

# The Report Card Newsletter

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## Major Amendments Affecting Teacher Layoffs Take Effect July 1, 2014

On Friday, June 13, 2014, the Governor of Illinois signed HB 5546 into law, amending certain requirements of layoff lists and sequencing, allowing limited recall rights to Group 2 teachers, and clarifying when remediation is not necessary for a "for cause" dismissal of a tenured teacher.

The law now requires that the teacher layoff list (dismissal list), which must be distributed to the union 75 days before the end of the academic year, must now include teacher names. Previously, the law did not require the layoff list to include the names of individual teachers.

The Act clarifies that when determining the sequence of the teachers included in the layoff list, only the *last* teacher evaluation of the school term should be used, and the evaluations may not be averaged, unless otherwise agreed upon in a collective bargaining agreement.

The amendment also provides limited recall rights for teachers in Group 2. (Group 2 consists of teachers who have received either an overall rating of "Needs Improvement" or "Unsatisfactory" on one of their last two performance evaluations, as well as teachers who have only been evaluated once and have received either rating in that evaluation.) The Act provides that Group 2 teachers who are the subject of layoff during the 2013-2014 school year may be eligible for recall in connection with vacancies from the beginning of the 2014-2015 school year until February 1, 2014 (unless this date is extended by a union contract). Group 2 teachers are eligible for this limited recall if they received an overall rating of "Needs Improvement" in their last

two performance ratings, provided the other overall rating was "Satisfactory," "Proficient," or "Excellent."

These Group 2 recall rights are distinguished from rights of teachers in Groups 3 and 4, in that the recall rights for Groups 3 and 4 extend for the entire school term, as opposed to February 1, or 6 months based on agreement, for Group 2 teachers.

Finally, the Act clarifies when school district's may forego remediation when seeking a "for cause" dismissal of a tenured teacher. After a school district's PERA implementation date, if a tenured teacher completes a remediation plan, after receiving a rating of "Unsatisfactory," in an annual or biennial overall performance evaluation, and then subsequently receives another rating of "Unsatisfactory," in any annual or biennial overall performance evaluation during the next 36 month period, the district may forego remediation and seek dismissal in accordance with Section 24-12, or 24-85, of the School Code. The amendment takes effect on July 1, 2014, and school districts are encouraged to contact their Hinshaw school attorney to determine the specific impact of the law on a particular district.

Public Act 98-0648

## Appellate Court Overturns Labor Board Decision in Bus Driver Subcontracting Case

Bus drivers and monitors filed an unfair labor practice against their school district employer after the employer subcontracted their services to a private company. The bus drivers and monitors, "Bus Employees", argued that the district subcontracted their services in

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retaliation for their efforts to unionize and also argued that the district failed to bargain in good faith regarding the subject of subcontracting. The Bus Employees argued that while the district allegedly had a history of problems with its bus services, the district only solicited bids to outsource these services shortly after the Bus Employees unionized. On the other hand, the district introduced evidence to show that the problems with the bus service had significantly worsened over the years, as well as evidence that the district had attempted to use other avenues, outside of subcontracting, to alleviate these problems. While the Illinois Educational Labor Relations Board found in favor of the Bus Employees, the Illinois Appellate Court reversed the Board's decision and determined that the school district did not engage in unlawful labor practices when it subcontracted the services that were held by the Bus Employees. In refusing to find that the school district retaliated, the Appellate Court explained that the district had a legitimate reason to subcontract, which included the exorbitant amount of time that the district spent responding to parent complaints about the transportation department and dealing with day to day operational needs of that department, in addition to the potential million dollar savings that would be achieved through subcontracting. The Appellate Court also noted that while subcontracting is a mandatory subject of bargaining, the district provided all of the requisite notices and information to the union to meet the standard for good-faith bargaining in the subcontracting context. While the school district ultimately prevailed, there are a number of considerations to be evaluated when considering subcontracting. For further information, please contact [Gina Madden](#) or your regular Hinshaw attorney.

*Community Unit School District No. 5 v. The Illinois Educational Labor Relations Board*, No. 4-13-0294, 6/5/14

## State Court Invalidates California's Teacher Tenure, Dismissal and Layoff Laws

A state court in California ruled that the California teacher tenure law violates the California Constitution. The case was brought by a group of California public school students who argued that the California teacher tenure law, along with other laws covering the California teacher dismissal and layoff procedures, result in a disproportionate number of "grossly ineffective" teachers retaining teaching positions in schools that serve low-income and minority students. The court rejected California's two year teacher tenure track and also determined that the dismissal procedure made it virtually impossible for schools to remove ineffective teachers. In

doing so, the court noted that it can take from two (2) to ten (10) years and cost from \$50,000 to \$450,000 (or more) to dismiss an incompetent teacher. In its invalidation of the layoff law, the court criticized California's procedure which uses seniority as the sole factor in determining which teachers are retained in layoffs. While the judge was careful to limit his opinion solely to the California laws as they relate to the California Constitution, this case may create a trend of lawsuits throughout the country. As expected, however, the teacher's unions in California vowed to appeal the decision and the judge has ruled that the current laws must remain in place until the appeals process is completed. Experts will certainly be evaluating Illinois statutes, as the Illinois dismissal statute also imposes an extensive (although different) multi-layer approach. Notably, on Friday, June 13, 2014, the Governor of Illinois signed HB 5546 into law, changing teacher recall rights related to layoffs. Detailed information related to what is now, Public Act 98-0648, is available in a separate article in this issue of The Report Card.

*Vergara v. State of California*, Cal. Super. Ct, No. BC484642, 6/10/14

## Illinois Governor Signs Law on School Bullying Policies

Effective June 26, 2014, the Governor of Illinois signed HB 5707 into law, which establishes new requirements related to mandated bullying policies for school districts, non-public, non-sectarian elementary or secondary schools, and charter schools. The legislation establishes specific criteria for the bullying policies, by defining "policy on bullying" and "restorative measures." School districts are no longer required to communicate their policy on bullying to students and their parents or guardian on an annual basis. Districts and schools are now required to evaluate their bullying policies every two years, making the information developed as a result of the policy evaluation available on the internet website of the school district, charter school, or non-public, non-sectarian elementary or secondary school, if such a website exists. If an internet website is not available, the information must be provided to school administrators, school board members, school personnel, parents, guardians, and students.

School districts are encouraged to contact their Hinshaw school attorney to determine the specific impact of the law on a particular district.

Public Act 98-0669, amending the Illinois School Code 105 ILCS 5/27-23.7 and 105 ILCS 5/27A-5.

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