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NEW JERSEY ENACTS TEACHER TENURE REFORM

On August 6, 2012, Governor Christie signed into law the “Teacher Effectiveness and Accountability for the Children of New Jersey (“TEACHNJ”) Act” (“the Act”). The Act, most of which becomes effective in the 2012-2013 school year, does not eliminate or significantly change the underlying concept of tenure. The Act does, however, significantly alter the manner in which teaching staff members are evaluated and achieve and maintain tenure in their positions. The Act also changes the procedure by which Districts prosecute tenure charges against those teaching staff members.

I. New Evaluation Standards for All Teaching Staff Members

The Act requires school districts to develop evaluation rubrics that the districts will then use to evaluate and assess the effectiveness of its teaching staff members. These rubrics must be submitted to, and approved by, the Commissioner prior to use and must be adopted by the Board of Education. The evaluation rubric must be based partially on multiple objective measures of student learning and achievement, taking into account student growth from one year to the next. Evaluation procedures must also consider multiple measures of practice and student learning in conjunction with professional practice standards, as well as performance frameworks by which to gauge the staff member’s performance, among other things. The Act also establishes four categories of effectiveness in which a teaching staff member’s performance is to be categorized, which must be reflected in the rubric: (1) ineffective; (2) partially effective; (3) effective; and (4) highly effective.

In order to ensure the effectiveness of its teachers, the Act requires that each school in the district form a so-called “school improvement panel.” The panel must consist of the principal or his/her designee, an assistant or vice principal, and a teacher. The purpose of the panel is to oversee the mentoring of teachers and the identification of professional development opportunities for all instructional staff members that are tailored to meet the unique needs of the students and staff of the school. The panel must also conduct evaluations of teachers, including the annual summative evaluation. However, the teacher on the panel shall not take part in the evaluation process, unless otherwise agreed to by the majority representative of the district’s teachers.

II. Changes to Tenure Acquisition

For all teaching staff members who were employed prior to the effective date of the Act, tenure acquisition remains unchanged. In other words, currently employed teachers earn tenure after employment for: (1) three consecutive calendar years; (2) three consecutive academic years, together with employment at the beginning of the next succeeding academic year, or (3) the equivalent of more than three academic years within a period of any four consecutive academic years. However, for newly employed teaching staff members who begin work in the 2012-2013 school year, one additional year of employment is added to the previous requirements. Thus, teaching staff members who fall under this category must work for either four consecutive calendar years, four consecutive academic years plus employment at the beginning of the next succeeding academic year, or the equivalent of more than four academic years within a period of any five consecutive academic years before earning tenure.

In addition, teachers employed after the Act's effective date must also complete a district mentorship program during their first year of employment, and receive a rating of effective or highly effective in two annual summative evaluations within the three years of employment following their initial year of mentorship. Principals, assistant principals and vice principals employed after the Act's effective date do not need to complete a mentoring program, but must achieve a rating of effective or highly effective in two annual summative evaluations within the first three years of employment and the first effective rating must be received on or after the completion of the second year of employment.

III. Arbitrators to Decide Tenure Cases

Finally, the Act implements several significant changes to the previous system for prosecuting tenure charges against teaching staff members. For tenure charges filed prior to the Act's effective date, the process remains the same - that is, charges certified to the Commissioner are then adjudicated in the Office of Administrative Law, subject to the Commissioner of Education's final decision. However, for all charges certified after the effective date, that process is eliminated and the charges will be adjudicated by an arbitrator.

When any tenure charges, including charges of unbecoming conduct, are filed with the Board by the Superintendent, the charges will be transmitted to the Commissioner, who then randomly selects an arbitrator from the panel to decide the case. The discovery process under the Act is limited and all tenure hearings must be held within 45 days of the assignment to the arbitrator. After the hearing has concluded, the arbitrator must then issue a decision in the case within 45 days, which is final and binding on the parties. The costs of the arbitrator are to be paid by the State of New Jersey, and are capped at \$7,500 per case.

Previously, when tenure charges of inefficiency (poor teaching performance) were filed against a teaching staff member, the law required districts to provide a 90-day improvement plan to the employee as well as an opportunity for the employee to cure his or her performance deficiencies. The Act eliminates this requirement and now requires a superintendent to file tenure charges of inefficiency against a teaching staff member who is rated ineffective or partially effective in two consecutive annual summative evaluations.

After inefficiency charges are filed, the arbitrator is required to decide in the board's favor and dismiss the employee, unless the employee can show that: (1) his or her evaluations failed to adhere to the evaluation process; (2) there was a mistake of fact in the evaluation; (3) the charges were brought due to considerations of political affiliation, nepotism, union activity or discrimination; or (4) the district's actions were arbitrary and capricious and that one of these factors materially affected the outcome of his or her evaluation.

Although the Act does make noteworthy changes to the tenure acquisition and prosecution process, the concept of tenure remains largely unchanged. Moreover, the concept of seniority also remains unchanged; in the event of a reduction in force, the most senior tenured individuals must be retained over less senior or non-tenured employees.

While most provisions in the Act go into effect in the 2012-2013 school year, districts have until December 31, 2012 to develop and adopt the new evaluation rubric, and until January 31, 2013 to implement a pilot evaluation program using the rubric. Full implementation of the rubric by each district must be complete beginning with the 2013-2014 school year.

We expect the Department of Education to issue regulations in the near future which will clarify how the Act is to be implemented. In the meantime, should you have any questions regarding the Act, please do not hesitate to contact the school law attorneys at Schenck, Price, Smith & King, LLP.

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