
HOUSE BILL 3035

State of Washington

61st Legislature

2010 Regular Session

By Representatives Quall, Priest, Hunter, Carlyle, Probst, Kagi, Haigh, Lias, Dammeier, Kelley, Anderson, Kenney, Conway, Santos, Maxwell, Sullivan, and Rolfes

Read first time 01/21/10. Referred to Committee on Education.

1 AN ACT Relating to educator performance and innovation; amending
2 RCW 28A.150.230, 28A.405.100, 28A.405.220, and 28A.400.200; and adding
3 new sections to chapter 28A.405 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **PART I**

6 **EDUCATOR EVALUATIONS AND PERFORMANCE**

7 **Sec. 101.** RCW 28A.150.230 and 2006 c 263 s 201 are each amended to
8 read as follows:

9 (1) It is the intent and purpose of this section to guarantee that
10 each common school district board of directors, whether or not acting
11 through its respective administrative staff, be held accountable for
12 the proper operation of their district to the local community and its
13 electorate. In accordance with the provisions of Title 28A RCW, as now
14 or hereafter amended, each common school district board of directors
15 shall be vested with the final responsibility for the setting of
16 policies ensuring quality in the content and extent of its educational
17 program and that such program provide students with the opportunity to

1 achieve those skills which are generally recognized as requisite to
2 learning.

3 (2) In conformance with the provisions of Title 28A RCW, as now or
4 hereafter amended, it shall be the responsibility of each common school
5 district board of directors to adopt policies to:

6 (a) Establish performance criteria and an evaluation process for
7 its superintendent, classified staff, certificated personnel, including
8 administrative staff, and for all programs constituting a part of such
9 district's curriculum. Each district shall report annually to the
10 superintendent of public instruction the following for each employee
11 group listed in this subsection (2)(a): (i) Evaluation criteria and
12 rubrics; (ii) a description of each rating; and (iii) the number of
13 staff in each rating;

14 (b) Determine the final assignment of staff, certificated or
15 classified, according to board enumerated classroom and program needs
16 and data, based upon a plan to ensure that the assignment policy: (i)
17 Supports the learning needs of all the students in the district; and
18 (ii) gives specific attention to high-need schools and classrooms;

19 (c) Provide information to the local community and its electorate
20 describing the school district's policies concerning hiring, assigning,
21 terminating, and evaluating staff, including the criteria for
22 evaluating teachers and principals;

23 (d) Determine the amount of instructional hours necessary for any
24 student to acquire a quality education in such district, in not less
25 than an amount otherwise required in RCW 28A.150.220, or rules of the
26 state board of education;

27 ~~((d))~~ (e) Determine the allocation of staff time, whether
28 certificated or classified;

29 ~~((e))~~ (f) Establish final curriculum standards consistent with
30 law and rules of the superintendent of public instruction, relevant to
31 the particular needs of district students or the unusual
32 characteristics of the district, and ensuring a quality education for
33 each student in the district; and

34 ~~((f))~~ (g) Evaluate teaching materials, including text books,
35 teaching aids, handouts, or other printed material, in public hearing
36 upon complaint by parents, guardians or custodians of students who
37 consider dissemination of such material to students objectionable.

1 **Sec. 102.** RCW 28A.405.100 and 1997 c 278 s 1 are each amended to
2 read as follows:

3 (1)(a) Except as provided in subsection (2) of this section, the
4 superintendent of public instruction shall establish and may amend from
5 time to time minimum criteria for the evaluation of the professional
6 performance capabilities and development of certificated classroom
7 teachers and certificated support personnel. For classroom teachers
8 the criteria shall be developed in the following categories:
9 Instructional skill; classroom management, professional preparation and
10 scholarship; effort toward improvement when needed; the handling of
11 student discipline and attendant problems; and interest in teaching
12 pupils and knowledge of subject matter.

13 (b) Every board of directors shall, in accordance with procedure
14 provided in RCW 41.59.010 through 41.59.170, 41.59.910 and 41.59.920,
15 establish evaluative criteria and procedures for all certificated
16 classroom teachers and certificated support personnel. The evaluative
17 criteria must contain as a minimum the criteria established by the
18 superintendent of public instruction pursuant to this section and must
19 be prepared within six months following adoption of the superintendent
20 of public instruction's minimum criteria. The district must certify to
21 the superintendent of public instruction that evaluative criteria have
22 been so prepared by the district.

23 (2)(a) Pursuant to the implementation schedule established in
24 subsection (7)(b) of this section, every board of directors shall, in
25 accordance with procedures provided in RCW 41.59.010 through 41.59.170,
26 41.59.910, and 41.59.920, establish revised evaluative criteria and a
27 four-level rating system for all certificated classroom teachers.

28 (b) The minimum criteria shall include: (i) Centering instruction
29 on high expectations for student achievement; (ii) demonstrating
30 effective teaching practices; (iii) recognizing individual student
31 learning needs and developing strategies to address those needs; (iv)
32 providing clear and intentional focus on subject matter content and
33 curriculum; (v) fostering and managing a safe, positive learning
34 environment; (vi) using multiple student data elements to modify
35 instruction and improve student learning; (vii) communicating with
36 parents and school community; and (viii) exhibiting collaborative and
37 collegial practices focused on improving instructional practice and
38 student learning.

1 (c) The four-level rating system used to evaluate the certificated
2 classroom teacher must describe performance along a continuum that
3 indicates the extent to which the criteria have been met or exceeded.
4 When student growth data, if available and appropriate, is referenced
5 in the evaluation process it must be based on multiple measures that
6 can include classroom-based, school-based, district-based, and state-
7 based tools. As used in this subsection, "student growth" means the
8 change in student achievement between two points in time.

9 (3)(a) Except as provided in subsection ((+5+)) (10) of this
10 section, it shall be the responsibility of a principal or his or her
11 designee to evaluate all certificated personnel in his or her school.
12 During each school year all classroom teachers and certificated support
13 personnel(, hereinafter referred to as "employees" in this section,)
14 shall be observed for the purposes of evaluation at least twice in the
15 performance of their assigned duties. Total observation time for each
16 employee for each school year shall be not less than sixty minutes. An
17 employee in the third year of provisional status as defined in RCW
18 28A.405.220 shall be observed at least three times in the performance
19 of his or her duties and the total observation time for the school year
20 shall not be less than ninety minutes. Following each observation, or
21 series of observations, the principal or other evaluator shall promptly
22 document the results of the observation in writing, and shall provide
23 the employee with a copy thereof within three days after such report is
24 prepared. New employees shall be observed at least once for a total
25 observation time of thirty minutes during the first ninety calendar
26 days of their employment period.

27 (b) As used in this subsection and subsection (4) of this section,
28 "employees" means classroom teachers and certificated support
29 personnel.

30 (4)(a) At any time after October 15th, an employee whose work is
31 not judged ((unsatisfactory)) satisfactory based on district evaluation
32 criteria shall be notified in writing of the specific areas of
33 deficiencies along with a reasonable program for improvement. During
34 the period of probation, the employee may not be transferred from the
35 supervision of the original evaluator. Improvement of performance or
36 probable cause for nonrenewal must occur and be documented by the
37 original evaluator before any consideration of a request for transfer
38 or reassignment as contemplated by either the individual or the school

1 district. A probationary period of sixty school days shall be
2 established. The establishment of a probationary period does not
3 adversely affect the contract status of an employee within the meaning
4 of RCW 28A.405.300. The purpose of the probationary period is to give
5 the employee opportunity to demonstrate improvements in his or her
6 areas of deficiency. The establishment of the probationary period and
7 the giving of the notice to the employee of deficiency shall be by the
8 school district superintendent and need not be submitted to the board
9 of directors for approval. During the probationary period the
10 evaluator shall meet with the employee at least twice monthly to
11 supervise and make a written evaluation of the progress, if any, made
12 by the employee. The evaluator may authorize one additional
13 certificated employee to evaluate the probationer and to aid the
14 employee in improving his or her areas of deficiency; such additional
15 certificated employee shall be immune from any civil liability that
16 might otherwise be incurred or imposed with regard to the good faith
17 performance of such evaluation. The probationer may be removed from
18 probation if he or she has demonstrated improvement to the satisfaction
19 of the principal in those areas specifically detailed in his or her
20 initial notice of deficiency and subsequently detailed in his or her
21 improvement program. Lack of necessary improvement during the
22 established probationary period, as specifically documented in writing
23 with notification to the probationer and shall constitute grounds for
24 a finding of probable cause under RCW 28A.405.300 or 28A.405.210.

25 (b) Immediately following the completion of a probationary period
26 that does not produce performance changes detailed in the initial
27 notice of deficiencies and improvement program, the employee may be
28 removed from his or her assignment and placed into an alternative
29 assignment for the remainder of the school year. This reassignment may
30 not displace another employee nor may it adversely affect the
31 probationary employee's compensation or benefits for the remainder of
32 the employee's contract year. If such reassignment is not possible,
33 the district may, at its option, place the employee on paid leave for
34 the balance of the contract term.

35 ~~((+2))~~ (5) Every board of directors shall establish evaluative
36 criteria and procedures for all superintendents, principals, and other
37 administrators. It shall be the responsibility of the district
38 superintendent or his or her designee to evaluate all administrators.

1 Except as provided in subsection (6) of this section, such evaluation
2 shall be based on the administrative position job description. Such
3 criteria, when applicable, shall include at least the following
4 categories: Knowledge of, experience in, and training in recognizing
5 good professional performance, capabilities and development; school
6 administration and management; school finance; professional preparation
7 and scholarship; effort toward improvement when needed; interest in
8 pupils, employees, patrons and subjects taught in school; leadership;
9 and ability and performance of evaluation of school personnel.

10 ((+3)) (6)(a) Pursuant to the implementation schedule established
11 by subsection (7)(b) of this section, every board of directors shall
12 establish revised evaluative criteria and a four-level rating system
13 for principals.

14 (b) The minimum criteria shall include: (i) Creating a school
15 culture that promotes the ongoing improvement of learning and teaching
16 for students and staff; (ii) providing for school safety; (iii) leading
17 the development, implementation, and evaluation of a data-driven plan
18 for increasing student achievement, including the use of multiple
19 student data elements; (iv) assisting instructional staff with
20 alignment of curriculum, instruction, and assessment with state and
21 local district learning goals; (v) monitoring, assisting, and
22 evaluating effective instruction and assessment practices; (vi)
23 managing both staff and fiscal resources to support student achievement
24 and legal responsibilities; and (vii) partnering with the school
25 community to promote student learning.

26 (c) The four-level rating system used to evaluate the principal
27 must describe performance along a continuum that indicates the extent
28 to which the criteria have been met or exceeded. When student growth
29 data, if available and appropriate, is referenced in the evaluation
30 process it must be based on multiple measures that can include
31 classroom-based, school-based, district-based, and state-based tools.
32 As used in this subsection, "student growth" means the change in
33 student achievement between two points in time.

34 (7)(a) The superintendent of public instruction, in collaboration
35 with state professional associations representing teachers, principals,
36 and administrators, shall create models for implementing the evaluation
37 system criteria, student growth tools, professional development
38 programs, and evaluator training for certificated classroom teachers

1 and principals. Human resources specialists, professional development
2 experts, and assessment experts must also be consulted. Due to the
3 diversity of teaching assignments and the many developmental levels of
4 students, classroom teachers and principals must be prominently
5 represented in this work. The models must be available for use in the
6 2011-12 school year.

7 (b) A new certificated classroom teacher evaluation system that
8 implements the provisions of subsection (2) of this section and a new
9 principal evaluation system that implements the provisions of
10 subsection (6) of this section shall be phased-in beginning with the
11 2010-11 school year by districts identified in (c) of this subsection
12 and implemented in all school districts beginning with the 2013-14
13 school year.

14 (c) A set of school districts shall be selected by the
15 superintendent of public instruction to participate in a collaborative
16 process resulting in the development and piloting of new certificated
17 classroom teacher and principal evaluation systems during the 2010-11
18 and 2011-12 school years. These school districts must be selected
19 based on: (i) The agreement of the local associations representing
20 classroom teachers and principals to collaborate with the district in
21 this developmental work and (ii) the agreement to participate in the
22 full range of development and implementation activities, including:
23 Development of rubrics for the evaluation criteria and ratings in
24 subsections (2) and (6) of this section; identification of or
25 development of appropriate multiple measures of student growth in
26 subsections (2) and (6) of this section; development of appropriate
27 evaluation system forms; participation in professional development for
28 principals and classroom teachers regarding the content of the new
29 evaluation system; participation in evaluator training; and
30 participation in activities to evaluate the effectiveness of the new
31 systems and support programs. The superintendent of public instruction
32 must analyze the districts' evaluative data, consult with participating
33 districts and stakeholders, recommend appropriate changes, and address
34 statewide implementation issues. The superintendent of public
35 instruction shall report evaluation system implementation status,
36 evaluation data, and recommendations to appropriate committees of the
37 legislature and governor by July 1, 2011, and at the conclusion of the
38 development phase by July 1, 2012.

1 (8) Each certificated (~~(employee)~~) classroom teacher and
2 certificated support personnel shall have the opportunity for
3 confidential conferences with his or her immediate supervisor on no
4 less than two occasions in each school year. Such confidential
5 conference shall have as its sole purpose the aiding of the
6 administrator in his or her assessment of the employee's professional
7 performance.

8 (~~(+4)~~) (9) The failure of any evaluator to evaluate or supervise
9 or cause the evaluation or supervision of certificated (~~(employees)~~)
10 classroom teachers and certificated support personnel or administrators
11 in accordance with this section, as now or hereafter amended, when it
12 is his or her specific assigned or delegated responsibility to do so,
13 shall be sufficient cause for the nonrenewal of any such evaluator's
14 contract under RCW 28A.405.210, or the discharge of such evaluator
15 under RCW 28A.405.300.

16 (~~(+5)~~) (10) After (~~(an employee)~~) a certificated classroom teacher
17 or certificated support personnel has four years of satisfactory
18 evaluations under subsection (1) of this section or has received one of
19 the two top ratings for four years under subsection (2) of this
20 section, a school district may use a short form of evaluation, a
21 locally bargained evaluation emphasizing professional growth, an
22 evaluation under subsection (1) or (2) of this section, or any
23 combination thereof. The short form of evaluation shall include either
24 a thirty minute observation during the school year with a written
25 summary or a final annual written evaluation based on the criteria in
26 subsection (1) or (2) of this section and based on at least two
27 observation periods during the school year totaling at least sixty
28 minutes without a written summary of such observations being prepared.
29 A locally bargained short-form evaluation emphasizing professional
30 growth must provide that the professional growth activity conducted by
31 the certificated classroom teacher be specifically linked to one or
32 more of the certificated classroom teacher evaluation criteria.
33 However, the evaluation process set forth in subsection (1) or (2) of
34 this section shall be followed at least once every three years unless
35 this time is extended by a local school district under the bargaining
36 process set forth in chapter 41.59 RCW. The employee or evaluator may
37 require that the evaluation process set forth in subsection (1) or (2)
38 of this section be conducted in any given school year. No evaluation

1 other than the evaluation authorized under subsection (1) or (2) of
2 this section may be used as a basis for determining that an employee's
3 work is (~~unsatisfactory~~) not satisfactory under subsection (1) or (2)
4 of this section or as probable cause for the nonrenewal of an
5 employee's contract under RCW 28A.405.210 unless an evaluation process
6 developed under chapter 41.59 RCW determines otherwise.

7 **Sec. 103.** RCW 28A.405.220 and 2009 c 57 s 2 are each amended to
8 read as follows:

9 (1) Notwithstanding the provisions of RCW 28A.405.210, every person
10 employed by a school district in a teaching or other nonsupervisory
11 certificated position shall be subject to nonrenewal of employment
12 contract as provided in this section during the first (~~two~~) three
13 years of employment by such district, unless: (a) The employee has
14 previously completed at least two years of certificated employment in
15 another school district in the state of Washington, in which case the
16 employee shall be subject to nonrenewal of employment contract pursuant
17 to this section during the first year of employment with the new
18 district; or (b) the school district superintendent may make a
19 determination to remove an employee from provisional status if the
20 employee has received one of the top two evaluation ratings during the
21 second year of employment by the district. Employees as defined in
22 this section shall hereinafter be referred to as "provisional
23 employees(~~s~~)."

24 (2) In the event the superintendent of the school district
25 determines that the employment contract of any provisional employee
26 should not be renewed by the district for the next ensuing term such
27 provisional employee shall be notified thereof in writing on or before
28 May 15th preceding the commencement of such school term, or if the
29 omnibus appropriations act has not passed the legislature by May 15th,
30 then notification shall be no later than June 15th, which notification
31 shall state the reason or reasons for such determination. Such notice
32 shall be served upon the provisional employee personally, or by
33 certified or registered mail, or by leaving a copy of the notice at the
34 place of his or her usual abode with some person of suitable age and
35 discretion then resident therein. The determination of the
36 superintendent shall be subject to the evaluation requirements of RCW
37 28A.405.100.

1 (3) Every such provisional employee so notified, at his or her
2 request made in writing and filed with the superintendent of the
3 district within ten days after receiving such notice, shall be given
4 the opportunity to meet informally with the superintendent for the
5 purpose of requesting the superintendent to reconsider his or her
6 decision. Such meeting shall be held no later than ten days following
7 the receipt of such request, and the provisional employee shall be
8 given written notice of the date, time and place of meeting at least
9 three days prior thereto. At such meeting the provisional employee
10 shall be given the opportunity to refute any facts upon which the
11 superintendent's determination was based and to make any argument in
12 support of his or her request for reconsideration.

13 (4) Within ten days following the meeting with the provisional
14 employee, the superintendent shall either reinstate the provisional
15 employee or shall submit to the school district board of directors for
16 consideration at its next regular meeting a written report recommending
17 that the employment contract of the provisional employee be nonrenewed
18 and stating the reason or reasons therefor. A copy of such report
19 shall be delivered to the provisional employee at least three days
20 prior to the scheduled meeting of the board of directors. In taking
21 action upon the recommendation of the superintendent, the board of
22 directors shall consider any written communication which the
23 provisional employee may file with the secretary of the board at any
24 time prior to that meeting.

25 (5) The board of directors shall notify the provisional employee in
26 writing of its final decision within ten days following the meeting at
27 which the superintendent's recommendation was considered. The decision
28 of the board of directors to nonrenew the contract of a provisional
29 employee shall be final and not subject to appeal.

30 (6) This section applies to any person employed by a school
31 district in a teaching or other nonsupervisory certificated position
32 after June 25, 1976. This section provides the exclusive means for
33 nonrenewing the employment contract of a provisional employee and no
34 other provision of law shall be applicable thereto, including, without
35 limitation, RCW 28A.405.210 and chapter 28A.645 RCW.

36 NEW SECTION. Sec. 104. A new section is added to chapter 28A.405
37 RCW to read as follows:

1 (1) Representatives of the office of the superintendent of public
2 instruction and statewide associations representing administrators,
3 principals, human resources specialists, and certificated classroom
4 teachers shall analyze how the evaluation systems in RCW 28A.405.100
5 (2) and (6) affect issues related to a change in contract status.

6 (2) The analysis shall be conducted during each of the phase-in
7 years of the certificated classroom teacher and principal evaluation
8 systems. The analysis shall include: Procedures, timelines,
9 probationary periods, appeal procedures, and other items related to the
10 timely exercise of employment decisions and due process provisions for
11 certificated classroom teachers and principals.

12 NEW SECTION. **Sec. 105.** A new section is added to chapter 28A.405
13 RCW to read as follows:

14 If funds are provided for professional development activities
15 designed specifically for first through third-year teachers, the funds
16 shall be allocated first to districts participating in the evaluation
17 systems in RCW 28A.405.100 (2) and (6) before the required
18 implementation date under that section.

19 **PART II**

20 **ENCOURAGING INNOVATIONS**

21 **Sec. 201.** RCW 28A.400.200 and 2002 c 353 s 2 are each amended to
22 read as follows:

23 (1) Every school district board of directors shall fix, alter,
24 allow, and order paid salaries and compensation for all district
25 employees in conformance with this section.

26 (2)(a) Salaries for certificated instructional staff shall not be
27 less than the salary provided in the appropriations act in the
28 statewide salary allocation schedule for an employee with a
29 baccalaureate degree and zero years of service; and

30 (b) Salaries for certificated instructional staff with a master's
31 degree shall not be less than the salary provided in the appropriations
32 act in the statewide salary allocation schedule for an employee with a
33 master's degree and zero years of service;

34 (3)(a) The actual average salary paid to certificated instructional
35 staff shall not exceed the district's average certificated

1 instructional staff salary used for the state basic education
2 allocations for that school year as determined pursuant to RCW
3 28A.150.410.

4 (b) Fringe benefit contributions for certificated instructional
5 staff shall be included as salary under (a) of this subsection only to
6 the extent that the district's actual average benefit contribution
7 exceeds the amount of the insurance benefits allocation provided per
8 certificated instructional staff unit in the state operating
9 appropriations act in effect at the time the compensation is payable.
10 For purposes of this section, fringe benefits shall not include payment
11 for unused leave for illness or injury under RCW 28A.400.210; employer
12 contributions for old age survivors insurance, workers' compensation,
13 unemployment compensation, and retirement benefits under the Washington
14 state retirement system; or employer contributions for health benefits
15 in excess of the insurance benefits allocation provided per
16 certificated instructional staff unit in the state operating
17 appropriations act in effect at the time the compensation is payable.
18 A school district may not use state funds to provide employer
19 contributions for such excess health benefits.

20 (c) Salary and benefits for certificated instructional staff in
21 programs other than basic education shall be consistent with the salary
22 and benefits paid to certificated instructional staff in the basic
23 education program.

24 (4) Salaries and benefits for certificated instructional staff may
25 exceed the limitations in subsection (3) of this section only by
26 separate contract for additional time, for additional responsibilities,
27 ~~((or))~~ for incentives, or for implementing specific measurable
28 innovative activities specified by the school district to: (a) Close
29 one or more achievement gaps or (b) focus on development of science,
30 technology, engineering, and mathematics (STEM) learning opportunities
31 to include professional development. Supplemental contracts shall not
32 cause the state to incur any present or future funding obligation.
33 Supplemental contracts shall be subject to the collective bargaining
34 provisions of chapter 41.59 RCW and the provisions of RCW 28A.405.240,
35 shall not exceed one year, and if not renewed shall not constitute
36 adverse change in accordance with RCW 28A.405.300 through 28A.405.380.
37 No district may enter into a supplemental contract under this

1 subsection for the provision of services which are a part of the basic
2 education program required by Article IX, section 3 of the state
3 Constitution.

4 (5) Employee benefit plans offered by any district shall comply
5 with RCW 28A.400.350 and 28A.400.275 and 28A.400.280.

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