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January 7, 2010

VIA EMAIL & REGULAR U.S. MAIL

Dr. Deborah S. Delisle
Superintendent of Public Instruction
Ohio Department of Education
25 South Front Street
Columbus, OH 43215

**Re: Conversion Community School/Sponsor District
"Operational Independence"**

Dear Dr. Delisle:

Thank you for the opportunity to meet with you last week to discuss our clients' concerns with respect to letters recently issued by ODE requiring operational separation of conversion community schools and their school district sponsors. With this letter, we are sending to you some of the documents we referenced during the meeting.

Enclosed, please find the following:

1. Legislation ODE proposed to the General Assembly in connection with H.B. 1 that would have amended Chapter 3314 to require that conversion community school operations be completely independent from those of the sponsor district. Although evidently propounded on behalf of ODE, we understood you to indicate at our meeting that you were unaware of this proposed amendment. It was not included in H.B. 1.
2. Communications that evidence the prior position of ODE with respect to the current matter, as follows:

- First, we are enclosing a series of communications related to requirements newly imposed by H.B. 79 three years ago. These include a "Community School Alert" that we sent to clients in February of 2007, notifying them of the potential risk that school district employees could incur if they continued to serve on the governing boards of conversion (or other) community schools; a Weekly Update from then Superintendent of Public Instruction Zelman, expressing ODE's position that the new law did not affect "current district employees serving on governing authorities," and that it also did not affect "the community school's authority to contract with the sponsor for fiscal or other services"; and an Advisory Letter issued by ODE's Office of Community Schools dated March 15, 2007, and entitled Governing Authorities Membership Guidance, which reiterates the positions stated in Superintendent Zelman's Weekly Update.
 - Second, we are also enclosing instructions from ODE, in the form of excerpts from the 2006 CSADM Manual, and from a Powerpoint presentation, directing school districts and community schools as to how to report, and divide funding for, students who are educated in part by each entity.
3. Auditor of State Bulletin 98-003, in which the Auditor of State advises as follows with respect to the provision of fiscal services to community schools:
- [S]eparate data processing runs will be or may be necessary to keep track of each community school separately. (For example, the fiscal agent may run payroll checks for his/her school district; then stop and switch checks, this time loading those belonging to community school A; then run payroll for community school A; then switch from community school A to community school B; then run and so forth.)
4. Opinions of the Ohio Attorney General and the Ohio Ethics Commission that approve service by an employee of a public body to a related non-profit corporation (i.e., one established by, and under contract with, the public body) under the "official capacity exception" to conflict of interest, ethics, and incompatibility of office principles. Specifically, we are enclosing the following:
- Ohio Ethics Commission Advisory Opinion 96-005
 - Ohio Attorney General Opinion 96-007

We additionally direct your attention to Ohio Ethics Commission Advisory Opinions 82-004, 83-010, 84-001, 94-001, and 2001-05, and to Ohio Attorney General Opinion 91-007.

We would further note that our office sent all of the above-cited opinions to ODE in 2004 in connection with our description of the model that was the basis for many of the conversion schools then being established. Following a meeting at ODE that included, among others, Matt DeTemple, ODE agreed that sponsor district administrators could serve on the governing boards of sponsored community schools (advice reiterated three years later, in the context of H.B. 79, as described above), with such administrators serving in their official capacities as representatives of the sponsor districts.

- We are additionally enclosing a more recent informal advisory opinion of the Ohio Ethics Commission, dated August 1, 2007, and issued to the Office of Treasurer of State Richard Cordray.

We have many other documents that detail the history of the conversion community schools' interactions with ODE on this and related topics. Please let us know if our submission of the same would facilitate your consideration of the substantive matters we discussed last week.

As we stated in our meeting, ODE's stance regarding the relationships between conversion community schools and their school district sponsors has "life or death" significance not only to many of the schools, but also to the children and served by the schools. We understand that you have serious concerns about how these schools operate, but we remain hopeful that your concerns can be resolved in a manner that will permit the schools to continue to carry out their mission for Ohio's pupils, and we stand ready to assist in this effort in any way possible.

Finally, it was our understanding at the conclusion of the meeting that you would be taking under advisement the possibility of extending the 90 day deadline communicated to the conversion schools in the letters sent to them by ODE. Please let us know your decision with respect to this deadline.

Thank you.

Very truly yours,



Susan B. Greenberger



Nicholas A. Pittner

Bricker & Eckler
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Dr. Deborah A. Delisle

January 7, 2010

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Enclosures:

- (1) Amendment Proposed by ODE for Inclusion in H.B. 1
- (2) Bricker & Eckler 2007 HB 79 Alert
- (3) Superintendent Zelman's March 2007 Weekly Update
- (4) OCS March 2007 Advisory Letter
- (5) 2006 CSADM Manual Excerpt
- (6) OCS Powerpoint Slide
- (7) Auditor of State Bulletin 98-003
- (8) Ohio Ethics Commission Opinion 96-005
- (9) Attorney General Opinion 96-007
- (10) Informal Ethics Commission Opinion to State Treasurer Cordray (2007)

Via email only:

cc: Francis Pompey
Kimberly Murnieks
Kimberly L. Hall

From: Dennis, Gregory
Sent: Friday, June 12, 2009 4:46 PM
To: 'john.stanford@governor.ohio.gov'; 'kris.long@governor.ohio.gov'; 'Williams, Karundi'; 'Harrigan, Sarah'
Cc: 'Lazarevska, Elena'; 'Roush, Erik'; Oxender, Jeannette; Hogue, Jennifer; Weir, Kelly
Subject: Dept. of Education Amendments
Attachments: Conference Committee Requests.xls; Comp Item 356-EDU237-Community School Oversight.doc; Comp Item 317-EDU238-ADK Expansion.doc; Comp Item 317-EDU-239Gifted Unit Funding.doc; Comp Item 331-EDU240-Spec Ed Weights.doc; Comp Item 332-EDU241-Pupil Transportation Formula.doc; Comp Item 342-EDU242-All Day Kindergarten.doc; Comp Item 346-EDU243-Funding Council.doc; Comp Item 320-EDU245-Formula ADM.doc; Comp Item 357-EDU246-Comm Sch Sponsors.doc; Comp Item 358-EDU247-Comm Sch Sponsors.doc; Comp Item 361-EDU248-Comm Sch Sponsors.doc; Comp Item 363-EDU249-Comm Sch Accct and Closure.doc; Comp Item 367-EDU250-Comm Sch Teachers.doc; Comp Item 387-EDU251-Tea Comp Task Force.doc; Comp Item 389-EDU252-Montessori.doc; Comp Item 392-EDU253-CECD Make-up.doc; Comp Item 394-EDU254-Child Care Study.doc; Comp Item 397-EDU255-SBE meetings.doc; Comp Item 411-EDU256-AYP linkage.doc; Comp Item 412-EDU257-Nonpub Assessment.doc; Comp Item 424-EDU258-Health Screenings.doc; Comp Item 435-EDU259-Corporal Punishment.doc; Comp Item 438-EDU260-Minimum School Year.doc; Comp Item 446-EDU261-Extended Year PD.doc; Comp Item 447-EDU262-Academic Standards.doc; Comp Item 449-EDU263-Perf Indicators.doc; Comp Item 450-EDU264-SEHCB.doc; Comp Item 451-EDU265-Parent Involvement.doc; Comp Item 452-EDU266-Unauditable CSs.doc; Comp Item 465-EDU267-School Improvement.doc; Comp Item 473-EDU268-STEM.doc; Comp Item 482-EDU269-CTE Enhancements.doc; Comp Item 484-EDU270-Teach Ohio.doc; No Comp Item-EDU272-FY Start and SFSF.doc; No Comp Item-EDU273-Early childhood-Step Up.doc; No Comp Item-EDU274-Ratio waivers.doc; No Comp Item-EDU275-Non-GRF Approp.doc; No Comp Item-EDU276-CS closure-spec ed.doc; No Comp Item-EDU277-Move Stabilization to FED.doc; No Comp Item-EDU278-CS clarification type.doc; No Comp Item-EDU279-Proportional Cut-EMIS Line.doc; No Comp Item-EDU280-OCIS.doc; Comp Item 321-EDU281-Payment Harmonization.doc; Comp Item 326-EDU282-CTE Use of Funds.doc; Comp Item 329-EDU283-Gifted Spending Guarantee.doc; Comp Item 332-EDU284-Transportation Base.doc; Comp Item 333-EDU285-Adj Charge Off.doc; Comp Item 333-EDU286-3306 Clarifications.doc; Comp Item 334-EDU287-Gain Cap.doc; Comp Item 336-EDU288-District Flexibility.doc; Comp Item 336-EDU289-ADCs.doc; Comp Item 336-EDU290-Reporting of EBM Components.doc; Comp Item 336-EDU291-Spending Report Date.doc; Comp Item 345-EDU292-CS Split Payments.doc; Comp Item 346-EDU293-Career-Tech Study.doc; Comp Item 347-EDU294-JVSC Open Enrollment.doc; Comp Item 379-EDU295-Res Educator-Renewable.doc; Comp Item 428-EDU296-Engagement Teams.doc; Comp Item 448-EDU297-OGT Replacement.doc; Comp Item 454-EDU298-Set-asides out of ALI200100.doc; Comp Item 460-EDU299-Perf Review Clean Up.doc; Comp Item 531-EDU300-Title IID.doc; Comp Item 350-EDU301-ESC Study.doc; Comp Item 382-EDU302-Background Checks.doc; Comp Item 448-EDU303-Testing changes.doc

All:

A matrix of our amendment requests, along with electronic copies of the amendments is attached.

Our amendments can be grouped into three basic categories:

- A- Amendments to Senate version of HB 1
- B- Items not included in the Comparison Document (page 2 of attached Excel

workbook)

C- Amendments to House language, if House language is selected by the conference committee (primarily technical)

Enjoy!

[Note: Items 244 and 271 were submitted through the portal in error. Both were duplicates and not included with the attachments to this e-mail.]

Respectfully,

Greg Dennis
Office of Legislative Services
Ohio Dept. of Education
(614) 466-3125

*"He that lives upon hope will die fasting."
- Benjamin Franklin*

Proposed Amendment to House Bill 1
EDU278

I. Short Title [no comp doc #; not a matter of difference, but critical to calculate payments properly]

Clarify community school type

II. Summary Statement

Clarification of distinction between e-schools and brick and mortar community schools

III. Effect if not Enacted

The Revised Code evidences legislative intent that each community school be either a site-based school OR an e-school. However, some have construed the current law and argue that community schools could be a “blended” model with some students attending in person and others “attending” on-line.

IV. Fund & Line Item Affected (if any)

NA

V. Potential Stakeholders Affected

Community schools

VI. Other ORC or Temp Law Section Affected

3314.02, 3314.03, 3314.22

VII. Effective Date (Highlight One): 90 days Immediate Other _____

VIII. Sample Language (do not leave blank)

Note: Drafted to “As Passed by the House” version

3314.02 Proposal for converting public school to community school.

(A) As used in this chapter:

(5) “New start-up school” means a community school other than one created by converting all or part of an existing public school or educational service center building, as designated in the school’s contract pursuant to division (A)(17) of section 3314.03 of the Revised Code.

(7) “Internet- or computer-based community school” means a community school established under this chapter in which each ~~the~~-enrolled students works, primarily from ~~their~~ the student’s residences, on assignments in nonclassroom-based learning opportunities provided via an internet- or other computer-based instructional method that does not rely on regular classroom instruction. An internet- or computer-based

community school may supplement its internet- or computer-based curriculum with noncomputer-based learning opportunities as long as it is minor in nature and intended only to provide learning opportunities not provided by its internet- or computer-based curriculum. or via comprehensive instructional methods that include internet-based, other computer based, and noncomputer-based learning opportunities.

3314.03 Specifications of contract between sponsor and governing authority - specifications of comprehensive plan.

A copy of every contract entered into under this section shall be filed with the superintendent of public instruction.

(A) Each contract entered into between a sponsor and the governing authority of a community school shall specify the following:

(1) That the school shall be established as either of the following:

(a) A nonprofit corporation established under Chapter 1702. of the Revised Code, if established prior to April 8, 2003;

(b) A public benefit corporation established under Chapter 1702. of the Revised Code, if established after April 8, 2003;

(2) The education program of the school, including the school's mission, the characteristics of the students the school is expected to attract, the ages and grades of students, and the focus of the curriculum; , including identification of wheather the community school is an internet or computer-based community school or a site-based community school. A community school established under this chapter shall not be both.

.....

(17) (a) Whether the school is to be created by converting all or part of an existing public school or educational service center building or is to be a new start-up school, and if it is a converted public school or service center building, specification of any duties or responsibilities of an employer that the board of education or service center governing board that operated the school or building before conversion is delegating to the governing authority of the community school with respect to all or any specified group of employees provided the delegation is not prohibited by a collective bargaining agreement applicable to such employees;

(b) If a community school is a conversion community school, the contract must specify that the operations of the community school will be completely independent from those of the sponsoring district, including the provision of classroom space adequate to meet the needs of its students, staff, and administrative staff and operations.

3314.22 Child entitled to computer supplied by school.

(A)(1) Each child enrolled in an internet- or computer-based community school is entitled to a computer supplied by the school; however, the parent of any child enrolled in the school may waive this entitlement in the manner specified in division (A)(3) of this section. In no case shall an internet- or computer-based community school provide a stipend or other substitute to an enrolled child or the child's parent in lieu of supplying a computer to the child. The prohibition contained in the preceding sentence is intended to clarify the meaning of this division as it existed prior to September 29, 2005, and is not intended to change that meaning in any way. No child may be enrolled in an internet- or computer-based community school until the provisions of this sections (A)(1) through (A)(5) of this chapter have been met.



~~(C) If a community school that is not an internet- or computer-based community school provides any of its enrolled students with nonclassroom based learning opportunities provided via an internet- or other computer based instructional method and requires such students to participate in any of those learning opportunities from their residences, the school shall be subject to this section and division (C)(1) of section 3314.21 of the Revised Code relative to each such student in the same manner as an internet- or computer-based community school, unless both of the following conditions apply to the student:~~

~~(1) The nonclassroom based learning opportunities in which the student is required to participate from the student's residence are supplemental in nature or do not constitute a significant portion of the total classroom-based and nonclassroom-based learning opportunities provided to the student by the school;~~

~~(2) The student's residence is equipped with a computer available for the student's use.~~



Bricker & Eckler LLP

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Community School Alert



February 2007

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H.B. 79 Creates Risk for School District Employees and Others Who Sit on Community School Boards of Directors

Boards of education that sponsor community schools typically create the schools as “conversion” community schools and designate school district employees to represent the board of education on the conversion school’s governing authority, typically referred to as a “board of directors.” Now, due to a recent change in Ohio law, the individuals so designated may be at risk of losing their ability to continue to work for the school district. Likewise, employees of other entities that provide services to, or oversee the operations of, community schools may be at risk of losing their jobs if they serve on the governing board of a community school.

The risk is created by language inserted by the Conference Committee into H.B. 79 (generally known as the “teacher misconduct reporting bill”) in the waning hours of the last legislative session. Although the versions of the bill initially passed by both the House and the Senate did not make changes to Chapter 3314 (the portion of the Ohio Revised Code that concerns community schools), numerous provisions related to community schools were added by the Conference Committee, including a modification of R.C. 3314.02(E) that creates the problem described in this Alert.

As newly modified, R.C. 3314.02(E) establishes a number of restrictions concerning those who sit on the governing boards of community schools, including the provision highlighted below:

(E) (3) No present or former member, or immediate relative of a present or former member, of the governing authority of any community school established under this chapter shall

be an owner, employee, or consultant of any nonprofit or for-profit operator of a community school, as defined in section 3314.014 [3314.01.4] of the Revised Code, unless at least one year has elapsed since the conclusion of the person’s membership.

“Operator” is defined in R.C. 3314.014 as either of the following:

- (1) An individual or **organization that manages the daily operations of a community school pursuant to a contract** between the operator and the school’s governing authority;
- (2) A **nonprofit organization that provides programmatic oversight and support to a community school** under a contract with the school’s governing authority and that retains the right to terminate its affiliation with the school if the school fails to meet the organization’s quality standards.

Although the definitions are in some regards ambiguous, there is nevertheless a very real risk that any school district that sponsors a community school may be considered an “operator.” If so, any employee of the district who also serves (or has a relative who serves) on the board of directors of the sponsored community school (or any other community school) would run afoul of R.C. 3314.02. The individual’s continued employment with the district would then be barred until one year after membership on the community school governing board had ceased.

This document has been prepared as a general reference document for informational purposes. The information contained herein is not intended to be and should not be construed as legal advice. Each circumstance should be considered and evaluated separately, and possibly with involvement of legal counsel.

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Similarly, if a community school receives services from, or is overseen by, some other entity – for example, an ESC, Council of Governments, or juvenile court – the new H.B. 79 provision may prohibit a person from being employed by such other entity if the person (or his or her relative) also serves on the board of directors of any community school in Ohio. This means that if, for example, your community school has on its board of directors an individual who works for an ESC, and if that ESC provides extensive services to a community school, that board member may be at risk of losing his or her job with the ESC. And this is true even if the community school served by the ESC is not your school but a different one, elsewhere in Ohio.

Our purpose in making you aware of this legislation is not to cause undue concern but to make you aware of what could result from a literal application of this legislation. While the interpretation of this new provision may be subject to debate and the intent of the legislature is unclear, the potential consequences are of such severity that every community school and sponsor should review the composition of the school's board of directors and consider whether modifications are appropriate. **In particular, any school district board of education that has employees who serve on the governing board of a community school should consider taking immediate action aimed at terminating the employees' service on such boards.**

The new legislation becomes effective on March 30, 2007. There is no "grandfather clause." Thus, the prohibition may be applicable to current community school board members and possibly (although seemingly doubtfully) even to those who

cease their service as board members less than a year prior to March 30. We believe the legislators did not intend such a harsh consequence. Even if it were intended, to the extent the legislation would deny a school district employee the benefits of his or her employment contract, we believe the legislation would be unlikely to survive constitutional scrutiny.

We are seeking to bring this problem to the attention of education and legislative leaders in the hope that corrective legislation will address this problem. But unless designated as emergency legislation, any correction would not become effective prior to March 30.

In deciding whether and how to restructure a community school's board of directors, community schools and their sponsors must proceed with caution, giving careful consideration to requirements stemming from the school's corporate governing documents, the school's tax status, the sponsor contract between the school and sponsor, and various provisions of Ohio law. School district sponsors that remove their representatives from the governing authority of a community school may also seek alternative means of preserving the district's ability to exercise effective oversight of the school – for example, through modifications of the sponsorship contract with the school.

In light of the potential adverse impact of this legislation, you may wish to bring the problems described in this Alert to the attention of your legislators. You may also consider joining with others in the public school community for the purpose of seeking a legislative solution or for the purpose of challenging the constitutionality of this legislation, or both.

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From: communicate@ode.state.oh.us [mailto:communicate@ode.state.oh.us]
Sent: Monday, March 12, 2007 8:17 AM
To: Ohio Educators
Subject: ODE This Week - Weekly Update from Susan T. Zelman, Superintendent of Public Instruction

This weekly e-mail from Susan Tave Zelman contains seven news items.

You may also view this document and the attachments at <http://www.ode.state.oh.us/> by searching for keywords *Current e-mails to Superintendents*.

News

- D3A2 content now available to all districts
- HB 79 affects community school operators, not sponsors
- HB 79 also specifies new requirements for district student acceleration policies
- Ohio Core legislation affects criteria for Diploma with Honors
- AP, IB test fee waivers available for low-income students
- Severe Weather Awareness Week announced
- Severe Weather Awareness poster contest underway

News

D3A2 content now available to all districts

D3A2 Release 1.0 is ready now to provide access to its collection of content resources to all Ohio schools. Thousands of content resources are available, including assessments, lesson plans, videos and other resources aligned to Ohio's Academic Content Standards. To search for resources aligned to specific benchmarks and grade-level indicators in the academic content standards, click [here](#) and select *Tools* on the left menu. These resources are made available free of charge by 14 Ohio content providers who have agreed to rigorous development, review and alignment policies. The providers are:

- Cleveland Municipal School District
- Columbus Zoo
- COSI - Columbus
- INFOhio
- Northern Ohio Educational Computer Association
- Northwest Ohio Educational Technology
- ODE
- Ohio Historical Society/Ohio Social Studies Resource Center
- Ohio Resource Center for Mathematics, Science and Reading
- WNEO PBS 45/49 - Akron
- WVIZ Ideastream - Cleveland
- CET Connect - Cincinnati
- WGTE - Toledo
- WPTD Think TV - Dayton

Twelve school districts are currently piloting the D3A2 Release 10 data analysis functions. Look for updates on this roll-out in the coming months.

HB 79 affects community school operators, not sponsors

ODE has received a number of questions regarding the impact of House Bill 79 on the governing authority membership of conversion community schools. The new law, which takes effect March 30, prohibits a current or former governing authority member from being employed by a community school operator for one year after leaving a governing authority. An operator is essentially an independent contractor hired by a governing authority to run a community school. Districts that sponsor conversion community schools are not operators, so the new law will not affect the employment of current district employees serving on governing authorities. The bill also does not affect a conversion school sponsor's ability to determine which employer duties will be delegated to a community school or the community school's authority to contract with the sponsor for fiscal or other services.

HB 79 also specifies new requirements for district student acceleration policies

House Bill 79 also amended previous provisions of House Bill 66, which required districts to adopt this school year either the State Board of Education "Model Student Acceleration Policy for Advanced Learners" or a similar policy. The new requirements specify if districts do not adopt the State Board model, they are to submit their policy to ODE for review and approval. Upon request, ODE will provide technical assistance in developing policies, which shall cover early entrance to kindergarten, whole grade acceleration, subject area acceleration and early high school graduation. Last summer, all districts were asked to submit Acceleration Policy Review Forms. Those who have not yet done so must send in forms by June 15, 2007. To access the form and further information, click [here](#).

Ohio Core legislation affects criteria for Diploma with Honors

New Diploma with Honors criteria will go into effect June 30, as a result of Ohio Core legislation passed in December 2006. The State Board of Education passed a Resolution of Intent to adopt rules containing the new criteria at its February Board meeting.

Students starting high school in the fall of 2007 (Graduating Class of 2011) and every subsequent class must complete more intensive criteria in mathematics, science and social studies for high school academic Diplomas with Honors. In addition, career-technical students also must meet more intensive credentials for career-technical programs and assessments. The new Diplomas with Honors will not affect the graduating classes of 2007 through 2010.

Procedurally, the awarding of the new Diplomas with Honors has not changed. For information regarding required coursework, please direct guidance counselors and parents to click [here](#) and search keywords *Diploma with Honors* or *Graduation Requirements*.

For more information about the Diploma with Honors, contact Virginia Ressa at (614) 728-6920 or virginia.ressa@ode.state.oh.us.

AP, IB test fee waivers available for low-income students

The U.S. Department of Education recently awarded ODE a \$227,474 discretionary grant to waive fees for low-income students to take Advanced Placement (AP) and International Baccalaureate (IB) tests. Low-income students are defined as those on free and reduced-price lunches. The grants cover \$83 per student, per test, and are designed to increase AP/IB course and test access for students who might otherwise be discouraged by financial requirements. AP/IB offerings are aligned with the Ohio Core and STEM (Science, Technology, Engineering and Mathematics) initiatives. School districts can access the grant funds now through March 16, 2008, by completing a form available through your AP coordinator no later than **June 15, 2007**. For more information, contact your coordinator or Nenna Davis at nenna.davis@ode.state.oh.us or call (614) 466-9514.

Severe Weather Awareness Week announced

Severe Weather Awareness Week for Ohio is scheduled for March 25-31. This year's statewide tornado drill will be held Wednesday, March 28 at 9:50 a.m. At that time, every county will sound its warning sirens, and an Emergency Alert System (EAS) test message also will broadcast.

Schools, businesses and households are encouraged to practice their severe weather plans during the statewide tornado drill; however, it is not mandated that schools and businesses participate in this drill.

If the drill interferes with schools' testing periods, or if they are not in session because of spring break, then schools must independently schedule a time to practice their tornado drills, in accordance with Ohio Revised Code (section 3737.73).

Severe Weather Awareness poster contest underway

The Ohio Committee for Severe Weather Awareness (OCSWA) is gearing up for its annual Severe Weather Awareness Poster Contest. OCSWA invites all Ohio students in first through fifth grades and individualized instruction classes to create posters that illustrate how to prepare for and protect oneself from severe weather. For information about the contest, click [here](#). The deadline for submissions is April 16, 2007.

Issued 3/12/2007

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Susan Tave Zelman

Superintendent of Public Instruction

Office of Community Schools

Todd L. Hanes
Executive Director

March 15, 2007

Dear Sponsor,

We have recently received a number of questions regarding the impact of House Bill ("H.B.") 79 on governing authority membership of conversion community schools. This correspondence is offered to answer those specific questions and clarify other general questions concerning governing authority membership. H.B. 79 becomes effective on March 30, 2007.

The bill makes several changes to Ohio Revised Code ("R.C.") section 3314.02(E), which affect the membership of community school governing authorities. R.C. sections 3314.02(E)(1) and (2) apply only to start-up community schools. R.C. 3314.02(E)(2) is a new section that limits a person from serving on the governing authority of more than two start-up community schools.

The main question we have received concerns the legal implications of R.C. 3314.03(E)(3) to the governing authority membership of conversion community schools. The new code section provides:

No present or former member, or immediate relative of a present or former member, of the governing authority of any community school established under this chapter shall be an owner, employee, or consultant of any nonprofit or for-profit *operator* of a community school, as defined in section 3314.014 of the Revised Code, unless at least one year has elapsed since the conclusion of the person's membership.

(Emphasis added.) The section, by its express language, applies to both conversion and start-up community schools. It provides that present or former members of a community school governing authority are prohibited from employment by any for-profit or nonprofit community school operators for one year after leaving the membership of the governing authority. School Districts with employees currently serving on the governing authority of conversion community schools are concerned that their employees will be prohibited from employment for the next year, assuming that the employee resigned from the governing authority today.

R.C. 3314.02(E)(3) applies the employment restriction to community school operators. It is the Department's position that a sponsoring school district of a conversion community school is not an operator, as defined in R.C. 3314.014. The Department has reached this position by examining the Revised Code, Legislative Service Commission Bill Analyses, and the history of the operator provisions.

R.C. 3314.014 defines an operator as, "an organization that manages the daily operations of a community school pursuant to a contract between the operator and the school's governing authority." The Legislative Service Commission's analysis of H.B. 115 (126th General Assembly) notes that "(a)n operator is essentially an independent contractor engaged to run the community school." H.B. 79 also creates R.C. 3314.026. This section allows an operator to appeal a contract termination to the community school sponsor. Taken in total, references to operator contracts are all references to a third-party contract between the community school governing authority and an independent organization (not the sponsor) to run the daily operations of the

