prior to such attendance in any school year, the board of education of the school district in which the child's grandparent resides and the board of education of the school district in which the child's parent resides enter into a written agreement specifying that good cause exists for such attendance, describing the nature of this good cause, and consenting to such attendance.

In lieu of a consent form signed by a parent, a board of education may request the grandparent of a child attending school in the district in which the grandparent resides pursuant to division (F)(11) of this section to complete any consent form required by the district, including any authorization required by [sections 3313.712, 3313.713, 3313.716, and 3313.718 of the Revised Code](#). Upon request, the grandparent shall complete any consent form required by the district. A school district shall not incur any liability solely because of its receipt of a consent form from a grandparent in lieu of a parent.

Division (F)(11) of this section does not create, and shall not be construed as creating, a new cause of action or substantive legal right against a school district, a member of a board of education, or an employee of a school district. This section does not affect, and shall not be construed as affecting, any immunities from defenses to tort liability created or recognized by Chapter 2744. of the Revised Code for a school district, member, or employee.

(12) A child under the age of twenty-two years is entitled to attend school in a school district other than the district in which the child is entitled to attend school under division (B), (C), or (E) of this section provided that, prior to such attendance in any school year, both of the following occur:

(a) The superintendent of the district in which the child is entitled to attend school under division (B), (C), or (E) of this section contacts the superintendent of another district for purposes of this division;

(b) The superintendents of both districts enter into a written agreement that consents to the attendance and specifies that the purpose of such attendance is to protect the student's physical or mental well-being or to deal with other extenuating circumstances deemed appropriate by the superintendents.

While an agreement is in effect under this division for a student who is not receiving special education under Chapter 3323. of the Revised Code and notwithstanding Chapter 3327. of the Revised Code, the board of education of neither school district involved in the agreement is required to provide transportation for the student to and from the school where the student attends.

A student attending a school of a district pursuant to this division shall be allowed to participate in all student activities, including interscholastic athletics, at the school where the student is attending on the same basis as any student who has always attended the schools of that district while of compulsory school age.

(13) All school districts shall comply with the “McKinney-Vento Homeless Assistance Act,” [42 U.S.C.A. 11431 et seq.](#), for the education of homeless children. Each city, local, and exempted village school district shall comply with the requirements of that act governing the provision of a free, appropriate public education, including public preschool, to each homeless child.

When a child loses permanent housing and becomes a homeless person, as defined in [42 U.S.C.A. 11481\(5\)](#), or when a child who is such a homeless person changes temporary living arrangements, the child's parent or guardian shall have the option of enrolling the child in either of the following:

(a) The child's school of origin, as defined in [42 U.S.C.A. 11432\(g\)\(3\)\(C\)](#);

(b) The school that is operated by the school district in which the shelter where the child currently resides is located and that serves the geographic area in which the shelter is located.

(14) A child under the age of twenty-two years who resides with a person other than the child's parent is entitled to attend school in the school district in which that person resides if both of the following apply:

(a) That person has been appointed, through a military power of attorney executed under section 574(a) of the “National Defense Authorization Act for Fiscal Year 1994,” 107 Stat. 1674 (1993), [10 U.S.C. 1044b](#), or through a comparable document necessary to complete a family care plan, as the parent's agent for the care, custody, and control of the child while the parent is on active duty as a member of the national guard or a reserve unit of the armed forces of the United States or because the parent is a member of the armed forces of the United States and is on a duty assignment away from the parent's residence.

(b) The military power of attorney or comparable document includes at least the authority to enroll the child in school.

The entitlement to attend school in the district in which the parent's agent under the military power of attorney or comparable document resides applies until the end of the school year in which the military power of attorney or comparable document expires.

(G) A board of education, after approving admission, may waive tuition for students who will temporarily reside in the district and who are either of the following:



(1) Residents or domiciliaries of a foreign nation who request admission as foreign exchange students;

(2) Residents or domiciliaries of the United States but not of Ohio who request admission as participants in an exchange program operated by a student exchange organization.

(H) Pursuant to [sections 3311.211, 3313.90, 3319.01, 3323.04, 3327.04, and 3327.06 of the Revised Code](#), a child may attend school or participate in a special education program in a school district other than in the district where the child is entitled to attend school under division (B) of this section.

(I)(1) Notwithstanding anything to the contrary in this section or [section 3313.65 of the Revised Code](#), a child under twenty-two years of age may attend school in the school district in which the child, at the end of the first full week of October of the school year, was entitled to attend school as otherwise provided under this section or [section 3313.65 of the Revised Code](#), if at that time the child was enrolled in the schools of the district but since that time the child or the child's parent has relocated to a new address located outside of that school district and within the same county as the child's or parent's address immediately prior to the relocation. The child may continue to attend school in the district, and at the school to which the child was assigned at the end of the first full week of October of the current school year, for the balance of the school year. Division (I)(1) of this section applies only if both of the following conditions are satisfied:

(a) The board of education of the school district in which the child was entitled to attend school at the end of the first full week in October and of the district to which the child or child's parent has relocated each has adopted a policy to enroll children described in division (I)(1) of this section.

(b) The child's parent provides written notification of the relocation outside of the school district to the superintendent of each of the two school districts.

(2) At the beginning of the school year following the school year in which the child or the child's parent relocated outside of the school district as described in division (I)(1) of this section, the child is not entitled to attend school in the school district under that division.

(3) Any person or entity owing tuition to the school district on behalf of the child at the end of the first full week in October, as provided in division (C) of this section, shall continue to owe such tuition to the district for the child's attendance under division (I)(1) of this section for the lesser of the balance of the school year or the balance of the time that the child attends school in the district under division (I)(1) of this section.

(4) A pupil who may attend school in the district under division (I)(1) of this section shall be entitled to transportation services pursuant to an agreement between the district and the district in which the child or child's parent has relocated unless the districts have not entered into such agreement, in which case the child shall be entitled to transportation services in the same manner as a pupil attending school in the district under interdistrict open enrollment as described in [division \(E\) of section 3313.981 of the Revised Code](#), regardless of whether the district has adopted an open enrollment policy as described in division (B)(1) (b) or (c) of section 3313.98 of the Revised Code.

(J) This division does not apply to a child receiving special education.



A school district required to pay tuition pursuant to division (C)(2) or (3) of this section or [section 3313.65 of the Revised Code](#) shall have an amount deducted under [division \(C\) of section 3317.023 of the Revised Code](#) equal to its own tuition rate for the same period of attendance. A school district entitled to receive tuition pursuant to division (C)(2) or (3) of this section or [section 3313.65 of the Revised Code](#) shall have an amount credited under [division \(C\) of section 3317.023 of the Revised Code](#) equal to its own tuition rate for the same period of attendance. If the tuition rate credited to the district of attendance exceeds the rate deducted from the district required to pay tuition, the department of education and workforce shall pay the district of attendance the difference from amounts deducted from all districts' payments under [division \(C\) of section 3317.023 of the Revised Code](#) but not credited to other school districts under such division and from appropriations made for such purpose. The treasurer of each school district shall, by the fifteenth day of January and July, furnish the director of education and workforce a report of the names of each child who attended the district's schools under divisions (C)(2) and (3) of this section or [section 3313.65 of the Revised Code](#) during the preceding six calendar months, the duration of the attendance of those children, the school district responsible for tuition on behalf of the child, and any other information that the director requires.

Upon receipt of the report the director, pursuant to [division \(C\) of section 3317.023 of the Revised Code](#), shall deduct each district's tuition obligations under divisions (C)(2) and (3) of this section or [section 3313.65 of the Revised Code](#) and pay to the district of attendance that amount plus any amount required to be paid by the state.

(K) In the event of a disagreement, the director of education and workforce shall determine the school district in which the parent resides.

(L) Nothing in this section requires or authorizes, or shall be construed to require or authorize, the admission to a public school in this state of a pupil who has been permanently excluded from public school attendance by the director pursuant to [sections 3301.121 and 3313.662 of the Revised Code](#).

(M) In accordance with division (B)(1) of this section, a child whose parent is a member of the national guard or a reserve unit of the armed forces of the United States and is called to active duty, or a child whose parent is a member of the armed forces of the United States and is ordered to a temporary duty assignment outside of the district, may continue to attend school in the district in which the child's parent lived before being called to active duty or ordered to a temporary duty assignment outside of the district, as long as the child's parent continues to be a resident of that district, and regardless of where the child lives as a result of the parent's active duty status or temporary duty assignment. However, the district is not responsible for providing transportation for the child if the child lives outside of the district as a result of the parent's active duty status or temporary duty assignment.

### CREDIT(S)

(2023 H 33, § 130.100, eff. 10-3-23; 2021 H 110, eff. 9-30-21; 2017 H 49, eff. 9-29-17; 2013 H 59, eff. 9-29-13; 2011 H 153, eff. 6-30-11; 2009 H 1, eff. 7-17-09; 2008 H 214, eff. 5-14-08; 2007 H 119, eff. 9-29-07; 2006 S 164, eff. 3-23-07; 2006 H 137, eff. 10-9-06; 2006 S 238, eff. 9-21-06; 2006 H 530, eff. 6-30-06; 2004 H 426, eff. 5-18-05; 2004 H 130, eff. 7-20-04; 2003 H 3, eff. 8-15-03; 2001 H 94, eff. 9-5-01; 2000 H 332, eff. 1-1-01; 2000 H 448, eff. 10-5-00; 1999 H 470, eff. 7-1-00; 1999 H 121, eff. 11-3-99; 1999 H 281, eff. 10-29-99; 1999 H 238, eff. 6-8-99; 1998 H 650, eff. 7-1-98; 1997 H 408, eff. 10-1-97; 1996 H 601, eff. 10-29-96; 1993 H 152, eff. 7-1-93; 1992 H 154, H 55; 1991 H 298; 1990 S 3, H 723, H 434, H 341; 1989 H 248, S 51; 1988 H 743, H 146; 1987 H 231; 1986 H 564; 1983 H 210; 1981 S 140, H 71; 1980 H 965, S 160, H 900, H 550; 1978 H 811; 1973 H 159; 130 v S 77; 129 v 337; 1953 H 1; GC 4838-2)

## Footnotes

[2](#) So in original; should this read “Section 5”?

R.C. § 3313.64, OH ST § 3313.64

Current through File 12 of the 135th General Assembly (2023-2024).

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Baldwin's Ohio Revised Code Annotated  
Title XXXIII. Education--Libraries (Refs & Annos)  
Chapter 3323. Education of Disabled Children (Refs & Annos)  
General Provisions

## R.C. § 3323.02

## 3323.02 Programs for children with disabilities

Effective: October 3, 2023

Currentness

As used in this section, “IDEIA” means the “Individuals with Disabilities Education Improvement Act of 2004,” [Pub. L. No. 108-446](#).

It is the purpose of this chapter to ensure that all children with disabilities residing in this state who are at least three years of age and less than twenty-two years of age, including children with disabilities who have been suspended or expelled from school, have available to them a free appropriate public education. No school district, county board of developmental disabilities, or other educational agency shall receive state or federal funds for special education and related services unless those services for children with disabilities are provided in accordance with IDEIA and related provisions of the Code of Federal Regulations, the provisions of this chapter, rules and standards adopted by the department of education and workforce, and any procedures or guidelines issued by the director of education and workforce. Any options or discretion provided to the state by IDEIA may be exercised in state law or in rules or standards adopted by the department.

The department shall establish rules or standards for the provision of special education and related services for all children with disabilities who are at least three years of age and less than twenty-two years of age residing in the state, regardless of the severity of their disabilities, including children with disabilities who have been suspended or expelled from school. The state law and the rules or standards of the department may impose requirements that are not required by IDEIA or related provisions of the Code of Federal Regulations. The school district of residence is responsible, in all instances, for ensuring that the requirements of Part B of IDEIA are met for every eligible child in its jurisdiction, regardless of whether services are provided by another school district, other educational agency, or other agency, department, or entity, unless IDEIA or related provisions of the Code of Federal Regulations, another section of this chapter, or a rule adopted by the department specifies that another school district, other educational agency, or other agency, department, or entity is responsible for ensuring compliance with Part B of IDEIA.

Notwithstanding [division \(A\)\(4\) of section 3301.53 of the Revised Code](#) and any rules adopted pursuant to that section and [division \(A\) of section 3313.646 of the Revised Code](#), a board of education of a school district may provide special education and related services for preschool children with disabilities in accordance with this chapter and [section 3301.52, divisions \(A\) \(1\) to \(3\) and \(A\)\(5\) and \(6\) of section 3301.53, and sections 3301.54 to 3301.59 of the Revised Code](#).

The department may require any state or local agency to provide documentation that special education and related services for children with disabilities provided by the agency are in compliance with the requirements of this chapter.

Not later than the first day of February of each year the department shall furnish the chairpersons of the education committees of the house of representatives and the senate with a report on the status of implementation of special education and related services for children with disabilities required by this chapter. The report shall include but shall not be limited to the following items: the most recent available figures on the number of children identified as children with disabilities and the number of identified children receiving special education and related services. The information contained in these reports shall be public information.

**CREDIT(S)**

(2023 H 33, § 130.100, eff. 10-3-23; 2016 H 158, eff. 10-12-16; 2009 S 79, eff. 10-6-09; 2007 H 119, eff. 9-29-07; 1989 H 248, eff. 7-1-91; 1980 S 160; 1976 H 455)

R.C. § 3323.02, OH ST § 3323.02

Current through File 12 of the 135th General Assembly (2023-2024).

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Baldwin's Ohio Revised Code Annotated  
Title LVII. Taxation (Refs & Annos)  
Chapter 5705. Tax Levy Law (Refs & Annos)  
Appropriation Measures; Restrictions

## R.C. § 5705.412

5705.412 Restriction upon school district expenditures; certification of adequate revenues; penalty

Effective: October 3, 2023

[Currentness](#)

(A) As used in this section, “qualifying contract” means any agreement for the expenditure of money under which aggregate payments from the funds included in the school district's five-year forecast under [section 5705.391 of the Revised Code](#) will exceed the lesser of the following amounts:

(1) Five hundred thousand dollars;

(2) One per cent of the total revenue to be credited in the current fiscal year to the district's general fund, as specified in the district's most recent certificate of estimated resources certified under [section 5705.36 of the Revised Code](#).

(B)(1) Notwithstanding [section 5705.41 of the Revised Code](#), no school district shall adopt any appropriation measure, make any qualifying contract, or increase during any school year any wage or salary schedule unless there is attached thereto a certificate, signed as required by this section, that the school district has in effect the authorization to levy taxes including the renewal or replacement of existing levies which, when combined with the estimated revenue from all other sources available to the district at the time of certification, are sufficient to provide the operating revenues necessary to enable the district to maintain all personnel and programs for all the days set forth in its adopted school calendars for the current fiscal year and for a number of days in succeeding fiscal years equal to the number of days instruction was held or is scheduled for the current fiscal year, as follows:

(a) A certificate attached to an appropriation measure under this section shall cover only the fiscal year in which the appropriation measure is effective and shall not consider the renewal or replacement of an existing levy as the authority to levy taxes that are subject to appropriation in the current fiscal year unless the renewal or replacement levy has been approved by the electors and is subject to appropriation in the current fiscal year.

(b) A certificate attached, in accordance with this section, to any qualifying contract shall cover the term of the contract.

(c) A certificate attached under this section to a wage or salary schedule shall cover the term of the schedule.

If the board of education has not adopted a school calendar for the school year beginning on the first day of the fiscal year in which a certificate is required, the certificate attached to an appropriation measure shall include the number of days on which instruction was held in the preceding fiscal year and other certificates required under this section shall include that number of days for the fiscal year in which the certificate is required and any succeeding fiscal years that the certificate must cover.

The certificate shall be signed by the treasurer and president of the board of education and the superintendent of the school district, unless the district is in a state of fiscal emergency declared under Chapter 3316. of the Revised Code. In that case, the certificate shall be signed by a member of the district's financial planning and supervision commission who is designated by the commission for this purpose.

(2) In lieu of the certificate required under division (B) of this section, an alternative certificate stating the following may be attached:

(a) The contract is a multi-year contract for materials, equipment, or nonpayroll services essential to the education program of the district;

(b) The multi-year contract demonstrates savings over the duration of the contract as compared to costs that otherwise would have been demonstrated in a single year contract, and the terms will allow the district to reduce the deficit it is currently facing in future years as demonstrated in its five-year forecast adopted in accordance with [section 5705.391 of the Revised Code](#).

The certificate shall be signed by the treasurer and president of the board of education and the superintendent of the school district, unless the district is in a state of fiscal emergency declared under Chapter 3316. of the Revised Code. In that case, the certificate shall be signed by a member of the district's financial planning and supervision commission who is designated by the commission for this purpose.

(C) Every qualifying contract made or wage or salary schedule adopted or put into effect without such a certificate shall be void, and no payment of any amount due thereon shall be made.

(D) The department of education and workforce and the auditor of state jointly shall adopt rules governing the methods by which treasurers, presidents of boards of education, superintendents, and members of financial planning and supervision commissions shall estimate revenue and determine whether such revenue is sufficient to provide necessary operating revenue for the purpose of making certifications required by this section.

(E) The auditor of state shall be responsible for determining whether school districts are in compliance with this section. At the time a school district is audited pursuant to [section 117.11 of the Revised Code](#), the auditor of state shall review each certificate issued under this section since the district's last audit, and the appropriation measure, contract, or wage and salary schedule to which such certificate was attached. If the auditor of state determines that a school district has not complied with this section with respect to any qualifying contract or wage or salary schedule, the auditor of state shall notify the prosecuting attorney for the county, the city director of law, or other chief law officer of the school district. That officer may file a civil action in any court of appropriate jurisdiction to seek a declaration that the contract or wage or salary schedule is void, to recover for the school district from the payee the amount of payments already made under it, or both, except that the officer shall not seek to recover payments made under any collective bargaining agreement entered into under Chapter 4117. of the Revised Code. If the officer does not file such an action within one hundred twenty days after receiving notice of noncompliance from the auditor of state, any taxpayer may institute the action in the taxpayer's own name on behalf of the school district.

(F) This section does not apply to any contract or increase in any wage or salary schedule that is necessary in order to enable a board of education to comply with [division \(B\) of section 3317.13 of the Revised Code](#), provided the contract or increase does not exceed the amount required to be paid to be in compliance with such division.

(G) Any officer, employee, or other person who expends or authorizes the expenditure of any public funds or authorizes or executes any contract or schedule contrary to this section, expends or authorizes the expenditure of any public funds on the void contract or schedule, or issues a certificate under this section which contains any false statements is liable to the school district for the full amount paid from the district's funds on the contract or schedule. The officer, employee, or other person is jointly and severally liable in person and upon any official bond that the officer, employee, or other person has given to the school district to the extent of any payments on the void claim, not to exceed ten thousand dollars. However, no officer, employee, or other person shall be liable for a mistaken estimate of available resources made in good faith and based upon reasonable grounds. If an officer, employee, or other person is found to have complied with rules jointly adopted by the department of education and workforce and the auditor of state under this section governing methods by which revenue shall be estimated and determined sufficient to provide necessary operating revenue for the purpose of making certifications required by this section, the officer, employee, or other person shall not be liable under this section if the estimates and determinations made according to those rules do not, in fact, conform with actual revenue. The prosecuting attorney of the county, the city director of law, or other chief law officer of the district shall enforce this liability by civil action brought in any court of appropriate jurisdiction in the name of and on behalf of the school district. If the prosecuting attorney, city director of law, or other chief law officer of the district fails, upon the written request of any taxpayer, to institute action for the enforcement of the liability, the attorney general, or the taxpayer in the taxpayer's own name, may institute the action on behalf of the subdivision.

(H) This section does not require the attachment of an additional certificate beyond that required by [section 5705.41 of the Revised Code](#) for current payrolls of, or contracts of employment with, any employees or officers of the school district.

This section does not require the attachment of a certificate to a temporary appropriation measure if all of the following apply:

- (1) The amount appropriated does not exceed twenty-five per cent of the total amount from all sources available for expenditure from any fund during the preceding fiscal year;
- (2) The measure will not be in effect on or after the thirtieth day following the earliest date on which the district may pass an annual appropriation measure;
- (3) An amended official certificate of estimated resources for the current year, if required, has not been certified to the board of education under [division \(B\) of section 5705.36 of the Revised Code](#).

#### CREDIT(S)

(2023 H 33, § 130.100, eff. 10-3-23; 2011 H 153, eff. 9-29-11; 2003 H 3, eff. 8-15-03; 2000 S 77, eff. 6-30-00; 1999 H 282, eff. 9-28-99; 1997 H 412, eff. 7-1-98; 1997 H 215, eff. 7-1-98; 1990 S 257, eff. 9-26-90; 1985 H 201; 1984 H 747; 1980 H 1237; 1979 H 44, H 288; 1978 H 1285; 1977 S 221, H 219; 1972 H 1029; 1971 H 475)

R.C. § 5705.412, OH ST § 5705.412

Current through File 12 of the 135th General Assembly (2023-2024).