

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SB 558

52nd Legislature, 1st Session, 2015

Tracking Number: .199658.1

Short Title: Use of Leave & Teacher Evaluations

Sponsor(s): Senator Jacob Candelaria

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Bill Summary:

SB 558 amends the *School Personnel Act* to require that the taking of leave pursuant to the federal *Family and Medical Leave Act of 1993* (FMLA) shall not in any way affect a teacher's performance evaluation under the highly objective uniform statewide standard of evaluation for teachers.

Fiscal Impact:

SB 558 does not contain an appropriation.

Substantive Issues:

Testimony presented to the Legislative Education Study Committee (LESC) suggests that an examination of the issues addressed by SB 558 may be in order. To illustrate, during the 2014 interim, the LESC heard testimony on the issues pertaining to the implementation of the current evaluation system. Specifically, school districts and charter schools testified that attendance has been one of the primary concerns (see "Background," below).

Family and Medical Leave Act

Under the frequently asked questions of the NMTEACH portion on the Public Education Department (PED) website, teacher attendance scores are based on a calculation of total points available reduced by the number of days absent. Teachers can receive up to 20 points in the teacher attendance category under the multiple measures component of the evaluation. The following list enumerates the range of points for each rating based on attendance:

- 18 – 20, exemplary;
- 15 – 17, highly effective;
- 10 – 14, effective;
- 7 – 9, minimally effective; and
- > 6, ineffective.

Additionally, a school district can submit its own cut scores, but the cut scores cannot be more lenient than the state default scores. According to PED, leave that is excluded from the attendance calculation includes leave under FMLA, bereavement, jury duty, military leave,

religious leave, professional development, and coaching. SB 558 would codify the exclusion of leave under FMLA in state law.

According to the United States Department of Labor, FMLA entitles eligible employees to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. Eligible employees are entitled to:

- 12 work weeks of leave in a 12-month period for:
 - the birth of a child and to care for the newborn child within one year of birth;
 - the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
 - to care for the employee’s spouse, child, or parent who has a serious health condition;
 - a serious health condition that makes the employee unable to perform the essential functions of his or her job;
 - any qualifying exigency arising out of the fact that the employee’s spouse, son, daughter, or parent is a covered military member on “covered active duty”; or
- 26 work weeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness if the eligible employee is the service member’s spouse, son, daughter, parent, or next of kin.

Background:

Teacher and School Leader Effectiveness Evaluations

Adopted in August 2012 and amended in September 2013, the PED rule, *Teacher and School Leader Effectiveness*, implements an evaluation program for public school teachers and administrators called the Effectiveness Evaluation System (EES), sometimes also called the NMTEACH Effectiveness Evaluation System. Under this system, districts have the option of using the plan developed by PED or submitting a custom plan to PED for department approval.

In general, 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.

Briefly, the rule requires that:

- school districts use a department-adopted student achievement growth measure or, with department permission, use a combination of PED-approved growth measures and, for non-tested subjects or grades, a PED-approved alternative measure;

- whenever possible, the performance rating include three years or more of student achievement growth data; and
- if a school district has not implemented appropriate course assessments or adopted a comparable measure, student achievement growth be measured by:
 - the growth achievement of the classroom teacher’s students on state assessments;
 - the school’s A through F letter grade for courses in which enrolled students do not take the state assessment, provided that a school district may assign instructional team student achievement growth to classroom teachers in lieu of using the school grade growth calculation; or
 - state-developed end-of-course examinations or other PED-recommended options.

For the remainder of a teacher’s evaluation:

- 25 percent is based on teaching observations by one of two types of observers – either “approved” or “certified” – using the NMTEACH rubric or protocol; and
- 25 percent is based on “multiple measures,” which vary, again, according to the group to which the teacher belongs. As noted under “Bill Summary,” above, attendance is one of those multiple measures.

Regarding the multiple measures component, the rule requires that, upon approval by PED, the school district adopt at least two multiple measures that align with improved student achievement that must be used district-wide.

Finally, documents obtained from the PED website indicate that the multiple measures category captures a teacher’s professionalism through a combination of locally adopted criteria (10 percent) and the planning, preparation, and professional activities identified in domains 1 and 4 of the NMTEACH rubric (15 percent). School districts and charter schools had the option to choose some of the multiple measures included in their plan. Examples of locally adopted criteria include attendance, student surveys, parent surveys, college and career readiness, graduation rate, and school attendance.

Implementation of the EES

Altogether over the course of five meetings during the 2014 interim, the LESC heard testimony from 27 school districts, two charter schools, and two special state-supported schools on the implementation of the teacher and principal evaluation systems. Testimony from school districts and charter schools noted a lack of clarity with regard to a number of aspects of the evaluation system, among them:

- incorrect coding of teachers in terms of groups A, B, or C;
- PED’s not including teacher attendance data in some of the evaluations, creating conflicts with local bargaining agreements;
- inconsistent application of the multiple measures component of the evaluation; and
- districts’ lack of access to specific calculations and procedures used to populate data in the summative evaluation reports, limiting their ability to explain and substantiate ratings.

During the November meeting, the Secretary of Public Education provided the PED response to the issues and concerns that districts and charter schools had raised. This testimony began with a description of the impact upon students of effective and ineffective teachers. It also explained

how the NMTEACH protocol was designed ultimately to improve student outcomes through certain initiatives targeted at teachers, and it illustrated the differences in teacher ratings under the current evaluation system versus the previous evaluation system.

The Secretary then enumerated several areas for improvement in the implementation of the evaluation system that will rely on PED/district partnerships, among them:

- “incomplete” or “inaccurate” data; and
- understanding teacher attendance as a component of the system.

Finally, the Secretary proposed a number of solutions to these issues, among them:

- establishing a NMTEACH liaison for each district and charter school, as well as providing ongoing training on roster verification, value-added score (VAS), and the summative reports; and
- clarifying teacher attendance reporting requirements regarding the federal FMLA, bereavement leave, and other kinds of leave.

Committee Referrals:

SEC/SPAC

Related Bills:

SB 91 *Teacher Licensure Levels & Advancement*

SB 138 *Repeal A-B-C-D-F School Rating Act*

SB 202a *Public Education Data Advisory Council*

SB 205 *Delay Use of Certain Test in Teacher Evals*

SB 378 *Teacher & Admin Differential Performance*

SB 497 *Quantifiable Data in Teacher Evaluations*

SB 562 *Teacher Evaluation Use of Data*

FL/HB 76a *Teacher Licensure Levels & Advancement*

CS/CS/HB 144 *Teacher & School Leader Effectiveness Act*

HB 156a *Innovations in Teaching Act*