

EMPLOYEE RIGHTS UNDER PERA WHERE ARE WE NOW?

I. INTRODUCTION

The Performance Evaluation Reform Act (PERA) became law in January 2010. In June 2011, Senate Bill 7 (SB 7) was signed into law by Governor Quinn. As a result of the Acts, evaluation of teachers and principals became subject to new evaluation criteria, particularly student growth becoming a significant factor in performance, and performance evaluation ratings gained greater importance in employment decisions. As directed by PERA, the Illinois State Board of Education (“ISBE”) adopted rules, effective May 21, 2012, which clarify the obligations of evaluators and requirements of evaluation plans.

This program will focus on key aspects of PERA and SB 7 as they relate to the evaluation, retention and dismissal of teachers.

II. IMPLEMENTATION OF PERA AND SB 7

- A.** PERA established implementation dates that vary by school district. For most school districts, the implementation date will be September 1, 2016. However, some requirements, such as standard performance evaluation ratings and evaluator training, are currently in effect
- B.** SB 7 was effective in June 2011 and while some collective bargaining agreements were granted grandfathered status, that exception expired in June 2013. Thus, SB 7 is now in full force and effect.

III. ENSURING YOUR DISTRICT HAS ESTABLISHED PROCEDURES IN COMPLIANCE WITH PERA AND SB 7

A. PERA - Evaluation Plans and Collective Bargaining Agreements

- 1. Review evaluation plans and provisions in teacher collective bargaining agreement (CBA) to ensure PERA/*School Code* compliance.
- 2. Key provisions to review:
 - a. Performance ratings categories.
 - b. Frequency and timing of observations and evaluations (Note: PERA regulations impose minimum requirements for teacher classroom observations effective upon PERA implementation date, i.e., 9/1/16 for most Districts).
 - c. Professional development plans (PDP's).
 - d. Remediation plan procedures.

Although the information contained herein is considered accurate, it is not, nor should it be construed to be legal advice. If you have an individual problem or incident that involves a topic covered in this document, please seek a legal opinion that is based upon the facts of your particular case.

B. SB 7 - Collective Bargaining Agreements

1. Revise teacher CBA to comply with SB 7 requirements and significant changes to RIF and RIF recall of teachers.
2. Key provisions to review:
 - a. Teacher vacancy appointment procedures.
 - b. RIF layoff process.
 - c. RIF recall provisions.
 - d. Teacher qualifications for sequence of dismissal (SOD) list position categories.
 - e. Seniority definition and “tie-breaker” provisions.
3. Primary school management objectives:
 - a. SB 7/*School Code* compliance.
 - b. RIF layoff and RIF recall provisions/procedures conform to SB 7 requirements.
 - c. Maintain consistency between CBA and SB 7 provisions to avoid grievances or lawsuits.
 - d. Provide definitions of key terms (e.g., “qualifications,” “length of continuing service,” etc.) to reduce potential misinterpretation or contract violation.
 - e. Retain management discretion to implement RIF and reassignment of teachers consistent with District needs and SB 7 obligations.

C. Duty to Bargain: PERA - Teacher Evaluation Plans

1. General Rule: Procedural components of teacher evaluation plans are mandatory subjects of bargaining. However, substantive criteria, weight, and areas evaluated in teacher evaluation plans are not mandatory bargaining subjects.
 - a. Procedural components of teacher evaluation plan include:
 - frequency and timelines for observations or evaluations of non-tenured and tenured teachers;
 - timing of post-observation conferences and summative evaluations; and

- tenured teacher remediation plan procedures.
- b. Compare: Non-procedural substantive provisions of teacher evaluation plans are non-mandatory subjects of bargaining. Substantive provisions include:
- performance ratings (i.e., “excellent”, “proficient”, “needs improvement,” and “unsatisfactory”);
 - evaluation criteria or standards (e.g., instructional planning, instructional effectiveness, subject matter competency, classroom management, etc.); and
 - decision whether tenured teacher successfully completed remediation plan.

D. Duty to Bargain - SB 7/Reduction in Force ("RIF")

1. Duty to bargain issue: Under Illinois law, an employer's decision to RIF or lay off employees for financial reasons (i.e., cost savings) is a mandatory subject of bargaining.
 - a. Caution: Most RIF/layoff decisions are based in part upon economic or financial reasons.
 - b. Contrast: An employer's decision to RIF in order to reorganize or restructure its delivery of services is a matter of "inherent managerial policy" and thus not mandatorily negotiable.
2. Avoid: An employer should generally decline to agree to contractual restrictions on its ability to RIF or lay off bargaining unit employees. These types of "No RIF" clauses overly restrict an employer's right to lay off employees even if such layoffs are necessary based upon reduced student enrollment or necessary budget cuts.

E. Strategies for Key Issues

1. PERA
 - a. Tenured and non-tenured teachers must be rated “excellent,” “proficient,” “needs improvement,” or “unsatisfactory.”
 - i. Confirm teacher evaluation plan and CBA language comply with PERA.
 - ii. Avoid Union proposals to add additional ratings categories (e.g., “superior,” “exceptional,” “very good,” “commendable”).
 - (a) Unintended Consequences: Addition of non-PERA designated ratings categories results in several adverse consequences:

- (1) Teacher evaluation plan could be challenged as non-compliant with PERA and any teachers rated “needs improvement” or “unsatisfactory” can object to ratings and claim PDP or remediation plan is invalid; and
 - (2) Teachers rated in non-PERA designated ratings categories cannot be properly placed in RIF Group (i.e., #1-4) for purposes of SOD list.
 - b. Timing of evaluations - minimum requirements are specified by PERA:
 - i. Non-tenured: Must evaluate at least once every school year.
 - ii. Tenured: Must evaluate at least once every two school years, except if rated “needs improvement” or “unsatisfactory.” Teacher must be rated at least once in school year following “needs improvement” or “unsatisfactory” rating.
 - iii. Avoid: Language that restricts the administration’s ability to observe and evaluate teachers more frequently than the minimum requirements. Districts should retain ability to evaluate non-tenured teachers as often as necessary to determine re-employment, and tenured teachers in off-cycle years in the event performance issues arise.

2. SB 7

- a. SB 7 RIF “grandfather” provisions no longer apply: SB 7 “grandfathered” existing RIF and RIF recall provisions in CBA’s until the CBA expired or June 30, 2013, whichever occurred first.
 - i. Implications: All CBA provisions regarding RIF, seniority, and RIF recall must comply with SB 7 requirements. RIF and RIF recall must be based upon a tenured or non-tenured teacher’s performance evaluation rating which determines their RIF Group placement and layoff order on the SOD list.
- b. Joint RIF Committee:
 - i. The scope of Joint RIF Committee is limited by SB 7 to the following issues:

- Criteria for excluding a teacher from Group 2 and placement into Group 3;
- Alternative definition for Group 4;
- Including a performance evaluation rating from another District;
- For performance ratings determined prior to September 1, 2012, the basis for assigning performance ratings to be used in sequence of dismissal; and
- Upon request from a committee member, review of the SOD List to determine whether there is a trend of more senior teachers receiving lower performance ratings.

ii. Bargaining tip:

(a) Do not include Joint RIF Committee provisions in the CBA.

(1) Rationale: Union will attempt to negotiate expanded role of Joint RIF Committee and reduce authority of the Superintendent.

(2) Example Union proposal:

Joint RIF Committee – The Joint RIF Committee comprised of an equal number of teachers and Administration representatives, will determine which teachers are placed in RIF Groups 1-4. In addition, the Committee will review teachers’ qualifications for teaching positions and prepare the SOD list based upon the teacher’s certification, performance evaluations, and seniority. The Committee will submit the SOD list to the Superintendent and the Union for review. Teachers will receive a copy of the SOD list upon final review and approval by the Union and Superintendent.

(3) SB 7 compliance and management right issues:

- The District’s Administration (not Joint RIF Committee) is delegated authority to review teachers’ qualifications, performance evaluation ratings, and

determine RIF Group placement and order of layoff on the SOD list.

- Joint RIF Committee authority is enumerated specifically by SB 7 and the District should not expand the Joint RIF Committee's role and authority by negotiating language into the CBA. Note: there is no duty to bargain provisions regarding the Joint RIF Committee.

c. RIF recall rights:

- i. SB 7 limits RIF recall rights to tenured and non-tenured teachers in RIF Groups 3 and 4, and in limited circumstances teachers in RIF Group 2.

NOTE: RIF'd group 2 teachers no later than six months after the start of the following school term if they are in group 2 due to one "needs improvement" rating and, if there are two ratings available, the other rating is not "needs improvement" or "unsatisfactory."

- (a) Implications: Tenured teacher rated "needs improvement" is subject to RIF layoff before any non-tenured teacher in RIF Groups 3 or 4, but may now be eligible for RIF recall up to February 1 of the next school year.

d. SOD List - Teacher Qualifications:

- i. SB 7 provides that teachers must be placed in RIF Groups "categorized into one or more positions the teacher is qualified to hold." The teacher's qualifications for positions are based upon the teacher's "legal qualifications or any other qualifications established in a District job description."

- ii. Contract language tips:

- (a) Reserve administrative right to determine the teacher's qualifications for teaching positions in the District.

- (1) Impact: The District can adopt job descriptions which establish and identify teachers' qualifications for teaching positions.

- (2) Example: The job description provides that junior high school science teachers must have previous teaching experience in science at the junior high or middle school grade level.
 - (b) Consider whether the District wants to accept a Union proposal which substitutes “teaching certification” for “legal qualifications.” This type of broad language would result in a teacher’s placement in numerous teaching positions based upon their teaching certificate rather than their job description qualifications for the position.
- e. SOD List – Revised Definition for Group One Teachers:
 - i. SB 1762 (effective January 1, 2014) amends Section 24-12 of *The School Code* to clarify which teachers are to be placed into Group One.
 - ii. Group One teachers shall include those teachers who:
 - (a) Are not in contractual continued service (tenure); and
 - (b) Satisfies one of the following criteria:
 - Has not received a performance evaluation rating;
 - Is employed for one school year or less to replace a teacher on leave;
 - Is employed on a “part-time basis” as defined in *The School Code* (less than five days a normal school week or less than a full day).
 - iii. SB 1762 clarifies the issue as to whether part-time, non-tenured teachers could be placed in Groupings 3 or 4.
- f. Seniority:
 - i. SB 7 provides that “length of continuing service in District” is determining factor in deciding order of RIF layoff of teachers in RIF Groups 3 and 4, and to some extent, 2.
 - (a) Seniority lists are to be distributed to the Union at the same time the SOD list is distributed (75 days before the end of school).

(b) Contract language implications:

- (1) Define “length of continuing service” in contract language to ensure clarity and consistency in determining teachers’ sequence of RIF layoff in RIF Groups 2, 3 and 4.

Option: Define “length of continuing service” as beginning with continuous full-time probationary teaching service, count part-time teaching on a pro-rata basis, and exclude unpaid leaves of absence in excess of 90 days from calculation of service.

- (2) Include seniority “tie-breaker” provision: Add a “seniority tie-breaker” clause to determine the order of layoff if two or more teachers in same RIF Group have same length of continued service.

- Example: Total District service horizontal lane placement, total teaching service outside District.

- ii. SB 7 requires that SOD list be based upon each teacher’s RIF Group placement in each category of position they are legally qualified to hold.

- (a) Added requirements: In consultation with the teachers’ exclusive bargaining agent, the district is to prepare a length of continuous service list (seniority list) and distribute this list to the union no later than 75 days before the end of the school term. This list is to be used for determining the order of ranking of teachers in Groupings 3 and 4, and to some extent, 2.

- (b) Contract language tip: Specify that SOD and Seniority lists will be provided to Union President at least 75 days before end of each school term per requirements of SB 7 and SB 1762.

f. Teacher vacancies:

- i. Seniority limited to tie-breaker factor: SB 7 prohibits Districts from considering a teacher’s seniority as factor in filling new or vacant teaching positions, unless all other factors are equal.

- ii. SB 7 valid factors: Certification, qualifications, merit and

ability (including performance evaluations), and relevant experience.

- iii. Contract language implications and options:
 - (a). Must delete or revise existing contract language specifying that the qualified teacher with the greatest length of District service will be appointed to the teaching vacancy.
 - (b). If contract language refers to seniority, explicitly provide that: 1) seniority only applies “if all other factors, including certification, qualifications, merit and ability (including performance evaluations), and relevant experience are equal;” and 2) the Administration’s decision “to select a teacher to fill a new or vacant teaching position is not grievable under the contractual grievance procedure.”

IV. IMPLEMENTING THE PERA EVALUATION PROCESS

A. By November 1 of the year preceding PERA implementation:

- 1. There must be a meeting of the joint committee used to incorporate the use of data and indicators of student growth as a significant factor in rating teacher performance. The committee must be composed of equal representation selected by the district and its teachers or exclusive bargaining representative of teachers.
 - a. If the joint committee is unable to reach an agreement on the incorporation of data and indicators of student growth within 180 calendar days of its first meeting, the school district will be required to adopt those aspects of the State model plan.
 - b. ISBE rules permit members of the joint committee to meet prior to November 1 of the year preceding PERA implementation to discuss the incorporation of student growth without triggering the 180 day timeframe. However, the district representatives and union representatives must formally agree to the date which the 180 day timeframe begins to run.

B. By applicable implementation date, District evaluation plan must consider student growth as a significant factor

- 1. Student growth means a demonstrable change in a student’s or group of students’ knowledge or skills, as evidenced by gain and/or attainment on two or more assessments, between two or more points in time.
- 2. For purposes of requirements specific to the inclusion of student growth in performance evaluations, ISBE rules exclude from the definition of “teacher” any individual who holds a school service personnel certificate

or a professional educator license endorsed for school support personnel and is assigned to an area designated as requiring the certificate or endorsement, such as school counselors, school psychologists, nonteaching school speech and language pathologists, school nurses, and school social workers.

C. Notice of evaluation must be provided

1. At the start of the school term, the district must provide a written notice to each teacher who will be evaluated that year that a performance evaluation will be conducted in that school term. If the teacher is hired after the start of the school term, the notice must be provided to him/her no later than 30 days after the contract is executed. The notice may be provided electronically (i.e., via e-mail), or in paper format. The written notice must include:
 - a. A copy of the rubric to be used to rate the teacher against identified standards and goals and other tools to be used to determine a performance evaluation rating;
 - b. A summary of the manner in which measures of student growth and professional practice to be used in the evaluation relate to the performance evaluation ratings; and
 - c. A summary of the district's procedures related to the provision of professional development or remediation in the event a teacher receives a "needs improvement" or "unsatisfactory" rating, respectively, to include evaluation tools to be used during the remediation period.

V. PROFESSIONAL DEVELOPMENT PLANS AND REMEDIATION

A. Professional Development Plan ("PDP")

1. PDPs are for tenured teachers only.
2. If a tenured teacher's performance is rated "needs improvement," the evaluator, in consultation with the evaluated teacher, must develop a PDP directed to the areas of performance that the tenured teacher needs to improve.
3. The PDP must be developed within 30 school days after the completion of a "needs improvement" evaluation.
4. When developing the PDP, the evaluator must take into account the tenured teacher's on-going professional development responsibilities, including his or her regular teaching assignments.
5. The PDP must include supports that the district will provide to address the performance areas identified as needing improvement.

6. ISBE rules require that professional development provided as part of a PDP or remediation plan align to the 2011 Standards for Professional Learning published by Learning Forward.
7. Tenured teachers must be evaluated at least once in the school year following the PDP. Tenured teachers who are evaluated equal to or better than “satisfactory” or “proficient” must be reinstated to the regular tenured teacher evaluation cycle.

B. Practical considerations for PDP’s

1. Negotiable issues not addressed by PERA:
 - a. Duration of PDP (Compare: tenured teacher remediation plan must be 90 school days, or shorter period negotiated by parties);
 - b. Process for assessment of teacher’s performance during PDP (Contrast: remediation plan requires evaluation and ratings at mid-point and end of 90-school day remediation period);
 - c. Right to issue performance rating upon completion of PDP; and
 - d. Consequence of “needs improvement” rating at end of PDP.

2. Contract language examples:

PDP Process – The PDP period shall extend 90 school days. Evaluation conferences and ratings shall be scheduled to occur at 30-school day intervals. Teachers rated “unsatisfactory” after completion of the PDP period shall be placed on remediation for a 60-school day remediation period (60-day remediation requires negotiation with union as default is 90 school days). Teachers rated “proficient” or better at the end of the PDP will be evaluated and rated during the school year immediately following the teacher’s “needs improvement” rating.

3. Union contract proposals to avoid:

Scope of PDP – The PDP shall identify the evaluation components or criteria rated “needs improvement.”The teacher’s performance during the PDP shall be assessed and rated solely on those performance issues which are specifically identified as deficient based upon a “needs improvement” rating. The evaluator must provide specific guidance, assistance, direction, and sufficient administrative supports (including, but not limited to, a consulting or mentor teacher) which are designed to enable the teacher to improve their performance to achieve a “proficient” or “excellent” rating. Any teacher rated “proficient” or better will be reinstated to the regular two (2) year tenured teacher evaluation cycle.

4. Teacher must be evaluated in the next school year.

C. Remediation Plans

1. Section 24A-5 of the *School Code* includes specific procedural requirements that must be followed by school districts when placing a tenured teacher on a formal remediation plan following an “unsatisfactory” performance rating.

2. Summary of the remediation process:

An “unsatisfactory” performance rating generally means that the tenured teacher shows documented weaknesses in one or more of the primary evaluation criteria (i.e., instructional planning, classroom management, etc.) and is not meeting the school district’s performance standards. Provided the tenured teacher’s performance deficiencies are deemed remediable, the teacher must be given an opportunity to correct his/her performance deficiencies within a specific timeframe. If, at the conclusion of the remediation period, the tenured teacher has not corrected his/her performance deficiencies, the teacher is subject to dismissal in accordance with Section 24-12 of the *School Code*. If the tenured teacher has corrected his/her performance deficiencies, the teacher returns to the regular evaluation cycle for tenured teachers.

While the major components and timelines for tenured teacher remediation plans remain the same, PERA modifies certain requirements for tenured teacher remediation plans under Section 24A-5 of the *School Code*.

3. The Remediation Provisions Which Remain ***Unchanged*** by PERA
 - a. Application: Remediation applies only to tenured teachers.
 - b. Commencement: The development and commencement of the remediation plan must occur within 30 school days after the tenured teacher is rated “unsatisfactory”¹.
 - c. Participants: Tenured teacher (who was rated unsatisfactory), evaluator and a consulting teacher.
 - d. Consulting Teacher: A consulting teacher must participate in the remediation plan and provide advice to the tenured teacher on how to improve teaching skills and successfully complete the remediation plan. The consulting teacher must:
 - i. be an educational employee as defined under the Illinois Educational Labor Relations Act (“IELRA”);

¹ P.A. 96-1423 clarified that districts have 30 school days to develop and commence the remediation plan.

- ii. have at least five years of teaching experience and a familiarity with the assignment of the teacher being evaluated; and
 - iii. have received an “excellent” evaluation rating on his/her most recent evaluation.
- e. Timeline Requirements: A school district’s failure to comply with the time requirements in Section 24A-5 does not automatically invalidate the results of the remediation plan. However, a failure to reasonably comply could compromise the plan and any resulting teacher dismissal.
- f. Dismissal: If the tenured teacher is rated “unsatisfactory” at the end of the remediation period, he/she is subject to dismissal in accordance with Section 24-12 of the *School Code*.
- i. Immediate dismissal of a tenured teacher is not prohibited for deficiencies which are deemed irremediable or for actions which are injurious to or endanger the health of students in the classroom or school.

4. **Changes** to the Remediation Provisions Instituted by PERA

- a. Duration: Allows for a shorter remediation period if provided by a collective bargaining agreement (otherwise 90 school days of remediation within the classroom).
- b. Evaluations: The evaluator must:
 - i. conduct a mid-point and final evaluation of the tenured teacher during the remediation period (previously an evaluation had to be conducted every 30 school days during the remediation period); and
 - ii. meet with the tenured teacher within 10 school days after each evaluation to provide a copy of the evaluation and to discuss the written evaluation and ratings.
- c. Reinstatement: If the tenured teacher achieves a rating equal to or better than “satisfactory” or “proficient” at the end of the remediation plan, the tenured teacher must still be evaluated at least once in the school year following the “unsatisfactory” rating. If the tenured teacher then achieves a rating equal to or better than “satisfactory” or “proficient” in the school year following the “unsatisfactory” rating, he/she shall be reinstated to the school district’s regular evaluation schedule for tenured teachers.

Note: PERA created conflicting obligations for teachers placed on remediation or PDP and Paragraph c. above represents a conservative interpretation of these provisions.

- d. Dismissal: If the tenured teacher is rated “unsatisfactory” or “needs improvement” at the end of the remediation period, he/she is subject to dismissal in accordance with Section 24-12 of the *School Code*.
5. SB 7 eliminated 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.

VI. DISMISSAL OF TENURED TEACHERS

A. The dismissal process

SB 7 attempts to streamline the tenured teacher dismissal hearing process and imposes new hearing officer requirements and mandated ISBE training as of September 1, 2012.

B. Selection and compensation of the hearing officer.

1. A tenured teacher can request that the board of education select the hearing officer. If this occurs, then the school board shall be responsible for paying the fees and costs of the hearing officer.
2. A tenured teacher can also request that the hearing officer be selected through a mutual selection process. If this occurs, then both sides shall be jointly responsible for paying the hearing officer’s fees and costs.
3. All written notices of hearing rights sent on or after July 1, 2012 must inform the dismissed teachers of the above options for selecting a hearing officer.
4. Prior to SB 7, ISBE paid the fees and costs of the hearing officer.
5. Teachers now have 17 days (rather than 10) to request a dismissal hearing.

C. Time frame for hearing

1. The tenured teacher dismissal hearing must now commence 75 days after the selection of a hearing officer and conclude 120 days from the date of selection.
2. Each party is limited to three days to present its respective case.
3. Previously, there were no time limits for conducting a hearing and no limitation on the time a party had to present its case.

D. Disclosures required by each party prior to hearing:

1. Information relevant to its case.

2. Information in its possession relevant to the other party's case.
3. Previously, pre-hearing discovery consisted mainly of written interrogatories and requests for production of documents.
4. The dismissed teacher is now also required to answer the bill of particulars prior to the hearing and provide his or her affirmative defenses thereto.
5. ISBE is directed to draft rules which address additional discovery and scheduling matters.

E. Hearing Officer's decision

1. 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.
2. If dismissal is related to the teacher's conduct, the hearing officer will no longer render a final and binding decision. Instead, the hearing officer will prepare a recommended decision and order for the school board, and the board of education will decide whether to dismiss the tenured teacher based upon this report. The school board may modify or supplement the hearing officer's findings of fact if, in its opinion, the findings of fact are against the manifest weight of the evidence.
3. 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.
4. 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 alternative PERA evaluation procedure outlined below). Appeal of the hearing officer's decision is to the circuit court under a manifest weight of the evidence standard.

F. Alternative process under PERA

Under PERA, school districts may adopt a streamlined process for performance-based dismissals of tenured teachers who fail to remediate with at least a "Proficient" rating or better (referred to as the Optional Alternative Evaluative Dismissal Process for PERA Evaluations").

1. School districts have the option of becoming the final decision maker in performance-based dismissal actions if:

- a. The “Unsatisfactory” performance rating that caused the remediation plan resulted from a PERA evaluation;
 - b. School board members receive training to better understand evaluation systems and processes; and
 - c. The school district provides a second qualified evaluator during the remediation process.
 - i. The second evaluator must not have participated in the initial evaluation giving rise to the “Unsatisfactory” rating and, if the second evaluator is an administrator, must not be a direct report to the individual who determined the “Unsatisfactory” rating.
 - ii. The teachers’ union shall also have the opportunity to provide names for the selection of the second evaluator and assist in establishing a process for selection of the second evaluator.²
2. Teachers are entitled to receive a dismissal hearing before an independent hearing officer under the streamlined process; however, the teacher may only challenge the substantive and procedural aspects of:
- a. the “unsatisfactory” rating that led to the remediation;
 - b. the remediation plan; and
 - c. the final remediation evaluation.

For procedural challenges, the teacher must demonstrate how the alleged procedural defect materially affected the teacher’s ability to demonstrate a level of performance necessary to avoid remediation or dismissal, or successfully complete a remediation plan. In the absence of a material defect, the hearing officer (or a reviewing court) may not consider the procedural defect when assessing the validity of a performance evaluation or remediation plan.

3. 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.
- a. Parties each have two days to present evidence and testimony, unless otherwise extended by mutual agreement or order of the hearing officer;

² The teachers’ union must have this opportunity and the list of “second evaluators” must be created prior to a district’s first teacher remediation period relating to a dismissal.

- b. The hearing officer only issues findings of fact and a recommendation to the school board to either retain or dismiss the teacher; and
 - c. The school board has 45 days to decide whether to dismiss the teacher, provided that only PERA-trained board members may vote on the dismissal.
- 4. Appeal by the teacher of his or her dismissal is to be filed in appellate court, instead of circuit court, as with other dismissal appeals. If the hearing officer recommended dismissal, the appellate court may only reverse the school board's dismissal decision if it is found to be arbitrary, capricious, an abuse of discretion or not in accordance with law.
 - 5. No Waiver

Districts may not waive, through agreement with teachers or teachers' unions, their right to dismiss a teacher pursuant to the Optional Alternative Evaluative Dismissal Process.

G. Reservation of Rights

- 1. PERA does not prevent school districts from dismissing or non-renewing non-tenured teachers for any reason not prohibited by applicable employment, labor or civil rights laws.

Note: PERA provides greater discretion to school districts in dismissing 4th year non-tenured teachers prior to tenure accrual by allowing dismissal for "any reason" not prohibited by law.

Recommendation: School districts should provide specific reason for 4th year non-tenured teacher dismissals as required by Section 5/24-11 of the *School Code*. The specific reason can be based upon teacher's conduct (e.g., inability to collaborate effectively with team or grade level teachers) as well as performance.

- 2. PERA left intact the provision stating that Sections 24A-4 and 24A-5 are not to be construed as preventing immediate dismissal of teacher for deficiencies which are deemed irremediable or for actions which are injurious to or endanger the health or person of students in the classroom or school.