

## Can't Touch This: Seventh Circuit Panel Backs Tenured Teacher Law

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In *Elliott v. Board of School Trustees of Madison Consolidated Schools*, a three-judge panel of the U.S. Court of Appeals for the Seventh Circuit unanimously upheld a federal district court's ruling that the layoff provision of Indiana's 2011 Senate Bill 1 (SB 1) violated the federal Contract Clause when applied retroactively to a teacher who earned tenure before the new law took effect. The decision was issued on Dec. 4. For more than 80 years, Indiana's 1927 teacher tenure law has created contractual rights for tenured teachers. In 2011, the Indiana General Assembly passed SB 1 that curtailed tenured teacher protections during layoffs. Essentially, SB 1 allowed schools, during a reduction in force (RIF), to base layoff decisions on teacher performance rather than seniority. The court's decision in *Elliott*, stemmed from the termination of a 19-year veteran teacher who was terminated as part of the school's decision to layoff teachers due to declining enrollment. Other non-tenured teachers remained employed in positions for which the tenured teacher was qualified. The three-judge panel rejected the state's argument that a performance-based layoff regime is necessary to ensure teacher quality. Rather, the court reiterated that schools have other grounds for the cancellation of tenured teacher contracts such as immorality, insubordination, and incompetence included in Indiana Code 20-28-7.5-1. The court further echoed that nothing requires a school to wait for a RIF to terminate poor-performing tenured teachers. Ultimately, courts interpreted the Indiana law to mean schools must retain qualified tenured teachers over non-tenured teachers during layoffs. As school employers prepare to conduct mid-year evaluations, this case is an important reminder to administer thorough evaluations. Evaluations remain an important tool to communicate performance standards and as evidence for termination decisions.

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