



## *School Law FYI*

# ***Upcoming Deadlines for Renewal and Nonrenewal of Individual Teacher Contracts***

RICHARD F. VERSTEGEN, DOUGLAS E. WITTE, BRIAN P. GOODMAN | 03.02.22

During the second half of the school year, Wisconsin school administrators and boards are usually planning for staffing for the succeeding school year. As part of this planning process, administrators and boards need to be aware of issues related to the renewal and nonrenewal of teacher contracts, which is an issue that may be governed by statutes that have April, May, and June deadlines. This article addresses some of the issues that should be considered during the renewal and nonrenewal process. However, each situation may vary based on the circumstances, and districts should seek legal counsel if they have questions before making decisions.

### ***Renewal or Nonrenewal of the Contract***

Wisconsin Statute § 118.21 requires that: school boards contract in writing with qualified teachers; that the contracts be filed with the school district clerk; and that a copy of the teacher's authority to teach be attached. In general, these teacher contracts are one-year contracts.

Wisconsin Statute § 118.22 sets forth the procedures that a school board must follow to renew or non-renew a full-time teacher's contract for the ensuing school year. This statute can also apply to a part-time teacher's contract if the school board has incorporated this statute into the part-time teacher's contract (either within the contract itself, board policy, or employee handbook). School officials will want to review these documents to determine whether the statute will apply to any of their part-time teachers.

Full-time teacher contracts automatically renew pursuant to Wis. Stat. § 118.22, unless the school board takes action to prevent the renewal. The board must be careful to follow all

statutory, contractual, handbook, and policy requirements that may be applicable to any such renewal or nonrenewal of the contract.

- Under Wis. Stat. § 118.22, in order to non-renew a contract for the 2022 – 2023 school year, the board must inform the teacher by written notice of preliminary consideration of nonrenewal of the contract **by Saturday, April 30, 2022**, and give the teacher final written notice of refusal to renew the contract for the ensuing school year on or before **Sunday, May 15, 2022**. By operation of Wis. Stat. § 990.001(4)(c), if the school district has no office hours on Saturday, April 30, the board is able to give preliminary consideration of the contract by May 2, 2022 (the next workday following the Saturday deadline). By operation of Wis. Stat. § 990.001(4)(b), the board is able to give final written notice by May 16, 2022. However, to avoid any potential dispute, boards should aim to comply with the express deadlines established by Wis. Stat. § 118.22. The statute also permits a teacher to request a private conference with the school board after receiving any preliminary notice. As a result, school boards typically issue a preliminary notice at least in early or mid-April in order to allow time for a private conference, if requested, to be conducted prior to final board action and issuance of final notice of nonrenewal.
- If a school board intends to renew a contract for the 2022 – 2023 school year, a school board must still consider the requirements under Wis. Stat. § 118.22. The statute requires that the board give written notice of renewal to the teacher on or before **Sunday, May 15, 2022**. By operation of Wis. Stat. § 990.001(4)(b), the board is able to give this written notice by May 16, 2022. However, to avoid any potential dispute, boards should aim to comply with the express deadline established by Wis. Stat. § 118.22. A teacher who receives a notice of renewal of contract, or a teacher who does not receive a notice of renewal or refusal to renew the teacher’s contract, must accept or reject in writing such contract not later than **Wednesday, June 15, 2022**. Nothing in the law requires the board to issue the actual individual teacher contract to the teacher before the start of the 2022 – 2023 school year. However, the above procedure certainly contemplates that the terms of the contract will be determined during the spring of the 2021 – 2022 school year.
- The parties will likely not be able to delay these deadlines. The teacher nonrenewal statute previously authorized districts to agree to modify or waive any of the provisions of the statute. However, this part of the statute was repealed. Thus, boards should avoid agreeing to any change in the deadlines.
- If boards do not follow the statutory process, contracts may be automatically renewed for an additional year. Because many of the dates above fall on weekend days, from a practical perspective, it is very important for school district officials to plan to take action well before the deadlines noted in order to avoid any issues with respect to timely notice, particularly because it will need to issue the notice to the teacher by the final deadline.

## ***Reduction of Staff***

In general, school boards must meet the nonrenewal deadlines of Wis. Stat. § 118.22 for any full-time teacher that it believes may be subject to reduction, including reductions from full-time to part-time. Of course, school boards should review their individual contracts, handbook, and board policies and should consult legal counsel to determine whether the nonrenewal procedure should be used for any reductions in staff. (Some layoff policies may have inconsistent dates from the nonrenewal statute). Boards must also take any layoff actions with enough lead time so that the preliminary notice of consideration of nonrenewal can be in the teacher's hand by April 30.

## ***Part-time Teacher Contracts***

Part-time teacher contracts are not subject to Wis. Stat. § 118.22 unless the school board has incorporated this statute into the part-time teacher's contract (either within the contract itself, board policy, or employee handbook). Therefore, absent such incorporation, these contracts will not renew for subsequent school years. If a school board wants to retain a part-time teacher for a subsequent school year, the school board should issue a part-time teacher a contract for that subsequent school year. There are no specific statutory deadlines for issuing such contracts, but such teachers are not under contract with the school district for the subsequent school year until such a contract is issued to and accepted by the part-time teachers.

Additionally, part-time teacher contracts (that do not incorporate Wis. Stat. § 118.22) will automatically terminate at the end of the contract's term, as provided by the specific language in the contract. School boards that do not wish to retain such part-time teachers can allow the contract to expire as stated in the contract. From a practical perspective, such school boards should consider giving such a part-time teacher a reasonable amount of notice that the school board is not going to offer the teacher a contract for the following year, but such notice is not legally required.

## ***General Procedural Considerations***

**Notice.** Wisconsin Statute § 118.22 states that the board must "inform" the teacher by a preliminary notice in writing. It also states that the board must "give" the teacher written notice of renewal or refusal to renew the teacher's contract for the ensuing school year. However, the statute does not identify any specific method (e.g., certified mail, etc.) by which such notices must be provided to the teacher.

The board must take action on any notice. Even though the notice must be from the board, the board can delegate authority to an administrator to give the notice to the teacher. The best practice (particularly for any preliminary notice or final notice of nonrenewal) is for an administrator to hand-deliver any notice and have a copy signed and dated by the teacher to

confirm receipt. In general, school officials can require a teacher to meet with them to deliver this notice. If hand delivery is not feasible, alternative methods may be to send the notice by either email (return receipt requested) to a home or work email address, and/or by certified mail to the teacher's home address (in addition to mailing a copy by first class mail in case a teacher does not sign for receipt of the certified mail). School districts should consult their legal counsel for special situations.

**Board Meeting.** Wisconsin Statute § 118.22 states that “no teacher may be employed or dismissed except by a majority of the full membership of the board.” This means the decision to renew or non-renew a contract must be made by a majority vote of the full membership of the school board. For example, with a seven-member board, four members must vote in favor of any such decision to renew or non-renew a contract, not just the majority of a quorum of the board at a meeting. To assure compliance, any such action should be by roll call vote.

With school board elections occurring in April and new board members taking office by the last Monday in April, some school boards plan for any decisions related to nonrenewal to occur in March. By doing so, any new school board members are not necessarily required to make difficult decisions related to nonrenewal as part of their first duties as elected officials.

**Private Conference.** After receiving the preliminary notice of consideration of nonrenewal, the teacher has a right to a private conference with the board. This is a “conference,” not an “evidentiary hearing.” The board must inform the teacher of this right to a private conference when it informs the teacher of the preliminary notice of consideration of nonrenewal and must inform the teacher that the private conference will be provided if the teacher files a request with the board within five days after receiving the preliminary notice. This private conference must be afforded to the teacher prior to the teacher being given final written notice of refusal to renew the teacher's contract.

It is advisable for the board when providing any preliminary notice to the teacher, to inform the teacher how exactly the teacher should file a request for a private conference. If such a request should be provided to the district administrator, then that should be specified in the preliminary notice, along with how such a request should be sent (e.g., by email or by other means).

Also, if a teacher files a request for a private conference, it is important for any school board to remember that such a private conference is a “meeting” of the board, and therefore, subject to the Open Meetings Law. However, the private conference can be held in a closed session. The purpose of the private conference is to afford the teacher the ability to meet with the board and to provide facts and arguments bearing on the board's decision whether to go through with the contemplated nonrenewal. As a result, it is important for the board to hold such private conferences in a way that affords the teacher the opportunity to sufficiently present such facts and arguments and to effectively allow board members to objectively consider such facts and arguments.

The structure of such conference depends on many factors, including any standards that are applicable to such a nonrenewal as set forth in board policy, employee handbook, teacher handbook, or district grievance procedure. The board should consider whether the teacher has the right to have a representative at the private conference, and it should also consider whether to permit the district administrator or any other administrators to attend the private conference. A board should consider whether any constitutional due process requirements must be met during any private conference, including where a just cause provision may be applicable. Boards should likely consult with legal counsel on this issue.

***Content of Contracts.*** Wisconsin statutes set forth the minimum requirements for individual teacher contracts. The contract, in addition to fixing the teacher's wage, may provide for compensating the teacher for necessary travel expenses. To avoid a prohibited practice charge under Wis. Stat. § 111.70(3)(a)4, a school board is required to include language stating that the contract is subject to amendment by a subsequent collective bargaining agreement.

The other contents of an individual contract are largely a matter of school board discretion, subject to the individual teacher's agreement to these contents. There is no requirement that each individual teacher contract in the district contains the exact same contents. A contract may vary from one teacher to another, as long as the different terms are not based on some protected category (e.g., religion, race, etc.). Among other provisions, many contracts include a provision stating that the contract will be subject to the rules, handbook, and policies of the school board and administration. Boards may also include a provision concerning liquidated damages, written authorization to pay a teacher over a twelve-month period, and a contracted number of days.

School boards should not issue contracts that are inconsistent with state or federal law or inconsistent with board policies, handbook provisions, or base wage determinations in an applicable collective bargaining agreement. School boards should also consider excluding provisions that may hinder their ability to manage the district's business.

Changing most material terms of the contract, however, cannot be done unilaterally by the board, and the board may need to take certain steps in order to incorporate such changes, including, absent mutual agreement with the affected teachers, following the process for nonrenewal and reissuance of the revised contracts. Such changes may be difficult at this time, considering the amount of time required for such steps. However, boards may want to consider such changes for the future.

## ***Conclusion***

School boards should plan now to address any issues related to the renewal and nonrenewal of individual teacher contracts. Boards need to base any decision in light of provisions contained in the applicable statutes, handbooks, policies, bargaining agreements, and practices in the district and should seek legal counsel as necessary. Additional information on

this topic is available in the Wisconsin Association of School Board (WASB) publication, *The Nonrenewal Bulletin 2022 Edition*, authored by Boardman Clark. This publication is available from WASB including on WASB's website.

For advice on specific matters or how to apply a policy to particular facts, please consult one of Boardman Clark's School Law Practice Group attorneys.

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## ***Primary Authors***



**Richard F. Verstegen**  
(608) 286-7233



**Douglas E. Witte**  
(608) 283-7529



**Brian P. Goodman**  
(608) 283-1722

## ***School Law Practice Group Members***

**Michael J. Julka**  
(608) 286-7238

**Steve Zach**  
(608) 283-1736

**Rhonda R. Hazen**  
(608) 283-1724

**Brian P. Goodman**  
(608) 283-1722

**William L. Fahey**  
(608) 286-7234

**Richard F. Verstegen**  
(608) 286-7233

**Tess O'Brien-Heinzen**  
(608) 283-1798

**Daniel T. Fahey**  
(608) 286-7216

**Eileen A. Brownlee**  
(608) 822-3251

**David P. Weller**  
(608) 286-7235

**Matthew W. Bell**  
(608) 286-7239

**Eric B. Hagen**  
(608) 286-7225

**Douglas E. Witte**  
(608) 283-7529

**Jennifer S. Mirus**  
(608) 283-1799

**Christopher T. Schmidt**  
(608) 286-7157