



EDUCATION

# ALERT

## WHAT WAS THE PENNSYLVANIA LEGISLATURE THINKING WHEN IT MODIFIED THE ACCOUNTABILITY PROVISIONS FOR TEACHERS UNDER THE PUBLIC SCHOOL CODE?

Under the guise of improving teacher accountability, the Pennsylvania Legislature recently engaged in a sweeping overhaul of the evaluation process for professional employees (teachers) under the Public School Code. However, in making some of these changes, however well-motivated the State Legislature may have been in terms of improving teacher accountability, the State Legislature has actually made it far more difficult to terminate professional employees who are not performing up to standards in the Commonwealth of Pennsylvania.

First, the Pennsylvania Legislature included the following language modifying the Public School Code:

**“No employee shall be dismissed under Section 1122 unless the employee has been provided a completed rating tool provided for under this section, which includes a description based upon classroom observations of deficiencies in practice supported by detailed anecdotal records that justify the unsatisfactory rating.”**

The translation of this language is that no teacher or temporary professional employee can be dismissed unless they are rated unsatisfactory on the rating tool. At first blush, that might seem to be appropriate. However, if, for example, a teacher were to have engaged in inappropriate sexual misconduct with a student, which would otherwise be immorality under the School Code, the district would have to rate a teacher first as unsatisfactory before they dismiss a teacher. Even though this is patently absurd, the legislation will definitely need to be amended to change this provision.

Second, the legislation also provides for a new rating instrument and methodology. Beginning in the 2013-2014 school year, the evaluation of professional employees and temporary professional employees needs to take into account the following:

I. Classroom observation and practice models that are related to student achievement in each of the following areas:

- (a) Planning and preparation
- (b) Classroom environment
- (c) Instruction
- (d) Professional responsibilities

II. Student performance, which shall comprise 50% of the overall rating of the professional employee or temporary professional employee serving as a classroom teacher and shall be based on multiple measures of student achievement. The 50% shall be comprised of the following:

(a) 15 percent building level data, including but not limited to all of the following:

I. Student performance on assessments

II. Value-added assessment system data made available by the Department under Section 221

III. Graduation rate as reported to the Department under Section 222

IV. Promotion rate

V. Attendance rate as reported to the Department under Section 2512

VI. Advance placement course participation

VII. Scholastic aptitude tests and preliminary scholastic aptitude tests

(b) 15% of the teacher’s specific data, including but not limited to student achievement attributable to a specific teacher as measured by

all of the following:

- I. Student performance on assessments
- II. Value-added assessment system data made available by the Department under Section 221
- III. Progress in meeting the goals of the student individualized education plans required under the Individuals with Disabilities Education Act.
- IV. Locally developed school district rubrics
- c) 20% elective data, including measures of student achievement that are locally developed and selected by the school district from a list approved by the Department and published in The Pennsylvania Bulletin by June 30 of each year including, but not limited to, the following:

- I. District-designed measures and examinations
- II. Nationally recognized standardized tests
- III. Industry certification examinations
- IV. Student projects pursuant to local requirements.
- V. Student portfolios pursuant to local requirements.

On their face, these objective methodologies may seem to be a good idea and if they were properly implemented, they very well could be a good idea. However, the State Legislature and/or the Governor's Office that proposed this language have very little understanding of the evaluative process for professional employees and how labor arbitrators will interpret this language.

Third, as the result of the imposition of this language, should a district in the future seek to terminate a professional or temporary professional employee, one can expect that the teachers' unions representing these employees will argue that a teacher cannot be held accountable on the basis of performance for all of the students in their classroom because:

- The teacher does not have a choice in which students are assigned to them.
- The teacher may have a disproportionate number of students who are exceptional students from a special education perspective.
- How could a teacher be held responsible for the problems

that may have been created as the result of a prior professional employee or temporary professional employee who did not perform adequately with the student (poor teaching performance usually has at least a four year residual impact on students)?

- The teacher cannot be held responsible for the socioeconomic status of a student, which has the greatest predicative factor on student performance.

Fourth, the proposed evaluation methodology further does not take into account how to evaluate teachers where performance results do not adequately measure the teacher's performance. Examples of this would be the rating of music teachers, art teachers, guidance counselors, physical education teachers, vocational-technical school teachers, intermediate unit teachers, and the like.

Fifth, I would expect that now the termination of a professional employee will become a statistical battle between districts and teachers. Though it is clear that the current system is not optimal and is much more subjectively based, I conclude that the proposed legislation will actually make it more difficult to terminate professional and temporary professional employees than ever before. Accordingly, "what was our State Legislature thinking?"

Finally, it appears as if the only effective methodology to terminate professional and temporary professional employees based upon current amendments to the law is to rely upon a teacher's criminal history information. If a teacher has a problem in his/her criminal background, that appears to be the most efficient way to terminate a professional or temporary professional employee. Otherwise, school administrators are now going to be mired in statistical paperwork prior to terminating any teacher.

I believe that most labor arbitrators will not support the statistical methodologies in place for a teacher's discharge. The Legislature's handiwork has now created a situation that will likely cause districts to have even more difficulty in terminating non-performing teachers. If I were in a position to grade, the Legislature would get an "F" for this effort.

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