



Public Comments on Proposed Revisions to 19 TAC Chapter 150 Commissioner's Rules Concerning Educator Appraisal

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The Association of Texas Professional Educators (ATPE) is the preeminent educator association in Texas that, with a strong collaborative philosophy, speaks for classroom teachers, administrators, future, retired, and para-educators and works to create better opportunities for 5 million public schoolchildren. ATPE is a member-owned, member-governed professional association with more than 100,000 members, making it the leading educators' association in Texas and the largest independent association for public school educators in the nation. **ATPE appreciates the opportunity to offer the following comments on the proposed revisions to 19 TAC Chapter 150, Commissioner's Rules Concerning Educator Appraisal, Subchapter AA, Teacher Appraisal.**

ATPE appreciates the Texas Education Agency's (TEA) focus on improving the educator appraisal system in Texas. ATPE supports evaluation systems that will help identify teachers who are struggling and that will provide timely, meaningful feedback and assistance to all teachers. We are grateful that the commissioner has solicited input from teachers by convening a committee of practitioners tasked with providing input on the appraisal system.

However, ATPE remains opposed to the inclusion of certain provisions in the proposed rules and has serious concerns that such provisions will taint the system as a whole. Of particular concern are provisions pushed by the U.S. Department of Education by way of the NCLB flexibility waiver, including the ability of school districts to use standardized test scores as a measure of evaluating teachers on student growth.

Value-Added Measurement

The continued inclusion of value-added data as a means to measure student growth runs contrary to the wisdom of parents, education practitioners, researchers, stakeholders, lawmakers, and national leaders who acknowledge the ineffective overuse of student standardized test scores and are thus moving away from the use of such an indicator in much of the education arena, including educator evaluations.

While VAM has diagnostic value as an indicator, prominent researchers question its reliability for high-stakes decisions affecting educator appraisals, compensation, employment, and preparation program accountability. Among the research entities warning about the use of VAM is the American Statistical Association (ASA). The ASA cautions that limitations of the model exist and such “limitations are particularly relevant if VAMs are used for high-stakes purposes.” The ASA further states that “ranking teachers by their VAM scores can have unintended consequences that reduce quality,” that aside from test scores, VAMs “do not directly measure potential teacher contributions toward other student outcomes,” that “VAM scores and rankings can change substantially when a different model or test is used,” and that “effects – positive or negative – attributed to a teacher may actually be caused by other factors that are not captured in the model.”¹

Based on the research cautioning against the use of VAM, ATPE has continued to suggest that any use of VAM as part of a formal evaluation process be limited to the campus level or higher, as opposed to the individual teacher or classroom level. Research suggests that the occurrence of false positives or negatives is at a lower rate when VAM is used at the campus or higher level. Further, the use of campus or higher-level data would promote collaboration among teachers and classrooms across the campus.

Despite the abundance of research cautioning against the use of individual VAM data, Texas seeks to finalize through this proposed rule the use of such data to make high-stakes evaluation decisions for roughly a third of Texas teachers. This highlights an additional logistical weakness in using VAM for high-stakes evaluations; it can only measure student growth for teachers of a grade and subject where a state standardized test is administered, meaning only about 30 percent of teachers in Texas will be subjected to the controversial measure. The potential harm created by this bifurcated system, where teachers of certain tested subjects would be isolated from the majority of their peers, is tremendous and will only serve to alienate teachers in tested subjects or discourage teachers from teaching those subjects.

Not only do the proposed rules allow for the use of VAM, they require that an educator’s VAM score account for at least 20 percent of the overall appraisal. This percentage has been driven by the U.S. Department of Education, through Secretary of Education Arne Duncan, which has demanded that student growth make up at least 20 percent of teacher evaluations by way of the ESEA flexibility waiver process. However, the recent reauthorization of the Elementary and Secondary Education Act (ESEA), passed by the U.S. Congress and signed by President Obama last month, untied the federal strings binding Texas to the 20 percent threshold for student

¹ ATPE highlights the American Statistical Society’s and other research at http://www.teachthevote.org/content/resources/ATPE_EDUCATOR_EVALUATION_REFORM_RESOURCES.pdf

growth. We should no longer be going down the path of adopting controversial and unproven methods, especially at the expense of local control.

The tremendous backlash against testing continues to grow, and allowing the use of state standardized test scores in the evaluation of teachers runs contradictory to the message permeating our state and country. It also contradicts the Texas legislature's move to reduce the number of required tests and lessen their emphasis on our accountability system, the continually growing number of parents who opt their children out of state testing, the U.S. Congress's education law reversing how national testing plays into states' accountability systems, and more. Knowing that students' test scores will play a significant role in determining whether certain teachers keep their jobs or receive bonuses is in direct opposition to the outcry against high-stakes testing.

It is necessary to remove VAM as a student growth indicator at the individual teacher and classroom level [150.1002 (d)(4)] and the requirement that student growth account for at least 20 percent of the overall summative appraisal score [150.1002(e)] in order to develop a reliable, accurate, and locally supported appraisal system.

Assessment of Teacher Performance

Domains and Dimensions

In comments to TEA addressing what were at the time the commissioner's proposed rules concerning teacher standards, ATPE supported the standards as a first step but cautioned that "some of the standards might be insusceptible to measurement" and that several of the standards reflect "ideals that are dependent upon forces outside an individual teacher's control." ATPE was apprehensive about how the standards would later inform the appraisal instrument.

Our concerns remain and are reflected in pieces of the proposed rule. For instance, teachers must rely upon district resources and support to ensure a safe physical learning environment, and district decisions affecting the number of students assigned to each teacher can severely impact the management, routines, and efficiencies of a classroom [150.1002(a)(3)].

Similarly, a teacher's knowledge of her students will naturally improve as the school year progresses. One would expect a teacher observed in the second semester to have a stronger knowledge of her students and classroom than a teacher observed in the first semester, but the system would not account for such a flaw. Although the teacher had no control over the timing of the observation or appraisal, such a decision could inappropriately hurt the teacher whose classroom is observed earlier in the year.

Evaluation Categories

The most common comment we have received from our pilot district educators regards the assigned categories on which educators must be evaluated [150.1002(c) & (f)] in the assessment of their performance. ATPE members in pilot districts understand that the majority of teachers should expect to be rated in the “developing” category and that such a rating, the default rating, is considered to describe the average teacher. However, in the section on student growth, “developing” is equivalent to “below expectations.” ATPE questions why the appraisal instrument is designed to pool most teachers into the “developing” category, but the rule is written to reflect that the average teacher is below expectations. Assigning the average teacher a below-expectations rating on most dimensions sends a terrible message to good teachers and does little to build consensus for a system that is intended to support educators’ growth.

Appraisals, Data Sources, and Conferences

Goal-Setting and Professional Development Plan

ATPE believes more clarity needs to be provided with regard to the portion of 150.1003(b)(1) requiring that a Goal-Setting and Professional Development Plan be approved by the appraiser. While this seems reasonable on the surface, there is potential for collaboration between the educator and the appraiser to be lost. Does this mean that the appraiser is able to add to, change, or omit some of the teacher’s plan? If so, what recourse does the teacher have if she feels that stipulations added by the appraiser are unreasonable or she has another area in which she’d like to place more focus based on her own observations from the classroom? Current PDAS rules provide that when a teacher is given a “Teacher In Need of Assistance” plan that requires the teacher participate in professional development, at least one option must not create a financial burden on the teacher. The T-TESS Professional Development Plan needs similar protective provisions.

Finally, while the plan is to be developed collaboratively, Section 150.1003(b)(1) states that the appraisal must include an “appraiser-approved” plan. There is no explanation as to what happens if the appraiser does not approve the plan. As collaboration should be the focus throughout the appraisal process, that should be reflected in the language in 150.1003(b)(1).

Observation Pre-conference

Language in 150.1003(b)(3) requires an observation pre-conference for announced observations for teachers beyond their first year of appraisal in a district under T-TESS. Presumably, teachers in their first year will cover all observation pre-conference discussion topics in the required Goal-Setting and Professional Development Plan conference (though

150.1003(b)(3) does not actually state that the matters that would be discussed in a pre-observation conference are to be discussed in the goal-setting conference if there is no pre-observation conference), and thus those teachers are not included. Language stating that an observation pre-conference must be conducted only “prior to announced observations” begs the question of importance. The language as it is written puts no emphasis at all on observation pre-conferences. For instance, there is no requirement explicitly stating first-year teachers have discussions regarding observation expectations and, beyond that, a teacher may never have one again. What is the point in requiring it in one instance, but not in others? If the observation pre-conference is considered an important piece of the appraisal instrument, it should be required for all.

Similarly, language in 150.1003(c) will interact with this section in a strange way. 150.1003(b)(3) provides that a pre-observation conference is required for a teacher before “an announced observation.” But 150.1003(c) provides that “a teacher may be given advanced notice of the date of an observation but no advanced notice is required.” So, in effect, the rules provide that a pre-observation conference is only required if and when an appraiser voluntarily gives advanced notice of the observation. The experience under the PDAS, which had a similar discretionary notice requirement, was that notice was usually not provided in advance of an observation, and there are some very sound pedagogical reasons for that. But these rules provide for a required conference while setting up a situation where it is very unlikely that the conference will actually occur. If there is a purpose to the conference (and there could be many potentially valid purposes) that supports including it in the rule, then it should be included in all situations. If, on the other hand, it is intended to be simply discretionary and up to the appraiser, then the rule should be modified to simply state that it is discretionary and left up to the appraiser. Tying it to the non-required announcement of an observation serves no purpose other than to discourage announced observations. If that is the purpose, it should be stated more directly.

Observation Post-Conference

Section 150.1003(b)(5) provides for a post-observation conference between appraiser and teacher that must be conducted within 10 working days of the observation. Section 150.1003(b)(5)(C) includes the requirement for a written report to be developed after a discussion is had regarding a teacher’s “areas for reinforcement” and “areas for refinement.” ATPE questions, first, where and how these terms are defined and, second, by when the report must be shared. Section 150.1003(b)(5) does not state a deadline for providing the post-observation report, but Section 150.1003(f) provides in part that “any documentation that will influence a teacher’s summative annual appraisal must be shared in writing with the teacher within 10 working days.” The two rules must be read together, but when they are, the appraiser

must ignore the stated deadlines in one. The observation report, which certainly can “influence a teacher’s summative annual appraisal,” must be completed after the post-observation conference and must be shared within 10 working days. However, the appraiser is also given 10 working days to hold the conference. The rule requires the appraiser to ignore one of the stated deadlines – either for holding the conference or sharing the document – not a desired situation when rulemaking.

Post End-of-Year Conference Documentation

Section 150.1003(k) provides that any documentation that is collected after the end-of-year conference as provided in 150.1003(i) may lead to a change in the teacher’s summative report. The only procedure described in 150.1003(k) is that the teacher must be notified as to the change made to the summative report. There is no limitation as to when this change can be made and when this notice must be given, and it is clear that it is very possible that a teacher may not learn of a change until after the last day of student instruction. If this is the case, a teacher would be placed in the position of being unable to effectively respond to the change, most significantly by being unable to request a second appraisal, as provided for in both the Texas Education Code and 150.1004(c). This leads to an unreasonable restriction in a teacher’s ability to respond to concerns with which the teacher may not agree. It should be noted that an employing school district is in no way limited in taking what it considers to be appropriate remedial action in response to matters that arise after an end-of-year conference regardless of whether these concerns become a part of the teacher’s T-TESS summative report.

Off-Year Appraisal Requirements

While goal-setting, professional development planning, and communication and feedback are important in years where teachers are not subject to a full-appraisal, ATPE questions the inclusion of a student growth score in those years. The proposed rule appears to suggest that the student growth measure is more important than other appraisal measures, such as the domains and dimensions that reflect the teacher standards and observations. The continued emphasis on student growth at the expense of equally valuable or even more valuable measures of a teacher’s performance is alarming and should be addressed.

150.1004 Teacher Response and Appeals Appropriateness

ATPE fails to understand why the rules outlining a teacher’s ability to respond and appeal throughout the appraisal process are differentiated dependent on the domain or measurement [150.1003(a) & (c)]. Section 150.1004(a) provides that a teacher may submit a written rebuttal at specific times, clearly indicating that those are the only times that a rebuttal may be submitted. The rule provides that a teacher can respond “after receiving a written observation summary *or any other written documentation*” (emphasis added) related to Domains I, II, and

III. However, Section 150.1004(a)(2) states that a teacher may only respond to issues related to Domain IV “after receiving a written summative annual appraisal.” Domain IV includes “professional demeanor and ethics.” It has become increasingly common for supervisors to reference the Educator’s Code of Ethics when documenting an allegation that a teacher’s performance does not meet acceptable standards. This rule effectively prohibits the teacher from even responding to such documentation. The teacher’s response is a critical component to the appraisal process, as it provides teachers the opportunity to document either a denial or explanation of their actions. Prohibiting such a response runs entirely counter to the goal of fairly evaluating a teacher’s performance.

In addition, while effectively any documentation regarding a teacher’s performance can affect a teacher’s appraisal (and as such, the T-TESS rules would apply to it), the documentation can, separately and apart from the T-TESS itself, be used by a district as evidence to consider, decide on, and potentially support negative employment actions, including non-renewal or termination of the teacher’s employment contract. The rule stating that a teacher can only respond to a document relating to Domain IV after receiving the summative report rather than at any time the teacher receives “written documentation” (as with Domains I-III) means that the teacher cannot respond, which leaves district decision makers blind as to a teacher’s description, explanation, or denial of allegations contained in a written document that relates to Domain IV, which again, significantly, includes the Educators’ Code of Ethics. For example, a teacher could receive a written reprimand in October alleging that she forcefully grabbed a student, thereby violating the Code of Ethics. Since this relates to Domain IV, the teacher would not be allowed to submit a written response. The district administrators could determine, in March, based on the reprimand, that the teacher should be non-renewed without having the benefit of reviewing the teacher’s response that she did forcefully grab the student because he was in the act of punching and kicking a younger student. There is no interest being served by prohibiting a response to such an allegation before the summative appraisal. A teacher should be allowed, as is the case with the PDAS, to respond within 10 business days to any document that may affect the teacher’s appraisal score.

Further, the limitation placed on submitting a written response or requesting a second appraisal serves no significant purpose, ignores the practical reality of the appraisal process, and inappropriately ties the hands of both appraiser and teacher. It is not unusual, when concerns are noted in an observation, for an appraiser to offer to do a second observation. This can be an entirely legitimate process since an observation is a “snapshot” of the teacher’s performance and it may be agreed that an individual day was not accurately reflective of the teacher’s true performance. Under the PDAS, the teacher can accept this as a resolution, knowing that if the subsequent observation does not actually happen, the teacher can always request a second appraisal after receiving the summative. That would not be possible with this

rule. The teacher will be forced to choose between requesting the second appraisal or waiving the option. This leads to more of an adversarial relationship between appraiser and teacher rather than collaboration, which should be the goal. This increased pressure on teachers to request the second appraisal early rather than “waiting to see what happens” will also increase the “costs” of the T-TESS by requiring the districts to provide more second appraisals. The goal of the rule should be to maximize flexibility, not to restrict the choices of both teacher and appraiser.

Finally, the rule creates a nonsensical situation. A teacher can only request a second appraisal at the summative if the teacher has already requested a second appraisal after receiving the observation report, which means the teacher is, effectively, requesting an additional second appraisal. There is no sense to a rule that establishes two options: no second appraisal or two second appraisals.

We appreciate this opportunity to share our input and hope you will carefully consider our concerns on behalf of more than 100,000 educators across the state of Texas. **ATPE encourages the commissioner to delay implementation of 19 TAC Chapter 150, Commissioner’s Rules Concerning Educator Appraisal, Subchapter AA, Teacher Appraisal, in order to address the concerns outlined above.**