

Procedural Guidance for Nonrenewal of Teacher & Administrator Contracts

Jan 02 2019

Practice Area: School Law

It is never too early to be thinking about next year's staffing needs, and the reality is that while districts have until spring to make teacher nonrenewal decisions, nonrenewal statutory deadlines for administrator contracts begin in January. Considering nonrenewals earlier and understanding the statutory deadlines that need to be complied with will ensure districts are prepared to send out any preliminary notices of nonrenewal in accordance with those statutory deadlines. When a decision is made to pursue nonrenewal of a contract due to performance concerns, a district will want to gather evidence throughout the year to present to the school board to support the request for nonrenewal. Understanding what procedural requirements are in place for the nonrenewal of contracts will help districts better prepare for any contracts that may not be in the best interests of the district to renew. This is true for both teaching contracts and administrator contracts, which have varying statutory deadlines and requirements.

Sections 118.22 and 118.24, Wis. Stats., govern the mandatory requirements for renewal and nonrenewal of teacher and administrator contracts. School boards should examine the guidelines and practical considerations of this statute as listed below when making these important nonrenewal decisions.

To Whom Do The Nonrenewal Statutes Apply?

The teacher nonrenewal statute, Wis. Stat. § 118.22, applies to any teacher who 1) holds a teacher's certificate or license issued by the state superintendent or a classification status under the technical college system board and 2) whose legal employment requires such a certificate, license, or classification status.

Who does the teacher nonrenewal statute *not* apply to? The statute does not apply to part-time teachers, teachers employed by a board of school directors in a city of the 1st class, or teachers who hold the indicated license, certificate, or classification, but whose position does not actually require said license. The statute also does not apply to nonrenewal of co-curricular assignments, such as coaching.

The administrator nonrenewal statute, Wis. Stat. § 118.24, applies to any full-time school district administrator, business manager, school principal, and assistants to such persons. Administrator contracts can be for two year terms, with optional contract extensions of one year each, so districts must remember that a two year administrator contract can only be nonrenewed during the contract's expiration year. Alternatively, districts can also use one year administrator contracts, which are subject to the nonrenewal procedure every year.

What is Preliminary Notice? When Must it be Given?

Sections 118.22 and 118.24, Wis. Stats., both require school boards to give teachers and administrators written preliminary notice that their contract is being considered for nonrenewal. However, the statutory requirements and deadlines for the preliminary notice differ slightly for teachers and administrators.

To give a teacher preliminary notice under Wis. Stat. § 118.22(3) that his or her contract is being considered for nonrenewal, the preliminary notice must be in writing, must inform the teacher that the board is considering nonrenewal of the teacher's contract, and must inform the teacher that he or she has the right to attend a private conference with the board before the formal notice of nonrenewal is given. The preliminary notice must also inform the teacher that he or she must file the request for the private conference within five days after receiving the preliminary notice of nonrenewal.

The statute requires that the teacher receive the preliminary notice at least 15 days prior to being given the formal written notice of nonrenewal. The statute specifies in Wis. Stat. § 118.22(2) that the deadline to give the formal notice of nonrenewal is May 15; therefore, the deadline to give the preliminary notice is April 30.

If the teacher receives the written preliminary notice on the deadline of April 30, then the teacher has until May 5 to file a request with the board for a private conference. However, note that April 30 is the *final* deadline for the preliminary notice to be given. If the teacher receives the preliminary notice earlier than April 30, then the teacher has five days from that earlier date to file the request for a private conference.

Unlike the April 30 deadline for preliminary notice for a teacher, districts must act much earlier to give preliminary notice of nonrenewal to an administrator. Under Wis. Stat. § 118.24, districts must give an administrator the preliminary notice of nonrenewal at least five months prior to the expiration of the contract. For a contract with the typical June 30 expiration date, the deadline for a district to give an administrator preliminary notice is January 31. Unlike teachers, who can receive the preliminary notice via hand-delivery, the administrator nonrenewal statute specifically requires the preliminary notice be provided by registered mail.

Similar to preliminary notice for teachers, the preliminary notice for an administrator must be in writing, and the notice must state that the board is considering nonrenewal of the administrator's contract. The preliminary notice must also inform the administrator that he or she has the right to a hearing before the school board prior to receiving the written notice of nonrenewal. However, unlike with teachers, an administrator requesting a hearing before the school board must file this request with the board within seven days of receiving the preliminary notice.

What Happens After Preliminary Notice is Given?

If a teacher files a timely request for a private conference with the board, then the teacher has the right to attend a private conference prior to being given the formal written notice of nonrenewal. Since the deadline for the board to issue the formal notice of nonrenewal is May 15, this means the private conference must occur prior to that date.

Likewise, an administrator who files a timely request for a hearing before the board has the right to attend that hearing prior to receiving formal written notice of nonrenewal. As the deadline for the board to issue the formal notice of nonrenewal to an administrator is February 28, assuming a contract expiration of June 30, this means the board hearing must occur prior to February 28. Additionally, the administrator's written request to the board should include a statement specifying whether the administrator wants the hearing to be public or private. Section 118.24(7), Wis. Stats., also allows the administrator to request the reasons, in writing, upon which the board is considering nonrenewal, and the board is required to comply with this request prior to the hearing.

If a teacher or administrator fails to file a request for a private conference or hearing before the board, then the individual is not entitled to that proceeding prior to receiving the formal notice of nonrenewal. However, even if a proceeding before the board is not requested, a majority vote by the full board in favor of nonrenewal must still occur under Wis. Stat. § 118.22(2) or Wis. Stat. § 118.24(6), respectively, before the district can proceed with giving the formal written notice of nonrenewal to the teacher or administrator.

What is the Private Conference/Board Hearing and What Does it Look Like?

The teacher and administrator statutes use different language to describe the proceeding before the board that can occur prior to the formal notice of nonrenewal being issued, with Wis. Stat. § 118.22(3) giving a teacher the right to request a "private conference" with the board, and Wis. Stat. § 118.24(7) giving an administrator the right to request a "hearing before the board."

For either a teacher or administrator, the full board should be present at the private conference or hearing, as Wis. Stat. § 118.22(2) and § 118.24(6) both require that the decision to nonrenew a contract be made by a majority vote of the full membership of the board. Also present should be the teacher or administrator being considered for nonrenewal, the teacher or administrator's representative (if desired), and the district administrator(s) who will present the reasons for the nonrenewal to the board. Both the teacher or administrator and the district administrator(s) should have an opportunity to present information to the board regarding the nonrenewal during the proceeding.

The private conference for a teacher, or a board hearing for an administrator, are both considered a "meeting" under Wis. Stat. § 19.82(2) and are therefore subject to the Open Meetings Law. Public notice for the private conference must be made per Wis. Stat. § 19.84(1). The public notice should refer to Wis. Stat. § 118.22(3), but the notice does not need to give the teacher or administrator's name. The board may convene in closed session for the private conference or board hearing under Wis. Stat. § 19.85(1)(c).

While the teacher can request that the private conference be held in open session, the board is only required to grant this request if the private conference would be considered an "evidentiary hearing" under Wis. Stat. § 19.85(1)(b). An "evidentiary hearing" is where there are formal charges against the teacher and an examination of those charges by testimony from interested persons and evidence in support or defense of the charges. Formal charges are those that may damage the good name, reputation, honor, or integrity of the teacher, or where the nonrenewal might impose substantial stigma or other disability, 66 Wis. Op. Att'y Gen. 211 (1977). Also note that there are additional notice requirements for an evidentiary hearing under Wis. Stat. § 19.85(1)(b), which requires that the teacher receive actual notice of the evidentiary hearing and notice of the teacher's right to demand the hearing be held in open session.

For an administrator, Wis. Stat. § 118.24(7) specifically gives the administrator the right to request either a private or public hearing before the board. The administrator nonrenewal statute also notes that the teacher nonrenewal statute, Wis. Stat. § 118.22, does not apply to the administrator's hearing before the board.

When Must the Notice of Nonrenewal be Given?

For teachers, per Wis. Stat. § 118.22(2), the board must give the teacher formal notice of nonrenewal on or before the deadline of May 15.

For administrators, Wis. Stat. § 118.24(6) requires the board give formal notice of nonrenewal at least four months prior to the expiration of the administrator's contract. Assuming the common contract expiration date of June 30, this means the deadline for an administrator is February 28.

As with the preliminary notice, this notice of nonrenewal must also be in writing for both teachers and administrators.

What if the Board Wants to Renew the Contract?

If a school board wants to renew a teacher's contract for the following year, the board must still follow the requirements of Wis. Stat. § 118.22(2). The board would give the teacher written notice of renewal of the teacher's contract for the following school year, and the teacher would have until the deadline of June 15 to either accept or reject the contract in writing.

Similar to renewing a teacher's contract, a school board wishing to renew an administrator's contract must still follow the statutory requirements of the administrator statute, Wis. Stat. § 118.24(6). The board would give the administrator written notice of renewal at least four months prior to the contract's expiration. An administrator receiving notice of renewal then must accept or reject the contract in writing on or before three months prior to the contract expiration. Again assuming a contract expiration of June 30, the administrator must notify the board of the acceptance or rejection of the contract by March 31.

However, note that a teacher or administrator who misses or forgets to accept the contract by the June 15 or March 31 deadline should not necessarily be automatically assumed to be terminated, unless the board has specifically stated in advance that this would be the result of missing the deadline.

What if a Board Does Not Send Timely Written Notice of Renewal or Nonrenewal?

If a teacher does not receive any written notice whatsoever by May 15, under Wis. Stat. § 118.22(2) the contract then in force shall continue for the ensuing school year and the teacher has until June 15 to either accept or reject the contract in writing. In the event contract terms change on an annual basis, it is imperative to ensure notice is provided to prevent the current contract from continuing in force.

If an administrator does not receive any written notice of renewal or nonrenewal four months prior to the contract expiration, then per Wis. Stat. § 118.24(6), the administrator's current contract shall continue in force for two years. Note that the administrator's statute mandates in this instance where timely notice is not given, the contract continues for an additional two years, regardless of whether the contract at issue is a one year or two year contract. An administrator who does not receive notice of renewal or nonrenewal still has the same deadline of three months prior to the contract's expiration to accept or reject the contract in writing.

What About a Teacher or Administrator Who is Already Under Contract?

School boards are specifically prohibited by statute, under Wis. Stat. § 118.22(2) and Wis. Stat. § 118.24(6), from entering into an employment contract with a teacher or administrator for any period of time as to which that individual is then under a contract of employment with another school board.

Summary of Teacher Nonrenewal Deadlines under Wis. Stat. § 118.22		
Deadlines	Required Notices	
April 30	Preliminary Notice of Nonrenewal	Board must give teacher written notice by this date that states 1) the board is considering nonrenewal and 2) teacher has right to private conference with board if the request is filed within 5 days after receiving preliminary notice.

May 5	Private Conference Request	If teacher received preliminary notice and wants a private conference, teacher must file request with board by this date.
May 5-15	Private Conference	If teacher filed timely request for private conference on deadline of May 5, then this is the time frame in which private conference must occur.
May 15	Formal Notice	Board must give teacher written notice of nonrenewal (or renewal) by this date. If no notice given, the contract in force continues for the ensuing school year.
June 15	Teacher Acceptance or Rejection	If teacher receives renewal notice, or no notice, then teacher has until this date to accept or reject in writing.

Summary of Administrator Nonrenewal Deadlines under Wis. Stat. § 118.22

(Deadlines below assume a contract expiration date of June 30)

Deadlines	Required Notices	
January 31	Preliminary Notice of Nonrenewal	Administrator must receive written notice <u>via registered mail</u> by this date that states 1) the board is considering nonrenewal and 2) administrator has right to hearing before the board if the request is filed within 7 days of receiving preliminary notice.
February 7	Board Hearing Request	If administrator received preliminary notice and wants a hearing before the board, administrator must file request with board by this date.

February 7-28	Hearing before Board	If administrator filed timely request for a board hearing by deadline of February 7, then this is the time frame in which the hearing before the board must occur.
February 28	Formal Notice	Board must give administrator written notice of nonrenewal (or renewal) by this date. If no notice given, the contract in force continues for two years.
March 31	Administrator Acceptance or Rejection	If administrator receives renewal notice, or no notice, then administrator has until this date to accept or reject in writing.

Practical Considerations:

Plan Ahead. Start considering potential nonrenewals sooner rather than later. While the charts above give the absolute deadlines to give the written preliminary notice to either a teacher or administrator, waiting until the deadline means the board only has the shortest possible window to hold the private conference or board hearing, have the full board vote on the nonrenewal, and deliver the formal notice of nonrenewal to the teacher or administrator. Additionally, starting the process sooner than the above deadlines allows more time to potentially discuss other options with the teacher or administrator, such as discussion of resignation in lieu of nonrenewal. Finally, a board needs to give itself enough time to ensure timely delivery of the preliminary notice and formal notice, whether that delivery method is hand deliver for a teacher or registered mail for an administrator. Waiting until the last moment to deliver the notices is not recommended.

Is Nonrenewal the Best Option? Consider whether to offer the employee the option to voluntarily resign or retire in lieu of nonrenewal. This may curb a costly, time consuming, and contentious nonrenewal process, and allow the employee to best position himself/herself for future employment.

Delivery of Notices. For a teacher, best practice for delivery of the preliminary notice and the formal notice of nonrenewal is to have an administrator hand-deliver each notice and have the teacher sign and date copies to affirm the teacher received each notice within the statutorily allowed timeframe. For an administrator, the statute *requires* delivery via registered mail for the preliminary notice. The administrator statute does not specify delivery method for the formal written notice of nonrenewal, so a board could again use registered mail, or hand-delivery would be acceptable as well, with the administrator being asked to sign and date the notice of nonrenewal to acknowledge timely delivery.

Possible Documentation to Support a Nonrenewal:

- Any board policy, employee handbook provision, or individual contract provision relevant to nonrenewals
- Any violated board policies, employee handbook policies, school manual policies
- Evaluation Documents – including all documentation from formal and informal observations, information shared with the teacher or administrator at any pre- or post-observation conferences, Educator Effectiveness documents (SLO, PPG), and the final evaluation for the year
- Prior Evaluations
- Student Performance Data
- Performance Improvement Plans
- Memos of Concern
- Disciplinary Letters
- Attendance logs
- Parent, Staff, or Student Complaints (signed and dated by the individual)
- Documentation of administration's attempts to provide support – including coaching, mentoring, professional development/training
- Documentation of prior notice to teacher or administrator of areas of concern

Nonrenewal Standard. Boards need to be aware of what standard, if any, their district is using for nonrenewals. Ensure board policies, employee handbooks, and individual contracts include appropriate language for nonrenewal of a contract. Many districts have no standard, simply opting for employment at will, while other districts may use arbitrary or capricious, or even a just cause standard. Whatever standard is used for nonrenewal, districts must make sure it is consistent across all relevant documents.

Resignations/Retirements. Even if a teacher or administrator has expressed plans to resign or retire, a district should continue to proceed with the timelines for preliminary notice and formal notice of nonrenewal if the district wants to ensure a contract is not renewed for the following year. A district should not stop proceedings under Wis. Stat. § 118.22 or Wis. Stat. § 118.24 until the signed resignation or retirement paperwork is received and accepted by the board.

Additional Requirements. Districts should be aware of any additional requirements for nonrenewal of a teacher or administrator contract that exist in their board policy, employee handbook, or in individual teacher or administrator contracts in order to ensure all necessary steps to nonrenew are fulfilled by following the deadlines in Wis. Stat. § 118.22 or Wis. Stat. § 118.24. Districts may wish to consider revisions to policies and individual contracts to avoid obligating the district to requirements beyond those required by law.

Unemployment Benefits. A nonrenewed teacher or administrator may be entitled to unemployment insurance benefits, depending on the specific circumstances of the nonrenewal.

Insurance. Be aware that state and federal law place certain obligations on districts to provide nonrenewed employees with the option to continue group insurance coverage for a period of time and/or the option to convert individual coverage.

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