

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 876
Finance

(Senator Ferguson)

Public School Teachers and Administrators - Appeals and Layoffs - Rights and Limitations

This bill limits review by the State Board of Education of a decision of a local board of education to suspend or dismiss a public school teacher or administrator to a review on the record. The bill also requires a public school employer to negotiate teacher layoff policies as part of collective bargaining. Performance evaluations must account for no less than 51% of the formula used to make layoff decisions in any negotiated policy.

The bill takes effect July 1, 2012.

Fiscal Summary

State Effect: The number of cases that the State Board of Education refers to the Office of Administrative Hearings (OAH) may decrease slightly; however, the bill is not expected to materially affect the operations or finances of OAH or the State board.

Local Effect: Local school system expenditures for arbitrators may increase if expanding topics that local school systems must collectively bargain increases the number of days of negotiation required.

Small Business Effect: None.

Analysis

Current Law:

Teacher and Administrator Layoffs – Right to Appeal

On the recommendation of the local superintendent of schools, a local board of education may suspend or dismiss a teacher, principal, supervisor, assistant superintendent, or other professional assistant for immorality; misconduct in office, including knowingly failing to report suspected child abuse; insubordination; incompetency; or willful neglect of duty.

Before removing an individual, the local board must send the individual a copy of the charges and give the individual an opportunity to request a hearing. If the individual requests a hearing, the individual must have an opportunity to be heard before the local board, in person or by counsel, and to bring witnesses to the hearing. The individual may appeal the decision of the local board to the State Board of Education.

In Baltimore City, the suspension and removal of an assistant superintendent and higher level employees must be as provided by the personnel system established by the Baltimore City Board of School Commissioners.

For all proceedings before a local board of education, the local board may have the proceedings heard first by a hearing examiner. The hearing examiner must submit to the local board and the appellant a record of the proceeding and exhibits and the hearing examiner's findings of fact, conclusions of law, and recommendations. Parties to the proceeding before the hearing examiner may make arguments before the local board. After it reviews the record and the recommendation of the hearing examiner, the local board must make a decision. The decision may be appealed to the State Board of Education. Each local board must adopt reasonable rules and regulations to regulate the proceedings before the hearing examiner.

According to the Code of Maryland Regulations (COMAR), if a local board of education's decision to suspend or dismiss a teacher or administrator is appealed to the State Board of Education, then the State board must exercise its independent judgment on the record before determining whether to sustain the suspension or dismissal of a certificated employee. The standard of review must be *de novo*. The local board has the burden of proof by a preponderance of the evidence. The State board, in its discretion, may modify a penalty.

COMAR also requires that the State Board of Education transfer an appeal of a suspension or dismissal of a teacher or administrator to OAH for review by an

administrative law judge. The State board must also transfer an appeal in which the State board finds that there exists a genuine dispute of material fact to OAH for review by an administrative law judge.

Layoff Policies and Performance Evaluations

Teacher layoff policies are not a topic that a public school employer must negotiate with the exclusive negotiating agent for public school employees under collective bargaining rules. However, excluding specified topics, a public school employer and the exclusive negotiating agent for public school employees may negotiate on matters that are mutually agreed upon. Specifically, the school calendar, the maximum number of students assigned to a class, or any matter that is precluded by applicable statutory law may not be collectively bargained.

Performance evaluations are not required to be used in policies relating to layoffs of public school employees.

Background: The Education Reform Act of 2010 (Chapter 189) requires the State board to adopt regulations establishing general standards for performance evaluations of certified teachers and principals. These standards must include observations, clear standards, rigor, and claims and evidence of observed instruction, as well as model performance evaluation criteria.

Each local board of education must, in turn, establish performance evaluation criteria that are based on these general standards and are mutually agreed upon by the local school system and the exclusive employee representative. Mutual agreement is not governed by State public school employee collective bargaining laws. The performance evaluation criteria must include data on student growth as a significant component and may not be based solely on an existing or newly created single examination or assessment. However, an existing or newly created single examination may be used as one of multiple measures of student growth. In addition, no single criterion can account for more than 35% of the total performance evaluation criteria. If a school system and the exclusive employee representative fail to mutually agree on the criteria, the State board's model performance evaluation criteria take effect six months after the final regulations establishing the model criteria are adopted.

In November 2010, the Administrative, Executive, and Legislative Review (AELR) Committee voted to oppose an early set of proposed regulations submitted by the board on this subject. The State board has placed the regulations on hold and will restart the process of promulgating draft regulations in June 2012, consistent with the Education Reform Act of 2010 and the Race to the Top application. Based on lessons learned from the pilot local evaluation systems, MSDE will develop a list of acceptable options for the

components of a statewide system of evaluation. This list will guide local school systems when they draft their final evaluation systems and will provide flexibility for local school systems within the parameters ultimately established by State board regulations.

MSDE reports that the State Board of Education reviews five to eight termination cases a year; however, the number of cases may increase when the new teacher evaluation system is fully operational.

State Expenditures: The number of cases that the State Board of Education refers to OAH may decrease slightly; however, the bill is not expected to materially affect the operations or finances of OAH or the State board. MSDE reports that the bill's requirement that the State Board of Education limit its review of the decision of a local board of education to suspend or dismiss a public school teacher or administrator to a review on the record will preclude referral to OAH, but the requirement will not increase the work of the State board.

Local Expenditures: Local school system expenditures for arbitrators may increase if expanding topics that local school systems must collectively bargain to include teacher layoff policies increases the number of days of negotiation required. However, it is unknown if there will be a substantive difference in the number of days of negotiation required. One local school system reported that hiring an arbitrator costs approximately \$2,000 per day.

Additional Information

Prior Introductions: None.

Cross File: HB 1210 (Delegates Rosenberg and Hucker) - Ways and Means.

Information Source(s): Maryland State Department of Education, Office of Administrative Hearings, Kent and Montgomery counties, Baltimore City, Department of Legislative Services

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