

Pennsylvania Association of Elementary and Secondary School Principals

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LEGAL UPDATE

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Overview

- Teacher Evaluations
 - Practical effects and implications on dismissal process
 - Videotaping Teacher Lessons
- Health-Related Issues
 - Allergies, Cardiac Arrest and School Students
 - Concussion Law
- Act 93 Developments
 - Health Insurance for Retirees
 - Wages
- Pension Programs

Teacher Evaluations

- HB 1901 (Act 82 of 2012)
 - Omnibus School Code Amendments
 - New Rating Systems for Professional and Temporary Professional Employees
 - Classroom teachers: Begins 2013-2014 school year
 - Principals: Begins 2014-2015 school year
 - Other Professionals: Begins 2014-2015 school year

Teacher Evaluations

- New Rating Labels:
 - Distinguished
 - Really means satisfactory
 - Proficient
 - Really means satisfactory
 - Needs Improvement
 - First “needs improvement” means satisfactory
 - Second “needs improvement” within ten years of the first “needs improvement” is unsatisfactory *where the employee is in the same certification*
 - Failing
 - Really means unsatisfactory

Teacher Evaluations

- Improvement Plan
 - An overall performance rating of “needs improvement” or “failing”
 - Requires the employee to participate in a performance improvement plan
- Term “Performance Improvement Plan”
 - A Plan, designed with input of the employee, that may include mentoring, coaching, recommendations for professional development and intensive supervision based on the contents of the rating tool under this section

Teacher Evaluations

- Improvement Plans
 - Do's and Do Not's of Improvement Plans
 - An Improvement Plan should not contain:
 - Anything that requires the district or the administration to take affirmative actions or be required to do anything
 - Promises to meet with the employee
 - Promises to review the employee's paperwork
 - Promises to give feedback
 - These things will be difficult to accomplish, keep up with, and add unneeded work for the administrator
 - Do not allow the Association to sneak these in

Teacher Evaluations

- Improvement Plans
 - An Improvement Plan should contain:
 - “The employee must comply with all applicable policies of the School Board, a copy of which is available [on District’s website/in District administrative office/etc.]”
 - “The employee must comply with all applicable work rules”
 - “The employee must comply with all directives”
 - “The employee must comply with all requirements contained in the applicable job descriptions”
 - Include specific directives that would apply specifically to the teacher for whom the Improvement Plan is being designed.
 - The onus should be on the employee/teacher to take the steps to improve themselves

Teacher Evaluations

- Improvement Plan
 - Training and Education
 - Improvement Plan should state that the District recognizes the employee is fully credentialed and legally qualified to fulfill their position, and therefore, it is expected that the employee has already had the training and education to perform all aspects of their job properly, including compliance with the Improvement Plan and other rules/requirements of the job.
 - If the employee believes that additional training, education, assistance or mentoring is needed to fulfill the Improvement Plan requirements, or even the job requirements, the employee must provide written documentation stating the nature of assistance needed and the reasons or rationale why such assistance is needed and reasonable.
 - The school district will then decide what assistance, if any, will be provided

Teacher Evaluations

- Classroom Teachers
 - Teachers who provide direct instruction to students related to a specific subject or grade level
 - Beginning in 2013-2014: evaluations must give consideration to the following:
 - Class observation and practice models related to student achievement
 - Student performance which shall comprise 50% of the overall rating and will be made up of three separate components
 - **Building Level Data**
 - **Teacher Specific Data**
 - **Elective Data**

Teacher Evaluations

- Building Level Data
 - 15% of the 50% should be based on “building level data” which includes, and should be with regard to:
 - Student performance on assessment
 - Value added assessment system data provided by PDE
 - Graduation rates reported by PDE
 - Promotion rates
 - Attendance rate as reported by PDE
 - Advance placement course participation
 - SAT and PSAT data

Teacher Evaluations

- Teacher Specific Data
 - 15% of the 50% should be based on “teacher specific data” which includes, and should be with regard to:
 - Student achievement attributable to a specific teacher as measured by
 - Student performance on assessment
 - Value added provided by PDE
 - Progress in meeting goals of IEP’s
 - Locally developed rubrics

Teacher Evaluations

- Elective Data
 - 20% of the 50% should be based on “elective data” which includes, and should be with regard to:
 - Measures of student achievement that are locally developed and selected by the district from a list published each year in the PA Bulletin, including:
 - District-designed measures
 - Nationally recognized standardized tests
 - Industry certification exams
 - Student projects
 - Student portfolios

Teacher Evaluations

- Ratings and Collective Bargaining Agreement
 - No CBA negotiated after the effective date of HB 1901 can provide for a different rating system
 - “a provision in any agreement or contract in effect on the effective date of this subsection that provides for a rating system in conflict with this section shall be discontinued in any new or renewed agreement or contract or during the period of status quo following an expired contract”

Teacher Evaluations

- Includes:
 - No employee shall be dismissed under section 1122 unless the employee has been provided a completed rating tool provided for under this section, which includes a description based upon classroom observations of deficiencies in practice supported by detailed anecdotal records that justify the unsatisfactory rating
 - What about criminal acts??

Teacher Evaluations

- Videotaping Teacher Lessons
 - Permissible to tape a teacher giving a lesson in conjunction with their evaluation
 - *Isadore v. WCAB*, Pennsylvania Commonwealth Court:
 - Videotaping is permissible
 - Employer had films taken of an Employee engaged in activities the employee stated he could not complete; Employee asked the Court to reverse on the basis that the videotapes should be inadmissible as evidence
 - Court held that motion pictures, while not sufficient standing alone, are admissible as evidence for the purpose of establishing facts, and more importantly, they “need not be taken with either the knowledge or consent of the claimant”

Student Health

- Concussion Law
 - A student who, as determined by a game official, coach from the student's team, certified athletic trainer, licensed physician, licensed physical therapist or other official designated by a student's school entity, exhibits signs or symptoms of a concussion or traumatic brain injury while participating in an athletic activity must be removed by the coach from participation of the activity at that time.
- Districts are advised to hold informational meetings prior to the start of each athletic season to discuss concussions and other head injuries, and proper concussion management
 - Law does not require that this meeting is held, but it is advisable that a District hold one anyway, will help in avoiding liability
- District also advised to adopt an appropriate policy delineating these requirements and have a solicitor review the same prior to adoption.

Student Health

- Concussion Law
 - Restrictions on Returning to Play
 - Coach cannot return a student to participation until the student is evaluated and cleared for return to participation, in writing, by an appropriate medical professional
 - School Board is permitted to designate a specific person or persons who are the appropriate medical professions who can provide the written clearance to return to participation
 - Annual Training
 - Mandatory that a coach receives the training through the required training course annually

Student Health

- Concussion Law
 - Penalties Provided
 - For a coach found in violation of the requirements of the law, school boards must adopt these minimum penalties
 - First Violation: suspension from coaching any athletic activity for the remainder of the season
 - Second Violation: suspension from coaching any athletic activity for the remainder of the season and for the next season
 - Third Violation: permanent suspension from coaching any athletic activity
 - Practice Note:
 - Penalties do not take effect until two years following the effective date of the law

Student Health

- Allergies and Students
 - Section 1422.3 of the School Code
 - The Department of Education, in collaboration with the advisory health councils, must develop guidelines for managing life-threatening food allergies in schools which shall be published on the department's Internet website. The guidelines are to be published on the Department of Education's Internet website no later than January, 2011.
 - The Guidelines are posted as:
 - Pennsylvania Guidelines for Management of Food Allergies in Schools, Recommendations & Resource Guide for School Personnel, 2011

Student Health

- Allergies and Students
 - The Department of Education Guidelines address the following:
 - Scope of the problem of childhood allergies and its impact on school student health
 - Types of detailed policies and protocols to help prevent allergic reaction emergencies and death from anaphylaxis in schools
 - The systematic planning and multidisciplinary team approach needed prior to school entry by the student with life-threatening food allergies
 - The school district staff's role and necessary training in preventing exposure to specific allergens
 - Responsibilities of the parent or guardian, school staff and the student's primary care provider for notice, consent and documentation of administration of medication to a school student with a food allergy
 - Emergency response protocols should a life-threatening allergic event occur
 - The roles of specific staff members in the care of the student with a life-threatening allergic condition

Student Health

- Allergies and Students
 - Case Study, Soler v. Cowles Publishing :
 - Nine year old boy transferred into district and the district knew he was severely allergic to peanuts and that the student required an Epi-Pen. On a field trip, his teacher brought along his inhaler and Epi-Pen, but then provided the student with the school lunch for the trip which was a peanut butter and jelly sandwich, trail mix with nuts, carrots, and apple, and a peanut butter cookie. The student gave the sandwich and trail mix back to the teacher because he was aware he could not eat those items, but he didn't know the cookie was peanut butter so he ate a part of the cookie. After he became ill, a parent chaperone who was a nurse took him to the bus and called the student's father, but did not administer the Epi-Pen. After the student worsened, they decided to drive the student home, but he got sicker, so they stopped at a fire station where he received an Epi-Pen injection. The child stopped breathing and was transported by ambulance to a hospital where he later died.

Student Health

- Allergies and Students
 - Case Study shows why there is a greater emphasis on providing for students with severe allergies.
 - School failed to provide a nut free lunch
 - School failed to educate the teacher on the student's condition
 - School failed to educate volunteers on the student's condition
 - Teacher failed to provide the student with an alternative lunch, or make the student aware of the peanut element of the cookie when he returned the other nut portions of the lunch
 - School failed to educate all involved how to administer the Epi-Pen promptly and properly
 - Need to properly evaluate a student's individual sensitivity to certain items, have a proper plan in place which also addresses field trips and out of building protocol, to train staff and other related individuals including bus drivers and volunteers, and most of all, to properly implement a plan to respond to emergencies.

Student Health

- Allergies and Students
 - Other considerations:
 - Parent involvement including giving parents documentation of the fact that staff training occurred
 - Notices to students and other parents in a classroom with a severely allergic student of the allergy and informing others not to bring elements of the allergy-related item to the building
 - Procedures in place for parents and students to make a school district aware of the allergy and the severity of the same
 - Harassment and Bullying of the allergic student, either due to their allergic nature, or because of the safeguards put in place to protect them (private/distinct lunch tables)
 - District should have a policy in place, and should work very closely with solicitor to implement the same in a lawful manner.

Student Health

- Cardiopulmonary Resuscitation and Cardiac Arrest
 - Section 1439 of the School Code:
 - At least one person in every school must be certified in the use of cardiopulmonary resuscitation during regular school hours when school is in session and students are present.
- Sudden Cardiac Arrest Prevention Act
 - Act 59 of 2012
 - A student who, as determined by a game official, coach from the student's team, certified athletic trainer, licensed physician or other official designated by the student's school entity, exhibits signs or symptoms of sudden cardiac arrest while participating in an athletic activity must be removed by the coach from participation at that time

Student Health

- Sudden Cardiac Arrest and Prevention Act
 - If a student is known to have exhibited signs or symptoms of sudden cardiac arrest at any time prior to, or following, an athletic activity, the student must be prevented from participating in an athletic activity
 - A student removed, or prevented, from participating in an athletic activity because of exhibiting signs or symptoms of cardiac arrest cannot return to participation until the student is evaluated and cleared for return to participation, in writing, by a licensed physician, certified registered nurse practitioner, or cardiologist.

Student Health

- Sudden Cardiac Arrest and Prevention Act
 - Students participating in, or desiring to, participate in an athletic activity and the student's parent or guardian must, each school year and prior to participation in an athletic activity, sign and return to the student's school an acknowledgement of receipt and review of sudden cardiac arrest symptoms and warning signs information that is developed by the Department of Education and the Department of Health
- District also advised to adopt an appropriate policy delineating these requirements and have a solicitor review the same prior to adoption.

Student Health

- Sudden Cardiac Arrest and Prevention Act
 - Training
 - Once each school year, coach of an athletic activity must complete the sudden cardiac arrest training course offered by a provider approved by the Department of Education
 - A coach of an athletic activity cannot coach the athletic activity until the coach completes the training course required under the section
 - Penalties
 - Similar in nature to the Safety in youth Sports Act (Concussion Law previously addressed)

Act 93 Update

- Trends and Recent Developments in Act 93 Plans
 - Medical for Retirees is beginning to be dropped for Act 93 employees across the state
 - Employers more willing to put money into salaries and other benefits before extending to retiree medical care
 - Retiree Spouse and Family medical care almost non-existent due to the rising costs associated with retiree healthcare in general
 - Contributions towards health insurance are also more common now than in the past
 - Wages
 - Common trend to see Act 93 employees have frozen wages for a year, or an extension of a Plan out to an additional year with no changes
 - Wages are also more often being tied to Performance Ratings

Current Pension Program

- All Pension Programs across the state are experiencing difficulty with funding
- Pensions Programs are supposed to be “safe” because of the way they are designed to be funded; however, the recent economy has made funding become a concern and implicates questions the legislature will likely try to address with further legislation
 - Ex: Recent legislation regarding new classes of benefits for new members after July 1, 2011
- The current pension program could fluxuate depending on the type of legislation passed to try an alleviate funding issues
 - school districts are hurting financially and have increasing pension obligations; likely to see legislation to address these issues

Questions?

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