



# PANC

## 2022 SPRING CONFERENCE

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### NONRENEWALS AND MIPs (Mandatory Improvement Plans)

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# NONRENEWALS AND MIPs

Do these topics (nonrenewals and MIPs) belong together?

1. Maybe
2. Sometimes
3. It depends

# NONRENEWALS AND MIPs

## What are we talking about?

1. Nonrenewals and MIPs?
2. Nonrenewals or MIPs?
3. Nonrenewals?
4. MIPs?

# NONRENEWALS AND MIPs

## What are we talking about?

- Law on Nonrenewals
- Law on MIPs
- Practical choices and considerations
- Decision-making
- Board expectations
- Use of resources
- Alternatives to MIPs
- Alternatives to Non-renewals

# NONRENEWALS AND MIPs

## Issues and concerns

- A MIP is a lot of work.
- Why MIP if you can nonrenew?
  - Give teacher (including other instructional support personnel) opportunity and support to improve.
    - But, why not use growth plan?
- MIP is “final chance.”
- Legal presumption and consequences with a MIP.
- Can you replace with a better teacher?
- What does the school board expect?

# NONRENEWALS AND MIPs

## Issues and concerns

- Who are you dealing with?
- Low performing school or not?
- What are the employee's problems?
- What are your circumstances/needs?
- What does your Board want/expect?

# NONRENEWALS AND MIPs

## Issues and concerns

- Dealing with administrators, teachers, and instructional support personnel.
- No MIP for non-instructional or classified personnel (unless local board policy requires it).

# THE LAW ON NONRENEWALS

## Teachers

- Career Teacher (§115C-325) – CAN'T be nonrenewed.
- Probationary Teacher? NO! We haven't had them since 2013!  
WAKE UP!!
- Contract Teacher (§115C-325.3)
  - 1 year contract for first 3 years
  - After first 3 years: eligible for:
    - ❖ 1 year  
or
    - ❖ 2 year  
or
    - ❖ 4 year
  - Board policy may require first 3 years to be consecutive (or not)
  - Board policy may set standards for multi-year contracts



# THE LAW ON NONRENEWALS

## Contract Teachers – Renewals and Nonrenewals

- Superintendent recommends renewed contracts and length of contract term only if teacher has shown effectiveness as demonstrated by proficiency on evaluation.
- BOE may:
  - Approve Superintendent's recommendation,
  - Decide not to renew, or
  - Decide to offer renewal for a different term than Superintendent recommends
  - §115C-325.3(b)

# THE LAW ON NONRENEWALS

## Contract Teachers – Renewals and Nonrenewals

- If Superintendent decides not to recommend a renewed contract, does the Board vote to nonrenew?

NO!

- Superintendent must give written notice of his or her decision to the teacher by June 1.
- The contract then simply expires on its own at the end of the contract term. §115C-325.3(d).



# THE LAW ON NONRENEWALS

## Contract Teachers – Renewals and Nonrenewals

BUT WAIT...THERE'S MORE!

- §115C-325.3(e) – Teacher has the “right” “to petition the board” for a nonrenewal hearing.
- BOE has complete discretion whether (or not) to grant a hearing.
- Check local board policy on this!
- BOE shall notify the petitioning teacher of its decision whether to grant hearing.
- If hearing is granted, it must be conducted pursuant to §115C-45(c)

(cont.)

# THE LAW ON NONRENEWALS

## Contract Teachers – Renewals and Nonrenewals

BUT WAIT...THERE'S MORE!

- BOE shall notify teacher of its decision to nonrenew by June 15 or, if a hearing is granted, within 10 days after hearing (or later date agreed to in writing by Superintendent and teacher).
- BOE decision to nonrenew can't be: arbitrary, capricious, discriminatory, personal, political, or on any basis prohibited by State or Federal law.

# THE LAW ON NONRENEWALS

## Contract Teachers – Renewals and Nonrenewals



# THE LAW ON NONRENEWALS

## ADMINISTRATOR NONRENEWALS

- §115C-287.1 requires contracts for certain administrators (Principal, AP, Supervisor, Director)
  - Whose major function includes direct or indirect supervision of teaching or any part of the instructional program
- Other administrators are not covered by this law.
- Check local board policy to see who is covered.
- Check your administrator contract language.

# THE LAW ON NONRENEWALS

## ADMINISTRATOR NONRENEWALS

- §115C-287.1 governs nonrenewal of administrators who are covered by that section.
- Rolling annual renewals are not allowed.
- BOE must vote to renew or extend an administrator's contract. §115C-287.1(b).

# THE LAW ON NONRENEWALS

## ADMINISTRATOR NONRENEWALS

- Superintendent may recommend a renewed or extended contract to BOE.
- BOE may approve the recommendation or decide not to renew or extend the contract.
- §115C-287.1 (d).



# THE LAW ON NONRENEWALS

## ADMINISTRATOR NONRENEWALS

- If Superintendent decides not to recommend a renewed contract, does the Board vote whether to nonrenew?  
NO!
- Superintendent must give written notice of his or her decision by May 1.
- The Superintendent's reasons may not be: arbitrary, capricious, discriminatory, personal, political, or prohibited by State or Federal law.
- No action by the BOE or further notice to the administrator is needed and the contract simply expires at the end of its term. §115C-287.1(d).



# THE LAW ON NONRENEWALS

## ADMINISTRATOR NONRENEWALS

### UNLESS...

- If the administrator files with the Superintendent a written request for a hearing within 10 days of receipt of the Superintendent's notice, the BOE shall conduct a hearing pursuant to §115C-45(c).
- Administrator has a right to a hearing if request is timely filed.
- Failure to file a timely request results in a waiver of the right to hearing.

# THE LAW ON NONRENEWALS

## ADMINISTRATOR NONRENEWALS

- After hearing, BOE must make final decision on renewal/nonrenewal.
- IF BOE decides not to renew contract, it shall notify administrator by June 1 of final year of contract.
- BOE decision may be for any cause that is not: arbitrary, capricious, discriminatory, personal, political, or prohibited by State or Federal law.
- §115C-287.1 (d).

# THE LAW ON NONRENEWALS

## ADMINISTRATOR NONRENEWALS

- If the nonrenewed administrator held career status as a teacher in your school system immediately prior to becoming an administrator, with no subsequent break in service (excepting such breaks as military leave, maternity leave, etc.) then they retain career status as a teacher.
- Unless, the school administrator voluntarily relinquished that career status to become an administrator, or unless you go through dismissal/demotion under the tenure law (§ 115C-325).
- § 115C-287.1 (f1)

# THE LAW ON NONRENEWALS

## ADMINISTRATOR NONRENEWALS

### STILL MORE!

- What if the Personnel Office screws up yet again?!?
- If Superintendent or BOE fails to notify administrator by June 1 of final year that they will not be offered a new contract, then what happens?
- Provide written notice to the administrator that they will be nonrenewed
- Administrator is entitled to 30 days of employment or pay from the date they are notified.
- §115C-287.1 (f)

# THE LAW ON NONRENEWALS

## ADMINISTRATOR NONRENEWALS

- Special provisions for provisional assistant principals. §115C-287.1 (h).
- Nothing requires the local BOE to extend or renew the contract of an administrator who holds a provisional AP license.
- If SBE does not extend the provisional AP license of one who held career teacher status in your district, AP retains that status unless they relinquished it or unless dismissed or demoted under tenure law (§115C-325).

# THE LAW ON NONRENEWALS

## OTHER ADMINISTRATORS

- There are no specific laws dealing with nonrenewals of these “other” administrators:
  - Superintendent
  - Asst. or Assoc. Superintendent
  - Administrators not included in §115C-287.1 (i.e., those whose major function does not involve the instructional program).
- But, be sure to check:
  - Board policy
  - Contract provisions that may establish nonrenewal notices.

# BOARD NONRENEWAL HEARINGS

- BOE does not have to state its reasons for granting/denying a teacher's request for discretionary hearing.
- BOE should be aware that granting discretionary hearings can lead to legal challenges for subsequent denials of discretionary hearings.
- A board hearing is conducted pursuant to G.S. 115C-45(c), which allows (but does not require) the board to appoint a panel of 2 or more members to hear and decide the matter for and on behalf of the board.



# BOARD NONRENEWAL HEARINGS

- Because there is not a vested property interest at stake, procedural requirements for due process may be relatively minimal.
- Board may, by policy or simply by notice, structure hearings under G.S. §115C-45(c) in any way it deems appropriate, so long as it meets the minimal requirements of: notice, a record, and impartiality.

# BOARD NONRENEWAL HEARINGS

- A board hearing under G.S. §115C-45(c) requires, at a minimum, that:
  - Proper notice is given to all parties.
  - A record of the hearing is properly entered in the Board's records.
  - That Board members act impartially to provide a fair hearing.

# BOARD NONRENEWAL HEARINGS

- Check your Board policies to see if they already prescribe procedures for a Board-level hearing under G.S. §115C-45(c).
- Consider whether to adopt such a policy, even though it is not required by law.

# BOARD NONRENEWAL HEARINGS

## PRACTICAL ADVICE/TIPS

- Superintendent is not required to give any reasons for decision not to recommend renewed contract. BUT, BOE may want to know.
- Advise the teacher that nonrenewal notice will become part of their file and that they may be asked whether they have ever received one on future employment applications. Counsel the teacher to resign.

# BOARD NONRENEWAL HEARINGS

## PRACTICAL ADVICE/TIPS

- Resignations are always better than hearings.
- If you may be headed to a hearing, BE PREPARED, IN ADVANCE.
- DON'T wait until D-day to call the lawyer.
- Know the legal requirements and follow them.
- Meet with teacher before Superintendent issues nonrenewal notice.

# BOARD NONRENEWAL HEARINGS

## PRACTICAL ADVICE/TIPS

- If the Board grants a hearing, make sure the Superintendent is prepared to support the decision not to recommend a renewed contract with reasons/information/documentation that:
  - Are legally adequate.
  - Are properly documented.
  - Meet the Board's policy standard.
  - Will pass Board members' "fairness" expectations.

# BOARD NONRENEWAL HEARINGS

## PRACTICAL ADVICE/TIPS

- Don't hold back on the reasons. If you don't include them now, any later added reasons may be excluded or may look questionable.
- Alternatives to nonrenewals? Resignation. Impact on future job prospects. Dismissal. Offer other employment?

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# MIPs AND NONRENEWALS

## MIPs OR NONRENEWALS



# MIPs AND NONRENEWALS

## MIPs OR NONRENEWALS

### WHY GO THROUGH THE MIP PROCESS IF YOU CAN JUST NONRENEW?

- Last chance to support/improve teacher.
- The job market is tight.
- The pool isn't deep.
- Board expectations
- Board policy

# MIPs AND NONRENEWALS

## MIPs OR NONRENEWALS

### WHY GO THROUGH THE MIP PROCESS IF YOU CAN JUST RENEW?

- MIP may lead to legal presumption of “substantial evidence” of inadequate performance.
- MIP may lead to decision prior to nonrenewal time
- MIP may provide negotiating leverage when considering State Board’s list of dismissed (and other ) teachers.
- You may not be able to nonrenew (e.g., career teacher) at all or any time soon (e.g., teacher on 4-year contract).

# EVALUATIONS AND MIPs

- N.C. Gen. Stat. §115C-333 applies to Low-Performing (L-P) schools.
- N.C. Gen. Stat. §115C-333.1 applies to schools that are NOT L-P.
- Different standards and requirements for MIPs depending on L-P school or not.
  - Different requirement for who observes/evaluates.
  - Different development.
  - Different timelines for completion.
- Qualified observer not in L-P schools, only schools that are not L-P.



- Inadequate Performance (G.S. 115-325.4(a)(1)):

- Creates definition of inadequate performance for non-career status teachers under grounds for their dismissal or demotion.
- Must consider two things:
  - ❖ Evaluation data.
  - ❖ Standards adopted by local board of education.
- Inadequate performance for a teacher shall mean (i) failure to perform at a proficient level on any standard of DPI's teacher evaluation instrument, or (ii) otherwise performing in a manner that is below standard.
- Exceptions:
  - ❖ The language about Exceptions and the presumption for failing to notify teachers of inadequacy are not in the law applicable to non-career status teachers.

# Mandatory Improvement Plans

- Defined as: “an instrument designed to improve a teacher’s performance or the performance of any licensed employee ... by providing the individual with notice of specific performance areas that have substantial deficiencies and a set of strategies, including the specific support to be provided to the individual, so that the individual, within a reasonable period of time, should satisfactorily resolve such deficiencies.”



# Mandatory Improvement Plans

- MIP must state (at a minimum):
  - Specific performance areas that are deficient
  - Strategies to resolve them
  - Specific support to be provided to the teacher

# Mandatory Improvement Plans

- MIP should include timelines
- MIP timelines are set in law as maximums or minimums:
  - Teacher IN LOW-PERFORMING SCHOOL, to complete the MIP, is allowed no more than:
    - 90 instructional days; or
    - by the start of the next school year
  - NOTE: These are maximum time limits. MIP “shall be designed to be complete within” these limits.
- Teacher NOT in low-performing school:
  - at least 60 instructional days to complete the MIP.
  - NOTE: This is minimum time required

# Mandatory Improvement Plans

- When may a teacher be placed on a MIP?
  - Teachers may be placed on MIPs following below proficient ratings on evaluations.
  - Regardless of any evaluation ratings, a principal may place a teacher on a MIP if the teacher has engaged in inappropriate conduct or performed inadequately to such a degree that such conduct or performance is causing substantial harm to the educational environment and that immediate dismissal or demotion is inappropriate. The principal must document the exigent reason for immediately instituting the MIP.

# Mandatory Improvement Plans

- Local boards may adopt policies for the development and implementation of MIPs and for monitored and directed growth plans.



# SPECIFIC REQUIREMENTS FOR LOW-PERFORMING SCHOOLS (G.S. 115C-333)

- Requires annual evaluation of all licensed employees assigned to schools identified as low-performing.
- Requires local boards to use performance standards and criteria adopted by SBE, and may adopt additional criteria and standards.

# SPECIFIC REQUIREMENTS FOR LOW-PERFORMING SCHOOLS (G.S. 115C-333)

## MIP is mandatory:

- A rating on an evaluation of below proficient or otherwise representing below standard performance, or if teacher has engaged in inappropriate conduct or performed inadequately to the degree that it causes such substantial harm that immediate dismissal is recommended by evaluator, it must result in either a MIP or a recommendation for dismissal or nonrenewal. Evaluator must recommend to the Superintendent, who must decide.

## MIP Development:

- MIP shall be developed by the evaluator or supervisor, unless evaluation was done by assistance team.
- If evaluation was done by assistance team, then it develops MIP in collaboration with principal/supervisor.

## MIP Time Limits:

- MIP shall be designed to be completed within: 90 instructional days or before the beginning of the next school year.

# SPECIFIC REQUIREMENTS FOR LOW-PERFORMING SCHOOLS (G.S. 115C-333)

## Reassessments/Results:

- Upon reassessment after a MIP, Superintendent must initiate dismissal, demotion or nonrenewal proceedings if the employee has failed to either become proficient or demonstrate sufficient improvement toward the standards.
- If not proficient, reassessment results shall constitute “substantial evidence” of teacher’s inadequate performance.

# SPECIFIC REQUIREMENTS FOR LOW-PERFORMING SCHOOLS (G.S. 115C-333)

## State Board Notification

- If a local board dismisses a career status employee for any reason other than a RIF, or dismisses a teacher under contract for cause, it must notify SBE.
- This requirement also applies to contract teachers who are nonrenewed after being placed on a MIP based on the reasons in this statute.
- Teacher's name than gets added to State Board's list provided annually to all school boards.
- BIG negotiating leverage!



# Schools NOT Identified as Low-Performing (G.S. 115C-333.1)

MIP is not mandatory:

- If on an evaluation or an observation report a teacher receives a rating of below proficient or below standard, the principal may place the teacher on a MIP, but only if the superintendent or designee finds that the performance deficiencies cannot be addressed satisfactorily through an individual, monitored, or directed growth plan.

# Schools NOT Identified as Low-Performing (G.S. 115C-333.1)

## MIP Development:

- MIP shall be developed by principal in consultation with the teacher
- Teacher has 5 instructional days to request a modification of a proposed MIP
- Principal shall consider teacher's suggested modifications before finalizing the MIP.

## MIP Time Limits:

- The teacher shall have a minimum of 60 instructional days to complete the MIP.

# Schools NOT Identified as Low-Performing (G.S. 115C-333.1)

## Reassessment/Results:

- After completion of the MIP the teacher shall be assessed. If the teacher is not proficient in any of the performance standards identified in the MIP or has not demonstrated sufficient improvement towards those standards, the superintendent MAY recommend demotion, dismissal or nonrenewal, OR the nonrenewal or immediate dismissal or demotion of a contract teacher who has engaged in inappropriate conduct or performed so inadequately that it causes substantial harm to the education environment.
- If not proficient, reassessment results shall constitute “substantial evidence” of the teacher’s inadequate performance.

# Schools NOT Identified as Low-Performing (G.S.

## 115C-333.1) State Board Notification:

- If a local board dismisses a career status employee for any reason other than a RIF, or dismisses a teacher under contract for cause, it must notify SBE.
- This requirement also applies to contract teachers who are nonrenewed after being placed on a MIP, based on reasons in that statute.
- Teacher's name then gets added to State Board's list provided annually to all school boards.
- BIG negotiating leverage!

# Schools NOT Identified as Low-Performing (G.S.

## Qualified Observer: 115C-333.1)

- Teacher placed on a MIP has a right to be observed by a qualified observer in the area or areas of concern identified in the MIP.
- A “qualified observer” is any administrator or teacher licensed by DPI and working in North Carolina, any employee of DPI trained in evaluating licensed employees, or any instructor/professor in a North Carolina School of Education who holds an educator’s license.

(cont.)

# Schools NOT Identified as Low-Performing (G.S.

## Qualified Observer: 115C-333.1)

- Local board of education shall maintain a list of qualified observers employed by that board, selected by the board. Local board “shall strive to select administrators and teachers with excellent reputations for competence and fairness.”
- There is a joint selection process (teacher and principal) for designating the qualified observer. Qualified observer must be chosen within 20 instructional days after MIP begins.

(cont.)

# Schools NOT Identified as Low-Performing (G.S. 115C-333.1)

## Qualified Observer.

- The qualified observer must submit a report to the principal before the end of the MIP period. The principal and superintendent shall consider the report.
- Teacher pays expenses of qualified observer if not employed by that LEA.

# Mandatory Improvement Plans

## Legal Effect:

- If teacher on MIP does not attain “Proficient” rating, reassessment results constitute “substantial evidence” of inadequate performance.
- Absence of a MIP does not preclude a dismissal proceeding, but in such case the superintendent shall not be entitled to the “substantial evidence” provision.



# What is Different about a MIP?

- Legal presumption at end of MIP process: “substantial evidence” of inadequate performance, if teacher does not achieve “Proficient” ratings.

# Is MIP Now Required Before Dismissal for Inadequate Performance?

- No but you don't have benefit of "substantial evidence" provision without a MIP.
- Impetus to resign is greater if MIP has been provided.
- Evidence from some other growth plan (e.g., monitored or directed) or other documentation/evidence may still be "substantial."
- Teachers and their representatives will argue teacher should have been given MIP.
- Hearing officers and school boards may question why a MIP was not provided.

# Practice Tips

## When developing the MIP:

- Be sure to state the standards/elements that are deficient.
- While not required by law, to be more effective, also state problems in clear, plain terms.
- Be sure to articulate the support to be provided to the teacher.

# Practice Tips

## For teachers on MIP:

- Document thoroughly
- Don't just rely on ratings/comments on the evaluation instruments.

# Practice Tips

- Train administrators who evaluate teacher performance that they must include narrative comments on the evaluation instrument.

# Practice Tips

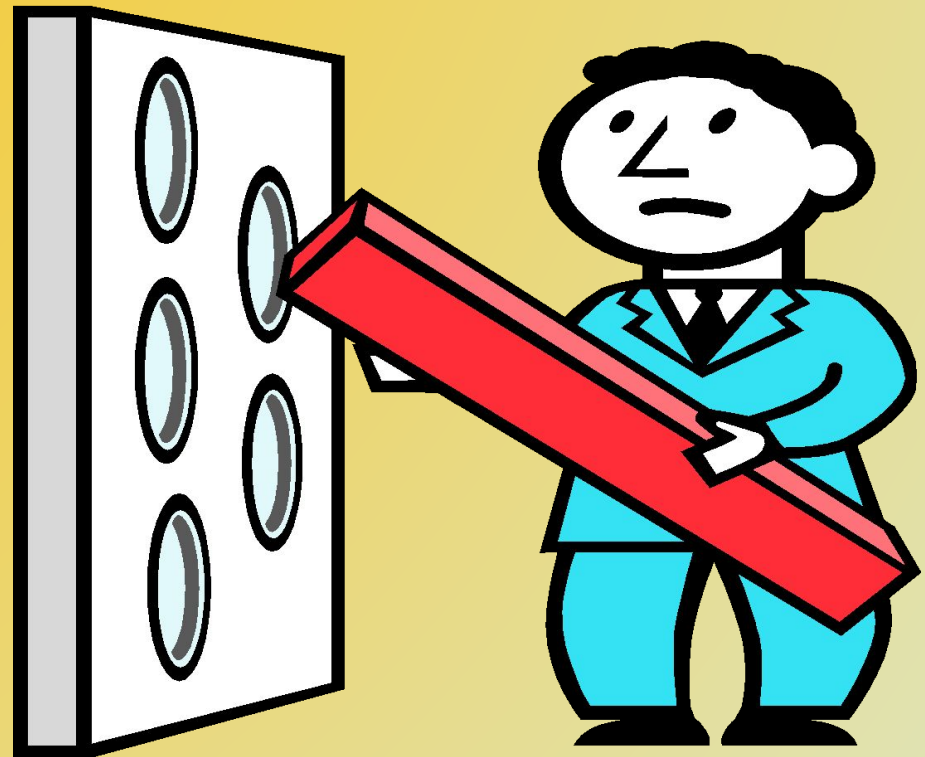
- Be sure that the teacher is told in writing if their performance is “below standard,” “unsatisfactory,” or “inadequate.”
- Make sure to use these words in addition to the ratings on evaluation instrument.

# Practice Tips

- Make sure the peer observer is prepared to do honest review.
- Document performance concerns that occur outside of the formal observation, if any.

# Practice Tips

- Document legitimate performance concerns, even if they don't "fit" perfectly on the evaluation instrument.





Your Session Is Now Over!

