

To Evaluate or Not: Navigating Immediate and Future Implications of H.B. 197's Provisions Regarding Teacher/Administrator Evaluations

By Helen S. Carroll

As public school districts struggle with the myriad issues associated with COVID-19 and the Governor's Order closing schools, announced on March 12, 2020, a means to continue student learning is every district's foremost concern. Other issues, including the continued provision of school meals, are paramount. Beyond these, one important issue school districts should consider is how to address and, if possible, complete teacher and administrator evaluations for the 2019-2020 school year. House Bill 197, signed by Governor DeWine on March 27, 2020, provides some guidance. More specific information was released by the Ohio Department of Education ("ODE") on March 30, 2020.

Because completion of teacher evaluations is, by law, not required until May 1 of any school year, it is unlikely many teacher evaluations were fully completed on the date schools were officially closed to students earlier this month. Particularly for those teachers being considered for contract nonrenewal, where a third observation is required, procedural requirements would be difficult if not impossible to meet. Most schools reasonably plan to conduct the third annual mandatory observation late in the school year to provide a teacher the maximum time to demonstrate improvement in those circumstances where performance concerns are present. In accordance with House Bill 197, the Superintendent of Public Instruction is authorized to extend deadlines related to the conduct of evaluations for teachers and administrators, notices of intent not to reemploy and the requirements for updating teacher evaluation policies to conform with the new framework for evaluation of teachers ("OTES 2.0"). For any teacher evaluations completed for the 2019-2020 school year, value-added student data may not be considered.

ODE's March 30, 2020 guidance indicated that for school districts that elect to attempt to complete teacher evaluations this school year, the deadline for completion is extended from May 1 to May 22, 2020 with an extension for providing a written evaluation report from May 10 to May 29, 2020. Even with these extensions, the practical considerations for conducting a teacher observation under the current "virtual learning" environment may be insurmountable and would likely draw objections from a teacher bargaining representative, if not approved in advance. Acquiring approval for continued teacher evaluations during the period of time covered by House Bill 197 should be sought prior to implementation.

The March 30, 2020 announcement from ODE also specifically addressed implementation of OTES 2.0. All school districts were previously required to update policies to address new evaluation requirements by July 1, 2020. This deadline has been extended to September 1, 2020. In addition, school districts now have the option to delay implementation of OTES 2.0 to the 2021-2022 school year.

House Bill 197 allows the board of education to elect to waive evaluations for teachers, counselors, administrators or the superintendent for the 2019-2020 school year if the board determines it would be "impossible or impracticable to do so." However, in the event a board of education makes this determination, "the employee shall be considered not to have had evaluation procedures complied with pursuant to section 3319.111 of the Revised Code for purposes of section 3319.11 of the Revised Code." This means that the option to non-renew a teacher's contract in 2020 is not available. For administrators

or a superintendent, the impact can extend into future years, as more fully described below. Districts are permitted to use any evaluation completed prior to March 14, 2020, when making employment decisions for teachers. School districts are also permitted to work with and collaborate with any teacher collective bargaining organization representing its employees when determining whether to complete evaluations for the 2019-2020 school year.

The absence of a teacher evaluation for the 2019-2020 school, for continuing contract teachers and for those limited contract teachers who are not eligible for a continuing contract, is unlikely to present a serious issue. However, for a teacher whose contract is expiring at the end of the 2019-2020 school year and who is eligible for a continuing contract, the absence of an evaluation, in compliance with section 3319.11 of Revised Code, presents a unique issue. A new employment contract for that particular teacher should not be approved. For a teacher eligible for a continuing contract, if the Board takes no action to renew a teacher's contract, a one-year "extended limited contract" will be created by statute. At the end of that one year, unless the teacher is properly evaluated and timely recommended for nonrenewal, the teacher is entitled to a continuing contract. As an alternative to the automatic one (1) year extended limited contract, an additional option exists, for creation of a two-year "extended limited contract" with reasons directed at improvement. The process applicable to this option is complex. Roetzel's Education Law attorneys are available to assist with navigating these procedures to maintain the teacher's employment for an additional one (1) or two (2) years, address measures for improved performance and provide the board of education with time to determine if the award of a continuing contract is warranted.

For administrators, the board of education must complete an evaluation in each year of the contract and, in the final year, a preliminary and final evaluation in order to comply with statutory requirements. If, for the 2019-2020 school year, the evaluation requirements are deemed to be "not complied with" and the administrator is not in the final year of the contract, the administrator will not be eligible for nonrenewal at the expiration of his or her individual contract of employment. In that event, the contract is extended by operation of law for one (1) or two (2) years, depending upon the length of the administrator's prior employment in the school district. For this reason, it is advisable for the superintendent or designee to complete as many administrative evaluations as possible prior to the end of the 2019-2020 school year. For an administrator in the final year of his or her contract and if the final evaluation was completed prior to March 14, 2020, the completed evaluation may be utilized when making a decision related to future employment.

Please contact any of the listed attorneys for guidance on these or any education-related issues.

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