

IEA-NEA Guide to Legal Rights and Responsibilities of Education Employees

The IEA-NEA Department of Legal Services provides the best in legal protection for educational employees across Illinois. Using IEA-NEA and NEA resources, the Legal Department’s nine attorneys, legal support staff and IEA-NEA retained law firms work closely with UniServ Directors and Association Representatives (ARs).

When it comes to your job-related legal rights and responsibilities, however, there is no substitute for a well-informed employee. The following Legal Guide summarizes some of the laws governing your employment. Costly, time-consuming legal action often can be avoided and potential legal action often can be resolved at the building level, if members and ARs know their rights and responsibilities. We hope this guide will help you deal effectively with your employer, avoid legal problems, recognize when legal issues occur, and learn about your rights and responsibilities.

This guide is supplemented with links to other resources, including videos by IEA attorneys which are accessible only to IEA members. You can access the courses by logging into [Members Only](#). Click on the IEA Online Learning Portal picture at the top, and then choose Legal from the course categories on the left.



This legal guide does not constitute legal advice. Readers should be aware that laws and regulations change and courts interpret laws which may impact the guidance contained here. An individual’s circumstances will likely influence the way the law should be applied. The information here cannot substitute for individualized legal advice. In cooperation with your AR, you should contact your UniServ Director regarding unresolved legal questions or concerns. The guide is protected by copyright and should not be reproduced without permission and is intended for use by IEA members. Copyright 2015, Illinois Education Association-NEA Legal Services Department.

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I. Right to Union Representation in Investigations

Whether you work for a public school, which is governed by the Illinois Educational Labor Relations Act (IELRA), or a private school, which is governed by the National Labor Relations Act (NLRA), you are legally entitled to union representation during *any* employer interview that you reasonably fear may result in discipline. However, unless your union's contract provides otherwise, to exercise this right under either law, you *must* request such representation. Because

of the importance of this right, all educational employees need to be aware of it, and make appropriate and timely requests for representation.

The right to representation is based upon Section 3(a) of the IELRA and Section 7 of the NLRA. These sections of the laws provide either public or private educational employees the right to organize, form, join, or assist in employee organizations or engage in lawful concerted activities for mutual aid and protection. You will sometimes hear this right called a “Weingarten Right” from a 1975 U.S. Supreme Court case that initially identified this right under the NLRA.

If you are being interviewed by a supervisor and you reasonably believe that what you say may lead to discipline, prior to the start of the interview, you should state something similar to the following to invoke your Weingarten Right: *If this discussion could lead in any way to my being disciplined or terminated or affect my personal working conditions, I respectfully request that a union representative be present at the meeting.* If you failed to request a union representative at the start of the interview, you may do so at any time during the interview.

Union representation serves two important purposes. First, it provides the individual employee with a knowledgeable and articulate spokesperson who can help the employee present the employer with facts in support of his or her position. Second, it allows the union to monitor overall discipline by the employer and make certain that it is applied fairly and uniformly.

If you request union representation, the employer has two options: agree to such representation or proceed with its investigation without your interview. You, by the same token, can agree to forego union representation if you so desire. However, it would be imprudent to do so without first discussing the matter with a union representative. Additionally, you should not sign disciplinary documents without first consulting a union representative who can review the documents.

When the union representative is present at the investigatory interview, he or she may not be directed to remain silent or serve merely as a note-taker. Instead, the union representative has the right to engage in the following actions before and during an investigatory meeting:

- to request information on the general subject of the interview;
- to privately consult with you before the interview begins;
- to ask the interviewer to clarify or rephrase a question that is unclear;
- to ask clarifying questions on your behalf;
- to provide additional information to the interviewer at the end of the employee interview.

In most cases, you may not refuse to answer an employer’s question. In fact, you may be disciplined for such refusal. In all cases, you should never provide false information during an interview.

The right to a union representative does not apply under the following circumstances:

- the employer's meeting is merely for the purpose of communicating general work instructions or training;
- prior to the meeting, the employee has been specifically advised that no discipline or employment consequences can result from the interview;
- prior to the interview, the employer has reached a final decision to discipline the employee and the purpose of the interview is only to inform the employee of the employer's decision.

In addition, the Illinois Educational Labor Relations Board (IELRB) has held that the right to representation does *not* apply to a post-observation performance evaluation conference. The reasoning of the Board was that there is no reasonable fear that the conference would lead to discipline. The Board stated, however, that if the parties included a provision for union representation at post-observation evaluation conferences in the collective bargaining agreement, then such representation would be required.

II. Sources of Educational Employee Rights

An educational employee has a number of different legal protections and rights from a variety of sources. To determine whether any rights have been violated, each of the following sources should be explored. The rights listed below are by no means exhaustive, but are meant to highlight some of the more important protections.

A. Constitutional Rights

The United States Constitution and the Constitution of the State of Illinois provide a number of protections to all citizens. Two of the more important protections for educational employees are the rights of free speech and due process. Other rights include freedom of religion, freedom from search and seizure, freedom from self-incrimination, and certain privacy rights.

1. Free Speech

A person does not give up his or her First Amendment right to free speech as a result of becoming a public employee. Free speech encompasses a number of different areas, each with its own specific rules. These include academic freedom, artistic expression, the rights of association (such as with a union), and political speech. Educational employees may not be dismissed, transferred, reprimanded, nor have their employment rights infringed in any way as a result of exercising constitutionally protected rights of free speech. This applies to probationary as well as non-probationary employees. In addition to constitutional protections, employees may also have just cause protections in their collective bargaining agreement. For those employees, the employer must prove it had just cause to discipline the employee for their speech.

Determining whether free speech rights have been violated requires a number of steps. Much will depend upon the situation's unique facts. However, it is important to remember that a person must prove with evidence that his or her rights have been violated. Mere "belief" is not sufficient.

The first step is to determine whether "protected speech" is involved. Speech is considered to be protected whether it is made publicly (by letters to the editor, speeches to the public, comments at school board meetings, internet postings) or privately, such as to an immediate supervisor. The inquiry is two-fold: First, did the employee speak as a private citizen or pursuant to his or her official duties. Public employers have broad discretion to manage their operations, including restricting its employees' speech when the restriction is necessary to operate efficiently and effectively. Therefore, public employees expressing views pursuant to their official duties are not protected by the First Amendment. If, however, the employee is speaking as a citizen, then the second inquiry is whether the subject of the speech is a matter of public concern because only matters of public concern rather than private concern are protected. If, for example an employee airs personal grievances against a supervisor that pertain solely to his or her individual situation, these are not protected speech. Issues of public concern include educational policy, expenditures of public funds, and board positions on collective bargaining.

The next step in the analysis is whether the employee's interest in commenting on matters of public concern outweighs the employer's interest in promoting efficiency and integrity in discharging official duties. There are a number of factors which will be considered in weighing the respective rights. These include:

1. The need to maintain discipline or harmony among co-workers;
2. The need for confidentiality;
3. The need to curtail conduct which impedes the employee's proper and competent performance of his or her daily duties;
4. The need to encourage a close and personal relationship between the employee and superiors where that relationship calls for loyalty and confidence.

The more disruptive the speech, the less likely it is to be protected. Similarly, the closer the personal contact between the speaker and audience, such as between a principal and a superintendent or a secretary and his or her immediate supervisor, the less likely it is to be protected.

After overcoming the "protected speech" requirement, an employee must prove that the exercise of the protected speech was a substantial or motivating factor in the employer's decision to take some adverse employment action against him or her. This issue of fact must be supported by proof.

If the employee is successful in proving that his or her speech was constitutionally protected and that it was a substantial or motivating factor in the employer's action, the employer is then given

the opportunity to prove that it would have reached the same employment decision even in the absence of protected conduct. The theory, as expressed by the courts, is that an employee should not be placed in a better position just because he or she exercised rights of free speech. Similarly, an employer would not be prohibited from disciplining an employee if it would have done so even if no free speech issue were involved. Furthermore, if an employer, after a good faith investigation, reasonably concludes that the employee's speech was not a matter of public concern and takes action against the employee because of it, the employer's conduct will not be improper even though it is later determined that the employee's speech was constitutionally protected. Once again, this will be an issue of fact.

If the employee is successful in meeting these burdens of proof, appropriate relief can include an injunction, reinstatement to a job or position, other damages, and attorney fees.

2. Due Process

Public employees, including educational employees, may not have their "property rights" or "liberty rights" taken without due process of law. Liberty rights include things such as a person's reputation (i.e., being accused of acts damaging to your reputation). Property rights may include the right to keep a job. To have a property right in a job, there must be a reasonable expectation of continued employment. This expectation of continued employment could be based upon state law (such as tenure statutes); an employment contract; a "just cause" provision in a collective bargaining agreement; or some school board policy guaranteeing continued employment. An employee's belief he or she will continue to be employed is not sufficient.

The amount of process which is due varies considerably from situation to situation. It does not necessarily require all the rights normally given in a court proceeding. The more serious the penalty (i.e., discharge), the more "process" is required. The minimum process is a notice of the charges, a discussion of the proof against the employee, and some opportunity to respond. More rights are often given by statute or contract, and these possibilities are discussed later.

B. State and Federal Statutes

A second source of educational employee rights is state and federal statutes. The most important include tenure acts; School Code; labor laws; unemployment and workers compensation; receiving, continuing and converting health insurance; and various anti-discrimination statutes.

1. Illinois Educational Labor Relations Act (IELRA)

Enacted in 1984, the IELRA establishes a comprehensive labor relations framework for educational employees and employers. This statute creates rights for all employees of public school districts, co-ops, community colleges, and universities, except for those individuals who are supervisors, managers, students, and temporary employees, as defined by the IELRA.

The Act allows covered employees to organize, form, join, and assist unions for purposes of bargaining and for employees' mutual aid and protection. Educational employees can petition the Illinois Educational Labor Relations Board (IELRB) for an election to determine the exclusive bargaining representative. The exclusive bargaining representative then has authority to collectively bargain with the employer on behalf of the members of its bargaining unit.

The educational employer and exclusive bargaining representative are required to bargain in good faith. The duty to bargain in good faith does not require the parties to make concessions or agree to proposals, but does require the parties to exchange proposals in an attempt to reach agreement, reduce any agreements to writing, and incorporate those agreements into a collective bargaining agreement. The employer is required to negotiate with respect to wages, hours, and other terms and conditions of employment. Mandatory subjects of bargaining include: hours worked by employees; the decision to subcontract work formerly performed by bargaining unit members; the development and implementation of procedural aspects of evaluation plans; the decision and the impact of a decision to reduce the number of full-time faculty for economic reasons; and the decision and impact of a decision to significantly reorganize the number and length of teaching periods. All collective bargaining agreements must include a grievance procedure ending in binding arbitration and prohibit strikes during the duration of the agreement.

The Act prohibits educational employers from doing a number of things considered unfair labor practices (ULPs). Some of the more common ULPs are: interfering, restraining, or coercing employees from exercising their rights under the Act; discriminating against employees to discourage membership in an employee organization or participation in IELRB proceedings; refusing to bargain in good faith, including making unilateral changes without adequate prior notice and bargaining with the exclusive representative; and refusing to comply with a binding arbitration award. Charges are filed with the IELRB which investigates the charges and, where appropriate, issues complaints. Hearings may then be held and a decision issued by the hearing officer of the IELRB. The IELRB has the authority to issue appropriate orders to prohibit the ULP and order remedial relief where appropriate.

A five minute video by IEA Associate General Counsel Betsy Pawlicki for members only about the IELRA can be found at the IEA Learning Portal: [IELRA Training Video](#).

2. National Labor Relations Act (NLRA)

Enacted in 1935, the NLRA is the foundational statute of U.S. labor law. It guarantees private sector employees the rights to organize unions, engage in collective bargaining, and take collective action. This Act governs IEA members employed by private colleges and institutions. Decisions interpreting this law often influence the IELRB in applying the IELRA.

Employees unrepresented by a union can petition the National Labor Relations Board (NLRB) for an election to determine the exclusive bargaining representative. The exclusive bargaining

representative then has authority to collectively bargain with the employer on behalf of the members of its bargaining unit.

The employer and exclusive bargaining representative are required to bargain in good faith. The duty to bargain in good faith does not require the parties to make concessions or agree to proposals, but does require the parties to exchange proposals in an attempt to reach agreement, reduce any agreements to writing, and incorporate those agreements into a collective bargaining agreement. The employer is required to negotiate with respect to wages, hours, and other terms and conditions of employment. Mandatory subjects of bargaining include: hours worked by employees; the decision to subcontract work formerly performed by bargaining unit members; the development and implementation of procedural aspects of evaluation plans; the decision and the impact of a decision to reduce the number of full-time faculty for economic reasons; and the decision and impact of a decision to reorganize the number and length of teaching periods.

The Act prohibits employers from doing a number of things considered unfair labor practices (ULPs). Some of the more common ULPs are: interfering, restraining, or coercing employees from exercising their rights under the Act; discriminating against employees to discourage membership in an employee organization or participation in NLRB proceedings; refusing to bargain in good faith, including making unilateral changes without adequate prior notice and bargaining with the exclusive representative; and refusing to comply with a binding arbitration award. Charges are filed with the NLRB which investigates the charges and, where appropriate, issues complaints. Hearings may then be held and a decision issued by the hearing officer of the NLRB. The NLRB has the authority to issue appropriate orders to prohibit the ULP and order remedial relief where appropriate.

3. Tenure Laws

The Teacher Tenure Act for teachers in school districts other than Chicago is found in Section 24-11, *et seq.* of the School Code. Those provisions provide a comprehensive procedure for becoming tenured and the protections once tenured. More details about dismissal are in Section III.A titled Evaluations, Reductions-in-Force, Dismissal and Nonrenewal.

The Tenure Act covers all school district employees regularly required to be certified under the provisions of the School Code (*i.e.*, teachers, administrators, counselors, etc.). The Act further provides that a “teacher” who is first employed full-time by a school district or special education cooperative prior to the district’s applicable Performance Evaluation Reform Act of 2010 (PERA) implementation date, attains tenure by serving four consecutive years as a full-time teacher in that district. Temporary employment, whether full time or part time, will not qualify toward the completion of the probationary period. A teacher must work for 120 days in a school year to count toward tenure. Time off for personal or sick leave does not count toward tenure. If a teacher works fewer than 120 days in a year, that year is not counted for purposes of determining whether the teacher taught for four consecutive years, but the teacher does not lose

“credit” for the prior years. However, if a district opts to impose Family and Medical Leave Act leave on a teacher at the end of a school year, those days will count towards the 120 days.

Some changes to acquiring tenure will take effect once a school district implements student growth as part of a teacher’s evaluation under the Performance Evaluation Reform Act of 2010 (PERA). There is a rolling date for implementation but most districts will begin using student growth in evaluations in 2015-16 or 2016-17. Current probationary teachers are grandfathered under the existing law to achieve (or be denied) tenure. No teachers will have to restart their tenure track as long as they remain employed by their current district.

For teachers hired after a school district implements PERA, the teacher must receive two “proficient” or “excellent” evaluation ratings in two of the last three years with a “proficient” or “excellent” rating in the fourth year. If no evaluation was performed on schedule, the teacher will be considered to have received a “proficient” rating. If at the end of the four year probationary period, a teacher fails to receive the required performance ratings, the district is compelled to non-renew the teacher. PERA also provides that teachers receiving “excellent” ratings in their first three years of achieve tenure. Also, after PERA is implemented, if a tenured teacher received “proficient” or “excellent” ratings in his or her last two evaluations moves to a new district, the teacher will eligible to achieve tenure in the new district after two straight years of receiving “excellent” evaluations.

Community College Tenure is governed by Section 3B-2 of the Public Community College Act. It covers “faculty members” who are defined to include full-time employees of the community college who are engaged in teaching or academic support services. Supervisors, administrators, and clerical personnel are excluded. A faculty member becomes tenured after being employed at the community college for three consecutive school years. The board may extend the probation for an additional year by giving the faculty member notice at least 60 days before the end of the school term, including notice of the corrective actions that need to be taken. The probationary period may be shortened by local board rule or collective bargaining agreement.

4. Discrimination Statutes

Both federal and state laws prohibit an employer from making employment decisions based upon certain prohibited criteria. The employer may not discriminate against an employee based upon race, color, religion, sex, national origin, age, ancestry, marital status, pregnancy, sexual orientation, physical or mental disability, order of protection status, or unfavorable military discharge. The employer may not fail or refuse to hire individuals or otherwise discriminate against them in compensation, terms and conditions of employment, promotion, discharge, discipline, or tenure based upon any of these prohibited criteria. Claims of discrimination can be filed with the Equal Employment Opportunity Commission (EEOC) and the Illinois Department of Human Rights. Under certain circumstances, claims can then be filed in either federal or state

court. The initial elements to prove a discrimination case will vary depending upon the type of discrimination involved (pay, promotion, hiring, etc.). For example, to assert a discrimination claim based on a failure to promote, the complainant must first establish that he or she is a member of the protected class (e.g., racial minority), that he or she is qualified for the position in question, and that they were denied the position. The employer then has the opportunity to present some evidence of a legitimate, non-discriminatory reason for its action. Finally, the complainant has the burden of proving that the reason given by the employer was mere pretext. As with any other case, the person who believes he or she has suffered illegal discrimination must prove the charges with evidence.

C. Collective Bargaining Agreements

Another source of employee rights is the collective bargaining agreement (CBA). Provisions in a CBA often go well beyond rights given by statute or the constitution. These documents are also very flexible since negotiations occur every few years, and provisions can meet changing needs.

If a provision of a collective bargaining agreement is violated, the employee or union may file a grievance. Failure to file within the contractually stated period may result in a loss of rights, so it is very important to meet all grievance deadlines. The final stage of the grievance procedure is binding arbitration. Failure by an employer to comply with an arbitration award can be an unfair labor practice which is filed with the IELRB. See Section III.B.1 for more information on the IELRB. A short video and handout by IEA Associate General Counsel Rob Lyons for members only about grievance processing can be found at the IEA Learning Portal: [Grievance Processing course](#).

D. School Board Policies and Handbooks

Another source of employee rights comes from board policies. A board is bound by the official policies it adopts. Where a collective bargaining agreement exists, board policies may serve as a supplement to those rights.

An employee handbook may also be a source of rights. To create enforceable rights, the language of the handbook must contain a promise clear enough that an employee would reasonably believe that an offer had been made. Second, the statement must be disseminated so the employee is aware of its contents and believes it to be an offer. Finally, the employee must accept the offer by beginning or continuing to work after he or she becomes aware of the handbook provision. If these conditions are met, the handbook becomes a contract binding on the employer.

III. Evaluations, Reductions-in-Force, Dismissals, and Non-renewals

A. Elementary and Secondary Teachers

The laws governing teacher evaluations were amended by the Performance Evaluation Reform Act of 2010 (PERA) and to a lesser extent in 2011 by Senate Bill 7 (SB7). These laws take effect in stages and the timeframe will differ from district to district. All districts must fully implement the changes in 2016-17. For purposes of this section, “PERA implementation” means the date on which a school district is required to use student growth indicators as a significant factor in summative evaluation ratings for teachers.

1. Teacher Evaluations

All public school districts must develop evaluation plans for its teachers. The plans must meet the minimum standards set forth in the School Code and in regulations issued by the State Board of Education. See Part 50 rules. At the end of the evaluation, a teacher ultimately receives a summative rating of “excellent,” “proficient,” “needs improvement,” or “unsatisfactory.” The summative rating must include a description of the teacher’s strengths and weaknesses. All evaluations must be conducted by an administrator or peer evaluator who has successfully completed a pre-qualification program provided by the State Board of Education and been successfully retrained during every license renewal cycle. You can check whether an evaluator has passed the pre-qualification program by looking at the State Board of Education website. www.isbe.net.

Tenured teachers must be given a summative evaluation rating at least once every two years. However, tenured teachers who receive an “unsatisfactory” or “needs improvement” rating must receive a full summative evaluation in the year following the “unsatisfactory” or “needs improvement” rating. Probationary teachers must receive a summative evaluation rating at least once every year.

To meet the State Board of Education requirements, all tenured teacher evaluations must include at least two in-person observations of the teacher in the classroom. One of these observations must be a “formal” observation, meaning that both pre-observation and post-observation conferences must be held and the evaluator must observe the teacher for at least 45 minutes, an entire lesson, or an entire class period. All probationary teacher evaluations must include at least three in-person observations of the teacher in the classroom, and two must be “formal” observations.

Once a school district is required under PERA to include student growth indicators as a significant factor in a teacher's evaluation, at least 30% (25% in the first two years of implementation) of the summative evaluation rating must be based on student growth. In districts outside of Chicago, student growth cannot be measured by how the students perform on state tests such as ISAT/PSAE. Each district is required to form a joint committee of equal district and union representatives to determine which factors and data will be used to measure student growth. If the joint committee fails to reach consensus regarding how student growth will be incorporated into the summative evaluation rating, the plan will default to a model plan developed by the State Board of Education. The minimum requirements of the state default plan can be found here: <http://www.isbe.net/rules/archive/pdfs/50ARK.pdf>.

A video webinar developed by IEA's Center for Educational Innovation provides more information about the major components of PERA and the use of student growth on the evaluation process: Follow this link for the webinar conducted on 5/10/12: [Illinois Performance Evaluation and You](#).

A tenured teacher who receives a "needs improvement" rating must complete a Professional Development Plan (PDP). The district is required to develop the plan in consultation with the teacher. The purpose of the PDP is to specifically address the areas of teaching practice identified in the summative evaluation as needing improvement and provide guidance, support, and activities to the teacher designed to help improve teaching practice in those areas. The PDP must be created within 30 school days of receiving the "needs improvement" rating. The plan must take into account the teacher's ongoing professional responsibilities including the regular teaching assignments. The School Code does not establish the duration of a PDP, set forth any requirements to observe or evaluate a teacher on a PDP, or require that a summative rating be issued upon completion of the PDP. Your district and local union may provide for these and other details concerning a PDP. Tenured teachers receiving a "needs improvement" rating must receive a summative evaluation in the school year following the "needs improvement" rating.

A tenured teacher who receives an "unsatisfactory" rating must complete a remediation plan. The district is required to develop the plan in conjunction with the remediating teacher and with a consulting teacher who has at least five years of teaching experience and an excellent rating who has been selected to assist the teacher in the remediation. The purpose of the remediation plan is to specifically address the teaching practice identified in the summative evaluation as deficient and provide guidance, support, and activities to the teacher that are designed to help remediate teaching practice. The remediation plan must be created within 30 *school days*. The remediation plan lasts for 90 school days unless a collective bargaining agreement provides for a shorter period. During the remediation period, the teacher must be assessed by a qualified evaluator at 45 days and at the end of the period. If the teacher is rated satisfactory at the end of the remediation period, he or she is returned to the regular evaluation schedule. If teacher is rated unsatisfactory at the end of the remediation period, the teacher must be dismissed according to the specifications of Section 24-12 of the School Code.

2. Reductions in Force – Honorable Dismissals of Teachers

Beginning with the 2011-2012 school year, the law determining layoff order changed. According to SB7, RIF and recall procedures are now based on the teacher's license, qualifications, performance evaluations, and seniority. Tenured teachers may be RIF'd before probationary teachers if the tenured teacher(s) have lower performance evaluations.

A video by IEA Associate General Counsel Rachel Clark explaining teacher RIF order can be found [here](#). See Chapter 3 for the video for teachers.

If a summative evaluation rating was not given when scheduled, the teacher will be considered to have received a rating of "proficient," as long as the teacher has had at least one prior evaluation in the district. Additionally, the teacher should check with their union representative to see if they have rights to grieve evaluation process violations under the CBA or otherwise challenge an evaluator's failure to provide a summative rating.

Once summative ratings are given, the district must categorize each teacher into one or more positions for which the teacher is licensed and qualified (based upon legal qualifications and qualifications in the job descriptions established on or before May 10th of the school year prior to the RIF). For each position (i.e., "art teacher," "social worker," etc.), the district must establish four groupings of teachers based upon the teachers' last two performance evaluations as follows:

- 1) part-time teachers and probationary teachers who have not received a summative evaluation rating;
- 2) teachers who have received at least one "needs improvement" or "unsatisfactory" summative evaluation rating in their last two evaluations;
- 3) teachers whose last two summative evaluation ratings are no lower than a "satisfactory" or "proficient;" and
- 4) teachers whose last two performance evaluation ratings are "excellent," or two of the last three evaluations are "excellent" and the third is "satisfactory" or "proficient."

The RIF must begin with Group 1 and end, if necessary, with Group 4.

- 1) Teachers in Group 1 are dismissed in any order, at the discretion of the district.
- 2) Teachers in Group 2 are dismissed by subgroups created by averaging the teachers' performance evaluation ratings.
 - a. Teachers with the lowest average are dismissed before teachers with a higher average.
 - i. (1 for "unsatisfactory" + 3 for "proficient" = subgroup 2; 2 for "needs improvement" + 3 for "proficient" = subgroup 2.5)

- b. Teachers with the same average are dismissed by inverse seniority (*i.e.*, teachers with the least amount of continued service with the school are dismissed first), unless a CBA provides otherwise.
 - i. (1 for “unsatisfactory” + 3 for “proficient” = subgroup 2; 2 for “needs improvement” + 2 for “needs improvement” = subgroup 2)
- 3) Teachers in Group 3 are dismissed by inverse seniority without subgroups.
- 4) Teacher in Group 4 are also dismissed by inverse seniority without subgroups.

A joint committee of equal district and teacher representatives can agree, by majority vote, to set criteria that would allow teachers to move from Group 2 to Group 3, from Group 3 to Group 4, and/or create an alternate definition of Group 4. Your CBA may have other procedures.

At least 75 days before the end of the school term, the district is required to post the annual RIF list establishing the sequence of honorable dismissals categorized by positions and groupings but without the names of the teachers. Adjustments to the list are allowed from 75 days until 45 days before the end of the school term for teachers in Group 1 who receive a summative evaluation rating before the RIF notices are sent. If there is an error in the RIF list, it must be challenged and brought to the district’s attention immediately. In addition, the district is required to post a list of teachers’ seniority in the district, at least 75 days before the end of the school term.

If the joint committee (made up of an equal number of district and teacher representatives) notices a trend in which more senior teachers have received lower evaluations and therefore more likely to be RIF’d, there are three lines of defense: First, a joint committee member can request from the district a list (without the teachers’ names) of all teachers’ previous and current evaluation ratings and the number of years worked. After receiving this information, the committee members may request that the full committee review the data. After such review, the committee or a member may submit a report flagging any inconsistencies to the school board and union and can be released to the media and public. Second, if the information reveals possible age discrimination, an employment discrimination charge can be filed. Third, if the information reveals that union activists or supporters have received lower evaluations, an unfair labor practice charge can be filed.

If the district decides to proceed with the RIF, written notice must be given to the teachers being dismissed at least 45 days prior to the end of the school term together with a statement of honorable dismissal. Any teacher honorably dismissed must be paid earned compensation on or before the third business day following the end of the school term.

A teacher who is honorably dismissed may have recall rights. Teachers (tenured and non-tenured) in Groups 3 and 4 are recalled in reverse order of RIF if a position that teacher is qualified to teach (based upon legal qualifications and qualifications included in the job descriptions on or before May 10th of the previous school year) becomes vacant within one calendar year from the beginning of the following school term. In certain circumstances, these

recall rights extend to two years. Teachers in Group 2 are recalled if positions become available before February 1 of the school year following the RIF and if the teacher is in Group 2 due to one “needs improvement” rating and one “proficient” or “excellent” rating. Teachers in Group 2 due to an “unsatisfactory” rating of any kind do not have statutory recall rights nor do teachers in Group 1. Teachers without statutory recall rights may be considered for recall under a CBA.

Additionally, if a special education joint agreement is dissolved, tenured special education teachers are placed on all member districts’ RIF lists and are RIF’d first according to the same criteria as teachers employed by the member districts (license/qualifications, performance evaluation rating, and inverse seniority).

A teacher’s grouping and ranking on a RIF list are considered part of the teacher’s performance evaluation, and therefore are prohibited from disclosure under the Personnel Records Review Act. However, disclosure to the union is required.

3. Non-Renewal of Non-Tenured Teachers

There are currently two sets of rules for the non-renewal of non-tenured teachers, depending upon whether the teacher was first employed by his or her district prior to or on or after the district’s PERA implementation date. Teachers first employed full-time by their district prior to the PERA implementation date are subject to a four-year probationary period. First, second, and third-year probationary teachers have the least statutory protection. To non-renew them, the district need only give written notice, at least 45 days prior to the end of the school term, that it does not intend to re-employ them for the following year. No reasons must be given. A fourth-year teacher must be given written notice of dismissal at least 45 days prior to the end of the school term delivered by certified mail, and the notice must state the specific reasons for dismissal. Fourth-year probationary teachers do not have a right to a hearing when they are non-renewed unless there is a specific provision in a CBA, employee handbook, or board policy that provides a right to a hearing

Teachers hired full-time on or after the PERA implementation date are subject to three types of probationary periods based on the teachers’ evaluation ratings. First, a teacher is tenured after a four-year probationary period where a teacher receives an annual evaluation of at least “proficient” or higher in probationary year two or three, and at least a “proficient” or higher rating in year four. If a teacher fails to meet these requirements, the teacher must be dismissed at the end of the fourth year. Second, a teacher is tenured after three consecutive years of receiving annual “excellent” evaluation ratings. Third, if a teacher who was tenured in one district and received a rating of at least “proficient” in the last two PERA-based evaluations in her that district later starts to work in a new district, the teacher is tenured either when he or she receives two consecutive, annual “excellent” evaluation ratings from the new district or completes a four-year probationary period with “proficient” ratings. The non-renewal rules remain the same after the PERA implementation date.

If the school fails to provide the 45 day written notice of dismissal to any probationary teacher, the teacher is automatically renewed for the next year, unless he or she is required to be dismissed for failure to receive an annual evaluation of at least “proficient” or higher in probationary year two or three, and at least “proficient” or higher in year four after PERA implementation.

A non-tenured teacher who is terminated in the middle of the school year does have a right to a hearing prior to dismissal and may likely have other due process and contractual protections. Additionally, non-tenured teachers may not be dismissed for illegal reasons, such as sex, race, age, disability, or union discrimination.

4. Tenured Teacher Dismissals

A tenured teacher who is dismissed for cause has a number of statutory protections. If the district decides to dismiss a teacher, written notice of the charges, including a bill of particulars and the teacher’s right to request a hearing either before a mutually selected hearing officer whose cost will be split equally between the teacher and the district, or a district-selected hearing officer whose cost is fully paid by the district, must be mailed to the teacher and served upon the teacher either by certified mail, return receipt requested, or personal delivery with receipt. The teacher has seventeen days in which to request in writing that a hearing be scheduled. If no hearing is requested, the teacher is considered to be discharged. Requests for a hearing must be made to the secretary of the local board of education.

If the teacher requests a hearing before a mutually selected hearing officer, the Illinois State Board of Education (ISBE) is notified and provides to both the school board and the teacher a list of five impartial hearing officers certified by a national arbitration organization with five years of experience in labor and employment matters and trained by the ISBE on evaluative and non-evaluative dismissals. Both sides alternately strike the names to arrive at the person who will serve as the hearing officer or may request a second list from the ISBE. If there is no suitable hearing officer on the list, then both sides may also mutually agree to select a hearing officer who is not on a list provided by the ISBE. If the teacher requests a hearing before a district-selected hearing officer, the district must select a name from the master list of qualified hearing officers provided by the ISBE.

If the teacher requests a hearing, he or she must file an answer to the bill of particulars with any affirmative defenses. A hearing is then scheduled within 75 days of selecting the hearing officer and must be concluded within 120 days. At least 10 days prior to the hearing, each side must disclose to the other side a summary of the facts or opinions of each witness who will be called to testify and documentary evidence that will be used to present their case. The teacher’s initial answer and affirmative defenses must be updated after the pre-hearing discovery. At the hearing,

the district has the burden of proving by a preponderance of the evidence that cause exists for dismissal (and, if appropriate, that the cause is irremediable). Each side has three days to present its case (or two days for a dismissal under Performance Dismissal Option 2 discussed below). Both sides have a right to be represented by counsel and to cross-examine each other’s witnesses. All testimony is taken under oath and transcribed. The costs of the court reporter will be paid by the party or parties paying for the hearing officer. Any post-hearing briefs must be submitted by the parties no later than 21 days after a party’s receipt of the hearing transcript.

Decisions for teacher dismissal cases are handled differently depending on whether the teacher is being dismissed for misconduct or unsatisfactory performance. There are two ways in which teacher performance dismissal cases can be handled depending on whether the district has implemented PERA and whether the district opts to use the alternative PERA evaluation dismissal process.

a. Performance Dismissal Option 1—available before and after PERA implementation

The issues before a hearing officer in a hearing for performance dismissal are whether the performance was unsatisfactory, the evaluations were valid or appropriate, whether the remediation plan was properly implemented, and whether the unsatisfactory performance was successfully remediated. At the conclusion of the hearing and filing of briefs, the hearing officer is required to issue a written decision within 30 days, determining whether to retain or dismiss the teacher. If the hearing officer fails to provide a decision within 30 days without good cause, then a new hearing officer may be mutually selected by the parties to rehear the charges.

If the hearing officer’s decision is in favor of the teacher, then the teacher is reinstated in the same or substantially similar position, and the hearing officer determines how much the district must compensate the teacher for lost pay and benefits.

If the hearing officer finds against the teacher, the teacher is dismissed. This decision may be appealed to circuit court, but the issues considered on appeal are limited. No new testimony is taken, and the court may only reverse the decision of the hearing officer if it is against the manifest weight of the evidence or if a procedural error exists.

b. Performance Dismissal Option 2—PERA Evaluation

After its PERA implementation date, a district has the option to follow an alternative performance (i.e. poor evaluation) dismissal procedure. Before it has the option to use this dismissal process, the district must first train its school board members in the PERA evaluation system. Under PERA, a teacher can only be dismissed for cause by receiving a PERA evaluation of “unsatisfactory” and subsequently failing to complete a remediation plan with a rating of “proficient” or higher. During the remediation period, the district must select a second evaluator

from a list jointly compiled by the district and the union. The second evaluator is used during the remediation process to either conduct the mid-point and final remediation evaluation or conduct an independent assessment of whether the teacher completed the remediation plan with a “proficient” or higher rating. The second evaluator cannot be someone who reports to the evaluator who gave the initial “unsatisfactory” summative rating. For a district to initiate this type of dismissal, it must provide written notice to the teacher within 30 days after the final remediation evaluation is completed along with a copy of the teacher’s evaluation.

In addition to the hearing officer selection process and pre-hearing procedures listed above, the hearing officer must also have completed an ISBE pre-qualification program regarding PERA performance evaluations. The issues considered at the hearing are limited to whether the teacher’s summative “unsatisfactory” performance evaluation rating that led to the remediation, the remediation plan itself, and the final remediation evaluation each met the PERA guidelines. The hearing officer will only give weight to the teacher’s PERA performance evaluations relevant to the scope of the hearing. Each party will be given two days (instead of three) to present their case. The district has the burden to prove, by a preponderance of the evidence, why the teacher should be dismissed. In instances where the second evaluator conducts an independent assessment and finds the teacher “proficient,” contrary to the first evaluator finding the teacher “unsatisfactory,” the district can still dismiss the teacher but must show the hearing officer why the first evaluator’s assessment of the teacher was more valid than the second evaluator’s.

After the hearing is concluded, the hearing officer has 30 days to report his or her findings of fact and a recommendation as to whether the teacher should be dismissed for cause to the district. Only PERA-trained board members may vote on whether to retain or dismiss the teacher. The district must issue a written order, stating whether to retain or dismiss the teacher, within 45 days of receipt of the hearing officer’s findings of fact and recommendation. If the board dismisses the teacher contrary to the hearing officer’s recommendation, then the board’s written order must contain its reason for that conclusion. If the board retains the teacher, the board must issue a written order stating the amount of back pay, minus any mitigation costs, to be paid to the teacher within 45 days.

A teacher may appeal a district’s dismissal decision directly to the appellate court. If the hearing officer recommended the dismissal, the district’s decision may only be overturned if it is found to be arbitrary, capricious, an abuse of discretion, or not in accordance with law. However, if the district made the dismissal decision contrary to the hearing officer’s retention decision, then the appellate court can only reverse the decision if it’s against the manifest weight of the evidence. If a teacher successfully appeals the decision for dismissal by the district, then the appellate court will order reinstatement, ordering the district to determine the appropriate amount of back pay, minus mitigation costs. The teacher may challenge the district’s determination of damages through an expedited arbitration procedure paid for by the district.

c. Conduct Dismissal

Causes for dismissal are classified as either remediable or irreparable. If a charge is remediable, the teacher must be given notice in writing stating specifically what conduct, if not corrected, may result in dismissal. The teacher must be given an opportunity to correct the deficiencies. If the conduct is considered irreparable by the district, no prior warning must be given. Conduct is deemed to be irreparable if it causes damage to the students, faculty, or school which could not be corrected if prior notice and an opportunity to correct were given.

The issues before a hearing officer in cases where a teacher is being dismissed for conduct (such as inappropriate or illegal behavior) are whether the misconduct occurred and whether it was remediable or irreparable. The hearing officer must report to the district his or her findings of fact and a recommendation as to whether the teacher should be dismissed for cause within 30 days after the hearing is concluded,.

If the hearing officer recommends that the teacher be dismissed, then the district must issue a written order stating whether the teacher will be retained or dismissed for cause within 45 days of the hearing officer's recommendation. The district's written order must contain the hearing officer's findings of fact unless the district finds those facts are against the manifest weight of the evidence in which case it may modify or supplement the findings of fact. If the district decides to dismiss the teacher for cause contrary to the hearing officer's findings and recommendation, the district's written order must specify the reasons for that conclusion. The teacher has a right to appeal the district's written order to the circuit court. As an added protection to the teacher, the court review must consider both the district's decision and its supplemental findings of fact (if applicable) and the hearing officer's findings of fact and recommendation in making its decision.

If the district retains the teacher, the district must issue a written order stating the amount of back pay, minus any mitigation costs, to be paid to the teacher within 45 days. If the teacher objects to the amount of back pay, and if no resolution is achieved, then the hearing officer will determine the amount the board must pay. Similarly, if a decision for dismissal by the district is appealed and reversed, then the court will order reinstatement, ordering the district to determine the appropriate amount of back pay, minus mitigation costs. The teacher may challenge the district's determination of damages through an expedited arbitration procedure paid for by the district.

B. Higher Education

1. Non-tenured Faculty Members-Community Colleges

Non-tenured community college faculty members must be evaluated pursuant to college rules or by a collective bargaining agreement with the exclusive bargaining representative. Such evaluations are not governed by the evaluation procedures for elementary and secondary education teachers. If the board decides to dismiss the non-tenured faculty member based upon

such an evaluation, written notice must be given at least 60 days prior to the end of the school term or follow other procedures which may be required in the collective bargaining agreement. Specific reasons must be given to the dismissed faculty member upon request.

Non-tenured faculty members have preferential recall rights over new faculty members if they are competent to render the services required by the position. The recall rights exist for a period of 24 calendar months from the beginning of the school term for which the faculty member was dismissed.

2. Tenured Faculty Members-Community Colleges

A tenured faculty member may be dismissed for cause upon a majority vote of the board. Upon request of the faculty member, he or she must be given the specific charges upon which the dismissal is based. The dismissal is final unless a request for a hearing is made in writing within 10 calendar days of the dismissal.

If the dismissed faculty member requests a hearing, a hearing officer is selected from a list of five arbitrators supplied by a nationally recognized arbitration organization. The board and the faculty member alternately strike the names to select the arbitrator who will hear the dismissal proceedings.

At the hearing, the board must prove by a preponderance of the evidence that cause for dismissal exists. Both parties have the right to call witnesses and introduce documentary evidence. The parties may be represented by counsel and may cross-examine each other's witnesses. All testimony is taken under oath and transcribed.

Following the hearing, the arbitrator must issue a written decision. This decision may then be appealed by the losing party to the courts. No new evidence is introduced on appeal. The courts may only reverse a decision of the arbitrator if the decision was against the manifest weight of the evidence or if there were procedural errors.

A tenured faculty member also has certain rights in the event of a reduction in force. Notice must be given at least 60 days prior to the end of the school year together with a statement of honorable dismissal. A tenured faculty member has the right to "bump" any probationary employee or less-senior faculty member who is employed in a position he or she is competent to teach. Bumping rights do not include the right to bump part-time faculty members.

The honorably dismissed tenured faculty member also has recall rights for 24 months from the beginning of the school term for which he or she was dismissed. Recall is in the order of seniority with the most senior person being recalled first. The recalled faculty member must be competent to render the services required by the position. A collective bargaining agreement may provide greater notice and recall rights.

A video by IEA Associate General Counsel Rachel Clark about college faculty RIFs can be found at the IEA Learning Portal: [Community College RIFs](#), see Chapter 2 and more information can be found in the training handouts.

3. Colleges and Universities

There are no state statutes governing the tenure rights of faculty members at colleges and universities. A faculty member who has attained tenure at a public college or university has constitutional rights of due process before being discharged for cause. In addition, most if not all of public and private universities or governing boards have policies concerning the discharge of tenured faculty. A collective bargaining agreement, if one exists, may also be a source of rights.

4. College and University Civil Service Employees

Employees at public colleges and universities, other than principal administrative employees and teaching, research and extension facilities, are protected by the State University Civil Service System. This protection is found in 110 ILCS 70, *et seq.* and should be consulted for the particular institutions covered. A collective bargaining agreement may be a source of additional rights and protections.

A non-faculty employee when newly hired must serve a probationary period from six months to one year. During that time, the employee may be discharged without a hearing. After serving the probationary period, the employee may only be terminated for just cause. The employee must be served with written charges. He or she then has 15 days to request a dismissal hearing. If no hearing is requested, the discharge becomes final.

A hearing is scheduled before a hearing board appointed by the University Civil Service Merit Board. The hearing board makes findings of fact and transmits this together with the transcript of the hearing to the Merit Board. The hearing board makes findings of fact and transmits this together with the transcript of the hearing to the Merit Board. The Merit Board then makes a final decision based upon these recommendations. The decision is subject to review by the courts. However, no new evidence is taken and the decision of the Merit Board may only be overturned if the factual findings are against the manifest weight of the evidence or there are procedural errors.

Non-faculty employees also have certain protections when there is a reduction in force. These protections only apply to those employees who have completed the probationary period. The least-senior employee must be laid off first. Those who are laid off are placed on a re-employment register and are recalled in the order of seniority.

C. Educational Support Professionals (K-12 and Community Colleges)

Educational support professionals (ESP) do not have the statutory protection of dismissal only for cause. However, many collective bargaining agreements do have such protections. If a person covered by such a provision is dismissed in violation of a contract provision, a grievance must be filed within the applicable grievance time lines. The final step of the grievance procedure is binding arbitration.

Protections exist in the case of reductions in force for K-12 ESPs. If the employer decides to reduce the number of educational support professionals employed or discontinue a particular type of service (e.g., cafeteria work), written notice must be given to the affected employees by certified mail at least 30 days prior to the effective date of the RIF. The notice must contain a statement of honorable dismissal and the reason(s) for it. Unless an alternative method is provided by a collective bargaining agreement, reductions must proceed in the inverse order of seniority within the respective “category of position,” with the least-senior employee reduced first. No distinction is made by the statute with regard to probationary or permanent status; thus, all are included in the protection.

If any vacancies occur within one calendar year from the beginning of the following school term, the position becoming available must be offered to the most senior person who was honorably dismissed within that category of position.

A video by IEA Associate General Counsel Rachel Clark about ESP RIFs can be found at the IEA Learning Portal: [ESP RIFs](#), see Chapter 1. As part of the course, there is more information and support found in the handouts.

IV. Leaves

A short video by IEA Deputy General Counsel Paul Klenck about various leave laws affecting educational employees is found on the IEA Learning Portal: [Illness, Incapacity and Fitness for Duty](#). A one-page summary of some leave laws is part of the handouts from this course.

A. Sick Leaves

Illinois law requires school districts and community colleges to provide full-time teachers and other employees who work 600 or more hours in a school year at least 10 full days of paid sick leave each school year. Sick leave is typically awarded at the beginning of each school term. It may be used for personal illness, serious illness or death in the immediate family or household, or birth, adoption or placement for adoption. The School Code provides that an employee may use at least 30 sick leave days for birth or adoption, and a longer period may be negotiated in

local collective bargaining agreements. Unused sick leave may be accumulated to at least 180 days. The amount of sick leave awarded each year or unused leave allowed to accumulate may be increased by the collective bargaining agreement or by board policy. A teacher may not be dismissed or have his or her tenure status affected by temporary physical or mental incapacity.

Federal law requires that persons who are disabled because of pregnancy, childbirth, or related medical condition must be treated the same as other employees. Thus, a woman who is medically unable to work following childbirth is entitled to use accumulated sick leave for this purpose. Sick leave may not be used for an extended maternity leave unless provided for by a collective bargaining agreement, board policy, or allowed for other non-medical leaves.

A school board may, but is not required to, pay employees for unused sick leave when they leave employment. Employees covered by the Illinois Teachers' Retirement System (TRS), the State Universities Retirement System (SURS), and the Illinois Municipal Retirement Fund (IMRF) may credit unused sick leave to increase service credit to enhance retirement benefits and eligibility.

TRS members receive service credit at retirement for unused, uncompensated sick leave. The amount of service credit available can be determined by dividing the number of reportable sick leave days by 170. TRS members may receive up to a maximum of two years of credit. SURS members may receive a maximum of one year of additional service credit for 180 or more days of unused, uncompensated sick leave days. IMRF members may receive a maximum of one year of additional service credit for 240 days of unused, unpaid sick leave days.

B. Family and Medical Leave Act (FMLA)

In general, the FMLA entitles eligible employees to take up to 12 workweeks of job-protected unpaid leave (or to substitute accrued paid leave) per year for the birth and care of a newborn child, adoption or placement of a child for adoption or foster care, care of a family member (child, spouse or parent) with a serious health condition, or the employee's own serious health condition that makes it impossible for him or her to perform the job. Employers covered by the law are required to maintain any pre-existing health coverage during the leave period and, once the leave period is concluded, to reinstate the employee to the same or equivalent job. All school districts are covered by the law, although not all educational employees are eligible. To be eligible, the employee must have worked for the employer for at least 1250 hours during the preceding 12-month period and the employer must have at least 50 employees. Teachers are presumed to have met the 1250-hour requirement.

The FMLA also provides the same type of leave and protections for military families. An employee can take up to 12 workweeks of job-protected unpaid leave per year for any "qualifying exigency" arising out of an employee's spouse, son, daughter, or parent being called into active military duty in a foreign country (in regular or reserve components of the Armed

Forces) to address such issues as attending military sponsored functions, making appropriate financial and legal arrangements, and arranging for alternative childcare. Similarly, an employee who is the spouse, son, daughter, parent or next of kin of a “covered service member” may take up to 26 weeks of unpaid leave per year to care for the service member with a serious injury or illness including veterans who were members of the Armed Forces within the preceding 5 years of being treated for an injury or illness that occurred or was aggravated.

C. Victims Economic Security and Safety Act (VESSA)

VESSA permits employees who are victims of domestic or sexual violence, or who have family or household members who are victims of such violence, to take up to twelve (12) weeks of unpaid leave in any twelve (12) month period to seek medical help, legal assistance, counseling, safety planning, and other assistance. The Act also prohibits employers from discriminating against employees who are victims of domestic or sexual violence or who have family or household members who are victims of domestic or sexual violence. The maximum amount of leave that must be granted depends on the size of the employer. If the employer has 15 to 49 employees, an employee is entitled to a total of 8 weeks of unpaid leave per year; if the employer has 50 employees or more, an employee is entitled to a total of 12 workweeks of VESSA leave per year. The leave may be taken intermittently or at a reduced work schedule in order to address issues arising from domestic or sexual violence including medical attention, victim services, counseling, safety planning, and legal assistance. The employee must provide the employer 48 hours’ notice of taking VESSA leave whenever practicably possible and the employer can require that the employee certify that the VESSA leave is being taken for one of the permitted purposes (for example, provide documentation from a victim organization, attorney, clergy member, medical professional, police or court record, or any other corroborating evidence). A one-page summary of VESSA is on the contained as a handout in the [Leaves Course](#).

D. Other Leaves

The Illinois School Code contains several other leave options for public school teachers:

Sabbatical Leave: A school board may grant a sabbatical leave to a tenured teacher for resident study, research, travel, or other activities determined by the board to improve the school district by improving the quality and level of experience in the teaching force. The length of the leave may be from four months to one year. In order to qualify for a leave, the teacher must have at least six years of satisfactory full-time teaching experience.

During the leave the teacher is paid the normal salary from which may be deducted an amount equal to that paid for substitute teachers. The teacher on sabbatical leave must be paid at least the statutory minimum salary or one-half the

normal salary, whichever is greater. After completion of the sabbatical leave, the teacher must return to the district for at least one school term or repay the district the amount received during the sabbatical. A teacher returning from sabbatical leave must be returned to a position equivalent to that held before the leave. A teacher returning from sabbatical leave does not lose any tenure rights.

Other leave benefits: A tenured teacher who enters *military service* is protected against loss of tenure status. Similarly, a teacher who is elected to the *General Assembly* must be given a leave of absence if one is requested, and leaves must be granted for *service to a state or national teacher organization* that represents teachers in collective bargaining negotiations. Many collective bargaining agreements provide for a variety of leaves including maternity and parental leaves, extended illness leaves, bereavement leaves, and educational leaves. Carefully review your union contract to see if it contains any other leave options.

V. Compensation

A. Extra Duty Pay

Compensation for extra duty work is a mandatory subject of bargaining and extra duty compensation should be set forth in the collective bargaining agreement. Compensation for extra duty work may be creditable to the Teachers' Retirement System ("TRS"), the Illinois Municipal Retirement Fund ("IMRF"), the State Universities Retirement Systems of Illinois ("SURS") and Social Security, as applicable.

Some considerations about extra duty include:

- Teachers and other salaried employees do not earn FLSA overtime for extra duty work and such work is not subject to tenure acquisition or protection unless it involves an extended work year (for example, guidance counselors scheduled to work two additional weeks).
- Unless a collective bargaining agreement states otherwise, teachers may be involuntarily assigned extra duty work if it is reasonably related to the educational program and is not onerous, unreasonably time consuming, demeaning to the profession or assigned in a discriminatory manner.
- A series of one year extra duty contracts will generally not rise to the level of a property right. Unless a collective bargaining agreement provides otherwise, non-renewal of an extra duty assignment does not violate just cause discipline protections.

Absent contractual language or a clearly established past practice, extra duty positions can be filled by non-bargaining unit employees. Educational Support Professionals (ESP's) are

generally subject to overtime requirements for extra duty assignments. ESPs may generally not *volunteer* to do the same work that they regularly perform, without compensation.

B. Vacation Pay

There is no statutory basis to provide for vacation pay. However, vacation pay is a mandatory subject of bargaining. For state university employees, the State University Civil Service Merit Board recommends standards for vacations. Any earned vacation pay, however, must be paid if unused at the termination of employment.

C. Annualized Wages

Many collective bargaining agreements allow both certified and hourly-paid ESPs who work nine or ten months to receive that pay over a 12-month period, thus “annualizing” such employee pay. The employees’ total wages for nine or ten months are computed on an annual basis and the employee is paid in equal installments over a 12-month period. Such salary procedures are generally done for the convenience of the parties and to allow for twelve-month equalization of pay.

For purposes of the Fair Labor Standards Act, annualizing salary does not convert non-exempt employees under the wage and hour laws to exempt salaried employees. The fact that an employee is paid on a salary basis is alone not enough to convert that person to exempt status. If the non-exempt employee works more than forty hours in a work week making the employee eligible for overtime compensation, adjustment must be made to the employee’s salary to accommodate any overtime compensation to which the employee might be entitled. The employer cannot delay paying eligible employees overtime compensation based upon the annualizing of salary or paying a fixed monthly salary. Such overtime compensation must be paid in the next payroll period in accordance with overtime laws.

D. Overtime

The Fair Labor Standards Act (“FLSA”) requires that employers pay non-exempt employees one and one-half times the regular rate of pay for hours **worked** in excess of 40 in a workweek. There is no requirement that overtime be paid if employees work over eight hours a day but less than 40 hours for the workweek, unless contractually agreed to. Paid holidays or other time the employee is paid but does not actually work, is not calculated into the workweek to determine overtime pay, unless contractually agreed. Executives, professionals and administrative employees are exempt from the overtime requirements provided that they meet certain tests under the FLSA.

Under both the FLSA and the Illinois Minimum Wage Law, issues arise concerning the calculation of hours. Wages must be paid for any time that the employer has “suffered or permitted” the work to be performed. For example, an employee may voluntarily continue to work at the end of a shift or may come in early prior to the beginning of the normal work time. If the employer knows or has reason to believe that such employee has worked beyond the normal work time, compensation is required. In most cases an employee is entitled to compensation if he or she is engaged in physical or mental exertion controlled or required by the employer. These include:

- Time spent by an employee changing clothes or washing up after, if that activity is required by the nature of an employee’s job (such as, food service);
- On call time if it is primarily for the employer’s benefit; and
- Meal breaks if the employee’s time is spent primarily for the employer’s benefit (that is, meals taken while monitoring the phone);

The following activities are normally **excluded** from work time:

- Time spent by an employee traveling to and from the actual place of the performance of the work. That is, commuting time is not hours of work. However, travel between work locations, such as different schools may be considered work time;
- Bona fide meal periods of 30 minutes or more if the employee’s time is spent primarily for his own benefit. If an employee is not free from performing work duties (that is, a secretary answering the phone while on lunch) such time may be compensable; and
- Voluntary meetings or trainings not related to the employee’s work and held outside of work hours.

E. Overpayment

As a general rule, money mistakenly overpaid to an employee must be paid back. To avoid such problems, employees should carefully examine their salary schedule placement, withholdings and other payroll documents to make sure they are getting the correct salary amount and that the correct deductions are being made. The employer may not, however, simply deduct an overpayment from future paychecks. It violates the Illinois Wage Payment and Collection Act for an employer to withhold money from a paycheck without first obtaining a judgment or the employee’s concurrence. If the employee does not reach an agreement as to a repayment plan and the employer files suit to recover, the employee may be liable for fees and costs incurred in the bringing of the suit. Before overpayment issues arise, the parties may bargain on how far back overpayment and underpayment claims can be pursued.

F. Illinois Wage Payment and Collection Act

The Illinois Wage Payment and Collection Act (“IWPCA”) covers all public and private school employees, except for state university employees. The Act provides for the prompt payment of wages and resolution of compensation disputes. According to the IWPCA:

- All wages earned by an employee during a semi-monthly or bi-weekly pay period must be paid no later than 13 days after the end of the pay period unless otherwise provided for in a collective bargaining agreement. Employees who are exempt under the FLSA may be paid up to 21 calendar days after the wage was earned;
- Certain deductions may be made from an employee’s pay for such purposes as retirement plans, insurance, savings plans, credit unions, union dues, etc.;
- If employees are on strike, the employer must pay them all wages earned up to the strike on the next regular payday;
- Employees absent from work at the time for payment must be paid upon demand within five days of the payday. Payment can be made by mail if the employee so requests in writing;
- Deductions from wages are prohibited unless they are: (1) required by law (such as income taxes); (2) to the benefit of the employee (such as health insurance premiums, union dues etc.); (3) made pursuant to a valid wage assignment or wage deduction order; or (4) made with the express written consent of the employee, given freely at the time the deduction is made ;
- Cash or other shortages may not be deducted from an employee’s final wages. Acceptance of a paycheck from which such deductions have been withheld does not waive the employee’s rights;
- All earned vacation must be paid as part of the employee’s final compensation unless otherwise provided for in a collective bargaining agreement;
- At the time of termination of employment, final compensation must be made at separation, if possible, but in no case later than the next regularly scheduled payday; In case of a dispute over wages, the employer shall pay without condition or within the time set by this Act, all wages conceded to be due, and any release or restrictive endorsement on the paycheck shall be null and void;
- All wages must be paid in a form that the employee may readily convert to cash (without the need of a bank account) unless the employee volunteers to be paid by direct deposit into an account of the employee’s choice; and
- The Department of Labor is authorized to assist any employee and act on his/her behalf in the collection of wages due him/her. An employee can file a claim with the Illinois Department of Labor in Springfield or Chicago. If a collective bargaining agreement

exists, the Department of Labor will defer enforcement to the exhaustion of administrative remedies found in the agreement. A private right of action may be brought within five years of the occurrence.

VI. Resignations

Timelines and restrictions on resignations may be set out in a collective bargaining agreement, board policy, or individual contract. If such timelines exist and an employee violates the timeline requirement, he or she may be subject to a breach of contract suit. A successful breach of contract action may result in the employee having to pay for any damages caused by the resignation (e.g., costs of substitutes, advertising, interviewing, etc.). Furthermore, some agreements contain a “liquidated damages” provision, which sets out a sum of money the employee owes if the employee does not follow the required resignation procedure and timeline. Resignations usually make the employee ineligible for unemployment benefits.

There are conflicting court opinions on a public employee’s ability to rescind a resignation. One court held that a teacher must act to withdraw the resignation prior to the district taking any action to accept or act on the resignation. Once the employer acts on the resignation, an attempt to withdraw the resignation is ineffectual. However, another court held that once a public employee submits a resignation either effective immediately or on a future date, the resignation is an unalterable fact and the employee cannot withdraw the resignation.

Teachers have additional requirements under Section 24-14 of the School Code which establishes rules for when and how a certified employee can resign. Although the statute refers to tenured teachers, an Illinois court has held that the rules apply to probationary teachers as well. The statute states that a teacher “may resign at any time by obtaining concurrence of the board or by serving at least 30 days’ written notice upon the secretary of the board. However, no teacher may resign during the school term, without the concurrence of the board, in order to accept another teaching assignment.” A teacher who resigns without following these statutory timelines and requirements is “guilty of unprofessional conduct” and could have the teaching license suspended for up to a year. If a teacher resigns before classes commence, but fewer than 30 days before the start of classes, the teacher either has to get the board’s concurrence or work into the school year to meet the 30 days.

VII. Personnel Files

Under the Illinois Personnel Records Act, an employee may request in writing that the employer permit him or her to inspect any personnel documents that have been or may be used in determining the employee’s qualifications for employment, promotion, transfer, additional compensation, discharge, or other disciplinary action. The employer must grant at least two inspection requests within a calendar year. The right of inspection does not apply to letters or

reference, employment test documents (although test scores may be seen), materials related to the employer's "staff planning" including business development unless those materials are used to determine an individual employee's qualifications, and certain employer investigatory or security records relating to employee criminal conduct. The law applies to active employees, employees on leave of absence or layoff who are subject to recall, and employees who have left employment within the last year.

Upon request, an employee has the right to submit a written explanation of any statement in his or her file if the employer will not agree to remove or change that statement, as well as obtain a copy of all or part of the information contained in his or her file. Furthermore, an employer is prohibited from divulging any disciplinary report, letter of reprimand, or other disciplinary action to a third party unassociated with either the employer or the employee's bargaining agent, without giving written notice to the employee by first-class mail. However, an employee may waive such written notice by a written, signed employment application form with another employer.

If an employee is denied his or her right under the Act, or an employer otherwise violates the Act, the employee can file a complaint with the Illinois Department of Labor or commence an action in court if the Department fails to act. Furthermore, many collective bargaining agreements and board policies allow an employee access to his or her files, including the right to review, to make copies, and to place in the file written rebuttals to misleading or false information.

There are specific instances when educational employees have the right of access to personnel files even if this is not guaranteed by contract. If an employee has filed a grievance or unfair labor practice, pertinent information, including a personnel file, can be requested. Similarly, tenured faculty who are being dismissed for cause have discovery rights. An employee can request copies of the complete personnel files to obtain information necessary to advance the case.

The evaluation law covering primary and secondary teachers also provides that a copy of all evaluations must be provided to the teacher and must be kept on file. Copies of these evaluations should be kept by the teachers in case the need ever arises for their use. However, the Freedom of Information Act (FOIA) prohibits teachers' performance evaluations from being disclosed.

VIII. License Revocation and Suspension

A teaching license may be suspended for up to five years or revoked upon evidence of immorality, a condition of health detrimental to the welfare of pupils, incompetency, unprofessional conduct, the neglect of any professional duty, abuse or neglect of a child, the willful failure to report an instance of child abuse or neglect, failure to repay an Illinois guaranteed student loan or other just cause. Incompetency includes receiving two unsatisfactory

evaluations within a seven year period. Suspension and revocation proceedings may be initiated only by the state superintendent. The superintendent may, in addition to or in lieu of suspension or revocation, require the teacher to seek professional development.

Before a license may be suspended or revoked, charges must be served on the teacher. The teacher may request that a hearing in the regional office of education held pursuant to rules adopted by the State Educator Preparation and Licensure Board and the State Board will issue a final decision.

A final decision to revoke or suspend a license may be appealed to the courts.

If a license holder is convicted of certain sex or narcotics offenses, a teaching license is automatically suspended. If the conviction is reversed on appeal and the person is acquitted following a new trial or charges are dismissed, the suspension is lifted. If the conviction becomes final, the license is automatically revoked.

IX. Employee Liability

Educational employees often express concern whether they can be held personally liable for injuries occurring to students or other employees in the course of their work. There are a number of ways in which employees are protected from such liability.

A video by IEA Deputy General Counsel Paul Klenck explaining employee liability protections and the NEA EEL policy is available for members only on the IEA Learning Portal: [Liability and Criminal Defense Protection](#)

A. Indemnification

School districts and community colleges are required to indemnify (hold harmless) teachers and other employees against liability arising out of civil rights claims, death and bodily injury, and property damage claims sought for negligent or wrongful acts occurring during the scope of employment or under the direction of the board. The protection includes the cost of defending such actions as well as any damages which might actually be awarded. This protection includes extracurricular activities as well as events occurring during normal school hours.

B. Educators' Liability Insurance

In addition to this statutory protection, IEA-NEA members are covered by Educators' Employment Liability (EEL) insurance, which provides additional coverage of one million dollars and monitoring of the legal defense provided by the school. Although a few activities are

excluded, all IEA-NEA members and fee payers have professional and personal liability protection underwritten and administered by Nautilus Insurance Company.

This same EEL protection extends to members who must defend themselves against criminal charges by reimbursing attorney fees and legal costs up to \$35,000 when the member is found innocent of such charges. Some additional coverage is provided for posting bail or for damage to personal property when assaulted at school. This policy protects IEA-NEA members only for legal actions that arise out of the member's educational employment and is subject to some restrictions and exclusions.

In addition, health-related fields such as nursing may purchase additional liability insurance at a low cost through NEA.

A copy of the policy and more information on EEL protection is available on the members' only section of the IEA website at Benefits/Educators Employment Liability Insurance.

C. Standard of Proof

A student who sues a school district or school employee for injuries incurred in the course of school activities must prove more than mere negligence. The student must prove that the school employee was guilty of willful and wanton misconduct. This means a course of action that shows an actual or deliberate intention to cause harm or an utter indifference to or disregard for the safety of others. Therefore, mere carelessness is not sufficient to recover damages.

This high standard of proof makes it difficult to recover damages except in the most egregious circumstances. As stated earlier, the school board will be required to pay any damages assessed unless they include punitive damages. Even here, your IEA-NEA Educators' Employment Liability insurance provides some protection for such damages.

X. Open Meetings Act

The Open Meetings Act establishes that public boards, including educational employers, must hold meetings that are open to the public. The board must give notice of the schedule of its regular meetings with dates, times, and location at the beginning of each year. At least 48 hours before each regular meeting, the agenda must be continuously posted at the principal office of the public body, at the location of the meeting, or on the public body's website. The notice must provide the subject matter of the meeting and any resolution or ordinance that will be the subject of the final action of the meeting. Items not on the agenda can be discussed, but such items cannot be voted on. It must also give at least a 48-hour notice of any special meetings, including the agenda. Members of the public must be given an opportunity to speak at a public meeting, but the board can adopt rules regarding public comment procedures, including limiting the time allotted for the public to speak.

At all meetings, minutes must be taken that are then available to the public on the public body's website (if any) within 10 days after the approval of the minutes by the board. These minutes must include a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken. All sessions, with a few exceptions, must be open. Some exceptions to the requirement for open meetings which pertain to educational employers are discussions concerning appointment, employment compensation, discipline, performance or dismissal of specific employees, deliberations on collective bargaining matters or salary schedules, meetings to discuss litigation or probable litigation, the placement of students in special education programs, and student discipline cases. Minutes of executive sessions must be maintained by the board but need not be made public under most circumstances.

Any final action taken in open session on a matter that was discussed in closed session must be preceded by a public recital of the nature of the matter discussed in closed session. A general description of a confidential matter would be sufficient as long as it informs the public of the business being conducted. In addition, a public body must review semi-annually the minutes of all closed sessions to determine whether confidentiality still exists. After making this determination, the body is required to report in open session and make available for public inspection those minutes that no longer require confidential treatment.

Any person found to have violated any portion of this Act (except the requirement that public employees be trained on the compliance of this Act) is guilty of a Class C misdemeanor. If a board fails to comply with this Act, any person may file suit within 60 days of the alleged violation to force compliance. A court may issue appropriate relief if a violation is found, including requiring a meeting be open, enjoining future violations, ordering that executive session minutes be made public, or declaring any final action taken at a closed meeting to be null and void. Under some circumstances, attorney fees can also be awarded to the prevailing party.

Alternatively, any person who believes that the board failed to comply with this Act may file a request for review with the Public Access Counselor of the Attorney General's Office within 60 days of the alleged violation. The Public Access Counselor may request relevant documents from the board (which cannot be publicly disclosed under FOIA), however, the board is not required to answer. If the board does provide an answer or a redacted answer, the Public Access Counselor will provide a copy of that answer to the person who filed the request for review who may then provide his or her own response. The Public Access Counselor shall consider the request, response, reply, and any other supporting materials provided to either issue a binding opinion including findings of fact and conclusions of law or recommend the parties to mediation. If the Public Access Counselor issues a binding opinion finding a violation of the Act, the board is required to take immediate necessary steps to comply with the directive of the opinion, or it may appeal to circuit court. If the Public Access Counselor doesn't find a violation, the requester can also appeal. The [Illinois Attorney General](#) provides detailed resources about the Open Meetings Act, including copies of Public Access Counselor opinions.

XI. Pensions

Thirteen different Illinois pension systems cover various public employees, though most IEA members are participants in one of three systems. Teachers employed in primary and secondary schools are covered by the Illinois Teachers' Retirement System ("TRS"). Non-teaching employees in these districts are covered by the Illinois Municipal Retirement Fund ("IMRF"). Employees of public colleges, universities, and community colleges, including both teachers and educational support professionals, are covered by the State Universities Retirement System ("SURS").

The pensions provide for a variety of benefits including retirement, disability and death benefits. The three systems are reciprocal, meaning service credit earned in one system will usually be counted in determining benefits in another system.

A. IMRF

All school districts are IMRF employers. Employees who are *expected* to work at least 600 hours in a year are covered by IMRF. Employees hired before January 1, 2011 are considered Tier 1 employees and those hired on or after January 1, 2011 are Tier 2. Members contribute 4.5% of wages, though Tier 2 employees are capped at contributing on earnings up to \$111,571 in 2015 (with the amount adjusted upwards each year.) The employer's contributions are calculated annually and based upon its employees' salaries, ages, years of service credit and the return on IMRF's investments. Employees may qualify for additional service credit through uncompensated, unused sick leave and may purchase service credit under other special conditions.

Employees are eligible for temporary disability benefits if they have a mental or physical condition that makes them unable to perform the duties of any position reasonably assigned to them. They can then receive disability benefits for a period equal to one-half of their service credit, but for no longer than 30 months. They continue to earn service credit while receiving disability benefits. The benefits amount to 50% of their average monthly salary. Once an employee has exhausted their temporary disability benefits, if they continue to be unable to engage in *any* gainful activity, they may qualify for permanent disability benefits.

Death benefits are available for spouses and designated beneficiaries. Benefits vary on the length of service credit, whether the death was work related and whether the person is a Tier 1 or 2 participant.

Tier 1 employees are eligible after eight years of service credit and for normal retirement at age 60, or early retirement at age 55. Tier 2 participants must have 10 years of service credit with normal retirement at age 67 or early retirement at 62. Early retirement benefits are reduced by a formula related to age and years of service credit. Benefits are determined by years of service and the “final rate of earnings” which is an average of prior earnings.

B. SURS

Nearly all employees of the 65 state universities, colleges and community colleges are SURS participants. Employees can choose to be in the traditional defined benefit plan, a portable defined benefit plan or a self-managed plan. Employees must make an irrevocable choice within the first six months of employment. Employees contribute 8% of gross earnings, though Tier 2 employees (who started on or after January 1, 2011) are capped at contributing to any salary above about \$109,000, adjusted annually. The state contribution is determined annually, except that employees in the self-managed plan receive an annual 7.6% state contribution. Employees earn service credit while working or on disability and can receive additional credit for unused, unpaid sick leave, and can purchase service credit in some other circumstances.

Employees with two years of service credit are eligible for disability benefits if they become unable to perform their job. They can then receive 50% of their average earnings. The benefits continue while disabled until the member has received an amount equal to half their total earnings while a retirement system participant. The employee continues to earn service credit while getting disability benefits. If the employee continues to be permanently disabled (and they were not in the Self-Managed Plan), they may be eligible for a disability retirement allowance equal to 35% of their basic compensation before disability.

Death benefits are available for spouses and designated beneficiaries. Benefits vary on the length of service credit and whether the person is in the Traditional or Portable or Self-Managed Plan.

Employees under all Plans are eligible to retire at any age with 30 years of service. Under the Self-Managed Plan employees can also retire at age 55 with eight years of service or age 62 with five years of service. Under the Traditional and Portable Plans, Tier 1 employees are eligible for retirement at age 60 with eight years of service or age 62 with five years of service, and Tier 2 employees are eligible at age 67 with ten years of service. Employees may be eligible for reduced benefits at a younger age. Benefits are determined by a formula using years of service credit and average earnings. Alternative formulas may be used if they result in greater benefits.

C. TRS

Teachers and certificated employees employed by public schools and charters outside of Chicago participate in TRS. Employees hired before January 1, 2011 are considered Tier 1 employees and those hired on or after that date are considered Tier 2. Additional legislation affecting benefits was enacted on December 5, 2013. IEA was a member of a coalition challenging the constitutionality of that law, and was victorious in getting the state Supreme Court to declare the 2013 changes unconstitutional. Further efforts to amend the law are likely.

Members contribute 9.4% of salary on all credible earnings. The employer also makes contributions and the state provides additional funding. Employees earn service credit while working or on disability and can receive additional credit for unused, unpaid sick leave, and can purchase service credit in some other circumstances.

No minimum service requirements are necessary for disability due to a work related injury, but for other conditions which result in the teacher becoming unable to perform the duties of the position, the teacher must have three years of service credit. The employee may then receive 40% of their contract rate of pay (60% if an occupational disability). The employee can receive non-occupational benefits for a period equal to one-fourth of their service credit. The employee continues to earn service credit while getting disability benefits. Thereafter, the teacher may be eligible for a disability retirement annuity equal to 35% of their last contract rate of pay.

Death benefits are available for spouses and designated beneficiaries. Benefits vary on the length of service credit and whether the person is a Tier 1 or 2 participant.

Tier 1 employees are eligible to retire at age 55 with 35 years of service, age 60 with 10 years or age 62 with 5 years. A discounted annuity is available at age 55 with 20 years of service. Tier 2 employees are eligible to retire at age 67 with 10 years of service. A discounted annuity is available at age 62 with 10 years of service. Benefits are determined by a formula using years of service credit and average earnings.

D. Felony Convictions

Each of the systems provides that members who are convicted of any felony relating to or arising out of or in connection with his or her services as an employee forfeits benefits to which they may be entitled.

E. Other disability and retirement issues

Your collective bargaining agreement may provide for supplemental disability benefits or you may qualify for social security disability insurance or supplemental security income. Additionally, your collective bargaining agreement may provide for additional supplemental retirement savings plans such as 403(b), 457(b) and 401(a) Plans. You should consult with your Association Representative to learn more about these options.

XII. Child Abuse and Neglect

A video presentation on the IEA Learning Portal by IEA Associate General Counsel Betsy Pawlicki explains mandated reporter obligations, the investigation process and how to avoid false charges: [DCFS Investigations](#). Additional materials about DCFS prepared by the IEA legal department for members such as a DCFS Checklist and Brochure can be found by taking the course and going directly to Chapter 2.

A. Reporting Requirements

All educational personnel are required by law to report to the Department of Children and Family Services (DCFS) if they have reasonable cause to believe that a child known to them in their professional or official capacity may be an abused or neglected child. A report made by an educational employee to the person in charge of the educational institution does not relieve the employee of the duty to report to DCFS. The identities of reporters, witnesses, and subjects of the report are confidential under law. Traditional privileges such as that between a counselor and student do not relieve the person of the obligation to report child abuse or neglect. Abuse includes such things as physical abuse, a substantial risk of physical or emotional injury, torture, sexual abuse, or excessive corporal punishment. Neglect includes the denial or lack of basic necessities such as food, clothing, shelter, and medical care.

When an educational employee makes a report to DCFS, the employee, may also inform the principal, superintendent or other supervisor that a report has been made. Such a report to a supervisor is not required by law, but may be required by local school district policy. This supervisor may not interfere with the filing of a DCFS report. Willful failure to file a report where required may be a misdemeanor and can result in the suspension or revocation of a

person's teaching license. A person acting in good faith in making a report or participating in an investigation has immunity from civil and criminal liability, related to making the report.

B. Investigation of Reports

The Department of Children and Family Services is required to investigate all reports of suspected child abuse or neglect. If, after an initial investigation, it appears that there is a good-faith indication of abuse or neglect and the person named as the alleged perpetrator is employed in an activity resulting in frequent contact with children and the alleged abuse occurred in the course of such employment, DCFS is required to notify the school district that it has begun a formal investigation.

The investigation is to be conducted in the most unobtrusive manner possible. A school employee accused of child abuse has the right to have his or her supervisor, union representative, and attorney present when interviewed by the DCFS representative. An employee accused of child abuse should never speak to the DCFS investigator before first consulting his or her union representative.

Once the investigation is completed, the Department will determine that the report is either "indicated" or "unfounded." The Department only needs to establish the low threshold of "credible evidence" to indicate. If the Department determines that the report is "indicated," it is placed on the DCFS Central Registry where it will remain for a minimum of five years. School superintendents have access to information contained on the Central Registry. A superintendent is required to inform the State Board of Education, the school board, and the chief administrator in the school where the alleged perpetrator is employed, that the person has been named as a perpetrator in an indicated report.

Being named as a perpetrator in an indicated report may be grounds for suspension or revocation of a teaching license. Also, a failure to disclose a DCFS indicated report on a teacher's initial or renewal licensure application can result in a license suspension or revocation. See Section VIII for more detail on license renewal and suspension.

C. Appeal Rights

A person named as the subject of an indicated report has the right to request the Department to amend, expunge information from, or remove the report from the Central Registry by filing a request with the Department within 60 days of notification of the indicated report. Upon filing of such a request, the Department will conduct a review of the file and make a decision whether to grant the request. If the request is denied, the subject of the report can then request a hearing with the Department.

At the hearing, the Department has the burden of proving the accuracy and consistency of the report. Decisions of the Department following a hearing are subject to review by the courts. However, no new evidence will be taken in court, and a court may only reverse a decision of the Department if factual findings are against the manifest weight of the evidence or if there are procedural errors.

XIII. Workers' Compensation

To qualify for benefits under the Illinois Workers' Compensation Act, the employee must establish they were injured in the course of employment by a risk that arises out of such employment. The employee must timely notify the employer of the injury. The employee may be eligible for three major benefits:

1. Medical benefits amounting to 100 percent of all reasonable and necessary medical expenses.
2. Weekly benefits of 2/3rds of the employee's average weekly wage during any period he or she is unable to work.
3. Permanent and temporary, partial or total disability, permanent wage loss or death benefits.

A video on the IEA Learning Portal is available for members by IEA Associate General Counsel Robert Lyons: [Workers' Compensation](#) course.

A brochure providing further information on the Workers' Compensation Act with a list of law firms who handle workers' compensation claims for members is available upon taking the course above.