

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SB 316

51st Legislature, 1st Session, 2013

Tracking Number: .191922.1

Short Title: Teacher Licensing & Performance Ratings

Sponsor(s): Senator Sander Rue

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Bill Summary:

SB 316 amends the *School Personnel Act* of the *Public School Code* to require that:

- “effectiveness” be defined according to five performance evaluation rating levels of:
 - exemplary;
 - highly effective;
 - effective;
 - minimally effective; or
 - ineffective;
- “improvement plan” be defined as a written plan for the teacher that:
 - identifies the areas in which the teacher needs improvement;
 - provides for professional development, training, support, or other opportunities aligned with the areas in which the teacher needs improvement; and
 - states the expectation that the teacher demonstrate improvement in certain areas within 90 working days of receiving the improvement plan;
- the tiered licensure of teachers be linked to annual objective performance evaluation ratings; and
- an improvement plan process be provided for teachers that do not demonstrate effectiveness.

For Level 1 licensure, provisions in SB 316:

- change the requirement:
 - to apply for a Level 2 license from teaching for a minimum of three years to provisions specified in the Public Education Department (PED) rules;
 - from an annual evaluation of competency to an annual evaluation of effectiveness;
 - to only during the first three years of teaching, a teacher is subject to the provisions in the *School Personnel Act* relating to termination decisions by the local school board or governing authority of a state agency (see “Technical Issues,” below);

- state that if the teacher receives minimally effective or ineffective performance evaluation ratings during the fourth or fifth year of teaching, the teacher is required to receive an improvement plan from a school administrator or mentor,
 - after completion of the improvement plan, the teacher shall:
 - continue to teach with a Level 1 license if improvement is demonstrated; and
 - be terminated as provided in Section 22-10A-24 NMSA if no improvement is demonstrated; and
- remove the following provisions:
 - if at any point during Level 1 licensure, the teacher fails to demonstrate satisfactory progress and competence annually, the teacher may be terminated as provided in the *School Personnel Act* relating to termination decisions by the local school board or governing authority of a state agency; and
 - if the teacher has not demonstrated satisfactory progress and competence by the end of the five-year period, the teacher shall not be granted a Level 2 license.

For Level 2 licensure, provisions in SB 316:

- change:
 - the duration of a Level 2 license to five years; and
 - the annual demonstration of competency to the annual demonstration of effectiveness; and
- state that if the teacher does not demonstrate effectiveness, the school district shall provide the teacher with an improvement plan during the next school year, and if
 - by the end of that school year the teacher fails to demonstrate effectiveness, a school district may choose not to contract with the teacher.

For Level 3-A licensure, provisions in SB 316:

- change:
 - the duration of a Level 3-A license to five years; and
 - the annual demonstration of competency to the annual demonstration of effectiveness;
- state that if the teacher does not demonstrate effectiveness, the school district shall provide the teacher with an improvement plan during the next school year, and if
 - by the end of that school year the teacher fails to demonstrate effectiveness, a school district may choose not to contract with the teacher; and
- remove the requirement that an applicant must:
 - teach at Level 2 for at least three years; and

- hold a post-baccalaureate degree or National Board for Professional Teaching Standards (NBPTS) certification.

For Level 3-B licensure, provisions in SB 316:

- change:
 - the duration of a Level 3-B license to five years; and
 - the annual demonstration of instructional leader and administrative competency to the annual demonstration of effectiveness; and
- remove the requirement that an applicant must:
 - hold a Level 2 license and meet the requirements for a level 3-A license; or hold a Level 2 license and hold the highest-ranked counselor license for at least four years;
 - hold a post-baccalaureate degree or NBPTS certification;
 - satisfactorily complete PED-approved courses in administration and a PED-approved administration apprenticeship program; and
 - demonstrate instructional leader competence required by PED and verified by the local superintendent through the highly objective uniform statewide standard of evaluation.

Additional provisions in SB 316 allow PED to issue:

- A Level 2 license to an applicant who has:
 - completed at least two years of teaching with a Level 1 license and has received an objective performance evaluation rating of exemplary or highly effective for each of the immediately preceding two years; or
 - completed at least five years of teaching with a Level 1 license and has not received an objective performance evaluation rating of minimally effective or ineffective in the immediately preceding three-year period; or
 - been granted reciprocity as provided by PED rules.
- A Level 3-A license to an applicant who has:
 - completed at least two years of teaching with a Level 2 license and has received an objective performance evaluation rating of exemplary or highly effective for each of the immediately preceding two years; or
 - completed at least five years of teaching with a Level 2 license and has not received an objective performance evaluation rating of minimally effective or ineffective in the immediately preceding three-year period.
- A Level 3-B license to an applicant who has:
 - submitted to PED written approval from a superintendent or the superintendent's designee to enter into an administrator preparation program; and
 - completed at least three years of teaching with a Level 2 license and has received an objective performance evaluation rating of exemplary or highly effective for each of the immediately preceding three years; or

- completed at least two years of teaching with a Level 3-A license and has received an objective performance evaluation rating of exemplary or highly effective or effective for each of the immediately preceding two years.

Fiscal Impact:

SB 316 makes no appropriation.

Fiscal Issues:

House Bill 3, as amended by the House Education Committee, includes \$1.0 million for a New Teacher Evaluation System for FY 14.

The FY 14 Executive Recommendation includes approximately \$11.3 million to PED for rewarding highly effective teachers and principals. According to the *Executive Budget Recommendation* for FY 14, an appropriation of \$11.3 million would provide:

\$7,500 to 675 exemplary teachers	=	\$5,062,500
\$5,000 to 1,125 highly effective teachers	=	\$5,625,000
\$10,000 to 50 exemplary principals	=	\$ 500,000
\$7,500 to 50 highly effective principals	=	\$ 375,000
		\$11,562,500.

It is indeterminate as to why the grand total of the Executive funding recommendation to reward highly effective teachers and principals equals \$11,562,500 and does not match the \$11.3 million request.

According to the PED bill analysis:

- approximately 1,100 teachers annually advance from tier to tier, which is estimated to cost districts and charter schools approximately \$11.0 million;
- beginning in FY 16, SB 316, if enacted, might decrease the annual movement of teachers from tier to tier and reduce operational costs for school districts and charter schools; and
- SB 316, if enacted, would remove additional burden and costs on teachers in the licensure advancement process.

According to the Fiscal Impact Report (FIR) by the Legislative Finance Committee:

- for FY 12, PED collected over \$2.0 million in licensure fees;
- for FY 13, PED estimated collecting \$2.2 million in licensure fees;
- for FY 14, PED estimates collecting \$2.4 million in licensure fees; and
- the collection of licensure fees may increase as the time between required licensure renewals is decreased.

Substantive Issues:

According to a licensure fee memo posted on PED’s website, current fees for licensure renewal and for advancement throughout the licensure levels include:

- \$125 for initial and additional licensure applications for teachers, administrators, and instructional support providers;
- \$35 for initial and additional licensure applications for educational assistants, substitute teachers, health assistants, and coaches;
- \$95 for continuing licensure applications for teachers at the same licensure level, administrators, and instructional support providers;
- \$35 for continuing licensure applications for educational assistants, substitute teachers, health assistances, and athletic coaches;
- \$320 for teacher advancement through the Professional Development Dossier (PDD) process;
- \$110 for resubmitting one strand for teacher advancement through the PDD process;
- \$220 for resubmitting two strands for teacher advancement through the PDD process;
- \$320 for resubmitting three strands for teacher advancement through the PDD process; and
- \$95 for adding an endorsement to a teaching license.

According to the PED bill analysis, SB 316, if enacted:

- the PDD would be retained for the first two years of implementation. Keeping the PDD for at least two years would allow a transition phase for teachers that have met the requirements that were set under the previous guidelines (see “Background,” below);
- would reduce the burden of support that PED must provide in the implementation of the PDD process because the “Effective Teachers and School Leaders Bureau spends 90 percent of their efforts on supporting the PDD, impacting between 1,100 and 1,300 teachers per year and with minimal, if any, effect on student achievement”;
- would align the three-tiered licensure system to the actual classroom performance of teachers, which would create a system that is student-centered; and
- would allow the most effective teachers to advance throughout the licensure system faster than current law allows.

According to the FIR, SB 316, if enacted, would “not establish inability to improve as a prima facie showing of ‘just cause,’ even though the bill indicates the employee shall be terminated” (see information on the current law in “Background,” below).¹

Technical Issues:

The FIR indicates that the definition of effectiveness in SB 316 establishes the levels of effectiveness, but does not state which of the five levels will be considered effective.

Background:

Current Law

Termination decisions in the *School Personnel Act* (22-10A-24 NMSA 1978) prohibit termination of an employee who has been employed by a school district or state agency for three consecutive years without just cause. In the *School Personnel Act*, just cause is defined as “a reason that is rationally related to an employee’s competence or turpitude or the proper

¹ In Latin, prima facie literally translates to “at first face.” In other words, a prima facie case is one that, upon first impression, shows the court some form of offense has taken place and a particular defendant is responsible.

performance of the employee’s duties and that is not in violation of the employee’s civil or constitutional rights.”

Additional provisions in the *School Personnel Act* in the *Public School Code* currently require:

- post-baccalaureate degrees or NBPTS certification before teachers may obtain Level 3-A or Level 3-B licenses;
- PED to adopt criteria and minimum highly objective uniform statewide standards of evaluation for the annual performance evaluation of licensed school employees;
- the professional development plan for teachers to include documentation on how a teacher who receives professional development that has been required or offered by the state or a school district or charter school incorporates the results of that professional development in the classroom;
- a local superintendent to adopt policies, guidelines, and procedures for the performance evaluation process;
- an evaluation by other school employees to be one component of the evaluation tool for school administrators;
- as part of the highly objective uniform statewide standard of evaluation for teachers, a school principal to observe each teacher’s classroom practice to determine the teacher’s ability to demonstrate state-adopted competencies;
- at the beginning of each school year, teachers and school principals to devise professional development plans for the coming year, and performance evaluations to be based in part on how well the professional development plan was carried out;
- if a Level 2 or Level 3-A teacher’s performance evaluation indicates less than satisfactory performance and competency, a school principal to require a teacher to undergo peer intervention, including mentoring, for a period the school principal deems necessary. If the teacher is unable to demonstrate satisfactory performance and competency by the end of the period, the peer interveners may recommend termination of the teacher; and
- at least every two years, school principals to attend a training program approved by the department to improve their evaluation, administrative, and instructional leadership skills.

PED Rule: Performance Evaluation System Requirements for Teachers

To advance through licensure levels, PED rules specify the PDD as the central requirement in the process (6.69.4 NMAC). PED defines the PDD as a “focused, compact collection of documentation” compiled by the teacher and the school district. The PDD:

- includes classroom data such as lesson descriptions, student work, and video and audio recordings, with explanations written by the teacher and verification of the work and recommendation for advancement completed by the superintendent; and
- is organized into five strands:
 - the first three of which – Instruction, Student Learning, and Professional Learning – incorporate the nine teacher competencies specified in PED rule are completed by the teacher; and
 - two other strands, which, respectively, verify the teacher’s work in the dossier and recommend the teacher for licensure advancement based on the annual evaluations are completed by a district-level administrator.

PED Rule: Teacher and School Leader Effectiveness

Published and effective in late August 2012, the PED rule on evaluating teachers and principals (6.69.8 NMAC) states as its objective to establish uniform procedures for conducting annual evaluations of licensed school employees for:

- setting the standards for each effectiveness level;
- measuring and implementing student achievement growth; and
- monitoring each school district's implementation of its teacher and school leader effectiveness evaluation system.

The rule begins defines a number terms, among them "ESS," which means effectiveness evaluation systems that are developed by school districts to measure the effectiveness of licensed school employees. The term "licensed school employee" means "teachers and school leaders employed in a public school."² For teachers and school leaders in all schools, the EES begins school year 2013-2014.

The rule differentiates among five levels of performance, which include:

- exemplary, meets competency;
- highly effective, meets competency;
- effective, meets competency;
- minimally effective, does not meet competency; and
- ineffective, does not meet competency.

For teachers in content areas included in the standards-based assessments, the EES requires:

- an evaluation based on sound educational principles and contemporary research in effective educational practices; and
- a student achievement growth component, which is based on:
 - valid and reliable data and indicators of student achievement growth assessed annually through a combination of 35 percent standards-based assessment and 15 percent additional department-approved assessments, for a total of 50 percent, provided that this calculation is not based upon a single test score;
 - assessments that are selected by a school district from a list of options approved by the department for any subjects and grade levels not measured by state assessments; and
 - the PED-adopted measure of student achievement growth calculated for all courses associated with state assessments and for which the school district must select comparable measures of student achievement growth for other grades and subjects.

For teachers in non- standards-based assessments content areas and grades, the EES requires:

- an evaluation based on sound educational principles and contemporary research in effective educational practices; and
- a student achievement growth component, which is based on:

² The rule does not apply to teachers and administrators in private schools, Bureau of Indian Education schools, or state agencies.

- valid and reliable data and indicators of student achievement growth assessed annually on district-selected and department-approved assessments, for a total of 50 percent;
- assessments that are selected by a school district from a list of options approved by the department for any subjects and grade levels not measured by department-approved assessments; and
- the PED-adopted measure of student achievement growth calculated for all courses associated with department-approved assessments and for which the school district must select comparable measures of student achievement growth approved by the PED, for other grades and subjects.

In addition, a school district may develop its own assessment that measures student achievement growth for classroom teachers who do not teach in a standards-based assessment grade or subject, provided that the district submits the assessment to the department for approval.

For the evaluation of school leaders, the rule requires that:

- the EES rating for the performance of a school leader be based on:
 - the change in a school's A through F letter grade (50 percent);
 - multiple measures (a minimum of two multiple measures must be adopted and they must align with improved student achievement, for 25 percent of the evaluation); and
 - documented fidelity observations of school leaders (25 percent); and
- the effectiveness evaluation of school leaders include student achievement growth data for students assigned to the public school for at least three consecutive school years, provided that the student achievement growth component of the effectiveness evaluation is based on the change in the school's A through F letter grade.

Committee Referrals:

SEC/SFC

Related Bills:

- HB 158 *School Performance-Based Budgeting*
- HB 167 *Teacher Licensure Content Knowledge* (Identical to SB 418)
- HB 192 *School Program Units for Certain Personnel*
- HB 276 *Teacher Licensing & Performance Ratings* (Identical)
- HB 481 *Evidence of Teacher Competency* (Identical to SB 475)
- SB 418 *Teacher Licensure Content Knowledge* (Identical to HB 167)
- SB 475 *Evidence of Teacher Competency* (Identical to HB 481)