

CHAPTER 2011-1

Committee Substitute for Committee Substitute for Senate Bill No. 736

An act relating to education personnel; providing a short title; amending s. 1012.34, F.S.; revising provisions relating to the evaluation of instructional personnel and school administrators; requiring the Department of Education to approve each school district's instructional personnel and school administrator evaluation systems; requiring reporting by the Commissioner of Education relating to the evaluation systems; providing requirements and revising procedures and criteria for the evaluation systems; requiring the commissioner to approve or select and the State Board of Education to adopt formulas for school districts to use in measuring student learning growth; requiring the state board to adopt rules relating to standards and measures for implementation of the evaluation systems; amending s. 1008.22, F.S.; requiring school districts to administer assessments for each course offered in the district; amending s. 1012.22, F.S.; revising provisions relating to instructional personnel and school administrator compensation and salary schedules; providing requirements for a performance salary schedule, a grandfathered salary schedule, adjustments, and supplements; revising criteria for the promotion of instructional personnel; creating s. 1012.335, F.S.; providing employment criteria for instructional personnel hired on or after July 1, 2011; providing definitions; providing grounds for suspension or dismissal; requiring rules to define the term "just cause"; providing that certain individuals who are hired as instructional personnel are ineligible for contracts issued under s. 1012.33, F.S.; amending s. 1002.33, F.S.; requiring charter schools to comply with provisions relating to compensation and salary schedules, workforce reductions, contracts with instructional personnel hired on or after July 1, 2011, and certain requirements for performance evaluations; amending s. 1003.621, F.S.; requiring academically high-performing school districts to comply with additional requirements for personnel; amending s. 1006.09, F.S.; conforming provisions to changes made by the act; amending s. 1012.07, F.S.; revising the methodology for determining critical teacher shortage areas; amending s. 1012.2315, F.S.; providing reporting requirements relating to instructional personnel and school administrator performance; amending s. 1012.27, F.S.; revising the criteria for transferring a teacher; conforming provisions to changes made by the act; amending s. 1012.28, F.S.; authorizing a principal to refuse to accept the placement or transfer of instructional personnel under certain circumstances; amending s. 1012.33, F.S.; revising provisions relating to contracts with certain education personnel; revising just cause grounds for dismissal; deleting provisions to conform to changes made by the act; revising the criteria for renewing a professional service contract; requiring that a district school board's decision to retain personnel be primarily based on the employee's performance; repealing s. 1012.52, F.S., relating to legislative intent and

findings to improve student achievement and teacher quality; amending s. 1012.795, F.S.; conforming provisions to changes made by the act; authorizing an exemption from requirements for performance evaluation systems and compensation and salary schedules for certain school districts; providing that specified provisions of law do not apply to rulemaking required to administer the act; providing for the repeal of certain special acts or general laws of local application relating to contracts for instructional personnel or school administrators; providing for application of specified provisions of the act; providing for severability; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as the “Student Success Act.”

Section 2. Effective upon this act becoming a law, section 1012.34, Florida Statutes, is amended to read:

1012.34 ~~Personnel evaluation~~ Assessment procedures and criteria.—

(1) EVALUATION SYSTEM APPROVAL AND REPORTING.—

(a) For the purpose of ~~increasing student learning growth~~ by improving the quality of instructional, administrative, and supervisory services in the public schools of the state, the district school superintendent shall establish procedures for evaluating assessing the performance of duties and responsibilities of all instructional, administrative, and supervisory personnel employed by the school district. The district school superintendent shall annually report the evaluation results of instructional personnel and school administrators to the Department of Education in addition to the information required under subsection (5).

(b) ~~The department of Education must approve each school district’s instructional personnel and school administrator evaluation systems assessment system. The department shall monitor each district’s implementation of its instructional personnel and school administrator evaluation systems for compliance with the requirements of this section.~~

(c) By December 1, 2012, the Commissioner of Education shall report to the Governor, the President of the Senate, and the Speaker of the House of Representatives the approval and implementation status of each school district’s instructional personnel and school administrator evaluation systems. The report shall include performance evaluation results for the prior school year for instructional personnel and school administrators using the four levels of performance specified in paragraph (2)(e). The performance evaluation results for instructional personnel shall be disaggregated by classroom teachers, as defined in s. 1012.01(2)(a), excluding substitute teachers, and all other instructional personnel, as defined in s. 1012.01(2)(b)–

~~(d). The commissioner shall continue to report, by December 1 each year thereafter, each school district’s performance evaluation results and the~~

status of any evaluation system revisions requested by a school district pursuant to subsection (6).

(2) EVALUATION SYSTEM REQUIREMENTS.—The evaluation systems for instructional personnel and school administrators must following conditions must be considered in the design of the district’s instructional personnel assessment system:

(a) The system must Be designed to support effective instruction and student learning growth, and performance evaluation results must be used when developing district and school level improvement plans.

(b) The system must Provide appropriate instruments, procedures, and criteria for continuous quality improvement of the professional skills of instructional personnel and school administrators, and performance evaluation results must be used when identifying professional development.

(c) The system must Include a mechanism to examine performance data from multiple sources, including opportunities for give parents an opportunity to provide input into employee performance evaluations assessments when appropriate.

(d) Identify In addition to addressing generic teaching competencies, districts must determine those teaching fields for which special evaluation procedures and criteria are necessary will be developed.

(e) Differentiate among four levels of performance as follows:

1. Highly effective.

2. Effective.

3. Needs improvement or, for instructional personnel in the first 3 years of employment who need improvement, developing.

4. Unsatisfactory.

The Commissioner of Education shall consult with experts, instructional personnel, school administrators, and education stakeholders in developing the criteria for the performance levels. Each district school board may establish a peer assistance process. The plan may provide a mechanism for assistance of persons who are placed on performance probation as well as offer assistance to other employees who request it.

(f) The district school board shall Provide for training programs that are based upon guidelines provided by the department of Education to ensure that all individuals with evaluation responsibilities understand the proper use of the evaluation assessment criteria and procedures.

(g) Include a process for monitoring and evaluating the effective and consistent use of the evaluation criteria by employees with evaluation responsibilities.

(h) Include a process for monitoring and evaluating the effectiveness of the system itself in improving instruction and student learning.

In addition, each district school board may establish a peer assistance process. This process may be a part of the regular evaluation system or used to assist employees placed on performance probation, newly hired classroom teachers, or employees who request assistance.

(3) EVALUATION PROCEDURES AND CRITERIA.—~~The assessment procedure for~~ Instructional personnel and school administrator performance evaluations administrators must be primarily based upon ~~on~~ the performance of students assigned to their classrooms or schools, as provided in this section appropriate. Pursuant to this section, a school district's performance evaluation assessment is not limited to basing unsatisfactory performance of instructional personnel and school administrators solely upon student performance, but may include other criteria approved to evaluate assess instructional personnel and school administrators' performance, or any combination of student performance and other approved criteria. Evaluation ~~The procedures and criteria~~ must comply with, but are not limited to, the following requirements:

(a) A performance evaluation ~~An assessment~~ must be conducted for each employee at least once a year, except that a classroom teacher, as defined in s. 1012.01(2)(a), excluding substitute teachers, who is newly hired by the district school board must be observed and evaluated at least twice in the first year of teaching in the school district. The performance evaluation assessment must be based upon sound educational principles and contemporary research in effective educational practices. ~~The assessment must primarily use data and indicators of improvement in student performance assessed annually as specified in s. 1008.22 and may consider results of peer reviews in evaluating the employee's performance. Student performance must be measured by state assessments required under s. 1008.22 and by local assessments for subjects and grade levels not measured by the state assessment program.~~ The evaluation assessment criteria must include, ~~but are not limited to,~~ indicators that relate to the following:

1. Performance of students. At least 50 percent of a performance evaluation must be based upon data and indicators of student learning growth assessed annually by statewide assessments or, for subjects and grade levels not measured by statewide assessments, by school district assessments as provided in s. 1008.22(8). Each school district must use the formula adopted pursuant to paragraph (7)(a) for measuring student learning growth in all courses associated with statewide assessments and must select an equally appropriate formula for measuring student learning growth for all other grades and subjects, except as otherwise provided in subsection (7).

a. For classroom teachers, as defined in s. 1012.01(2)(a), excluding substitute teachers, the student learning growth portion of the evaluation must include growth data for students assigned to the teacher over the course of at least 3 years. If less than 3 years of data are available, the years for which data are available must be used and the percentage of the evaluation based upon student learning growth may be reduced to not less than 40 percent.

b. For instructional personnel who are not classroom teachers, the student learning growth portion of the evaluation must include growth data on statewide assessments for students assigned to the instructional personnel over the course of at least 3 years, or may include a combination of student learning growth data and other measureable student outcomes that are specific to the assigned position, provided that the student learning growth data accounts for not less than 30 percent of the evaluation. If less than 3 years of student growth data are available, the years for which data are available must be used and the percentage of the evaluation based upon student learning growth may be reduced to not less than 20 percent.

c. For school administrators, the student learning growth portion of the evaluation must include growth data for students assigned to the school over the course of at least 3 years. If less than 3 years of data are available, the years for which data are available must be used and the percentage of the evaluation based upon student learning growth may be reduced to not less than 40 percent.

2. Instructional practice. Evaluation criteria used when annually observing classroom teachers, as defined in s. 1012.01(2)(a), excluding substitute teachers, must include indicators based upon each of the Florida Educator Accomplished Practices adopted by the State Board of Education. For instructional personnel who are not classroom teachers, evaluation criteria must be based upon indicators of the Florida Educator Accomplished Practices and may include specific job expectations related to student support.

3. Instructional leadership. For school administrators, evaluation criteria must include indicators based upon each of the leadership standards adopted by the State Board of Education under s. 1012.986, including performance measures related to the effectiveness of classroom teachers in the school, the administrator's appropriate use of evaluation criteria and procedures, recruitment and retention of effective and highly effective classroom teachers, improvement in the percentage of instructional personnel evaluated at the highly effective or effective level, and other leadership practices that result in student learning growth. The system may include a means to give parents and instructional personnel an opportunity to provide input into the administrator's performance evaluation.

4. Professional and job responsibilities. For instructional personnel and school administrators, other professional and job responsibilities must be

included as adopted by the State Board of Education. The district school board may identify additional professional and job responsibilities.

~~2. Ability to maintain appropriate discipline.~~

~~3. Knowledge of subject matter. The district school board shall make special provisions for evaluating teachers who are assigned to teach out-of-field.~~

~~4. Ability to plan and deliver instruction and the use of technology in the classroom.~~

~~5. Ability to evaluate instructional needs.~~

~~6. Ability to establish and maintain a positive collaborative relationship with students' families to increase student achievement.~~

~~7. Other professional competencies, responsibilities, and requirements as established by rules of the State Board of Education and policies of the district school board.~~

(b) All personnel must be fully informed of the criteria and procedures associated with the evaluation assessment process before the evaluation assessment takes place.

(c) The individual responsible for supervising the employee must evaluate assess the employee's performance. The evaluation system may provide for the evaluator to consider input from other personnel trained under paragraph (2)(f). The evaluator must submit a written report of the evaluation assessment to the district school superintendent for the purpose of reviewing the employee's contract. The evaluator must submit the written report to the employee no later than 10 days after the evaluation assessment takes place. The evaluator must discuss the written evaluation report of assessment with the employee. The employee shall have the right to initiate a written response to the evaluation assessment, and the response shall become a permanent attachment to his or her personnel file.

(d) The evaluator may amend an evaluation based upon assessment data from the current school year if the data becomes available within 90 days after the close of the school year. The evaluator must then comply with the procedures set forth in paragraph (c).

(4) NOTIFICATION OF UNSATISFACTORY PERFORMANCE.—If an employee who holds a professional service contract as provided in s. 1012.33 is not performing his or her duties in a satisfactory manner, the evaluator shall notify the employee in writing of such determination. The notice must describe such unsatisfactory performance and include notice of the following procedural requirements:

~~(a)1.~~ Upon delivery of a notice of unsatisfactory performance, the evaluator must confer with the employee who holds a professional service

contract, make recommendations with respect to specific areas of unsatisfactory performance, and provide assistance in helping to correct deficiencies within a prescribed period of time.

~~(b)1.2.a.—If~~ The employee who holds a professional service contract as ~~provided in s. 1012.33,~~ the employee shall be placed on performance probation and governed by the provisions of this section for 90 calendar days following the receipt of the notice of unsatisfactory performance to demonstrate corrective action. School holidays and school vacation periods are not counted when calculating the 90-calendar-day period. During the 90 calendar days, the employee who holds a professional service contract must be evaluated periodically and apprised of progress achieved and must be provided assistance and inservice training opportunities to help correct the noted performance deficiencies. At any time during the 90 calendar days, the employee who holds a professional service contract may request a transfer to another appropriate position with a different supervising administrator; however, if a transfer is granted pursuant to ss. 1012.27(1) and 1012.28(6), it does not extend the period for correcting performance deficiencies.

2.b. Within 14 days after the close of the 90 calendar days, the evaluator must evaluate assess whether the performance deficiencies have been corrected and forward a recommendation to the district school superintendent. Within 14 days after receiving the evaluator's recommendation, the district school superintendent must notify the employee who holds a professional service contract in writing whether the performance deficiencies have been satisfactorily corrected and whether the district school superintendent will recommend that the district school board continue or terminate his or her employment contract. If the employee wishes to contest the district school superintendent's recommendation, the employee must, within 15 days after receipt of the district school superintendent's recommendation, submit a written request for a hearing. The hearing shall be conducted at the district school board's election in accordance with one of the following procedures:

a.(I) A direct hearing conducted by the district school board within 60 days after receipt of the written appeal. The hearing shall be conducted in accordance with the provisions of ss. 120.569 and 120.57. A majority vote of the membership of the district school board shall be required to sustain the district school superintendent's recommendation. The determination of the district school board shall be final as to the sufficiency or insufficiency of the grounds for termination of employment; or

b.(II) A hearing conducted by an administrative law judge assigned by the Division of Administrative Hearings of the Department of Management Services. The hearing shall be conducted within 60 days after receipt of the written appeal in accordance with chapter 120. The recommendation of the administrative law judge shall be made to the district school board. A majority vote of the membership of the district school board shall be required to sustain or change the administrative law judge's recommendation. The

determination of the district school board shall be final as to the sufficiency or insufficiency of the grounds for termination of employment.

~~(5)(4) ADDITIONAL NOTIFICATIONS.—~~The district school superintendent shall annually notify the department of any instructional personnel or school administrators who receive two consecutive unsatisfactory evaluations. The district school superintendent shall also notify the department of any instructional personnel or school administrators and who are have been given written notice by the district of intent to terminate or not renew that their employment is being terminated or is not being renewed or that the district school board intends to terminate, or not renew, their employment. The department shall conduct an investigation to determine whether action shall be taken against the certificateholder pursuant to s. 1012.795(1)(e).

~~(5) —~~The district school superintendent shall develop a mechanism for evaluating the effective use of assessment criteria and evaluation procedures by administrators who are assigned responsibility for evaluating the performance of instructional personnel. The use of the assessment and evaluation procedures shall be considered as part of the annual assessment of the administrator's performance. The system must include a mechanism to give parents and teachers an opportunity to provide input into the administrator's performance assessment, when appropriate.

~~(6) —~~Nothing in this section shall be construed to grant a probationary employee a right to continued employment beyond the term of his or her contract.

~~(6)(7) ANNUAL REVIEW OF AND REVISIONS TO THE SCHOOL DISTRICT EVALUATION SYSTEMS.—~~The district school board shall establish a procedure for annually reviewing instructional personnel and school administrator evaluation assessment systems to determine compliance with this section. All substantial revisions to an approved system must be reviewed and approved by the district school board before being used to evaluate assess instructional personnel or school administrators. Upon request by a school district, the department shall provide assistance in developing, improving, or reviewing an evaluation assessment system.

(7) MEASUREMENT OF STUDENT LEARNING GROWTH.—

(a) By June 1, 2011, the Commissioner of Education shall approve a formula to measure individual student learning growth on the Florida Comprehensive Assessment Test (FCAT) administered under s. 1008.22(3)(c)1. The formula must take into consideration each student's prior academic performance. The formula must not set different expectations for student learning growth based upon a student's gender, race, ethnicity, or socioeconomic status. In the development of the formula, the commissioner shall consider other factors such as a student's attendance record, disability status, or status as an English language learner. The commissioner shall select additional formulas as appropriate for the remainder of the statewide assessments included under s. 1008.22 and continue to select formulas as

new assessments are implemented in the state system. After the commissioner approves the formula to measure individual student learning growth on the FCAT and as additional formulas are selected by the commissioner for new assessments implemented in the state system, the State Board of Education shall adopt these formulas by rule.

(b) Beginning in the 2011-2012 school year, each school district shall measure student learning growth using the formula approved by the commissioner under paragraph (a) for courses associated with the FCAT. Each school district shall implement the additional student learning growth measures selected by the commissioner under paragraph (a) for the remainder of the statewide assessments included under s. 1008.22 as they become available. Beginning in the 2014-2015 school year, for grades and subjects not assessed by statewide assessments but otherwise assessed as required under s. 1008.22(8), each school district shall measure student learning growth using an equally appropriate formula. The department shall provide models for measuring student learning growth which school districts may adopt.

(c) For a course that is not measured by a statewide assessment, a school district may request, through the evaluation system approval process, to use a student achievement measure rather than a student learning growth measure if achievement is demonstrated to be a more appropriate measure of classroom teacher performance. A school district may also request to use a combination of student learning growth and achievement, if appropriate.

(d) If the student learning growth in a course is not measured by a statewide assessment but is measured by a school district assessment, a school district may request, through the evaluation system approval process, that the performance evaluation for the classroom teacher assigned to that course include the learning growth of his or her students on FCAT Reading or FCAT Mathematics. The request must clearly explain the rationale supporting the request. However, the classroom teacher's performance evaluation must give greater weight to student learning growth on the district assessment.

(e) For classroom teachers of courses for which the district has not implemented appropriate assessments under s. 1008.22(8) or for which the school district has not adopted an equally appropriate measure of student learning growth under paragraphs (b)-(d), student learning growth must be measured by the growth in learning of the classroom teacher's students on statewide assessments, or, for courses in which enrolled students do not take the statewide assessments, measurable learning targets must be established based upon the goals of the school improvement plan and approved by the school principal. A district school superintendent may assign to instructional personnel in an instructional team the student learning growth of the instructional team's students on statewide assessments. This paragraph expires July 1, 2015.

(8) RULEMAKING.—The State Board of Education shall adopt rules pursuant to ss. 120.536(1) and 120.54 ~~which, that~~ establish uniform procedures guidelines for the submission, review, and approval of district evaluation systems and reporting requirements ~~procedures~~ for the annual evaluation assessment of instructional personnel and school administrators; specific, discrete standards for each performance level required under subsection (2) to ensure clear and sufficient differentiation in the performance levels and to provide consistency in meaning across school districts; the measurement of student learning growth and associated implementation procedures required under subsection (7); a process to permit instructional personnel to review the class roster for accuracy and to correct any mistakes relating to the identity of students for whom the individual is responsible; and a process for monitoring school district implementation of evaluation systems in accordance with this section that include criteria for evaluating professional performance. ~~Specifically, the rules shall establish a student learning growth standard that if not met will result in the employee receiving an unsatisfactory performance evaluation rating. In like manner, the rules shall establish a student learning growth standard that must be met in order for an employee to receive a highly effective rating and a student learning growth standard that must be met in order for an employee to receive an effective rating.~~

Section 3. Subsection (8) of section 1008.22, Florida Statutes, is amended to read:

1008.22 Student assessment program for public schools.—

(8) LOCAL ASSESSMENTS.—

(a) Measurement of the learning gains of students in all subjects and grade levels other than subjects and grade levels required for the state student achievement testing program is the responsibility of the school districts.

(b) Beginning with the 2014-2015 school year, each school district shall administer for each course offered in the district a student assessment that measures mastery of the content, as described in the state-adopted course description, at the necessary level of rigor for the course. Such assessments may include:

1. Statewide assessments.
2. Other standardized assessments, including nationally recognized standardized assessments.
3. Industry certification examinations.
4. District-developed or district-selected end-of-course assessments.

(c) The Commissioner of Education shall identify methods to assist and support districts in the development and acquisition of assessments required

under this subsection. Methods may include developing item banks, facilitating the sharing of developed tests among school districts, acquiring assessments from state and national curriculum-area organizations, and providing technical assistance in best professional practices of test development based upon state-adopted curriculum standards, administration, and security.

Section 4. Paragraphs (c) and (e) of subsection (1) of section 1012.22, Florida Statutes, are amended to read:

1012.22 Public school personnel; powers and duties of the district school board.—The district school board shall:

(1) Designate positions to be filled, prescribe qualifications for those positions, and provide for the appointment, compensation, promotion, suspension, and dismissal of employees as follows, subject to the requirements of this chapter:

(c) *Compensation and salary schedules.*—

1. Definitions.—As used in this paragraph:

a. “Adjustment” means an addition to the base salary schedule that is not a bonus and becomes part of the employee’s permanent base salary and shall be considered compensation under s. 121.021(22).

b. “Grandfathered salary schedule” means the salary schedule or schedules adopted by a district school board before July 1, 2014, pursuant to subparagraph 4.

c. “Instructional personnel” means instructional personnel as defined in s. 1012.01(2)(a)-(d), excluding substitute teachers.

d. “Performance salary schedule” means the salary schedule or schedules adopted by a district school board pursuant to subparagraph 5.

e. “Salary schedule” means the schedule or schedules used to provide the base salary for district school board personnel.

f. “School administrator” means a school administrator as defined in s. 1012.01(3)(c).

g. “Supplement” means an annual addition to the base salary for the term of the negotiated supplement as long as the employee continues his or her employment for the purpose of the supplement. A supplement does not become part of the employee’s continuing base salary but shall be considered compensation under s. 121.021(22).

2. Cost-of-living adjustment.—A district school board may provide a cost-of-living salary adjustment if the adjustment:

a. Does not discriminate among comparable classes of employees based upon the salary schedule under which they are compensated.

b. Does not exceed 50 percent of the annual adjustment provided to instructional personnel rated as effective.

3. Advanced degrees.—A district school board may not use advanced degrees in setting a salary schedule for instructional personnel or school administrators hired on or after July 1, 2011, unless the advanced degree is held in the individual's area of certification and is only a salary supplement.

4. Grandfathered salary schedule.—

a. The district school board shall adopt a salary schedule or salary schedules to be used as the basis for paying all school employees hired before July 1, 2014. Instructional personnel on annual contract as of July 1, 2014, shall be placed on the performance salary schedule adopted under subparagraph 5. Instructional personnel on continuing contract or professional service contract may opt into the performance salary schedule if the employee relinquishes such contract and agrees to be employed on an annual contract under s. 1012.335. Such an employee shall be placed on the performance salary schedule and may not return to continuing contract or professional service contract status. Any employee who opts into the performance salary schedule may not return to the grandfathered salary schedule.

b. In determining the grandfathered salary schedule for instructional personnel, a district school board must base a portion of each employee's compensation upon performance demonstrated under s. 1012.34 and shall provide differentiated pay for both instructional personnel and school administrators based upon district-determined factors, including, but not limited to, additional responsibilities, school demographics, critical shortage areas, and level of job performance difficulties.

5. Performance salary schedule.—By July 1, 2014, the district school board shall adopt a performance salary schedule that provides annual salary adjustments for instructional personnel and school administrators based upon performance determined under s. 1012.34. Employees hired on or after July 1, 2014, or employees who choose to move from the grandfathered salary schedule to the performance salary schedule shall be compensated pursuant to the performance salary schedule once they have received the appropriate performance evaluation for this purpose. However, a classroom teacher whose performance evaluation utilizes student learning growth measures established under s. 1012.34(7)(e) shall remain under the grandfathered salary schedule until his or her teaching assignment changes to a subject for which there is an assessment or the school district establishes equally appropriate measures of student learning growth as defined under s. 1012.34 and rules of the State Board of Education.

a. Base salary.—The base salary shall be established as follows:

(I) The base salary for instructional personnel or school administrators who opt into the performance salary schedule shall be the salary paid in the prior year, including adjustments only.

(II) Beginning July 1, 2014, instructional personnel or school administrators new to the district, returning to the district after a break in service without an authorized leave of absence, or appointed for the first time to a position in the district in the capacity of instructional personnel or school administrator shall be placed on the performance salary schedule.

b. Salary adjustments.—Salary adjustments for highly effective or effective performance shall be established as follows:

(I) The annual salary adjustment under the performance salary schedule for an employee rated as highly effective must be greater than the highest annual salary adjustment available to an employee of the same classification through any other salary schedule adopted by the district.

(II) The annual salary adjustment under the performance salary schedule for an employee rated as effective must be equal to at least 50 percent and no more than 75 percent of the annual adjustment provided for a highly effective employee of the same classification.

(III) The performance salary schedule shall not provide an annual salary adjustment for an employee who receives a rating other than highly effective or effective for the year.

c. Salary supplements.—In addition to the salary adjustments, each district school board shall provide for salary supplements for activities that must include, but are not limited to:

(I) Assignment to a Title I eligible school.

(II) Assignment to a school in the bottom two categories of the school improvement system under s. 1008.33 such that the supplement remains in force for at least 1 year following improved performance in that school.

(III) Certification and teaching in critical teacher shortage areas. State-wide critical teacher shortage areas shall be identified by the State Board of Education under s. 1012.07. However, the district school board may identify other areas of critical shortage within the school district for purposes of this sub-sub-subparagraph and may remove areas identified by the state board which do not apply within the school district.

(IV) Assignment of additional academic responsibilities.

If budget constraints in any given year limit a district school board's ability to fully fund all adopted salary schedules, the performance salary schedule shall not be reduced on the basis of total cost or the value of individual awards in a manner that is proportionally greater than reductions to any other salary schedules adopted by the district. The district school board shall

adopt a salary schedule or salary schedules designed to furnish incentives for improvement in training and for continued efficient service to be used as a basis for paying all school employees and fix and authorize the compensation of school employees on the basis thereof.

2. A district school board, in determining the salary schedule for instructional personnel, must base a portion of each employee's compensation on performance demonstrated under s. 1012.34, must consider the prior teaching experience of a person who has been designated state teacher of the year by any state in the United States, and must consider prior professional experience in the field of education gained in positions in addition to district level instructional and administrative positions.

3. In developing the salary schedule, the district school board shall seek input from parents, teachers, and representatives of the business community.

4. Beginning with the 2007-2008 academic year, each district school board shall adopt a salary schedule with differentiated pay for both instructional personnel and school-based administrators. The salary schedule is subject to negotiation as provided in chapter 447 and must allow differentiated pay based on district-determined factors, including, but not limited to, additional responsibilities, school demographics, critical shortage areas, and level of job performance difficulties.

(e) *Transfer and promotion.*—The district school board shall act on recommendations of the district school superintendent regarding transfer and promotion of any employee. The district school superintendent's primary consideration in recommending an individual for a promotion must be the individual's demonstrated effectiveness under s. 1012.34.

Section 5. Section 1012.335, Florida Statutes, is created to read:

1012.335 Contracts with instructional personnel hired on or after July 1, 2011.—

(1) DEFINITIONS.—As used in this section, the term:

(a) “Annual contract” means an employment contract for a period of no longer than 1 school year which the district school board may choose to award or not award without cause.

(b) “Instructional personnel” means instructional personnel as defined in s. 1012.01(2)(a)-(d), excluding substitute teachers.

(c) “Probationary contract” means an employment contract for a period of 1 school year awarded to instructional personnel upon initial employment in a school district. Probationary contract employees may be dismissed without cause or may resign without breach of contract. A district school board may not award a probationary contract more than once to the same employee unless the employee was rehired after a break in service for which an

authorized leave of absence was not granted. A probationary contract shall be awarded regardless of previous employment in another school district or state.

(2) EMPLOYMENT.—

(a) Beginning July 1, 2011, each individual newly hired as instructional personnel by the district school board shall be awarded a probationary contract. Upon successful completion of the probationary contract, the district school board may award an annual contract pursuant to paragraph (c).

(b) Beginning July 1, 2011, an annual contract may be awarded pursuant to paragraph (c) for instructional personnel who have successfully completed a probationary contract with the district school board and have received one or more annual contracts from the district school board.

(c) An annual contract may be awarded only if the employee:

1. Holds an active professional certificate or temporary certificate issued pursuant to s. 1012.56 and rules of the State Board of Education.

2. Has been recommended by the district school superintendent for the annual contract based upon the individual's evaluation under s. 1012.34 and approved by the district school board.

3. Has not received two consecutive annual performance evaluation ratings of unsatisfactory, two annual performance evaluation ratings of unsatisfactory within a 3-year period, or three consecutive annual performance evaluation ratings of needs improvement or a combination of needs improvement and unsatisfactory under s. 1012.34.

(3) VIOLATION OF ANNUAL CONTRACT.—Instructional personnel who accept a written offer from the district school board and who leave their positions without prior release from the district school board are subject to the jurisdiction of the Education Practices Commission.

(4) SUSPENSION OR DISMISSAL OF INSTRUCTIONAL PERSONNEL ON ANNUAL CONTRACT.—Any instructional personnel with an annual contract may be suspended or dismissed at any time during the term of the contract for just cause as provided in subsection (5). The district school board shall notify the employee in writing whenever charges are made and may suspend such person without pay. However, if the charges are not sustained, the employee shall be immediately reinstated and his or her back pay shall be paid. If the employee wishes to contest the charges, he or she must, within 15 days after receipt of the written notice, submit a written request for a hearing to the district school board. A direct hearing shall be conducted by the district school board or a subcommittee thereof within 60 days after receipt of the written appeal. The hearing shall be conducted in accordance with ss. 120.569 and 120.57. A majority vote of the membership of the district school board shall be required to sustain the district school

superintendent's recommendation. The district school board's determination is final as to the sufficiency or insufficiency of the grounds for suspension without pay or dismissal. Any such decision adverse to the employee may be appealed by the employee pursuant to s. 120.68.

(5) JUST CAUSE.—The State Board of Education shall adopt rules pursuant to ss. 120.536(1) and 120.54 to define the term "just cause." Just cause includes, but is not limited to:

(a) Immorality.

(b) Misconduct in office.

(c) Incompetency.

(d) Gross insubordination.

(e) Willful neglect of duty.

(f) Being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude.

(6) LIMITATION.—An individual newly hired as instructional personnel by a school district in this state under this section is ineligible for any contract issued under s. 1012.33.

Section 6. Paragraph (b) of subsection (16) of section 1002.33, Florida Statutes, is amended to read:

1002.33 Charter schools.—

(16) EXEMPTION FROM STATUTES.—

(b) Additionally, a charter school shall be in compliance with the following statutes:

1. Section 286.011, relating to public meetings and records, public inspection, and criminal and civil penalties.

2. Chapter 119, relating to public records.

3. Section 1003.03, relating to the maximum class size, except that the calculation for compliance pursuant to s. 1003.03 shall be the average at the school level.

4. Section 1012.22(1)(c), relating to compensation and salary schedules.

5. Section 1012.33(5), relating to workforce reductions.

6. Section 1012.335, relating to contracts with instructional personnel hired on or after July 1, 2011.

7. Section 1012.34, relating to the substantive requirements for performance evaluations for instructional personnel and school administrators.

Section 7. Paragraph (h) of subsection (2) of section 1003.621, Florida Statutes, is amended to read:

1003.621 Academically high-performing school districts.—It is the intent of the Legislature to recognize and reward school districts that demonstrate the ability to consistently maintain or improve their high-performing status. The purpose of this section is to provide high-performing school districts with flexibility in meeting the specific requirements in statute and rules of the State Board of Education.

(2) COMPLIANCE WITH STATUTES AND RULES.—Each academically high-performing school district shall comply with all of the provisions in chapters 1000-1013, and rules of the State Board of Education which implement these provisions, pertaining to the following:

(h) Sections 1012.22(1)(c) and 1012.27(2), relating to public school personnel compensation and salary schedules; s. 1012.34, relating to personnel evaluation procedures and criteria; and ss. 1012.33 and 1012.335, relating to contracts with instructional personnel, staff, supervisors, and school administrators differentiated pay and performance pay policies for school administrators and instructional personnel. Professional service contracts are subject to the provisions of ss. 1012.33 and 1012.34.

Section 8. Subsection (4) of section 1006.09, Florida Statutes, is amended to read:

1006.09 Duties of school principal relating to student discipline and school safety.—

(4) When a student has been the victim of a violent crime perpetrated by another student who attends the same school, the school principal shall make full and effective use of the provisions of subsection (2) and s. 1006.13(6). A school principal who fails to comply with this subsection shall be ineligible for any portion of the performance pay ~~policy incentive~~ or the differentiated pay under s. 1012.22. However, if any party responsible for notification fails to properly notify the school, the school principal shall be eligible for the performance pay incentive or differentiated pay.

Section 9. Section 1012.07, Florida Statutes, is amended to read:

1012.07 Identification of critical teacher shortage areas.—

~~(1) As used in ss. 1009.57, 1009.58, and 1009.59, The term “critical teacher shortage area” means high-need content areas applies to mathematics, science, career education, and high-priority high-priority location areas identified by the State Board of Education may identify career education programs having critical teacher shortages. The State Board of Education shall adopt rules pursuant to ss. 120.536(1) and 120.54 necessary~~

to annually identify ~~other~~ critical teacher shortage areas and ~~high-priority location~~ areas. The state board ~~must~~ shall ~~also~~ consider current and emerging educational requirements and workforce demands teacher characteristics such as ethnic background, race, and sex in determining critical teacher shortage areas. School grade levels may also be designated critical teacher shortage areas. Individual district school boards may identify and submit other critical teacher shortage areas. Such submissions shortages must be aligned to current and emerging educational requirements and workforce demands in order to be certified to and approved by the State Board of Education. ~~High-priority~~ High-priority location areas shall be in high-density, low-economic urban schools, and low-density, low-economic rural schools, and schools identified as lowest performing under s. 1008.33(4)(b) shall include schools which meet criteria which include, but are not limited to, the percentage of free lunches, the percentage of students under Chapter I of the Education Consolidation and Improvement Act of 1981, and the faculty attrition rate.

~~(2) This section shall be implemented only to the extent as specifically funded and authorized by law.~~

Section 10. Subsection (5) of section 1012.2315, Florida Statutes, is amended to read:

1012.2315 Assignment of teachers.—

(5) REPORT.—

(a) By July 1, 2012, the Department of Education shall annually report on its website, in a manner that is accessible to the public, the performance rating data reported by district school boards under s. 1012.34. The report must include the percentage of classroom teachers, instructional personnel, and school administrators receiving each performance rating aggregated by school district and by school.

(b) Notwithstanding the provisions of s. 1012.31(3)(a)2., each school district shall annually report to the parent of any student who is assigned to a classroom teacher or school administrator having two consecutive annual performance evaluation ratings of unsatisfactory under s. 1012.34, two annual performance evaluation ratings of unsatisfactory within a 3-year period under s. 1012.34, or three consecutive annual performance evaluation ratings of needs improvement or a combination of needs improvement and unsatisfactory under s. 1012.34. Schools graded “D” or “F” shall annually report their teacher-retention rate. Included in this report shall be reasons listed for leaving by each teacher who left the school for any reason.

Section 11. Subsections (1) and (2) of section 1012.27, Florida Statutes, are amended to read:

1012.27 Public school personnel; powers and duties of district school superintendent.—The district school superintendent is responsible for

directing the work of the personnel, subject to the requirements of this chapter, and in addition the district school superintendent shall perform the following:

(1) POSITIONS, QUALIFICATIONS, AND NOMINATIONS.—

(a) Recommend to the district school board duties and responsibilities which need to be performed and positions which need to be filled to make possible the development of an adequate school program in the district.

(b) Recommend minimum qualifications of personnel for these various positions, and nominate in writing persons to fill such positions.

The district school superintendent's recommendations for filling instructional positions at the school level must consider nominations received from school principals of the respective schools. Before transferring a teacher who holds a professional teaching certificate from one school to another, the district school superintendent shall consult with the principal of the receiving school and allow the principal to review the teacher's records, including student performance demonstrated under s. 1012.34, and interview the teacher. If, in the judgment of the principal, students would not benefit from the placement, an alternative placement may be sought. A principal may refuse the placement in accordance with s. 1012.28(6).

(2) COMPENSATION AND SALARY SCHEDULES.—Prepare and recommend to the district school board for adoption a salary schedule or salary schedules in accordance with s. 1012.22. ~~The district school superintendent must recommend a salary schedule for instructional personnel which bases a portion of each employee's compensation on performance demonstrated under s. 1012.34. In developing the recommended salary schedule, the district school superintendent shall include input from parents, teachers, and representatives of the business community. Beginning with the 2007-2008 academic year, the recommended salary schedule for classroom teachers shall be consistent with the district's differentiated-pay policy based upon s. 1012.22.~~

Section 12. Subsection (3) of section 1012.28, Florida Statutes, is amended, present subsection (6) is renumbered and amended, and a new subsection (6) is added to that section, to read:

1012.28 Public school personnel; duties of school principals.—

(3) Each school principal is responsible for the performance of all personnel employed by the district school board and assigned to the school to which the principal is assigned. The school principal shall faithfully and effectively apply the personnel evaluation ~~assessment~~ system approved by the district school board pursuant to s. 1012.34.

(6) A principal may refuse to accept the placement or transfer of instructional personnel by the district school superintendent to his or her

school unless the instructional personnel has a performance rating of effective or highly effective under s. 1012.34.

(7)(6) A school principal who fails to comply with this section shall be ineligible for any portion of the performance pay ~~policy incentive~~ and differentiated pay under s. 1012.22.

Section 13. Paragraph (a) of subsection (1) and subsections (3) and (5) of section 1012.33, Florida Statutes, are amended to read:

1012.33 Contracts with instructional staff, supervisors, and school principals.—

(1)(a) Each person employed as a member of the instructional staff in any district school system shall be properly certified pursuant to s. 1012.56 or s. 1012.57 or employed pursuant to s. 1012.39 and shall be entitled to and shall receive a written contract as specified in this section. All such contracts, except continuing contracts as specified in subsection (4), shall contain provisions for dismissal during the term of the contract only for just cause. Just cause includes, but is not limited to, the following instances, as defined by rule of the State Board of Education: immorality, misconduct in office, incompetency, two consecutive annual performance evaluation ratings of unsatisfactory under s. 1012.34, two annual performance evaluation ratings of unsatisfactory within a 3-year period under s. 1012.34, three consecutive annual performance evaluation ratings of needs improvement or a combination of needs improvement and unsatisfactory under s. 1012.34, gross insubordination, willful neglect of duty, or being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude.

(3)(a) Each district school board shall provide a professional service contract as prescribed herein. Each member of the instructional staff who completed the following requirements prior to July 1, 1984, shall be entitled to and shall be issued a continuing contract in the form prescribed by rules of the state board pursuant to s. 231.36, Florida Statutes (1981). Each member of the instructional staff who completes the following requirements on or after July 1, 1984, shall be entitled to and shall be issued a professional service contract in the form prescribed by rules of the state board as provided herein:

1. The member must hold a professional certificate as prescribed by s. 1012.56 and rules of the State Board of Education.

2. The member must have completed 3 years of probationary service in the district during a period not in excess of 5 successive years, except for leave duly authorized and granted.

3. The member must have been recommended by the district school superintendent for such contract and reappointed by the district school board

based on successful performance of duties and demonstration of professional competence.

4. For any person newly employed as a member of the instructional staff after June 30, 1997, the initial annual contract shall include a 97-day probationary period during which time the employee's contract may be terminated without cause or the employee may resign without breach of contract.

(b) The professional service contract shall be effective at the beginning of the school fiscal year following the completion of all requirements therefor.

(c) The period of service provided herein may be extended to 4 years when prescribed by the district school board and agreed to in writing by the employee at the time of reappointment.

~~(d) A district school board may issue a continuing contract prior to July 1, 1984, and may issue a professional service contract subsequent to July 1, 1984, to any employee who has previously held a professional service contract or continuing contract in the same or another district within this state. Any employee who holds a continuing contract may, but is not required to, exchange such continuing contract for a professional service contract in the same district.~~

~~(d)~~(e) A professional service contract shall be renewed each year unless:

1. The district school superintendent, after receiving the recommendations required by s. 1012.34, charges the employee with unsatisfactory performance and notifies the employee of performance deficiencies as required by s. 1012.34; or

2. The employee receives two consecutive annual performance evaluation ratings of unsatisfactory under s. 1012.34, two annual performance evaluation ratings of unsatisfactory within a 3-year period under s. 1012.34, or three consecutive annual performance evaluation ratings of needs improvement or a combination of needs improvement and unsatisfactory under s. 1012.34. An employee who holds a professional service contract on July 1, 1997, is subject to the procedures set forth in paragraph (f) during the term of the existing professional service contract. The employee is subject to the procedures set forth in s. 1012.34(3)(d) upon the next renewal of the professional service contract; however, if the employee is notified of performance deficiencies before the next contract renewal date, the procedures of s. 1012.34(3)(d) do not apply until the procedures set forth in paragraph (f) have been exhausted and the professional service contract is subsequently renewed.

~~(f) The district school superintendent shall notify an employee who holds a professional service contract on July 1, 1997, in writing, no later than 6 weeks prior to the end of the postschool conference period, of performance deficiencies which may result in termination of employment, if not corrected~~

during the subsequent year of employment (which shall be granted for an additional year in accordance with the provisions in subsection (1)). Except as otherwise hereinafter provided, this action shall not be subject to the provisions of chapter 120, but the following procedures shall apply:

1. ~~On receiving notice of unsatisfactory performance, the employee, on request, shall be accorded an opportunity to meet with the district school superintendent, or his or her designee, for an informal review of the determination of unsatisfactory performance.~~

2. ~~An employee notified of unsatisfactory performance may request an opportunity to be considered for a transfer to another appropriate position, with a different supervising administrator, for the subsequent year of employment. If the request for the transfer is granted, the district school superintendent shall annually report to the department the total number of employees transferred pursuant to this subparagraph, where they were transferred, and what, if any, remediation was implemented to remediate the unsatisfactory performance.~~

3. ~~During the subsequent year, the employee shall be provided assistance and inservice training opportunities to help correct the noted performance deficiencies. The employee shall also be evaluated periodically so that he or she will be kept apprised of progress achieved.~~

4. ~~Not later than 6 weeks prior to the close of the postschool conference period of the subsequent year, the district school superintendent, after receiving and reviewing the recommendation required by s. 1012.34, shall notify the employee, in writing, whether the performance deficiencies have been corrected. If so, a new professional service contract shall be issued to the employee. If the performance deficiencies have not been corrected, the district school superintendent may notify the district school board and the employee, in writing, that the employee shall not be issued a new professional service contract; however, if the recommendation of the district school superintendent is not to issue a new professional service contract, and if the employee wishes to contest such recommendation, the employee will have 15 days from receipt of the district school superintendent's recommendation to demand, in writing, a hearing. In such hearing, the employee may raise as an issue, among other things, the sufficiency of the district school superintendent's charges of unsatisfactory performance. Such hearing shall be conducted at the district school board's election in accordance with one of the following procedures:~~

a. ~~A direct hearing conducted by the district school board within 60 days of receipt of the written appeal. The hearing shall be conducted in accordance with the provisions of ss. 120.569 and 120.57. A majority vote of the membership of the district school board shall be required to sustain the district school superintendent's recommendation. The determination of the district school board shall be final as to the sufficiency or insufficiency of the grounds for termination of employment; or~~

~~b.—A hearing conducted by an administrative law judge assigned by the Division of Administrative Hearings of the Department of Management Services. The hearing shall be conducted within 60 days of receipt of the written appeal in accordance with chapter 120. The recommendation of the administrative law judge shall be made to the district school board. A majority vote of the membership of the district school board shall be required to sustain or change the administrative law judge's recommendation. The determination of the district school board shall be final as to the sufficiency or insufficiency of the grounds for termination of employment.~~

~~(g)—Beginning July 1, 2001, for each employee who enters into a written contract, pursuant to this section, in a school district in which the employee was not employed as of June 30, 2001, or was employed as of June 30, 2001, but has since broken employment with that district for 1 school year or more, for purposes of pay, a district school board must recognize and accept each year of full-time public school teaching service earned in the State of Florida for which the employee received a satisfactory performance evaluation; however, an employee may voluntarily waive this provision. Instructional personnel employed pursuant to s. 121.091(9)(b) and (c) are exempt from the provisions of this paragraph.~~

(5) If workforce reduction is needed, a district school board must retain employees at a school or in the school district based upon educational program needs and the performance evaluations of employees within the affected program areas. Within the program areas requiring reduction, the employee with the lowest performance evaluations must be the first to be released; the employee with the next lowest performance evaluations must be the second to be released; and reductions shall continue in like manner until the needed number of reductions has occurred. A district school board may not prioritize retention of employees based upon seniority. Should a district school board have to choose from among its personnel who are on continuing contracts or professional service contracts as to which should be retained, such decisions shall be made pursuant to the terms of a collectively bargained agreement, when one exists. If no such agreement exists, the district school board shall prescribe rules to handle reductions in workforce.

Section 14. Section 1012.52, Florida Statutes, is repealed.

Section 15. Paragraph (h) of subsection (1) of section 1012.795, Florida Statutes, is amended to read:

1012.795 Education Practices Commission; authority to discipline.—

(1) The Education Practices Commission may suspend the educator certificate of any person as defined in s. 1012.01(2) or (3) for up to 5 years, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for that period of time, after which the holder may return to teaching as provided in subsection (4); may revoke the educator certificate of any person, thereby denying that person the right to teach or otherwise be

employed by a district school board or public school in any capacity requiring direct contact with students for up to 10 years, with reinstatement subject to the provisions of subsection (4); may revoke permanently the educator certificate of any person thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students; may suspend the educator certificate, upon an order of the court or notice by the Department of Revenue relating to the payment of child support; or may impose any other penalty provided by law, if the person:

(h) Has breached a contract, as provided in s. 1012.33(2) or s. 1012.335.

Section 16. (1) Notwithstanding any other provision of this act, a school district that received an exemption under Florida's Race to the Top Memorandum of Understanding for Phase 2, as provided in section (D)(2)(ii) of the memorandum, is allowed to base 40 percent, instead of 50 percent, of instructional personnel and school administrator performance evaluations upon student learning growth under s. 1012.34, Florida Statutes, as amended by this act. The school district is also exempt from the amendments to s. 1012.22(1)(c), Florida Statutes, made by this act. The exemptions described in this subsection are effective for the 2011-2012 school year and are effective for each school year thereafter if the school district receives annual approval by the State Board of Education.

(2) The State Board of Education shall base its approval upon demonstration by the school district of the following:

(a) The instructional personnel and school administrator evaluation systems base at least 40 percent of an employee's performance evaluation upon student performance and that student performance is the single greatest component of an employee's evaluation.

(b) The instructional personnel and school administrator evaluation systems adopt the Commissioner of Education's student learning growth formula for statewide assessments as provided under s. 1012.34(7), Florida Statutes.

(c) The school district's instructional personnel and school administrator compensation system awards salary increases based upon sustained student performance.

(d) The school district's contract system awards instructional personnel and school administrators based upon student performance and removes ineffective employees.

(e) Beginning with the 2014-2015 school year and each school year thereafter, student learning growth based upon performance on statewide assessments under s. 1008.22, Florida Statutes, must have significantly improved compared to student learning growth in the district in 2011-2012 and significantly improved compared to other school districts.

(3) The State Board of Education shall annually renew a school district's exemptions if the school district demonstrates that it meets the requirements of subsection (2). If the exemptions are not renewed, the school district must comply with the requirements and laws described in subsection (1) by the beginning of the next school year immediately following the loss of the exemptions.

(4) The State Board of Education shall adopt rules pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to establish the procedures for applying for the exemptions and the criteria for renewing the exemptions.

This section shall be repealed August 1, 2017, unless reviewed and reenacted by the Legislature.

Section 17. Chapter 2010-279, Laws of Florida, does not apply to any rulemaking required to administer this act.

Section 18. The provisions of any special act or general law of local application relating to contracts for instructional personnel or school administrators in public schools or school districts in effect on or before the effective date of this act are repealed.

Section 19. The amendments made by this act to s. 1012.33, Florida Statutes, apply to contracts newly entered into, extended, or readopted on or after July 1, 2011, and to all contracts entered into on or after July 1, 2014.

Section 20. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 21. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2011.

Approved by the Governor March 24, 2011.

Filed in Office Secretary of State March 24, 2011.