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State Superintendent of Schools

TO: Members of the State Board of Education
FROM: Karen B. Salmon, Ph.D.
DATE: April 28, 2020
SUBJECT: Request for Waivers Related to Teacher and Principal Evaluations

PURPOSE:

To review waiver recommendations related to requirements for teacher and principal evaluations as a result of the extraordinary circumstances created by the COVID-19 pandemic and resulting school closures.

BACKGROUND/HISTORICAL PERSPECTIVE:

Education Reform Act of 2010 and Code of Maryland Regulation (COMAR) 13A.07.09 identify requirements for the evaluation of teachers and principals. All teachers and principals are required to be evaluated annually using either the state evaluation model or an approved locally developed model. Most school systems use a locally developed model for evaluations. Local school systems are required to use the state evaluation model only if the local school system and exclusive employee representative fail to agree on a locally developed model.

Evaluations consist of professional practice and student growth measures. Professional practice domains for teachers are planning and preparation; classroom environment; instruction; and professional responsibilities. Professional practice domains for principals are the Professional Standards for Educational Leaders, which were adopted by the State Board of Education in February 2017. Student growth, for both teachers and principals, measures student progress from a clearly articulated baseline to one or more points in time. Most school systems use local and state assessment data as measures for student growth. Student growth measures are typically collected at defined points of time such as the beginning, middle, and end of the school year. Outcomes of evaluations are used to determine certification standing, contract renewals, and other employment decisions.

As a result of the COVID-19 pandemic, Maryland schools have been closed since March 16, 2020, and will be closed at least through May 15, 2020. The Maryland State Department of Education has been fielding questions and concerns regarding the impact of extended closures. Issues that impact each school system are the logistical barriers to meeting teacher and principal evaluation requirements in this environment.

EXECUTIVE SUMMARY:

Local school systems have modified assessment administration, instructional practices, and grading policies due to COVID-19 school closures. School systems have shifted to distance learning and state assessments were waived for the 2019-2020 school year. These modifications impact student growth measures for teacher and principal evaluations. As a result, it is difficult to fully capture certain measures of student progress. A waiver of student growth requirements is requested for local evaluation models, the state (default) evaluation model, and for student growth requirements defined in the regulation associated with the evaluation cycle of tenured teachers. The waiver would only apply to 2019-2020 student growth measures for teacher and principal evaluations.

As a result of reviewing the Maryland Annotated Code, COMAR, and other documents, and based on the authority of the State Board included in COMAR 13A.01.01.02-1 *Waiver from Regulations*, the following waivers are requested:

Education Article Section 6-202 and COMAR 13A.07.09.04 (B) and (C) *Local Education Agency Evaluation System* - Request waiver of student growth component for teacher and principal evaluations.

Education Article Section 6-202 and COMAR 13A.07.09.05 (B) *Default Model* - Request waiver of student growth component for teacher and principal evaluations.

COMAR 13A.07.09.06 (A) and (C) *Evaluation Cycle* - Request waiver of annual student growth requirement for tenured teachers on a 3-year evaluation cycle and annual student growth requirement for principals for the 2019-2020 school year only.

ACTION:

Request approval of the identified waivers.

ATTACHMENT:

Code of Maryland Regulations and Maryland Annotated Code applicable to the requested waivers.

Article – Education
Annotated Code of Maryland

§6–202.

(a) (1) On the recommendation of the county superintendent, a county board may suspend or dismiss a teacher, principal, supervisor, assistant superintendent, or other professional assistant for:

(i) Immorality;

(ii) Misconduct in office, including knowingly failing to report suspected child abuse in violation of § 5–704 of the Family Law Article;

(iii) Insubordination;

(iv) Incompetency; or

(v) Willful neglect of duty.

(2) (i) Before removing an individual, the county board shall send the individual a copy of the charges against the individual and give the individual an opportunity within 10 days to request:

1. A hearing before the county board; or

2. A hearing before an arbitrator in accordance with paragraph (5) of this subsection.

(ii) If an individual's request does not specify that the hearing be before an arbitrator, the request shall be considered a request for a hearing before the county board.

(3) If the individual requests a hearing before the county board within the 10–day period:

(i) The county board promptly shall hold a hearing, but a hearing may not be set within 10 days after the county board sends the individual a notice of the hearing; and

(ii) The individual shall have an opportunity to be heard before the county board, in person or by counsel, and to bring witnesses to the hearing.

(4) The individual may appeal from the decision of the county board to the State Board.

(5) (i) If the individual or the individual's representative requests a hearing before an arbitrator within the 10–day period, the hearing shall be conducted in accordance with this paragraph.

(ii) 1. An arbitrator shall be selected as provided in this subparagraph.

2. If the superintendent and the individual or the individual's representative agree on an arbitrator, the arbitrator shall be chosen by mutual agreement of the parties.

3. If the superintendent and the individual or the individual's representative cannot agree on an arbitrator:

A. The county board shall request from the American Arbitration Association a list of the arbitrators that are available to hear this type of dispute and make a decision in a timely manner; and

B. The parties shall alternately strike arbitrators from the list.

(iii) The rules of labor arbitration shall apply.

(iv) A stenographic record shall be made of the proceedings before the arbitrator.

(v) 1. The arbitrator shall determine whether the county board has sufficient cause for suspension or dismissal of the individual.

2. A lesser penalty than dismissal may be imposed by the arbitrator only to the extent that either party proposes the lesser penalty in the proceeding.

(vi) In making a decision, the arbitration proceeding is governed by this subtitle and by the collective bargaining agreement applicable to the individual.

(vii) Except as provided in subparagraph (viii) of this paragraph, the county board shall pay the full cost and expenses of the arbitration, including:

1. The American Arbitration Association's administrative fees;

2. The full cost of the stenography and transcription services;

3. Reasonable expenses for required travel;

4. Reasonable fees and expenses incurred or charged by the arbitrator; and

5. Reasonable expenses associated with any witness or evidence produced at the request of the arbitrator.

(viii) 1. The superintendent and the individual shall pay their own respective costs and expenses associated with any witness or evidence produced by them.

2. If the arbitrator determines that the county board had sufficient cause to suspend or dismiss the individual, then the individual shall pay 50% of the fees and expenses incurred or

charged by the arbitrator and the administrative fees, if any, of the American Arbitration Association.

(ix) 1. The decision and award by the arbitrator are final and binding on the parties.

2. An individual may request judicial review by a circuit court, which shall be governed by the Maryland Uniform Arbitration Act.

(6) Notwithstanding any provision of local law, in Baltimore City the suspension and removal of assistant superintendents and higher levels shall be as provided by the personnel system established by the Baltimore City Board of School Commissioners under § 4–311 of this article.

(b) (1) Except as provided in paragraph (3) of this subsection, the probationary period of employment of a certificated employee in a local school system shall cover a period of 3 years from the date of employment and shall consist of a 1–year employment contract that may be renewed by the county board.

(2) (i) A county board shall evaluate annually a nontenured certificated employee based on established performance evaluation criteria.

(ii) Subject to subparagraph (iii) of this paragraph, if the nontenured certificated employee is not on track to qualify for tenure at any formal evaluation point:

1. A mentor promptly shall be assigned to the employee to provide the employee comprehensive guidance and instruction; and

2. Additional professional development shall be provided to the employee, as appropriate.

(iii) Nothing in this paragraph shall be construed to prohibit a county board from assigning a mentor at any time during a nontenured certificated employee's employment.

(3) (i) Subject to subparagraph (ii) of this paragraph, if a certificated employee has achieved tenure in a local school system in the State and moves to another local school system in the State, that employee shall be tenured if the employee's contract is renewed after 1 year of probationary employment in the local school system to which the employee relocated if:

1. The employee's final evaluation in the local school system from which the employee departed is satisfactory or better; and

2. There has been no break in the employee's service between the two systems of longer than 1 year.

(ii) A local school system may extend the probationary period for a certificated employee subject to subparagraph (i) of this paragraph for a second year from the date of employment if:

1. The employee does not qualify for tenure at the end of the first year based on established performance evaluation criteria; and

2. The employee demonstrates a strong potential for improvement.

(4) (i) The State Board shall adopt regulations that implement the provisions of paragraphs (1) and (2) of this subsection and define the scope of a mentoring program and professional development that will be aligned with the 3–year probationary period.

(ii) The State Board shall adopt regulations to establish standards for effective mentoring, including provisions to ensure that mentors provide mentoring that:

1. Is focused;

2. Is systematic;

3. Is ongoing;

4. Is of high quality;

5. Is geared to the needs of each employee being mentored;

6. Includes observations; and

7. Includes feedback.

(c) (1) In this subsection, “student growth” means student progress assessed by multiple measures and from a clearly articulated baseline to one or more points in time.

(2) (i) Subject to subparagraph (iii) of this paragraph, the State Board shall adopt regulations that establish general standards for performance evaluations for certificated teachers and principals that include observations, clear standards, rigor, and claims and evidence of observed instruction.

(ii) The regulations adopted under subparagraph (i) of this paragraph shall include default model performance evaluation criteria.

(iii) Before the proposal of the regulations required under this paragraph, the State Board shall solicit information and recommendations from each local school system and convene a meeting wherein this information and these recommendations are discussed and considered.

(3) Subject to paragraph (6) of this subsection:

(i) A county board shall establish performance evaluation criteria for certificated teachers and principals in the local school system based on the general standards adopted

under paragraph (2) of this subsection that are mutually agreed on by the local school system and the exclusive employee representative.

(ii) Nothing in this paragraph shall be construed to require mutual agreement under subparagraph (i) of this paragraph to be governed by Subtitles 4 and 5 of this title.

(4) Subject to paragraph (7) of this subsection, the performance evaluation criteria developed under paragraph (3) of this subsection:

(i) Shall include data on student growth as a significant component of the evaluation and as one of multiple measures; and

(ii) May not be based solely on an existing or newly created single examination or assessment.

(5) (i) An existing or newly created single examination or assessment may be used as one of the multiple measures.

(ii) No single criterion shall account for more than 35% of the total performance evaluation criteria.

(6) If a local school system and the exclusive employee representative fail to mutually agree under paragraph (3) of this subsection, the default model performance evaluation criteria adopted by the State Board under paragraph (2)(ii) of this subsection shall take effect in the local jurisdiction 6 months following the final adoption of the regulations.

(7) Any performance evaluation criteria developed under this subsection may not require student growth data based on State assessments to be used to make personnel decisions before the 2016–2017 school year.

Title 13A STATE BOARD OF EDUCATION

Subtitle 07 SCHOOL PERSONNEL

Chapter 09 Evaluation of Teachers and Principals

Authority: Education Article, §§2-205(b) and (g) and 6-202, Annotated Code of Maryland

.04 Local Education Agency Evaluation System.

A. An evaluation system for teachers and principals developed by a local education agency in mutual agreement with the exclusive employee representatives shall include performance evaluation criteria, at a minimum, based on multiple measures, and on the general standards set forth in §§B and C of this regulation.

B. General Standards: Teacher Evaluation System.

(1) An evaluation system shall be based on standards, such as the INTASC Model Core Teaching Standards or other Department-approved or nationally recognized standards for teaching, and those standards shall be explained to teachers and communicated to the school community. The selected standards shall be used to evaluate the teacher's professional practice and student growth.

(2) A teacher's evaluation shall include at least five components:

(a) Planning and preparation;

(b) Classroom environment;

(c) Instruction;

(d) Professional responsibility; and

(e) Student growth.

(3) An evaluation system shall provide, at a minimum, for an overall rating of highly effective, effective, or ineffective.

(4) Classroom observations shall play a role in the evaluation system, at a minimum, in the following ways:

(a) Classroom observations of teachers' professional practice shall be conducted by certificated individuals who have completed training that includes identification of teaching behaviors that result in student growth and the use of the selected standards in the observation;

(b) An evaluation of a teacher's professional practice, including planning and preparation, classroom environment, and instruction shall be based on at least two observations during the school year;

(c) An evaluation report that evaluates a teacher as ineffective shall include at least one observation by an individual other than the immediate supervisor;

(d) An observation, announced or unannounced, shall be conducted with full knowledge of the teacher;

(e) A written observation report shall be shared with the teacher and a copy provided to the teacher within a reasonable period of time;

(f) A teacher shall sign the observation report to acknowledge receipt;

(g) An observation shall provide for written comments and reactions by the teacher being observed, which shall be attached to the observation report; and

(h) An observation shall provide specific guidance in areas needing improvement and supports as well a reasonable timeline to demonstrate improvement in areas marked as ineffective.

(5) Claims and evidence of observed instruction that substantiate the observed behavior or behaviors in a classroom observation shall be a part of the teacher's evaluation and may be identified by either the teacher or the evaluator or both and may include:

(a) Student work;

(b) Teacher-developed initiatives;

(c) Portfolios;

(d) Projects;

(e) Student test data;

(f) Artifacts; and

(g) Other statements.

(6) A local education agency's evaluation system shall include rigor, which shall be demonstrated, in part, by:

(a) The establishment of student growth as a significant component of the evaluation;

(b) For the school years 2014—2015 and 2015—2016, the use of student learning objectives (SLOs) informed by the data resulting from the State assessments, which shall be represented on a teacher's evaluation; and

(c) The Department shall review and approve mutually agreed-on evaluation systems to ensure compliance with the minimum general standards.

(7) The Department's approval of an agreed-on evaluation system after the 2015—2016 school year will be based, in part, on the Department's analysis of the evaluation data obtained in the 2014—2015 and 2015—2016 school years, including an analysis of the use of State assessment data as a direct measure of student growth.

(8) The evaluation system shall provide focused professional development, resources, and a mentoring component for teachers who are evaluated as ineffective and for all nontenured teachers.

(9) Until school year 2016—2017, student growth data based on or derived from State assessments may not be used to make personnel decisions.

C. General Standards: Principal Evaluation System. A principal's evaluation system shall be based on:

(1) The outcomes contained in the Maryland Instructional Leadership Framework, February 2005, and in the Interstate Leadership Licensure Consortium; and

(2) The standards set forth in §B(3), (6)(a)—(b), and (9) of this regulation.

.05 Default Model.

A. If the school system and the exclusive employee representative do not reach agreement on an evaluation system, the default model shall be adopted by the school system.

B. The default model shall include:

(1) A student growth component that comprises at least 50 percent of the teacher's and principal's evaluation in the following ways:

(a) For school years 2014—2015 and 2015—2016, for elementary and middle school teachers providing instruction in State-assessed content areas, 20 percent of the evaluation shall be based on SLOs based on and informed by the data obtained from the State assessments and 30 percent on other SLOs or other locally determined measures;

(b) For school years after 2015—2016, for elementary and middle school teachers providing instruction in State-assessed content areas, based on an analysis conducted by the Department of evaluation data obtained in school years 2014—2015 and 2015—2016, including an analysis of the use of State Assessment data as a direct measure of student growth, aggregate class growth

scores for State-assessed content areas being taught may comprise at least 20 percent of the teacher's evaluation;

(c) For school years 2014—2015 and 2015—2016, elementary and middle school teachers providing instruction in non-State-assessed grades or content areas, SLOs or other locally determined measures in the content areas being taught shall comprise 50 percent of the evaluation;

(d) For school years after 2015—2016, for elementary and middle school teachers providing instruction in non-State-assessed grades or content areas, based on an analysis conducted by the Department of evaluation data obtained in school years 2014—2015 and 2015—2016, SLOs or other locally determined measures may comprise up to 30 percent of the evaluation and a school-wide index may comprise up to 20 percent; and

(e) For high school teachers, SLOs informed by the data obtained from the High School Assessments shall comprise 50 percent of the teacher's evaluation;

(2) A professional practice component that comprises at least 50 percent of the teacher's evaluation in the following ways:

(a) Planning and preparation — 12.5 percent;

(b) Classroom environment — 12.5 percent;

(c) Instruction — 12.5 percent; and

(d) Professional responsibility — 12.5 percent;

(3) Measures of student growth for principals as follows:

(a) For elementary and middle school principals, student growth shall be measured by SLOs, in part, based on and informed by State assessment data, aggregate school-wide growth scores in State-assessed content areas, and the school-wide index;

(b) For high school principals, student growth shall be measured by SLOs, in part, based on and informed by the high school assessment data and the school-wide index; and

(c) For principals of other types of schools, student growth shall be measured by SLOs and the school-wide index;

(4) A professional practice component for principals which:

(a) Shall count for 50 percent of a principal's evaluation; and

(b) Shall include, but not be limited to, the outcomes in the Maryland Instructional Leadership Framework, and other outcomes based on Interstate School Leaders and Licensure Consortium (ISLLC); and

(5) A provision that, until school year 2016—2017, student growth data based on or derived from State assessments may not be used to make personnel decisions.

.06 Evaluation Cycle.

A. Tenured Teachers. On the 3-year evaluation cycle, tenured teachers shall be evaluated once annually in the following ways:

(1) In the first year of the evaluation cycle conducted under these regulations, tenured teachers shall be evaluated on both professional practice and student growth;

(2) If in the first year of the evaluation cycle a tenured teacher is determined to be highly effective or effective, then in the second year of the evaluation cycle the tenured teacher shall be evaluated using the professional practice rating from the previous year and the student growth based on the most recent available data;

(3) If in the second year of the evaluation cycle a tenured teacher is determined to be highly effective or effective, then in the third year of the evaluation cycle the tenured teacher shall be evaluated using the professional practice rating from the previous year and student growth based on the most recent available data;

(4) At the beginning of the fourth year, the evaluation cycle shall begin again as described in §A(1)—(3) of this regulation; and

(5) In any year, a principal may determine or a tenured teacher may request that the evaluation be based on a new review of professional practice along with student growth.

B. Nontenured Teachers and Teachers Rated as Ineffective. All nontenured teachers and all teachers rated as ineffective shall be evaluated annually on student growth and professional practice.

C. Principals. Every principal shall be evaluated at least once annually based on all of the components set forth in Regulations .04 and .05 of this chapter.