

Yesterday, the State legislature approved Am. Sub. H.B. 197 (H.B. 197) – an emergency response to the coronavirus disease 2019 (COVID-19) pandemic. This legislation includes numerous provisions that are important to the governance and operations of Ohio K-12 school districts.

The following is a summary of those provisions. Please click [here](#) for the text of the entire legislation.

Open Meetings

(A) **Meetings** – School board and committee members “may hold and attend meetings and may conduct and attend hearings by means of teleconference, video conference, or any other similar electronic technology.” Those members who attend meetings in such manner “shall be considered present as if in person at the meeting or hearing, shall be permitted to vote and shall be counted for purposes of determining whether a quorum is present at the meeting or hearing.” Resolutions, rules and formal actions taken under such circumstances shall have the same effect as if they had occurred during an open meeting/hearing attended in person.

(B) **Notice** – School boards and committees are to provide 24-hour notice of such meetings to the public, to the media that have requested notification of a meeting and to those required to be notified of a 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,” except in the event of an emergency requiring immediate action. In the event of an emergency, immediate notice of the time, place and purpose of the meeting/hearing is to be given to the news media that have requested notification or the parties required to be notified of a hearing.

(C) **Access** – Access to such meetings that the public would otherwise be entitled to attend in person is to be “commensurate with the method in which the meeting or hearing is being conducted.” Specified examples of such methods include live streaming over the internet, local radio, television, cable, public access channels, call-in information for a teleconference, or any other similar electronic technology. The public must be able to “observe and hear the discussions and deliberations of all the members of the public body, whether the member is participating in person or electronically.”

(D) **Public participation and other practicalities** – Many school board policies permit limited public participation at meetings, which ought to be taken into account when establishing the means and methods of the meeting. Among other practical considerations, if meetings are to take place by teleconference, board and committee members ought to state their names so that members of the public know who is speaking, and roll-call votes should be taken to avoid confusion over which members voted and how they voted.

(E) **Hearings** – A public body conducting a hearing as described above must establish a means “through the use of electronic equipment that is widely available to the general public” to converse with witnesses and to receive documentary testimony/physical evidence.

(F) **Effectiveness of provisions** – These provisions are effective during the period of the emergency declared in the Governor’s COVID-19-related Executive Order 2020-01D (issued on March 9, 2020), but not later than December 1, 2020.

Primary election – “Absent voting” relating to the primary election scheduled for March 17 has been extended to April 28, 2020. Voters taking advantage of this must have been registered to vote in Ohio as of February 18, 2020, and they need to have their ballots (a) received by the appropriate board of elections not later than 7:30 p.m. on April 28, 2020, or (b) postmarked on or before April 27, 2020, and received not later than May 8, 2020, (with a separate submission deadline for uniformed services and overseas absent voters).

EdChoice – The EdChoice-designated school buildings for the 2020-21 school year are to be limited to those previously eligible for the 2019-20 school year. In summary terms, EdChoice scholarships for 2020-21 shall be limited to (a) students who received a scholarship in the 2019-20 school year; (b) students who were eligible for a scholarship in 2019-20 and remain eligible in 2020-21; (c) siblings of current EdChoice scholarship recipients, who are enrolled in, or would be enrolled in, a currently eligible building; and (d) incoming kindergarten students, rising high school students and relocated students, if the building that they attend/would attend met the eligibility conditions for performance-based scholarships in the 2019-20 school year. The process of funding the EdChoice scholarships is to be unchanged. The 60-day application period for the 2020-21 scholarships begins on April 1, 2020.

Working from home – During the period of emergency declared by Executive Order 2020-01D and for 30 days after the cessation of that period, any day that an employee performs personal services at a location (including the employee’s home) to which the employee is required to report as a result of the emergency declaration is treated as a day worked at the employee’s principal place of work, rather than the location at which the employee must work as a result of the declaration. In plain English, employers can continue withholding and remitting on wages paid the municipal income taxes for the municipality in which the employer is located, rather than the municipalities in which the employees reside and perform services during the period covered (plus an additional 30 days) by that Executive Order.

Distance learning – School districts are permitted to use distance learning to make up for any number of missed hours/days of instruction (even beyond the three days previously permitted by law) caused by the March 14, 2020 ordered closure of Ohio K-12 schools. Implementation of this provision (i.e., by amendment or adoption) will depend upon whether a school board has adopted a relevant plan under ORC Section 3313.482 to require make-up distance learning.

Testing – School districts shall not be required to administer State tests. The non-administration of State tests shall not impact such matters as enrollment counts for the 2020-21 school year, student withdrawals from schools and specified scholarship eligibility for the 2021-21 school year.

Report cards – For the 2019-20 school year, the Department of Education (DoE) shall not (a) publish report card ratings; (b) assign overall letter grades to school districts and buildings; (c) assign grades to other measures; or (d) rank school districts. However, the DoE must report any data that it has regarding the performance of districts and buildings for the 2019-20 school year by September 15, 2020. The absence of report card ratings shall not enter into determinations of sanctions or penalties or create a new starting point for determinations based on ratings over multiple years.

Third-grade reading guarantee – The Third Grade Reading Guarantee will not prevent promotion of a student to the fourth grade unless a student’s school principal and reading teacher agree that the student is reading below grade level and is not prepared to be promoted to fourth grade.

Graduation – Seniors or students “on track” to graduate in the 2019-20 school year shall graduate if the student’s principal, in consultation with the student’s teachers and counselors, determines that the student completed the required curriculum or individualized education program at the time of the school closure pursuant to the Director of Health’s Order on March 14, 2020. Districts or schools that have previously adopted a resolution to exceed the minimum curriculum requirements for graduation prescribed under current law may elect to require only the minimum curriculum for the purpose of graduation for the 2019-20 school year. No district may grant a diploma under this provision after September 30, 2020.

Special education – Certain licensed special education providers can use telehealth and electronic communication methods to serve students receiving special education services through their school district or through the Autism Scholarship/Jon Peterson Special Needs Scholarship program. These provisions are effective only during the Governor’s COVID-19-related Executive Order 2020-01D but not later than December 1, 2020.

College Credit Plus – The Chancellor of Higher Education, in consultation with the State Superintendent of Public Instruction, may extend, waive or modify College Credit Plus timelines and requirements during the COVID-19 emergency.

State licensure – State license expirations and deadlines are extended until the sooner of 90 days after COVID-19 emergency ends or December 1, 2020. The Department of Education may issue one-year, non-renewable provisional licenses to educators who have met all other requirements for licensure except passage of a subject area exam.

Employee evaluations – Boards of education may elect to forego conducting evaluations of district employees, including teachers and administrators, for the 2019-20 school year, if the board determines that evaluations would be impossible or impracticable, provided no employee may be penalized for lack of such evaluation. A district board may collaborate with bargaining units in determining whether to complete evaluations for the school year. Use of value-added data for the 2019-20 school year to measure student learning attributable to the teacher is prohibited.

School district income taxes – During the period of the emergency declared in Executive Order 2020-01D, the State Tax Commissioner can extend tax filing and payment deadlines, including those for school district income taxes.

Student meals – The State Director of Agriculture is authorized to exempt a school from regulation as a food processing establishment (under ORC Section 3715.021) if it has been issued a food service operation license (under ORC Chapter 3717) and is transporting food only for purposes of the Seamless Summer Option Program or the Summer Food Service Program administered by the U.S.D.A. In plain English, this means schools are permitted to distribute meals to eligible students either by pick-up at the school, or by delivery to the student or another pick-up location.

This material is not intended to, and does not, provide legal advice as to particular issues or matters, each of which should be addressed in the specific factual setting in which it arises, and reference to it is not a substitute for consultation with an attorney.

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