CHANGES IN GEORGIA EDUCATIONAL LEADERSHIP PREPARATION AND CERTIFICATION: THE LEGAL AND PRACTICAL ISSUES

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The latest educational reform and accountability movement, culminating in the enactment of the No Child Left Behind Act in 2001, has focused attention on the instructional role of educational leadership. Some critics have contended that leadership preparation programs are ineffective and in need of a major redesign to ensure that leadership candidates are adequately prepared to deal with the increasing complexity of educational leadership roles. Under close public scrutiny, school superintendents and principals face intense pressure to secure and retain highly qualified teachers whose teaching results in high achievement from all students. The increased demands on administrators and accompanying high stress levels have had a chilling effect on teachers' aspirations to move into formal leadership roles. Those with a keen eye for fiscal responsibility have further criticized Georgia's salary schedule in which educators are paid on their highest degree, resulting in many classroom teachers being paid higher salaries because they hold leadership certificates, although they have no desire to seek leadership positions within their schools or systems. These factors and others prompted the Georgia Professional Standards Commission (PSC) and other stakeholders to initiate significant changes in the certification process for educational leaders, requiring similar changes in educational leadership preparation programs in Georgia.

This document is intended for superintendents and school system administrators charged with implementing these changes within the public school systems of the State. It will present a brief overview of the new leadership certification and preparation program, but anyone looking for specific answers related to the details of the new certification requirements should consult the PSC's website, www.gapsc.com, and all of the material available there about the new Rule. Primarily, this document will attempt to address at least some of the legal and practical issues that may be faced by those charged with making the new Rule work in the field, that is, in the schools and central offices of the State.

I. Summary of the Rule

A major redesign effort focused on how the PSC certifies Georgia educational leaders and the preparation needed for that role has been ongoing for a number of years. The new PSC Rule 505-2-.300, Educational Leadership, became effective April 15, 2008 and defines the positions to which it applies as follows: "Positions requiring a Leadership certificate are those in which an individual has the authority and/or responsibility, in a supervisory role, for Board-approved educational programs and/or personnel required to hold certification for their assigned job as determined by the Professional Standards Commission." The new leadership program, which requires local school systems or RESAs to collaborate with leadership preparation institutions to create a program design that meets the needs of both the higher education institution and the local school system, replaces the old "L" certificate with a new Performance-Based "PL" certificate.

The most frequently asked question is how the new Rule will affect educators who currently hold Georgia Clear Renewable Leadership "L" certificates or endorsements. Individuals with "L" certificates at Level 5, 6, or 7 issued prior to September 30, 2009 will be "grandfathered" under the old rules and remain eligible to be hired or serve in positions requiring a leadership certification. Similarly, Leadership endorsements for the positions of Director of Media Centers, Director of Pupil Personnel Services, Director of Special Education, Director of Technical/Career Education and Instructional Supervision already issued prior to that date will remain in effect, subject to existing renewal requirements. Effective September 30, 2009, no new endorsements in those fields will be issued and personnel assigned to those positions without the old endorsement must hold a valid certificate in the field of Educational Leadership.

The new certification process begins with an initial pool of pre-service leadership candidates at the master's degree level or higher who will be eligible for employment in leadership positions upon completion of performance-based programs and issuance of a "PL" certificate at the building or system level. Building level programs will emphasize instructional leadership skills focused on student achievement, while the system level programs will emphasize management of resources to facilitate student learning. Educators wanting to become eligible for employment in leadership positions must first complete a Master's degree (in any field) from an accredited institution and pass the Georgia Assessment for the Certification of Educators (GACE) Leadership Assessment, at which time they will be eligible to apply for a five-year Non-Renewable Leadership (NL-5) certificate. For the Level 5 leadership preparation programs, a college or university can still accept applications for admission without input from a local school system. The NL-5 will be valid for 5 years and identifies the educator as a "Pre-Service Leadership Candidate," who is eligible to be offered a job in a leadership position. According to the PSC's website, "For the purposes of accepting candidates into PSC-approved Level 6 or Level 7 Leadership Programs, leadership candidates will be determined by the local school system in partnership with their college/university provider." Upon leadership employment, the educator will be issued a new "NPL-5" certificate and will have five years to complete a PSC-approved, performance based PL-6 or PL-7 program specified for the building level or system level, depending on the educator's specific job assignment. Superintendents and individuals assigned to concurrent job responsibilities are required to hold both certificates. Upon completion of the program, the educator will be issued a PL-6 or PL-7 certificate at either the building level or system level, which will make those individuals eligible for employment in leadership positions.

Once candidates are hired in an educational leadership position, it is the school system's responsibility to provide these candidates with opportunities to carry out performance-based assignments and program requirements while enrolled in programs offered by the PSC-approved leadership preparation provider with which the school system or RESA is collaborating. As part of the performance-based leadership program, building or system administrators must work with beginning leader candidates to develop an individualized induction plan that will define the responsibilities for the beginning leader candidate's residency program. Guidelines for the Leadership Supervised Residency require the plan to be agreed upon at the beginning of the residency. It must provide the beginning leader candidate with "substantial responsibility that

increases over time and complexity and involves direct interaction with appropriate staff, students, parents and community leaders."

II. Legal and Practical Considerations

It is the new role of the school system in the process of selecting leadership candidates and working directly with its teacher preparation institution partner to provide the training and evaluation of each candidate's program of work that raises legal and practical concerns. While complaining about the pool of leadership applicants available and the lack of experience of newly certified administrators required little investment by local officials, the new process places substantial responsibility on school systems and their existing leadership to identify and develop the leaders of the future. The Rule is intentionally flexible in defining how this responsibility is to be carried out.

For example, while certain positions will require a leadership certificate issued by the PSC, the number of "leadership positions" in which a system may place someone enrolled in a program seeking a "PL" certificate and/or a leadership degree may be much larger than the number of positions requiring a leadership certificate. Many teachers assume leadership roles within a school fulfilling duties as department chairs, grade-level chairs, accreditation review committee chairs or similar functions that provide opportunities for leadership, but do not require a specific certificate. The list is not intended to be remotely exhaustive nor to suggest that a school system would have to fill such positions only with those participating in a leadership certification training program. This example demonstrates both the flexibility and the potential difficulties for school systems.

A. Federal Issues

While obvious to all existing superintendents and human resources directors, it cannot be overemphasized that the recruitment and selection of leaders and candidates must be conducted so as to ensure nondiscrimination on the basis of race, color, national origin, gender, age, religion or disability. Every candidate not allowed to participate in a leadership certification training program although holding what the candidate perceives to be a "leadership position," and every candidate not assigned to a "leadership position" even though the candidate wants to participate in a training program (and thus cannot), will be inclined to blame the decision on some illegal motivation. Such contentions arise in public school employment on a daily basis, and experienced administrators realize that they must be prepared to explain to the Equal Employment Opportunity Commission or to a court the legitimate, nondiscriminatory motive that is the real reason for the decision. In the past, superintendents might face such a challenge in filling a specific position, but now such challenges may arise over the decision to allow a candidate the opportunity to be trained to be a "leader."

Similar discrimination claims could arise with regard to the selection of individuals who serve as "coaches," especially when these individuals might be experienced administrators still employed by the school system. The rule seems to place the primary responsibility for the procurement and contracting of coaches with the higher education institution, although, as in all endeavors under the rule, the school system is to cooperate. The process clearly will involve a substantial

amount of time by both the certificate candidates and the coaches involved. Therefore, superintendents will have an additional interest in which employees are chosen to fill both roles.

B. State Issues

In addition to legal considerations under federal law, the implications of Georgia law must also be considered in implementing the process. First and foremost, superintendents and boards of education must be careful to separate issues relating to certification from those involving the employment contract and the evaluation process. Separately considering and analyzing the issues does not mean they may not overlap and it is the overlap which will often require individualized consideration.

For example, the rule clearly contemplates that a school system may choose to hire a "pre-service leadership candidate" with an NL-5 certificate to assume a position such as assistant principal requiring, under PSC rules, a leadership certificate. This candidate will have five years under the rule to complete a program and obtain a PL-6 or PL-7 certificate. During this time, the candidate will be employed under yearly contracts with the local board of education (while it is legally possible for a board of education to enter into a multiyear contract with an administrator, this is rarely the practice in Georgia for assistant principals). Each year, that contract must be renewed, although these individuals cannot obtain any of the "tenure" protections of the Fair Dismissal Act. It is crucial that in agreeing to allow the candidate/employee to participate in the certification program, the school system not create documentation stating, or even implying, an agreement to employ the candidate on a multiyear basis. However, given the investment of resources being made by the school system in the candidate's training program, the school system has a very real interest in insuring that the candidate is actively engaged in the promptest possible completion of the program to obtain performance based certification. Under the Fair Dismissal Act, "failure to secure and maintain educational training" is a cause which would justify the termination of a contract and certainly is a legitimate reason not to renew the employment of a non-tenured administrator. School systems which are accustomed to mass production of form contracts and evaluations will find it necessary to carefully draft language setting forth contract expectations, performance expectations for evaluation purposes, and certification expectations applicable to the candidate's program with the training institution. No magic language exists to satisfy each individual circumstance, but an awareness of the issues is essential.

On the other hand, the school system may choose to allow a leadership certificate candidate to participate in a program where the leadership opportunity provided within the system does not require a leadership certificate under PSC rules (see examples of department chair, etc. above). Once again, a distinction must be made between the contract relationship, the evaluation process and the certification process, but this time the considerations are different. As a teacher, the employee can acquire and likely already has the "tenure" protection of the Fair Dismissal Act. While the leadership responsibilities assigned are crucial for the certification process, incorporating those responsibilities into a contract, especially if they are accompanied with a supplement or increase in pay, may lead to an argument that the removal of those duties and the transfer back to solely classroom responsibilities is a demotion under the terms of Georgia law (a transfer from one position to another having less "responsibility, prestige and salary.") While the

Fair Dismissal Act currently specifies that it is not intended to vest tenure rights on department head or chairperson positions, any language in the contract must be carefully reviewed to make sure the distinction is maintained.

While the school system time and resources devoted to the training program of these individuals by the system is certainly equivalent to that devoted to an employee placed in an assistant principal position requiring a leadership certificate, the employee's failure to make progress toward full certification is not as clearly tied to the employment relationship. The employee is, after all, a teacher with a teaching certificate, and the lack of progress toward a leadership certificate may not justify termination or even non-renewal. Where a system desires this connection, careful drafting of a contract addendum or, better yet, evaluation expectations is essential.

C. The Individual Induction Plan

One of the key components in the new training process is the development of an individual induction plan for each candidate. Given the issues outlined above, it should be obvious that this plan may become a key component in the school system's annual evaluation of the employee's performance. Where the job responsibilities for employment purposes are different from the leadership expectations for certificate purposes, both the IIP and the evaluation documents need to make this clear.

D. Future hiring criteria

Other legal issues and considerations may arise in the future, especially as the pool of performance based certificate holders increases. School systems could, and may choose to, give preference to the holders of such certificates or even the holders of such certificates who have participated in training programs sponsored by the school system in cooperation with its institutional partner. In doing so, vacancy announcements will have to be carefully drafted and consideration will have to be given to the available pool given the limitations put forth in the vacancy announcement. As always, considerations of potential discrimination claims and diversity needs of the district will be key in making these decisions.

E. Contract with Provider

Any contractual relationship entered into between a school district and another entity has potential legal ramifications. This is certainly true of the agreement between the district and its higher education partners or providers in the certification process. It is likely and advisable that the initial contracts track the language of the rule and provide as much flexibility and discretion to the school district as possible. School systems are used to working with colleges and universities with student teachers and other intern programs which should provide models for these agreements. Specificity is probably better left to the IIP's of each candidate.

F. Certification of the Superintendent

Finally, of personal interest to superintendents is the language in the proposed rule requiring superintendents to have performance based certification at both the school and system level. Of course, current superintendents are grandfathered in under the terms of the rule. Of more interest will be the extent to which superintendents and their boards, at least in the interim, turn to the permit rule of the PSC, Rule 505-2-.10, authorized by O.C.G.A. § 20-2-101(b). Under that code section, the superintendent may be employed if he or she "possesses acceptable business or management experience as specified by the Professional Standards Commission." As performance based leadership certification becomes the norm, most boards of education will clearly look for their chief educational officer to possess proven leadership skills at both the school and system level and the certification process outlined by the new rule provides that opportunity.

If superintendents and school system leaders have learned anything in their experience, it is that the unexpected can be expected and that all new laws and administrative rules have legal and practical consequences, some of which cannot possibly be anticipated. The basic legal concepts identified in this document form the framework for the consideration of any issue likely to arise and at this early stage of the implementation of a most ambitious new program, that is all that can be accomplished.