

# School Law Briefing

## *School Code Preempts the IELRA in Teacher Discipline Matters*

Under the Illinois School Code, school boards are vested with the authority and the responsibility to discipline and/or discharge tenured teachers for “sufficient cause.” However, since 1984, when the Illinois Educational Labor Relations Act (“IELRA”) was enacted, many teachers have been covered by collective bargaining agreements which provide for “just cause” for discipline or discharge, and for arbitration of disputes over alleged violations of the agreement. These two very powerful statutory influences have been primed for collision for over ten years.

In January 1995, the Illinois Supreme Court addressed the tension between the Code and the IELRA. In *Board of Educ. of Rockford School Dist. No. 205 v. Illinois Educational Labor Relations Bd.*, 165 Ill.2d 80, a tenured teacher was issued a disciplinary suspension after he was involved in a physical altercation with his students. The District determined that, although the teacher’s conduct was cause for dismissal, it was remediable and issued the teacher a formal “notice to remedy” as required by the Code.

The teacher subsequently filed a grievance, claiming that he had been disciplined without just cause in violation of the collective bargaining agreement which covered him. The District filed a Motion to Dismiss the grievance, citing its exclusive authority under the Code to determine the propriety of the “notice to remedy.” The District argued that its authority was nondelegable; therefore, the arbitrator had no jurisdiction to issue an award on the grievance.

The arbitrator denied the Motion to Dismiss and issued his award, ruling that the District had violated the labor agreement by disciplining the teacher without just cause. Confident of its position, the Rockford School District refused to comply with the award and

the teachers’ union filed an unfair labor practice charge with the IELRB. The IELRB found that the District had violated the IELRA by refusing to comply with the arbitrator’s award.

On appeal, the appellate court reversed the IELRB’s decision. On further appeal, the Supreme Court ruled similarly. The Court ruled that the IELRA prohibits the implementation of an arbitration award based on a provision in a collective bargaining agreement which violates or conflicts with any Illinois statute. Because the Code gives the school board the sole power to dismiss teachers for cause and/or to issue notices to remedy, allowing an arbitrator to decide whether a school board acted with just cause would conflict with the School Code. Accordingly, the court held that the arbitrator was without jurisdiction to make such a determination, and the District had not violated the IELRA by refusing to comply with the award.

The *Rockford* decision is a significant development for educational employers throughout the State. District officials are advised to review all of their pending teacher discipline grievances and to invoke the protections that the *Rockford* case affords to their statutory discretion.

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**Vol I, No. 1**

**Autumn 1995**

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## The Tax Cap Saga Continues -- Understanding the New Revisions



In 1991, the Illinois Legislature passed the Property Tax Extension Limitation Act, commonly known as “tax caps” for the “collar counties” (35 ILCS 245/1-1, *et seq.*). This law provided that, before a tax rate is increased by more than 5% or the increase in the consumer price index (“CPI”), whichever is less, the school board shall submit the rate to a referendum.

This year, the General Assembly broadened the tax cap landscape. Recent legislation extends tax cap limitations to Cook County, and authorizes all local governments in Cook and the collar counties to resume the issuance of Alternate Bonds and to issue Limited Tax Bonds in lieu of general obligation bonds that have otherwise been authorized by applicable law. (P.A. 89-385). Limited tax bonds will be secured by 1995 non-referendum bond debt. Each local government's full base amount for issuance of such bonds will again become available as existing non-referendum general obligation bonds are paid or retired.

The Act also restores the power of local governments to issue alternate or “double-barreled” bonds. Alternate bonds are general obligation bonds payable from enterprise funds or from a special revenue source, or both with the general obligation of the local government acting as a back-up security for the bonds.

The Act defines the “debt service extension base” as an amount equal to the portion of the 1994 extension for payment of interest in principal and bonds issued by a taxing district without a referendum. The bill also allows for a referendum for the establishment of a new debt service

extension base or an increase in the existing debt service extension base, if: (1) the taxing district holds a referendum before the date on which the levy must be filed with the county clerk, and (2) a majority of the District's electorate voting on the referendum approve the question. The referendum question must be on the ballot at a regularly scheduled election. The referendum allowance would permit school districts who have paid off all their bonds and interest payments and are now debt free to go to the voters to establish a new debt base. This new base would represent what the district would be allowed to issue in future levy years without referendum from the electorate. Districts should review this option and consider establishing a new base as soon as possible.

As noted above, the new Act extends tax cap limitations to Cook County school districts for the first time. In 1994, the CPI for the year was 2.7%. Therefore, in 1995, a school district may not levy tax dollars that are more than 2.7% greater than the tax revenues received the previous year, exclusive of debt. Thus, if a school district receives \$1,000,000 in tax revenues in a given year, then the most that they can receive in all funds, exclusive of debt, the following year would be \$1,027,000. However, if any funds are not at the statutory maximum, a school district may under certain conditions be able to “massage” the funds and move dollars from one to the other. For example, if your transportation fund is in excess of what you need for that year, you may be able to move those excess dollars over to the education fund.

To further illustrate, if a district has a maximum rate of \$2 for its education fund, but its extension produces a levy rate that is less than \$2, the district can levy more dollars for the education fund, up to its statutory limit, as long as this total tax increase does not exceed 2.7% (or whatever the CPI is for that year) overall, exclusive of debt.

The only exception to the general tax cap structure is for new construction projects. The tax cap limitations do not apply to a school district's tax extension for new construction for that levy year. Therefore, if a district has a new construction project, it can levy higher than the CPI increase for that year. It is important that this be done in each year of the start of a new construction project because, after the year of new construction, the district will never again have the opportunity to increase its extension relevant to that new construction. However, if the extension exceeds 5%, a school district would still need to hold a “Truth in Taxation Hearing,” even if the overage is attributable to new construction.

To sum, increases in tax levies by school districts affected by the Act are limited to the CPI increase or 5%, whichever is less, exclusive of debt. However, districts are authorized to increase the extension for new construction within the boundaries of a school district without regard to the tax cap. Tax caps can (and probably will) cause confusion and concern when establishing your tax levy for any given year. School districts and their business managers are advised to make sure they fully understand proper administration of the property tax cap rules.

# Waivers: New Possibilities for Old Problems

Effective February 27, 1995, Public Act 89-3 grants school boards the opportunity to seek modifications of State Board rules or waivers of School Code provisions. The State Board was required to file its first report with the General Assembly by October 1, 1995. It shows that, since the effective date, there were 61 applications for waivers of School Code sections, which can only be approved by the General Assembly, and 31 applications for modifications to the School Code or State Board rules and regulations, which can be approved by the State Board. The State Board has acted on some of the applications before it but, as of now, the General Assembly has not. The following is a brief summary of some of the waivers placed before the General Assembly for approval, and of the modifications already granted by the State Board.

**1) Physical Education:** Most of the applications for waivers before the General Assembly target physical education requirements. There are six applications which seek to allow school districts to conduct physical education classes every other day, three days a week or two days a week. There are five applications which would exempt students from taking physical education classes so that they could take other classes or participate in other activities during the school day. Similarly, two applications seek to waive all physical education requirements for a certain time period so that students can take a course in computer technology.

Two applications seek to waive physical education classes for students who have failed courses needed for graduation so that they make retake those courses. In addition, one application seeks to extend the physical education

exemption for 11th and 12th graders to 9th and 10th graders, and another one seeks to exempt students who participate in extracurricular activities. Lastly, three applications seek a complete waiver from offering any physical education classes.

As with applications for waivers, most of the applications for modifications concern physical education requirements. The most popular application for a modification was to offer physical education classes three or four days a week. There were eight such requests. Five requests sought to count activities such as R.O.T.C., marching band, cheerleading, and pom-poms as physical education. Four applications sought to combine physical education in some way with courses in sex, health or drug education.

**2) School Days:** Four applications for waivers seek to allow school districts to conduct a full day of teacher in-service, rather than two half-days of school improvement activities. Five applications for modification are pending which, if granted, would permit the school districts to recognize the contributions of Casimir Pulaski or Abraham Lincoln through instructional activities rather than observing the school holidays in their honor. In addition, one granted application allows the school district to take attendance during the first period of the day in junior high and at the beginning of the morning and afternoon sessions in grades K through five instead of at the beginning of each scheduled class.

A reduction in instructional time has also been the subject of several applications. One application seeks to reduce the minimum hours of instructional time for grades 1 through 5 from five hours per day to 4-1/2. Another application seeks a waiver to provide a 216 minute instructional day instead of the statutory 300 minutes on days when students are taking the IGAP test or other tests. Lastly, one district received a modification which allowed it to take three school improvement partial days at the start

of the school year and to make up the time later in the month of September.

**3) Employment:** One application seeks to eliminate the statutorily required rating system on tenured teacher evaluations and replace it with an evaluation system created by the district administration and teachers. Another application, if granted, would permit the district to enter into a one, two or three year employment contract with its administrators. One school district has applied for a waiver allowing it to assign teachers with a grade 6-12 certificate to teach 5th grade up to one-half time.

The State Board has granted a waiver allowing a district to contract the behind-the-wheel drivers' education instruction to a commercial driving school and also the classroom instruction to a commercial driving school if the teacher provided is certified. Lastly, three school districts are seeking waivers that would allow them to serve reduction-in-force notices to teachers by first-class personal delivery instead of certified mail.

**4) School Accreditation and Assessment:** Three applications seek a complete waiver of the school accreditation process. Two others seek a complete waiver of the requirements related to the Illinois School Improvement Process. One application seeks to waive local assessment and testing for certain 7th and 8th grade subjects.

The State Board has already granted applications seeking modifications in school accreditation and assessment requirements, including: (a) eliminating the Quality Review visit until the end of the 1999-2000 school year; (b) modifying the time table for compliance with the school accreditation process; (c) allowing a different assessment to be used in place of the one currently required to meet the outcomes for certain areas; and, (d) granting an extension until February of 1997 to complete outcomes for all six fundamental learning areas.

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*is published quarterly by AnceI, Glink, Diamond, Cope & Bush, P.C., as a service to our public education clients and friends. It is intended to provide timely information of interest but not as a substitute for legal advice. Be sure to consult with an attorney before taking action based on the contents. We welcome comments and questions. Permission to reproduce is granted provided credit is given to AGDC&B School Law Briefing. Editor Timothy E. Guare Design: Douglas M. Doty*

5) **Corporal Punishment:** Two school districts seek a waiver allowing them to paddle students unless prohibited by written parental objection. The State Board has granted an application from the Chicago Board of Education allowing it to clarify that any individual who violates the School Board's corporal punishment policy or who uses excessive force when force is permitted shall be deemed to be acting outside of the scope of his or her duties. *(Note: This clarification helps protect the school district from lawsuits that result from such actions.)*

6) **Finance:** Three school districts seek to waive the requirement that the school treasurer live in the district so that they can appoint the chief school business official to serve as the school treasurer. Three school districts seek a waiver to increase the maximum debt limit above 13.8%. One school district seeks a waiver to allow it to transfer funds from the bond and interest fund to the education fund, operations and maintenance fund or transportation fund. Two school districts seek waivers allowing them to establish different fiscal years.

7) **Health Requirements:** Three applications for waivers seek to exclude students who have not complied with the health examination and immunization requirements by the first day of school instead of the statutory October 15th deadline. One school district seeks a waiver that would allow it to require non-administrative health aides to administer medication. The State Board has granted 4 modifications allowing districts to employ registered nurses who do not hold school nurse certification to perform professional nursing services in non-classroom instructional related activities.

8) **Life/Safety:** Life/safety waiver applications currently before the General Assembly would waive the requirement of installing sprinklers in new building additions due to excessive costs incurred with well water systems. However, waivers of life/safety issues are not as frequently sought, probably because their funding is from sources outside any tax cap limitation.

The above examples show that many districts are already making creative use of the waiver process to find more cost-effective ways of providing educational services. As the General Assembly's rulings provide guidance in this area, we will keep our readers advised.

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