

K-12 Reform -- Governor Snyder Signs Historic Overhaul of Teacher Tenure, Evaluation, and Collective Bargaining

July 19, 2011

Governor Snyder signed four packaged bills today that fundamentally change the landscape of such core K-12 issues as teacher tenure, performance evaluation, collective bargaining, and discharge and demotion of tenured teachers. With some limited exceptions as to collective bargaining agreements currently in place, the four bills are effective immediately and amend the Teacher Tenure Act (TTA), the Revised School Code (RSC), and the Public Employment Relations Act (PERA). The main changes to each law are summarized below:

Teacher Tenure Act

The amendments primarily target: (1) how probationary teachers achieve tenure; and (2) discharge and demotion of tenured teachers. The legislation generally extends the probationary period to five years and dictates a teacher must be rated "effective" or "highly effective" on the three most recent annual year-end performance evaluations to successfully complete probation. The legislation also decreases the notice period for termination of a probationary teacher from 60 to 15 days before the end of the school year and provides that probationary teachers may be dismissed at any time.

The TTA now mandates that tenured teachers may be discharged or demoted for a reason that is not "arbitrary or capricious." This shift -- from "just cause" to "arbitrary and capricious" -- significantly lowers the standard a school district must meet in order to successfully discharge or demote a tenured teacher.

Revised School Code

Under the new legislation, a teacher's length of service may no longer be the primary or determining factor in personnel decisions like lay-off, rehire, and recall. Length of service now may only be used as a tiebreaker among equal employees.

The RSC changes radically revise the performance evaluation system for both teachers and administrators, building in several dates -- beginning as early as September of this year -- by which districts must comply with requirements for a "rigorous, transparent, and fair performance evaluation system." Beginning in 2013, the legislation utilizes a new rating scale of "highly effective," "effective," "minimally effective," or "ineffective;" dictates "multiple classroom observations;" mandates the use of a "state evaluation tool" to be designed by the Governor's Council on Educator Effectiveness in order to best measure student growth and assessment data; and increasingly requires evaluations to take "student growth and assessment data" into account. Finally, the new legislation requires "midyear progress reports" for certain probationary teachers and those who are rated as "minimally effective" or "ineffective," and provides that teachers and administrators who are rated as "ineffective" on three consecutive annual year-end evaluations shall be dismissed from employment.

Public Employment Relations Act

To coordinate the changes to the TTA and RSC with the collective bargaining process, the PERA amendments now prohibit school districts and unions from bargaining over seven new subjects. These subjects are: placement of teachers; policies regarding personnel decisions like lay-off, rehire, and recall; performance evaluation system; teacher discipline or discharge policy, including the new arbitrary and capricious standard; format, timing, or number of classroom

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observations; performance-based compensation; and notice to parents/guardians about ineffective teachers. By eliminating these often contentious subjects, the new legislation markedly alters the subjects which school districts and unions will bargain over going forward.

Guidance for School Districts

These four bills significantly overhaul basic tenets of the statutorily dictated relationship between school districts and teachers and administrators. Such a change, combined with the specific and complex new requirements adopted by these bills, means school districts need to be more informed than ever as to their powers and responsibilities under applicable laws. Whether it be dealing with the changes to the probationary period, the elimination of the "just cause" standard, the radically new and complex evaluation system, or the prohibition of several subjects in collective bargaining, Miller Canfield will keep you apprised as to how to comply with such a new approach to school law in the state of Michigan.

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