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Priority Briefing

## EDUCATION REFORM ACT

On Thursday, the Education Reform Act which had already been passed unanimously by the Senate, was approved by the House with only one dissenting vote and was sent to the Governor. This is the second part of the educational reforms which began in 2010 with the passage of the Performance Evaluation Reform Act (PERA).

PERA will necessitate significant revisions to teacher evaluation plans including: incorporation of student growth as more than 50% of teacher and principal evaluation and four mandatory ratings (excellent, proficient, needs improvement, and unsatisfactory). For most school districts, PERA must be implemented by 2016 for teacher evaluation and 2012 for principal evaluation. Details of PERA may be found in our Priority Briefing dated January 20, 2010.

The Education Reform Act which is now on the Governor's desk builds upon PERA by making collective bargaining more transparent to the public, reducing the importance of seniority and tenure by elevating the importance of teacher performance, making PERA-compliant evaluation the basis of acquiring and retaining tenure, and streamlining the dismissal of tenured teachers. Details of the Education Reform Act may be found in our Priority Briefing dated April 21, 2011, and were recently the subject of our Breakfast Seminars where we were joined by Sara Boucek, the Chief Legal Counsel for the IASA, who played a pivotal role in negotiation of the text of the Education Reform Act.

In brief, the Education Reform Act contains the following highlights:

- **COLLECTIVE BARGAINING** - After 15 days of mediation without success, either party may declare impasse. Both parties must then submit final offers and cost summaries to the mediator who must publish the offers. Teachers may not strike until 14 days after publication and 10 days after giving notice of intent to strike. Publication and notice may run concurrently. The purpose of publication is transparency; to open the bargaining positions of the parties to public scrutiny.
- **SENIORITY and TENURE** - New or vacant teaching positions must be filled on the basis of certification, qualification, and experience; seniority may not be used unless all other factors are equal. Tenure will be earned and lost on the basis of performance as determined by PERA-compliant evaluation. Under certain circumstances, pre-tenure evaluations and previously acquired tenure may be portable from one school district to another. RIFs and recall will be based upon performance as determined by PERA-compliant evaluation rather than tenure and seniority.
- **TENURED TEACHER DISMISSAL** - A third, alternative procedure is established for the remediation and dismissal of a tenured teacher for performance reasons. The alternative procedure requires the use of a second evaluator during the remediation process (a procedure our firm has always recommended). If the teacher challenges a failure to remediate, the hearing is limited to a consideration of the performance evaluations at issue. The hearing officer may only issue findings of fact and recommendations to the board of education, which may be accepted in whole or part by the board. Thus, it is the school board which retains the ultimate decision on dismissal rather than the hearing officer as under current procedures. The decision of the school board may be appealed to the appellate court, thereby eliminating the lower court as under current procedures, and may be reversed only upon a determination that the school board's decision was arbitrary, capricious, an abuse of discretion, or contrary to law. The intent of the alternative procedure is to streamline the process, making it quicker and less expensive. The Act makes similar revisions to the role of the hearing officer in conduct related proceedings for the dismissal of a tenured teacher.
- **SPECIAL EDUCATION JOINT AGREEMENTS** – The collective bargaining, seniority and tenure, and tenured teacher dismissal provisions of the Education Reform Act and teacher evaluation procedures of PERA generally apply to special education joint agreements as well as school districts. There is, however, a twist with regard to the RIF and recall of tenured teachers employed in a joint agreement. Similar to the current provisions of Section 24-11 of the School Code, any teacher first employed full-time in a joint agreement prior to the implementation of PERA, acquires tenure in all of the programs that the teacher is legally qualified to hold. Any tenured teacher employed after 1987 as a full-time teacher in a joint agreement who is RIF'ed on or before the end of the 2010-2011 school term is eligible for employment in the joint agreement programs for which the teacher is legally qualified in order of seniority in the joint agreement. Any

tenured teacher employed in a joint agreement during the 2011-2012 school term or thereafter, shall be subject to RIF and recall based upon performance.

The Education Reform Act mandates training for school board members. The IASB currently provides excellent training programs for school board members and it is anticipated that it will provide the mandated training under the Act.

We will provide a comprehensive review of both PERA and the Education Reform Act after the Reform Act is signed by the Governor (as expected, with or without an emendatory veto). In the meantime, you may address questions to any one of our attorneys in our Oak Brook or Flossmoor office.