

CHAPTER 351. TEACHER TENURE HEARINGS**GENERAL**

- Sec.
- 351.1. Purpose and scope.
 - 351.2. Definitions.
 - 351.3. Petitions of appeal.
 - 351.4. Rules of practice and procedures for teacher tenure appeals filed with the Secretary.
 - 351.5. Appeals from denial of a hearing.
 - 351.6. Conduct of participants.
 - 351.7. Briefs.
 - 351.8. Testimony.
 - 351.9. Continuance.
 - 351.10. Compliance.

RATINGS

- 351.21. Rating form.
- 351.22. Additional standards for use of the DEBE-333.
- 351.23. Alternative rating form.
- 351.24. General rating using alternative forms.
- 351.25. Suspensions.
- 351.26. Unsatisfactory rating.
- 351.27. Plan for alternative rating system.
- 351.28. Procedure for approval of alternative rating form.

Authority

The provisions of this Chapter 351 issued under section 35 of the Administrative Agency Law (71 P. S. § 1710.35) (Repealed), unless otherwise noted.

Source

The provisions of this Chapter 351 adopted March 31, 1978, effective April 1, 1978, 8 Pa.B. 830, unless otherwise noted.

GENERAL**§ 351.1. Purpose and scope.**

(a) Appeals taken under section 1131 of the School Code (24 P. S. § 11-1131) shall be taken in accordance with the provisions of this chapter.

(b) In addition to the provisions set forth in this chapter, appeals will follow 1 Pa. Code Part II (relating to general rules of administrative practice and procedure); except that the following sections do not apply to these proceedings: §§ 35.1, 35.2, 35.5, 35.6, 35.7, 35.9, 35.10, 35.11, 35.14, 35.18, 35.19, 35.20,

35.37, 35.101, 35.102, 35.103, 35.104, 35.105, 35.106, 35.190, 35.201, 35.202, 35.203, 35.204, 35.205, 35.206, 35.207, 35.211, 35.212, 35.213, 35.214, 35.221, 35.225 and 35.251.

Source

The provisions of this § 351.1 adopted March 31, 1978, effective April 1, 1978, 8 Pa.B. 830.

§ 351.2. Definitions.

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

Agency—The Department.

Appellant—A person who has appealed from an action of the board which governs the district where the person is employed.

Board—A board of school directors, area vocational-technical school board of directors or intermediate unit board of directors.

Department—The Department of Education of the Commonwealth.

Employe—A professional employe of a school district, intermediate unit or area vocational-technical school.

Hearing examiner—A person designated by the Secretary to act on his behalf at a teacher tenure hearing.

Legal division—The legal division of the Department.

School Code—The Public School Code of 1949 (24 P. S. §§ 1-101—27-2702).

Secretary—The Secretary of Education of the Commonwealth.

Teacher tenure hearing—A hearing before the Secretary conducted under section 1131 of the School Code (24 P. S. § 11-1131).

Source

The provisions of this § 351.2 adopted March 31, 1978, effective April 1, 1978, 8 Pa.B. 830.

§ 351.3. Petitions of appeal.

(a) Petitions of appeal filed with the Secretary under section 1131 of the School Code (24 P. S. § 11-1131) shall contain the following information:

- (1) A statement of the jurisdiction of the Secretary of Education.
- (2) A statement of relevant facts and the grounds for the appeal.
- (3) A statement of the issues presented.
- (4) The relief requested by the appellant.

(b) Petitions of appeal shall be filed with the Secretary within 30 days after receipt by registered mail of the written notice of the decision of the board or may be filed upon receipt of actual notice of the denial of a hearing.

Source

The provisions of this § 351.3 adopted March 31, 1978, effective April 1, 1978, 8 Pa.B. 830.

§ 351.4. Rules of practice and procedures for teacher tenure appeals filed with the Secretary.

(a) The legal division will set the day and time for the hearing and send a copy of the notice of hearing to all parties.

(b) Immediately upon receipt of the notice of the hearing, the secretary of the board shall forward to the Secretary the following:

(1) One copy of the transcript of the proceedings before the board concerning the appellant.

(2) Two copies of the statement of charges served upon the appellant.

(3) Two copies of relevant minutes and resolutions of the board concerning the appellant.

(4) Two copies of the appellant's professional employe contract.

(5) Two copies of other documents the secretary of the board or the board itself deems relevant to this appeal which are part of the record as set forth in subsections (c)—(h).

(c) The secretary of the board will submit an explanation if any of the materials listed in subsection (b) are not available.

(d) A request for more specific pleadings may be made by the Secretary. Immediately upon receipt, the appellant shall answer the request and send two copies to the Secretary and one copy to the opposing counsel.

(e) Prehearing conferences may not be held unless, in the discretion of the hearing examiner, a conference is necessary to expedite the hearing.

(f) Opposing counsel are required to exchange all material pertinent to the appeal and submit this material to the Secretary prior to the hearing.

(g) The appellant shall open and close the argument unless otherwise directed by the hearing examiner.

(h) Where there has been a hearing before the Board prior to the hearing before the Secretary, argument will be limited to 30 minutes for each party.

Source

The provisions of this § 351.4 adopted March 31, 1978, effective April 1, 1978, 8 Pa.B. 830.

Cross References

This section cited in 22 Pa. Code § 351.5 (relating to appeals from denial of a hearing).

§ 351.5. Appeals from denial of a hearing.

(a) Where the board refuses to give an employe a hearing under sections 1151 or 1122 of the School Code (24 P. S. §§ 11-1151 or 11-1122), the employe may appeal to the Secretary within 30 days after receipt by registered mail of the written notice of the decision of the board or may file upon receipt of actual written notice of the denial of a hearing, whichever comes first.

(b) The procedures prescribed in § 351.4(a)—(c) (relating to rules of practice and procedures for teacher tenure appeals filed with the Secretary) shall be followed for the hearings described in subsection (a).

(c) The hearings described in subsection (a) shall be held for the purpose of determining the nature of the action by the board and determining the professional employe status of the appellant.

(d) Argument shall be heard at the discretion of the hearing examiner.

Source

The provisions of this § 351.5 adopted March 31, 1978, effective April 1, 1978, 8 Pa.B. 830.

Notes of Decisions

Notice of Appeal

Complaint in Mandamus was properly dismissed by Court of Common Pleas since refusal of Board to hold hearing on demotion of professional employee is a ground for appeal to the Secretary of Education; transfer of the case to the Secretary of Education would have been ineffectual since the complaint had not been filed within the 30 day period provided for in 22 Pa. Code § 351.5(a). *Black v. Board of Director of West Chester Area*, 510 A.2d 912 (Pa. Cmwlth. 1986).

§ 351.6. Conduct of participants.

(a) It is the duty of the hearing examiner to conduct a fair and impartial hearing and to maintain order. Disregard by participants or counsel of rulings of the hearing examiner on matters of order and procedure shall be noted on the record, and, where the hearing examiner deems it necessary, shall be the subject of a special written report to the Secretary. In the event that participants or counsel should be guilty of disrespectful, disorderly, or contumacious language or conduct in connection with any hearing, the hearing examiner immediately may submit to the Secretary his report thereon, together with his recommendations, and, in his discretion, may suspend the individual for the duration of the hearing or suspend the hearing.

(b) The Department may deny, temporarily or permanently, the privilege of appearing or practicing before it in any way in a teacher tenure hearing to any person who is found by the Department after notice and opportunity for hearing in the matter:

- (1) Not to possess the requisite qualifications to represent others.
- (2) To have engaged in unethical conduct or conduct that has jeopardized the rights of a professional employe by failure to comply with this chapter.

Source

The provisions of this § 351.6 adopted March 31, 1978, effective April 1, 1978, 8 Pa.B. 830.

§ 351.7. Briefs.

(a) The original briefs shall contain:

- (1) A summary of argument which is no longer than one page in length.

- (2) The citation of any cases or statutes relied upon in the argument.
- (3) A statement of the facts and issues of the case.
- (4) References to the pages of the record or exhibits where evidence appears.
- (5) Proposed findings of fact and conclusions of law with specific references to the pages of the transcript.
- (b) The appellant's brief shall be delivered to the Secretary and to the opposing counsel at least 10 days before the hearing.
- (c) The board's brief shall be delivered to the Secretary and to opposing counsel at least 5 days before the hearing.
- (d) In all cases, the appellant may file a reply brief.
- (e) The hearing examiner may request additional briefs to be submitted after the hearing and shall set a date for filing of those briefs.
- (f) In the event that it is impossible to meet the briefing schedule set forth in this section because of the duty of the Secretary to schedule a hearing not sooner than 10 days nor more than 30 days after presentation of a petition, then either party may request a continuance.

Source

The provisions of this § 351.7 adopted March 31, 1978, effective April 1, 1978, 8 Pa.B. 830; amended June 30, 1978, effective July 1, 1978, 8 Pa.B. 1754; amended August 25, 1978, effective August 26, 1978, 8 Pa.B. 2338. Immediately preceding text appears at serial pages (35180) and (35181).

§ 351.8. Testimony.

- (a) Testimony shall be received and recorded at the hearing before the board. The hearing before the Secretary will be held for purpose of reviewing the legal questions involved. However, additional testimony may be taken at the discretion of the hearing examiner.
- (b) Where there has been no prior hearing before the board, testimony may be taken subject to the discretion of the hearing examiner.
- (c) If either party to a proceeding wishes to offer testimony, a notice of intent to offer testimony shall be delivered to the Secretary and to opposing counsel at least 14 days before the hearing. Included in the notice of intent shall be:
 - (1) The name and position of each person who is to offer testimony.
 - (2) An explanation of the purpose and scope of the testimony to be offered.

Source

The provisions of this § 351.8 adopted March 31, 1978, effective April 1, 1978, 8 Pa.B. 830; amended August 25, 1978, effective August 26, 1978, 8 Pa.B. 830. Immediately preceding text appears at serial page (35181).

Notes of Decisions*Discretion*

Even if the petition had provided additional evidence to the secretary at least 14 days before the hearing, it was still within the secretary's discretion to admit or refuse that evidence. *Dohanic v. Department of Education*, 533 A.2d 812 (Pa. Cmwlth. 1987); appeal denied 541 A.2d 1392 (Pa. 1988).

Where dismissed teacher's notice of intent to offer additional testimony was delivered to the Secretary of Education only 10 days in advance of the scheduled hearing date and that notice gave no indication of the purpose or scope of the proposed testimony, the teacher had not complied with the provisions of 22 Pa. Code § 351.8(c) requiring delivery at least 14 days prior to the hearing and the Secretary did not abuse her discretion in refusing to accept the additional testimony. *Keating v. Board of School Directors of the Riverside School District*, 513 A.2d 547 (Pa. Cmwlth. 1986); appeal denied 522 A.2d 51 (Pa. 1987).

Verbal Notice

Petitioner's allegation to the Secretary that he verbally informed the School Board of his refusal to consent to a change in positions, which appeared for the first time in Petitioner's Brief opposing a Motion to Quash based on his failure to request a Board hearing, was not sufficient to meet the requirements of this section. *Walsh v. Sto-Rox School District*, 532 A.2d 547 (Pa. Cmwlth. 1987).

§ 351.9. Continuance.

(a) Hearings or appeals shall commence on the first day scheduled, and continuances may not be granted except for good cause shown. A hearing examiner may only grant a second continuance in extraordinary circumstances.

(b) Requests for a continuance shall be in writing and delivered to opposing counsel and the Secretary.

(c) The attorney requesting the continuance shall consult the opposing counsel to seek agreement to the request. The written request should then state whether the request is unopposed.

(d) Objections to a request for a continuance should also be made in writing to the Secretary.

Source

The provisions of this § 351.9 adopted March 31, 1978, effective April 1, 1978, 8 Pa.B. 830.

§ 351.10. Compliance.

In cases where a party violates the provisions of this chapter the hearing examiner may:

- (1) Deny or dismiss the hearing depending on the degree of violation.
- (2) Reach a disposition adverse to the dilatory party.

Source

The provisions of this § 351.10 adopted March 31, 1978, effective April 1, 1978, 8 Pa.B. 830.

RATINGS

§ 351.21. Rating form.

The following rating form has been promulgated under this chapter:

Commonwealth of Pennsylvania
DEPARTMENT OF EDUCATION
Box 911, Harrisburg, Pa. 17126

TEMPORARY PROFESSIONAL EMPLOYEE/PROFESSIONAL EMPLOYEE RATING FORM

Rev. DEBE-333

Last Name		First	Middle
District/LU.		School	

Satisfactory Service of employe sufficiently acceptable to justify continuation of employment.	Signature of Rater	Unsatisfactory Improvement is essential to justify continuance in service.	Signature of Rater
Position	Date	Position	Date

I. PERSONALITY: (encompasses those personal characteristics that directly influence professional performance.)	II. PREPARATION:	III. TECHNIQUE	IV. PUPIL REACTION: (student response to activities over which the professional employe has control.)
<ul style="list-style-type: none"> Exercises (prudent) judgment. Maintains personal hygiene. Maintains poise and composure Maintains professional attitudes. 	<ul style="list-style-type: none"> Communicates with parents about student's progress. Demonstrates appropriate language usage. Demonstrates a willingness to cooperate toward district goals. Evidences planning which reflects short and long range objectives and activities. Keeps abreast of subject matter and special practices. Provides appropriate instructional material to meet the student's needs. 	<ul style="list-style-type: none"> Demonstrates ability to organize for instruction. Encourages students with appropriate reinforcement. Provides an educational atmosphere consistent with instructional goals. Provides for individual student differences. Utilizes appropriate strategies. 	<ul style="list-style-type: none"> Demonstrates work/study habits. Evidences communication skills. Exhibits behaviors conducive to learning. Participates in learning activities.

Rating: Temporary Professional Employe
I certify that the above-named employe for the period beginning _____ (month/day/year) and ending _____ (month/day/year) has received a rating of SATISFACTORY UNSATISFACTORY

Date _____ I.U. Executive Director or Dist. Supt.

Rating _____
(Total Category I, II, III, IV)

Seniority _____
Weighted Total _____

Rating: Professional Employe
I certify that the above-named employe for the period beginning _____ (month/day/year) and ending _____ (month/day/year) has received a rating of SATISFACTORY UNSATISFACTORY

Date _____ I.U. Executive Director or Dist. Supt.

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

Date _____ Signature of Employe _____

STANDARDS FOR USE OF DEBE-333

EMPLOYEE DEFINITIONS*

The term *professional employe* shall include those who are certificated as teachers, supervisors, principals, assistant principals, vice-principals, directors of vocational education, dental hygienist, visiting teachers, home and school visitors, school counselors, child nutrition program specialists, school nurses, school librarians and school secretaries, the selection of whom is on the basis of merit as determined by eligibility lists.

The term *temporary professional employe* shall mean any individual who has been employed to perform for a limited time the duties of a newly created position or of a regular professional employe whose service has been terminated by death, resignation, suspension or removal.

The term *employe* used only hereafter shall refer to both temporary professional and professional employes.

RATING OF TEMPORARY PROFESSIONAL EMPLOYE**

A temporary professional employe must be notified as to the quality of service at least twice a year. No such employe shall be dismissed unless rated as unsatisfactory and notified in writing of such unsatisfactory rating within 10 days after the unsatisfactory rating. A temporary professional employe whose work has been certified by the district superintendent or an intermediate unit executive director to the secretary of the school district, during the last four (4) months of the second year of such service, as being satisfactory shall thereafter be a *professional employe* within the meaning of this article. The attainment of this status shall be recorded in the records of the board and written notification thereof shall be sent also to the employe. The employe shall then be tendered forthwith a regular contract of employment as provided for professional employes.

DESIGNATED RATER***

Rating shall be done by or under the supervision of the superintendent of schools or, if so directed by him/her, the same may be done by an assistant superintendent, a supervisor, or a principal, who has supervision over the work of the professional employe or temporary professional employe who is being rated. No unsatisfactory rating shall be valid unless approved by the district superintendent.

MAINTENANCE OF RATING RECORDS****

It shall be the duty of the board of school directors to cause to be established a permanent record system containing ratings for each professional employe within the district and copies of all his/her ratings for the year shall be transmitted to the employe upon his/her request; or if any rating during the year is unsatisfactory copy of same shall be transmitted to the professional employe concerned. No . . . employe shall be dismissed unless such rating records have been kept on file by the board of school directors.

* See Section 1101 (1) and (3) of the Public School Code of 1949, as amended.

** See Section 1108 of the Public School Code of 1949, as amended.

*** See Section 1123 of the Public School Code of 1949, as amended.

**** See Section 1125(a) of the Public School Code of 1949, as amended.

Note: . . . The word *professional* has been deleted to be consistent with the employe definitions.

GENERAL RATING

1. Designated rater shall use this rating card for each and

every official employe rating.

2. The designated rater will place his/her signature in the block provided for either the satisfactory or unsatisfactory rating at the top of the card.
3. Professional employes shall be rated a minimum of once each year.
4. Due consideration shall be given in the rating process to the following factors: professional assignment, intellectual level of students and learning/behavioral problems which might affect professional performance and factors over which the professional has control.
5. Using the descriptors listed in each category on the card, the rater will attach a numerical value to the employe's performance in each of the four categories—Personality, Preparation, Technique and Pupil Reaction—to a maximum numerical value of 20 points per category. The aggregate numerical value will not exceed 80 points when adding the four categories.
6. The final numerical rating for each category will appear in the designated block at the bottom of each category column. The total numerical score of the four categories shall be placed in the rating box.
7. Descriptors in each category shall not be weighted. The objective is to substantiate the numerical score with anecdotal records using the descriptors simply as guides.
8. A rating in any category of less than 20 points shall be substantiated by anecdotal records and discussed with the employe.
9. A copy of the rating shall be provided to any employe upon request.

DETAILED APPRAISAL FOR UNSATISFACTORY RATING

1. When an unsatisfactory rating in any major category I, II, III or IV is given an employe, the rater must place a check in the block opposite that category designation.
2. It is possible that a gross deficiency in a single category might be sufficiently serious to warrant a total rating of unsatisfactory.
3. Wherever an unsatisfactory rating is given, each such recorded rating must be stated and the specific circumstances supported by anecdotal records. The records must include specific details of evidence likely to be important in the event the services of an employe are to be discontinued.
4. Two consecutive unsatisfactory ratings of a professional employe are necessary to support a dismissal on the grounds of incompetency.

SUSPENSION AND NUMERICAL WEIGHTING

When the number of employes within the district must be reduced, the intermediate unit executive director or district superintendent shall follow the procedures in Section 1125 of the Public School Code of 1949. In accordance with standards and weighting incorporated in this card, seniority is to be added to the rating only when a substantial difference exists in the ratings of those considered for suspension. Seniority will be given the weight of one point for each year of service in the school district of current employment to a total not to exceed 20 points.

Source

The provisions of this § 351.21 adopted August 25, 1978, effective August 26, 1978, 8 Pa.B. 2339.

Notes of Decisions*Numerical Scores*

The contents of the rating form of a teacher must include numerical scores to support an unsatisfactory rating to support a school district's proposed personnel action of discharge. *Hamburg v. Department of Education*, 458 A.2d 288 (Pa. Cmwlth. 1983); affirmed 484 A.2d 867 (Pa. Cmwlth. 1984).

The failure to use numerical scores as contemplated by the regulations which created the DEBE-333 form has no effect upon a rating of a teacher as unsatisfactory, since this section requires only that unsatisfactory ratings be approved and signed by the district superintendent or intermediate unit director and be supported by anecdotal records, and not that the unsatisfactory ratings contain numerical scores. *Hamburg v. North Penn School District*, 484 A.2d 867 (Pa. Cmwlth. 1984).

Perfect Rating Scores

An arbitrator may not require a school district to award perfect rating scores to each of its professional employees since the school district could not award such scores voluntarily because doing so would violate the evaluation provisions of the act of March 10, 1949 (P. L. 30) (24 P. S. § 11-1123) and this section in that awarding a perfect score is not an evaluation individual or otherwise. *Perkiomen Valley Education Association v. Perkiomen Valley School District*, 460 A.2d 896 (Pa. Cmwlth. 1983).

Use of Rating

It is proper for the district superintendent to both sign the rating form and perform the rating. *School District of Philadelphia v. Kushner*, 530 A.2d 541 (Pa. Cmwlth. 1987); appeal dismissed 552 A.2d 667 (Pa. 1989).

§ 351.22. Additional standards for use of the DEBE-333.

- (a) Standards for use of the DEBE-333 have been incorporated in the official rating card. Additional standards are stated in this section.
- (b) Descriptors in each category of the DEBE-333 shall not be weighted.
 - (1) The rater shall not divide the total number of points in each category of personality, preparation, technique, and pupil reaction by the total number of descriptors in that category and assign a weight to each descriptor.
 - (2) The rater shall rate the employe in a category using the descriptors as guides; the rater shall not manipulate each descriptor and give it a standard weight or value.
 - (3) The rater does not have to react to all items as descriptors in each observation.
- (c) Descriptors are not listed in the four categories in order of importance, but simply in alphabetical order.
- (d) When a gross deficiency in a category is observed, the rater shall place a check in the block provided at the top right corner of that category.
- (e) The total efficiency rating or number shall be registered in the space provided at the bottom of the front sheet of the DEBE-333.

(f) A school district may assign a numerical equivalent to satisfactory and to unsatisfactory and determine that only the difference between those two numbers equivalent to satisfactory and unsatisfactory constitutes a substantial difference.

(g) Rating of less than 20 in any category shall be substantiated by anecdotal records and discussed with the employe within 5 working days after the day of the final observation preceding the rating. The discussion may take place before or after the rating is approved by the superintendent. The 5-day limitation may be extended only because of emergency or extenuating circumstances.

(h) A temporary professional and a professional employe shall be given the opportunity to sign his rating form.

(i) If the employe refuses to sign in the space provided, the refusal shall be recorded and dated. The employe shall be notified in writing of this notation within 10 days.

Source

The provisions of this § 351.22 adopted August 24, 1979, effective August 25, 1979, 9 Pa.B. 2884; corrected November 26, 1982, effective February 16, 1980, 12 Pa.B. 4055.

Notes of Decisions

Numerical Scores

The failure to use numerical scores as contemplated by the regulations which created the DEBE-333 form has no effect upon a rating of a teacher as unsatisfactory, since this section requires only that unsatisfactory ratings be approved and signed by the district superintendent or intermediate unit director and be supported by anecdotal records, and not that the unsatisfactory ratings contain numerical scores. *Hamburg v. North Penn School District*, 484 A.2d 867 (Pa. Cmwlth. 1984).

Unsatisfactory Ratings

Although this section discusses how ratings should be completed it does not deal specifically with unsatisfactory ratings. *School District of Philadelphia v. Kushner*, 530 A.2d 541 (Pa. Cmwlth. 1987); appeal dismissed 552 A.2d 667 (Pa. 1989).

§ 351.23. Alternative rating form.

(a) Each board of school directors may adopt an alternative rating form and submit the same to the Department for approval by May 30 of the year preceding the school term in which the form is to be used; however, for the 1979-80 school year, the form shall be submitted by October 30, 1979 if it is to be valid after January 1, 1980.

(b) The alternative rating form shall conform to the standards set forth in §§ 351.24—351.28 (relating to general rating using alternative forms; suspensions; unsatisfactory rating; plan for alternative rating system; and procedure for approval of alternative rating form).

(c) Previously approved forms shall be valid until January 1, 1980, provided that ratings are conducted in conformance with § 351.24(a)—(d).

Source

The provisions of this § 351.23 adopted August 24, 1979, effective August 25, 1979, 9 Pa.B. 2884; corrected November 26, 1982, effective February 16, 1980, 12 Pa.B. 4055.

§ 351.24. General rating using alternative forms.

(a) When an alternative form has been approved by the Department, the rater shall use the alternative form for every official rating of temporary professional or professional employes.

(b) Professional employes shall be rated a minimum of once each year.

(c) Temporary professional employes shall be rated once each semester for a minimum of two ratings each year.

(d) Rating shall be substantiated by anecdotal records and discussed with the employe within 5 working days after the final observation preceding the rating. The discussion may take place before or after the rating is approved by the superintendent. The 5-day limitation may be extended only because of emergency or extenuating circumstances.

(e) A temporary professional and professional employe shall be given the opportunity to sign his rating form.

(f) If the employe refuses to sign in the space provided, the refusal shall be recorded and dated. The employe shall be notified in writing of this notation within 10 days.

(g) The alternative rating form shall be restricted to the consideration of four major categories: personality, preparation, technique and pupil reaction.

(h) The alternative rating form need not require numbers or a numerical rating.

Source

The provisions of this § 351.24 adopted August 24, 1979, effective August 25, 1979, 9 Pa.B. 2884; corrected November 26, 1982, effective February 16, 1980, 12 Pa.B. 4055.

Cross References

This section cited in 22 Pa. Code § 351.23 (relating to alternative rating form).

§ 351.25. Suspensions.

(a) Seniority shall only be weighted in the rating when the number of employes within the district are reduced and a substantial difference in performance rating exists among those under consideration.

(b) What constitutes a substantial difference in rating of those under consideration shall be determined by local policy.

(c) Seniority shall be weighted as determined by local policy. The local district shall not eliminate seniority as a weighting factor.

Source

The provisions of this § 351.25 adopted August 24, 1979, effective August 25, 1979, 9 Pa.B. 2884; corrected November 26, 1982, effective February 16, 1980, 12 Pa.B. 4055.

Cross References

This section cited in 22 Pa. Code § 351.23 (relating to alternative rating form).

§ 351.26. Unsatisfactory rating.

(a) Two consecutive unsatisfactory ratings of a professional employe shall be necessary to dismiss on the grounds of incompetency. This requirement insures that dismissal is not based on the first instance of unsatisfactory performance but that dismissal follows notice and an opportunity for the professional employe to improve.

(b) The intermediate unit director or district superintendent shall approve and sign the rating form when an unsatisfactory rating is recorded.

(c) Whenever an unsatisfactory rating is given, it shall be supported by anecdotal records. The records shall include specific evidence likely to be important in the event of dismissal.

Source

The provisions of this § 351.26 adopted August 24, 1979, effective August 25, 1979, 9 Pa.B. 2884; corrected November 26, 1982, effective February 16, 1980, 12 Pa.B. 4055.

Notes of Decisions*Anecdotal Records*

The arbitrator's award denying discharged teacher's grievance concluding that observation by district superintendent of teacher prior to her termination was impossible due to teacher's failure to work the remainder of school year because of illness was upheld as the award drew its essence from the Collective Bargaining Agreement. The Court determined that the basis of the arbitrator's award represented a reasonable interpretation of the labor agreement between the parties. *Shapiro v. School District of Philadelphia*, 637 A.2d 718 (Pa. Cmwlth. 1994).

The Board need not formally introduce supporting anecdotal records of an unsatisfactory rating upon which the dismissal of a temporary professional employe was based as long as the person who rated the temporary employe testifies and explains the rating process. *Phillis v. Board of School Directors of Mechanicsburg Area School District*, 617 A.2d 830 (Pa. Cmwlth. 1992); appeal denied 634 A.2d 226 (Pa. 1993).

Commonwealth Court has construed this regulation to require that unsatisfactory ratings be approved and signed by the district superintendent or intermediate unit director and that the rating be supported by anecdotal records. The ratings need not contain numerical scores citing *Hamburg v. North Penn School District*, 484 A.2d 867, 869 (1984). *School District of Philadelphia v. Kushner*, 530 A.2d 541 (Pa. Cmwlth. 1987); appeal dismissed 552 A.2d 667 (Pa. 1989).

The failure to use numerical scores as contemplated by the regulations which created the DEBE-333 form has no effect upon a rating of a teacher as unsatisfactory, since this section requires only that unsatisfactory ratings be approved and signed by the district superintendent or intermediate unit director and be supported by anecdotal records, and not that the unsatisfactory ratings contain numerical scores. *Hamburg v. North Penn School District*, 484 A.2d 867 (Pa. Cmwlth. 1984).

Cross References

This section cited in 22 Pa. Code § 351.23 (relating to alternative rating form).

§ 351.27. Plan for alternative rating system.

- (a) Each submitted plan shall include the following elements:
- (1) Statement of the objectives of the alternative rating system.
 - (2) Description of the procedures used to develop the rating form. This shall include dates and groups involved.
 - (3) Documentation from the chief school administrator explaining the involvement in the development of the alternative rating form of those professional employees who are to be evaluated.
 - (4) Description of the procedures for appealing the rating.
 - (5) Description of the process by which the rating form will be used to improve professional employees' performance.
- (b) Professional employees shall be given the opportunity to submit documentation to the Department explaining their involvement in the development of the alternative rating form.
- (c) An alternative rating form adopted by the board of school directors shall become effective when approved by the Secretary.

Source

The provisions of this § 351.27 adopted August 24, 1979, effective August 25, 1979, 9 Pa.B. 2884; corrected November 26, 1982, effective February 16, 1980, 12 Pa.B. 4055.

Cross References

This section cited in 22 Pa. Code § 351.23 (relating to alternative rating form).

§ 351.28. Procedure for approval of alternative rating form.

- (a) After approval by the board of school directors, the chief school administrator or intermediate unit executive director shall submit the proposed rating form to the Department.
- (b) Two copies of the rating form shall be submitted to the Department at least 60 days prior to the tentative adoption date.
- (c) The chief school administrator or intermediate unit executive director shall be notified of the Department's decision in writing within 60 days of receipt of the form by the Department. Failure to receive notice of approval or disapproval within 60 days constitutes an approval.
- (d) The rating form adopted by the board of school directors or intermediate unit board of directors and approved by the Secretary of Education shall become an integral part of the written policies of the board and shall be made available to all temporary professional/professional employees covered by the rating form.

Source

The provisions of this § 351.28 adopted August 24, 1979, effective August 25, 1979, 9 Pa.B. 2884; corrected November 26, 1980, effective February 16, 1980, 12 Pa.B. 4055.

Cross References

This section cited in 22 Pa. Code § 351.23 (relating to alternative rating form).

[Next page is 354-1.]

351-16

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