

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 608 (Senator Ferguson, *et al.*)
Education, Health, and Environmental Affairs

Public School Personnel - Grounds for Suspension or Dismissal - Ineffectiveness

This bill adds “ineffectiveness” to the list of reasons for which a local board of education, on recommendation of the local superintendent of schools, may suspend or dismiss a teacher, principal, supervisor, assistant superintendent, or other professional assistant. Ineffectiveness is to be determined by specified performance evaluation criteria for certified teachers and principals required under current law.

The bill states the intent that the authority of a local board of education to suspend or dismiss specified personnel on the basis of ineffectiveness be consistent with recommendations of the Maryland Council for Educator Effectiveness (MCEE) as implemented by a local board of education.

Fiscal Summary

State Effect: None.

Local Effect: To the extent that local school systems may be able to expedite dismissal of teachers, local school salary and related expenditures may decrease by an indeterminate amount.

Small Business Effect: None.

Analysis

Current Law: On the recommendation of the local superintendent of schools, a local board of education may suspend or dismiss a teacher, principal, supervisor, assistant superintendent, or other professional assistant for immorality; misconduct in office,

including knowingly failing to report suspected child abuse; insubordination; incompetency; or willful neglect of duty.

Before removing an individual, the local board must send the individual a copy of the charges against the individual and give the individual an opportunity within 10 days to request a hearing. The local board must hold a hearing if the request is received; the individual may appeal the decision to the State Board of Education. In Baltimore City the suspension and removal of assistant superintendents and higher level officials must be as provided by the personnel system established by the Baltimore City Board of School Commissioners.

Performance Evaluations

Under the Education Reform Act of 2010 (Chapter 189) the State board must 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, as well as model performance evaluation criteria. Before these regulations are proposed, the State board must solicit information and recommendations from each local school system and convene a meeting to discuss this information and recommendations.

Each local board of education must, in turn, establish performance evaluation criteria that are based on the general standards adopted by the State board and are mutually agreed upon by the local school system and the exclusive employee representative. Mutual agreement is not governed by State public school employee collective bargaining laws. The performance evaluation criteria must include data on student growth as a significant component and may not be based solely on an existing or newly created single examination or assessment. However, an existing or newly created single examination may be used as one of multiple measures of student growth. In addition, no single criterion can account for more than 35% of the total performance evaluation criteria. If a school system and the exclusive employee representative fail to mutually agree on the criteria, the State board's model performance evaluation criteria take effect six months after the final regulations establishing the model criteria are adopted.

Background: In February 2011, advice from the State Attorney General's Office indicated that it is possible to infer that student outcomes constitute a basis for determining teacher incompetency, and that therefore it is "conceptually possible for a Maryland teacher to be disciplined on the ground of student outcomes alone under current law..." However, the advice also indicates that adding ineffectiveness as a ground for suspension or dismissal and linking this to performance evaluation criteria for teachers and principals would "clarify that student outcomes alone (or in combination with other factors) would be a sufficient basis for teacher discipline."

Race to the Top

In part, Maryland's Education Reform Act was in response to Race to the Top (RTTT), the U.S. Department of Education's (USDE) \$4 billion competitive grant program authorized under the federal American Recovery and Reinvestment Act of 2009. On August 24, 2010, Maryland was awarded a federal Race to the Top grant in the amount of \$250 million over four years. The Maryland State Department of Education (MSDE) will receive \$125 million to support school reform, and the 22 participating local school systems will collectively receive \$125 million distributed over four years. Maryland received the full amount of funds requested in its application and is one of only 12 states and the District of Columbia to receive RTTT funding.

MSDE will use its \$125 million from the RTTT fund to implement 54 projects specified in the State's RTTT application. Maryland's primary RTTT reforms are to (1) revise the PreK-12 Maryland State Curriculum, assessments, and accountability system based on the Common Core Standards to assure that all graduates are college- and career-ready; (2) build a statewide technology infrastructure that links all data elements with analytic and instructional tools to monitor and promote student achievement; (3) redesign the model for preparation, development, retention, and evaluation of teachers and principals; and (4) fully implement the innovative Breakthrough Center approach for transforming low-performing schools and districts.

Maryland Council for Educator Effectiveness

The Governor established MCEE by executive order to develop recommendations for the State's model evaluation system for educators required by the Education Reform Act. MCEE is co-chaired by the State Superintendent of Schools and the vice president of the Maryland State Education Association, and is comprised of representatives of educators, school boards, the business industry, State agencies, and legislators. Before formulating its recommendations, MCEE is charged with reviewing existing evaluation systems used throughout the State, determining how to measure student growth, determining specifically how to measure student growth in nontested subject areas, and defining "effective" and "highly effective" teachers and principals. In order to assist the work of MCEE, subcommittees and an advisory panel of experts have been created. The four subcommittees are exploring prekindergarten through third grade, fourth grade through eighth grade, high school, and nontested areas in all grades.

Proposed Regulations to Implement the Education Reform Act

The Maryland State Department of Education (MSDE) developed proposed regulations in accordance with the Education Reform Act. Beginning with the 2012-2013 school year, the proposed regulations establish general standards relating to performance evaluations.

Specifically, the regulations identify the student growth component as at least 50% of the evaluation and prohibit any single performance evaluation criterion from accounting for more than 35% of the total performance evaluation criteria. The proposed regulations require all teachers to be evaluated at least once annually based on student growth and at least every other year based on the multiple measures of student growth, planning and preparation, classroom environment, instruction, and professional responsibility. Principals are required to be evaluated annually based on student growth and specific instructional leadership outcomes.

On November 8, 2010, the Administrative, Executive, and Legislative Review Committee (AELR) held a public hearing relating to whether the proposed regulations comply with statutory authority and the legislative intent of the law. Testimony at the hearing included a discussion of several potential issues of legal concern with the proposed regulations, specifically (1) whether the regulations comply with the statutory requirement that the State board solicit information and *convene* a meeting *prior* to proposing regulations that establish general standards; (2) whether the requirement that the student growth component be at least 50% of an evaluation – a provision also contained in the State’s RTTT application – is a power reserved to the State board as part of its authority to establish *general standards* for performance evaluations or is a power reserved to the local boards of education as part of their authority to establish *specific performance evaluation criteria*, subject to mutual agreement with the local bargaining unit in that jurisdiction, and to be agreed upon within six months of the final adoption of the State board’s model policy (which, presumably, would include the “at least 50%” determination); (3) the frequency and type of evaluations that must take place; and (4) the seemingly arbitrary date of the 2012-2013 school year for implementation of the law, rather than following the sequence of events required under the law.

On November 10, 2010, following a vote of 12-3 to oppose the adoption of the proposed regulations, AELR sent a letter to the State Superintendent of Schools and the Governor explaining its action. Specifically, AELR moved to reject the proposed regulations as not being consistent with the legislative intent of the law. The committee also requested that the Governor direct the State board to withdraw the regulations and resubmit them in compliance with the law and encouraged MCEE to continue its work on the model performance evaluation criteria and to include whatever prescriptive criteria, including percentages, are appropriate. Finally, the committee letter asked the Governor to contact the U.S. Secretary of Education to notify the Secretary that corrections need to be made to the regulations implementing the Education Reform Act that also may result in the need for minor changes to the State’s RTTT application.

Additional Information

Prior Introductions: None.

Cross File: HB 525 (Delegates Rosenberg and Ivey) - Ways and Means.

Information Source(s): Maryland State Department of Education, Maryland Association of Boards of Education, Department of Legislative Services

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Analysis by: Scott P. Gates

Direct Inquiries to:

(410) 946-5510

(301) 970-5510