Focus on PERFORMANCE

Senate Bill 7
Public Acts 97-0007, 97-0008
(Effective Date: June 13, 2011)

&

The Performance Evaluation Reform Act
(“PERA”)
Public Act 96-0861
(Effective date: January 15, 2010)

ED-RED Finance-Legislation Meeting
Scott F. Uhler
Partner
Friday, May 4, 2012
Klein, Thorpe & Jenkins, Ltd.
Maine South High School Board Room
Chicago and Orland Park
1131 S. Dee Road
sfuhler@ktjlaw.com
Park Ridge, Illinois
ISBE charged with implementation and oversight of the new evaluation processes for principals and for teachers.

- **First:** Improved training and qualification process for evaluators (during 2011-2012).

- **Second:** New standards for evaluation of principals and assistant principals, based on research and on student growth. (Sept. 1, 2012)
  
  New training for superintendents as evaluators of principals.

- **Third:** New rating system for teachers, tenured and non-tenured (adds “needs improvement” category. (Sept. 30, 2012)

- **Fourth:** New teacher performance evaluation system to include student growth as significant factor in teacher performance rating. (Sept. 1, 2015, or Sept. 1, 2016)
New requirements:
- New/Vacant Positions
- Tenure
- RIF
- Dismissal
- State Supt. Certification Revocation Authority
- Survey Learning Conditions
- Board Training
- Bargaining

Fundamental purpose of SB 7:
- Operationalize use of new performance evaluation ratings
Between 2012 – 2016, must include data and indicators of student growth as a “significant factor” in rating teachers by implementation date.

Post-9/1/12, any evaluator must first complete a pre-qualification program provided or approved by ISBE.

The Performance Evaluation Advisory Council (PEAC) advises ISBE on the development and implementation of improved performance evaluation systems and supports.

- PEAC has been meeting monthly in Bloomington, Illinois and will continue to do so through 2017.

PEAC has provided ISBE with recommendations for minimum standards for principal/assistant principal and teacher evaluations as well as “model” principal/assistant principal and teacher evaluations.

Based on the recommendations of PEAC, ISBE approved administrative rules (the “PERA Administrative Rules”).

The PEAC web page, can be found at: http://www.isbe.net/peac/.
What are we trying to improve?
- Evaluator capacity to assess and improve teaching performance
- Reliability and validity of evaluation
- Ability of principals and teachers to improve student outcomes

What steps are being taken to improve?
- Evaluation mechanics
  - Principals, tenured (proficient or excellent), non-tenured; annual/bi-annual cycles
    - New rating system
    - No public disclosure of evaluation information
- Evaluation and Prequalification of Principals
By Sept. 1, 2012:

- Local districts must establish principal evaluation system and plan, incorporating measures of student growth, pursuant to Ill. Admin. rule requirements 23 Il. Ad. Code 50.300

- Evaluators must complete prequalification for evaluation of principals and by principals
Evaluators must be pre-qualified to evaluate principals
- Can use or adapt ISBE model principal evaluation plan (or create own)
- Incorporate student achievement for principals/assist. principals
- Clear standards of effective practice, and now ratings are determined, are to be shared with those being evaluated

Provisions to be included:
- Specific duties, responsibilities, management and competence
- Strengths, weaknesses
- Performance goals in any contract
- Who will evaluate (Supt.)
- Deadline for completion of March 1 annually
Annual written notice (at start of year) to include:

- Rubric used to rate student growth and professional practice
- Description of how measures of growth, practice, relate to summative rating
- Before Oct. 1st, will meet to determine student growth metrics and targets, and professional growth goals
- After completion of rating, meet to discuss rating and evidence used
Student Growth Components – must include data & indicators on student growth as significant factor
- At least 30% of rating assigned (25% first two years)

Growth assessments
- Identify at least 2 assessments from Type I or Type II

Assistant principal
- Evaluator can select criteria that align to responsibilities to assess student growth (attendance, decrease in disciplinary removals, etc.)

District to determine how specific student characteristics (special ed, ELL, etc.) factor into assessment and targets to measure impact of principal on student achievement
Principal/Assistant Principal Performance Evaluation Plans 23 Il. Ad. Code 50.300

- Professional Practice Components shall:
  - Comprise minimum of 50% of rating
  - Include rubric & instruments being used to evaluate principal/assistant principal
  - Align to Illinois Standards for Principal Evaluation (Appendix A, 23 Il. Ad. Code 50)
  - Rubric to set forth indicators for each standard, with four performance levels for each indicator
  - Rely on State model or create own; if create own, the content, assessment and rating must be explained to principal/assistant principal
  - Require that by Feb. 1, principal and assistant principal are to complete self-assessment (aligned to the district rubric), which is to be considered in reaching rating

- Include observations by evaluator
  - Minimum 2 formal observations, scheduled in advance, with minimum of one objective
  - Shall observe school practices, may directly observe interactions during work day
  - Provide feedback from observations no later than 10 work days after observation
  - Other info or evidence which may have negative impact on rating must be shared with principal within 10 day timeline
  - No limit on informal evaluations; data from such observations can be considered in determining rating, provided it is documented in writing
Evaluator Pre-Qualification
Training Options

- **ISBE training protocol**
  - CEC Partnership Group designed and is implementing eval. training program
  - Focus on professional practice and student growth (for principals)
  - Evaluators must complete training and must pass assessments

- **Training**
  - Registration opens 5/1/12; training begins 5/7/12
  - Combination of online, instructor-led, and self-paced modules
  - Online assessments
    - Must pass modules sequentially to move on to next module
Options Other Than ISBE Training

- Train-the-trainer program
  - Districts can develop their own training protocol or program
  - Trainer must meet ISBE criteria to qualify, go thru pre-qualification program, pass trainer assessments, participate in ongoing development
  - Stringent training prerequisites and follow-up

- “Independent” Study?
  - Must complete either ISBE or locally trainer provided pre-qualification

- Assessments
  - Evaluators completing training through State-approved “trainer” must still take and pass the ISBE developed assessments
  - Two chances to pass a module
    - Intensive support/remediation if do not pass
Training Mechanics

- ISBE expects to be on time (Sept. 2012)
- Must complete both trainings if will be evaluating both
- Must complete retraining w/in 5 years
- Time commitment
  - Self-paced, but teacher evaluation estimated to be 32 hours (module 2 Teachscape 15-18 hours)
  - Principal evaluation estimated to be 20 hours
- Student growth as element of evaluation
  - Academic growth must be incorporated now for principals (25% of rating 2012-2014, then 30% thereafter)
  - Teachers 2015-2016
  - Defined as “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
Initial Training Timelines

4/2/12  Training/pre-qualification website established

4/16/12  Train-the-trainer registration opens

5/1/12  Teacher/principal pre-qualification training registration opens

5/7/12  Teacher/principal pre-qualification training begins

6/1/12  Remediation intervention begins

9/1/12  No evaluation permitted after this date except by pre-qualified evaluators
How Does This Affect Teachers?

- **Performance Evaluation Plan**
  - Plan to evaluate a teacher ... that includes data and indicators on student growth as significant factor and measures professional practice
  - Districts must implement no later than PERA implementation date

- **Development of Plan**
  - Joint Committee
    - Equal representation union and district
    - Selected by district and union
    - Has duties to establish performance evaluation plan under 23 Il.Ad.Code 50.100
Components (9/1/12)

- Evaluate non-tenured annually
  - Also next year for teacher receiving unsatisfactory or needs improvement
- Tenured at least once every two years
- Description duties & responsibilities, standards teacher expected to meet
- Personal observation of teacher by the evaluator
- Consider attendance, planning, instructional methods, classroom management, subject competency

Components (cont’d)

- Ratings change: excellent, proficient, needs improvement, unsatisfactory
- Specification strengths & weaknesses, with reasons
- Put copy in teacher’s file and give teacher copy
- Processes following “needs improvement” or “unsatisfactory” rating
Performance Evaluation Plan for Teachers (24A-5)

- By **implementation date** (no later than this date):
  - Must provide for use in the plan of (1) student growth as significant factor in teacher performance rating (see Section 50.110 Student Growth Components) and (2) evaluation of teacher’s professional practice (see Section 50.120 Professional Practice Components for Teachers)

- By start of **that** school term, written notice to teacher that an evaluation be conducted that term is required. Notice shall include:
  - Rubric used to rate teacher against standards & goals used to determine performance evaluation rating
  - Summary of manner in which measures of student growth & professional practice relate to actual summative final rating
  - Summary of district’s provision of professional development or remediation (if “needs improvement” or “unsatisfactory”)
Performance Evaluation Plan for Teachers (24A-5)

- **Student Growth Components (Section 50.110)**
  - At least 30% of overall rating
  - Identify at least 2 assessments (one Type I or II, and one Type III assessment)
  - Identify student growth expectations

- **Assessments**
  - Type I – reliable, measures group in same manner with same assessment items, scored by non-district entity, statewide or beyond Illinois (NWEA, ACT)
  - Type II – district assessment used districtwide by all teachers in given grade or subject area
  - Type III – rigorous, aligned to curriculum and qualified evaluator and teacher determine measures student learning in that course.

- **Professional Practice Components (Section 50.120)**
  - Must include instructional framework based on research re: effective instruction, addressing:
    - Planning
    - Instructional delivery
    - Classroom management
    - Aligned with Illinois Professional Teaching Standards 23 Ill.Ad.Code 24
  - District must quantify relative importance of each portion of framework to ultimate professional practice rating
What If Joint Committee Cannot Agree On Data and Indicators of Student Growth to be Used?

- District is required to adopt the State model regarding data and indicators of student growth about which the joint committee is unable to agree within 180 days of initial meeting.

- State model
  - Student growth components set forth in 23 Ill. Ad.Code 50.110
  - Student growth component shall comprise 50% of the teacher performance evaluation rating assigned.
Senate Bill 7
Illinois Reform Initiative

- Addresses the importance of hiring and retention of most qualified, effective teachers
  - Reduce seniority/rely on performance as factor in retention/hiring/layoff/tenure decisions
  - Address some of difficulties in processes for removal of unsatisfactory teacher or teacher guilty of misconduct (original proposal would grant board authority to dismiss unsatisfactory teachers)
  - Public disclosure when collective bargaining fails to reach agreement (original proposal - board resolves disputes, and teachers lose right to strike)

- Miscellaneous
  - Board member training
  - Survey of learning conditions
Board Leadership Training
(In effect)

- Applies to members elected or appointed after effective date of Act

- Within first year of service (or term):
  - Must complete 4 hrs. professional development leadership training

- Must post names of Board members on district website (who have completed training)

- Training to cover:
  - Topics in education and labor law
  - Financial oversight and accountability
  - Fiduciary responsibilities of a board member
  - Training may be provided by association established under School Code, or by ISBE approved entity
Survey of Learning Conditions
(School year 2012-13)

- Begins 2012-13 (subject to appropriation)
- ISBE to develop instrument (based on PEAC instrument to provide feedback to principals on the instructional environment within a school)
- School District to administer in every school at least every 2 years; send data to ISBE
- At minimum, feedback from:
  - Teachers during non-instructional time
  - Students (grades 6-12)
  - Data from school, district, and State levels

- Survey of instructional environment
- State Superintendent will identify indicators to be reported on at State and local levels
  - Must first consult with teachers, principals and other appropriate stakeholders
  - Shall publicly report data on select indicators
State Superintendent Certificate Review (In effect)

- State Supt. now has added authority to act on teacher certificate for “incompetency”:
  - Two unsatisfactory ratings within a period of 7 years
  - Must consider numerous factors to determine sanction
    - Time between unsatisfactory evaluations
    - Quality of prior remediation plans
    - Whether evaluator properly certified/trained
    - Whether unsatisfactory was related to same assignment
    - Whether rating is in first year of a position or assignment
    - Whether evaluation is pre or post – PERA implementation date
  - Can revoke, suspend, condition, restrict or require professional development at teacher’s cost
New/Vacant Positions
(In effect)

• Required factors (including, but not limited to):
  ➢ Certification
  ➢ Qualifications
  ➢ Merit and ability
    ▪ Performance evaluations (if available)
    ▪ Relevant experience (this is local decision)

• District discretion
  ➢ Decision to select candidate not subject to grievance
  ➢ Can grieve failure to follow any procedure requirement in a CBA related to filling of new of vacant positions

• Seniority as a factor
  ➢ Can only be considered when all other criteria result in two equal candidates

• Current provisions of CBAs on these issues, now in effect, remain in effect until expiration of CBA

• Substantially similar to original proposal
What is a “position”?  

- Possible gray areas
  - Summer school
  - Before/after school support
  - Coaching positions
  - Filling position during leave of absence

These are likely not subject to SB 7 requirements
<table>
<thead>
<tr>
<th>Period [To attain tenure]</th>
<th>Rating</th>
<th>Conditions</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>Excellent (E)</strong></td>
<td>Must have at least P in 2 of last 3 years</td>
<td>If after 4 consecutive yrs. do not qualify, <strong>must be dismissed</strong>. Non-renewal in last yr. – must give reasons.</td>
</tr>
<tr>
<td></td>
<td><strong>Proficient (P)</strong> Needs Improvement (NI) Unsatisfactory (U)</td>
<td>Must have at least P in last year. Failure to conduct evaluation results in automatic P, for purposes of tenure.</td>
<td></td>
</tr>
<tr>
<td>4 years</td>
<td></td>
<td>Must have at least P in 2 of last 3 years</td>
<td></td>
</tr>
<tr>
<td>3 years</td>
<td></td>
<td>Must have 3 consecutive E’s</td>
<td>Non-renewal in last yr. – must give reasons.</td>
</tr>
<tr>
<td>“Accelerated”</td>
<td></td>
<td>Tenure can be accelerated. Can still release during probationary period.</td>
<td></td>
</tr>
<tr>
<td>2 years</td>
<td></td>
<td>Must have 2 consecutive E’s with new district (need not be first two years). If do not receive 2 consecutive E’s as required, follow regular 4 year track.</td>
<td>Can be no break in service. Illinois only. Evaluations from prior district must be post-PERA implementation date.</td>
</tr>
<tr>
<td>“Portable”</td>
<td></td>
<td>Must have at least P in last 2 evaluations from prior district. Must have voluntarily departed or been honorably dismissed.</td>
<td></td>
</tr>
</tbody>
</table>
School terms of service

- If at conclusion of 4 consecutive school terms of service that count toward tenure, performance does not qualify for tenure, **must be dismissed**.

- School term counted toward tenure if person teaches (or is otherwise present and participating in district/program’s educational program) for 120 days or more.
  
  ✓ Days of leave under FMLA that teacher is required to take until end of school term shall be considered days of teaching or participation.

- School term not counted toward tenure is not a break in service for determining 4 “consecutive school terms” if teacher teaches or otherwise is present and participates in district or educational program in the following school term.
Dismissal Process (In effect)
Tenured Teacher – Misconduct

- Hearing officer makes findings of fact and a recommendation to the board of education regarding dismissal
- Timelines
  - Convene hearing within 75 days
  - Finish within 120 days
- Each party has 3 days to present their case
- Board decides whether conduct occurred, was remediable and should result in dismissal
- Decision must be in writing, with reasons
- Board decision is final
- No proposal in original
Dismissal Process
Remediation (In effect)

- Hearing Officer has final decision on dismissal
  - Must be trained in evaluative methods, processes

- After PERA implementation date (9/1/15 or 9/1/16):
  - If tenured teacher successfully completes remediation plan after an unsatisfactory
    - If receive another unsatisfactory w/in 36 months of the prior remediation plan
    - District can forgo another remediation and seek dismissal under the Code

- Optional alternative evaluative dismissal (Effective 9/1/15 or 9/1/16)(can be moved up by agreement, no earlier than 2013)
Optional Alternative
Evaluative Dismissal (9/1/15 or 9/1/16)

• Board members who vote on dismissal must be PERA trained
• Board and union can select 2\textsuperscript{nd} evaluator
• Hearing process still available
  – Hearing officer must complete 24A pre-qualification
• Scope of the hearing is limited
• Teacher can only challenge unsatisfactory evaluation, remediation plan and final remediation evaluation
• Each party has 2 days to present their case
Bargaining (In effect)

- New public disclosure of both sides’ final proposals, if impasse is reached after mediation.
- New timelines are created regarding invocation of mediation, and declaration of impasse
- If parties do not reach agreement on a new CBA by 90 days prior to the start of the forthcoming school year:
  - Must notify IELRB of that status, including whether mediation has been used
  - If parties have reached impasse, can petition IELRB to initiate mediation
Bargaining (In effect)

Mediation
☐ Any time after 15 days of mediation, either party can declare impasse. Mediator can declare impasse at any time.
  ▪ W/in 7 days of declaration of impasse, each party must submit to mediator and the other party, in writing, their final offer, including its cost summary (on the issues that were not agreed to).
  ▪ W/in 7 days of receipt of these final offers, the mediator is to make each parties final offer and cost summary public by filing them with the IELRB
  ▪ The IELRB is to immediately post the offers on its website.
  ▪ On the same day as mediator files offers with IELRB, school board is also to provide notice of the availability of the offers on the IELRB website to all news media that have filed annual request for notices under the Open Meetings Act
Reductions In Force
(In effect – but current CBA remains until June 30, 2013)

- Performance-based process for determining RIF by category (not seniority)
- Teachers must be categorized, by job description/qualifications each year
  - Must be fixed by district by May 10th of prior year (if will be relied on)
- RIF Notice reduced to 45 days from 60 (from end of school yr.)
- Each year, Board, in consultation with union, must establish honorable dismissal sequence 75 days before end of school term

- By 12/1/11, joint committee (equal admin. and union representation) to meet to consider possible modifications to groups 2 and 4
  - Must reach agreement by Feb. 1st of any year in order for agreement to apply to sequence of dismissal for that year
  - “Agreement” of joint committee requires majority vote of all committee members
  - Failure to agree results in automatic “default” to applicable provisions of the statute

- CBAs in place before 1/1/11 remain in effect (through expiration of contract, or 6/30/13, whichever is sooner)
Reductions In Force
(In effect)

Joint Committee  (must be established and hold first meeting by 12/1/11)
☐ Committee must consider (and may agree):
  ▪ To criteria for excluding from Group 2 and placing into Group 3 a teacher whose last 2 performance evaluations include a Needs Improvement and either a Proficient or Excellent
  ▪ To an alternative definition for Group 4, which definition must take into account prior performance evaluation ratings and may take into account other factors relating to district/program’s educational objectives; cannot permit teacher with a Needs Improvement or Unsatisfactory in either of last 2 performance ratings
  ▪ To including w/in the definition of a performance evaluation rating a performance evaluation rating administered by a school district other than the school district determining the sequence of dismissal
# RIF Formula
*(In numerical order; lowest number first)*

<table>
<thead>
<tr>
<th>Group</th>
<th>Category</th>
<th>Rating</th>
<th>Recall Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Can bargain alternative “tie-breaker” with union</td>
<td>Excellent (E) Proficient (P) Needs Improvement (NI) Unsatisfactory (U)</td>
<td>Calculate average of ratings; lowest average rating dismissed first w/in group 2</td>
<td>Covers next term or w/in 1 calendar yr. from start of next school term; can extend 2 yrs. based on # of teachers.</td>
</tr>
</tbody>
</table>

| 1 | W/in group, order of dismissal is at discretion of district. | Non-tenured. | No evaluation | None |
| 2 | W/in group, if same avg. performance rating, least senior dismissed first | Non-tenured and tenured. | Had NI or U in one of last 2 perf. evaluations. | None |
| 3 | W/in group, least senior dismissed first | Non-tenured and tenured. | At least satisfactory or P on both of last 2 eval., or on one eval. if only one eval. is available. | Eligible for recall |
| 4 | W/in group, least senior dismissed first | Non-tenured and tenured. | E in two of last three evals., with a P or satisfactory in other year | Eligible for recall |
RIF Formula

- Calculate average performance evaluation rating, using last two performance evaluations, or last evaluation, if only one available
  - Excellent = 4
  - Proficient (or satisfactory) = 3
  - Needs improvement = 2
  - Unsatisfactory = 1

- Covers all teachers, tenured and probationary, removed or dismissed based on Bd. decision:
  - To reduce number of teachers employed
  - To discontinue particular type of teaching service
  - To reduce number of programs/positions in a special education joint agreement

- Does not cover non-renewal of probationary teacher
FOCUS ON PERFORMANCE

Go to: KTJLAW.COM, “Resources/Publications/Education E-Notes”

- Tenure chart
  - Tenure exercise
- New/vacant positions chart
- Dismissal chart
- Remediation chart
- Summary of SB 7

- Summaries:
  - Survey Learning Conditions
  - Board Training
  - State Supt. Certification Revocation Authority
  - New/Vacant Positions
  - Tenure
  - RIF
  - Dismissal
  - Bargaining