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Illinois's performance evaluation reform act (PERA) and its effect on the dismissal of teachers for unsatisfactory teaching performance : a review of related litigation

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ABSTRACT

ILLINOIS'S PERFORMANCE EVALUATION REFORM ACT (PERA) AND ITS EFFECT ON THE DISMISSAL OF TEACHERS FOR UNSATISFACTORY TEACHING PERFORMANCE: A REVIEW OF RELATED LITIGATION

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With the federal government's expanding role in K-12 public education, this study examines how the government's role led to the passage of the Illinois *Performance Evaluation Reform Act* (PERA). PERA made changes to Article 24A of the School Code, specifically the section that deals with teacher performance evaluation. PERA created a public school teacher evaluation system that included—for the first time—a requirement that student academic growth data be part of the public school teacher classroom performance evaluation calculus. As a result of PERA, for the first time in Illinois teacher tenure, reductions in force (RIF), and teacher dismissals are now based upon a combination of teacher classroom teaching performance and student academic performance.

The study also examined if PERA has had a demonstrable effect on the dismissal of teachers for unsatisfactory classroom teaching performance as it was intended by the legislature. The legislature hoped that if school officials were given the necessary statutory tools, they would be able to hold teachers accountable for improving student academic achievement. This study examines teacher dismissal cases both pre-PERA and post-PERA to determine if there are

lessons to be learned. Strict adherence to the directives outlined in Article 24A is imperative if school districts want to ensure their teacher dismissal cases are upheld.

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BY

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DEDICATION

To Amy, with all my love – I couldn't have done this without you.

To Haley and Noah, always think big.

TABLE OF CONTENTS

Chapter Page

Chapter Page

Chapter Page

CHAPTER 1

INTRODUCTION

For most private sector employees, continued employment is conditioned on a mutual agreement between the employee and employer. Private employees can be fired – often with very little notice – for even minor infractions. Public employees, including teachers, have significantly more job protection than their private counterparts due to Constitutional protections afforded to them by virtue of their public employment.

In the last century, many K-12 public school educators have enjoyed job protections characterized as "tenure." Teachers earn tenure after successfully completing a certain number of years on the job (typically anywhere from two to four). In many districts, earning tenure can be equivalent to attaining a lifetime appointment. Previously, tenure protections restricted boards of education from firing a teacher unless it was for "just cause." "Just cause" is a legal term that indicates the employer was justified in the dismissal of a teacher because they did something that was considered irremediable, such as sexually abusing a child or striking a child.[1] However, if a teacher was tenured, yet considered a well-below-average classroom teacher, it was nonetheless very difficult to remove that teacher from the classroom.

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[1] DUHAIME'S ENCYCLOPEDIA OF LAW, http://www.duhaime.org/LegalDictionary/J/JustCause.aspx (last visited Mar. 22, 2017).

In recent years, the federal government and states have begun to tie student academic achievement outcomes to teacher performance evaluations. Teacher accountability for the improvement of academic outcomes is now an expectation from the public and in many jurisdictions tenure no longer means access to lifetime employment. Before elaborating on recent changes to tenure laws in the United States, it is important to first examine how tenure for public educators began in this country.

Teacher Tenure in America

In 1885, the National Education Association[2] (NEA) convened a committee to examine how public school teachers could acquire civil service protections from the patronage that was rampant within the federal government.[3] The NEA believed civil service protections should be extended to public school teachers so they would be free from political influence.[4] Just one year after the NEA's committee convened, in 1886, the state of Massachusetts enacted a statute

[2] NATIONAL EDUCATION ASSOCIATION, http://www.nea.org (last visited Mar. 22, 2017).
[3] J. McKeen Cattell, W. Carson Ryan, Jr. & Raymond Walters, editors, *Teachers' Tenure*, SCHOOL AND SOCIETY, Vol XIV p. 129 (July – Dec.1921). In 1881, a deranged individual who believed he had the right to a political appointment assassinated President James A. Garfield. In the aftermath of President Garfield's assassination, President Chester Arthur signed the *Pendleton Civil Service Act of 1883* into law. This Act was intended to stop the "spoils system" that had become infamous during the Jacksonian Era of American politics when governmental appointments were bestowed upon patrons of the winning political candidate. The *Pendleton Civil Service Act* created a public-sector system resulting in individuals being hired and retained based upon merit. The Act also protected public sector employees from arbitrary dismissal and made those positions more professional in nature. Although these protections were not afforded to public school teachers, the Act created the first system where public employees were offered job protections.
[4] *Id.*

entitled, "Relating to the Tenure of Office of Teachers."[5] This statute allowed public school districts to enter into employment contracts with teachers that extended beyond one year.[6] In 1889, the Boston School Committee passed rules extending tenure protections to teachers. New teachers in the Boston district were given a one-year probationary contract, followed by four annual years of possible renewal based on mutual agreement. After a teacher's fifth successful year of teaching in the district, they were granted permanent tenure and could only be removed for cause.[7]

In the early 1900s, educational labor and pro-business groups wrangled with one another in many of the nation's largest cities. Labor preferred elected boards of education, while business groups wanted appointed board members.[8] For example, in Chicago the Board of Education sought to dismantle the Chicago teacher's union[9] and implemented the "Loeb Rule."[10] The Loeb Rule, named after Jacob Loeb, a Board of Education member, wanted to strip the Chicago's teacher union of its power. The "Loeb Rule" prevented Chicago teachers from belonging to, or having any affiliation with, an association that collected membership dues.[11] Though the Loeb Rule was quickly overturned by the courts, its enactment signaled

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[5] State Library of Massachusetts Archives, http://archives.lib.state.ma.us/actsResolves/1886/1886acts0313.pdf (last visited Aug. 12, 2016).
[6] McSherry v. City of St. Paul, 277 N.W. 541(Minn. 1938).
[7] *Id.*
[8] IRA KATZNELSON & MARGARET WEIR, SCHOOLING FOR ALL: CLASS, RACE AND THE DECLINE OF THE DEMOCRATIC IDEAL 113 (1985).
[9] KATE ROUSMANIERE, CITIZEN TEACHER: THE LIFE AND LEADERSHIP OF MARGARET HALEY 160 (2005).
[10] Justin Law, *The Courts vs. Teacher Unionism*, THE LABOR AND WORKING-CLASS HIST. ASSOC., May 23, 2014 *available at* https://lawcha.org/wordpress/2014/05/23/courts-vs-teacher-unionism-justin-law/ (last visited Jan. 15, 2017).
[11] ROUSMANIERE, *supra* note 9, at 160.

the Chicago Board of Education's desire to separate teachers from organized labor.[12] Chicago teachers wanted tenure, and with the help of a local labor leader attempted to acquire it via a legislative enactment. The union's proposed legislation would have accomplished two of the teachers' goals: enabling teachers to acquire tenure protection after one year of employment and providing for the election of Chicago school board members. Though the bill did not come to fruition, it did open the door for a compromise bill offered by school board member, Ralph Otis. The Otis compromise bill proposed keeping an appointed board but allowing teachers to acquire tenure protection after three years of employment. The Otis Law was passed by the General Assembly in Springfield, granting teachers in Chicago tenure rights for the first time.[13]

In 1941, the Illinois legislature passed the *Act to Establish and Maintain a System of Free Schools*.[14] This legislation provided tenure protection for full-time teachers who were employed in public school districts outside of Chicago who had taught for at least two consecutive years in the same school district.[15] In 1985, the Illinois legislature added Article 24A to the School Code. Article 24A vested public school officials with the authority to remediate or remove tenured teachers who demonstrated unsatisfactory classroom teaching performance.[16] Article 24A's enactment was the direct result of *A Nation at Risk*, a report

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[12] KATZNELSON, *supra* note 8, at 113.
[13] *Id.* at 115.
[14] Thomas Kersten, *Teaching Tenure: Illinois School Board Presidents' Perspectives and Suggestions for Improvement,* PLANNING AND CHANGING, at 237, *available at* http://files.eric.ed.gov/fulltext/EJ756253.pdf (last visited July 10, 2016).
[15] *Id.*
[16] Ill. St. Bd. of Educ., *Legislative Package 1985*, *available at* http://files.eric.ed.gov/fulltext/ED260519.pdf (last visited Dec. 14, 2015).

issued by the 18-member National Commission on Excellence in Education (NCEE).[17] *A Nation at Risk* called for greater accountability for student learning from teachers and policymakers.[18] The report expressly recommended that "citizens across the Nation hold educators and elected officials responsible for providing the leadership necessary to achieve these reforms, and that citizens provide the fiscal support and stability required to bring about the reforms we propose."[19] *A Nation at Risk* sounded an alarm for educational reform and led policymakers to push for classroom improvements and school restructuring.[20] In Illinois, these policy reforms manifested themselves in the form of Illinois's Article 24A. However, as will be outlined in future chapters, Article 24A did not yield its intended results.

Between 1995 and 2005, 83% of Illinois's public school districts did not place a single teacher on an Article 24A remediation plan.[21] Statewide only one in 930 tenured Illinois public school teachers was placed on a remediation plan each year.[22] Between 1987 and 2005, 94% of Illinois public school districts did not even attempt to dismiss a tenured teacher.[23] According to Scott Reeder, a reporter with the Small Newspaper Group, "School districts didn't have the courage to use the tools they were given."[24] Notwithstanding Article 24A's enactment, during this time period Illinois public school officials only successfully dismissed 39 tenured teachers

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[17] MARIS VINOVSKIS, FROM A NATION AT RISK TO NO CHILD LEFT BEHIND 16 (2009).
[18] *Id*. at 124.
[19] Nat'l Commission on Excellence in Educ., A Nation at Risk 32 (1983).
[20] VINOVSKIS, *supra* note 17, at 17.
[21] Scott Reeder, *Remediation Falls Short of '85 Legislative Intent*, *available at* http://thehiddencostsoftenure.com/stories/?prcss=display&id=266545 (last visited July 7, 2016).
[22] *Id.*
[23] *Id.*
[24] Telephone Interview with Scott Reeder, Small Newspaper Group (Jan. 16, 2012).

as a consequence of unsatisfactory classroom teaching performance.[25] In 2010, the Illinois legislature strengthened Article 24A by passing the *Performance Evaluation Reform Act*[26] (PERA).

PERA's intent was clear: the legislature wanted more educational accountability. PERA created a public school teacher evaluation system that included four discrete performance ratings, mandated use of an approved instructional framework, included a requirement that all evaluators of public school teachers undergo evaluation training, and specified frequency and timelines for all teacher evaluations. Additionally —for the first time— the law included a requirement that student academic growth data be part of the public school teacher classroom performance evaluation calculus.[27] Both major Illinois teacher unions, the Illinois Education Association[28] (IEA) and the Illinois Federation of Teachers[29] (IFT), supported PERA.[30] The legislature intended to hold Illinois public school teachers accountable if their students did not meet established academic expectations. To date, it remains unclear whether PERA will result in an increased number of public school teacher dismissals based upon unsatisfactory teaching performance.

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[25] Reeder, *supra* note 21.
[26] Illinois Performance Evaluation Reform Act of 2010, P.A. 096-0861 (2010).
[27] Ill. St. Bd. of Educ., *Growth Through Learning, Frequently Asked Questions*, Apr. 12, 2012, *available at* https://www.isbe.net/Documents/pera-faqs.pdf#search=pera%2Dfaqs (last visited Mar. 24, 2017).
[28] ILLINOIS EDUCATION ASSOCIATION, https://www.ieanea.org (last visited Mar. 22, 2017).
[29] ILLINOIS FEDERATION OF TEACHERS, https://www.ift-aft.org (last visited Mar. 22, 2017).
[30] Senator Kimberly Lightfoot, *NCSL Panel Discussion: Reforming Principal and Teacher* Evaluations, National Conference of State Leaders, *available at* *http://www.ncsl.org/documents/educ/SenatorLightford.pdf* (last visited Dec. 15, 2015).

Purpose of the Study

In light of the federal government's expanding role in K-12 public education, this study will examine how the government's role led to the passage of the Illinois *Performance Evaluation Reform Act*.[31] The study will also examine if the Illinois *Performance Evaluation Reform Act* has had a demonstrable effect on the dismissal of teachers for unsatisfactory classroom teaching performance as it was intended by the legislature.[32]

Statement of the Problem

The *Performance Evaluation Reform Act*[33] of 2010 (PERA) brought five major changes to Article 24A of the School Code. These changes were:

1. An evaluation system that included four discreet performance ratings;
2. The use of instructional frameworks based upon the Illinois teaching standards;
3. Evaluator training to improve inter-rater reliability;
4. Specified frequency and timelines for all teacher evaluations; and
5. The requirement that student academic performance as part of the evaluation process' calculus.[34]

The *Performance Evaluation Reform Act's*[35] intended purpose was to change how public school teacher and principal performance is measured.[36] With the subsequent passage of

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[31] Illinois Performance Evaluation Reform Act of 2010, P.A. 096-0861 (2010).

[33] *Id*.
[34] Ill. St. Bd. of Educ., *supra* note 27.
[35] Illinois Performance Evaluation Reform Act of 2010, P.A. 096-0861 (2010).

Senate Bill 7,[37] the thrust of the bill was to "connect teacher hiring and dismissal to teacher performance."[38]

As a result of PERA, for the first time in Illinois teacher tenure, reductions in force (RIF), and teacher dismissals are now based upon a combination of teacher classroom teaching performance and student academic performance. The legislature hoped that if boards of education and school administrators were given the necessary statutory tools, they would be able to hold teachers accountable for improving student academic achievement. It is not yet known if PERA will make a difference in changing outcomes in teacher performance evaluations. Then-U.S. Secretary of Education, Arne Duncan celebrated PERA's changes by stating, "Illinois has created a powerful framework to strengthen the teaching profession and advance student learning in Illinois."[39] It is yet to be determined if the Illinois legislature's intent, or Secretary Duncan's sentiments, will come to fruition.

Research Questions

This study will investigate the following questions:

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[36] Ill. St. Bd. of Educ., *Performance Evaluation Advisory Council*, *available at* http://www.isbe.net/peac/ (last visited Feb. 15, 2016).
[37] Illinois School Code Education Labor Relations Pension Act 2011, P.A. 097-0008 (2011).
[38] Ill. Assoc. of Sch. Bds., *SB 7/SB 630 Analysis*, *available at* http://www.iasb.com/govrel/sb7analysis.pdf (last visited Dec. 17, 2015).
[39] Joy Resmovits and Will Guzzardi, *Illinois Education Reform: Gov. Pat Quinn Signs Bill Into Law*, HUFFINGTON POST, Aug. 13, 2011, *available at* http://www.huffingtonpost.com/2011/06/13/pat-quinn-signs-ed-reform-bill_n_876048.html (last visited Dec. 27, 2015).

1. What impact has the federal government had upon both the accountability standards for Illinois K-12 public education and the ratification of Performance Evaluation Reform Act[40] and Senate Bill 7?[41]
2. What changes have occurred as a result of the Performance Evaluation Reform Act[42] and Senate Bill 7[43] in the areas of Illinois public school teacher performance evaluation and the dismissal of tenured teachers based upon unsatisfactory classroom teaching performance?
3. What guidance do the legislative and litigation histories of the Illinois public school teacher performance evaluation and tenured teacher dismissal processes provide to Illinois educational leaders and local school board members?

Delimitations

The Performance Evaluation Reform Act of 2010[44] was enacted to connect teacher, principal, and assistant principal hiring and dismissal to student performance. Although PERA was intended for application to both public school principals and assistant principals, this study only examines PERA as it relates to Illinois public school teachers. The study addresses only aspects of federal educational history related to the Performance Evaluation Reform Act of 2010.[45]

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[40] Illinois Performance Evaluation Reform Act of 2010, P.A. 096-0861 (2010).
[41] Illinois School Code Education Labor Relations Pension Act 2011, P.A. 097-0008 (2011).
[42] Illinois Performance Evaluation Reform Act of 2010, P.A. 096-0861 (2010).
[43] Illinois School Code Education Labor Relations Pension Act 2011, P.A. 097-0008 (2011).
[44] Illinois Performance Evaluation Reform Act of 2010, P.A. 096-0861 (2010).
[45] *Id*.

Limitations

Between the years of 1987-2005, there is strong speculation that some teachers and school districts entered into separation agreements rather than proceeding with a legal battle to dismiss for unsatisfactory teaching performance.[46] Because of privacy laws in Illinois, those agreements are confidential so accurate numbers and details cannot be obtained. Also, there is a lack of secondary source material because of the recent passage of the Performance Evaluation Reform Act of 2010.[47]

[46] Scott Reeder, *An Editorial: Time to Quit Hiding Costs of Tenure*, *available at* http://thehiddencostsoftenure.com/stories/?prcss=display&id=267798 (last visited Apr. 7, 2016).
[47] Illinois Performance Evaluation Reform Act of 2010, P.A. 096-0861 (2010).

CHAPTER 2

LITERATURE REVIEW

Chapter Two begins by overviewing the federal government's increased involvement in K-12 public education. Specifically, this chapter overviews the federal government's involvement in public education over the past 70 years as it relates to Illinois's *Performance Evaluation Reform Act* (PERA).[48] The accountability expectations placed upon public educators have escalated over the previous seven decades, culminating with the 2010 passage of Illinois's PERA. PERA altered the process for evaluating teacher classroom performance and dismissing tenured Illinois public school teachers who were not able to demonstrate minimally satisfactory teaching performance. Chapter Two also examines pertinent Illinois judicial decisions involving teachers who were dismissed as a consequence of unsatisfactory classroom teaching performance. This historical overview begins with discourse surrounding public education after the Soviet Union's 1957 launch of the first satellite to orbit the earth.

The Soviets Win the Race to Space

An alarm over the state of American education sounded on October 4, 1957. That day the Soviet Union launched Sputnik, the first artificial satellite, into Earth's orbit. Sputnik's

[48] *Id*. at § 24A-3.

launch surprised the United States.[49] The United States public generally believed America would place the first satellite into space, but the Soviets prevailed in this race by placing the small 184-pound device into the Earth's orbit.[50] Walter A. McDougall, a Pulitzer Prize winning historian, described Sputnik's launch as the "greatest watershed in the history of the Cold War."[51] Technologically, Americans believed the USSR was inferior to the United States. However, this belief was challenged by the reality of a Soviet satellite looking down upon North America.[52]

The successful Sputnik launch emerged from the International Geophysical Year (IGY). The IGY was a sixty-seven-nation effort that focused the world scientific community's attention on space, the sun, and the solar system for a period of eighteen months.[53] Although most countries worked together to advance knowledge during the IGY, the United States and the Union of Soviet Socialist Republics (USSR) each boldly proclaimed their country would be the first to place an artificial satellite into the earth's orbit during the IGY. Most Americans dismissed the USSR's claim, believing the United States would be the first to place a satellite into orbit.[54] America faced many challenges in the race to space, including internal competition between the United States military's service branches and a misconception that the feat was not important to President Eisenhower.[55]

Eisenhower and most of his Washington colleagues did not anticipate the American public's level of outrage following the USSR's Sputnik launch. Gabriel Heatter, an American

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[49] PAUL DICKSON, SPUTNIK: THE SHOCK OF THE CENTURY 196 (Digital Ed. 2007).
[50] *Id*. at 142.
[51] *Id*. at 3922.
[52] *Id*. at 173.
[53] *Id*. 142.
[54] DICKSON, *supra* note 49, at 142.
[55] *Id*. at 1402.

reporter for the Mutual Broadcasting System, wrote an editorial titled "Thank you, Mr. Sputnik" following Sputnik's launch:

> You hit our pride a frightful blow. You suddenly made us realize that we are not the best in everything. You reminded us of an old-fashioned American word, humility. You woke us out of that long sleep. You made us realize a nation can talk too much, too long, too hard about money. A nation, like a man, can grow soft and complacent. It can fall behind when it thinks it is Number One in everything.[56]

The public demanded to know why the Soviets beat American scientists in the race to space and directed their outrage toward public education.[57] For example, a 1957 Gallup poll indicated 70 percent of poll respondents agreed that American high school students needed to work harder to compete with their Soviet counterparts.[58] A National Aeronautics and Space Administration (NASA) researcher noted that following Sputnik's launch, individuals were more likely to testify before Congress or get quoted in a newspaper if they had a statistic indicating America's educational inferiority to the Soviets.[59]

The Federal Government Becomes Involved in Formulating Educational Policy

Before Sputnik, the federal government[60] focused primarily upon collecting and analyzing data on schools rather providing funding or formulating educational policy. Many

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[56] *Id*. at 3659.
[57] *Id*. at 3698.
[58] *Id*.
[59] DICKSON, *supra* note 49, at 3712.
[60] At this point in time, the Department of Education did not yet exist. President Andrew Johnson signed legislation creating the first Department of Education in 1867. Because many were concerned that they would lose local control, the Department of Education was demoted

groups, particularly those from southern states, opposed federal intrusion into the educational arena because they did not want their schools subjected to forced racial integration.[61] Others worried federal funding would find its way to Catholic schools if the federal government became more involved in education.[62] Ironically, the week before Sputnik was launched, President Eisenhower publicly contemplated using the Arkansas National Guard to respond to Governor Wallace's refusal to desegregate Arkansas' public schools, thus adding to southern fears of federal intrusion.[63]

The public outcry over Sputnik prompted a Texas senator to call for hearings on missiles and space, and ultimately education in the United States.[64] Lyndon Baines Johnson, the Senate Majority Leader, was a southern Democrat who was familiar with the political landscape. As chairman of the Senate Special Committee on Space and Astronautics, Senator Johnson used the hearings to craft the National Defense Act of 1958.[65] The National Defense Act created funding for expanded teaching of mathematics, science, and technical education in colleges and high schools across the country. Between 1958 and 1964, the federal government's support for science and mathematics increased from 21 to 33 percent, resulting in an additional three billion federal dollars being invested in education.[66] As a result, the federal

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to Office in Education in 1868. It would not be until 1979 that Congress would enact the Department of Education Organization Act, Pub. L. No. 96-88, § 93 Stat. 668 (1979)

[61] Brown v. the Bd. of Educ., 347 U.S. 483 (1954), the landmark U.S. Supreme Court decision that declared state laws allowing separate public schools for black and white students, was announced a few years before Sputnik was launched.

[62] VINOVSKIS, *supra* note 17, at 11.

[63] DICKSON, *supra* note 49, at 260.

[64] *Id*. at 280.

[65] National Defense Education Act of 1958, Pub. L. No. 85-864, § 72 Stat. 1580 (1958).

[66] DICKSON, *supra* note 49, at 3738.

government and states became increasingly intertwined in funding math and science instruction.

In 1965, with the support of a Democratic Congress, then-President Lyndon Baines Johnson launched a series of social programs referred to collectively as The Great Society. The Great Society was designed to lift Americans out of poverty and created mandates to level the playing field between the rich and poor. The Elementary and Secondary Act of 1965 (ESEA)[67] was a product of President Johnson's Great Society. The ESEA's intent was to create educational equality by providing increased funding to schools that served poor children. The ESEA also offered early childhood education to underprivileged children.[68] Two such programs, *Title I*[69] and *Head Start*,[70] targeted students of poverty by offering early intervention programs.[71] The ESEA paved the way for expanded federal involvement in state and local education.[72]

In 1969, Congress directed the federal Office of Education to administer the National Assessment of Educational Progress (NAEP) test[73] to all 17-year-old students. Congress planned to use the NAEP test results to compare state student academic achievement levels.[74] The NAEP, a criterion-based assessment, used longitudinal data to compare the academic

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[67] Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10, § 79 Stat. 27 (1965).
[68] Julian E. Zelizer, *How Education Policy Went Astray*, THE ATLANTIC, Apr. 10, 2015, *available at* http://www.theatlantic.com/education/archive/2015/04/how-education-policy-went-astray/390210/ (last visited July 26, 2016).
[69] A program that was created to distribute funding to schools and school districts with a high percentage of low income students.
[70] A program that provides early childhood education and parent involvement services to low-income children.
[71] VINOVSKIS, *supra* note 17, at 3.
[72] *Id*. at 11.
[73] National Assessment of Educational Progress, *available at* http://nces.ed.gov/nationsreportcard/about/newnaephistory.aspx (last visited Mar. 22, 2017).
[74] VINOVSKIS, *supra* note 17, at 132.

achievement levels of students enrolled in grades four, eight and twelve.[75] Legislators hoped the NAEP would provide evidence showing federal programs, such as those emerging from the ESEA, were helping economically disadvantaged children. Unfortunately, NAEP data showed only modest improvement. Also, NAEP scores did not disaggregate student data; failing to differentiate between students who were economically disadvantaged and those who were not.[76] While governors initially resisted using the NAEP data, they ultimately acknowledged the need for more reliable state-level student academic assessment data.[77]

The 1970s were difficult times for educators. The general public had high expectations for President Johnson's programs, notably *Title I* and *Head Start*. However, as outlined above those programs only showed modest gains for Title I students. When Title I students' performance was compared to non-Title I students, testing results indicated the achievement gap was not closing.[78]

In 1979 President Jimmy Carter expanded the level of federal involvement in public education by authorizing the creation of the Department of Education (DOE) and making the Secretary of Education a cabinet level post.[79] The legislation creating the DOE passed by a very narrow margin[80] and over the years Republicans began calling for the DOE's abolishment.[81] After Ronald Reagan was elected President in 1980, many anticipated the DOE would be abolished. Though President Reagan's campaign called for the DOE's elimination, this

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[75] *Id*. at 194.
[76] *Id*. at 226.
[77] *Id*. at 18.
[78] MARTIN KOSTERS & BRENT MAST, CLOSING THE EDUCATION ACHIEVEMENT GAP: IS TITLE I WORKING? 3 (2003).
[79] VINOVSKIS, *supra* note 17, at 3.
[80] The Senate voted 69 in favor and 22 against. The House of Representatives voted 215 in favor and 201 against.
[81] VINOVSKIS, *supra* note 17, at 99.

proposal did not resonate with the general public. As a result, President Reagan instead focused on lowering taxes and eliminating other federal programs.[82]

A Nation at Risk

On August 26, 1981, then-Secretary of Education T.H. Bell created The National Commission on Excellence in Education (NCEE). The NCEE's 18 members were drawn from education, government and private sectors.[83] The NCEE's charge was to report on the state of public education in the United States.[84] The report focused on four areas: curriculum, expectations for students, time in school, and teacher competency.[85] Their report, *A Nation at Risk*, raised concerns that American schools were falling behind their counterparts in other parts of the world. One part of the report stated:

> Each generation of Americans has outstripped its parents in education, in literacy and in economic attainment. For the first time in the history of our country, the educational skills of one generation will not surpass, will not equal, will not even approach, those of their parents.[86]

With these words, *A Nation at Risk* focused the national spotlight on public education.

A Nation at Risk recommended the following changes to public education:

1. Strengthen high school requirements and academic standards,

2. Establish rigorous performance expectations with measurable standards,

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[82] Fred. M. Hechinger, *The Reagan Effect; The Department That Would Not Die*. N.Y. TIMES, Nov. 14, 1982, http://www.nytimes.com/1982/11/14/education/the-reagan-effect-the-department-that-would-not-die.html.
[83] VINOVSKIS, *supra* note 17, at 16.
[84] Nat'l Commission on Excellence in Educ., *supra* note 19, at 1-2.
[85] *Id*. at 18.
[86] *Id*. at 11.

3. Increase the length of both the school day and year,
4. Improve the pool of teaching candidates and the subsequent professional development of teachers,
5. Hold legislators, educational leaders and the general public accountable,
6. Provide stronger financial support for schools.[87]

A Nation at Risk recommended the creation of a system for evaluating teacher classroom instructional performance that would enable school administrators and local boards of education to either reward or remove teachers based upon classroom teaching performance. It also focused a national dialogue on K-12 public education reform.[88] Some educators believed *A Nation at Risk* was pessimistic and claimed the authors had a pre-determined purpose.[89] However, the report resonated with both the media and the American public.[90] Acting against the wishes of his own union, the American Federation of Teachers'[91] president endorsed the report and the call for improved public education in the United States.[92] A *Nation at Risk* recommended, "citizens across the Nation hold educators and elected officials responsible for providing the leadership necessary to achieve these reforms, and that citizens provide the fiscal support and stability required to bring about the reforms we propose."[93] Prompted by *A Nation at Risk*, the Reagan Administration proposed four national goals to be met by 1990. These goals were:

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[87] *Id*. at 24-33.
[88] VINOVSKIS, *supra* note 17, at 207.
[89] Lawrence C. Stedman & Marshall S. Smith, *Recent Reform Proposals,* CONTEMPORARY EDUC. REV. 2: 85-104 (1983).
[90] *Id.*
[91] AMERICAN FEDERATION OF TEACHERS, http://www.aft.org (last visited Mar. 22, 2017).
[92] RICHARD D. KAHLENBERG, TOUGH LIBERAL: ALBERT SHANKER AND THE BATTLES OVER SCHOOLS, UNIONS, RACE, AND DEMOCRACY 234 (2007).
[93] Nat'l Commission on Excellence in Educ., *supra* note 19, at 32.

1. Raise high school graduation rates to above 90%,
2. Raise scores on college admission tests to above the 1985 average,
3. Make teacher salaries competitive with entry level business and engineering salaries, and
4. Increase high school graduation requirements.[94]

Although average scores on college admission exams did rise above the 1985 average and high school graduation requirements increased, the remaining two goals remained unmet at the national level by 1990.[95]

The Nation's Governors Join the School Reform Effort

The nation's governors were actively engaged with school reform during both the Carter and Reagan administrations.[96] Following *A Nation at Risk*, the National Governors Association (NGA) formulated a set of their own national goals.[97] The NGA partnered with both the Education Commission of the States and the Council of Chief State School Officers to create and maintain a system of accountability based upon the NGA's proposed goals.[98] The Southern Regional Education Board, with the backing of two pro-education governors, Bill Clinton (Arkansas) and Lamar Alexander (Tennessee), called for reliable state comparisons

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[94] David Baumann, *Democrats Want National Goals Set on Literacy, Basic Skills at Summit*, EDUC. DAILY, Sept. 21, 1989 at 2.
[95] *Id*.
[96] VINOVSKIS, *supra* note 17, at 19.
[97] Nat'l Governors Ass'n, Time for Results: The Governors' 1991 Report on Education 3 (1986).
[98] *Id*. at 4-5.

based on student academic achievement scores.[99] The NGA understood reliable data was needed and set about creating a better accountability system[100]

While campaigning for the presidency in 1987, then-Vice President George H. Bush's platform focused on many issues. However, education was not one of them. Nonetheless, while on the campaign trail presidential candidate Bush told a group of students, "I want to be the education President."[101] However, it was not until a year after winning the election that President Bush actually turned his attention toward education when the National Governors Association encouraged the Bush Administration to convene an education summit. In preparing for the summit, the Bush Administration charged two government agencies with developing preliminary national education goals.[102] The Office of Educational Research and Improvement (OERI) and the Planning and Evaluative Service were each tasked with developing position papers and proposed national goals.[103] The NGA, led by Governor Bill Clinton, also prepared a set of national goals for proposal at the upcoming Charlottesville Summit.[104] The U.S. House of Representatives and U.S. Senate, perhaps not wanting to be left

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[99] Maris A. Vinovskis, *The Road to Charlottesville*, a publication of the National Education Goals Panel, 14 (1999) *available at* https://govinfo.library.unt.edu/negp/reports/negp30.pdf (last visited June 23, 2016).
[100] Lynn Olson, *With Goals in Place, Focus Shifts to Setting Strategy,* EDUC. WK., Mar. 7, 1990, at 9.
[101] Reagan Walker, *Bush: Capturing the "Education" Moment?*, EDUC. WK.,Oct. 19, 1988, at 8.
[102] VINOVSKIS, *supra* note 17, at 23.
[103] *Id*. at 23.
[104] *Id*. The Charlottesville Summit was a meeting between President George H. Bush and the nation's Governors in Charlottesville, Virginia for two days in September of 1989. The purpose of the summit was to come up with an agreed upon list of national education goals.

out, also drafted their own national education goals in advance of the summit.[105] This activity signaled legislators were ready to establish national K-12 education goals.

The 1989 Charlottesville Summit between the Bush Administration and the NGA was widely regarded as a success. The NGA and the Bush Administration reached agreement on six national goals. The goals were announced during President Bush's January 31, 1990 State of the Union Address. The NGA declared, "These national goals are not the President's goals or the Governors' goals; they are the nation's goals."[106] The nation now had a unified list of goals that were agreed upon by the Bush Administration, the NGA and Congress to be achieved by the year 2000. The six agreed upon national education goals were:

1. All children in America will start school ready to learn,
2. The high school graduation rate will increase to at least 90 percent,
3. American students will leave grades four, eight and twelve having demonstrated competency in challenging subject matter, including English, mathematics, science, history and geography; and every school in America will ensure that all students learn to use their minds well, so they may be prepared for responsible leadership and productive employment in our modern economy,
4. U.S. students will be first in the world in science and mathematics achievement,
5. Every adult American will be literate and possess the knowledge and skills necessary to compete in the global economy and exercise the rights and responsibilities of citizenship, and

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[105] Julie A. Miller, *Democrats Stress Party's Historic Role With Set of Six Key Goals for Schools*, EDUC. WK., Sept. 27, 1989, at 9.
[106] Nat'l Governors' Ass'n, National Education Goals 12 (1990).

6. Every school in America will be free of drugs and violence and will offer a safe, disciplined environment conducive to learning.[107]

Both the public and lawmakers believed the establishment of national goals was a positive step for the nation's public schools.[108] Governor Clinton stated, "This is the first time in the history of this country that we have ever thought enough of education and ever understood its significance to our economic future enough to commit ourselves to national performance goals."[109] According to a national poll,[110] the public doubted the goals would be achieved by 2000, but many believed the articulation of national goals had set the country on the right path.[111]

To ensure the states were working toward achieving these goals, the NGA urged the creation of a National Education Goals Panel (NEGP). In the fall of 1990, the NEGP was officially created. The NEGP was a fourteen-member panel charged with defining and measuring progress on the six agreed upon national education goals. The panel's membership included four Bush Administration officials, six governors and four congressional leaders.[112]

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[107] Nat'l Educ. Goals Panel, *National Education Goals Report,* ix (1991).
[108] Edward B. Fiske, *Paying Attention to the Schools is a National Mission Now,* N.Y. TIMES, Oct. 1, 1989.
[109] Bernard Weinraub, Bush and Governors Set Education Goals, N.Y. TIMES, Sept. 29, 1989.
[110] S. M. Elam *The 22nd Annual Gallup Poll of the Public's Attitudes Toward the Public Schools*, PHI DELTA KAPPAN, 72(1), 42. EJ 413 175 (1990).
[111] David Baumann, *National Goals Important, But Unattainable, Poll Says*, EDUC. DAILY, Aug. 23, 1990, at 1-4.
[112] Lynn Olson, Members Appointed to the Education Goals Panel, EDUC. WK., Sept. 5, 1990, at 10.

1992 Presidential Election

Education was a major issue in the 1992 presidential campaign between President Bush and then-Governor Clinton. During the campaign, President Bush pointed out Governor Clinton's home state, Arkansas, ranked 48th out of the 50 states in the percentage of adults who had graduated from high school.[113] In turn, Governor Clinton criticized the Bush Administration for championing school choice rather than emphasizing the six national education goals agreed upon by both the administration and the NGA.[114] As part of his campaign, Governor Clinton called for improving education by working to create a set of national standards, creating a national assessment to measure student progress, and achieving the national goals previously agreed upon by the year 2000.[115]

In 1992, William Jefferson Clinton was elected as the 42nd President of the United States, and immediately turned his attention to public education. The Clinton Administration was concerned Congress would only authorize minor changes to the ESEA and would not further reform K-12 public education.[116] The Administration worried the growing criticism surrounding Title I's[117] effectiveness within the ESEA would hamper reform.[118] Clinton supported the Goals 2000 legislation, which was designed to create a framework to identify world-class academic standards, measure student progress, and provide needed support for

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[113] Julie A. Miller, *Clinton, in Attacking Bush's Policies, Pledges "Real Education Reform" Plan,* EDUC. WK., May 27, 1992, at 11.
[114] David J. Hoff, *Romer Says Campaign Rhetoric has Sidetracked Reforms*, EDUC. DAILY, Oct. 27, 1992, at 4.
[115] BILL CLINTON & AL GORE, PUTTING PEOPLE FIRST: HOW WE CAN ALL CHANGE AMERICA 84-85 (1992).
[116] VINOVSKIS, *supra* note 17, at 67.
[117] Title I is the federal program that sends dollars to schools with disadvantaged students for reading and math support.
[118] VINOVSKIS, *supra* note 17, at 76.

students to meet academic standards.[119] In a 1994 State of the Union Address, President Clinton declared, "Goals 2000 links world-class standards to grassroots reforms and I hope Congress will pass it without delay."[120]

Goals 2000: The Educate America Act was enacted in the spring of 1994.[121] Congressional approval gave credence to the original six goals proposed by President Bush and the National Governor's Association. The Clinton Administration supported the original six goals and, with Congressional support, added two additional goals. The two new goals addressed skill development for teachers and a call for increased parental involvement designed to promote student social, emotional and academic growth.[122]

Goals 2000 and the Charlottesville Legacy

In 1994, the Republican Party gained control of both the U.S. House of Representatives and Senate. Clinton's efforts to bolster Goals 2000 were hampered by a Congressional focus on addressing the national deficit and an accompanying reticence to spend more money.[123] As a result, Goals 2000 funding was just $500 million per year, well below the Clinton White House's proposed $870 million.[124] The new legislation was intended to be a vehicle for

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[119] The Goals 2000: Educate America Act, Pub. L. No. 103-227, 108 Stat. 125 (1994). *Specifically, see* Section 2, purpose, *available at* http://www2.ed.gov/legislation/GOALS2000/TheAct/sec2.html (last visited Mar. 22, 2017).
[120] WILLIAM CLINTON, STATE OF THE UNION ADDRESS, Jan. 25, 1994, *available at* http://www.washingtonpost.com/wp-srv/politics/special/states/docs/sou94.htm (last visited Mar. 22, 2017).
[121] Mark Pitsch, *Clinton's "Goals 2000" Package Wins House Backing*, EDUC. WK., Oct. 20, 1993, at 13.
[122] DAVID CARLETON, STUDENT'S GUIDE TO LANDMARK CONGRESSIONAL LAWS, 208 (2002).
[123] VINOVSKIS, *supra* note 17, at 113.
[124] *Id*.

creating systemic educational reform by providing a framework for change at the state and local levels.[125] For example, Goals 2000 created the National Education Standards and Improvement Council (NESIC) within the U.S. Department of Education. The NESIC's major focus was to approve performance standards proposed by state education agencies. Performance standards provided teachers with evidence indicating whether a student had mastered the curricular objective. Federal dollars were allocated to the states via competitive grants.[126] Although individual states were awarded Goals 2000 funding to institute performance standards, the resulting state standards did not require federal review after funding had been awarded. Thus, any resulting NESIC review was the product of voluntary state initiatives.[127] Because it was voluntary, states were not held accountable for creating performance standards.

In response to Republican victories in the 1994 mid-term elections, President Clinton quietly abandoned Goals 2000 and began advocating for federal programs such as Title I that directed funds to help children living in poverty with reading and math.[128] Reviews of Goals 2000's effectiveness were mixed. By 1997, forty-two states had implemented content standards, but only eight states had completed performance standards.[129] However, many education experts believed the legislation had resulted in reform at both the state and local

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[125] *Id*. at 68.
[126] Erik Robelen, *States Sluggish on Execution of 1994 ESEA*, EDUC. WK., Nov. 28, 2001, at 21, 26-27.
[127] *Id*.
[128] VINOVSKIS, *supra* note 17, at 130.
[129] U.S. Dep't of Educ., High Standards for All Students: A Report from the National Assessment of Title I on Progress and Challenges since the 1994 Reauthorization, 20-21 (2001).

levels.[130] For example, a study by the U.S. Department of Education found states often directed Goals 2000 funds to individual school districts for use in creating curricular content and instituting performance standards.[131]

In his 1997 State of the Union Address, President Clinton called for voluntary nationwide testing of all fourth and eighth grade students in reading and math.[132] While partisanship prevented the Clinton Administration from receiving the necessary support to create national assessments, the Clinton Administration did persuade Republicans to create draft assessments to see how future tests might look.[133] It was generally agreed Goals 2000 provided a roadmap for the future restructuring of American K-12 public education.[134]

American K-12 public schools' collective failure to meet any of the lofty goals promulgated in Charlottesville by the year 2000 went largely unnoticed by both the media and the public.[135] Many lawmakers who had promised the United States would meet those goals were either no longer in office or had moved on to other initiatives.[136] During his tenure as the Governor of Arkansas, and later as the President of the United States, Clinton moved the national education conversation toward increased accountability.[137] Governor Clinton guided the national discourse toward performance goals and argued increased student academic

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[130] Diane Ravitch, *Brookings Papers on Education Policy, 2000*, 6 (2000), *available at* https://muse.jhu.edu/article/26439/pdf (last visited Feb. 11, 2017).
[131] VINOVSKIS, *supra* note 17, at 116.
[132] WILLIAM CLINTON, STATE OF THE UNION ADDRESS, Feb. 4, 1997, *available at* http://www.washingtonpost.com/wp-srv/politics/special/states/docs/sou97.htm (last visited Mar. 22, 2017).
[133] WAYNE RIDDLE, NATIONAL TESTS: ADMINISTRATION INITIATIVE, Congressional Research Service, June 16, 1998, at 1.
[134] VINOVSKIS, *supra* note 17, at 119.
[135] *Id*. at 218.
[136] *Id*.
[137] *Id*. at 15.

achievement would lead to a stronger workforce and economy.[138] President Clinton moved the country toward content area student learning standards and an accompanying framework designed to support states in meeting Goals 2000's expectations.[139]

The 2000 Presidential Election

In the 2000 election Vice President Al Gore and George W. Bush, the Republican Texas Governor, ran for President. George W. Bush believed the federal government should help schools succeed by giving states the flexibility to design and institute programs that would have a positive effect on student achievement.[140] Candidate Bush advocated for strategies designed to educate "at-risk" children, questioned the success of federal programs like Title I and touted his education successes during his tenure as the Governor of Texas.[141] Vice President Gore defended the Clinton Administration's educational policies and scrutinized Bush's claims of success in Texas.[142] Upon being elected, President Bush declared K-12 public education would be a major priority for his leadership team.[143]

Before the election, both political parties were willing to collaborate to reauthorize the Elementary and Secondary Education Act. After the 2000 election, the Senate was evenly split between Democrats and Republicans until New Hampshire Senator Judd Gregg denounced his Republican affiliation and declared himself an Independent. Senator Gregg's declaration shifted control of Congressional committees to the Democrats. Notwithstanding this shift, the

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[138] Weinraub, *supra* note 109.
[139] VINOVSKIS, *supra* note 17, at 130.
[140] *Id*. at 155.
[141] *Id*. at 140.
[142] *Id*.
[143] *Id*. at 160.

White House believed Senate support for Bush's educational agenda was still achievable.[144] Senator Gregg's political shift resulted in Senator Ted Kennedy, a Democrat, serving as chairperson of the Senate Health, Education, Labor and Pensions Committee. Senator Kennedy became a key player in formulating what would become the *No Child Left Behind Act of 2001*.[145]

Following the 2000 election, the House of Representatives' Education and Workforce Committee also experienced a change in leadership. Three candidates vied for the post, but John Boehner, an Ohio Republican, was elected by his peers.[146] Boehner was known for his skills as a negotiator and had close ties with House Speaker Newt Gingrich. As a result, the Bush White House viewed Boehner as the person who could best aid President Bush in passing new education legislation.[147]

No Child Left Behind

After the election, the Bush Administration began working behind the scenes with the Heritage Foundation, an influential Republican Party think tank, on setting an education reform agenda. The Heritage Foundation recommended the White House approach reform in three steps. First, by developing a stronger federal role in the reform effort. Second, by extending discretion to the states on federal spending with accompanying accountability measures. Third,

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[144] Erik W. Robelen & Ben Wear, *Senate Shifts as Spending Fight Looms, EDUC. WK.,* May 30, 2001 at 1, 24.
[145] *Id*.
[146] Erik W. Robelen, *Bush Has Loyal Lieutenant in New Ed. Panel Chairman*, EDUC. WK., Jan. 31, 2001, at 21.
[147] Michael Cardman, *Boehner Leapfrogs Petri to Chair House Ed Panel*, EDUC. DAILY, Jan. 8, 2001, at 1-2.

by using the National Assessment of Educational Progress (NAEP) to compare individual state progress and verify reform was occurring.[148] Liberal-minded foundations, even though they were not working with the Bush Administration, also supported increased scrutiny and accountability as long as these efforts were accompanied by increased federal Title I funding.[149]

Three days after his inauguration, President Bush released his education agenda entitled *No Child Left Behind*. The agenda detailed national accountability standards that included annual testing of all students in grades three through eight and outlined consequences for schools that failed to meet the standards for improved student academic growth.[150] Connecticut Senator Joseph Lieberman summed up *No Child Left Behind* stating:

> President Bush has articulated a set of priorities that overlap significantly with our new Democratic proposal. We feel strongly that the circumstances have never been better for breaking the ongoing partisan stalemate and reaching bipartisan agreement on legislation that will leverage real improvement in our schools.[151]

The *No Child Left Behind Act* (NCLB) passed in December of 2001 and President Bush signed NCLB into law the following January.[152] Support for the legislation was overwhelming. In the

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[148] Nina Shokraii Rees, *Improving Education for Every American Child*, Priorities for the President, 53-54. (Stuart M. Butler and Kim r. Holmes, eds, 2001).
[149] VINOVSKIS, *supra* note 17, at 162.
[150] No Child Left Behind, Executive Summary, at 2, *available at* https://www2.ed.gov/nclb/overview/intro/execsumm.pdf (last visited Oct. 2, 2016).
[151] Erik W. Robelen, *Bush, Democrats Compromise as ESEA Bills Take Shape*, EDUC. WK., May 16, 2001 at 27.
[152] Joetta L. Sack, *ESEA Negotiators Near Accords, But Snags Remain*, EDUC. WK., Dec. 5, 2001at 28, 31.

U.S. House of Representatives, the NCLB passed 381 to 41.[153] In the U.S. Senate, the NCLB passed 87-10.[154] President Bush welcomed NCLB's bipartisan support, pointing out:

> These historic reforms will improve our public schools by creating an environment where every child can learn through real accountability, unprecedented flexibility for states and school districts, greater local control, more options for parents and more funding for what works.[155]

The NCLB's expectation of increased accountability for public K-12 education was now a federal statutory mandate.

NCLB Implementation

Goals 2000 had directed states to set rigorous content and achievement standards in reading and language arts, math and science, but never held them accountable for not meeting those benchmarks.[156] The NCLB required states to create content standards and set targets for student achievement in reading, math and one additional academic indicator. The additional indicator was left up to each state's discretion but all high schools were mandated to use graduation rate.[157] The state of Illinois used science in grades four and seven and writing in

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[153] *Final Vote Results for Roll Call 497*, H.R. 1, 107'th Cong. (2001) United States House of Representatives, *available at* http://clerk.house.gov/evs/2001/roll497.xml (last visited Sept. 2, 2016).
[154] *United States Senate Roll Call Votes*, H.R. 1, 107th Cong. (2001), *available at* http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=107&session=1&vote=00371 (last visited Sept. 2, 2016).
[155] Diana Jean Schemo, *Senate Approves a Bill to Expand the Federal Role in Public Education*, N.Y. TIMES, Dec. 19.
[156] Erik W. Robelen, *Agency Looks for Balance Policing ESEA,* EDUC. WK., Mar. 13, 2002 at 1, 21.
[157] VINOVSKIS, *supra* note 17, at 173.

grades five, six and eight as its additional indicator.[158] The NCLB directed states to establish content standards no later than the 2005-06 school year. Under the NCLB, all K-12 public schools were required to set and achieve their state's academic achievement standards. However, only schools receiving Title I funds were susceptible to sanctions.[159]

Each state created academic standards and set their own proficiency targets. All states used the same starting point based upon 2001-02 student achievement scores in reading and math. While all schools were expected to reach 100% proficiency in reading and math by 2013-14, each state was allowed to determine what Adequate Yearly Progress (AYP) would be for their K-12 public schools.[160] AYP is the measure by which schools were held accountable for student academic performance.[161] As had been the practice with Goals 2000, the federal government did not judge each state's established academic standards or performance indicators. Predictably, there were wide variations in the rigor of the resulting state academic standards.[162]

The NCLB expected each school district to meet proficiency targets both on a school-wide basis and also for each defined student subgroup population. These subgroup populations included: racial groups, limited English proficient students, students with Individualized Education Plans (IEPs) and students receiving free or reduced-price lunches.[163] If any subgroup within a Title I school failed to meet proficiency standards, the entire school would

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[158] Ill. St. Bd. of Educ., *Accountability Workbook,* Attachment C, State Assessments, *available at* https://www2.ed.gov/admins/lead/account/stateplans03/ilcsa.pdf (last visited Jan. 16, 2017).
[159] VINOVSKIS, *supra* note 17, at 174.
[160] *Id*. at 173.
[161] Ill. St. Bd. of Educ., *No Child Left Behind, Adequate Yearly Progress*, *available at* http://www.isbe.state.il.us/%5C%5C%5C%5C/ayp/default.htm (last visited Sept. 1, 2016).
[162] Lynn Olson, *A "Proficient" Score Depends on Geography*, EDUC WK., Feb. 20, 2002 at 14-15.
[163] VINOVSKIS, *supra* note 17, at 174-175.

be identified as being in need of improvement and sanctions would be imposed. The NCLB also required at least 95 percent of each subgroup, as well as the school as a whole, to participate in the assessment process or the school could risk designation as being in need of improvement.[164] Congress believed this provision would ensure proper attention was given to closing the achievement gap within the identified student subgroups.[165]

Any school receiving Title I funds that failed to make Adequate Yearly Progress (AYP) for two consecutive years was designated as being in need of "school improvement."[166] If a school was designated as being in need of improvement, the school district was required to allow any student in that building the option of transferring to another school within the same district that was meeting the AYP expectations. If a Title I school failed to satisfy the AYP expectations for three consecutive years, the school district was also required to offer students who attended the "failing" school Supplemental Educational Services (SES).[167] SES referred collectively to academic help offered outside the regular school day or week or during the summer, including tutoring or other remedial services in reading and math.[168] The cost of implementing these mandates was borne by the individual school districts and the needed funds were set aside from the school district's Title funds to pay for transportation and Supplemental Educational Services.[169] If schools failed to make AYP for four consecutive years, more

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[164] *Id*. at 175.
[165] *Id*.
[166] *Id*.
[167] *Id*.
[168] U.S. Dept. of Educ., *Laws & Guidance, Supplemental Educational Services*, http://www2.ed.gov/nclb/choice/help/ses/description.html (last visited Sept. 1, 2016).
[169] Erik W. Robelen, *States Report Few Schools as Dangerous,* EDUC. WK., Sept. 24, 2003, at 32-33.

stringent penalties were imposed. Those penalties could include a total restructuring of the school's teaching staff and curriculum.[170]

2004 Presidential Election

During the 2004 Presidential election, most of the Democratic primary contenders believed the NCLB was too drastic and needed to be repealed. Howard Dean, a Vermont Democratic presidential contender, promised to "dismantle" the NCLB because trend data suggested that every school in the country would be deemed "failing" by 2013.[171] The eventual Democratic nominee, John Kerry, advocated for changes to the NCLB during the primary campaign. However, upon receiving the Democratic Party's nomination, Kerry began touting some of the NCLB's successes.[172] While the Bush Administration also touted the NCLB's successes, his campaign yielded to political pressure and indicated a willingness for flexibility and a relaxation of the rules.[173] President Bush won reelection and NCLB continued throughout his second term.

Bush's 2004 re-election brought major changes to his cabinet, as nine of fifteen cabinet members were replaced.[174] One of those changes was the replacement of the Secretary of Education, Rod Paige, who had served from 2001-2005. Although a strong NCLB proponent, Secretary Paige was viewed by the Bush White House as a political liability. His

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[170] Erik W. Robelen, *An ESEA Primer*, EDUC. WK., Jan. 9, 2002, at 28-29.
[171] Erik W. Robelen, *On Trail, It's Dean vs. No Child Left Behind Act*, EDUC. WK., Nov. 12, 2003, at 1, 22-23.
[172] Erik W. Robelen & Michelle R. Davis, *Fine Line on Schools for Bush, Kerry*, EDUC. WK., Oct. 13, 2004, at 1, 30-32.
[173] Michelle R. Davis, *Paige Stresses Flexibility of Education Law*, EDUC. WK., Mar. 17, 2004, at 40, 49.
[174] VINOVSKIS, *supra* note 17, at 187.

characterization of the NEA as a terrorist organization during the presidential campaign and the perception that he was not able to effectively work with Congress led to his forced resignation.[175] Immediately after the election, Bush nominated Margaret Spellings to lead the Department of Education. Previously, Spellings had served as one of the Bush Administration's domestic policy advisors.[176] Spellings' nomination was well received by both parties. Democratic Senator Ted Kennedy (MA) said, "Margaret Spellings is a capable, principled leader who has the ear of the president and has earned strong bipartisan respect in Congress."[177] Spellings received overwhelming Congressional approval to lead the Department of Education.[178]

NCLB's Impact

Secretary Spellings' nomination signaled a willingness on the part of the Bush Administration to become more flexible with the NCLB as long as the Act's major ideas were adhered to and states were held to the expectation that all students would reach proficiency by 2013-14.[179] However, shortly after the 2004 election, states and interest groups pushed back against the NCLB. In 2005, Utah passed legislation allowing school districts to ignore the NCLB's requirements unless the cost of complying with the Act's requirements was funded by

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[175] Michelle R. Davis, *Spellings Would Bring Acumen, Pragmatism to Secretary's Position*, EDUC. WK., Nov. 24, 2004, at 30.
[176] VINOVSKIS, *supra* note 17, at 188.
[177] Erik W. Robelen, *President Picks a Trusted Aide for Secretary*, EDUC. WK., Nov. 24, 2004, at 1, 31.
[178] Michelle R. Davis, *Department's PR Activities Scrutinized,* EDUC. WK., Jan. 19, 2005 at 2, 24-25.
[179] David J. Hoff, *States to Get New Options on NCLB Law*, EDUC. WK., Apr. 13, 2005, at 1, 38.

the federal government.[180] The American Federation of Teachers[181] (AFT), a national teachers union, launched a campaign to improve the law. In May of 2005, the AFT advanced the slogan, "NCLB – Let's Get It Right."[182] The AFT's campaign called upon the Bush Administration to improve four major areas of the Act: changing how AYP was measured, improving teacher quality, making physical improvements to schools and increasing federal funding.[183]

In contrast, the National Education Association[184] (NEA) challenged the NCLB's legality in federal court. In *School District of the City of Pontiac v. Secretary of the United States Department of Education,*[185] the NEA claimed the NCLB was an unfunded federal mandate.[186] The state of Connecticut also filed suit in *State of Connecticut v. Duncan,*[187] similarly arguing the annual testing of all students in grades three through eight constituted an unfunded federal mandate.[188] Texas directly challenged the NCLB by designating hundreds of Texas public school districts as having met AYP expectations even though the schools had not

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[180] Michelle R. Davis, *Utah is Unlikely Fly in Bush's School Ointment*, EDUC. WK., Feb. 9, 2005, at 1, 21.
[181] AMERICAN FEDERATION OF TEACHERS, http://www.aft.org (last visited Mar. 22, 2017).
[182] Am. Federation of Teachers, *NCLB—Let's Get it Right,* AM. FEDERATION OF TEACHERS NOTEBOOK, Summer 2005, *available at* http://www.aft.org/periodical/american-educator/summer-2005/notebook (last visited Sept. 4, 2016).
[183] Linda Jacobson, *AFT Follows Separate Path in Changing Law*, EDUC. WK., July 13, 2005, at 3, 17.
[184] NAT'L EDUC. ASSOC., http://www.nea.org (last visited Mar. 22, 2017).
[185] Sch. Dist. of the City of Pontiac v. Sec. of the U.S. Dept. of Educ., 512 F.3d 252 (6th Cir. 2008).
[186] Mark Walsh, *Court Ruling in NCLB Suit Fuels Fight Over Costs*. EDUC. WK., Jan. 16, 2008, at 1, 19.
[187] Connecticut v. Duncan, 612 F.3d 107 (2d Cir. 2010).
[188] Jeff Archer, *Connecticut Files Court Challenge to NCLB*, EDUC. WK., Aug. 31, 2005, at 22, 27.

met the federal government's AYP definition.[189] In 2005, the National Conference of State Legislatures published a report challenging the constitutionality of NCLB. The report also made specific recommendations for improving the NCLB, such as granting states more flexibility in setting academic growth targets, allowing states to create their own interventions for schools that failed to make AYP and providing increased federal funding for NCLB implementation.[190]

NAEP Yields Mixed Results for NCLB

The Bush Administration used the National Assessment of Educational Progress (NAEP) as a measure to determine if the NCLB was improving student academic achievement. In 2005, the Department of Education released the results of the Trend NAEP Assessment (Trend). The Trend was considered to be a valid indicator of student academic achievement and tested students in grades four, seven and eleven. The Trend results showed student reading and math achievement scores were significantly higher for grades four and seven than had been the case in previous decades while the scores for high school students remained flat.[191] NAEP scores showed while math and reading scores reflected small gains for fourth grade students since the NCLB's enactment, the data showed growth was slowing.[192] Notwithstanding this data, Secretary of Education Spellings praised the 2005 NAEP results, stating:

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[189] David J. Hoff, *Texas Stands Behind Own Testing Rule*, EDUC. WK., Mar. 9, 2005, at 1, 23.
[190] David J. Hoff, *NCLB Law Needs Work, Legislators Assert*, EDUC. WK., Mar. 2, 2005, at 1, 20.
[191] Kathleen Kennedy Manzo, & Sean Cavanagh, *South Posts Big Gains on Long-Term NAEP in Reading and Math,* EDUC. WK., July 27, 2005, at 1, 16.
[192] Lynn Olson, *NAEP Gains Are Elusive in Key Areas*, EDUC. WK., Oct. 26, 2005, at 1, 22-23.

> These results, like the long-term July data, confirm that we are on the right track with No Child Left Behind, particularly with younger students who have benefited from the core principles of annual assessment and disaggregation of data.[193]

While the Bush Administration was optimistic, others questioned the findings. Ross Wiener, policy director of the Education Trust, stated, "The absence of really bad news isn't the same as good news, and if you're concerned about education and closing achievement gaps, there's simply not enough good news in these national results."[194]

The 2007 NAEP reading scores for fourth grade students showed only marginal gains when measured against the 2005 NAEP scores. Overall, eighth grade students showed minimal growth.[195] In math, both fourth and eighth grade students showed small gains over the 2005 results.[196] Even though scores showed only modest gains, Secretary Spellings continued to champion the 2007 NAEP scores, stating:

> At a time when our student population is becoming more diverse, educators and students are rising to the challenge and excelling in the classroom. I'm pleased with the progress but not satisfied. As we inch closer to our goal of having every child on grade level in reading and math by 2014, we need to continue to pick

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[193] Press Release, U.S. Dept. of Ed., Spellings Encouraged By New National and State Report Cards on Math and Reading (Oct. 19, 2005), *available at* https://www2.ed.gov/news/pressreleases/2005/10/10192005.html (last visited Mar. 22, 2017).
[194] Olson, *supra* note 192, at 22-23.
[195] Jihyun Lee, Wendy S. Grigg, and Patricia L. Donahue, *The Nation's Report Card: Reading 2007: National Assessment of Educational Progress at Grades 4 and 8,* Nat'l Center for Educ. Statistics, Inst. of Educ. Sciences, U.S. Dept. of Educ., 2, *available at https://nces.ed.gov/nationsreportcard/pdf/main2007/2007496.pdf (last visited Mar. 22, 2017).*
[196] Jihyun Lee, Wendy S. Grigg, & Gloria S. Dion, *The Nation's Report Card: Mathematics 2007,* National Center for Education Statistics, Institute of Education Sciences, U.S. Dept. of Educ., 2, *available at https://nces.ed.gov/nationsreportcard/pdf/main2007/2007494.pdf (last visited Mar. 22, 2017).*

> up the pace. I am confident that our nation's schools and teachers can get the job done.[197]

Between 2005 and 2007 the number of students meeting the NCLB's "proficient" definition remained relatively flat. Less than one-third of all fourth and seventh grade students were considered to be proficient.[198]

In the 1980s, *A Nation at Risk* had sounded the alarm for educational reform. However despite many changes made to public education, by 2007 legislators and educators had not significantly improved student academic performance. *A Nation at Risk* had called upon both legislators and educators to provide the leadership and fiscal support necessary to raise student academic achievement. While many legislators were concerned by the NCLB's stringent sanctions, others argued the Act did not provide the funding needed for effective implementation. In 2007 Senator Hillary Clinton, then a candidate for the Democratic Presidential nomination, stated, "We do need accountability, but not the kind of accountability the NCLB law has imposed on people. Not only has it been funded at less than has been promised, it's been administered with a heavy and arbitrary hand."[199] NCLB placed the onus of ensuring all students meet academic performance targets on states and individual school districts. Those increased expectations would also lead to change in the state of Illinois for all public school educators. The following section outlines a brief history of the push for greater educational accountability in Illinois, largely in response to Federal efforts.

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[197] Press Release, U.S. Dept. of Ed., *Secretary Spellings Highlights Gains Made on the Nation's Report Card Under No Child Left Behind* (Sept. 25, 2007), *available at* https://www.ed.gov/news/pressreleases/2007/09/09252007.html (last visited Mar. 22, 2017).
[198] Lee, *supra* note 195 at 2.
[199] Alyson Klein, *Hillary Clinton Critical of NCLB Before State Teachers' Union*, EDUC. WK., Apr. 27, 2007.

Accountability in Illinois

As noted above, increased educational scrutiny and entanglements between the federal government and states have been taking place for over 70 years. The accountability movement in K-12 public education impacted Illinois, as it did all states, and effectively tied school funding to academic performance. Although the accountability movement affected all states, this study takes an in depth look at how it has specifically impacted the State of Illinois. Increased scrutiny from the federal government has altered the way in which teachers in Illinois are now evaluated. Since 2011, Illinois teacher performance evaluations have been tied to student academic performance. In doing so, the legislature sought to connect student performance to teacher hiring and dismissal.[200] This change significantly altered tenure protections for teachers in the state. However, as briefly discussed in Chapter 1, public school teachers have not always been afforded tenure in Illinois.

The concept of tenure was born in the Age of Enlightenment in France where individuals were invited to participate in academic contests without concern of offending the church or public with their research or skepticism.[201] Tenure for educators first came to the United States in the mid to late 1800s to protect academics at the post-secondary level from being dismissed at the whims of wealthy donors.[202] Tenure would eventually be afforded to K-12 public educators in Illinois, but those protections would be lessened by legislative changes in 2010, culminating with the passage of Illinois's *Performance Evaluation Reform Act*

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[200] Ill. Assoc. of Sch. Bds., *supra* note 38.
[201] Norman Dorsen, *The Need for a New Enlightenment: Lessons in Liberty from the Eighteenth Century,* CASE W. RES. L. REV. 38, 479 (1988).
[202] Lawrence White, *Academic Tenure: Its Historical and Legal Meanings in the United States and Its Relationship to the Compensation of Medical School Faculty Members,* ST. LOUIS U. L.J., 44, 51 (2000).

(PERA).[203] However, before PERA was passed, Illinois teachers struggled to earn job protections. Although the focus of this study is ultimately on the accountability movement, it is important to first understand the history of K-12 public educator tenure in Illinois.

Public School Employee Job Protections for Chicago Educators

In 1885, the National Education Association (NEA) convened a committee to examine how public school teachers could acquire civil service protections from patronage and the spoils system that had been rampant in the federal government.[204] Chicago, like many of the nation's largest cities, was undergoing a struggle between labor and pro-business groups. Labor wanted elected boards of education while business wanted appointed school board members.[205] In the early 1900s, a struggle raged in the city of Chicago between the Chicago Teachers Federation and the pro-business Board of Education. Until this time, the Mayor of Chicago had appointed members to the Board of Education. William Thompson, the Mayor of

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[203] Illinois Performance Evaluation Reform Act of 2010, P.A. 096-0861 at § 24A-3 (2010).
[204] J. McKeen Cattell, W. Carson Ryan, Jr. & Raymond Walters, editors, *Teachers' Tenure*, SCH. AND SOCIETY, Vol XIV p. 129 (July – Dec.1921). During the 1800s, federal government appointments were often based upon political affiliation. New York Senator William L. Marcy's famous line, "to the victor belong the spoils of the enemy," reflected this practice as governmental appointments were awarded to those who helped individuals become elected. In 1881, a deranged individual who believed he had the right to a political appointment assassinated President James A. Garfield. In the aftermath of President Garfield's assassination, President Chester Arthur signed the *Pendleton Civil Service Act of 1883* into law. This Act was intended to stop the "spoils system" that had become infamous during the Jacksonian Era of American politics when governmental appointments were bestowed upon patrons of the winning political candidate. The *Pendleton Civil Service Act* created a public sector system resulting in individuals being hired and retained based upon merit. The Act also protected public sector employees from arbitrary dismissal and made those positions more professional in nature. Although these protections were not afforded to public school teachers, the Act created the first system where public employees were offered job protections.
[205] KATZNELSON, *supra* note 8, at 113.

Chicago, was known for his pro-business, anti-labor rhetoric.[206] In 1915, the Board of Education implemented the "Loeb Rule."[207] The Loeb Rule sought to dismantle teacher unions in Chicago. The Loeb Rule stated Chicago teachers could not belong to or have an affiliation with an association that collected membership dues.[208] Although the courts ultimately overturned the rule, it was clear the Chicago Board of Education's goal was to separate teachers from organized labor.[209]

With the help of labor reformer Robert Buck, Chicago teachers attempted to gain tenure by introducing a bill in Springfield. This bill would have granted Chicago teachers tenure protection after one year of teaching and provided for the election of school board members within the city of Chicago. Though the bill was not successful, it opened the door to a compromise bill offered by a Chicago school board member, Ralph Otis. Otis' proposal retained an appointed school board but offered teachers tenure protection after three years.[210] Teachers preferred Buck's proposed bill but, fearing the bill would not pass, they backed the Otis Bill because it would offer at least some tenure protections for Chicago public school teachers.[211] The Otis Bill passed and though it provided teachers with tenure protection, the law only affected Chicago teachers.[212] As a result, teachers in Chicago were protected from capricious dismissals once they started their fourth consecutive year of employment. It would be twenty-four years later, in 1941, until tenure protections would finally be provided to the rest of Illinois's public school teachers. The *Act to Establish and Maintain a System of Free*

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[206] ROUSMANIERE, *supra* note 9, at 160.
[207] Law, *supra* note 10.
[208] ROUSMANIERE, *supra* note 9, at 160.
[209] KATZNELSON, *supra* note 8, at 113.
[210] *Id*. at 115.
[211] *Id*. at 117.
[212] *Id*.

Schools was passed to provide tenure rights for teachers outside of Chicago.[213] This legislation provided tenure protection for full time teachers who had taught for two consecutive years within the same school district.[214] Proponents argued the Act would eliminate arbitrary dismissals, protect teacher liberties and improve classroom instruction.[215]

Minor Changes to Tenure Status for Illinois Teachers between 1961 and 1985

Between 1961 and 1985, the legislature made only minor changes to the Illinois School Code's teacher tenure provisions. In 1961, the School Code was amended to provide contractual continued service (i.e., tenure) would cease for any teacher after he or she reached age 65. After reaching age 65, teachers were placed on a year-to-year employment status.[216] In 1963, full-time teachers who were employed by a special education cooperative[217] comprised of two or more participating school districts were granted tenure status on the same basis as regular education teachers. As a result, once a special education teacher was granted tenure they were accorded tenure status in each of the special education cooperative's member school districts. If the special education cooperative was dissolved, the teacher had the right to be placed in a vacant teaching position within one of the cooperative's member school districts, provided the teacher was certified for the vacant position.[218]

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[213] Kersten, *supra* note 14 at 237.
[214] *Id.*
[215] *Id.*
[216] Illinois School Code of 1961, 105 ILL. COMP. STAT. 5/24-11 (1961).
[217] A special education cooperative is a group of school districts that coordinate efforts for comprehensive special education services for students that need intensive services.
[218] Illinois School Code of 1961, 105 ILL. COMP. STAT. 5/24-11 (1963).

Prior to 1973, Illinois public school teachers who had not yet been granted tenure (i.e., probationary teachers) were provided a two-year time period to acquire contractual continued service status. Boards of education had the authority to extend the two-year probationary period by one year. However, teachers did not have a right to be provided with reasons for the board of education's extension decision. In 1973, the School Code was amended to require boards of education to both state the reason for the extension of the probationary period and outline any corrective action the teacher needed to complete in order to attain tenure.[219] In 1979, a change to the School Code raised the age teachers would continue to qualify for contractual continued service from 65 years of age to 70. Teachers who continued to be employed after their seventieth birthday were employed on a year-to-year basis.[220]

A Nation at Risk Spurs Illinois Reform

As outlined above, in 1983 the National Commission on Excellence in Education released its seminal report, A Nation at Risk. In response, the state of Illinois also created its own commission. The Illinois Commission on the Improvement of Elementary and Secondary Education was created in 1983 and had twenty members. The membership included twelve legislators and eight lay members.[221] The Illinois Senate Education Committee Chairman, Arthur Berman, chaired the commission. The Commission's report, entitled *Excellence in the Making*, focused on three areas: educational quality, public accountability and teacher

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[219] Illinois School Code of 1961, 105 ILL. COMP. STAT. 5/24-11 (1973).
[220] Illinois School Code of 1961, 105 ILL. COMP. STAT. 5/24-11 (1979).
[221] Ill. St. Bd. of Educ., *supra* note 16.

quality.[222] The Commission was credited with setting the stage for the *Illinois Education Reform Act of 1985*.[223]

The *Illinois Education Reform Act of 1985* expanded student testing, led to the creation of school district report cards with student assessment scores and required teachers to pass a written exam in order to become certified.[224] The Act also amended and added Article 24A to the Illinois School Code. Article 24A provided a framework for teacher evaluation, outlined the remediation of tenured teachers whose classroom teaching performance was rated as "unsatisfactory" and provided parameters for the dismissal of teachers who failed to remediate "unsatisfactory" classroom teaching performance.[225] Senator Arthur Berman, chief sponsor of the bill and also the chairman of the Illinois Commission on the Improvement of Elementary and Secondary Education, said the legislation had placed "Illinois on a meaningful course of educational reform."[226]

Article 24A of the Illinois School Code

Article 24A required all public school districts to develop and submit a teacher evaluation plan to the Illinois State Board of Education. Article 24A also required school

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[222] Ted Sanders, *Illinois Educational Reform: A Thoughtful Response to Crisis,* ILL. PERIODICALS ONLINE, May 1986 at 17, available at http://www.lib.niu.edu/1986/ii860517.html (last visited Dec. 22, 2015).
[223] Education Reform Package Act, P.A. 84-126 (1985).
[224] Jean Latz Griffin & John Schrag, *Education Reform Bill Passes Last Big Test*, CHI. TRIB., July 3, 1985, *available at* http://articles.chicagotribune.com/1985-07-03/news/8502130067_1_senate-president-philip-rock-educational-reform-illinois-house (last visited Feb. 3, 2016).
[225] Ill. St. Bd. of Educ., *supra* note 221.
[226] Griffin, *supra* note 224.

officials to formulate the evaluation plan "in cooperation with … teachers."[227] Each school district's evaluation plan had to include the performance standards teachers were expected to meet.[228] Performance standards were to identify specific skills teachers needed to incorporate into their classroom teaching. All tenured teachers had to be evaluated at least once every two years and the performance evaluation had to take into account the teacher's attendance, planning, instructional methods, classroom management and knowledge of curricular content.[229] The evaluator was to note the teacher's strengths and weaknesses and the teacher's classroom teaching performance had to be given an overall rating of excellent, satisfactory or unsatisfactory. A copy of the performance evaluation had to be given to the teacher and also placed in the teacher's personnel file.[230]

Article 24A specifically addressed the procedures to be followed for a teacher whose overall classroom teaching performance was rated as unsatisfactory. These remedial procedures provided that within thirty days after the evaluation was completed, school officials were to develop and implement a remediation plan designed to correct the identified deficiencies in the teacher's classroom teaching performance.[231] Article 24A also outlined the assistance school officials were expected to provide to teachers who received unsatisfactory performance ratings. This assistance included the appointment of a consulting teacher who would support the remediating teacher in correcting his or her identified teaching

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[227] 105 ILL. COMP. STAT. 5/24A-4 (1985).
[228] 105 ILL. COMP. STAT. 5/24A-5 (1985).
[229] *Id*.
[230] *Id.*
[231] 105 ILL. COMP. STAT. 5/24A-5(f) (1985).

deficiencies.[232] During their remediation year, the remediating teacher was to be evaluated quarterly.[233] During the remediation process the consulting teacher was to provide the teacher advice on how to remediate the identified classroom teaching deficiencies.[234] Even though the consulting teacher offered advice, the remediating teacher's final performance evaluation rating was to be determined by the administrator responsible for implementing the remediation plan.[235] If the remediating teacher successfully completed the remediation process with a rating of either satisfactory or excellent, he or she would be placed back on his or her normal performance evaluation schedule.[236] However, if the teacher's classroom teaching performance was rated as unsatisfactory at the conclusion of the remediation process, the teacher was to be given a notice of dismissal in accordance with the School Code.[237] With the addition of Article 24A to the School Code, legislators provided direction for educators on the remediation of teachers who received unsatisfactory performance evaluations.

Teacher Dismissal Cases Processed Pursuant to Article 24A of the School Code between 1985 and 2010

Following Article 24A's 1985 adoption, several teacher dismissal cases arising from unsatisfactory classroom teaching performance were litigated in Illinois courts. These cases are presented below in chronological order.

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[232] The consulting teacher's classroom teaching performance had to have been rated as excellent on their last performance evaluation, *located at* 105 ILL. COMP. STAT. 5/24A-5(g) (1985).
[233] 105 ILL. COMP. STAT. 5/24A-5(h) (1985).
[234] 105 ILL. COMP. STAT. 5/24A-5(j) (1985).
[235] 105 ILL. COMP. STAT. 5/24A-5(h) (1985).
[236] 105 ILL. COMP. STAT. 5/24A-5(i) (1985).
[237] *Id.*

Powell v. Board of Education[238]

In spring 1987 Kenneth Powell was a twenty-two-year veteran tenured teacher in Peoria School District 150.[239] That spring the principal evaluated Powell's classroom teaching performance and found it to be "unsatisfactory – needs improvement."[240] The principal formulated and implemented a remediation plan for Powell during the 1987-88 school year. The remediation plan addressed the following four deficiencies in Powell's teaching performance: student discipline, classroom management, a lack of enthusiasm, and poor classroom organization.[241] In accordance with the school code, the principal informed Powell if he did not successfully complete the remediation plan with at least a "satisfactory" rating, he would be dismissed from his employment as a teacher in the school district.[242]

Powell did not successfully complete the remediation plan and the school board terminated his employment.[243] After receiving notice of his dismissal, Powell exercised his right to a hearing under the School Code, asserting the Board of Education had played no part in the formulation or administration of his remediation plan.[244] The hearing officer affirmed the principal's final evaluation rating and the school board's dismissal of Powell.[245] Powell initiated an administrative review in the circuit court of Peoria County. He challenged the hearing officer's ruling based on the fact the Board of Education had not conducted Powell's

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[238] Powell v. Bd. of Educ. of the City of Peoria, 189 Ill. App. 3d 802 (1989).
[239] *Id*. at 810, *citing* Ill. Rev. Stat. 1987, ch. 122, 24A-5(a) and 24A-5(e), *now* 105 ILL. COMP. STAT. 5/24A-5(a) and 5(e) (1985).
[240] *Powell,* 189 Ill. App. 3d 802.
[241] *Id.*
[242] *Id.* at 805.
[243] *Id.*
[244] *Id.*
[245] *Powell,* 189 Ill. App. 3d at 805.

performance evaluation nor formulated or implemented the remediation plan.[246] Instead, the Board of Education's singular role in Powell's dismissal was approving school officials' dismissal recommendation.[247] The circuit court reversed the hearing officer's decision, stating, "the statutory requirements to initiate a remediation program for Kenneth Powell [were] not met by the School Board."[248] The circuit court ordered Powell's immediate reinstatement.[249] The circuit court interpreted the statutory language "development and commencement by the *district* of a remediation plan" to mean only schools boards had the authority to develop and initiate the remediation programs – not administrators.[250]

The school board appealed. The appellate court considered the following issues:

1. Whether Article 24A required Boards of Education to initiate or develop a remediation plan for unsatisfactory classroom teaching performance.

2. Whether a teacher who does not successfully complete a remediation plan can be dismissed with the Board of Education acting only in a ministerial capacity.[251]

In considering the first issue, the appellate court concluded Article 24A of the Illinois School Code generally vested a school district's administrators with responsibility for conducting the initial performance evaluation rating of a teacher's classroom teaching performance, and identifying the teacher's strengths and weaknesses.[252] The appellate court also found it was an administrative responsibility to formulate the final performance evaluation

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[246] *Id.*
[247] *Id.*
[248] *Id.*
[249] *Id.*
[250] *Powell,* 189 Ill. App. 3d at 805.
[251] *Id.* at 806.
[252] *Id.* at 805.

rating for a teacher who had been placed on a remediation plan.[253] The appellate court concluded the circuit court erred in concluding only school boards could be directly responsible for the administration of remediation plans.[254] The appellate court found that Section 24A of the School Code explicitly permitted administrators to develop and commence remediation plans.[255]

On the second issue, the appellate court addressed whether Powell could be dismissed without the Board of Education taking any action beyond approving the administrative dismissal recommendation. The Board of Education argued once school officials formulated and implemented the remediation plan, the school board had no role unless school officials concluded the remediating teacher failed to successfully complete the remediation process.[256] In that event, the Board of Education was only responsible for acting upon school officials' dismissal recommendation. In response, Powell argued the Board of Education could not delegate direct control over the remediation of teachers who were employed by the school district. The appellate court agreed with the Board of Education, finding once the remediation plan had been implemented, the Board of Education had no control over either the teacher's dismissal or retention.[257] The appellate court reversed the circuit court and upheld Powell's dismissal. Three years later, another case based on unsatisfactory teaching performance would come before an appellate court in Illinois.

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[253] Ill. Rev. Stat. 1987, ch. 122, pars. 24A—5(h), *now* 105 ILL. COMP. STAT. 5/24A-5(h).
[254] *Powell,* 189 Ill. App. 3d at 806.
[255] *Id.*
[256] *Id.* at 807
[257] *Id.*

Dudley v. Board of Education[258]

Deborah Dudley was a tenured teacher in the Bellwood School District. During the 1990-91 school year, Dudley received an "unsatisfactory" evaluation rating of her classroom teaching performance and was placed on a remediation plan. Dudley failed to successfully complete the remediation plan. As a result, consistent with Article 24A of the School Code, the Board of Education terminated Dudley's employment in the school district. Rather than waiting for the hearing officer to render a decision, Dudley filed a complaint asking for declaratory judgment against the school district in the Circuit Court of Cook County. Dudley asserted both her performance evaluation and remediation plan had been "conducted in a manner contrary to Article 24A of the School Code."[259] Dudley alleged her performance evaluation had failed to identify her strengths and was not utilized to improve her teaching.[260] The circuit court found that beyond the right to request a hearing under Section 24-12 of the School Code, Dudley did not have the right to challenge the school district until after the hearing officer rendered a decision.[261] The circuit court pointed out administrative review was the exclusive means for obtaining review of the Board of Education's termination decision. Based upon these findings, the circuit court dismissed Dudley's complaint.[262]

Dudley appealed. The appellate court affirmed the circuit court's decision, finding aside from administrative remedies Dudley did not have a private right of action to enforce the School Code. The court concluded, while Article 24A provided protections to tenured teachers,

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[258] Dudley v. Bellwood Sch. Dist., 260 Ill. App.3d 1100 (1994).
[259] Ill. Rev. Stat. 1989, ch. 122, par. 24A-1 *et seq., now* 105 ILL. COMP. STAT. 5/24A-1 *et seq.* (West 1992).
[260] *Dudley,* 260 Ill. App.3d at 1102.
[261] The privilege of instituting a lawsuit arising from a particular transaction or state of facts.
[262] *Dudley,* 260 Ill. App.3d at 1101.

Sections 24-12 and 24-16 of the School Code outlined the exclusive remedy for enforcing Article 24's protections; that exclusive remedy was the administrative review process.[263] The appellate court found since Dudley had not argued Article 24A was constitutionally "invalid on its face,"[264] she could not claim a private right of action until she had exhausted other available remedies.[265] The appellate court affirmed the circuit court's decision to dismiss the case.[266]

Davis v. Board of Education[267]

While Deborah Dudley's case was making its way through the courts, another case involving unsatisfactory teaching performance was being contested. George Davis was initially employed by the Chicago Board of Education as a classroom teacher in 1963. In the fall of 1989, Mr. Davis became an auto mechanics teacher at the Washburne Trade School. Davis' principal observed Davis' classroom teaching and met with him several times to address deficiencies in his classroom teaching performance and offer suggestions for improvement. After failing to improve, Davis received an "unsatisfactory" evaluation rating of his classroom teaching performance.[268] In February of 1990, the principal developed a remediation plan and named Davis' department chair as the consulting teacher for the remediation process.[269]

The remediation plan was designed to address specific deficiencies observed in Davis' teaching performance. These deficiencies included: inadequate knowledge of the curricular

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[263] *Id.* at 1105.
[264] *Id.* at 1106.
[265] *Id.* at 1107.
[266] *Id.*
[267] Davis v. Bd. of Educ. of the City of Chicago, 276 Ill. App.3d 693 (1995).
[268] *Davis,* 276 Ill. App.3d at 695.
[269] *Id.*

content standards, poor instructional preparation, failure to utilize organized teaching methods, failure to motivate students, failure to implement suggestions for improvement, failure to establish classroom rules, failure to assign homework, a lack of student progress and failure to use class time effectively.[270] During the 45-day remediation period, the principal observed and evaluated Davis at least ten times.[271] At the conclusion of the remediation period, the principal completed a formal observation of Davis and again rated his classroom teaching performance as "unsatisfactory."[272] As a result, the Board of Education terminated Davis' employment.[273]

Davis exercised his right to a hearing.[274] Davis contended the school officials' evidence did not support a finding that his performance was irremediable.[275] The hearing officer concluded school officials had proven Davis' failure to successfully complete the remediation plan constituted sufficient grounds to justify his dismissal.[276] Davis filed suit in the Circuit Court of Cook County. The circuit court affirmed the hearing officer's decision, and Davis appealed.

Before the appellate court, Davis argued the district's use of his department chair as the consulting teacher violated the School Code.[277] However, the appellate court rejected this claim. The court highlighted that the School Code states the consulting teacher must be appointed by the principal, have five years of successful teaching experience, understand the

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[270] *Id.*
[271] *Id.*
[272] *Id.*
[273] *Davis,* 276 Ill. App.3d at 695.
[274] *Id.*
[275] *Id.* at 696.
[276] *Id.* at 695.
[277] *Id.* at 696.

teaching assignment and must have received an 'excellent' rating on their last evaluation.[278] The department chair met these criteria.

Davis also argued it was the hearing officer, not the school board, who should determine whether he had successfully completed the remediation plan. The appellate court pointed out Article 24A of the School Code provided for the principal and consulting teacher, not the hearing officer, to determine whether a teacher had successfully completed the remediation plan.[279] The court further noted the School Code provided any teacher who failed to complete a remediation plan with at least a satisfactory rating "shall be dismissed."[280] Therefore, the court found Davis' claim was without merit.[281] On appeal, the district court determined there was sufficient cause for Davis' dismissal and upheld the hearing officer's decision.[282] One year later, another case involving a veteran teacher from the Chicago Public Schools would make its way through the courts.

Board of Education v. Smith[283]

Vashti Smith was a thirty-year veteran teacher who had been employed by the Chicago Public Schools since 1969. In the spring of 1991, Smith received an "unsatisfactory" rating on her teaching performance evaluation. The evaluation identified the following deficiencies in her teaching performance: failure to record grades, keep report cards, maintain bulletin boards, teach the prescribed math curriculum, implement a communication policy with her families,

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[278] 105 ILL. COMP. STAT. 5/24A-5(j) (West 1992).
[279] 105 ILL. COMP. STAT. 5/24A-5(f) (West 1992).
[280] 105 ILL. COMP. STAT. 5/24A-5(m) (West 1992).
[281] *Davis,* 276 Ill. App.3d at 698.
[282] *Id.* at 697.
[283] Chicago Bd. of Educ. v. Smith, 279 Ill. App.3d 26 (1996).

follow the school's emergency plan, keep attendance records and prepare sufficient lesson plans.[284] Smith's principal met with her in March of 1991 to finalize a remediation plan.

As outlined in the remediation plan, Smith's principal would observe her classroom teaching performance four times and conduct several conferences with her during the spring of 1991. Smith was also to meet with her consulting teacher several times during the remediation process.[285] On May 23, 1991, at the conclusion of the remediation process, Smith met with the principal who once again rated her classroom teaching performance as "unsatisfactory." The principal advised Smith he would be recommending her dismissal to the Board of Education.[286] The principal provided Smith a document entitled, "YOU HAVE NOT COMPLIED WITH THE FOLLOWING."[287] The document listed the deficiencies that had been set forth in her summative evaluation and her final performance rating.[288] Thereafter, the Board of Education accepted the principal's dismissal recommendation and Smith's employment was terminated. Smith requested a hearing.[289]

Smith challenged her dismissal, in part, because her principal had failed to utilize the required classroom visitation forms nor had she received a final evaluation report at the conclusion of the remediation plan. Smith also argued the classroom visitation forms and final evaluation were required by both the school district's handbook and the School Code.[290] Smith's principal testified the document entitled "YOU HAVE NOT COMPLIED WITH THE

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[284] *Id.* at 28.
[285] *Id.*
[286] *Id.*
[287] *Id.*
[288] *Smith,* 279 Ill. App.3d at 28.
[289] *Id.* at 29.
[290] *Id.*

FOLLOWING" constituted Smith's final evaluation.[291] The Board of Education's post-hearing brief argued Smith had waived her right to object to errors in the evaluation process because she had not formally notified the Illinois State Board of Education in writing prior to the hearing.[292] In support of this assertion, the Board of Education cited Section 52.90 of the Illinois Administrative Code that stated in part:

> Any party who proceeds with the hearing after the knowledge of any provision of this Part prior to hearing that has not been complied with and fails to state his/her objection thereto in writing to the State Board of Education or the hearing officer shall be deemed to have waived his/her right to object.[293]

The hearing officer had concluded this provision was limited to teachers who were dismissed for cause and did not apply to teachers who failed to successfully complete a remediation plan.[294] Accordingly, the hearing officer ordered Smith to be reinstated with a new forty-five-day remediation period. This decision was based upon procedural defects the hearing officer found in the evaluation process. These procedural defects included the fact no final evaluation report had been provided to Smith and the principal's failure to utilize the proper classroom observation forms.[295] The Board of Education sought review of the hearing officer's decision in the Circuit Court of Cook County.

The circuit court reversed the hearing officer's decision. The court concluded Smith had "waived her right to object to her not receiving an evaluation."[296] Because the hearing officer had not considered the substantive question of Smith's dismissal, the court remanded the matter

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[291] *Id.*
[292] *Id.* at 30.
[293] ILL. ADMIN CODE tit. 23 §52.90 (1994).
[294] *Smith,* 279 Ill. App.3d at 30.
[295] *Id.* at 29.
[296] *Id.* at 31.

back to the hearing officer to determine whether Smith's teaching performance had been correctly rated as "unsatisfactory."[297] On remand, the hearing officer found Smith had been properly dismissed for cause based upon the deficiencies delineated in her final evaluation.[298] The circuit court affirmed the hearing officer's decision.[299]

Smith appealed. The appellate court noted the principal had not used the proper forms nor had he provided her with a formal evaluation document as required by the School Code.[300] The appellate court further noted there was no binding authority interpreting Section 52.90 of the Illinois Administrative Code. In the absence of controlling precedential rulings, the appellate court affirmed the hearing officer's initial determination that the waiver provision was not applicable.[301] The appellate court reversed the circuit court on the procedural issues and affirmed the hearing officer's original decision that had ordered Smith's conditional reinstatement.[302] Six years later, another teacher dismissal case, *Spangler,* would be decided.

Board of Education v. Spangler[303]

Raymond Spangler was a tenured teacher in the Elk Grove School District. In April of 1997, the principal's summative evaluation of Spangler's classroom teaching rated his performance as "unsatisfactory."[304] The principal noted Spangler's teaching performance was deficient in the following areas: instructional methods, lesson planning and organization, and

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[297] *Id.*
[298] *Id.*
[299] *Smith,* 279 Ill. App.3d at 31.
[300] *Id.* at 35.
[301] *Id.* at 34.
[302] *Id.* at 36.
[303] Bd. of Educ. of Cmty. Consol. Sch. Dist. No. 54 v. Spangler, 328 Ill App.3d 747 (2002).
[304] *Id.* at 749.

pacing.[305] A remediation plan addressing eleven areas of weakness in Spangler's teaching performance was developed, and Spangler was given a year to successfully complete the remediation process with a satisfactory rating.[306] The principal observed Spangler's classroom teaching performance multiple times during each forty-five-day remediation period.[307] Spangler failed to receive a "satisfactory" rating during any of the four quarters.[308] Because Spangler received an "unsatisfactory" rating at the conclusion of the remediation period, the Board of Education terminated his employment.[309]

The Board of Education listed seventeen charges on Spangler's notice of dismissal.[310] These charges included: failing to record grades, not following lesson plans, allowing students to work in the hall without supervision, not proving feedback to students and failing to act in a professional manner.[311] Spangler requested an administrative hearing. The hearing officer found only six of the charges had merit.[312] The hearing officer concluded the Board of Education had failed to show by a "preponderance of the evidence" that Spangler's teaching performance warranted an "unsatisfactory" rating. Based upon this conclusion, the hearing officer ordered Spangler's reinstatement.[313] The Board of Education sought review in the circuit court, where the hearing officer's decision was affirmed.[314]

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[305] *Id.*
[306] *Id.*
[307] *Id.*
[308] *Spangler,* 328 Ill App.3d at 749.
[309] *Id.* at 750.
[310] *Id.*
[311] *Id.*
[312] *Id.* at 750-751.
[313] *Spangler,* 328 Ill App.3d at 751.
[314] *Id.*

The Board of Education appealed to the First District Appellate Court. The appellate court focused on two issues: the scope of the hearing officer's authority and whether the charges and accompanying evidence supported Spangler's dismissal. The Board of Education contended the hearing officer had exceeded his authority under the School Code "by substituting his judgment for that of the Board."[315] The Board of Education argued the hearing officer had "no authority to evaluate the seriousness or gravity of the charges when ascertaining whether the Board had met its burden of proving that an unsatisfactory rating was justified."[316] The appellate court disagreed. Pointing to Article 24-12's "legislative purpose" the appellate court concluded, "it was the legislature's intent to give full and total authority to the hearing officer to make the ultimate decision and determination as to dismissal."[317] The appellate court found it was essential under the School Code for the hearing officer to have authority to evaluate the "gravity of the charges."[318]

The Board of Education contended the hearing officer erred by concluding the Board of Education had proven six of the charges against Spangler, yet ruling Spangler should not be dismissed.[319] The Board of Education argued as a matter of law the hearing officer was required to dismiss Spangler. The appellate court noted under the Board of Education's theory, if even one charge were proven, the hearing officer would automatically be required to uphold a dismissal.[320] The appellate court rejected the Board's argument that the hearing officer had to

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[315] *Id.* at 752.
[316] *Id.* at 753.
[317] *Id.* at 754.
[318] *Spangler,* 328 Ill App.3d at 755.
[319] *Id.* at 759.
[320] *Id.* at 760.

uphold the dismissal based on the fact that some of the charges had been proven.[321] Instead, the appellate court affirmed the reversal of Spangler's dismissal and ordered that he be reinstated.[322] That same year the courts would decide another teacher dismissal case based on adherence to the School Code.

Buchna v. Board of Education[323]

Lauri Buchna, a third-grade teacher, was employed by the Illinois Valley Central Unit School District. At the close of the 1997-1998 school year, Buchna's classroom teaching performance was rated as "Does not Meet District Expectations."[324] Instead of utilizing the three evaluative ratings expressly specified by Article 24A of the School Code, the School District's evaluation scheme utilized only two performance ratings. Those ratings included, "Meets or Exceeds District Expectations" and "Does not Meet District Expectations."[325] As a result of the evaluation Buchna was placed on a remediation plan.[326] During the first and second quarters of her remediation plan, Buchna's teaching performance was rated as "Does not Meet District Expectations."[327] Buchna received no performance rating for the third quarter of the remediation plan. For the final quarter, Buchna again received a rating of "Does not

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[321] *Id.*
[322] *Id.*
[323] Buchna v. Ill. St. Bd. of Educ., 342 Ill. App.3d 934 (2003).
[324] *Id.* at 935.
[325] *Id.*
[326] *Id.*
[327] *Id.*

Meet District Expectations."[328] As a result of failing to successfully complete the remediation plan, the Board of Education terminated Buchna's employment.

Buchna sought administrative review, arguing school officials had not complied with Section 24A-5(c) of the School Code. This statutory provision expressly directed school officials to utilize three performance ratings as part of their evaluation scheme. The three required performance rating options were "excellent," "satisfactory," or "unsatisfactory."[329] Notwithstanding the School District's deviation from the School Code's express directive, the hearing officer upheld the Board of Education's dismissal, observing the school officials had "substantially complied with subsection 24A-5(c)."[330] Buchna appealed and the circuit court affirmed the hearing officer's decision.[331]

Buchna appealed to the Third District Appellate Court. Buchna argued school officials' use of only two performance rating options had ignored the School Code's explicit directive.[332] The Board of Education contended the school district's evaluation scheme complied with the required three ratings, because the School District's "Meets or Exceeds" category encapsulated both "excellent" and "satisfactory" performance ratings.[333] The Board of Education argued Buchna had not been negatively affected by the two-tiered system because her "Does not Meet" performance rating would have been the equivalent of "unsatisfactory" under the statute.[334] However, the appellate court found the school district's two-tiered rating system "threaten[ed] the legislature's intended application of section 24A-5" and held that because the legislature's

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[328] *Buchna,* 342 Ill. App.3d at 935.
[329] *Id.* at 936.
[330] *Id.*
[331] *Id.*
[332] *Id.* at 937.
[333] *Buchna,* 342 Ill. App.3d at 938.
[334] *Id.*

directive had not been followed, school officials had forfeited their authority.[335] The appellate court rejected the Board of Education's argument that school officials had "substantially compl[ied]" with Article 24A even though school officials had failed to comply with the legislature's explicit statutory language.[336] The appellate court further pointed out the Board of Education could not rely on the argument that the two-tiered scheme was the product of collective bargaining with the local teacher's union. As a result, the appellate court reversed the hearing officer's decision to affirm Buchna's termination.[337] The court found the two-tiered performance evaluation system used by the school district did not comply with Section 24A-5 of School Code and, therefore, was not authorized.[338] The expectation that school officials strictly adhere to the procedures outlined in 24A was an important factor in the *Raitzik* case.

Raitzik v. Board of Education[339]

Charlene Raitzik was a twenty-five-year veteran teacher in the Chicago Public Schools. Raitzik taught at the Pulaski Fine Arts Academy.[340] Previously, Raitzik's principal had reassigned her to different grade levels as a consequence her not being able to "control younger children."[341] Ultimately, Raitzik was assigned to teach sixth grade.[342] From 1993 to 1995, Raitzik received either "satisfactory" or "excellent" performance ratings from her principal.[343]

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[335] *Id.* at 939.
[336] *Id.*
[337] *Id.*
[338] *Buchna,* 342 Ill. App.3d at 939.
[339] *Raitzik v. Bd. of Educ. of the City of Chicago,* 356 Ill. App.3d 813 (2005).
[340] *Id.* at 814.
[341] *Id.* at 815.
[342] *Id.*
[343] *Id.*

However, in December of 1995, for the first time, Raitzik received an "unsatisfactory" performance rating. This rating was a result of Raitzik not carrying out discipline procedures, not motivating students and not maintaining a task-oriented classroom.[344] Raitzik received another "unsatisfactory" rating the following June and was subsequently placed on a ninety-day remediation plan.[345] Her remediation plan was extended twice before she received an overall "satisfactory" performance rating."[346] During the following three school years, Raitzik received performance ratings of "satisfactory" or "excellent."[347] Despite these ratings, her principal noted her classroom management skills remained in need of improvement.[348]

During the 2000-2001 school year, Raitzik's classroom teaching was formally observed twice. During her first observation in October, Raitzik's principal noted students did not cooperate, Raitzik had not displayed student work in the classroom, she lacked interpersonal skills and her desk was "a mess."[349] After a January observation and evaluation, the principal noted Raitzik was using incomplete lesson plans, student assignments were not dated and her grade book contained many unfinished student assignments. The principal also noted Raitzik was not keeping student attendance records, students ignored her when she tried to re-direct them, and she had failed to control the students in her classroom.[350] During a post observation conference the principal advised Raitzik her teaching performance was "unsatisfactory."[351]

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[344] *Raitzik,* 356 Ill. App.3d at 815.
[345] *Id.*
[346] *Id.*
[347] *Id.*
[348] *Id.*
[349] *Raitzik,* 356 Ill. App.3d at 815.
[350] *Id.*
[351] *Id.* at 816.

Beginning in February of 2001, Raitzik was placed on a ninety-day remediation plan.[352] The remediation plan addressed five areas of deficiency: failure to maintain reasonable student conduct, not establishing positive learning expectations, failure to monitor student progress, failure to use sound judgment and failure to provide students with a safe and orderly learning environment.[353] Raitzik was advised if she received an "unsatisfactory" rating at the end of the ninety-day remediation period, the principal would recommend her dismissal to the Board of Education.[354]

During the remediation period, Raitzik's principal observed her classroom teaching two times. Each observation included a classroom visit and a post-observation conference.[355] Raitzik also had access to a consulting teacher who was available to assist her before and after school, on the phone at home and in her classroom.[356] During the remediation period, the consulting teacher observed Raitzik's classroom teaching at least once every week.[357] On the last day of the remediation period, Raitzik's principal observed her a final time. The principal noted the previously identified deficiencies in Raitzik's teaching performance had not been corrected.[358] On October 12, 2001, the principal sent Raitzik a letter stating he would be recommending her dismissal to the Board of Education due to her lack of progress.[359] The principal prepared a Teacher Evaluation Review for the Board of Education delineating both strengths and weaknesses in Raitzik's teaching performance. Among the weaknesses were

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[352] *Id.* at 817.
[353] *Id.*
[354] *Raitzik,* 356 Ill. App.3d at 817.
[355] *Id.* at 818.
[356] *Id.* at 817.
[357] *Id.*
[358] *Id.* at 820.
[359] *Raitzik,* 356 Ill. App.3d at 820.

inconsistent lesson planning, failure to control her students and not recording student grades.[360] The Board of Education approved the dismissal recommendation and Raitzik exercised her right to a hearing before the hearing officer.[361]

At the hearing, the consulting teacher testified she noted little improvement in Raitzik's classroom teaching skills or relationships with her students.[362] She also testified Raitzik spent time grading homework during class rather than teaching the students and did not implement suggestions for improvement offered by (her supervising teacher).[363] Raitzik testified she disagreed with many of the consulting teacher's observations and believed her principal was retaliating against her due to an unrelated issue.[364] The principal testified regarding his observations of Raitzik's classroom teaching performance and final evaluation.[365] At the close of the proceeding the hearing officer ordered school officials to reinstate Raitzik.[366] The hearing officer explained he found it "troubling" that the tenured teacher's classroom was only formally observed twice during the remediation period, the minimum required by law.[367] The hearing officer also found it "significant" that since 1990, Raitzik had earned mostly "excellent" or "satisfactory" performance ratings.[368] The hearing officer noted Raitzik's students scored well on academic achievement tests compared to other sixth grade students in the school.[369] Despite determining the consulting teacher's comments were "generally

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[360] *Id.* at 821.
[361] *Id.*
[362] *Id.* at 818.
[363] *Id.*
[364] *Raitzik,* 356 Ill. App.3d at 821.
[365] *Id.*
[366] *Id.*
[367] *Id.*
[368] *Id.*
[369] *Raitzik,* 356 Ill. App.3d at 822.

accurate" and finding the principal's testimony had not exhibited any "retaliation or bias," the hearing officer concluded school officials had not proven the deficiencies noted by the principal in Raitzik's teaching performance nor did the identified deficiencies warrant dismissal of a tenured teacher.[370]

The Board of Education rejected the hearing officer's decision and affirmed Raitzik's dismissal.[371] The Board noted the principal had formulated and implemented an appropriate remediation plan, but Raitzik had failed to improve her teaching performance.[372] Raitzik filed for administrative review of the Board of Education's decision with the Circuit Court of Cook County.[373] After reviewing the facts, the court concluded Raitzik had "indeed fail[ed] to raise her rating as required under the remediation process" and this failure constituted sufficient grounds for Raitzik's dismissal.[374] The court affirmed the Board's decision to terminate Raitzik's employment.

Raitzik appealed the Board's decision to the First District Appellate Court. The appellate court found none of Raitzik's claims had merit.[375] Although the appellate court observed Raitzik had made some improvement during her remediation period, this did not mean her dismissal was unwarranted.[376] The court noted, "the record supports the Board's conclusion that [Raitzik's] performance was unacceptable."[377] The appellate court ultimately found Raitzik had failed to improve the rating of her classroom teaching performance and,

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[370] *Id.*
[371] *Id.*
[372] *Id.*
[373] *Id.*
[374] *Raitzik,* 356 Ill. App.3d at 822.
[375] *Id.* at 825.
[376] *Id.* at 829-30.
[377] *Id.* at 822.

therefore, "cause existed for [Raitzik's] dismissal."[378] Based upon these findings and conclusions the appellate court affirmed the dismissal.[379] The appellate court also highlighted the distinction between proceedings for non-Chicago school districts under Section 24-12 of the School Code, wherein the hearing officer makes the final decision on teacher dismissal, and the Chicago Public Schools' teacher dismissal process under Section 34-85, where the hearing officer makes a nonbinding recommendation and the Chicago Board of Education is vested with final teacher dismissal authority.[380] Six years later, adherence to the procedures in Article 24A of the School Code by the Board of Education would uphold another dismissal in the Montgomery case.

Montgomery v. Board of Education[381]

Clarence Montgomery was a tenured chemistry teacher at Tilden High School in the city of Chicago. During the 2006–2007 school year, the Tilden principal received complaints from both parents and staff about Montgomery's teaching methods. During the fall of 2007, the principal observed Montgomery's classroom teaching twice. After both observations the principal shared recommendations with Montgomery designed to help him improve his teaching performance.[382] At the conclusion of both post-observation conferences, Montgomery refused to sign the principal's summary observation report.[383] In December, as a result of

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[378] *Id.*
[379] *Raitzik,* 356 Ill. App.3d at 822.
[380] *Id.* at 832-33.
[381] Montgomery v. Bd. Of Educ. of City of Chicago, No. 1-11-2324, 2012 Ill. App. Unpub. Lexis 2135 (Ill. App. Ct. Aug. 30, 2012).
[382] *Id.* at *5.
[383] *Id.* at *6.

Montgomery's teaching methods, his failure to get along with faculty and his lack of professional work habits, the principal rated Montgomery's teaching performance as unsatisfactory.[384]

Five days after Montgomery received the unsatisfactory rating, the principal and consulting teacher met with Montgomery to discuss the remediation plan.[385] The science department chair was assigned to serve as the consulting teacher for Montgomery's remediation plan. During the initial meeting to develop the plan, Montgomery refused to participate and refused to sign any documents.[386] A second meeting was held five days later and Montgomery again refused to either participate or sign the remediation plan.[387] Per Article 24A-5(i) of the School Code, Montgomery's ninety-day remediation process began on December 18, 2007.[388]

During the remediation period, Montgomery was observed four times by the principal and 38 times by the consulting teacher. Montgomery's principal observed Montgomery's classroom teaching at the 30, 60 and 90-day mark of the remediation plan and after each observation the principal rated Montgomery's teaching performance as unsatisfactory.[389] At the conclusion of the remediation period, Montgomery was notified he had "failed to complete the remediation process with a satisfactory rating" and a recommendation for his dismissal would be submitted to the Board of Education.[390] The Board of Education voted to dismiss Montgomery.

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[384] *Id.*
[385] *Id.*
[386] *Montgomery,* 2012 Ill. App. Unpub. Lexis 2135 at e6e.
[387] *Id.* at e7e.
[388] *Id.*
[389] *Id.* at *12.
[390] *Id.* at *14.

Montgomery exercised his right to a hearing. During the hearing, Montgomery argued he had not had any input into the creation of his remediation plan and never received the final remediation plan document.[391] He also stated he had not signed any of the documentation during the remediation process because "he did not want the documents to be used against him."[392] Montgomery alleged he was not provided with an evaluation prior to his unsatisfactory rating and argued the Board of Education had failed to prove "by a preponderance of evidence" that he had failed to complete the remediation process.[393] The hearing officer rejected Montgomery's claims and upheld the Board of Education's dismissal decision.[394]

Montgomery sought administrative review in the Circuit Court of Cook County. The Circuit Court upheld the dismissal.[395] Montgomery proceeded, without legal counsel, to seek further review before the Illinois First District Appellate Court. Before both the trial and appellate courts, Montgomery raised several new claims that had not been brought before the hearing officer. Three of the four claims were dismissed by the appellate court because Montgomery raised those issues "for the first, and only time, before the trial court."[396] The remaining issue concerned whether the consulting teacher had participated in the development of Montgomery's remediation plan.[397] On this issue, the court found the consulting teacher had participated and "the provisions of section 24A-5(h) had been met."[398] The court affirmed the

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[391] *Montgomery,* 2012 Ill. App. Unpub. Lexis 2135 at *16.
[392] *Id.*
[393] *Id.* at *21.
[394] *Id.*
[395] *Id.* at *24. Although the appellate court noted the circuit court's decision, it provided no discussion of the arguments or reasoning behind the decision.
[396] *Montgomery,* 2012 Ill. App. Unpub. Lexis 2135 at *25.
[397] *Id.*
[398] *Id.* at *29.

hearing officer's decision and upheld Montgomery's dismissal.[399] Montgomery sought leave to appeal to the Supreme Court of Illinois but further review was denied.

MacDonald v. Board of Education[400]

James Scott MacDonald, a fourteen-year veteran teacher, was employed by the Pawnee Community Unit School District. In the spring of 2009, MacDonald was dismissed by the Pawnee Community Unit School District after failing to successfully complete a remediation plan.[401] Until the 2007-08 school year, MacDonald had received satisfactory ratings on his teaching performance evaluations. His principal formally evaluated MacDonald in May 2008 and rated his classroom teaching performance as unsatisfactory.[402] She noted problems with "instructional management, student management, attendance and promptness."[403]

On June 2, 2008, the principal notified local union officials MacDonald had received an unsatisfactory performance rating and, as a result, a remediation plan would be formulated within 30 days.[404] She also noted the remediation plan would commence at the beginning of the 2008-09 school year.[405] On October 22, 2008, the principal sent MacDonald a letter inviting him to a meeting to discuss the remediation plan.[406] Due to a previously scheduled medical appointment, MacDonald did not attend the meeting. Nonetheless, the meeting was

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[399] *Id.*
[400] MacDonald v. State Bd. of Educ., 966 N.E.2d 322 (Ill. App. 2012).
[401] *Id.* at 324.
[402] *Id.*
[403] *Id.*
[404] *Id.*
[405] *MacDonald,* 966 N.E.2d at 324.
[406] *Id.*

held without him.[407] On October 31, 2008, MacDonald was presented with the remediation plan.[408]

MacDonald's principal conducted the first remediation plan evaluation.[409] MacDonald received a performance rating of unsatisfactory.[410] In January, MacDonald was evaluated for a second time. Again, the principal rated his classroom teaching performance as unsatisfactory.[411] The remediation plan also required a second evaluator to assess MacDonald's teaching performance. The grade school principal evaluated MacDonald in February 2009 and rated his performance as unsatisfactory.[412] MacDonald's principal conducted the final remediation evaluation on March 16, 2009.[413] Again, MacDonald received an unsatisfactory performance rating. On April 14, 2009, MacDonald received the remediation plan's summative evaluation. At that time, MacDonald was advised he had not successfully completed the remediation plan.[414] As a result, on April 22, 2009, the Board of Education voted to terminate MacDonald's employment.

MacDonald exercised his right to a hearing.[415] During the hearing, MacDonald argued the Board of Education had violated section 24A-5(f) of the School Code.[416] Specifically, MacDonald claimed school officials had failed to adopt and implement a remediation plan

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[407] *Id.*
[408] *Id.*
[409] *Id.* at 325.
[410] *MacDonald,* 966 N.E.2d at 325.
[411] *Id.*
[412] *Id.*
[413] *Id.*
[414] *Id.*
[415] *MacDonald,* 966 N.E.2d at 325.
[416] *Id.*

within 30 days of his classroom teaching performance being rated as unsatisfactory.[417] MacDonald also contended school officials had not afforded him a ninety-day remediation period and had failed to evaluate him every thirty days during the remediation plan.[418] The hearing officer found school officials had complied with the School Code's procedural requirements and upheld the dismissal.[419] In June of 2010, MacDonald filed for administrative review with the Circuit Court of Sangamon County.[420] The circuit court upheld the hearing officer's decision and MacDonald appealed to the Fourth District Appellate Court.[421]

Before the appellate court, MacDonald argued the Board of Education had violated section 24A-5(f) of the School Code.[422] The appellate court focused on Article 24A-5's procedural requirements, specifically the School Code's directive for school officials to create a remediation plan in a timely manner.[423] The appellate court observed the unsatisfactory evaluation triggering the remediation was provided to MacDonald on May 27, 2008.[424] Noting the hearing officer had found the remediation plan had not been developed and implemented until October 31, 2008, the court observed school officials had taken 158 days to formulate the remediation plan.[425] School officials argued the delay should be excused either because of the difficulty in finding a qualified consulting teacher to participate in the plan or because the summer break accounted for part of the 158 day period.[426] School officials further contended

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[417] *Id.*
[418] *Id.*
[419] *Id.*
[420] *MacDonald,* 966 N.E.2d at 325.
[421] *Id.*
[422] *Id.*
[423] *Id.*
[424] *Id.* at 326.
[425] *MacDonald,* 966 N.E.2d at 326.
[426] *Id.* at 327.

MacDonald had benefitted from having additional time to focus on improving his teaching performance.[427] The court observed school officials had made a first unsuccessful attempt to locate a consulting teacher within the statutory 30-day time period but did not make a second attempt until another 50 days had passed, and allowed nearly two more months to pass before making a third attempt.[428]

The appellate court noted the legislature could have excluded summer vacation from the 30-day time requirement by referring to "school days" rather than "30 days," as it had done when specifying that remediation plans must run for "90 school days."[429] Though school officials argued MacDonald had benefitted from having the summer period, the appellate court noted MacDonald taught for over two months during the following school year before he was provided with the remediation plan.[430] The court reasoned, if MacDonald's "deficiencies were as serious as the Board contend[ed], the Board should not have waited 158 days to write the plan."[431] The appellate court found school officials had "failed to create a remediation plan within a reasonable time" and, as a result, failed to comply with this requirement in a timely manner.[432] Based upon this conclusion the appellate court ordered that MacDonald be reinstated to his teaching position and awarded back pay.[433]

The preceding nine dismissal cases were decided after the Illinois legislature's passage of Article 24A of the School Code and each decision involved a teacher who failed to

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[427] *Id.*
[428] *Id.* at 328.
[429] *Id.* at 329.
[430] *MacDonald,* 966 N.E.2d at 329-30.
[431] *Id.* at 330.
[432] *Id.*
[433] *Id.*

successfully a remediation plan. In 2010, the Illinois legislature passed the *Performance Evaluation Reform Act of 2010* (PERA),[434] which made significant changes to Article 24A.

The Illinois *Performance Evaluation Reform Act of 2010*[435]

In January of 2010, the *Illinois Performance Evaluation Reform Act* (PERA) was signed into law.[436] According to the Illinois General Assembly, "[m]any existing [school] district performance evaluation systems fail[ed] to adequately distinguish between effective and ineffective teachers and principals."[437] In an effort to address this perceived infirmity, PERA was enacted, in part, to change how teacher and principal performance is measured.[438] The legislature sought to ensure the validity and reliability of the state's performance evaluation systems for public school teachers and principals to have a positive impact on the professional development of teachers and improved student achievement outcomes.[439]

State of Illinois officials also anticipated PERA would improve the state's chances of securing federal Race to the Top (RTTT) Grant program funding.[440] Race to the Top was created as a way for the federal government to push states to adopt the common core state standards, which were being advocated by the Gates Foundation. Bill Gates, the billionaire founder of Microsoft, funded research and seed money for states to implement a common set of

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[434] Illinois Performance Evaluation Reform Act of 2010, P.A. 096-0861 (2010).
[435] *Id*.
[436] *Id*.
[437] *Id*.
[438] Ill. St. Bd. of Educ., *supra* note 36.
[439] *Id.*
[440] Governor Pat Quinn, *The State of Illinois Race to the Top Application for Initial Funding*, Jan. 19, 2010, *available at* https://www2.ed.gov/programs/racetothetop/phase1-applications/illinois.pdf (last visited Mar. 24, 2017).

standards and make other changes to improve educational outcomes for students.[441] Illinois had twice previously applied for RTTT funds and had been unsuccessful both times. The federal RTTT Grant program used a five-hundred-point rubric to score all state funding requests.[442] States were graded on their progress and reform plans in four key areas: upgrading data systems, ability to turn around low-performing schools, implementation of common standards and assessments, and improving teacher and principal effectiveness.[443] Before PERA, the Illinois legislature had passed three different bills designed to improve the state's ability to procure RTTT funds. One of the bills created a statewide longitudinal data system,[444] another bill allowed for alternative teacher certification programs,[445] and the third bill doubled the number of Illinois charter schools.[446] The final bill, PERA, amended the Illinois teacher performance evaluation system by incorporating student academic growth into the teacher and administrator performance evaluation processes.[447] Of these four bills, PERA was considered by many to be the most significant piece of legislation.[448]

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[441] Lyndsey Layton, *How Bill Gates Pulled Off the Swift Common Core Revolution*, WASH. POST, June 7, 2014, *available at* https://www.washingtonpost.com/politics/how-bill-gates-pulled-off-the-swift-common-core-revolution/2014/06/07/a830e32e-ec34-11e3-9f5c-9075d5508f0a_story.html?utm_term=.40f8d17614b5 (last visited Mar. 12, 2017).
[442] U.S. Dept. of Ed., *Race to the Top Program, Appendix B Scoring Rubric*, *available at* http://www2.ed.gov/programs/racetothetop/scoringrubric.pdf (last visited July 24, 2016).
[443] U.S. Dept. of Ed., *Race to the Top Program, Executive Summary*, *available at* https://www2.ed.gov/programs/racetothetop/executive-summary.pdf (last visited July 24, 2016).
[444] Longitudinal Education Data System Act, P.A. 96-0107 (2009), *codified in* 105 ILL. COMP. STAT. 13/P-20 (2012).
[445] P.A. 096-0862 (2009).
[446] P.A. 096-0105 (2009).
[447] Quinn, *supra* note 440, at 2.
[448] Elliot Regenstein, *Illinois: The New Leader in Education Reform?*, July 13, 2011, at 6, *available at* http://cdn.americanprogress.org/wp-content/uploads/issues/2011/07/pdf/illinois_education.pdf (last visited Nov. 8, 2015).

PERA brought five major changes to Article 24A of the School Code: a teacher performance evaluation system that included four discrete performance ratings, the use of an instructional framework tied to the Illinois Professional Teaching Standards, a requirement that all evaluators undergo training to improve inter-rater reliability, establishment of timelines for all teacher and principal evaluations, and the mandatory incorporation of student academic growth data in the evaluation process.[449] The new evaluation scheme was to be phased in beginning September 1, 2012, and fully implemented by the beginning of the 2016-17 school year.[450]

A Teacher Evaluation System with Four Performance Ratings

Previously, Illinois public school districts could apply for a waiver that would allow school officials to alter the teacher performance rating system rather using the three performance ratings expressly delineated in the School Code. PERA eliminated this waiver option. Beginning with the 2012-13 school year, all Illinois public school districts were required to utilize PERA's four performance ratings. In descending order these performance ratings were: excellent, proficient, needs improvement, and unsatisfactory.[451]

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[449] Ill. St. Bd. of Educ., *supra* note 27.
[450] Ill. St. Bd. of Educ., *ISBE Non-Regulatory Guidance on PERA & SB 7,* Dec. 5, 2011, *updated* May 15, 2015, at 16, *available at* www.isbe.net/pera/pdf/pera_guidance.pdf (last visited Nov. 8, 2015).
[451] Illinois Performance Evaluation Reform Act of 2010, P.A 096-0861 at § 24A-5(e) (2010).

Instructional Frameworks

PERA required the utilization of an instructional framework based on research related to effective instruction, planning, classroom management, and instructional delivery. The framework also needed to be aligned with the Illinois Professional Teaching Standards.[452] The legislature's objective was to tie professional practice to student academic growth.[453] School districts were allowed to select their own instructional framework, so long as the selected framework was both aligned with the Illinois Professional Teaching Standards and utilized PERA's four delineated performance evaluation ratings.[454] If a school district elected not to select an instructional framework, the default option was Charlotte Danielson Framework for Teaching.[455]

The Charlotte Danielson Framework for Teaching

The Danielson Framework contains rubrics that incorporate four discrete domains. Each domain addresses specific components of the teaching process: Planning and Preparation, Classroom Environment, Instruction, and Professional Responsibilities.[456] The Danielson Framework's domains align with PERA's four required performance ratings i.e., excellent,

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[452] Ill. St. Bd. of Educ., *supra* note 450 at 23.
[453] Illinois Performance Evaluation Reform Act of 2010, P.A. 096-861 (2010).
[454] *Id*.
[455] Teachscape, *Charlotte Danielson's Framework for Teaching sees Record Growth as States and Districts Redefine Teacher Evaluation*, PR NEWSWIRE, June 28, 2011, *available at* *http://www.prnewswire.com/news-releases/charlotte-danielsons-framework-for-teaching-sees-record-growth-as-states-and-districts-redefine-teacher-evaluation-124646653.html* (last visited Mar. 24, 2017).
[456] The Danielson Group, *The Framework*, *available at* http://www.danielsongroup.org/framework/ (last visited Mar. 24, 2017).

proficient, needs improvement, and unsatisfactory.[457] By using each domain's rubric, the evaluator is able rate the teacher's performance based upon objective data. During the 2007-08 school year, the Chicago Public Schools (CPS) piloted the Danielson Framework. CPS officials found school district administrators demonstrated better inter-rater reliability using the Danielson Framework than their colleagues who did not use the Danielson Framework.[458] In the school year preceding the pilot implementation of the Danielson Framework, 91% of CPS teachers evaluated were rated as either "superior" or "excellent" and only 0.3% of teachers were rated as "unsatisfactory." In the first year of the pilot, 8% of teachers in the Chicago Public Schools received a rating of "unsatisfactory" and 58% received a rating of "excellent."[459] The pilot year's results also showed a shift in the attitudes of principals who used the Danielson Framework. Fifty-seven percent of principals reported having a positive attitude regarding both the framework's use and the teacher conferences that were conducted as part of the teacher performance evaluation process.[460]

Evaluator Training

Another change PERA brought to Article 24A of the Illinois School Code involved mandated training for evaluators. PERA requires school boards to ensure that all administrators evaluating certified personnel pass a state-approved training program prior to performing any

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[457] Illinois Performance Evaluation Reform Act of 2010, P.A. 096-0861 at § 24A-5(e) (2010).
[458] Lauren Sartain, Sara Ray Stoelinga & Eric R. Brown, *Rethinking Teacher Evaluation,* Consortium on Chicago School Research at the University of Chicago Urban Education Institute, *available at* https://consortium.uchicago.edu/sites/default/files/publications/Teacher%20Eval%20Report%20FINAL.pdf (last visited July 2, 2016).
[459] *Id.*
[460] *Id.*

evaluations.[461] The Illinois State Board of Education used the "Growth Through Learning[462]," online modules to complete this training.[463] Evaluators are required participate in approximately forty hours of training, and pass six assessments[464] before conducting any evaluations.[465] The Illinois State Board of Education estimated completion of Module 2 would require 15-18 hours and the attendant assessment would require another seven hours of the administrator's time.[466] Module 2 contains videos of classroom teaching lessons for each administrator to watch and grade. This step was designed to ensure inter-rater reliability.[467] The State Board of Education partnered with the Consortium for Educational Change (CEC) Partnership Group[468] to create the modules and deliver the required training.[469]

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[461] Illinois Performance Evaluation Reform Act of 2010, P.A. 096-0861 at § 24A-3 (2010).
[462] The "Growth Through Learning's" five modules are: "Understand Teacher Practice," "Validate Your Knowledge and Skills," "Collaborate With Teachers to Improve Practice," "Reflect, Measure, Evaluate" and "Understand Student Growth."
[463] http://www.growththroughlearningillinois.org (last visited Mar. 24, 2017).
[464] Ill. St. Bd. Of Educ. CEC Partnership Group, *Teacher and Principal Evaluation Training and Assessments,* at 36, *available at* https://illinoisasa.wikispaces.com/file/view/teacher-prin-eval-trng-asmt_pres_041112.pdf (last visited Mar. 24, 2017).
[465] Illinois Performance Evaluation Reform Act of 2010, P.A. 096-0861 at § 24A-3 (2010).
[466] Ill. St. Bd. Of Educ. CEC Partnership Group, *supra* note 464.
[467] *Id*.
[468] The CEC Partnership Group's membership included: The Danielson Group, the Center for the Study of Educational Policy at Illinois State University, the DuPage County Regional Office of Education, the Value-Added Research Center at the University of Wisconsin and Teachscape. Teachscape is a for-profit company that created the online professional practice modules used to train evaluators. http://cecillinois.org.
[469] Ill. St. Bd. of Educ., *New Performance Evaluation System Training Plan in Place, Training to Start Soon*, *available at* http://www.isbe.net/pera/pdf/pera-perf-eval-training-release-0312.pdf (last visited Nov. 28, 2015).

Evaluation Timelines

PERA set the evaluation cycle for both non-tenured and tenured teachers. Non-tenured teachers must be evaluated every year. Tenured teachers who receive a performance rating of either 'Proficient' or 'Excellent' are placed on an every other year evaluation cycle. A tenured teacher who receives a performance rating of 'Needs Improvement' will be evaluated again during the following academic year. If this teacher receives at least a 'Proficient' performance rating during the following year, he or she will be returned to a two-year evaluation cycle.[470] However, if this teacher receives a performance rating of 'Needs Improvement' he or she would be placed on a professional development plan. The professional development plan is created by an evaluator, in consultation with the teacher, and will be designed to address the areas of the teacher's performance identified as being in need of improvement. The plan will also identify the supports school officials need to provide the teacher.[471]

PERA requires that a tenured teacher who receives an 'unsatisfactory' rating be placed on a ninety-day remediation plan.[472] At this point, within thirty days of the teacher receiving an unsatisfactory performance rating, the evaluator meets with the teacher to formulate a remediation plan. The resulting remediation plan is to be designed to correct the deficiencies identified in the teacher's performance evaluation and is collaboratively developed with input from both the remediating teacher and a consulting teacher. The evaluator selects the consulting teacher. The selected consulting teacher must have received a performance rating of 'Excellent' on his or her last performance evaluation.[473] The consulting teacher provides the

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[470] Illinois Performance Evaluation Reform Act of 2010, P.A. 096-0861 at § 24A-5(2) (2010).
[471] *Id*. at § 24A-5(h).
[472] *Id*. at § 24A-5(i).
[473] *Id*. at § 24A-5(j).

remediating teacher advice on how to correct the deficiencies identified in the evaluation. At the end of the remediation period, if the remediating teacher receives a performance rating of "proficient" or better, he or she will be returned to the regular evaluation cycle set forth in the school district's collective bargaining agreement.[474] If the teacher fails to receive at least a satisfactory performance rating, PERA mandates that the local school board must terminate the teacher's employment.[475]

Student Growth as a Teacher Evaluation Metric

Lastly, PERA also requires that student academic growth be used as a metric in all teacher and principal performance evaluations. PERA's implementing regulations define student academic growth as "a demonstrable change in a student's or group of students' knowledge or skills."[476] PERA specifies three types of assessments that school districts can use to measure student academic growth. Type I assessments are defined as "reliable assessments that measure a certain group or subset of students" and are administered either statewide or nationally. The Measures of Academic Progress (MAP) is an example of a Type I assessment.[477] The MAP test assesses students in grades 1-12 in areas of math, language usage and reading using both local and national norms.[478] Type II assessments are defined as "any

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[474] *Id*. at § 24A-5(l).
[475] Illinois Performance Evaluation Reform Act of 2010, P.A. 096-0861 at § 24A-5(m) (2010).
[476] ILL. ADMIN. CODE tit. 23, § 50 (2015), *available at* https://www.isbe.net/Documents/50ARK.pdf (last visited Mar. 24, 2017).
[477] *Id.*
[478] Northwest Evaluation Association, *Measures of Academic Progress*, https://www.nwea.org/assessments/map/ (last visited July 25, 2016).

assessment developed or adopted and approved for use by the school district."[479] One example of a Type II Assessment is the Fountas and Pinnell Benchmark Assessment that can be administered by classroom teachers.[480] PERA's implementing regulations define Type III assessments as being "aligned to the course's curriculum," created by the teacher and approved by an administrator.[481] These assessments are administered by the classroom teacher to measure student academic growth on specific learning objectives.[482] Each teacher's overall performance rating is based, in part, on at least one Type I or Type II assessment and one Type III assessment. If a teacher cannot use a Type I or Type II assessment, they would be expected to use two Type III assessments for the student growth portion of their performance evaluation.[483] For example, consider a special education teacher who works with students challenged by severe disabilities. A severely disabled child would be exempt from standardized testing. Therefore, a Type I assessment would not be available to measure the student's academic growth. PERA requires that student growth represent at least 25% of a teacher's overall performance evaluation rating during the first two years of PERA's implementation,

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[479] ILL. ADMIN. CODE tit. 23, § 50 (2015), *available at* https://www.isbe.net/Documents/50ARK.pdf (last visited Mar. 24, 2017).
[480] Fountas & Pinnell Literacy, *Assessment FAQs,* http://www.heinemann.com/fountasandpinnell/faqs_bas.aspx (last visited Mar. 24, 2017).
[481] ILL. ADMIN. CODE tit. 23, § 50 (2015), *available at* https://www.isbe.net/Documents/50ARK.pdf (last visited Mar. 24, 2017).
[482] Ill. St. Bd. Of Educ., *Model Teacher Evaluation System: Measuring Student Growth Using Type III Assessments*, Feb. 2013, *available at* https://www.isbe.net/Documents/13-6-te-model-sys-meas-typeiii.pdf (last visited Mar. 24, 2017).
[483] ILL. ADMIN. CODE tit. 23, § 50.110 (2015), *available at* https://www.isbe.net/Documents/50ARK.pdf (last visited Mar. 24, 2017).

and be increased to at least 30% beginning during PERA's third and subsequent years of implementation.[484]

Although some skeptics believe PERA's primary intent was to erode teacher tenure rights, the Act received overwhelming statewide support.[485] Both of Illinois's major teacher unions, the Illinois Education Association (IEA) and the Illinois Federation of Teachers (IFT), supported PERA.[486] The Management Alliance, a group comprised of the Illinois Association of School Boards, the Illinois Principals Association, the Illinois Association of School Administrators and the Illinois Association of School Business Officials, also supported the legislation.[487] PERA passed the House of Representatives by a 74-37 margin,[488] and the Senate by a 48-4 margin.[489]

Senate Bill 7[490]

Seventeen months after PERA was signed into law, the Illinois legislature enacted Senate Bill 7 (SB 7), which expanded PERA's provisions.[491] SB 7 addressed concerns raised

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[484] *Id*. at § 50.
[485] Jim Broadway, *What's Going On? It's a Simultaneous Policy Scrum!,* ST. SCH. NEWS SERVICE, Dec. 20, 2010, *available at* http://www.illinoisschoolnews.com/updates/122010preview.pdf (last visited Dec. 2, 2015).
[486] Lightfoot, *supra* note 30.
[487] Quinn, *supra* note 440, at 7.
[488] State of Illinois, 96th General Assembly, House of Representatives, Transcript Debate, Jan. 12, 2010, at 79, *available at* http://www.ilga.gov/house/transcripts/htrans96/09600085.pdf (last visited Nov. 26, 2015).
[489] State of Illinois, 96th General Assembly, Regular Session, Senate Transcript, Jan 13, 2010, at 26, *available at* http://www.ilga.gov/senate/transcripts/strans96/09600074.pdf (last visited Nov. 26, 2015).
[490] Illinois School Code Education Labor Relations Pension Act of 2011, P.A. 097-0008 (2011).

by legislators in the wake of PERA's passage. These concerns included school board training, the revocation of licenses of certified employees, creation of a system for collecting feedback from teachers, students and parents, and the collective bargaining guidelines used when the bargaining process reaches an impasse.[492] SB 7 also addresses how teacher tenure is granted, the dismissal of tenured teachers, reductions in force and teacher recall rights.[493] According to the Illinois Association of School Boards, SB 7's primary purpose was to "connect teacher hiring and dismissal to teacher performance."[494]

School Board Training

SB 7 requires local board of education members to undergo a minimum of four hours of professional development in the following areas: financial oversight, education law, PERA and labor law. This professional development was to be completed within one year of the board member taking office.[495] School districts are required to post online the professional development classes attended by individual school board members.[496]

Although Section 21-23 of the School Code already vested the state superintendent with authority to "suspend, revoke, or limit" a teaching certificate for incompetency, SB 7 added language that defined "incompetency" to include a teacher who received two unsatisfactory

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[491] Ill. Assoc. of Sch. Bds., *supra* note 38.
[492] *Id*.
[493] Ill. St. Bd. of Educ., *Performance Evaluation Reform Act (PERA) and Senate Bill 7*, http://www.isbe.net/pera/ (last visited Dec. 27, 2015).
[494] Ill. Assoc. of Sch. Bds., *supra* note 38.
[495] Ill. St. Bd. of Educ., supra note 450, at Section G. School Board Member Training.
[496] Ill. Assoc. of Sch. Bds., *supra* note 38.

performance evaluations within a seven-year period.[497] SB 7 also required school officials to survey teachers, students and parents regarding learning conditions within the school district. This survey data must be collected annually and posted on each school district's state report card.[498] Another SB 7 provision delineated new collective bargaining guidelines. Under SB 7, if a local board of education and local teacher bargaining unit reach a bargaining impasse, within seven days the parties are required to declare an impasse and submit their respective final contract proposals. If a settlement is not reached, both final offers are released to the press and posted on the school district's website. Thereafter, if an agreement is not reached, the teacher's collective bargaining unit representatives would be authorized to issue an intent to strike.[499]

Acquiring Tenure

Under SB 7, teachers can still attain tenure status. However, the tenure acquisition process has been altered. Before SB 7, teachers were required to complete a four-year process to earn tenure.[500] Under SB 7, teachers have the potential to earn accelerated tenure in three years if they receive "Excellent" performance ratings during each of their first three years of teaching. Teachers who have previously acquired tenure in another school district may attain

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[497] Ill. Educ. Assoc., *Unions Stand Together to Forge Historic Education Reform*, *available at* http://www.ieanea.org/media/2011/04/Sb7-fact-sheet-updated-4-161.pdf (last visited Dec. 3, 2015).
[498] *Id*.
[499] Ill. Assoc. of Sch. Bds., *supra* note 38.
[500] 105 ILL. COMP. STAT. 5/24-11(d) (2016); Legis. Educ. Network of DuPage County, *Support Senate Bill 7*, *available at* http://www.lend-dupage.org/wp-content/uploads/2011/09/SB7-Long-4-28-11.pdf (last visited Dec. 29, 2015).

accelerated tenure if they receive an "Excellent" performance rating for each of the first two years in a new school district.[501]

Streamlined Tenured Teacher Dismissal Procedures

SB 7 both streamlined and shortened tenured teacher dismissal procedures. Under these new procedures if a tenured teacher is dismissed as a consequence of failing to successfully complete a remediation plan and thereafter requests a hearing, he or she can have the board of education cover the cost of the hearing if the teacher agrees to allow the local board of education to select the hearing officer. If the teacher elects to have input into the selection of a hearing officer, he or she must pay half of the hearing costs.[502] The hearing must begin within 75 days after the hearing office's selection and must conclude within 120 days of the date the hearing officer was selected. During the dismissal hearing, both the board of education and the teacher are each allowed a maximum of three days to present their evidence. Before SB 7's passage, there were no time constraints on conducting a hearing and there was no limit on how many days each side had to present evidence.[503]

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[501] *Id*.
[502] Ill. Assoc. of Sch. Bds., *supra* note 38.
[503] Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd., *An Overview of Public Act 97-0008*, June 2011, *available at* http://www.rsnlt.com/clientuploads/documents/DLW_Education_Reform_Legislation_WEB_UPDATED.pdf (last visited Feb. 18, 2016).

Reductions in Force

Reductions in Force (RIF) are defined by the Illinois General Assembly as a local board of education's decision to decrease the number of teachers employed by the school district due to financial exigency.[504] Before SB 7, decisions on whom to RIF were predicated solely on seniority. Under SB 7, teachers are assigned to one of four groups based upon two factors: whether they have been evaluated, and the performance ratings the teacher received on their most recent performance evaluation. Group One teachers include non-tenured teachers who have not received a formal performance evaluation. Group Two includes teachers who received either a "Needs Improvement" or an "Unsatisfactory" on either or both of their last two performance evaluations. Group Three consists of teachers who received a rating of "Satisfactory" or "Proficient" on both of their last performance evaluations. Group Four includes teachers who received either a rating of "Excellent" on their two most recent performance evaluations, or two "Excellent" ratings and one "Proficient" rating on their last three evaluations.[505]

If it becomes necessary for a school district to initiate a reduction in force, Group One teachers are dismissed first, followed by Group Two, Group Three and finally Group Four teachers.[506] Within each of these groups, teachers with the lowest performance ratings are dismissed first. If two teachers within a group have the same performance rating, the teacher with the least amount of continued contractual service (i.e., least amount of seniority) within the school district is dismissed first.[507] On July 1, 2014, the law was amended to provide that all

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[504] 105 ILL. COMP. STAT. 5/24-12(b) (2014).
[505] Ill. Assoc. of Sch. Bds., *supra* note 38.
[506] *Id*.
[507] *Id*.

Group Two teachers who are honorably dismissed as a result of a reduction in force have recall rights.[508] Previously, only teachers in Groups 3 and 4 had recall rights.[509] Teachers who are eligible for recall are recalled in the reverse order of their dismissal unless an alternative order is established by the school district's collective bargaining agreement.[510]

At the time of SB 7's signing, then-U.S. Secretary of Education Arne Duncan stated, "Illinois has created a powerful framework to strengthen the teaching profession and advance student learning in Illinois."[511] SB 7 expanded PERA and added training for school board members, vested the state superintendent more latitude in the revocation of teaching licenses, provided new collective bargaining guidelines, offered alternative ways to obtain tenure, streamlined the process of dismissing teachers who are dismissed as a result of failing to successfully complete a remediation plan, and implemented new RIF procedures. Although Senate Bill 7 resulted in many changes, the thrust of the bill was to "connect teacher hiring and dismissal to teacher performance."[512] Secretary Duncan, as well as others from both parties, celebrated PERA as a model for the nation.

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[508] Ill. St. Bd. of Educ., *Non-Regulatory Guidance, Recall Rights of Honorably Dismissed Teachers*, http://www.isbe.net/peac/pdf/guidance/14-2-recall-rights-hon-disch-teachers.pdf (last visited Dec. 2, 2015).
[509] Recall rights are rights teachers have to their position should it reopen within a certain period of time.
[510] Ill. St. Bd. of Educ., *supra* note 508.
[511] Resmovits & Guzzardi, *supra* note 39.
[512] Ill. Assoc. of Sch. Bds., *supra* note 38.

Illinois Judicial Decisions Dealing with Teacher Dismissals After PERA's Implementation

Since PERA's passage, Illinois courts have decided two teacher dismissal cases related to unsatisfactory teaching performance. While both cases were decided after PERA's enactment, the decisions were based on pre-PERA law. These decisions are presented below.

***Board of Education v. Orbach*[513]**

Shelley Orbach was a tenured high school science teacher in the Waukegan School District. Orbach's principal evaluated Orbach in 2010 and assessed the following six areas of her teaching performance: organization, management, content, methodology, personal interaction and professional responsibilities.[514] Each of these six areas had one of four possible performance ratings: "excellent," "satisfactory," "needs improvement" and "not observed."[515] The overall rating for a teacher's summative evaluation was based on an average of the performance ratings for each of these six areas. These calculations yielded one of the following summative performance ratings: "Excellent," "Satisfactory," or "Unsatisfactory."[516] Based upon the individual scores in the six identified areas, Orbach's classroom teaching was rated as unsatisfactory in two areas and satisfactory in four areas. As a result, Orbach's overall

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[513] Bd. of Educ. of Waukegan Cmty. Unit Sch. Dist. No. 60 v. Orbach, 991 N.E.2d 851 (Ill. App. 2013).
[514] *Id.* at 853.
[515] *Id.*
[516] *Id.*

summative performance rating was satisfactory.[517] However, because two of the areas were rated as being deficient, school officials placed Orbach on a remediation plan.[518] The remediation plan specified the "indicators for success [would be] satisfactory ratings on the summative evaluation in each of the deficient areas."[519]

Orbach's classroom teaching performance was observed and formally evaluated three times during the fall of 2010; twice by his administrator and one time by the heads of the math and science departments.[520] Each of these three evaluations resulted in Orbach receiving an overall rating of satisfactory. However, during each one of the three evaluations Orbach also received an unsatisfactory rating in one of the six areas – methodology.[521] Despite the overall satisfactory rating, the Board of Education voted to dismiss Orbach.[522] The Board of Education's dismissal resolution stated, "any teacher receiving an unsatisfactory rating at the end of a Remediation Plan shall be dismissed in accordance with the law."[523]

Orbach requested a hearing before a hearing officer.[524] The hearing officer reversed the dismissal and ordered Orbach reinstated to "a substantially similar teaching position."[525] The hearing officer found a teacher's dismissal was only warranted "if the overall rating was unsatisfactory."[526] The Board of Education sought administrative review of the hearing officer's decision in the Circuit Court of Lake County. The circuit court reversed the hearing

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[517] *Id.*
[518] *Orbach*, 991 N.E.2d at 853.
[519] *Id.*
[520] *Id.*
[521] *Id.* at 854.
[522] *Id.*
[523] *Orbach*, 991 N.E.2d at 854.
[524] *Id.*
[525] *Id.*
[526] *Id.*

officer's decision, relying upon both the School District's collective bargaining agreement and the School Code.[527] Even though Orbach's overall performance rating was satisfactory, the circuit court reasoned if the teacher's classroom teaching performance was not found to be satisfactory in each of the six areas, the teacher should be dismissed.[528]

Orbach appealed the decision to Illinois's Second District Court. Orbach argued only an overall performance rating of unsatisfactory should lead to a teacher's dismissal.[529] School officials argued the School Code required the dismissal of a teacher who failed to remediate the deficiencies addressed by the remediation plan, regardless of the teacher's overall performance rating.[530] The appellate court observed that 24A-5(m)'s plain language stated "any teacher who fails to complete any applicable remediation plan" should be dismissed.[531] The court pointed out the legislature could have said an applicable portion of a remediation plan, but opted to speak globally about the remediation plan.[532] The court also noted the Board of Education's rationale for Orbach's dismissal "would mandate the dismissal of all but perfect teachers."[533] The court further found the School District's collective bargaining agreement made dismissal "contingent upon a teacher's overall rating."[534] The court held there was no conflict between the School District's collective bargaining agreement and Section 24A-5(m) of the School Code since both provided a teacher could only be dismissed based upon the overall

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[527] *Id.*
[528] *Orbach*, 991 N.E.2d at 854.
[529] *Id.* at 855.
[530] *Id.* at 856.
[531] *Id.*
[532] *Id.* at 857.
[533] *Orbach*, 991 N.E.2d at 857.
[534] *Id.* at 858.

performance rating emerging from the remediation plan.[535] The court reasoned since Orbach's overall performance rating was "satisfactory," he was subject to reevaluation the following year and therefore he could not be dismissed.[536] The appellate court reversed the circuit court's order and affirmed the hearing officer's decision, thereby ordering Orbach's reinstatement.[537]

Valley View v. Reid[538]

Lynn Reid was a tenured school psychologist with the Valley View Community School District. Reid was placed on a remediation plan on January 11, 2010.[539] Prior to the unsatisfactory rating that precipitated the remediation plan, Reid's previous performance evaluations had rated her as excellent in all categories.[540] In 2006, Reid had been moved to another school in the district and received a rating of excellent from her new principal, who commended Reid "for her planning, methods, and assessment skills, and knowledge of her subject matter."[541]

Three years later, in 2009, Reid was again evaluated by the same administrator and was rated as unsatisfactory in almost all categories. As a result, the administrator recommended that Reid be placed on a remediation plan.[542] Reid disagreed with the administrator's assessment and recommendation. In response to Reid's challenge, the administrator reconsidered and

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[535] *Id.*
[536] *Id.*
[537] *Id.*
[538] Bd. of Educ. of Valley View Cmty. Unit Sch. Dist. No. 354-U v. Ill. St. Bd. of Educ., 1 N.E.3d 905 (Ill. App. 3d 2013).
[539] *Id.* at 911. This case was decided after the enactment of PERA. However, because the remediation plan took place prior to PERA, this case followed the pre-PERA School Code.
[540] *Id.* at 910.
[541] *Id.*
[542] *Id.*

submitted a revised evaluation recommending Reid's "Re-employment with a Professional Growth Program" instead of being placed on a remediation plan.[543] Reid agreed to participate in the growth plan.[544] The following December, Reid was again evaluated by her principal. Reid received a performance rating of "unsatisfactory" based upon her performance being assessed as deficient in several areas including planning, instruction and assessment, classroom management and the learning environment.[545] A new remediation plan was created for Reid beginning on January 11, 2010.[546] At the conclusion of the remediation plan, after failing to successfully complete the remediation plan, the Board of Education dismissed Reid.[547] Reid sought administrative review with a hearing officer provided by the Illinois State Board of Education.[548]

The hearing officer determined Reid had presented extensive evidence and testimony rebutting school officials' basis for recommending Reid's dismissal.[549] The hearing officer also expressed concern over the consulting teacher's role as outlined in the School Code. The School Code required that the consulting teacher must have at least five years of teaching experience, knowledge of the job assignment, and must have received an excellent rating on his or her last performance evaluation.[550] The hearing officer could not find any evidence showing Reid's consulting teacher met the qualifications or had even participated in the remediation

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[543] *Valley View*, 1 N.E.3d at 910.
[544] *Id.*
[545] *Id.* at 911.
[546] *Id.*
[547] *Id.* at 908.
[548] *Valley View*, 1 N.E.3d at 908.
[549] *Id.* at 912.
[550] 105 ILL. COMP. STAT. 5/24A-5 (j) (2012).

plan "in any fashion."[551] The hearing officer overturned the dismissal and ordered Reid reinstated with full back pay.[552] School officials filed a Complaint for Administrative Review with the circuit court challenging Reid's reinstatement.[553] The circuit court concluded the hearing officer's decision was not against the manifest weight of the evidence and affirmed the decision to have Reid reinstated.[554] The Board of Education then appealed to the Third District Appellate Court.

On appeal, school officials contended the hearing officer's decision was contrary to the evidence presented.[555] Although the hearing officer was presented with conflicting evidence, the appellate court pointed out the hearing officer's job was to assess the "information and the testimony of the witnesses and to determine the appropriate weight to be given the evidence."[556] The court found the hearing officer's findings were appropriate and, as a result, affirmed the decision to reinstate Reid with full back pay.[557]

Tenure Still Exists

Tenure rights for Illinois public schoolteachers are a statutory creation of the legislature. Even after PERA's enactment, Illinois public K-12 schoolteachers have retained tenure rights. However, an erosion of the potency of those rights began when the federal government became increasingly involved in public education. Spurred on by the 1957 Sputnik launch, the 1983

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[551] *Valley View*, 1 N.E.3d at 912.
[552] *Id.* at 913.
[553] *Id.*
[554] *Id.*
[555] *Id.*
[556] *Valley View*, 1 N.E.3d at 919.
[557] *Id.* at 920.

publishing of *A Nation at Risk* and the 1985 passage of the Education Reform package,[558] Illinois public schoolteachers have become increasingly more accountable for their classroom teaching performance. This heightened accountability has manifested itself in the form of an erosion of public school teacher tenure protections. With the Performance Evaluation Reform Act's[559] 2010 passage, the State of Illinois created a more rigorous system of accountability for K-12 public school classroom teachers that incorporated student academic achievement data into the calculus of evaluating classroom teaching performance.

[558] The Illinois Educational Reform Act of 1985, P.A. 084-126 (1985).
[559] Illinois Performance Evaluation Reform Act of 2010, P.A. 096-0861 (2010).

CHAPTER 3

ANALYSIS

In 1985, the Illinois legislature amended the Illinois School Code to afford public K-12 school administrators and local boards of education the ability to more easily remediate or dismiss tenured teachers who demonstrated unsatisfactory classroom teaching performance.[560] Thereafter, in 2010 the legislature strengthened the 1985 reforms with the passage of the *Illinois Performance Evaluation Reform Act* (PERA).[561] Chapter Three examines trends in teacher dismissal cases after the passage of both of these state laws. Between 1985 when Article 24A was adopted until PERA's 2010 enactment, Illinois courts issued nine published decisions[562] that interpreted Article 24's provisions. After PERA's passage, Illinois courts issued two more published decisions in teacher dismissal cases related to unsatisfactory teaching performance. However, while both of those cases were decided after PERA's enactment, they are being treated as Article 24A cases because there have not been any post-PERA published decisions that interpret PERA's provisions.[563]

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[560] Ill. St. Bd. of Educ., *Legislative Package 1985*, *available at* http://files.eric.ed.gov/fulltext/ED260519.pdf (last visited Dec. 14, 2015).
[561] Illinois Performance Evaluation Reform Act of 2010, P.A. 096-0861 (2010).
[562] Some appeals could have been decided in unpublished decisions from the circuit or appellate courts.
[563] There have been three cases that have been decided based on post-PERA law but in each instance the cases involved teachers being dismissed for financial reasons (RIF). The three cases: Pioli and Edelson v. N. Chi. Cmty. Sch. Dist. No. 187, 2014 IL App (2d) 130512-U (Ill. App. 2d 2014), *available at*

As explained in Chapter Two, the 1985 addition of Article 24A to the Illinois School Code was largely the Illinois legislature's response to *A Nation at Risk*, a report issued by the National Commission on Excellence in Education (NCEE).[564] *A Nation at Risk* called for greater accountability for student academic achievement from the entire educational community.[565] Unfortunately, Illinois's 1985 reforms did not fully yield the intended results in addressing unsatisfactory teaching performance.[566] For example, one study showed that from 1987-2005, 94% of Illinois public school districts did not attempt to dismiss a single tenured teacher as a consequence of unsatisfactory classroom teaching performance.[567] This fact is particularly surprising because during this time period, an estimated 2.5 million annual hours of administrative time were allocated to evaluating the classroom teaching performance of Illinois public K-12 teachers.[568] This significant investment of time and energy resulted in only one of 930 teachers (0.1%) having their classroom teaching performance rated as unsatisfactory.[569]

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http://www.illinoiscourts.gov/R23_Orders/AppellateCourt/2014/2ndDistrict/2130512_R23.pdf (last visited Sept. 9, 2017) (the two teachers were denied recall rights because they fell in Group 2 in a year the district needed to cut licensed teachers for financial reasons), Frakes and Lawler v. Peoria Sch. Dist. No. 150, 2014 IL App (3d) 130306 (Ill. App. 3d 2014), *available at* http://www.illinoiscourts.gov/opinions/AppellateCourt/2014/3rdDistrict/3130306.pdf (last visited Sept. 9, 2017) (both teachers were denied recall rights because they also fell in Group 2 in a year the district needed to cut licensed teachers for financial reasons), Holmes v. Bd. of Educ. of Belvidere Cmty. Sch. Dist. 100, 2015 IL App (2d) 140731 (Ill. App. 2d 2015), *available at* https://casetext.com/case/holmes-v-bd-of-educ-of-belvidere-cmty-sch-dist-100 (last visited Sept. 9, 2017) (seven teachers were dismissed because they fell in Group 2 in a year the district needed to cut licensed teachers for financial reasons).

[564] VINOVSKIS, *supra* note 17, at 16.

[565] *Id.* at 124.

[566] Ill. St. Bd. of Educ., *Legislative Package 1985*, *available at* http://files.eric.ed.gov/fulltext/ED260519.pdf (last visited Dec. 14, 2015).

[567] Scott Reeder, *Remediation Falls Short of '85 Legislative Intent*, *available at* http://thehiddencostsoftenure.com/stories/?prcss=display&id=266545 (last visited July 7, 2016).

[568] *Id.*

[569] *Id.*

According to Scott Reeder of the Small Newspaper group, before Article 24A was added to the Illinois School Code in 1985, an average of three teachers per year were dismissed statewide as a consequence of unsatisfactory classroom teaching performance.[570] In the 17 years following Article 24A's passage, an average of only two teachers per year (.0002%) were dismissed as a consequence of unsatisfactory classroom teaching performance.[571]

PERA's stated primary purpose was to "connect teacher hiring and dismissal to teacher performance."[572] PERA streamlined the Illinois public school teacher evaluation and dismissal processes, and, for the first time, incorporated student academic growth data into the teacher performance evaluation calculus.[573] This change required public school administrators to use student academic growth data in formulating at least 25% of a teacher's overall performance evaluation rating. During PERA's third year implementation, the impact of student academic growth data upon teacher performance evaluations had to account for at least 30% of the teacher's overall performance evaluation rating.[574] Under PERA, if a teacher's classroom teaching performance is rated as "unsatisfactory" the teacher is required to participate in a 90-school day remediation plan.[575] If the teacher fails to successfully complete this remediation

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[570] Scott Reeder, *Diplomacy Undermines Teacher Evaluations, available at* http://thehiddencostsoftenure.com/stories/?prcss=display&id=266561 (last visited Sept. 9, 2017).
[571] Scott Reeder, *Tenure Frustrates Drive for Teacher Accountability*, *available at* http://thehiddencostsoftenure.com/stories/?prcss=display&id=266539 (last visited Sept. 9, 2017).
[572] Ill. Assoc. of Sch. Bds., *SB 7/SB 630 Analysis*, *available at* http://www.iasb.com/govrel/sb7analysis.pdf (last visited Dec. 17, 2015).
[573] Ill. St. Bd. of Educ., *Growth Through Learning, Frequently Asked Questions*, Apr. 12, 2012, *available at* https://www.isbe.net/Documents/pera-faqs.pdf#search=pera%2Dfaqs (last visited Mar. 24, 2017).
[574] ILL. ADMIN. CODE tit. 23, § 50 (2015), *available at* https://www.isbe.net/Documents/50ARK.pdf (last visited Mar. 24, 2017).
[575] Illinois Performance Evaluation Reform Act of 2010, P.A. 096-0861 at § 24A-5(i) (2010).

plan with at least a "satisfactory" performance rating the local school board is required by law to terminate the teacher's employment.[576] In 2011 U.S. Secretary of Education, Arne Duncan, lauded the changes brought forth by PERA stating, "Illinois has created a powerful framework to strengthen the teaching profession and advance student learning in Illinois."[577]

Analysis of Teacher Dismissal Cases Resulting from Unsatisfactory Classroom Teaching Performance

Chapter Two's review of Illinois court decisions shows that teacher-litigants' dismissal challenges fall into three primary categories. These categories are: 1. An assertion that the school district did not utilize the statutorily required teacher classroom performance rating categories; 2. An assertion that school officials did not follow the School Code when determining who must participate in the remediation process; and, 3. Allegations that school officials committed procedural errors in dismissing the teacher.

Illinois Judicial Decisions Involving the Teacher Classroom Performance Rating Categories

Three out of the eleven cases decided by the appellate courts involving the dismissal of a tenured teacher for unsatisfactory teaching performance addressed the issue of performance rating categories. Before PERA, subsection 24A-5(c) of the School Code directed school officials to utilize one of three discrete categories to rate the tenured teacher's classroom

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[576] *Id*.
[577] Resmovits & Guzzardi, *supra* note 39.

teaching performance:[578] excellent, satisfactory or unsatisfactory.[579] This directive was at issue in *Buchna v. Illinois State Board of Education.*[580] In this case school officials used only two performance rating categories when they evaluated Lori Buchna's classroom teaching performance. The two categories utilized by school officials were; "Meets or Exceeds District Expectations" or "Does Not Meet District Expectations."[581] There was no third option, as mandated by the School Code. When Buchna received a performance rating of "Does Not Meet District Expectations" she was dismissed by the Board of Education.[582] In challenging her termination, Buchna argued she had been improperly fired because the school district's teacher evaluation system only used two – and not the state-required three – performance ratings.[583]

The Third District Appellate Court ruled for Buchna, finding the school district's two-tiered rating system did not comply with Article 24A.[584] As explained in Chapter Two, school officials attempted to defend the use of two (instead of the state mandated three) performance evaluation categories by suggesting that the requirement should not be interpreted to mean the three specifically named categories. School officials argued, that Buchna's rating of "does not meet district expectations" would have been the same had the school district utilized the three categories specifically required by the School Code. School officials argued they had not disregarded state directives, but instead had opted to condense the state mandate into two

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[578] Buchna v. Ill. St. Bd. of Educ., 342 Ill. App.3d 934, 936 (2003).
[579] 105 ILL. COMP. STAT. 5/24A-5(c) (1985).
[580] Buchna v. Ill. St. Bd. of Educ., 342 Ill. App.3d 934 (2003).
[581] *Id.* at 935.
[582] *Id.*
[583] *Id.* at 937.
[584] *Id.* at 939.

categories.[585] This argument proved to be unsuccessful. The court pointed out Article 24A explicitly required the use of three performance rating categories. Thus the court declined school officials' invitation to "… disregard [Article 24A's] clear statutory directives."[586] The appellate court concluded Article 24A's explicit use of the three-tiered rating system was mandatory, not simply a legislative suggestion.[587]

Chicago Board of Education v. Smith[588] also involved a performance rating challenge. In this case, the challenge did not involve the evaluation categories, but instead disputed the formal evaluation required at the end of a teacher's remediation program. In *Smith,* the teacher argued school officials had violated Article 24A by failing to provide her with a formal evaluation or rating at the end of her remediation period.[589] Subsection 24A-5(k) of the School Code provided the school official responsible for remediating a teacher's unsatisfactory classroom teaching performance were required to provide the remediating teacher with both a midpoint and a final performance evaluation rating. In addition to providing a performance rating, these evaluations were to note both observed deficiencies and provide the teacher with recommendations for improvement.[590] The First District Appellate Court found school officials had not provided the teacher with either a formal evaluation document or a rating as was required by the School Code. In *Smith*, like *Buchna*, the courts took a literal approach to

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[585] Buchna v. Ill. St. Bd. of Educ., 342 Ill. App.3d 934, 938 (2003).
[586] *Id.*
[587] *Id.* at 937.
[588] *Smith,* 279 Ill. App.3d 26.
[589] *Id.* at 29.
[590] 105 ILL. COMP. STAT. 5/24A-5(k) (1985).

application of 24A to teachers, holding that "a proper evaluation requires the inclusion of *at least* the items listed in the School Code."[591]

In *Board of Education v. Orbach,*[592] Illinois courts were called to rule upon the calculus utilized to rate a teacher's overall performance evaluation rating. In *Orbach* the teacher-litigant, notwithstanding receipt of an overall performance rating of "satisfactory" at the culmination of her remediation plan, was nonetheless dismissed because she had failed to receive a satisfactory rating on each discreet component of the plan.[593] The Board of Education argued the School Code provided "any teacher receiving an unsatisfactory rating at the end of a Remediation Plan shall be dismissed in accordance with the law."[594] The Second District Appellate Court disagreed, observing Section 24A-5(m)'s plain language stated "any teacher who fails to complete any applicable remediation plan" should be dismissed.[595] Once again, courts made it clear that a strict, literal reading of 24A would be applied in teacher dismissal cases. The fact that Orbach failed to earn a satisfactory rating on each component of the remediation plan was found to be irrelevant. The court found a teacher's dismissal could only be based upon the remediation plan's overall performance rating.[596]

The three cases interpreting Article 24A's mandated performance category ratings are instructive. Sometimes courts find that state statutes do not require strict, literal adherence to the school code in order to meet the "spirit" of the law. This is not the stance Illinois courts have taken in regards to the application of 24A under PERA. Illinois courts have consistently

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[591] *Smith,* 279 Ill. App.3d at 35.
[592] *Orbach*, 991 N.E.2d 851.
[593] *Id.* at 854.
[594] *Id.* at 854.
[595] *Id.* at 856.
[596] *Id.* at 858.

demanded strict adherence to Article 24A's specific language. Therefore, litigants seeking "wiggle room" in 24A are unlikely to find a sympathetic judicial ear.

Court Decisions Interpreting Article 24A's Delineation of the Persons Who Must Participate in the Remediation Process

Tenured teachers who are dismissed often litigate their dismissals by alleging school officials failed to involve the "right" employees in formulating the termination recommendation to the local board of education. Five of the eleven cases involving the dismissal of a tenured teacher for unsatisfactory classroom teaching performance questioned who must participate in Article 24A's remediation process. In *Powell v. Board of Education,*[597] the court addressed whether Article 24A required members of the board of education to participate in the remediation process. In *Powell,* the teacher-litigant argued the Board of Education violated Article 24A-5(f) because members of the board of education had not participated in either conducting the teacher's performance evaluation or formulating and implementing the remediation plan.[598] As explained in Chapter Two, a school district administrator had conducted Powell's performance evaluation and issued the final performance rating. Recall Illinois courts had required strict adherence with the School Code's language. However, in *Powell* the court ruled the absence of specific language in the School Code did not give teachers the latitude to determine who they wished to have fulfill roles in the remediation process. The Third District Appellate Court found it was the responsibility of the school official charged with overseeing Powell's remediation plan to formulate the teacher's final

[597] *Powell,* 189 Ill. App. 3d 802.
[598] *Id.* at 805.

performance evaluation rating.[599] The appellate court determined Article 24A of the Illinois School Code vested schools officials with the responsibility of conducting "the initial evaluation, the rating of the teacher's performance, and [identifying] the teacher's strengths and weaknesses."[600] Thus, it was not up to the remediating to choose who would participate the remediation process.

In another case, *Davis v. Board of Education,*[601] the teacher-litigant unsuccessfully argued it was the hearing officer, rather than the school board, who should determine whether his teaching performance had been properly rated as unsatisfactory at the conclusion of the remediation plan.[602] Even though the hearing officer had determined school officials had not committed procedural violations when carrying out the remediation process and had upheld the teacher's dismissal, Davis argued the determination of whether he had successfully completed the remediation plan should have been made by the hearing officer rather than by school officials.[603] At the time of the decision, Section 24A-5(f) provided the remediation process could be extended for up to one year if the principal and consulting teacher concluded the teacher's performance was remediable.[604] Again taking a literal approach to interpreting the School Code, the First District Appellate Court found Article 24A clearly stated for a Chicago public school teacher, both the principal and consulting teacher, not the hearing officer, were vested with the authority to make the final determination regarding whether the remediating

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[599] Ill. Rev. Stat. 1987, ch. 122, par. 24A-5(h)*, now* 105 ILL. COMP. STAT. 5/24A-5(h) (West 1992).
[600] *Powell,* 189 Ill. App. 3d at 805.
[601] *Davis,* 276 Ill. App.3d 693.
[602] *Id.*
[603] *Id.*
[604] 105 ILL. COMP. STAT. 5/24A-5(f) (West 1992).

teacher had demonstrated satisfactory improvement.[605] The appellate court pointed out Article 24A-5(f) expressly vested, "the principal and the consulting teacher with the power to make this determination."[606] The appellate court rejected Davis' contention that it was up to the hearing officer to make the final determination and upheld Davis' dismissal.[607] Therefore, when 24A contains specific language mandating individual membership on the remediation team it appears that courts will strictly enforce this mandate.

The question of whether the School Code vested the hearing officer with authority to determine whether the teacher had adequately improved his/her teaching performance as a result of the remediation process was the central issue in *Board of Education v. Spangler.*[608] In *Spangler s*chool officials argued the hearing officer should have "no authority to evaluate the seriousness or gravity of the charges when ascertaining whether the Board had met its burden of proving that an unsatisfactory rating was justified."[609] The First District Appellate Court concluded it was "inherent" to the nature of the proceedings under the School Code "that the hearing officer ha[d] authority to evaluate the gravity of the charges."[610] The court reasoned because Article 24A interjected an independent hearing officer into the process, "it was the legislature's intent to give full and total authority to the hearing officer to make the ultimate decision and determination as to dismissal."[611] As a result of this conclusion the court ordered Spangler's reinstatement with back pay.[612] In this case, although the School Code was silent on

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[605] *Davis,* 276 Ill. App. 3d at 696.
[606] *Id.*
[607] *Id.*
[608] *Spangler,* 328 Ill App.3d 747.
[609] *Id.* at 753.
[610] *Id.* at 755.
[611] *Id.* at 754.
[612] *Id.* at 755.

the issue of who was vested with authority make the final say on the remediation process, the *Powell* court extended this power to the hearing officer reasoning making such determinations were central to the hearing officer's role. Therefore, it appears even though the specific role of an individual in the process need not be specified in the School Code so long as their part in the remediation process is clear.

Two of the reviewed cases addressed issues related to the qualifications and/or participation of consulting teachers. As previously explained, consulting teachers play an integral role in the remediation process. They are responsible both for shepherding teachers through the process but also have evaluative responsibilities. Consulting teachers are responsible for both the formative and summative components of the evaluation process. The consulting teacher's role in formulating and implementing the remediation plan was at issue in *Montgomery v. Board of Education.*[613] In *Montgomery,* the teacher-litigant claimed school officials had not complied with Article 24A-5's procedural requirements. Specifically, Montgomery argued he should not have been fired because his consulting teacher had not participated in the development of his remediation plan.[614] Unlike earlier challenges (such as *Powell*) where the specific make-up of remediation teams was at issue, *in Montgomery* the teacher challenged the requisite amount of participation required of the consulting teacher. The Circuit Court of Cook County found the consulting teacher had adequately participated and, therefore, "the provisions of section 24A-5(h) had been met."[615] Montgomery's classroom teaching performance was observed thirty-eight times by the consulting teacher and based upon this observation the appellate court concluded Montgomery had mischaracterized the

[613] Montgomery v. Bd. of Educ., 982 N.E.2d 770 (Ill. 2013).
[614] *Id.* at 25.
[615] *Id.* at 29.

consulting teacher's level of participation.[616] Montgomery appealed to the First District Appellate Court where his petition was denied. A second case, *Valley View v. Reid*[617] was also decided based upon the consulting teacher's qualifications and level of participation.

In *Reid,*[618] school officials dismissed Lynn Reid when she failed to receive a rating of "satisfactory" at the conclusion of her remediation period.[619] Like *Montgomery,* the issue in this case was not the teacher's overall performance rating, but instead focused upon the consulting teacher's required qualifications. As explained in Chapter Two, Article 24A-5(h) requires the participation of a consulting teacher. The law is specific about the consulting teacher's qualifications, requiring that the consulting teacher must have at least five years of teaching experience, knowledge of the job assignment, and must have received an excellent rating on his or her last performance evaluation.[620] In *Reid,* the dismissed teacher argued that by utilizing a consulting teacher who did not meet these requirements, school officials had failed to comply with Article 24A's requirements. The Third District Appellate Court could not find evidence showing Reid's consulting teacher had either met these qualifications or had even participated in the formulation and implementation of remediation plan "in any fashion."[621] Based upon these observations the court ordered the teacher's reinstatement with full back pay.[622] Thus, much like earlier cases, when there is specific language in 24A outlining individual roles or scopes of responsibility, Illinois courts will likely apply that language literally. In *Reid,* it is difficult to assess whether the key factor in the court's decision was the

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[616] *Id.* at 27.
[617] *Valley View*, 1 N.E.3d 905.
[618] *Id*.
[619] *Id.* at 908.
[620] 105 ILL. COMP. STAT. 5/24A-5(j) (West 1992).
[621] *Valley View*, 1 N.E.3d at *912.*
[622] *Id*.

fact that the consulting teacher did not play a role in the process, or the fact that the consulting teacher was not qualified to fill the role delineated by 24A's language. The former is certainly an issue, but the court's language also suggests the latter violation may have been problematic enough to stand on its own in terms of denying dismissed teachers their rights under the law.

The five dismissal decisions addressing issues related to whom must participate in the remediation process are useful to public school officials when a teacher has received a rating of "unsatisfactory" on their performance evaluation. Before developing the remediation plan, both school officials and teachers must be mindful of Article 24A-5's expectations for all parties. The courts have repeatedly found both school officials and teachers must adhere to Article 24A's plain language when such language exists. For example, Article 24A charges all public school officials outside the City of Chicago with conducting the performance evaluation and determining final performance rating for a teacher undergoing the remediation process. School officials and teachers must also be aware that, for Chicago Public School teachers, the school official and consulting teacher are vested with authority to determine if the teacher successfully completed the remediation plan and the hearing officer is only authorized to make a recommendation on this question. However, for public school teachers who are not employed by the Chicago Public Schools, the hearing officer has authority to determine if the teacher adequately improved his/her classroom teaching performance rating at the remediation plan's conclusion. Thus, when considering dismissal claims in Illinois it is essential to make the distinction of whether or not the teacher is employed by the Chicago Public Schools. However, the courts have consistently indicated school officials must strictly comply with Article 24A's requirements when selecting and utilizing the support of a consulting teacher.

Article 24A Procedural Issues

Three of the eleven cases addressing the dismissal of a tenured teacher for unsatisfactory teaching performance involved a failure of school officials to strictly adhere to Article 24A's dismissal process. *MacDonald v. Board of Education,*[623] involved school officials' failure to implement a remediation plan in a timely manner. Subsection 24A-5(i) of the School Code directs school officials to develop a remediation plan within 30 days of the teacher's receipt of an "unsatisfactory" rating of the teacher's classroom teaching performance.[624] In *MacDonald*,[625] James MacDonald was notified on the last day of the school year that he had received an "unsatisfactory" performance rating and that a remediation plan would be written for him within 30 days. However, MacDonald's remediation plan was not written until October 31, 2008 – 158 days after he received his "unsatisfactory" performance rating.[626] When MacDonald ultimately failed to improve his performance rating he was dismissed by the Board of Education.[627] MacDonald's challenge revolved around the School Code's procedural guidelines – specifically the 30 day rule outlined above. MacDonald argued school officials had violated Article 24A because they failed to formulate and implement a remediation plan within 30 days of his receipt of the unsatisfactory performance rating.[628]

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[623] *MacDonald,* 966 N.E.2d 322.
[624] 105 ILL. COMP. STAT. 5/24A-5(i) (West 1992).
[625] *MacDonald,* 966 N.E.2d 322.
[626] *Id.* at 324.
[627] *Id.* at 325.
[628] *Id.*

The Fourth District Appellate Court agreed with MacDonald.[629] School officials argued summer vacation days should have been excluded from the timeline calculation but the appellate court disagreed.[630] The court pointed out the legislature could have excluded summer vacation from the 30-day requirement by referring to "school days" rather than using the phrase "30 days," as was done when specifying that remediation plans must run for "90 school days."[631] As has been the result in other cases, Illinois courts have strictly adhered to the written requirements stated in Article 24A. The difference in *MacDonald*, as compared to some of the other cases was the absence of language added by the legislature (i.e. the failure of the legislature to specify "school days" as opposed to "days") which led to the court's decision. This is akin to the court's analysis in *Spangler*. *In Spangler,* the court found it "inherent" to the role of a hearing officer to be able to make final determinations. Similarly, in *MacDonald* the court found that because there was different language available to the General Assembly that was not used, the meaning of "days" was "inherently" understood to mean just that and not "school days."

A second case involving a procedural challenge was *Dudley v. Board of Education.*[632] The central issue addressed in this case was whether Deborah Dudley had the right to circumvent 24A's administrative review process. After being dismissed as a consequence of unsatisfactory teaching performance, Dudley immediately filed suit against the school district in the Circuit Court of Cook County rather than requesting a hearing with a hearing officer as prescribed by Article 24A. The First District Appellate Court concluded aside from the rights

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[629] *Id.* at 326.
[630] *MacDonald,* 966 N.E.2d at 327.
[631] *Id.* at 329.
[632] *Dudley,* 260 Ill. App.3d 1100.

provided in Article 24A, Dudley did not have a private right of action to enforce the School Code. The court concluded, while Article 24A provided protections to teachers, Sections 24-12 and 24-16 of the School Code outlined the exclusive remedy for enforcing Article 24's protections and the exclusive remedy was the administrative review process.[633] The appellate court affirmed the circuit court's decision, noting Dudley had failed to exhaust the protections provided by the School Code.[634] The court's decision in *Dudley* is consistent with previous decisions where the courts strictly interpreted the School Code's specific language.

A third case, *Raitzik v. Board of Education,*[635] focused upon whether the hearing officer had complied with Article 24A's procedures. Article 24A-5(m) expressly requires the dismissal of any teacher who fails to complete a remediation plan with a "rating equal to or better than satisfactory."[636] In *Raitzik,* the teacher failed to improve her rating during the remediation process and was dismissed by the Board of Education.[637] Raitzik exercised her right to a hearing and the hearing officer ordered her reinstatement.[638] Even though Raitzik had failed to improve her performance rating by the conclusion of the remediation process, the hearing officer concluded it was "troubling" that the teacher was only formally observed twice during the remediation period, i.e., the minimum of observations required by Article 24A.[639] The Board of Education rejected the hearing officer's decision, and affirmed Raitzik's dismissal because Raitzik had failed to improve her performance rating during the remediation

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[633] *Id.* at 1105.
[634] *Id.* at 1107.
[635] *Raitzik,* 356 Ill. App.3d 813.
[636] 105 ILL. COMP. STAT. 5/24A-5(m) (West 1992).
[637] *Raitzik,* 356 Ill. App.3d at 821.
[638] *Id*.
[639] *Id*.

period.[640] The First District Appellate Court found Raitzik had failed to improve the rating of her classroom teaching performance and, therefore, "cause existed for [Raitzik's] dismissal."[641] The court adhered to the statutorily outlined role of hearing officers to make final determinations in remediation cases. It appears the court refused to interpret hearing officers' role beyond parameters delineated by Article 24A.

The decisions interpreting Article 24A's procedures and timelines for the formulation and implementation of a remediation plan triggered by an "unsatisfactory" performance rating are informative for both school officials and teachers. All parties must understand and adhere to Article 24A's plain language. It appears that Illinois courts will strictly follow Article 24A's timeline requirements when formulating and implementing a remediation plan after a teacher receives an unsatisfactory performance rating. Also, the courts have determined the exclusive remedy for a public school teacher who has been dismissed for unsatisfactory teaching performance is Article 24A's administrative review process. Furthermore, the courts have concluded when Article 24A's procedures are followed, if a teacher fails to improve their performance rating following a remediation period, they *must* be dismissed per 24A-5(m). It would appear that hearing officers are expected to do no more and no less than make sure a school district has complied with the specific requirements of 24A. Professional judgment of the quality or process of the teacher's remediation process cannot come into play in hearing officers' decisions.

Surprisingly there are few tenured teacher dismissal cases that have made their way into Illinois courts. This seems to indicate that a vast majority of teachers who are dismissed either

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[640] *Id.* at 822.
[641] *Id.*

1.) resign from their teaching positions, or 2.) do not challenge school districts' termination decisions. Outlined below, are some unique characteristics of the litigant pool in Article 24A tenured teacher dismissal cases.

Gender of Teachers

The cases were reviewed to determine if the gender patterns of teacher-litigants matched the overall gender pattern of teachers in the state of Illinois. Five of eleven, or 45% of the teachers in the dismissal cases reviewed were male. Twenty-three percent of all teachers in the state of Illinois are male (a number that has remained steady for the past ten years).[642] When percentages are considered, there is a difference between the overall percentage of male teachers in Illinois and percentage of male teachers who have sued to retain their positions (i.e., this difference is 22% higher than the state's overall percentage of male teachers). Given the small sample size, it is difficult to draw any statistically significant conclusions. However, it appears there is an over-representation of male teachers who have sought to have the Illinois courts overturn their employment dismissals as a consequence of unsatisfactory teaching performance.

Years of Experience of Teachers

The cases were also reviewed to determine if the number of years of teaching experience of teacher-litigants matched the overall years of experience of public school

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[e] *Illinois Report Card Demographics*, *available at* https://www.illinoisreportcard.com/State.aspx?source=teachers&source2=teacherdemographics&Stateid=IL (last visited Sept. 9, 2017).

teachers in the state of Illinois. The number of years of classroom teaching experience of the teacher-litigants in the eleven teacher dismissal cases ranged from 14 to 30 years. Years of experience of Illinois teachers were difficult to obtain, but the average age of a teacher in the state is 41 years.[643] The National Center of Education Statistics collected the average age of teachers in the following ranges: Less than 30 years, 30-49 years, 50-54 years, and 55 years or more.[644] Most teachers between 14 and 30 years of experience would fall between the ages of 36 and 54. While the age ranges are not perfect, it is the best data that can be obtained. Sixty-four percent (64%) of all teachers in the state of Illinois are between the ages of 30-54, the approximate age range of all eleven teacher-litigants.[645] Approximately 36% of teachers in the state would have either less than 14 years of experience or more than 30 years of experience. Taking into account the fact that a public school teacher in the state of Illinois would not reach tenure until completing their fifth year of teaching, it is noted there are no teacher-litigants between 5 and 13 years of service. Thus, it appears that "newer" teachers are not typically the ones who make up the litigant pool Approximately 17% of the teachers in the state of Illinois are age 55 and older.[646] It is also significant that a group representing 17% of the total teachers in the state do not have a single teacher-litigant in the eleven dismissal cases. From the small sample size, it appears there is an over-representation of teachers in their mid-career compared to those at either the beginning or end of their career.

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[643] National Center for Education Statistics, Institute of Education Sciences, U.S. Dept. of Educ., *School and Staffing Survey (SASS)*, *available at* https://nces.ed.gov/surveys/sass/tables/sass1112_2013314_t1s_002.asp (last visited Sept. 9, 2017).
[644] *Id.*
[645] *Id.*
[646] *Id.*

Size of School Districts

The cases were reviewed to determine if the size of school districts in the eleven teacher dismissal cases reflect the diverse size of districts in the state of Illinois. Of the eleven teacher dismissal cases, four came from the City of Chicago, four cases came from the suburbs around Chicago and three cases were from downstate school districts. The state of Illinois classifies the size of school districts as large, medium and small.[647] Large school districts (i.e., 3001 students or more) represented seven of the eleven cases. Considering 64% of the teacher-litigants came from 25% of the districts in the state, it could be considered an over-representation. However, these school districts have a greater number of teachers due to higher student enrollments. Almost 25% of students in the state of Illinois attend the largest school district in the state (Chicago Public Schools), while 36% of the teacher-litigants taught in the Chicago Public Schools. This is not a significant difference due to the small sample size. Medium-sized school districts (i.e., approximately 1000-3000 students) were represented in three of the teacher dismissal cases. Fifty percent (50%) of the school districts in Illinois are considered medium-sized, while only 27% of the teacher-litigants were employed in these school districts. Only one case originated from a small school district (i.e., under 1000 students). Nine percent of the teacher-litigants were employed in small school districts. This comprised 25% of the public school districts in the state of Illinois. Although there were some significant differences, it is difficult to ascertain any meaningful findings because of the vast size differences between Chicago Public Schools and a small-sized school district in the state of Illinois.

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[647] *Illinois Interactive Report Card*, *available at* https://iirc.niu.edu/Classic/CompareDistrictList.aspx (last visited Sept. 9, 2017).

Appellate Court Districts

The cases were reviewed to determine if there was a noticeable pattern of teacher dismissal cases originating within the different appellate court districts in the state of Illinois. When looking at the eleven teacher dismissal cases, six originated in the 1st District Appellate Court (i.e., including the City of Chicago and neighboring suburbs). One teacher dismissal case originated within the 2nd District Appellate Court. Approximately 12.8 million individuals live in the state of Illinois.[648] Of those 12.8 million residents, 9.5 million live in the city of Chicago and surrounding suburbs (i.e., within the First Appellate Court).[649] The 2nd District Appellate Court encompasses three counties (Dupage, Kane, Lake) with major population centers surrounding Chicago. Considering approximately 75% of the population of Illinois resides within the First and Second District Appellate Court Districts, 64% percent of the teacher dismissal cases originating within these geographic areas is reasonable when the small sample size is considered. Three teacher dismissal cases originated within the Third District Appellate Court and the Fourth District Appellate Court was represented in one case. The Fifth District Appellate Court did not have any teacher dismissal cases. While the Fourth District Appellate Court had three cases, the Third District had 27% of the teacher dismissal cases with only 14%

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[648] U.S. Census Bureau, *Quick Facts Illinois, available at* https://www.census.gov/quickfacts/table/PST045216/17 (last visited Sept. 9, 2017).
[649] The Business Journals, *New Population Estimates put 52 Areas Above 1 Million, available at* http://www.bizjournals.com/bizjournals/on-numbers/scott-thomas/2013/03/new-population-estimates-put-52-areas.html#i8 (last visited Sept. 9, 2017).

of the population.[650] There does not appear to be a geographic trend in teacher dismissal litigation.

Conclusion

Upon reviewing teacher dismissal litigation involving unsatisfactory teaching performance, the data demonstrated teacher-litigants contested their dismissal because of issues with the teacher classroom performance rating categories, interpreting who must participate in the remediation process, and because of Article 24A procedural issues. These eleven teacher dismissal cases are informative for school administrators and boards of education after a teacher has received an "unsatisfactory" rating on their performance evaluation. Though the sample size is small, there appears to be an over-representation of male teacher-litigants and teachers in mid-career in the eleven dismissals that were brought before the courts. Although males only make up 23% of the teachers in Illinois, roughly twice that number (45%) were represented in the eleven dismissal cases. Mid-career teachers were also overly represented as there were no teachers with less than 14 years of service and none with above thirty years of service in the eleven dismissal cases. Even with only eleven dismissal cases, there is much to be learned from the cases and the demographic data within. The courts have demonstrated close adherence to the procedural directives of Article 24A of the School Code is necessary if school districts want to ensure their teacher dismissal cases are upheld.

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[650] *Illinois Counties by Population*, *available at* http://www.illinois-demographics.com/counties_by_population (last visited Sept. 9, 2017).

CHAPTER 4

CONCLUSION

As previously addressed in this study, the American public's view of education changed on October 4, 1957. After Sputnik's launch, the federal government assumed a more active role in education policy and funding, demanding heightened accountability for student academic achievement from states, schools, and K-12 public educators. Greater federal involvement prompted the Illinois education accountability movement, and subsequently resulted in the Performance Evaluation Reform Act (PERA).[651] As part of the move toward increased accountability, the state of Illinois strengthened its teacher evaluation systems by providing administrators with the necessary tools to remediate poor classroom teaching performance. This Chapter identifies what administrators can learn from the eleven teacher dismissal cases, the policy implications of these cases, and identifies areas for future study. Specifically, this Chapter includes: Lessons learned from Illinois court decisions, a practical checklist for administrators, speculation on PERA's future, and suggestions for future study in this area.

[651] Illinois Performance Evaluation Reform Act of 2010, P.A. 096-0861 (2010).

Lessons Learned from Illinois Court Decisions

The decisions issued by the Illinois appellate courts have been clear; in order to successfully dismiss a teacher for unsatisfactory classroom teaching performance public school leaders must adhere to the directives outlined in Article 24A of the Illinois School Code. As outlined in Chapter Three, teacher dismissal cases may be categorized into three groups: cases addressing performance rating categories, cases addressing the remediation process itself (including the makeup of the remediation team), and cases addressing school officials' adherence to Article 24A's procedural guidelines.

Performance Rating Categories: Lessons for Administrators

It is essential that school administrators understand how the School Code defines and operationalizes (when relevant) the teacher classroom performance rating categories. Specifically:

- It is essential for school districts to establish a teacher classroom performance evaluation system utilizing the three performance rating categories specified by the School Code;
- Administrators must issue both a mid-point and a final performance evaluation and each of these evaluations must include summative statement of the teacher's classroom teaching performance and a final performance rating; and
- A teacher's dismissal must be based upon the teacher's *overall* performance rating.

School officials should also be cognizant of the language contained in their local collective bargaining agreements. In some instances, the School Code allows school officials leeway

regarding the language used in the school district's teacher evaluation plan. However, school administrators should assume, based on this study's review of Illinois teacher dismissal decisions, the court's generally consider Article 24A's language to be mandatory. For example, Article 24A uses the term "days" this means just that – not "school days" or "business days." Before an administrator issues an "unsatisfactory" performance rating at the conclusion of a remediation plan, it is essential to know and properly follow both the School Code and the school district's local collective bargaining agreement language. Administrators should also contact the school district's attorney for advice before issuing an "unsatisfactory" performance rating. Important lessons for administrators related to each of the three dismissal categories are outlined below.

Utilize the Three Performance Rating Categories Delineated in Article 24A

School officials should be careful not to agree to include language in their local collective bargaining agreement that runs contrary to the School Code. Illinois's Third District Appellate Court was clear on the matter, finding that the use of the three-tiered rating system was mandatory.[652] The use of an evaluation system that fails to adhere to Article 24A's prescribed categories of performance ratings will not likely pass muster with the Illinois courts. If an administrator works in a school district where local collective bargaining language conflicts with Article 24A, they should contact the school district's attorney before giving a teacher an unsatisfactory performance rating.

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[652] *Buchna,* 342 Ill. App.3d at 937.

The Formal Recording of Both a Mid-Point and Final Summative Evaluation and Final Performance Rating Are Mandatory

Illinois courts have consistently indicated a tenured teacher dismissal for unsatisfactory classroom teaching performance will not be upheld if Article 24A's plain language has not been followed. Therefore, administrators must know and apply Article 24A's tenets when dealing with teacher evaluation and remediation issues. In circumstances where the statutory language is implied but remains open to interpretation (i.e. in the court's interpretation of "days" versus "school days" in *MacDonald*[653] the Illinois courts have taken a practical approach. For example, hearing officers, play a specific role in the teacher dismissal process. If a hearing officer fails to fulfill the statute's mandated role or exceeds the limits of the defined role (e.g., *Raitzik*) the courts will likely rule in favor of the dismissed teacher.

A Teacher may Only be Dismissed Based Upon Their Overall Performance Rating

School districts may not dismiss a teacher following a remediation plan if the teacher has received an "unsatisfactory" rating on only some parts of the summative evaluation. Article 24A provides a teacher may only be dismissed (in fact, must be dismissed) if the teacher receives an "unsatisfactory" on the overall rating following completion of the remediation process.[654] For example, if upon completion of the remediation process the administrator and consulting teacher determine the teacher remains deficient in classroom environment but believe that, overall, the teacher should receive a satisfactory rating the remediating teacher

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[653] *MacDonald,* 966 N.E.2d at 322.
[654] *Orbach*, 991 N.E.2d at 858.

may not be dismissed. The teacher's failure to achieve a satisfactory rating on classroom environment does provide sufficient not grounds for a teacher to be dismissed because the overall performance rating was satisfactory. In other words, Illinois courts do not expect a remediating teacher to be perfect – rather the expectation is for the remediating teacher's summative classroom teaching performance be rated as satisfactory or better.

Teacher Remediation Procedures

Illinois court decisions show school officials how to avoid having a teacher dismissal overturned for errors in the remediation/dismissal process. The courts expect school officials to follow Article 24A when a teacher's classroom teaching performance is rated as unsatisfactory. For example:

- An administrator must conduct the performance evaluation and determine the teacher's final performance rating;
- The hearing officer's role is different for the Chicago Public Schools than for other Illinois public school districts; and
- The consulting teacher's qualifications must meet the criteria set forth in Article 24A.

The Illinois court decisions reviewed in Chapter Two demonstrates that strict adherence Article 24A's language is paramount for administrators. By utilizing the checklist provided in this Chapter, administrators can be mindful of steps needed to ensure their teacher dismissal case will be upheld by the Illinois courts.

The Administrator (<u>not</u> Members of the Local School Board) is Responsible for Conducting the Performance Evaluation and the Teacher's Final Performance Rating

Under Article 24A's guidelines there are several individuals who participate in developing and implementing a teacher's remediation plan. However, notwithstanding the important input each of these individuals offer throughout the remediation process, ultimately the final decision regarding whether the remediating teacher receives a summative performance rating of satisfactory or better resides with the with the responsible administrator.

Different Rules for the Chicago Public Schools than for Other Illinois Public School Districts Regarding a Hearing Officer's determination as to Whether a Remediating Teacher Raised their Performance Rating Following Completion of the Remediation Process

The Illinois School Code treats personnel evaluation for the Chicago Public Schools differently than it does for other Illinois public school districts. In decisions involving the dismissal of tenured Chicago Public School teachers, Illinois courts have ruled both the administrator and the consulting teacher, not the hearing officer, must *both* make a final determination on whether the remediating teacher made satisfactory improvement during the remediation process.[655] For all other Illinois public school districts, Illinois courts have ruled it is the hearing officer who shall make the determination regarding whether the remediating

[655] *Davis,* 276 Ill. App.3d at 696.

teacher sufficiently improved his or her classroom teaching performance.[656] Therefore, school officials must be aware of who makes the ultimate determination of whether the remediating teacher has sufficiently improved their classroom teaching performance during the remediation process.

When Conducting the Remediation Process, School Officials Must Utilize a Consulting Teacher Who Meets the Qualifications Outlined in Article 24A

Article 24A-5(h) specifies the consulting teacher must have:

- At least five years of teaching experience,
- Knowledge of the job assignment, and
- Received an excellent rating on his or her last performance evaluation.[657]

If school officials designate a consulting teacher who does not meet these criteria, the Illinois courts will probably not uphold the remediating teacher's dismissal. A teacher who meets the qualifications set forth in Article 24A-5(h) cannot be compelled to participate in the remediation process. Therefore it is important for school officials work with the local teacher's union when identifying teachers who meet Article 24A's criteria. If there are no teachers employed in the school district who meet the statutory criteria, school officials may request their local Regional Office of Education to identify a teacher who meets the criteria.[658]

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[656] *Spangler,* 328 Ill App.3d at 754.
[657] 105 ILL. COMP. STAT. 5/24A-5(j) (West 1992).
[658] *Id.*

Tenured Teacher Dismissal Cases Involving Procedural and Timeline Issues

School officials must be sure they carefully follow the procedural and timeline requirements set forth in Article 24A for tenured teacher dismissals. Illinois courts are unlikely allow school officials leeway in complying with Article 24A's procedural and timeline requirements. For example;

- Administrators must follow state-mandated timelines when developing and preparing to implement a remediation plan,
- The administrative review process is the exclusive remedy provided by Article 24A, and
- If the remediating teacher fails to sufficiently improve their overall classroom teaching performance rating they must be dismissed.

It is important for school officials to have a clear understanding Article 24A's requirements and to carefully comply with the School Code's guidelines. By using the administrative checklist set forth later in this Chapter, school officials may avoid making errors when evaluating and preparing to dismiss a tenured teacher who receives an unsatisfactory rating of their classroom teaching performance.

School Officials Must Follow Article 24A's Mandated Timelines When Developing and Implementing a Remediation Plan

From an administrative perspective, one of the most critical aspects of overseeing a remediating teacher may be adhering to Article 24A's proscribed timelines. This study suggests that Illinois courts will literally interpret the statutory "30 calendar days" language. As discussed earlier in this study, the Fourth District Court of Illinois has interpreted this language to mean days of a year – not just the days when a school is in session.[659] This is important when a teacher's remediation plan runs over a scheduled school break (e.g., summer

[659] *MacDonald,* 966 N.E.2d at 329.

recess). For administrators, this creates a challenge in securing staff members who are available to work with the remediating teacher during "off contract" time periods.

For a Tenured Teacher Who Has Been Dismissed as a Consequence of Unsatisfactory Classroom Teaching Performance Article 24A's Administrative Review Process is the Teacher's Exclusive Remedy for Challenging the Dismissal

Just as it is essential for school officials to closely adhere to Article 24A's mandates, it is equally important for a tenured teacher who has been dismissed to also do so. From a teacher's perspective, adherence with the School Code is of special importance when a tenured teacher challenges an unsatisfactory evaluation. As previously explained in this study, the Illinois First District Appellate Court has ruled the administrative review process is the sole remedy available to a tenured teacher who wishes to challenge their dismissal.[660] School officials should advise teachers of their rights before developing and implementing a remediation plan. For example, school officials could provide a photocopy of the relevant portion of the School Code to a tenured teacher who receives an unsatisfactory rating of their classroom teaching performance. Although this could be interpreted as giving advice to the "opposing" party, a school district is well served not just by *winning* litigation but also by *avoiding* litigation altogether.

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[660] *Dudley,* 260 Ill. App.3d at 1105.

A Hearing Officer Must Uphold a Dismissal if a Remediating Teacher Fails to Sufficiently Improve Their Overall Classroom Teaching Performance Rating at the Conclusion of the Remediation Process

A hearing officer must uphold the dismissal of a tenured teacher who has received an overall "unsatisfactory" performance rating at the conclusion of the remediation process. Article 24A-5(m) requires the dismissal of any tenured teacher who fails to complete a remediation plan with an overall "rating equal to or better than a satisfactory."[661]

A Checklist for School Officials

Below is a checklist for school officials to use when they have a tenured teacher who has received an "unsatisfactory" rating of their classroom teaching performance during the regular evaluation cycle. By following this checklist, school officials may avoid losing a dismissal case because of mistakes Illinois courts have previously designated as being unacceptable. School Code references are included throughout the checklist. Always consult with your attorney when you have a tenured teacher who receives an "unsatisfactory" rating of their classroom teaching performance. Note, requirements or timeframes may be modified by a local school district's collective bargaining agreement. While school officials cannot provide teachers with fewer rights than are mandated by the School Code, a local collective bargaining agreement may augment a teachers' rights during the evaluation and remediation processes.

[661] 105 ILL. COMP. STAT. 5/24A-5(m) (West 1992).

- A consulting teacher who is selected by school officials must meet all the following criteria:[662]
  - Have 5 years of teaching experience,
  - Have knowledge of remediating teacher's job assignment, and
  - Must have received an "excellent" rating on their last performance evaluation.

- The consulting teacher must participate in the development of the remediation plan and thereafter must provide advice to the remediating teacher on how to improve their teaching skills in order to successfully complete the remediation plan.[663]

- The administrator must develop a remediation plan within 30 calendar days after issuing a tenured teacher an "unsatisfactory" rating of their classroom teaching performance (Note, this 30 day time period includes holiday and summer breaks.)[664]

- The remediation plan must run for 90 school days – including, if necessary, into the next school year.[665]

- The administrator must perform a mid-point evaluation during the remediation period.[666]
  - This evaluation must assess the teacher's classroom teaching performance during the remediation process.

- The administrator must perform a final evaluation at the conclusion of the remediation process.[667]
  - The evaluation must include an evaluation of the teacher's classroom teaching performance during the time period since the mid-point evaluation and provide an overall rating of the remediating teacher's classroom teaching performance during the remediation period.
  - The evaluation must identify both any deficiencies in the teacher's classroom teaching performance and recommendations for improvement.
  - The evaluation must be issued to the remediating teacher within 10 calendar days after the conclusion of the remediation plan.
  - A written copy of the final evaluation and rating must be provided to the teacher within 10 school days after the date of the evaluation.

- If the remediating teacher fails to raise their performance rating during the remediation period to better than "satisfactory" the remediating teacher must be dismissed.[668]

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[662] *Id*. at 5/24A-5(j).
[663] *Id*. at 5/24A-5(k).
[664] *Id*. at 5/24A-5(i).
[665] *Id.*
[666] 105 ILL. COMP. STAT. 5/24A-5(k) (West 1992).
[667] *Id.*
[668] *Id.* at 5/24A-5(m).

- If the remediating teacher sufficiently improves their overall performance rating during the remediation period to at least "satisfactory;"
  - They must be reinstated to the regular evaluation schedule contained in the school district's evaluation plan[669] or,
  - If the remediating teacher receives an "unsatisfactory" performance rating on any evaluation conducted within 36 months following completion of the remediation plan, the teacher may be dismissed without the need for another remediation plan.[670]

What We Might Expect from PERA

In the eleven tenured teacher dismissal cases discussed in this study, hearing officers found it problematic when a teacher who had previously received excellent performance ratings suddenly received an unsatisfactory rating. School officials must demonstrate that they have worked with the teacher to remediate identified deficiencies in the teacher's classroom teaching performance. If the teacher does not raise his or her classroom performance rating, school officials must show the teacher has demonstrated a pattern of unsatisfactory classroom performance. If a school official inherits a poor performing teacher from a previous administrator, it is important to make sure they work with the teacher to improve their teaching practice and document deficiencies before an unsatisfactory rating is issued.

As explained in Chapter Three, it was significant that of the eleven teacher dismissal cases, there were no teachers who had less than 13 years of teaching experience and no teachers with over 30 years of teaching experience who were involved in litigation resulting from unsatisfactory teaching performance.[671] Given small sample of cases, it is difficult to ascertain

[669] *Id*. at 5/24A-5(l).
[670] *Id*. at 5/24A-5(n).
[671] We only know the average age of those teachers that have brought suit for being dismissed.

why there were no teacher dismissal cases involving teachers with less than thirteen years of experience. It is possible teachers with less than thirteen years of experiences had fewer resources to fight a dismissal or were not as emotionally invested in a school district as those with more experience. It is expected PERA will have an impact upon teachers who have acquired tenure but still have less than thirteen years of teaching experience.

Remediating a tenured teacher's unsatisfactory classroom teaching performance requires a great deal of work and support. With PERA incorporating student performance into the calculus of determining a teacher's classroom teaching performance rating, it is possible more teachers who are relatively new to the profession will receive unsatisfactory classroom teaching ratings. Perhaps this was the legislature's intent when PERA was enacted – i.e., empowering school officials to "get rid" of underperforming teachers sooner rather than later.

In a perfect world, teachers would improve their professional practice, student achievement scores would rise, and school officials would use the tools the legislature has provided to remove poor performing teachers. In a test-tube, the legislature's statutory creation would provide administrators with the tools needed to either remediate or dismiss teachers who demonstrate unsatisfactory classroom teaching performance. However, school officials must utilize PERA's tools in order for this legislation to have its intended effect. It will take time to see if PERA will have a positive impact on K-12 public education in Illinois.

Policy Implications

As discussed above, under PERA, Article 24A-20 of the School Code was amended. Article 24A-20 now mandates that the Illinois State Board of Education (ISBE) create a system

of data collection regarding teacher classroom teaching performance assessment.[672] The ISBE has been charged with creating a process for measuring the correlation between teacher classroom teaching performance and student academic growth.[673] As part of this data collection process, the ISBE must measure the correlation between classroom teaching performance ratings and student growth against teacher retention rates in each Illinois public school district.[674] The ISBE has been charged with collecting and evaluating this data to guide future legislative changes Article 24A. However, to date, the ISBE has not shared how this data will used nor provided any recommendations for improving the tenured teacher evaluation process.

Areas for Future Study

Given PERA's newness, the impact of the law upon policy and court decisions has not yet been fully realized. Nonetheless, there are areas that will require further study. For example, the ISBE is collecting data regarding the inter-rater reliability (IRR) of school officials who are responsible for evaluating the classroom teaching performance of tenured teachers.[675] As part of the ISBE's annual data collection process, all Illinois public school districts must input the performance ratings of all tenured teachers who were evaluated and disclose the name of the school official who conducted each tenured teacher's performance evaluation. To date, the ISBE has not disclosed what they plan to do with this information.

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[672] 105 ILL. COMP. STAT. 5/24A-20 (West 1992).
[673] *Id*. at 5/24A-20(a)(9).
[674] *Id*. at 5/24A-20(a)(9)(B).
[675] By August 30 of every year, all school districts must upload all teacher evaluation data and the corresponding administrator who assigned the rating as well. It is part of the Employment Information System on the State Board of Education website.

This data could create the potential for future litigation. Illinois teachers' unions likely have an interest in obtaining this information to see how administrators in their respective school district are rating classroom teaching performance. The potential for future litigation is high if IRR differences are considered. If one school official is a more stringent evaluator than his or her counterpart in a school across town, teacher unions will take notice. Furthermore, those evaluations have the potential to impact the each public school district's honorable dismissal list (RIF). Training for all school officials is essential in order to both ensure inter-rater reliability and to avoid having teacher dismissal cases overturned.[676] The collection and use of inter-rater reliability data for public school administrators has the potential to be the subject of future litigation.

Another area that will require future research is the use of Student Learning Objectives (SLOs). SLOs are performance targets teachers set at the beginning of the school year to measure student progress during either a semester or a year-long course. All Illinois teachers must use student academic growth data as part of the public school teacher evaluation process. Student academic growth data must account for 30% of the calculation of each tenured teacher's overall classroom teaching performance rating. Teachers create their own assessment tools used to measure their SLOs and administer a pre-and post-test to all of their students.[677] SLOs must be approved by an administrator and the assessments are scored by a colleague. The PERA Joint Committee (comprised of equal representation of teachers and administrators) decide if SLOs are to be used when a public school district creates its evaluation instrument to meet PERA's requirements. Because both SLOs and assessments are created by the teacher,

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[676] Ill. St. Bd. Of Educ. CEC Partnership Group, *supra* note 464.
[677] Ill. St. Bd. of Educ., *Student Learning Objective Guidebook*, *available at* https://www.isbe.net/Documents/slo-guidebook.pdf (last visited Sept. 17, 2017).

the difference in perceived quality could differ significantly among teachers and school officials. Student academic growth was a major component of PERA, but if the quality in SLOs has wide variance within a school district, it could lead to some school officials not utilizing them to improve the professional practice of their teachers. SLOs are a legislative creation. If not utilized correctly, the number of teachers who meet their student performance goals might not match the actual standardized test results for those same students. In short, the SLOs may not improve the professional practice of teachers if the bar is set too low. These areas will require future research. However, this list is not exhaustive and the impact of PERA may not fully be known for more than a decade. In order to avoid having future tenured teacher dismissal cases overturned educators and researchers should consider these questions.

PERA's Future

In recent years, policy has shifted away from bargaining rights for public unions. Two of Illinois's neighboring states, Wisconsin and Iowa, have recently passed legislation that limits the ability of public unions, including teachers, to bargain. Teachers in those states may now only bargain wages, and these wages are legislatively tied to the Consumer Price Index.[678] Health insurance, working conditions, benefits and evaluation procedures can no longer be bargained by Iowa and Wisconsin teachers.[679] A recent court case, *Friedrichs v. California*

[678] Dawn Tefft, *In Wisconsin, Life After Collective Bargaining,* ALTERNET.COM, July 1, 2013, http://www.alternet.org/wisconsin-life-after-collective-bargaining-0

[679] Jason Noble and Brianne Pfannestiel, *Here are the Five Key Changes in Iowa's Collective Bargaining Bill,* DES MOINES REGISTER, Feb. 8, 2017, http://www.desmoinesregister.com/story/news/politics/2017/02/08/here-5-key-changes-iowas-collective-bargaining-bill/97658446/.

Teachers Association,[680] arrived on the U.S. Supreme Court docket. *Friedrichs* addressed whether public sector unions could collect dues from individuals who opted not to join the union. However, before the case was heard by the Supreme Court a trusted conservative member of the Court, Justice Antonin Scalia, died. When the Supreme Court heard the case the justices deadlocked at 4-4. As a result the holding of the lower court, protecting union rights to collect dues from members who opted not to join, became the final decision in the case.[681] It could be a matter of time before the Supreme Court hears another case on the matter.[682]

Since Bill Gates became involved with the initiative to bring Race to the Top and the Common Core State Standards to K-12 public education, wealthy individuals have had a seat at the table when setting education policy.[683] With Donald Trump's election as the president of the United States, and the attendant confirmation of Betsy DeVos as Secretary of Education, affluent citizens are continuing to have a major impact upon public education. In DeVos' Senate confirmation hearing, she stated is was "possible" her family had donated over $200 million dollars to Republican candidates.[684] In the past, DeVos and her family have

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[680] Friedrichs v. Cal. Teachers Ass'n, 578 U.S. ___ (2016).
[681] Adam Liptak, *Victory for Unions as Supreme Court, Scalia Gone, Ties 4-4*, N.Y. TIMES, Mar. 29, 2016, https://www.nytimes.com/2016/03/30/us/politics/friedrichs-v-california-teachers-association-union-fees-supreme-court-ruling.html?_r=0.
[682] Jonathan Bilyk, *Seventh Circuit Hears Arguments Over IL 'Fair Share' Union Fees; Case May be Headed to SCOTUS*, COOK CO. REC., Mar. 1, 2017, http://cookcountyrecord.com/stories/511086567-seventh-circuit-hears-arguments-over-il-fair-share-union-fees-case-may-be-headed-to-scotus.
[683] Lyndsey Layton, *How Bill Gates Pulled Off the Swift Common Core Revolution,* WASH. POST, June 7, 2014, https://www.washingtonpost.com/politics/how-bill-gates-pulled-off-the-swift-common-core-revolution/2014/06/07/a830e32e-ec34-11e3-9f5c-9075d5508f0a_story.html?utm_term=.4dd66328664d.
[684] Dan Alexander, *Betsy DeVos Says It's 'Possible' Her Family Has Donated $200M to Republicans*, FORBES, Jan 17, 2017, https://www.forbes.com/sites/danalexander/2017/01/17/devos-says-its-possible-her-family-has-donated-200m-to-republicans/#3b67cf01ac91.

championed school choice and charter schools.[685] The Trump Administration recently proposed one billion dollars be allocated to a voucher system that would allow families to use public tax dollars to pay for private school tuition.[686] While it is unknown where K-12 public policy will go under Secretary DeVos and President Trump, it can be assumed wealthy individuals will have an increasing voice in setting education policy.

Conclusion

Since Sputnik's launch on October 4, 1957, the American public has demanded increased accountability from K-12 public educators. With the 1985 addition of Article 24A to the Illinois School Code, accountability measures have increased for Illinois public educators. Ultimately, it will be up to public school officials to use the legislative tools provided to them to improve the professional practice of Illinois public school teachers. The Illinois courts have been clear when interpreting these legislative tools: school officials must adhere to the School Code's plain language when dismissing a tenured teacher as a consequence of unsatisfactory classroom teaching performance. At this point it is not known if the legislative measures put in place by elected officials will improve teaching and learning in Illinois's K-12 public school classrooms.

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[685] Chris Weller, *New Education Secretary Betsy DeVos Champions Vouchers and Charter Schools – Here's What That Means*, BUS. INSIDER, Feb. 7, 2017, http://www.businessinsider.com/what-are-charter-schools-2017-2.

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