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HOUSE BILL 2309

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State of Washington

62nd Legislature

2012 Regular Session

By Representatives Pettigrew and Dammeier; by request of Superintendent of Public Instruction

Read first time 01/11/12. Referred to Committee on Education.

1 AN ACT Relating to provisional school employees; amending RCW  
2 28A.405.220 and 28A.405.100; creating new sections; and providing an  
3 effective date.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that in order for  
6 Washington schools to be great places to teach and learn, where all  
7 kids and educators succeed, schools must build cultures where all  
8 students thrive. A critical part of a successful school culture is a  
9 system that encourages improvement in teaching practice and ensures  
10 that student success is the primary consideration in staffing decisions  
11 in schools. The system must:

12 (1) Ensure that educators are appropriately recognized for their  
13 ability to help students learn through a fair evaluation system based  
14 on the criteria outlined by the legislature;

15 (2) Recognize that teachers who are deemed unsatisfactory through  
16 the fair evaluation deserve an opportunity to improve their practice  
17 and be provided a plan of improvement that supports educator and  
18 ultimately student success; and

1 (3) Recognize that a teacher who is deemed unsatisfactory through  
2 the fair evaluation for a second consecutive year should be considered  
3 a provisional employee of the school district, and be subject to a  
4 streamlined process for nonrenewal when the teacher's practice does not  
5 improve.

6 **Sec. 2.** RCW 28A.405.220 and 2010 c 235 s 203 are each amended to  
7 read as follows:

8 (1) Notwithstanding the provisions of RCW 28A.405.210, every person  
9 employed by a school district in a teaching or other nonsupervisory  
10 certificated position shall be subject to nonrenewal of employment  
11 contract as provided in this section:

12 (a) During the first three years of employment by such district,  
13 unless: ((+a)) (i) The employee has previously completed at least two  
14 years of certificated employment in another school district in the  
15 state of Washington, in which case the employee shall be subject to  
16 nonrenewal of employment contract pursuant to this section during the  
17 first year of employment with the new district; or ((+b)) (ii) the  
18 school district superintendent may make a determination to remove an  
19 employee from provisional status if the employee has received one of  
20 the top two evaluation ratings during the second year of employment by  
21 the district; or

22 (b) Immediately after receiving a second consecutive annual  
23 personnel evaluation identified as unsatisfactory.

24 (2) Employees as defined in this section shall hereinafter be  
25 referred to as "provisional employees."

26 ((+2)) (3) In the event the superintendent of the school district  
27 determines that the employment contract of any provisional employee  
28 should not be renewed by the district for the next ensuing term such  
29 provisional employee shall be notified thereof in writing on or before  
30 May 15th preceding the commencement of such school term, or if the  
31 omnibus appropriations act has not passed the legislature by May 15th,  
32 then notification shall be no later than June 15th, which notification  
33 shall state the reason or reasons for such determination. Such notice  
34 shall be served upon the provisional employee personally, or by  
35 certified or registered mail, or by leaving a copy of the notice at the  
36 place of his or her usual abode with some person of suitable age and

1 discretion then resident therein. The determination of the  
2 superintendent shall be subject to the evaluation requirements of RCW  
3 28A.405.100.

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

16 ~~((+4))~~ (5) Within ten days following the meeting with the  
17 provisional employee, the superintendent shall either reinstate the  
18 provisional employee or shall submit to the school district board of  
19 directors for consideration at its next regular meeting a written  
20 report recommending that the employment contract of the provisional  
21 employee be nonrenewed and stating the reason or reasons therefor. A  
22 copy of such report shall be delivered to the provisional employee at  
23 least three days prior to the scheduled meeting of the board of  
24 directors. In taking action upon the recommendation of the  
25 superintendent, the board of directors shall consider any written  
26 communication which the provisional employee may file with the  
27 secretary of the board at any time prior to that meeting.

28 ~~((+5))~~ (6) The board of directors shall notify the provisional  
29 employee in writing of its final decision within ten days following the  
30 meeting at which the superintendent's recommendation was considered.  
31 The decision of the board of directors to nonrenew the contract of a  
32 provisional employee shall be final and not subject to appeal.

33 ~~((+6))~~ (7) This section applies to any person employed by a school  
34 district in a teaching or other nonsupervisory certificated position  
35 after June 25, 1976. This section provides the exclusive means for  
36 nonrenewing the employment contract of a provisional employee and no  
37 other provision of law shall be applicable thereto, including, without  
38 limitation, RCW 28A.405.210 and chapter 28A.645 RCW.

1       **Sec. 3.** RCW 28A.405.100 and 2010 c 235 s 202 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 and  
36 collaborating with parents and [the] school community; and (viii)  
37 exhibiting collaborative and collegial practices focused on improving  
38 instructional practice and 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 relevant to the teacher and  
5 subject matter, is referenced in the evaluation process it must be  
6 based on multiple measures that can include classroom-based, school-  
7 based, district-based, and state-based tools. As used in this  
8 subsection, "student growth" means the change in student achievement  
9 between two points in time.

10 (3)(a) Except as provided in subsection (10) of this section, it  
11 shall be the responsibility of a principal or his or her designee to  
12 evaluate all certificated personnel in his or her school. During each  
13 school year all classroom teachers and certificated support personnel  
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 satisfactory based on district evaluation criteria shall be  
32 notified in writing of the specific areas of deficiencies along with a  
33 reasonable program for improvement. During the period of probation,  
34 the employee may not be transferred from the supervision of the  
35 original evaluator. Improvement of performance or probable cause for  
36 nonrenewal must occur and be documented by the original evaluator  
37 before any consideration of a request for transfer or reassignment as  
38 contemplated by either the individual or the school district. A

1 probationary period of sixty school days shall be established. The  
2 establishment of a probationary period does not adversely affect the  
3 contract status of an employee within the meaning of RCW 28A.405.300.  
4 The purpose of the probationary period is to give the employee  
5 opportunity to demonstrate improvements in his or her areas of  
6 deficiency. The establishment of the probationary period and the  
7 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. Employees who received a personnel  
35 evaluation identified as unsatisfactory in the previous year and  
36 receive an unsatisfactory personnel evaluation as a result of not  
37 producing performance changes detailed in the initial notice of

1 deficiencies and improvement program shall immediately be considered a  
2 provisional employee in accordance with RCW 28A.405.220.

3 (5) Every board of directors shall establish evaluative criteria  
4 and procedures for all superintendents, principals, and other  
5 administrators. It shall be the responsibility of the district  
6 superintendent or his or her designee to evaluate all administrators.  
7 Except as provided in subsection (6) of this section, such evaluation  
8 shall be based on the administrative position job description. Such  
9 criteria, when applicable, shall include at least the following  
10 categories: Knowledge of, experience in, and training in recognizing  
11 good professional performance, capabilities and development; school  
12 administration and management; school finance; professional preparation  
13 and scholarship; effort toward improvement when needed; interest in  
14 pupils, employees, patrons and subjects taught in school; leadership;  
15 and ability and performance of evaluation of school personnel.

16 (6)(a) Pursuant to the implementation schedule established by  
17 subsection (7)(b) of this section, every board of directors shall  
18 establish revised evaluative criteria and a four-level rating system  
19 for principals.

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

33 (c) The four-level rating system used to evaluate the principal  
34 must describe performance along a continuum that indicates the extent  
35 to which the criteria have been met or exceeded. When available,  
36 student growth data that is referenced in the evaluation process must  
37 be based on multiple measures that can include classroom-based, school-

1 based, district-based, and state-based tools. As used in this  
2 subsection, "student growth" means the change in student achievement  
3 between two points in time.

4 (7)(a) The superintendent of public instruction, in collaboration  
5 with state associations representing teachers, principals,  
6 administrators, and parents, shall create models for implementing the  
7 evaluation system criteria, student growth tools, professional  
8 development programs, and evaluator training for certificated classroom  
9 teachers and principals. Human resources specialists, professional  
10 development experts, and assessment experts must also be consulted.  
11 Due to the diversity of teaching assignments and the many developmental  
12 levels of students, classroom teachers and principals must be  
13 prominently represented in this work. The models must be available for  
14 use in the 2011-12 school year.

15 (b) A new certificated classroom teacher evaluation system that  
16 implements the provisions of subsection (2) of this section and a new  
17 principal evaluation system that implements the provisions of  
18 subsection (6) of this section shall be phased-in beginning with the  
19 2010-11 school year by districts identified in (c) of this subsection  
20 and implemented in all school districts beginning with the 2013-14  
21 school year.

22 (c) A set of school districts shall be selected by the  
23 superintendent of public instruction to participate in a collaborative  
24 process resulting in the development and piloting of new certificated  
25 classroom teacher and principal evaluation systems during the 2010-11  
26 and 2011-12 school years. These school districts must be selected  
27 based on: (i) The agreement of the local associations representing  
28 classroom teachers and principals to collaborate with the district in  
29 this developmental work and (ii) the agreement to participate in the  
30 full range of development and implementation activities, including:  
31 Development of rubrics for the evaluation criteria and ratings in  
32 subsections (2) and (6) of this section; identification of or  
33 development of appropriate multiple measures of student growth in  
34 subsections (2) and (6) of this section; development of appropriate  
35 evaluation system forms; participation in professional development for  
36 principals and classroom teachers regarding the content of the new  
37 evaluation system; participation in evaluator training; and  
38 participation in activities to evaluate the effectiveness of the new



1 systems and support programs. The school districts must submit to the  
2 office of the superintendent of public instruction data that is used in  
3 evaluations and all district-collected student achievement, aptitude,  
4 and growth data regardless of whether the data is used in evaluations.  
5 If the data is not available electronically, the district may submit it  
6 in nonelectronic form. The superintendent of public instruction must  
7 analyze the districts' use of student data in evaluations, including  
8 examining the extent that student data is not used or is underutilized.  
9 The superintendent of public instruction must also consult with  
10 participating districts and stakeholders, recommend appropriate  
11 changes, and address statewide implementation issues. The  
12 superintendent of public instruction shall report evaluation system  
13 implementation status, evaluation data, and recommendations to  
14 appropriate committees of the legislature and governor by July 1, 2011,  
15 and at the conclusion of the development phase by July 1, 2012. In the  
16 July 1, 2011, report, the superintendent shall include recommendations  
17 for whether a single statewide evaluation model should be adopted,  
18 whether modified versions developed by school districts should be  
19 subject to state approval, and what the criteria would be for  
20 determining if a school district's evaluation model meets or exceeds a  
21 statewide model. The report shall also identify challenges posed by  
22 requiring a state approval process.

23 (8) Each certificated classroom teacher and certificated support  
24 personnel shall have the opportunity for confidential conferences with  
25 his or her immediate supervisor on no less than two occasions in each  
26 school year. Such confidential conference shall have as its sole  
27 purpose the aiding of the administrator in his or her assessment of the  
28 employee's professional performance.

29 (9) The failure of any evaluator to evaluate or supervise or cause  
30 the evaluation or supervision of certificated classroom teachers and  
31 certificated support personnel or administrators in accordance with  
32 this section, as now or hereafter amended, when it is his or her  
33 specific assigned or delegated responsibility to do so, shall be  
34 sufficient cause for the nonrenewal of any such evaluator's contract  
35 under RCW 28A.405.210, or the discharge of such evaluator under RCW  
36 28A.405.300.

37 (10) After a certificated classroom teacher or certificated support  
38 personnel has four years of satisfactory evaluations under subsection

1 (1) of this section or has received one of the two top ratings for four  
2 years under subsection (2) of this section, a school district may use  
3 a short form of evaluation, a locally bargained evaluation emphasizing  
4 professional growth, an evaluation under subsection (1) or (2) of this  
5 section, or any combination thereof. The short form of evaluation  
6 shall include either a thirty minute observation during the school year  
7 with a written summary or a final annual written evaluation based on  
8 the criteria in subsection (1) or (2) of this section and based on at  
9 least two observation periods during the school year totaling at least  
10 sixty minutes without a written summary of such observations being  
11 prepared. A locally bargained short-form evaluation emphasizing  
12 professional growth must provide that the professional growth activity  
13 conducted by the certificated classroom teacher be specifically linked  
14 to one or more of the certificated classroom teacher evaluation  
15 criteria. However, the evaluation process set forth in subsection (1)  
16 or (2) of this section shall be followed at least once every three  
17 years unless this time is extended by a local school district under the  
18 bargaining process set forth in chapter 41.59 RCW. The employee or  
19 evaluator may require that the evaluation process set forth in  
20 subsection (1) or (2) of this section be conducted in any given school  
21 year. No evaluation other than the evaluation authorized under  
22 subsection (1) or (2) of this section may be used as a basis for  
23 determining that an employee's work is not satisfactory under  
24 subsection (1) or (2) of this section or as probable cause for the  
25 nonrenewal of an employee's contract under RCW 28A.405.210 unless an  
26 evaluation process developed under chapter 41.59 RCW determines  
27 otherwise.

28 NEW SECTION. **Sec. 4.** The superintendent of public instruction  
29 shall adopt rules no later than July 1, 2013, to implement the  
30 amendments to RCW 28A.405.220 and 28A.405.100 identified in sections 2  
31 and 3 of this act, respectively. These rules must go into effect on  
32 September 1, 2013.

33 NEW SECTION. **Sec. 5.** Sections 2 and 3 of this act take effect  
34 September 1, 2013.

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