

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
FIRST JUDICIAL DISTRICT COURT**

**STATE OF NEW MEXICO EX REL.
THE HONORABLE MIMI STEWART,
THE HONORALBE SHERYL WILLIAMS STAPLETON,
THE HONORABLE HOWIE C. MORALES,
THE HONORALBE LINDA M. LOPEZ,
THE HONORABLE WILLIAM P. SOULES,
AMERICAN FEDERATION OF TEACHERS—
NEW MEXICO, ALBUQUERQUE FEDERATION OF
TEACHERS, JOLENE BEGAY, DANA ALLEN,
NAOMI DANIEL, RON LAVANDOSKI, TRACEY
BRUMLIK, CRYSTAL HERRERA, and
ALLISON HAWKS,**

Plaintiffs,

v.

No. _____

**NEW MEXICO PUBLIC EDUCATION
DEPARTMENT and SECRETARY-DESIGNEE
HANNA SKANDERA in her official capacity,**

Defendants.

**COMPLAINT FOR DECLARATORY JUDGMENT AND PRELIMINARY AND
PERMANENT INJUNCTIVE RELIEF**

COME NOW, Plaintiffs, by and through the undersigned, and for their Complaint against

Defendants state as follows:

I. INTRODUCTION

1. Plaintiffs bring this action against the Public Education Department and its Secretary-Designee, in her official capacity only, because Defendants have implemented a fundamental change in the manner in which teachers are evaluated in New Mexico. As detailed in this Complaint, that change is based on a fundamentally, and irreparably, flawed methodology which is further plagued by consistent and appalling data errors. As a result, teachers are being

evaluated, and employment decisions made, based on a process that is, at best, arbitrary and capricious.

2. Due to the problems with the evaluation methodology detailed herein, Defendants have or are about to violate Plaintiffs' constitutional rights, violate the statutory authority under which they operate, and violate other provisions of law. Plaintiffs seek declaratory and injunctive relief.

II. PARTIES, JURISDICTION, AND VENUE

3. Plaintiff the Honorable Senator Mimi Stewart is the elected Senator from District 17 (Bernalillo County). She is a retired educator, and is a member of the Senate Corporations & Transportation, and the Public Affairs Committees. She is also the Vice Chair of the Legislative Education Study Committee, a permanent bipartisan and bicameral interim committee of the Legislature.

4. Plaintiff the Honorable Representative Sheryl Williams Stapleton is the elected Representative from District 19 (Bernalillo County). She is an educator, and is a member of the House Education, Safety & Civil Affairs, and Rules & Order of Business Committees. She is a voting member of the Legislative Education Study Committee.

5. Plaintiff the Honorable Senator Howie C. Morales is the elected Senator from District 28 (Catron, Grant and Socorro Counties). He is an educator, and a member of the Senate Finance Committee. He is also a voting member of the Legislative Education Study Committee.

6. Plaintiff the Honorable Senator Linda M. Lopez is the elected Senator from District 11 (Bernalillo County), and is on the Senate Rules and Judiciary Committees. She is an advisory member of the Legislative Education Study Committee.

7. Plaintiff the Honorable William P. Soules is the elected Senator from District 37 (Doña Ana County). He is an educator, and is the Vice-Chair of the Senate Education Committee and a member of the Senate Conservation Committees. He is an advisory member of the Legislative Education Study Committee.

8. Plaintiff American Federation of Teachers New Mexico (“AFT”) is a labor organization (as defined by § 10-7E-4(I) of the Public Employee Bargaining Act) and the exclusive bargaining representative for over 23,000 teachers and other educational employees in New Mexico. Petitioner has its principal place of business in the County of Bernalillo and has 30 local affiliates throughout the State of New Mexico.

9. Plaintiff Albuquerque Teachers Federation is a labor organization (as defined by § 10-7E-4(I) of the Public Employee Bargaining Act) and the exclusive bargaining representative for over 7,100 educational employees of Albuquerque Public Schools.

10. Plaintiff Jolene Begay is an English Teacher at Miyamura High School in Gallup-McKinley County Schools, New Mexico. She has been a teacher for 13.5 years. In the last evaluation period she was classified as a Group A teacher, and received a “minimally effective” rating, even though her students had high test scores. The scores from two of her four observations were not reported and reduced the score on her evaluation.

11. Plaintiff Dana Allen is a science teacher and chairman of the science department at Highland High School, with nine years of experience at Albuquerque Public Schools (“APS”). He teaches primarily 9th and 10th grade students. He was rated “minimally effective,” due entirely to very low test scores, which in 2013-14 were based on his former students who took the Standard Based Assessment (“SBA”) for science in 11th grade a year after he taught them. His attendance score also was calculated incorrectly.

12. Plaintiff Naomi Daniel has been a teacher for 31 years, the last sixteen of which was at the New Futures High School in APS. Last year, she taught electives and 12th grade English. Because of the subjects she taught, there were no student achievement scores in her evaluation. She received a “minimally effective” rating, because she fractured her hip and missed eight weeks on FMLA leave. When Ms. Daniel contacted APS human resources, she was told that HR did not report the leave as FMLA and because it was from a prior year changes could not be made. Plaintiff Daniel was told by H.R. that she did not need to worry because the scores “don’t mean anything this year.”

13. Plaintiff Ron Lavandoski, is a special education 9th grade math teacher at Cibola High School and has been teaching in APS for eighteen (18) years. While Mr. Lavandoski teaches students with learning disabilities and his principal gave him positive observation ratings, his effectiveness level was “minimally effective” because of his student achievement scores. Upon information and belief, Mr. Lavandoski’s states that his student achievement score is based on incorrect data and on his former students who took the math SBA in 10th grade in the year after they were his students.

14. Plaintiff Tracey Brumlik has been a teacher for twenty-five years and has always had successful evaluations. In 2013-2014, Ms. Brumlik taught 5th grade at Ventana Ranch Elementary School, APS. She received a “minimally effective” rating on her 2013-14 evaluation, but the test scores used to calculate her student achievement were based on 2012-13 test scores for 6th and 7th grade math at her former school. Ms. Brumlik also had points deducted from her evaluation for teacher attendance when she took FMLA leave for the adoption of her child.

15. Plaintiff Crystall Herrera is a special education teacher with fourteen (14) years experience at Lew Wallace Elementary School in APS. She was given an “effective” rating in

May 2014 and in September 2014, but later told that she should have been rated “minimally effective.” Ms. Herrera was improperly penalized for utilizing two days of bereavement leave, which reduced her rating from “effective” to “minimally effective.”

16. Plaintiff Allison Hawks teaches dual-language (50/50 English/Spanish) fifth grade at Eugene Field Elementary School. She was rated “minimally effective” based largely on student test scores (6.3/35 points for student achievement), which could not be explained to her by her principal.

17. Defendant Public Education Department (“PED”) is a cabinet department created by N.M. Const. Art. XII, § 6 headed by a Secretary of Education.

18. Defendant Hanna Skandera is the Secretary-Designate (having not been confirmed by the Senate) of PED. In that capacity, she has the authority to approve and issue regulations relating to public education on behalf of the State’s executive branch.

19. Plaintiffs bring this action against Defendant Skandera solely in her official capacity as Secretary-Designates of the PED.

20. Plaintiff AFT has associational standing to bring this suit on behalf of the 23,000 teachers and educational employees in bargaining units it represents, all of whom are affected by the regulations and PED actions challenged by this suit.

21. The Legislator Plaintiffs have standing to bring this suit to protect the proper domain of the Legislature to establish the substantive law in New Mexico, to set its public policy, and to ensure that that substantive public policy is carried out by executive administrative agencies.

22. Plaintiffs bring this action under the New Mexico Declaratory Judgment Act, NMSA 1978, §§ 44-6-1 to -15, because an actual controversy has arisen between the Plaintiffs and Defendants as described in this Complaint.

23. This Court has jurisdiction over the parties and has subject matter jurisdiction.

24. Venue is proper in this Court pursuant to NMSA 1978, § 38-3-1(G) (1988), because at least one of the Plaintiffs has its principal place of business in the County of Bernalillo, State of New Mexico.

III. FACTS

A. Adoption of the Challenged Regulations

25. By statute, teachers are evaluated and licensed pursuant to the terms of a three-tier licensure system, as established by the New Mexico Legislature in 2003. In that year, the Legislature enacted comprehensive public education reform through the seventy-four sections of 2003 N.M. Laws Ch. 153.

26. Sections 33 through 54 of that Act modified provisions of the School Personnel Act to create a three-tier teacher licensing and evaluation system, relevant provisions of which are codified at NMSA 1978, §§ 22-10A-3 through -12 (as amended through 2011).

27. The existing statutory framework for teacher evaluations for licensure purposes requires that the teacher be evaluated for “competency” against a “highly objective uniform statewide standard of evaluation” to be developed by PED. Relevant statutory provisions include:

a. NMSA 1978, § 22-10A-4(B) (2005): “The New Mexico licensure framework for teachers and school administrators is a progressive career system in which licensees are required to demonstrate increased competencies and undertake increased duties as they progress through the licensure levels. The minimum salary provided as part of the career system shall not take effect

until the department has adopted increased competencies for the particular level of licensure and a *highly objective uniform statewide standard of evaluation.*” (Emphasis added.)

b. NMSA 1978, § 22-10A-6 (2009) (establishing educational requirements for licensure).

c. NMSA 1978, § 22-10A-7(B) (2011) (for level-one licenses, requiring the evaluation of the teacher at the end of the first year “for competency”); Section 22-10A-7(F) (requiring the department to establish “competencies and qualifications” for level-one licensure at various grade levels); Section 22-10A-7(G) (establishing a minimum salary for level-one teachers following the adoption of “highly objective uniform statewide standards of evaluation for level one teachers” which are found at 6.69.4 NMAC).

d. NMSA 1978, § 22-10A-10 (2005) (similar provisions for level-two licensure).

e. NMSA 1978, § 22-10A-11 (2009) (similar provisions for level-three licensure).

f. NMSA 1978, § 22-10A-19 (2010) (requiring PED to adopt criteria and “minimum highly objective uniform statewide standards of evaluation” for the annual performance evaluation of teachers.

28. As required by these provisions, PED adopted regulations establishing the “highly objective uniform statewide standard of evaluation” which is the statutorily required measure of teacher “competency.” Those regulations are found at 6.69.4 NMAC. As required by statute, they measure teacher competency by reference to the teacher’s skills, training and knowledge, not student performance. 6.69.4.11 NMAC.

29. In the 2012 Regulation Session of the Legislature the PED had legislation introduced that would have added “student achievement as a critical component” of the licensure process and “reformulate[e] the compensation system to reflect the evaluation process. . That

legislation, titled the Teacher and School Leader Effectiveness Act, was introduced by Dennis J. Roch as HB 249. However, that bill died and the Legislature did not pass any legislation altering the existing teacher evaluation framework as established by existing statutes.

30. Despite this failure, PED proposed, and ultimately promulgated, regulations which implement the new teacher evaluation program for which it sought—but did not receive—legislative authority. Those regulations were published in Volume XXIII, Number 16, page 623, of the New Mexico Register on August 30, 2012. They are currently codified at 6.69.8 NMAC.

B. Description of the Challenged Regulations

31. PED was not shy about its intention of fundamentally changing public education policy through the new regulations; its objectives section stated: “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.

32. The regulations provide that school districts “may continue to use the highly objective uniform statewide standards of evaluation described in 6.69.4 NMAC ... during the 2012-2013 school year[.]” 6.69.8.8(B) NMAC, but that “no later than the commencement of the 2013-2014 school year, all school district shall develop and submit to the department for approval and for implementation during the 2013-2014 school year, an effectiveness evaluation system for measuring the performance of licensed school employees.” 6.69.8.8(A) NMAC.

33. Although the regulations purported to leave it to the school districts to develop the “effectiveness evaluation system,” (“EES”) they dictate the major terms of those systems. In particular, those plans must “include measures of student achievement growth worth 50%, observations worth 25% and other multiple measures worth 25%, unless otherwise provided for.” 6.69.8.8(D)(5) NMAC.

34. Moreover, the regulations provide that the “[t]eacher ... effectiveness evaluation procedures for licensed school employees shall be based on the performance of students assigned to their classrooms or public schools.” 6.69.8.8(E) NMAC.

35. In addition to dictating that 50% of the EES be based on “measures of student achievement growth,” PED dictated that “[s]chool 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.” 6.69.8.9 NMAC.

36. Under the evaluation system the Student Achievement portion may be measure by up to three exams including New Mexico Standards Based Assessment (SBA), End of Course (EoC) exams and other PED-approved assessments. The classroom observation portion consists of the NMTEACH Observation Rubric, Domain 2 (Creating an Environment for Learning) and Domain 3 (Teaching for Learning). Multiple measures of teacher performance are measured by how the teacher performs in Domain 1 (Planning and Preparation) and Domain 4 (Professionalism), as well as, teacher attendance, parent surveys or student surveys.

37. Teacher groups are defined by either the grade level taught or by the assessment their students are required to take. For 2013-14, classroom teachers were classified as Group A, Group B or Group C.

38. Group A teachers are teachers that teach grades and/or subjects that can be linked to the SBA, including:

- Grades 3-5 for language arts and math
- Grades 6-8 , 10-11 for language arts and math;
- Grades 7, 9, 10 and 11 for science; and
- Special Education teachers in the grades and subjects above

39. Group B teachers teach grades and or subjects that cannot be meaningfully linked to SBA, including:

- Grades 3-5 for non-tested subjects (CTE, art, music, etc.)
- Grades 6-8 for social studies
- Grades 6, 8, 9, and 12 for science
- Grades 9 and 12 for language arts/math

40. Group C is comprised of teachers who teach students in kindergarten through second grade.

41. The PED approved a “State Plan” that was the default plan for school districts. Alternatively, school districts could develop their own plan which allowed them to select the number of exams that would be factored into the student achievement and the various components that would make up the multiple measures (i.e., teacher attendance, student surveys, and parent surveys).

42. Eighteen (18) public school districts used the State Plan and sixty-nine (69) school districts adopted modified plans that were approved by the PED.

43. For Group A teachers the default State Plan includes the following evaluation components:

- Student Achievement (50%) measured by:
 - Standard Based Assessment – 35%
 - End of Course Exam – 15%
- Observations (25%): measured by Domains 2 & 3
- Multiple Measures (25%): measured by Domains 1 & 4 (15%) and Teacher Attendance (10%)

44. For Group B teachers the evaluation components under the default State Plan are:

- Student Achievement (50%): measured by End of Course exams
- Observations (25%): measured by Domains 2 & 3
- Multiple Measures (25%): measured by Domains 1 & 4 (15%) and Teacher Attendance (10%)

45. For Group C teachers the evaluation components under the default state plan are:
- Student Achievement (50%): measured by DIBELS (Dynamic Indicators of Basic Early Literacy Skills)
 - Observations (25%): measured by Domains 2 & 3
 - Multiple Measures (25%): measured by Domains 1 & 4 (15%) and Teacher Attendance (10%)

C. PED Rushed the Implementation of the Teacher Evaluation System

46. The teacher evaluation system was not complete when the PED mandated its use for the 2013-14 school years. On August 29, 2013, Secretary-Designate Skandera issued a memorandum stating that the NMTEACH Online Evaluation System was not ready and was preventing principals from meeting the PED's initial deadline. Consequently, the PED extended the deadline for school districts to provide the PED with teacher observation scores for Domains 2 & 3 from October 15 to November 1, 2013. (PED memo dated August 29, 2013).

47. The August 29 memo also stated that in November 2013, the NMTEACH system would "be populated with student achievement data that is linked directly to their teachers." However, school districts learned that the data linking student to teachers in the system was not correct.

48. For example, in February 2014, David Van Wattering, Assistant Superintendent of Instruction for Portales Municipal School District, sent a letter to the PED Director of Education Quality, Matthew Montano, notifying him that the students were not properly matched to their teachers who taught them certain subjects. Van Wattering noted that the PED reporting requirements for 2013-14 exceeded the requirements in prior years and the older information was not designed to meet the requirements of the new evaluation system. He stated that in prior years, consistent with PED requirements, the school district only connected students to their homeroom teacher and not their subject matter teachers. Therefore, Van Wattering concluded "only about

50% of our students' SBA scores are connected to the correct teacher" for students in the fifth and sixth grade. He stated, "[C]onsequently, the current information linking teacher to students' past SBA scores is not accurate for the purpose of teacher evaluation." When the PED issued the summative reports to Portales Municipal School District in May 2014 and again in August 2014, the evaluations were incorrect because student achievement data remained linked to the wrong teachers.

49. The information provided by the PED to school districts was constantly changing. While the PED stated that SBA and EoCs are always the first choice of PED for use in student achievement scores, it was unclear which grades, subjects and exams would be included in a student achievement scores.

50. Between August and November 2013, the PED changed the list of EOCs and grades to be assessed for Group B teachers several times:

- On October 4, 2013, the PED website stated that elementary music and art EoCs would only be administered to grades 4-6, eliminating grades K-3.
- On October 7, 2013, the PED released a PowerPoint presentation which stated that the physical education EoC would only be administered to grades 4-5, and not grades K-3 and 6. The October 7, 2013, presentation stated that the music EoC would only be administered to grades 4-5, eliminating grade 6. Finally, the presentation stated that the Spanish I EoC would only be administered to grades 9-12, exempting grades 7-8.
- On October 15, 2013, the PED released a new memo with a new list of available EoCs. A pen/paper assessment for sixth grade physical education was added, which was different from the information provided just a week earlier. The October 15 memo also stated that the middle school science EoC would be administered in Grade 8, but that "Scores from a student's 8th grade assessment may be attributed to that student's 6th and 7th grade teachers from previous academic years." The October 15 memo included the Spanish I EoC for grades 7-8.

The PED made numerous changes to various aspects of the evaluations system throughout the course of the 2013-2014 school year.

D. “Value Added” – Student Growth as Measure of Teacher Effectiveness

51. On July 22, 2013, the PED issued a memorandum to superintendents that stated:

In preparation for the NMTEACH Effective Teacher and School Leader system, NMPED will be developing a Value-Added Model (VAM) for use with the End of Course Exams (EoCs). This model will be established for statewide use and be input into the NMTEACH Online System. This will enable entering of EoC data into the system for use in the summative evaluation. This VAM model will be the only allowable VAM model to be used with NMTEACH system.

52. Individual school districts did not have access to the PED’s value added model or data. Individual student test scores were submitted to the PED, which made the VAM calculations, and provided the value added scores to Teachscape for inclusion in the educator effectiveness reports.

53. VAM attempts to measure and predict a teacher’s contribution to their students’ growth based on 3 years worth of assessments for each student. According to the PED, the difference between a teacher’s students’ score in the current year on the standardized test and their expected score is “the teacher’s unique contribution to the academic performance of his or her students, i.e., value added score (VAS).” A teacher receives points if a student exceeds the amount of growth that the value added model predicts.

54. According to the PED, “reliable VAS will contain at least three years of student achievement data.” However, the PED implemented the evaluation system for the 2013-14 school year, when the overwhelming majority of teachers could not be linked to students with three years of student data on either the SBA or other EoCs.

55. The PED acknowledged that “[S]ince this is the first year using the NMTEACH educator effectiveness system, many teachers do not have enough student achievement data to count as 50% of their possible points in the evaluation.” The PED further stated that for most

teachers “it will be three to four years before they are eligible to be evaluated at 50% for the improved student achievement portion.”

56. Because the PED did not have three years of reliable student achievement data, the PED applied “graduated considerations” to teacher evaluations. The PED used graduated considerations to redistribute the points from the student achievement portion of the evaluation to the observation and multiple measures categories, so that the student achievement portion counted less than 50% towards the overall educator effectiveness score.

57. The PED assigned teachers to “tags” which relates to the number of years of student achievement data for teachers with that tag and the redistribution of points to the observation and multiple measures categories. For example:

Teacher Tag	Years of VAS		Possible Points by Category			
	SBA	EoC	SBA points	EoC Points	Observation	Multiple Measures
4	3	3	70	30	50	50
6	3	0	70	0	65	65
9	1-2	0	35	0	100	65
12	0	0	0	0	100	100

58. The PED’s graduated considerations created thirty-nine (39) different “tags” for purposes of allocating points under the evaluation system. For the default State Plan, there were nine (9) possible “tags” that were applied to teachers.

59. The PED’s application of graduated considerations preempted and overruled the weights assigned to certain evaluation measures that local school districts chose to include in their educator evaluation system.

60. Because of graduated considerations, the preference for SBA exams and the lack of approved EoCs in many subjects, the 2013-14 evaluations that included student achievement as a measure of effectiveness were limited almost entirely to Group A teachers. Even among

Group A, only a fraction of teachers had enough “Years of VAS” to make student achievement worth 50% of their evaluation (Tag 4). As shown above, a Group A, Tag 6 teacher would have 70 points (out of 200) of their evaluation score based on student achievement, while in comparison a Group A, Tag 12 teacher would be evaluated based entirely on observations and multiple measures.

61. Despite the fact that the PED recognized that less than 3 years of student test data made its value added model an unreliable measure of an teacher’s individual contribution to student growth, the PED allowed insufficient data to be used for 2013-14 teacher evaluations. For example, a Tag 9 teacher’s student achievement score was calculated using 1-2 years of student data.

62. Furthermore, the PED’s value added model calculated student achievement based on exams that were not aligned with a teacher’s curriculum, in the current or prior years. For example, the PED gives a value added score to 9th grade math teachers even though the students take the math SBA at the end of 10th grade. According to the PED, the 9th grade math teacher contributed to the learning of the student, and therefore, receives credit for growth or lack of growth as evidenced by performance on the SBA as a 10th grader. Furthermore, the 9th grade teacher’s value added score is based on the entire test, not just those items addressing content taught in 9th grade math.

63. Similarly, science teachers in the 9th and 10th tenth grades received a value added score based on their former students who took the science SBA in 11th grade. Incredibly, the 9th or 10th teacher’s value added score is derived by measuring her students’ performance on the 11th grade science SBA in comparison to her students’ performance on the Reading and math

SBAAs administered in 8th and 10th grade. Consequently, 9th and 10th grade science teachers are receiving student achievement scores based entirely on tests of courses that they've never taught.

64. The PED's value added model coupled with graduated considerations results in unreliable and invalid evaluations of teacher effectiveness.

E. Widespread Errors in Educator Effectiveness Summative Reports

65. On or about May 15, 2014, the PED released the educator effectiveness summative reports to New Mexico school districts. Immediately, it was clear that the evaluation reports were not accurate. On June 7, 2014, the Albuquerque Journal reported that the PED and Albuquerque Public Schools ("APS") recognized that there were errors in the data on which the evaluations were based, but neither the PED nor APS could determine how widespread the problems were. John Swedian, *More questions on evals accuracy*, The Albuquerque Journal, published June 7, 2014 @ Abqjournal.com.

66. Principals and superintendents described numerous errors, including that many teachers were:

- Rated on incomplete or incorrect test data;
- Docked for being absent more days than they were actually gone from school, and some appeared to be marked down for days when their absences should have been excused;
- Missing data from student surveys; and
- Rated poorly on the student achievement portion of the evaluation, even when their students had made clear progress on tests.

67. Similar problems were widely reported in other school districts. The PED stated that the errors were due to the data submitted to the PED by the school districts.

68. On June 19, 2014, the PED sent a memorandum to school district superintendents stating, "the PED will be reopening the Inquiry Log submission window for questions relating to the NMTEACH Educator Effectiveness System Summative Evaluation Reports." The deadline

for submitting inquiries was extended to June 27, 2014. The memo further stated that “the PED will work directly with districts to answer all inquiries as soon as possible,” but that “any updates to the NMTEACH Summative Evaluations will not occur until all Inquiry Logs have been reviewed.”

69. In July 2014, the PED announced that corrected educator effectiveness summative reports would be issued to New Mexico school districts by the end of August 2014. John Swedian, *Corrected teacher evaluations due before school starts*, The Albuquerque Journal, published July 14, 2014 @ Abqjournal.com.

F. Legislative Education Study Committee

70. The Legislative Education Study Committee is a permanent bipartisan committee created in 1965 by the New Mexico Legislature. The LESC comprises 27 legislators (10 voting, 17 advisory) appointed to provide proportionate representation from both houses and both political parties.

71. According to the LESC website, the LESC attempts to provide all legislators with objective information pertaining to New Mexico public schools as well as to state and national education trends. The LESC:

- conducts a continuing study of all education in New Mexico, the laws governing such education and the policies and costs of the New Mexico educational system, including the training of certified teaching personnel in postsecondary institutions;
- recommends funding levels for public education;
- recommends changes in laws relating to education; and
- makes a full report of its findings and recommendations.

72. As a focus area of the 2014 LESC work plan, the LESC requested testimony from school districts regarding the implementation of the teacher and principal evaluation system.

Between June and October 2014, the LESC received survey responses and heard testimony from

27 school districts, two charter schools, and two special state-supported schools. The school districts represented twenty percent of all New Mexico school districts (27 of 135) and were representative of all district sizes, racial and economic demographics. On November 17, 2014 the LESC issued a summary report (the “LESC Report” is attached hereto as Exhibit A).

73. The LESC Report summarized the testimony of the school officials detailing serious problems with the teacher evaluation system and the summative reports. The LESC Report identified widespread problems with almost every rating measure used in teacher evaluations:

- Parent and Student Surveys: lack of security; late development; survey points incorrectly credited; lack of feedback; incorrect data; and timing;
- Data: inaccurate, missing and incomplete data;
- Coding of teachers: incorrect coding of teachers in Groups A, B, and C; and
- Attendance: PED calculation of attendance points was missing, erroneous or conflicted with allowable absences in collective bargaining agreements.

74. The LESC identified the following issues related to inaccurate, missing and incorrect data:

- teachers that should have SBA scores did not;
- no data was received for some current teachers;
- teachers were given VAS and SBA data for classes they did not teach;
- teachers originally in group A were not given their student achievement data as they were placed in groups B and C;
- inaccurate data in general; and
- teachers were given data points not covered by their assignments.

75. The LESC Report noted that when the PED issued the revised summative reports the data problems were not corrected.

76. The school districts surveyed by the LESC identified significant error rates in the educator effectiveness summative reports because of the flawed data:

- Aztec Municipal Schools appealed 30% of its teacher evaluation scores. LESC Meeting, July 15, 2014;
- Moriarty-Edgewood Schools stated that the reports had a 26% error rate. LESC Meeting, June 17, 2014;
- Bloomfield Schools testified to a 40% error rate. LESC Meeting, July 15, 2014; and
- Albuquerque Public Schools (APS) reported that there were 808 potential errors in correct tags for teachers on graduated considerations. LESC Meeting, October 14, 2014.

77. Even after the PED issued “corrected” summative reports, the evaluations were not accurate. According to Superintendent Cleveland of Rio Rancho Public Schools, initially approximately 50% of the evaluations were inaccurate. When the district received PED’s “second round of evaluations” in July, there were new problems with the data and “some things that were correct in the first round were incorrect in the second.” On October 14, 2014, Superintendent Cleveland testified to the LESC, there remained 229 “inaccurate evaluations.”

78. Other districts identified similar errors in the “corrected” summative reports:

- Lovington Municipal Schools reported to the LESC that it appealed 45 teacher evaluations (22%) to the PED and had to resubmit 34 of the “corrected” summative reports for “possible mistakes.” LESC Meeting September 23, 2014;
- APS stated that the performance level for 211 teachers was changed when the PED moved teachers from Group C to Group A, even though the underlying data for the teachers remained the same; and
- Floyd Municipal Schools, which has only 22 teachers stated that when the “final” summative reports were released, the districts discovered “new problems” such as group C teachers (originally labeled correctly) being reassigned to Group A.” LESC Meeting, September 23, 2014.

79. On September 24, 2014, Dr. Ann Lynn McIlroy, Superintendent of Loving Municipal Schools sent an email to PED staff, Matthew Montano, Director of Education Quality,

in which she requested corrections to the data used for the 2013-14 evaluations. Superintendent McIlroy wrote:

I would like to schedule a time to go through the teacher evaluation information from last year. It would be great to be able to make corrections in our data before more time passes. Apparently there must be a good deal of incorrect data based on the number of errors included in the summative evaluations. I do not want our teachers to suffer consequences for years to come due to our inability to submit or correct data. Likewise, I want to make sure we are submitting information correctly from this point forward.

...

G. Survey and Attendance Errors affecting all Teacher Groups

80. Rio Rancho Public Schools used teacher attendance (5%) and student surveys (5%) as measures of professionalism for Group A and B evaluations and teacher attendance (5%) and parent surveys (5%) for Group C teachers.

81. Rio Rancho reported to the LESC in October 2014 that the summative reports based on surveys were not accurate due to the following issues:

- Lack of Security – anyone could access the survey website and rate a teacher multiple times;
- Late Development – teachers were never informed of the criteria and the survey system was not completed until March 2014;
- Survey Points Incorrectly Credited – PED’s assignment of teachers to the incorrect group resulted in teachers not having survey data; and
- Incorrect Data – PED assigned certain teachers points when they had not given the survey based on a percentage of points earned in other categories. Consequently some teachers who did not give the survey received more points than teachers who had.

Texico Municipal Schools also reported security concerns with the student surveys of teachers.

82. Under the default State Plan, teacher attendance comprised ten percent (10%) of each teacher’s evaluation. Many districts chose elected to make attendance worth only five percent (5%) of the evaluation total.

83. Because of the PED's graduated considerations, however, the amount of points counted towards teacher attendance varied among teachers within the same school district. For example, in Tucumcari Public Schools teacher attendance was worth 13 out of 200 points (6.5%) for some, while for others it was worth 20 points (10%) or 40 points (20%) of the total evaluation score. There were wide variations among school districts, such as:

- Tularosa Municipal Schools - teacher attendance was worth 20, 26 or 40 points.
- Hagerman Municipal Schools - teacher attendance counted as 10, 13 or 20 points.
- Portales Municipal Schools - teacher attendance counted as either 26 or 40 points

84. As a result, teachers with the exact same attendance records earned different points on their evaluations, which may have impacted their effectiveness level.

85. When the PED issued "corrected" summative reports, it allocated additional points to the teacher attendance category when there was missing data for student or parent surveys. By doing so, the PED overruled the school districts decision weight that considered teacher attendance

86. Furthermore, there were widespread reports of absences being counted against teachers even when the absences were for legally protected reasons such as FMLA leave, bereavement leave or to attend professional development courses. For example, Gallup-McKinley reported that teachers may have received "ineffective" or "minimally effective" ratings in 2013-14 because of the way PED required attendance to be counted, even though the PED attendance rules violated the district's collective bargaining agreement. Similar conflicts with calculating attendance were noted by Albuquerque Public Schools, which also questioned whether instruction suffers when teachers are incentivized to teach when they are ill.

H. Group A teachers

87. While problems with surveys, attendance and coding affected all teachers, the inaccurate and missing data particularly impacted Group A teachers - the group that had more teachers with student achievement data factored into their 2013-14 educator effectiveness summative report.

88. Moriarty-Edgewood School District reported that Group A shows a smaller percentage of teachers with ratings of “highly effective” or “exemplary” when compared to Groups B and C.

89. In fact, Group A teachers were far more likely to receive ratings of “minimally effective” or “ineffective” on their summative reports. Santa Fe Public Schools reported to the LESC that Group A teachers had an eighty-seven percent (87%) higher chance of being rated “minimally effective” or “ineffective” when compared to Group B teachers. In Santa Fe, twenty-one (21) of the twenty-seven (27) teachers rated “ineffective” were Group A teachers. Fifty-six percent (56%) of the Santa Fe Public School teachers that were rated “minimally effective” were Group A teachers (133 of 237). LESC Meeting, October 14, 2014.

90. This disparate impact on Group A teachers was reported by other districts:

- In Albuquerque Public Schools, seventy-seven percent (77%) of the “ineffective” teachers were Group A (86/111) and eight-one percent (81%) of the “minimally effective” teachers were Group A (739/912). LESC Meeting, October 14, 2014;
- Carlsbad Municipal Schools testified that thirty-nine percent (39%) of its group A teachers (75 of 191) were rated “minimally effective” and four (4) teachers were rated “ineffective,” while only eleven percent (11%) of Group B and thirteen percent (13%) of Group C teachers were rated “minimally effective.” There were zero ineffective teachers in either Group B or C. LESC Meeting, September 23, 2014;
- Gadsden Independent Schools reported that twenty-six percent (26%) of its Group A teachers (120 of 464) were rated “minimally effective” while thirteen percent (13%) of Group B teachers and four percent (4%) of Group C teachers received “minimally effective” ratings. While thirty (30) Group A teachers were rated “ineffective,” there were only 7 “ineffective” teachers from Groups B and C combined. LESC Meeting, October 14, 2014;

- Lovington Municipal Schools submitted data showing that thirteen (13) teachers were rated “ineffective” all of who were Group A. More than half (27 of 44) of the teachers who rated “minimally effective” were Group A teachers. LESC Meeting, September 23, 2014; and
- Pojoaque Valley Public Schools testified that fifty percent (50%) of its group A teachers (29 of 58) were rated “minimally effective” and three (3) teachers were “ineffective,” while there were only a five (5) Group B and C teachers rated “minimally effective” and zero “ineffective” teachers in those groups. LESC Meeting, June 17, 2014.

91. Within Group A, teachers with student achievement data were more likely to be rated “minimally effective” or “ineffective” than Group A teachers who were in “tags” that did not include student achievement data in their evaluations.

J. Teacher Feedback and Due Process

92. The PED issued the educator effectiveness summative reports to New Mexico school districts on or about May 15, 2014. Because the reports were issued late in the school year and there were obvious errors, New Mexico school districts were uncertain whether to present them to teachers. For example, the following districts reported to the LESC that they did not share the summative reports with teachers due to data errors: Aztec Municipal Schools, Cimarron Municipal Schools, Pojoaque Valley Public Schools, Texico Municipal Schools and Silver Consolidated Schools.

93. Melrose Municipal Schools shared the reports with its teachers but did not require teachers to sign them. Instead, teachers signed a statement prepared by the superintendent which stated:

As a teacher at Melrose Schools, I agree my principal has shown me my summative evaluation sheet utilizing the new PED mandated evaluation system. I further agree that the Melrose principals have done walkthroughs and formal observations in compliance with the PED mandated evaluation system. However, because we do not understand the VAS scoring system, which relates to 50 percent of my evaluation, I am signing this statement instead of my evaluation sheet, submitted by the PED, as suggested by my superintendent. The Melrose Schools administrative team has tried to understand how the summative

evaluation scores were arrived at and we all understand very little. We further understand that there were parts left off my evaluation that may have helped my scores. I am signing this sheet acknowledging that I have been given my summative evaluation, but that I don't necessarily agree with it. I also know that this summative evaluation will be in my personnel file, as mandated by PED.

LESC Meeting, September 23, 2014.

94. Joel Boyd, Superintendent of Santa Fe Public Schools, described the school districts' dilemma caused by the errors with the summative reports in a letter he sent to Secretary-Designate Skandera dated October 13, 2014:

- Teachers who make important student gains in the last school year and are rated effective or better at the time of personal observation and written evaluation may be subsequently rated lower based on NMPED's Summative Report and its use of criteria from two and more years earlier that do not reflect the teachers' current capabilities.
- Principals who personally deemed a teacher as effective or better may need to subsequently develop a professional growth plan that does not reflect actual personal observations and written evaluations.

95. Santa Fe reported that twenty-seven (27) teachers who were rated "effective" by their principals based on observations and written evaluations at the end of the 2013-14 school year were later rated "minimally effective" or "ineffective" when the PED issued the summative reports in August 2014.

96. Several school districts questioned the usefulness of VAM as a measure of teacher effectiveness or its usefulness helping teachers improve their instruction:

- Santa Fe Superintendent Boyd noted that, "[t]he statistical models currently used in New Mexico and other states make it impossible to use end-of-year standardized test data for teachers that originate from the year of evaluation, rendering the ratings for some improving teachers as near useless."
- Superintendent TJ Parks from Hobbs Municipal Schools testified that observations allowed administrators to provide teachers with immediate results and feedback, while student achievement does not. LECS Meeting, September 23, 2014.

- Las Vegas City Schools reported that student achievement “does not seem to support or reflect the level of professional growth on the part of the teacher or the quality of instruction.” LESC Meeting, August 27, 2014.
- Superintendent Jamie Widner, Melrose Municipal Schools advised the LESC that VAM is “inherently undefinable for the average school administrator” and stated “there is no way that it can be discerned how our teachers will be rated based on the VAM.” He called VAM the “worst part” of the evaluation system “because it does not give a true picture of what happens in that classroom on a day-to-day basis.” LESC Meeting, September 23, 2014.

K. The PED’s Invalid Evaluation System is Harming Teachers, Students and Schools

97. The PED’s incorrect evaluations based on bad data renders the entire system invalid. Santa Fe Superintendent Joel Boyd, in an editorial that was submitted to the LESC when he testified on October 14, 2014, which stated:

In New Mexico, we have seen at least three shifts in overall teacher evaluation results in just a three month span due to either incomplete or inaccurate calculations. At best, these shifts have reduced the level of confidence of stakeholders across the state in the system. At worst, they call to question the validity of every evaluation for teachers in New Mexico.

Joel D. Boyd, *Commentary: We need to get teacher evaluations right*, The Santa Fe New Mexican, published September 20, 2014.

98. Superintendent Boyd called on the PED to “to press the pause button and delay the use of standardized test scores as a high-stakes component within the evaluation system until we resolve the obvious problems.”

99. Several school districts described the negative effect the NM teacher evaluation system was having on the teaching profession.

- Floyd Municipal Schools Superintendent Boyd testified that “if the data at the top of the summative report were incorrect, how could his teachers trust that the rest of the data are correct?” LESC Meeting, September 23, 2014;
- Lovington Municipal Schools reported that its teachers have “no confidence in PED or the Educator Effectiveness System,” and that “teacher moral has declined significantly.” The district reported a “dramatic increase in retirements and resignations citing (sic) EES as the motivation.” LESC Meeting, September 23, 2014;

- Melrose Municipal Schools Superintendent Widner stated that “veteran teachers and administrators are leaving the profession in droves due to mandates from the PED.” LESC Meeting, September 23, 2014; and
- The Bloomfield Schools superintendent Bloomfield testified that school year 2013-2014 was the district’s highest year on record for resignations and transfers and the district is having difficulty recruiting 18 new teachers. LESC Meeting, July 15, 2014.

100. Many school districts believed that the 2013-14 school year was a “hold harmless” or “baseline” year and that the evaluations would not be used against teachers. For example, Melrose Superintendent Widner stated:

There were some problems, that I addressed to PED and I was given some responses to my questions, but I did not pursue changes in our teacher evaluations like other districts. I chose to accept what was sent, knowing that they were wrong, and hoping that the second year would be better. We were told upfront that this was a baseline year and that changes would be made to make the process better and more usable as time progressed. I hope that is the case.

LESC Meeting, September 23, 2014.

101. Similarly, the Gadsden Superintendent testified that “this first year was a pilot of the system” and thus, “hiring and firing decisions will not be based on the teacher evaluations.”

LESC Meeting, October, 14, 2014.

102. Secretary-Designate Skandera had advised school districts that hiring and firing were local decisions and that the Educator Evaluation System would not be used by the PED to fire teachers.

103. The PED’s NMTEACH Fact Sheet Eblast, dated November 6, 2013, reiterated this point:

Myth: The PED will use a teacher’s evaluation to decrease a teacher’s pay and/or fire a teacher if their evaluation determines that they are ineffective.

Fact: Personnel matters have long been and remain at the local level to be decided by school and district administrators. NMTEACH is designed to help teachers improve their skills. The tools used in the teacher evaluation will reinforce the areas a teacher is doing well and provide resources and

support for areas that need to be improved. NMTEACH is designed with an expectation that the evaluator and the teacher have multiple conversations and work together to improve instruction.

(Bolded text appears in original document).

104. In fact, 2013-14 was not a “hold harmless” year; the PED requires all teachers with an “ineffective” rating to be placed on a professional growth plan, regardless of whether the summative report was accurate. Local school districts may also place teachers who received a “minimally effective” rating on professional growth plans based on the inaccurate summative reports.

105. Furthermore, the PED intends to use the flawed evaluations to determine whether teacher licenses will be renewed and whether teachers can advance from a Level I license to Level II and from Level II to III.

106. In a memo dated December 22, 2014, the PED stated that the license of any teacher with an “ineffective” rating will lapse and the teacher would be prohibited from reapplying for three years.

107. On January 16, 2015, the PED walked back the initial memo and stated that all teachers with a rating of “ineffective” or “minimally effective” with a license expiring at the 2014-15 would be able to apply for a one year extension if supported by their school district.

108. A teacher with a “minimally effective” rating who earned less than 50% of the points awarded for student achievement data cannot advance licensure levels when their license expires at the conclusion of the 2014-15 year. A teacher who ranked “effective” but did not have student achievement data because of graduated considerations may advance their licensure level.

109. Regardless, the January memo clearly stated that all teachers “advancing from each level must still meet the requirement of three successful years at their existing licensure

level.” Consequently, the erroneous evaluations from 2013-14 will prohibit teachers from advancing their licenses (and earning additional compensation) and will be used by the PED to deny teachers new licenses when the current one expires.

Count I – Declaratory Judgment that the Regulations and their Implementation Violate Teachers’ Substantive and Procedural Due Process Rights

110. Plaintiffs incorporate by reference the preceding allegations as those set forth herein.

111. Individual Plaintiffs and members of Plaintiff AFT have a legally-cognizable property interest in their continued employment.

112. As created by the School Personnel Act, that legally-cognizable property interest includes the reasonable expectation that decisions concerning their continued employment would be based upon “minimum highly objective uniform statewide standards of evaluation” to be determined by PED and implemented through “policies, guidelines and procedures” developed by their local school superintendents.

113. By requiring school districts to adopt a educator evaluation system that is based on flawed methodology, erroneous records, and inaccurate data, PED will deprive school teachers of their property interest in their continued employment without due process of law.

114. There is no rational basis for the use of a fundamentally-flawed evaluation system, particularly where the system, in every way, contradicts the statutorily-mandated “highly objective uniform statewide standard of evaluation.” Rather, the PED’s continued insistence on using the invalid system for complying with the statutory mandate is arbitrary and capricious.

115. The use of PED’s a fundamentally-flawed educator evaluation system will result in a high risk of erroneous deprivation of teacher’s protected property right in their continued employment.

116. Moreover, the risk of erroneous deprivation from Defendants' use of the fundamentally-flawed system and bad data is exacerbated by the fact that the VAM and calculation of the value added scores is in the sole control and determination of the PED, leaving teachers little to no opportunity to effectively challenge a low or erroneous score.

117. Furthermore, the PED's control of the VAM and value added scores prevents teachers from receiving understandable feedback and suggestions that would help them improve classroom instruction or student outcomes.

118. The new regulations, in concert with the unreliable system and erroneous data used by PED, violate teachers' substantive and procedural due process rights.

119. The substantive and due process rights at issue in this Complaint are derived from N.M. Const. Art. II, § 18. This suit only seeks to invoke those provisions of the state constitution, and not the equivalent portions of the federal constitution.

**Count II – Declaratory Judgment that the Regulations as Enacted
are Ultra Vires and Unconstitutional**

120. Plaintiffs incorporate by reference the preceding allegations as those set forth herein.

121. As an administrative agency, PED only has the powers conferred on it by statute. In this case, Section 22-10A-19(A) required PED to adopt "criteria and minimum highly objective uniform statewide standards of evaluation."

122. As detailed above, the challenged regulations fail to meet this statutory mandate and grant of authority. Indeed, with different evaluation criteria for Groups A, B and C teachers, the "graduated consideration" within those groups, and the different values placed on teacher attendance, the standards are not even uniform within a single *school* much less statewide.

123. The decision to create and rely on a fundamentally-flawed system that causes educators to receive incorrect evaluations, as described in this complaint, is arbitrary and capricious.

124. The regulations exceed Defendants' statutory authority and accordingly are ultra vires and void.

Count III – Declaration that the Regulations as Enacted and Implemented Violate the School Personnel Act and the Public Employee Bargaining Act

125. Plaintiffs incorporate by reference the preceding allegations as those set forth herein.

126. The School Personnel Act governs teacher evaluations. It leaves to the school districts the authority to “adopt policies, guidelines and procedures for the performance evaluation process of licensed school employees,” and only grants PED the authority to “adopt criteria and minimum highly objective uniform statewide standards of evaluation for the annual performance evaluation of licensed school employees.” Section 22-10A-19(A & B).

127. This division of authority is part of the declaration of policy from the 2003 public school reforms: “The legislature finds further that the public school governance structure needs to change to provide accountability *from the bottom up instead of from the top down*. Each school principal, with the help of school councils made up of parents and teachers, must be the instructional leader in the public school, motivating and holding accountable both teachers and students. Each local superintendent must function as the school district's chief executive officer and have responsibility for the day-to-day operations of the school district, including personnel and student disciplinary decisions.” NMSA 1978, § 22-1-1.2(F) (2003, as amended 2007).

128. The challenged regulations flip this legislative division of powers between the PED and the local school boards, giving the PED unfettered control over all aspects of educator evaluations.

129. The School Personnel Act contains numerous other provisions regarding teacher termination and discharge with which the challenged regulations conflict. These include, but are not limited to:

a. NMSA 1978, § 22-10A-19(D) (2010) (providing that evaluations shall be based in part on how well a professional development plan was carried out).

b. NMSA 1978, § 22-10A-24(D) (2003) (teacher contracts can only be terminated for just cause).

c. NMSA 1978, § 22-10A-22 (2003), -24(C) & -27(A & B) (providing that local school boards and/or superintendents make the termination or discharge decisions and hold hearings when a teacher challenges the local decision).

d. NMSA 1978, § 22-10A-4(A) (2005) (recognizing that “teaching and school administration are recognized as professions, with all the rights, responsibilities and privileges accorded professions....”).

130. Moreover, the Public Employee Bargaining Act leaves to the local school districts and labor organizations the duty to bargain in good faith regarding all terms and conditions of employment, including “the impact of [the district’s] professional and instructional decisions.” NMSA 1978, § 10-7E-17(A)(1) & (D) (2003).

131. The challenged regulations render negotiations over evaluation policies and procedures meaningless by usurping all authority of the school district to adopt such policies and procedures.

Count IV – Preliminary and Permanent Injunctive Relief

132. Plaintiffs incorporate by reference the preceding allegations as those set forth herein.

133. Plaintiffs, and the members they represent, will be irreparably harmed if a preliminary injunction is not issued to prohibit PED from acting on the erroneous 2013-14 evaluations and utilizing the fundamentally-flawed educator evaluation system required by the challenged regulations for the upcoming school year.

134. There would be no damage to the Defendants nor damage to the public interest if a preliminary injunction is issued to stay enforcement of the fundamentally-flawed evaluation system required by the challenged regulations for the upcoming school year.

135. Any harm caused by a preliminary injunction is outweighed by the irreparable injury to the Plaintiffs from the denial of an order staying enforcement of the erroneous 2013-14 evaluations and the fundamentally-flawed evaluation system required by the challenged regulations.

136. Plaintiffs have demonstrated the need, and grounds, for a preliminary injunction. See *National Trust for Historic Preservation v. City of Albuquerque*, 117 N.M. 590, 595, 874 P.2d 798, 803 (Ct. App. 1994) (“To obtain a preliminary injunction, a plaintiff must show that (1) the plaintiff will suffer irreparable injury unless the injunction is granted; (2) the threatened injury outweighs any damage the injunction might cause the defendant; (3) issuance of the injunction will not be adverse to the public's interest; and (4) there is a substantial likelihood plaintiff will prevail on the merits.”).

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Enter a declaratory judgment in favor of Plaintiffs finding that 6.69.8 NMAC as adopted and applied deprives Plaintiffs and the teachers that Plaintiff AFT represents of their substantive and procedural due process rights, in violation of N.M. Const. Art. II, § 18.

B. Enter a declaratory judgment in favor of Plaintiffs finding that 6.69.8 NMAC is ultra vires and void, Defendants having exceeded their statutory authority in adopting and implementing the same.

C. Enter a declaratory judgment in favor of Plaintiffs finding that 6.69.8 NMAC violates the School Personnel Act and the Public Employee Bargaining Act and is, accordingly, void.

D. Enter a preliminary and permanent injunction preventing Defendants from using the erroneous 2013-14 evaluations for purposes of teacher licensure.

E. Enter a preliminary and permanent injunction preventing Defendants from implementing 6.69.8 NMAC unless and until it corrects the legal deficiencies identified herein.

Dated: February 13, 2015

Respectfully submitted,

YOUTZ & VALDEZ, P.C.

/s/ Shane C. Youtz

Shane C. Youtz

shane@youtzvaldez.com

Stephen Curtice

stephen@youtzvaldez.com

James A. Montalbano

james@youtzvaldez.com

900 Gold Avenue S.W.

Albuquerque, NM 87102

(505) 244-1200 – Telephone

(505) 244-9700 – Fax

and

/s/ David J. Strom

David J. Strom

dstrom@aft.org

Daniel J. McNeil

dmcneil@aft.org

American Federation of Teachers,

AFL-CIO

555 New Jersey Avenue, N.W.

Washington, DC 20001

(202) 393-7472

Fax: (202) 393-6385

Counsel for Plaintiffs

STATE OF NEW MEXICO
LEGISLATIVE EDUCATION STUDY COMMITTEE

REPRESENTATIVES

Mimi Stewart, Vice Chair
Nora Espinoza
Jimmie C. Hall
Rick Miera
Dennis J. Roch
Sheryl M. Williams Stapleton

State Capitol North, 325 Don Gaspar, Suite 200
Santa Fe, New Mexico 87501
Phone: (505) 986-4591 Fax: (505) 986-4338
<http://www.nmlegis.gov/lcs/lesc/lescdefault.aspx>

SENATORS

John M. Sapien, Chair
Craig W. Brandt
Gay G. Kernan
Howie C. Morales

ADVISORY

Alonzo Baldonado
Nathan "Nate" Cote
George Dodge, Jr.
David M. Gallegos
Stephanie Garcia Richard
Timothy D. Lewis
Tomás E. Salazar
James E. Smith
Christine Trujillo
Bob Wooley



ADVISORY

Jacob R. Candelaria
Lee S. Cotter
Daniel A. Ivey-Soto
Linda M. Lopez
John Pinto
William P. Soules
Pat Woods

Frances Ramírez-Maestas, Director

November 17, 2014

MEMORANDUM

TO: Legislative Education Study Committee

FR: Heidi L. Macdonald

**RE: STAFF REPORT: TEACHER AND PRINCIPAL EVALUATION PANEL
SUMMARY REPORT: PUBLIC EDUCATION DEPARTMENT (PED)
RESPONSE**

INTRODUCTION

As a focus area of the 2014 Legislative Education Study Committee (LESC) workplan, the LESC requested testimony during interim meetings (June to October) from school district and charter school leaders regarding the implementation of the teacher and principal evaluation system. Staff was directed to compile general perceptions, issues, and concerns into a summary report, which is to be provided to the Secretary-designate of Public Education for review and comment.

Teacher and Principal Evaluation Panels

At each interim meeting from June to October, a panel comprised of surrounding area school districts and/or charter schools was assembled to provide testimony to the LESC regarding the implementation of the evaluation system. In each instance, each panel member was given a set of seven questions (see **Attachment 1**), which included the following:

1. school district/charter school implementation timeline of the evaluation system;
2. online system used to implement the evaluation system;

EXHIBIT

A

3. number and percentage of teachers in your school district/charter school from Group A, Group B, and Group C, as well as their effectiveness ratings;
4. number and percentage of principals and assistant principals in your school district/charter school from Group A and Group B, as well as their effectiveness ratings;
5. shared data and results of the summative reports with teachers and principals;
6. participation in the New Mexico's Teacher and School Leader Evaluation Pilot Project from school year 2012-2013; and
7. additional comments addressing lessons learned in implementing the evaluation system.

Each panel member was also requested to submit written responses to the set of seven questions prior to testifying before the LESC so that these responses could be included in the committee notebooks for review.

The following school districts and charter schools provided testimony as follows:

- ***June – Santa Fe***
 - New Mexico School for the Deaf;
 - New Mexico School for the Blind and Visually Impaired;
 - East Mountain High School (state-chartered charter school);
 - Los Alamos Public Schools;
 - Moriarty-Edgewood Schools; and
 - Pojoaque Valley Public Schools.
- ***July – Farmington***
 - Aztec Municipal Schools;
 - Bloomfield Schools;
 - Farmington Municipal Schools;
 - Gallup-McKinley County Schools; and
 - New Mexico Virtual Academy (locally chartered charter school).
- ***August – Las Vegas***
 - Cimarron Municipal Schools;
 - Des Moines Municipal Schools;
 - Las Vegas City Schools;
 - Raton Public Schools;
 - Santa Rosa Consolidated Schools; and
 - West Las Vegas Public Schools.
- ***September – Hobbs***
 - Artesia Public Schools;
 - Carlsbad Municipal Schools (submitted written materials, however, unable to testify due to flooding in his district);
 - Floyd Municipal Schools;
 - Hobbs Municipal Schools;
 - Lovington Municipal Schools;
 - Melrose Municipal Schools;
 - Roswell Municipal Schools; and
 - Texico Municipal Schools.

- **October – Santa Fe**
 - Albuquerque Public Schools;
 - Cuba Independent Schools;
 - Gadsden Independent Schools;
 - Rio Rancho Public Schools;
 - Santa Fe Public Schools; and
 - Silver Consolidated Schools.

In total, 27 school districts, two charter schools, and two special state-supported schools testified before the LESC. As special state-supported schools, the New Mexico School for the Deaf and the New Mexico School for the Blind and Visually Impaired are exempt from the evaluation process, and their data was not included in the Issues and Concerns section below.

This staff report includes information related to:

- agency rule and related points;
- general perceptions;
- issues and concerns; and
- next steps.

AGENCY RULE AND RELATED POINTS

Adopted in August 2012 and amended in September 2013, the Public Education Department (PED) rule, *Teacher and School Leader Effectiveness*, implements an evaluation program for public school teachers and administrators called the Effectiveness Evaluation System (EES). During the 2014 interim, the LESC heard testimony on the provisions and implementation of this rule and testimony from school districts and charter schools on the implementation of the EES within their respective districts.

LESC staff testimony began with a summary of the components of the PED rule. In general, this testimony explained, 50 percent of a teacher’s evaluation is based on student achievement measures, whether derived from the state standards-based assessments or some other student assessment. Details vary, however, depending upon whether a teacher is a member of Group A, Group B, or Group C.

- Group A teachers teach subjects tested by the standards-based assessments in those grades in which the assessments are administered;
- Group B teachers teach either non-tested subjects or tested subjects in grades in which the standards-based assessments are not administered; and
- Group C teachers teach in grades K-2.

For the remainder of a teacher’s evaluation, staff testimony continued:

- 25 percent is based on teaching observations by one of two types of observers – either “approved” or “certified” – using the New Mexico Teacher Evaluation Advisory Council (NMTEACH) rubric or protocol; and

- 25 percent is based on “multiple measures,” which vary, again, according to the group to which the teacher belongs.

Turning to the evaluation of administrators, LESC staff testified that the EES requires that every school leader have an annual effectiveness evaluation, which must be conducted by a qualified person approved by PED. For the EES rating itself:

- 50 percent is based on the change in the school’s letter grade;
- 25 percent is based on the school’s multiple measures; and
- 25 percent is based on “documented fidelity observations of the school leader.”

According to the PED business rules, unlike teachers, administrators are categorized into two groups:

- Group A Principals/School Administrators
 - New Mexico licensed administrators (Level 3-B);
 - serve as principal/director, assistant principal, dean of students, or athletic directors; and
 - supervise and evaluate certified teachers.
- Group B School Administrators
 - district-level administrators; and athletic directors and deans of students that do not have Level 3-B licenses.

LESC staff testified that, prior to 2012, when the *Teacher and School Leader Effectiveness* rule was first codified by PED, the *Performance Evaluation System Requirements for Teachers* rule primarily governed the requirements for a highly objective uniform statewide standard of evaluation (HOUSSE) for teachers from early childhood through grade 12, which rated teachers as either meeting competency or not meeting competency.

According to PED, during the 2013 interim:

- every aspect of the nine teacher competencies in HOUSSE can be found in the four domains in the NMTEACH Observation Protocol; and
- each effectiveness rating aligns with the *School Personnel Act* because teachers who receive EES ratings of exemplary, highly effective, or effective will meet competency and teachers who receive minimally effective or ineffective EES ratings will not meet competency.

June 2014 Interim Meeting

During the June 2014 interim meeting, LESC staff presented an overview of the current EES program as well as provided information on the summative evaluations for the reported schools. According to a May 16, 2014 newspaper article, *76% Pass New Evaluations for Teachers*, PED sent school districts individual teacher evaluation scores for school year 2013-2014. According to the article, PED indicated that the remainder was not included either because their districts

missed a deadline for submitting evaluation materials or because they were not classroom teachers, such as librarians or instructional coaches.

The following scores, included in the referenced newspaper article, are composed of the number and the percentage of the teachers evaluated in five levels of performance as follows:

1. **exemplary:** 235 teachers, or 1.5 percent of the total teachers evaluated;
2. **highly effective:** 3,245 teachers, or 20.4 percent of the total teachers evaluated;
3. **effective:** 8,609 teachers, or 54.1 percent of the total teachers evaluated;
4. **minimally effective:** 3,288 teachers, or 20.7 percent of the total teachers evaluated; and
5. **ineffective:** 533 teachers, or 3.4 percent of the total teachers evaluated.

The scores reflect that 15,910, or 73 percent, of the state's 21,800 teachers were evaluated.

GENERAL PERCEPTIONS¹

In general, school leaders did not dispute the value of reviewing and possibly improving the new teacher and principal evaluation system. For example, one school leader stated that the school board, administration, and staff believe in accountability and support any viable and understandable system of evaluation. On the other hand, another school leader stated their district does support evaluating teachers with a better method. According to this school leader, the district certainly wants to be held accountable; however, the district does not believe the state is using a better method today than previously used.

Another school leader noted that the evaluation system is becoming a high stakes game when evaluating teachers' performance and attempting to interpret results that the district has little control over but are held liable. Validity, the school leader added, is the key because there is too much uncertainty when evaluating and interpreting results. This school district, the school leader added, supports accountability and will continue to have high expectations for teachers and administrators. Accountability, the school leader emphasized, is reflective of transparency, and this is not happening throughout the system. On a related matter, the school leader was concerned about the rushed implementation. According to one school leader, the new evaluation system appears to be a good start, but it is being implemented without enough stakeholder input. Due to the speed of implementation, one school leader noted, the district administrators have not been able to fully comprehend and effectively convey all aspects of the evaluation system to teachers, administrators, students, and parents. However, the school leader stated that, implementation of the Common Core State Standards, the PARCC assessment, and the new evaluation system simultaneously has been overwhelming to teachers, administrators, students, and parents.

Observation Component

In general, the school leaders stated that the observation component of the evaluation process has provided focus on best practices for both teachers and principals. In fact, according to one school leader, principals have the most impact on changing instruction and for that reason this

¹ The examples in this document attempt to reflect actual testimony and written responses.

particular school leader believes the observation portion of the evaluation system should have a heavier weighting.

Among other comments, school leaders reported that:

- observations have resulted in immediate feedback and support for struggling teachers;
- the observation portion of the evaluation system has improved the walkthrough component of the teacher evaluation system;
- calibration training of principals and the rubric being utilized across the state is helping to make the teacher observation component more fair, equitable, evidence-based, and uniform; and
- the observation component now pinpoints the lack of best teacher practices.

ISSUES AND CONCERNS

Among issues and concerns during the school leaders' presentations, the following points of interest are based on actual testimony from school leaders as well as from submitted documents:

Evaluation Contents

Student and parent surveys

Noting the following concerns as they relate to student and parent surveys, some school leaders indicated that they felt they could not release summative reports to teachers, primarily because:

- missing questionnaires;
- security issues regarding online student surveys; and
- flaws with the 2013-2014 system included:
 - lack of security;
 - late development;
 - survey points incorrectly credited;
 - lack of feedback;
 - incorrect data; and
 - timing.

Data

Noting the following concerns as they relate to missing and incomplete data, the school leaders indicated the following:

- Discovery data or DIBELS scores from the 2012-2013 school year were not used;
- EoC grades were not available, which meant that a number of teachers did not receive achievement scores;
- teachers that should have had SBA scores did not;
- no data was received for some current teachers;

- teachers had incorrectly identified licensure levels; and
- group C teachers were not provided Discovery data points on any of the evaluations in one district.

Noting the following concerns as they relate to inaccurate data, the school leaders stated the following:

- teachers were given value added scores and NM SBA data for classes that they did not teach;
- teachers originally in group A were not given their student achievement data as they were placed in groups B and C;
- inaccurate data in general;
- teachers were given data points not covered by their assignments;
- teachers receiving credit for courses they did not teach; and
- one school leader stated the district submitted 45 evaluations for review and appeal; however, when the corrected evaluations were sent back to the district from the PED, there were 34 evaluations with additional mistakes.

Coding of teachers

Noting the following concerns as they relate to the incorrect coding of teachers, the school leaders indicated the following:

- over 200 teachers were placed in the incorrect groups;
- after the “final” summative reports were released, new problems were discovered, such as some group C teachers placed as group A teachers;
- 59 identifiable errors in the coding of 339 teachers;
- there were discrepancies in how teachers were coded; and
- with 229 unresolved summative evaluations (most due to errors in group placement), the school leader is unclear as to who was placed in group A, B, or C. The school leader stated the problem with the group issue lies with the evolving dual use of the STARS system for tracking both highly qualified and for evaluation purposes. The school leader asked PED on different occasions for a complete list of assignments and groups and had not received any information.

Confidentiality issues

Raising concerns of confidentiality, some school leaders indicated that they received evaluations for teachers who were no longer employed in their school district.

Attendance

Among concerns noted by school leaders, the PED did not include teacher attendance data on the some evaluations. This is primarily an issue because absences are often attributed to the *Family and Medical Leave Act*, bereavement, jury duty, military leave, religious leave, professional development, and coaching. School leaders also mentioned that the PED attendance requirements create conflicts with local bargaining agreements.

Summative reports

School leaders stated that some teachers in their school districts did not receive their summative reports.

Observation component

Several school leaders indicated that they felt principals have the biggest impact on changing instructions and thus the observation portion of the evaluation system should receive more weight in the total evaluation score.

Special education

Noting the following concerns as they relate to special education, the school leaders said the following:

- one school leader indicated that special education teachers in the district did not receive summative reports and should have; and
- there have been concerns raised by special education teachers regarding the NMTEACH rubric and its inability to address educational plans and special needs to teachers in special education classrooms who are teaching a prescribed curriculum program. This situation could place principals in a difficult position when the rubric is taken literally. The district has added vocabulary to the NMTEACH rubric to address the situations specific to special education classrooms.

Implementation

Initial concerns

Noting the following concerns as they relate to the initial implementation of the evaluation system, the school leaders stressed the following:

- the system was being implemented when more time was needed for development, including PED trainings and timelines;
- deadlines were changed by PED;
- for a rural district, the time it takes to implement the program is consuming; and
- due to the speed of implementation, the district has not been able to fully comprehend and effectively convey all aspects of the evaluation system to teachers, administrators, students, and parents.

Implementation with other initiatives

In general, school leaders indicated the implementation of the Common Core State Standards, the PARCC assessment, and the evaluation system simultaneously has been overwhelming to teachers, administrators, students, and parents.

Administrator training

Among the concerns noted by the school leaders, administrators were not trained before the implementation of the new system. According to one school leader, the PED training in the 2013-2014 school year was not effective due to the fact that the training platform was not completed and accessible to participants during their trainings. Also many administrators were unable to login to the site due to limited internet capability.

Summative report reviews

Referring to the lack of time to review the summative reports, the school leaders indicated that districts received reports late in the year, and validation of the data was not complete before teachers left for the summer. Administrators were not able to meet with staff to thoroughly explain the contents of the summative reports.

Data Verification

Citing the lack of an opportunity for data verification, school leaders request an opportunity to verify data before calculations are made. This will help alleviate stress for teachers.

Observations

School leaders noted the observation component of the evaluation system was time consuming and sometimes overwhelming. In addition, school leaders reported the teacher observation protocol, along with reflection and targeted professional development embedded in Teachscape, has the potential to improve teaching and learning.

Communication

Concerning communication with PED, school leaders request the communication to be clear and timely.

Clarity

Value added model (VAM) or value added score (VAS)

Referring to concerns with the VAM or the VAS data, several school leaders indicated they had difficulty understanding and explaining both concepts.

Graduated considerations

Noting the following concerns as they relate to graduated considerations, the school leaders stated the following:

- all teachers in one district received graduated consideration points on their evaluations; and
- there is a lack of understanding in the application of graduated considerations.

Professional growth plans

School leaders noted the lack of clear direction as related to which personnel should be placed on a professional growth plan.

Hold harmless/baseline year

Several school leaders emphasized the first year of the teacher evaluation system was believed to be a hold harmless or baseline year.

Student achievement

Related to issues with the student achievement portion of the evaluation system, the school leaders noted the following:

- data points re-assigned teachers to the group associated with their data from the previous year. With changes in teaching positions from year to year, staff are not in the same group as their student achievement data;
- districts do not have access to specific calculations and procedures used to populate data in the summative evaluation reports. School leaders indicated if this information was available, it would greatly assist them in their ability to explain and substantiate ratings;
- several school leaders questioned why the evaluation of teachers was being based on three years worth of data;
- student achievement data is weighted too heavily in the NMTEACH framework. There is a perceived lack of transparency in the student achievement portion of the summative evaluation reports;
- teachers have student achievement measures included from years they were classified as a long term substitute prior to being hired as teachers; and
- current school year 2013-2014 data was not used.

Multiple measures

School leaders noted that the multiple measures component of the evaluation was being applied inconsistently.

Teachscape

Referring to Teachscape concerns, school leaders noted the system has potential to make the process more manageable, yet school districts continue to have significant problems in utilizing the system for its intended purpose.

For a complete list of concerns and issues raised by the school leader testimony, please see **Attachment 2**.

NEXT STEPS

On November 17, 2014 the Secretary-designate will provide a response to the Teacher and Principal Evaluation Panel Summary Report.

QUESTIONS

TEACHER AND PRINCIPAL EVALUATION PANEL:
AREA SCHOOL DISTRICTS/CHARTER SCHOOL

July 15, 2014

1. Based on the PED approved plan for your school district/charter school, outline your school district/charter school implementation timeline of the Educator Effectiveness System (EES) for teachers and principals this school year.
2. Which online system does your school district/charter school use to help implement the EES?

Does your school district/charter school plan on using this system next year?

3. By licensure level, what is the number and percent of teachers in your school district/charter school in each of the following groups:
 - *Group A: teachers who teach grades and/or subjects that can be meaningfully linked to the standards-based assessment;*
 - *Group B: teachers who teach grades and/or subjects that cannot be meaningfully linked to the standards-based assessment; and*
 - *Group C: teachers who teach in kindergarten, first, and second grades.*

Please outline the number and percent of each group's effectiveness ratings (i.e., exemplary, highly effective, effective, minimally effective, or ineffective).

4. For principals and assistant principals, what is the number and percent of these administrators in your school district/charter school in each of the following groups:
 - *Group A: New Mexico licensed administrators (Level 3-B); serve as Principal/Director, Assistant Principal, Dean of Students, or Athletic Directors; and supervise and evaluate certified teachers; and*
 - *Group B: district-level administrators; and Athletic Directors and Deans of Students that do not have Level 3-B licenses.*

Please outline the number and percent of each group's effectiveness ratings (i.e., exemplary, highly effective, effective, minimally effective, or ineffective).

5. Has your school district/charter school shared the data and results of the "District Educator Effectiveness Summative Report" with your teachers and principals? Why or why not?
6. Did your school district/charter school participate in the New Mexico's Teacher and School Leader Evaluation Pilot Project for the EES? If so, outline any differences between the pilot and your most recent EES ratings, if any.
7. Please add any other comments you might have addressing lessons learned in implementing your evaluation system.

Teacher and Principal Evaluation Panel Summary

7. Please add any other comments you might have addressing lessons learned in implementing your evaluation system.	Issues/concerns from superintendents' testimony during interim meetings
<p>Learning the interface and online reporting system, principals noted, caused frustration for teachers and principals due to a lack of familiarity with Teachscape. Three formal observations and two informal walkthroughs presented an onerous burden of time and effort for everyone involved. Regarding this problem, the district worked with PED. These discussions led to an agreement with PED for mid-year changes to the district's evaluation protocols, including a reduction in formal observations from three to two (if conducted by two different administrators). The opportunity to meet with PED also created an opportunity to gain more clarity. Elementary principals report the teacher observation protocol, along with reflection, and targeted/differentiated professional development embedded in Teachscape can lead to improvements in teaching and learning.</p>	<ul style="list-style-type: none"> • problems entering data on Teachscape • 59 identifiable errors in the coding of 339 teachers • hold harmless/baseline year • 27-28 percent error rate
<p>Student achievement data is from 2012-2013. These data points re-assigned teachers to the group associated with their data from the previous year. With changes in position from year to year, staff are not in the same group as their student achievement data. Teacher groups were changed, causing a disconnect with the appropriate Multiple Measure. Missing data due to re-assignment to the wrong group. Zero Discovery and DIBELS scores from the 2012-2013 school year were attached to teachers. All teachers received points under graduated considerations. 13 teachers did not receive their summative evaluation report. The district received 13 evaluations for teachers no longer with the district (breach of confidentiality issue raised). Overall error rate= 26%.</p>	<ul style="list-style-type: none"> • missing or incomplete data • evaluations received for teacher not employed in the district • missing points • 27-28 percent error rate
<p>The observation component of the evaluation process has greatly intensified focus on solid best-practices for both teachers and principals. Active “front-loading” of validation processes could be used to greatly increase the accuracy of summative reports prior to release. Specific</p>	<ul style="list-style-type: none"> • significant problems with Teachscape • questions regarding student achievement system • inaccurate data • missing summative reports

Teacher and Principal Evaluation Panel Summary

<p>calculations and procedures used to populate data in the summative evaluation reports. Districts do not currently have access to this information. This information would greatly assist administrators in their ability to explain and substantiate ratings, especially those produced from standardized test data. Teachscape has great potential to help make this process more manageable, yet the school district continues to have significant problems in utilizing the system to its intended potential.</p>	
<p>There were no EoC grades available, which meant that a number of people did not receive achievement scores. We wanted to input explore and plan achievement scores, but were given no way to do so. We wanted a different CCR score for our other ten percent; the state gave us a score they probably used to compute the school grade. The deadline for observations and domains 1 and 4 was not clear to me.</p>	<ul style="list-style-type: none"> • current rubric for evaluations does not provide a basis for how some of his teachers are to be evaluated, such as those who teach college level courses • inaccurate data • missing data • 65 percent error rate
<p>NMTEACH trainings are beneficial. We had a hard time implementing the full system in our district. I believe the new system is a great step in the right direction and far better than what we have had in the past, but I also believe that unless we had all the components ready to implement early in the school year we should have waited. The PED did communicate, please know that, but it was too late in the school year. We must be clear and timely with our communications. One thing has become very clear is how much being in the classroom matters. In fact, principals have the biggest impact on changing instruction and for that reason I believe the observation portion of our evaluation system should count the most. The other training that has been very beneficial to our principals that we have hosted twice in our district is the inter-rater reliability training. Through this practice we are able to share best practices and talk about the different approaches.</p>	<ul style="list-style-type: none"> • inaccurate data • inadequate time before end of school year to thoroughly review the summative reports • observation component weighted more • 30-35 percent error rate
<p>The new EES appears to be a good start, but it is being implemented without enough stakeholder input and it is being rushed through. We had approximately 40% erroneous</p>	<ul style="list-style-type: none"> • attendance issues • difficulty explaining the value-added model • 40 percent error rate

Teacher and Principal Evaluation Panel Summary

<p>reports, some our fault and some the fault of the PED and Teachscape.</p>	
<p>The biggest issue in implementing the EES was communication. Information did not come in a package, but in pieces. Other issues are trying to roll something out when it is still in development, there are questions that can't or weren't answered when asked, the final product was not available from the beginning, questions about data and a lack of understanding of the mathematical equations used to calculate scores. Deadlines were changed, reports arrived late, requests for information were not timely and data was incorrect. It is a system with value, but implementation has been difficult.</p>	<ul style="list-style-type: none"> • problems entering data on Teachscape • attendance issues • inaccurate data • missing or incomplete data
<p>Administration at larger schools need more help. The graduated considerations are confusing to teachers. The collective bargaining agreement negotiated with the union is being overwritten by PED rule in the area of attendance. This is a violation of the Public Employees Bargaining Act.</p>	<ul style="list-style-type: none"> • issues with graduated considerations (difficult to understand and to explain) • attendance issues • evaluation of teachers being based on three years worth of data • district's collective bargaining agreement and how <i>Public Employees Bargaining Act</i> factors are included
<p>The evaluation rubric has to be aligned to the job description of a virtual teacher. The evaluation system as it stands requires a lot of work to complete along with all of the other responsibilities. Teachers are not opposed to being evaluated. They are opposed to the evaluation system not being meaningful. The teacher evaluation system is a tool and should be used as a tool.</p>	<ul style="list-style-type: none"> • observations overwhelming and time consuming • teacher attendance • student surveys
<p>My biggest lesson learned was to be aware of the data that the district is reporting. Although most of my summative reports were accurate, I am concerned that errors can easily happen with a few simple errors on my report data. I would appreciate an opportunity to verify data before calculations are made so I am not the cause of any stress for teachers when reports come out.</p>	<ul style="list-style-type: none"> • inaccurate data • no opportunity to check/verify data from previous years
<p>The most important lesson I learned was to ensure accurate reporting of data and make sure teachers are tied to the data they have contributed. I am appreciative of the data</p>	<ul style="list-style-type: none"> • stressed need for accurate data

Teacher and Principal Evaluation Panel Summary

<p>verifications that will be implemented this coming school year.</p>	
<p>Schools received data for teachers who were no longer employed at the school site. We did not receive data for some of our current teachers. We learned the process involves a lot of time. We learned that the tool can provide meaningful and useful data for influencing student achievement. We learned that the lack of human resources can prevent the system from attaining the intent. We learned that we must start implementing the evaluation plan very early in the school year. We learned that the tool is a good tool for improving instruction; unfortunately, the variable “test score” does not seem to support or reflect the level of professional growth on the part of the teacher or the quality of instruction.</p>	<ul style="list-style-type: none"> • data for some teachers no longer in the district • some teachers received no data • missing data
<p>Huge learning curve for all of us. Hurt morale in a big way. Appreciate PED making adjustments when reasonable.</p>	<ul style="list-style-type: none"> • problems with roll out of system • administrators not trained before roll out of system
<p>Creates accountability, is data based, objective, and unbiased. It is a fair rating system. All documents are stored in one centralized location. Enhances quality of instruction based on contact time and feedback requirements while including information on all teacher domains. Expectations for every teacher are uniform. Improves curricula development as there is ongoing teacher reflection based on follow up and feedback while providing professional development opportunities. Initially, especially for a rural district, the time it takes to implement the program is very consuming. Teacher buy-in is another factor. Lack of training is one thing that as the program is used more can easily be addressed.</p>	<ul style="list-style-type: none"> • frustration with so many initiatives happening at the same time • trouble understanding the value-added model
<p>Incomplete observations shouldn't reflect an effectiveness rating. There should be some notification or submit to state upon completion option.</p>	<ul style="list-style-type: none"> • teacher attendance should not be counted against a teacher's rating if it is used for professional development training or if the teacher is sick • system does not account for vital elements, such as parental involvement, how teachers interact with students, how valuable a teacher is within the school setting, and knowledge outside the rubric

Teacher and Principal Evaluation Panel Summary

<p>The thought and organization of the observation portion of EES has improved the walkthrough component of the teacher evaluation system. Calibration training of principals and the rubric being utilized across the state is helping to make the teacher observation component more fair, equitable, evidence-based, and uniform. The observation component now pinpoints the lack of best teacher practices. Implementation of Common Core Standards, the PARCC assessment, and the EES program simultaneously has been overwhelming to teachers, administrators, students, and parents. We are concerned that the VAS formula does not provide an accurate representation of student achievement. Additionally, until we are certain the high-stakes assessments align with the standards being taught, the student achievement results should be viewed with skepticism. Due to the speed of implementation, we have not been able to fully comprehend and effectively convey all aspects of the EES program to teachers, administrators, students, and parents. The options which districts have within the EES program are becoming more limited.</p>	<ul style="list-style-type: none"> • some teachers were not issued a summative report • district issued summative reports for teachers no longer in the district • missing data • multiple measures applied inconsistently • VAM data applied inconsistently and hard to explain • implementation of too many educational reforms simultaneously • observation portion should be given more weight • administrators not able to comprehend or effectively explain evaluations • options that district has with evaluations too limited
<p>Training in the 2013-2014 school year was ineffective for administrators due to the fact that the training platform was not completed and accessible to participants when PED had their trainings. Many of the administrators that attended the training were unable to login to the site and internet capability was limited. Due to the late business rules established for principals it was not fair to evaluate principals using the NMTEACH school leader evaluation system established by NMPED. Teachers should not be held to 50% of their evaluation results being tied to student achievement measures.</p>	<ul style="list-style-type: none"> • did not present due to flooding in his district
<p>The school board, administration, and staff believe in accountability and support any viable and understandable system of evaluation.</p>	<ul style="list-style-type: none"> • inadequate time for review of summative reports • 10 inquiries on 22 teachers • changed school names for teachers • one teacher's overall rating changed from

Teacher and Principal Evaluation Panel Summary

	<p>“effective” to “minimally effective” without notice</p> <ul style="list-style-type: none"> • teachers changed from Group C to Group A although these teachers taught Kindergarten, first grade, or second grade • points given to teachers in areas not covered by that teacher’s assignment
None provided.	<ul style="list-style-type: none"> • observation count for more percentage of total evaluation score
<p>Inconsistent and erroneous information communicated from PED to district. The Teachscape program is definitely browser sensitive. It has been a positive change allowing local districts to have user management control of Teachscape. We have seen a drastic increase in retirements and resignations citing EES as the motivation. Level 1 teachers rated as minimally effective on their third annual summative evaluation will be forced to exit the profession as a result of not being able to have three consecutive effective evaluations in their first five years.</p>	<ul style="list-style-type: none"> • 22 percent of original summative evaluations had inquiries and were submitted to PED for review, after he received the original 45 reports back from PED, there were an additional 34 reports that had to be resubmitted back to PED because of additional errors • inaccurate school names
<p>First and foremost, we do support evaluating teachers with a better method. We certainly want to be held accountable. We don't believe we are using a better method today than we were using before. We believe the observation piece is very good and the walkthroughs have really encouraged teacher-principals interactions. My biggest concern is the VAM portion of the evaluation plan. We knew about student achievement being a part of the plan, but 50 percent is way too much and with it being so hard to determine how to process scoring, it becomes a major issue.</p>	<ul style="list-style-type: none"> • discovery points not included on the evaluations • PED answered some, but not all of the district’s questions • district informed this was a baseline year • difficult to understand VAM
Not provided.	<ul style="list-style-type: none"> • problems with uploading documentation • scheduling conflicts when principals are called to the district office during scheduled observations • partial observation of a lesson does not look at the whole picture • subjectivity (teachers doing same thing get different scores) • time consuming for observations
This is becoming a high stakes game when evaluating teachers’ performance and	<ul style="list-style-type: none"> • security issues regarding online student surveys

Teacher and Principal Evaluation Panel Summary

<p>attempting to interpret results that the district has little control over but are held liable. Validity is the key and right now there is too much uncertainty when evaluating and interpreting results. The district supports accountability and will continue to have high expectations for teachers and administrators. Accountability is reflective of transparency and this is not happening all the way through the system.</p>	<ul style="list-style-type: none"> • inaccurate data
<p>There have been concerns raised by special education teachers regarding the NMTEACH rubric and its inability to address special circumstances, educational plans, and special needs to teachers in special education classrooms who are teaching a prescribed curriculum program. It can place principals in a difficult position when the rubric is taken literally. The district has added vocabulary to the NMTEACH rubric to address the special situations that occur in special education classrooms. Increased accountability for the principal to be in the classroom. Increased standardization in the expectations of observations resulting in more standardized feedback. More courageous conversations with teachers to increase student learning. Observations have resulted in immediate feedback and support for struggling teachers. Attendance has improved but the district questions the quality of instruction if teachers attend school ill. Trainings and timelines for implementation of the NMTEACH observation rubric and Teachscape system were rushed and made the observation process initially cumbersome. Implementation of NMTEACH and Teachscape required the district to hire additional staff. Student achievement data is weighted too heavily in the NMTEACH framework. There is lack of transparency in the student achievement portion of the summative evaluation reports. Students were double counted for teachers. There is no guidance on which course numbers assigned to teacher were pulled from STARS to attach student achievement information. Teachers have</p>	<ul style="list-style-type: none"> • initial implementation difficulties • not all summative reports available • teachers missing from the district master list • inaccurate data • attendance issues • district received reports for teachers in other districts • NMTEACH rubric's inability to address special circumstances, education plans, and special needs of special education teachers • rushed training and timelines for implementation of new system • district had to hire new staff • student achievement is weighted too heavily • lack of transparency in the student achievement portion • issues with graduated considerations • attendance requirements creating conflicts with local bargaining agreements and related absence policies • confidentiality issues due to districts having access to evaluations of teachers they do not supervise

Teacher and Principal Evaluation Panel Summary

<p>student achievement measures included from years they were classified as a long term substitute prior to being hired as teachers. Ninth grade teachers received value added scores based on SBA even though there is no SBA administered in 9th grade. Graduated considerations have created a confusing system where teachers receive more credit for different portions of their evaluation than their colleagues. Confidentiality issues raised. Attendance requirements create conflicts with local bargaining agreements and related absence policies.</p>	
<p>There may be flaws in the new evaluation system, but for the most part our district has benefitted with the evaluation as it is an excellent tool by which teachers can validate their great teaching and by which they can grow and improve in their practice.</p>	<ul style="list-style-type: none"> • difficulty with VAM scores • attendance issues
<p>The manner in which we implemented the new evaluation system was critical. Teachers appeared comfortable with the process. As with anything new, there were glitches in the use of the software.</p>	<ul style="list-style-type: none"> • first year of evaluations are viewed as a pilot program
<p>Concerns - incorrect groups. Over 200 teachers in the wrong groups. Failed student survey process for school year 2013-2014. Despite the fact that the district values the data we would get from a well-constructed student survey system, we have chosen not to use this aspect of the system for school year 2014-2015 evaluations. Flaws with the 2013-2014 system include: lack of security; late development; survey points incorrectly credited; lack of feedback; incorrect data; assumptions; and timing. Student achievement data- inconsistent application of the graduated consideration rules; data attribution concerns; no mechanism for review or verification; and violations of good statistical practices. Summative evaluations - basic errors; too late to provide to teachers during the current instructional year; completely lacking in feedback for reflection and growth; and over 200 potentially flawed summative report remain.</p>	<ul style="list-style-type: none"> • unclear on business rules for assigning teachers to groups • teachers in incorrect groups • teacher surveys: lack of security; late development; survey points incorrectly credited; lack of feedback; incorrect data; and late timing • application of graduated considerations issues • teachers receiving credit for courses they did not teach • data attribution concerns • timing issues • understaffing at PED
<p>Clarification Request - NMPED Teacher</p>	<ul style="list-style-type: none"> • how the data was collected

Teacher and Principal Evaluation Panel Summary

<p>Evaluation Implementation - Letter from Superintendent Joel Boyd to Secretary-designate Hanna Skandera on October 13, 2014. Commentary: we need to get teacher evaluations right - published in the Santa Fe New Mexican on September 20, 2014.</p>	<ul style="list-style-type: none"> • adequate staffing to work with PED to correct the data • PED data system issues • timing of the data • school year 2013-2014 data not used • clear direction on which personnel should be placed on a professional growth plan
<p>We did the best we could despite the fact we were not adequately prepared by NMPED, and received miscommunication initially regarding the evaluation online instrument we could use. The district changed our plan for 2014-2017 to expedite and simplify the data collection and insure more accurate summative reports that are accurate, explainable, and complete.</p>	<ul style="list-style-type: none"> • difficulty understanding how data being collected • difficulty explaining to teachers