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# **EDUCATION LAW AND COVID-19**

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# COVID-19 SCHOOL CLOSURES: OVERVIEW

- **At his March 12 press conference, Governor DeWine used the phrase “extended spring break” in his announcement. The Governor then announced that the “extended spring break” would begin at the end of the school day on March 16, 2020, and end three weeks later.**
- Shortly after making the announcement, Governor DeWine further clarified that he ordered schools to be closed to students.
- **On Saturday, March 14, 2020, Dr. Amy Acton, Director of the Ohio Department of Health, issued an order providing additional clarification.**

It explains:

- “All school buildings that provide any kindergarten through grade twelve instruction in the State of Ohio are to be closed to students.
  - ...this closure does not include administrators, teachers, staff, vendors or contractors of a school. The administration of each school shall determine the appropriate level of access to the school during the closure.
  - This order does not apply to and/or excludes activities or events at schools for voting, food services, housing of students at boarding schools, health services, charitable work, or any activity approved by the local health department.”
- On April, 20, 2020, the Governor extended the school-building closure through the end of the school year.

# HB 197: WHY IT MATTERS TO SCHOOL BOARDS, ADMINISTRATION, TEACHERS AND STUDENTS

- 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.
- How are districts being impacted by these programs? Payment?

## 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.

# HB 197: WHY IT MATTERS TO SCHOOL BOARDS, ADMINISTRATION, TEACHERS AND STUDENTS

## 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 and 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.

# HB 197: WHY IT MATTERS TO SCHOOL BOARDS, ADMINISTRATION, TEACHERS AND STUDENTS

## 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;

## **HB 197: WHY IT MATTERS TO SCHOOL BOARDS, ADMINISTRATION, TEACHERS AND STUDENTS**

- 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 student 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;

# HB 197: WHY IT MATTERS TO SCHOOL BOARDS, ADMINISTRATION, TEACHERS AND STUDENTS

- 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;

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- 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.

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## 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.

# COVID-19 AND OPEN MEETINGS

## Open Meetings

Can a public body still hold a public meeting with individuals physically present?

The short answer is yes.

- There is nothing in the legislation preventing a local public body from continuing to conduct all or some of its public meetings or public hearings with its members present in-person or to hold such gatherings in an open setting permitting members of the public to be physically present. It is important to note that, except where the bill made specific changes to the requirements of the law, the provisions of Ohio Revised Code 121.22 related to open meetings – including those regarding notice, the taking and maintenance of minutes, and limitations on executive sessions – continue to apply.
- Size matters. The emergency declarations issued by Gov. Mike DeWine and the Ohio Department of Health do impose limitations on public gatherings and the number of people permitted to congregate. These declarations have been modified occasionally in substantive respects relevant to public meetings, and additional changes may be forthcoming. In addition, public health officials have provided guidance on maintaining “social distancing” during this pandemic.
- As a result, before holding an in-person meeting, a public body should give due consideration to the limitations and guidance and appropriate concern for the health and welfare of the members of the body and their constituents.

# COVID-19 AND OPEN MEETINGS

Can a public body broadcast the meeting via teleconference, audio only, with no video attached?

- HB 197 specifically permits a public body to conduct meetings via teleconference, video conference or any similar electronic technology. Thus, a public body may choose to use audio-only teleconferencing. Of course, the law requires that access to any such meetings be afforded through some mechanism that makes it generally available, including teleconferencing; live streaming via the internet; or broadcasting on local radio, cable television or public-access stations. **When using audio-only teleconferencing, the public body should ensure that speakers are identified and individual votes announced verbally so that listeners can determine what each member is saying and how he/she is voting.**

# COVID-19 AND OPEN MEETINGS

What about notice?

- Absent an emergency situation, the law requires that notice of a virtual meeting be provided to the public and to media outlets that have requested notice of the body's meetings at least 24 hours before the meeting. The notice must include the technique being used to conduct the meeting and the method of access available to the media and the public. A public body is encouraged to provide notice in the same way that it has provided notice in the past regarding additions to the content of the notice and its recipients.

# COVID-19 AND OPEN MEETINGS

Must the public body afford the public in attendance a chance for comment?

- Nothing in Ohio law affords the public the right to make comments, pose questions or otherwise speak at a meeting of a public body. Generally, most public bodies do give those attending in-person the opportunity to speak, usually under reasonable, defined and uniform limitations. A public body may arrange for such input at a virtual meeting through the electronic technology being used by the body, but it is not required to do so. Clearly, taking steps to allow input is commendable, as it serves to maintain an additional facet of normalcy at meetings of the public body.

# COVID-19 AND OPEN MEETINGS

Can a public body still enter into executive session?

- Yes. Nothing has changed regarding the executive sessions that public bodies may hold or the way that a public body enters into executive session.
- A public body must convene in open session and, after a motion and a second, vote by roll call to go into an executive session to consider one or more of the permitted topics set out in R.C. 121.22(G)(1)-(8), including:
- To consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official, or the investigation of charges or complaints against a public employee, official, licensee, or regulated individual, unless the public employee, official, licensee, or regulated individual requests a public hearing. To discuss collective bargaining, and/or conferences with an attorney for the public body concerning disputes involving the public body that are the subject of pending or imminent court action.
- If a personnel matter is at issue, the section requires more specific identification of the matter. Also, an attorney for the body must participate in any executive session convened for the purpose of discussing pending or imminent litigation. At the conclusion of the executive session, the public body must return to open session before taking any action or vote or before adjourning. These standards apply to both virtual and in-person meetings.

# COVID-19 AND EVALUATIONS

- Completion of teacher evaluations is, by law, not required until May 1 of any school year.
- This year, due to COVID-19, 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 conducting 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.

# COVID-19 AND EVALUATIONS

- The March 30, 2020 guidance from the Ohio Department of Education (“ODE”) indicated that for school district that elect to attempt to complete teacher evaluations this school year, the deadline for completing 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 for 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.

# COVID-19 AND EVALUATIONS

- 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 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 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.

# COVID-19 AND STUDENT ISSUES

- PROVIDING MEALS
- DISTANCE LEARNING
- MENTAL HEALTH CONCERNS:
  - **Find time to call students and parents:** Counselors and educators who interact with students face-to-face are usually able to pick up on nonverbal cues that indicate something is bothering a student, however that option goes away when interactions are moved online. Although many counselors are already juggling so many demands on their time, as well as potentially their own families, counselors should try to find time to call individual students and/or families to check on their well-being and offer support. Even five minutes could mean a lot to some families.
  - **Use online tools to build a sense of student community:** Tools like FlipGrid or Seesaw allow students to share photos and videos that classmates can watch and comment on in their own time. Counselors and educators can use these tools, as well as other online learning forums, to ask students to share their high and low points for the week or describe how they're feeling each day using an emoji, a GIF or a song. Answers to these questions can help counselors determine which students might be in urgent need of support. A simple Google form also works well, even if sent to a handful of students per week to avoid becoming overwhelmed by responses.
  - **Use telehealth resources to keep up with students in need:** Although public health guidelines for social distancing suggest counselors should avoid meeting with clients face-to-face, if possible many counselors are able to conduct sessions via secure telehealth applications. School counselors can share a list of clinical mental health counselors that families can reach out to for services if necessary.

# COVID-19 AND STUDENT ISSUES

- Homelessness
- Special Education Services:

Questions to ask in determining if the student is receiving a Free Appropriate Public Education (FAPE):

- Do your special education students have access to the appropriate resources required to engage in your alternative delivery model, such as cell phones, computers and internet or other acceptable connectivity?
- Will all students in the school or district have equal access to the learning and required materials, which might include technology?
- Can the alternative delivery model effectively support the district's deployment of FAPE, including the ability to provide differentiated instruction and one-on-one support for students who need it? Regardless of where the learning is happening, supports and services identified within a student's IEP must be provided to the extent practicable and without putting the health and safety of students or educators at risk as long as the school district is operating. This might consist of phone calls or virtual conferences for direct one-on-one interaction with a student.
- If using a virtual platform, can your district or building provide training to staff, students, parents and guardians enabling them to use the online system and understand the district's expectations for use of the system? All training can be accomplished virtually.
- If using phone time to connect with students or email, can your district or building communicate and connect with families to discuss a structure and communication routine for working with their student via phone or email?
- Does your district or building have a process in place to track and document communications with parents and services provided pursuant to the IEP?
- Can the district or building work with related services providers to understand to what extent possible any particular service, such as occupational therapy, physical therapy and speech language therapy, can be provided in an alternative delivery format?
- How can your instructional aides or assistive technology support services to students during Ohio's ordered school-building closure?

