

# THE AEL ADVOCATE

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## THE 2010 LEGISLATIVE SESSION: NEW LAWS AFFECTING SCHOOLS AND SCHOOL EMPLOYEES

### I. EMPLOYMENT ISSUES

#### FAIRNESS IN NEGOTIATIONS ACT: THE NEW LAW TO LEVEL THE PLAYING FIELD

From time immemorial, the State Board of Education has been the ultimate arbiter of all contract negotiation disputes between local boards of education and employee organizations representing school personnel. This system has always been weighted in favor of the local boards and most rulings by the State Board have been in local boards' favor.

On July 1, 2010, this will all change. On May 4, 2010, Governor O'Malley signed into law legislation entitled the "Fairness in Negotiations Act" passed by the 2010 term of the Maryland General Assembly (Senate Bill 590 and House Bill 243). The purpose of this legislation is to level the playing field in contract negotiations between local boards and employee organizations by stripping the State Board of its power over negotiation disputes. The new law sets into place a new, more balanced dispute resolution process before a newly established "Public School Labor Relations Board ("PSLRB"). The PSLRB is to be an independent unit of state government, completely separate from and not under the control of the State Board of Education.

#### A. Contract Negotiations And the New Law

The PSLRB replaces the State Board of Education as the entity to decide the negotiability of topics, that is whether they are "mandatory," "permissive," or "prohibited." **[For a full discussion of the "mandatory," "permissive" or "prohibited" nature of topics, see the AEL ADVOCATE, Volume 1, Issue 1].** As before, local boards and employee organizations negotiate on all matters relating to "salaries, wages, hours and other working conditions," but not topics "affecting the proper administration of schools." Disputes often arise due to the potential overlap

between the general terms “working conditions” and “administration of schools,” the employee organization arguing a topic constitutes a “working condition and therefore, negotiable and the local board arguing it falls within “administration of schools” and not negotiable. Significantly, the new law specifically adds “procedures regarding employee transfers and assignments” to the “working conditions” category as a topic to be negotiated. In the past, many school boards maintained that transfer and assignment procedures involved the “proper administration of schools” and as such, were not negotiable.

## **B. Disputes Over the Negotiability of a Topic: Procedure Prior to Impasse**

Under the new law, whenever a local board and employee organization dispute the negotiability of a topic, but impasse has not been reached, either party may submit a request for a decision in writing to the PSLRB for final resolution of the dispute. Briefs supporting the respective positions are to be submitted within 7 days of the request and the PSLRB will issue a written decision within 14 days of receipt of the briefs. In making its decision, the PSLRB is to use a “balancing test” to determine whether the impact of the matter on the school system outweighs the direct impact on the employees. Of particular import is the fact that, under the new law, **prior decisions of the State Board of Education as to the negotiability of a topic are not binding on the PSLRB.**

## **C. Negotiation Disputes After Impasse**

Under the new law, the PSLRB, not the State Superintendent, determines whether impasse is reached. If impasse has been reached, the PSLRB requests last and best offers from the parties and orders mediation to commence within 14 days. Parties are to select a mediator within 5 days, either by agreement or by alternate striking from a list of 7 neutral mediators furnished by the Federal Mediation and Conciliation Service or the American Arbitration Association. The mediation is to conclude within 25 days of its first session and if the parties cannot agree on resolution of the dispute, the mediator will issue a written order, which can be accepted in full, in part or declined, with a request for arbitration.

If arbitration is requested, the PSLRB has 5 days in which to set a date for an arbitration hearing before its Board. **Prior orders, actions and opinions of the State Board of Education are not binding on the PSLRB in rendering its ruling.** The PSLRB has subpoena power in the arbitration. Witness testimony and documentary evidence, which may include evidence of comparables from other jurisdictions within and outside Maryland and evidence of the school system’s ability to pay, may be presented by the parties at the hearing. Within 20 days of the arbitration hearing, the PSLRB will issue a written order which is **FINAL and BINDING** on both sides (prior to the new law, arbitration was non-binding for the Anne Arundel County School System

and if the Board of Education did not like the result, it simply rejected it). If a party fails to comply with an order issued by the PSLRB, a board member of the PSLRB may petition the Circuit Court to order the party to comply with the Board's order.

As always, however, the decision reached in the process is subject to the fiscal relationship between the local board of education and the county council. If the funding is not there, the local board **MUST** renegotiate with the employee organization, not just ignore the ruling of the arbitrator.

#### **D. Courts Are Now An Available Remedy For Appellate Review**

Prior to the new law, the State Board of Education was almost always the final step in the appeal process for disputes involving contract negotiation. Courts declined to hear appeals of State Board rulings, ruling that the State Board was the “expert in the field.” Since the State Board generally supported the local board, employee organizations usually found appeals to be a waste of time. The Fairness in Negotiations Act not only stripped the State Board of its authority over labor negotiations, it also instituted the right to appeal any final decision of the PSLRB to the Circuit Court.

#### **E. PSLRB: Composition of the New Board**

By stripping the State Board of Education of its power over local board-employee organization contract negotiations, the Fairness in Negotiations Act seeks to “level the playing field” in disputes between the parties. The question remains, however, whether the new Board will, in fact, provide a “fair and balanced approach” to the process in the future. Key to this inquiry is the composition of the new Board, that is, who will be chosen to exert power over the process after July 1, 2010? The new law sets forth the methodology for selecting Board Members of the PSLRB as follows:

- 1) The PSLRB will consist of 5 Board Members appointed by the Governor with the advice and consent of the State Senate. The composition of the Board is to be as follows:

- a.) **One Board Member with the following qualifications to represent the public**

- must have experience in labor relations;
- cannot be an officer or employee of a BOE or employee organization representing school system employees;
- cannot be an elected official of the state, a county, or employee organization representing public school employees;
- cannot be an active member of a labor union.

**b.) Two Board Members as follows:**

- one Member chosen from a list of candidates submitted by the organization representing a majority of public school employees in the state for collective bargaining purposes, and
- one Member chosen from a list of candidates submitted by a statewide organization representing public school employees in at least one jurisdiction in Maryland for collective bargaining purposes (other than the majority organization choosing the other Board Member in this category);
- Board Members cannot be employees of the State or a public school employee organization.

**c.) Two Board Members:**

- chosen from a list of candidates submitted by the Maryland Association of Boards of Education and the State Superintendents' Association of Maryland who are:
- not officers or employees of the State or County or State Boards of Education and are
- not officers or employees of employee organizations representing employees of public school systems in Maryland.

All proposed Members must be known for independent and objective judgment.

## **EDUCATION REFORM ACT OF 2010**

**The new law, effective July 1, 2010 requires the following changes to tenure and evaluations for certificated employees:**

**A. New Probationary Periods for Certificated Employees effective July 1, 2010**

The new legislation lengthens the amount of time for certificated employees to attain tenure from two to three years. Non-tenured certificated employees will be evaluated annually and, if not on track, a mentor is to be promptly assigned to provide comprehensive guidance and instruction and, in addition, professional development is to be provided. A mentor may also be assigned at any time, prior to evaluations if necessary. Mentors are to follow standards to be established by the State Board to insure effective monitoring.

If a certificated employee who is tenured in one school system relocates to a new school system, that employee is not immediately tenured in the new school system. Rather, tenure is granted only if the employee's contract is renewed after a one year probationary period and the employee's final evaluation in the school system from which he or she departed was satisfactory or better, with the break in employment between the systems not longer than one year. A school system can extend the probationary period for a second year.

## **B. New Guidelines for Performance Evaluations for Certificated Teachers and Principals**

The new legislation requires the State Board to adopt new regulations establishing standards for performance evaluations for certificated principals and teachers that "include observations, clear standards, rigor and evidence of observed instruction." In setting these standards, the State Board is to solicit information and recommendations from each local school system and convene a meeting to discuss and consider the same.

Based on the State Board's standards, each county school system is to establish specific performance evaluation criteria for certificated principals and teachers as mutually agreed upon by the local school system and the exclusive employee representative. This mutual agreement is not to be controlled or governed by the negotiated contract between the parties and remains outside of said contract.

The State Board will also adopt a "model performance evaluation criteria" which will take effect in jurisdictions where local school systems and exclusive employee representatives cannot agree on the criteria to be implemented.

## **II. STUDENT RELATIONS**

### **ANNE ARUNDEL COUNTY OFFICE DISCIPLINE REFERRALS**

Effective July 1, 2010, the Anne Arundel County Board of Education is to establish a committee to develop and recommend a policy and specific guidelines for administering office discipline referrals in the Anne Arundel County Public Schools. The policy and guidelines are to be presented to the BOE for approval before January 1, 2011. The committee is to be made up of:

- two members of TAAAC, one of which is an elementary school teacher, one of which is a secondary school teacher;
- two members of AEL, one of which is an administrator of an elementary school, one of which is an administrator of a secondary school;

- one member from the county-wide CAC;
- one member as designee of the County Superintendent;
- two members from the PTA
- one member from the Board of Education appointed by the current chairman of the Board who shall chair the committee.

### **STUDENT STIGMA ACT**

Effective October 1, 2010, the definition of “child with disability” in Section 8-401 of the Education Article of the Maryland Code is amended, in part, to change the term “emotional disturbance” to “emotional disability.” School-based documents are to reflect this change, but not until all documents already in print prior to the October 1<sup>st</sup> effective date have been used.

### **USE OF BRAILLE IN INSTRUCTION OF BLIND AND VISUALLY IMPAIRED STUDENTS**

The new legislation requires the State Board of Education to establish standards for mastery of Braille for use in English, language arts, and mathematics instruction of blind and visually impaired students on or before September 1, 2012. Certification and recertification requirements for teachers of the blind and visually impaired are to be reviewed and modified, as deemed appropriate, by the State Board and the Professional Standards and Teacher Education Board.

### **CLASSROOM PLACEMENT OF MULTIPLE-BIRTH CHILDREN**

Effective July 1, 2010, parents of multiple-birth children entering kindergarten through second grade may request that said children be placed in the same or different classrooms. This request must be made in writing to the school principal within 14 days after the first day of school, or if the children enroll in school after the school year has already commenced, on the first day of attendance. The school is required to provide the classroom placement requested, but if, after 30 days, the principal, in consultation with the classroom teachers affected, determines that the placement is disruptive to the school, the principal may determine whether the classroom placement was, in fact, appropriate or should be changed. County boards are prohibited from adopting a classroom placement policy automatically separating or placing multiple birth children together.

### **MARYLAND YOUTH CRISIS HOTLINE: DISTRIBUTION OF INFORMATION IN PUBLIC SCHOOLS**

Effective July 1, 2010, each county school board is required to provide each student in grades 6 through 12 with the telephone number of the Maryland Youth Crisis Hotline by printing the telephone number prominently in the school handbook AND by printing the number on students' school identification cards, if the cards are provided. School systems are not, however, required to reprint and reissue handbooks and/or school identification cards already in use on the effective date of the new law.

## **REVIEW OF THE ALTERNATE MARYLAND SCHOOL ASSESSMENT**

The new law requires a State Department of Education review of the Alternate Maryland School Assessment (ALT-MSA), specifically finding that special education teachers are spending an inordinate amount of their instructional hours creating, preparing and administering the many aspects of the ALT-MSA and that the entire process, including scoring is too subjective in nature. The review is to include surveys of all teachers of severely disabled students, recommendations for improvement, consideration of greater guidance by the State Department of Education and use of state-approved materials for testing. The State Department of Education is to report its review results to the Governor on or before October 1, 2011.

## **SAFE SCHOOLS ACT OF 2010**

The Safe Schools Act of 2010, effective July 1, 2010, sets forth a comprehensive plan to reach its goal of a safer learning environment for students and personnel. Highlights of the law are as follows:

### **The following is added to the Courts and Judicial Proceedings Article of the Maryland Code:**

- a.) Findings by the Juvenile Court that a child has been found to be delinquent, in need of assistance, or in need of supervision and committed to the custody or guardianship of Juvenile Services: MAY (not shall) be reported to school officials.

### **The following is added to Section 7-303 of the Education Article of the Maryland Code:**

- a.) Offenses are added to the list of offenses for which a student is arrested that require reporting to school officials, that is, arrests for 2<sup>nd</sup> degree assault, malicious destruction of property, motor vehicle theft, inducing false testimony or avoidance of subpoena.
- b.) The superintendent and the school principal have the power to decide whether to prohibit a student who is ARRESTED for an offense involving rape or sexual offense from attending the same school or riding on the same bus as the

alleged victim. If the student is CONVICTED of the rape or sexual offense, the student is prohibited from attending the same school or riding on the same school bus as the victim.

- c.) Each school enrolling students in grades 6 through 12 is required to designate at least one school security officer, which can include a school principal, another school administrator, a law enforcement officer or other person employed by the school system or local government, who is designated by the superintendent or principal. **Exception: A teacher cannot be designated as a school security officer.**

- d.) The State Board (with input from the Department of Juvenile Services, the Department of State Police, the Department of Human Resources and local school systems) is required to develop a model policy to address gangs, gang activity and similar destructive or illegal group behavior in schools by March 31, 2011. Local school systems (with input from parents, school employees and administrators, school volunteers, students, local law enforcement and the Office of the Public Defender) are thereafter required to establish a policy or regulations based on the model policy by September 1, 2011. Each school system shall provide training for teachers and administrators and awareness programs for students, staff, volunteers and parents on the newly established gang activity regulations.
- e.) All suspected gang activity is to be reported to the principal and school security officer, after which appropriate action is to be taken to maintain a safe school environment.

### **PUBLIC SCHOOLS LAW ENFORCEMENT OFFICERS: CULTURAL COMPETENCY TRAINING CURRICULUM**

Effective July 1, 2010, the Maryland Police Training Commission, in consultation with the State Department of Education, is required to develop a model cultural competency training curriculum for law enforcement officers assigned to public schools. These officers are to be “encouraged” to complete the cultural competency training curriculum before beginning a public school assignment.

### **PHYSICAL EDUCATION FACILITIES FOR SCHOOLS**

Under the new law, effective July 1, 2010, the State Department of Education is required to adopt regulations requiring public schools that are newly constructed or completely renovated on or after January 1, 2013 to include a gymnasium and support space for physical education instruction. This law mainly addresses elementary schools, which frequently rely on “multi-purpose” rooms to house lunch, assembly and physical education activities. There is to be a waiver provision available, based on land or zoning constraints.