



SPONSOR: Rep. Heffernan & Rep. K. Williams & Sen. Sturgeon &  
Sen. Townsend  
Reps. Chukwuocha, Morrison, Michael Smith; Sens.  
Lawson, Lockman, Poore, Sokola, Walsh

HOUSE OF REPRESENTATIVES  
151st GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1  
FOR  
HOUSE BILL NO. 291

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO EDUCATOR EVALUATIONS AND  
PROCEDURES FOR THE TERMINATION OF SERVICES OF PROFESSIONAL EMPLOYEES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1           Section 1. Amend § 1270, Title 14 of the Delaware Code by making deletions as shown by strike through and  
2           insertions as shown by underline as follows:

3           Subchapter VII. Educator Evaluations

4           § 1270 The Delaware Performance Appraisal System II. [Effective July 1, 2022]

5           (a) An educator holding an initial license pursuant to § 1210 of this title must receive a Delaware Performance  
6           Appraisal System II (DPAS II) evaluation annually. An educator holding a continuing license pursuant to § 1211 of this  
7           title or an advanced license pursuant to § 1213 of this title must receive a Delaware Performance Appraisal System II  
8           (DPAS II) evaluation at least every 2 academic years. For purposes of this subchapter only, the term “educator” shall also  
9           include specialists who practice in Delaware public schools, whether or not they are licensed and certified by the  
10          Department. The evaluation must be consistent with the Delaware Professional Teaching Standards and the Delaware  
11          Administrators’ Standards, and must otherwise be in accordance with the criteria and requirements of this section.

12          (b) The Department, with the consent of the State Board of Education, shall promulgate rules and regulations to  
13          administer the Delaware Performance Appraisal System II (DPAS II). The DPAS II must include an overall rating and a  
14          student-improvement component rating, and must identify what constitutes satisfactory performance and unsatisfactory  
15          performance on the overall evaluation and on each component of the evaluation. For the purposes of § 1273 of this title,  
16          DPAS II must also include a definition of “pattern of ineffective teaching” and define “pattern of ineffective  
17          administration” as it relates to unsatisfactory performance on the overall DPAS II evaluation.

(c) (1) DPAS II must have no more than 5 components and must have a strong focus on student improvement, with 1 component dedicated exclusively to student improvement. All components must be weighted equally beginning in the 2017-18 academic year.

(2) For all Part A and Part B goals, the educator, as well as the administrator, may propose measures to be used to provide data to judge progress towards the goals. The proposed measures must be approved by the administrator, and not result in additional assessments for students. With regard to Part B goals, the measures must be selected from a list of the standardized measures approved by the Department.

(3) The measure of student improvement must take into consideration student absence, student mobility, student chronic noncompliance with school rules, chronic failure by parents to abide by the Parents' Declaration of Responsibilities under § 157 of this title, and other factors that may adversely affect the evaluation. If a student has missed more than 15% of the class time, the student's performance shall only be used with the agreement of the teacher under this chapter.

(d) A local school district may develop and implement other assessment tools that measure annual student improvement, including assessments in other content areas. Assessment tools developed and implemented pursuant to this subsection must be approved by the Secretary and must be funded with local funds.

(e) Nothing in this section prevents a local school district from administering other evaluations in addition to the Delaware Performance Appraisal System II, provided that administration of additional evaluations is reported to the Department.

(f) A local school district, vocational-technical school district or charter school may make application to the Department for a waiver of the provisions of the DPAS II evaluation system, which shall be granted, subject to the provisions of rules and regulations promulgated pursuant to this subchapter, if the request for a waiver is based on a locally developed evaluation process that is demonstrated to be the product of the collective bargaining process pursuant to Chapter 40 of this title and community review and is as rigorous and as educationally sound as DPAS II, provides for evaluating educator performance by measuring student growth using multiple measures over the course of a curricular year, and contains a mechanism for certifying evaluators and for quality control.

~~(g) The Department shall promptly establish a pilot program in not more than 3 local education agencies. The pilot program, which shall be for the 2016-17 and 2017-18 academic years, shall weigh all components equally, shall incorporate a survey provision for parents and students to be included within Component IV of the evaluation, and shall meet the following requirements for each participating local education agency:~~

(1) Any such program shall be conducted with the consent of the school district and organization representing the district's educators for collective bargaining purposes.

(2) Such program shall, to the fullest extent practicable, use the mathematical algorithm recommended by the DPAS II Subcommittee and contained in its Final Report dated March 31, 2016, as Appendix C to determine final or summative ratings for evaluations.

(3) The component dedicated exclusively to student improvement shall contain 2 parts. The first part, known as "Part A," shall contain an individual goal created by the educator and administrator that is based upon the school or district improvement document and demonstrates the educator's contribution to student growth for his or her current cohort of students. The second part, known as "Part B," shall contain an individual goal created by the educator and administrator that is based upon an assessment approved by the Department. The administrator shall assess the progress toward goals, regardless of whether the educator has satisfied the requirements of § 1403(a) of this title, is on an improvement plan, has expectations contained in the most recent performance evaluation, or has a satisfactory most recent performance evaluation.

(4) In the event that the educator and administrator cannot agree upon the goals to be included in the component dedicated exclusively to student improvement, the goals shall be determined as follows:

a. For educators who have not satisfied the requirements of § 1403(a) of this title, the administrator shall determine the goals to be included in the component dedicated exclusively to student improvement.

b. For educators who have satisfied the requirements of § 1403(a) of this title but are on an improvement plan or have expectations contained in their most recent performance evaluation, the administrator shall determine the goals to be included in the component dedicated exclusively to student improvement.

c. For educators who have satisfied the requirements of § 1403(a) of this title and whose most recent performance evaluation is satisfactory, the educator and administrator shall each determine a Part A and Part B goal. In such instance, each goal shall be of equal weight.

(5) For all Part A and Part B goals, the administrator shall identify the measures to be used to provide data to judge progress towards the goals. In regards to Part B goals, the measure must be selected from a list of standardized measures approved by the Department.

(6) The administrator shall be solely responsible for assessing progress toward the goals using the data generated by measures identified by the administrator and any other data provided by the educator and accepted by the administrator for this purpose.

76           (g) The Department shall implement the Delaware Teacher Growth and Support System through a pilot program in  
77 no less than 3 local education agencies for the 2021-2022 academic year. During the 2022-2023 academic year, additional  
78 non-participating local education agencies may join the pilot program. The pilot program shall weigh all performance areas  
79 equally, shall incorporate professional growth plans for teachers, and shall meet the following requirements for each  
80 participating local education agency:

81           (1) Any such pilot program shall be conducted with the consent of the local education agency and  
82 organization representing the local education agency's educators for collective bargaining purposes, if applicable.

83           (2) The performance area dedicated to student improvement shall contain a Part I and a Part II. Part I shall  
84 contain at least 1 individual professional learning goal created by the teacher and administrator that is focused on the  
85 continuous improvement of skills aligned to the Delaware Teacher Growth and Support System teacher observation  
86 rubric. Part II shall contain at least 2 individual student improvement goals selected by the teacher and administrator  
87 that demonstrate the teacher's contribution to student growth for his or her current cohort of students. If the teacher and  
88 administrator do not agree, the administrator's decision is final. Each "Part II" goal shall be based upon a measure that  
89 has been approved by the Department. Measures may be created by a local education agency but must be approved by  
90 the Department prior to use. The administrator shall assess the progress toward goals, regardless of whether the teacher  
91 has satisfied the requirements of § 1403(a) of this title, is on a directed professional growth plan, or has a satisfactory  
92 rating on his or her most recent performance evaluation.

93           (3) Notwithstanding any other provision of law, rule or regulation to the contrary, grades 3 through 8 and high  
94 school state assessments required under § 151 of this title shall not be required as a measure of student growth as part  
95 of a teacher's evaluation.

96           (4) The measure of student improvement must take into consideration student absence, student mobility,  
97 student chronic noncompliance with school rules, chronic failure by parents to abide by the Parents' Declaration of  
98 Responsibilities under § 157 of this title, and other factors that may adversely affect the evaluation. If a student has  
99 missed more than 15% of the class time, the student's performance shall only be used with the agreement of the teacher  
100 under this chapter.

101           (5) a. Local education agencies that participated in the 2021-2022 school year pilot may continue to use the  
102 Delaware Teacher Growth and Support System during the 2022-2023 academic year. Evidence collected and feedback  
103 provided under this subsection shall be used as part of a teacher's evaluation cycle and to assign an official summative  
104 rating for the 2022-2023 academic year. Any local education agency that participated in the 2021-2022 school year  
105 pilot that does not continue to use the Delaware Growth and Support System during the 2022-2023 school year shall

apply to the Department for approval to revert back to the Delaware Performance Appraisal System II (DPAS II) or an approved alternate evaluation system.

b. Any such decision regarding continued use of the Delaware Teacher Growth and Support System during the 2022-2023 school year shall be made with the consent of the school district and organization representing the district's educators for collective bargaining purposes. Approval granted under this subsection shall be for the 2022-2023 school year only.

c. For the 2022-2023 school year any local education agency that makes the decision not to continue with the Delaware Teacher Growth and Support System shall implement DPAS II or an approved alternate evaluation system in accordance with this section.

(6) Beginning with the 2023-2024 academic year, the Delaware Teacher Growth and Support System will replace the Delaware Performance Appraisal System II for all licensed and certified teachers.

(h)(1) Notwithstanding any provision of this section, the ~~educator evaluation system~~ Delaware Performance Appraisal System II under this section is ~~suspended~~ modified for the 2020-2021, 2021-2022 and 2022-2023 academic school year years. In lieu of the ~~educator evaluation system~~, Educators must engage in an observation and feedback cycle designed to provide coaching, and support related to hybrid and remote learning practices that encourage all of the following:

- a. Relationship building.
- b. Student engagement in learning.
- c. Standards-aligned curriculum implementation.

(2) The observation and feedback cycle under paragraph (h)(1) of this section must include all of the following:

- a. An initial goal setting process.
- b. Classroom observation:

1. Experienced teachers shall receive a minimum of 1 announced or unannounced observation within the observation and feedback cycle.

2. Novice teachers shall receive a minimum of 2 announced or unannounced observations within the observation and feedback cycle.

- c. An end-of-year conference between the educator and evaluator.

(3) The evaluator shall record feedback provided to an educator under this subsection in the Data Service Center platform and must include all of the following:

a. Component and Criterion level ratings as developed for the 2020-2021 school ~~year year~~, and shared by the Department in a guidance document.

b. Any narrative language related to recommendations or commendations on the educator's performance. ~~Recommendations on performance may not result in a formal improvement plan.~~

(4) The only forms that an educator must complete under this subsection are the following:

a. The goal setting form.

b. A verification form, created by the Department, to ensure that the educator's observation and feedback cycle has been completed.

(5) Evidence collected and feedback provided during observations under this subsection may ~~not~~ be used ~~for either of the following:~~ as part of the evaluation cycle and to assign a summative rating for the 2021-2022 and 2022-2023 academic years.

~~a. As part of the evaluation cycle.~~

~~b. To assign a summative rating for the 2020-2021 school year.~~

~~(6) Formal improvement plans in place for the 2020-2021 school year remain in effect through the next evaluation cycle under this section.~~

Section 2. Amend § 1403, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter I. General Provisions

§ 1403 Application of Chapter

(a) Except as set forth in subsection (b) of this section, the provisions set forth in §§ 1411, 1412, 1413 and 1414 of this title, covering reasons for termination, notice of termination, hearings before a board and judicial review, shall apply to all teachers:

(1) Who began teaching in a Delaware public school prior to the end of the 2009/2010 school year and have completed 3 years of service in the State, 2 years of which shall be in the employ of the terminating board; or

(2) Who began teaching in a Delaware public school after the conclusion of the 2009/2010 school year and has completed at least 3 years of service in the State, at least 2 of which are in the employ of the terminating board, provided that said teacher has received at least 2 years of "Satisfactory" ratings in the "Student Improvement" component of the teacher appraisal process (established pursuant to § 1270 of this title) within a 3-year period. The 2 "Satisfactory" ratings need not be consecutive and the requirement for "Satisfactory" ratings need only be satisfied once in order for the provisions of §§ 1411 through 1414 of this title to apply.

(3) Who began teaching in a Delaware public school after the conclusion of the 2020-2021 school year and have completed at least 3 years of service in the State, at least 2 of which are in the employ of the terminating board, provided that said teacher has received at least 2 years of “Satisfactory” summative ratings in the teacher appraisal process (established pursuant to § 1270 of this title) within a 3-year period. The 2 “Satisfactory” ratings need not be consecutive and the requirement for “Satisfactory” ratings need only be satisfied once in order for the provision of §§ 1411 through 1414 of this title to apply.

(b) The provisions set forth in §§ 1411, 1412, 1413 and 1414 of this title shall not apply to teachers employed temporarily to replace professional personnel on leave of absence or to teachers holding temporary certificates.

(c) Time spent in military service shall not be counted as years of service for purposes of this chapter.

(d) Notwithstanding the provisions of § 1403 (a)(2), due to the Covid-19 pandemic, the provisions set forth in §§ 1411, 1412, 1413 and 1414 of this title shall apply to teachers who began teaching in the 2017-2018 and 2018-2019 school years and have completed at least 3 years of service, at least 2 of which are in the employ of the terminating board.

Section 3. Amend § 1410, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter II. Termination of Services at the End of the School Year

§ 1410. Notice of intention to terminate services.

(a) In the event that any board desires to dispense with the services of any teacher, such board shall give notice in writing to such teacher on or before May 15 of any year of its intention to terminate said teacher’s services at the end of such school year. For teachers identified pursuant to ~~§ 1403(a)(1) or (2)~~ § 1403(a)(1), (a)(2), (a)(3) or (d) of this title, such written notice shall state the reasons for such intended termination of services and shall be accompanied by a copy of this chapter; provided, however, that this requirement shall not apply to those teachers employed temporarily to replace professional personnel on leave of absence or those holding temporary certificates.

(b) Teachers other than those identified pursuant to ~~§ 1403(a)(1) or (2)~~ § 1403(a)(1), (a)(2), (a)(3) or (d) this title may, within 7 days of receiving notice of intention to terminate services, request in writing, the reason or reasons for such notice. The board will provide such reason or reasons in writing and a copy of this chapter no later than 5 days after receipt of such a request, provided that the stated reason or reasons must have either been contained in the teacher’s performance appraisal, and the teacher was provided time to correct any deficiency through an individualized improvement plan or other documented materials properly placed in the teacher’s personnel file prior to said notice. In providing the reason or reasons, the board is not limited to the reasons set forth in § 1411 of this title. Within 7 days of receiving the reason or reasons for the notice of intention to terminate services, a teacher may request in writing a conference with the board’s superintendent

for the purpose of discussing the reason or reasons and attempting to resolve any disputed matter. Within 10 days of receiving such a request for a conference, the superintendent shall personally provide the teacher a conference to review the matter. The conference with the superintendent is final and conclusive. The provisions of this subsection shall not apply to teachers employed temporarily to replace professional personnel on leave of absence or to teachers holding temporary certificates.

Section 3. Section 1 of this Act takes effect on July 1, 2022.

#### SYNOPSIS

This Act continues the changes made to the Delaware Performance Appraisal System II created under Senate Bill 42 of the 151st General Assembly, with modifications. In order to maintain an evaluation system under current operational challenges, this bill modifies Senate Bill 42 by allowing evidence collected during the observation and feedback cycle to be used a part of the evaluation cycle, to assign a summative rating, and to place educators on improvement plans, if needed. Additionally, this bill extends the pilot for the Delaware Teacher Growth and Support System, created under House Bill 133 of the 151st General Assembly, to the 2022-2023 school year, moving the start date for statewide implementation to the 2023-2024 school year.

This bill also reconciles inconsistencies that have arisen with educators' hearing rights as outlined in Chapter 14 of Title 14 due to the suspension of the state assessment in 2019-2020 school year and low participation in the 2020-2021 school year. Additionally, this bill aligns Chapter 14 with the new educator evaluation system, the Delaware Teacher Growth and Support System, by placing the emphasis on building a culture of professionalism and learning within every school, which is measured in a summative evaluation, rather than one component of an evaluation.

This substitute bill is substantively the same as House Bill No. 291. Some technical corrections were made to accommodate language in 14 Del. C. § 1270(g) that was scheduled to sunset in 2022.