The Role of Administrative Observation, Evaluative Evidence and Procedural Due Process in Illinois, Before and After the Passage of the Performance Evaluation Reform Act (pera) and Senate Bill 7 (sb7).

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ABSTRACT

THE ROLE OF ADMINISTRATIVE OBSERVATION, EVALUATIVE EVIDENCE AND PROCEDURAL DUE PROCESS IN ILLINOIS, BEFORE AND AFTER THE PASSAGE OF THE PERFORMANCE EVALUATION REFORM ACT (PERA) AND SENATE BILL 7 (SB7)

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Northern Illinois University, 2019
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This study examines the impact of the Performance Evaluation Reform Act (PERA) and Senate Bill 7 (SB7) on evaluative practices utilized with tenured educators within Illinois. Given the sense of urgency brought to bear on teacher quality from laws such as No Child Left Behind (NCLB) and Race To The Top (RTTT), revisions to the law that include streamlined processes, uniform evidence gathering and interpretation, and student growth measures are mainstays of legislation like PERA and SB7. Akin to many states, Illinois schools are working to institutionalize these concepts into everyday practices.

In reviewing the changes made to the Illinois teacher performance evaluation process, from 1986 to present, the changes brought on by PERA and SB7 can be understood by reviewing judicial rulings on tenured teacher dismissals under Article 24A of the Illinois School Code. Relevant judicial cases would then shed light on trends and issues related to the role of evaluative evidence and procedural compliance under PERA and SB7. These trends and issues would subsequently provide guidance on how educational leaders might avoid or overcome these emerging challenges as they implement PERA and SB7.

PERA and SB7 have, and will continue to, impact evaluative processes in Illinois. These new laws would need to withstand the scrutiny and interpretation of the judicial process, and public school administrators would benefit from the analysis of relevant rulings.
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PASSAGE OF THE PERFORMANCE EVALUATION REFORM
ACT (PERA) AND SENATE BILL 7 (SB7)

BY

CHRISTOPHER J. ADKINS
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A DISSERTATION SUBMITTED TO THE GRADUATE SCHOOL
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF
DOCTOR OF EDUCATION

DEPARTMENT OF EDUCATIONAL LEADERSHIP, EDUCATIONAL PSYCHOLOGY
AND FOUNDATIONS

Doctoral Co-Directors:
Dr. Kelly H. Summers
Dr. Christine Rienstra-Kiracofe
DEDICATION

To Holly—your support and love has been immeasurable!

To my children, Sydney, Marie, Lucas, and Faye—you make me so happy!

_Luke 18: 15-17_
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CHAPTER 1
INTRODUCTION

The Federal government has historically addressed concerns about teacher quality by passing laws such as the No Child Left Behind Act (NCLB)\(^1\) and Race To The Top (RTTT).\(^2\) These laws have spurred states to streamline evaluation processes, ensure uniform evidence gathering and interpretation, and include student growth measures in evaluation ratings. In 2010, the State of Illinois passed legislation that changed how administrators evaluate educators. The Performance Evaluation Reform Act (PERA)\(^3\) and Senate Bill 7 (SB7)\(^4\) provide direction for the frequency of evaluations, criteria for evaluation plans, and establish inter-rater reliability requirements for administrators that conduct evaluations. PERA and SB7 require all Illinois public school administrators to take forty hours of training on evaluation,\(^5\) and attempt to ensure that public educator evaluations have a high level of inter-rater reliability across the State. The training required by PERA and SB7 sought to provide uniformity and cohesiveness of evaluations of public school educators in Illinois. The training’s salient points emphasized legal

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requirements, observational techniques, and noted that observational and student growth evidence must support any assigned evaluation rating. Evaluators must follow State statutes and local evaluation practices, clearly describing evidence collected, and provide a resulting rating, when evaluating an educator.

Prior to PERA and SB7, administrators in Illinois evaluated teachers under the provisions of the Education Reform Act of 1985 (ERA). ERA allowed individual public school districts to create evaluation plans unique to their specific district. These plans varied greatly across the State. For example, some districts required annual evaluations of tenured teachers, while others only required evaluations every two or three years. Additionally, districts used differing criteria for assigning ratings; one district might use a binary system, another a three-tiered system, while another a four-tiered rating system. This created significant variance in Illinois public school teachers’ evaluations.

As outlined above, PERA and SB7 ushered in rigorous evaluation training requirements for administrators and established uniform criteria and procedures for evaluation. These new evaluative requirements included the addition of common descriptors of teaching practice into the evaluative feedback given to educators. The most common descriptors used in Illinois came from the Charlotte Danielson Framework for Effective Teachers.

The Danielson Framework contains four domains: Planning and Preparation, Classroom Environment, Instructional Practice, and Professional Responsibilities. Each domain includes a

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list of descriptive attributes and rubrics used to assign educators’ evaluative ratings. The usage of the Danielson Framework was new to many educators and school districts, as the earlier law, the *Education Reform Act of 1985*, did not specify the usage of such frameworks. Post-*PERA* and *SB7*, many educators in Illinois have found themselves experiencing a deeper, more rigorous, evaluative process. The path to incorporation was not always a smooth one: as the State of Illinois implemented these laws, natural dissonance between educators and evaluators began to occur.

*PERA and SB7* embed evaluative due processes designed to ensure that educators know the procedures, deadlines, and expectations of the evaluation process.\(^9\) Compliance with due process during the evaluative process often plays a role in determining whether a dismissal is effective or not. For example, in 2006 prior to the implementation of *PERA* and *SB7*, a new-to-the-district public school administrator evaluated a recently tenured special education teacher and assigned her an evaluation rating of Unsatisfactory. The administrator worked with the teacher, following the prescribed evaluation practices for the school district. After two formal observations, several informal walkthroughs, and many conversations, the administrator let the teacher know that her Unsatisfactory performance could affect her employment with the district. As the administrator prepared to rate the teacher as Unsatisfactory on her summative evaluation and then go to remediation, the administrator reviewed the teacher’s evaluative history with the Human Resources department and the District’s school board attorney. During the review, the

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administrator learned that during the teacher’s second year of teaching the evaluating administrator had made a clerical error in tabulating points on the teacher’s summative evaluation. The administrator added incorrectly, and assigned the teacher the required points needed for retention, even though the accurate total would have necessitated the teacher’s dismissal. Given the procedural due process error, although just a simple clerical error, the District attorney counseled the administration to not even bother trying to dismiss the teacher and instead to do their best to coach the teacher in improving her skills. The clerical error confounded the dismissal process and resulted in a poor performing teacher keeping her job for another four years before eventually resigning of her own accord. Prior to PERA and SB7, examples such as this added to the conventional wisdom among public educators in Illinois that it is very difficult to dismiss an underperforming tenured educator. Due process protections provide needed clarity of evaluative procedures, yet also mean that if evaluators do not follow due process to perfection when rating educators, the intent of evaluative feedback can get lost in due process errors. Aspects of due process such as procedures, deadlines, and evaluative expectations require examination regarding the impact they have on evaluation and how educators can ensure due process protections while minimizing any errors that may unduly influence evaluation.

On average, from the introduction of the Education Reform Act of 1985 until 2005, public school districts in Illinois have dismissed only 0.002 percent of teachers. This means

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10 *the district required one to three points be assigned to each of seven categories. A teacher would need a score of 18 out of 21 or higher to be retained.
Illinois administrators released only 2 out of 95,000 teachers for Unsatisfactory performance (i.e. cause) over a ten-year timeframe. According to the National Center for Educational Statistics, other states averaged over 50 teacher performance dismissals in the 2007-2008 school year alone. The public perception of needing to hold educators accountable for their practice was, in part, the genesis for PERA and SB7. In contrast, according to the Illinois State Board of Education website, since the passage of PERA and SB7, public school districts in Illinois have dismissed 20 teachers for poor teaching performance after an impartial administrative hearing in the last eight years. There are an additional 5 Illinois public school educators dismissed for poor teaching performance who contested their dismissal all the way through to the appellate level.

Educators in Illinois, if dismissed for cause, have the right to an administrative hearing prior to dismissal by the Board of Education. A Board of Education is required to provide evidence and comply with due process procedures. An impartial hearing officer must determine if the evidence presented warrants dismissal, assess procedural compliance and due process, and then support or overturn the dismissal. If either the teacher or district feels an error has occurred, that either party did not apply the law properly, or that the law itself is unclear, then they may seek clarity through the judicial system. Thus, it is necessary to examine judicial

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13 *When an educator is dismissed for Unsatisfactory performance, it is commonly referred to as being dismissed for cause.
16 *Determining if the evidence warrants dismissal is referred to as ‘the manifest weight of the evidence’.*
decisions as they relate to educator dismissal and due process to better inform the teacher evaluation process.

**Purpose of the Study**

This study examines how the *Performance Evaluation Reform Act (PERA)* and *Senate Bill 7 (SB7)* have influenced teacher evaluation and dismissal within Illinois. Like many states, schools in Illinois are working to institutionalize increased rigor and accountability into everyday practices. The review of literature provides an overview of Illinois tenured teacher dismissal case law from 1986 to present, separated as pre- and post-*PERA/SB7*, as related to teacher evaluation and dismissal. These judicial decisions shed light on trends and issues related to the role of evaluative evidence and procedural compliance under *PERA* and *SB7*. These trends and issues can provide important guidance for how educational leaders might avoid or overcome these emerging challenges as they implement these laws. The review of literature will provide a critical analysis of historical and societal context in the United States, specifically in Illinois, related to unsatisfactorily rated and subsequently dismissed tenured educators prior to, and after, the passage of *PERA* and *SB7*. The review of literature will also examine the impact of *PERA* and *SB7* on the due process rights of unsatisfactorily rated and subsequently dismissed tenured educators and the role evidence plays when evaluating tenured educators in Illinois.

**Significance of the Study**

Close examination of the impact that the *Performance Evaluation Review Act (PERA)* and *Senate Bill 7 (SB7)* will have on the educational community will assist the general instructional community in many ways. A thorough study will highlight structures within the law that may need judicial intercession or legislative revision. In reviewing prior legislation,
case law, and current trends, the study will provide guidance to educational leaders as *PERA* and *SB7* become institutionalized. As educational leaders within the community (school administrators, board members, public citizens, and politicians) seek to gain knowledge about implementation, this study would assist in preventing significant failures. Thus, a deeper review and study of *PERA* and *SB7* will provide guidance to the educational community as a new era of evaluation unfolds in Illinois public schools.

**Research Questions**

The following questions will guide this study:

1. What legislative changes has *PERA* and *SB7* brought to the evaluation process within Illinois?

2. What are the pertinent cases in Illinois from 1986 to present, when dismissing teachers under 105 ILCS 24A? What role did evidence play in those dismissals before, and after, *PERA & SB7*?

3. What are common challenges to the new evaluative processes under *PERA* and *SB7*?

4. How have the Courts ruled on 24A dismissal cases under *PERA* and *SB7*? What trends, themes, and/or issues come from these rulings?

5. How might educational leaders identify and avoid these common challenges in the daily practice/implementation of *PERA* and *SB7*?
Delimitations

Given that both PERA and SB7 are Illinois State laws, this dissertation will solely examine cases from the Illinois Appellate courts. Additionally, the cases examined are limited to dismissals based on teaching practice and efficacy, and not on dismissal for causes related to unprofessional conduct or actions such as criminal activity, abuse of students, and/or felonious behavior. The cases selected are the only ones found to deal directly with educator performance and adherence to due process during the dismissal process.

Limitations

A limiting factor in reviewing case law is the small number of teacher dismissal cases heard by Illinois courts. Often an educator may resign or agree to a separation agreement in order to avoid termination. As such, the review of literature will only examine cases in which Boards of Education actually completed the termination process and the educator then sought judicial relief. The study will review cases in chronological order by decision date.
CHAPTER 2
REVIEW OF LITERATURE

Chapter 2 reviews the legal and political context of educational legislation as it relates to the dismissal of tenured public school teachers. This chapter opens with a review of federal education legislation that provides context for the subsequent genesis and evolution of Illinois State educational legislation. National prowess in technology, security, and economics relies upon a strong educational system. As such, this chapter examines the progression of federal and Illinois state educational legislation from the start of the Cold War to present day. The review of legislation will examine the national discourse surrounding education and the subsequent impact on the State of Illinois leading to the Educational Reform Act of 1985\(^\text{17}\) and ultimately the era governed by the Performance Evaluation Reform Act of 2010 (PERA) and Senate Bill 7 of 2011 (SB7).\(^\text{18}\) A review of relevant case law related to this legislation will illustrate how the courts have interpreted these laws.

Federal Education Legislation from Sputnik to the No Child Left Behind Act

Prior to the 1940s, the American public took a laissez-faire approach to teacher efficacy. John Dewey’s seminal writing in 1916, *Democracy and Education: An Introduction to the Philosophy*

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of Education, set the stage for schools to shift from an agrarian focus on basic skills instruction to a more industrial approach with increased curricular offerings. In a 1945 speech, educational theorist Dr. Charles Prosser expanded on Dewey’s ideals, asserting non-college bound students would benefit from a focus on life skills such as social skills, etiquette, health, home, and family living. Prosser asserted a life-skills focus would result in both productive and well-rounded citizens. He argued vocational education should be a national imperative.

As Americans lived out their post-World War II lives in peace and prosperity, the Soviet Union busily advanced its space program. In 1957, the Soviet satellite Sputnik circled the earth, suggesting to many Russia’s worldwide technological superiority. As Sputnik moved through space, the American public grew concerned about the Soviet Union’s technological prowess and feared Soviet intercontinental nuclear capability might not be far behind. Americans perceived that the Soviet education system helped drive the Soviet gains in the space-race. They sought solace from the brewing Cold War by asking the American government to take action and improve American public schools.

President Dwight D. Eisenhower responded (perhaps to allay Americans’ fears) by emphasizing and equating a public school focus on mathematics and science with a strong national defense. Eisenhower recommended that the federal government play an increased role

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in public education. In response, the United States Congress passed the *National Defense Education Act (NDEA)* in September of 1958. The *NDEA* provided student loans to college students and K-12 grants to states focusing on post-secondary teacher preparation and mathematics and science programming. When President Eisenhower signed the *NDEA*, he told the nation: “This Act, which is an emergency undertaking to be terminated after four years, will in that time do much to strengthen our American system of education so that it can meet the broad and increasing demands imposed upon it by considerations of basic national security.”

Throughout the 1960s, federal lawmakers passed additional legislation addressing societal issues, civil rights, educational funding, entitlements, and student access to education. In 1965 the *Elementary and Secondary Education Act (ESEA)* was signed into law by President Lyndon Johnson. The *ESEA* was designed to ensure that all students received an equitable education. A main component of the *ESEA* was Title I. Title I held local school districts accountable for providing an adequate learning environment by ensuring funding for schools with significant amounts of low income students. Since the enactment of the *ESEA* it has been

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reauthorized every five years in a variety of forms. During the 1960s, Americans also began to see the successes of the National Aeronautic and Space Administration (NASA). The whole world watched in awe as Americans landed on the moon on July 20, 1969. Young men and women aspired to become astronauts, and saw the pathway to such a career via the hard sciences.

As the space race wound down in the late 1970s, Gallup reported that only fifty-three percent of the American public had confidence in public schools. Standardized test scores had dropped from the performance levels of the 1960s. Academics suggested that this led to American apathy towards public schools during the 1970s. It was not until the economic downturn of the late 1970s and 1980s that the United States purposefully reexamined the quality of American public schools. The United States sought to reclaim worldwide industrial and economic superiority by bolstering public education. Then-Secretary of Education, Terrell Bell, established the Commission on Excellence in Education in 1981. The Commission’s task was to investigate the efficacy of public schools in America, collect data, and issue a report of its findings. In 1983, the Commission released a comprehensive report entitled A Nation at Risk.
In an April 1983 public address, President Ronald Reagan commented on *A Nation at Risk,* specifically highlighting how standardized test scores had declined over the previous two decades. For example, American students’ average scaled scores on the College Board's Scholastic Aptitude Tests (SAT) mathematics exams (the range being 0 to 800) were 40 points lower than they had been in the late 1950s and 1960s. *A Nation at Risk* revealed additional alarming data. The report estimated that thirteen percent of all seventeen year olds were functionally illiterate, while forty percent of minority students the same age were functionally illiterate. Of American adults, the report suggested that fourteen percent were functionally illiterate. Internationally, American students ranked last in seven comparative academic tests; they did not break into the top two places on twelve other tests.

*A Nation at Risk* suggested the American public education system was failing. American students were not at the forefront of academic success and significant performance discrepancies existed between racial groups in American public schools. Mary Hatwood Futrell of the National Education Association observed, “When the report came out, it catapulted the issue of

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education onto the national agenda. The federal government’s focus on education prompted industry leaders, education advocates, and politicians to push for significant educational reform. Americans began talking about school choice, productivity, achievement, and teacher efficacy as ways to improve education. Additional educational legislation passed during the 1980s and 1990s would further embed the Federal government’s role in public education. These enactments included revisions to the Bilingual Education Act, adoption of the Handicapped Children’s Protection Act, reauthorization of the Elementary and Secondary Education Act (ESEA), expansion of Head Start programming, and further expansion of ESEA programming and appropriations.

In early 1989, forty-nine governors met with President George Bush, Sr. to discuss the status of education in the country. The governors advocated requiring states to adopt and assess specific curricular standards to ensure student success. Sensing the governors’ call for better accountability in schools, President Bush pushed for the passage of America 2000, a set of broad-based strategies designed to improve public education over a period of nine years.

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However, due to the inclusion of voluntary testing requirements for public schools, the Republican caucus did not support *America 2000* and it did not become law.\(^{57}\)

Two years later, newly elected President William Clinton continued the educational reform conversation and supported legislation entitled *Goals 2000*.\(^{58}\) Through this legislation, Clinton sought to expand education funding in exchange for common state standards and testing. *Goals 2000* fleshed out how states would set student standards and how professional development could help teachers ensure students reached those standards. Three years later, in 1994, federal legislators reauthorized the ESEA as the *Improving America’s Schools Act (IASA)*, which passed concurrently into law with *Goals 2000*.\(^{59}\) *Goals 2000* was similar to *America 2000* in that it required states to adopt definitive student learning standards.\(^{60}\) However, *Goals 2000* imposed no consequences on states if they failed to comply with the law’s requirements.\(^{61}\) The non-punitive nature of *Goals 2000* allowed it to receive needed support from both Republicans and Democrats, thus facilitating its passage. However, by 1997, only seventeen states had adopted standards of any sort as required under the legislation.\(^{62}\)

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The IASA bridged concerns of both Democrat and Republican legislators about Goals 2000 by compromising on two significant components related to the evaluation of educators. The states-rights Republicans attained fewer rules and regulations, while Democrats gained requirements for standards, assessment, and accountability. As a result, states were required to demonstrate yearly growth in student performance on standardized tests, defined as adequate yearly progress (AYP). The IASA required states to directly link AYP to standardized student academic assessment scores. States would then receive federal funding for attaining AYP. Additionally, IASA required the creation of professional development plans to build teacher efficacy. The plans required specific and tangible actions designed to improve instruction and positively affect student growth. States had to establish corrective action plans for schools that were not performing. The IASA allowed schools to apply for funding via the Dwight D. Eisenhower Professional Development Program. Schools that won these competitive grants used the funds to support teacher development by relating their professional development activities to overall reforms.

The IASA made explicit connections between monitoring, teacher development, and student academic achievement. As the Harvard Journal on Legislation observed, “[t]he

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rationale behind such a system is as follows: by attaching incentives to increases in student achievement, schools would be more motivated to effectuate such improvements. The novelty of the approach was that, for the first time, there would be consequences for schools regarding their performance.”

At the end of the century, Andrew Rothenham of the Democratic Leadership Council’s Progressive Policy Institute authored a white paper on the federal role in public education. Rothenham argued Congress should set performance benchmarks for student growth and terminate aid to school districts that failed to meet those standards. These ideals became components of the 1999 Presidential campaign. Then-Governor Bush pushed education reform as a part of his political platform. Bush highlighted the “soft bigotry of low expectations” and the failure of Goals 2000 as examples of the need for additional reform. After Bush’s election in 2000, The No Child Left Behind Act of 2001 (NCLB) passed. The IASA and Goals 2000 paved the way for many of the tenets contained in NCLB. NCLB used student academic performance to evaluate both school districts and individual students.

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Under NCLB, school districts were required to participate in statewide academic testing on an annual basis. Individual school scores and school district average scores reported student academic achievement results. NCLB required disaggregation of the academic performance of subgroups such as ethnicity, gender, free/reduced lunch status, limited English Proficient, and disabled students.\textsuperscript{81} School districts were required to demonstrate overall student academic growth, not only as an average, but also within each of the identified subgroups.\textsuperscript{82} School districts were required to include and analyze additional data like student attendance rates and graduation rates in their yearly reporting.\textsuperscript{83}

NCLB’s required student growth and achievement monitoring allowed public schools to analyze teacher efficacy more clearly. Provisions of the law set forth expectations for preparing, training, and recruiting high quality teachers and principals.\textsuperscript{84} By supporting the development of high quality classroom teachers, NCLB pushed public schools to increase student academic achievement\textsuperscript{85} and held schools and school districts responsible for ensuring student academic


growth.\textsuperscript{86}

\textit{NCLB}'s primary stated objective was to have one hundred percent of students either meeting or exceeding academic standards by 2014.\textsuperscript{87} Under the Act, schools and school districts were required to demonstrate adequate student academic growth each year.\textsuperscript{88} Individual schools and school districts were required to achieve annual Adequate Yearly Progress (AYP) targets.\textsuperscript{89} States were able to calculate the amount of growth needed each year on identified statewide exams,\textsuperscript{90} and AYP calculations had to occur on a yearly basis.\textsuperscript{91} Schools, districts, and/or states that failed to meet their AYP targets were subject to increasingly severe sanctions and governmental oversight.\textsuperscript{92} This oversight included sanctions such as; requiring the development of formal improvement plans, offering school choice to students, offering tutoring services to low socio-economic status students, providing state level oversight, and requiring teacher dismissal.\textsuperscript{93} \textit{NCLB} provided states latitude in setting goals and benchmarks by allowing each

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state to develop its own testing requirements.\textsuperscript{94}

**Federal Education Legislation, Racing To The Top**

In the post-\textit{NCLB} era, public schools encountered increased federal oversight and bureaucracy, which ran concurrent with an economic downturn. The economic impact of the terror attacks on September 11, 2001, prompted the federal government to push Americans to stimulate the economy by purchasing goods and services. President Bush, on November 8, 2001, said, “This great nation will never be intimidated. People are going about their daily lives, working and shopping and playing, worshiping at churches and synagogues and mosques, going to movies and to baseball games.”\textsuperscript{95} The President encouraged Americans to spend money in an effort to stave off the impending economic instability brought about by the 9/11 terror attacks. This call for the American people to go about living out their dreams matriculated to the housing market as well. To stimulate the economy the Federal Reserve dropped interest rates to 1%, credit rating agencies loosened junk security ratings, and fund managers relied heavily on bond ratings from credit agencies.\textsuperscript{96} At the same time, the Securities and Exchange Commission loosened its grip on large banks, the Office of the Comptroller of the Currency over-rode state lending laws, allowing risky loan approvals, “creative mortgaging” became a craze, and Fannie Mae/Freddie Mac over-extended themselves.\textsuperscript{97} As a result, the American economy grew significantly unstable over the following years throughout 2008. Banks closed, businesses


shuttered their doors, and the American people felt the effect of a struggling economy. Shortly after the 2009 inauguration, President Barack Obama signed the *American Reinvestment and Recovery Act (ARRA)* into law.\(^98\) *ARRA* provided a variety of economic stimuli designed to bolster America’s economy.

*Race To The Top (RTTT)* was a competitive grant opportunity (available to states) embedded within *ARRA*.\(^99\) *RTTT* provided $4 billion dollars to be shared between states that received the grant.\(^100\) The American public was, in part due to the downturn of the economy, requesting an increased return on their taxation investment via the public school system.\(^101\) To qualify for *RTTT* funds, states needed to comply with several requirements related to funding structures and school improvement.\(^102\) Required attributes for winning *RTTT* grants included ensuring achievement for all students, developing and implementing clear state standards for curricula, identifying and grooming great teachers and leaders, turning around low performing schools, prioritizing education funding at the state level, and implementing student growth as a function of teacher evaluation.\(^103\)

*RTTT* stipulated that student growth data assist the recipient state to improve teacher and principal efficacy. Specific tasks to accomplish this included designing and implementing

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\(^{99}\) Sections 14005 and 14006 of the *American Investment and Recovery Act of 2009 (ARRA)*, (Public Law No. 111-5, 123 Stat. 115, 516), as amended, authorized the Race To The Top program, referred to in *ARRA* as the State Incentive Grant Fund.

\(^{100}\) U.S. Department of Education, ED-ESE-12-C-0067, Fundamental Change: Innovation in America’s Schools Under Race To The Top (November, 2015).

\(^{101}\) Mary Stanik, Public Schools Must Be Held Accountable, Americans Say; Public Calls for Dramatic Changes to No Child Left Behind Act, Says an Engaged Public is Key to Accountability, Standard Newswire, http://www.standardnewswire.com/news/518221390.html, (December 2, 2013).


evaluation systems for teachers and principals that took into account data on student growth as a significant factor and conducting annual evaluations of teachers and principals. These evaluations were to be used, at a minimum, to inform decisions regarding retention of teachers and principals, to determine whether to grant tenure, and to remove ineffective tenured and untenured teachers and principals after they have had ample opportunities to improve. To obtain a share of the $4 billion dollars, a state would have to adopt legislation supporting these ideals.

States could request funding during two different phases of application. At the outset, forty states applied for RTTT funds in phase one. Only two states – Tennessee and Delaware – received funding in the initial phase. Phase two saw thirty-five states re-apply, of which an additional ten states received funding. With only twelve states receiving funding, the federal government allocated additional funds and permitted a third application phase. It was in this third phase that the State of Illinois attained funding. Although using growth models had been part of a larger conversation within the education profession, it was not until the carrot of additional funding from the federal government that the State of Illinois chose to pursue legislation designed to address the existing evaluation system.

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112 The ten states that received funding in Phase Two are: Florida, Georgia, New York, North Carolina, Ohio, Maryland, Massachusetts, District of Columbia, Hawaii, and Rhode Island.
As states began shifting their public school funding and school improvement practices, the Obama administration looked to reauthorize NCLB. As a result, the Every Student Succeeds Act (ESSA) was passed into law in December of 2015.110 ESSA provides for continued student protections from discrimination and segregation, preschool opportunities, and innovative instructional practices.111 ESSA maintains a focus on accountability measures and public disclosure of school performance and student growth on standardized tests.112 High academic standards are also required for all students.113 Given that the main tenets of ESSA affect funding parity and equity, ESSA’s impact on educator evaluations will likely be minimal, barring any significant legislative action.


As a Nation at Risk induced federal accountability for increased student academic achievement education in the mid-1980s, then-Governor Thompson sought to overhaul Illinois’ public school educational practices at the state level. Thompson’s Education Reform Act of 1985114 resulted in the creation of a variety of procedures used to evaluate educators. Administrators were required to conduct formal evaluations of educators. If an educator failed a formal evaluation, there were sanctions, up to and including dismissal. If dismissed, educators were entitled to an impartial administrative hearing. Many of these procedures and processes remained in effect until amended in 2010 by the Performance Evaluation Reform Act115 and Senate Bill 7.116

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The Education Reform Act (ERA) emerged from the 1984 efforts of the Illinois Commission on the Improvement of Elementary and Secondary Education. The Commission examined the state of Illinois’ public schools and presented legislators with a variety of findings and related policy recommendations. One of the Commission’s findings noted “on-the-job evaluation procedures were inadequate.” Teachers did not receive detailed feedback after classroom evaluations nor were Unsatisfactory teachers remediated or released. The Commission recommended that the “evaluation of education personnel be systematized, with training in evaluation procedures provided to those responsible for conducting such evaluations.” The Commission’s recommendations addressed the need to create clear and coherent methodologies for evaluating educators.

The ERA required the creation and public distribution of school and district report cards. These report cards communicated academic performance and student demographic information to the public. The report cards served to inform the public about the efficacy of the school by sharing academic scores for reading and mathematics. Additionally, the public would be able to review the socio-economic and ethnic makeup of any given school. The ERA required new educators to pass proficiency exams to become certified and required that administrators evaluate educators every two years. Under ERA, administrators had to participate in evaluation training and then certify before conducting evaluations. ERA required re-certification every five years in

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order for administrators to continue evaluating classroom-teaching performance.\textsuperscript{119} The passage of the \textit{ERA} also added Article 24A (see Appendix A)\textsuperscript{120} to the Illinois School Code.

Section 24A of the Illinois Compiled Statutes governed the process for evaluating and remediating a tenured public school teacher’s classroom teaching performance.\textsuperscript{121} When an administrator rated a teacher’s classroom-teaching performance as Unsatisfactory, if the teacher failed to satisfactorily complete the resulting statutorily mandated remediation process, Section 24A delineated the steps necessary to terminate the teacher’s employment.

The 1985 iteration of 24A contained eight sections.\textsuperscript{122} The first two sections required evaluation of the classroom-teaching performance of all public school teachers every two years. All public school districts\textsuperscript{123} were required to comply with the statute.\textsuperscript{124} The third and fourth sections of Article 24A required evaluation practices training for school administrators every two years.\textsuperscript{125} Additionally, Article 24A required public school districts to have formal evaluation plans on file with the State outlining the district’s evaluative procedures.\textsuperscript{126} Section five of the law outlined how a certified school administrator would evaluate a classroom teacher based on a specific job description.\textsuperscript{127} Each public school district’s evaluation plan needed to address the classroom teacher’s attendance, planning, instructional methods, classroom management, and

\textsuperscript{120} 105 ILCS 5/24A: 1 – 8.
\textsuperscript{121} 105 ILCS 5/24A-20, as amended (eff. Jan. 15, 2010).
\textsuperscript{122} 105 ILCS 5/24A: 1 – 8.
\textsuperscript{123} Schools as defined by 105 ILCS 5/34.
\textsuperscript{124} 105 ILCS 5/34-1 et seq. ; 105 ILCS 5/24A – 1 ; 105 ILCS 5/24A – 2.
\textsuperscript{125} 105 ILCS 5/24A -3 ; 105 ILCS 5/24A – 3.
\textsuperscript{126} 105 ILCS 5/24A -3 ; 105 ILCS 5/24A – 4.
\textsuperscript{127} 105 ILCS 5/24A – 5(a) ; 105 ILCS 5/24A – 5(a).
subject matter competency. Section five also required a final evaluative rating of Excellent, Satisfactory, or Unsatisfactory. In addition, the school administrator conducting the evaluation was required to specifically document the teacher's strengths and weaknesses and support the administrator’s evaluative comments with evidence. Providing copies of performance evaluations for the teacher and the school district’s human resources file was required as well.

Teachers rated as either Excellent or Satisfactory were eligible for rehire and continued employment. However, teachers rated Unsatisfactory in classroom teaching performance were required to complete a remediation process designed to correct their identified teaching deficiencies. The resulting remediation plan allowed the teacher 90 school days to correct the identified classroom teaching deficiencies before the evaluator assigned a final rating.

The remediation process required the participation of the evaluator, the educator, and a mentor teacher. Outlined in Article 24A were mentor teacher requirements and guidelines for how a district could identify eligible mentor teachers within a school district. Section five of the law clarified issues related to observation frequency, evaluation guidelines, and mentor support. School district size dictated procedures, timelines, and future evaluative expectations. This section also clearly defined administrative hearing procedures for

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129 105 ILCS 5/24A – 5(c).
130 105 ILCS 5/24A – 5(d).
131 105 ILCS 5/24A – 5(e).
133 105 ILCS 5/24A – 5(g).
135 105 ILCS 5/24A – 5(i).
Unsatisfactory educators.\textsuperscript{138} Essentially, impartial parties would hold hearings and then make recommendations to the Board of Education.\textsuperscript{139} Educators with deficiencies deemed unremediable were subject to immediate dismissal.\textsuperscript{140}

Section six of Article 24A addressed how a district was to proceed when modification of an evaluation for a specific educator was required, or when the evaluation plan itself conflicted with the district’s collective bargaining agreement.\textsuperscript{141} Section seven authorized the Illinois State Board to enact any relevant rules needed to enforce the statute.\textsuperscript{142} Section eight of Article 24A required evaluation of non-tenured educators on a yearly basis.\textsuperscript{143} Satisfactory ratings granted non-tenured educators continued employment. However, non-tenured teachers rated as Unsatisfactory faced release from employment. Tenured teachers would remain in continued contractual service unless rated as Unsatisfactory after a remediation period. Article 24A brought greater clarity to the evaluative process for the classroom performance of Illinois public school teachers.

\textbf{State of Illinois Legislation: PERA and SB7}

Due to the competitive nature of RTTT and the phased application system, legislators in Illinois banded together to implement the required reforms. Illinois State Senator Kimberly Lightfoot stated, “It’s not that we’ve never wanted to do it [education reform] before. I think Race To The Top was our driving force to get us all honest and fair, and willing to negotiate at

\textsuperscript{138} 105 ILCS 5/24A – 5(k).
\textsuperscript{139} 105 ILCS 5/24A – 5(k).
\textsuperscript{140} 105 ILCS 5/24A – 5(k).
\textsuperscript{141} 105 ILCS 5/24A – 6.
\textsuperscript{142} 105 ILCS 5/24A – 7.
\textsuperscript{143} 105 ILCS 5/24A – 8.
the table.”

In an attempt to be more successful in attaining RTTT funds, the State of Illinois moved to adopt two connected pieces of legislation. Commonly known as Senate Bill 7 (SB7) and the Performance Evaluation Reform Act (PERA), this legislation addressed both student growth and teacher efficacy. Both PERA and SB7 sought to provide fidelity to teacher evaluation and dismissal processes. By adopting this legislation, a variety of student growth measures now apply towards an Illinois educator’s evaluation. Educators are still evaluated using classroom observations, which combine with student growth data to result in a final rating. Additionally, under the new legislation, Reduction-In-Force (RIF) lists now prioritize educators according to evaluation ratings and not seniority, as had previously been the case. Districts may now use RIF lists to release underperforming tenured educators before a higher-performing less senior educators, or even a non-tenured educator.

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144 William Howell, Results of President Obama’s Race To The Top: Win or Lose, states enacted education reforms. EducationNext, Fall 2015, Vol.15, No.4, http://educationnext.org/results-president-obama-race-to-the-top-reform/.
SB7 and PERA award educators tenure after four years of contiguous full-time service to a specific district after earning four consecutive Proficient ratings.\footnote{105 ILCS § 24A-11 as amended (eff. Jan. 15, 2010).} However, SB7 and PERA created two additional pathways to tenure. One pathway requires three consecutive years of full-time employment with an Excellent rating earned each year.\footnote{A school district would need to choose the three year path for this to be in effect. (105 ILCS 5/24/-11.d.2)} Districts, at their discretion, may grant tenure to teachers who have previously earned tenure in another Illinois school district after two consecutive years in the new district with Excellent ratings.\footnote{105 ILCS § 24A-11.d.3 as amended (eff. Jan. 15, 2010).}


PERA requires that school districts form a joint committee of teachers and administrators.\footnote{Ed Reform, Senate Bill 7, P.A. 97-0008 (eff. Jan. 13, 2011); Performance Evaluation Reform Act of 2010, Senate Bill 315, P.A. 96-861 (eff. Jan. 15, 2010). (The School Code (105 ILCS) was amended by changing Sections 2-...}
Committee is responsible for developing the actual evaluation plan for the district, identifying what percentage of a teacher’s overall rating stems from student growth, and determining what type of assessments to use for evaluating student growth.\textsuperscript{159} Districts receive parameters for student growth and observation frequency from the State, yet are free to make their own specific requirements within the State parameters.\textsuperscript{160} Thus, evaluation procedures vary slightly from district to district.

\textit{SB7} and \textit{PERA} combined to ensure that evaluative practices were fair and consistent across the State of Illinois. \textit{SB7} and \textit{PERA} hold administrators and educators to strict standards and requirements, which assist in providing increased efficacy for feedback and evaluation ratings. The resulting evaluation landscape provided a significant paradigm shift for all public school administrators and teachers in the State.

Perhaps unsurprisingly, the evolution of evaluative legislation from \textit{ERA} to \textit{SB7} and \textit{PERA} is fostering a variety of legal challenges. The following cases illustrate these current challenges and illustrate the result of litigation brought about by tenured educators who failed to successfully remediate deficiencies and were subsequently released due to performance.

Illinois Article 24A Case Law from 1985 to 2010

*Powell v. Board of Education*[^161]  

Two years after the enactment of the Illinois Education Reform Act, the first Article 24A case came before the Illinois courts. In *Powell v. Board of Education*, Illinois courts clarified the roles of the Board of Education and the evaluating administrator in teacher remediation plans.[^162] In March of 1987, Principal James McCormack rated Kenneth Powell, a tenured teacher of twenty-two years, as “Unsatisfactory – Needs Improvement” on Powell’s summative evaluation.[^163] McCormack then created a remediation plan for Powell which addressed the following performance areas: discipline, classroom management, enthusiasm, and organization.[^164] McCormack informed Powell that he would face dismissal if he did not satisfactorily complete the remediation plan.[^165] Powell participated in the remediation plan throughout the 1987-88 school year.[^166] The Illinois School Code required regular evaluations during the remediation period, which McCormack provided.[^167] However, during each of the plan’s quarterly evaluations, Powell’s classroom performance ratings remained Unsatisfactory.[^168] At the conclusion of the remediation period, McCormack rated Powell as Unsatisfactory and[^169] indicated that Powell failed to successfully complete the remediation plan.[^170] McCormack then recommended that the Board of Education dismiss Powell from his

teaching position. The Board acted on McCormack’s recommendation and subsequently dismissed Powell.

Powell requested (and received) a hearing by an officer selected jointly by himself and the State Board of Education, as provided for by Illinois law. The hearing officer upheld the school board’s dismissal decision. In response, Powell filed suit in the circuit court of Peoria County, claiming the Board had not met the statutory requirements of Section 24A of the School Code when the administrator, and not the Board of Education itself, had facilitated the evaluation process. The circuit court reversed the hearing officer’s decision, finding for Powell.

Unhappy with the trial court’s decision, the School Board appealed the circuit court’s decision to the Third District Court of Illinois.

The appellate panel considered the role of the Board of Education at two specific points during Powell’s dismissal proceedings. First, the court considered whether the Board was responsible for initiating and developing the actual remediation plan. Secondly, the court evaluated whether the Board actually made the decision to dismiss Powell. Powell contended that if McCormack made the actual decision about Powell’s efficacy, and not the Board, then the Board would have been acting in a ‘ministerial capacity’ only. Powell further argued that the School Code, as initially written, required the Board act directly, and not based on an

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administrative recommendation, which would require more intimate involvement in the evaluation process by the Board.\textsuperscript{181}

In considering the first question, the circuit court agreed with Powell’s assertion that the statute meant the Board of Education should be intimately involved in the creation of the remediation plan. The circuit court quoted section 5/24A-5(f) of the law (which supported Powell’s argument) referring to the “development and commencement by the district of a remediation plan.”\textsuperscript{182} The trial court interpreted the word ‘district’ to be the Board of Education itself. However, the appellate court found that this interpretation was in error, citing the statutory scheme of 24A that places the burden of evaluation on trained and certified administrators.\textsuperscript{183} The statute indicates that the administrator, not the Board of Education, is responsible for the initial evaluation, rating of the educator, and the determination of teachers’ strengths and weaknesses.\textsuperscript{184} The appellate panel further noted that the school code required the administrator to submit a final evaluation to the Board regarding the completed remediation plan, which McCormack had done.\textsuperscript{185} The appellate court held “given the legislative scheme and the unspecified language of the statute, we find that the trial court erred in finding that school boards are solely responsible for the remediation plans.”\textsuperscript{186} This finding affirmed the Board’s position that McCormack was following the law by creating, facilitating, and rating Powell’s remediation plan. The court held that McCormack was also correct in recommending Powell’s dismissal to

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the Board. Additionally supporting this interpretation, the appellate panel cited a 1989 amendment to the statute that specifically permitted administrators to develop, initiate, and oversee remediation plans.\(^{187}\)

The appellate panel next considered whether the Board of Education could dismiss Powell if only acting on McCormack’s recommendation, and thus in a ministerial capacity. Powell contended the Board delegated its duties to McCormack by allowing the administrator to determine Powell’s evaluative rating and make the recommendation for dismissal. Powell argued that the School Code did not absolve the Board of its historic and statutorily defined control over the teachers employed by the school district.\(^{188}\) The panel reviewed Section 24-12 of the School Code, finding the amended statute delegated the authority to dismiss to a hearing officer, indicating that the hearing officer’s determination would be final.\(^{189}\) The appellate panel noted that amended section 5/24-12 suggests that once a teacher begins remediation, the Board no longer has responsibility or control over releasing or retaining the teacher.\(^{190}\) As a result, the court concluded that the amended section 5/24-12 of the statute clearly indicated the legislature’s intent to remove jurisdiction over a teacher dismissal decision from the school board and to vest this responsibility instead with a disinterested hearing officer.\(^{191}\) Accordingly, the appellate panel reversed the circuit court’s decision and remanded the case for a new hearing to determine


the evidentiary basis for Powell’s dismissal. There are no further appeals on record for this case.

**Dudley v. Board of Education**

Five years later, in 1992, *Dudley v. Board of Education* sought to clarify the due process and administrative remedy rights of an employee during the dismissal process. Deborah Dudley, a tenured teacher, received an Unsatisfactory rating on a summative evaluation of her teaching performance. Dudley participated in a remediation plan, but did not complete the plan with a successful rating. The Board of Education acted on an administrative recommendation to dismiss Dudley for cause, suspending Dudley without pay pending the outcome of the dismissal proceedings. Dudley chose not to participate in a hearing with an impartial hearing officer, as afforded to her by Illinois School Code.

Subsequently Dudley sued the Board of Education and Bellwood School District #88 in Cook County Circuit Court, claiming that her evaluation and remediation violated Article 24A of the School Code. Dudley filed a two-part complaint. The first count of the complaint outlined several aspects of the evaluative process that Dudley felt the Administration conducted improperly. The second count of the complaint challenged the Board’s decision to suspend Dudley without pay.

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The first count of Dudley’s complaint asserted that the Board had failed to list the names of all qualified administrators involved in the remediation plan, failed to specify evidence of the plaintiff’s strengths, and failed to conduct the evaluation in a manner consistent with improving educational services.200 Dudley also claimed that the remediation plan violated state law because the Board initiated the remediation plan after conducting an invalid evaluation.201 Dudley argued that the Board did not initiate the remediation plan within 30 days of the written evaluation, thus violating her procedural due process rights.202 Dudley further argued that the Board set her up to fail by implementing the remediation plan in bad faith.203 Dudley supported this claim by sharing that neither she nor her consulting teacher were involved in the development of the remediation plan.204 Dudley alleged the administration omitted numerous additional facts from prior hearings and proceedings due to personal animosity from the principal.205 These additional facts purportedly related to Dudley’s claim that administration had wrongly rated her as Unsatisfactory, wrongly subjugated her to a remediation plan, and wrongfully conducted dismissal proceedings against her.206

While arguing in the Circuit Court, Dudley amended her original complaint207 and dropped the second count completely. In revising the complaint, Dudley sought a judicial order to void the Unsatisfactory evaluation, clear the evaluative record, stop the dismissal, and to

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upgrade the evaluation from Unsatisfactory to Satisfactory or better.\footnote{Dudley v. Bd. Of Educ., 260 Ill. App. 3d 1100, 1102.} In response, the Board filed a motion to dismiss, stating that the amended complaint failed to state a cause of action and asserted that Dudley had failed to exhaust her administrative remedies by not participating in an impartial hearing prior to going to court.\footnote{Dudley v. Bd. Of Educ., 260 Ill. App. 3d 1100, 1102.} The Circuit Court of Cook County granted the school board’s motion to dismiss, affirming that the plaintiff had not pursued administrative review.\footnote{Dudley v. Bd. Of Educ., 260 Ill. App. 3d 1100, 1103.} The Circuit Court reinforced that a complete hearing must take place as an administrative remedy prior to further legal action by the plaintiff.\footnote{Dudley v. Bd. Of Educ., 260 Ill. App. 3d 1100, 1103.} Dudley appealed the trial court decision to the Appellate Court of Illinois, 1st District.\footnote{Dudley v. Bd. Of Educ., 260 Ill. App. 3d 1100, 1103.}

The appellate panel considered two points of law related to Dudley’s complaint. The first was whether she had a private right of action for enforcing Article 24A of the School Code.\footnote{Dudley v. Bd. Of Educ., 260 Ill. App. 3d 1100, 1103.} The second was whether Dudley needed to exhaust administrative remedies under section 5/24-12 of the School Code if the School Board had no jurisdiction to dismiss in the first place.\footnote{Dudley v. Bd. Of Educ., 260 Ill. App. 3d 1100, 1103.}

Speaking on the private right of action claim, the appellate panel cited sections 5/24-12 and 5/24-16 of the School Code that clearly assert the plaintiff’s requirement to seek administrative review of the dismissal before going to court. The court held that jumping straight to a lawsuit was not Dudley’s right.\footnote{Dudley v. Bd. Of Educ., 260 Ill. App. 3d 1100, 1105.} In fact, the statute required Dudley to contest the dismissal in an administrative hearing with an impartial hearing officer first, which Dudley did not do.\footnote{Dudley v. Bd. Of Educ., 260 Ill. App. 3d 1100, 1105.} A private right of action might have existed if Dudley could have shown one of the
following: that the statute contradicted public policy, that Dudley was a member of a protected class, that Dudley’s injuries were ones the statute intended to prevent, that the need for civil action under the statute was clear, or that Dudley had no other options. Dudley could not demonstrate that these conditions existed.

Weighing the second aspect of Dudley’s claim, as with count one, the appellate panel similarly held that Dudley first had to exhaust her administrative remedy opportunities before the court would hear the case. The appellate court affirmed the circuit court’s dismissal of count one of the amended complaint. The appellate panel noted that Dudley had not challenged the constitutionality of the statute and thus first needed to exhaust all administrative remedies. After hearing the arguments from Dudley and weighing them against the statute, the appellate court affirmed the order of the Cook County circuit court. Dudley did not pursue any further legal action.

**Davis v. Board of Education**

One year after Dudley v. Board, another court was called on to clarify Article 24A and the authority given to evaluators to determine the weight of evidence when dismissing tenured teachers. The teacher at issue in the case, George Davis, began working as an automotive mechanics instructor for the Chicago Board of Education in 1963. Davis’ principal, Dr. Lutzow, observed Davis several times during his twenty-sixth year of teaching at Washburne

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Trade School. Based on these observations, Lutzow determined Davis was Unsatisfactory in his classroom performance. Lutzow conferenced with Davis, outlining instructional weaknesses and suggesting methods for improvement. Lutzow then formally rated Davis as Unsatisfactory, having been continuously dissatisfied with Davis’ performance. On February 27, 1990, Lutzow developed a remediation plan for Davis that highlighted ten areas of weakness. Davis claimed to understand the terms of the remediation plan. Lutzow assigned Wardell Boyd as Davis’ consulting teacher to provide guidance and support to Davis during the remediation. Boyd was Davis’ department chair and listed by the Board of Education as a qualified consulting teacher. Davis received ten observations during the remediation period. Discussions about the results of the observations took place in meetings with Davis, Lutzow, Boyd, and Assistant Principal Helm. Lutzow, Boyd, and Helm made specific suggestions for improvement to Davis based on their observations. Despite this, on May 7, 1993, Lutzow again formally rated Davis as Unsatisfactory. In the new evaluation, Lutzow further highlighted Davis’ deficiencies and added to the list an incident in which Davis left students unsupervised when installing a car engine. The Board of Education terminated...
Davis for not completing the remediation plan with a Satisfactory rating\(^{239}\) and Davis subsequently requested an administrative hearing.\(^{240}\)

At the hearing, the hearing officer determined that the Board of Education had proved nine of the ten charges of Unsatisfactory performance, thus constituting cause for dismissal.\(^{241}\) The causes for dismissal were inadequate knowledge of automotive mechanics, inadequate preparation, failure to utilize properly structured and organized teaching methods, failure to motivate students, failure to implement suggestions for improvement, failure to establish classroom rules, failure to give or review homework, lack of student progress, and failure to use class time effectively.\(^{242}\) Davis responded by filing suit in the Circuit Court of Cook County.\(^{243}\) The circuit court affirmed the hearing officer’s decision and Davis then appealed the decision to the Illinois 3\(^{rd}\) District court of appeals.\(^{244}\)

The appellate panel reviewed Davis’ assertions that the hearing officer had applied the wrong legal standard when determining that Davis did not satisfactorily complete the remediation plan.\(^{245}\) Davis asserted that the hearing officer should have determined whether Davis made any improvements during the remediation plan.\(^{246}\) Davis also claimed that the evidence did not support a finding that his conduct was irremediable, did not support the hearing officer’s general determinations, that the evidence was arbitrary and capricious, and that the


appointment of the department chair as the consulting teacher violated the intent of the School Code.247

Regarding Davis’ assertion that the hearing officer applied the incorrect legal standard, the appellate panel cited the Illinois School Code248 as saying, “the principal and the consulting teacher provided for herein determine (based on the teacher’s progress) that the teacher may be remediable.”249 The appellate panel rejected Davis’ contention, highlighting that the principal and consulting teacher were the only ones able to determine if the unsatisfactorily rated educator was remediable.250

The appellate panel similarly rejected Davis’ second argument.251 The panel found Davis, per his own admission to the hearing officer, did not show sufficient growth during remediation and thus warranted termination.252 In an effort to demonstrate that Davis was entitled to additional time to remediate, he cited a case pre-dating Article 24A, from 1980, Board of Education v. Illinois State Board of Education.253 Since that case, the State of Illinois passed Article 24A into law, which specifically gives the authority to extend the remediation timeframe to the principal and consulting teacher.254 The appellate panel affirmed that Davis would only be entitled to continue in his position if Lutzow and Boyd determined that Davis exhibited Satisfactory performance.255 In response to Davis’ contention that the hearing officer was arbitrary and capricious in weighing the evidence, the appellate panel found that the hearing

248 105 ILCS 5/24A-5(f)
250 105 ILCS 5/24A-5(f)
251 105 ILCS 5/24A-5(f)
252 105 ILCS 5/24A-5(f)
254 105 ILCS 5/24A-5(f)
255 105 ILCS 5/24A-5(f)
officer was able to cite specific examples of Davis’ Unsatisfactory performance.\textsuperscript{256} Davis admitted to these examples, which were consistent with prior Unsatisfactory evaluations.\textsuperscript{257} The appellate panel referenced the history of evaluative evidence and the educator’s own admissions as evidence that the hearing officer’s determinations were not arbitrary or capricious.\textsuperscript{258} Finally, the court found Davis’ argument that Boyd did not meet the statutory requirements of a consulting teacher (due to his role as department chair) was without merit.\textsuperscript{259} The appellate panel noted the School Code\textsuperscript{260} requires a consulting teacher “be selected by the principal, [have] at least 5 years teaching experience and a reasonable familiarity with the assignment of the teacher being evaluated, and [have] received an Excellent rating on his or her most recent evaluation.”\textsuperscript{261} Boyd met all these conditions, and thus his role as department chair was irrelevant.\textsuperscript{262} For these reasons, the appellate court affirmed the circuit court’s decision to uphold Davis’s termination. Davis did not pursue further legal recourse.

\textit{Chicago Board of Education v. Vashti Smith}\textsuperscript{263}

In March of 1991, Principal Robert Kellberg rated Vashti Smith, a twenty-two year veteran educator, as Unsatisfactory on her evaluation.\textsuperscript{264} Kellberg placed Smith on remediation and provided her with a notice of deficiencies.\textsuperscript{265} The notice cited ten different reasons for the

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\textsuperscript{265} *Chicago Public Schools calls these notices an “E-3 Notice”; \textit{Chicago Board of Education v. Smith}, 279 Ill.App.3d 28 (Ill. App. Ct. 3rd Dist. 1996)
Unsatisfactory rating.²⁶⁶ At that time, Smith received a remediation plan and a mentor teacher, Barbara Moore, was assigned to Smith by Kellberg.²⁶⁷ The remediation plan began on March 12, 1991.²⁶⁸ Kellberg observed Smith at least four times and conferenced with Smith on several additional occasions during the remediation period.²⁶⁹ Smith also consulted with her mentor teacher, Barbara Moore, between March 12 and May 2.²⁷⁰ On May 21, 1991, Kellberg prepared a document that listed the concerns outlined in the remediation plan underneath a heading that stated Smith had not complied with the items.²⁷¹ Kellberg met with Smith on May 23, 1991, shared the document, and told Smith that her performance was still Unsatisfactory. After meeting with Smith, Kellberg observed the teacher in the classroom again on May 23.²⁷² After the observation on May 23, Kellberg filled out the Classroom Teacher Visitation form as required by the district handbook.²⁷³ Based on the observations and conference, Kellberg recommended Smith’s dismissal on May 24, 1991, in a letter to the Deputy Superintendent of Schools.²⁷⁴ Kellberg then conducted the final observation on June 13, providing Smith with a written copy of the observation on June 14, 1991 after Kellberg made the recommendation for dismissal.

Smith challenged her dismissal and requested a hearing.²⁷⁵ Smith cited due process errors in that Kellberg did not provide her the required final observation and accompanying

write-up until after the summative evaluation on May 24. Smith argued that the State School Code required written feedback be given to Smith prior to the final evaluation. Kellberg admitted to this error during the hearing. Due to this the hearing officer found that

Clearly, by not utilizing the Classroom Teacher Visitation Form, even if Kellberg met with Ms. Smith after each visitation, the procedures set forth in the Handbook were not followed. Moreover, and perhaps even more significant, the document given to Ms. Smith at the end of her remediation period did not constitute an evaluation.

The district also argued during the hearing that the observation write-up provided to Smith on June 14 satisfied the requirements under the school code and the district handbook. The hearing officer found this evaluation to be tainted, given that Kellberg had observed Smith on May 23 and June 13, which was after the remediation period ended. In a post-hearing brief, the Board argued that Smith had waived her right to object to errors in the evaluation process by not indicating her objection in writing prior to the hearing. To underscore their argument, the Board cited section 52.90 of the Illinois Administrative Code, which states that a party waives his/her right to object if he/she does not provide the State Board of Education or the Hearing Officer with a written objection. However, the hearing officer found that Smith had indeed notified the Board, having responded to pre-hearing interrogatories by stating that she would

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282 Illinois Administrative Code, 23 Ill. Adm.Code 52.90 (If a party fails to notify the Board of Education or hearing officer of his/her objection in writing, then the party waives their right to object.)
283 Illinois Administrative Code, 23 Ill. Adm.Code 52.90 (If a party fails to notify the Board of Education or hearing officer of his/her objection in writing, then the party waives their right to object.)
argue the School Code, Teacher Evaluation Plan, and Handbook had been violated. The hearing officer did not address the issue of the cause for Smith’s dismissal due to the due process error, and thus the hearing officer voided the dismissal. The hearing officer reinstated Smith and placed Smith on remediation. The hearing officer indicated that Smith’s continued reinstatement was dependent on the successful completion of a new forty-five day remediation plan.

The School Board asked the Circuit Court of Cook County for judicial review of the hearing officer’s decision. The School Board asserted that since Smith went straight to a hearing, she waived her right to contest that due process had not been followed during the evaluation process. On July 12, 1993, the circuit court of Cook County reversed the hearing officer’s decision, finding that section 52.90 of the Administrative Code did indeed apply to the School Code and Handbook procedures and thus Smith had waived her right to an evaluation. The court concluded that since Smith did not place her objection in writing prior to proceeding with the hearing, she was not able to object to the evaluation. This resulted in the circuit court remanding the case back to the hearing officer to determine if the dismissal was due to Smith’s Unsatisfactory teaching. The hearing officer found Smith’s dismissal due to Unsatisfactory performance supported by cause, which the circuit court affirmed.
On appeal, Smith argued before the Illinois 3rd District court that the trial court ruled incorrectly by declaring that she had waived her right to object to her dismissal for cause under the Administrative Code. The appellate panel found the hearing officer’s initial decision was correct and, thus, overturned the lower court’s decision. The appellate panel underscored the fact that Administrative procedure does not supersede School Code. The School Code allowed Smith to object to her dismissal, even though she did not inform the Board in accordance with the Administrative Code.

Further, the appellate panel found that the form given to Smith by Kellberg on May 23, 1991 (after the remediation period ended) did not satisfy the requirements of an evaluation plan under the School Code or the collective bargaining agreement. Both the School Code and the collective bargaining agreement required timely, written feedback prior to the summative evaluation. The appellate panel noted that the teacher evaluation feedback form even stated the required timeline right on the form. When Kellberg provided written feedback and evaluation to Smith after the conclusion of the remediation period (after providing a termination recommendation to the Board), Kellberg violated Smith’s due process rights. As such, the appellate panel decided that Smith should be reinstated pending a forty-five day extension of the remediation period, per the hearing officer’s determination on October 9, 1992. There was no further appeal.

**Gilbert v. Board of Education**

In 1995, Gilbert, a tenured teacher, cited Article 24A when he sued the District 211 Board of Education, asserting that the Board had intentionally interfered with his contractual continued service under Illinois law and that, in doing so, the Board had inflicted emotional distress upon Gilbert. Gilbert filed a four-part motion against the Board.

During the 1993-94 school year, Gilbert received an Unsatisfactory rating on his evaluation. On June 16, 1994, agents of the Board placed Gilbert on a remediation plan. On July 11, 1995, over a year later, the Board served Gilbert with written notice of the charges against his performance and his subsequent dismissal. The Board claimed that Gilbert failed to comply with the remediation plan. Gilbert then requested a hearing in accordance with the Illinois School Code. One month later, the Board offered an administrative hearing to Gilbert, which he declined. Instead Gilbert filed a motion with the United States District Court for the Northern District of Illinois, alleging a violation of his rights. At that time, the Board suspended Gilbert without pay. All administrative hearing proceedings were halted pending resolution of the motion by the court.

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304 105 ILCS 5/24 – 11(c). (In Illinois, continued contractual service is guaranteed after four years unless written notice of dismissal is provided by mail. Continued contractual service is commonly referred to as ‘tenure.’).
311 105 ILCS 5/24-12.
Count one of the motion was not at issue in this case, as it alleged the facts pertaining to plaintiff’s dismissal were a violation of the Americans with Disabilities Act (ADA).\textsuperscript{316,317} Count II, for which the Board asked for summary judgment, alleged that by dismissing Gilbert, the Board had slandered Gilbert’s name and reputation.\textsuperscript{318} In count III, the plaintiff asserted that the Board intentionally interfered with Gilbert’s contractual relationship with the Board.\textsuperscript{319} The plaintiff also alleged, in count IV, that the Board inflicted intentional emotional distress on Gilbert when seeking to dismiss him.\textsuperscript{320} The United States District Court for the Northern District of Illinois heard arguments for summary judgment of count II and dismissal of counts III and IV.\textsuperscript{321}

Hearing arguments from both parties, the court found that the plaintiff had been provided all procedural safeguards and processes required by statute. Gilbert had been placed on remediation, been notified of charges against him, and had an opportunity to share his version of events in a hearing.\textsuperscript{322} The court noted that the plaintiff had himself declined the hearing and prevented his own opportunity to present his perspective on the remediation process and dismissal.\textsuperscript{323}

Gilbert also claimed the Board stigmatized him during the evaluative process and that the dismissal harmed his reputation, good name, and honor.\textsuperscript{324} Gilbert asserted that the potential of disclosing the charges for dismissal to subsequent employers infringed upon his future

\textsuperscript{317} 42 U.S.C. §12117(a).
employability. The court recognized that termination from employment would naturally influence the good name of the dismissed employee to some degree. The court observed that for the Board to harm Gilbert’s reputation substantively, the Board would have had to publicize Gilbert’s termination. Given that the Board did not publicize Gilbert’s name or further identify him to the public in any way, the Board did not actively disseminate disparaging comments about Gilbert. The court issued summary judgment in favor of the Board on count two of the motion.

In reviewing counts three and four of the motion, the appellate panel did not dismiss the counts as requested by the Board. Gilbert alleged that the Board intentionally interfered with his contract, inflicting emotional distress, and was thus entitled to sue. Gilbert was not required to use the remedy of an administrative hearing to determine if the Board had violated the ADA, as the hearing officer does not have jurisdiction over such a claim. Motions one, three, and four proceeded in court, while motion two did not proceed. Gilbert then filed another amended complaint, encompassing motions once, three, and four, which was subsequently dismissed by the court on January 11, 2010.

Board of Education v. Spangler\textsuperscript{335}

In June of 1998, teacher Raymond Spangler sought clarification on the scope of a hearing officer’s authority to interpret evidence when dismissing a tenured educator. On October 2, 1996, Spangler received written notice from his principal, Dr. Bruce Brown, raising several concerns based on Brown’s five previous classroom observations.\textsuperscript{336} Brown expressed concern regarding Spangler’s classroom interactions, lesson organization, instructional planning, classroom management, instructional methodology, and provision of student assessment feedback as the specific areas of concern.\textsuperscript{337} The principal’s written feedback indicated Spangler’s teaching performance rating would be Unsatisfactory if no improvements occurred.\textsuperscript{338}

On April 30, 1997, Spangler received his summative evaluation.\textsuperscript{339} The evaluation drew upon evidence from ten classroom observations conducted throughout the school year.\textsuperscript{340} Two of the observations had been announced visits, as required by the evaluation plan.\textsuperscript{341} The observations showed that Spangler remained deficient in several performance areas.\textsuperscript{342} These areas included instructional methodology, lesson planning and organization, concept of lesson directions, and pacing.\textsuperscript{343} Spangler subsequently received an Unsatisfactory overall performance rating from Brown.\textsuperscript{344} The Unsatisfactory rating required Spangler to successfully complete a State
remediation plan. Spangler’s remediation plan addressed the deficient instructional areas, and included multiple classroom observations throughout the remediation cycle.

Both Brown and the Assistant Superintendent for Instruction, Marianne Zito, conducted these observations. Brown observed Spangler twenty-nine times during the remediation cycle, with three observations having been prearranged. Additionally, Zito observed Spangler twice in the spring of 1998. At the conclusion of each quarter of the remediation cycle, Spangler received an updated evaluation from Brown. Spangler received Unsatisfactory ratings on each quarterly assessment. On June 18, 1998, the Board passed a resolution citing seventeen specific Unsatisfactory issues and dismissed Spangler for failing to complete remediation with a Satisfactory rating.

Spangler requested a hearing with an impartial hearing officer. At the hearing, Spangler argued that he had made improvements in twelve of the seventeen areas identified by the Board, which warranted keeping his job. The hearing officer found five of the Board’s charges supported the dismissal, seven charges did not, and the five remaining charges were neutral. The hearing officer ruled the Board did not have sufficient cause to rate Spangler’s teaching performance as Unsatisfactory. Therefore, the hearing officer concluded Spangler’s
dismissal was made in error\textsuperscript{356} and overturned the dismissal.\textsuperscript{357} The Board sought administrative review in the Circuit Court of Cook County, which upheld the hearing officer’s decision to reverse Spangler’s dismissal.\textsuperscript{358}

The Board appealed the lower court decision to the Appellate Court of Illinois, First District.\textsuperscript{359} The appellate court’s decision began by considering the hearing officer’s scope of authority.\textsuperscript{360} The appellate panel acknowledged that “it was the school board's responsibility to determine facts, weigh the evidence presented to it, and, after due consideration of matters with respect to credibility, ascertain whether there was sufficient evidence to support dismissal of a tenured teacher.”\textsuperscript{361} However, the appellate court pointed out that while the school board initially had the power to dismiss a teacher, this decision was subject to the review procedures set forth by the School Code.\textsuperscript{362} The court further noted these procedures granted “full and total authority to the hearing officer to make the ultimate decision and determination as to dismissal.”\textsuperscript{363} Thus, the appellate court unequivocally affirmed the hearing officer’s authority to reverse the Board of Education’s dismissal decision.\textsuperscript{364}

The appellate court then addressed the Board of Education’s argument that the hearing officer should have affirmed the dismissal as the Board had proven “six of the charges against Spangler.”\textsuperscript{365} The appellate panel observed the hearing officer had not explicitly stated the

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Board had proven six of the charges. Instead the hearing officer indicated two of the charges had been “sustained.” This led the panel to “presume” the Board had merely proven the two charges by a “preponderance of evidence.” The Board of Education further argued that, based on proving two of the charges, “the hearing officer was required as a matter of law … to find Spangler was properly rated as Unsatisfactory” and therefore the dismissal should be immune to challenge. However, noting the Board had failed to reference any case law supporting this argument, the court deemed the argument waived for purposes of appellate review. The court further noted that even assuming the Board waived their argument, its application would compel a hearing officer to uphold a teacher’s dismissal even if a single proven charge was “minor or unrelated to the teacher’s ability to perform his job functions.” The appellate court described such a result as “absurd.”

The Board argued it was against the manifest weight of the evidence for the hearing officer to conclude the Board had failed to adequately prove five of the charges against Spangler. Citing Board of Education of Round Lake Area Schools, Community Unit School District No. 116 v. The State Board of Education, the appellate panel pointed out a hearing officer’s decision was against the manifest weight of the evidence “only where ‘all reasonable and unbiased persons would agree it is clearly evident the [hearing officer] erred and should have

reached the opposite conclusion.” The court opined that where the evidentiary record supported the hearing officer’s decision, the ruling should not be disturbed. Additionally, the appellate panel stated it was not the judiciary’s “function to reassess the credibility of witnesses or the weight to be given to the evidence” by a hearing officer. Thus, the appellate panel supported the hearing officer’s interpretation of the evidence.

Finally, the Board asserted it had presented compelling evidence demonstrating Spangler “was not qualified to teach” and that Spangler’s continued presence in the classroom was “detrimental to students.” The court pointed out the hearing officer had treated this assertion as a “conclusion” rather than a charge the Board had used in an attempt “to bring up other incidents” unrelated to the “other sixteen charges.” In Community Unit School District v. Maclin, the school board brought identical charges against a teacher and the court dismissed them as “conclusions, not proper charges.” The court did, however, point out Maclin had qualified the dismissal of charges against the teacher by noting that, had the charges been “proven by evidence,” they would have constituted “a proper reason for dismissal.” Thus, because the hearing officer had considered the Board’s allegation that Spangler was not qualified to teach and concluded the charges lacked sufficient evidentiary support, “the Board’s argument

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375 Round Lake Area Schools, 292 Ill App. 3d at 109.
376 Shreve, 309 Ill. App. 3d at 678-79.
that [the hearing officer] failed to consider these charges … [was] without merit.”\textsuperscript{381} As a result, the appellate court sustained the hearing officer’s reversal of Spangler’s dismissal.\textsuperscript{382}

\textit{Lauri Buchna v. Board of Education}\textsuperscript{383}

Due process and procedural compliance were also key factors in the case of Lauri Buchna. Lauri Buchna was a third grade teacher at Illinois Valley Central Unit District No. 321.\textsuperscript{384} During the 1997-98 school year, the Administration rated Buchna as “Does not meet District Expectations.”\textsuperscript{385} Buchna then began a State remediation plan\textsuperscript{386} calling for Buchna to remediate ten Unsatisfactory areas.\textsuperscript{387} During the remediation period, the Administration issued Buchna four reports about her progress.\textsuperscript{388} The first, second, and fourth reports indicated that Buchna “Did not meet expectations.”\textsuperscript{389} The third report did not have a rating.\textsuperscript{390} The Board terminated Buchna at the end of the remediation period, with Buchna having received an overall rating of “Does not meet district expectations.”\textsuperscript{391} Buchna then exercised her right to an administrative hearing.\textsuperscript{392}

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\textsuperscript{383} \textit{Lauri Buchna v. Illinois State Board of Education, David Jacobs, Hearing Officer; and Board of Education of Illinois Valley Central Unit District No. 321, 342 Ill. App. 3d. 934.}
\textsuperscript{384} \textit{Lauri Buchna v. Illinois State Board of Education, David Jacobs, Hearing Officer; and Board of Education of Illinois Valley Central Unit District No. 321, 342 Ill. App. 3d. 934, 935.}
\textsuperscript{385} \textit{Lauri Buchna v. Illinois State Board of Education, David Jacobs, Hearing Officer; and Board of Education of Illinois Valley Central Unit District No. 321, 342 Ill. App. 3d. 934, 935.}
\textsuperscript{386} \textit{Lauri Buchna v. Illinois State Board of Education, David Jacobs, Hearing Officer; and Board of Education of Illinois Valley Central Unit District No. 321, 342 Ill. App. 3d. 934, 935.}
\textsuperscript{387} \textit{Lauri Buchna v. Illinois State Board of Education, David Jacobs, Hearing Officer; and Board of Education of Illinois Valley Central Unit District No. 321, 342 Ill. App. 3d. 934, 935.}
\textsuperscript{388} \textit{Lauri Buchna v. Illinois State Board of Education, David Jacobs, Hearing Officer; and Board of Education of Illinois Valley Central Unit District No. 321, 342 Ill. App. 3d. 934, 935.}
\textsuperscript{389} \textit{Lauri Buchna v. Illinois State Board of Education, David Jacobs, Hearing Officer; and Board of Education of Illinois Valley Central Unit District No. 321, 342 Ill. App. 3d. 934, 935.}
\textsuperscript{390} \textit{Lauri Buchna v. Illinois State Board of Education, David Jacobs, Hearing Officer; and Board of Education of Illinois Valley Central Unit District No. 321, 342 Ill. App. 3d. 934, 935.}
\textsuperscript{391} \textit{Lauri Buchna v. Illinois State Board of Education, David Jacobs, Hearing Officer; and Board of Education of Illinois Valley Central Unit District No. 321, 342 Ill. App. 3d. 934, 935.}
\textsuperscript{392} 105 ILCS 5/24A-12.
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Buchna asked the hearing officer for a directed verdict. A main support for Buchna’s request stemmed from article 5/24A-5(c) of the School Code, which required the district to have a three-tiered evaluation system. When the school district initially evaluated Buchna, it had a two-tiered evaluation system; evaluators rated teachers as either “Does not meet district expectations” or “Meets or exceeds district expectations.” The local bargaining unit agreed to the two-tiered system during negotiations. After hearing Buchna’s argument, the hearing officer denied the motion for directed verdict and found in favor of the school district, stating that the board had complied with section 5/24A-5(c). Buchna appealed the hearing officer’s decision to the Peoria County Circuit Court.

Buchna argued that the school district had not strictly adhered to the statute cited in section 5/24A-5(c). Specifically, the school district was required to have a three-tiered system and instead had a two-tiered system. Attorneys for the defendants argued that the school district complied with the statute by including both of the terms “meets or exceeds” in the positive rating. The defendants also attempted to interpret the word “shall” as meaning

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393 Lauri Buchna v. Illinois State Board of Education, David Jacobs, Hearing Officer; and Board of Education of Illinois Valley Central Unit District No. 321, 342 Ill. App. 3d. 934, 935.
395 Lauri Buchna v. Illinois State Board of Education, David Jacobs, Hearing Officer; and Board of Education of Illinois Valley Central Unit District No. 321, 342 Ill. App. 3d. 934, 939.
396 Lauri Buchna v. Illinois State Board of Education, David Jacobs, Hearing Officer; and Board of Education of Illinois Valley Central Unit District No. 321, 342 Ill. App. 3d. 934, 936.
397 Lauri Buchna v. Illinois State Board of Education, David Jacobs, Hearing Officer; and Board of Education of Illinois Valley Central Unit District No. 321, 342 Ill. App. 3d. 934, 936.
398 105 ILCS 5/24A – 5(c).
399 Lauri Buchna v. Illinois State Board of Education, David Jacobs, Hearing Officer; and Board of Education of Illinois Valley Central Unit District No. 321, 342 Ill. App. 3d. 934, 936.
400 Lauri Buchna v. Illinois State Board of Education, David Jacobs, Hearing Officer; and Board of Education of Illinois Valley Central Unit District No. 321, 342 Ill. App. 3d. 934, 936.
401 Lauri Buchna v. Illinois State Board of Education, David Jacobs, Hearing Officer; and Board of Education of Illinois Valley Central Unit District No. 321, 342 Ill. App. 3d. 934, 936.
“may,” which would then make a three-tiered system optional. The Board further attempted to defend Buchna’s dismissal by arguing that the two-tiered system resulted from mandatory bargaining with the local collective bargaining unit. Rejecting this argument, the appellate panel cited Illinois statute 115 ILCS 5/10(b), which states that collective bargaining agreements cannot subvert state law. A school district would be required to obtain a waiver from the State of Illinois to do so. The district did not have such a waiver, and thus was required to comply with section 5/24A-5(c). The circuit court found in favor of the Board of Education, upholding the hearing officer’s decision. The circuit court judge found that the hearing officer’s decision was in line with the manifest weight of the evidence and held that the decision did not contradict the law. Buchna appealed the circuit court’s decision to the 3rd District Court of Appeals.

After a review of Buchna’s appeal, the appellate panel reversed the lower court’s decision. The appellate panel cited In re C.W., which requires the appellate court to apply the statute as written, given that the language in the statute is clear and unambiguous. The

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402 Lauri Buchna v. Illinois State Board of Education, David Jacobs, Hearing Officer; and Board of Education of Illinois Valley Central Unit District No. 321, 342 Ill. App. 3d. 934, 937.
403 Lauri Buchna v. Illinois State Board of Education, David Jacobs, Hearing Officer; and Board of Education of Illinois Valley Central Unit District No. 321, 342 Ill. App. 3d. 934, 939.
404 Lauri Buchna v. Illinois State Board of Education, David Jacobs, Hearing Officer; and Board of Education of Illinois Valley Central Unit District No. 321, 342 Ill. App. 3d. 934, 939.
405 105 ILCS 5/2-3.25g.
407 Lauri Buchna v. Illinois State Board of Education, David Jacobs, Hearing Officer; and Board of Education of Illinois Valley Central Unit District No. 321, 342 Ill. App. 3d. 934, 936.
408 Lauri Buchna v. Illinois State Board of Education, David Jacobs, Hearing Officer; and Board of Education of Illinois Valley Central Unit District No. 321, 342 Ill. App. 3d. 934, 936.
409 Lauri Buchna v. Illinois State Board of Education, David Jacobs, Hearing Officer; and Board of Education of Illinois Valley Central Unit District No. 321, 342 Ill. App. 3d. 934, 936.
410 In re C.W., 199 Ill.2d 198.
411 Lauri Buchna v. Illinois State Board of Education, David Jacobs, Hearing Officer; and Board of Education of Illinois Valley Central Unit District No. 321, 342 Ill. App. 3d. 934, 936.
court determined the school district did not comply with the school code’s three-tier requirement by combining two descriptors into one rating statement. The appellate panel noted that the statute utilized the term “shall,” which requires strict compliance and stated that laws require literal interpretation and that the statute is not open to interpretation by the Board of Education. The appellate court went on to note that section 5/24A-5(c) even placed the three-tiered ratings in quotation marks to highlight the significance of needing the three separate rating categories.

Given that administration did not use a three-tiered rating system with Buchna in the first place, the appellate panel found her rating improper. The improper rating should not have subjected Buchna to remediation or the subsequent dismissal. The court determined that the Board had not evaluated Buchna properly. The appellate panel overturned Buchna’s dismissal, and reversed the hearing officer’s decision. The Board did not appeal this decision.

413 Lauri Buchna v. Illinois State Board of Education, David Jacobs, Hearing Officer; and Board of Education of Illinois Valley Central Unit District No. 321, 342 Ill. App. 3d. 934, 937.
414 Lauri Buchna v. Illinois State Board of Education, David Jacobs, Hearing Officer; and Board of Education of Illinois Valley Central Unit District No. 321, 342 Ill. App. 3d. 934, 937.
415 Lauri Buchna v. Illinois State Board of Education, David Jacobs, Hearing Officer; and Board of Education of Illinois Valley Central Unit District No. 321, 342 Ill. App. 3d. 934, 937.
416 Lauri Buchna v. Illinois State Board of Education, David Jacobs, Hearing Officer; and Board of Education of Illinois Valley Central Unit District No. 321, 342 Ill. App. 3d. 934, 937.
417 Lauri Buchna v. Illinois State Board of Education, David Jacobs, Hearing Officer; and Board of Education of Illinois Valley Central Unit District No. 321, 342 Ill. App. 3d. 934, 938.
418 Lauri Buchna v. Illinois State Board of Education, David Jacobs, Hearing Officer; and Board of Education of Illinois Valley Central Unit District No. 321, 342 Ill. App. 3d. 934, 938.
419 Lauri Buchna v. Illinois State Board of Education, David Jacobs, Hearing Officer; and Board of Education of Illinois Valley Central Unit District No. 321, 342 Ill. App. 3d. 934, 938.
420 Lauri Buchna v. Illinois State Board of Education, David Jacobs, Hearing Officer; and Board of Education of Illinois Valley Central Unit District No. 321, 342 Ill. App. 3d. 934, 939.
Charlene Raitzik was a tenured educator in Chicago with twenty-five years in the district. From 1990 to the time of her release in the fall of 2001, Raitzik taught at Pulaski Fine Arts Academy where she taught second, sixth, and eighth grades. During the first two years at Pulaski Fine Arts Academy, Raitzik received Excellent ratings on a four-tiered scale. During those initial evaluations, Principal Alexander noted that Raitzik was weak in her rapport with students and in communicating with parents. Over the next three years Raitzik was rated as Satisfactory twice and then Excellent in the spring of 1995.

In December of 1995, Raitzik received an Unsatisfactory rating, based on having a disorderly classroom, not carrying out disciplinary procedures, not motivating students, and not having a task-oriented classroom. Administration placed Raitzik on a remediation plan in June of 1996, after Raitzik received a second Unsatisfactory rating that same month. Administration extended the remediation period twice before Raitzik satisfactorily completed the remediation plan. Raitzik’s next three evaluations yielded two Excellent ratings and one Satisfactory rating. All three evaluations noted that classroom management, as well as student relationships, were areas for improvement.

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425 The four point scale is (from lowest to highest); Unsatisfactory, Satisfactory, Excellent, and Superior.
In the fall of 2000, Raitzik attended an orientation meeting about the evaluation process. At the meeting, Raitzik signed a form stating that she was present and understood all evaluation requirements. Principal Alexander observed Raitzik twice, in the fall and winter, of the 2000-01 school year. After both observations, Alexander noted areas of weakness in relation to planning, organization, classroom management, and student relationships. Alexander and Raitzik met after each observation and complied with all required forms and signatures. Based on these observations, Alexander issued a Notice of Unsatisfactory Performance (also called an E-3 Notice) to Raitzik in January of 2001.

The E-3 notice listed several areas of deficiency related to the classroom environment, student records and assessments, and classroom management. Alexander assigned a qualified mentor teacher to Raitzik named Peterson. Peterson was an 11-year veteran teacher who taught the same subjects as Raitzik and had received superior ratings for five years, as required by the Illinois School Code. Upon meeting to discuss the required remediation plan, Alexander, Peterson, and Raitzik developed a plan to address five deficiency areas. The five deficiency areas were; failure to maintain reasonable student conduct, failure to establish positive and fair learning expectations for students, failure to evaluate and record student progress, failure to use sound judgment, and failure to provide a safe, clean, and decorated classroom.

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Administration outlined the areas of deficiency with bullet points and included specific improvement suggestions for Raitzik to implement. Alexander, Peterson, and Raitzik all agreed to the provisions of the remediation plan and signed the required forms.

Throughout the remediation period, Peterson met with Raitzik and offered support while also making suggestions for improvement. While working with Raitzik, Peterson noted that Raitzik often did not implement the suggestions given to her. Additionally, Raitzik would engage in behaviors such as grading papers when she should have been teaching, eating lunch and falling asleep during observations of Petersons’ classes, and delivering boring lessons with no higher-order thinking involved. Alexander also observed Raitzik throughout the remediation period. Alexander noted concerns similar to Peterson’s, describing Raitzik’s class as deadly boring and a waste of time. After the Administration conducted four observations in the spring of 2001, Alexander met with Raitzik and Peterson to discuss progress with the remediation plan. After holding the meeting, Alexander observed Raitzik twice more in late spring. Each time Alexander observed Raitzik, they subsequently held a meeting to discuss the observation and sign the required paperwork. Given that the ninety-day remediation plan extended from the 2000-01 school year into the 2001-02 school year, Alexander conducted the final two observations in early fall 2001. Before the final

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observation in September of 2001, Alexander again met with Raitzik and Peterson to discuss progress toward successful completion of the remediation plan.454 After the final observation, Alexander met with Peterson to discuss her visits and interactions with Raitzik during the remediation period.455 Peterson shared that Raitzik had not implemented suggested improvements nor capitalized on the support offered to her during the remediation period.456

In October of 2001, Alexander notified Raitzik that she had failed to successfully remediate her deficiencies.457 Thus, Alexander recommended Raitzik’s dismissal.458 Alexander submitted a Teacher Evaluation Review that listed both Raitzik’s strengths and weaknesses and issued a final rating of Unsatisfactory.459 The Board of Education approved Raitzik’s dismissal for cause.460

Raitzik asked for and received an Administrative Hearing to review her dismissal.461 Raitzik claimed that the poor evaluation had stemmed from a separate confrontation she had with Alexander in the spring of 2000.462 Raitzik acknowledged that she understood the evaluations she had received, along with the remediation plan and subsequent evaluations and ratings.463 Raitzik characterized the type of support she received during the remediation period as not being helpful or consistent.464

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The hearing officer decided in favor of Raitzik, and ordered her reinstatement. The hearing officer determined that Alexander and Peterson’s accounts were generally accurate, that the mentor teacher did indeed support Raitzik, and that Alexander did not display any signs of retaliation or bias. The hearing officer referenced *Board v. Spangler*, sharing that some of the dismissal charges were unfounded, others founded in part, but that none were significant enough to justify dismissal for cause.

After the Hearing Officer issued a decision, the Board of Education reviewed the decision and rejected it, instead upholding the dismissal, stating that Alexander had complied with all the procedural due process requirements of the evaluation plan. Raitzik then filed with the Circuit Court of Cook County for administrative review. The Circuit Court found that the evidence presented by the Board was sufficient for dismissal and determined that all procedural safeguards were present and dismissed Raitzik’s complaint. Raitzik then sought an appeal from the Appellate Court, 1st District.

The appellate panel considered two facets of the case. First, the panel considered whether the manifest weight of the evidence was in line with the findings of fact. Second, the court considered whether the findings justified Raitzik’s dismissal for cause.

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court noted that when considering the two components, it would not interfere with the Board’s discretionary authority.475

When looking at the manifest weight of the evidence, the appellate panel clarified that the Boards’ findings were prima facie accurate.476 The court affirmed the Board’s decision, stating that an unbiased and reasonable person would not agree that the finding was erroneous.477 In supporting the claim against the evidence presented, Raitzik argued that the Board violated her due process rights.478 Raitzik cited the Illinois School Code, claiming that the administration did not provide 30-day ratings during the remediation period, that Peterson was unavailable to her, and that Alexander had not conducted an observation at the end of the remediation period.479 The appellate panel noted that the section of the School Code referenced by Raitzik applied to school districts that had less than 500,000 residents.480 Given that the City of Chicago employed Raitzik, the School Code pertaining to districts over 500,000 residents applied.481 When applying section 24A-5(h) properly, the appellate panel affirmed that all procedural and due process rights were in place during the evaluation process.482

The appellate panel next looked at the dismissal for cause and considered the evidentiary support for the dismissal. The court held Raitzik did not satisfactorily complete the remediation plan and, thus, there was proper cause for dismissal.483 The appellate panel stated that unless the Board’s decision was arbitrary, unreasonable, or unrelated to Raitzik’s service, the Board’s
decision should be given due respect and deference. The appellate panel affirmed the judgment of the trial court and upheld the Board’s decision to dismiss Raitzik for cause.

MacDonald v. Board

The Appellate Court of Illinois, Fourth District, decided the next significant case involving teacher dismissal on February 6, 2012. In May of 2008, Judy Wilson, Principal at the Jr./Sr. High School in Pawnee School District #11, rated tenured art teacher James MacDonald Unsatisfactory on his teaching evaluation. In accordance with section 24A-5(f) of the School Code, the Administration should have had a remediation plan developed and implemented within 30 days. However, the remediation plan was not developed and/or implemented until October 31, 2008, one hundred and fifty-six days later. Wilson rated MacDonald as Unsatisfactory at the conclusion of the remediation plan and (despite the delay in initiating the remediation plan) the school board dismissed MacDonald for cause in April of 2009. MacDonald subsequently requested a hearing with an impartial hearing officer.

MacDonald claimed the remediation plan was not developed or carried out within thirty days (by June 26, 2008) in accordance with the School Code. In fact, the administration assigned a mentor teacher only after 156 days. The Board testified Wilson was finally able to

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locate a mentor teacher in early October 2008.\textsuperscript{495} On October 22, 2008, of the following school year, MacDonald received notice to meet with the administration five days later to discuss and implement the remediation plan.\textsuperscript{496} MacDonald was unable to attend due to a pre-existing medical appointment;\textsuperscript{497} however, the meeting occurred without MacDonald present. Meeting participants included Superintendent Rigdon, Principal Wilson, and Amy Howard (the consulting teacher).\textsuperscript{498} During the meeting, the administration drafted a remediation plan and arranged for another meeting with MacDonald.\textsuperscript{499}

MacDonald met with the administration on October 31, 2008.\textsuperscript{500} The mentor teacher who was to support MacDonald during remediation was not able to attend the meeting; however, MacDonald did bring a Pawnee Education Association (PEA) representative with him.\textsuperscript{501} Administration and MacDonald revised the remediation plan, as MacDonald had been unable to provide input at the first meeting.\textsuperscript{502} MacDonald received a final copy of the remediation plan on November 21, 2008.\textsuperscript{503}

Both Wilson and elementary principal Linda Cline rated MacDonald Unsatisfactory after each of the subsequent observations.\textsuperscript{504} Wilson provided a summative rating to MacDonald on April 14, 2009,\textsuperscript{505} indicating an overall Unsatisfactory rating, stating that MacDonald had not

\textsuperscript{495} MacDonald v. Board, No. 4-11-0599, 2012 Ill. App. LEXIS 462, at *15-16 (4\textsuperscript{th} Ill. App. Feb 6, 2012).
\textsuperscript{496} MacDonald v. Board, No. 4-11-0599, 2012 Ill. App. LEXIS 462, at *2 (4\textsuperscript{th} Ill. App. Feb 6, 2012).
\textsuperscript{497} MacDonald v. Board, No. 4-11-0599, 2012 Ill. App. LEXIS 462, at *2 (4\textsuperscript{th} Ill. App. Feb 6, 2012).
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\textsuperscript{500} MacDonald v. Board, No. 4-11-0599, 2012 Ill. App. LEXIS 462, at *2 (4\textsuperscript{th} Ill. App. Feb 6, 2012).
\textsuperscript{501} MacDonald v. Board, No. 4-11-0599, 2012 Ill. App. LEXIS 462, at *2 (4\textsuperscript{th} Ill. App. Feb 6, 2012).
\textsuperscript{502} MacDonald v. Board, No. 4-11-0599, 2012 Ill. App. LEXIS 462, at *2 (4\textsuperscript{th} Ill. App. Feb 6, 2012).
\textsuperscript{503} MacDonald v. Board, No. 4-11-0599, 2012 Ill. App. LEXIS 462, at *2 (4\textsuperscript{th} Ill. App. Feb 6, 2012).
\textsuperscript{504} MacDonald v. Board, No. 4-11-0599, 2012 Ill. App. LEXIS 462, at *3 (4\textsuperscript{th} Ill. App. Feb 6, 2012).
\textsuperscript{505} MacDonald v. Board, No. 4-11-0599, 2012 Ill. App. LEXIS 462, at *3 (4\textsuperscript{th} Ill. App. Feb 6, 2012).
satisfactorily completed remediation.506 The Board voted to dismiss MacDonald on April 22, 2009.507

MacDonald sought a hearing to have an impartial review of the dismissal decision and argued there was not enough evidentiary cause to dismiss him.508 MacDonald argued that the 156 days it took to assign a mentor teacher and initiate a remediation plan far exceeded the statutory 30-day limitation.509 A hearing officer upheld the district’s dismissal decision, noting that there was sufficient evidentiary cause for dismissal and finding the Board had complied with due process requirements. The hearing officer noted that although implementing the remediation plan took 158 days, the delay was because administration was not able to procure a qualified mentor teacher until October of 2008.510

As a result, MacDonald filed for review in the Circuit Court of Sangamon County in June 2011, alleging violations of due process due to the length of time between his initial Unsatisfactory rating and the beginning of the remediation period.511 The circuit court upheld the hearing officer’s decision.512 The plaintiff then filed an appeal with the Appellate Court of Illinois, Fourth District.513

The appellate panel considered five district violations asserted by MacDonald, including failing to develop and implement a remediation plan within 30 days, failing to provide a 90-day remediation period with evaluations every 30 days, failing to provide a consulting teacher,
failing to provide assistance, and ultimately determined the Board erred in determining MacDonald had failed to satisfactorily remediate.\footnote{MacDonald v. Board, No. 4-11-0599, 2012 Ill. App. LEXIS 462, at *5 (4th Ill. App. Feb 6, 2012).} The appellate panel considered the Board’s response that it had simply delayed starting the remediation plan due to the unavailability of a qualified mentor teacher.\footnote{MacDonald v. Board, No. 4-11-0599, 2012 Ill. App. LEXIS 462, at *7 (4th Ill. App. Feb 6, 2012).} The hearing officer had agreed with that argument but had not accessed prior case law in ruling that the Board did not violate due process.\footnote{MacDonald v. Board, No. 4-11-0599, 2012 Ill. App. LEXIS 462, at *7-8 (4th Ill. App. Feb 6, 2012).} Instead the hearing officer had relied on remarks made by Illinois Senator Berman during the legislative sessions that led to Article 24A.\footnote{MacDonald v. Board, No. 4-11-0599, 2012 Ill. App. LEXIS 462, at *8 (4th Ill. App. Feb 6, 2012).} In 1985, Senator Berman argued that failure to comply with a 30-day timeline would not invalidate the results of the remediation plan.\footnote{MacDonald v. Board, No. 4-11-0599, 2012 Ill. App. LEXIS 462, at *8 (4th Ill. App. Feb 6, 2012).} The appellate panel noted that although Berman did indeed say this during legislative session, his remarks were a summation of the legislative discourse and not a reflection of the actual written language of section 5/24A.\footnote{MacDonald v. Board, No. 4-11-0599, 2012 Ill. App. LEXIS 462, at *8 (4th Ill. App. Feb 6, 2012).} The appellate panel did not find the Board’s assertions about the difficulty of finding a mentor teacher to be a legitimate reason for taking 156 days to share and implement the remediation plan. The appellate court determined that the remediation process fell outside of strict compliance, or even substantial compliance, with the required timelines.\footnote{MacDonald v. Board, No. 4-11-0599, 2012 Ill. App. LEXIS 462, at *10 (4th Ill. App. Feb 6, 2012).} As such, the appellate court reversed the decision of the circuit court and ordered MacDonald reinstated with back pay and benefits.\footnote{MacDonald v. Board, No. 4-11-0599, 2012 Ill. App. LEXIS 462, at *6 (4th Ill. App. Feb 6, 2012).} Due to the appellate court’s finding of a due process error by the Board, the court did not address MacDonald’s’ remaining claims.\footnote{MacDonald v. Board, No. 4-11-0599, 2012 Ill. App. LEXIS 462, at *6 (4th Ill. App. Feb 6, 2012).}
During the 2007-08 school year, Principal Nichole Jackson rated Anna Farkas’ teaching as Unsatisfactory. Jackson observed Farkas twice during the year. After the observations, Jackson placed Farkas on remediation for a 20-week plan. At the end of the plan, Jackson again rated Farkas as Unsatisfactory and the Board subsequently dismissed Farkas for cause.

Feedback from the first observation indicated Farkas was not meeting expectations in 12 out of 24 defined areas. The second observation identified problems with Farkas’ planning and delivery of instruction. Jackson quantified her concerns with observational evidence and gave Farkas a notice of Unsatisfactory teaching performance. Farkas took advantage of a “Fresh Start” agreement between the Chicago Teachers Union and the Chicago Board of Education allowing Farkas develop a remediation plan that addressed her Unsatisfactory performance and to choose whether the mentor teacher or the principal would evaluate the remediation plan. Farkas chose to have Jackson evaluate the completed remediation plan.

The District then assigned Brenda Humphrey as a mentor teacher for the purpose of supporting Farkas and providing non-evaluative feedback during the remediation period. Farkas addressed teaching procedures, classroom management, and professional responsibility in her

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529 Fresh Start allowed for failing schools to have increased local governance of the school, in lieu of federal sanctions from NCLB.
Since Jackson was to provide the final evaluation rating, she evaluated Farkas midway through the remediation process and indicated Farkas was still performing unsatisfactorily. Further, during the remediation period, Jackson received complaints about Farkas from both students and staff.

In the final evaluation, Jackson stated that Farkas’ written lesson planning had improved, but that delivery of instruction remained Unsatisfactory. Jackson noted that Humpfrey had spent 50 hours with Farkas during the remediation period (only 47 were required) and affirmed that significant deficiencies in lesson delivery and classroom management existed. Jackson used her observations of Farkas, factoring in corroborating input from Humpfrey, to rate Farkas as Unsatisfactory overall. The Board subsequently dismissed Farkas in the spring of 2008, and Farkas subsequently requested a hearing by an impartial hearing officer.

At the hearing, Farkas contended that she implemented suggestions for improvement and had made improvements in some areas. Two colleagues testified on her behalf, both refuting administration’s claims about concerns with her delivery of instruction and student management. The hearing officer directed the Board to reinstate Farkas based on testimony that the school was chaotic and that the mentor did not have sufficient experience with high school. The Board of Education disagreed and determined there was significant evidence to

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support dismissal, noting that the mentor met the requirements under the Fresh Start agreement, and that the improvement in written lesson planning did not outweigh Farkas’ remaining deficiencies. The Board dismissed Farkas, who filed for administrative review with the Circuit Court of Cook County.

The circuit court reviewed the appeal and found that the Board had followed all procedural due process requirements but did not fully explain the reasons for the Unsatisfactory evaluation. The court ordered the Board to review its rating of Farkas and to detail its reasons if moving forward with dismissal. The Board provided the court with additional details and affirmed its decision to terminate Farkas. The court then affirmed the Board’s termination decision and dismissed Farkas’ request for administrative review. Farkas next appealed the circuit court’s decision to the 1st District Appellate Court. The appellate panel first had to determine if the findings of fact went against the manifest weight of the evidence and, secondly, whether that evidence provided cause to dismiss.

Farkas’ main contention was that since she had improved in nine of the 24 original deficiencies, she had successfully completed remediation. The appellate panel acknowledged that Farkas had shown improvement in some areas, but that she still did not successfully complete the remediation. Thus, the appellate panel found sufficient evidence to support

dismissal, citing section 5/24A-5(j) of the School Code that indicates failing to successfully remediate constitutes sufficient cause to dismiss. The school code does not delineate how many identified areas may need to improve to constitute success. The statute simply states that remediation must be successful. Thus, the appellate panel relied on Jackson’s interpretation and rated Farkas’s performance. Given that the School Code clearly indicates remediation must be successful and Jackson determined Farkas did not successfully remediate, there was enough cause to dismiss. The appellate panel affirmed the Board’s dismissal of Farkas and Farkas did not appeal further.

Montgomery v. Board

In the 2006-07 school year, Principal Hammond began receiving complaints from students, parents, and teachers about chemistry teacher Clarence Montgomery. The claims against Montgomery centered on a lack of teaching and labs in the classroom, a lack of homework, and the fact that Montgomery had the highest number of failing students at the school. Based on these complaints, Hammond observed the plaintiff twice in the fall of 2007. Hammond’s first observation and pre/post-observation discussions with Montgomery identified several concerns. Hammond met with Montgomery to review the observation and

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make suggestions for improvement.\textsuperscript{561} However, Montgomery refused to sign the observation documents.\textsuperscript{562}

When observed the second time, Hammond noted no change in Montgomery’s teaching, and Montgomery again refused to sign the notes or the observation form.\textsuperscript{563} Hammond rated Montgomery as Unsatisfactory in three overall categories: instructional performance, fostering school relations, and formation of good work habits.\textsuperscript{564} Due to the Unsatisfactory rating, Hammond placed Montgomery on a remediation plan.\textsuperscript{565}

Hammond assigned a mentor teacher, Edward Talbot, to assist Montgomery in his remediation.\textsuperscript{566} In December of 2007, Hammond and Talbot met with the plaintiff to develop a remediation plan.\textsuperscript{567} However, Montgomery did not give any input and left before the conclusion of the meeting, stating that his attorney had filed suit against Hammond and the Board.\textsuperscript{568} Later that week, Hammond, Talbot, and Montgomery met again to review the remediation plan.\textsuperscript{569} Hammond asked for input from Talbot and Montgomery.\textsuperscript{570} Talbot reviewed, approved of, and signed the remediation plan,\textsuperscript{571} but Montgomery refused to sign the plan yet again.\textsuperscript{572} Hammond put a copy of the remediation plan signed by herself and Talbot in Montgomery’s school mailbox and mailed a copy to Montgomery’s home.\textsuperscript{573}

The remediation plan began on December 18 and lasted ninety school days.\textsuperscript{574} The plan specified that Montgomery was to submit written lesson plans, start class on time, prepare adequately for class prior to class beginning, and accept and act on suggestions for improvement.\textsuperscript{575} During the remediation period, Talbot observed Montgomery thirty-eight times.\textsuperscript{576} Talbot reported that the plaintiff was argumentative and confrontational during and after these classroom observations.\textsuperscript{577} Talbot offered verbal suggestions to Montgomery and followed up with written summaries of the conversations.\textsuperscript{578} Montgomery refused to provide copies of lesson plans and parent communication logs, even though Talbot requested them in writing.\textsuperscript{579} Talbot observed the plaintiff yelling at students, not conducting required labs, nor contacting parents as required.\textsuperscript{580} Further, Talbot expressed concern for his personal safety after Montgomery became very angry with Talbot and did not want Talbot in the room.\textsuperscript{581}

In May of 2008, Montgomery received a suspension for not showing up to work and failing to report his absence.\textsuperscript{582} While suspended, the plaintiff did not leave lesson plans for the substitute as required by his absence.\textsuperscript{583} Montgomery’s’ next observation occurred in the fall of 2008 and resulted in a heated discussion between Talbot and the plaintiff.\textsuperscript{584} The plaintiff did not have lesson plans prepared and simply showed the class slides on a screen.\textsuperscript{585} In late

September 2008, Talbot conducted his final observation of Montgomery.\(^{586}\) During this observation, the plaintiff became angry with two different students: one for asking about a textbook page number and the other for providing an answer read straight from the textbook.\(^{587}\)

During the remediation period, Hammond observed Montgomery three times.\(^{588}\) Hammond provided the plaintiff with a written evaluation at the thirty, sixty, and ninety-day mark of the remediation period.\(^{589}\) All three evaluations indicated Montgomery’s teaching remained Unsatisfactory.\(^{590}\) Hammond shared evidence supporting the evaluations with the plaintiff in meetings after each evaluation and provided suggestions for Montgomery’s professional improvement.\(^{591}\) Montgomery refused to sign any of the evaluations.\(^{592}\) At the conclusion of the remediation period, Hammond informed Montgomery she would be recommending that the Board dismiss Montgomery.\(^{593}\) After being dismissed, Montgomery requested a hearing by an impartial hearing officer to contest the dismissal.\(^{594}\)

The hearing officer heard testimony in support of both the plaintiff and the defendant.\(^{595}\) The Board called former supervising administrators and coworkers who elaborated on Montgomery’s poor practices as an educator.\(^{596}\) Montgomery testified that he had never received an official copy of the remediation plan and did not have input in creating it.\(^{597}\)


On appeal, Montgomery raised several concerns with proceedings at the lower levels. First, he argued the statute of limitations should rightly have begun when the District first initiated the remediation process. Secondly, Montgomery’s mentor teacher was not allowed to testify at the dismissal hearing nor did the mentor teacher participate in evaluations, and as such, the mentor teacher should not rate Montgomery’s performance. Montgomery further asserted that the mentor teacher did not participate in developing the remediation plan.\footnote{Montgomery v. Board, No. 1-11-2324, 2012 WL 6964346, at *7 (Ill. App. 1 Dist. Aug. 30, 2012).} The appellate

panel dismissed all but Montgomery’s final argument, given that the plaintiff had not raised the other issues at the dismissal or the trial court hearings. Montgomery’s final assertion, that the assigned mentor had not helped to develop the remediation plan, was the only issue considered by the appellate court.

When determining the merit of the plaintiff’s final assertion, the appellate panel affirmed that the hearing officer makes findings of fact at the administrative hearing. The appellate panel was able to cite multiple meetings, conversations, and interactions supporting the Board’s position that the mentor teacher did participate in developing the remediation plan. The appellate panel referenced two separate meetings where Talbot, Hammond and Montgomery were all present to discuss the remediation plan. In the second meeting, Hammond had reviewed the remediation plan and asked Talbot and Montgomery if there were any questions or suggested changes. The plaintiff insisted that this did not occur, yet both Talbot and Hammond testified that the conversation had occurred. Montgomery inferred that since Talbot had not made or offered changes to the remediation plan that Talbot had not participated in the document’s development. The appellate panel cited Talbot’s testimony that he had read the plan, agreed with it, and signed it as evidence of participation in developing the plan.

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Talbot’s participation in developing the plan was not reliant on making an active change to the draft plan, given that the plan already accurately represented the needed course of action.\footnote{Montgomery v. Board, No. 1-11-2324, 2012 WL 6964346, at *9 (Ill. App. 1 Dist. Aug. 30, 2012).}


At the end of the 2009-10 school year, Principal Molly Schaefer observed tenured science teacher Shelley Orbach.\footnote{Board v. Orbach, No. 2-12-0504, 2013 Ill. App. LEXIS 405, at *2-3 (Ill. App. 2nd Dist. June 17, 2013).} The observation resulted in Schaefer rating Orbach Unsatisfactory in two of six performance categories, and satisfactory in the remaining four categories.\footnote{Board v. Orbach, No. 2-12-0504, 2013 Ill. App. LEXIS 405, at *2-3 (Ill. App. 2nd Dist. June 17, 2013).} Due to the four satisfactory ratings, Orbach’s overall summative rating was satisfactory.\footnote{Board v. Orbach, No. 2-12-0504, 2013 Ill. App. LEXIS 405, at *2-3 (Ill. App. 2nd Dist. June 17, 2013).} However, because of the two Unsatisfactory categories, Schaefer placed Orbach on remediation.\footnote{Board v. Orbach, No. 2-12-0504, 2013 Ill. App. LEXIS 405, at *2-3 (Ill. App. 2nd Dist. June 17, 2013).}

Schaefer and Orbach developed a remediation plan to address the two Unsatisfactory categories and initiated the plan in the fall semester of the 2010-11 school year.\footnote{Board v. Orbach, No. 2-12-0504, 2013 Ill. App. LEXIS 405, at *3 (Ill. App. 2nd Dist. June 17, 2013).}

Administration observed Orbach three times before the end of the fall 2010 semester.\footnote{Board v. Orbach, No. 2-12-0504, 2013 Ill. App. LEXIS 405, at *3-4 (Ill. App. 2nd Dist. June 17, 2013).} Orbach received evaluations from Schaefer twice and Division Head Karen Frank once.\footnote{Board v. Orbach, No. 2-12-0504, 2013 Ill. App. LEXIS 405, at *3-4 (Ill. App. 2nd Dist. June 17, 2013).} The evaluations all resulted in an Unsatisfactory rating in one category and five satisfactory ratings in
the remaining categories, yielding an overall rating of satisfactory. Citing Orbach’s one remaining Unsatisfactory rating, the Board concluded that Orbach failed to remediate all the Unsatisfactory areas and dismissed him on January 11, 2011.

Orbach contested his dismissal in a hearing before an impartial hearing officer. Orbach claimed that the collective bargaining agreement (CBA) between the Union and Board only required that an educator receive an overall rating of satisfactory to justify successful remediation. The Board disagreed, arguing that Orbach had not successfully remediated, as one of the identified categories remained Unsatisfactory. The hearing officer found in favor of Orbach, noting the teacher’s overall rating of satisfactory, and ordered the Board to reinstate Orbach to a substantially similar position.

The school board appealed the hearing officer’s decision to the Circuit Court of Lake County. Since Orbach earned an Unsatisfactory rating in one of the identified remediation areas, the Board argued that Orbach had not truly remediated successfully. Orbach countered that mathematically the overall rating was Satisfactory, and he had thus remediated successfully. The opinion of the circuit court judge was that the CBA and the School Code both required the teacher to satisfactorily remediate all areas of deficiency. Since Orbach had not improved in one of the pre-identified categories, the circuit judge ruled that Orbach had not remediated successfully.

satisfactorily remediated overall. The court reversed the hearing officer’s decision, ruling in favor of the Board’s dismissal of Orbach. Orbach appealed the trial court decision to the Illinois Appellate Court, 2nd District.

Orbach’s argument before the appellate court stemmed from the plain language of the CBA, which clearly stated that even though an Unsatisfactory rating in any category would trigger a remediation plan, the Board could only dismiss Orbach if the overall rating at the conclusion of remediation was Unsatisfactory. The Board’s contention was that the CBA did not control the dismissal proceedings and that the Illinois School Code was the controlling law.

Given Orbach’s Unsatisfactory rating in the one category, despite the mathematically averaged overall rating of satisfactory, the Board contended that it met the statutory obligation for dismissal. The appellate panel considered the relationship between the Illinois School Code and the CBA, finding that the two did not conflict. The appellate panel opined that in addition to the Illinois School Code, the Board must also follow the more detailed evaluation plan described in the district’s CBA. The CBA in Orbach’s district clearly outlined that an Unsatisfactory rating in any category would initiate a remediation plan and an overall rating of

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640 Article IV(A)(12)(a), entitled “Remediation Status”, states that a rating of Unsatisfactory in any category would initiate a remediation plan. Article IV(A)(12)(c), entitled “Results of Remediation”, states that 1. any teacher rated as satisfactorily overall would be re-evaluated the following year and 2. that only educators with an overall rating of Unsatisfactory would be dismissed. The CBA clearly calls for an overall rating of Unsatisfactory in order to dismiss.
Unsatisfactory would trigger a dismissal. Given that the School Code and CBA were not in conflict, and Orbach had achieved an overall rating of satisfactory, the appellate panel found in favor of Orbach and reinstated the decision of the hearing officer.

*Walczak v. Board*

In September 2013, Illinois’ 1st District court upheld the termination of teacher Harriet Walczak by the Chicago City Board of Education. Walczak, a high school language arts and literature teacher, had been tenured for thirty years. In November 2007, Principal Nichole Jackson rated Walczak as Unsatisfactory and indicated she would need to begin a period of remediation.

At the start of the 2007-08 school year, Walczak opted to follow the remediation protocol outlined in the district Collective Bargaining Agreement (CBA), commonly referred to as the Fresh Start program, and work closely with an identified mentor teacher to build teaching skills. Jackson assigned Ellen Kelly as the mentor teacher. Kelly worked with Walczak for over 50 hours during the remediation period, requesting copies of lesson plans, observing, meeting with, and modeling instructional practices for Walczak. During her oversight, Kelly

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observed Walczak’s students using profanity, being off-task, and unengaged. Kelly also observed Walczak did not implement lessons effectively, did not engage students, did not have effective classroom management or expectations, and did not attempt to meet with Kelly as required. Kelly continued supporting Walczak by co-teaching lessons, offering advice, making suggestions, and reflecting on lesson efficacy. At the end of the remediation period, Walczak gave lesson plans to Kelly that were one month old. When Kelly offered suggestions for improvement, Walczak declined to accept the suggestions and used the outdated lesson plans anyway. After the remediation period ended, Jackson rated Walczak as having unsatisfactorily completed remediation and recommended the teacher’s dismissal. The assistant principal escorted Walczak out of the school within fifteen minutes of the conclusion of the evaluation conference.

Walczak was provided an administrative hearing in accordance with section 34-85c of the Illinois School Code. At the hearing, Jackson indicated that in the year leading up to the remediation period, she had observed Walczak over ten times and had repeatedly given Walczak specific direction to improve classroom management and instructional practices. The Wells

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High School Dean, Howard Frye, also testified that Walczak referred more students to him for disciplinary violations than other teachers and indicated that other staff who taught the same students did not have similar classroom management struggles.\textsuperscript{663} According to Frye, the students’ behavior in Walczak’s room was typical for the school but the high amount of referrals from Walczak was atypical.\textsuperscript{664}

At the administrative hearing, Walczak had retired teacher Carlene Blumenthal testify on her behalf.\textsuperscript{665} In preparation for her testimony, Blumenthal had reviewed the notes, logs, and prior testimony provided by Kelly.\textsuperscript{666} Blumenthal addressed Kelly’s credibility as an observer, asserting that Kelly was unqualified as a mentor since Kelly did not have the same subject matter background, and had not taught similar courses as Walczak.\textsuperscript{667} Blumenthal was also critical of the amount of time Kelly spent with Walczak, stating that the 21 hours Kelly spent in Walczak’s classroom were not enough.\textsuperscript{668} Walczak further shared that she felt Jackson had not directly supported her in remediating her weaknesses, resulting in diminished chances for successful remediation.\textsuperscript{669}

Additionally, Walczak testified on her own behalf, stating that her students had assaulted her several times, complaining that students she referred to Frye returned to her class without

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consequence.\textsuperscript{670} Walczak reported that Jackson had asked students inappropriate questions, such as if Walczak was too old to teach, and noted that her final observation took place with only two students present.\textsuperscript{671}

After hearing the arguments, the hearing officer recommended reinstating Walczak, highlighting a variety of concerns with the dismissal process.\textsuperscript{672} Although the administration met all the requirements of due process as proscribed by the Fresh Start program, the hearing officer suggested that while Kelly had the best of intentions in mentoring Walczak, she barely met the minimum qualifications to be a mentor.\textsuperscript{673} The report also found that Walczak was unable to respond to her evaluation, given that the assistant principal required Walczak to vacate the premises within fifteen minutes of the evaluation conference.\textsuperscript{674} The report stated that Jackson failed to provide direct support to Walczak throughout the remediation process.\textsuperscript{675} The hearing officer summarized his findings to the Board, opining that had Walczak worked with a more experienced mentor and principal, along with better students and a special education assistant, she may have performed satisfactorily.\textsuperscript{676}


On review, the Board determined the hearing officer had exceeded his statutory authority by determining that Kelly was not a duly certified mentor.677 The hearing officer recognized Kelly as being ‘paper qualified,’ meaning that Kelly barely met the minimum requirements of a mentor under the statute.678 The Board replied by opining that Kelly met the requirements of the statute.679 Additionally, the Board interpreted the law as requiring school administrators to observe and evaluate, but not requiring active support of the educator under remediation.680 The Board also rejected any judgments made by the hearing officer due to Blumenthal’s testimony.681 Blumenthal had not trained or certified as an evaluator, nor had Blumenthal directly observed Walczak.682 Given the hearing officer’s overreaching interpretation of the Fresh Start program’s requirements and the inconsistent testimony, the Board rejected the hearing officer’s report and dismissed Walczak.683 Walczak appealed the termination decision to the Circuit Court of Cook County, which upheld the Board’s decision.684 Walczak then appealed the trial court’s decision to the 1st District Court of Appeals.685

The issues before the appellate panel centered on the validity of the Fresh Start program, the claim of defective remediation, a due process violation claim, and the validity of Blumenthal’s testimony at the hearing.\textsuperscript{687} The appellate panel found that the Fresh Start program did not contradict state statutes for evaluation and held that the choices and processes involved did not negatively affect Walczak’s chances for a successful remediation.\textsuperscript{688} Walczak had the opportunity to transfer from Wells; when she did not transfer, she tacitly agreed to the Fresh Start provisions.\textsuperscript{689}

The appellate panel also reviewed Walczak’s claim that her remediation was insufficient.\textsuperscript{690} Walczak’s assertion centered on the hearing officer’s finding that Kelly was unqualified to mentor Walczak and that Jackson should have assisted Walczak personally.\textsuperscript{691} The appellate panel found that Kelly was indeed certified and qualified to mentor Walczak and that the hearing officer’s interpretations of what “qualified” meant did not hold merit.\textsuperscript{692} Additionally, the appellate panel refuted Walczak’s claims that Jackson needed to not just conduct observations, but also be directly supportive by helping Walczak make changes to her practice.\textsuperscript{693} The court determined that the Fresh Start program only required administrators to participate in training, certify in evaluative practices, observe teachers a certain amount of times,

and follow timelines for providing feedback and summative ratings to educators.\textsuperscript{694} The program did not require or ask administrators to support the educator personally during remediation.\textsuperscript{695} For these reasons, the appellate panel did not find Walczak’s remediation process to be defective.\textsuperscript{696}

Walczak’s next claim was that the Board did not follow due process when it chose not to accept the hearing officer’s findings.\textsuperscript{697} Section 34-85 clearly states that the hearing officer only provides a recommendation to the superintendent, but does not make a binding recommendation.\textsuperscript{698} Walczak did not contend that she had successfully completed remediation, so the appellate panel was able to accept the findings of fact and determine that the school district presented sufficient evidence to support dismissal.\textsuperscript{699} Walczak asserted administration violated due process since the hearing officer’s report suggested that Jackson’s lack of direct support of Walczak was indicative of bias.\textsuperscript{700} Walczak also referenced the hearing officer’s determination that the classroom consisted of poorly behaved special education students that required a special education assistant.\textsuperscript{701} The appellate panel noted that the principal was fully

certified and capable of evaluating educators. They also found that the makeup of the classroom was not significantly different from any other in the school and was well within legal parameters for student placement. Walczak opined that her expert witness, Blumenthal, countered Jackson’s interpretation of Walczak’s performance. The appellate panel affirmed the Board’s rejection of Blumenthal’s testimony. Without any certification or experience as an evaluator, the appellate panel found that the Board was not in error when it discounted Blumenthal’s testimony. Although Blumenthal was entitled to share her opinion of the evaluation and remediation process and of the mentor, her opinion did not require the Board’s attention or action. The appellate panel did not find sufficient evidence to overturn the Board’s interpretation and decision. Given these reasons, the appellate panel affirmed the decision of the Board and circuit court and upheld Walczak’s dismissal.

*Valley View v. Illinois State Board of Education (ISBE)*

In the last pertinent court case pre-PERA and SB7, Valley View School Board dismissed tenured school psychologist Lynn Reid for failing to satisfactorily complete a remediation
plan. Various administrators gave Reid Excellent ratings during her first six years of evaluations. In the seventh year, Principal Nylander gave Reid Unsatisfactory ratings in most evaluative categories and recommended Reid undergo remediation. Reid submitted a rebuttal to the evaluation in response. Nylander reissued an evaluation that withdrew the suggested remediation and instead recommended that Reid be re-employed and participate in the district’s Professional Growth Program. Reid agreed to participate in the Professional Growth program and later testified that based on threatening comments and conflicting statements about her performance, her relationship with Nylander deteriorated from that point forward. The following year, Nylander conducted an evaluation of Reid and determined that she had not successfully completed the Professional Growth Program, citing several Unsatisfactory areas.

Nylander placed Reid on remediation and assigned a mentor teacher, Robin Black-Vannoy, to oversee Reid’s progress. Reid gave input into the remediation plan, acknowledged that she understood it, and signed a copy of the remediation plan. Throughout the remediation period, Nylander observed Reid 24 times. Dr. David Hehl, an administrator qualified to

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710 Given that Reid’s remediation plan became effective on January 11, 2010, the 1992 statutes apply to this case. Public Act 96-861 was passed in 2009, but did not become effective until January 15, 2010; Valley View v. Illinois State Board of Education, No. 3-12-0373, 2013 IL App. 3rd Dist. October 25, 2013.


conduct evaluations, observed Reid five additional times. Nylander submitted a final evaluation on June 3, 2010, finding that Reid had not satisfactorily completed the remediation process, and noting 23 additional areas of deficiency.

The Board dismissed Reid on June 6, 2010. Reid requested administrative review, claiming the Board failed to prove she had not successfully remediated due to a lack of evidence and minimal assistance from Black-Vannoy. Reid testified that Nylander had both terminated Reid for poor performance and provided Reid with a positive letter of recommendation at the same time. Reid opined that the contradicting rating and recommendation implied that Nylander was unfair and biased toward her.

When the hearing began, neither side had obtained a court reporter, as was traditionally done to ensure an accurate record of the hearing itself. The Board and Reid agreed to continue without one, relying on the hearing officer to take the notes. During the hearing, Reid stated that during the remediation period, Nylander verbalized she would be terminating Reid and had threatened to increase Reid’s workload if she did not resign. Reid claimed that Nylander offered her a positive letter of recommendation if she would voluntarily resign. Reid

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presented workload data and copies of letters of recommendation to substantiate her claim of an unfair remediation. Nylander denied having conversations about dismissing Reid or coercing Reid into a voluntary resignation. Nylander stated that during the remediation she showed Reid the Illinois School Job Bank website in an effort to assist Reid. Nylander further testified that Reid had requested a letter of recommendation so she could find a new job. The final piece of evidence highlighted in the hearing officer’s report was the contradictory letter of recommendation written by Nylander. In the letter, Nylander indicated that Reid would make a good school psychologist, seemingly in conflict with the determination by Nylander to terminate Reid’s employment.

The hearing officer noted that Nylander had not provided any additional insight into or documentation of what had occurred during remediation. The evidence presented by the District at the hearing did not include any substantive documentation that Nylander or Black-Vannoy had worked with Reid. Thus, the hearing officer agreed with the contention Reid made that Black-Vannoy was not a true participant in the remediation process.

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officer found the District terminated Reid improperly by not providing enough collected
evidence, ruling the Board had not met its burden of proof.\textsuperscript{736} The hearing officer recommended
the Board reinstate Reid with back pay.\textsuperscript{737} The Board of Education filed for administrative
review in the 12\textsuperscript{th} Judicial Circuit of Will County.\textsuperscript{738}

The circuit court affirmed the decision of the hearing officer.\textsuperscript{739} The Board then filed an
appeal with the Appellate Court for the 3\textsuperscript{rd} District of Illinois.\textsuperscript{740} The Board argued that the
original hearing contained procedural errors when the hearing proceeded without a recorder and
that the hearing officer did not declare a specific decision in the summary of the hearing.\textsuperscript{741} The
Board also suggested the hearing officer did not consider Reid’s negative evaluations during the
remediation period.\textsuperscript{742} Reid countered that the procedural errors were inconsequential and the
evidence supported the findings of fact made by the hearing officer.\textsuperscript{743} Additionally, even
though the Board consented to continue the hearing without a recorder at the time of the hearing,
the Board cited the lack of a court reporter as the main procedural defect in the original
hearing.\textsuperscript{744} The appellate panel noted that both Reid and the Board agreed to proceed without a

\textsuperscript{736} Valley View v. Illinois State Board of Education, No. 3-12-0373, 2013 IL. App. 3d 120373, at *912 (Ill. App. 3\textsuperscript{rd}
Dist. October 25, 2013).
\textsuperscript{737} Valley View v. Illinois State Board of Education, No. 3-12-0373, 2013 IL. App. 3d 120373, at *912-913 (Ill. App.
3\textsuperscript{rd} Dist. October 25, 2013).
\textsuperscript{738} Valley View v. Illinois State Board of Education, No. 3-12-0373, 2013 IL. App. 3d 120373, at *913 (Ill. App. 3\textsuperscript{rd}
Dist. October 25, 2013).
\textsuperscript{739} Valley View v. Illinois State Board of Education, No. 3-12-0373, 2013 IL. App. 3d 120373, at *913 (Ill. App. 3\textsuperscript{rd}
Dist. October 25, 2013).
\textsuperscript{740} Valley View v. Illinois State Board of Education, No. 3-12-0373, 2013 IL. App. 3d 120373, at *913 (Ill. App. 3\textsuperscript{rd}
Dist. October 25, 2013).
\textsuperscript{741} Valley View v. Illinois State Board of Education, No. 3-12-0373, 2013 IL. App. 3d 120373, at *913 (Ill. App. 3\textsuperscript{rd}
Dist. October 25, 2013).
\textsuperscript{742} Valley View v. Illinois State Board of Education, No. 3-12-0373, 2013 IL. App. 3d 120373, at *913 (Ill. App. 3\textsuperscript{rd}
Dist. October 25, 2013).
\textsuperscript{743} Valley View v. Illinois State Board of Education, No. 3-12-0373, 2013 IL. App. 3d 120373, at *913 (Ill. App. 3\textsuperscript{rd}
Dist. October 25, 2013).
\textsuperscript{744} Valley View v. Illinois State Board of Education, No. 3-12-0373, 2013 IL. App. 3d 120373, at *914 (Ill. App. 3\textsuperscript{rd}
Dist. October 25, 2013).
court reporter and neither party criticized the hearing officer’s summary of the evidence, asked to supplement the report with any additional information, or contested the veracity of what the hearing officer reported as evidence.745 Finally, the Board contested the written report from the hearing officer, claiming that the hearing officer did not include language indicating that the decision was final. The Board argued that without a specified decision, the Board did not have to reinstate Reid and had remedy through administrative review.746 The appellate panel recognized this omission but categorized it as a technical error.747

The appellate panel next reviewed the manifest weight of the evidence and considered how the hearing summary reported the evidence.748 The hearing officer directly tied the decision to the summarized findings.749 The appellate panel did note a complete lack of evidence or testimony by Black-Vannoy, which they interpreted as Black-Vannoy not participating fully in the remediation process in violation of section 5/24A-5(h) of the Illinois School Code.750

The Board argued that the only evidence needed to support dismissal should be that Reid failed to satisfactorily complete remediation.751 Reid was able to verify that her workload had

745 Valley View v. Illinois State Board of Education, No. 3-12-0373, 2013 IL App. 3d 120373, at *914 (Ill. App. 3rd Dist. October 25, 2013); The appellate court determined that the lack of a court reporter did not warrant a reversal based on procedural defect.
750 105 ILCS 5/24A-5(h): The consulting teacher shall provide advice to the teacher rated Unsatisfactory regarding how to improve teaching skills and to successfully complete the remediation plan. The consulting teacher shall participate in developing the remediation plan, but the final decision as to the evaluation shall be done solely by the administrator; Valley View v. Illinois State Board of Education, No. 3-12-0373, 2013 IL App. 3d 120373, at *915 (Ill. App. 3rd Dist. October 25, 2013).
increased after a verbal threat by Nylander to do just that and showed that Nylander attempted to bully Reid into voluntarily resigning in exchange for a positive recommendation. The appellate panel found that this evidence was sufficient to counter the evidence cited by the Board in dismissing Reid, and thus, the appellate panel was able to affirm the hearing officer’s decision on this count and ordered Reid reinstated with full back pay.

**Illinois Case Law from 2010 to present**

*Frakes v. Peoria School District*[^754]

In 2011, Peoria School District implemented PERA. During the 2011-12 school year, administrators rated Illinois teacher plaintiffs, Michelle Frakes and Eymarde Lawler, as Unsatisfactory and placed them in Category Two[^755] for Reduction-In-Force (RIF) purposes per state statute. Both educators were special education teachers at Trewyn Middle School.[^757] Administration placed Frakes and Lawler on remediation plans based on their Unsatisfactory evaluations.[^758] Before the remediation plan period for either teacher could commence, the plaintiffs, independent of each other, placed themselves on medical leave for serious health


[^755]: PERA and SB7 require educators be placed in one of four Categories/Groupings, based on their evaluation rating. Any RIF would then release educators in Category/Group One first, then Category/Group Two, then Category/Group Three, and finally Category/Group Four. Within Category/Group One, educators can be released at the Districts’ discretion without any recall right. Educators in Category/Group Two, Three, or Four would be released according to seniority and certifications.

[^756]: [Frakes v. Peoria School District](http://example.com) No. 150, 2014 IL. App 3d 130306 2; *there are four RIF categories for educators, Category One is comprised of first year teachers, Category Two is any teacher beyond year one that is rated Unsatisfactory or needs-improvement, Category Three is for any teacher beyond year one with an average rating of Proficient, and Category Four is any teacher beyond year one with an average rating of Excellent. Teachers would be RIF’d starting in Category One, and then moving through to Category Four.*

[^757]: Andy Kravetz, Judge throws out teachers’ lawsuit against District 150, Peoria Journal Star, April 26, 2013.

issues for the duration of the 2011-12 school year.\textsuperscript{759} In April 2012, the District advised the defendants of their impending release via a RIF by the district\textsuperscript{760} due to enrollment and budgetary forecasts by the district.\textsuperscript{761} Frakes’ and Lawler’s placement in Category Two resulted in their honorable dismissal at the end of the 2012-13 school year.\textsuperscript{762}

The Board dismissed seventy teachers that year.\textsuperscript{763} Sixteen were due to Unsatisfactory performance and 54 due to their assignment to RIF Categories One, Two, and Three per their performance evaluations.\textsuperscript{764} In July of 2012, the District received updated enrollment figures and additional funding from the State of Illinois.\textsuperscript{765} Due to these updates, the District received additional monies to add back staff.\textsuperscript{766}

The plaintiffs filed suit with the 10th Judicial Circuit court in Peoria County asserting that, due to the District receiving additional state funding over the summer of 2012, the District never actually carried out a RIF, thus negating the initial RIF’s dismissals.\textsuperscript{767} District Interim Comptroller/Treasurer Teri Dunn entered an affidavit into evidence stating that due to high student mobility, the District was unable to forecast enrollment until late June or July of each year, and thus the District had to move forward with the RIF process in the early spring of 2012.\textsuperscript{768} Additionally, Dunn shared that the Board had to consider a RIF scenario in early spring 2012 given the instability of state funding.\textsuperscript{769} Since 2008, the State of Illinois had decreased

\textsuperscript{759} Frakes v. Peoria School District No. 150, 2014 IL. App 3d 130306 2
\textsuperscript{760} Frakes v. Peoria School District No. 150, 2014 IL. App 3d 130306 2
\textsuperscript{761} Frakes v. Peoria School District No. 150, 2014 IL. App 3d 130306 3
\textsuperscript{762} Frakes v. Peoria School District No. 150, 2014 IL. App 3d 130306 3
\textsuperscript{763} Frakes v. Peoria School District No. 150, 2014 IL. App 3d 130306 3
\textsuperscript{764} Frakes v. Peoria School District No. 150, 2014 IL. App 3d 130306 3
\textsuperscript{765} Frakes v. Peoria School District No. 150, 2014 IL. App 3d 130306 3
\textsuperscript{766} Frakes v. Peoria School District No. 150, 2014 IL. App 3d 130306 2
\textsuperscript{767} Frakes v. Peoria School District No. 150, 2014 IL. App 3d 130306 2
\textsuperscript{768} Frakes v. Peoria School District No. 150, 2014 IL. App 3d 130306 3
\textsuperscript{769} Frakes v. Peoria School District No. 150, 2014 IL. App 3d 130306 3
public school funding by 11.3%, with a 4.7% decrease in funding in 2012 alone.\textsuperscript{770} To be fiscally responsible, she asserted, the District had to initiate the RIF. In April of 2013, the circuit court found in favor of the school district, affirming that the school district followed all applicable statutes during the RIF.\textsuperscript{771} Frakes and Lawler appealed this decision to the Appellate Court of Illinois, Third District stating that had the RIF not occurred, they would have had time to successfully remediate and thus been in Category Three and not subject to any potential RIF.\textsuperscript{772}

The appellate panel considered two questions on appeal.\textsuperscript{773} The first question asked whether the RIF was valid given that the District was able to hire additional staff, but not Frakes or Lawler, later in the summer of 2012.\textsuperscript{774} The second question asked whether the Board violated the due process rights of the plaintiffs under §24A-5 of the School Code when they were subject to the RIF due to their established performance ratings, despite not having completed the remediation period.\textsuperscript{775}

When considering the first issue, the appellate panel referred to §24-12(b) of the School Code.\textsuperscript{776} The Code provides for specific procedures for the dismissal of teachers pursuant to RIF decisions.\textsuperscript{777} The Code requires Group 1 teachers be dismissed first in any order.\textsuperscript{778} The Code then has Group 2 teachers dismissed next, followed by Group 3 and Group 4 teachers dismissed.

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\item \textsuperscript{771} Frakes v. Peoria School District No. 150, 2014 IL. App 3d 130306 3
\item \textsuperscript{772} Frakes v. Peoria School District No. 150, 2014 IL. App 3d 130306 4
\item \textsuperscript{773} Frakes v. Peoria School District No. 150, 2014 IL. App 3d 130306 4
\item \textsuperscript{774} Frakes v. Peoria School District No. 150, 2014 IL. App 3d 130306 4
\item \textsuperscript{775} 105 ILCS 5/24A-5; Frakes v. Peoria School District No. 150, 2014 IL. App 3d 130306 7
\item \textsuperscript{776} 105 ILCS 5/24-12(b); Frakes v. Peoria School District No. 150, 2014 IL. App 3d 130306 5
\item \textsuperscript{777} Frakes v. Peoria School District No. 150, 2014 IL. App 3d 130306 5
\item \textsuperscript{778} 105 ILCS 5/24-12(b)
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in reverse order of seniority. When placed into one of the four performance evaluation groups for RIF, educators were then subject to recall, or not, depending on their grouping. The Code further outlines how the Board recalls teachers if positions arise after a RIF. For example, Group 1 and Group 2 teachers have no automatic recall rights, whereas Group 3 and Group 4 teachers have recall rights in order of seniority. If a district were to conduct a formal recall of teachers who had experienced RIF, then Group 2 teachers would have priority over Group 1 teachers. Given that the district ended up rehiring teachers over the summer of 2012, Frakes and Lawler contended that the Board should have known they would need more teachers the next year, and thus not have RIF’d them in the first place. The appellate panel rejected this argument stating, “Such a process is not condemned or prohibited by the statutory scheme, and it in fact appears to be contemplated by it.” The court referenced 105 ILCS 5/24 – 12(b) and how it provides for what must occur if vacancies arise, thus holding that vacancies meeting or surpassing the number of dismissals due to RIF do not negate the initial RIF itself. The appellate panel further noted that Frakes and Lawler correctly asserted that Group 2 educators have retention rights over Group 1 teachers, but not recall rights. In other words, had the District moved to rehire all RIF teachers en-masse, seniority would apply to the recall. Since the District chose not to do this, no recall rights applied to Frakes and Lawler. The school code specifically states that only educators in Groups Three and Four have recall rights.

779 105 ILCS 5/24-12(b)
781 Frakes v. Peoria School District No. 150, 2014 IL. App 3d 130306 6
782 Frakes v. Peoria School District No. 150, 2014 IL. App 3d 130306 2
783 Frakes v. Peoria School District No. 150, 2014 IL. App 3d 130306 6
784 Frakes v. Peoria School District No. 150, 2014 IL. App 3d 130306 6
785 Frakes v. Peoria School District No. 150, 2014 IL. App 3d 130306 6
786 Frakes v. Peoria School District No. 150, 2014 IL. App 3d 130306 7
The plaintiffs’ sought declaratory and injunctive relief based on their second argument, claiming that the District acted “on a whim” to dismiss them.\footnote{Frakes v. Peoria School District No. 150, 2014 IL. App 3d 130306 7} This claim was inaccurate given that the District complied with all timelines and notifications found in the statute.\footnote{Frakes v. Peoria School District No. 150, 2014 IL. App 3d 130306 7} Indeed, the court noted that the statute “militates against a school board’s potential to dismiss on a whim.”\footnote{Frakes v. Peoria School District No. 150, 2014 IL. App 3d 130306 7} The plaintiffs asserted that since the Board initially rated them as Unsatisfactory, they should have had the opportunity to complete the 90-day remediation prior to being eligible for RIF.\footnote{105 ILCS 5/24A -5(i); Frakes v. Peoria School District No. 150, 2014 IL. App 3d 130306 8} The plaintiffs argued that Article 24A gives significant rights to teachers in remediation; however, a reduction in force overrules article 24A.\footnote{Frakes v. Peoria School District No. 150, 2014 IL. App 3d 130306 8} The appellate panel affirmed the circuit court’s decision in favor of the defendant.\footnote{Frakes v. Peoria School District No. 150, 2014 IL. App 3d 130306 9} The appellate court did recognize the nexus between teacher evaluations and a RIF, although a RIF occurs apart from evaluation.\footnote{Frakes v. Peoria School District No. 150, 2014 IL. App 3d 130306 8} In its decision, the appellate court found that the Board followed the statute and Frakes and Lawler were properly RIF’d. The appellate court also decided that the statutes for remediation did not override the RIF process conducted by the District.\footnote{Frakes v. Peoria School District No. 150, 2014 IL. App 3d 130306 9} Considering that the District complied with all the requirements, timelines, and safeguards of 105 ILCS 5/24-12(b), the appellate court affirmed the circuit court’s decision to grant summary judgment to the School District.\footnote{Frakes v. Peoria School District No. 150, 2014 IL. App 3d 130306 9}
Pioli v. North Chicago CUSD #187

In January of 2014, Leonore Pioli filed a civil suit against her school district, CUSD #187, after being RIF’d in the spring of 2012. Pioli claimed the Board had been able to add additional staff in early Fall 2012 and thus should not have dismissed Pioli in the first place. Pioli alleged that the district violated Section 24-12 of the School Code when it dismissed her. Both Pioli and the Board sought summary judgment before the Lake County Circuit Court.

In the spring of 2012, Administration rated Pioli, a tenured teacher, as Unsatisfactory. This rating placed Pioli into RIF Group 2 in accordance with PERA and SB7. At the same time, the District learned it had to cut $3.2 million from its operating budget for the following year to begin ameliorating a $9 million deficit. The Administration recommended conducting a RIF to reduce the staffing allotment for the 2012-13 school year. The Administration used standing committees to determine staffing needs, make recommendations for staffing allotments, and ensure the statutory RIF process was followed. The Board acted on administrative recommendations and released 12 staff from RIF Group 1 and 12 staff from RIF Group 2. Of the 24 staff reduced in force, six were special educators, including Pioli.
The Board sent a notice of honorable dismissal to Pioli in March of 2012 effective on May 31, 2012. The discharge letter had the following key quote within the text: “Your last day of employment in the District, subject to the use of snow or emergency days, shall be May 31, 2012.” Then around July/August of 2012, the District received updated enrollment information allowing additional staffing allotments. This information was not available prior to the March RIF or even by May 31, 2012, when the RIF became effective.

Pioli filed suit in trial court, claiming that since the District received updated enrollment information and was able to add staff, the original RIF should not have occurred. Pioli claimed that had the RIF not occurred, the District would still employ her, allowing her to complete the 90-day remediation process. Both Pioli and the Board requested summary judgment, and on April 25, 2013, the trial court granted summary judgment for the Board. Pioli appealed to the Appellate Court 2nd District, stating that the matter of law interpreted by the trial court was erroneous.

The appellate panel heard arguments from Pioli and the Board pertaining to the dismissal of tenured teachers under the new Illinois School Code, 105 ILCS 5/24-12. Pioli cited Birk v. Board of Education as grounds the Board should give priority to tenured teachers and use only seniority when releasing and/or when recalling educators. Pioli argued that had the Board followed this reasoning, the Board would not have dismissed her. This would have been an

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815 Birk v. Board, 104 Ill. 2d 252 (1984)
appropriate interpretation of the School Code prior to 2011; however, due to PERA and SB7, the amended statute outlines that a District must RIF educators in Group 1 first, then Group 2, then Group 3, and finally Group 4, regardless of seniority. PERA and SB7 only allow seniority to play a role in Groups 2, 3, and 4 if educators have the same certifications and a tie breaker is needed. Given that Pioli was a specialist (solely certified to teach special education and nothing else) and she was in Category 2, her seniority did not play a role in her RIF.

Pioli also claimed that she was entitled to evaluative due process and should have had the statutory 90-day remediation period prior to being RIF’d as a Category 2 educator. The Board countered that it had honorably released Pioli as part of a RIF process and not directly due to her evaluation, thus nullifying Pioli’s evaluative due process protections. The appellate panel found that although evaluation ratings place educators into RIF groups, the evaluative process (i.e., the remediation process) does not override the RIF process itself. Pioli further argued that the Board of Education provided the Unsatisfactory rating solely to dismiss educators at their “pure whim.” The appellate court disagreed, citing the statute and noting that the RIF process and timeline were followed accurately and the RIF chronologically superseded the 90 day remediation period.

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817 105 ILCS 5/24A – 12(b)
818 105 ILCS 5/24A – 12(b)
821 105 ILCS 5/24A – 12(b)
822 105 ILCS 5/24A – 12(b)
Pioli’s final claim pertained to the recall process.\textsuperscript{825} Pioli claimed that since the District had been able to rehire staff in the fall, an actual RIF was not needed, and thus she should not have been RIF’d at all,\textsuperscript{826} implying that the Board should recall Pioli. The District, given the timing and structures of Illinois State funding, was not able to ascertain its true budget status until mid-summer 2012, thus it had to initiate the RIF in accordance with the state statute.\textsuperscript{827} Given that the District provided affidavits proving it acted in a timely and good faith manner to RIF the educators, the process was not tainted.\textsuperscript{828} The appellate panel pointed out that the statute clearly states educators in Groups 1 and 2 retain no recall rights; only the educators in Groups 3 and 4 are due recall.\textsuperscript{829} Given Pioli’s Unsatisfactory rating, which placed her in Group 2, she was not entitled to recall.\textsuperscript{830}

The appellate court affirmed the decision of the circuit court and granted summary judgment in favor of the defendant.\textsuperscript{831} The Court found that the “plaintiff’s argument is devoid of merit.”\textsuperscript{832} The appellate court went on to state that the intent of the statute cited by the defendants is “a clear decision by the legislature to prioritize teacher evaluations.”\textsuperscript{833} Given the independence of process the statute provides to the RIF process, there was no evaluative due process attached to the honorable RIF dismissal of Pioli.\textsuperscript{834} The appellate panel noted that the

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\textsuperscript{829} 105 ILCS 5/24A – 12(b)
\textsuperscript{830} 105 ILCS 5/24A – 12(b)
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Illinois state legislature amended the statute itself to articulate a difference between release for evaluative cause and honorable dismissal under a reduction-in-force situation. The District ensured the process had high fidelity to the requirements of law and, thus, did not break the law in honorably releasing Pioli via a RIF.

*Holmes v. Board*

In one of the most recent judicial reviews of educator dismissal under PERA and SB7, the courts heard a complaint from several tenured educators in the Belvidere school system. Seven teachers were rated as either Unsatisfactory or Needs-Improvement during the 2012-13 school year. The Belvidere school system utilizes an SB7 and PERA-compliant evaluation process and factors both a performance rating and student growth rating into the teachers’ final evaluation ratings.

During the 2012-13 school year, the seven plaintiffs did not have a growth goal factored into their summative rating. The evaluation plan for the District combined student growth and performance ratings in a rubric that mathematically determined what the overall evaluation rating would be. The rubric was designed so that if an educator received a Needs-Improvement or

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Unsatisfactory performance rating, there would be no mathematical way to obtain a Proficient overall rating regardless of the student growth rating.\footnote{Holmes v. Board, No. 2-14-0731, 2015 II. App. (2d) 140731U; 2015 Ill. Appun. LEXIS 484 at *3, (March 13, 2015).}

Each of the plaintiffs received either a Needs-Improvement or Unsatisfactory performance rating, thus it was mathematically impossible for them to receive an overall Proficient rating.\footnote{Holmes v. Board, No. 2-14-0731, 2015 II. App. (2d) 140731U; 2015 Ill. Appun. LEXIS 484 at *3, (March 13, 2015).} Given the mathematical impossibility of obtaining an overall Proficient rating, the Administration did not have the educators complete the student growth-rating portion of the evaluative process, as the Board recognized a student growth rating would not change the overall rating and deemed the student growth rating was unnecessary.\footnote{Holmes v. Board, No. 2-14-0731, 2015 II. App. (2d) 140731U; 2015 Ill. Appun. LEXIS 484 at *3, (March 13, 2015).} The seven plaintiffs were then placed in either Group 1 or Group 2 for RIF purposes based on their evaluation ratings.\footnote{Holmes v. Board, No. 2-14-0731, 2015 II. App. (2d) 140731U; 2015 Ill. Appun. LEXIS 484 at *3, (March 13, 2015).} In the spring of 2013, Belvidere conducted a reduction-in-force of Group 1 and Group 2 staff, which resulted in Board dismissing the plaintiffs.\footnote{Holmes v. Board, No. 2-14-0731, 2015 II. App. (2d) 140731U; 2015 Ill. Appun. LEXIS 484 at *3, (March 13, 2015).}

The plaintiffs appealed their dismissal, stating the evaluations were not complete due to the lack of a student growth goal rating.\footnote{Holmes v. Board, No. 2-14-0731, 2015 II. App. (2d) 140731U; 2015 Ill. Appun. LEXIS 484 at *3, (March 13, 2015).} The plaintiffs argued that the incomplete evaluation should have required usage of the last, most recent, summative rating.\footnote{Holmes v. Board, No. 2-14-0731, 2015 II. App. (2d) 140731U; 2015 Ill. Appun. LEXIS 484 at *3, (March 13, 2015).} All seven plaintiffs’ last ratings were positive ratings of either Excellent or Proficient, which would have altered their
placement in the RIF categories, resulting in them retaining their positions. The Board then filed a motion to dismiss Holmes’ complaint. The trial court granted the Board’s motion, and the plaintiffs filed an appeal with the appellate court.

The plaintiffs argued that because of the missing student growth rating, the dismissal by the Board under the RIF was incomplete due to the incomplete remediation period, asserting that the Board must use the prior positive ratings. The plaintiffs cited Article 24A-4(a) of the school code, which outlines the components of evaluation needed by a school district. The appellate panel determined that since even the highest student growth rating possible would not have altered the summative rating, there was nothing substantial left for the evaluative process. The appellate panel determined that the Board acted on complete and valid evaluations, and thus the dismissals were proper, affirming the decision of the trial court and dismissing the complaint.

Labno v. Board

Julie Labno was a tenured teacher for the Chicago Public Schools (CPS). During the first thirteen years of Labno’s career, she had received all Superior and Excellent ratings. After shuffling between schools and acting as a regular substitute for a year-and-a-half, CPS assigned Labno to TEAM Englewood High School. During Labno’s time at TEAM Englewood, Principal Korellis began to notice deficiencies in Labno’s instructional performance, preparation and assessment, and non-instructional performance. In the 2010-11 school year, Korellis rated Labno’s teaching as Unsatisfactory. Korellis placed Labno on state remediation, and after the required ninety days, assigned an Unsatisfactory rating and recommended Labno for dismissal. Labno sought administrative relief from a District Hearing Officer prior to her dismissal. The hearing officer reviewed the evidence and testimony and recommended the Board dismiss Labno for failure to remEDIATE.

Upon dismissal, Labno participated in an impartial administrative hearing followed by the Board dismissing her on November 4, 2012. Labno sought direct relief from the Appellate Court, First District, Second Division. Labno did not contest her Unsatisfactory rating to the appellate court; instead she argued that the consulting teacher and principal had not adequately performed their jobs, that Korellis did not consider the challenges posed by special education students when observing Labno, and that Labno’s dismissal was arbitrary and unreasonable. The Second Division Appellate panel heard Labno’s arguments and affirmed the BOE’s dismissal determination.

The appellate panel first examined the process of remediation support used with Labno. Labno contested that her mentor teacher, Curtis, did not perform her duties as required under the remediation plan. Labno opined that Curtis had not observed her enough times, co-taught in the classroom, nor observed her classroom performance in the final weeks of remediation. Labno referenced needing weekly observations or co-teaching, even though Labno conceded that the state statute does not dictate any specific frequency of observation or support. The appellate panel referenced Board evidence showing that Curtis had observed,
planned, and offered support regularly throughout the remediation.\textsuperscript{875} The court cited the state statute, as it does not mandate a specific number of interactions, the frequency of observations, or any specific type of activities.\textsuperscript{876} \textsuperscript{877} Instead the statute requires only that the Board assign a consulting teacher, that the teacher assist in the remediation plan, and that the teacher hold certain qualifications to serve as a mentor.\textsuperscript{878} The appellate panel found that the Board met the consulting teacher requirements set forth in the statute and thus found for the district on this part of Labno’s argument.\textsuperscript{879}

Secondly, Labno argued that Korellis did not formally evaluate her.\textsuperscript{880} Labno highlighted a lack of an announced visit as proof of this.\textsuperscript{881} However, Korellis had documented many unannounced visits.\textsuperscript{882} Korellis had provided evidence of an offer to conduct an announced visit but indicated that Labno never replied to that invitation.\textsuperscript{883} Although Labno’s remediation plan itemized that announced and unannounced observations would take place, the appellate court noted that no statutory obligation for announced visits existed, and thus Labno’s argument was without merit.\textsuperscript{884}

\begin{itemize}
\item \textsuperscript{875} \textit{Labno v. Board}, No. 1-12-3684, 2014 IL. App (1st) 123684-U; 2014 Ill. Unpub. LEXIS 2213 at 15, (September 30, 2014).
\item \textsuperscript{876} \textit{Labno v. Board}, No. 1-12-3684, 2014 IL. App (1st) 123684-U; 2014 Ill. Unpub. LEXIS 2213 at 15, (September 30, 2014).
\item \textsuperscript{877} 105 ILCS 5/24 – 5(j)
\item \textsuperscript{878} 105 ILCS 5/24 – 5(j)
\item \textsuperscript{879} \textit{Labno v. Board}, No. 1-12-3684, 2014 IL. App (1st) 123684-U; 2014 Ill. Unpub. LEXIS 2213 at 16, (September 30, 2014).
\item \textsuperscript{880} \textit{Labno v. Board}, No. 1-12-3684, 2014 IL. App (1st) 123684-U; 2014 Ill. Unpub. LEXIS 2213 at 18, (September 30, 2014).
\item \textsuperscript{881} \textit{Labno v. Board}, No. 1-12-3684, 2014 IL. App (1st) 123684-U; 2014 Ill. Unpub. LEXIS 2213 at 18-19, (September 30, 2014).
\item \textsuperscript{882} \textit{Labno v. Board}, No. 1-12-3684, 2014 IL. App (1st) 123684-U; 2014 Ill. Unpub. LEXIS 2213 at 19, (September 30, 2014).
\item \textsuperscript{883} \textit{Labno v. Board}, No. 1-12-3684, 2014 IL. App (1st) 123684-U; 2014 Ill. Unpub. LEXIS 2213 at 20, (September 30, 2014).
\item \textsuperscript{884} \textit{Labno v. Board}, No. 1-12-3684, 2014 IL. App (1st) 123684-U; 2014 Ill. Unpub. LEXIS 2213 at 19, (September 30, 2014).
\end{itemize}
Finally, Labno argued that Korellis only observed classes that had large amounts of special education students, thus skewing the observations negatively.\textsuperscript{885} Labno inferred that, due to the number of special education students, the class was atypical and more difficult to manage. The hearing officer had found that Labno’s replacement was able to manage the same class successfully.\textsuperscript{886} The hearing officer found that Labno’s colleagues had similar class demographics and were successful in maintaining classroom decorum.\textsuperscript{887} Labno was unable to prevent any evidence other than her interpretations of the dismissal process, which refuted the evidence presented by the Board.\textsuperscript{888}

The court issued an opinion that addressed each of Labno’s concerns.\textsuperscript{889} The decision cited \textit{Raitzik v. Board},\textsuperscript{890} clarifying that the court will accept the decision of the Board as prima facie true and correct unless the evidence is glaringly incorrect and that no unreasonable person would agree with the Board.\textsuperscript{891} The appellate panel did not overrule the evidence presented at dismissal, stating, “We will not disturb the Board’s findings and judgment if there is any evidence appearing in the record to support the Board’s findings.”\textsuperscript{892} The appellate panel found that Labno’s different interpretation of the evidence did not supersede the Board’s
interpretation. The appellate court found enough evidence to support the hearing officers’ determinations of fact. The appellate panel stated that given the Board’s sufficient evidence, the dismissal was not arbitrary or unreasonable. Thus, the appellate panel upheld the Board’s decision to terminate Labno. Labno did not appeal the decision.

Perez v. Board

The Illinois Appellate Court decided another educator dismissal case in August 2015. The Chicago Board of Education dismissed Sonia Perez for cause in June 2014. Perez filed suit in the courts, claiming retaliation for union activity, that her dismissal was not warranted, and that the Board did not provide adequate support to Perez during remediation. The appellate panel heard the case and affirmed the decision of the Board.

Perez served as a special education teacher and counselor/case manager throughout her time in Chicago Public Schools. After seven years as counselor/case manager, Principal

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Juarez reassigned Perez to a special education teacher position in 2008.904 Perez challenged the reassignment, arguing that the collective bargaining agreement prohibited such a reassignment.905 Perez was successful in the grievance, and the Board placed Perez back into the counselor/case manager position for the 2011-12 school year.906 During the grievance hearing, Juarez cited Perez’s poor performance as a reason for the reassignment.907 The grievance-hearing officer did not address the performance issues themselves, noting only that Juarez should have followed the evaluative process and not simply re-assigned Perez.908

After serving as a counselor/case manager for six months, Juarez served Perez with an E-3 remediation notice in February of 2012.909 Juarez cited weakness in planning efficiently or effectively, weakness in case management knowledge, insubordination, poor communication, hostility, and evasiveness.910 Perez began the state remediation period following the E-3 notice.911 Perez completed the remediation period in November of 2012.912 Juarez rated Perez as Unsatisfactory at the conclusion of the remediation and recommended her for dismissal.913

The District Superintendent approved dismissal proceedings in March of 2013, and the Board held dismissal hearings in August and December of 2013. After the hearings, the Board acted on the hearing officers’ recommendation to dismiss Perez. Perez then sought a direct review by the Appellate Court, First District, Second Division.

The appellate panel heard Perez argue that her dismissal was a result of retaliation for her union grievance that the Board failed to show sufficient cause for her dismissal, that Perez’s evaluations contradict one another and thus show improvement, and that the Board did not support Perez during the remediation.

The appellate panel addressed the first claim of retaliation by examining three key aspects to determine if retaliation occurred. The first two aspects, that Perez engaged in union activity and that the Board was aware of the activity, were not in dispute. Perez was formally grieving a Board action, which is union activity. As the recipient of the grievance, the Board was fully aware of the union activity. However, the third aspect, that of the union activity being the cause of the grievance, was unfounded. In the initial grievance, the arbitrator heard

evidence of Perez’s poor performance. The arbitrator had noted this concern but did not rule on the substance of the evidence. The hearing officer had only addressed the due process of the contractual claim. As such, the grievance hearing itself provided evidence that Perez’s performance was a concern well before the grievance. The appellate panel then found the performance issues stood apart from any retaliatory claim.

Perez’s second claim asserted that the Board did not have enough evidence to justify dismissal. However, the appellate panel noted that Perez supported her claim based on isolated and misquoted statements from peers during the board hearing. Perez also stated that Juarez did not directly observe some evidence used in her evaluations. Specifically, Perez claimed that Juarez had cited a poorly planned and communicated ISAT meeting and School Fair as evidence for dismissal. The Board hearing officer noted that these items supported the overall contention of Perez’s disorganization and that there was sufficient job-specific evidence that went along with the theme of disorganization. The appellate panel considered the sum

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931 Perez v. Board, No. 1-14-2377, 2015 IL. App (1st) 142377-U; 2015 Ill. App. Unpub. LEXIS 1885, at 24, (August 25, 2015). *both the Board and Perez acknowledge the Juarez was not present at either the ISAT meeting or the School Fair.
total of the statements made during the board hearing and determined there was indeed enough evidence provided by Juarez and the Board to support termination.933

The third argument made by Perez was that Juarez’s evaluation in February of 2012, the second of three during the remediation period, listed many of her deficient areas as strengths.934 The appellate panel further looked at the last evaluation from March of 2012, which was much more critical and negative and bolstered the Board’s assertion that Perez was not improving.935

Perez’s final argument was that the Board did not support her during the remediation period.936 Perez argued that the school did not have an adequate number of ancillary support staff to assist in completing the special education tasks she was responsible for to complete the IEP obligations of the school.937 Perez also argued that other staff in similar positions received more support than she did.938 The appellate panel pointed out that the testimony from the Principal indicated that Perez did indeed receive support due to how far behind she was in completing assigned tasks.939 Additionally, the appellate panel found that the Board had twenty-three other schools with similar circumstances that did not have the same challenges that Perez

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had. The Principal acknowledged this in the board hearing and shared that this was a funding-based decision and not related to Perez’s performance or lack thereof. The appellate panel could not find any withholding of support for Perez during the remediation period; thus, the appellate court upheld the Board’s dismissal.
CHAPTER 3
ANALYSIS

The review of literature on the impact of PERA and SB7\textsuperscript{945} on tenured educator dismissal in Illinois highlights a variety of trends, issues, and themes in case law from 1985 to present. To analyze these themes, this chapter will first compare and contrast the ERA with PERA and SB7. There are significant changes between the two pieces of legislation and those differences provide context for case law decisions. This chapter then elaborates on four themes within the court rulings that are pertinent to PERA and SB7. The four themes include: 1) judicial decisions adhere stringently to PERA and SB7 statutes, 2) collected evidence must directly support the summative rating, 3) the quantity of evidence presented and due process are critical, and 4) strict overall adherence to due process may be less relevant than certain specific aspects of due process.

Analysis of Changes from ERA to PERA/SB7

ERA of 1985\textsuperscript{946} required Illinois evaluators to observe and rate the performance of educators once every two years. In this process, educators received one of three ratings,\textsuperscript{947} were guaranteed specific due process for remediation,\textsuperscript{948} and could request an administrative review.


\textsuperscript{946} 105 ILCS 5/34-1 et seq.; 105 ILCS 5/24A – 1; 105 ILCS 5/24A – 2.

\textsuperscript{947} \#Excellent, Satisfactory, or Unsatisfactory, 105 ILCS 5/24A – 5(e).

\textsuperscript{948} 105 ILCS 5/24A – 5(f).
hearing before an impartial hearing officer\textsuperscript{949} prior to dismissal. \textit{PERA} and \textit{SB7} built on these structures by requiring rigorous training and inter-rater reliability for evaluators by defining specific required ratings, by requiring an increase in the frequency of evaluations, by including student growth data in the interpretation of an evaluative rating, and by correlating evaluation rating to the reduction in force (RIF) process. The due process rights to a remediation process and administrative hearing remained unchanged when the State reauthorized \textit{ERA} as \textit{PERA} and \textit{SB7}.

Under \textit{ERA} of 1985, evaluators were required to attend a two-day training prior to evaluating educators,\textsuperscript{950} but with the passage of \textit{PERA} and \textit{SB7}, training requirements evolved to include a five module training process.\textsuperscript{951} The State electronically provided the modules to administrators, covering information about the law, the Danielson Framework, interpretation and bias, and student growth. The main component of the training requirement, which differed significantly from \textit{ERA}, was Module 2, which required evaluators to observe videos of sample teacher instruction and then rate the collected evidence. Module 2 compared the evaluators’ assigned ratings to a scored rubric, and ratings had to match to pass the module. This module took a significant amount of time to complete, and if not successfully completed, evaluators could not conduct observations until participating in a remediation course provided by the State. The State designed Module 2 to ensure inter-rater reliability among evaluators across Illinois.

\textsuperscript{949} 105 ILCS 5/24A – 5(k).
\textsuperscript{950} 105 ILCS 5/24A
The required ratings under PERA and SB7 moved Illinois from the three-tier system under ERA to a four-tier system.\textsuperscript{952} Under ERA, the three ratings of Unsatisfactory, Satisfactory, and Excellent essentially created a pass/fail system. Educators could move from an acceptable (i.e., Satisfactory or better) performance rating to a negative rating, remediation, and potential dismissal. PERA and SB7 required evaluation ratings of Unsatisfactory, Needs Improvement, Proficient, and Excellent. By incorporating the Needs Improvement rating into this new four-tier system, educators were to present evidence-based feedback that illustrated where improvements to practice would need to occur to avoid an Unsatisfactory rating. It is important to note, however, that PERA and SB7 do not require the linear progression of rating. In other words, once the collected evidence is interpreted by the evaluator, a tenured educator could potentially move from one end of the evaluative spectrum to the other (Excellent to Unsatisfactory) without being rated in any of the intermediate categories (Proficient or Needs Improvement). PERA and SB7 required that the four rating system be aligned to a research base that most public school districts identified as the Danielson Framework.\textsuperscript{953} Each rating came with a rubric describing the attributes required to obtain the rating that clarified, for evaluators and educators alike, what rating any given evidence would justify.

PERA and SB7 increased the frequency of observations for tenured teachers as well.\textsuperscript{954} Evaluators now had to observe tenured teachers twice in a two-year cycle as opposed to once


every two years under ERA. Additionally, PERA and SB7 required that evaluators observe educators rated as either Unsatisfactory or Needs Improvement three times in the following two-year cycle. Student growth data were also required during the two-year cycle and had to account for at least thirty percent of the overall rating. Illinois educators had never before been required to include student growth data as part of their evaluation. Individual public school districts were able to determine how to apply the law within the parameters set by PERA and SB7.

Once educators received a rating from their evaluator, districts used the rating to place educators on a “Sequence of Honorable Dismissal (SOHD)” list. The SOHD list dictated how educators would be released if a RIF was required by the District. This was different from ERA in that, prior to 2010, raw seniority drove the RIF process. The most senior educators were safe, and districts had to release the newest educators regardless of their instructional efficacy. Under ERA, seniority-driven RIF processes often resulted in senior educators teaching courses in which they did not hold the proper certification. PERA and SB7 required that the first metric used to sort staff for RIF was the evaluation rating. Only after the rating sorted educators into groups did the seniority of the educators in each grouping play a part in a RIF. Additionally, PERA and SB7 only allowed RIF’d educators to take over (i.e., bump) other educators from positions for which they held certifications, which ensured that students received instruction from educators certified in the subject taught. The impact of this meant that if two educators held the same certificates, a less senior educator with a high evaluation rating might keep his/her job over a more senior

Table 1 summarizes and provides a side-by-side comparison of the changes in performance evaluations from *ERA* to *PERA*.

<table>
<thead>
<tr>
<th>Topic</th>
<th><strong>ERA</strong></th>
<th><strong>PERA and SB7</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Frequency of Evaluation for Tenured Educators</td>
<td>One (1) formal observation every two (2) school years.</td>
<td>Two (2) observations, and one set of Student Growth data, in a two (2) year cycle.</td>
</tr>
<tr>
<td>Qualitative Ratings Used</td>
<td>Three ratings; Unsatisfactory, Satisfactory, and Excellent.</td>
<td>Four rating system; Unsatisfactory, Needs Improvement, Proficient, Excellent.</td>
</tr>
<tr>
<td>Remediation Process</td>
<td>Ninety (90) day remediation process. Educator must show Satisfactory completion of Remediation Plan.</td>
<td>No change.</td>
</tr>
<tr>
<td>Administrative Review by Impartial Hearing Officer</td>
<td>Educator entitled to review by an impartial hearing officer.</td>
<td>No change.</td>
</tr>
<tr>
<td>Evaluator Training</td>
<td>Two day in-person training.</td>
<td>Online training using five (5) modules. Module Two (2) contained exam that required the interpretation of evidence and assignment of a rating that aligned with expert analysis. Administrators must pass the exam to evaluate.</td>
</tr>
<tr>
<td>Inter-Rater Reliability Requirement</td>
<td>None.</td>
<td>Inter-rater reliability exam required. Recalibration class required every five years.</td>
</tr>
<tr>
<td>Student Growth Data Requirement</td>
<td>None.</td>
<td>Evaluation ratings include student growth data, and educators must meet pre-determined growth goals.</td>
</tr>
<tr>
<td>Evaluation Rating as Part of RIF Process</td>
<td>None.</td>
<td>Evaluation ratings placed educators into one of four groupings. RIF conducted using the prioritized groupings, based on evaluation rating, and regardless of progress with a remediation process.</td>
</tr>
</tbody>
</table>
In addition to comparing the legislative changes from *ERA* to *PERA*, it is important to understand the litigation that was born from these two laws. The sum total of the changes ushered in by *PERA* and *SB7* resulted in the various litigation outlined in the review of literature. Of the reviewed cases, several come to the fore and lend understanding and context to the four analyzed themes.

**Analysis of Themes from 24A Rulings under *ERA* and under *PERA* and *SB7***

As Illinois public schools institutionalize *PERA* and *SB7* into everyday practice, several trends, themes, and issues emerge for consideration by courts, legislators, and practitioners. The identified cases\(^{956}\) shed light on what aspects of the dismissal process public school districts should consider when making the determination to release educators.

**Theme 1: Favoring Keeping Good Teachers and Removing Low Performing Teachers**

An initial theme is that decisions from Illinois courts are trending in favor of keeping good teachers and removing low-performing teachers. The honorable dismissal of educators via the RIF process, despite an educator not having completed remediation, clearly indicates the importance of evaluation ratings in the dismissal process. Under the *ERA of 1985*, educators dismissed prior to the completion of a remediation period would have a clear due process case against a school district. Given the legislative intent of *PERA* and *SB7* to keep effective educators over less-effective educators, the courts provided precedent in *Frakes* and *Pioli* to strengthen the RIF process, thus reducing the due process power of remediation. In *Frakes v. Peoria*\(^{957}\), the Board released Frakes due to a reduction in force. Immediately prior to the RIF,

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the Board had evaluated Frakes as Unsatisfactory and had begun the remediation process. Frakes was RIF’d before the completion of the remediation process, which Frakes claimed was a violation of due process. The courts clarified that under PERA and SB7 the Unsatisfactory rating placed Frakes into the proper RIF category, and thus, the Board honorably dismissed Frakes properly. The courts ruled that given the proper RIF, Frakes was not entitled to complete the remediation process and upheld the dismissal. This ruling effectively set the RIF process, under PERA and SB7, as trumping the remediation process when an educator was RIF’d before completing remediation. Then in Pioli v. Chicago CUSD #187958 the Board honorably dismissed Pioli due to an Unsatisfactory rating. Pioli argued the Board did not allow Pioli to complete the remediation period before the Board RIF’d her. Different from Frakes, Pioli also claimed the Board then hired completely new staff the following school year. The Board clarified that the evaluation of Pioli and the subsequent RIF all occurred prior to new information from the State that allowed the hire of additional educators. Additionally, Pioli held a specific and singular certification the Board did not need to hire in the following school year. The court upheld the dismissal stating:

While we understand plaintiffs' contention that their layoffs and lack of recall rights demonstrate a decline in tenure protections, that result is due to a clear decision by the legislature to prioritize teacher evaluations. The statutory amendments do not completely erode tenure protections in layoff situations, as teachers within the same groups and with the same evaluation ratings are dismissed based on seniority considerations. 105 ILCS 5/24-12 (West 2012). Tenured teachers with "unsatisfactory" ratings also receive substantial classroom remediation (105 ILCS 5/24A-5(i) (West 2012)), presumably to help them achieve success (as embodied by a higher rating) in the classroom. However, the tenure benefits during layoffs that plaintiffs currently seek, largely embodied in the prior law, may only be achieved through legislative action.959

By ruling in this fashion, the courts firmly set precedent that the RIF dismissal processes found in PERA and SB7, when properly applied, could potentially dismiss a teacher without having access to the complete remediation period. In fact, the court’s statement reinforces the legislative intent that would require successfully evaluated, yet less senior, educators to retain their positions over poorly evaluated, yet more senior, educators. Additionally, the Appellate Court affirmed that the Districts’ financial change shortly after the RIF did not require the District to rehire honorably dismissed educators in accordance with the recall process found in PERA and SB7. These decisions are a clear indication of Illinois courts favoring the intent of PERA and SB7 to ensure that public school districts retain high quality educators.

Additionally, Illinois court decisions are trending in that, barring evidence to the contrary, an evaluator’s interpretation of performance is *prima facie* and not subject to review. The courts, both under ERA of 1985 and PERA/SB7, affirm this interpretation. Raitzik set the precedent for this, and Illinois courts have cited it since 2005. In Raitzik,960 the plaintiff claimed the presented evidence did not warrant dismissal. The hearing officer cited Spangler and determined the evidence presented did not warrant dismissal. The Board disagreed and dismissed Raitzik. The trial court upheld the dismissal, as did the appellate court. The appellate court determined that the Board’s interpretation of the presented evidence was *prima facie* and, thus, not subject to reinterpretation. The court further determined there was no evidence to indicate that the Board’s interpretation was arbitrary, unreasonable, or unrelated to the dismissal. This ruling established the interpretative right of an evaluator when reviewing evidence. Despite Raitzik's disagreement with the evaluator’s interpretation of evidence, this case solidified the

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authority of evaluators in Illinois to interpret evidence as they see fit. Successive cases in Illinois cite *Raitzik* when supporting the right of the evaluator and, thus, the Board to interpret evidence, rate educators, and potentially dismiss educators rated as Unsatisfactory.

Further supporting *PERA* and *SB7* is the finding in *Holmes* that counters the court’s earlier finding in *Buchna*.961 *Buchna* won her claim in 2003, given that the Board did not follow the law concerning the rating system.962 The Board lost the argument that not meeting standards would warrant dismissal irrespective of the rating system used. The Board dismissed Buchna using a two-rating system even though *ERA* required a three-rating system. Buchna claimed the Board committed a due process error by not using the required three-rating system. The Board attempted to argue that rating an educator as “does not meet expectations” would be the same whether there were two or three ratings. In deciding in favor of Buchna, the Courts declared that due process rights trumped Buchna’s deficiencies. Buchna was able to retain employment due to the Board’s incorrect evaluation rating system.

However, post-*PERA* and *SB7*, the courts supported the Board in *Holmes*.963 despite not including the statutorily required student growth data, and agreed that the student growth data would not have substantively influenced the evaluation rating. Holmes claimed the dismissal violated due process in that student growth data were not included in the final rating. The Board claimed the student growth data would not have changed the outcome of the evaluation. The courts found in favor of the Board, agreeing with the Board’s claim that the student growth

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961 Lauri Buchna v. Illinois State Board of Education, David Jacobs, Hearing Officer; and Board of Education of Illinois Valley Central Unit District No. 321, 342 Ill. App. 3d. 934.
962 #The Board used a two rating system, as opposed to the three rating system required by *ERA* of 1985.
would not substantively affect the dismissal process. This decision represents the first case of a Board successfully dismissing an educator for performance when the Board clearly had not completed all the evaluation procedures. This interpretation by the courts indicates that the specifics of due process might not carry as much influence under PERA and SB7 if the specifics would not significantly alter the outcome.

**Theme 2: Importance of Evidence**

The second theme garnered from the identified cases is the importance of evidence supporting a summative rating. Given that Illinois courts clearly support the interpretive right of an evaluator, the only place in which a district could err theoretically rests with inconsistent interpretation of evidence. Spangler,964 Orbach,965 and Valley View966 all demonstrate the need for consistency when dismissing educators: were a district to dismiss an educator for cause, then the identified Unsatisfactory deficiencies would need to be the majority. When the identified Unsatisfactory deficiencies are the minority, as in Spangler, it makes sense that the majority of deficiencies may have improved Satisfactorily. The inconsistency of Unsatisfactory to Satisfactory areas in Spangler led to Spangler’s reinstatement. Spangler is a poignant case in that the main complaint was of the role of evidence in the dismissal process. The Board dismissed Spangler after a remediation period in which he addressed seventeen identified deficiency areas. Spangler claimed he had improved in twelve of the seventeen areas given that the Board only proved Unsatisfactory performance in five of the areas. The hearing officer agreed with Spangler, citing that the manifest weight of the evidence indicated that Spangler had

successfully remediated. The trial and appellate courts agreed, reinstating Spangler to his position. Courts in Illinois have since cited Spangler as a precedent in successive cases. Although Spangler does not set a quantifiable amount of evidence needed to dismiss an educator nor does it establish a specific ratio of Satisfactory/Unsatisfactory remediation goals to demonstrate successful completion of the remediation process, it does provide guidance about the manifest weight of evidence. Spangler led practitioners to a common sense understanding that a Board needs at least a common majority of Unsatisfactorily met goals to support a dismissal. In Spangler, the Board relied on Unsatisfactory ratings of only five out of seventeen identified areas. This is only 29% of the identified goal areas. The Board acknowledged growth in the other 71% of the identified areas. This led the hearing officer, trial court, and appellate court to concur that the manifest weight of the evidence did not warrant Spangler’s dismissal.

In Orbach,967 the Board did not consistently apply the rules outlined in the collective bargaining agreement and those in the State statutes. The courts reinstated Orbach, finding that the CBA and the statutes did not conflict. Board v. Orbach968 presented an issue in which the Board went forward with a dismissal despite rating Orbach as Satisfactorily completing remediation. At the conclusion of remediation, the Board rated Orbach Unsatisfactory in only one of six identified areas. The remaining five areas were Satisfactory. The Board claimed State law allowed them to dismiss Orbach for the one deficient area, yet the local collective bargaining agreement went beyond State law. The CBA required an overall Unsatisfactory rating after remediation for the Board to dismiss Orbach. The appellate panel reinstated Orbach, clarifying that unless a CBA violates State law, the Board must also comply with the CBA when evaluating

educators. This ruling demonstrates the need to ensure consistency between regulative bodies when dismissing educators.

*Valley View v. Illinois State Board of Education (ISBE)*\(^{969}\) was the final court case under *ERA*. In *Valley View*, the appellate panel reinstated the educator, Reid, given the conflicting evidence from the dismissal process. The evaluating administrator had provided Reid with a positive letter of recommendation that conflicted with the assigned Unsatisfactory rating from the remediation period. The courts agreed with Reid that the recommendation letter was significant enough proof to indicate the evaluation rating was arbitrary, warranting Reid’s reinstatement.

The role of evidence in educator dismissals has not changed significantly from *ERA* to *PERA/SB7*. Since 1985, evidence has been required to support deficiencies and Unsatisfactory ratings. As early as *Raitzik*, the courts declared the interpretation of evidence to be the sole purview of the evaluator. The term *prima facie* means “accepted as correct until proven otherwise.” The courts purposely use this term to demonstrate that it must accept the evaluator’s interpretation, barring any significant proof otherwise. A common understanding might be that a dismissed educator would disagree with the interpretation of the evaluator if the educator is not the trained, certified, and experienced evaluator. When evidence contradicts itself or does not provide manifest weight, a dismissed educator may be successful in challenging a dismissal. When the preponderance of evidence shows an educator has successfully remediated, as in *Spangler*,\(^{970}\) then an evaluator faces a challenge in using a lesser amount of evidence as cause to

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dismiss. When evaluators prove the manifest weight of the evidence with clear and irrefutable actions by an educator, the courts will find an interpreted evaluation rating *prima facie* and, thus, support the interpretation made by the evaluator.

The role of evidence in educator dismissals provides an intriguing, g push/pull dynamic between the educators’ right to quantifiable evidence and the evaluators right to qualitative interpretation of the collected evidence. Educators can and should expect to have their dismissal supported by proof, yet this expectation can easily cause the educator to challenge the interpreted rating. Clear and incontrovertible evidence is absolutely necessary when dismissing an educator.

**Theme 3: Quantity of Evidence and Due Process**

The third theme, based on how Illinois courts have ruled to date, is the quantity of evidence used in determining ratings and the importance of due process during dismissal. When using evidence to dismiss educators, the courts have already set precedence that a rating is *prima facie*. Yet under both *ERA of 1985* and *PERA/SB7*, Illinois courts have never quantified how much evidence a Board may need to justify any given rating. *Davis v. Board*[^971] and *Farkas v. Board*[^972] presents litigation that further illustrate this theme.

In *Davis v. Board*,[^973] the Board defended a claim by Davis that the dismissal was arbitrary and capricious. Davis claimed successful progress in one of ten identified deficiency areas showed successful remediation. The courts disagreed, citing that the preponderance of deficiency areas were still deficient after the remediation period and, thus, upheld the Board’s dismissal of Davis.

In *Farkas*, the Board determined that Farkas had not shown Satisfactory improvement in 15 of 24 deficiency areas. Farkas claimed the remaining nine areas that did improve were sufficient to warrant keeping her position. The appellate panel disagreed and, using the precedent from *Spangler*, found in favor of the Board and upheld the dismissal. Administrators will want to have several evidentiary artifacts that justify any given rating, yet the *PERA/SB7* evaluation training for administrators has made it clear that any one piece of evidence may trump any number of other evidence artifacts. This issue may never present itself, yet an educator may argue there are enough documented Proficient/Excellent artifacts to overrule one documented Unsatisfactory/Needs Improvement artifact. The evaluator may then interpret the exact inverse, that the one Unsatisfactory/Needs Improvement artifact outweighs the many Proficient/Excellent artifacts. Educators who present this argument will have to overcome the *prima facie* precedent to be successful.

**Theme 4: Strict Adherence to Due Process**

A fourth and final theme public schools can anticipate is that of strict adherence to due process versus which components of due process may overrule others. While *ERA* was the law in Illinois, educators who successfully litigated their dismissals relied on citing due process errors.

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974 *For example, if an evaluator collects several evidence artifacts about the classroom environment that indicate proficiency, yet observes the educator slap a child, that one incident of slapping a child may warrant an Unsatisfactory rating.*

In Powell v. Board, the main issue was Powell’s claim that ERA of 1985 meant for the Board of Education itself to be more involved in the evaluative process and provide the actual performance rating. The Court clarified that the Board acted as a governing body and approved the recommendation of the evaluating administrator. Powell lost the case and the Court upheld the dismissal. Then in Dudley v. Board, Dudley went straight to the judicial process in the courts and skipped the administrative hearing as required by ERA. The courts ruled that Dudley needed to have exhausted administrative remedies by participating in an impartial hearing at the local level and, thus, upheld the Board’s dismissal of Dudley. In Chicago BOE v. Smith, the courts ruled in favor of the educator, given the evaluator did not follow the proper deadlines and provide written summaries of evaluations in a timely manner. The Board unsuccessfully argued that Smith had not objected in writing in a timely fashion and, thus, could not contest the dismissal. The courts disagreed, ruling that the evaluative deadlines were imperative in ensuring Smith’s due process and that Smith’s objections to being dismissed were worthy of review despite the fact the objection was not reduced to writing. Smith was successful in litigating the dismissal. This is the first case in which due process played a role in an educator retaining their position. Had the evaluator complied properly with the deadlines by observing Smith, provided written feedback in a timely manner, and then rated Smith’s performance, the dismissal may have very well complied with the law. In Gilbert v. Board, the plaintiff challenged the Board claiming emotional distress, slander, interference of a contractual

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977 *the duly elected seven member Board of Education.
979 105 ILCS 5/24A – 5(k).
relationship, and violation of the *Americans with Disabilities Act*.982 The court eventually dismissed all the claims, and the Court upheld the Board’s dismissal of Gilbert.

In *MacDonald v. Board*,983 the courts overturned a dismissal based on due process given that the Board did not comply with statutory deadlines. The Board did not assign a mentor to MacDonald until 156 days after the Unsatisfactory evaluation. The remediation period did not begin for another two days. The Board attempted to argue that it was unable to procure the statutorily required mentor given the limited availability of qualified mentors. However, the 158 days between the negative rating and the start of remediation were significantly longer than the 30-day limit under *ERA*. Given this, the courts agreed with MacDonald and reinstated his employment. *MacDonald* underscores the importance of complying with deadlines and procedures when dismissing educators.

In *Montgomery v. Board*,984 Montgomery claimed due process errors during the dismissal process. The hearing officer, trial court, and appellate court upheld the Board’s dismissal of Montgomery given the preponderance of evidence shown by the Board that refuted Montgomery’s claims. *Walczak v. Board*985 presented a due process claim about the qualification of the mentor and the level of support from the administration during remediation. Walczak claimed the mentor did not have enough expertise or understanding of Walczak’s teaching assignment and the administration should have been more proactive in helping Walczak. The court found the Board had met the due process requirements for the mentor

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teacher and clarified that the administration’s role during remediation was to assist in developing
the remediation plan, observing the educator, and evaluating the performance of the educator.
However, the evaluating administrator was not responsible for actively providing support to the
remediating educator. The appellate panel upheld the Board’s dismissal of Walczak. Since
PERA and SB7, educators have not successfully litigated using the due process error
argument. In Labno v. Board, Labno opined the mentor had not supported her properly, the
administration had not conducted a formal observation, and the observed class had special
education students in it, which thus presented a skewed view of her performance. The court
found the mentor had complied with State statute in that the administration had many informal
observations and documentation of invitations for formal observation and then cited Raitzik regarding the interpretation of performance within the class with the special education students.
The courts clarified, as they had in Raitzik, that the interpretation of the evaluator is prima facie
and, thus, not subject to reinterpretation by the court.

Perez v. Board is the most recent case under PERA and SB7. In Perez, the courts
heard claims from Perez that the Board dismissed her due to retaliation for union activity, had
contradicted itself in evaluations, and had not supported her during remediation. The courts

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determined that the dismissal was not due to Perez’s’ union activity, that the final evaluation
during remediation trumps any intermediary feedback Perez may have received, and, as in
Walczak,990 that the evaluator does not need to support the remediated educator overtly.

In the five cases under PERA and SB7, the timing of remediation versus reduction in
force has been a clear due process issue. In both Frakes and Pioli, the courts clearly ruled that
educators are not entitled to complete a remediation period if a RIF occurs during the
remediation timeframe. The ruling in Pioli connected the legislative intent of keeping high
performing educators, regardless of seniority and remediation status, to the events in the case.
Although Pioli argued that had the Board completed the remediation period, the RIF may not
have affected her. The law intends that even though the timing was poor for Pioli, the evaluation
rating drove the RIF process. In Holmes, the courts minimized due process when they ruled that
even though the Board had not included the statutorily required student growth data in the
evaluation, the inclusion of the data itself would not have changed the overall rating, thus the due
process error was not significant enough to overturn the dismissal. This is different from the
ERA cases (Smith, Buchna, and MacDonald)991 in that the due process errors in those cases
overturned the dismissal. Due process had been a tightly held aspect of educator dismissal under
ERA but is a challenge for educators under PERA and SB7. The argument of which due process
right, RIF versus remediation, holds sway may not be over yet.

Next Steps

Illinois courts adjudicated fourteen of the identified cases under the rules and regulations of ERA. Five cases adjudicated by Illinois courts fell under PERA and SB7 rules and regulations. Of the fourteen ERA cases, only five tenured educators were successful in contesting dismissal. Since PERA and SB7, no tenured educators have been successful in litigating their dismissal.

PERA and SB7 have ushered in a variety of changes to how public school districts evaluate tenured educators in Illinois. These changes are helpful to both Districts and educators. However, PERA and SB7 still present a variety of untested issues. Despite these clarifications, various interpretations of PERA and SB7 still remain for Illinois courts. Chapter 4 will provide guidance about how an Illinois public school district might prepare for and/or prevent such issues.
CHAPTER 4
CONCLUSIONS

Synthesizing differences in the evaluative process from ERA to PERA and SB7 sheds light on several applications for educational leaders. This chapter elaborates on suggestions for evidence collection and due process, the SOHD and RIF processes, preparation for evaluation of staff, and areas for future study. The topics covered will help Illinois public school districts when facing the potential dismissal of a tenured educator.

Evaluation and Due Process

Evaluators can avoid legal challenges brought by dismissed educators with a clear and concise application of evidence collection and due process. A data collection template that linearly connects evidence to interpretation to rating provides no doubt about how an evaluator has derived a rating and will help an evaluator draw clear and concise connections. A recommended example is in Appendix A.992 The evaluator will collect, compile, and report evidence based on the observation process. After the pre-conference and observation, the evaluator should share the template with the educator for reflection prior to the post-conference. Only the first three columns: Observation Notes, Comments, Questions or Wonderings will be complete. The final column, What to Work On, will be blank. The evaluator will complete the final column during the post-conference as the evaluator and educator discuss the lesson. The

992 Becky McCabe, Observation Write-Up Template, (proprietary document created by McCabe, circa 2011), used with permission from Becky McCabe, given 10/25/19.
Evaluator will include summarizing comments in the Post-Conference section along with tentative rating statements based on the collected evidence. This template would minimize the Importance of Evidence discussed in Chapter Three and illustrated in *Spangler*, *Orbach*, and *Valley View*, can be avoided with such a template. Evaluators using this template will be able to draw clear and concise correlations among all aspects of the observation process that lead to a rating.

The Summative Evaluation must also be clear and concise in performance evaluations. An evaluator must use a template that defines a rating for each Danielson domain, citing the evidence used to determine the rating. A sample template is included in Appendix B. This template requires an evaluator to elaborate on each Domain and provide a rating for each Domain and then a total performance rating. Evaluators combine the total performance rating with the total student growth rating, which produces the total Summative rating. Each clearly articulated component of the template fosters declarative and irrefutable communication during the summative evaluation process. The use of such a template provides a direct link from collected evidence to the interpreted rating, which as the courts have repeatedly ruled, is *prima facie* and thus constitutes a solid evaluation rating.

In addition to clearly articulated evidence collection and summative evaluation processes, an Illinois public school district must have a process by which evaluators monitor and affirm due process for educators. Evaluators at individual buildings must keep track of observation, student

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growth, and summative rating deadlines. This study would indicate that a best practice for evaluators would be to use a spreadsheet to track meeting dates as well as the dates that both educators and evaluators submit, sign, and return paperwork. Additionally, the spreadsheet must indicate what rating results from the process. An example spreadsheet is included in Appendix C. An evaluator that collects such data can avoid the due process challenges found in *Chicago BOE v. Smith*997 and *MacDonald v. Board*.998

Educators rated as Unsatisfactory progress to the State Remediation process immediately upon completion of the Summative process. Given the cases studied, and the propensity for a dismissed educator to challenge a dismissal in court, it is recommended that the school district’s legal counsel assist in drafting the remediation plan based on evidence of deficiencies found in the observation write-up and summative evaluation form. Direct connections from initial evidence collection to goals within the remediation plan should be clear and easily discernible by any practitioner. Additionally, the suggestions for improvement found in the observation write-up and summative evaluation will serve as benchmarks for what will constitute successful remediation of the noted deficiency. In providing an evidence-based thread from beginning to end and tracking progress to ensure due process, an evaluator can successfully defend the rating against a challenge from the educator with an Unsatisfactory rating.

**Sequence of Honorable Dismissal and Reduction in Force**

The Sequence of Honorable Dismissal (SOHD) and Reduction in Force (RIF) process go hand in hand with evaluation under *PERA* and *SB7*. The SOHD list uses an educator’s evaluation rating to determine the order of dismissal. As such, public school administrators must

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ensure accuracy of the information used to develop the SOHD list. A variety of resources exist to help facilitate this process, chief among them the PERA Performance Rating spreadsheet available from Dr. White and the IASA. Administrators must meet the timelines for developing the list and presenting it to the collective bargaining unit.

**Preparation**

Public school administrators who thoroughly prepare for the evaluation process will be successful in dismissing educators with an Unsatisfactory rating. Preparation must include detailed and frequent communication with the collective bargaining unit, the Joint Evaluation Committee, administrators, and individual educators. Evaluators avoid the legal challenges discussed in the Review of Literature when they provide evaluation handbooks outlining district expectations, deadlines, processes, and forms, to everyone involved in the evaluation process. Communication among evaluators, the Human Resources Department, and union leadership throughout the year can alleviate any potential concerns about due process requirements. The Human Resources Department must advise evaluators through the year by reviewing evaluation documents, counseling evaluators on how to engage in difficult conversations, providing job-impacting sentence stems for use when providing feedback, and counseling evaluators on how to respond when interpreted ratings are challenged, or when asked for references by those educators being dismissed.

This researcher recommends that administrators present new educators information about the evaluative process during the mentoring and induction process. Building familiarity with the process will allow educators to actively participate, and self-advocate, in the evaluation process.

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Lastly, a public school district must seek out and identify qualified mentors who can assist during the remediation process, so evaluators can assign the mentor teacher in a timely fashion. Public school administrators who communicate and plan effectively will meet the requirements of PERA and SB7, ensuring that evidence is recorded and interpreted appropriately, and that evaluations are due process compliant.

**Areas for Further Study**

During the course of this study, several questions arose that bear further study. These questions are both qualitative and quantitative. A qualitative study stems from several cases[^1000] where educators challenged the evidence used in dismissal, claiming that it was arbitrary, unreasonable, or unrelated to their performance rating. Examples of questions to study are; How do educators receive critical feedback? Inversely, how do evaluators express critical feedback? Do evaluators communicate clearly and directly enough? Do evaluators “say it like it is” or “beat around the bush” when expressing critical feedback? Do evaluators use “job-impacting language,” and if so, do educators hear the seriousness of the feedback? A quantitative study might examine the perception of feedback as good/bad versus critical feedback indicative of fixed-mindset or growth-mindset.

An additional area to study would be the impact of SB 1213[^1001] on educator dismissals. Enacted in the fall of 2019, this law requires local school districts to implement a local appeals process to review any Unsatisfactory rating. The local panel of certified evaluators can overturn


[^1001]: 105 ILCS 5/24A-5.5
an Unsatisfactory rating, which would directly conflict with the *prima facie* precedent from Illinois courts. Legal challenges to SB 1213 can be expected, and would bear monitoring, study, and analysis.

**Conclusion**

This study set out to understand the impact of *PERA* and *SB7* on tenured public educator dismissal in Illinois. During the course of the literature review and analysis this study articulated the legislative changes *PERA* and *SB7* brought to the evaluation process within Illinois. The study examined the pertinent cases in Illinois from 1986 to present, when dismissing teachers under 105 ILCS 24A. The study identified the role of evidence in those dismissals before, and after, *PERA & SB7*. Common challenges to the new evaluative processes, and how Illinois Courts have ruled under *PERA* and *SB7*, shed light on trends, themes, and issues that evaluators should take note of and prepare for. The study makes recommendations for how educational leaders can identify and avoid these common challenges in the daily practice and implementation of *PERA* and *SB7*. Successful evaluation in the *PERA* and *SB7* era requires evaluators to ensure evidentiary precision and due process fidelity. Using the tools shown in Appendices A, B, and C, a public school district can limit its exposure to liability when dismissing tenured educators. Evaluators that combine the historical trend of *prima facie* support from Illinois courts with the recommended documentation tools found in this study, an evaluator can efficiently dismiss an educator with an Unsatisfactory rating without violating due process rights.
APPENDIX A:

Observation Write-Up Template

**FORMAL OBSERVATION NOTES**

<table>
<thead>
<tr>
<th>Name:</th>
<th>School/Site:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date:</td>
<td></td>
</tr>
</tbody>
</table>

**Goal areas:** Educator and evaluator jointly discuss and agree upon focus for the observation. If educator struggles, evaluator may dictate a focal area for the lesson.

<table>
<thead>
<tr>
<th>Observation Notes enter time here</th>
<th>Comments</th>
<th>Questions or Wonderings</th>
<th>What to work on</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Direct notation of evidence here.</td>
<td>Provide insight into what context, situation, or history is relevant to noted evidence. Provide praise here if warranted.</td>
<td>Pose prompting, guiding, or coaching question here, based on the evidence collected.</td>
<td>Provide clear goal or objective for educator to improve upon.</td>
</tr>
</tbody>
</table>

**Pre-Conference:** Summarize the conversation held in the pre-conference meeting. Ensure that narrative includes the goal of instruction, relevant student information, assessment plan, and discussion of what goals the evaluator and educator have for the observation.

**Post-Conference:** Summarize the conversation held in the post-conference meeting. Ensure that the evaluator directly address any questions or wonderings. Review aspects the educator is to work on. Provide statements like, “Based on this observation, a rating of [insert Unsatisfactory, Needs-Improvement, Proficient, or Excellent here] would be warranted at this time.”

**Copy to:** Teacher, Administrator, Building HR File

Evaluator:  Date:

Staff Member:  Date:
APPENDIX B:

Summative Rating Template

Summative Evaluation

<table>
<thead>
<tr>
<th>Educator:</th>
<th>Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evaluator:</td>
<td>Assignment:</td>
</tr>
<tr>
<td>School(s):</td>
<td></td>
</tr>
</tbody>
</table>

Non-Tenured [ ] Year 1 [ ] Year 2 [ ] Year 3 [ ] Year 4 [ ] Tenured

**DOMAIN 1 - Planning and Preparation**

- a. Demonstrating knowledge of content and pedagogy
- b. Demonstrating knowledge of students
- c. Setting instructional outcomes
- d. Demonstrating knowledge of resources
- e. Designing coherent instruction
- f. Designing student assessments

Comments:
Summarize evidence collected, referring to observation notes and conversation. Directly connect interpretation of evidence to Danielson attributes. Include "Educator will..." statements to clarify areas for improvement.

Rating for Domain 1
[ ] Unsatisfactory [ ] Needs Improvement [ ] Proficient [ ] Excellent

**DOMAIN 2 - Environment**

- a. Creating an environment of respect and rapport
- b. Establishing a culture for learning
- c. Managing classroom procedures
- d. Managing student behavior
- e. Organizing physical space

Comments:
Summarize evidence collected, referring to observation notes and conversation. Directly connect interpretation of evidence to Danielson attributes. Include "Educator will..." statements to clarify areas for improvement.

Rating for Domain 2
[ ] Unsatisfactory [ ] Needs Improvement [ ] Proficient [ ] Excellent

**DOMAIN 3 - Instruction/Delivery of Services**

- a. Communicating with students
- b. Using questioning and discussion techniques
- c. Engaging students in learning
- d. Using assessment in instruction
- e. Demonstrating flexibility and responsiveness

Comments:
Summarize evidence collected, referring to observation notes and conversation. Directly connect interpretation of evidence to Danielson attributes. Include "Educator will..." statements to clarify areas for improvement.

Rating for Domain 3
[ ] Unsatisfactory [ ] Needs Improvement [ ] Proficient [ ] Excellent

**DOMAIN 4 - Professional Responsibilities**

- a. Reflecting on professional practices
- b. Maintaining accurate records
- c. Communicating with families
- d. Participating in the professional community
- e. Growing and developing professionally
- f. Showing professionalism

Comments:
Summarize evidence collected, referring to observation notes and conversation. Directly connect interpretation of evidence to Danielson attributes. Include "Educator will..." statements to clarify areas for improvement.

Rating for Domain 4
[ ] Unsatisfactory [ ] Needs Improvement [ ] Proficient [ ] Excellent
Definition of Performance Evaluation Ratings

Unsatisfactory – Three or more needs improvement ratings, or any unsatisfactory rating. If tenured, unsatisfactory can only be issued after completing the Professional Support Plan. For a tenured educator, a final summative rating of unsatisfactory requires participation in the State of Illinois Remediation Plan.

Needs Improvement – Any ratings which include one or two needs improvement ratings, and no unsatisfactory ratings. For a tenured educator, a state required Professional Development Plan must be developed if the overall Summative evaluation rating is Needs Improvement.

Proficient – Either all proficient ratings or three proficient with one excellent rating.

Excellent – At least two domain ratings of distinguished, of which one must be Domain 3. No ratings lower than proficient.

Performance Evaluation Rating:

☐ Unsatisfactory  ☐ Needs Improvement  ☐ Proficient  ☐ Excellent

Calculation of Summative Student Growth Rating

<table>
<thead>
<tr>
<th>Rating for Student Growth Assessment #1</th>
<th>☐ Unsatisfactory</th>
<th>☐ Needs Improvement</th>
<th>☐ Proficient</th>
<th>☐ Excellent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rating for Student Growth Assessment #2</td>
<td>☐ Unsatisfactory</td>
<td>☐ Needs Improvement</td>
<td>☐ Proficient</td>
<td>☐ Excellent</td>
</tr>
</tbody>
</table>

Instructions: Locate the rating from Assessment #1 in the top row and the rating from Assessment #2 in the left column then find the intersection of the two in the matrix to determine the student growth overall rating. For example, Excellent on Assessment #1 and Needs Improvement on Assessment #2 translates to an overall rating of Proficient. Note that each assessment counts equally.

Student Growth Rating:  ☐ Unsatisfactory  ☐ Needs Improvement  ☐ Proficient  ☐ Excellent
Instructions: Locate the rating from Performance Evaluation Rating in the top row and the rating from the Summative Student Growth in the left column then find the intersection of the two in the matrix to determine the Summative Evaluation Rating. For example, Proficient in Performance Evaluation Rating and Unsatisfactory in Summative Student Growth translates to a Summative rating of Needs Improvement. Note that the Performance Evaluation Rating counts for 70% of the Summative rating and the Summative Student Growth Rating counts for 30% of the Summative Evaluation Rating.

<table>
<thead>
<tr>
<th></th>
<th>Excellent</th>
<th>Proficient</th>
<th>Needs Improvement</th>
<th>Unsatisfactory</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Excellent</strong></td>
<td>Excellent</td>
<td>Proficient</td>
<td>Proficient</td>
<td>Needs Improvement</td>
</tr>
<tr>
<td><strong>Proficient</strong></td>
<td>Excellent</td>
<td>Proficient</td>
<td>Needs Improvement</td>
<td>Needs Improvement</td>
</tr>
<tr>
<td><strong>Needs Improvement</strong></td>
<td>Proficient</td>
<td>Proficient</td>
<td>Needs Improvement</td>
<td>Unsatisfactory</td>
</tr>
<tr>
<td><strong>Unsatisfactory</strong></td>
<td>Proficient</td>
<td>Needs Improvement</td>
<td>Needs Improvement</td>
<td>Unsatisfactory</td>
</tr>
</tbody>
</table>

Summative Evaluation Rating:

- [ ] Unsatisfactory
- [ ] Needs Improvement
- [ ] Proficient
- [x] Excellent

Signature of Educator*  
Signature of Evaluator  
Date

* Indicates that content has been seen and discussed
## APPENDIX C:

### Evaluation Tracker

<table>
<thead>
<tr>
<th>Name</th>
<th>Initial Date</th>
<th>Date 1</th>
<th>Date 2</th>
<th>Date 3</th>
<th>Date 4</th>
<th>Overall Growth Goal</th>
<th>Goal #1</th>
<th>Goal #2</th>
<th>Goal #3</th>
<th>Overall Final Rating</th>
<th>Rating</th>
<th>Final Date</th>
</tr>
</thead>
</table>