



Community School Training

August 9, 2013

Ohio Department of Transportation
1980 W. Broad St.
Columbus, Ohio 43223



Dave Yost • Auditor of State

2013 Community School Training Agenda

8:30 - 9:00	Registration
9:00 - 9:15	Conference Welcome
9:15-10:10	Using Ohio's Public Records Act to Promote Transparent & Accountable Government Cory Haydocy, AOS Legal Division
10:10 - 11:05	Federal Program Audits (Single & A-133 Audits) Michele Porter, AOS Center for Audit Excellence
11:05 - 11:20	Break
11:20 - 11:45	Ohio Compliance Supplement Michele Porter, AOS Center for Audit Excellence
11:45 - 12:15	Lunch
12:15 - 1:10	Legal Update Michael Press, AOS Legal Division
1:10 - 2:05	Ohio Ethics Law - Can I Do That? Jennifer Hardin, Ohio Ethics Commission
2:05 - 2:20	Break
2:20 - 3:15	School Expenditure Standards Eric Bode, Ohio Department of Education
3:15-3:30	Certificates/Adjourn



2013 COMMUNITY SCHOOL TRAINING SPEAKERS

ROBERT HINKLE

Bob Hinkle is the Chief Deputy Auditor for the Ohio Auditor of State Dave Yost's office. His career with the Ohio Auditor of State's office started in 1984 as an Assistant Auditor. Bob knows the workings and responsibilities of the office as he has completed audits at the staff level and every management level, to being appointed Chief Deputy Auditor in March 2006. In his 28 plus years of service with the Auditor of State's office, Bob has worked with every type of local government on accounting and auditing issues.

Bob is a Certified Public Accountant and Certified Government Financial Manager. He is a member of the AICPA, OSCP, AGA and currently is a member and President of the Ohio GFOA. A graduate of Mount Vernon Nazarene University, he resides in Mount Gilead, Ohio with his wife, Kelly and their three children, Lincey, Garrison, and Alexis.

ERIC BODE

Eric Bode joined the Ohio Department of Education in early 2011. He oversees pupil transportation; finance program services; school funding and fiscal support services; and services related to community schools, voucher programs, nonpublic schools and home education. Bode has worked since 1993 in finance and management for the state of Ohio, including the Ohio School Facilities Commission, the Ohio Emergency Management Agency and the Ohio Office of Budget and Management. He received a bachelor's degree in international economics from Georgetown University and a master's degree in public policy from Harvard's Kennedy School of Government.

JENNIFER HARDIN

Jennifer Hardin is the Ohio Ethics Commission's Senior Attorney. She administers the Commission's financial disclosure requirement for approximately 11,000 public officials and employees who are required to file annual personal financial disclosure statements. She has worked for the Ethics Commission since 1989.

Ms. Hardin is a member of the Steering Committee for the Council on Governmental Ethics Laws (COGEL), an international organization composed of federal, state, local, and provincial agencies responsible for the administration and implementation of ethics, financial disclosure, elections, campaign finance, and freedom of information laws and provisions. She chairs the Publications Committee and is the editor of the *COGEL Guardian*.

Ms. Hardin was graduated from the University of Cincinnati in 1986 with a Bachelor's Degree *cum laude* in English Literature. She received her law degree from The Ohio State University College of Law in 1989.

CORY A. HAYDOCY

Mr. Haydocy serves as Assistant Legal Counsel for the Auditor of State's Open Government Unit and has been with the Auditor of State's Office in his current position since November 2012. In addition to his Open Government Unit duties, Mr. Haydocy conducts Certified Public Records Training seminars for state and local government officials and assists in the handling of public record issues for the office.

Prior to working for the Auditor of State, Mr. Haydocy served as a Legal Intern for the Honorable Paul Herbert of the Franklin County Municipal Court. Mr. Haydocy earned his Juris Doctorate from Duquesne University School of Law and his Bachelor of Arts in Political Science from the University of Dayton. He resides in Columbus and was admitted to practice law in Ohio in November 2012.

MICHELE PORTER, CPA, CISA

Michele is a Technical and Quality Assurance Specialist in the Center for Audit Excellence group of the Ohio Auditor of State's Office where she provides support services and training to over 400 auditors. She has served the Ohio Auditor of State's Office for 17 years and is well versed in governmental accounting, auditing and reporting requirements. Michele assists in researching, consulting, interpreting and implementing professional standards; reviewing and approving modifications to audit reports and reportable findings; developing training materials; and conducting public speaking. Her specialties include implementation and interpretation of Government Auditing Standards (the "Yellow Book") as it relates to Independence, updates and modification of the Auditor of State's Ohio Compliance Supplement, sample selection and projection requirements, Automated Working Papers software and implementation, and Information System Auditing. Michele is a Certified Public Accountant and a Certified Information Systems Auditor. She graduated from Youngstown State University with a Bachelors of Science in Business Administration in Accounting and a Masters of Business Administration.

MICHAEL PRESS

Michael Press, Assistant Legal Counsel, joined the Auditor of State's Office in 2012. In his role, Mike serves as the Regional Attorney for the Dayton and Youngstown regions. The Legal Division provides legal advice to the Auditor and his staff; reviews legal documents relating to the Office of the Auditor of State; and assists in responding to requests from public officials and citizens for information and records.

Prior to his service in the Auditor of State's Office, Mike interned at a general practice in Columbus. He assisted the firm's attorneys in legal research and trial preparation. Mike received his Juris Doctorate, *cum laude*, from Capital University Law School in 2011 and holds a Bachelor of Business Administration in Accounting, Finance and Business Pre-Law from Ohio University. Mike passed the Ohio CPA exam prior to attending law school.

Mike is a member of the Columbus Bar Association and the Ohio State Bar Association. He lives in Grandview, Ohio.



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*Auditor of State's 2013
Community School Training*

Using Ohio's Public Records Act
to Promote
Open and Accountable Government

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Cory A. Haydocy
Assistant Legal Counsel
Legal Division

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Office Public Records Policy R.C. 149.43(E)

- All public offices must prepare, distribute, and post a public records policy
- The Auditor of State's model public records policy is available at:
<http://www.auditor.state.oh.us/services/opengov/PublicRecordsPolicy85x11.pdf>
- The model public records policy is for guidance, it is **not** a substitute for an individualized policy suited to each public office

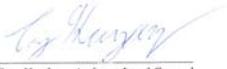


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ACKNOWLEDGEMENT OF RECEIPT BY RECORDS MANAGER OF PUBLIC RECORDS POLICY

In accordance with Ohio Revised Code Section 149.43(E)(2), I hereby acknowledge receipt of the Auditor of State Public Records Policy, a copy of which is attached hereto and incorporated herein by reference.



Cory Haydocy, Assistant Legal Counsel
Open Government Unit, Legal Division
Auditor of State

3/18/2013
Date

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Compliance

The State Auditor audits public offices for:

- Compliance with the training of elected officials
AND
- Public Records policy provisions for all public offices
AND
- Compliance with public access to the records retention schedules of each public office

For audit details, visit the Ohio Auditor's web site to view **Technical Bulletin 2007-014**:
www.auditor.state.oh.us/services/lgs/bulletins/2007/2007-014.pdf



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Public Records Act Overview

- Definitions*
- Obligations*
- Exceptions*
- Liabilities*



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Definitions – The “Who?” of Public Records

- **Public Office** – R.C. 149.011(A)
- Any private entity that is the **functional equivalent** of a governmental entity
- A **person responsible for public records**



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Definitions – The “Who?” of Public Records

Factors considered in “Functional Equivalence”:

- Whether the entity performs a **governmental function**
- Level of **government funding**
- Extent of **government involvement or regulation**
- Whether the entity was **created by the government or to avoid the requirements of the Public Records Act**

State ex rel. Oriana House, Inc v. Montgomery (2006),
110 Ohio St. 3d 456.



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Definitions – The “What?” of Public Records

Records – R.C. 149.011(G):

- Have information stored on a fixed medium (tapes, e-mails, photos, films, videos, papers, etc.), **and**
- Are created or received by, or come under the jurisdiction of, a public office, **and**
- Document what the public office does: the organization, functions, policies, decisions, procedures, operations, or other activities **of the office**



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Definitions – The “When” of Public Records

Public Records – R.C. 149.43(A) includes records “**kept by**” any public office

“**Kept by**” means any record that is actually in existence and in the possession of the public office or person responsible for public records

- Examples of records **not “kept by”** a public office:
 - (1) a record not yet in existence,
 - (2) a record that has been disposed of lawfully



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Electronic Records

E-mail

Databases

*Electronic Records
Management*



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Electronic Records

Email

- Handle electronic records just like any other tangible record
- Analyze based on **content**, rather than storage medium



Uniform Electronic Transactions Act – R.C. Chapter 1306



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Electronic Records

Databases

- If a computer program can perform a search and produce a compilation or summary described by the requester, that output is deemed to already “exist” as a record for the purposes of the Public Records Act.
- A public office is not required to search a database for information and compile or summarize to create new records.

Electronic Records Management Resources

- Ohio Electronic Records Committee:
<http://www.ohio.erc.org>



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Notes

Notes can be “records,” but are usually transient

Notes are **not** public records if they are:

- 1) Kept as personal papers, not official records;
- 2) Kept for the employee’s own convenience (for example, to recall events);
AND
- 3) Other employees did not use or have access to the notes

State ex rel. Cranford v. Cleveland, 2004 Ohio 4884



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Drafts

If a draft meets the definition of a record, it is subject to both the Public Records Act and records retention laws.



A public office can address the length of time that drafts must be kept in its records retention schedules.



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Rights and Obligations

- **Any “person”** can make a public records request, including corporations and other governmental agencies
- **No special format or special language** required
- A request may be **written** or **verbal**
- The requester’s motive **is not relevant**. However, the request must at least be specific and describe in detail the records being sought
- A public office cannot require the requester to put it in **writing** or reveal his/her **identity**



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Rights and Obligations

- Regular business hours
- Copies at “cost”
- Payment in advance (optional)
- Methods of delivery



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Modified Rights and Obligations - Journalists

- A **journalist** can receive select residential or familial information about a specific peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, etc.
- The request **must** be in writing and include the journalist's name, title, and the name and address of the journalist's employer
- The request **must** also state that the disclosure of this information sought would be in the **public interest**



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Modified Rights and Obligations - Courts

- Access to most Ohio **court records** is governed by Sup. Ct. Rules of Superintendence R. 44-47, and court records retention by Sup. R. 26.01-.05
- Ohio **Rules of Procedure** create exceptions to the Public Records Act
- Judges and clerks of most courts are excepted from the definition of “elected officials” required to take public records training. R.C. 109.43(A)(2)



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Miscellaneous

No obligation to:

- Create new records – including electronic records
- Store records on particular media



- Provide complete duplication of the voluminous files of a public office
- Provide internet access to electronic public records



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Public Records Act Exceptions

Unless the public office can identify an exception that clearly requires or permits withholding a requested record, it **must** disclose the record

- Exceptions are created only by law
(Exceptions are usually statutes, but they may also come from constitutional rights or common law)
- Persons cannot “contract out” of the Public Records Act



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Mandatory/Catch-all Exception

- Any state or federal law which **prohibits** the release of specified records – RC 149.43(A)(1)(v)
- Such records are prohibited from disclosure in response to a public records request, even if the public office would like to disclose it
- If any state statutes, rules, federal statutes or regulations prohibit public disclosure, then a public office **MUST NOT release** that record in response to a Public Records Request



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Example: Student Records

Family Education Rights and Privacy Act of 1974 (FERPA)

School officials may not disclose personally identifiable information about students without the written consent of the students or their parents, unless permitted to do so by the Act



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Discretionary Exception

- A record may be “confidential” if it is **excepted from disclosure under the Public Records Act**
- An “**exception**” means that a public office **does not have to** disclose the record in response to a request, but **may if it so chooses**
- Thus, if any state or federal laws designate certain records as “not public record” then they **are not** subject to the provisions of the Public Records Act

Note: Some confidentiality laws, such as the Personal Information Systems Act, may apply to non-records



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Waiver of Discretionary Exception

- Waiver of an exception occurs by any voluntary disclosure of a record that could be appropriately withheld under one of the exemptions
- The disclosure **must** have been voluntary and **to a member of the public**
- Waiver is forever, and for everyone, as to **that specific record**



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Example: Confidential Law Enforcement Investigatory Records

Step 1
Must pertain to a "law enforcement matter" involving:



- Specific suspicion of misconduct
- Conduct violates law (criminal, civil or administrative)
 - **Not** internal personnel discipline
- Agency has authority to enforce law

Step 2
Release of record would disclose any of the following:



- Uncharged Suspect
- Confidential Source or Witness
- Physical Safety
- Investigatory techniques/procedures
- Investigatory Work Product



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Miscellaneous

Government job application materials:

There is no public records exception that generally protects resumes and application materials submitted to public offices in the hiring process.

Juvenile records:

Although it is a common misconception, there is no Ohio law that categorically excludes all juvenile records from public records disclosure.

General Privacy:

Constitutional right to privacy is very limited.



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Safety Officer Exceptions

- Peace Officer
- Parole Officer
- Prosecuting Attorney
- Assistant Prosecuting Attorney
- Correctional Employee
- Youth Services Employee
- Firefighter
- EMT
- BCI&I Investigators



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Safety Officer Occupation Exempted Information Includes:

- Personal Address except for state or political subdivision
- Social Security Numbers
- Residential Telephone Numbers
- Bank Account Numbers
- Debt/Charge/Credit Card Numbers
- Emergency Telephone Numbers
- Medical Information
- Beneficiaries' Names
- Voluntary Salary Deductions
- Photographs of undercover or plain clothes positions or assignments



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Exception To This Rule

*Should a **journalist** desire select residential or familial information about a specific peace officer, parole officer, prosecuting atty, assistant prosecuting atty, correctional employee, youth services employee, firefighter or EMT that is exempt, then the journalist must put the request in writing. The request shall include the journalist's name, title and the name and address of the journalist's employer. The request shall state that this disclosure of the information sought would be in the public interest.*



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Mandatory vs. Discretionary: Examples

Mandatory Exceptions

- Physician-patient privileged records
- Student education records
- Criminal history records obtained through LEADS

Discretionary Exceptions

- Trial preparation records
- "Infrastructure" and "security" records
- Confidential Law Enforcement Investigatory Records (CLEIRs)



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Additional Examples of Exceptions

- **Security & Infrastructure Records** R.C. 149.433

- **Juvenile Records**

- Juvenile Courts
- Children Services Agen
- Fingerprints and photographs statute



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Exceptions Summary

- If a record falls squarely within the mandatory “catch all” exception, **WITHHOLD**
- For discretionary exceptions, use **CAUTION** and withhold or waive. **Consult legal counsel!**
- If a record is clearly public with no applicable exceptions, **DISCLOSE**



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How to Comply With Public Records Requests

Preparation

Negotiation/Clarification

Documentation

Withholding/Redacting



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Preparation: Tools



Lists:

- Non-records
- Exceptions

Retention Schedules:

- Set and follow prudent records retention periods

Periodic training of office staff

Yellow Book: keep on hand, linked online:

www.auditor.state.oh.us/services/opengov/resources/2011-3-15_SunshineLawsManual_CO.pdf

Contact information of your legal counsel



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Mandatory Negotiation/Clarification

What is “overly broad”?

- Mandatory clarification is required when a request is denied as **ambiguous** or **overly broad**, or the office **can't reasonably identify** which records are being requested
- Public office must inform the requester how the records are maintained and accessed, so that the requester has an opportunity to revise the request



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Optional Negotiation/Clarification

A public office *may* ask a requester to make a request in writing, or to provide their identity, or for the intended use of the records, if . . .

- The office believes it would benefit the requester by enhancing the office's ability to identify, locate or deliver the requested records,

AND

- The office **first** discloses that the requester does not need to submit a request in writing, or reveal his/her identity, or the intended use of the records



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Documentation

- Documenting the steps taken to satisfy a public records request is a **must!**
- If a request is made verbally, **write it down**
- Send a **receipt letter** if you cannot satisfy a request immediately. **(See Handout Page 1)**
- Document the **format** in which the requester wishes to receive the records
- Document the agency's **charges** per copy, if copies are requested



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Withholding or Redacting: Definition and Identification

- “Redaction” - **Obscuring or deleting** any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of a record
- Redactions **must** be plainly visible, or the office must advise the requester of what redactions have been made – R.C. 149.43(B)(1)

(See Handout Page 2)



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Withholding or Redacting: Explanation of legal authority required

- If a request is denied in part (redactions within a document), or in whole (entire document), the public office must provide an explanation of why the request was denied, **including legal authority!!!**
– R.C. 149.43(B)(3)
- The explanation can be provided on the document itself or in a cover letter
- Ohio Revised Code and Administrative Code online:
– <http://codes.ohio.gov> (for office and requester use)

(See Handout Pages 3, 4)



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Liabilities for Violating the Public Records Act

- **Mandamus Action** by “person aggrieved” by violation of Division 149.43(B) of the Public Records Act
A legal action in common pleas, appellate court, or the Ohio Supreme Court to enforce the Act
- **Civil Damages** (only if violation caused actual lost use of records)
- **Attorney’s fees** and court costs
- **Possible reduction** of damages and fees



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Records Retention

Obligations
Liabilities
Schedules



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Obligations of Public Offices for Records Retention

- **Shall make** only such records as are necessary to document the organization, functions, and essential transactions of the agency, and to protect the legal and financial rights of the state and persons directly affected – R.C. 149.40
- **May not** destroy, mutilate, or otherwise dispose of records except as provided by law or under the rules of the records commissions – R.C. 149.351



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Obligations of Public Offices for Records Retention

- Shall **organize and maintain** public records in a manner that they can be made available for inspection or copying

AND

- Shall have available a copy of its **current records retention schedule** at a location readily available to the public – R.C. 149.43(B)(2)



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Liabilities for Violating Records Retention Laws

Any person may file either or both of the following, in common pleas court:

- A civil action for **injunctive relief** to compel compliance with this section, and an award of reasonable attorney's fees, and/or
- A civil action to recover a **forfeiture of \$1,000 for each violation**, and an award of reasonable attorney's fees – R.C. 149.351



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Factors Determining Retention Periods

- **Administrative Purposes** – period needed by the office to carry out its duties
- **Fiscal Tracking** – needs pertaining to the receipt, transfer, payment, adjustment, or encumbrances of funds. Documents subject to audit.
- **Legal Value** – documents relating to rights or obligations of citizens, or of the agency that created it
- **Historical Value** – Ohio Historical Society/Archives



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Records Retention & Disposal

Retention Schedules:

- Records of a public office may be destroyed, but only if they are destroyed in compliance with a properly approved records retention schedule.
- However, if the retention schedule does not address the particular type of record in question, the record must be kept until the schedule is properly amended to address that category of records.
- If a public record is retained beyond its properly approved destruction date, it keeps its public record status until it is destroyed.



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Records Retention & Disposal

Retention Schedules- How Long Should Records Be Kept?:

- In crafting proposed records retention schedules, a public office must evaluate the length of time each type of record warrants retention for administrative, legal or fiscal purposes after it has been received or created by the office.
- Consideration should also be given to the enduring historical value of each type of record, which will be evaluated by the Ohio Historical Society when that office conducts its review.
- Records commissions may consult with the Ohio Historical Society during this process. R.C. 149.31(A).



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Records Retention & Disposal

Retention Schedules:

- All public offices must maintain a copy of all current records retention schedules at a location readily available to the public. - R.C. 149.43(E)(1)
- Without an applicable schedule dictating how long a record must be kept and when it can be destroyed, a public office must keep that record forever.
- Creating and following schedules for all of its records allows a public office to dispose of records once they are no longer necessary or valuable.



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Why Retain Records?

- Maintaining organized documentation and support for financial transactions is essential in assuring the entity's financial statements are accurately presented and that all expenditures are made for a proper public purpose.
- The failure to maintain organized supporting documentation eliminates a significant control point, increases a risk of fraud, may lead to inaccurate financial statements, obscures the audit trail and provides for the opportunity for errors, irregularities to occur and remain undetected by management for an extended period of time.
- Without appropriate documentation, it may not be possible to determine if the expenditure was made for a proper public purpose.
- In addition, the failure to maintain adequate support for expenditures could result in the entity making inappropriate disbursements for goods or services not actually received by the entity.



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Records Retention Information

*For more information,
please contact your
records commission,
and/or:*

Ohio Historical Center



State Archives
614-297-2536

localrecs@ohiohistory.org



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Questions & Answers

**Auditor of State Open Government Unit
Web Page:**
www.auditor.state.oh.us/services/opengov/default.htm

Yellow Book Online:

www.auditor.state.oh.us/services/opengov/resources/2011-3-15_SunshineLawsManual_CO.pdf

For Additional Information ...



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A-133 Update

July 29, 2013

Presented by:
Michele Porter

www.ohioauditor.gov AOS, Center For Audit Excellence

1

Agenda

- Overview of A-133
- OMB's *Proposed* A-133 Revisions
- Questions



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2

Brief History of A-133

- "The Single Audit Act of 1984" (*Public Law 98-502*) established requirements for certain governments that administer Federal financial assistance programs.
 - **Single Audit** Act Amendments of 1996 (*31 USC 75*)
- OMB Circular **A-128** (*Audits of States, Local Governments*), issued in 1985 to help auditors and recipients implement the new Single Audit Act.
 - OMB Circular **A-133** (*Audits of Institutions of Higher Education & Other Non-Profit Organizations*), issued in 1990, where OMB extended the single audit process to non-profits.
 - A-133 requirements amended in 2003 & 2007



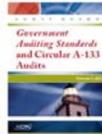
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3

Brief History of A-133

- Each year, OMB issues an updated version of the “OMB Compliance Supplement” to assist auditors in performing the required audits.
- In addition, the AICPA maintains a guide titled *Government Auditing Standards and Circular A-133 Audits* which gives a basic description of the procedures auditors should perform and the reports they should issue for single audits.



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4

Am I required to have an A-133 audit?



- A-133, Subpart B, Section .200(a) states:
 - Non-Federal entities that **expend \$500,000 (for fiscal years ending after December 31, 2003) or more in a year in Federal awards** shall have a single or program-specific audit conducted for that year in accordance with the provisions of this part.



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5

Am I required to have an A-133 audit?

- So, how do you know how much Federal funds you spent?
 - It is **VERY IMPORTANT** that the Treasurer has some method in place to track federal expenditures!
 - As an example: Each federal grant is tracked in a separate fund & cost center. At year end, as part of closing out the books, the system requires the Treasurer to complete a Federal Expenditures summary to determine if it is over \$500,000.



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6

Am I required to have an A-133 audit?

- **IMPORTANT NOTES:**

- If the Charter School passes federal funds through to their Management Company to spend – the federal expenditures are determined when they are spent by the management company.
- A-133 requires the auditee to prepare a schedule of expenditures of federal awards.
 - A-133 requires the auditor to determine and provide an opinion on, whether the auditee's schedule is presented fairly.
- Auditors must be able to audit original records (ie. when school utilizes a mgmt. co. auditors need mgmt. company records).



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7

Am I required to have an A-133 audit?

- So, how do you know if you require a single audit, if you don't track and calculate total federal expenditures at the end of the fiscal year?
 - You don't know, and you may not get the required single audit.



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8

Am I required to have an A-133 audit?

- Per A-133 .235(c)(1):
 - The audit shall be completed and the reporting required by paragraph (c)(2) or (c)(3) of this section submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period.
 - If FYE is 6/30/13, then single audit must be done and submitted by the end of 3/31/14.



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Am I required to have an A-133 audit?

- If an entity fails to have a required single audit, or fails to meet the A-133 deadline, there are several possible consequences:
 - Pay back the federal funds, and/or
 - Loss of federal funding in future years, and/or
 - Citations, internal control deficiencies, & A-133 opinion modification in federal audit,
 - Etc.
- It is up to the Federal Agency to decide what the ultimate outcome will be.



Am I required to have an A-133 audit?

- If your school did not qualify for a single audit in the past, be sure to contact your auditors ASAP if you think you may be single in the current year!
 - Auditors need to do single audits earlier in order to meet the A-133 deadline.



A-133 Terminology

- Type A program
 - a program with large expenditures
- Type B program
 - a program with smaller expenditures
- Federal Schedule
 - AKA the Schedule of Expenditure of Federal Awards (SEFA) is a report of federal expenditures that is required to be part of your A-133 audit.
- FACCR
 - An audit program prepared by the Auditor of State of Ohio's office used in auditing federal program compliance during a single audit.

OMB's Proposed A-133 Revisions



OMB's Proposed A-133 Revisions

- OMB is in the process of modifying A-133.
- OMB Reform is being issued in 3 parts
 - 1st - "**Advance Notice** of Grants Reform" was issued in February 2012.
 - 2nd - "**Proposed OMB Uniform Guidance**" was issued in January 2013
 - 3rd - "**Final Guidance**" is slated to be issued by the end of 2013.

OMB's Proposed A-133 Revisions

- Proposed increase of the threshold for a **single audit** to **\$750,000** in federal expenditures.
 - Removed tiered approach as presented in advance notice, in light of comments they received.
 - An entity that falls below the \$750,000 threshold must make records available for review or audit by appropriate officials of the Federal agency, pass-through entity, and the GAO.



OMB's Proposed A-133 Revisions

- The minimum threshold for the **Type A/B program** determination is proposed to be revised from \$300,000 to **\$500,000**.
- For a Type A program to be designated as high-risk the revision says it must have, in the most recent period:
 - Failed to receive an unqualified opinion;
 - Had a material weakness in internal control; or
 - Had questioned costs exceeding 5% of the program's expenditures.



OMB's Proposed A-133 Revisions

- Reduces the number of high-risk Type B programs that must be tested as major programs **from at least 1/2 to at least 1/4** of the number of low-risk Type A programs.
- Revision states that small Type B programs would be considered those that are a **flat 25% of the Type A/B program threshold**.



OMB's Proposed A-133 Revisions

- The % of coverage required in a single audit is proposed to be reduced from the current 50% / 25% to:
 - **40%** for not low-risk auditees
 - **20%** for low-risk auditees



OMB's Proposed A-133 Revisions

- Criteria for low-risk auditee status has been revised.
 - It would now more clearly include Data Collection Form submissions within required timeframes as a criteria;
 - Adds a criteria that the auditor did not report a substantial doubt about the auditees ability to continue as a going concern;
 - Removes the previous option for waivers in this area.

OMB's Proposed A-133 Revisions

- Proposes that the number of types of compliance requirements to be tested in a single audit be reduced from the current 14 compliance requirements to 6 compliance requirements.
 1. Activities Allowed or Unallowed AND Allowable Costs/Cost Principles
 - This could include some testing of Period of Availability and Matching
 2. Cash Management
 3. Eligibility
 4. Reporting
 5. Subrecipient Monitoring
 6. Special Tests & Provisions



OMB's Proposed A-133 Revisions

- Therefore, the following sections are proposed to be removed from the FACCR's:
 - D – Davis-Bacon Act
 - F – Equipment & Real Property Mgmt.
 - G – Matching, Level of Effort, Earmarking
 - H – Period of Availability
 - I – Procurement & Suspension Debarment
 - J – Program Income
 - K – Real Property Acquisition & Relocation Assistance
- The proposal would permit the federal agencies to request that certain of the deleted types of compliance requirements be added to the Special Tests & Provisions (Section N) requirements for federal programs where they could be considered essential to the oversight of the program.



OMB's Proposed A-133 Revisions

- It is important that auditees understand that they will remain responsible for complying with all applicable Federal compliance requirements despite the reduction in the types of compliance requirements auditors must test as part of a single audit.



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22

OMB's Proposed A-133 Revisions

- Auditees must identify amount provided to subrecipients from each Federal program on the face of the Federal Schedule
 - Currently A-133 allows this to be in a footnote disclosure, and only requires this be reported "to the extent practical".
 - The proposal eliminates these provisions.



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23

OMB's Proposed A-133 Revisions

- When audit findings are not corrected or are only partially corrected, the Summary Schedule of Prior Audit Findings should describe:
 - Why the finding reoccurred
 - Planned corrective action
 - Any partial corrective action taken



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OMB's Proposed A-133 Revisions

- Findings related to the financial statements which auditors must report in accordance with GAGAS are required to also be included in:
 - Corrective Action Plan
 - Summary Schedule of Prior Audit Findings

25



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OMB's Proposed A-133 Revisions

- More detail will be required to be reported in auditor findings.
- The **questioned cost** threshold for reporting will be increased **from \$10,000 to \$25,000**.

26



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OMB's Proposed A-133 Revisions

- Combines the cost principles and administrative requirements into a single document with limited variations by type of entity.
 - A-21 – Cost Principles for *Educational Institutions*
 - A-87 – Cost Principles for *State, Local, and Indian Tribal Gov's*
 - A-89 – *Federal Domestic Assistance Program Information*
 - A-102 – *Awards and Cooperative Agreements with State and Local Gov's*
 - A-110 – *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations*
 - A-122 – *Cost Principles for Non-Profit Organizations*
 - A-133 – *Audits of States, Local Gov's and Non-Profit Org's*

27



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OMB's Proposed A-133 Revisions

- A number of changes are also being proposed in the following complex areas:
 - Indirect Costs
 - Time & Effort Reporting
 - Administrative Requirements
- Certain A-133 reform changes require changing the law; therefore, these changes cannot, and are not, included in the Proposal (ie. Reducing the single audit reporting deadline from 9 months to say 6 months).



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28

OMB's Proposed A-133 Revisions

- When are the revised A-133 audit requirements effective?????
 - Again, remember that these are just **proposed** revisions.
 - Final draft is *planned* to be issued by the end of 2013.
- Proposed changes will *likely* be effective for audit periods beginning within one year of the changes becoming Final (i.e., possibly certain fiscal year 2014 or later audit periods).



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29

OMB's Proposed A-133 Revisions

- How will this affect me?
- If this proposal takes effect as is:
 - School may no longer be a single audit(threshold increase)
 - School's low risk auditee status may change, based on new criteria
 - Schools potentially could have less programs requiring testing due to % of coverage decrease



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30

OMB's Proposed A-133 Revisions

- Time & Effort and Indirect Cost requirements changing
- SEFA must identify total amount provided to subrecipients from each Federal program on the face of the SEFA

OMB's Proposed A-133 Revisions

- Findings –
 - More detail required in comments
 - Questioned Cost threshold higher
 - GAGAS findings need corrective action plan and must be addressed in Summary Schedule of Prior Audit Findings

OMB's Proposed A-133 Revisions

- Further info available:
 - http://www.whitehouse.gov/omb/grants_docs#proposed
 - Full text proposal
 - Federal Register notice
 - Crosswalk from existing to proposed guidance
 - Crosswalk from proposed guidance to predominant source in existing guidance
 - Text comparisons: administrative requirements, cost principles, audit requirements, & definitions

OMB's Proposed A-133 Revisions

- Further info available:
 - <http://www.ohioauditor.gov/services/lgs/bulletins/2013/2013-006.pdf>
 - AOS Bulletin 2013-006

NOTE:

The FAQ information presented in this slide show is subject to change.

Federal guidelines, etc. change, and this information is based on the current guidance.

Federal FAQ's

- Q: If Title I funds are only used in the elementary does the *high school* graduation rate matter?
 - A: Yes. When ODE received the Title I award from USDE, ODE had to promise to apply the cohort graduation rate calculations to the state report card and the report cards of each of the Ohio schools.
 - As a result, the requirement applies universally to all Ohio schools.

Federal FAQ's

- Q: ODE is performing an onsite review over 2 of the programs which will probably be major programs here. Does this affect what auditors will be testing and or which programs are selected as major?
 - A: It could affect both the major program determination, and the amount of testing you do.
 - Major program determination

See the next slide for more detail

Federal FAQ's

- A-133 Guide 8.35 explains the effect on the amount of testing:
 - The oversight exercised by federal agencies or pass-through entities could indicate risk.
 - An important factor in assessing risk is the results of recent audits performed by federal agencies or pass-through entities.
 - For example, recent monitoring or other reviews that were performed by an oversight entity and that disclosed no audit findings may indicate lower risk, whereas monitoring that disclosed significant findings could indicate higher risk.
 - **However, reviews performed by federal agencies or pass-through entities vary widely with coverage and intensity. Therefore, consideration of the scope of reviews performed may assist the auditor in evaluating whether the reviews increase, decrease, or have no impact on risk.**

Federal FAQ's

- First, ODE's testing must have covered a majority of your audit period.
- Second, ODE's testing and report must be finished so we can review what they did and their results.
- Third, we need to consider the scope and intensity of the ODE review.
- Assuming 1, 2, & 3 are favorable:
 - Auditors might use the results of onsite reviews to reduce the extent of control and/or substantive testing **for any FACCR audit objectives that ODE has already reviewed/tested** as evidenced by their final report.

FAQ's

- Q: We have a schoolwide program and have no documentation for T&E – is this ok since we are schoolwide?
 - A: It depends. Per Section B of the school FACCR's:
 - A school that *consolidates Federal funds with State and local funds in a consolidated schoolwide pool* is **not** required to maintain separate records by program
 - If a schoolwide program school does *not consolidate* Federal funds in a consolidated schoolwide pool, the school **must keep** separate records by program.

FAQ's

- If a school operating a schoolwide program **consolidates** Federal, State, and local funds in a consolidated schoolwide pool:
 - An employee who is paid in full with funds from that pool is **not** required to file a semi-annual certification because there is no distinction between staff paid with Federal funds and staff paid with State or local funds.
 - In effect, payment from the single consolidated schoolwide pool certifies that the employee works only on activities of the schoolwide program.

FAQ's

- If a school operating a schoolwide program **does not consolidate** Federal funds with State and local funds in a consolidated schoolwide pool:
 - An employee who works, in whole or in part, on a Federal program or cost objective **must document time and effort** as follows:

FAQ's

- (a) An employee who works **solely on a single cost objective** (i.e., a single Federal program whose funds have not been consolidated or Federal programs whose funds have been consolidated but not with State and local funds) must furnish a **semi-annual certification** that he/she has been engaged solely in activities that support the single cost objective.
 - The certifications must be signed by the employee or a supervisory official having first-hand knowledge of the work performed by the employee in accordance with OMB Circular A-87, Attachment B, paragraph 8.h.(3).

FAQ's

- (b) An employee who works on **multiple activities or cost objectives** (e.g., in part on a Federal program whose funds have not been consolidated in a consolidated schoolwide pool and in part on Federal programs supported with funds consolidated in a schoolwide pool or on activities that are not part of the same cost objective) **must maintain time and effort distribution records** in accordance with OMB Circular A-87, Attachment B, paragraph 8.h.(4), (5), and (6). The employee must document the portion of time and effort dedicated to:
 - (i) The Federal program or cost objective; and
 - (ii) Each other program or cost objective supported by consolidated Federal funds or other revenue sources.

FAQ's

- Q: My school district has a schoolwide program in a building which consists of Title I, Title II-A, IDEA Part B, and local (general) funds. They do not consolidate their funds. For a teacher working in that building, is it necessary to have Personal Activity Reports (PAR's), or can a semi-annual certification be used?
 - A: A semi-annual certification can be used because the schoolwide program is a single cost objective for the district, and the general fund is the only source of local funds.
 - The general fund can always be allowably used to subsidize Federal program costs without creating a secondary cost objective.

FAQ's

- Q: Where can I get an example Personal Activity Report and semi-annual certification forms?
 - A: ODE has sample PAR & semi-annual certification forms in their document library.
 - Go to: <https://ccip.ode.state.oh.us/documentlibrary>
 - Search for "time and effort" – it brings up:
 - Single Funding Source Certification (Semi-annual cert. form)
 - Time and Effort Forms
 - Time and Effort Guidance



Federal FAQ's

- Q: We are considering consolidating Federal, State, and local funds into a consolidated schoolwide pool. Where can I find information about this type of schoolwide program?
 - AOS Bulletin 2007-003
 - Throughout the school FACCR's: Specifically sections II, B, & N
 - USDE's "Designing Schoolwide Programs" - <http://www.ed.gov/policy/elsec/guid/designingswpguid.doc>
 - ODE's Document Library - <https://ccip.ode.state.oh.us/documentlibrary>
 - Search for "schoolwide" and look under the "financial information section"

Federal FAQ's

- Q: We received federal grants from ODE and charged indirect costs to them – is this allowed?
 - A: Yes, but only if you did so in accordance with an approved plan.
 - 2 CFR 225, Appendix C, Part D:
 2. Each local gov. that has been designated as a "major local government" by OMB is also required to submit a plan to its cognizant agency annually. OMB periodically lists major gov's in the Federal Register.

Federal FAQ's

- 2 CFR 225, Appendix C, Part D:
 - 3. All other local gov's claiming central service costs must develop a plan in accordance with the requirements described in this appendix and maintain the plan and related documentation for audit. These local gov's are not required to submit their plans for *Federal* approval unless they are specifically requested to do so by the cog. **Where a local government only receives funds as a sub-recipient, the primary recipient (ODE) will be responsible for negotiating indirect cost rates and/or monitoring the sub-recipient's plan.**
 - ODE guidance on indirect cost recovery plans is located at <http://education.ohio.gov/GD/Templates/Pages/ODE/ODEDetail.aspx?page=3&TopicRelationID=717&ContentID=4491&Content=141186>

Questions?



A-133 Update

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52



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Ohio Compliance Supplement 2013

Presented by: Michele Porter,
Center for Audit Excellence

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1

**Skinny
OCS**



2012 = 7 Chapters
2013 = 3 Chapters
(Direct Laws, Indirect Laws & Mandates, Stewardship)



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2

Available on the Auditor of State Internet



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Mission & Accomplishments
Office Organization

Local Government Resources
Ohio Compliance Supplement Manual
2013
Ohio Compliance Supplement Implementation Guide (Rev. 01/2013) (pdf 1.5 MB)
• Exhibit 3 Compliance ACE Word Version
Ohio Compliance Supplement Manual (Rev. 01/2013) (pdf 3.7 MB)
• PDF and Microsoft Word Version by Sections
Optional Procedures Manual (Rev. 02/2013) (docx)



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New OCS File – Implementation Guide



The OCS implementation guide is packed with great information for auditing compliance in Ohio governments.

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New OCS File – Implementation Guide



This file includes:

1. a revised version of the old OCS Introduction file
2. all of the old appendices that were strewn throughout chapters 1-7
3. all of the old individual appendix files

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New OCS File – Implementation Guide



Let's take a look at the new file. The file was set up with the following easy navigation techniques:

1. Clickable Table of Contents
2. Bookmarks



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6

New OCS File - Implementation Guide can be found in the attachments of this PDF file. File attachments can be found in the upper left hand of this window, beneath the 'Bookmarks' tab.

Implementation Guide - Highlights



Direct Laws are in Chapter 1

These are laws that could materially impact the financial statements and/or disclosures.

Implementation Guide - Highlights



Indirect Laws and Mandated Testing is in Chapter 2

Indirect Laws - If these laws aren't complied with they could cause a material liability or shut down an entity.

Mandated Laws - The ORC requires AOS to test certain laws.

Implementation Guide - Highlights



Stewardship Laws are in Chapter 3

In addition to the “direct”, “indirect”, and “mandated compliance tests” discussed above the Auditor of State has identified laws of **significant public interest due to stewardship considerations**. Citizens and public officials want and need to know whether governments are handling their funds properly and complying with laws and regulations. Public officials entrusted with public resources are responsible for complying with those laws and regulations.

Implementation Guide - Highlights



However, the categorization of a requirement in Chapter 2 or 3, or even its omission from this Supplement **does not lessen a government's responsibility for compliance** and for instituting controls it believes are necessary to assure compliance with any laws and regulations that apply to the government.

Implementation Guide - Highlights



To help ensure entities are responsibly complying with laws we don't test annually.....
The Auditor of State intends to select a few audits randomly each year, to test requirements listed in the OCS Optional Procedures Manual.



Chapter 1 – Direct Laws

Direct			
<ul style="list-style-type: none"> •Appropriation Measure •Encumbrances/Blanket POs •Set Asides •Establish funds •Distribution of Revenue •Sale of Bonds/Perm. Improvement •Transf/Advances •Reserves •Allocating Interest 	<ul style="list-style-type: none"> •County Children Service Fund •Budgetary County Hospitals •Budgetary Colleges •Board of Education Conveyances •School facilities •Retiring Debt •Bonds / Notes •Library Notes •Govts invest in own securities 	<ul style="list-style-type: none"> •Annual Financial Reporting •Management Company Footnote •Self Insurance •Average Daily Membership/ School Funding •Community School Funding •Vacation and Sick Leave 	<ul style="list-style-type: none"> •Income Tax and Pensions •Cemetery Endowment Fund •Fraud •Solid waste expenditures •Allocating Audit Costs •Ag Society Supplement



Chapter 2 – Indirect Laws and Statutorily Mandated Tests

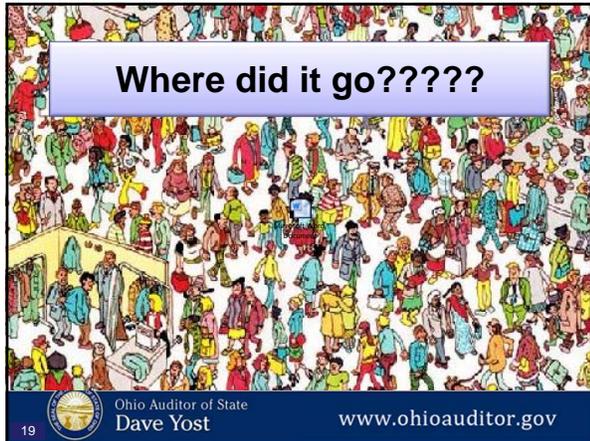
Indirect		Mandated
<ul style="list-style-type: none"> •Internet or computer based community school space •Required accounting records •Investments •Deposits 	<ul style="list-style-type: none"> •Sponsor Monitoring of Community Schools •Cashbook •Electronic kilowatt-hour tax 	<ul style="list-style-type: none"> •Force Accounts (also indirect) •Landfill AUP •County electronic signature •CPE Treasurer •School Anti-bullying •Employee notification of fraud hotline

Chapter 3 – Stewardship Most Sections Allow Rotating

Stewardship	
<ul style="list-style-type: none"> •Deposits of public money •Public meetings •Public Records •Appointments, compensation, etc. •Prohibited political activities •Bonding requirements •Foundation Anticipation Notes •Commissaries •Unclaimed costs and fees •Court record requirements •Court fees, fines, costs, etc. 	<ul style="list-style-type: none"> •Training and continuing education for county auditors •FOJ •LETF •Allocating township trustee and fiscal officer compensation •Reimbursement of insurance premiums for townships •Cafeteria plans townships

Optional Procedures Manual

Optional Procedures	
<ul style="list-style-type: none"> •Certification of available revenue •Appropriations limited by estimated resources •5705.36, 5704.41(A) and (B) Restrictions •Ten mill limitation •Permission to establish funds •Five year projections •412 Certificates •Contracts and contract modifications/bidding 	<ul style="list-style-type: none"> •Procurement cards •Credit cards •Prevailing wages •Reverse Internet auctions •Issuing Municipal Securities •Books to be kept by courts (non accounting related records) •Fines and penalties to be paid to law libraries •5705.36 Appendix •OPM Legal Matrices



Where did it go?????

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19

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20



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21



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*Auditor of State's 2013
Community School Training*

Legal Update

Presented by:
Michael Press
Assistant Legal Counsel

Agenda

- Ethics Opinion Review
- Case Law Review and Legislative Update
- Common Findings for Recovery & Noncompliance Citations – How to Avoid
- Unauditable Designation & How to avoid



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ETHICS OPINION REVIEW

Ohio Ethics Commission Advisory Opinion No. 2010-01

All members of the governing board, officers, employees of a community school are subject, without limitation, to:

- Chapter 102 of the Ohio Ethics Laws
- Ohio Rev. Code Sections 2921.42 and 2921.43 - (including all teachers)
- Added to Ohio Revised Code Section 3314.03 in March of 2007



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Ohio Ethics Commission Advisory Opinion No. 2010-01

... continued ...

- The OEC issued Opinion 2010-01. This Opinion overruled Opinion 2003-01 as it related to limits on the application of the Ethics Law and related statutes.
- So what does this mean?
 - ✓ Conflict of interest, nepotism, public contract restrictions, accepting gifts, etc.
- Consult legal counsel and OEC



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Case Law Review and Legislative Update



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Shared Services Agreements Ohio
Rev. Code Section 3313.849

New code section

- The bill authorizes school districts, community schools, or STEM schools to agree to share any services offered by an ESC and to pool funding resources with any other school districts, community schools, or STEM schools provided that each participant in those shared services specifies in its service agreement: (1) the amount of funds it will be contributing toward the total cost of the shared services, (2) the services that will be shared, and (3) the other participating districts or schools.



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Shared Services Agreements Ohio
Rev. Code Section 3313.849

... continued ...

- The bill specifies that the authority to enter into a shared services agreement is in addition to the authority to share the services of supervisory teachers, special instruction teachers, special education teachers, and other licensed personnel granted to school district boards of education under continuing law.



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Community School Sponsor Oversight
Ohio Rev. Code Sec. 3314.015

- The bill revises the provisions of current law regarding the Department's oversight and approval of sponsors of community schools. Most sponsors must be approved by and enter into an agreement with the Department before they may contract with any schools. (Certain sponsors in the former pilot project area (Lucas County) are exempt from the approval provision, however.)
- The bill also adds a provision stating that Department's authority to approve, disapprove, or revoke the approval of an entity's sponsorship applies to *both* start-up community schools *and* conversion community schools



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Teacher Evaluations Ohio Rev. Code Sec. 3319.11

- Under continuing law, all school districts and educational service centers, and all community schools and STEM schools that receive federal Race to the Top grant funds, must adopt a standards-based teacher evaluation system that conforms to a framework developed by the State Board. The evaluation system must provide for multiple evaluation factors. Under current law, one of those factors must be student academic growth, and it must make up 50% of each evaluation. Under the bill, however, the student academic growth factor must account for 35% of each evaluation. In addition, the bill permits a school district to attribute an additional percentage to that factor, not to exceed 15% of each evaluation.



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Teacher Evaluations Ohio Rev. Code Sec. 3319.11

... continued ...

- The bill also specifies that in calculating student academic growth for an evaluation, a student must be excluded if the student has 30 or more *excused or unexcused* absences for the school year, instead of 60 or more *unexcused* absences for the school year as under current law.



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Ohio Rev. Code Section 3314.011 (Rev. Eff. 3/22/13)

Sec. 3314.011. Every community school established under this chapter shall have a designated fiscal officer. The auditor of state may require by rule that the fiscal officer of any community school, before entering upon duties as fiscal officer of the school, execute a bond in an amount and with surety to be approved by the governing authority of the school, payable to the state, conditioned for the faithful performance of all the official duties required of the fiscal officer. Any such bond shall be deposited with the governing authority of the school, and a copy thereof, certified by the governing authority, shall be filed with the county auditor.

Prior to assuming the duties of fiscal officer, the fiscal officer designated under this section shall be licensed under section 3301.074 of the Revised Code. ~~and shall complete more than sixteen hours of continuing education classes, courses, or workshops in the area of school accounting as approved by the governing authority of the community school. Any fiscal officer who has received under section 3301.074 of the Revised Code shall complete an additional twenty-four hours of continuing education classes, courses, or workshops in the area of school accounting as approved by the governing authority of the school within one year after assuming the duties of fiscal officer of the school. However, any such classes, courses, or workshops approved or approved hours completed by the fiscal officer prior to assuming the duties of fiscal officer shall count toward the additional twenty-four hours of continuing education required under this section. The governing authority of any fiscal officer who is not licensed under section 3301.074 of the Revised Code shall complete the eight hours of continuing education classes, courses, or workshops in the area of school accounting as approved by the governing authority. Any person applying as a fiscal officer of a community school at the effective date of this amendment who is not licensed as a treasurer shall be permitted to serve as a fiscal officer for not more than one year following the effective date of this amendment. Beginning on that date and thereafter, no community school shall permit any individual to serve as a fiscal officer without a license as required by this section.~~

HB 555 GA 129, Eff. 3/22/2013.



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Richard Cordray, Ohio Attorney General
vs.
The International Preparatory School

- Is a community school treasurer a “public official”?
- If so, Ohio Revised Code 9.39 “strict liability” applies.
- *Supreme Court* decided this case on December 20, 2010
- Community School treasurer is public official



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Hope Academy Broadway Campus et al.,
v.
White Hat Management, LLC et al.,
2013-Ohio-911.

Background:

- The community school boards had contracts that required them to turn over 96 percent of their state funding to the management company to operate the schools
- The community school boards requested and the management company declined to provide the management company with the detailed accounting records pertaining to their management of the schools.
- The boards argued that:
 - they have a responsibility to oversee the use of public funds flowing through the schools to the for-profit management company and that they therefore should be provided copies of the records.



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Hope Academy Broadway Campus et al.,
v.
White Hat Management, LLC et al.,
2013-Ohio-911.

... continued ...

- **The management company refused to provide the requested records. It argued that:**
 - the records were proprietary and confidential and that the law only required it to provide summary information.
 - Public funds cease to be public once they pass through a private company to pay for services



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**Hope Academy Broadway Campus et al.,
v.
White Hat Management, LLC et al.,
2013-Ohio-911.**

... continued ...

➤ **The trial court held and the appellate court agreed that:**

- Charter schools are public entities and the funds that a management company receives remain public funds. The management company was therefore ordered to pen its' books.
- Management companies are public offices and therefore are "public officials" because they act as agents on behalf of public offices.
- Ohio Rev. Code Section 3314.024 requires a management company that receives more than 20 percent of a community school's annual gross revenues to provide a detailed accounting including the nature and costs of the services it provides, and that this detailed accounting must be provided to the community school.



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**Common Findings for
Recovery and
Noncompliance Citations**

How to Avoid



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**Majority of Community
Schools are in Compliance**

- Most schools implement sound fiscal practices
- Those who are not in compliance generate the most attention, but are not typical
- Laws and regulations are aimed at schools that are out of compliance
- Compliance is important as it effects children, their parents, teachers and the community



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Findings for Recovery and Noncompliance Citations

- A **finding for recovery** will be issued where, during the course of an audit, it is found that public money has been illegally expended, has not been accounted for, is due but not collected, or that any public property has been misappropriated or converted.
- A **noncompliance citation** is a finding that school has not complied with some local, state or federal provision.



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Findings for Recovery *Who is Liable?*

- The individual directly responsible for the loss or misuse of public funds will be held liable.
- Generally, Ohio law holds certain other parties jointly and severally liable by virtue of holding certain positions:
 - Under Ohio law, any public official who either **authorizes** an illegal expenditure of public funds or **supervises the accounts** of a public office from which such illegal expenditures is made is liable for the amount of such expenditure. *Seward v. National Surety Co.*, 120 Ohio St. 47 (1929); 1980 Op. Att’y Gen. No. 80-074; ORC 9.39; *State ex rel. Vill. of Linndale v. Masten*, 18 Ohio St. 3d 228 (1985)



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Findings for Recovery *Who is Liable?*

- So, who does this apply to?
- Who “authorizes” and/or “supervises the accounts” of the school?
 - Those who make the purchase
 - Those who sign checks
 - Those who approve expenditures/purchases
 - The Treasurer/Fiscal Officer – think about *Cordray v. TIPS*
 - Documentation and Transparency are paramount



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Common Findings for Recovery *Proper Public Purpose*

- Government entities may not make expenditures of public monies unless they are for a valid public purpose. *State ex rel. McClure v. Hagerman*, 155 Ohio St. 320 (1951).
- Typically, the determination of what constitutes a "proper public purpose" rests with the judgment of the governmental entity, unless such determination is arbitrary or unreasonable.
- Even if a purchase is reasonable, **Ohio Attorney General Opinion 82-006** indicates that it must be memorialized and must be approved BEFORE the purchase is made.
- Policies



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Common Findings for Recovery *Proper Public Purpose*

- AOS Technical Bulletins 2003-005 and 2004-002 discuss the requirements imposed by case law and AG Opinions.
- There are two criteria that the entity should consider when making a determination of proper public purpose:
 - (1) the expenditure is required for the general good of all inhabitants (students), meaning its objective is the promotion of public health, safety, morals, general welfare, security, prosperity, and contentment of all inhabitants, and
 - (2) the primary objective of the expenditure is to further a public purpose, even if an incidental private end is advanced



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Common Findings for Recovery *Proper Public Purpose & Documentation*

- Most findings for recovery are due to a lack of documentation
- An expenditure may be for a proper public purpose, but lack of documentation makes it impossible to determine what the purpose was
- Credit cards and lack of itemized receipts
- Sam's Club, Office Max, Target, Restaurants, Grocery Stores, and Gasoline – personal or private?
- Remember – transparency and documentation!



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Common Noncompliance & Referrals

Failure to Withhold STRS & SERS Contributions

- Teaching and non-teaching employees are required to make the statutorily mandated contributions to STRS and SERS. (see Ohio Rev. Code Sections 3314.10, 3307.26, 3309.23)
- Employee and employer contributions are sometimes found to have been unpaid to the appropriate retirements system. This typically results in a referral to the respective entity.
- **Please note** – we no longer make findings for entities that also contribute to Social Security. Although it is the AOS position that this is not fiscally prudent and unnecessary due to the above-referenced law, the IRS has declined to rule on the matter. As such, we acknowledge that this is a management decision and accept an entity's decision to pay Social Security taxes as a precaution



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Common Noncompliance & Referrals

Failure to Withhold STRS & SERS Contributions

- The OEC has held that community schools are subject to the Ohio's ethics laws. Remember earlier discussion
- Among other prohibitions, ORC § § 102.03 and 2921.42 prohibit public officials from using their public offices to secure contracts, employment, etc. for themselves or relatives/certain associates. These are commonly referred to as "related party transactions."
- A finding that a school has likely violated a provision of the ethics law will result in a referral to the OEC.



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Common Noncompliance & Referrals

Failure to Withhold STRS & SERS Contributions

... continued ...

- In one example, we saw that an executive director of a community school hired her young relative as an administrative assistant, and set their relative's compensation. The total compensation in this scenario totaled more than 5k during the school year. This resulted in a referral to the OEC.
- Another referral resulted from a governing board member voting to utilize her own company for a school project.



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Avoiding Findings & Citations

TRUST BUT VERIFY

- Sponsors should review the governing board's contracts and arrangements to ensure compliance and best practices.
- Governing board must monitor and verify companies and/or employees responsible for fiscal operations.
- Fiscal officers must assure compliance with board policies and accounting procedures.
- This is not a lack of trust – it is a system of checks and balances that help everyone win.



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Avoiding Findings & Citations

TRUST BUT VERIFY

... continued ...

- The Executive Director was responsible for many significant operational duties for the Academy during the year – including approving contracts, setting salary schedules, drafting and approving purchase requisitions and reimbursements (including her own), and entering into debt agreements.
- This lack of segregation of duties increases the risk that the Academy's funds could be misappropriated or fraudulent activity could occur and go undetected by management. Again, this is the exception – not the rule. However, this is a safeguard that helps keep public funds safe.



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Avoiding Findings & Citations

TRUST BUT VERIFY

... continued ...

- In this type of situation, we'd recommend that the Board take a more active role. This would allow for segregation of duties which would, in turn, help the organization safeguard its assets. We would also recommend that all expenditures involving the salary of or reimbursement to the Executive Director be approved by the Board.



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Avoiding Findings & Citations

Board Approval of Expenditures/Policies

- A way to avoid findings/citations of this nature is for the governing board to adopt formal policies over authorization of expenditures and terms for reimbursements. Those expenditures and policies should be reviewed on a regular basis.
- These types of policies should identify those individuals responsible for reviewing and approving purchases of the entity. Those individuals with such authority should be independent of the purchases. The policy should also include a requirement that supporting documentation be provided, and should specify what documentation is required.
- Additionally, policies on reimbursements should require that prior approval be given to make a purchase for which reimbursement is sought.



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Avoiding Findings & Citations

Example Policy Provisions

- upon receipt of original itemized documentation, credit card expenditures will be paid through the Board of Director's bank account."
- "failure to submit an original itemized receipt for any purchase made on the Board credit card shall result in rejection of payment for any and all charges not properly documented."
- "the Board of Directors and the Fiscal Officer are responsible for the supervision, distribution, use and documentation of the credit card."



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Avoiding Findings & Citations

Treasurer Issues

- Avoid having your treasurer on both sides of a transaction.
- Example: School contracts with a management company for treasurer and other services. The board determines to contract with the management company for grant writing services. Treasurer signs the check issued to the management company as compensation for grant writing services.



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Unauditable Designation & How to Avoid



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Unauditable Designation

- This law requires the AOS to notify the school's sponsor and the ODE when a charter or community school fails to submit documents showing how tax dollars have been spent.
- If financial statements and records are not brought into an auditable condition, state payments to the school will stop.
- This law also prohibits a school's sponsor from opening any additional community schools while their finances are considered to be unauditable.



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Unauditable Designation

... continued ...

- Once the situation is corrected, payments to the school resume.
- The AOS declares a public office "unauditable" when officials fail to submit complete financial statements and other documentation needed to support an annual audit.
- If the AOS or a public accountant finds that a community school is unauditable, the AOS shall provide written notification of that declaration to the school, the school's sponsor, and the ODE.



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Unauditable Designation

... continued ...

- A sponsor that is notified by the AOS that a community school that it sponsors is unauditable shall not enter into contracts with any additional community schools until the records are brought into an auditable condition, and the AOS or a public accountant is able to complete a financial audit of that school.



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Unauditable Designation

... continued ...

Not later than 45 days after receiving notification by the Auditor of State that a community school is unauditable, **the sponsor of the school shall provide a written response to the Auditor of State.** The response shall include the following:

- (1) An overview of the process the sponsor will use to review and understand the circumstances that led to the community school becoming unauditable;
- (2) A plan for providing the Auditor of State with the documentation necessary to complete an audit of the community school and for ensuring that all financial documents are available in the future and
- (3) The actions the sponsor will take to ensure the plan is implemented.



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Unauditable Designation

... continued ...

- If a community school fails to make reasonable efforts and continuing progress to bring its accounts, records, files, or reports into an auditable condition within 90 days after being declared unauditable, the AOS shall notify the ODE of the school's failure.
- If the AOS or a public accountant subsequently is able to complete a financial audit of the school, the AOS shall notify the ODE that the audit has been complete.



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Unauditable Designation

... continued ...

- Upon notification by the AOS that a community school has failed to make reasonable efforts and continuing progress to bring its accounts, records, files, or reports into an auditable condition following a declaration that the school is unauditable, the ODE shall immediately cease all payments to the school under ORC Chapter 3314 and any other provision of law.
- Upon subsequent notification from the AOS under that division that either the AOS or a public accountant was able to complete a financial audit of the community school, the ODE shall release all funds withheld from the school under this section.



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Unauditable Designation

... continued ...

- AOS Technical Bulletin 2007-008 provides guidance
- How to avoid being “unauditable” – need to have the following:
 - An accurate/complete reconciliation of the school’s bank and investment accounts to the school’s book balance including supporting documentation (e.g., listing of outstanding checks, listing of deposits in transit, support for other adjustments, etc);
 - Approved minutes for all board meetings held during fiscal year;
 - Ledgers with all fiscal year activity posted



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Unauditable Designation

How to avoid being “unauditable” – need to have the following (continued):

- Supporting documentation (e.g., receipt detail, expense detail, payroll records, leases, capital assets, contract with employees and service providers, etc.); and
- Financial statements including notes and management’s discussion and analysis.



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EXPENDITURE STANDARDS For Community Schools

Office of Quality School Choice & Funding Finance Program Services
August 2013





AGENDA

- I. The Categories
- II. The Coding
- III. The Crosswalks
- IV. The Next Steps
- V. Data Issues
- VI. Guidance documents

THE CATEGORIES



THE ^{old} CATEGORIES

^

Instructional

Pupil Support

Building Support

Administrative

Staff Support

THE ^{new} CATEGORIES

^

20 Categories in three groups

Included - Classroom instructional
Included - Non-classroom
Excluded

Ohio | Department of Education

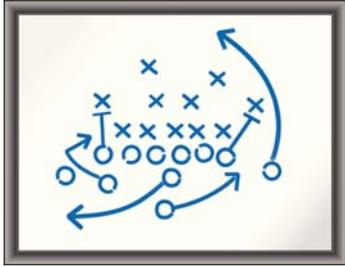
THE ^{new} CATEGORIES

^

- Each grouping is the sum of individual categories.
- For example, "Classroom Instructional" includes instruction, pupil support services, and instructional staff support services.
- ODE will publish information both at the grouping level and the category level

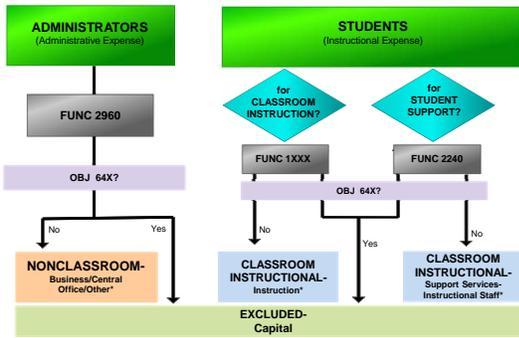
Ohio | Department of Education

THE CODING



INFORMATION TECHNOLOGY – Who uses it?

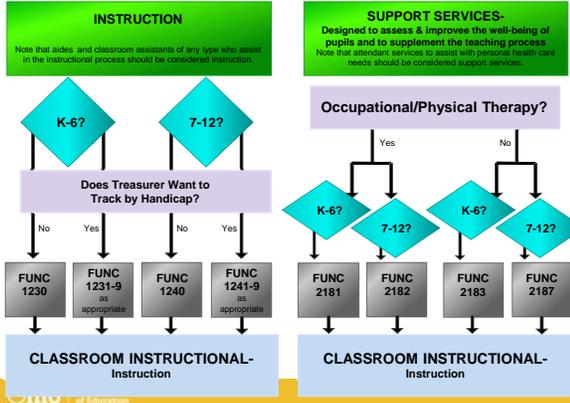
Revised 8/6/2013

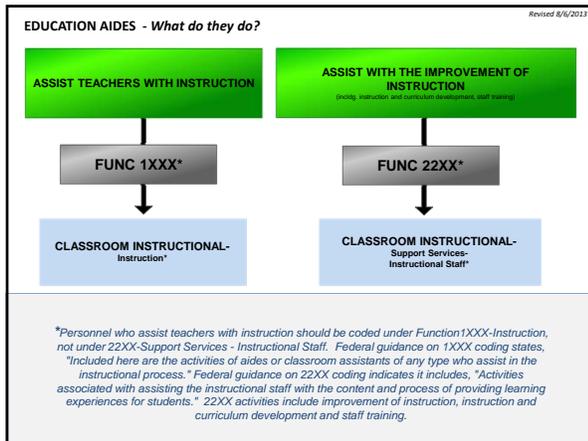


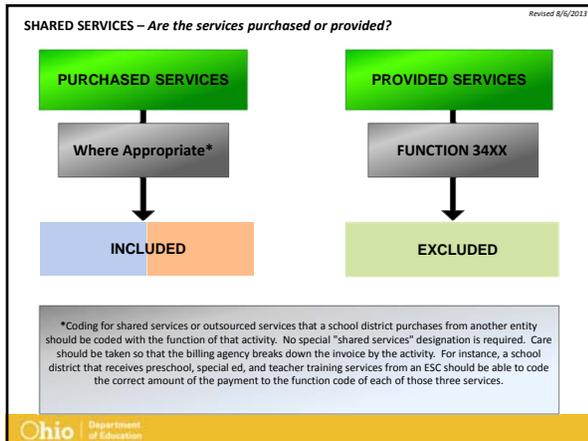
* If an expense serves multiple functions, the cost may be allocated based on usage. For instance, if a school purchases a software license for use on all school computers, the expense could be divided between function 2968 and 1100 based on the number of computers used for admin and instruction.

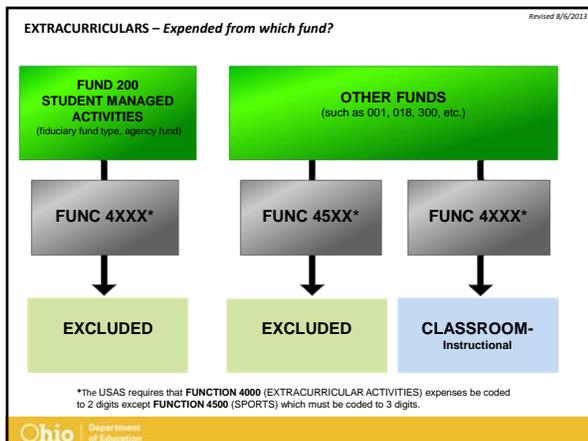
SPECIAL EDUCATION – What for?

Revised 8/6/2013











**THE NEXT STEPS:
USAS Coding**

On the [Expenditure Reporting Classification Chart](#), review the codes you use in the far left column against the crosswalk and far right column to see where those expenses will be counted.

Ohio Department of Education

**THE NEXT STEPS:
ODE Products- Local Report Card**

- For each school, % classroom instructional (CRI)
- Statewide average % CRI
- Category average % CRI (small, medium, large, eSchools)
- Rank of school within category by % CRI

Ohio Department of Education

**THE NEXT STEPS:
ODE Products – not on Report Card**

- Total operating expenditure amounts, classroom instructional amounts, category amounts
- Per pupil amounts
- Produce report for each school
- iLRC reports

**THE NEXT STEPS:
Community Schools**

- Complete FY13 expenditure data and submit by the end of Period H (Sept. 30, 2013)
- ODE will complete its products after data is submitted

Community School Data Issues

- Analysis based on *FY2012* data posted on ODE's website
- The rankings and local report card information will start with *FY2013* data
- Generally, data and results from community schools more problematic than other schools

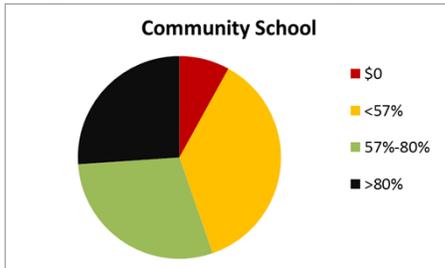
Community School Data Issues

- Some examples of draft data:

School	Wtd. ADM	Classroom	Non-CR	CRI+NCR	CRI%
A	1,168	\$ 4,034	\$ 2,202	\$ 6,236	65%
B	402	\$ 4,870	\$ 3,077	\$ 7,947	61%
C	214	\$ -	\$ 5,951	\$ 5,951	0%
D	326	\$ 7,325	\$ -	\$ 7,325	100%
E	28	\$ 59,989	\$ 8,840	\$ 68,829	87%
AVG		\$ 5,781	\$ 2,710	\$ 8,491	68%

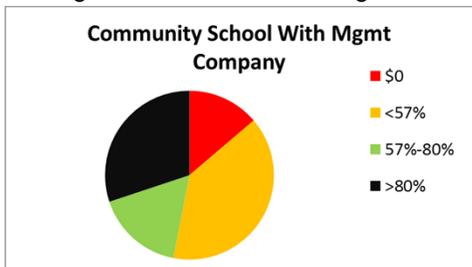
FY2012 Data

Many schools had classroom instructional spending outside the normal range



FY2012 Data

Many schools had classroom instructional spending outside the normal range



FY2012 Data

Pupil Support Services

- Includes: guidance services, health services, psychological services, speech/audiology, attendance and social work, support for students with a disability
- All school average: \$468
- Community school average: \$204
- 117 of 349 comm. schools indicate \$0

FY2012 Data

Operations & Maintenance

- Includes: care and upkeep of buildings, grounds, equipment and furniture; security services
- All school average: \$815
- Community school average: \$476
- 103 of 349 comm. schools indicate \$0

Auditor of State

Bulletin 2004-009

[C]ertain community schools using management companies are now required to more fully disclose accounting information regarding the nature and costs of services provided by these companies.

Auditor of State IPA Correspondence – Feb 2012

[A]uditors should include a noncompliance citation ...where the management company has not submitted ...a detailed accounting of purchased service expenses that substantially complies with the Ohio Expenditure Flow Model (EFM).

Expenditure Standards

Responsibilities:

[C]ommunity schools ...are required to report expenditures ...according to the definitions outlined in this standard and any rules or guidance provided by the department or the Auditor of State. All expenditure data shall be reported in accordance with ...the *Uniform School Accounting System Manual*.

For More Information

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