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I. SUMMARY OF ARGUMENT

Section 3319.02 of the Ohio Revised Code governs the employment contracts of every public school principal, assistant superintendent, and other school administrator in the state of Ohio. In that section, the General Assembly carefully balanced the rights of school districts and their administrators. The General Assembly provided districts with the substantive right to renew or nonrenew the contract of a school administrator for any reason, but granted administrators certain procedural rights, including the right, upon request, to a meeting with the school board prior to a vote on renewal or nonrenewal.

Appellee Teays Valley Local School District Board of Education (“the District”) asks this Court to disrupt this careful statutory framework. It claims that it was entitled to ignore with impunity the mandatory provision requiring a meeting with the school board prior to nonrenewing the contract of Appellant Stacey L. Carna (“Carna”), even though the General Assembly explicitly sought to prevent such violations by providing for automatic reinstatement of any administrator whose request for a meeting is not honored.

Section 3319.02(D) sets out in plain language the procedures established by the General Assembly for renewing or nonrenewing such administrators’ contracts. Among those procedures are mandatory notice and the right to be heard prior to any decision to renew or nonrenew an administrator’s contract, including a meeting with the school board in executive session at which the reasons for renewal or nonrenewal are discussed and the administrator has the right to representation. R.C. § 3319.02(D)(4). To enforce this provision, the General Assembly enacted R.C. 3319.02(D)(5), which states, in relevant part, “if the board fails to provide at the request of the employee a meeting as prescribed in division (D)(4) of this section, the employee automatically shall be reemployed” for one year.

The requirements of Section 3319.02(D) are plainly grounded in principles of due process, and this Court has required that Section 3319.02 be construed broadly in favor of school administrators to effectuate the section's remedial purposes. *State ex rel. Luckey v. Etheridge* (1992), 62 Ohio St. 3d 404, 406, 583 N.E.2d 960. Unfortunately, the Fourth District Court of Appeals did the opposite in its decision below, effectively stripping administrators of key protections despite clear statutory language to the contrary.

Carna brought a mandamus action when the District ignored her request for a meeting with the school board and failed to provide such a meeting prior to nonrenewing her contract as an elementary school principal. The Fourth District Court of Appeals held that, despite admissions by the District that Carna had requested a meeting with the Board and that no such meeting had been held, Carna could not be reinstated pursuant to Section 3319.02(D)(5) because she had made her request for a meeting too *early*—i.e., she had requested the meeting immediately upon being informed that her contract would not be renewed, instead of waiting for the District's formal evaluations of her performance and the board's formal notification that her contract was about to expire and that she had the right to request a meeting. Notably, no such notification was ever provided to Carna.

The question in this case, which affects the rights of every public school administrator in Ohio, is the meaning of Section 3319.02(D)(5). Neither Division (D)(4) nor Division (D)(5) requires that a request for a meeting be made at a particular time or in a particular manner. The court below nevertheless held that a request for a meeting prior to the required formal evaluations and notification was not a request for “a meeting as prescribed in division (D)(4).” According to this reasoning, such a request could therefore be ignored without triggering automatic reinstatement.

This determination obviates the General Assembly's protections and creates three fundamental problems that this Court must correct. First, it judicially amends the actual words of the statute. According to any permissible reading of Section 3319.02(D)(5), the words "a meeting as prescribed in division (D)(4)" specify the type of *meeting* that must be provided when an administrator requests one: that is, a meeting in executive session, at which the reasons for renewal or nonrenewal are discussed and the administrator is entitled to the representative of his or her choice. But the court below used the language "as prescribed in division (D)(4)" as if it defined the type of *request* required. Instead of requiring reinstatement if a school board fails to provide an appropriate meeting, the reasoning below twists the language of the statute so that division (D)(4) somehow limits the sorts of employee requests a school board must honor.

This creates a second problem: the appellate court's reasoning inserts into division (D)(4) constraints and prerequisites for making a proper meeting request that simply do not exist in the statute. That division contains two clear, easily met procedural requirements for school boards: providing, prior to the last day of March, a notice "of the date that the contract expires and that the employee may request a meeting with the board"; and, "[u]pon request by such an employee," providing a meeting in executive session to discuss the reasons for renewal or nonrenewal. R.C. 3319.02(D)(4). Nothing in the division sets more specific requirements for an employee's meeting request. There is not, for instance, a requirement that a request be made in writing, that it be made by a specific deadline, or that it use "magic words" to incorporate the various requirements the statute imposes for the meeting itself. Nothing in the statute would indicate to an administrator like Carna that a request like the one she made—a request in response to the first indication she received from her employer that her contract would be nonrenewed—could simply be ignored.

Despite this lack of limiting criteria, the court below held that a request is not “as prescribed in division (D)(4)” unless it occurs *after* two evaluations by the district, required by Section 3319.02(D)(2), as well as after the notice required by division (D)(4), which the court below concluded can be withheld, as it was in this case, without consequence. If the evaluations, notice, and meeting request do not occur in that order—an order found nowhere in the statute—the request is invalid. Under the statute, the time between the final evaluation and a vote on nonrenewal can be as short as five days. This means an administrator could request a meeting every day for a period of months after being informed of impending nonrenewal, but without one last request during the short period between the final evaluation and the board’s vote, these prior requests could be ignored with impunity.

Worse, without reversal by this Court, the lower court’s reasoning would make the period in which an administrator can request a meeting even shorter than five days, to the point of virtual nonexistence. The lower court, relying on a prior appellate decision that cited an earlier, outdated version of the statute, excused the District for its failure to provide Carna notice of her right to a meeting. But it held that, where notice *is* provided, an administrator can request a meeting only after the issuance of both the Division (D)(2) evaluations and the Division (D)(4) notice of the right to a meeting.

Although the court stopped short of holding that school districts can sidestep all requests for a meeting by simply refusing to provide the required notice, the result of its actual holding, left unaltered, will be even more absurd than if it had. Under the court’s holding, a principal who is informed that his or her contract will be nonrenewed will have a period of as little as five days in which to request a meeting with the board, no matter how many prior requests the principal has made. But even if the principal makes a “valid” request after the final evaluation,

that request can then be ignored with impunity if the district subsequently issues the required notice of the principal's right to a meeting, because under the court's holding, this subsequent notice, not the final evaluation, would be the triggering event for a meeting request. Notably, the only deadline for issuing this required notice is the last day of March, which is the same deadline the statute provides for the final nonrenewal vote. This means the notice can be issued the same day as the board's vote, or literally any time up to the moment before the board votes. Without a reversal, this decision will transform the absolute, unlimited right to request a meeting into a right that can be exercised only during an extremely short, unpredictable period of time just prior to the final vote—a period during which it will be essentially impossible to prepare for the meeting or obtain representation.

This case presents a stark choice: to uphold the General Assembly's careful balancing by applying the language of Section 3319.02(D) as written; or to distort the language of the statute by extinguishing the procedural protections the General Assembly sought to establish. The Court should restore the integrity of the framework established by the General Assembly by holding that a board must honor a meeting request by a school administrator made after the administrator is told that his or her contract will not be renewed.

II. STATEMENT OF FACTS

A. Factual Background: Carna's Request for a Meeting and the Subsequent Nonrenewal of Her Employment Contract without a Meeting

This case has a rich factual history, which is adequately described in the opinions issued by the court of appeals and the trial court. For the purposes of the pure legal question addressed here, though, only a few facts have any relevance, and they are entirely undisputed.

Carna entered into a two-year contract with the District as principal of Ashville Elementary School in 2006, which covered the 2006-2007 and 2007-2008 school years. During

the 2006-2007 school year, false allegations arose against Carna regarding her supposed tampering with Ohio Achievement Tests at her school. Carna was subsequently exonerated by the Ohio Department of Education when, among other things, it was revealed that there was no evidence that Carna tampered with any tests, and there *was* evidence that two of the employees who aired the allegations against her *had* tampered with student tests. (Appx. 18-20).

These revelations occurred too late to save Carna's job. She was placed on paid administrative leave in May 2007, continuing to the end of her contractual term in the summer of 2008. (Appx. 4). After placing her on leave, on July 11, 2007, Assistant Superintendent Robert Thompson told Carna that the District was not going to renew her contract upon its expiration. In the same conversation, Carna requested a meeting with the board regarding this nonrenewal. (Supp. 3, at ¶ 13; see also Supp. 23 (noting that Carna was told in the summer of 2007 that she would be recommended for nonrenewal)). The District does not dispute that Carna's request for a meeting occurred. (See, e.g., Supp. 11, at ¶ 5 (adopting Carna's description of request)).

The District never provided Carna with a more formal notification that the board would be voting on the recommendation not to renew her contract or that she had the right to a meeting prior to the vote. Its only further references to nonrenewal prior to the board's vote were two similar statements by Assistant Superintendent Thompson in his "evaluations" of Carna's job performance, which were issued while she was on administrative leave. (Supp. 23-24). These evaluations contained no reference to a specific meeting at which the board would vote on nonrenewal. Nor did these evaluations inform Carna of her right to meet with the board prior to its vote. Carna's prior request for a meeting with the board was never honored, and on March 17, 2008, the board voted not to renew her contract. (Appx. 4-5).

B. Procedural History

Carna filed her petition for mandamus and request for preliminary injunction with the Pickaway County Court of Common Pleas on February 12, 2009.¹ After the trial court denied the preliminary injunction, the District filed its Motion for Partial Summary Judgment addressing Carna's mandamus petition on February 19, 2010, and Carna filed a cross-motion for Partial Summary Judgment on March 8, 2010. The court of common pleas entered partial summary judgment for the District on March 29, 2010. The court incorporated into this order Civil Rule 58 language designating its decision as a final appealable order. (Appx. 32-33). Carna filed a timely notice of appeal to the Fourth District Court of Appeals on April 27, 2010, asking the court of appeals to reverse the judgment against her and grant summary judgment and mandamus in her favor.

The court of appeals affirmed on March 17, 2011, holding that Carna's "July 11, 2007 request did not constitute a request for 'a meeting as prescribed in [R.C. 3319.02(D)(4)].'" (Appx. 11). The court held that any meeting request made prior to a final evaluation pursuant to Section 3319.02(D)(2) can be ignored, even if an administrator makes the request upon being told his or her contract will not be renewed. (Appx. 11-14). The court stated, "Construing the statute as a whole, we believe that it is the preliminary evaluation and the superintendent's intended recommendation [in the final evaluation] that triggers the administrator's right to request a meeting with the board, except in those circumstances when the board notifies the administrator of the contract expiration date." (Appx. 13-14). This Court subsequently accepted Carna's appeal as to the proposition of law described below.

¹ Carna's complaint also included a claim for breach of contract, seeking reimbursement of her attorneys' fees expended in her successful licensure defense. That claim was denied in separate summary judgment proceedings during the pendency of this appeal, and is no longer pending.

III. ARGUMENT

PROPOSITION OF LAW:

When a principal requests a meeting with the school board after being told in advance that her contract will not be renewed, the school board's failure to provide a meeting prior to voting on the principal's nonrenewal violates Section 3319.02(D)(4) of the Ohio Revised Code and requires automatic reinstatement of the principal pursuant to Section 3319.02(D)(5).

A. *The Court of Appeals Misconstrued the Statutory Language "As Prescribed in Division (D)(4)" to Modify the Word "Request" Instead of the Word "Meeting"*

Section 3319.02 of the Ohio Revised Code provides a mandatory set of procedures for renewing or nonrenewing the employment contract of any public school assistant superintendent or principal, and a number of other types of licensed school administrators. This Court has previously held that it is a remedial statute, and must be construed liberally in favor of the rights of school administrators. *State ex rel. Luckey v. Etheridge* (1992), 62 Ohio St. 3d 404, 406, 583 N.E.2d 960 (citing *State ex rel. Brennan v. Vinton County Local Bd. of Educ.* (1985), 18 Ohio St. 3d 208, 209, 480 N.E.2d 476). This Court and other Ohio courts have also acknowledged that mandamus is the appropriate means for enforcing the statute's reinstatement provision in the event of a violation of the statute. *State ex rel. Jones v. Sandusky City Schools* (6th Dist.), 2006-Ohio-188, at ¶ 7 (citing *State ex rel. Cassels v. Dayton City Sch. Dist. Bd. of Educ.* (1994), 69 Ohio St.3d 217, 219, 631 N.E.2d 150); accord *Luckey*, 62 Ohio St. 3d at 406-07.

The question facing the court below was the meaning of that reinstatement provision, Section 3319.02(D)(5), which provides, in relevant part, that "if the board fails to provide at the request of the employee a meeting as prescribed in division (D)(4) of this section, the employee automatically shall be reemployed at the same salary plus any increments that may be authorized by the board for a period of one year" The provision cites Division (D)(4), which states,

Before taking action to renew or nonrenew the contract of an assistant superintendent, principal, assistant principal, or other administrator under this section and prior to the last day of March of the year in which such employee's contract expires, the board shall notify each such employee of the date that the contract expires and that the employee may request a meeting with the board. Upon request by such an employee, the board shall grant the employee a meeting in executive session. In that meeting, the board shall discuss its reasons for considering renewal or nonrenewal of the contract. The employee shall be permitted to have a representative, chosen by the employee, present at the meeting.

These provisions are worded plainly, without ambiguity. Accordingly, the proper role of the court below in determining the meaning of these provisions was to "review the statutory language, reading words and phrases in context and construing them according to the rules of grammar and common usage." *State v. Bess*, 126 Ohio St.3d 350, 2010-Ohio-3292, at ¶18 (quotations and citations omitted).

Instead, the court of appeals rearranged the words of the statute to give them a new meaning contrary to the General Assembly's remedial intent. In particular, the court relied entirely on the words "as prescribed in division (D)(4)," (Appx. 11), which appears in the phrase, "if the board fails to provide at the request of the employee a meeting as prescribed in division (D)(4)." By its placement in that phrase, the words "as prescribed in division (D)(4)" are capable of modifying only one word in the phrase: the word "meeting." As a rule, "modifying words or phrases only apply to the words or phrases immediately preceding or subsequent to the word, and will not modify the other words, phrases or clauses more remote, unless the intent of the legislature clearly require[s] such an extension," *State v. Bowen* (1st Dist.), 139 Ohio App.3d 41, 44, 742 N.E.2d 1166. Here, the immediately preceding word is "meeting." Accordingly, the words "as prescribed in division (D)(4)" modify the word "meeting."

This application of ordinary grammatical rules comports with the remedial purpose of the statute. The words “as prescribed in division (D)(4)” refer to the three criteria in Division (D)(4) for a proper meeting with an employee: holding the meeting in executive session; explaining the reasons for nonrenewal; and providing the employee with the right to representation. Sensibly, the General Assembly ensured through the words “as prescribed in division (D)(4)” that a district cannot defeat an employee’s right to a pre-vote meeting by holding a sham “meeting” that does not satisfy those three criteria. Any meeting that fails to meet those minimum requirements is not a “meeting as prescribed in division (D)(4).”

As important here, there are no “other words, phrases or clauses more remote” that the phrase “as prescribed in division (D)(4)” could possibly modify. The court below used the phrase to modify the word “request”; that is, it held that a request for a meeting was not “as prescribed in division (D)(4)” unless it is made following the occurrence of several prerequisites, including two evaluations pursuant to R.C. 3319.02(D)(2). (Appx. 13-14). That is not a fair reading of the statute because the word “request” in division (D)(5) cannot be so modified. If it had intended the words “as prescribed in division (D)(4)” to modify the word “request,” the General Assembly could easily have done so. For instance, it could have worded the provision, “if the board fails to honor a *meeting request* as prescribed in division (D)(4)” —a wording that would permit the words “as prescribed” to modify the words “meeting request,” instead of the word “meeting.” Or the provision could have been worded, “if the board fails to honor a *request for a meeting* as prescribed in division (D)(4)” —a more ambiguous word order in which “as prescribed” could modify either the meeting or both the request and the meeting.

But the General Assembly did neither. Instead, it used the words “if the board fails to provide *at the request of the employee* a meeting as prescribed in division (D)(4).” There is no

logical, grammatically appropriate way to combine the term “as prescribed” with the term “at the request of the employee” so that the request, instead of the meeting, must satisfy the criteria in division (D)(4). The only way to connect these two phrases is with ellipses, as in the fragment, “*** request *** as prescribed in division (D)(4).” Of course, nearly all of the operative words of the provision—including the most important one, “meeting”—would need to be elided in such a fragment, giving the provision an entirely different meaning.

B. The Court of Appeals Erroneously Interpreted the Words “As Prescribed in Division (D)(4)” to Create a Number of Nonexistent Prerequisites to a Valid Meeting Request

The court compounded its erroneous construction of the words of Division (D)(5) itself by adding non-existent provisions to Division (D)(4), contrary to this Court’s rules of construction. See *Bess*, 2010-Ohio-3292, at ¶ 18 (“[W]e must give effect to the words of a statute and may not modify an unambiguous statute by deleting words used or inserting words not used.” (quotations and citations omitted)). The court’s holding that a request, to be effective, must be made “as prescribed in division (D)(4),” would have been harmless, had the court limited itself to determining what Division (D)(4) and Section 3319.02 as a whole actually say about how requests must be made. In fact, a careful review of Section 3319.02 reveals no prerequisites or technical requirements for such requests. There is no requirement that a request be made in writing, that it be made by a specific deadline, or that it use “magic words” to incorporate the various requirements the statute imposes for the meeting itself. Indeed, the lack of criteria in Division (D)(4) for a proper meeting request is further evidence that it is the board’s meeting, not the administrator’s request, that must occur “as prescribed in division (D)(4).”

But the court of appeals, echoing the similar reasoning of the trial court, held that the statute, read as a whole, contemplates a meeting request only after the occurrence of three

prerequisites: (1) the “preliminary evaluation” the district must complete at least sixty (60) days prior to a renewal vote, per Division (D)(2)(c)(ii); (2) the subsequent “final evaluation,” which must occur at least five (5) days prior to the vote, *id.*; and (3) the notice to the employee of the expiration of the contract and the employee’s right to a meeting required by division (D)(4), which must be issued prior to the board’s vote and no later than the last day of March, which is the same deadline the statute sets in Division (C) for holding the vote. (Appx. 13-14).

The statute prohibits the board from holding a vote on renewal or nonrenewal prior to the occurrence of these three events by setting a specific timeframe for each event: sixty days prior to the vote for the first evaluation, five days prior to the vote for the final evaluation, and no later than the last day of March for the notice of contract expiration and the right to a meeting. In contrast to the explicitly stated deadlines for these three events, the statute does not provide any starting point or deadline for an administrator’s request for a meeting. The requirement that a request be made after the occurrence of the other three events was written into the statute by the lower courts based on nothing more than the fact that the provisions describing each precondition to nonrenewal (the first evaluation, the final evaluation, and the notice of the right to a meeting) appear in that order in the statute. (Appx. 30).

The court’s emphasis on the order of the statute’s provisions is misplaced. There is no basis in the statute for concluding that a request for a meeting is not “as prescribed in division (D)(4)” unless it occurs after both of the evaluations—which are described in Division (D)(2), and are not mentioned at all in Division (D)(4)—and the required notice.

The General Assembly did not imply a sequence of events through its ordering of the various provisions of Section 3319.02. Instead, where it intended for events to occur before or after others, it used the explicit words of the statute to accomplish that intent. The vote on

renewal or nonrenewal is described in Division (C), prior to the provisions in Division (D)(2) describing the required performance evaluations. But the statute explicitly states that the evaluations must occur “prior to any action by the board on the employee’s contract.” R.C. § 3319.02(D)(2)(c)(iii). Similarly, the provision addressing the required notice of the right to a meeting appears in Division (D)(4), after the voting provision in Division (C), but the General Assembly explicitly required it to be issued “[b]efore taking action to renew or nonrenew the contract.” R.C. § 3319.02(D)(4).

While the evaluations in Division (D)(2) appear in the statute prior to the notice of the right to a meeting in Division (D)(4), nothing in the statute ties their timing together. These separate prerequisites to nonrenewal appear in non-consecutive provisions of the statute, separated by another unrelated provision, Division (D)(3), that addresses a wholly distinct set of procedures for terminating an administrator’s contract for cause. In fact, the notice of the right to a meeting bears little direct relationship to the evaluations. The notice must be issued regardless of the recommendation of renewal or nonrenewal in the evaluations, and it does not need to inform the administrator of that recommendation. There is no reason that the notice of the right to a meeting could not be issued prior to the issuance of either or both of the required evaluations, and nothing in the statute prevents a school board from doing so. Yet the courts below held that these events must occur in that specific order, prior to any request for a meeting.

The court of appeals expressed great concern with the possibility that, absent its engrafting of a provision requiring that the evaluations, the required notice, and any request for a meeting must occur in that order, a clever administrator might entrap an unwitting school board by requesting a meeting on the first day of his or her employment, then hoping that the board has forgotten about this request by the time of a subsequent nonrenewal vote. (Appx. 12). Of course,

if this were a legitimate concern, fixing it would be the province of the General Assembly, not the court of appeals. But that issue is not presented here. Carna made her request for a meeting at the most logical, predictable time: her first indication that her contract would not be renewed. It is not clear how or why an administrator would ever request a meeting to discuss the impending nonrenewal of his or her contract any earlier than that, and the Appellant is unaware of any case presenting such an unlikely series of events. Yet the court of appeals, unlike the General Assembly, was so concerned with this scenario that it inserted nonexistent statutory provisions (provisions that the General Assembly could easily have enacted if it had so chosen) requiring that a request be made only after the occurrence of multiple, specific prerequisites, instead of simply holding that a request can be made only after an administrator is told that nonrenewal is being considered or recommended, as Carna was told here.

C. The Court of Appeals Decision Will Produce Absurd Results, Contrary to the Clear Purpose of the General Assembly's Enactment

As noted, the General Assembly could have chosen to apply specific time constraints as prerequisites for a valid meeting request, but did not. Even if the General Assembly *had* chosen to impose such prerequisites, however, it is tremendously unlikely that it would have chosen to do so in the manner selected by the court below. The court of appeals found itself in a difficult situation: it had interpreted into the statute a requirement that several events must occur in a specific order—first the preliminary evaluation, then the final evaluation, then the Division (D)(4) notice of the right to a meeting, and finally the meeting request—but it also knew that the District in this case had failed to provide the required notice pursuant to Division (D)(4). The court concluded that the failure to give notice, by itself, was not a basis for automatic reinstatement, since Division (D)(5) provides for reinstatement only if a school board fails to

conduct evaluations or fails to provide a meeting. R.C. § 3319.02(D)(5).² But following the logic of its conclusion that a request for a meeting must occur *after* the proper notice of the right to a meeting would mean that school boards could defeat an administrator's right to request a meeting by withholding the notice altogether, as the District did here.

In an effort to avoid this Catch-22, which would have amounted to a judicial repeal of the right of an administrator to a pre-vote meeting with the board, the court instead arrived at a conclusion that exacerbated its previous errors. It held that "it is the preliminary evaluation and the superintendent's intended recommendation [in the final evaluation] that triggers the administrator's right to request a meeting with the board, except in those circumstances when the board notifies the administrator of the contract expiration date." (Appx. 13-14). So, under the circumstances here, the District was permitted to ignore Carna's request because it was made prior to her final evaluation, even though her request was made after she was told in advance what the recommendation of that evaluation would be. Even if Carna had then repeated that request dozens or hundreds of times prior to her final evaluation, the District could continue to ignore her requests unless she renewed her request for a meeting during the period between receiving her second evaluation and the nonrenewal vote. This, despite the fact that she was never told when that vote would be, and despite the fact that the period between the final evaluation and the vote on nonrenewal can be as short as five (5) days according to the statute. R.C. 3319.02(D)(2)(c)(ii). That short of a time period renders an administrator's right to

² It should be noted, however, that the court's support for this conclusion was not the plain language of the statute, but instead, a prior appellate decision interpreting a prior version of the statute—one that provided for reinstatement only where an administrator was given *no* notice of the intended nonrenewal of his or her contract. (Appx. 14, n. 2 (citing *State ex rel. Butler v. Fort Frye Local School District* (1995), Washington App. No. 93CA31)). The statute has since been amended to provide for reinstatement when no evaluations are provided pursuant to Division (D)(2) or when a requested meeting is not held pursuant to Division (D)(4).

representation at the meeting meaningless, to say nothing of the ability of an administrator and his or her representative to prepare adequately for such a crucial meeting.

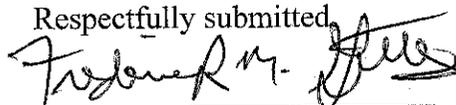
But worse, according to the reasoning of the court of appeals, such a request would still not necessarily be valid “in those circumstances when the board notifies the administrator of the contract expiration date.” Under this holding, it is impossible to tell whether a meeting request is actually valid until the vote itself occurs: the “last day of March” deadline in Division (D)(4) for issuing such a notice is the same as the deadline in Division (C) for holding the nonrenewal vote, so the triggering event for issuing a valid meeting request under the court’s holding could occur at literally any time prior to the vote. Even where a prior meeting request is made within the already-short period between the final evaluation and the vote, a board could then issue the required notice of the right to a meeting at any time, including the moment before the board votes. This would require the administrator to make yet another request for a meeting or else risk having his or her prior request disregarded.

The court could hardly have produced a more absurd result. Facing a statute that unambiguously states that reinstatement is mandatory if no meeting is held after one is requested, the court concluded, without any statutory support, that there are limitations on the types of request that must be honored. Then, finding no indication from the General Assembly regarding what specific limitations to apply, the court created brand new prerequisites on its own authority—and settled on a sequence of events that makes it impossible to tell when the right to request a meeting has been triggered. Worst of all, each of these departures from the ordinary principles of statutory construction occurred with respect to a statutory scheme that this Court has held must be construed liberally *in favor* of the rights of administrators like Carna.

IV. CONCLUSION

The plain language of Revised Code Section 3319.02 mandates reinstatement for an administrator who requests and is denied a meeting with the school board prior to a contract nonrenewal vote. Appellant Stacey L. Carna requested a meeting, and her request was ignored. For the reasons stated above, she respectfully requests that this Court reverse the judgment of the court of appeals and order that summary judgment be granted in her favor.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of August, 2011, a copy of the foregoing Merit Brief of Appellant Stacey L. Carna was served by postage-paid U.S. Mail upon the following:

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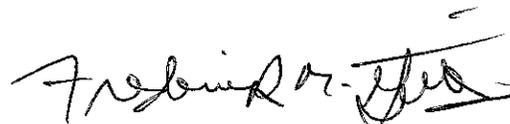
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Local School District Board of Education



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APPENDIX TO THE MERIT BRIEF OF APPELLANT STACEY L. CARNA

Notice of Appeal to the Ohio Supreme Court, April 29, 2011..... 1

**Decision and Judgment Entry of the Fourth District Court of Appeals,
March 17, 2011 3**

**Decision and Entry of the Pickaway County Court of Common Pleas,
March 29, 2010 17**

Ohio Revised Code Section 3319.02 34

IN THE SUPREME COURT OF OHIO

STATE EX REL. STACEY L. CARNA,

Relator-Appellant,

vs.

TEAYS VALLEY LOCAL SCHOOL
DISTRICT,

Respondent- Appellee.

CASE NO. 11-0716

On Appeal from the Pickaway
County Court of Appeals,
Fourth Appellate District,
Case No. 2010 CA 0018

NOTICE OF APPEAL OF APPELLANT STACEY L. CARNA

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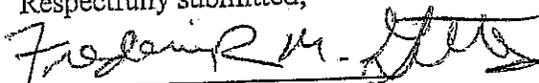
Attorneys for Appellee Teays Valley Local
School District

FILED
APR 29 2011
CLERK OF COURT
SUPREME COURT OF OHIO

NOTICE OF APPEAL OF APPELLANT STACEY L. CARNA

Appellant Stacey L. Carna hereby gives notice of her appeal to the Supreme Court of Ohio from the decision and judgment entry of the Pickaway County Court of Appeals, Fourth Appellate District, entered in Court of Appeals Case No. 2010 CA 0018, *State ex rel. Stacey L. Carna v. Teays Valley Local School District*, on March 17, 2011. This case presents an issue of public and great general interest under Supreme Court Practice Rule 2.1(A)(3). A time-stamped copy of the Court of Appeals decision and judgment entry is attached.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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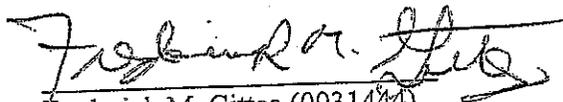
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IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
PICKAWAY COUNTY

2011 MAR 17 P 1:12

JAMES W. DEAN
CLERK OF COURTS
PICKAWAY COUNTY

STATE EX REL. STACEY L. CARNA, :

Relator-Appellant, :

vs. :

TEAYS VALLEY LOCAL SCHOOL, :

Respondent-Appellee. :

Case No. 10CA18

DECISION AND JUDGMENT ENTRY

APPEARANCES:

COUNSEL FOR APPELLANT: Frederick M. Gittes and Jeffrey P. Vardaro, 723 Oak Street, Columbus, Ohio 43205

COUNSEL FOR APPELLEE: Richard A. Williams and Susan S.R. Petro, 338 South High Street, Second Floor, Columbus, Ohio 43215

CIVIL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED:

ABELE, J.

This is an appeal from a Pickaway County Common Pleas Court judgment that denied the petition for a writ of mandamus filed by Stacey L. Carna, relator below and appellant herein.

Appellant raises the following assignment of error for review:

"THE TRIAL COURT ERRED AS A MATTER OF LAW IN DENYING THE APPELLANT'S PETITION FOR A WRIT OF MANDAMUS WHERE THE APPELLEE FAILED TO PROVIDE A MEETING WITH THE SCHOOL BOARD UPON THE APPELLANT'S REQUEST BEFORE NONRENEWING THE APPELLANT'S EMPLOYMENT CONTRACT, AS REQUIRED BY OHIO REVISED CODE 3319.02(D)(4)."

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In June 2006, appellant entered into a two-year administrator's employment contract with the Teays Valley Local School District Board of Education (Board), respondent below and appellee herein. Under the contract, the Board agreed to employ appellant as principal of Ashville Elementary School for the 2006-2007 and 2007-2008 school years. In May 2007, the Board placed appellant on administrative leave after allegations arose that appellant had tampered with Ohio Achievement Test results during the 2006-2007 school year. However, a subsequent investigation did not uncover evidence that appellant had tampered with the tests.

In a December 15, 2007 written "Adminstative Evaluation" (signed in January 2008), the Teays Valley Local Schools assistant superintendent wrote that he met with appellant in "early June [of 2007] to discuss her status with the district" and that at this meeting, appellant "was told she would not return to the district for the 2007-08 school year and at the conclusion of her contract she would not be recommended for another contract." A February 25, 2008 written "Administrative Evaluation" similarly informed appellant that "[t]he superintendent intends to recommend to [appellee that appellant's] contract not be renewed for the 2008-09 school year." Appellant signed both documents, but noted that she did not agree with either. During the March 17, 2008 meeting, the

Board determined not to renew appellant's contract.

On February 12, 2009, appellant filed a complaint and requested a preliminary injunction and a writ of mandamus. She requested the trial court to issue a writ of mandamus to order the Board to "restore [her] to her administrative level position as principal and grant her a renewal of her Administrative Contract at her previous salary, plus any increments." Appellant contended that the Board unlawfully non-renewed her contract by: (1) failing to evaluate her in accordance with R.C. 3319.02(D)(2); (2) failing to notify her of her right to meet with appellee regarding her non-renewal; and (3) failing to provide her an opportunity to meet with appellee.¹ The court denied appellant's request for a preliminary injunction.

The parties later filed cross-summary judgment motions regarding the mandamus claim. On March 29, 2010, the trial court denied appellant's petition for a writ of mandamus and entered judgment in the Board's favor. The court determined, in part, that appellant failed to establish that R.C. 3319.02(D)(5) entitled her to reinstatement. Specifically, the court found that appellant failed to show that she requested a meeting with the Board and that the Board denied her request. The court observed that even if appellant verbally requested a meeting on

¹ Appellant also asserted a breach of contract claim, but that claim is not at issue in the present appeal.

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July 11, 2007, when the assistant superintendent verbally informed her that the Board planned to not renew her contract, appellant's request did not constitute "a request in the context of an impending board decision to renew or not renew the administrator's contract." The court thus determined that appellant must have requested the meeting not when she first learned of the Board's intention to not renew, but after the Board began formal contract renewal procedures. The court explained:

"The statutory scheme contemplates an administrator's requesting a meeting after three things occur: (1) the superintendent or his designee conducts the final evaluation of the administrator; (2) the administrator learns of the superintendent's intended recommendation, as indicated on the final evaluation under division (D)(2)(c)(ii); and (3) the board notifies the administrator of the contract's expiration date and her right to request a meeting. An administrator's request for a meeting during a conversation some seven months before the administrator's final evaluation and the superintendent's official recommendation to the board is not a basis for alleging a violation of division (D)(4)."

This appeal followed.

In her sole assignment of error, appellant asserts that the trial court erred by entering summary judgment in the Board's favor after determining that she was not entitled to a writ of mandamus ordering the Board to restore her to her former position. Appellant asserts that the Board failed to comply with the R.C. 3119.02(D) mandate to honor her request for a meeting

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before it took action on her contract, which by operation of R.C. 3119.02(D)(5), requires her reinstatement.

A

SUMMARY JUDGMENT STANDARD

Appellate courts review trial court summary judgment decisions de novo. Grafton v. Ohio Edison Co. (1996), 77 Ohio St.3d 102, 105, 671 N.E.2d 241. Accordingly, appellate courts must independently review the record to determine if summary judgment is appropriate. In other words, appellate courts need not defer to trial court summary judgment decisions. See Brown v. Scioto Cty. Bd. of Commrs. (1993), 87 Ohio App.3d 704, 711, 622 N.E.2d 1153; Morehead v. Conley (1991), 75 Ohio App.3d 409, 411-412, 599 N.E.2d 786. Thus, to determine whether a trial court properly awarded summary judgment, an appellate court must review the Civ.R. 56 summary judgment standard as well as the applicable law. Civ.R. 56(C) provides:

Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's

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favor.

Accordingly, trial courts may not grant summary judgment unless the evidence demonstrates that (1) no genuine issue as to any material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and after viewing the evidence most strongly in favor of the nonmoving party, that conclusion is adverse to the party against whom the motion for summary judgment is made. See, e.g., Vahila v. Hall (1997), 77 Ohio St.3d 421, 429-430, 674 N.E.2d 1164.

B

WRIT OF MANDAMUS

In order for a writ of mandamus to issue, a relator must establish all of the following: (1) that the relator has a clear legal right to the relief prayed for; (2) that the respondent is under a clear legal duty to perform the act requested; and (3) that the relator has no plain and adequate remedy in the ordinary course of the law. See, e.g., State ex rel. Berger v. McMonagle (1983), 6 Ohio St.3d 28, 451 N.E.2d 225; see, also, State ex rel. Couch v. Trimble Local School Dist. Bd. of Edn., 120 Ohio St.3d 75, 2008-Ohio-4910, 896 N.E.2d 690; State ex rel. Asti v. Ohio Dept. of Youth Servs., 107 Ohio St.3d 262, 2005-Ohio-6432, 838 N.E.2d 658, at ¶17; State ex rel. Nichols v. Cuyahoga Cty. Bd. of

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Mental Retardation & Dev. Disabilities (1995), 72 Ohio St.3d 205, 207, 648 N.E.2d 823. A writ of mandamus is the appropriate procedural device when a school administrator seeks reemployment, damages, and back pay for the nonrenewal of his or her employment contract. See, e.g., State ex rel. Martines v. Cleveland City School Dist. Bd. of Edn. (1994), 70 Ohio St.3d 416, 639 N.E.2d 80; State ex rel. Cassels v. Dayton City School Dist. Bd. of Edn. (1994), 69 Ohio St.3d 217, 631 N.E.2d 150.

In the case sub judice, whether appellant has a clear legal right to reinstatement depends upon the meaning of the request provisions contained in R.C. 3319.02(D). Thus, the crux of this case is whether appellant's July 2007 request to meet with the Board constituted a request for "a meeting as prescribed in division (D)(4)."

C

R.C. 3319.02(D)

The relevant R.C. 3319.02(D) language that we must interpret provides:

(4) Before taking action to renew or nonrenew the contract of an assistant superintendent, principal, assistant principal, or other administrator under this section and prior to the last day of March of the year in which such employee's contract expires, the board shall notify each such employee of the date that the contract expires and that the employee may request a meeting with the board. Upon request by such an employee, the board shall grant the employee a meeting in executive session. In that meeting, the board shall discuss its reasons for considering renewal or nonrenewal of the contract. The employee shall be

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permitted to have a representative, chosen by the employee, present at the meeting.

(5) The establishment of an evaluation procedure shall not create an expectancy of continued employment. Nothing in division (D) of this section shall prevent a board from making the final determination regarding the renewal or nonrenewal of the contract of any assistant superintendent, principal, assistant principal, or other administrator. However, if a board fails to provide evaluations pursuant to division (D)(2)(c)(i) or (ii) of this section, or if the board fails to provide at the request of the employee a meeting as prescribed in division (D)(4) of this section, the employee automatically shall be reemployed at the same salary plus any increments that may be authorized by the board for a period of one year, except that if the employee has been employed by the district or service center as an assistant superintendent, principal, assistant principal, or other administrator for three years or more, the period of reemployment shall be for two years.

D

STATUTORY INTERPRETATION

The rules regarding statutory interpretation are well-established. In Washington Cty. Home v. Ohio Dept. of Health, 178 Ohio App.3d 78, 2008-Ohio-4342, 896 N.E.2d 1011, at ¶¶27-29, we set forth the analysis that we apply when interpreting a statute:

"The interpretation of a statute involves a purely legal question. Thus, we conduct a de novo review of a trial court's judgment interpreting a statute and afford no deference to the trial court's interpretation of a statute. See, e.g., Oliver v. Johnson, Jackson App. No. 06CA16, 2007-Ohio-5880, 2007 WL 3227668, at ¶5.

In construing a statute, a court's paramount concern is the legislature's intent in enacting it. See, e.g., State ex rel. Cincinnati Enquirer v. Jones-Kelley, 118 Ohio St.3d 81, 2008-Ohio-1770, 886 N.E.2d 206, at ¶17; State ex rel. Russell v. Thornton, 111

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Ohio St.3d 409, 2006-Ohio-5858, 856 N.E.2d 966, ¶11.
 ""The court must look to the statute itself to determine legislative intent, and if such intent is clearly expressed therein, the statute may not be restricted, constricted, qualified, narrowed, enlarged or abridged; significance and effect should, if possible, be accorded to every word, phrase, sentence and part of an act * * * ."" State ex rel. McGraw v. Gorman (1985), 17 Ohio St.3d 147, 149, 17 OBR 350, 478 N.E.2d 770, quoting Wachendorf v. Shaver (1948), 149 Ohio St. 231, 36 O.O. 554, 78 N.E.2d 370, paragraph five of the syllabus. To determine legislative intent, a court must ""read words and phrases in context and construe them in accordance with rules of grammar and common usage."" Id., quoting State ex rel. Russell v. Thornton, 111 Ohio St.3d 409, 2006-Ohio-5858, 856 N.E.2d 966, ¶11. ""In construing the terms of a particular statute, words must be given their usual, normal, and/or customary meanings."" Proctor v. Kardassilaris, 115 Ohio St.3d 71, 2007-Ohio-4838, 873 N.E.2d 872, ¶12.

When the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no need to apply rules of statutory construction. Id.; see also Cline v. Ohio Bur. of Motor Vehicles (1991), 61 Ohio St.3d 93, 96, 573 N.E.2d 77; Sears v. Weimer (1944), 143 Ohio St. 312, 28 O.O. 270, 55 N.E.2d 413, paragraph five of the syllabus. However, when a statute is subject to various interpretations, a court may invoke rules of statutory construction to arrive at legislative intent. R.C. 1.49; Cline, supra; Carter v. Youngstown (1946), 146 Ohio St. 203, 32 O.O. 184, 65 N.E.2d 63, paragraph one of the syllabus."

E

ANALYSIS

In the case at bar, we agree with the trial court's conclusion that appellant's July 11, 2007 request did not constitute a request for "a meeting as prescribed in [R.C. 3319.02(D)(4)]." Appellant's July 11, 2004 request occurred in response to the assistant superintendent's statement, made

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approximately one year before her contract was set to expire, that the Board planned to not renew her contract. After that notification, appellant received at least two written administrative evaluations that, in essence, notified her that her contract would not be renewed. Both of these evaluations occurred in the year that her contract was set to expire. After she received these evaluations, she did not request a meeting with the board. R.C. 3119.02(D)(4) governs a request for a meeting made "[b]efore [the board] tak[es] action to renew or nonrenew the contract." Although appellant's request in July 2007 occurred before the board took action to renew or nonrenew her contract, we agree with the trial court that the statute implies that the request must occur not at any time before the board takes action, but at a time reasonably related to the board's impending decision. To hold otherwise, as appellee argues, means that an administrator could request a meeting with the board the day after the administrator is hired under a two-year contract, then sit on that right until the board takes action on the contract, only to then complain that the board failed to honor the request for a meeting made nearly two years earlier.

We further agree with the trial court's analysis that appellant's July 2007 request is not the type of request that the statute contemplates:

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"The conversation of July, 2007, took place before the commencement of any contract renewal procedures under R.C. 3319.02(C) or (D). Division (D)(5) refers to an administrator's request for 'a meeting as prescribed in division (D)(4),' which the court interprets to mean a request in the context of an impending board decision to renew or not renew the administrator's contract.

The statutory scheme contemplates an administrator's requesting a meeting after three things occur: (1) the superintendent or his designee conducts the final evaluation of the administrator; (2) the administrator learns of the superintendent's intended recommendation, as indicated on the final evaluation under division (D)(2)(c)(ii); and (3) the board notifies the administrator of the contract's expiration date and her right to request a meeting. An administrator's request for a meeting during a conversation some seven months before the administrator's final evaluation and the superintendent's official recommendation to the board is not a basis for alleging a violation of division (D)(4)."

R.C. 3319.02(D)(2)(ii) requires that a preliminary and a final evaluation be conducted in the year that the administrator's contract is due to expire. The final evaluation must indicate the superintendent's intended recommendation to the board regarding the administrator's contract. R.C. 3319.02(D)(2)(ii). The board must consider these evaluations when deciding whether to renew the administrator's contract. *Id.* Thus, without these evaluations, a board cannot take action on the administrator's contract. Not until the final evaluation does an administrator receive formal notice as to whether the superintendent will recommend contract renewal. Construing the statute as a whole, we believe that it is the preliminary

evaluation and the superintendent's intended recommendation that triggers the administrator's right to request a meeting with the board, except in those circumstances when the board notifies the administrator of the contract expiration date.²

Although we recognize that appellant may deem our interpretation of the statute constrained, we believe that our interpretation comports with the plain meaning and intent of the statute. We do not believe that the statute intends to cover any request made at any time, but rather, we agree with the trial court that the request must occur in the context of an impending contract renewal. We do not believe that a request that occurs after an informal verbal notification from an assistant superintendent nearly one year before the contract expires constitutes the type of request for a meeting that the statute contemplates. If the legislature intended a different result, it possesses the authority to amend the statute and to clarify its intent.

Accordingly, based upon the foregoing reasons, we hereby overrule appellant's sole assignment of error and affirm the trial court's judgment.

² Apparently, no dispute exists in the case at bar that the Board did not provide appellant with written notification of her contract expiration date or of her right to request a meeting. Both parties appear to agree that neither of these failures justifies appellant's reinstatement. See State ex rel. Butler v. Fort Frye Loc. Sch. Dist. (Mar. 13, 1995), Washington App. No. 93CA31.

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13

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant the costs herein taxed.

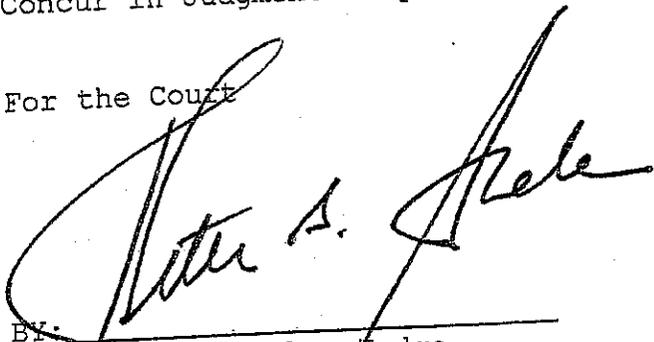
The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Pickaway County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Harsha, P.J. & McFarland, J.: Concur in Judgment & Opinion

For the Court



BY: _____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.

IN THE COURT OF COMMON PLEAS
PICKAWAY COUNTY, OHIO

JAMES W. DEAN
CLERK OF COURTS
PICKAWAY COUNTY

Case no. 2009-CI-0077

STATE EX REL. STACY L. CARNA,

Relator,

v.

TEAYS VALLEY LOCAL SCHOOL
DISTRICT BOARD OF EDUCATION

Respondent.

P. RANDALL KNECE, JUDGE

DECISION AND ENTRY

This cause is pending before the court on cross-motions for partial summary judgment. For the reasons that follow, the court hereby grants Respondent Teays Valley Local School District Board of Education's amended motion for partial summary judgment and denies Relator Stacey L. Carna's motion for partial summary judgment. Accordingly, the court hereby denies Relator Stacey L. Carna's petition for a writ of mandamus and enters judgment in favor of Respondent.

I. BACKGROUND

Before the above-captioned action commenced, this matter was before the Ohio State Board of Education in administrative proceedings known as *In the Matter of Stacey L. Carna*. An administrative hearing officer for the State Board of Education heard evidence from the parties over five days in July and August, 2008. The hearing officer issued her Report and Recommendation on October 6, 2008, from which the court ascertains the following facts pertinent to this litigation.

Before the start of the 2006-2007 school year, Relator Stacey L. Carna (hereinafter "Carna") entered an employment contract with Respondent Teays Valley Local School District Board of Education (hereinafter "the board"). The contract stated the parties' agreement that the board would employ Carna for a period of two years as principal of Ashville Elementary School. Carna received two favorable performance evaluations during the 2006-2007 school year.

From April 30 through May 3, 2007, Ashville Elementary administered the Ohio Achievement Test (hereinafter "OAT") to its students. Teachers examined the completed tests when collected immediately after the testing period and school office secretaries tasked with organizing and storing the tests examined them as well. Both teachers and secretaries examined the tests again the following day and reported erasure marks that had not existed the first time they reviewed the tests. The teachers also testified that they had not noticed any student erasing answers during the testing period. Interestingly, a witness at the administrative hearing testified that he observed the two secretaries "erasing on answer booklets of the OAT" because "all the bubbles had to be filled in perfect [sic]." Ohio State Board of Education Report and Recommendation 13, P1's ex. D (hereinafter "Report").

Beginning May 1, 2007, the morning after the first day of testing, the secretaries reported that milk crates in which the tests were stored had been moved from the positions in the storage room where the secretaries had arranged them the previous day. The secretaries also noticed that the tests were not in alphabetical order within the crates as they had been arranged the previous afternoon. The secretaries noticed the same irregularities the morning of May 2. Their suspicions aroused, the secretaries decided,

after collecting the tests at the end of testing on May 2, to record the exact position of each crate by measuring the distance from each crate to the filing cabinet. On the morning of May 3, they again observed that the crates had been moved and the tests within the crates were not in order.

Because Carna was one of the few with access to the storage room where each day's completed tests were kept overnight, and because she remained at school after hours on the testing days, "Teays Valley believed Mrs. Carna was responsible for the security breach." Report 13. As a result of the allegations levied by various teachers and two office secretaries, the board placed Carna on paid administrative leave for the remainder of the 2006-2007 school year. This suspension was effective May 7, 2007, a mere 4 days after the last day of OAT testing. The board took no steps to terminate Carna's contract, so Carna was paid her contractual salary through the 2007-2008 school year even though she did not serve as principal of Ashville Elementary.

The school district reported the alleged testing irregularities to the State Department of Education, which commenced an investigation that culminated in the hearing officer's "Report and Recommendation" issued October 6, 2008. The hearing officer who presided over the Department of Education's administrative hearing summarized the evidence presented:

[The case against Carna] was primarily based on reported testing irregularities by the teachers and secretaries at Ashville Elementary school combined with Mrs. Carna staying late on the days of the testing and having in [sic] interest in ensuring that the students did well on the test. Mrs. Carna's defense was primarily based on the animosity of some of the staff, particularly the secretaries, to Mrs. Carna, and the legitimate reasons why she stayed late on the nights in question.

Report at 2.

The report concluded that “[t]he evidence presented does not demonstrate that the tests were altered. Even if the evidence demonstrated that answers were altered, there is not sufficient evidence that Stacey Carna erased answers or otherwise altered the OAT[.]” *Id.* at 14. Accordingly, the hearing officer recommended no action be taken against Carna’s licenses issued by the State Board of Education. *Id.* at 15.

On February 12, 2009, Carna filed a complaint and requests for a preliminary injunction and a writ of mandamus.¹ She petitions the court for a writ of mandamus ordering the board to “restore Relator to her administrative level position as principal and grant her a renewal of her Administrative Contract at her previous salary, plus any increments.” Relator’s Mot. for Prelim. Inj. and Req. for Writ of Mandamus 5 (hereinafter “Relator’s Mot.”). On March 11, 2009, the board filed a memorandum opposing Carna’s request for injunctive relief and a writ of mandamus. On March 12, 2009, the court denied Carna’s motion for a preliminary injunction.

On February 19, 2010, the board filed its Amended Motion for Partial Summary Judgment, arguing no genuine issue of material fact remains on the question whether Carna is entitled to a writ of mandamus because she is not entitled to the requested relief. On March 8, 2010, Carna filed her own motion for partial summary judgment and a memorandum opposing the board’s summary judgment motion. Pursuant to Local Rule 6.08, the court finds the motions and responsive pleadings are submitted and ripe for review.

¹ Also on February 12, 2009, Carna filed a complaint asserting numerous causes of action sounding in tort. Named defendants are the board, the district superintendent and assistant superintendent, and teachers and secretaries at Ashville Elementary. That cause remains pending in this court as case number 2009-CI-0076.

II. ANALYSIS

Carna petitions the court for a writ of mandamus compelling the board to reinstate her as principal of Ashville Elementary School. She claims she is entitled to this relief under R.C. 3319.02(D)(5). The court disagrees. The extraordinary relief Carna seeks is not available in the circumstances of this case. Therefore the court will grant the board's motion for summary judgment and deny Carna's petition for a writ of mandamus.

A. Summary Judgment Standard

Ohio Civil Rule 56 governs motion for summary judgment, and that rule provides, in pertinent part:

* * * Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. . . . A summary judgment shall not be rendered unless it appears from the evidence or stipulation . . . that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor. * * *

Civ. R. 56(C). Under this rule, a trial court may not enter summary judgment if it appears a material fact is genuinely disputed. Summarizing the requirements of Rule 56(C), the Ohio Supreme Court recently stated that a trial court may grant summary judgment

when properly submitted evidence, construed in favor of the nonmoving party, shows that the material facts in the case are not in dispute and that the moving party is entitled to judgment as a matter of law because reasonable mind can come to but one conclusion, and that conclusion is adverse to the nonmoving party.

Ohio State Bar Assn. v. Heath, 123 Ohio St. 3d 483, 2009 Ohio 5958, ¶ 9, citing *Ohio State Bar Assn. v. Jackim*, 121 Ohio St. 3d 33, 901 N.E.2d 792, ¶ 4 (2009).

The party moving for summary judgment bears the initial burden of informing the trial court of the basis for its motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. The moving party cannot merely make a conclusory statement to the effect that the nonmoving party has no evidence to prove its case. Rather, the moving party must specifically point to some evidence demonstrating that the nonmoving party cannot support its claim. If the moving party satisfies this requirement, the burden shifts to the nonmoving party to set forth specific facts showing that there exists a genuine issue of material fact for trial. *ATS Ohio, Inc. v. Shively*, 1999 Ohio App. LEXIS 4275 at *6-7 (5th App. Dist.), citing *Vahila v. Hall*, 77 Ohio St. 3d 421, 429, 674 N.E.2d 1164 (1997).

B. Revised Code § 3319.02(D)

Carna requests that the court issue a writ of mandamus compelling the board to restore her as principal of Ashville Elementary. She claims she has a clear legal right to this relief because R.C. 3319.02(D)(5) entitles her to automatic reemployment under the facts presented here. More specifically, Carna argues, first, that the board failed to evaluate her as R.C. 3319.02(D)(2)(c)(i) and (ii) require; and second, that the board violated R.C. 3319.02(D)(4) by failing to notify Carna of “her right to meet with the Board of Education regarding her non-renewal” and failing “to provide to her an opportunity to meet with the Board of Education[.]” Relator’s Mot. 3. Carna maintains

that the remedy for both violations "automatic renewal of her Administrative Contract[.]"

Id.

Section 3319.02 of the Ohio Revised Code governs "employment of administrators and supervisors," including principals, in Ohio's public schools. Carna first contends that she is entitled to contract renewal because the board violated division (D)(2) of that section, which requires evaluations of principals and provides, in part, as follows:

* * *

(c) In order to provide time to show progress in correcting the deficiencies identified in the evaluation process, the evaluation process shall be completed as follows:

* * *

(ii) In any school year that the employee's contract of employment is due to expire, at least a preliminary evaluation and at least a final evaluation shall be completed in that year. A written copy of the preliminary evaluation shall be provided to the employee at least sixty days prior to any action by the board on the employee's contract of employment. The final evaluation shall indicate the superintendent's intended recommendation to the board regarding a contract of employment for the employee. A written copy of the evaluation shall be provided to the employee at least five days prior to the board's acting to renew or not renew the contract.

R.C. 3319.02(D)(2)(c)(ii). Carna's second argument for a writ of mandamus is based on Division (D)(4) of R.C. 3319.02, which states that the board must provide certain notice to an administrator whose contract term is due to expire:

(4) Before taking action to renew or nonrenew the contract of an assistant superintendent, principal, assistant principal, or other administrator under this section and prior to the last day of March of the year in which such employee's contract expires, the board shall notify each such employee of the date that the contract expires and that the employee may request a meeting with the board. Upon request by such an employee, the board shall grant the employee a meeting in executive session. In that meeting,

the board shall discuss its reasons for considering renewal or nonrenewal of the contract. The employee shall be permitted to have a representative, chosen by the employee, present at the meeting.

R.C. 3319.02(D)(4). The statute also provides a specific remedy if a school board either fails to evaluate an administrator or fails to meet with an administrator:

(5) The establishment of an evaluation procedure shall not create an expectancy of continued employment. Nothing in division (D) of this section shall prevent a board from making the final determination regarding the renewal or nonrenewal of the contract * * *. However, if a board fails to provide evaluations pursuant to division (D)(2)(c)(i) or (ii) of this section, or if the board fails to provide at the request of the employee a meeting as prescribed in division (D)(4) of this section, the employee automatically shall be reemployed at the same salary plus any increments that may be authorized by the board for a period of one year * * *

R.C. 3319.02(D)(5). As these excerpts show, division (D)(5) provides for automatic re-employment only when the board either (1) fails to evaluate the administrator or (2) fails to meet with the administrator after the administrator requests a meeting. Apart from these two specific violations, the board's decision whether to renew an administrator's contract is final.

C. Relator's Petition for a Writ of Mandamus

Ohio courts have held "that the appropriate procedural vehicle for a school administrator to seek reemployment, damages, and back pay for the nonrenewal of his or her employment contract is a petition for a writ of mandamus." *Jones v. Sandusky City Schools*, 2006 Ohio 188, ¶ 7 (6th App. Dist.), citing *Martines v. Cleveland City Sch. Dist. Bd. of Ed.*, 70 Ohio St. 3d 416 (1994). "To obtain a writ of mandamus, the relator must show that he has a clear legal right to the relief requested, the respondent has a clear legal duty to grant it, and no adequate remedy at law exists to vindicate the claimed right."

Hattie v. Goldhardt, 69 Ohio St. 3d 123, 125, 630 N.E.2d 696 (1994). A failure to show any one of these requisite factors will cause the petition to be denied. *Lunsford v. Buck*, 88 Ohio App. 3d 425, 428, 623 N.E.2d 1356 (4th Dist. 1993).

Relator Carna petitions the court for a writ of mandamus ordering the board to reinstate her as principal, renew her Administrator's contract, and "restore her to the salary she would be receiving" if so reinstated. Relator's Mot. 9. First, Carna argues that the board violated R.C. 3319.02(D)(2)(c)(i) and (ii) because it failed to evaluate her as those divisions require. Second, Carna contends the board violated R.C. 3319.02(D)(4) by failing to notify her "of her right to a meeting with the School Board." Relator's Mot. 5. She further argues that automatic renewal of her contract is the prescribed remedy for a violation of either provision.

1. Administrator Evaluations under R.C. 3319.02(D)(2)(c)(ii)

In its motion for summary judgment, the board first argues that Carna is not entitled to automatic contract renewal because the board complied with section 3319.02(D)(2)(c)(ii) by conducting the requisite evaluations. The court agrees. Division (D)(2)(c)(ii) requires the board to conduct a preliminary evaluation and a final evaluation during the year in which an administrator's contract is due to expire. The district's assistant superintendent evaluated Carna twice during the final year of her contract. Respt.'s ex. F, G.

Carna claims these evaluations did not satisfy division (D)(2)(c)(ii) because the board "failed to observe her to evaluate her effectiveness in performing her job duties." Relator's Req. 4. She argues the board could not have conducted an adequate evaluation

because the superintendent's designee did not directly observe her during performance of her job duties. Carna points to the obvious fact that she was on paid administrative leave from May 7, 2007, until her contract expired in the summer of 2008, during which time she was not permitted on school district property and could not perform her duties as principal. She argues that her final two evaluations were "sham evaluations" that did not comport with division (D)(2)(c)(ii). *See Relator's Mot. Sum. Judgm. 14-15.*

This argument falls short because the statute has no requirement that the superintendent or his designee directly observe an administrator during performance of his job duties. The word "observe" does not appear anywhere in division (D)(2). The statute prescribes the purposes and schedule for evaluations, but it does not mandate a certain method for conducting them. There are numerous ways a superintendent might conduct the evaluations consistent with the statute; the means might include, for instance, examining statistical or documentary evidence or personally interviewing an administrator. In short, there is no textual basis for adding a direct observation requirement to the specific prescriptions of division (D)(2).

Carna relies on R.C. 3319.02(D)(1)'s requirements that schools adopt and follow policies for evaluating administrators and consider the evaluations in deciding whether to renew a particular administrator's contract. She cites the board's own policy manual setting forth procedures for evaluating administrators and argues that the board violated division (D)(2)(c)(ii) by not following its own procedures. However, this reasoning errs in conflating divisions (D)(1) and (D)(2). Division (D)(2)(c)(ii) deals with the timing of evaluations and provides that the final evaluation must include the superintendent's intended recommendation to the board. Division (D)(5) provides a remedy of automatic

re-employment for violations of division (D)(2)(c)(ii), not division (D)(1). The court finds the board complied with division (D)(2)(c)(ii) and thus Carna is not entitled to automatic re-employment under division (D)(5).

2. Notice under R.C. 3319.02(D)(4)

Carna's second argument for reinstatement focuses on the board's alleged failure "to notify Relator Carna of her right to meet with the Board of Education regarding her non-renewal, and . . . to provide to her an opportunity to meet with the Board of Education . . ." Relator's Req. 3. In its summary judgment motion, the board argues, in essence, that even if it did not inform Carna that she may request a meeting, she is still not entitled to automatic re-employment. The court agrees with the board.

R.C. 3319.02(D)(5) provides for the automatic renewal of a principal's contract in two situations: "if a board fails to provide evaluations" under R.C. 3319.02(D)(2)(c)(i) or (ii), "or if the board fails to provide at the request of the employee a meeting as prescribed" in R.C. 3319.02(D)(4). Apart from these specific circumstances, "[n]othing in division (D) of this section shall prevent a board from making the final determination regarding the renewal or nonrenewal of the contract . . ." R.C. 3319.02(D)(5).

Carna argues that the board failed to notify her "of her right to a meeting with the School Board regarding the potential non-renewal of her contract. Thus, Respondent failed to grant the required meeting with the board." Relator's Req. 5. This argument, however, fails to account for the simple fact that a school board is required to meet with an administrator only if the administrator so requests.

The court is bound to apply the plain and unambiguous language of division (D)(5). "Courts do not have the authority to ignore the plain and unambiguous language of a statute under the guise of statutory interpretation, but must give effect to the words used." *State, Dept. of Taxation v. Johnson*, 1997 Ohio App. LEXIS 5983 at *2, citing *Wray v. Wymer*, 77 Ohio App.3d 122, 601 N.E.2d 503 (1991). "In other words, courts may not delete words used or insert words not used." *Id.*, citing *Cline v. Ohio Bur. of Motor Vehicles*, 61 Ohio St.3d 93, 97, 573 N.E.2d 77 (1991). With this in mind, although division (D)(4) clearly states that "the board shall notify each such employee . . . that the employee may request a meeting with the board[,]" it is equally clear that division (D)(5) does not mandate automatic contract renewal when the board fails to so notify the administrator. By its terms, division (D)(5) provides for automatic renewal of the administrator's contract *only* when the board either fails to provide evaluations or fails to honor an administrator's request for a meeting; this remedy is not available when the board merely fails to inform an administrator that he may request a meeting. While the court cannot account for this apparent omission, it is not the court's prerogative to correct it if the court were so inclined.

A look at Ohio cases counsels caution in interpreting this complex statute. In *Butler v. Frye Local Sch. Dist.*, 1995 Ohio App. LEXIS 1109, the Fourth District Court of Appeals addressed a case similar to the case at bar. In *Butler*, the school board, prior to March 31 in the year Butler's administrative contract would expire, served written notice on Butler that it had nonrenewed his contract as principal of the district high school. Butler filed a mandamus petition seeking reinstatement, claiming he was entitled to automatic contract renewal because the board did not "advis[e] him of 'his right' to

meet the school board prior to their vote not to re-employ him[.]” After quoting the rule of division (D)(5) that nothing in subsection (D) “shall prevent the board from making the final determination” regarding contract renewal, the Court explained that division (D)(5)

makes it clear that the failure of the board to follow these directives does not negate its authority to decide against contract renewal. This internal inconsistency has been noted by at least one eminent treatise on the matter. However, any such inconsistency must be corrected by the General Assembly. This court is not the appropriate forum to accomplish that task. Suffice it to say that, if the school board’s failure to follow the directives of R.C. 3319.02(D) does not deprive it of authority to decide against renewal of an employment contract, then relator is unable to establish a clear legal right to a writ of mandamus (on these points) ordering his re-employment.

Butler v. Frye Local Sch. Dist., 1995 Ohio App. LEXIS 1109, *12-13 (internal citations omitted).

In *Butler*, the Court of Appeals was unwilling to “ignore the plain and unambiguous language of a statute,” *Johnson*, 1997 Ohio App. LEXIS 5983 at *2, or “insert words not used,” *Cline*, 61 Ohio St.3d at 97, in order to fashion a remedy for the administrator. The *Butler* Court recognized that although the school board did not comply with division (D)(4)’s notice requirement, automatic renewal of the administrator’s contract was not a remedy permitted by division (D)(5).

In this case, the court will not ignore the plain and unambiguous language of the statute or insert words not used. Carna claims the board failed to notify her that she may request a meeting, but, as in *Butler*, this does not mean Carna is entitled to automatic re-employment. The current version of division (D)(5) provides for automatic re-employment only when the board either (1) fails to evaluate the administrator or (2) fails to meet with the administrator *after the administrator requests a meeting*. Apart from

these two specific violations, "nothing in division (D) . . . shall prevent a board from making the final determination regarding the renewal or nonrenewal of the contract[.]" R.C. 3319.02(D)(5). Here, the board evaluated Carna properly under division (D)(2)(c)(ii), and Carna does not claim the board rejected her request for a meeting. Because neither situation listed in division (D)(5) applies here, Carna is not entitled to that division's remedy of automatic re-employment. Affording this remedy to administrators who never receive notice in the first place is the task of the legislature should it elect to do so.

Carna argues that, in fact, she requested a meeting with the board on July 11, 2007, after the assistant superintendent verbally informed her that the board would not renew her contract. Carna aff. ¶ 13, Relator's ex. A. Carna maintains that the board violated division (D)(4) by not granting this request for a meeting. The court disagrees. The conversation of July, 2007, took place before the commencement of any contract renewal procedures under R.C. 3319.02(C) or (D). Division (D)(5) refers to an administrator's request for "a meeting as prescribed in division (D)(4)," which the court interprets to mean a request in the context of an impending board decision to renew or not renew the administrator's contract.

The statutory scheme contemplates an administrator's requesting a meeting after three things occur: (1) the superintendent or his designee conducts the final evaluation of the administrator; (2) the administrator learns of the superintendent's intended recommendation, as indicated on the final evaluation under division (D)(2)(c)(ii); and (3) the board notifies the administrator of the contract's expiration date and her right to request a meeting. An administrator's request for a meeting during a conversation some

seven months before the administrator's final evaluation and the superintendent's official recommendation to the board is not a basis for alleging a violation of division (D)(4).

Finally, the court recognizes that Ohio case law has remained in effect even as the General Assembly has amended R.C. 3319.02. In 1994, analyzing a prior version of the statute, the Ohio Supreme Court held that "[a]lthough R.C. 3319.02(D) mandates the evaluation procedure, it provides no remedy of reemployment for failure on the part of the board to comply with that procedure." *Cassels v. Dayton City Sch. Dist. Bd. of Ed.*, 69 Ohio St.3d 217, 222, 631 N.E.2d 150 (1994). The language of R.C. 3319.02(D)(5), providing for automatic re-employment when a board fails to evaluate an administrator or fails to grant the administrator a requested meeting, went into effect on June 30, 2000; the most recent amendment to R.C. 3319.02 (adding language not relevant here) became effective on September 26, 2003. See 1999 Ohio S.B. 77 and 2003 Ohio H.B. 95; see also *Jones*, 2006 Ohio 188 at ¶ 10. In 2006, the Sixth District Court of Appeals analyzed the changes to the statute and reaffirmed prior case law, holding that "the only time that an administrator is re-employed by operation of law occurs when a school board fails to give the administrator timely written notice of its intention not to renew his contract[.]" *Id.* at ¶ 13, *discretionary appeal not allowed by Jones v. Sandusky City Schs.*, 109 Ohio St. 3d 1495 (2006).

In view of recent developments in case law following amendments to the statute, the court is reluctant to depart from appellate court holdings that automatic re-employment is available only when the board fails to timely notify an administrator in writing that it will not renew the administrator's contract. Given the current state of the

law, a cautious approach in this area is appropriate. The court will decline Carna's invitation to add to division (D)(5).

The court finds that the board's actions in this case satisfied the evaluation requirements of R.C. 3319.02(D)(2)(c)(ii). Furthermore, even if the board did not notify Carna that she may request a meeting, the court will not add this omission to the existing bases for automatic re-employment listed in R.C. 3319.02(D)(5). Carna does not assert that the board failed to give her timely written notice of its intent not to renew her contract. Therefore she is not entitled to the relief she requests.

The court finds that the board has satisfied its initial burden of demonstrating the absence of a genuine issue of material fact. The burden of production having thus shifted, the court finds Carna has failed to demonstrate the existence of a genuine issue of material fact. Because Carna cannot demonstrate she has a clear legal right to the relief requested, the court will deny her mandamus petition and grant summary judgment in favor of the board.

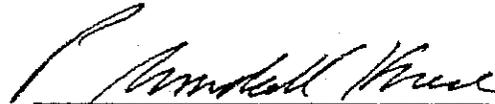
III. CONCLUSION

For the foregoing reasons, the court hereby **GRANTS** Respondent's amended motion for partial summary judgment and **DENIES** Relator's motion for partial summary judgment. Accordingly, it is ordered that the **WRIT BE DENIED** and that judgment be entered in favor of Respondents.

As the court previously denied Relator's request for a preliminary injunction, this is a final appealable order and within three (3) days of the entering of this judgment upon the journal, the Clerk of this court shall serve upon the parties, as provided for in Civil

Rule 5(B), with notice of the filing of a final appealable order and note such service upon the appearance docket pursuant to Civil Rule 58.

IT IS SO ORDERED.


P. RANDALL KNECE, JUDGE

Date: 03-29-10

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Baldwin's Ohio Revised Code Annotated Currentness

Title XXXIII. Education--Libraries

▣ Chapter 3319. Schools--Superintendent; Teachers; Employees (Refs & Annos)

▣ Superintendent; Other Administrators

→ **3319.02 Other administrators; vacation leave; recruitment**

(A)(1) As used in this section, "other administrator" means any of the following:

(a) Except as provided in division (A)(2) of this section, any employee in a position for which a board of education requires a license designated by rule of the department of education for being an administrator issued under section 3319.22 of the Revised Code, including a professional pupil services employee or administrative specialist or an equivalent of either one who is not employed as a school counselor and spends less than fifty per cent of the time employed teaching or working with students;

(b) Any nonlicensed employee whose job duties enable such employee to be considered as either a "supervisor" or a "management level employee," as defined in section 4117.01 of the Revised Code;

(c) A business manager appointed under section 3319.03 of the Revised Code.

(2) As used in this section, "other administrator" does not include a superintendent, assistant superintendent, principal, or assistant principal.

(B) The board of education of each school district and the governing board of an educational service center may appoint one or more assistant superintendents and such other administrators as are necessary. An assistant educational service center superintendent or service center supervisor employed on a part-time basis may also be employed by a local board as a teacher. The board of each city, exempted village, and local school district shall employ principals for all high schools and for such other schools as the board designates, and those boards may appoint assistant principals for any school that they designate.

(C) In educational service centers and in city, exempted village, and local school districts, assistant superintendents, principals, assistant principals, and other administrators shall only be employed or reemployed in accordance with nominations of the superintendent, except that a board of education of a school district or the governing board of a service center, by a three-fourths vote of its full membership, may reemploy any assistant superintendent, principal, assistant principal, or other administrator whom the superintendent refuses to nominate.

The board of education or governing board shall execute a written contract of employment with each assistant

superintendent, principal, assistant principal, and other administrator it employs or reemploys. The term of such contract shall not exceed three years except that in the case of a person who has been employed as an assistant superintendent, principal, assistant principal, or other administrator in the district or center for three years or more, the term of the contract shall be for not more than five years and, unless the superintendent of the district recommends otherwise, not less than two years. If the superintendent so recommends, the term of the contract of a person who has been employed by the district or service center as an assistant superintendent, principal, assistant principal, or other administrator for three years or more may be one year, but all subsequent contracts granted such person shall be for a term of not less than two years and not more than five years. When a teacher with continuing service status becomes an assistant superintendent, principal, assistant principal, or other administrator or with the district or service center with which the teacher holds continuing service status, the teacher retains such status in the teacher's nonadministrative position as provided in sections 3319.08 and 3319.09 of the Revised Code.

A board of education or governing board may reemploy an assistant superintendent, principal, assistant principal, or other administrator at any regular or special meeting held during the period beginning on the first day of January of the calendar year immediately preceding the year of expiration of the employment contract and ending on the last day of March of the year the employment contract expires.

Except by mutual agreement of the parties thereto, no assistant superintendent, principal, assistant principal, or other administrator shall be transferred during the life of a contract to a position of lesser responsibility. No contract may be terminated by a board except pursuant to section 3319.16 of the Revised Code. No contract may be suspended except pursuant to section 3319.17 or 3319.171 of the Revised Code. The salaries and compensation prescribed by such contracts shall not be reduced by a board unless such reduction is a part of a uniform plan affecting the entire district or center. The contract shall specify the employee's administrative position and duties as included in the job description adopted under division (D) of this section, the salary and other compensation to be paid for performance of duties, the number of days to be worked, the number of days of vacation leave, if any, and any paid holidays in the contractual year.

An assistant superintendent, principal, assistant principal, or other administrator is, at the expiration of the current term of employment, deemed reemployed at the same salary plus any increments that may be authorized by the board, unless such employee notifies the board in writing to the contrary on or before the first day of June, or unless such board, on or before the last day of March of the year in which the contract of employment expires, either reemploys such employee for a succeeding term or gives written notice of its intention not to reemploy the employee. The term of reemployment of a person reemployed under this paragraph shall be one year, except that if such person has been employed by the school district or service center as an assistant superintendent, principal, assistant principal, or other administrator for three years or more, the term of reemployment shall be two years.

(D)(1) Each board shall adopt procedures for the evaluation of all assistant superintendents, principals, assistant principals, and other administrators and shall evaluate such employees in accordance with those procedures. The evaluation based upon such procedures shall be considered by the board in deciding whether to renew the contract of employment of an assistant superintendent, principal, assistant principal, or other administrator.

(2) The evaluation shall measure each assistant superintendent's, principal's, assistant principal's, and other administrator's effectiveness in performing the duties included in the job description and the evaluation procedures shall provide for, but not be limited to, the following:

(a) Each assistant superintendent, principal, assistant principal, and other administrator shall be evaluated annually through a written evaluation process.

(b) The evaluation shall be conducted by the superintendent or designee.

(c) In order to provide time to show progress in correcting the deficiencies identified in the evaluation process, the evaluation process shall be completed as follows:

(i) In any school year that the employee's contract of employment is not due to expire, at least one evaluation shall be completed in that year. A written copy of the evaluation shall be provided to the employee no later than the end of the employee's contract year as defined by the employee's annual salary notice.

(ii) In any school year that the employee's contract of employment is due to expire, at least a preliminary evaluation and at least a final evaluation shall be completed in that year. A written copy of the preliminary evaluation shall be provided to the employee at least sixty days prior to any action by the board on the employee's contract of employment. The final evaluation shall indicate the superintendent's intended recommendation to the board regarding a contract of employment for the employee. A written copy of the evaluation shall be provided to the employee at least five days prior to the board's acting to renew or not renew the contract.

(3) Termination of an assistant superintendent, principal, assistant principal, or other administrator's contract shall be pursuant to section 3319.16 of the Revised Code. Suspension of any such employee shall be pursuant to section 3319.17 or 3319.171 of the Revised Code.

(4) Before taking action to renew or nonrenew the contract of an assistant superintendent, principal, assistant principal, or other administrator under this section and prior to the last day of March of the year in which such employee's contract expires, the board shall notify each such employee of the date that the contract expires and that the employee may request a meeting with the board. Upon request by such an employee, the board shall grant the employee a meeting in executive session. In that meeting, the board shall discuss its reasons for considering renewal or nonrenewal of the contract. The employee shall be permitted to have a representative, chosen by the employee, present at the meeting.

(5) The establishment of an evaluation procedure shall not create an expectancy of continued employment. Nothing in division (D) of this section shall prevent a board from making the final determination regarding the renewal or nonrenewal of the contract of any assistant superintendent, principal, assistant principal, or other administrator. However, if a board fails to provide evaluations pursuant to division (D)(2)(c)(i) or (ii) of this section, or if the board fails to provide at the request of the employee a meeting as prescribed in division (D)(4) of this section, the employee automatically shall be reemployed at the same salary plus any increments that may be

authorized by the board for a period of one year, except that if the employee has been employed by the district or service center as an assistant superintendent, principal, assistant principal, or other administrator for three years or more, the period of reemployment shall be for two years.

(E) On nomination of the superintendent of a service center a governing board may employ supervisors who shall be employed under written contracts of employment for terms not to exceed five years each. Such contracts may be terminated by a governing board pursuant to section 3319.16 of the Revised Code. Any supervisor employed pursuant to this division may terminate the contract of employment at the end of any school year after giving the board at least thirty days' written notice prior to such termination. On the recommendation of the superintendent the contract or contracts of any supervisor employed pursuant to this division may be suspended for the remainder of the term of any such contract pursuant to section 3319.17 or 3319.171 of the Revised Code.

(F) A board may establish vacation leave for any individuals employed under this section. Upon such an individual's separation from employment, a board that has such leave may compensate such an individual at the individual's current rate of pay for all lawfully accrued and unused vacation leave credited at the time of separation, not to exceed the amount accrued within three years before the date of separation. In case of the death of an individual employed under this section, such unused vacation leave as the board would have paid to the individual upon separation under this section shall be paid in accordance with section 2113.04 of the Revised Code, or to the estate.

(G) The board of education of any school district may contract with the governing board of the educational service center from which it otherwise receives services to conduct searches and recruitment of candidates for assistant superintendent, principal, assistant principal, and other administrator positions authorized under this section.

CREDIT(S)

(2003 H 95, eff. 9-26-03; 2000 S 77, eff. 6-30-00; 1999 H 238, eff. 6-8-99; 1998 H 650, eff. 7-1-98; 1997 H 56, eff. 3-31-97; 1996 S 230, eff. 10-29-96; 1995 H 117, eff. 9-29-95; 1992 S 159, eff. 8-7-92; 1989 S 140; 1988 H 439; 1987 H 107; 1980 H 769; 1973 S 381; 1972 S 35; 131 v S 111; 130 v H 95, S 87; 129 v 582; 127 v 554; 1953 H 1; GC 4842-1)

UNCODIFIED LAW

2000 S 77, § 3, eff. 6-30-00, reads:

The provisions of sections 3314.10, 3316.07, 3319.02, 3319.14, 3319.171, and 3319.18 of the Revised Code, as amended or enacted by this act, shall apply to the provision of evaluations of all assistant superintendents, principals, assistant principals, and other administrators beginning with the 2000-2001 school year regardless of the date their contracts were executed. However, the provisions of those sections, as amended or enacted by this act, shall not affect any terms or conditions of any employment contracts executed prior to the effective date of this act. The provisions of those sections, as amended or enacted by this act, also shall not be construed so as to cre-

ate any rights or remedies for any assistant superintendent, principal, assistant principal, and other administrator for failure of a school district to evaluate such person under the provisions of those sections, as amended or enacted by this act, for any contract years prior to the 2000-2001 school year.

HISTORICAL AND STATUTORY NOTES

Pre-1953 H 1 Amendments: 124 v H 225; 120 v 475

Amendment Note: 2003 H 95 substituted "any" for "either" in division (A)(1); added subdivision (A)(1)(c); rewrote division (C); and added division (G). Prior to amendment, division (C) read:

"In educational service centers and in city and exempted village school districts, assistant superintendents, principals, assistant principals, and other administrators shall only be employed or reemployed in accordance with nominations of the superintendent, except that a city or exempted village board of education or the governing board of a service center, by a three-fourths vote of its full membership, may reemploy any assistant superintendent, principal, assistant principal, or other administrator whom the superintendent refuses to nominate. In local school districts, assistant superintendents, principals, assistant principals, and other administrators shall only be employed or reemployed in accordance with nominations of the superintendent of the service center of which the local district is a part, except that a local board of education, by a three-fourths vote of its full membership, may reemploy any assistant superintendent, principal, assistant principal, or other administrator whom such superintendent refuses to nominate."

Amendment Note: 2000 S 77 inserted "of its full membership" after "three-fourths vote" twice, substituted "three-fourths" for "majority" in the second sentence, and deleted "after considering the nominees for the position" from the end of both sentences in the first paragraph in division (C); deleted "or suspended" after "terminated" and "or 3319.17" after "3319.16" and added the third sentence and inserted "as included in the job description adopted under division (D) of this section" in the fourth paragraph in division (C); redesignated and rewrote division (D); and deleted "if there is a reduction of the number of approved supervisory teachers allocated to the service center" after "any such contract" and "3317.11 or" after "pursuant to section", and inserted "or 3319.171" in division (E). Prior to amendment, division (D) read:

"(D) Each board shall adopt procedures for the evaluation of all assistant superintendents, principals, assistant principals, and other administrators and shall evaluate such employees in accordance with those procedures. The evaluation based upon such procedures shall be considered by the board in deciding whether to renew the contract of employment of an assistant superintendent, principal, assistant principal, or other administrator. The evaluation shall measure each assistant superintendent's, principal's, assistant principal's, and other administrator's effectiveness in performing the duties included in the job description and the evaluation procedures shall provide for, but not be limited to, the following:

"(1) Each assistant superintendent, principal, assistant principal, and other administrator shall be evaluated annually through a written evaluation process.

“(2) The evaluation shall be conducted by the superintendent or designee.

“(3) In order to provide time to show progress in correcting the deficiencies identified in the evaluation process the completed evaluation shall be received by the employee at least sixty days prior to any action by the board on the employee's contract of employment.

“Termination or suspension of an assistant superintendent, principal, assistant principal, or other administrator's contract shall be pursuant to section 3319.16 or 3319.17 of the Revised Code.

“The establishment of an evaluation procedure shall not create an expectancy of continued employment. Nothing in this section shall prevent a board from making the final determination regarding the renewal of or failure to renew the contract of any assistant superintendent, principal, assistant principal, or other administrator.

“Before taking action to renew or nonrenew the contract of an assistant superintendent, principal, assistant principal, or other administrator under this section and prior to the last day of March of the year in which such employee's contract expires, the board shall notify each such employee of the date that the contract expires and that the employee may request a meeting with the board. Upon request by such an employee, the board shall grant the employee a meeting in executive session to discuss the reasons for considering renewal or nonrenewal of the contract.”

Amendment Note: 1999 H 238 added division (A)(2); and designated and rewrote division (A)(1), which prior thereto read:

“(A) As used in this section, ‘other administrator’ means any employee in a position for which a board of education requires a license designated for being an administrator, other than a superintendent, assistant superintendent, principal, or assistant principal, issued under section 3319.22 of the Revised Code or any nonlicensed employee whose job duties enable such employee to be considered as either a ‘supervisor’ or a ‘management level employee,’ as defined in section 4117.01 of the Revised Code.”

Amendment Note: 1998 H 650, in division (E), substituted “teachers” for “teacher units”; deleted “pursuant to division (D) of section 3317.05 of the Revised Code, or” following “to the service center”; and inserted “3317.11 or”.

Amendment Note: 1997 H 56 inserted “or any nonlicensed employee whose job duties enable such employee to be considered as either a “supervisor” or a “management level employee,” as defined in section 4117.01 of the Revised Code” in division (A).

Amendment Note: 1996 S 230 rewrote division (A); and made other changes to reflect gender neutral language. Prior to amendment, division (A) read:

“(A) As used in this section, “other administrator” means any employee in a position for which a board of education requires a certificate of the type described by division (I), (M), or (O) of section 3319.22 of the Revised Code, provided that an employee required to have the type of certificate described by division (M) of such section spends less than fifty per cent of time teaching or working with students, or any other employee, except the superintendent, whose job duties enable such employee to be considered as either a “supervisor” or a “management level employee,” as defined in section 4117.01 of the Revised Code.”

Amendment Note: 1995 H 117 added all references to educational service centers and changed all references to county school districts to references to educational service centers; and made changes to reflect gender neutral language.

CROSS REFERENCES

Municipal school districts, other administrator defined, 3311.72
Public employees' collective bargaining, definitions, 4117.01

LIBRARY REFERENCES

Schools ~~63~~ 63(1), 63(3).
Westlaw Topic No. 345.
C.J.S. Schools and School Districts §§ 114, 116, 129, 142, 172 to 176, 183 to 191, 194 to 195, 218, 244, 248, 253, 259, 264 to 265, 725.
Baldwin's Ohio Legislative Service, 1989 Laws of Ohio, S 140--LSC Analysis, p 5-481

RESEARCH REFERENCES

ALR Library

52 ALR 4th 301, Sufficiency of Notice of Intention to Discharge or Not to Rehire Teacher, Under Statutes Requiring Such Notice.

99 ALR 336, Power to Remove Public Officer Without Notice and Hearing.

Encyclopedias

OH Jur. 3d Schools, Universities, & Colleges § 213, School Principals and Assistant Principals.

OH Jur. 3d Schools, Universities, & Colleges § 220, Notice of Renewal or Nonrenewal.

OH Jur. 3d Schools, Universities, & Colleges § 221, Status as an Administrator.

Treatises and Practice Aids