ROBBINS SCHWARTZ
NICHOLAS LIFTON & TAYLOR, LTD.

In Brief

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EDUCATION REFORM LEGISLATION AWAITS GOVERNOR'S SIGNATURE

On May 12, 2011, the Illinois House of Representatives took final action to pass Senate Bill 7. This bill has been forwarded to the Governor for action and is currently awaiting his signature in order to become law. As of the writing of this *In Brief*, the Governor has still not signed the bill.

A proper assessment of Senate Bill 7 (SB 7) begins with an examination of the Performance Evaluation Reform Act (PERA), Public Act 96-0861, the "Race to the Top" legislation passed in January, 2010 during the last legislative session. A primary component of PERA requires principals' and teachers' performance evaluations to include student growth as a significant factor in their performance reviews. The PERA implementation date for principals is September 1, 2012. With respect to teachers, PERA implementation is staggered. Schools receiving School Improvement Grants must implement PERA by the beginning of the 2012-2013 school year. The remaining school districts are not required to implement PERA until 2015-2016 or 2016-2017 at the latest.

Senate Bill 7 modifies PERA in several important respects. Senate Bill 7 allows school districts and their unions to agree to accelerate their respective PERA implementation date to as early as the beginning of the 2013-2014 school year. However, most significantly, SB 7 makes the connection between student growth and teacher performance and allows school districts to base certain personnel decisions on teacher performance so that the most effective teachers are, and remain, in the classrooms. As a final matter, SB 7 attempts to incorporate more transparency into the collective bargaining process.

Highlights of Senate Bill 7 (applicable to school districts outside the City of Chicago):

Attainment of Tenure – Senate Bill 7's tenure provisions become effective upon a district's implementation of PERA. Senate Bill 7 ties teachers' performance evaluations to decisions regarding tenure.

For the first time, *The School Code* will require that tenure decisions be based on performance evaluation ratings for teachers first employed by a school district on or after the date the district implements PERA. (The rules for acquiring tenure remains the same for teachers employed prior to a district's implementation of PERA.) Teachers may only receive tenure if rated "Proficient" or "Excellent" in two of the last three years of probationary teaching service, with a "Proficient" or "Excellent" rating in the fourth year. Tenure, however, may be awarded to new teachers in three years if the teacher receives an "Excellent" rating in each of his or her first three probationary teaching terms.

Senate Bill 7 shortens the tenure track for teachers who previously acquired tenure from a former district that had implemented PERA for teachers who (1) received "Proficient" or "Excellent" ratings in their last two years at their former districts, (2) who were honorably dismissed or otherwise voluntarily separated from employment at the end of the previously concluded school year, and (3) who receive two "Excellent" ratings in each of their first two teaching terms in the new school district. These teachers will receive tenure after two years.

Senate Bill 7 further provides that if a district fails to evaluate a teacher when required under Section 24A-5 of *The School Code*, then that teacher's performance shall be deemed to be "Proficient" for that reporting period for purposes of attaining tenure. For the school year to count toward the attainment of tenure, the teacher must work a minimum of 120 days.

Since new teachers may be on different paths to tenure, school districts will obviously have to closely monitor teachers' status to avoid inadvertently granting tenure status. Depending upon newly hired teachers' performance evaluation ratings and their length of continuous service to the district, a school district may have to provide notice of non-renewal or notice of dismissal stating reasons for dismissal prior to the conclusion of the fourth year of probationary teaching service.

Certification Action by State Superintendent for Reasons of Incompetency – Senate Bill 7's provisions in this area become effective immediately. Although prior to SB 7 the State Superintendent possessed the authority to take disciplinary action against certificate holders for various reasons, including "incompetency," the General Assembly had never defined the term "incompetency" in *The School Code.* Senate Bill 7 corrects this oversight by defining "incompetency" as two "Unsatisfactory" ratings within a 7 year period.

Senate Bill 7 expands the State Superintendent's authority beyond just the ability to discipline teachers and administrators. Besides initiating action to revoke or suspend an educator's certificate, the State Superintendent may now require educators to engage in prescribed professional development activities in lieu of, or in addition to, certificate suspension or revocation. Additional professional development activities shall be at the certificate holder's expense, unless provided for in a collective bargaining agreement and the CBA does not preclude the use of such funds for this purpose.

In determining whether to take disciplinary action or to order other corrective action, the State Superintendent shall analyze such factors as the time between evaluations; whether any of the "Unsatisfactory" evaluations occurred prior to the effective date of SB 7; whether the evaluator(s) who issued the "Unsatisfactory" evaluation met the pre-certification and training requirements of Section 24A-3 of *The School Code;* the quality of the remediation plans; whether the teacher successfully remediated; whether the evaluation plan was developed under PERA and whether the "Unsatisfactory" evaluation occurred in the educator's first year of teaching or administration service or following a change in assignment. As before SB 7, educators who are disciplined for incompetency are entitled to a hearing before the State Teacher Certification Board.

Filling of New and Vacant Positions – Senate Bill 7 creates new *School Code* Section 24.1 and is effective immediately. When a school district has an open position to fill, SB 7 requires school boards to evaluate candidates based upon their qualifications, certification areas, merit and ability, and relevant experience, which shall include performance evaluations. District-wide seniority can only be used as a tie-breaker when all other factors are considered equal.

Once a school district selects the best qualified candidate for the vacancy, the district's decision cannot be grieved or arbitrated. SB 7 specifies, however, that in the event a district fails to follow its CBA selection procedures, i.e., posting and notice requirements, etc., then such procedural deficiencies in the filling of vacancy process are subject to grievance and arbitration. Provisions regarding the filling of vacancies in a CBA on the effective date that SB 7 becomes law shall remain in effect for the term of the contract, unless terminated by mutual agreement.

Reductions-in-Force – Senate Bill 7's reduction-in-force provisions become effective for RIFs noticed at the end of the 2011-2012 school term, and all subsequent school years. Tenure status and seniority will no longer be the defining method determining the order of layoff when a district reduces the number of teaching positions in the school district or eliminates some type of teaching service. Any collective bargaining agreement specifying that RIFs shall be by order of seniority shall remain in effect until the expiration of the CBA or June 30, 2013, whichever is earlier.

School districts now must first consider qualifications and certification areas prior to considering seniority and tenure status. Qualifications include all qualifications imposed as a matter of law, plus additional qualifications set forth in the school

district's job descriptions. Among tenured and non-tenured teachers who satisfy all certification and qualification requirements, performance evaluations shall be used to determine the sequence of layoff. For purposes of ranking tenured and non-tenured teachers based upon performance, teachers are to be grouped into four performance categories based upon their last two summative evaluations.

Group One consists of all non-tenured teachers who have not yet received a performance evaluation rating. Group Two consists of tenured or non-tenured teachers who received a "Needs Improvement" or "Unsatisfactory" performance rating on either of their last two evaluations. Group Three consists of tenured and non-tenured teachers who received a "Satisfactory" or "Proficient" performance evaluation rating on both of their last two evaluations. Group Four consists of teachers with "Excellent" ratings on their last two performance evaluations and teachers with "Excellent" ratings on two of their last three performance evaluations, with the third being "Satisfactory" or "Proficient."

Layoffs shall start with Group One and progress through Group Four. Layoffs within Group One shall be at the board of education's discretion. Within Groups Two, Three and Four, layoffs shall occur based upon a tenured or non-tenured teacher's average performance evaluation rating based on the last two evaluations using the following numerical values: "Excellent" – 4; "Proficient" or "Satisfactory" – 3; "Needs Improvement" – 2; and "Unsatisfactory" – 1. Seniority shall only be used to determine layoff sequence in cases of a tie for teachers with the same average in the same grouping (unless an alternative method is bargained).

The school district in consultation with its teachers' exclusive bargaining representative shall develop a dismissal list categorized by positions and utilizing the groupings described herein and distribute the list to the union within 75 days before the end of the school term. Teachers may still be moved from one grouping to another until 45 days remain in the school year as any recently prepared summative evaluation**s** may cause a change in their placement. SB 7 also eliminates the different notice periods for tenured and non-tenured teachers. Notices for all teachers shall now be effective if received 45 days before the end of the school term.

For purposes of recall, school districts are only required to recall tenured and non-tenured teachers from Groups Three and Four who meet the vacant position's qualification requirements in reverse order of the reduction-in-force. Senate Bill 7 does not alter the duration of the recall period or the requirement of conducting hearings when honorably dismissing a disproportionate number of tenured teachers under Section 24-12 of *The School Code*.

Senate Bill 7's reduction-in-force provisions do not limit school districts from non-renewing non-tenured teachers under Section 24-11 of *The School Code.*

Dismissal of Tenured Teachers – Senate Bill 7's tenured teacher dismissal procedures are effective immediately, unless otherwise specifically noted herein. The new legislation attempts to streamline the hearing process and imposes new hearing officer requirements and mandated ISBE training beginning September 1, 2012.

Senate Bill 7 starts with changing how hearing officers are to be selected. A tenured teacher can request that the board of education select the hearing officer. In this case, the board shall be responsible for paying the fees and costs of the hearing officer. If the tenured teacher requests that the hearing officer be selected through a mutual selection process, then both sides shall be jointly responsible for paying the hearing officer's fees and costs. Prior to Senate Bill 7, ISBE paid the fees and costs of the arbitrator.

The tenured teacher hearing must now commence 75 days after a hearing officer is selected and conclude 120 days from the date of selection. Each party will be limited to three days to present their cases. Previously, there were no time limits for conducting a hearing and no limitation on the time a party had to present its case**.**

Prior to hearing, parties are now required to disclose to each other, information relevant to its case, as well as the other party's case. Previously, pre-hearing discovery consisted mainly of written interrogatories and requests for production of documents. The dismissed teacher is now also required to answer the bill of particulars and provide his or her affirmative defenses thereto. The hearing officer must issue his or her report within 30 days of the close of hearing, i.e., after submission of all post-hearing briefs (which are now due 21 days after the parties' receipt of the

hearing transcript), and may only extend the 30 day time period for good cause shown.

If dismissal is related to the teacher's conduct, the hearing officer will no longer render a final and binding decision. Instead, the hearing office will issue a recommended decision and order to the board of education, and the board of education will decide whether to dismiss the tenured teacher based upon this report. If the school board decides to dismiss the tenured teacher, then the teacher may appeal the board's decision to the circuit court under a manifest weight of the evidence standard. If the school board's decision is contrary to the hearing officer's recommendation, the circuit court is specifically required to consider the hearing officer's findings of fact and recommendation along with the board of education's decision.

Unlike conduct-related dismissals where the board of education makes the decision to dismiss, the hearing officer is vested with final decision making authority in performance-based dismissal hearings (unless the District opts to use the PERA evaluation procedures outlined below). Appeal of the hearing officer's decision is to the circuit court under a manifest weight of the evidence standard.

School districts may opt to adopt a streamlined process for performance-based dismissals of tenured teachers who fail to remediate with at least a "Proficient" rating or better. School districts have the option of becoming the final decision maker in performance-based dismissal actions if: school board members receive training to better understand evaluation systems and processes, and the district provides a second qualified evaluator during the remediation process. This second evaluator must not have participated in the initial evaluation giving rise to the "Unsatisfactory" rating. The teachers' union shall also have the opportunity to provide names for the selection of the second evaluator. Teachers are entitled to receive a dismissal hearing before an independent hearing officer; however, the hearing officer's role is limited to reviewing the procedures and determining compliance with *The School Code.* During the hearing process, the school district must demonstrate that the performance evaluation was valid, that the remediation process complied with *The School Code*, and that the teacher failed to successfully remediate with a "Proficient" or better rating. Appeal by the teacher of his or her dismissal is then to be filed in appellate court, instead of circuit court, as with other dismissal appeals.

Senate Bill 7 eliminates the requirement of implementing a remediation plan for an "Unsatisfactory" evaluation received within 36 months of previously completing a remediation plan. In such cases, the district can forgo a subsequent remediation plan and proceed immediately to dismissal.

Collective Bargaining and Teachers' Right to Strike – These provisions take effect immediately. In addition to modifying certain sections of *The School Code*, SB 7 amends the impasse procedures set-forth in the Illinois Educational Labor Relations Act. The time period that either party can petition the Illinois Educational Labor Relations Board (IELRB) to invoke mediation of a collective bargaining agreement has been increased from 45 days to 90 days prior to the start of the school year. In an effort to avoid having labor disputes interfere with instructional time, the IELRB can now invoke mediation 45 days before the start of school, an increase from 15 days.

Senate Bill 7 also establishes specific rules for mediation. After 15 days from commencement of mediation, either party, or the mediator, may declare impasse. Once impasse is declared, both parties have seven days to exchange final offers on all unresolved issues, and to provide same to the mediator, who is to hold them for another seven days. If after the seven day "holding period" no agreement is reached, then the mediator is to send the final offers to the IELRB. The offers shall be posted on the IELRB website and the school district shall provide notice of such posting to all media outlets for which it distributes meeting notices under the Open Meetings Act. Presumably, by publicizing final offers the public will better understand the issues between the parties and positions taken by each side. Such transparency is intended to encourage good-faith discussions and the settlement of as many issues as possible prior to publication. After 14 days of exchanging final offers and providing them to the mediator and posting on the IELRB's website, the union can strike as long as it meets other statutory requirements, such as providing the school district with a 10 day notice of intent to strike.

New School Board Member Training – Senate Bill 7 requires school board members elected after its effective date of becoming law, and those board

members appointed to fill a vacancy of at least one year, to engage in four hours of professional development and leadership training during the first year of their terms of office. New board members shall receive a minimum of four hours training covering education and labor law, financial oversight and accountability as well as their own fiduciary responsibilities to the school district. Training on financial oversight, accountability and fiduciary responsibilities may be provided by the Illinois Association of School Boards (IASB) or by other qualified providers approved by the State Board of Education in consultation with the IASB. The school district must post on its website the names of its board members who have completed the training.

Learning Conditions Survey – Beginning with the 2012-2013 school year and subject to appropriations from the General Assembly, SB 7 requires the State Board of Education to biennially develop and make available to each school district a survey of the instructional environment. Every school district will then be required to administer this survey to students in at least grades six through twelve and to teachers. This survey shall not be administered to teachers on days or at times that would interfere with their teaching duties. Results of the surveys shall then be provided to ISBE. In years that appropriations are insufficient for statewide administration of the survey, ISBE shall give priority to school districts with low performing schools and a representative sampling of other districts.

Senate Bill 7 will require much scrutiny and planning before school districts will be able to implement all of its provisions. When evaluating SB 7, educational employers will also need to consider the legislation's impact upon their collective bargaining agreements with their teachers' unions. As your school district embarks upon its analysis of SB 7, attorneys at RSNLT stand ready to assist you with whatever your needs may be with respect to this historical piece of educational reform legislation.

Dennis L. Weedman, of the firm's Collinsville office, prepared this *In Brief*.

Robbins Schwartz Nicholas Lifton & Taylor, Ltd.
55 West Monroe Street | Suite 800 | Chicago, Illinois 60603 | 312-332-7760 | questions@rsnlt.com.