

House Bill 197: Temporary Amendments to Ohio Law Relating to the Operations of Schools and Boards of Education During the COVID-19 Health Crisis

By Leighann K. Fink

On March 25, 2020, the Ohio General Assembly passed House Bill (“HB”) 197 in response to the COVID-19 pandemic. HB 197 addresses a number of topics important to the ongoing operation of K-12 schools and boards of education during this public health crisis, and creates temporary amendments to Ohio law in order to navigate this unprecedented situation as seamlessly as possible. These temporary amendments to Ohio law, relating to schools, are summarized below:

Food Processing for Seamless Summer Food Programs

Exempts schools as a “food processing establishment” to operate breakfast/lunch summer food programs, the Seamless Summer Option Program or Summer Food Service Program, without the typically required regulations under Ohio law.

Distance Learning Make Up Hours

Removes, for the 2019-2020 school year, the three (3) day cap on the use of distance learning to make up school days or hours, which will permit school districts, STEM schools, community schools (not internet or computer based) and chartered nonpublic schools to either amend distance learning plans, or, if no plan exists, adopt a plan, pursuant to R.C. 3313.482, to utilize distance learning to make-up any number of days or hours due to school closures based upon the COVID-19 public health crisis.

Licensure Deadline Extensions

Extends current legal deadlines for the renewal of certain state issued licenses until the sooner of ninety (90) days after the end of the public health crisis, as declared by Executive Order 2020-01D, or December 1, 2020. Licensees receive the same extension of time to comply with legal requirements for license renewal, and if a license is to expire during this period-of-time, the license remains valid until the sooner of ninety (90) days after the end of the public health emergency, as declared by Executive Order 2020-01D, or December 1, 2020. This extension, however, does not preclude a state agency, board or commission from taking disciplinary action against a licensee for reasons other than failure to comply with the licensure deadlines. Licensees are “encouraged” to make “all reasonable efforts” to comply with the extended deadlines before they elapse.

Open Meetings and Hearing Policy

Allows for the use of electronic communication to conduct public meetings, in lieu of in-person meetings, during the public health emergency declared by Executive Order 2020-01D, but not longer than December 1, 2020. During the COVID-19 emergency, a public body may conduct a meeting by teleconference, video conference, or other similar electronic means for the purposes of taking any kind of formal action, including passing resolutions and adopting rules. Under this amendment, any action

taken through the use of electronic communication shall have the same effect as if it occurred during an open meeting of the public body. Further, all members of the public body shall be considered “present” as if they are at the meeting in-person, shall be permitted to vote, and shall be counted to determine whether a quorum exists. Public bodies shall provide notification of meetings and hearings to the media at least twenty-four (24) hours in advance of the meeting or hearing, “by reasonable methods by which any person may determine the time, location, and the manner by which the meeting or hearing will be conducted.” In the case of an emergency, requiring immediate action, the public body shall immediately notify any news media that have requested notification and/or the parties required to be notified of the meeting and/or hearing. The public body shall provide public access to the meeting/hearing through methods such as live-streaming on the internet, local radio, television, cable, or public access channels, teleconference, or other similar means to allow the public to observe and hear the discussions and deliberations of the public body.

State Assessments, Reports and Ratings

Exempts any school district, community school, STEM school, chartered nonpublic school, the State School for the Deaf, and the State School for the Blind from administering the assessments required by R.C. 3301.0710 (Ohio Achievement Tests), R.C. 3301.0711 (Ohio Achievement Tests), R.C. 3301.0712 (College and Work Ready Assessment), R.C. 3313.903 (Measures of Skill Attainment), and R.C. 3314.017 (Academic Performance Rating for Community Schools), including the Ohio English Language Proficiency Assessment for English learners and the Alternate Assessment for Students with Significant Cognitive Disabilities. These amendments also:

- Prohibit the Ohio Department of Education (“ODE”) from reducing a district’s or school’s state aid for students who were unable to complete assessments;
- Prohibit an e-school from withdrawing students who did not complete assessments;
- Allow students participating in the Educational Choice Scholarship Program, the Jon Peterson Special Needs Scholarship Program, or the Pilot Project (Cleveland) Scholarship Program to be eligible for renewal for those scholarships in the 2020-2021 school year;
- Prohibit ODE from publishing and issuing ratings for overall grades, components, and individual measures on state report cards for the 2019-2020 school year;
- Establish safe harbor measures from penalties and sanctions for districts and schools based on the absence of state report card grades for the 2019-2020 school year;
- Exempt schools from retaining students in the third-grade under the Third-Grade Reading Guarantee, unless the student’s principal and reading teacher determine the student is not reading at grade level;
- Permit schools to grant high school diplomas to the class of 2020, in consultation with teachers and counselors, if it is determined that the student has successfully completed the student’s high school curriculum or individualized education program at the time Executive Order 2020-01D was issued;
- Permit a district or school to amend its curriculum requirement to the state minimum curriculum;

- Declare the intent of the General Assembly for schools to keep students “actively engaged” in learning opportunities for the remainder of the school year and to grant students who need in-person instruction to complete diploma requirements or career-technical education programs access to facilities as soon as Order 2020-01D is lifted, even if that date is past the last instructional day of the 2019-2020 school year;
- Permit ODE to issue one (1) year, nonrenewable, provisional licenses to educators if certain conditions are met;
- Provide authority to the State Superintendent to adjust deadlines for (1) teacher evaluations; (2) intent to reemploy notifications; (3) school safety drills; (4) emergency management tests; (4) requirements to fill a vacancy on the Board of Education; (5) updating teacher evaluation policies; and (6) gifted screening requirements;
- Waive the requirement for a parent of a homeschooled student to submit assessment data as a condition of allowing the student to continue receiving home instruction for the 2020-2021 school year; and
- Permit a district board of education to choose not to conduct evaluations of district employees, including teachers, administrators, or a superintendent for the 2019-2020 school year, if a board of education determines it would be “impossible or impracticable” to do so. If a board of education chooses not to evaluate an employee for the 2019-2020 school year, that employee shall not be penalized for the purpose of reemployment.

Delivery of Services to Special Needs Students

Allows professionals licensed under the following boards to deliver services electronically or via telehealth communications to special needs students during the COVID-19 health crisis: the Ohio Speech and Hearing Professionals Board (R.C. 4753.05), the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board (R.C. 4755.01), the State Board of Psychology (R.C. 4732.02), the Counselor, Social Worker and Marriage and Family Therapist Board (R.C. 4757.03) and the State Board of Education with respect to intervention specialists.

Educational Choice Scholarship Suspension

Prohibits ODE from accepting, processing, and awarding first-time performance-based scholarships for the 2020-2021 school year to students first eligible to receive those scholarships in the 2020-2021 school year which were to be funded under House Bill 166 of the 133rd General Assembly. However, ODE is required to accept, process, and award scholarships to a student: (1) whose sibling received a scholarship in the 2019-2020 school year; (2) who is enrolled in a school building that satisfied the conditions for eligibility in the 2019-2020 school year; (3) who was enrolled in a public or nonpublic school in grades K-12 or was homeschooled for the equivalent of the 2019-2020 school year, or is entering kindergarten or beginning homeschooling for the equivalent of kindergarten in the 2020-2021 school year; and (4) who is currently living in, or relocating to, the building or districts on the list for the 2019-2020 school year.

Tolling of Statutes of Limitations for Civil, Criminal and Administrative Matters

Requires criminal, civil and the administrative statutes of limitations and other court time limitations and deadlines that are set to expire between March 9, 2020 and July 30, 2020 be tolled. These provisions end on the date the period of emergency ends or July 30, 2020, whichever is sooner.

2020 Extension of Primary Election

Provides clarification that the Ohio 2020 primary was not cancelled and extends the date by which a person can vote by mail until April 28, 2020, and extends the date for those required to file a post-primary campaign finance report to June 5, 2020, at 4 p.m.

If you have any questions about HB 197 or any other matter, please contact any of the listed attorneys. We welcome your questions.

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