

Employee Evaluations and Performance in a Virtual Work Environment

September 25th, 2020

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Employee Evaluations and Performance in a Virtual Work Environment:

Interpreting Current State Law and Guidance

Presented by Dennis L. Weedman and Kevin P. Noll

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Introduction

Article 24A of The School Code, the related administrative rules, and the evaluation plan of the school district all control the evaluation of licensed teaching staff. The shift to virtual learning and remote education of students has required employers to reassess the methods in which they evaluate staff while still maintaining compliance with the applicable statutory and regulatory requirements.


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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.

Applicable Laws

Article 24A of The School Code (105 ILCS 5/24A-5) requires:

- An evaluation plan for licensed teaching staff to be negotiated by a joint committee made up of equal numbers of Board representatives and union representatives;
- Evaluation of a teacher's professional practice and that student growth be a significant factor in a teacher's evaluation. 

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Applicable Laws:

Article 24A of The School Code

The plan shall include a description of each teacher's duties and responsibilities, and of the standard to which the teacher is expected to conform, and must include at least:

- Personal observation of the teacher in the classroom by the evaluator, unless the teacher has no classroom duties.
- Consideration of the teacher's attendance, planning, instructional methods, classroom management, where relevant, and competency in the subject matter taught;

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Applicable
Laws:

Article 24A of
The School
Code



- Consideration of student growth as a significant factor in the rating of the teacher's performance.

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Applicable
Laws:

Article 24A of
The School
Code

Ratings must be "excellent," "proficient," "needs improvement," or "unsatisfactory."

Specify the teacher's strengths and weaknesses, with supporting reasons for the comments made.

Tenured teachers evaluated at least once every two years; non-tenured teachers evaluated annually.

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Applicable
Laws:

Article 24A of
The School
Code

Professional Development Plan within 30 school days of completion of a tenured teacher's summative evaluation rating of "needs improvement."

Remediation Plan within 30 school days of completion of a tenured teacher's summative evaluation rating of "unsatisfactory."

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Applicable
Laws:

The Illinois
Administrative
Code

The Illinois Administrative Code

- Written notice on or before the first student attendance day that the performance evaluation will be conducted in that school term, with a copy of the rubric, a summary of the manner in which student growth and professional practice align to evaluation ratings, and an explanation of the procedures related to provision of a professional development plan or remediation plan, including the evaluation tools to be used. 23 Ill. Adm. Code 50.100.



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Applicable Laws:

The Illinois Administrative Code

- Professional Practice evidence shall be collected through the use of multiple observations which include formal and informal observations.
- Formal observation requires an observation of the teacher in their classroom for a minimum of 45 minutes at a time, a complete lesson, or an observation during an entire class period.
- Formal observations require pre-observation conference and post-observation conference.

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Applicable Laws:

The Illinois Administrative Code

- Tenured teachers whose last summative rating was “excellent” or “proficient” must have a minimum of two observations during the cycle, one of which must be formal; Tenured teachers whose last summative rating was “needs improvement” or “unsatisfactory” must have a minimum of three observations in the year following assignment of the rating, at least two of which must be formal.
- Nontenured teachers must have three observations each school year, at least two of which must be formal.

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Applicable Laws:

The Illinois Administrative Code

- Student growth components representing at least 30% of the teacher's performance evaluation rating:
 - Must identify two types of assessments for each category of teacher, and may be:
 - At least one Type I or Type II assessment, as determined by the Joint Committee, and at least one Type III assessment.
 - If the joint committee determines that neither a Type I nor a Type II assessment can be identified, then there must be at least two Type III assessments, and the plan shall state the general nature of any Type III assessment chosen.



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March 27, 2020 Joint Statemet

March 27, 2020 Joint Statement:

- The IEA, IFT, IASA, IPA, ISBE, and Office of the Governor issued a Joint Statement on March 27, 2020, related to evaluation of licensed staff, reductions in force and the non-reemployment of teachers.
- Noted that, at that time, all statutory provisions related to evaluation (Article 24A), reduction in force (Section 24-12) and the non-reemployment of non-tenured teachers (Section 24-11) were unchanged. Same for ESP employees (Section 10-23.5).

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March 27, 2020 Joint Statemet

- Remediation Plans and Professional Development Plans were suspended until schools reopened.
- Clarified all "Act of God" days counted toward tenure accrual.
- Evaluations where all data had been collected and had been substantially completed were to be concluded remotely. Same for ESP employees.

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March 27, 2020 Joint Statemet

- Any teacher evaluation not completed by the end of the year were to be considered "proficient."
- Many school districts and their unions negotiated variances to these provisions.



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Public Act 101-643

Public Act 101-643 was signed into law on June 18, 2020, and made many changes to The School Code, including Sections 24-11, 24-12 and 24A-5.

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Public Act 101-643

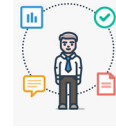
Section 24-11 was modified to address evaluation ratings to be given where evaluations were not completed prior to the closures of schools in March, 2020.

- Amendments apply, "during any time in which the Governor has declared a disaster due to a public health emergency pursuant to Section 7 of the Illinois Emergency Management Agency Act."
- Tenured teachers whose evaluations were not conducted as required, and received a prior evaluation rating of "Excellent," shall default to an "Excellent" rating, unless another method is negotiated.

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Public Act 101-643



- Does not address “Needs Improvement” and “Unsatisfactory” ratings, so absent agreement otherwise, they default to “Proficient.”
- Non-tenured teachers: The Board of Education and exclusive bargaining representative may agree to an alternative evaluation rating, so long as the agreement is in writing.
 - Does not address whether evaluation was conducted as required.
 - Does not require that prior “Excellent” ratings result in a default “Excellent” rating.

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Public Act 101-643

Section 24-12 modified provision related to evaluation ratings to be used in creation of Sequence of Honorable Dismissal list.

- Amendments apply “during any time in which the Governor has declared a disaster due to a public health emergency pursuant to Section 7 of the Illinois Emergency Management Agency Act.”

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Public Act 101-643

- For tenured teachers, applies, “unless the school board and any exclusive bargaining representative have completed the performance rating for teachers or mutually agreed to an alternate performance rating.”
 - The union does not participate in evaluation, so this provision is unclear.
- Any tenured teacher who was deemed “Excellent” in their last evaluation, and whose performance evaluation was not completed as required to be completed, shall receive an evaluation rating of “Excellent,” unless the Board and exclusive bargaining representative have mutually agreed to an alternative rating.

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Public Act 101-643

- For non-tenured teachers, the Board of Education and exclusive bargaining representative may mutually agree to an alternative evaluation rating.



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Public Act 101-643

Section 24A-5 was modified to waive the timeline requirements related to Remediation Plans, unless the Board and the exclusive bargaining representative mutually agree otherwise AND the agreement is in writing.

- Amendment applies, “[i]f the Governor has declared a disaster due to a public health emergency pursuant to Section 7 of the Illinois Emergency Management Agency Act that suspends in-person instruction.”
- Arguably, does not apply where students are learning remotely because of the return to school plan a district selected, unless in-person instruction has been suspended by Executive Order.

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Public Act 101-643

- Any remediation plan that had been in place for more than 45 days prior to the suspension of in-person instruction shall resume when in-person instruction resumes.
- Any remediation plan that had been in place for fewer than 45 days prior to the suspension of in-person instruction shall be discontinued and a new remediation period shall begin when in-person instruction resumes.
- The requirements of this paragraph apply regardless of whether they are included in a school district's teacher evaluation plan.

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August 31, 2020 Joint Guidance

August 31, 2020 Joint Statement

- The IEA, IFT, IASA, and IPA issued a joint statement on August 31, 2020 related to the implications of PA 101-643. Notably, this statement did *not* include the Governor's Office or the Illinois State Board of Education.
- The joint statement is merely suggestive informal guidance. It does not constitute law, administrative regulation or even formal guidance from the State of Illinois.



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August 31, 2020 Joint Guidance

- The joint statement recommends that the school district's Joint Committee, or where appropriate, Board and exclusive bargaining representative, meet to consider:
 - Providing tenured teachers with formative feedback for support and development, and rely on the default options provided in PA 101-643 in lieu of providing a summative evaluation rating.
 - Providing non-tenured teachers summative evaluation ratings, including the default options provided by PA 101-643.

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August 31, 2020 Joint Guidance

- Suggests that, “[a]bsent a disaster due to a public health emergency declared by the Governor pursuant to Section 7 of the Illinois Emergency Management Agency Act, a tenured teacher who is not evaluated defaults to ‘Proficient’” and, “[i]rrespective of whether the Governor has declared a disaster due to a public health emergency, a non-tenured teacher who is not evaluated defaults to a summative rating of ‘Proficient.’”

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August 31, 2020 Joint Guidance

- Indicates that if the Governor withdraws the disaster declaration during the school year, evaluations are not affected, “except possibly for the default summative rating of tenured teachers who have not been evaluated.”
- Affirms that a school board retains the right to non-reemploy or dismiss probationary teachers pursuant to The School Code.



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September 21,
2020 Dear
Colleague
Letter

September 21, 2020 Dear Colleague Letter from State Superintendent of Education Dr. Carmen I. Ayala:

- “Last spring, the legislature passed Public Act 101-643, which provided (among other things) flexibility for districts to be able to create an alternate performance rating system. As this new school year begins, district leaders are juggling all sorts of critical shortages, and pursuing different strategies regarding teacher evaluations. However, as it currently stands, the final summative rating has not been eliminated from rule or statutory language.”

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September 21,
2020 Dear
Colleague
Letter

- “Therefore, I brought this issue to the full board of education yesterday. After lengthy discussion, the board recognized the value of summative evaluations and encouraged districts to continue this practice as a means of helping recognize the performance of educators, identify areas where they need support, and keep tabs on student growth.”
- “However, due to the unusual nature of this 2020-21 school year, the board decided this agency will not initiate regulatory action against districts that don't end up moving forward with summative evaluations this year. This flexibility will be available for school districts for this school year only.”

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Questions?



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Dennis Weedman represents school districts, community colleges, county boards and other units of local government in labor negotiations and employment related matters, including complaints and charges of discrimination, wrongful termination litigation, claims of sexual harassment, civil rights violations and unfair labor practice charges. Dennis also advises clients on the handling of grievances, as well as represents public entities in labor arbitration hearings. He has represented employers in more than 200 arbitration hearings and has handled more than a hundred union organizational cases before the various public sector labor relations boards. Following certification of the bargaining unit, Dennis also serves as a negotiator and advisor for collective bargaining agreements, having negotiated several hundred labor contracts for public employers.

Dennis's area of practice extends well beyond just labor and employment matters. He counsels clients in all areas of personnel management, including employee leave rights, overtime obligations, and employee disciplinary matters, as well as in the areas of board governance, general education law and student rights and responsibilities. Dennis has served on the Illinois State Bar Association's Labor and Employment Section and is a frequent presenter for the Illinois Association of School Boards and at statewide conferences, including the Chicago-Kent School of Law Public Sector Labor Relations Conference.

Dennis has over twenty years of experience representing public entities in labor and employment disputes. Prior to joining Robbins Schwartz, Dennis served as an Administrative Law Judge with the Illinois Labor Relations Board and was Labor Relations Counsel for the Illinois Department of Central Management Services.

Dennis is approved by the Illinois State Board of Education to provide school board member training.

AWARDS

Illinois Leading Lawyer, Employment Law: Management, Labor Law: Management, School Law and Governmental, Municipal, Lobbying & Administrative Law, 2015

RECENT PRESENTATIONS

Ethics and Conflicts of Interest for Municipal Elected Officials, Illinois Municipal League Newly Elected Officials Workshop (June 2017)



PRACTICE AREAS

Education Law
Labor & Employment
Litigation
Municipal Law
Student Discipline

EDUCATION

J.D., Southern Illinois
University School of Law

B.A., University of Illinois
at Urbana-Champaign

ADMITTED TO PRACTICE

U.S. District Court for the
Central District of Illinois

Supreme Court of Illinois

ORGANIZATIONS

Illinois Council of School
Attorneys

Illinois Local Government
Lawyers Association

Illinois State Bar
Association

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Kevin's practice focuses in the area of labor and employment law. Kevin routinely counsels employers in all aspects of employment law including employee discipline, labor relations, and federal and state employment discrimination matters under the Americans with Disabilities Act, Family and Medical Leave Act, Age Discrimination in Employment Act, Illinois Human Rights Act, Title VII and other federal and state anti-discrimination and wage laws. Kevin represents employers in a variety of venues including both federal and state court, as well as the U.S. Equal Employment Opportunity Commission and the Illinois Department of Human Rights.

Prior to joining Robbins Schwartz, Kevin represented individuals with employment matters, civil rights claims, and consumer protection litigation.

AWARDS

Illinois "Rising Star," by Super Lawyers Magazine (2017-2020)

RECENT PUBLICATIONS

"NLRB Takes New Look at Charter Schools," *Chicago Daily Law Bulletin* (2019)

RECENT PRESENTATIONS

Updates from the DOL: New Developments for FMLA, FLSA, and IWPCA, IAPD/IPRA Soaring to New Heights Conference (January, 2020)

Is it ADA, FMLA, or Other Leave? Navigating the Murky Waters of Employee Leave Benefits, IAPD/IPRA Soaring to New Heights Conference (January, 2020)

Illinois Minimum Wage: Nutz and Bolts Overview, IGFOA Payroll Seminar (October 2019)



PRACTICE AREAS

Labor & Employment

EDUCATION

J.D., The John Marshall Law School

B.A., Indiana University

ADMITTED TO PRACTICE

U.S. District Court for the Northern District of Illinois

Supreme Court of Illinois

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Chicago Bar Association

Illinois State Bar Association

Kane County Bar Association