

Volume 18, No. 3 -- Fall 2011

## Illinois passes landmark educational reform legislation

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by Donald R. Tyer

On June 13, 2011, Governor Quinn signed into law the most comprehensive and far-reaching educational reform legislation that Illinois has seen in a generation. Senate Bill 7 ("SB 7") contains provisions that will impact how school districts evaluate, discipline, lay-off, and terminate faculty, as well as how districts and unions negotiate new contracts. These reforms are summarized below.

### *Changes to Tenure and Removal of Teachers*

Consistent with growing public opinion that teachers should be more accountable, SB 7 implements changes to the tenure system that place a premium on teacher performance. Instead of awarding tenure to teachers with four years of service regardless of their proficiency, SB 7 requires that teachers hired after their school's Performance Evaluation Reform Act ("PERA") implementation date be rated either proficient or excellent in two of the last three years of their probationary teaching service, with a rating of proficient or excellent in their fourth year.

SB 7 also establishes a tenure incentive by awarding tenure to new teachers who receive "excellent" evaluations in their first three years of probationary service. Recognizing the more transient nature of today's workforce, SB 7 makes tenure more portable. Under the new law, teachers who received "proficient" or "excellent" ratings in their last two years of teaching in a PERA compliant district will be tenured after two years in their new district provided they were honorably dismissed or voluntarily separated from their former district and they receive "excellent" ratings in their first two terms at the new district. Otherwise, previous tenure requirements apply.

There are other notable provisions in the new Illinois tenure legislation. For the purposes of attaining tenure, a teacher's performance will be deemed "proficient" if their school district fails to evaluate them in a given term. Teachers who were hired before their school's PERA implementation date will be considered probationary for their

first four school terms, and they must work or participate in the educational program for 120 days of each school term. Any leave taken under the Family Medical Leave Act ("FMLA") counts toward this 120 day requirement. The previous requirement that a first year teacher begin full time employment prior to November 1 to receive credit for that year has been removed. If there is a break in the teacher's service (for instance a non-FMLA leave of absence), it will not be considered a break in service for tenure purposes as long as the teacher returns to the classroom or is otherwise present and participating in the school's educational program in the following term.

SB 7 has changed how school districts may remove tenured teachers for both conduct and performance issues. For conduct or performance dismissals under Section 24-12 of the School Code, teachers now have the right to assist in selecting their hearing officer if they agree to split the costs of the hearing officer with the district. Teachers now have 17 days after being served with a notice of charges to request a hearing. That hearing must begin within 75 days of the hearing officer being selected, and must conclude within 120 days of the selection. Unless other arrangements are agreed upon by the parties, both sides have three days to present their case.

Pre-hearing discovery requirements now include the teacher's answer to the district's Bill of Particulars; including any affirmative defenses they may raise, a list of witnesses and the facts to which the witnesses will testify.

For conduct-related dismissals, the hearing officer will now render a recommended decision and order to the school board. The school board must then decide whether to dismiss the teacher based on the arbitrator's recommendation. If the board dismisses the teacher, the teacher may appeal the decision to the circuit court. The circuit court is required to consider the hearing officer's recommendation in the event the board's decision is different from the hearing officer's recommendation.

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In a performance based dismissal under Section 24-12, provided the district is not using the new alternative PERA evaluation procedure that is part of SB 7, the hearing officer has the authority to render a final decision regarding dismissal of the teacher.

PERA compliant school districts may begin using an alternate dismissal process for teachers who receive an “unsatisfactory” PERA evaluation, then fail to achieve a “proficient” or better after completing the remediation process. School districts must have this new system in place prior to the teacher participating in the remediation process. Under this alternate process, the school district can proceed immediately to dismissal if, within 36 months of completing remediation, the teacher receives an “unsatisfactory” evaluation.

At the dismissal hearing, the school district must prove that 1) the “unsatisfactory” evaluation was valid, 2) the remediation process complied with the School Code, and 3) the teacher failed to successfully remediate with a “proficient” or better rating. The school district is the final decision maker in performance-based dismissals. All appeals of school district decisions are filed directly with the appellate court rather than the circuit court.

These new provisions streamline the teacher dismissal process and shorten the timelines in certain circumstances. Again, the new legislation reflects the community perception that public school teachers should be held more accountable and school districts should not be held hostage by an interminably long, convoluted and costly dismissal process. These provisions become effective for dismissals after September 1, 2011.

### ***Changes in Hiring of Teachers and Reductions-in-Force***

Effective immediately, school districts seeking to fill new or vacant positions must consider candidate’s qualifications, certification areas, merit and ability, and relevant experience—including performance evaluations. District-wide seniority can only be used as a tie breaker when all other considerations are equal. The selections of particular candidates may not be grieved or arbitrated, unless the selections involved deviations from established procedures in a governing collective bargaining agreement.

For reductions-in-force (“RIF’s”), teachers will now be grouped into four performance categories as follows:

- Group 1 will contain all non-tenured teachers who have not received a performance evaluation rating.
- Group 2 will include all tenured and non-tenured teachers who received a “Needs Improvement” or “Unsatisfactory” performance rating on either of their last two evaluations.
- Group 3 will include tenured and non-tenured teachers who received a “Satisfactory” or “Proficient” performance evaluation rating on both of their last two evaluations.
- Group 4 will contain all teachers with “Excellent” ratings on their last two performance evaluations and teachers with “Excellent” ratings on two of their last three evaluations, if the third is a “Satisfactory” or “Proficient.”

Layoffs begin with Group 1 and progress through Group 4. Group 1 layoffs are done at the school board’s discretion. Group 2, 3, and 4 layoffs will occur based on the tenured or non-tenured teacher’s averaged evaluation rating using the last two evaluations. The evaluations are averaged using a point system: “Excellent” = four points, “Proficient” or “Satisfactory” = three points, “Needs Improvement” = two points, and “Unsatisfactory” = one point. Seniority will come into play only when a tiebreaker is needed for teachers with equal averages in the same grouping (though the parties may negotiate a different tiebreaker).

Teacher representatives and the school district will compile a dismissal list and distribute it to their union within 75 days prior to the end of the school year. Teachers in Group 1 may be moved to another group prior to 45 days before the end of the school year—allowing for schools to evaluate those teachers through the spring term. RIF notices now will be effective for both tenured and non-tenured teachers if received 45 days before the end of the school year. School districts are only required to recall those teachers in Groups 3 or 4 who meet the position’s qualification or requirements in reverse order of the RIF—meaning schools can choose not to recall those teachers in Groups 1 and 2.

These new RIF provisions take effect at the end of

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the 2011-2012 school year except for districts where the existing collective bargaining agreement specifies RIF procedures. Those procedures will remain in place until they expire or June 30, 2013—whichever is sooner. The net effect of the new RIF and hiring procedures will be to reward excellent performance and afford schools the discretion to hire the faculty they believe will improve classroom performance.

### ***Changes in Mediation and Collective Bargaining***

In keeping with the overall tone of this reform legislation, SB 7 also adds a measure of accountability to the collective bargaining process by requiring public disclosure of aspects of the negotiations that occur between school boards and unions. Effective immediately, school districts and unions in the midst of bargaining are now required to notify the Illinois Educational Labor Relations Board (“IELRB”) whether mediation has been used if no agreement is reached by 90 days prior to the start of the school year.

Once within that 90 day window, either side may petition the IELRB to initiate mediation to advance negotiations. If no agreement has been reached by 45 days prior to the start of the school year, the IELRB will initiate mediation on its own (if it has not been asked to already).

SB 7 also changes what occurs once mediation begins. After 15 days of mediation with no resolution, either party may declare an impasse. Additionally, the mediator may declare an impasse at *any time* during the mediation process. Once an impasse is declared, the process becomes much more transparent. SB 7 mandates that within seven days after an impasse is declared, both sides are to tender its final offer and cost summary, in writing, to the other side with a copy to the mediator.

Seven days after that, the mediator will make those last offers public by filing them with the IELRB which posts them on its website. Publicly posting these documents will likely leverage the very powerful pressure of public opinion by allowing communities to view the facts behind the rhetoric when negotiations stall and strikes are threatened. Finally, SB 7 requires that teachers wait at least 14 days after the mediators have publicized both offers before they strike—thus allowing communities time to exert pressure to avert a strike.

### ***Miscellaneous Provisions***

SB 7 also makes changes in the areas of training for school board members, giving greater disciplinary authority to the State Superintendent over incompetent teachers, and creating a mechanism through which the Illinois State Board of Education (“ISBE”) can better keep track of the educational environments in its districts.

Effective immediately, new school board members (those elected after this law was enacted) are required to take an additional four hours of professional development and leadership training as part of their professional development responsibilities. Those hours must include training in education and labor law, financial oversight/accountability, and fiduciary responsibilities.

Also incompetency was added to the grounds for which the State Superintendent now has the authority to discipline teachers. Incompetency is defined as receiving two “unsatisfactory” ratings within a seven year period. The Superintendent has an array of disciplinary measures to choose from, including suspension or revocation of the teacher’s certificate, and mandated professional development or further training.

Finally, SB 7 also initiates a new requirement that school districts administer a survey of learning conditions, to be created by ISBE, to all students and teachers in grades 6-12. The state is to provide funding for the survey with priority given to low-performing schools if funding is insufficient to survey all schools. The survey is intended to add another layer of accountability—providing state-level administrators with insight into the fundamental school environment experienced by students and teachers.

Running throughout SB 7 is the theme that the Illinois public education system must be more open, accountable, and focused on achievement. SB 7 represents a true transformation of the teacher tenure system, and the process by which school districts weed out underperforming teachers and reward the most effective teachers. Please contact Don Tyer or another firm attorney to guide your district as you phase in these new procedures and mandates. ■

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## School districts must provide concussion and head injury education

by Maureen Anichini Lemon

**F**ollowing the recent attention given to the potentially dangerous practice of allowing student athletes to return to play with a concussion or head injury, the Illinois General Assembly has enacted a new law that requires all Illinois school districts to adopt a policy and educate its constituents regarding student athlete concussions and head injuries.

Public Act 97-0204 creates Section 10-20.53 of the School Code, 105 ILCS 5/10-20.53. Signed into law on July 27, 2011, Section 10-20.53 recognizes that concussions are a type of brain injury that can range from mild to severe and can disrupt the normal working of the brain. Because the vast majority of concussions occur without loss of consciousness, many young athletes are prematurely returned to play, resulting in actual or potential physical injury or death.

To counter this trend, all school districts, including elementary school districts, must adopt a concussion / head injury policy that is in compliance with the protocols, policies and by-laws of the Illinois High School Association ("IHSA"). These materials can be found on the IHSA website, [www.ihsa.org](http://www.ihsa.org), through the following links: resources / sports medicine / concussion management.

A key component to the IHSA concussion and head injury policy is that a student athlete who is suspected of sustaining a concussion or head injury in a practice or a game must be removed from that practice or game. The student athlete should not be allowed to return to that contest unless the student athlete has been cleared to do so by a physician licensed to practice medicine in all its branches in Illinois or a certified athletic trainer. The student athlete should be observed for several hours and will only be al-

lowed to return to a future practice or contest once he / she receives written clearance from a physician or certified athletic trainer.

In addition to the adoption of a policy addressing concussions, each school district must have on file a form completed by student athletes and their parents or guardian that acknowledges that information regarding the school district's concussion and head injury policy was shared with them. This information should be contained in any agreement, contract, code or other written document required to be signed by the student athlete and his parents or guardian. A sample form can be found on the IHSA website at [www.ihsa.org](http://www.ihsa.org).

Finally, Public Act 97-0204 requires the IHSA to make available to all school districts, including elementary school districts, education materials such as visual presentations and other written materials, that describe the nature and risk of concussions and head injuries. Each school district shall use these materials to educate coaches, student athletes, and parents and guardians of student athletes about the nature and risk of concussions and head injuries, including continuing play after a concussion or head injury.

Because this statute is so recent, it is likely that many Illinois school districts will have begun the 2011-12 school year without obtaining the required signed notification by student athletes and their parents/guardians. We recommend that your school board adopt a policy and that you begin to implement the requirement to maintain signed notification forms as soon as practicable. If you have any questions regarding this law or need assistance in drafting a school board policy, please contact Maureen Lemon at (630) 682-0085. ■

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