

Ohio School Psychologists Association Fall 2022 Conference Navigating Hot Button Issues in 2022

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Presented by:

Pamela A. Leist - pleist@ennisbritton.com

@Pamela_Leist

SCHOLARS IN EDUCATION LAW

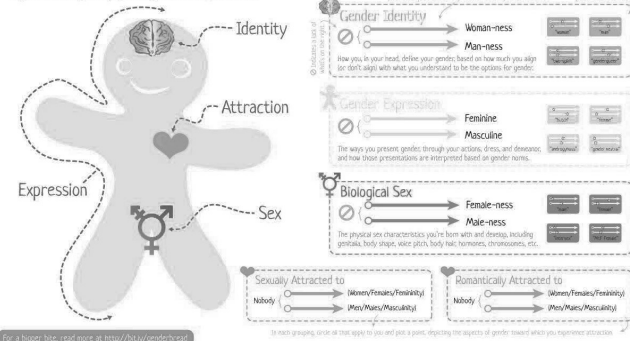
Transgender Rights and the Shifting Sands of Time

Let's Start with the Basics

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The Genderbread Person v3.3


Gender is one of those things everyone thinks they understand, but most people don't. Like idioms. Gender isn't binary. It's not either/or. In many cases it's both/and. A bit of this, a dash of that. This tasty little guide is meant to be an appetizer for gender understanding. It's okay if you're hungry for more. In fact, that's the idea.



Intersex – (OCR Terminology) generally describes people with **variations in physical sex characteristics**. These variations may involve anatomy, hormones, chromosomes, and other traits that differ from expectations generally associated with male and female bodies.

Cisgender – a person who identifies with the gender they are assigned at birth.

Transgender – a person whose gender identity does not conform to social or conventional norms associated with male or female gender; gender association does not match the assigned sex. **This is independent of sexual orientation (internal experience).**



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Gender nonconforming – a person who does not follow other people's ideas or stereotypes about how they should look or act based on the female or male gender assigned at birth.

Non-binary – a person who does not subscribe to conventional gender distinctions but identifies with neither, both, or a combination of genders.

Gender dysphoria – a formal diagnosis by a medical professional of a person whose emotional and psychological identity is the opposite of his/her biological sex.

GENDER PRONOUNS

1	2	3	4	5
(f)ae	(f)aer	(f)aer	(f)aers	(f)aerself
e/ey	em	eir	eirs	eirself
he	him	his	his	himself
per	per	pers	pers	perself
she	her	her	hers	herself
they	them	their	theirs	themself
ve	ver	vis	vis	verself
xe	xem	xyr	xyrs	xemself
ze/zie	hir	hir	hirs	hirself

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WHERE IS THE STUDENT IN TRANSITION?


Transition – the process through which a person's gender identity becomes known to others, or becomes established through legal documentation, and/or through medical interventions.

- ♦ **Social transition** – coming out and creating a personal environment in which a person's gender identity is known and, ideally, respected by others.
- ♦ **Medical transition** – using hormonal and/or surgical interventions to more closely align one's body with one's gender identity.
- ♦ **Legal transition** – changing identity documents to have a name and/or gender marker that reflects one's current identity.

Many transgender people never transition for a variety of reasons.

- ✓ They do not desire a physical change.
- ✓ They are content to have the world see them in a way that differs from how they identify internally.
- ✓ They are unable to transition due to work, school, family, health, or financial reasons.
- ✓ Some adopt a more neutral or gender non-conforming presentation without undergoing a full transition.

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Student's Rights: What's the (Administrative) Back Story?

A Walk Down Memory Lane

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HISTORY OF ADMINISTRATIVE GUIDANCE

2014: DOE – Colleges, universities, and public schools are expected to address sexual violence and other forms of sex discrimination, including acts taken against transgender students, in accordance with Title IX.

2014: EEOC "Employment Protections for LGBT Persons under Federal Sex Discrimination Laws" – Discrimination in the workplace against gay, lesbian, and transgender individuals violates state and federal civil rights laws.

2015: OSHA "Best Practices: A Guide to Restroom Access for Transgender Workers" – Employees should be able to use the restroom facilities that correspond to the gender they identify with.

2016: USDOE/DOJ "Dear Colleague" letter - "significant guidance" setting conditions on receiving federal funds, such as providing transgender students equal access to educational programs and activities, and allowing transgender students access to restrooms and locker rooms consistent with their gender identity, but may make individual facilities available to all students who seek additional privacy.

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CHANGE IN DIRECTION

2017: Guidance from 2016 rescinded. States and schools should make their own decisions without federal interference

2018: U.S. Department of Education reported that USDOE will handle complaints from transgender students as follows:

- **Will not investigate or take action on:**
 - Complaints filed by transgender students who are banned from using restrooms that match their gender identity
- **Will investigate or take action on:**
 - Complaints alleging that a transgender student has been bullied, harassed, or punished due to his or her gender nonconformity

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MORE RECENT GUIDANCE

Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation (January 20, 2021) This presidential order states that all persons (including children) should receive equal treatment under the law, no matter their sexual orientation or gender identity.

Executive Order on Guaranteeing an Educational Environment Free from Discrimination on the Basis Sex, Including Sexual Orientation or Gender Identity (March 8, 2021) This presidential order required the Secretary of Education to review all existing regulations guidance and policies for inconsistency with this order and to issue new guidance "as soon as practicable" with the authority to suspend, revise or rescind prior agency actions.

Title IX Public Hearing (June 7-11, 2021) This hearing invited students, educators, and other members of the public to provide comments, including on steps the Department can take to address discrimination based on sexual orientation or gender identity in educational environments.

Notice of Interpretation (June 16, 2021) Enforcement of Title IX with Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of *Bostock v. Clayton County* (SCOTUS, June 15, 2020). This notice clarifies that Title IX prohibits discrimination based on sexual orientation and gender identity.

Fact Sheet on Anti-LGBTQ+ Harassment in Schools (June 23, 2021) This fact sheet explains that discrimination against students based on their sexual orientation or gender identity is a form of sex discrimination prohibited by federal law, provides examples of the kinds of incidents OCR and the Justice Department may investigate, and includes information on what a student can do if they experience discrimination at school.

Announcement of Title IX Regulation Changes (June 23, 2022) – Stay Tuned!

Transgender Hot Topics & Recent Developments

RECENT UPDATES: ATHLETIC PARTICIPATION

Soule et al. v. CT Association of Schools et al. (District Conn. 2020)

- Students and their parents sued the Connecticut High school Athletic Conference, several school boards to prohibit them from allowing transgender students to participate in sports in accordance with the gender they identify with and to remove them from the records of races they had participated in while students.
- The two transgender students named in the suit intervened as defendants represented by the ACLU.
- The Trump administration intervened in the suit in support of the Plaintiffs. The Biden administration later withdrew from the suit.
- The District Court dismissed the case, which is now before the Court of Appeals. The dismissal was based on issues related to justiciability and whether money damages could be awarded, but the court directly noted that every appeals court so far that it reviewed has held that Title IX requires schools to treat transgender students consistent with their gender identity.

RECENT UPDATES: ATHLETIC PARTICIPATION

- “Save Women’s Sports Act” - Ohio Senate Bill 132 (3/16/21 – In Committee) and Ohio House Bill 61 (2/4/21 – In Committee, next scheduled hearing June 24th) – both propose to ban transgender students at all school levels from playing on the sports teams that align with their gender identity.
 - About 35 similar bills have been introduced at the state level across the country. Eight bills have been signed into law this year.
- **Hecox v. Little**, Case 1:20-cv-00184-DCN (District Court, Idaho)
 - Judge granted an injunction in favor of a college student against an Idaho law prohibiting transgender athletes from participating in sports based on the gender with which they identify.
- **FINA**, the World swimming’s governing body, voted on June 19th to approve new eligibility rules that restrict participation of transgender athletes in women’s competitions. Other sports may soon follow.

ATHLETICS: OHSAA POLICY 2014

The Ohio High School Athletic Association adopted a transgender policy in November 2014 setting forth eligibility rules.

<http://www.ohsaa.org/eligibility/TransgenderPolicy.pdf>

Notice to the School: The student and/or parents shall contact the school administrator or athletic director indicating that the student has a consistent gender identity different than the gender listed on the student’s school registration records or state birth record, and that the student desires to participate in activities in a manner consistent with his/her gender identity.

Notice to the Commissioner’s Office of the OHSAA: Upon receipt of notice from a transgender student and/or parent of a transgender student wishing to participate in interscholastic sports in a manner consistent with his/her gender identity, the school administrator or athletic director shall notify the OHSAA of the student’s interest in participating.

Clearance by Commissioner’s Office: Upon receipt of notice from a member school that a transgender student athlete wishes to participate in OHSAA sponsored sports in a manner consistent with his/her gender identity, the Commissioner’s Office shall take action.

When a student athlete is taking hormone treatment related to gender transition, that treatment must be monitored by a physician, and the Commissioner’s Office must receive regular reports about the athlete’s eligibility.

OHSAA TRANSGENDER FEMALE COMPETITORS

- A transgender female (male-to-female) student athlete who is taking medically prescribed hormone treatment related to gender transition may participate on a boy’s team at any time.
- However, before a transgender female may compete in a girl’s sport or on a girl’s team, the transgender female must either:
 - Have completed a minimum of one year of hormone treatment related to gender, or
 - Demonstrate to the Commissioner’s Office by way of sound medical evidence that the transgender female student athlete does not possess physical (bone structure, muscle mass, testosterone, hormonal, etc.) or physiological advantages over genetic females of the same age group.

OHSAA TRANSGENDER MALE COMPETITORS

A transgender male (female-to-male) student athlete who has **not** yet begun medically prescribed testosterone treatment for purposes of gender transition may compete on a boy's team.

If, however, the transgender male student athlete is taking medically prescribed testosterone treatment, medical evidence must be submitted to the Commissioner's Office that certifies that:

- ☐ the muscle mass developed as a result of this testosterone treatment does not exceed the muscle mass that is typical of an adolescent genetic boy;
- ☐ the student's testosterone treatment does not cause hormone levels to exceed normal levels; and
- ☐ the student's hormone levels are monitored by a licensed physician every three to six months.

RECENT UPDATES: USE OF PRONOUN CASES

Meriwether v. Hartop, U.S. Court of Appeals 6th Circuit. (March 2021)

- An Ohio university professor received a written reprimand after failing to use a student's preferred pronouns in class. He brought an action against the university alleging a violation of rights to his free speech and religious freedom.
- In the court's decision it highlighted the special place that universities hold in constitutional law, underscoring how strong the right to free speech is in such classrooms. It held that the professor's refusal to use a student's preferred pronouns was speech on a matter of public interest and his free speech rights outweighed the state's stated interest in "promoting the efficiency of the public services it performs through its employees."
- The court found that given the facts alleged in the complaint, it was plausible that the university was not religiously neutral in its treatment and remanded the case for fact-finding at the trial level.
- **UPDATE:** case settled this April 2022. Shawnee State agreed to rescind the reprimand and pay Meriwether \$400k in damages & attorney fees.

RECENT UPDATES: USE OF PRONOUN CASES

Kluge v. Brownsburg Community School Corporation, U.S. District Court, S.D. Indiana (July 2021).

- High school music teacher was forced to resign after the district denied a religious exemption to the policy of using students' preferred pronouns.
- A district court judge granted the school's motion for summary judgment, finding there was no Title VII violation in the forced resignation of the teacher.
- The court found that this case was distinct from *Meriwether* for two important reasons:
 - First, a high school teacher has different rights in their classroom than a university professor.
 - Second, in this case, the teacher did not assert their free speech rights but rather asserted a violation of Title VII for discrimination based on their religious beliefs.
- Even though the teacher showed a prima facie case for discrimination, the court found that any accommodation would create an interference with the school's ability to educate students, and that is an undue burden.

RECENT UPDATES: USE OF PRONOUN CASES

Ricard v. USD 475 Geary County, KS School Board, U.S. District Court, Kansas. Settled in August 2022.

- A middle school math teacher filed suit because she was suspended for 3 days following her refusal to call a student by their preferred pronouns.
- This case was filed on March 7th, 2022.
- The teacher asserted that her free speech rights, religious freedom rights, and due process rights were violated.
- The court issued a temporary injunction in May 2022 authorizing the teacher to use the pronoun of HER choice, and in doing so recognized that the teacher had a likelihood of success.
- The parties agreed to settle the case and it was dismissed in August for \$95k in damages and attorney fees. The district also had to declare the teacher retired at the end of the year in good standing with no disciplinary actions taken against her.

STATE BOARD RESOLUTION CHALLENGING FEDS

- **Resolution proposed at September board meeting, voted on in October**
- Declares the board's "unequivocal opposition to the proposed regulatory changes released by the U.S. Department of Education on June 23, 2022"
- Also declares support lawsuit seeking to invalidate rules adopted by the Department of Agriculture which was joined by the Ohio AG and 21 other state attorneys general
- Directs the Superintendent of Public Instruction to mail a copy of the resolution if approved to every public school district as well as elementary and secondary schools and preschools receiving federal funds, with a cover letter from the ODE stating the agency opposes Title IX regulatory changes, considers USDOE guidance documents without legal force and nonbinding, and urges districts not to amend policies/procedures based on guidance documents

STATE BOARD RESOLUTION CHALLENGING FEDS

- State Board also calls on General Assembly to:
 - ☐ Assist local schools "in combatting this federal overreach" by approving stopgap funding should the rules take effect
 - ☐ Pass legislation requiring schools to disclose information to parents whenever minor children claims a "discordant" gender identity, questions their identity, requests alternative names or pronouns, or otherwise indicates mental or emotional distress about gender identity
 - ☐ Protect rights of women and girls by prohibiting biological males to participate on female sports teams or access female privacy facilities
 - ☐ Prohibit classroom instruction on sexual orientation and gender identity in grades K-3
- Final paragraph declares the State Board rejects harmful, coercive and burdensome gender identity policies, procedures and regulations

Quick Tips: How Should You Respond?



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PRIVACY ISSUES

Students may have a privacy interest in their sexual orientation or gender identity, even if the information is known in some situations and not others.

o *Nguon v. Wolf*, 517 F.Supp.2d 1177 (C.D. Cal 2007)

Does a student have a privacy interest in his/her sexual orientation or gender identity, so much so that s/he can refuse to allow the district to inform the student's parents?

Is the information that would reveal a student's gender identity necessary to carry out the administrator's responsibilities?

Are there ways to safeguard against future/unintended disclosures?

Legislation may be soon to come on this!

STUDENT RECORDS AND REFERENCES

- o FERPA and Ohio Law
- o Parent knowledge of sexual orientation or gender identity
- A district may not disclose PII from educational records unless a FERPA exception applies
 - o Records that relate to gender identity contain PII
- FERPA allows parents and eligible students to review their educational records and change inaccurate or misleading information
 - o Does not prevent or compel school districts to change student records with no "inaccuracy," but leaves the decision for the local school district

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OFFICIAL RECORDS

Do we need to/can we change our official records for a student?

- Ohio law now permits a change on birth certificate for gender marker.
- Federally – medical documentation can be submitted to U.S. State Department for a change in gender marker on passport.
- ❖ If we have a change in the gender marker on a **passport** but not on a **birth certificate**, should we change the EMIS gender marker?

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NAMES

- o Do we treat the preferred name similarly to the way we would treat a nickname for any other student?
 - ✓ Nickname = derivative of given name.
- o **Remember:** The official/legal name is changed only when a **court order** legally changes the student's name.

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CASUAL REFERENCE

There is a distinction between official records and day-to-day references to the student.

Consider if/when/how you'll do the following:

Allow students to choose their name and preferred pronoun based on their consistently asserted gender identity.

Remember: There is no requirement for a court-ordered name and/or gender change in order to be referred by the name and pronouns they have chosen.

Remember: The name and pronouns reflecting the gender identity that is consistently asserted at school might not be the ones that are used at home.

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RESTROOMS/LOCKER ROOMS

Considerations: Because the use of facilities incorporates the recognition of a student's identity as well as privacy, comfort, and safety, this issue requires schools to consider numerous factors:

- Transgender student's preference
- Protecting student privacy
- Maximizing social integration of the transgender student
- Minimizing stigmatization of the student
- Ensuring equal opportunity to participate
- The student's age
- Protecting the safety of the students involved



ALTERNATIVE ARRANGEMENTS

A transgender student may express a need or desire for reasonable alternative arrangements regarding bathroom and locker use.

Alternative arrangements may include:

- Private area
- Separate changing schedule
- Single-stall restroom or unisex restroom

Any alternative arrangement should be provided in a way that protects the confidentiality of the student's transgender status.



ATTIRE

Students may request to dress in accordance with the gender identity that is regularly asserted at school.

- Schools should enforce the dress codes consistently and fairly across the entire student body.
- Does your dress code require students to choose between male and female clothing?

BULLYING AND HARASSMENT

Title IX implications:

- Transgender students may be at a higher risk for being bullied and harassment.
- Your current policies should cover these students under the prohibitions against discrimination on the basis of sex.

OVERNIGHT TRIPS

What should you do when transgender students attend overnight trips?

- What if it is with their assigned gender?
- What about their identified gender?

May we alert the other students and their parents to the gender identity of this student?



EXTRACURRICULAR ACTIVITIES

Transgender students should be provided the same opportunities to participate as other students.

- Participation in physical education based on the gender identity?
- What about competitive athletic events and contact sports?
- What will we do about locker rooms?
- How will we handle team travel and overnight field trips?



How Can We Be Proactive?

Ensure students, parents, administrators, board members, teachers, and staff are trained about what gender identity is, and what it means to be a transgender student.

- Consider the reaction your residents and other parents will have.

Ensure counselors, school psychologists, and social workers are able to provide culturally competent counseling to all students.

(OCR's *Questions and Answers on Title IX and Sexual Violence*, April 2014)

- Keep open lines of communication. Often the counselors or school nurse have more private dialogue with students. These are often your first communicators.

With each student, assess the level of parent knowledge/consent/involvement early on.

PROACTIVE MEASURES

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When a student/parent contacts the district, schedule a meeting to discuss the student's needs.

- Develop a plan. You may use the model of the 504 plan process to develop the plan to address student needs. After all – It's about accommodations!

- Carefully consider the participants

• **Discuss:**

- **Accommodations** – Restrooms, locker rooms, changing areas, school-related activities.
- **EMIS records** – Where will **unchanged EMIS records** impact a student throughout the year/day? Testing booklets, report cards, progress reports, IEPs, etc.
- **Process** – To deal with changes in the plan set up with the student (and parent?).
- **Concerns** – Of all participants involved.
 - Student: privacy, confidentiality, safety

RECOMMENDED BEST PRACTICES

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- Listen to what the parents have to say.
- Listen to what the student has to say.
- Work as a team to develop a plan for the student.
- Document this meeting and the resulting plan. Revisit the plan yearly – it will evolve over time.

HAVE A PLAN!

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U.S. Department of Education
Office for Civil Rights

October 2021

How Can Schools Support Intersex Students?

- Use inclusive language in school mission statements, such as a commitment to a safe and supportive campus for all students.
- Affirm students' right to be free from all forms of sex discrimination at school.
- Adopt policies that respect all students' gender identities and, where relevant, accurately reflect the diversity of human bodies.
- Advance gender-neutral practices (e.g., have students line up alphabetically).
- Maintain confidentiality about a student's medical information, except in the limited circumstances where disclosure is legally required.
- Facilitate opportunities for students to find support from peers, teachers, faculty, and staff, such as student-led organizations, and identify or provide supportive resources.
- Provide professional development opportunities for educators on supportive treatment of intersex students.

Where do we go from here?

New Title IX regulations will be coming – Initial draft released June 23, 2022 and open for public comment!

Cases will continue to be filed and decided, expanding our understanding of the law.

OCR will issue guidance.

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In the meantime....



Educating English Learners

SOME STATS ON EL STUDENTS IN OHIO

- Per ODE, Ohio's EL students have doubled in number over the last ten years to approximately 60k
- Spanish is the home language for 40% of EL students
- 90 other recognized home languages

FEDERAL PROTECTIONS FOR EL STUDENTS

- Anti-discrimination laws and regulations cover protected classes such as race, color, religion, sex, national origin, etc.
- Most protections against EL discrimination have been enacted through federal law. These laws form the basis for EL discrimination lawsuits.
 - Fourteenth Amendment Equal Protection Clause
 - Title VI of the Civil Rights Act of 1964
 - Bilingual Education Acts of 1968 and 1974
 - Health, Education, and Welfare Memorandum of 1970
 - Equal Educational Opportunities Act of 1974
 - Civil Rights Language Minority Regulations of 1980
 - Every Student Succeeds Act

FEDERAL PROTECTIONS FOR EL STUDENTS

- **Fourteenth Amendment**
 - Provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws."
 - Does not address discrimination on a particular basis but rather unequal treatment of groups of people.
 - §1983 claim is a primary vehicle to enforce the Fourteenth Amendment.

FEDERAL PROTECTIONS FOR EL STUDENTS

- **Title VI of the Civil Rights Act of 1964**
 - Prohibits discrimination on the basis of race, color, and national origin in programs and activities that receive federal financial assistance
 - Serves as model for other anti-discrimination laws, including Section 504
 - *Simple justice requires that public funds, to which all taxpayers of all races [colors, and national origins] contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial [color or national origin] discrimination.* – John F. Kennedy (1963)
 - Federal agencies including ODE must enact rules to achieve Title VI goals
 - Many recent cases brought under Title VI relate to a district's obligation to meet the needs of non-English -speaking students

FEDERAL PROTECTIONS FOR EL STUDENTS

- **Bilingual Education Acts of 1968 and 1974**
 - Also known as Title VII
 - Provided supplemental funding for school districts interested in establishing programs to meet the "special educational needs" of large numbers of children of limited English-speaking ability
- **Equal Educational Opportunities Act of 1974**
 - Mandates that no state can deny equal educational opportunities to any person on the basis of gender, race, color, or nationality through:
 - Intentional segregation
 - Neglecting to resolve an intentional segregation practice
 - Forced assignment of students to a school other than the closest school of residence that promotes further segregation
 - Discrimination in determining faculty and staff
 - Transferring a student to another school to increase segregation
 - **Failing to remove language barriers preventing students from being able to equally participate in English classes**

FEDERAL CASES PAVING THE WAY TO EQUAL ACCESS

***Brown v. Bd. of Educ.*, 347 U.S. 483 (1954)**

- US Supreme Court struck down “separate but equal” that was established in *Plessy v. Ferguson*.
- This decision established the principle of **equal educational opportunity** for all students.

***Johnson v. San Francisco Unified Sch. Dist.*, 339 F.Supp 1315 (N.D. Cal. 1971)**

- In some instances, desegregation actually made EL efforts more difficult
- Chinese Americans fought a desegregation order that forced them out of neighborhood schools that provided bilingual English-Chinese programs
- The court ruled against the Chinese community

FEDERAL CASES PAVING THE WAY TO EQUAL ACCESS

***Plyler v. Doe*, 457 U.S. 202 (1982)**

- US Supreme Court concluded a Texas law that denied funding to schools with undocumented students was unconstitutional based on the Fourteenth Amendment
- The Texas statute denied free public education to undocumented immigrants
- The Court reasoned that **illegal aliens and their children**, although not citizens, are still people and therefore **are afforded constitutional protections**

***Lau v. Nichols*, 414 U.S. 563 (1974)**

- Class-action lawsuit brought by Chinese-speaking students against a San Francisco school district
- US Supreme Court reaffirmed the 1970 memorandum prohibiting denial of access to educational programs due to inability to speak or understand English

EVERY STUDENT SUCCEEDS ACT REQUIREMENTS

- Signed December 2015, reauthorizes the Elementary and Secondary Education Act of 1965 (“ESSA”)
- Establishes requirements for public and non-public schools that receive federal funds pursuant to federal equal access/nondiscrimination laws
- Pursuant ESSA, all states including Ohio must:
 - Adopt a process to identify EL students
 - Annually assess English proficiency with tests that are aligned with the state’s English language proficiency standards
 - Provide reasonable accommodations on state assessments
 - To the extent practicable, provide assessments in the language and form most likely to yield accurate and reliable information on what those students know and can do to determine the student’s mastery of skills in subjects other than English until the student achieves EL proficiency
 - Implement accountability systems that include long term goals and measures of progress

IDENTIFICATION OF EL STUDENTS

- Must identify EL students **within 30 days of enrollment**, which is defined as the date on which the school received documentation and the student commences learning
- **Step 1:** ODE requires families to complete the Language Usage Survey
 - There are 17 versions available that have translated into the most common languages in Ohio
- **Step 2:** Ohio English Language Proficiency Screener (“OELPS”)
 - Designed to gauge development of English as a second/new language in the domains of listening, speaking, reading and writing

Question: Do entities other than a home district need to comply? Special Education program providers? Career Technical Schools?

ID OF EL SPECIAL EDUCATION STUDENTS

Scenario: a student who has a severe hearing impairment and is nonverbal is enrolled in kindergarten. Vietnamese is spoken in the home. The family speaks very little English. How do we proceed?

- Do we conduct a special education evaluation? Anything special about the evaluation process, the assessments we use?
- What if the student is unable to complete portions of the OELPS due to disability-related needs?
- Is the student entitled to both EL and IEP services potentially?

ID OF EL SPECIAL EDUCATION STUDENTS

- Must consider English language proficiency of ELs with disabilities in determining appropriate assessments for evaluations
 - Evaluations should not be delayed because of limited English proficiency or student’s participation in a LIEP
- Must provide and administer evaluations in the child’s native language, unless it is clearly not feasible to do so
 - BTW, must also take steps to engage with parents in their native language to facilitate meaningful participation, both at meetings and in all documentation
- Need to attempt to determine whether delays are disability related, or language related
- Must provide eligible students with both special education and language services if they are eligible per state and federal law
 - IEP team should include participants that can assess and assist with language barriers
 - The Feds encourage schools to involve staff with training and expertise in second language acquisition

ID OF EL STUDENTS

- In-state Transfers:
 - Schools may rely on language surveys and EL ID of students who transfer from another Ohio district
- Out-of-state Transfers
 - If a student transfers from out of state, then they must be assessed for EL status based on ODE's requirements and definitions
 - School may use language survey from other US schools, but apply ODE's definition
 - If district does not receive the survey results within 30 days of enrollment, must administer the Ohio Language Usage Survey

NOTICE TO PARENTS OF EL STUDENTS

- Must initially notify parents of ID, and continue to notify them annually
- Notice outlines child's ID as EL student, as well as placement in the language instruction educational program
- Must be provided no later than 30 calendar days after their enrollment (for students who enroll after the start of the school year, can add two additional weeks after placement in the LEIP)
- ODE provides templates for initial notice and annual notice, translated into a number of different languages

SERVICES FOR EL STUDENTS

- Once EL students are identified, districts are required to provide them with appropriate language assistance services and programs
- Goals of services:
 - Enable skill acquisition for English language
 - Ensure equal participation in curriculum and instruction

SERVICES FOR EL STUDENTS

- Factors to consider
 - English language proficiency
 - Grade level
 - Educational background
 - Language background for bilingual programs
- Districts expected to provide services from "qualified" professionals, and also provide access across all programs and services (including extracurriculars)
- Services continue until a student is exited from EL services

SERVICES FOR EL STUDENTS

Castaneda v. Pickard (5th Cir. 1981), 648 F.2d 989

- Facts: Mexican-American children and their parents filed a lawsuit against the Raymondville Texas Independent School District alleging the district engaged in discrimination in violation of the Fourteenth Amendment, Title VI, Equal Educational Opportunities Act of 1974. Complaint alleged that the children were unlawfully segregated and also received an inadequate bilingual education that denied their right to an education.
- Held: Court determined that school districts are required to take necessary actions to provide EL students the ability to overcome language barriers.
- Criteria for effective programs:
 - The bilingual education program must be based on sound educational theory
 - Program must be implemented effectively with resources for personnel, instructional materials, and space
 - After a trial period, the program must be proven effective in overcoming barriers/handicaps

RECLASSIFICATION/EXIT OF EL STUDENTS

- Students are expected to take the state's annual summative assessment, Ohio English Language Proficiency Assessment ("OELPA"), to determine progress and whether student is ready to be exited from services
 - Assesses proficiency in measuring, listening, speaking, reading, and writing
- OELPA is required for all EL students, and is administered during the designated testing window
- OELPA Performance Levels
 - 1 - Emerging – student receives services
 - 2 - Progressing – student receives
 - 3 - Proficient – student exits from EL status
- Untested/invalidated tests fall into category 1 or category 2 and cannot be exited from services!

MONITORING EL STUDENTS

- Districts are expected to monitor and regularly assess progress of EL students in both English proficiency and content knowledge, even if they opt out of services
- Monitoring systems should include periodic benchmarks to determine progress over time and identify when students are not making appropriate progress
- If inadequate progress is discovered, districts are expected to provide additional supports
- After students have exited services, schools are expected to monitor progress for at least two years
 - If student is not progressing adequately, schools may need to reassess English proficiency using a valid test
 - Schools should document this carefully

EL SPECIAL EDUCATION STUDENT SCENARIO, TAKE 2

- Our hearing-impaired student is determined eligible for special education under IDEA, and is also identified as an EL student.
- How should the IEP team address disability related needs for the OELPA assessment?
 - Per ODE, districts may exempt students from no more than three of the four domains or tests on the OELPA, and only if the student's disability is such that the student cannot participate in the stated domain or test per the individualized education program (IEP) or 504 plan with existing accommodations.
 - Exemption must be documented in IEP/504
 - Students may reach the Proficient level if they receive 4's and 5's on all non-exempt domains

What's Happening in Ohio With Dyslexia?

STUDENTS WITH DYSLLEXIA

- Percentage of students with dyslexia estimated to be between 5% and 17%
- Students with "characteristics" of dyslexia estimated to be between 15%-20%

Elliott & Grigorenko, 2014; Fletcher, et al., 2019; International Dyslexia Association, 2012; Odegard, et al. 2020



SPECIAL EDUCATION

How do we typically classify dyslexia under IDEA?

DYSLLEXIA UNDER IDEA AND STATE LAW

34 C.F.R. 300.8, OAC 3301-51-01(B)(10)(d)(x)

- Falls under Specific Learning Disability
- SLD is defined as a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia
 - BTW – Section 504 defines it the same way!
- The word dyslexia is only mentioned twice in the operating standards – under definitions of SLD and Vision Impairment



IDEA SLD ELIGIBILITY CRITERIA #1

Child does not achieve adequately for their age/grade level in one or more areas:

- Oral expression
- Listening comprehension
- Written expression
- Basic reading skills
- Reading fluency skills
- Reading comprehension
- Mathematics calculation
- Mathematics problem-solving

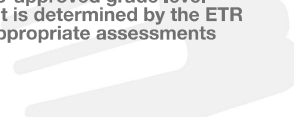


IDEA SLD ELIGIBILITY CRITERIA #2

Child does not make sufficient progress to meet age/state-approved grade levels in one or more areas listed previously when using a process based on the child's response to scientific, research-based intervention

OR

Child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade level standards, or intellectual development that is determined by the ETR team to be relevant to the SLD ID, using appropriate assessments



IDEA SLD ELIGIBILITY CRITERIA #3

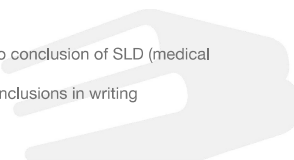
The ETR team determines that its findings under the other criteria are not primarily the result of:

- A visual, hearing, or motor disability;
- An intellectual disability;
- Emotional disturbance;
- Cultural factors;
- Environmental or economic disadvantage; or
- Limited English proficiency.



OHIO RULES FOR SLD ID

- Criteria adopted by the state included in 3301-51-06, and districts must use them
- To determine that underachievement is not due to lack of appropriate reading or math instruction, ETR team must consider:
 - Data that demonstrates the child received appropriate instruction by qualified staff
 - Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction
- Evaluation may utilize a process based on a child's response to scientific, research-based intervention to determine SLD ID
- Must ensure student is observed in classroom
- Must meet documentation requirements that led to conclusion of SLD (medical documentation, interventions, etc.)
- Each ETR team member must certify their own conclusions in writing



MEET THE TEAM!

- Evaluation team for student suspected of having SLD identification includes
 - Parents
 - Regular education teacher or general education teacher qualified to teach students of the child's age
 - At least one individual qualified to conduct individual diagnostic examinations of students, such as a school psychologist, speech-language pathologist, or remedial teacher

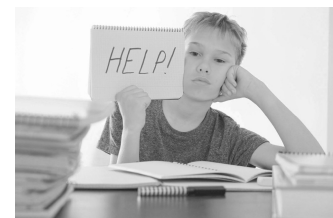
OAC 3301-51-01 (B)(22); 3301-51-06(H)(2)



DYSLEXIA UNDER STATE LAW

ORC §3323.25

"Dyslexia" means a specific learning disorder that is neurological in origin and that is characterized by unexpected difficulties with accurate or fluent word recognition and by poor spelling and decoding abilities not consistent with the person's intelligence, motivation, and sensory capabilities, which difficulties typically result from a deficit in the phonological component of language.



HB 436 – DYSLEXIA LAW

Signed by Gov. DeWine on January 9, 2021 (bill passed by GA on 12/20/2020)

Generally:

- Requires ODE and Ohio Dyslexia Committee to develop a guidebook on best practices for screening, intervention, remediation
- Requires ODE to offer professional development and assist districts in creating multi-disciplinary teams to carry out these practices
- Requires ODE to gather and report district data
- Requires ODE to develop academic standards in reading and writing for K-1 that incorporate the above
- For 2022-2023, school districts are required to have a multi-sensory certification process aligned with the guidebook for K-3 teachers
- Districts must also establish a multidisciplinary team to administer screening and intervention measures and analyze results of the measures

Original Timeline Under HB 436 – Required Tier 1 Dyslexia Screening

Tier one screenings in general	
School year	Grades
For the 2022-2023 school year	Students in grades K-3. Students in grades 4-6 upon request of a student's parent or guardian or request of a student's teacher with the permission of that student's parent or guardian.
For each school year thereafter	Students in kindergarten. Students in grades 1-6 upon request of a student's parent or guardian or request of a student's teacher with the permission of that student's parent or guardian.
Tier one screenings for transfer students	
For the 2022-2023 school year and each school year thereafter	Kindergarten students who transfer into the district or school, during the regularly scheduled screening of the kindergarten class or within 30 days after enrollment. Students in grades 1-6 who transfers into the district or school, within 30 days after enrollment.

HB 436 - OHIO DYSLEXIA COMMITTEE TASKS

- Establish the number of professional development hours teachers will need to complete to meet the new requirements (not less than 6 and not more than 18)
- May recommend student to teacher ratios for those teachers who have been certified in identifying and addressing dyslexia in buildings
- Recommend whether certification may require completion of a practicum
- Recommend which school personnel should be certified

HB 436 - PROFESSIONAL DEVELOPMENT

The act required a teacher to complete the required number of instructional hours in approved PD courses per the table below.

Good news! Any approved PD completed prior to effective date counts.

Grades	By the beginning of school year
Any instruction in grades K-1, including special education	2023-2024
Any instruction in grades 2-3, including special education	2024-2025
Special education in grades 4-12	2025-2026

HOW DID THE COMMITTEE'S WORK PAN OUT?

- The Ohio Dyslexia Committee was tasked with developing guidelines for implementing the new law
- Cost analysis published on ODE's website in December 2021 - <https://education.ohio.gov/getattachment/Topics/Learning-in-Ohio/Literacy/Dyslexia/Dyslexia-Cost-Study-Report-12-31-21.pdf.aspx?lang=en-US>
- Draft guidebook was released in December 2021 as well for public comment
- Legal summary published in January - <https://education.ohio.gov/getattachment/Topics/Learning-in-Ohio/Literacy/Dyslexia/Dyslexia-Support-Laws-Timeline-of-Requirements.pdf.aspx?lang=en-US>
- Approved teacher PD published in March - <https://education.ohio.gov/Topics/Learning-in-Ohio/Literacy/Dyslexia/Professional-Development>
- Final guidebook published in June - <https://education.ohio.gov/Topics/Learning-in-Ohio/Literacy/Dyslexia>
- State Board approved updates to the guidebook to comply with 583 mandates in July (divided vote of 12-7)

AND THEN CAME PASSAGE OF HB 583

- Pandemic and other challenges delayed implementation, which prompted legislators to extend timeline
- Bill signed in June 2022, most provisions became effective September 23rd
- Delayed dyslexia assessments – extended to 2023-2024, although HB 583 declares that schools may volunteer to screen earlier.
- Bill also declares that school districts are only required to comply with statutory requirements of Dyslexia Guidebook, and that all remaining parts of the guidebook are considered merely best practices.
- Also removed the word "multi-sensory" from the structured literacy program mandate.

AND THEN CAME PASSAGE OF HB 583

- HB 436 required school districts to ensure that all staff who provide instruction to kindergarten and first grade students complete certain dyslexia professional development “courses” from an ODE-approved list beginning in the 2023-2024 school year, with the same requirement for second and third grade instructors taking effect the following year.
- HB 583 modified the requirement to complete “courses” by replacing the word with the term “training.”
 - ODE must still approve the training.
 - A school district may require staff to complete professional development earlier, and any PD completed before April 12, 2021 that lands on the list of approved trainings may count to fulfill the requirement
- HB 583 also included language that exempts fine arts, music and physical education teachers from this requirement.

INTERESTING EXCERPTS FROM THE GUIDEBOOK

- *Accordingly, and as reflected in the law, the recommended best practices and methods detailed in this guidebook reflect a structured literacy approach across all levels of screening, instruction and intervention.*
- *This approach provides clear, explicit and systematic instruction for helping children understand the fundamental connections between sounds and letters, a concept referred to as the alphabetic principle.*
- *Although the focus of Ohio's dyslexia support laws and this guidebook center on screening, intervention and remediation procedures, the guidebook additionally highlights that, as best practice, alignment among all levels of instruction that incorporate a structured literacy approach will reinforce the learning process for children with dyslexia or dyslexic characteristics and tendencies.*
- *The Ohio Dyslexia Guidebook is structured to directly reflect the obligations of the Ohio Dyslexia Committee and the dyslexia support laws.*

WHAT HAPPENS AFTER TIER 1 SCREENING?

- After screening, districts must:
 - Identify each “at risk” student and notify parents
 - Monitor progress of each at risk student toward achieving grade level performance in accordance with law for up to six weeks
 - Administer a Tier 2 screening to each at-risk student who does not show any progress toward attaining grade level performance by the sixth week after identification, and report results to parents within 30 days
 - If the student is identified as having dyslexic tendencies:
 - Parent must be provided with information about reading development, the risk factors for dyslexia, and descriptions for evidence-based interventions
 - Parent must also be given a written explanation of the district's/school's structured literacy program if the student demonstrates markers for dyslexia

MULTIDISCIPLINARY TEAMS

- Responsible for administering screening and intervention measures, analyzing results
- Must include “trained and certified personnel and a stakeholder with expertise in the identification, intervention and remediation of dyslexia”
- District Level – Building Level – Grade Level – Student Level
- List of stakeholders included in guidebook, specifically references school psychologists
- Also provides guidance on aligning MTSS with dyslexia law

ADDITIONAL GUIDEBOOK SUGGESTIONS FOR ENGLISH LEARNERS

- Schools warned against isolating dyslexia screening information from other sources of data on the student's language and literacy development
- Lists data sources that might be used to help guide instruction for EL students
 - Language Usage Survey
 - Ohio English Language Proficiency Screener
 - Ohio English Language Proficiency Assessment
 - Instructional interventions provided for English language development
 - Information regarding previous educational experiences (inside or outside of the United States)
 - Progress in the district's selected educational approach for English learners
- Schools encouraged to use intervention-based diagnostic assessment (tier 2) and culturally responsive process that provide information about student's language and literacy in their first language

TYING EVERYTHING TOGETHER

- Ohio's new dyslexia law and special education law appear to operate in a parallel universe
- However, they intersect in interesting ways
 - Tier 1 and 2 assessments, Tier 3 interventions + Child Find
 - Interventions for students already on an IEP/504 plan
- District/building/grade level teams and SpEd staff should work in concert with each other





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Any Questions?

**Ohio Association of
Career-Technical
Superintendents**

Fall Forum Conference 2022

Presented by:
Pamela A. Leist
pleist@ennisbritton.com
[@Pamela_Leist](#)

ENNIS  BRITTON

Cincinnati Office

1714 West Galbraith Road
Cincinnati, OH 45239
Phone: (513) 421-2540
Toll-Free Number: 1 (888) 295-8409
Fax: (513) 562-4966

Columbus Office

300 Marconi Boulevard
Suite 308
Columbus, OH 43215
Phone: (614) 705-1333
Fax: (614) 423-2971

Cleveland Office

6000 Lombardo Center
Suite 120
Cleveland, Ohio 44131
Phone: (216) 487-8672
Fax: (216) 674-9639



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ennisbritton.com

