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July 18, 2012

MEMORANDUM

TO: Legislative Education Study Committee

FR: Phil Baca

**RE: STAFF REPORT: TEACHER AND PRINCIPAL EVALUATION SYSTEM:
UPDATE**

During the June Legislative Education Study Committee (LESC) interim meeting, the committee received the first staff report regarding the teacher and principal evaluation system which included:

- a press release from the Governor directing the Public Education Department (PED) to formulate a new teacher and principal evaluation system before the start of school year 2012-2013 in order to meet one of the conditions for the waiver from the federal *No Child Left Behind Act* (NCLB) (see "Background," below);
- a PED press release requesting nominations and outlining the role of a New Mexico Teacher Evaluation Advisory Council (NMTEACH); and
- a summary regarding the flexibility waiver provisions (see "Background," below) that PED received from the US Department of Education (USDE) relating to a system of evaluating teachers and principals.¹

¹ On February 12, 2012, when the USDE approved the state's revised application, New Mexico became the 11th of the 11 initial applicants to be granted a waiver from certain requirements of NCLB. To gain USDE's approval, each state was required to commit to four key principles: Principle 1, College- and Career-ready Expectations for All Students; Principle 2, State-developed Systems of Differentiated Recognition, Accountability, and Support; Principle 3, Supporting Effective Instruction and Leadership; and Principle 4, Reducing Duplication and Unnecessary Burden. One of the main components of Principle 3 is a system of evaluating teachers and principals that incorporates student achievement as a major factor.

Since the June interim meeting, PED has:

- announced the NMTEACH members selected by the Secretary-designate of Public Education and issued an interim schedule for NMTEACH (see Attachment 1 and Attachment 2); and
- published in the *New Mexico Register* a Notice of Proposed Rulemaking announcing a public hearing to be held on July 18, 2012 in Santa Fe to solicit public comment on a draft rule (see Attachment 3) for determining and measuring teacher and school leader effectiveness.

This staff report includes a:

- summary of the provisions in each section of the PED draft rule; and
- a staff review of the provisions in current law compared to those in the draft rule.

Summary of the Provisions in Each Section of the PED Draft Rule

The objective of the draft rule is 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.

Among its provisions, the draft rule includes seven sections:

1. Definitions;
2. Effectiveness Evaluation Systems;
3. Student Achievement Growth and Student Assessment Programs;
4. Effectiveness Evaluations of School Leaders;
5. Evaluations, Reports and Post-evaluation Conferences;
6. Appeal of Effectiveness Evaluations; and
7. Teachers and Administrators in Non-public Schools.

Definitions

This section includes definitions for certain school employees, PED, and Bureau of Indian Education (BIE) schools. Among other terms,

- ***EES*** means effectiveness evaluation systems that are developed by school districts to measure the effectiveness of licensed school employees;
- ***fidelity observations*** means the requirement of school leaders to periodically observe and evaluate assigned teachers in the classroom with observations that have been documented and are verifiable; and
- ***state agency*** means the New Mexico Military Institute, the New Mexico School for the Blind and Visually Impaired, the New Mexico School for the Deaf, any juvenile detention center or facility served by the Juvenile Justice Service of the Children, Youth

and Families Department, the New Mexico Youth Diagnostic and Development Center, the Sequoyah Adolescent Treatment Center of the Department of Health, Carrie Tingley Crippled Children's Hospital, the New Mexico Behavioral Health Institute at Las Vegas, and any other state agency responsible for educating resident children.

Effectiveness Evaluation Systems

Provisions in this section of the draft rule require all school districts, district-authorized charter schools, and state-authorized charter schools to:

- prior to the beginning of school year 2013-2014, submit an EES for measuring the performance of licensed school employees for PED approval;
- during school year 2013-2014, implement an approved EES; and
- annually report to PED the results of effectiveness evaluations of licensed school employees and the alignment of the EES with the three-tiered licensure system.

Other provisions require a teacher and school leader EES to:

- use results to inform district and school improvement plans and to support professional development of licensed school employees;
- include measures of student achievement growth worth 50 percent; observations worth 25 percent; and multiple measures worth 25 percent (a minimum of two multiple measures must be adopted and they must align with improved student achievement); and
- use one of the five following performance rating levels;
 - exemplary, meets competency;
 - highly effective, meets competency;
 - effective, meets competency;
 - minimally effective, does not meet competency; and
 - ineffective, does not meet competency.

For a teacher who teaches in a grade or subject that has a standards-based assessment, the draft rule requires an annual assessment of student achievement growth to be based on a combination of 35 percent standards-based assessment and 15 percent PED-approved assessments, for total student achievement growth worth 50 percent.

For a teacher who teaches in a grade or subject that does not have a standards-based assessment, the rule requires the use of district-selected and PED-approved assessments for student achievement growth worth 50 percent.

Student Achievement Growth and Student Assessment Programs

Provisions in this section of the draft rule, require:

- by school year 2013-2014 that a school district, district-authorized charter school, and state-authorized charter school to be responsible for measuring achievement gains for

students in all subjects and grade levels other than those required to participate in the state student achievement testing programs; and

- for a school district that has not implemented appropriate course assessments for measuring student growth by school year 2013-2014, student achievement growth to be measured by:
 - growth in achievement by teachers' students on state assessments; or
 - a school's A through F letter grade.

Effectiveness Evaluations of School Leaders

This section of the draft rule requires the EES rating for the performance of a school leader be based as follows:

- 50 percent based on the change in a school's A through F letter grade;
- 25 percent on multiple measures (a minimum of two multiple measures must be adopted and they must align with improved student achievement); and
- 25 percent on documented fidelity observations of school leaders.

Evaluations Reports and Post-Evaluation Conferences

Key provisions in this section of the draft rule provide for:

- a teacher who received an evaluation rating of exemplary or highly effective during the previous year to be observed once during the current year;
- a teacher who received an evaluation rating of effective, minimally effective, or ineffective during the previous year to be observed twice during the current year (once by the principal and once by an external observer);
- written feedback to be provided to the teacher within 10 calendar days after a completed observation;
- as part of the evaluation of a licensed school employee, a written report to be submitted to the school district superintendent with an exact copy to the licensed school employee; and
- the report for employees rated as ineffective or minimally effective to include observed performance described in detail and certain information relating to:
 - a licensee's right to a post-evaluation conference within 10 days of the completed evaluation; and
 - an account of what will be covered during the post-evaluation conference, including recommendations regarding unsatisfactory performance, the foundation for a 90-day professional growth plan, and support to be provided for correcting unsatisfactory work performance.

Other provisions of this section address procedures that are to be implemented after the expiration of the 90-day performance growth plan period, namely:

- within five school days, the evaluator will determine if unsatisfactory performance has been corrected and provide a written recommendation to the school district superintendent or head administrator of a charter school;
- within 10 school days after receipt of the written recommendation, the school district superintendent or head administrator of a charter school shall provide the licensed school employee with written notification of whether the unsatisfactory work performance has been corrected;
- if satisfactory progress has not been made, the school district superintendent or head administrator of a charter school shall determine whether to discharge or terminate the employee according to provisions in current law;
- employees who are placed on a 90-day performance growth plan and who have not been employed for three consecutive years shall have no reasonable expectation of continued employment beyond that contracted school year; and
- the school district superintendent or head administrator of a charter school shall provide written notice to PED of the name and license file numbers of all licensed school employees who have received two consecutive minimally effective or ineffective performance ratings and who have been given written notice of proposed discharge or termination or who have resigned their employment after receiving either rating.

Appeal of Effectiveness Evaluations

Among its provisions, this section of the draft rule provides for:

- a licensed school employee to submit a written appeal within 15 calendar days of receipt of written notice that the unsatisfactory performance has not been corrected; and
- exemptions to be granted only if a licensed school employee:
 - did not perform services during an entire school year;
 - was unable to perform services during the school year due to documented medical reasons of the employee or of the employee's spouse, live-in partner, or a child;
 - was unable to perform services during the school year due to the death of the employee's spouse, live-in partner, or a child; or
 - was not afforded a full 90 days to demonstrate growth in performance for any reason including the employee's own illness, provided that the employee provides appropriate verification.

Other provisions require appeal decisions to be:

- made by a different person than the evaluator of the licensed school employee; and
- considered final and not reviewable by other district personnel or PED.

Teachers and Administrators in Non-Public Schools

Finally, this section of the draft rule includes provisions that:

- require only licensed school personnel employed in schools subject to *A to F Schools Rating Act* to be governed by any requirement of the draft rule; and

- exempts licensed teachers or administrators employed in private schools, BIE schools, or state agencies from these requirements.

Staff Review of the Provisions in Current Law Compared to Those in the Draft Rule

In order to consider how the provisions in the *School Personnel Act* (Act) relate to the provisions in the draft rule, LESC reviewed the Act and the rule and found alignment in the following areas:

- the school district, district-authorized charter school, and state-authorized charter school shall develop procedures for the performance evaluation system;
- classroom observation is required to be a component of the performance evaluation system; and
- the appeal process is outlined, though differences in the two processes exist.

In other respects, however, the alignment between the Act and the proposed rule is not as clear; therefore, in advance of the public hearing scheduled for June 18, 2012, LESC staff has submitted questions about these points for PED to consider (see Attachment 4).

Background

Directive from the Governor

On April 11, 2012, the Office of the Governor issued a press release directing PED to formulate a new teacher and principal evaluation system and to:

- incorporate measures that were part of legislation introduced during the 2012 legislative session and to build upon the work of the Governor’s Effective Teacher Task Force; and
- establish initiatives that:
 - base 50 percent of each evaluation on three year’s worth of student achievement, as measured by the New Mexico Standards-based Assessment and other achievement measures selected by districts;
 - measure teachers and principals not on a pass/fail program, but instead within one of five different categories: Exemplary, Highly Effective, Effective, Minimally Effective, and Ineffective;
 - work within New Mexico’s current three-tier licensure system, but allow effective teachers and principals to move through the system faster based upon performance in the classroom;
 - provide strategic interventions for teachers and principals who are rated minimally effective or ineffective; and
 - provide strong professional development for all teachers, targeted to particular needs that are identified by the evaluation system; and
- establish the following timeline:
 - May 2012 – develop “statutory rules” to implement the new evaluation system, including public hearings and input from a stakeholder committee;

- summer 2012 – finalize rules for the new evaluation system;
- summer-fall 2012 – begin professional development under the new evaluation system;
- August 2012-June 2013 – implement pilot projects for the new evaluation system;
- August 2012-August 2013 – in collaboration with districts, ensure that end-of-course assessments for non-tested subjects and grades are in place; and
- fully implement the evaluation system by school year 2013-2014.

Summary Regarding the Flexibility Waiver Provisions

Principle 3: Supporting Effective Instruction and Leadership: In the amended submittal, which was approved by USDE, PED stated that New Mexico was in the process of finalizing legislation, based on the recommendations of the Effective Teaching Task Force, that would create a redesigned teacher and school leader evaluation system, and that this system would align with the requirements of the flexibility principles. Ultimately, this legislation did not pass in the 2012 legislative session.

Since then, PED has announced that it would pursue implementation of this evaluation system administratively and, on May 1, 2012, opened nominations for the New Mexico Teacher Evaluation Advisory Council. In that announcement, PED noted that the council would play a pivotal role in maintaining the NCLB waiver, and in developing a new teacher and school leader evaluation system based on student achievement.

Materials posted to PED’s website, and used in training webinars focusing on Principle 3, indicate that while PED intends to undertake the necessary action administratively rather than legislatively, the projected process and goals remain largely the same, although a few elements of the originally submitted timeline have been changed slightly, such as:

- the initiation of technical assistance to LEAs on evaluation requirements has been expanded from June 2012 to the entire school year 2012-2013;
- preliminary data runs to establish baselines and statistical formula have been pushed back from June through August 2012, to August through December 2012; and
- the phased-in implementation of new teacher and school leader evaluation systems, originally to occur in school year 2013-2014, apparently has been separated into two elements:
 - pilot key elements of the system in school year 2012-2013, and
 - implement the evaluation system in school year 2013-2014.

ATTACHMENT 1

NMTEACH Nomination Appointments		
Union Nominated Teachers		District/School/Organization
1	Nancy Taranto	AFT
2	Mary McGowan	NEA
3	Betty Patterson	NEA
PED Nominated Teachers		
1	Andrea Edmonson	Socorro
2	Sonya Romero-Smith	APS
3	Justin Moree	Gallup Mckinley
Principals		
1	Cynthia Risner-Schiller	Las Cruces
2	Edie Morris	Gallup McKinley
3	Gerard Flores Sr	Pecos
4	Todd Estes	Texico
Hispanic Education Advisory Council		
1	Lawrence Roybal	HEAC
Indian Education Advisory Council		
1	Keith Franklin	IEAC
Business Community Member		
1	Larry Langley	NM Business Roundtable
Higher Education Member		
1	Dick Howell	University of New Mexico
State Technical Experts		
1	Suchinct Sarangarm	Roswell
2	Taik Kim	NM Highlands
3	Richard Bowman	APS
National Technical Experts		
1	Dan Goldhaber	University of Washington
2	Felipe Martinez	UCLA
District Administrators		
1	Shirley Crawford	Capitan
2	Kirk Carpenter	Aztec Municipal
3	Stan Rounds	Las Cruces

Source: Public Education Department, 07/12/2012

DATE	Monday - July 9 th	Friday - July 20 th	Thursday - August 2 nd	Saturday - August 11 th	Saturday - August 25 th
TIME	10 am - 2 pm	1 pm - 5 pm	1 pm - 5 pm	FULL DAY 9 am - 4 pm	FULL DAY 9 am - 4 pm
LOCATION	Santa Fe	Las Cruces	Socorro	Albuquerque	Albuquerque
ADDRESS	Jerry Apodaca Building Mabry Hall 300 Don Gaspar Avenue Santa Fe, NM 87501	LCPS Administration Building Conference Room A 505 South Main Street Suite 249 Las Cruces, NM 88005	Socorro High School Library 1200 Michigan Ave Socorro, NM 87801	UNM Technology and Education Center 140 1924 Las Lomas Rd NE Albuquerque, NM 87106	TBD

**TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 69 SCHOOL PERSONNEL - PERFORMANCE
PART 8 TEACHER AND SCHOOL LEADER EFFECTIVENESS**

6.69.8.1 ISSUING AGENCY: Public Education Department. (PED)

[6.69.8.1 NMAC - N, XX-XX-12]

6.69.8.2 SCOPE: Chapter 69, Part 8 governs standards for determining and measuring teacher and school leader effectiveness.

[6.69.8.2 NMAC - N, XX-XX-12]

6.69.8.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, 22-10A-17, 22-10A-17.1, 22-10A-18, 22-10A-19 and 22-10A-19.1, NMSA 1978.

[6.69.8.3 NMAC - N, XX-XX-12]

6.69.8.4 DURATION: Permanent.

[6.69.8.4 NMAC - N, XX-XX-12]

6.69.8.5 EFFECTIVE DATE: XX XX, 2012, unless a later date is cited at the end of a section.

[6.69.8.5 NMAC - N, XX-XX-12]

6.69.8.6 OBJECTIVE: This rule establishes uniform procedures for conducting annual evaluations of licensed school employees, for setting the standards for each effectiveness level, for measuring and implementing student achievement growth, and for monitoring each school district's implementation of its teacher and school leader effectiveness evaluation system. This rule also seeks to change the dynamic of placing emphasis on teacher effectiveness and provide the opportunity to acknowledge excellence, thereby replacing the binary system that emphasizes years of experience and credentials.

[6.69.8.6 NMAC - N, XX-XX-12]

6.69.8.7 DEFINITIONS:

A. "Assistant principal" means a properly licensed instructional leader who assists a principal in a public school.

B. "BIE school" means a bureau of Indian education school that is governmentally owned and controlled, located in New Mexico, provides instruction for first through twelfth grades and is not sectarian or denominational.

C. "Department" means the New Mexico public education department or PED.

D. "EES" means effectiveness evaluation systems which are developed by school districts to measure the effectiveness of licensed school employees.

E. "Fidelity observations" means the requirement of school leaders to periodically observe and evaluate assigned teachers in the classroom with observations that have been documented and are verifiable.

F. "Licensed school employee" means teachers and school leaders employed in a public school.

G. "New Mexico standards-based assessment (SBA)" means the collection of instruments that assess student academic performance annually and the students' progress toward meeting the New Mexico content standards with benchmarks and performance standards.

H. "Principal" means the chief instructional leader and administrative head of a public school.

I. "School district" means one of the 89 political subdivisions of the state created for the administration of public schools and includes district-authorized and state-authorized charter schools.

J. "School district superintendent" means the chief executive officer of a school district and the head administrator of a charter school.

K. "School leader" means a principal or assistant principal employed in a public school.

L. "State agency" means the New Mexico military institute, the New Mexico school for the blind and visually impaired, the New Mexico school for the deaf, any juvenile detention center or facility served by the juvenile justice service of the children youth and families department, the New Mexico youth diagnostic and development center, the Sequoyah adolescent treatment center of the department of health, Carrie Tingley crippled children's hospital, the New Mexico behavioral health institute at Las Vegas and any other state agency responsible for educating resident children. 6.69.8 NMAC 2

M. "Teacher" means a person who holds a level one, two or three-A license and whose primary duty is classroom instruction or the supervision, below the school principal level, of an instructional program or whose duties include curriculum development, peer intervention, peer coaching or mentoring or serving as a resource teacher for other teachers.

[6.69.8.7 NMAC - N, XX-XX-12]

6.69.8.8 EFFECTIVENESS EVALUATION SYSTEMS:

A. As soon as possible but not later than the commencement of the 2013-2014 school year, all school districts shall develop and submit to the department for approval and for implementation during the 2013-2014 school year, an effectiveness evaluation system for measuring performance of licensed school employees.

B. School districts may continue to use the highly objective uniform statewide standards of evaluation described in 6.69.4 NMAC for evaluating, promoting, terminating and discharging licensed school employees for performance during the 2012-2013 school year.

C. Each school district shall report annually to the department the results of its effectiveness evaluations of its licensed school employees and the alignment of its effectiveness evaluation system with the three-tiered licensure system.

D. A teacher and school leader EES shall:

- (1) be designed to support effective instruction and student achievement, with the results used to inform school district and school level improvement plans;
- (2) provide appropriate instruments, procedures and criteria and continuous quality improvement of professional skills, with results used to support the professional development of licensed school employees;
- (3) include a mechanism to examine effectiveness data from multiple sources, which may include giving parents and students opportunities to provide input into effectiveness evaluations when appropriate;
- (4) identify those teaching fields for which special evaluation procedures and criteria may be developed in a manner that is consistent and reliable;
- (5) include measures of student achievement growth worth 50%, observations worth 25% and multiple measures worth 25%, unless otherwise provided for;
- (6) differentiate among at least five levels of performance, which include the following:
 - (a) exemplary, meets competency;
 - (b) highly effective, meets competency;
 - (c) effective, meets competency;
 - (d) minimally effective, does not meet competency; and
 - (e) ineffective, does not meet competency; and

E. Teacher and school leader effectiveness evaluation procedures for licensed school employees shall be based on the performance of students assigned to their classrooms or public schools.

F. Every public school classroom teacher who teaches in a grade or subject that has a standards-based assessment that would permit the calculation of student achievement growth, must have an annual effectiveness evaluation, provided that:

- (1) each evaluation shall be based on sound educational principles and contemporary research in effective educational practices; and
- (2) the student achievement growth component of a teacher's effectiveness evaluation shall be based on:
 - (a) valid and reliable data and indicators of student achievement growth assessed annually through a combination of 35% standards-based assessment and 15% additional department-approved assessments, for a total of 50%;
 - (b) 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
 - (c) the PED-adopted measure of student achievement growth calculated for all courses associated with state assessments and for which the school district shall select comparable measures of student achievement growth for other grades and subjects.

G. Every public school classroom teacher who teaches in a grade or subject that does not have a standards-based assessment, also must have an annual effectiveness evaluation, provided that:

- (1) each evaluation shall be based on sound educational principles and contemporary research in effective educational practices; and
- (2) the student achievement growth component of a teacher's effectiveness evaluation shall be based on: 6.69.8

NMAC 3

- (a) valid and reliable data and indicators of student achievement growth assessed annually on district-selected and department-approved assessments, for a total of 50%;
- (b) 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
- (c) the PED-adopted measure of student achievement growth calculated for all courses associated with department-approved assessments and for which the school district shall select comparable measures of student achievement growth, and approved by the PED, for other grades and subjects.

H. An EES shall base at least 25% of the results on data and indicators of instructional practice for teachers. School leaders shall observe instructional practice of teachers using common research-based observational protocol approved by the department that correlates observations to improved student achievement.

I. Effectiveness evaluation criteria for evaluating classroom teachers shall include indicators based on research-based instructional practices as determined by the department.

[6.69.8.8 NMAC - N, XX-XX-12]

[The department maintains a list of approved assessment options and effectiveness evaluation measures and criteria for evaluating classroom teachers on its website, which can be accessed at <http://ped.state.nm.us/> and used by school districts for determining the student achievement growth component and evaluation criteria in a teacher's effectiveness evaluation.]

6.69.8.9 STUDENT ACHIEVEMENT GROWTH AND STUDENT ASSESSMENT PROGRAMS:

A. School districts shall use the department-adopted student achievement growth measure to measure the growth in achievement of each student, provided that a school district may request permission to use a combination of the department-approved achievement growth measure and an alternative student achievement measure for non-tested subjects and grades which is department approved.

B. Whenever possible, an EES rating the performance of a classroom teacher shall include three years or more of student achievement growth data.

C. An EES rating the performance of any teachers who are assigned to courses not associated with state assessments may, upon request by their school district through the EES approval process, be permitted to include achievement growth that is demonstrated on state assessments as a percentage of the overall effectiveness evaluation. If that request is permitted and a percentage applied:

- (1) achievement growth of the state assessment shall be based on the students assigned to the teacher; and
- (2) the achievement growth of the teacher's assigned content area, as measured by the district-selected assessment, shall be the greater percentage.

D. Beginning with school year 2013-2014, if a school district has not implemented appropriate assessments of courses for classroom teachers nor adopted a comparable measure of student achievement growth, student achievement growth shall be measured by:

- (1) the growth in achievement of the classroom teacher's student on state assessments; or
- (2) the school's A through F letter grade pursuant to 6.19.8 NMAC for courses in which enrolled students do not take the state assessment, provided that a school district may assign instructional team student achievement growth to classroom teachers in lieu of using the school grade growth calculation.

E. Beginning with the 2013-2014 school year, each school district shall be responsible for measuring the achievement gains of their students in all subjects and grade levels other than subjects and grade levels required for the state student achievement testing programs. To accomplish this, each school district shall administer a student assessment for each course they offer that measures mastery of the content as described in the state-adopted course description at the necessary level of rigor for the course. The student assessments may include:

- (1) statewide assessments currently administered in mathematics and reading;
- (2) other standardized assessments approved by the department, including nationally recognized standardized assessments;
- (3) industry certification examinations; and
- (4) department-approved school district-developed or selected end-of-course assessments.

F. 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, it submits the assessment to the department for approval.

[6.69.8.9 NMAC - N, XX-XX-12] 6.69.8 NMAC 4

[The department maintains a list of approved student achievement growth measures on its website, which can be accessed at <http://ped.state.nm.us/> and used by school districts for determining the growth in advancement of each student.]

6.69.8.10 EFFECTIVENESS EVALUATIONS OF SCHOOL LEADERS:

- A. Every school leader must have an annual effectiveness evaluation, which shall be conducted by a qualified person and approved by PED.
- B. All EES ratings for the performance of a school leader shall be based 50% on the change in a school's A through F letter grade that has been assigned pursuant to 6.19.8 NMAC, 25% based on the school's multiple measures and 25% based upon documented fidelity observations of the school leader.
- C. The effectiveness evaluation of school leaders shall, whenever possible, 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 shall be based on the change in the school's A through F letter grade pursuant to 6.19.8 NMAC.

[6.69.8.10 NMAC - N, XX-XX-12]

[The department maintains a list of leadership standards on its website, which can be accessed at <http://ped.state.nm.us/> and used by school districts in establishing indicators for conducting effectiveness evaluation of school leaders.]

6.69.8.11 EVALUATIONS, REPORTS AND POST-EVALUATION CONFERENCES:

- A. A classroom teacher whose previous annual effectiveness evaluation rating was either highly effective or exemplary shall continue to be observed at least once a year by their school principal.
- B. A classroom teacher whose previous annual effectiveness evaluation rating was either ineffective minimally effective, or effective shall be observed at least twice a year, once by their school principal and once by an external observer. The principal rating this classroom teacher shall have no role in selecting nor be related by blood or marriage to the external observer.
- C. Written feedback from school leaders and external observers shall be provided to classroom teachers within ten calendar days after observation is completed, which observation can occur over more than one day, provided that a school district's EES permits this.
- D. Upon approval by the department, multiple measures adopted by a school district for use in their EES by the school districts shall constitute 25% of their teacher and school leader EES, provided that:
 - (1) the multiple measures align with improved student achievement; and
 - (2) each school district adopts at least two multiple measures which shall be used district-wide.
- E. The school leader responsible for supervising a licensed school employee shall be the one who evaluates that employee's performance. The school district's EES:
 - (1) may provide for the supervisor to consider input from other trained evaluators and observers provided that they are not also supervised by the supervisor nor are related by blood or marriage to the supervisor; and
 - (2) shall provide for contingencies if a supervisor leaves a school district for any reason prior to completing the required effectiveness evaluations of all teachers within that supervisor's responsibilities.
- F. Every person who evaluates a licensed school employee under this rule shall submit an original written report to the school district superintendent and an exact copy to the licensed school employee being evaluated. The effectiveness evaluation shall not be changed once each component is completed and it has been delivered to either the school district superintendent or the licensed school employee being evaluated.
- G. A licensed school employee rated minimally effective or ineffective may provide a written statement in response to their effectiveness evaluation and that statement shall become a permanent attachment to that employee's evaluation file.
- H. Every person who rates a licensed school employee minimally effective or ineffective shall describe in detail the minimally effective or ineffective performance and inform the licensee in writing:
 - (1) of a right to a post-evaluation conference which the evaluator must convene and which shall occur no later than ten days after the evaluation is completed unless the employee agrees to an extension;
 - (2) that during the conference the evaluator will make recommendations to the employee with respect to specific areas of unsatisfactory performance and provide feedback that lays the initial framework for an individual professional growth plan; 6.69.8 NMAC 5

(3) that the evaluator will provide assistance in helping the employee correct unsatisfactory performance and that the district will extend strategic support aligned to best practices identified by the department to assist the employee to correct unsatisfactory performance;

(4) that if the employee has an employment contract, the employee shall be placed on a performance growth plan for 90 school days from receipt of the notice of minimally effective or ineffective performance, provided that:

(a) the 90 days shall not include weekends, school holidays or school vacation periods, declared snow days, and approved employee leave days;

(b) during the 90 days the licensed school employee shall be observed and evaluated periodically, that is, more than four times in writing and shall be informed of the results of those observations; and

(c) the evaluator shall maintain documentation of having provided assistance and notification of in-service training opportunities to help correct the performance deficiencies noted of the licensed school employee; and

(5) that receipt of the notice shall constitute notice of uncorrected unsatisfactory work performance pursuant to Section 22-10A-3 NMSA and 6.69.2 NMAC.

I. Within five school days after the expiration of the 90-day performance growth plan, the evaluator shall determine whether the performance deficiencies have been corrected and forward a written recommendation to the school district superintendent.

J. Within ten school days after receipt of that written recommendation, the school district superintendent shall in writing notify the licensed school employee who has an employment contract with the school district whether the performance deficiencies have been satisfactorily corrected. A copy of the evaluator's recommendation shall accompany that notice.

K. If satisfactory progress has not been made, the local superintendent shall determine whether to discharge or terminate the employee pursuant to Sections 22-10A-27 or 22-10A-24, NMSA 1978.

L. An employee who has been placed on a 90-day performance growth plan because of minimally effective or ineffective performance and who has not been employed by a school district for three consecutive years, shall have no reasonable expectation of continued employment beyond the end of the contract year by reason of being on a growth plan.

M. The school district superintendent shall provide written notice to the educator quality division of the department the name and licensure file number of all licensed school employees who have received two consecutive minimally effective or ineffective performance ratings and who have been given a written notice of proposed discharge or of proposed termination, or who have resigned their employment after receiving either of these ratings.

[6.69.8.11 NMAC - N, XX-XX-12]

6.69.8.12 APPEAL OF EFFECTIVENESS EVALUATIONS:

A. A school district shall adopt procedures for permitting expedited review for the purpose of a licensed school employee requesting an exemption from being rated during a given school year under the school district's EES based only upon extraordinary circumstances.

B. The procedures shall require a written appeal to be submitted to the appellate reviewer within no more than 15 calendar days of receipt of a written notice that the licensed employee's performances deficiencies have not been satisfactorily corrected.

C. Appeals shall be received in a manner that permits verification of the date of receipt.

D. The person who evaluated the licensed school employee shall not be same person who receives and determines the appeal.

E. An exemption from the provisions of this rule can only be granted for one school year based upon extraordinary circumstances, which shall consist of:

(1) a licensed school employee's not having performed services during an entire school year, excluding days out for approved leave and school holidays or closure days, for reasons beyond the employee's control;

(2) a licensed school employee's not being able to perform services for extended periods during a school year due to documented medical reasons of the employee or of the employee's spouse, live-in partner or a child;

(3) a licensed school employee's not being able to perform services for extended periods during a school year due to the death of the employee's spouse, live-in partner or a child; or 6.69.8 NMAC 6

(4) a licensed school employee's not having been afforded a full 90 days to demonstrate growth in performance for any reason including the employee's own illness, provided that it shall be the employee's burden to provide verification of not being afforded the full 90 days.

F. All decisions on appeals rendered under this section shall be final and not further reviewable by anyone else at the school district or by the PED.

[6.69.8.12 NMAC - N, XX-XX-12]

6.69.8.13 TEACHERS AND ADMINISTRATORS IN NON-PUBLIC SCHOOLS:

A. Only licensed staff employed in schools subject to the A-B-C-D-F Schools Rating Act [Sections 22-2E-1 to 22-2E-4 NMSA 1978] shall be governed by any requirement or provision of this rule.

B. Specifically, neither licensed teachers nor administrators employed in private schools, BIE schools or state agencies shall be governed by any requirement or provision of this rule.

[6.69.8.13 NMAC - N, XX-XX-12]

HISTORY OF 6.69.8 NMAC: [Reserved]

STATE OF NEW MEXICO
LEGISLATIVE EDUCATION STUDY COMMITTEE

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July 17, 2012

MEMORANDUM

TO: Public Education Department

FR: Frances Ramirez-Maestas

RE: QUESTIONS ABOUT THE PROPOSED RULE "TEACHER AND SCHOOL LEADER EFFECTIVENESS" (6.69.8 NMAC)

The staff of the Legislative Education Study Committee has reviewed the proposed rule "Teacher and School Leader Effectiveness" (6.69.8 NMAC) and compared its provisions to current provisions in the *School Personnel Act*. Listed below are several provisions in law followed by questions about the alignment of the proposed rule with those provisions. We submit these questions for consideration by the Public Education Department (PED) as the department prepares for the public hearing on the proposed rule on July 18, 2012.

Specifically, the *School Personnel Act* requires:

- an annual demonstration of competency for teachers in Levels 1, 2 and 3A;
Does the proposed rule comport with these requirements?
- PED to adopt a highly objective uniform statewide standard of evaluation for principals and assistant principals, which includes data sources linked to student achievement, an educational plan for student success progress, and rules for the implementation of that evaluation system;
Does the "effectiveness evaluation system" for school leaders in the draft rule meet this statutory requirement?

- an evaluation by other school employees to be one component of the evaluation tool for school administrators;
Does the evaluation plan for school leaders in the draft rule comport with this statutory requirement?
- a “professional development plan” (PDP);
The proposed rule references both a “professional growth plan” and a “performance growth plan.” Does the draft rule align with the statutory requirement?
- the performance evaluation to be based in part on how well the PDP is carried out;
Does the draft rule align with this statutory requirement?
- an “external evaluator”;
In the draft rule, do the “peer interveners” meet this statutory requirement?
- school principals to attend a PED-approved training program to improve their evaluation skills every two years; and
Does the draft rule meet this statutory requirement?
- an appeal process that includes a due process right to a hearing with an independent arbitrator.
Does the draft rule meet this statutory requirement?

Finally, with regard to other provisions in the draft rule:

- The evaluation for school leaders contains a component value of 25 percent based upon documented fidelity observations of the school leader. Is this requirement supported in statute?
- The observation frequency for the current school year is determined by the rating received in the previous year (one observation for teachers rated exemplary or highly effective, two observations for teachers rated effective, and more than four periodic observations for teachers rated minimally effective or ineffective). How frequently will a new teacher who does not have a previous year’s rating be observed?
- Does the implementation of the “Effectiveness Evaluation System” include a process for measuring the effectiveness of a reform effort intended to enhance student achievement growth?