



Dispensing with evaluations of teachers and administrators under H.B. 197: Are the benefits worth the legal risks?

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An explanation of the provisions of H.B. 197 governing teacher and administrator evaluations

On March 27, 2020, Governor DeWine signed Am.Sub.H.B. 197 into law. This legislation makes it permissible for a board of education to elect to not finish teacher and administrator evaluations that were not already completed prior to March 14, 2020 (when the Director of Health issued the order closing all K-12 schools in Ohio). To make this election, a board of education must determine that it “would be impossible or impracticable” to conduct the evaluations.

Given the significant challenges of completing countless evaluations under the present circumstances and the numerous other stresses confronting school administrators at this time, shouldn't every board of education take the opportunity to relieve its administrators of this burden? For some schools, the risks may outweigh the benefits.

It is important to understand that H.B. 197 does not remove the prerequisite that boards of education comply with statutory evaluation requirements in order to be able to nonrenew the contract of a teacher or administrator. Thus, a wholesale election, declaring evaluations impossible or impracticable, may have significant and unintended consequences.

What are the consequences of electing to dispense with all uncompleted evaluations for teachers?

As noted above, the legislature made no changes to the prerequisites for the nonrenewal of a teacher. If a school district fails to comply with statutory evaluation procedures for a teacher on an expiring, limited contract, the teacher cannot be nonrenewed. (See O.R.C. 3319.11(E).) Further, under H.B. 197, if the election to dispense with evaluations is made, the “employee shall be considered not to have had evaluation procedures complied with” pursuant to Ohio Revised Code 3319.11.

Depending on the provisions of the applicable collective bargaining agreement in a district, relinquishing the ability to nonrenew may mean that a teacher secures a multi-year or continuing contract.

Therefore, before recommending the adoption of a resolution to dispense with evaluation of all teachers (or entering into a memorandum of understanding with a teachers’ union to dispense with evaluation of all teachers), the district will want to carefully consider whether there are any teachers for whom it expects to recommend nonrenewal this spring. In addition, the district will want to consider whether there are any teachers currently on improvement plans for whom it is important to complete the evaluation process in the current year in order to have data regarding progress for consideration next school year.

Can a board of education decide to waive completion of some teacher evaluations and not others?

Yes. If this is the course of action you want to take, the school district will want to word the board’s resolution carefully to dispense with evaluation of certain teachers, while preserving the ability to evaluate other teachers, such as teachers being considered for nonrenewal or on improvement plans. In addition, it will want to develop a plan to comply with evaluation procedures set forth in law, policy and/or any applicable collective bargaining agreement, while teachers are not physically present in classrooms.

What are the consequences of electing not to evaluate administrators?

Compliance with evaluation procedures is similarly significant when contemplating nonrenewal of an administrator. An administrator must be evaluated in every year of his or her contract, and failure to comply with evaluation procedures in any year of a multi-year contract prevents nonrenewal. (See O.R.C. 3319.02(D)(2)(c)(ii) and (ii).) H.B. 197 provided no relief with respect to the prerequisites for nonrenewal of an administrator. Therefore, deciding to forego evaluation of an administrator this particular year will eliminate the ability to recommend nonrenewal of an administrator at the expiration of a multi-year contract.

Are there any risks associated with completing evaluations for teachers and administrators under consideration for nonrenewal?

Because completion of evaluations may require school districts to adapt evaluation procedures to a distance learning environment, there is some risk that an employee or teachers’ union may attempt to challenge the sufficiency of the evaluation process through the grievance procedure or otherwise. However, the risk is less than that of doing nothing to complete the evaluation process.

Given the current situation and potential challenges associated with completing evaluations, recommendations for nonrenewal may be challenged. As employees who may need to be considered for nonrenewal are identified, and district needs are prioritized, districts will want to work closely with legal counsel regarding the adoption of any resolution to dispense with evaluation obligations and/or the development of a plan to complete evaluations, as well as any recommendation for nonrenewal of a teacher or administrator.

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