

**Personnel Administrators of North Carolina  
2016 Fall Conference  
Asheville, N.C.**

**October 3, 2016**

**“Legal Requirements Regarding  
Low Performing Schools” ©**

Christopher Z. Campbell  
K. Dean Shatley, II  
Campbell Shatley, PLLC  
674 Merrimon Ave., Suite 210  
Asheville, NC 28804  
(828) 378-0064

Teacher Contracts:  
Tale of Two Statutes  
(G.S. 115C-325 & 325.1 et seq)

Status as of July 1, 2014	Status Through July 1, 2018	July 1, 2018 and Beyond
<b>Career Status</b>		
	Maintains Career Status	Maintain Career Status
<b>Probationary/Contract Teacher</b>		
	1 year contracts	1, 2, or 4 year contracts
<b>Career Status Teacher Moves</b>		
	1 Year Contracts	1, 2, or 4 year contract

# TOPIC 1

# Loss of License v. MIP for All

- Budget bill § 8.32 – this is HUGE
  - Amends licensure requirements for ALL teachers
  - “Standards for continuing licensure shall include the following:

# Loss of License v. MIP for All

- New ¶ 4: “For all teachers employed by a local board of education, evidence of a rating of at least proficient on the most recent annual evaluation to maintain the current license status. A teacher who is unable to satisfy this requirement but has been placed on a mandatory improvement plan may be eligible to receive an initial degree license if that teacher satisfies all other licensure requirements.”
- To be enforced at time of licensure renewal?
- Growth plan = “mandatory improvement plan”?

# TOPIC 2

# Teacher Contract Non-Renewals

## A. Legal Basis

1. Deadline to notify teacher = June 1
2. Teacher has right to “Petition” Board for hearing

# Teacher Contract Non-Renewals

3. Campbell Shatley recommends: “The petition must state: 1) the basis for the appeal; and 2) the relevant facts underlying the claim. Hearings may be granted by the board only when the employee presents evidence of a violation of state law or unlawful discrimination.”
4. Final decision from Board = June 15 or later if hearing
5. Reason for Recommendation = ANY RATIONAL BASIS



# Teacher Contract Non-Renewals

## 6. Reason cannot be

- “Arbitrary or Capricious” = Nothing in the “record”.
- Record = evaluations, memos, letters, etc. in the personnel file
- “Discriminatory” = existing law (race, age, sex, disability, etc.)
- “Personal” = ? . . . “It’s always personal!”
  - Use a “disinterested administrator” to review the principal’s recommendation in cases of possible personal bias

# Teacher Contract Non-Renewals

## 6. (cont.)

- Political = First Amendment issue
  - Personal job complaints NOT protected speech
  - Matters of public concern ARE protected speech

7. Board does not have to make “findings”; HOWEVER, Board must see the reasons in the personnel file for a performance-based non-renewal.

# Take-Aways

- Principal must notify Superintendent before June 1 to allow time for Superintendent to meet with teacher (resignation)
- Principal should finish summative evaluation before recommending non-renewal to Superintendent (put problem employees on a faster track)
- Principal must be able to articulate “reasons” and show them in the Personnel file to the Board of Education before making recommendation to Superintendent

# Employee Write-Ups

- Documentation
  - Evaluations including artifacts and comments!
  - All written warnings, directives, and reprimands should be artifacts on the next evaluation.

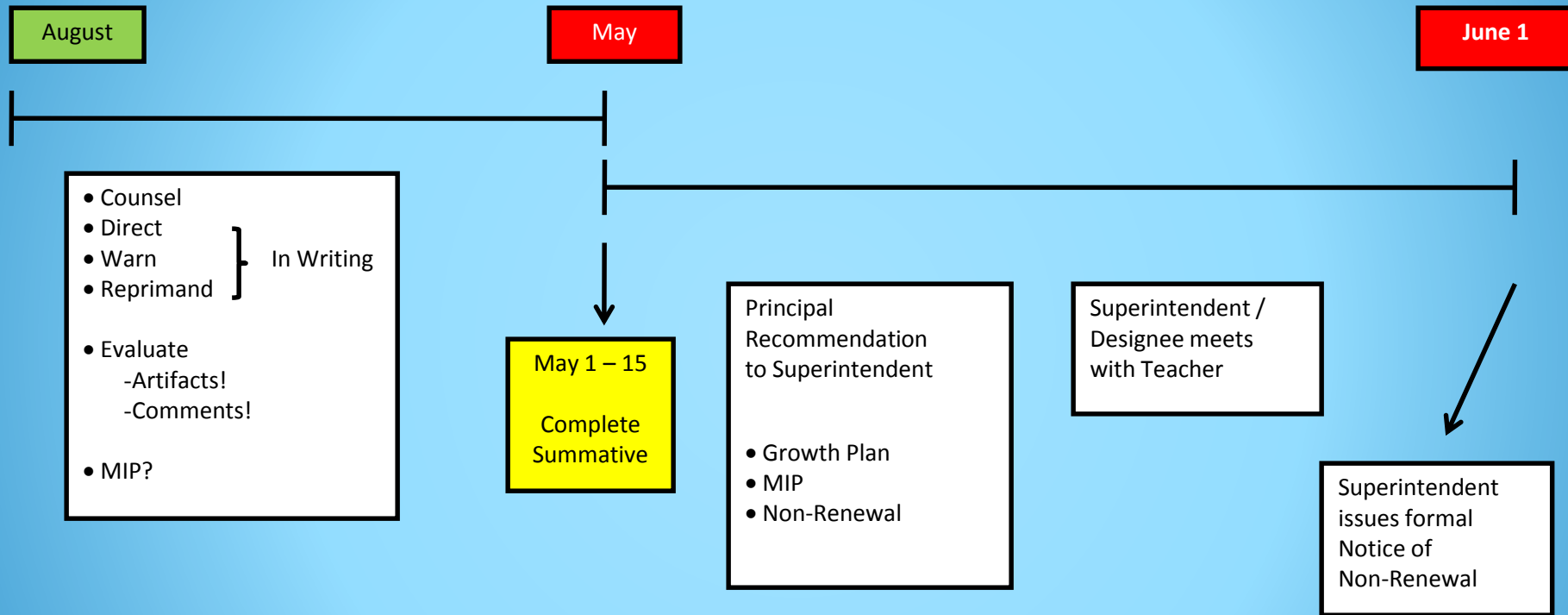
# Elements of a Write-Up

- i) the performance issue, ii) why it impacts students and/or the administration of the school, iii) any previous warnings, directives, reprimands, iv) all previous attempts to assist the employee in improving and v) a clear statement as to whether the employee has or has not made any improvement.
- Use Plain English!
- Your “audience” is the teacher AND the Board of Education

# Take-Aways

- MIPs and growth plans are optional
- Question for any plan vs. a recommendation for non-renewal or termination = Can this employee be saved through the use of a plan?

# CONTRACT TEACHERS (Principals' Action Timeline)



# TOPIC 3



# Dismissal of a Contract Teacher

- Looks a lot like dismissal of career status teacher
- May only be dismissed for certain reasons:
  - Inadequate Performance, Immorality, Neglect of Duty, Insubordination, etc.
- Teacher has right to:
  - Written notice of the grounds for termination
  - Opportunity to respond
  - Hearing before the Board

# Dismissal of a Contract Teacher

- No hearing before Hearing Officer
- Appeal to Superior Court is on the record
- Court has no authority to award monetary damages; may only direct Board to enter into a contract for one year

# TOPIC 4

# Dismissal of a Career Teacher

- Higher Legal Standard =
  1. "In determining whether the professional performance of a career employee is adequate, consideration shall be given to regular and special evaluation reports prepared in accordance with the published standards of performance which shall have been adopted by the Board."

# Dismissal of a Career Teacher

- Higher Legal Standard =
  2. Failure to notify a career employee of an inadequacy or deficiency in performance shall be conclusive evidence of satisfactory performance.

# Dismissal of a Career Teacher

- Higher Legal Standard =
  3. Inadequate performance for a teacher shall mean: (i) the failure to perform at a proficient level on any standard of the evaluation instrument; or (ii) otherwise performing in a manner that is below standard.

# Dismissal of a Career Teacher

- Higher Legal Standard =
  4. “For a career teacher, a performance rating below proficient shall constitute inadequate performance unless the principal noted on the instrument that the teacher is making adequate progress towards proficiency given the circumstances.”  
N.C.G.S. § 115C-325(e)(3).

# TOPIC 5



# Low Performing Schools / Additional Requirements Regarding Evaluations

- Definition as of July 1, 2015:
  - School receiving a “D” or “F”, and
  - School growth score of either “met expected growth” or “not met expected growth”.

# Low Performing Schools / Additional Requirements Regarding Evaluations

- 2 Categories
  - Single School defined as “low performing” but not the district
  - District defined as “low performing” because majority of schools identified as low performing

# Principals in All Low Performing Schools

## *Four Options for Principals:*

Within 30 days of identification, Superintendent to take one of the following actions regarding the school's Principal:

- Option #1: Recommend local Board retain Principal in current position

# Principals in All Low Performing Schools

- Option #2: Recommend local Board retain Principal in current position **“and a plan of remediation should be developed”**

Note: Principal can only be retained in the same position without a remediation plan if:

- the Principal was in that position for “no more than two years before the school is identified as low-performing,” or
- “If the School has met both student growth and has improved student achievement scores for the prior school year.” (2016 Budget Bill, HB 1030 § 8.31(a))

# Principals in All Low Performing Schools

- Option #3: Recommend that the Principal be transferred.

Note: Principal “shall not be transferred to another Principal position unless

- (i) it is in a school classification in which the Principal demonstrated at least 2 years of success,
- (ii) there is a plan to evaluate and provide remediation to the Principal for at least one year following the transfer to assure the Principal does not impede student performance at the school to which the Principal is being transferred; and
- (ii) the parents of the students at the school to which the Principal is being transferred are notified.”

Principal cannot be transferred to another low-performing school

# Principals in All Low Performing Schools

- Option #4: Proceed under G.S. § 115C-325.4 to dismiss or demote.

**Caveat: this option would still require making a complete case for dismissal as usual. If this is determined to be the option for any employee, consult legal counsel.**

# Evaluations of Licensed Employees in All Low Performing Schools

The statute is unclear on whether the term evaluation means a summative evaluation or simply an observation. DPI's policy provides clarity on this issue. For purposes of this presentation, it will be referred to as "supplemental evaluation."

# Evaluations of Licensed Employees in All Low Performing Schools

- Superintendent or Superintendent's designee must evaluate any school administrator at least once per year
- Principal or supervising Assistant Principal shall evaluate teacher at least once per year
- The evaluation should occur early enough during year to provide time to develop and implement mandatory improvement plan (MIP), if recommended



# Evaluations of Teachers in All Low Performing Schools

- Evaluation shall consist of:
  - Prior year summative, when available;
  - Student growth data, if applicable;
  - The current PDP;
  - Pre-observation conference (discussion of self-assessment, PDP, and the lesson to be observed);
  - Formal observation (at least 45 minute or entire class); and
  - Post-observation conference.

Note: Must have at least 3 years of student growth data to use this as criteria

# Evaluations of Teachers in All Low Performing Schools

If teacher is rated “Proficient” on supplemental evaluation, teacher returns to normal evaluation cycle, depending on years of service, etc.

Supplemental Evaluation may count as an observation on the summative but should not replace the summative

# Evaluations of Licensed Employees in All Low Performing Schools

- Per G.S. 115C-333 and DPI Policy: If teacher or school administrator receives below proficient / standard rating on supplemental evaluation, the evaluator shall recommend one of the following:
- Option #1: Employee placed on a MIP (completed within 90 days or before beginning of next school year);
  - No Qualified Observer requirement
  - Remain on comprehensive or standard evaluation cycle
  - DPI – may be PDP but must address deficiencies surfaced by the evaluation
  - Completed within 90 days or beginning of next school year
  - Reassess at end of MIP

# Evaluations of Licensed Employees in All Low Performing Schools

- Option #2: That the Superintendent should recommend dismissal or non-renewal of a teacher;
  - Immediate dismissal / demotion if the employee engaged in inappropriate conduct or inadequate performance to such a degree to cause harm to the educational environment
- Option #3: No recommendation to Superintendent (with explanation); Superintendent then decides whether to place teacher or school administrator on a MIP or dismiss / demote / non-renew as permitted by law.

# Reassessment / Dismissal

- After conclusion of MIP, Superintendent or designee shall reassess the employee.
- If Superintendent determines that a teacher failed to become proficient in any performance standard articulated in the MIP or demonstrate sufficient improvement toward such standards the Superintendent shall recommend dismissal or non-renewal of the teacher's contract.

# Reassessment / Dismissal

- **(Optional)** Under § 115C-105.38A, a Principal in a low performing school may recommend to the SBE that a teacher undergo a general knowledge test if it is determined that the teacher's performance is impaired by the teacher's lack of general knowledge.
- If teacher does not pass exam, teacher is required to go through remediation which shall consist of up to a semester of university or community college training or other similar activity. If remediation plan requires full-time course work, teacher will be considered on leave with pay.
- After remediation plan, teacher shall retake the exam. If the teacher fails the exam again, the SBE will bring a dismissal proceeding.

# Teacher Dismissal / State Board Notification

- If teacher in low performing school is dismissed for any reason (other than a RIF) or non-renewed for performance reasons, the Superintendent shall notify the SBE.
- SBE shall provide an annual list of these teachers to all districts.

# Teacher Dismissal / State Board Notification

- If another LEA hires a teacher on the list, the district must:
  - Observe the employee within 60 days;
  - Place the employee on a MIP to assist the employee; and
  - Submit the MIP to the SBE for comments and review.



# Teacher Dismissal / State Board Notification

- If the employee receives below proficient or satisfactory rating, Superintendent shall notify SBE, which shall initiate license revocation proceedings immediately.
- Must also notify SBE if employee comes into “good standing” and SBE will remove name from the “list”.

# Evaluation of Superintendents in Low Performing Schools

- The Board of Education must evaluate and report the results to the State Board of Education where
  - 1 or more schools low performing (LEA with 10 or less schools)
  - 2 or more schools low performing (LEA with 20 or less schools)
  - 3 or more schools low performing (LEA with more than 20 schools)

# Year 2 and Beyond?

- Year to year analysis for teachers in consistently "low-performing" schools, but if teacher doesn't improve over a couple years, action will likely need to be taken
- Recruitment and retention problems
- No notice to parents for transfer of teacher (like principal)
- Supplemental Evaluation v. previous year Summative Evaluation (Is the sequel as good as the first?)