

RULES AND REGULATIONS

Title 22—EDUCATION

DEPARTMENT OF EDUCATION

[22 PA. CODE CH. 19]

Educator Effectiveness Rating Tool; Classroom Teachers

The Department of Education (Department) adopts Chapter 19 (relating to educator effectiveness rating tool) to read as set forth in Annex A.

Omission of Proposed Rulemaking

Under section 1123 of the Public School Code of 1949 (act) (24 P.S. § 11-1123), regarding rating systems, amended by the act of June 30, 2012 (P.L. 684, No. 82) (Act 82), the Department is required to develop a rating tool to measure the effectiveness of classroom teachers. Section 1123(b)(2)(i) of the act requires the Department to publish this rating tool in the *Pennsylvania Bulletin* by June 30, 2013.

Under section 1123(j) of the act, the publication of the rating tool by the Department is expressly exempt from sections 201—205 the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201—1205), known as the Commonwealth Documents Law (CDL), section 204(b) of the Commonwealth Attorneys Act (71 P.S. § 732-204(b)) and the Regulatory Review Act (71 P.S. §§ 745.1—745.12). Therefore, the Department is not required to publish a notice of proposed rulemaking as prescribed by the CDL. The rating tool is exempt from the statutory provisions requiring review by the Office of Attorney General. The publication of the rating tool is not subject to review and approval by the Independent Regulatory Review Commission.

Statutory Authority

This final-omitted rulemaking is published under the authority of section 1123(a), (b)(2), (e) and (j) of the act as amended by Act 82 and sections 201 and 506 of The Administrative Code of 1929 (71 P.S. §§ 61 and 186).

Purpose

This final-omitted rulemaking fulfills the directive of section 1123(b)(2)(i) of the act that the Department “shall develop, issue and publish in the *Pennsylvania Bulletin* a rating tool.” As required under Act 82, the rating tool contains measures based on teacher observation and practice and multiple measures of student performance. The rating tool encompasses a form and instructions. The final-omitted rulemaking also includes a process whereby the governing board of a local education agency (LEA) may submit a plan for an alternative rating tool to the Department for review and approval.

Background and Public Input

Under section 1123(a) of the act, the Department developed the rating tool “in consultation with education experts, parents of school-age children enrolled in a public school, teachers and administrators. . . .” To formally implement this provision, the Department convened a Stakeholders Group. Members of the Stakeholders

Group included parents, teachers, administrators, chief executive officers of charter schools, representatives from higher education and others from across this Commonwealth. The Stakeholders Group met and reviewed key elements of the rating tool and provided the Department with feedback.

Provisions of Final-Omitted Rulemaking

Section 19.1 (relating to classroom teacher effectiveness rating tool) states:

The rating tool functions as a framework for the evaluation and summative process for classroom teachers, and is designed for local education agencies providing early childhood, elementary or secondary education across this Commonwealth. The tool is comprised of the form and instructions.

The rating tool consists of the one-page rating form used by LEAs to record the results of the data collection process which provides for a potential overall rating of Failing, Needs Improvement, Proficient or Distinguished. The rating form sets numeric values for these four rating levels on a zero to three point scale.

The rating tool includes descriptions of the four areas or domains set forth in Act 82 for teacher observation and practice. The four domains are as follows: planning and preparation; classroom environment; instruction; and professional responsibilities. The rating tool provides descriptions of educator performance or behavior at the four different rating levels in the four areas or domains.

The rating tool contains “Instructions for Rating Tool—Standards of Use” that are divided into six areas or main paragraphs. The first area includes the definitions for the rating tool. The second area, “General Provisions,” contains directions for the evaluation and rating process as well as basic instructions for completing the rating form.

The third area, “Standards of Use for Teacher Observation and Practice,” accounts for 50% of a teacher’s total rating. It addresses the evaluation of the four domains listed under “(A) Teacher Observation and Practice” in the form. This area sets forth descriptions of how to develop, combine and calculate the domains into one performance level. LEAs are allowed to use a variety of evidence gathering techniques.

The fourth area is entitled “Standards of Use for Multiple Measures of Student Performance.” Multiple measures represent the other 50% of a teacher’s total rating and are divided into three categories each assigned a percentage factor by Act 82.

The first category is “Building Level Data” and it covers eight different measurements including exam results, graduation and promotion rates, and attendance data. It is 15% of a teacher’s total rating.

The second category, “Teacher Specific Data,” also comprises 15% of a teacher’s final rating. It consists of measures based upon student performance on assessments, value added assessment system data or the Pennsylvania Value-Added Assessment System data, student progress by means of individual education plans and locally developed school district rubrics.

The final area in the rating of classroom teachers is the "Elective Data" measure which may include various options regarding measures of student performance selected from a list provided annually by the Department. LEAs shall select and develop measures using a Student Learning Objective process. This area is 20% of a teacher's total rating.

Section 19.1 also includes provisions addressing record keeping and creation of alternative rating tools.

Affected Parties

Based on data for the 2011-2012 school year, the number of individuals and entities that may be directly affected by the final-omitted rulemaking includes approximately 150,980 professional staff, 1.765 million students, school districts, area vocational-technical schools, career technology centers and intermediate units.

Benefits

The rating tool will provide for a more effective evaluation of teacher performance in schools in this Commonwealth. The potential benefits of the rating tool are significant. It will enable LEAs and the Department to document possible trends in teacher effectiveness. Thereby, local administrators, the Department and State lawmakers will be able to identify teacher improvement programs that are successful and produce solid results in student learning, achievement and growth.

Cost, Paperwork Estimates and Fiscal Impact

The paperwork costs should be minimal. The Department will provide assistance to LEAs in using electronic formats that will reduce paperwork costs and reduce staff time allotted to tracking and filing evaluations.

Additional costs imposed by this final-omitted rulemaking will be minimal. Annual evaluations of teachers and semiannual evaluations of untenured teachers are already a standard function of LEAs across this Commonwealth.

The Department budget for educator effectiveness programs was approximately \$3.7 million in the current fiscal year. This total is projected to be \$1.6 million in 3 years. Therefore, costs will go down as the project proceeds.

Effective Date

This final-omitted rulemaking shall take effect on July 1, 2013. The phase-in for the rating tool will begin in 2013-2014 school year.

Regulatory Review

Under section 1123(j) of the act, this final-omitted rulemaking is exempt from the Regulatory Review Act.

Contact Person and Information

For further information, individuals may contact Deborah E. Wynn, Executive Policy Specialist, Office of Elementary and Secondary Education, Department of Education, 333 Market Street, Fifth Floor, Harrisburg, PA 17126-0333, (717) 783-1024, dewynn@pa.gov. Persons with disabilities may use fax (717) 214-2786 or TTY at (717) 783-8445.

Order

The Department, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 22 Pa. Code, are amended by adding § 19.1 to read as set forth in Annex A.

(b) The Secretary of Education shall submit this order and Annex A to the Office of General Counsel for review and approval as to legality and form as required by law.

(c) The Secretary of Education shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This final-omitted rulemaking shall take effect on July 1, 2013.

WILLIAM E. HARNER, Ph.D.,
Acting Secretary

Fiscal Note: 6-330. (1) General Fund;

(7) Teacher Professional Development; (2) Implementing Year 2012-13 is \$2,032,000; (3) 1st Succeeding Year 2013-14 is \$2,036,000; 2nd Succeeding Year 2014-15 through 5th Succeeding Year 2017-18 is \$0; (4) 2010-11 Program—\$21,153,000; 2009-10 Program—\$22,750,000; 2008-09 Program—\$39,698,000;

(7) PA Assessment; (2) Implementing Year 2012-13 is \$1,693,000; (3) 1st Succeeding Year 2013-14 through 5th Succeeding Year 2017-18 is \$1,620,000; (4) 2010-11 Program—\$31,981,000; 2009-10 Program—\$37,620,000; 2008-09 Program—\$44,600,000;

(8) recommends adoption.

Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

Subpart A. MISCELLANEOUS PROVISIONS

CHAPTER 19. EDUCATOR EFFECTIVENESS RATING TOOL

§ 19.1. Classroom teacher effectiveness rating tool.

The rating tool functions as a framework for the evaluation and summative process for classroom teachers, and is designed for local education agencies providing early childhood, elementary or secondary education across this Commonwealth. The tool is comprised of the form and instructions. The following rating form shall be used to record the results of the data collection process.

Commonwealth of Pennsylvania	DEPARTMENT OF EDUCATION	333 Market St., Harrisburg, PA 17126-0333
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CLASSROOM TEACHER RATING FORM

PDE 82-1 (4/13)

Last Name _____ First _____ Middle _____

District/LEA _____ School _____

Rating Date: _____ Evaluation: (Check one) Semi-annual Annual

(A) Teacher Observation and Practice

Domain	Title	*Rating* (A)	Factor (B)	Earned Points (A x B)	Max Points
I.	Planning & Preparation		20%		0.60
II.	Classroom Environment		30%		0.90
III.	Instruction		30%		0.90
IV.	Professional Responsibilities		20%		0.60
(1) Teacher Observation & Practice Rating					3.00

Domain Rating Assignment (0 to 3 Point Scale (A))	
Rating	Value
Failing	0
Needs Improvement	1
Proficient	2
Distinguished	3

(B) Student Performance—Building Level Data, Teacher Specific Data, and Elective Data

Building Level Score (0—107)	
(2) Building Level Score Converted to 3 Point Rating	

(3) Teacher Specific Rating	
(4) Elective Rating	

(C) Final Teacher Effectiveness Rating—All Measures

Measure	Rating (C)	Factor (D)	Earned Points (C x D)	Max Points
(1) Teacher Observation & Practice Rating		50%		1.50
(2) Building Level Rating		15%		0.45
(3) Teacher Specific Rating		15%		0.45
(4) Elective Rating		20%		0.60
Total Earned Points				3.00

Conversion to Performance Rating	
Total Earned Points	Rating
0.00-0.49	Failing
0.50-1.49	Needs Improvement
1.50-2.49	Proficient
2.50-3.00	Distinguished
Performance Rating	

Rating: Professional Employee, OR Rating: Temporary Professional Employee

I certify that the above-named employee for the period beginning _____ and ending _____ has received a performance rating of: _____
(month/day/year) (month/day/year)

DISTINGUISHED PROFICIENT NEEDS IMPROVEMENT FAILING

resulting in a FINAL rating of:

SATISFACTORY UNSATISFACTORY

A performance rating of Distinguished, Proficient or Needs Improvement shall be considered satisfactory, except that the second Needs Improvement rating issued by the same employer within 10 years of the first final rating of Needs Improvement where the employee is in the same certification shall be considered unsatisfactory. A rating of Failing shall be considered unsatisfactory.

Date _____ Designated Rater / Position: _____ Date _____ Chief School Administrator

I acknowledge that I have read the report and that I have been given an opportunity to discuss it with the rater. My signature does not necessarily mean that I agree with the performance evaluation.

Date _____ Signature of Employee _____

Descriptions of the four domains in Part (A) Teacher Observation and Practice are summarized in Table A.

Table A: Descriptions of Four Domains	
Domain	Description
I. Planning & Preparation 20%	Effective teachers plan and prepare for lessons using their extensive knowledge of the content area, the relationships among different strands within the content and between the subject and other disciplines, and their students' prior understanding of the subject. Instructional outcomes are clear, represent important learning in the subject, and are aligned to the curriculum. The instructional design includes learning activities that are well sequenced and require all students to think, problem solve, inquire, and defend conjectures and opinions. Effective teachers design formative assessments to monitor learning, and they provide the information needed to differentiate instruction. Measures of student learning align with the curriculum, enabling students to demonstrate their understanding in more than one way.
II. Classroom Environment 30%	Effective teachers organize their classrooms so that all students can learn. They maximize instructional time and foster respectful interactions with and among students, ensuring that students find the classroom a safe place to take intellectual risks. Students themselves make a substantive contribution to the effective functioning of the class by assisting with classroom procedures, ensuring effective use of physical space, and supporting the learning of classmates. Students and teachers work in ways that demonstrate their belief that hard work will result in higher levels of learning. Student behavior is consistently appropriate, and the teacher's handling of infractions is subtle, preventive, and respectful of students' dignity.
III. Instruction 30%	In the classrooms of accomplished teachers, all students are highly engaged in learning. They make significant contributions to the success of the class through participation in high-level discussions and active involvement in their learning and the learning of others. Teacher explanations are clear and invite student intellectual engagement. The teacher's feedback is specific to learning goals and rubrics and offers concrete suggestions for improvement. As a result, students understand their progress in learning the content and can explain the learning goals and what they need to do in order to improve. Effective teachers recognize their responsibility for student learning and make adjustments, as needed, to ensure student success.
IV. Professional Responsibilities 20%	Accomplished teachers have high ethical standards and a deep sense of professionalism, focused on improving their own teaching and supporting the ongoing learning of colleagues. Their record-keeping systems are efficient and effective, and they communicate with families clearly, frequently, and with cultural sensitivity. Accomplished teachers assume leadership roles in both school and LEA projects, and they engage in a wide range of professional development activities to strengthen their practice. Reflection on their own teaching results in ideas for improvement that are shared across professional learning communities and contribute to improving the practice of all.

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Table B summarizes teacher performance levels for each of the Domain Rating Assignments and for the ratings to be assigned for each domain in the Rating (A) column.

Table B: Four Levels of Performance in Four Domains				
Domain	Failing	Needs Improvement	Proficient	Distinguished
I. Planning & Preparation 20%	Teacher's plans reflect little understanding of the content, the students, and available resources. Instructional outcomes are either lacking or inappropriate; assessment methodologies are inadequate.	Teacher's plans reflect moderate understanding of the content, the students, and available resources. Some instructional outcomes are suitable to the students as a group, and the approaches to assessment are partially aligned with the goals.	Teacher's plans reflect solid understanding of the content, the students, and available resources. Instructional outcomes represent important learning suitable to most students. Most elements of the instructional design, including the assessments, are aligned to the goals.	Teacher's plans, based on extensive content knowledge and understanding of students, are designed to engage students in significant learning. All aspects of the teacher's plans—instructional outcomes, learning activities, materials, resources, and assessments—are in complete alignment and are adapted as needed for individual students.

Table B: Four Levels of Performance in Four Domains

Domain	Failing	Needs Improvement	Proficient	Distinguished
II. Classroom Environment 30%	Classroom environment is characterized by chaos and conflict, with low expectations for learning, no clear standards of student conduct, poor use of physical space, and negative interactions between individuals.	Classroom environment functions somewhat effectively, with modest expectations for student learning and conduct, and classroom routines and use of space that partially support student learning. Students and the teacher rarely treat one another with disrespect.	Classroom environment functions smoothly, with little or no loss of instructional time. Expectations for student learning are high, and interactions among individuals are respectful. Standards for student conduct are clear, and the physical environment supports learning.	Students themselves make a substantive contribution to the smooth functioning of the classroom, with highly positive personal interactions, high expectations and student pride in work, seamless routines, clear standards of conduct, and a physical environment conducive to high-level learning.
III. Instruction 30%	Instruction is characterized by poor communication, low-level questions, little student engagement or participation in discussion, little or no use of assessment in learning, and rigid adherence to an instructional plan despite evidence that it should be revised or modified.	Only some students are engaged in learning because of only partially clear communication, uneven use of discussion strategies, and only some suitable instructional activities and materials. The teacher displays some use of assessment in instruction and is moderately flexible in adjusting the instructional plan and in response to students' interests and their success in learning.	All students are engaged in learning as a result of clear communication and successful use of questioning and discussion techniques. Activities and assignments are of high quality, and teacher and students make productive use of assessment. The teacher demonstrates flexibility in contributing to the success of the lesson and of each student.	All students are highly engaged in learning and make material contributions to the success of the class through their participation in discussions, active involvement in learning activities, and use of assessment information in their learning. The teacher persists in the search for approaches to meet the needs of every student.
IV. Professional Responsibilities 20%	The teacher demonstrates low ethical standards and levels of professionalism, with poor recordkeeping systems and skill in reflection, little or no communication with families or colleagues, and avoidance of school and LEA responsibilities and participation in activities for professional growth.	The teacher demonstrates moderate ethical standards and levels of professionalism, with rudimentary recordkeeping systems and skills in reflection, modest communication with families or colleagues, and compliance with expectations regarding participation in school and LEA projects and activities for professional growth.	The teacher demonstrates high ethical standards and a genuine sense of professionalism by engaging in accurate reflection on instruction, maintaining accurate records, communicating frequently with families, actively participating in school and LEA events, and engaging in activities for professional development.	The teacher's ethical standards and sense of professionalism are highly developed, showing perceptive use of reflection, effective systems for recordkeeping and communication with families, leadership roles in both school and LEA projects, and extensive professional development activities. Where appropriate, students contribute to the systems for recordkeeping and family communication.

From *Enhancing Professional Practice: A Framework for Teachers, 2nd Edition* (pp. 41-42), by Charlotte Danielson, Alexandria, VA: ASCD. © 2007 by ASCD. Adapted and reproduced with permission.

INSTRUCTIONS FOR RATING TOOL—STANDARDS OF USE

The rating form and related documents are available at the Department's website in electronic versions and Excel worksheet format for scoring and rating tabulation.

(I.) Definitions.

The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

Assessment—The term shall mean the Pennsylvania System of School Assessment test, the Keystone Exam, an equivalent local assessment or another test established by the State Board of Education to meet the requirements of section 2603-B(d)(10)(i) and required under the No Child Left Behind Act of 2001 (Public Law 107-110, 115 Stat. 1425) or its successor statute or required to achieve other standards established by the Department for the school or school district under 22 Pa. Code § 403.3 (relating to single accountability system).

Chief School Administrator—An individual who is employed as a school district superintendent, an executive director of an intermediate unit or a chief school administrator of an area vocational-technical school or career technology centers.

Classroom Teacher—A professional or temporary professional employee who provides direct instruction to students related to a specific subject or grade level and usually holds one of the following:

Instructional I Certificate (see § 49.82),

Instructional II Certificate (see § 49.83),

Vocational Instructional I Certificate (see § 49.142), and

Vocational Instructional II Certificate (see § 49.143).

Department—The Department of Education of the Commonwealth.

Distinguished—The employee's performance consistently reflects teaching at the highest level of practice.

District-designed measures and examinations, and locally developed school district rubrics—A measure of student performance created or selected by an LEA. The development or design of the measure shall be documented via a Student Learning Objective.

Education Specialist—A person who holds an educational specialist certificate issued by the Commonwealth, including a certificate endorsed in the area of elementary school counselor, secondary school counselor, social restoration, school nurse, home and school visitor, school psychologist, dental hygienist, instructional technology specialist or nutrition service specialist.

Employee—A person who is a professional employee or temporary professional employee.

Failing—The employee does not meet performance expectations required for the position.

Keystone Exam—An assessment developed or caused to be developed by the Department pursuant to 22 Pa. Code § 4.51 (relating to state assessment system).

LEA—A local education agency, including a public school district, area vocational-technical school, career technology center and intermediate unit, which is required to use a rating tool established pursuant to section 1123 of the Public School Code (24 P. S. § 11-1123).

Needs Improvement—The employee is functioning below proficient for performance expectations required for continued employment.

Nonteaching Professional Employee—A person who is an education specialist or a professional employee or temporary professional employee who provides services other than classroom instruction.

Performance Improvement Plan—A plan, designed by an LEA with input of the employee, that may include mentoring, coaching, recommendations for professional development and intensive supervision based on the results of the rating provided for under this chapter.

Principal—A building principal, an assistant principal, a vice principal or a director of vocational education.

Professional Employee—An individual who is certified as a teacher, supervisor, principal, assistant principal, vice-principal, director of vocational education, dental hygienist, visiting teacher, home and school visitor, school counselor, child nutrition program specialist, school nurse, or school librarian.

Proficient—The employee's performance consistently reflects practice at a professional level.

PSSA—The Pennsylvania System of School Assessment established in 22 Pa. Code § 4.51 (relating to state assessment system).

PVAAS—The Pennsylvania Value-Added Assessment System established in compliance with 22 Pa. Code § 403.3 (relating to single accountability system) and its data made available by the Department under Section 221 of the Public School Code (24 P. S. § 2-221).

SLO—The Student Learning Objective is a record of the development and application of student performance measures selected by an LEA. It documents the process used to determine a student performance measure and validate its assigned weight. This record will provide for quality assurance in rating a student performance measure on the zero-to-three-point rating scale.

Temporary Professional Employee—An individual who has been employed to perform for a limited time the duties of a newly created position or of a regular professional employee whose service has been terminated by death, resignation, suspension or removal.

(II.) General Provisions.

1. The rating of an employee shall be performed by or under the supervision of the chief school administrator, or, if so directed by the chief school administrator, by an assistant administrator, a supervisor or a principal, who has supervision over the work of the professional employee or temporary professional employee being rated, provided that no unsatisfactory rating shall be valid unless approved by the chief school administrator. (24 P. S. § 11-1123(h)(3))

2. The rating form shall be marked to indicate whether the employee is a professional employee or temporary professional employee.

3. A temporary professional employee must be notified as to the quality of service at least twice a year. (24 P. S. § 11-1108)

4. The rating form includes four measures or rated areas: Teacher Observation and Practice, Building Level, Teacher Specific, and Elective. Application of each measure is dependent on the availability of data. A rating in the range of zero to three based on the "0 to 3 Point Scale" must be given to each of the four rating areas.

5. Teacher Observation and Practice is divided into four domains: I. Planning and Preparation; II. Classroom Environment; III. Instruction; and IV. Professional Responsibilities. For each domain, an employee must be given a rating of zero, one, two or three which is based on classroom observation, practice models, evidence or documented artifacts.

6. The Building Level Score will be provided by the Department or its designee, and published annually on the Department's website.

7. The Teacher Specific Rating will include statewide assessments and value-added assessment system data if and when such data is available.

8. Data, ratings and weights assigned to measures for locally developed school district rubrics, progress in meeting the goals of student individualized education plans, and the Elective Rating must be recorded by a process provided by the Department.

9. Each of the four measures in Final Teacher Effectiveness Rating shall be rated on the zero-to-three-point scale. Each number in Rating (C) shall be multiplied by the Factor (D) and the sum of the Earned Points or Total Earned Points shall be converted into a Performance Rating using the table marked Conversion to Performance Rating.

10. An overall performance rating of Distinguished or Proficient shall be considered satisfactory.

11. An initial overall performance rating of Needs Improvement shall be considered satisfactory.

12. The second overall performance rating of Needs Improvement issued by the same employer within 10 years of the first rating of Needs Improvement where the employee is in the same certification shall be considered unsatisfactory.

13. For professional employees, two consecutive overall unsatisfactory ratings, which include classroom observations, and are not less than four months apart, shall be considered grounds for dismissal.

14. No temporary professional employee shall be dismissed unless rated unsatisfactory, and notification, in writing, of such unsatisfactory rating shall have been furnished the employee within 10 days following the date of such rating.

15. An employee who receives an overall performance rating of Needs Improvement or Failing must participate in a performance improvement plan. No employee will be rated Needs Improvement or Failing based solely on student test scores.

16. The rating form shall be marked to indicate the appropriate performance rating and whether the overall final rating is satisfactory or unsatisfactory.

17. The rating form must be signed by the chief school administrator or by a designated rater, who is an assistant administrator, supervisor or principal, has supervision over the work of the professional employee or temporary professional employee being rated, and is directed by the chief school administrator to perform the rating.

18. A final rating of unsatisfactory will not be valid unless signed by the chief school administrator.

19. A signed copy of the rating form shall be provided to the employee.

20. The rating tool is not intended to establish mandates or requirements for the formative process of supervising classroom teachers.

21. This rating form, section or chapter may not be construed to limit or constrain the authority of the chief school administrator of an LEA to initiate and take action on a personnel matter, including dismissal of a classroom teacher, based on information and data available at the time of the action.

(III.) Standards of Use for Teacher Observation and Practice.

Part (A) "Teacher Observation and Practice" in the rating form shall be completed using the following standards, calculations and procedures.

(a) *Teacher observation and practice domains.* The rating of a classroom teacher for effectiveness in teacher practice shall be based on classroom observation or other supervisory methods. Teacher practice shall comprise 50% of the Final Teacher Effectiveness Rating of the employee. The percentage factor for each domain is listed in Table C:

Table C: Four Domains	
<i>Domains</i>	<i>% of 50% allotment</i>
I. Planning and preparation.	20.0
II. Classroom environment.	30.0
III. Instruction.	30.0
IV. Professional responsibilities.	20.0

(b) *Summative process of evaluation.* LEAs shall utilize classroom practice models (e.g., Danielson, *Enhancing Professional Practice: A Framework for Teaching*) that address the areas related to classroom observation and practice contained in section 1123(1)(i) of the Public School Code (24 P. S. § 11-1123(1)(i)) and are approved by the Department. The Department shall publish a list of approved practice models for assessing the four domains annually on the Department's website. A classroom teacher must be given a rating in each of the four domains. In determining a rating for an employee, an LEA may use any portion or combination of the practice models related to the domains. The four domains and classroom practice models establish a framework for the summative process of evaluating classroom teachers. The form and standards do not impose mandates on the supervisory and formative processes utilized by an LEA.

(c) *Evidentiary sources.* Teacher observation and practice evaluation results and ratings shall be based on evidence. Information, including dates and times, if applicable, on the source of the evidence shall be noted in the employee's record. As appropriate for the employee and their placement in a classroom and educational program, records may include, but not be limited to, any combination of the following items:

(1) Notations of classroom observations, teacher/rater conferences or interviews, or informal observations or visits, including dates for observations, interviews and conferences.

(2) Lesson unit plans (types, titles and numbers), materials, technology, teacher resource documents, visual technology, utilization of space, student assignment sheets,

student work, instructional resources, student records, grade book, progress reports and report cards.

- (3) Interaction with students' family members.
- (4) Family, parent, school and community feedback.
- (5) Act 48 documentation.
- (6) Use of teaching and learning reflections.

(7) Examination of sources of evidence provided by the teacher.

The documentation, evidence and findings of the rater shall provide a basis for the rating of the employee in the domains of teacher observation and practice.

(d) *Scoring.* An LEA must provide a rating score in each domain. The four teacher observation and practice domains shall be rated and scored on a zero-to-three-point scale. The ratings of Failing, Needs Improvement, Proficient and Distinguished are given numeric values as shown in Table D.

<i>Performance Rating</i>	<i>Value</i>
Failing	0
Needs Improvement	1
Proficient	2
Distinguished	3

(e) *Ratings and weighted scoring.* The four domains of teacher observation and practice in Part (A) of the form are each assigned a percentage factor. Each domain shall be scored on the “0-to-3-point scale.” The individual score or rating for each domain is adjusted by the percentage factor attributed to that domain. The score of zero, one, two or three for each domain is calculated into points based on its percentage factor. The sum of the points for all domains will be the total Teacher Observation and Practice Rating. The calculation for each domain is set forth in Table E.

<i>Domain</i>	<i>Title</i>	<i>Rating (A)</i>	<i>Factor (B)</i>	<i>Earned Points (A x B)</i>	<i>Max Points</i>
I.	Planning & Preparation		20%		0.60
II.	Classroom Environment		30%		0.90
III.	Instruction		30%		0.90
IV.	Professional Responsibilities		20%		0.60
<i>Teacher Observation & Practice Points/Rating</i>					3.00

(f) *Administrative action based on available data.* Nothing in these standards of use for teacher observation and practice, this section or this chapter shall be construed to limit or constrain the authority of the chief school administrator of an LEA to initiate and take action on a personnel matter, including dismissal of a classroom teacher, based on information and data available at the time of the action.

(IV.) Standards of Use for Multiple Measures of Student Performance.

Student Performance is comprised of Building Level, Teacher Specific and Elective data. In total, these three measures are 50% of the Final Teacher Effectiveness Rating for a classroom teacher. Each area has a prescribed percentage factor of the performance rating as described in Table F.

<i>Multiple Measure Rating Area</i>	<i>Factor</i>
Building Level Rating	15%
Teacher Specific Rating	15%
Elective Rating	20%

(a) *Building level data.*

(1) For the purposes of Paragraph (IV) relating to Standards of Use for Multiple Measures of Student

Performance, the term “building” shall mean a school or configuration of grades that is assigned a unique four-digit identification number by the Department unless the context clearly indicates otherwise.

(2) This area comprises 15% of the Final Teacher Effectiveness Rating. Building level data shall include, but is not limited to, the following when data is available and applicable to a building where the educator provides service:

- (i) Student performance on assessments.
- (ii) Value-added assessment system data made available by the Department under section 221 of the Public School Code (24 P. S. § 2-221).
- (iii) Graduation rate as reported to the Department under section 222 of the Public School Code (24 P. S. § 2-222).
- (iv) Promotion rate.
- (v) Attendance rate as reported to the Department under section 2512 of the Public School Code (24 P. S. § 25-2512).
- (vi) Industry certification examinations data.
- (vii) Advanced placement course participation.
- (viii) Scholastic aptitude test and preliminary scholastic aptitude test data.

(3) The Department or its designee will provide the Building Level Score for each building within an LEA based on available data. LEA building data will be

published annually on the Department’s website. An explanation of the calculation of the building level data and the weight given to each measure utilized for a specific building will be published annually on the Department’s website. The Department may add to the list of measures for building level data set forth in Paragraph (IV)(a)(2). Notice of these changes will be published on the Department’s website.

(4) Each LEA shall utilize the conversions in Table G below to calculate the Building Level Rating for each building with eligible building level data.

Table G: Conversion from 100 Point Scale to 0—3 Scale for Building Level Rating	
<i>Building Level Score</i>	<i>0—3 Rating Scale*</i>
90.0 to 107	2.50—3.00
70.0 to 89.9	1.50—2.49
60.0 to 69.9	0.50—1.49
00.0 to 59.9	0.00—0.49

*The Department will publish the full conversion table on its website.

LEAs shall add the Building Level Rating to (B)(2) and (C)(2) of the Rating Form.

(5) For classroom teachers in positions for which there is no Building Level Score reported on the Department website, the LEA shall utilize the rating from the teacher observation and practice portion of the rating form in Part (A)(1) in place of the Building Level Rating.

(b) *Teacher specific data.*

(1) Teacher specific data shall comprise 15% of the Final Teacher Effectiveness Rating. Teacher specific data shall include, but is not limited to, the following when data is available and applicable to a specific classroom teacher:

- (i) Student performance on assessments.
- (ii) Value-added assessment system data made available by the Department under section 221 (24 P. S. § 2-221).

(iii) Progress in meeting the goals of student individualized education plans required under the Individuals with Disabilities Education Act (Public Law 91-230, 20 U.S.C. § 1400 et seq.).

(iv) Locally developed school district rubrics.

Any data used for a rating must be attributable to the specific classroom teacher who is being evaluated and rated.

(2) The following provisions in this subparagraph apply to teacher specific measures based on assessments and value-added assessment system data (Paragraphs (IV)(b)(1)(i) and (ii)).

(i) The portion of the Teacher Specific Rating related to assessments (Paragraph (IV)(b)(1)(i)) shall be calculated annually for a classroom teacher with available assessment data based upon a percentage of students who score proficient or advanced on the assessments. The Department or its designee will provide the performance level results for each student to the LEA. The LEA shall utilize the conversions in Table H below to rate the classroom teacher’s rating on a zero to three scale.

Table H: Conversion from % Scale to 0—3 Scale for Assessments Rating	
<i>% Students at Proficient or Advanced</i>	<i>0—3 Rating Scale</i>
95—100%	3.0
90—94.9%	2.5
80—89.9%	2.0
70—79.9%	1.5
65—69.9%	1.0
60—64.9%	0.5
Below 60%	0.0

(ii) Any score based upon student performance on assessments (Paragraph (IV)(b)(1)(i)) for a classroom teacher with available assessment data shall comprise not more than 5% of the classroom teacher’s Final Teacher Effectiveness Rating.

(iii) For the purposes of this section, the portion of the Teacher Specific Rating related to value-added assessment system data made available by the Department under section 221 of the Public School Code (24 P. S. § 2-221) (Paragraph (IV)(b)(1)(ii)) shall be known as PVAAS data.

(iv) Any PVAAS data score attributable to a classroom teacher shall be based on a rolling average of available assessment data during the most recent three consecutive school years.

(v) The Department or its designee will provide the initial 3 year average PVAAS data score to LEAs based on PVAAS data from school years 2013-2014, 2014-2015 and 2015-2016, and will provide the PVAAS rating every year thereafter for classroom teachers with three consecutive school years of PVAAS rating data.

(vi) Each LEA shall use the PVAAS data score provided by the Department or its designee and the conversions in Table I below to calculate a classroom teacher’s rating on the zero to three rating scale.

Table I: Conversion from 100 Points Scale to 0—3 Scale for PVAAS Rating	
<i>PVAAS Score</i>	<i>0—3 Scale*</i>
90.0 to 100	2.50—3.00
70.0 to 89.9	1.50—2.49
60.0 to 69.9	0.50—1.49
00.0 to 59.9	0.00—0.49

*The Department will publish the full conversion table on its website.

(vii) A score based upon available PVAAS data shall comprise not less than 10% of the classroom teacher’s Final Teacher Effectiveness Rating.

(viii) The Department or its designee will annually publish on the Department’s website an explanation for the PVAAS data based on the value-added assessment system data (Paragraph (IV)(b)(1)(ii)).

(ix) Whenever PVAAS data is unavailable for evaluation, other data may be substituted under the following conditions:

(A) In school year 2013-2014, an LEA shall use the rating from Subpart (A)(1) of the Teacher Observation and Practice Rating for a classroom teacher with PVAAS

data in place of the portion of the Teacher Specific Rating based on assessments and value-added assessment system data (Paragraphs (IV)(b)(2)(i) to (vii)) in Subparts (B)(3) and (C)(3) of the rating form.

(B) Starting in school year 2014-2015 and every school year thereafter, if three consecutive school years of PVAAS data are unavailable for the rating of a classroom teacher who provides direct instruction in subjects or grades subject to the assessments, an LEA shall use ratings developed through SLOs for data relating to "progress in meeting the goals of student individualized education plans required under the Individuals with Disabilities Education Act" (IEPs progress) if applicable, and locally developed school district rubrics (Paragraph (IV)(b)(3)).

(3) The following provisions in this subparagraph apply to teacher specific measures based on data related to IEPs progress and locally developed school district rubrics (Paragraphs (IV)(b)(1)(iii) and (iv)).

(i) The portion of the Teacher Specific Rating based on IEPs progress (Paragraph (IV)(b)(1)(iii)) shall be developed by the LEA and validated through an SLO pursuant to Paragraph (IV)(c)(2).

(ii) Any score attributable to a classroom teacher relating to IEP progress (Paragraph (IV)(b)(1)(iii)) and calculated through an SLO shall comprise no more than 5% of the classroom teacher's Final Teacher Effectiveness Rating.

(iii) The portion of the Teacher Specific Rating related to locally developed school district rubrics as listed in Paragraph (IV)(b)(1)(iv) may be based upon rubrics created by the LEA or an LEA may select a measure available through Paragraph (IV)(c) relating to Elective Data. An LEA shall utilize an SLO as set forth in Paragraph (IV)(c)(2) of this section to measure and validate a locally developed school district rubric.

(iv) Any score obtained from locally developed school district rubrics shall comprise not more than 5% of the Final Teacher Effectiveness Rating for a classroom teacher with PVAAS data as defined in Paragraph (IV)(b)(2)(iii).

(v) For a classroom teacher without any attributable assessment or PVAAS data (Paragraphs (IV)(b)(1)(i) and (ii)), or data related to IEP progress (Paragraph (IV)(b)(1)(iii)), the locally developed school district rubric or rubrics as described in Paragraphs (IV)(b)(1)(iv) and (b)(3)(iii) shall comprise no more than 15% of a classroom teacher's Final Teacher Effectiveness Rating.

(vi) For classroom teachers with no assessment data, no PVAAS data and no SLOs for IEP progress or locally developed school district rubrics in school year 2013-2014, an LEA shall use the rating from Subpart (A)(1) for total Teacher Observation and Practice Rating for a classroom teacher in Subparts (B)(3) and (C)(3) of the rating form.

(4) If a classroom teacher, who is working or has worked for other LEAs in the Commonwealth, is being considered for employment by a different LEA, the prospective employer may ask the teacher for written authorization to obtain the teacher's teacher specific data from a current or previous employer to provide for the continuity of the 3 year rolling average described in Paragraph (IV)(b)(2)(iv).

(c) *Elective data.*

(1) This third area will comprise 20% of the Final Teacher Effectiveness Rating. Elective Data shall consist

of measures of student achievement that are locally developed and selected by the LEA from a list approved by the Department and published in the Pennsylvania Bulletin by June 30 of each year, including, but not limited to, the following:

- (i) District-designed measures and examinations.
- (ii) Nationally recognized standardized tests.
- (iii) Industry certification examinations.
- (iv) Student projects pursuant to local requirements.
- (v) Student portfolios pursuant to local requirements.

(2) LEAs shall use an SLO to document the process to determine and validate the weight assigned to Elective Data measures that establish the Elective Rating. An SLO shall be used to record and verify quality assurance in validating measures of Elective Data, IEPs progress or locally developed school district rubrics on the zero-to-three-point scale and the assigned weight of a measure in the overall performance rating of a classroom teacher. The Department will provide direction, guidance and templates for LEAs to use SLOs in selecting, developing and applying Elective Data measures.

(3) All LEAs shall have SLOs in place for collecting Elective Data and ratings for school year 2014-2015. If Elective Data is unavailable in school year 2013-2014, an LEA shall use the rating in Subpart (A)(1) total Teacher Observation and Practice Rating of the form for a classroom teacher. The rating from Subpart (A)(1) in the form shall be used in Subparts (B)(4) and (C)(4) for the 20% of the classroom teacher's overall performance rating.

(4) If multiple Elective Data measures are used for one classroom teacher, the LEA shall determine the percentage weight given to each Elective Data measure.

(d) *Transfer option.* A classroom teacher who transfers from one building, as defined for building level data (Paragraph (IV)(a)(1)), to another within an LEA, shall have the option of using the Teacher Specific Rating in place of the Building Level Rating for the employee's evaluation in the new placement for two school years starting on the date when the classroom teacher begins the assignment in the new location. A classroom teacher who elects this option shall sign a statement of agreement giving the LEA permission to calculate the final rating using this method.

(e) *Administrative action based on available data.* Nothing in these standards of use for multiple measures of student performance, this section or this chapter shall be construed to limit or constrain the authority of the chief school administrator of an LEA to initiate and take action on a personnel matter, including dismissal of a classroom teacher, based on information and data available at the time of the action.

(V.) Recordkeeping: Maintenance of Rating Tool Data, Records and Forms

(a) *Records to be maintained.* It shall be the duty of the LEA to establish a permanent record system containing ratings for each employee within the LEA and copies of all her or his ratings for the year shall be transmitted to the employee upon her or his request; or if any rating during the year is unsatisfactory copy of same shall be transmitted to the employee concerned. No employee shall be dismissed for incompetency or unsatisfactory performance unless such rating records have been kept on file by the LEA.

(b) *Reporting of data restricted to aggregate results.* Pursuant to Section 1123(i) of the Public School Code

11-1123(i), LEAs shall provide to the Department the aggregate results of all classroom teacher evaluations.

(c) *Confidentiality.* Each LEA shall maintain records in accordance with Section 708(b)(7) of the act of February 14, 2008 (P. L. 6, No. 3), known as the “Right-to-Know Law,” (65 P. S. § 67.708(b)(7)), and Sections 221(a)(1) and 1123(p) of the Public School Code (24 P. S. §§ 2-221(a)(1) and 11-1123(p)).

(VI.) LEA Alternative Rating Tool.

The Department will review at the request of an LEA an alternative rating tool that has been approved by the LEA governing board. The Department may approve for a maximum period of not more than five years any alternative rating tool that meets or exceeds the measures of effectiveness established under 24 P. S. § 1123.

[Pa.B. Doc. No. 13-1115. Filed for public inspection June 21, 2013, 9:00 a.m.]

**Title 49—PROFESSIONAL
AND VOCATIONAL
STANDARDS**

STATE BOARD OF MEDICINE

[49 PA. CODE CH. 16]

Prescribing

The State Board of Medicine (Board) amends § 16.92 (relating to prescribing, administering and dispensing) to read as set forth in Annex A.

Effective Date

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

Statutory Authority

The final-form rulemaking is authorized under section 8 of the Medical Practice Act of 1985 (act) (63 P. S. § 422.8).

Background and Purpose

Poisoning is the leading cause of accidental death in the United States, and nine out of ten poisoning deaths are related to prescription drug overuse or abuse. See Warner M., et al. (2011). “Drug poisoning deaths in the United States, 1980—2008.” National Center for Health Statistics data brief, no 81. In this Commonwealth and 29 other states, poisoning is the leading cause of injury death. States must take steps to reverse this preventable cause of death.

While the Board already had in place a regulation to provide safeguards for physicians prescribing, administering and dispensing controlled substances, the Board failed to address and provide similar safeguards related to noncontrolled prescription drugs. Requiring the same safeguards for noncontrolled prescription drugs would be unnecessary and overly burdensome because most noncontrolled prescription drugs, such as antibiotics, are used very safely and are not drugs of abuse themselves or used in association with drugs of abuse. As more fully set forth in the proposed rulemaking published at 42 Pa.B. 1122 (March 3, 2012), the Board identified three noncontrolled drugs with sufficiently similar propensities for abuse or use in combination with drugs of abuse to

controlled substances, and for which there are numerous cases reported of fatal overdose, to warrant placing additional requirements on physicians who prescribe, administer and dispense these drugs.

Summary of Comments and Responses to Proposed Rule-making

Comments from the public

The proposed rulemaking was published at 42 Pa.B. 1122. The Board received comments from the Pennsylvania Pharmacists Association; JNESCO District Council 1, IUOE/AFL-CIO; the Pennsylvania Medical Society; and Kalogredis, Sansweet, Dearden and Burke, Ltd. (KSDB) on behalf of Troy Pharmacy. In addition, the Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC).

The Pennsylvania Pharmacists Association stated that it supported the proposed rulemaking as written. JNESCO, on behalf of 5,000 nurses and health care workers, wrote in support of the proposed rulemaking, noting that “it is vital to monitor those substances that have the potential to be improperly prescribed” and that health care workers have a “moral, ethical and legal obligation to ensure the safety and well-being of the patients we serve.” JNESCO noted that the Commonwealth would be the 17th state to further regulate these drugs. The Board appreciates the support of these groups.

The Pennsylvania Medical Society, representing about 17,000 physicians, residents and medical students, wrote in support of the proposed rulemaking and applauded the Board for tackling prescription drug abuse and diversion. The Pennsylvania Medical Society agreed that butalbital, carisoprodol and tramadol hydrochloride are medications with the potential for overuse or abuse with potential fatal side effects. The Pennsylvania Medical Society also noted with approval the Board’s emphasis on ensuring that the doctor-patient relationship is paramount prior to prescribing medications. The Board appreciates the support of the Pennsylvania Medical Society.

KSDB wrote in opposition to the proposed rulemaking. They viewed the proposed rulemaking as an attempt to classify the three drugs as controlled substances, which it viewed as the proper role of the Federal Drug Enforcement Administration (DEA), and stated that the Board was attempting to bypass the DEA drug review system for adding or deleting controlled substances.

This final-form rulemaking does not attempt to reclassify the three drugs. As noted by KSDB, at the Federal level, the DEA is involved in the classification of drugs as controlled substances. In fact, on December 12, 2011, the Administrator of the DEA issued a final rulemaking placing carisoprodol into Schedule IV on the Federal list of controlled substances. See 21 CFR 1308 (relating to schedules of controlled substances).

The Controlled Substance, Drug, Device and Cosmetic Act (Drug Act) (35 P. S. §§ 780-101—780-144) contains the listing of substances controlled in this Commonwealth and vests authority to control substances listed in the statutory schedules with the Secretary of Health. The Board is not seeking to amend the Drug Act. Rather, the Board is regulating the practice of medicine within this Commonwealth.

KSDB also suggested that the Board’s proposed rulemaking violated the Commerce Clause of the United States Constitution because it would “force non PA licensed medical practitioners to follow onerous ‘controlled