The Report Card Newsletter

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Illinois Public Schools: The Times, They Are A-Changin'

Hinshaw & Culbertson LLP

Illinois
Belleville
Chicago
Joliet
Lisle
Rockford
Springfield
info@hinshawlaw.com
www.hinshawlaw.com

School Law Group

Suzanne M. Bonds
630-505-4166

Alex Breland
312-704-3124

Heidi Eckert
618-310-2353

Anthony Ficarelli
630-505-4113

Thomas J. Lester
815-490-4908

Thomas Y. Mandler
312-704-3456

Thomas A. Morris, Jr.
312-704-3034

Scott E. Nemanich
815-726-5910

Steven M. Puiszis
312-704-3243

Charles R. Schmadeke
217-467-4914

D. Renee Schroeder
815-490-4921

Kathryn S. Vander Broek
312-704-3540

Michael L. Wagner
618-310-2380

On June 13, 2011, Illinois Senate Bill 7 was signed into law as Public Act 97-0008 (Act), with overwhelming support in both the Senate and House. As a result, substantial changes now are underway that require review and revision of well-established procedures for managing teacher tenure and retention decisions. Board training obligations and strike procedures also are impacted, and novel proposals are anticipated to arise at the bargaining table given the impact of the law on teacher working conditions. Additionally, those who do not yet know their Performance Evaluation Reform Act (PERA)-implementation date soon will as that date is an important trigger for implementation of several reforms set forth in the Act.

This is the first in a series of articles by Hinshaw & Culbertson LLP's School Law Group that will discuss the Act's implications on school operations. It provides a summary overview of the changes initiated by the Act. More focused reviews of bargaining implications, dismissal decisions, and teacher tenure determinations will follow. As always, Hinshaw's School Law attorneys are available to assist school districts as questions arise.

Attainment of Tenure

The goal behind the Act's attainment of tenure provision was to tie tenure decisions to a teacher's performance and not solely to longevity. It is effective upon the individual district's PERA-implementation date.

Under the Act, the following tenure schedule will be followed for new full-time teachers hired on or after the district's PERA-implementation date (teachers hired before that date continue to be on a straight four-consecutive-years schedule):

1. Every teacher generally will have a four-year probationary period. This is the same as the current requirements.
2. Teachers are *only* eligible for tenure if they attain a rating of "proficient" or "excellent" in two of the last three years, one of which must occur in the fourth year. A teacher may be accelerated for tenure in three years, provided that he or she attains a rating of "excellent" in each of his or her first three years.

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3. A seasoned teacher's tenure in a prior district essentially may be credited for two years in a new district, provided that there is no break in teaching service, dismissal from the prior district was honorable or voluntary, and the teacher attained a rating of "excellent" in each of his or her first two years in the new district.

Clearly this provision places a high value on strong-performing teachers, awarding them a fast-track to tenure.

Reductions-in-Force

Under the Act's provision concerning reductions-in-force (RIFs), teacher layoffs due to economic constraints will no longer be determined strictly by seniority. This section is effective for RIF notices sent during the 2011-2012 school term and beyond, assuming a district makes a determination that it will decrease the number of teachers or discontinue a particular type of service. The district will now use criteria that first looks at certifications and qualifications, then to performance evaluations, then to seniority, all other things being equal, absent an alternate agreed-upon sequence.

New elements concerning the RIF process are:

1. Teachers should be listed within positions for which they are certified and qualified (both legally and in compliance with any additional district standards in a job description in effect as of May 10 of the school term prior to the year in which the RIF notices will be issued.)
2. Tenured status impact on the RIF process is limited, ability playing a more significant role.
3. Teachers will be grouped into four performance groups generally based on the last two evaluations received. Group 1 will include teachers not in contractual continued service who have *not* yet received a performance rating. Group 2 will consist of all teachers with "needs improvement" or "unsatisfactory" ratings in *either* of their last two performance evaluations. Group 3 will include all teachers who attained at least a "satisfactory" or "proficient" rating on both of the last two performance evaluations (unless the teacher qualifies for Group 4).If two ratings are unavailable, the last evaluation should be used. Group 4 will include teachers with two "excellent" performance ratings during the last two years or with two "excellent" ratings in the last three years with the other rating being "satisfactory" or "proficient."
4. After the RIF occurs, districts are *only* required to recall tenured and nontenured teachers who fall into the top two performing evaluation groups (Groups 3 and 4) and then in reverse order of RIF and into positions for which they are listed as qualified.

Boards also are required to circulate a RIF-sequence list and to distribute it to the exclusive bargaining representatives within 75 days before the end of the school term. However, the district may shift teachers between groups up to 45 days prior to the end of the school term.

This process is a substantial departure from the current RIF structure and will require advanced planning by personnel offices. Notably, it does *not* apply to Chicago Public Schools (CPS).

Dismissal of Tenured Teachers

The Act streamlines the process for dismissal of tenured teachers. The current process has long been criticized for being time-consuming, expensive and virtually ineffective for dismissal of all but the most obvious cases. Highlights of the changes, which took effect immediately upon the Act's enactment, are as follows:

1. Illinois State Board of Education (ISBE) training will be required of all hearing officers as of September 1, 2012.
2. Previously, there were no time limits for beginning hearings and presentation of the case. Now, hearings *must* commence within 75 days of the selection of the hearing officer and be completed no more than 120 days after such selection. Each party may *not* exceed three days in presenting its case.
3. Pre-hearing discovery has been streamlined to require each side to disclose relevant information that it will be using and information in its possession that is relevant to the other party's case.
4. Hearing officers are still required to provide a decision within 30 days and may only extend that deadline for good cause.

5. For conduct-based hearings in non-CPS districts, the hearing officer will now make a recommendation to the board, which in turn will make the decision rather than the hearing officer making the decision without board input. For performance-based, non-CPS districts, the hearing officer will still make the decision *unless* the district opts to use the alternative PERA-evaluation procedure. CPS decision-making remains unchanged.
6. In the past, all appeals were made to the circuit court and reviewed under a manifest weight of the evidence standard. Under the Act, CPS appeals will now be taken directly to the appellate court. Non-CPS appeals for evaluation-dismissal cases will be heard by the circuit court and reviewed under a manifest weight of the evidence standard, unless the district chooses the alternative PERA-evaluation procedure. Appeals of board decisions will go to the circuit court on conduct-based dismissals (manifest weight of the evidence standard). The hearing officer's findings of fact and recommendations must be presented to the court for consideration in instances where the board's decision was contrary to the hearing officer's recommendation.

These changes will serve to give parameters to the timeframes involved in the process, and streamline the discovery process to allow for more of an arbitration-style discovery process rather than a litigation-style one. The appeal process will also be streamlined, but still afford the protection of a review that should protect the dismissed teacher's rights. The district also may impose the PERA-evaluation procedure which would further streamline the process and the costs involved, but does require board members to receive the required training.

Collective Bargaining Procedure

Few responsibilities have been as intimidating and/or frustrating to boards and administrations than the collective bargaining process. The Act attempts to make the process more transparent in order to force the opposing sides to be more forthright in their negotiations. These changes took effect immediately upon the Act's enactment.

Previously, mediation could be requested by either side within 45 days of the beginning of the next school term. The Illinois Educational Labor Relations Board (IELRB) could mandate mediation if the collective bargaining agreement (CBA) remained unresolved within 15 days of the beginning of the next school term. Under the Act, the time period for requested mediation is increased to within 90 days of the impending school year and mediation can be mandated by the IELRB within 45 days of the impending school year.

The Act also has a transparency clause that requires the disclosure of final offers on unresolved issues prior to strike requirements being met. Highlights of those transparencies for non-CPS districts are:

1. After 15 days from the commencement of mediation, either side may declare the negotiations at an impasse. The mediator also may declare the process at an impasse.
2. After an impasse is declared, the parties have seven days to get their final offers for their unresolved issues to each other and to the mediator. After receipt of the final offers, the mediator will hold them for another seven days.
3. After the seven-day holding period, the final offers are then sent to the IELRB for posting on its website, allowing the public to view all parties' final offers on all unresolved issues.
4. After a 14-day posting period, the collective bargaining unit may strike, provided that it has met all of its other strike requirements.

Many other collective bargaining-related changes in the Act are specific only to CPS. For example, the Act adds the matters of length of the school day and school year as permissive bargaining subjects under Section 4.5 of the Illinois Educational Labor Relations Act. The transparency clause requires a 90-day fact-finding period followed by a 30-day posting period for final offers after impasse prior to striking. Finally, the Chicago Teachers Union may strike only after an affirmative vote of 75 percent of all bargaining unit members.

Learning Conditions

The Act contemplates studies correlating student achievement to learning conditions and requires the ISBE to draft and publish a survey of learning conditions that all districts will be required to administer every two years. Survey participants would include both teachers and students at a minimum and could be expanded to include parents as well. The incorporation of this section would begin in the 2012-2013 school year. The program is subject to state funding being made available. In the event that the program is insufficiently funded, low-performing schools will be given first priority.

Training for Elected Board Members

School board members currently are not required to undergo any type of training. The Act mandates that all school board members elected after the legislation's effective date shall undergo a minimum of four hours of training through an entity approved by the ISBE and the Illinois Association of School Boards. This training shall be in the areas of fiduciary responsibility, financial accountability and law (education and labor).

Loss of Certification for Incompetence

Issuance and renewal of educator certificates is a power vested in the ISBE. Historically, the State Superintendent was charged with taking disciplinary actions against incompetent educators, but criteria has never been given as to the definition of "incompetent." The Act now gives the State Superintendent guidelines to follow. The Superintendent may still revoke or suspend an educator's certificate based on these criteria.

The Act defines "incompetence" as receiving two "unsatisfactory" ratings within a seven-year period. In making a decision, the State Superintendent may revoke, suspend or require professional development training after analyzing all factors in the evaluation process, including time periods between "unsatisfactory" ratings and the quality and efforts put into the subsequent remediation plan. These changes became effective immediately upon the legislation's enactment.

Filling New/Vacant Positions

There currently are no statutory requirements guiding districts in the filling of vacant or newly created positions. Although CPS is required to fill positions based on merit and ability, non-CPS districts only are required to do so if that had been previously collectively bargained.

The Act injects criteria into the process of filling vacant positions. Districts now are required to consider such factors as qualifications, certifications, merit, ability and relevant experience. Performance evaluations also will be included to the extent that they exist. Seniority may be a determinative factor *only* if all other factors are considered equal among the candidates. The Act created a new School Code section (24-1.5), which more fully sets forth this process.

Selections by the district may not be grieved. However, the selection process can be grieved if it directly violates the district's current CBA insofar that it can be demonstrated through evidence that certain factors were *not* considered in the process.

This provision went into effect immediately upon the Act's enactment.

Conclusion

The Act is the most comprehensive education bill to be passed by the Illinois General Assembly in many years. The changes, when applied correctly in conjunction with the PERA, should allow districts much wider latitude in retaining quality teachers, regardless of seniority. They will also allow for a more streamlined process of removal of ineffective teachers, regardless of seniority.

While the changes in the collective bargaining process may or may not help to hasten the process along, they will make the public aware of where the parties stand prior to a strike being called. In the current economic climate, this should favor districts in the negotiation process.

For further information, please contact Michael L. Wagner or your regular Hinshaw attorney.