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# LEGAL ISSUES IN TEACHER EVALUATION LEGISLATION: A STUDY OF STATE STATUTORY PROVISIONS

*Carole A. Veir\* and David L. Dagley\*\**

## I. INTRODUCTION

Since the beginning of the education reform movement in the 1980s, the dominant theme of nearly every professional journal and research report on school reform has been the topic of accountability in education. An example of this trend is illustrated in a 1983 document, *A Nation at Risk: The Imperative for Educational Reform*,<sup>1</sup> from the National Commission on Excellence in Education. Specifically, this document addressed the arena of accountability, focusing on the need for accountability on educator's actions. This report's information was the impetus that led state-level policymakers to create reforms for improved teacher evaluation.

Throughout the nation, legislative reformers have increasingly attempted to hold educators accountable. In the last two decades, a recurring theme in the reform movement has been the manner in which school personnel are evaluated. The theme was initially developed in *A Nation at Risk*. This report then provided the cornerstone for other reform-oriented reports from various interest groups such as Task Force on Education

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1. The Natl. Commn. on Excellence in Educ., *A Nation at Risk: The Imperative for Educational Reform*. (The Natl. Commn. on Excellence in Educ. 1983).

Each of these aspects of teacher evaluation presents not only a problem for the teachers and administrators but also for school boards and legislatures. They are given the great task of determining legally viable methods of evaluating teachers, taking appropriate and reasonable steps to improve teaching performance, and ultimately moving toward termination based on ineffective classroom performance. Additionally, to meet the burden of proof, each evaluation must be based upon sound procedures and documentation. The means for providing this, however, is not always legislatively sound. Presently there is no model statute from which a legally and legislatively sound evaluation system can be developed.

In most states, legislatures and state school boards require that local school systems develop teacher evaluation systems. These evaluation systems give the school a means for removing poor or problematic teachers. However, due to regular incongruencies in the legislation—its language, structure, procedures, and requirements—the process often cannot be carried out.

This study examines the impact of state statutes on teacher evaluations. Among other things, this paper provides an analysis of teacher legislation, focusing on and analyzing the accountability of teacher evaluation systems. This paper also demonstrates the significant variations among state statutory provisions. This work ultimately links legislative policy issues to legal issues in teacher termination based on these evaluation statutes.

## II. METHOD

To ensure that all evaluation statutes were located, four methods were used: (1) Computer searches were done using both Lexis and Westlaw; (2) Each individual state code was then removed from the shelves of a law library and checked by hand. This process was repeated two times with two different researchers; (3) For each state, a database was derived from analyzing the 50 state statutes. At this point, the Lexis and Westlaw citations were authenticated by checking against the published versions and the topical index for each state; and (4) Finally, the state department of education in each state was called, and the appropriate contact person was asked to send a copy of their legislation.

## III. RESULTS OF STATUTORY ANALYSIS

Through this research, it was determined that forty-two states (70%) have statutory language regulating the evaluation of classroom teachers. Seven of the forty-two states require evaluation of teachers. However, the statutes are located within other school related provisions and do not necessarily have separate subtitles or sections that directly address teacher evaluation. For example, in Michigan and Minnesota the teacher evaluation language is found under the Teacher Tenure Statute.<sup>16</sup> In Iowa, teacher evaluation is listed under School District Directors Powers and Duties.<sup>17</sup> In Maryland, teacher evaluation is under the Appointment, Suspension, and Dismissal subtitle.<sup>18</sup> Finally, in Wisconsin the statute is found under School District Standards.<sup>19</sup>

*A. Mandatory or Discretionary Models*

One of the primary issues with teacher evaluation is whether the state evaluation model is mandatory or discretionary for school districts. In the early days of the teacher evaluation movement, thirty-eight states enacted state-level policies for evaluation, with nearly half of these states developing state evaluation systems and mandating their use at the local level.<sup>20</sup> Presently there are six states in which the statute clearly gives a statutorily developed state system.<sup>21</sup> In three of these states, Hawaii, Pennsylvania, and West Virginia,<sup>22</sup> the teacher evaluation system described in statute is mandatory. In Maine and Texas, the use of the statutorily prescribed system is discretionary.<sup>23</sup>

Additionally, in Tennessee, districts must use the state-developed evaluation format and content, but the district may

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16. Mich. Stat. Ann. § 15.1983, §15.1993 (LEXIS L. Publg. 1996), Minn. Stat. Ann. § 122A.40 (West 2000 & Supp. 2001).

17. Iowa Code Ann. §§ 272.33, 279.23A, 279.14 (West 1999 & Supp. 2000).

18. Md. Educ. Code Ann. § 6-202 (1999).

19. Wis. Stat. Ann. § 121.02 (West 1999 & Supp. 2000).

20. Furtwengler, *supra* n. 14.

21. The six states are Hawaii, Maine, Pennsylvania, Tennessee, Texas, and West Virginia.

22. Haw. Rev. Stat. § 302A-638 (2000); 24 Pa. Consol. Stat. § 11-1123 (West 1992 & Supp. 2001); W. Va. Code § 18A-2-12 (1997).

23. 20 Me. Rev. Stat. Ann. § 13802 (1993), Tex. Educ. Code Ann. §§ 21.251, 21.352 (1999).

add to the prescribed system.<sup>24</sup> In Texas, the use of the state developed and adopted appraisal system is recommended.<sup>25</sup> Several statutes use a combination of the statutorily imposed criteria and local instrument development.<sup>26</sup> Ohio uses statutorily-required procedures in combination with a locally-developed instrument.<sup>27</sup> Thirty-six state statutes either require or allow the use of a locally developed evaluation systems for teacher evaluation.<sup>28</sup> By allowing these options, the state leaves both the process (evaluation procedures) and the product (the evaluation instrument) within the discretion of a local school board to develop and implement. Although beyond the scope of this present discussion, this may be problematic for a local district with limited resources. Oftentimes, these schools do not have skilled personnel or the tools necessary to develop an appropriate and legal system.

### *B. Purpose and Use of Teacher Evaluation*

The use of locally-developed evaluation instruments is much more common compared to the earlier formation of evaluation instruments for teachers. The Furtwengler study identified twenty-six states in which specific criteria for teacher evaluation were delineated.<sup>29</sup> Currently, fourteen statutes enumerate thirty-one different criteria for teacher evaluation.<sup>30</sup> Six statutes require that a portion of the evaluation criteria focus on student performance or progress.<sup>31</sup> Five statutes require the focus of the evaluation to be partially on instructional techniques and methodologies.<sup>32</sup> Five statutes require

24. Tenn. Code Ann. § 49-5-5204, 49-5-5205 (2000).

25. Tex. Educ. Code Ann. §§ 21.251, 21.352.

26. Examples include New Mexico, North Carolina, and Washington.

27. Ohio Rev. Code Ann. §3319.111 (West 2001).

28. The thirty-six states are Alaska, Arizona, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, Washington, Wisconsin, and Wyoming.

29. Furtwengler, n. 14.

30. The fourteen states are California, Colorado, Connecticut, Florida, Hawaii, Illinois, Kansas, Maryland, Missouri, North Carolina, Pennsylvania, Texas, Utah, and Washington.

31. States that use student achievement in evaluation are California, Colorado, Florida, Massachusetts, North Carolina, and Texas.

32. States that use instructional techniques in evaluation are California, Florida, Illinois, Pennsylvania, and Washington.

that teachers have the ability to maintain appropriate discipline, control, and classroom management.<sup>33</sup> Three statutes require that the teachers' knowledge of subject matter be measured.<sup>34</sup>

The *purpose* is the *reason* stated in the legislation for performing the teacher evaluation. Thirty-nine reasons are provided in eighteen of the forty-two statutes as *purposes* for performing teacher evaluations.<sup>35</sup> Fourteen statutes provide formative statements of purpose<sup>36</sup> such as professional growth,<sup>37</sup> constructive assistance for teachers,<sup>38</sup> improvement of instruction,<sup>39</sup> improvement of performance,<sup>40</sup> curriculum enhancement,<sup>41</sup> identification of behaviors that contribute to student progress,<sup>42</sup> and improvement of educational services.<sup>43</sup> Only the Ohio, Oklahoma, and Pennsylvania statutes indicate a summative purpose. In these states, the purpose of the evaluation system is to aid in the dismissal of poor teachers.<sup>44</sup> In one particular state, Colorado, both summative and formative purposes are listed in the statutes, but only minimal guidance is given for the administrator or school board to follow.<sup>45</sup>

The *use* of the teacher evaluation is defined as how the results of the evaluation are to be used. There are eighteen states with statutes in which the prescribed *use* of the evaluation can

33. States that use student discipline and/or classroom management in evaluation are Florida, Washington, Texas, Illinois, and Kansas.

34. States that measure teachers' knowledge of subject matter are Florida, Illinois, and Washington.

35. The statutes delineating purposes for doing teacher evaluation are Alaska, Arizona, Colorado, Florida, Illinois, Kansas, Kentucky, Missouri, Nevada, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Utah, Washington, West Virginia.

36. The states providing formative statements of purpose are Alaska, Arizona, Florida, Illinois, Kansas, Kentucky, Missouri, Nevada, New Jersey, Oregon, South Carolina, Utah, Washington, and West Virginia.

37. Ore. Rev. Stat. § 342.850 (1999); Wash. Rev. Code § 28A.405.100 (West 2000); Utah Code Ann. § 53A-10-101 (2001).

38. Nev. Rev. Stat. § 391.3125 (West 1999).

39. Colo. Rev. Stat. § 22-9-106 (2000).

40. Alaska Stat. § 14-20-149 (LEXIS L. Publg. 2000), Ariz. Rev. Stat. § 15-537 (2000), Ky. Rev. Stat. Ann. § 156-101 (2000), W. Va. Code § 18A-2-12 (2000).

41. Colo. Rev. Stat. Ann. § 22-9-106.

42. Utah Code Ann. § 53A-10-101.

43. 105 Ill. Comp. Stat. § 5/24A-1 (2001).

44. Ohio Rev. Code Ann. § 3319.111; Okla. Stat. Ann. tit. 70 § 6-101 (West 2000); 24 Pa. Consol. Stat. § 11-1123.

45. Colo. Rev. Stat. § 22-9-106.

be identified.<sup>46</sup> In California, the evaluation is described in the legislative section on resignations, dismissals, and leaves of absence within the context of unsatisfactory performance. That section dictates that when notice is given to employees, that notice “shall include the evaluation, if applicable.”<sup>47</sup>

### *C. Formative versus Summative Evaluation*

In contrast to the stated purpose of the evaluation system, the stated use of the teacher evaluation system is invariably for summative purposes. In defining the two different types of assessment, the purposes of these different techniques take on a perspective involved with the purpose and use statements. Formative evaluation, as used in the arena of teacher evaluation, is the process of analyzing the strengths and weaknesses of the educator. These evaluations provide opportunities for both the teacher and the administrator to reflect on the educator’s performance, to obtain feedback, and to provide for the professional development of the educator. These evaluations provide the teacher and the administrator with on-going input and data regarding the improvements taken toward targeted problem areas. During this phase of the evaluation cycle, the teacher and administrator determine the areas that need improvement, the necessary steps and standards of improvement, the desired outcomes, how the improvement is to be measured, who is to monitor and document the improvement, and in what timeframe the improvement is to take place.

In contrast to the formative evaluation, the summative phase of the cycle shows whether the data, the documentation, and the observations demonstrate the improvements and changes sought. During this summative phase the administrators make decisions, based on the data, regarding the teacher’s employment status. The dominant statutory use of the evaluation system is for dismissal of problem teachers. This summa-

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46. The states in which the use of evaluation can be identified are Alaska, Arizona, Arkansas, Colorado, Florida, Idaho, Illinois, Louisiana, Massachusetts, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, South Carolina, Virginia, Washington, and West Virginia.

47. Cal. Educ. Code § 44660 (West 2000).

tive use is found in seven of the current statutes.<sup>48</sup> The use of the evaluation system is non-renewable in five states.<sup>49</sup>

Other uses of these evaluation systems delineated by statutes include preparation for hearings,<sup>50</sup> production of evidence,<sup>51</sup> discovery,<sup>52</sup> demotion,<sup>53</sup> immediate discharge,<sup>54</sup> production of exhibits,<sup>55</sup> and in one state's legislation: tenure.<sup>56</sup> North Carolina is the only state whose statute mentions that evaluation systems are to be used as a plan of action for improvements.<sup>57</sup> In California, the evaluation's use is found in the article on resignations, dismissals, and leaves of absence based on unsatisfactory performance. According to the California statute, these cases require the teacher receive written notice and a copy of the evaluation.<sup>58</sup>

Ten of the eighteen states' statutes list both a *purpose* and a *use* for teacher evaluations.<sup>59</sup> In the other eight states, the statutes describe either a purpose or a use but not both. In three of the ten state statutes describing both purpose and use, the use of the evaluation contains some language that is summative rather than formative in nature.<sup>60</sup> Florida's evaluation is to be used for review of the employment contract.<sup>61</sup> In South Carolina the information is to be used in both an action plan to improve employees' performance and in dismissal and demotion actions.<sup>62</sup>

48. Alaska Stat. § 14-20-149; Colo. Rev. Stat. Ann. § 22-9-106; 105 Ill. Comp. Stat. § 5/24A-5 (2001); Mass. Gen. Laws Ann. ch. 71, § 38 (West 2001); Nev. Rev. Stat. Ann. § 391.3125; N.C. Gen. Stat. § 115C-333 (2000); W. Va. Code § 18A-2-12.

49. Ariz. Rev. Stat. § 15-537; Idaho Code § 33-514 (2000); N.D. Cent. Code § 15-47-26 (1999); Va. Code Ann. § 22-1-303 (2000); Wash. Rev. Code § 28A.405.100.

50. Ariz. Rev. Stat. § 15-537.

51. Ariz. Rev. Stat. § 15-537; La. Stat. Ann. § 17:391.5.

52. *Id.*

53. Mass. Gen. Laws, Ann. ch. 71, § 38.

54. Idaho Code § 33-514.

55. La. Stat. Ann. § 17:391.5.

56. N.J. Stat. Ann. § 18A:27-3.1 (2001).

57. N.C. Gen. Stat. § 115C-333.

58. Cal. Ed. Code § 44660.

59. States listing both a purpose and use are Alaska, Arizona, Colorado, Florida, Illinois, Nevada, New Jersey, South Carolina, Washington, West Virginia.

60. Fla. Stat. § 231.29 (2000); N.C. Gen. Stat. § 115C-333; S.C. Code Ann. § 59-26-10.

61. Fla. Stat. § 231.29.

62. S.C. Code Ann. § 59-26-10 (2000).

In many states, the given purposes and uses of the teacher evaluation are not consistent. The legislation states one or more reasons for conducting the evaluation that are not parallel with what the data or results are to be used for. This lack of consistency may pose problems for those attempting to justify actions taken based on the evaluation.

#### *D. Improving and Remediating Teachers*

Of the forty-two states addressing evaluation of teaching, fifteen require a written document that addresses deficiencies or weaknesses identified in the evaluation process.<sup>63</sup> Another eleven statutes address the need for an improvement plan without specifying that the plan be reduced to writing.<sup>64</sup> One additional statute requires some form of teacher assistance but does not specify how this is assistance to be provided.<sup>65</sup>

In eight of the twelve state statutes that require a written improvement plan, the statute specifies a use for the improvement plan.<sup>66</sup> Most state statutes are internally inconsistent. These statutes generally state that the use of the plan is for summative purposes, and the purpose of the plan is formative. Only two states, Indiana and Kentucky, suggest formative uses for the plan.<sup>67</sup> Some states give mixed messages relating to uses of the plans. Such mixed messages indicate that the plans are to be used for both summative and formative uses. For example, West Virginia states that the plans are to be used for "improvements, dismissal, and increased professional growth."<sup>68</sup> Similarly, Colorado specifies that the plans be used

63. The fifteen states with such statutory provisions are Alaska, Arizona, Colorado, Illinois, Louisiana, Michigan, Nebraska, Nevada, Ohio, Oregon, South Carolina, Tennessee, Utah, Washington, and West Virginia.

64. The eleven states with such statutory provisions are Arkansas, Florida, Georgia, Idaho, Indiana, Kentucky, Massachusetts, New Jersey, North Carolina, Oklahoma, and Texas.

65. Neb. Rev. Stat. § 79-828 (2001).

66. The twelve states with such statutory provisions are Alaska, Arizona, Colorado, Illinois, Louisiana, Nevada, Ohio, Oregon, Tennessee, Utah, Washington, and West Virginia.

67. Ind. Code Ann. § 20-6.1-9-1 (LEXIS L. Publg. 2000); Ky. Rev. Stat. Ann. § 156.101 (2001).

68. W. Va. Code § 18A-3A-3 (2000).

for "improvement, dismissal, correction of deficiencies, and to recommend for future improvement."<sup>69</sup>

Only five statutes contain specific language concerning the three purpose areas of the evaluation, the use of the evaluation, and the use of the improvement plan.<sup>70</sup> Often the three purpose areas are internally inconsistent and contradictory. Such internal inconsistencies offer little opportunity for administrators and school boards to interpret the meaning, purpose, or intent of the statute. In Alaska, for example, none of the three statements conform to each other.<sup>71</sup> In Arizona, Colorado, Illinois, and Oklahoma, two of the three statements conform.<sup>72</sup>

Six statutes have listed specific content for the remediation or improvement plans.<sup>73</sup> Four statutes requiring written improvement plans also have statutorily enumerated content for those plans.<sup>74</sup> Provisions required in the plans are necessary improvements,<sup>75</sup> assistance, support,<sup>76</sup> recommendations, available resources and training during the certification process,<sup>77</sup> specific steps needed for improvement,<sup>78</sup> the expected timeline,<sup>79</sup> and actions to be taken if no improvement is made.<sup>80</sup> Illinois language requires a "plan designed to correct deficiencies deemed remediable."<sup>81</sup>

Among the states that *do not require a written improvement plan*, Indiana requires that an improvement plan must provide for improvement of performance, growth, development, and periodic assessment.<sup>82</sup> Another state, Alaska, does not require a written plan but has required that the contents of the remedia-

69. Colo. Rev. Stat. § 22-9-106 (2000).

70. States listing all three areas are Alaska, Arizona, Colorado, Illinois, and Oklahoma.

71. Alaska Stat. § 14-20-149.

72. In Arizona, Colorado, Illinois, and Oklahoma two of the three statements are conforming.

73. Six statute have listed specific content for the remediation or improvement plans to be developed.

74. Colo. Rev. Stat. § 22-9-106; 105 Ill. Comp. Stat. § 5/24A-1; La. Rev. Stat. § 17:391.5; W.Va. Code § 18A-3A-3.

75. Colo. Rev. Stat. § 22-9-106; W.Va. Code § 18A-3A-3.

76. La. Rev. State. § 17:391.5; W.Va. Code § 18A-3A-3.

77. Colo. Rev. Stat. § 22-9-106; W.Va. Code § 18A-3A-3.

78. La. Rev. Stat. § 17:391.5.

79. *Id.*

80. *Id.*

81. 105 Ill. Comp. Stat. § 5/24A.1.

82. Ind. Code Ann. § 20-6.1-9-1.

tion plan be clear. The plan must further give specific performance expectations indicating ways in which performance can be improved. The remediation plan must include at least two observations.<sup>83</sup>

### *E. Use of the Improvement Plan*

A related area of improvement plans is the *use of the plan*. There are two aspects requiring exploration. First, if evaluation criteria are to be valid, observable, and job related, the criteria used in the improvement plan must be the same.<sup>84</sup> Growth and improvement will therefore be based on the appropriate criteria. In the various statutes requiring improvement plans, however, there are no provisions that provide for follow up to determine whether or not the educator has improved.

The *use of the plan*, then, by the nature of the document itself, is for improvement and remediation. Sixteen states have listed eighteen reasons for the use of the improvement plan.<sup>85</sup> The two reasons most often cited for the use of the plan are improvement, listed by seven states<sup>86</sup>, and dismissal, listed by six statutes<sup>87</sup>. Three states listing uses for the improvement plan do not require an improvement plan, written or otherwise.<sup>88</sup> State statutes are not required to address either improvement or remediation for teachers based on the results of an evaluation. In addition, there is no differentiation made in the state statutes between an improvement and a remediation plan. This lack of differentiation or definition in language further confuses districts as they attempt to follow legislative intent.

83. Alaska Stat. § 14.20.149.

84. Joseph Beckham, *Ten Judicial "Commandments" for Legally Sound Teacher Evaluation*, 117 W. Educ. L. Rep. 435 (1997). See also Ronald Boyd, *Improving Teacher Evaluations*, ED315431 (1989)(available at [http://www.ed.gov/databases/ERIC\\_digests/ed315431](http://www.ed.gov/databases/ERIC_digests/ed315431)); Donovan Peterson, *Legal and Ethical Issues of Teacher Evaluation: A Research Based Approach*, 7 Educational Research Q. 6 (Winter 1983).

85. Sixteen states have listed 18 reasons for the use of the improvement plan.

86. The seven states are Alaska, Arizona, Colorado, Indiana, North Carolina, Tennessee, and West Virginia.

87. Dismissal is listed by Arkansas, Colorado, Illinois, North Carolina, Massachusetts, and West Virginia.

88. The three statutes are Hawaii, Indiana, and Ohio.

### *F. Timelines for Improvement*

Eight of the statutes have timelines for improving performance.<sup>89</sup> These timelines vary from state to state. In Alaska, the timeline is range from a period of not less than 90 workdays and not more than 180 workdays while in Louisiana the timeline must not exceed two years.<sup>90</sup> Arizona, Colorado, and West Virginia allow for timelines that are reasonable.<sup>91</sup> The most statutorily proscriptive timelines are in Illinois, where the timeline is dependent upon the evaluation ratings and teacher status.<sup>92</sup>

## IV. CONCLUSION

Criteria for evaluating teachers required by various state statutes differ significantly. A tenet of teacher evaluation is that criteria used to measure teachers must be valid and observable, and the behaviors must be linked to teacher performance.<sup>93</sup> Consider, therefore, the criteria for judging a teacher's effectiveness offered by the legislatures of several states. For instance, Washington requires that the criteria for evaluation be developed in the categories of "the handling of student discipline and attendance problems; and interest in teaching pupils and knowledge of subject matter."<sup>94</sup> Florida's language demands that teachers show the "ability to establish and maintain positive collaborative relationships with students' families to increase student's achievement."<sup>95</sup> Hawaii expects both "efficiency and ability."<sup>96</sup> Kansas asks that "consideration should be given to the following personal qualities and attributes; efficiency, personal qualities, professional deportment, ability, results and performance."<sup>97</sup> Pennsylvania specifies that the "em-

89. Statutes with timelines are Alaska, Arkansas, Colorado, Illinois, Louisiana, Nevada, Washington, and West Virginia.

90. Alaska Stat. § 14.20.149; La. Rev. Stat. § 17:391.5.

91. Ariz. Rev. Stat. § 15-537; Colo. Rev. Stat. § 22-9-106; W. Va. Code § 18A-2-12.

92. 105 Ill. Comp. Stat. § 5/24A.1.

93. Beckham, *supra* n. 89. See also Boyd, *supra* n. 89; Peterson, *supra* n. 89.

94. Wash. Rev. Code § 28A.405.100.

95. Fla. Stat. § 231.29 (2001).

96. Haw. Rev. Stat. § 302A-638.

97. Kan. Stat. Ann. § 72-9004 (2001).

ployee shall be rated by an approved rating system which shall give due consideration to personality, preparation, techniques, and pupil reaction."<sup>98</sup>

Statutes vary widely in the direction they give to local school districts regarding teacher evaluation. Many statutes contain internal inconsistency and mixed guidance that districts are expected to apply objectively. Language in many statutes produces ambiguities. Statutes, to differing degrees, contain statements of purpose for the evaluation, statements of use of the evaluation, and statements on the use of documents developed in the evaluation process. This formulation conforms to the analysis of evaluation policies used by Furtwengler.<sup>99</sup>

Unfortunately, this internal inconsistency can be seen in a number of statutes. This is especially true in comparing *purpose* statements with *use* statements. In other words, while these purpose statements almost always address formative evaluation, the use statements almost always address summative evaluation. This internal inconsistency may lead to litigation when teachers contest punishment or dismissal. These problems may conceivably be sufficient to persuade a judge to interrupt the termination or other proposed action against a problem teacher. A judge could also order that the termination be changed to a remediation process based on the internal inconsistencies found within the state statute. The wide variation of criteria and the procedural due process differences seen throughout the states may lead to claims of equal protection violations. State legislation that is clearly and consistently written would provide protection for both school districts and school personnel and assist in the adjudication of issues brought through the implementation of this important educational function.

## V. RECOMMENDATIONS

The general purpose of a teacher evaluation is personal teaching improvement and to provide a means of recognizing strengths and weaknesses. Administrators then become accountable for improving the teaching process. It would follow that legislation must provide direction to policy makers and

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98. 24 Pa. Consol. Stat. § 11-1123.

99. *See supra* n. 14.

administrators in pursuing this goal. As can be seen through this analysis, much of the current legislation aimed at making teachers and schools accountable does not provide clear language that specifies the processes or products to be used to reach this goal. Policy makers and administrators cannot follow the intent of the law without a clear understanding of legislative expectations. From this analysis, the following recommendations for future legislation and policy development are provided:

1. Assure that within state legislation the language and terms are consistent.

2. Develop state legislation in which the stated *purposes* for conducting teacher evaluations and the *uses* for the teacher evaluation are consistent with each other. Inconsistency in these areas sends mixed messages to policy makers, administrators, and teachers. Not only should the legislation describe the purposes for conducting teacher evaluations, it should also link those purposes with the uses described for the data. In addition, both purpose and use should be linked to the dismissal statute if that is one of the contemplated purposes or ultimate uses of the teacher evaluation instrument.

3. State legislation should provide clear timelines to policy makers and administrators.

4. A clear differentiation between formative and summative processes should be included in state legislation. Each specific type of process should have parameters, uses, and results. These process measurements should be clarified so policy makers may develop appropriate guidelines for administrators and teachers alike.

5. State legislation should make clear whether an improvement or remediation plan is required. If the plan is necessary, the legislation should decide whether the plan is to be written, the contents of the plan to be addressed, and who, how, and when the plan is to be used (summative, formative, employment decisions, etc.). This legislation should clearly state how the plans are to be used in the summative or formative process and how these plans fit into other processes that may impact the teacher evaluation results.

State legislators, most of whom are not educators, may not wish to clarify these issues, leaving them open for interpretation by policy makers and the courts. In that case, legislators should explicitly grant policy makers from the state depart-

ments of education policy makers the right to provide this clarification and guidance in the manner they feel appropriate. State legislatures choosing this option shift the issue of accountability from themselves to others thus changing their role in the process of holding educators responsible.