

# Legal Connections



*This year's election is as important as ever. Be informed about local candidates for judge: [www.judgethecandidates.org](http://www.judgethecandidates.org)*

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LEGAL EXPERTISE FOR THE BUSINESS COMMUNITY

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## BACK TO SCHOOL INCLUDES SOME FASCINATING LEGAL QUESTIONS

Setting aside the scheduling headaches, the start to the 2020-21 school year should help parents better understand their rights.

### Is it legal for public schools to offer only online instruction?

Yes, mostly. It may be surprising to know that there is no fundamental right to education in the United States. In fact, education itself has no explicit or implicit protections in the Constitution. This is partially due to the localized system of education adopted early in the U.S., which delegated control to the states - and later to county and local boards of education.

Even the Ohio Constitution only requires a "thorough and efficient system of common schools throughout the state." Ohio requires public schools to enroll students residing within their district, but schools maintain substantial discretion in how to deliver the education. Public schools are within their discretion to alter the delivery method for rational reasons, such as during national emergencies, natural disasters or to avoid the risk of viral infection to students and staff members.



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### How about for special education students?

The inquiry is slightly different for students with disabilities. These students are protected by a federal law: the Individuals with Disabilities Education Act. This law assures that students with disabilities are provided a "free and appropriate public education" in their "least restrictive environment."

Under IDEA, schools need to make in-person services available to students who cannot effectively receive online instruction. The inability to receive online instruction can exist for various reasons, but one can imagine the challenges virtual instruction would raise for students with significant cognitive delays, autism, attention deficits or serious health impairments.

Luckily, IDEA affords students with disabilities and their parents powerful rights. First, parents must be invited to participate in selecting the appropriate "placement" for their children, including how instruction will be delivered. Next, if a parent disagrees with a placement decision, they have access to no-cost facilitators and mediators to help resolve any dispute. If all else fails,

parents can file a complaint with the Ohio Department of Education, with options to request an administrative hearing or an expedited hearing. Parents must exhaust these avenues before filing a complaint in court.

### Can public schools require students to wear a mask?

Yes, for most students. Ohio law allows public schools to adopt reasonable dress code policies to prevent substantial disruptions in school and to promote health and safety of students. An Aug. 13 Order issued by the Ohio Director of Health required masks for all K-12 students, which cements a school's authority to require masks for health and safety reasons. Exceptions must be made for students with certain medical conditions, mental health conditions and disabilities.

### Can public schools require liability waivers?

No. Public schools cannot require waivers from students in order to receive any form of instruction, whether in-person or online. This is because students have a right to attend public school where they reside (and to receive instruction in whatever manner it is delivered), and that right cannot be conditioned on signing a waiver.

Schools can require waivers for extracurriculars, including athletics. Extracurriculars have long been considered a privilege under Ohio law. Claims waived for extracurriculars should be limited to claims that arise from the increased risk of exposure from extracurriculars alone, not from in-class activities.

### Is paid leave available to stay home from work with my child?

Yes. The Families First Coronavirus Response Act requires employers to provide employees with expanded, paid sick and family leave for reasons related to COVID-19. FFCRA applies to private employers with fewer than 500 employees, and to certain public employers, including schools.

Under FFCRA, up to 12 weeks of paid leave (at two-thirds the regular rate, up to \$200 per day) is available for employees who are unavailable to work or tele-work because they must care for a child whose school is closed for COVID-related reasons. The Department of Labor has clarified that schools are considered closed when offering only online instruction. Employers are entitled to tax credits for all qualifying wages paid under the FFCRA. ■

JOIN US ON SEPT. 10 FOR A FREE COMMUNITY CONVERSATION ON PAROLE AND PROBATION: [CBALAW.ORG](http://CBALAW.ORG)

## THE MOST IMPORTANT ELECTIONS YOU HAVE NEVER HEARD OF AND HOW TO DO SOMETHING ABOUT IT!

The COVID-19 pandemic has brought into sharp focus the importance of courts and judges to the everyday lives of Ohioans. For instance, in August, a judge in Franklin County reversed the order of the City of Columbus that bars and restaurants be required to close at 10 p.m. Only a few days later, a different judge in Franklin County sided with Governor DeWine when the State of Ohio issued the same 10 p.m. closing order to bars and restaurants across the state.

These are but a few recent examples of how the lives of Ohioans are directly impacted by decisions made by elected judges in this state. Despite the direct impact a judge may have when deciding issues relating to divorces, criminal charges and civil matters, few of us pay close attention to the people who are running for judge. Many of us are aware (even though it does not appear on the ballot) of the political affiliations of judges and judge candidates, but that information only tells part of the story. A judge candidate's education,

experience and training all play a crucial part in the suitability of that candidate for elected office. So, you ask, how do we find out more about our judge candidates here in Ohio? Luckily, the Columbus Bar Association has a group of attorneys from all walks of life who are committed to an honest and unbiased evaluation of candidates running for judge here in Franklin County.

The CBA's Judiciary Committee meets every year to review information and personally interview candidates for judgeships. The committee has an extensive protocol for evaluating the qualifications of judge candidates and, thereafter, issues evaluations of the candidates who have screened



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with the committee. The committee considers many factors when evaluating judge candidates such as integrity, professional experience, legal knowledge, legal ability, judicial temperament, diligence, public service and sensitivity to issues of bias. Many members of the voting public do not have the opportunity to evaluate judicial candidates with this level of scrutiny and detail prior to casting their ballot. The CBA publishes the results of the committee's evaluation of judges and views this as a valuable resource for the public. You can review the committee's judicial candidate evaluations on the CBA's website or at [www.judgethecandidates.org](http://www.judgethecandidates.org). Now, get out there and vote! ■

Learn about the candidates for judge before you cast your ballot. Visit the Columbus Bar Association's **Judge the Candidates** website for information about Franklin County courts.

[www.JudgeTheCandidates.org](http://www.JudgeTheCandidates.org)

**When judges are on the ballot, be informed.**



CBA