

# THRUN EVALUATION TRACKER: EVALUATION APPEALS AND COMMON EVALUATION MISTAKES

## ARCHIVES

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Since the beginning of the school year, our Thrun Evaluation Tracker articles have addressed the performance evaluation system for teachers under Revised School Code Section 1249. As the school year winds down, administrators may receive an appeal or protest from teachers regarding their evaluation. Section 1249 provides a narrow appeal procedure for certain teachers. Outlined below are the appeal procedures and common mistakes to avoid during the evaluation process.

### *Evaluation Appeals*

Section 1249 requires school districts, ISDs, and public school academies to implement a performance evaluation system for teachers that includes an appeal procedure for tenured teachers rated “ineffective” on their annual year-end evaluation. Section 1249 does not create an appeal process for a teacher who is probationary or who is rated “highly effective,” “effective,” or “minimally effective.”

A tenured teacher may ask the superintendent to conduct a review of the evaluation and evaluation rating. The teacher must submit a review request in writing within 20 calendar days after the teacher is informed of the “ineffective” rating. Upon receipt of the appeal request, the superintendent must review the evaluation and rating and may make any modifications as deemed appropriate based on the review. The performance evaluation system cannot allow for a review more than twice in three school years. The statute does not provide for board-level review.

School officials should review board policies to determine if they contain a broader evaluation appeal right than required by Section 1249. For example, one commercial board policy service includes a “Public Complaints” policy which provides that “[a]ny person or group, having a legitimate interest in the operations of this District shall have the right to present a request, suggestion, or complaint concerning District personnel, the program, or the operations of the District.” Arguably, under that policy, a teacher who is not otherwise eligible to appeal under Section 1249 may still bring an evaluation appeal to the board.

School officials should ensure that board policies and administrative procedures expressly exclude teacher complaints based on an evaluation or rating. The decision whether to offer broader evaluation appeal rights should be made only after the board considers the school’s resources and needs.

### *Common Mistakes*

Below are some common mistakes that school officials should avoid when conducting teacher evaluations:

- *Not properly vetting information posted on the school’s website.* To comply with Section 1249, a school must post specific information on its website. Frequently, commercial evaluation vendors provide schools with information that they assert complies with the legal posting requirements and a simple link to that information. Schools should closely review the information provided by a vendor to confirm that it completely and accurately describes the school’s practices in conducting observations, mid-year progress reports, and evaluations.
- *Believing that all MDE-approved evaluation tools fully comply with Section 1249.* Section 1249 contains legal requirements that are not included in many of the MDE-approved evaluation tools. School officials should audit their school’s evaluation system to ensure full compliance with Section 1249’s requirements.
- *Failing to recognize which teachers need an Individualized Development Plan.* The Teachers’ Tenure Act broadly requires that *all* probationary teachers receive an IDP. The Revised School Code requires only that all *first-*

*year* probationary teachers and *any teacher* rated “minimally effective” or “ineffective” on the most recent annual year-end evaluation have an IDP. Schools must comply with both the Teachers’ Tenure Act and the Revised School Code. School officials may also place a teacher rated “effective” or “highly effective” on an IDP to address a specific performance-related issue or simply to improve performance.

- *Failing to identify performance goals for the next school year in the year-end evaluation.* The Revised School Code requires that all annual year-end teacher evaluations include specific performance goals that: (1) assist with improving the teacher’s effectiveness for the next school year; (2) are developed by the school official conducting the evaluation in consultation with the teacher; and (3) include recommended training, in consultation with the teacher, to assist the teacher with meeting performance goals.
- *Failing to give a teacher notice of his or her deficiencies and ample opportunities to improve.* It has been a “best practice” to provide deficiency notices in writing and to repeatedly observe or monitor the teacher’s progress to determine whether the teacher’s performance has improved. This best practice has new significance in light of the Court of Appeals’ recent ruling in *Summer v Southfield (II)*, as discussed in this edition of *School Law Notes*. Schools should ensure that they give teachers notice of deficient performance and opportunities to improve throughout the school year to ensure compliance with Section 1249. In addition, school officials should assist with the teacher’s development by identifying “relevant” coaching, instruction support, and professional development.
- *Failing to do observation “homework.”* Section 1249 requires observers and evaluators to review the teacher’s lesson plan, the state curriculum standard used in the lesson, and pupil engagement in the lesson during an observation. All classroom observations should comply with these review requirements.
- *Failing to conduct complete mid-year progress reports.* A mid-year progress report is required for *all* first-year probationary teachers and *any teacher* rated “minimally effective” or “ineffective” on the most recent year-end evaluation. The mid-year progress report must: (1) gauge the teacher’s

improvement from the preceding year or set a benchmark for first-year teachers; (2) assist the teacher with improving; (3) align with the teacher's IDP; (4) review the teacher's performance based, in part, on student achievement; (5) include specific performance goals for the remainder of the year; and (6) recommend training designed to assist the teacher with meeting goals.

Failing to follow Section 1249's requirements may undermine a school's subsequent layoff or termination decisions. To start the 2018-2019 school year off right, school officials should review their performance evaluation system this summer to ensure it complies with the Revised School Code and the Teachers' Tenure Act. School officials also should prepare a list of all teachers on IDPs at the beginning of the school year to ensure observations and mid-year progress reports are completed and nonrenewal timelines are followed.