

# **COVID-19 SCHOOL CLOSURE IMPACTS ON TEACHER EVALUATIONS AND PAY FOR PERFORMANCE PLANS**

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## **INTRO**

The purpose of this document is to provide general information in response to questions that are currently and frequently arising regarding the impact of COVID-19 school closures on a school district's ability and responsibility to evaluate its teachers and implement its performance pay plan. Information is presented in FAQ format.

The Trust appreciates the following firms peer reviewing this document: DeConcini McDonald Yetwin & Lacy, Sims Mackin, and Hufford, Horstman, Mongini, Parnell & Tucker. Please contact the Trust or local counsel if your district requires legal advice.

**Frequently asked questions schools face related to this topic fall into these general categories<sup>1</sup>:**

- What, if anything, can be done to complete teacher observations and evaluations that were not completed prior to school closures?
- What happens if it is not possible to complete teacher evaluations?
- How does the inability to complete a teacher evaluation impact the school district's ability to non-renew probationary teachers or dismiss continuing teachers for reasons of inadequacy of classroom performance?
- How does the inability to complete teacher evaluations impact implementation of the school district's performance pay plan?

**The following Arizona statutes ([Appendix I: Relevant Portions of Arizona Statutes](#)) impact the decisions school districts are facing on this topic:**

- [A.R.S. 15-536](#), "Offer of Contract to probationary teacher; acceptance; notice to teacher of intention not to re-employ; definition"
- [A.R.S. 15-537](#), "Performance of certificated teachers; evaluation system; alternative performance evaluation cycle; confidentiality"
- [A.R.S. 15-538](#), "Preliminary notice of inadequacy of classroom performance; performance improvement plan; adoption of definition"
- [A.R.S. 15-538.01](#), "Offer of contract to continuing teacher; definitions"
- [A.R.S. 15-977](#), "Classroom site fund; definitions"

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<sup>1</sup> As of the date of this FAQ (April 13, 2020), there has been no emergency orders, guidance or other action taken by Arizona legislature, the Governor, the State Board of Education or the Department of Education to address the teacher evaluation process or performance pay. Therefore, each school district will need to individually determine how best to proceed.

## FAQ

### 1. What Governing Board Policies and Administrative Regulations relating to this topic impact the decisions school districts are facing due to school closures?

For school districts that use ASBA's Policy Services, the pertinent Governing Board Policies and Administrative Regulations are:

- Policy GCO, "Evaluation of Professional Staff Members"
- Administrative Regulation GCO-RA, "Evaluation of Professional Staff Members"
- Administrative Regulation GCO-RB, "Evaluation of Professional Staff Members" (Procedures for Appeal of Evaluation)

### 2. Are teacher contracts and/or meet and confer agreements relevant to this topic and the way the District handles teacher evaluations and performance pay during COVID-19 school closures?

It is likely that a school district's teacher contracts reference teacher evaluation and performance pay. In addition, some school districts may include evaluation and performance pay provisions in their meet and confer agreements. It is possible or likely that certain provisions in the teacher contracts and/or meet and confer agreements will not be possible to implement. However, it will benefit the Superintendent and Governing Board to review those documents prior to taking Board action, to be better able to address or answer teacher concerns.

### 3. What practical steps may school district administrators want to take relative to teacher evaluations and prior to bringing a recommendation to the Governing Board for possible Board action?

Prior to recommending specific Governing Board action, school administrators may want to conduct the following type of "audit":

- Review the District's Teacher Evaluation System to determine what portions of the System cannot be implemented due to the school closures.
- Categorize or identify the following:
  - Highly performing teachers that were being evaluated through the District's expedited review process.
  - Continuing teachers for whom the second classroom performance evaluation was waived.
  - Teachers who had zero, one, or two classroom observations prior to school closures.
  - Teachers whose evaluations were completed at the time of school closures.
  - Teachers whose evaluations were completed and had their written evaluations transmitted to them and had the opportunity to confer with their evaluator.

- Teachers who were going to be placed on an improvement plan but had not yet been so placed at the time of school closures.
  - Teachers who were issued preliminary notices of inadequacy of classroom performance prior to school closures who had not yet had their 45 instructional days to overcome the inadequacies.
  - Teachers who were issued preliminary notices of inadequacy of classroom performance prior to school closures who had their 45 instructional days to overcome the inadequacies and who did not overcome the charges of inadequacy.
  - The number of probationary teachers.
  - The number of continuing teachers.
- Analyze how teachers in the different categories will be impacted by the administration's proposal(s) regarding teacher evaluations for 2019-2020. (e.g. Who will benefit? Who will be unhappy? Impact upon teacher classifications? Impact upon Prop 301 monies? Impact upon future employment?)
  - Obtain teacher input regarding any proposal(s) to change the evaluation system (e.g. teacher committee, surveys).

**4. What practical steps may school district administrators want to take relative to its pay for performance plan (Prop 301 Plan) and prior to bringing a recommendation to the Governing Board for possible Board action?**

Prior to recommending specific Governing Board action, school administrators may want to:

- Review the District's Prop 301 Plan and determine what elements of the plan cannot be implemented due to the school closures because the data cannot be generated due to school closures.
- Analyze how teachers in the different categories will be impacted by the administration's proposal(s) regarding the Prop 301 Plan for 2019-2020. (e.g. Who will benefit? Who will be unhappy?).
- Obtain teacher input regarding any proposal(s) to change the Performance Pay Plan. (e.g. teacher committee, surveys).

**5. What options may Governing Boards want to consider regarding the school district's Teacher Evaluation System for 2019-2020?**

The options that an administrative team may wish to provide to the Governing Board could include:

1. Modify the teacher evaluation system for 2019-2020 school year. Examples include but are not limited to:
  - Waiving a second observation for all certificated staff members.
  - Doubling the first formal observation score completed in 2019-2020. In teacher evaluation systems where a formal observation is given a specific

numeric score, the District could choose to double that number for that component.

- Using this school year's District based student data (such as benchmark tests) for the data portion of the teacher evaluation system.
  - Using last year's AIMS scores for the data portion of the teacher evaluation system.
  - Creating a "better but not worse" system where teachers could either use last school year's evaluation scores or this year's evaluation scores based on which scores are higher.
2. Use last school year's evaluations in its entirety. Teachers who worked in the 2018-2019 school year would receive the evaluation score as last year. Districts would have to come up with a plan for teacher who did not work in the 2018-2019 school year.

[A.R.S. §15-537](#) requires that the Governing Board shall establish a system for teacher evaluations and shall obtain teacher input. Districts should consider obtaining teacher input using traditional methods (e.g. evaluation committees, surveys). At a minimum, teachers should be permitted to speak at a public meeting at which the Governing Board considers changes to the teacher evaluation system for 2019-2020.

#### 6. What options may Governing Boards want to consider relative to the school district's Prop 301 Plan for 2019-2020?

[A.R.S. §15-977\(C\)](#) states that the performance-based pay portion of Prop 201 Plans must have an affirmative vote of 70% of the teachers. This requirement has not been waived. School districts that modified the elements outlined in section (C) may have a different provision relating to teacher input/vote. Accordingly, if a District proposes an alternative Prop 301 Plan for the 2019-2020 school year, the District may have to obtain teacher approval. Governing Boards may wish to consider the following options:

1. Maintaining its existing Prop 301 Plan. A change to the District's teacher evaluation system may not necessitate a change to the Prop 301 Plan. For example, if a school district's Prop 301 Plan is based upon 80% evaluation score and 20% professional development, the District has likely not altered the Prop 301 Plan if it changes how evaluations scores are calculated.
2. Altering the existing Prop 301 Plan. This likely requires teacher and Board approval.
3. Distributing Prop 301 funds based on what a teacher received last school year, if the teacher was employed. This likely requires teacher and Board approval.
4. Awarding each teacher in the District the same amount of Prop 301 funds for the 2019-2020 school year. This likely requires teacher and Board approval.

7. What practical options exist relative to teachers who were on a performance improvement plan but who had not been issued a preliminary notice of inadequacy of classroom performance at the time of school closures?

The most logical option is to simply continue the improvement plan into the 2020-2021 school year.

8. What options exist relative to teachers who were on a performance improvement plan and were issued a preliminary notice of inadequacy of classroom performance but did not have the required 45 instructional days to demonstrate improved performance at the time of school closures?

In most, if not every case, it will not be possible for the evaluator to formally observe the teacher during the school closure to determine if the teacher has overcome the charges of inadequacy – in fact, the issue of whether there are “instructional days” for purposes of an improvement period is an open question. Further, teachers may not have access to the supports and resources described in their improvement plans.

In short, it will be very difficult to fairly and appropriately assess teacher improvement during school closures. Therefore, the most defensible option for school districts will be to continue the improvement period into the 2020-2021 school year. In this case, the teacher would not have to be provided a new 45 instructional day period to demonstrative improvement but could be provided the number of instructional days that were missed during the 2019-2020 school year during school closures.

There may be a case in which the teacher needs so much improvement, and the administration has a reasonable or compelling basis to question the teacher’s ability to make the needed improvement, that it makes sense to have a frank discussion with the teacher about the option to resign at the end of this school year, rather than continue the improvement period into 2020-2021. The advantage to the teacher in this case would be the opportunity to resign rather than face a possible recommendation for dismissal in August, September, or October 2020. Springtime is a perfect time for teachers to look for other teaching opportunities and a teacher may decide this is a better option than continuing the improvement period into the fall of next school year. School district administrators may want to consult legal counsel if they choose to pursue this option.

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## **APPENDIX I: RELEVANT PORTIONS OF ARIZONA STATUTES**

### **A.R.S. § 15-536. Offer of contract to probationary teacher; acceptance; notice to teacher of intention not to reemploy; definition**

A. The governing board shall offer a teaching contract for the next ensuing school year to each probationary teacher, unless the governing board, a member of the board acting on behalf of the board or the superintendent of the school district gives notice to the teacher of the board's intention not to offer a teaching contract or unless such teacher has been dismissed pursuant to section 15-538, 15-539, 15-541 or 15-544. \* \* \*

B. Notice of the board's intention not to reemploy the teacher shall be by delivering it personally to the teacher or by sending it by registered or certified mail to the teacher at the teacher's place of residence as recorded in the school district records. The notice shall incorporate a statement of reasons for not reemploying the teacher. If the reasons are charges of inadequacy of classroom performance, the board or its authorized representative shall give the teacher written preliminary notice of inadequacy, specifying the nature of the inadequacy with such particularity as to furnish the teacher an opportunity to correct the inadequacies and maintain adequate classroom performance as defined by the governing board pursuant to section 15-538, subsection C. The governing board may delegate to employees of the governing board the general authority to issue preliminary notices of inadequacy of classroom performance to teachers pursuant to this subsection without the need for prior approval of each notice by the governing board. In all cases in which an employee of the governing board issues a preliminary notice of inadequacy of classroom performance without prior approval by the governing board, the employee shall report its issuance to the governing board within ten school days. The written notice of intention not to reemploy shall include a copy of any evaluation pertinent to the charges made and filed with the board. \* \* \*

D. A certificated teacher who is currently a continuing teacher as defined in section 15-538.01 but who has been designated after an evaluation conducted according to the requirements pursuant to section 15-537 in the lowest performance classification for the current school year shall become a probationary teacher as defined in section 15-536 for the subsequent school year and shall remain a probationary teacher until that teacher's performance classification is designated in either of the two highest performance classifications.

E. For the purposes of this section, "probationary teacher" means a certificated teacher who is not a continuing teacher.

### **A.R.S. § 15-537. Performance of certificated teachers; evaluation system; alternative performance evaluation cycle; confidentiality**

A. The governing board shall establish a system to evaluate the performance of certificated teachers in the school district that results in at least one evaluation of each certificated teacher by a qualified evaluator each school year or as provided in subsection B of this section. The governing board shall establish a teacher performance evaluation system that is designed to

improve teacher performance and improve student achievement and that includes the use of quantitative data on the academic progress for all students, which shall account for between twenty percent and thirty-three percent of the evaluation outcomes. The evaluation system shall include four performance classifications, designated as highly effective, effective, developing and ineffective. The objectives of the teacher performance evaluation system are to improve instruction and maintain instructional strengths. The governing board shall involve its certificated teachers in the development and periodic evaluation of the teacher performance evaluation system.

B. A school district may use an alternative performance evaluation cycle pursuant to this subsection subject to the following:

1. The governing board shall adopt policies for an expedited performance review during the years in which a teacher is not undergoing a formal performance evaluation pursuant to subsection A of this section. The expedited performance review policies may classify teacher performance in categories that include teamwork and support for lower-performing teachers.
2. The governing board shall allow only teachers who have been evaluated and designated in the highest performance classification for at least three consecutive years by the same school district under the evaluation system established pursuant to subsection A of this section to participate in the alternative performance evaluation cycle.
3. If an expedited performance review under this subsection determines that the teacher is not in the highest performance classification, the teacher shall be removed from the alternative performance evaluation cycle and be reviewed under the evaluation system established pursuant to subsection A of this section.

C. The governing board shall adopt teacher evaluation policies in a public meeting. Before adopting teacher evaluation policies, the governing board shall provide opportunities for public discussion on the proposed policies. The policies shall describe:

1. Incentives for teachers in the highest performance classification, which may include multiyear contracts not to exceed three years. The policies shall specify that the offer and acceptance of a multiyear contract does not exclude that teacher from the application of section 15-538.01, 15-540, 15-541 or 15-549 and that the teacher may accept a multiyear contract offer or decline and accept a one-year contract.
2. Incentives for teachers in the two highest performance classifications to work at schools that are assigned a letter grade of D or F pursuant to section 15-241.
3. Protections for teachers who are transferred to schools that are assigned a letter grade of D or F pursuant to section 15-241.
4. Protections for teachers if the principal of the school is designated in the lowest performance classification.

D. The policies prescribed in subsection C of this section shall describe:

1. Performance improvement plans for teachers designated in the lowest performance classification.
2. Dismissal or nonrenewal procedures pursuant to section 15-536 or 15-539 for teachers who continue to be designated in the lowest performance classification. The procedures shall require that the school district issue the preliminary notice of inadequacy of classroom performance no later than the second consecutive year that the teacher is designated in one of the two lowest performance classifications unless the teacher is in the first or second year of employment with the school district or has been reassigned to teach a new subject or grade level for the preceding or current school year.

E. A teacher who has been employed by the school district for the major portion of three or more consecutive school years and who is currently designated in the lowest performance classification for two consecutive school years shall not be transferred as a teacher to another school in that school district unless the school district has issued a preliminary notice of inadequacy of classroom performance and approved a performance improvement plan for the teacher pursuant to section 15-539 and the governing board has approved the new placement as in the best interests of the pupils in the school. A teacher who continues to be designated in one of the two lowest performance classifications shall not be permitted to transfer to another school. A teacher shall not be transferred more than once pursuant to this subsection.

F. The governing board shall prescribe specific procedures for the teacher performance evaluation system, which shall include at least the following elements:

1. At least two actual classroom observations of the certificated teacher demonstrating teaching skills in a complete and uninterrupted lesson by the qualified evaluator. There shall be at least sixty calendar days between the first and last observations. The last observation may follow the issuance of a preliminary notice of inadequacy of classroom performance and be used to determine whether the teacher has corrected inadequacies and has demonstrated adequate classroom performance. An observation shall not be conducted within two instructional days of any scheduled period in which school is not in session for one week or more. Within ten business days after each observation, the qualified evaluator shall provide written feedback to the teacher.
2. Specific and reasonable plans for the improvement of teacher performance as provided in subsection I of this section.
3. Appeal procedures for teachers who disagree with the evaluation of their performance, if the evaluation is for use as criteria for establishing compensation.
4. Training requirements for qualified evaluators.
5. A plan for the appropriate use of quantitative data of student academic progress in evaluations of all certificated teachers. The plan may make distinctions between certificated teachers who provide direct instruction to students and certificated teachers who do not provide direct instruction to students. The plan may include data for multiple school years and may



limit the use of data for certificated teachers who have taught for less than two complete school years.

G. The governing board may waive the requirement of a second classroom observation for a continuing teacher whose teaching performance based on the first classroom observation places the teacher in one of the two highest performance classifications for the current school year, unless the teacher requests a second observation.

H. The results of an annual evaluation conducted as provided in this section shall be in writing or provided in an electronic format to the certificated teacher, and a copy shall be transmitted or provided in an electronic format to the certificated teacher within five days after completion of the evaluation. The certificated teacher may initiate a written reaction or response to the evaluation.

I. Each evaluation shall include recommendations as to areas of improvement in the performance of the certificated teacher if the performance of the teacher warrants improvement. After transmittal of an evaluation, the qualified evaluator or another board designee shall confer with the teacher to make specific recommendations as to areas of improvement in the teacher's performance. The qualified evaluator or other board designee shall provide professional development opportunities for the certificated teacher to improve performance and follow up with the teacher after a reasonable period of time for the purpose of ascertaining that the teacher is demonstrating adequate performance. \* \* \*

**A.R.S. § 15-538. Preliminary notice of inadequacy of classroom performance; performance improvement plan; adoption of definition**

A. The governing board of any school district shall give any certificated teacher notice of intention to dismiss or not to reemploy if such intention is based on charges of inadequacy of classroom performance. The governing board or its authorized representative, at least forty-five instructional days before such notice, shall give the teacher written preliminary notice of inadequacy of classroom performance, specifying the nature thereof with such particularity as to furnish the teacher an opportunity to correct inadequacies and maintain adequate classroom performance as defined by the governing board pursuant to section 15-538, subsection C. A notice of the governing board's intention to dismiss or not to reemploy for inadequacy of classroom performance shall not be issued until the district has completed an observation at the conclusion of a performance improvement plan issued pursuant to subsection B. \* \* \* The written notice of intention to dismiss or not to reemploy shall include a copy of any valid evaluation pertinent to the charges made.

B. The preliminary notice of inadequacy of classroom performance shall be accompanied by a performance improvement plan designed to help the teacher correct inadequacies and demonstrate adequate classroom performance.

C. The governing board shall adopt a definition of inadequacy of classroom performance that aligns with the performance classifications. The governing board's definition may set standards that exceed the standards of the performance classifications and applies to notices issued pursuant to sections 15-536 and 15-537 and this section. The governing board shall develop

its definition of inadequacy of classroom performance in consultation with its certificated teachers. The consultation may be accomplished by holding a public hearing, forming an advisory committee or providing teachers the opportunity to respond to a proposed definition.

**A.R.S. § 15-538.01. Offer of contract to continuing teacher; definition**

A. The governing board shall offer to each continuing teacher a contract renewal for the next ensuing school year unless the governing board, a member of the board acting on behalf of the board or the superintendent of the school district gives notice to the teacher of the board's intent not to offer a contract and to dismiss the teacher as provided in section 15-539.

\* \* \*

C. A certificated teacher who is currently a continuing teacher as defined in this section but who has been designated after an evaluation conducted according to the requirements pursuant to section 15-537 in the lowest performance classification for the current school year shall become a probationary teacher as defined in section 15-536 for the subsequent school year and shall remain a probationary teacher until that teacher's performance classification is designated in either of the two highest performance classifications.

D. For the purposes of this section, "continuing teacher" means a certificated teacher who has been and is currently employed by the school district for the major portion of three consecutive school years and who has not been designated in the lowest performance classification for the previous school year or who has not regained continuing status after being designated as a probationary teacher pursuant to subsection C of this section.

**A.R.S. § 15-977. Classroom site fund; definitions**

A. The classroom site fund is established consisting of monies transferred to the fund pursuant to section 37-521, subsection B, section 42-5029, subsection E, paragraph 10 and section 42-5029.02, subsection A. The department of education shall administer the fund. School districts and charter schools may not supplant existing school site funding with revenues from the fund. All monies distributed from the fund are intended for use at the school site. Each school district or charter school shall allocate forty percent of the monies for teacher compensation increases based on performance and employment related expenses, twenty percent of the monies for teacher base salary increases and employment related expenses and forty percent of the monies for maintenance and operation purposes as prescribed in subsection H of this section. Teacher compensation increases based on performance or teacher base salary increases distributed pursuant to this subsection shall supplement, and not supplant, teacher compensation monies from any other sources. The school district or charter school shall notify each school principal of the amount available to the school by April 15 of each year. The district or charter school shall request from the school's principal each school's priority for the allocation of the funds available to the school for each program listed under subsection H of this section. The amount budgeted by the school district or charter school pursuant to this section shall not be included in the allowable budget balance carryforward calculated pursuant to section 15-943.01.

B. A school district governing board must adopt a performance based compensation system at a public hearing to allocate funding from the classroom site fund pursuant to subsection A of this section. Individual teacher performance shall be a component of the school district's portion of the forty percent allocation for teacher compensation based on performance and employment related expenses.

C. A school district governing board shall vote on a performance based compensation system that includes the following elements:

1. School district performance and school performance.
2. Individual teacher performance. The individual teacher performance component shall account for thirty-three percent of the forty percent allocation for teacher compensation based on performance and employment related expenses.
3. Measures of academic progress toward the academic standards adopted by the state board of education.
4. Other measures of academic progress.
5. Dropout or graduation rates.
6. Attendance rates.
7. Ratings of school quality by parents.
8. Ratings of school quality by students.
9. The input of teachers and administrators.
10. Approval of the performance based compensation system based on an affirmative vote of at least seventy percent of the teachers eligible to participate in the performance based compensation system.
11. An appeals process for teachers who have been denied performance based compensation.
12. Regular evaluation for effectiveness.

D. A performance based compensation system shall include teacher professional development programs that are aligned with the elements of the performance based compensation system.

E. A school district governing board may modify the elements contained in subsection C of this section and consider additional elements when adopting a performance based compensation system. A school district governing board shall adopt any modifications or additional elements and specify the criteria used at a public hearing. \* \* \*

H. Monies distributed from the classroom site fund shall be spent for the following maintenance and operation purposes:

1. Class size reduction.
2. Teacher compensation increases.
3. Assessment intervention programs.
4. Teacher development.
5. Dropout prevention programs.
6. Teacher liability insurance premiums.

I. The district governing board or charter school shall allocate the classroom site fund monies to include, if possible, the priorities identified by the principals of the schools while ensuring that the monies maximize classroom opportunities and conform to the authorized expenditures identified in subsection A of this section. \* \* \*