State Education Department Guidance on Applicability of Four-Year Probationary Period

The various provisions on tenure in Subpart D of Part EE of Chapter 56 of the Laws of 2015 that were enacted with the State budget each provide that teachers or school administrators "appointed on or after July 1, 2015" must be appointed for a probationary term of 4 years with certain specific exceptions.

Questions have been raised about whether it is the date of the vote of the board of education approving the probationary appointment that must be on or after July 1, 2015, or the effective date of the probationary appointment.

Based on the language of the statute and past decisions of the Commissioner of Education interpreting probationary appointments, it is the interpretation of the State Education Department that it is the date of the board of education's approval of the probationary appointment that is controlling. When a board of education approves the probationary appointment, it must specify the term of the probationary appointment. Therefore, where a board of education votes to appoint a new teacher or administrator on or after July 1, 2015, the educator must be appointed to a four year probationary period in accordance with the new tenure provisions (or a lesser period of two or three years in the case of regular substitutes receiving Jarema credit or teachers transferring from another district, respectively).

Where a board of education votes to make a probationary appointment prior to July 1, 2015, regardless of the effective date of that appointment, the probationary term must be 3 years in accordance with pre-existing law (or the lesser period for regular substitutes and teachers who transfer districts).

If a board of education is considering appointment of a probationary teacher or administrator to a four year probationary term, it should delay action approving the probationary appointment until on or after July 1, 2015.