

LONG & DiPIETRO, LLP

ATTORNEYS AT LAW
175 Derby Street
Unit 17
Hingham, MA 02043
www.long-law.com

MICHAEL J. LONG
ROSANN DiPIETRO
KELLY T. GONZALEZ
LESLIE C. CAREY

JOSEPH P. LONG
OF COUNSEL

TELEPHONE (781) 749-0021
FACSIMILE (781) 749-1121
email@long-law.com

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LEGAL ADVISORY: Amendments to M.G.L. c. 71, § 59B Weaken Superintendent's Authority in Personnel Matters Involving Non-Teaching Positions

On August 3, 2018, the Massachusetts Senate joined the House of Representatives in overriding the Governor's veto to enact an amendment to M.G.L. c. 71, § 59B, relative to the authority of Superintendents in certain personnel matters. As a result, section 59B now limits Superintendents' authority over promotion and termination decisions affecting some non-teaching staff. The new law does not apply to personnel decisions involving teachers.

Since the adoption of the Education Reform Act in 1993, the courts have supported statutory grants of authority to Superintendents in matters of personnel decisions such as promotions, transfers, and discipline. Section 59B delegated authority to building principals in various personnel decisions, subject to district policy and the review and approval of the Superintendent. In several cases, the Massachusetts Supreme Judicial Court and Appeals Court have found, in effect, that provisions of a collective bargaining agreement are contrary to law when they purport to limit or constrict the Superintendent's discretion in such matters. These cases recognized a conflict between the authority of the Superintendent and Principal under M.G.L. c. 71 and the rights of unions under M.G.L. c.150E to negotiate working conditions around transfers, promotions, and employee discipline. As a result, for many years the terms of collective agreements have been construed to permit, for example, the application of contract terms to voluntary transfers insofar as the contract establishes criteria for eligibility for transfer, provided the contract does not dictate whom the Superintendent must select from a "pool" of applicants who meet contractual qualifications for the position. *See, e.g., School Committee of Pittsfield v. United Educators of Pittsfield*, 438 Mass. 753 (2003); *School Committee of Newton v. Newton School Custodians, Local 454*, 438 Mass. 739 (2003).

After a two-year struggle over this issue, during which the Governor supported the position that M.G. L. c. 59B should not be weakened, the unions were able to convince the legislature at the end of the 2018 session to override the Governor's veto. The text of § 59B now expressly delegates to contracts control over promotions, procedures, and disciplinary standards. The amended M.G.L. c. 71, § 59 now reads in relevant parts:

...the promotion and discipline, up to and including termination, of employees in custodial, maintenance and other non-teaching positions shall be conducted in accordance with any governing collective bargaining agreement...

Where the rights of labor and management are established by the collective agreement, the Superintendent may no longer rely on ERA-based statutory and judicial law in cases of promotion and discipline for support staff. The new law does not speak to the issue of transfers. Thus, going forward we suggest you review contract language carefully with local labor counsel before making decisions about these matters. Stay tuned for legislative activity by unions which may seek similar roll backs to managerial discretion.

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