

**EDUCATIONAL REFORM SIGNED INTO LAW  
P.A. 97-0008 (eff. 6-13-11)**

On June 13, 2011, Governor Quinn signed into law a sweeping reform bill, SB 7, that dramatically changes the landscape of teacher employment in the years to come. The highlights of the law include:

1. Prohibiting the use of seniority in filling new or vacant teaching positions except when all other factors are equal.
2. Allowing the earlier grant of tenure after the implementation of PERA (*Performance Evaluation Reform Act*) evaluations to certain excellent probationary teachers, including teachers who were previously granted tenure in another school district.
3. Requiring reductions in force to be made based upon teacher evaluations and not by seniority except for certain special education teachers employed in special education cooperatives hired prior to July 1, 1987.
4. Requiring a second evaluator during remediation who is selected from a list jointly developed by the school board and union.
5. Making it easier and less costly to dismiss tenured teachers for both cause and performance by streamlining the hearing procedures and allowing school boards to review the hearing officers' decisions.
6. Requiring the board and union to publically disclose their final offers after mediation and before a strike.
7. Requiring training of school board members in topics such as education and labor law, financial oversight and accountability, and fiduciary responsibility of a board member.

It is quite clear that the ultimate success of P.A. 97-0008 (the "Act") in improving the quality of teachers is heavily dependent on (a) the proper evaluation of all teachers and (b) school boards not bargaining away the gains made in the Act.

More detailed descriptions of the changes made by the Act are outlined below.

**1. Vacant and New Teaching Positions.**

The Act requires school boards to fill new and vacant teaching positions on such factors as certification, qualifications, merit and ability, and relevant experience, but prohibits

the use of continuing service (*i.e.*, seniority) in the school district except when all other factors are equal. It also makes the school board's decision immune from challenge unless the board violates procedural requirements in a collective bargaining agreement.

## **2. Definitions of Probationary and Contractual Continued Service.**

The Act redefines probationary periods for newly hired teachers. Upon the implementation of PERA evaluations, which depending on the school district's individual circumstances, could be as soon as September 1, 2013, upon agreement of the board and union, or as late as September 1, 2016, probationary teachers will have an altered schedule for attaining tenure in a school district.

- a. A probationary teacher who receives annual evaluations of "excellent" in the first two years of service who had already attained tenure in another Illinois school district and who was honorably dismissed or voluntarily resigned from that school district with two post-PERA evaluations of "proficient" or higher, shall be granted tenure after two years unless given notice of dismissal at least 45 days prior to the end of any school term.
- b. A probationary teacher who receives annual evaluations of "excellent" in the first three school terms will be awarded tenure at the end of the third year unless given notice of dismissal at least 45 days prior to the end of school term. The notice must include specific reasons if the teacher is dismissed in the third school term.
- c. A probationary teacher who receives an overall rating of "proficient" in the last school term and at least "proficient" in either the second or third school term (or, put more simply, teachers who do not qualify for tenure under a. or b.) will be awarded tenure after 4 consecutive school terms, unless notified of dismissal at least 45 days prior to the end any school term. The notice must include specific reasons if the dismissal is provided in the final school term.
- d. A probationary teacher who is not eligible for tenure in a particular year still may be non-reemployed by giving a 45-day notice without reason.

Additionally, the Act clarifies the concept of "continued service" for the purpose of the acquisition of tenure. For a school term to be counted towards the attainment of tenure, a teacher must actually be present and participating in the districts educational program for 120 days or more. However, days of leave the teacher is required to take under the *Family Medical Leave Act* are considered days of participation in the district's educational program.

Finally, if a probationary teacher does not teach a full year, the year will not count toward the question of tenure but will not constitute a break in service if the teacher teaches in the following school year.

### **3. Reduction in Force.**

The Act creates a new process for reductions in force. The new process is based upon performance instead of seniority. Beginning in the 2011-2012 school year, school districts must create teacher groupings based upon performance evaluations. The teacher groupings are as follows:

- a. Grouping one shall consist of each teacher not in contractual continued service who has not received a performance evaluation rating.
- b. Grouping two shall consist of each teacher with a “needs improvement” or “unsatisfactory” performance evaluation rating on either of the teacher’s last two performance evaluation ratings.
- c. Grouping three shall consist of each teacher with a performance evaluation rating of at least “satisfactory” or “proficient” on the teacher’s last two performance evaluations. For first year teachers, one performance evaluation is sufficient to place the teacher in grouping three.
- d. Grouping four shall consist of each teacher whose last two performance evaluations are “excellent” with the third performance evaluation rating being at least “proficient or satisfactory.”

The Act requires the establishment of a joint committee, composed of equal numbers of representatives selected by the board and the union, which has the authority to modify the composition of the grouping but any modification requires approval of a majority of the committee.

Among teachers qualified to hold a position, teachers must be dismissed in the order of their groupings with teachers in grouping one dismissed first and teachers in grouping four dismissed last. Within grouping one, dismissal is at the discretion of the district. Within grouping two, three, and four, dismissal must be based upon the average performance evaluation rating with the lowest performing teacher dismissed first. If a tie exists within groupings two three and four, seniority then, and only then, controls.

Further, in consultation with the unions representing the teachers, the board must establish a “honorable dismissal list” categorized by positions and the groupings. Copies of the list must be distributed at least 75 days before the end of the school term. Dismissal must occur 45 days before the end of the school term.

The existence of the “honorable dismissal list” and the change to the process of reduction in force does not affect a board of education’s ability to dismiss a non-tenured teacher based upon performance (with or without reason) but does appear to grant recall rights to honorably dismissed probationary teachers.

For whatever reasons, teachers employed in special education cooperatives and hired before July 1, 1987, retain their “super tenure” and must be dismissed in reduction in force based upon seniority.

**4. Dismissal of Teachers in Contractual Continued Service for Reasons Other Than Honorable Dismissal.**

The Act changes the process for dismissing teachers. First, SB7 changes the process for selecting hearing officers. Beginning July 1, 2012, a hearing officer can be selected jointly by both the teacher and the board of education, or the hearing officer can be selected unilaterally by the board. If the hearing officer is selected jointly, the parties are required to share the costs of the hearing officer. If the hearing officer is selected unilaterally, the board is responsible for the costs of the hearing officer. After July 1, 2012, the Illinois State Board of Education is no longer responsible for any of the costs of a tenured teacher dismissal hearing.

The Act does not change the requirement that the board of education must initiate a dismissal by adopting a resolution including a bill of particulars. However, the legislation adds a requirement that the bill of particulars be answered by the teacher and a requirement that the teacher put forth affirmative defenses. ISBE is directed to promulgate rules setting forth procedures for answering and affirmative defenses as well as pre-hearing discovery.

Currently, a hearing officer has the authority to uphold a dismissal or reinstate a teacher. Under the Act, in conduct related dismissals, a hearing officer has the authority to submit findings of fact and decision to the board of education. The board of education can either adopt the hearing officer’s findings of fact and decision or the board of education can issue a supplemental findings of fact and an order finding that the hearing officer’s decision is against the manifest weight of the evidence and the board can dismiss notwithstanding the hearing officer’s decision. In such a case, the teacher has the right to appeal the dismissal to court, which will review the evidence, the board’s order, and any supplemental evidence adopted by the board.

As an alternative, the Act also sets forth a hearing process for teachers who fail to receive a performance rating of proficient or above under the evaluation standards required to be implemented by PERA. The school district has the right to elect to use this process, which requires the board to follow an alternative remediation procedure. The remediation process has been amended to require the use of a second evaluator selected from a list developed by the board and union. If the evaluation and remediation procedures are followed, a teacher may only challenge the specific performance rating, the remediation plan, and the final remediation evaluation. Only the performance evaluations at issue in the particular remediation can be considered by the hearing officer. As opposed to the hearing process in Article 24-12, the hearing officer under the alternative hearing process can only issue findings of fact and recommendation to the board of education. The ultimate decision to dismiss is up to the board provided that only board members trained

in the evaluation process can participate in the vote to dismiss. If the board dismissed a teacher contrary to the findings of fact and recommendations of the hearing officer, the teacher may appeal the decision pursuant to Administrative Review Law; however, judicial review must be initiated at the appellate level. The decision of the board can only be reversed if it is found to be arbitrary, capricious, or an abuse of discretion.

## **5. New Process of Mediation before Strikes.**

The Act also amends the *Illinois Educational Labor Relations Act* with regard to mediation. Under the proposed legislation, any time after 15 days from the start of mediation, either party may declare an impasse. Notification of an impasse must be filed with the Labor Board. Within 7 days after the declaration of an impasse, each party shall submit to the mediator in writing a final offer, including a cost summary of the offer. Seven days after the receipt of the offer, the mediator shall make public each party's final offer and costs. Teachers cannot go on strike unless 14 days have elapsed since the mediator made the final offers public and the Union has issued its 10-day strike notice.

## **6. Miscellaneous Provisions.**

The Act also contains a few other noteworthy provisions.

- a. The Act requires ISBE to develop an instrument to measure the learning environment in schools via survey of students and staff which, provided funding is allocated shall begin to be implemented in the 2012-2013 school year.
- b. The Act requires all school board members elected after the effective date of the Act to receive training on topics such as education and labor law, financial oversight and accountability, and fiduciary responsibility of a board member.
- c. The Act gives ISBE the authority to revoke teaching certificates or apply other sanctions for teachers who have two or more unsatisfactory evaluations in a seven year period.

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