Teacher Evaluations Key to State Chances for NCLB Waivers

By Stephen Sawchuk

Where their teacher-quality proposals are concerned, the fates of the 11 states that have bid for waivers of core principles of the No Child Left Behind Act appear to depend largely on how the peer reviewers—and, ultimately, U.S. Secretary of Education Arne Duncan—interpret their applications.

The U.S. Department of Education's criteria for teacher quality—one of four policy areas states must address in their applications—hinge on the ability of states and districts to ready new teacher-evaluation systems for statewide implementation by the end of the 2013-14 school year.

But even long-standing observers acknowledge that the Education Department's criteria for vetting the states' plans are vague in places and that it's hard to determine at this stage exactly what the peer reviewers will favor.

"We're going to have to watch it closely as it unspools," said Rob Weil, the director of field programs for the 1.5 million-member American Federation of Teachers. "It is a lot of work just to keep on top of it; [the process] seems a little discombobulated."

All of which leaves the most important question in the hands of reviewers: How likely are the states' plans to come to fruition within the waiver period—and should they be granted the flexibility in the meantime?

One challenge for the reviewers is that states and their districts are at widely divergent stages of developing new evaluation systems, ranging from Tennessee, which has an operational statewide teacher-evaluation system, to Kentucky, where nearly every detail of such a system remains undecided.

And the stakes are different from those of the Race to the Top competition, which also put a premium on teacher evaluation: Unlike that contest, Education Department officials have stressed that they want all states to apply for—and earn—the flexibility.

Some, like Mr. Weil, welcome a process that could help every state eventually win breathing room from the NCLB law. But others question whether political pressure will prevent a rigorous review.

"On the first round, I think it won't be seen as too costly to kick a few of these back," said Sandi Jacobs, the director of state policy for the National Council on Teacher Quality, a Washington-based nonprofit advocacy group that tracks states' teacher policies. "I think the real question is on the second round."
Teacher Proposals

States applying for the U.S. Department of Education’s NCLB flexibility must prepare all districts to implement teacher-evaluation systems that consider student achievement within three years. The first step: adopting statewide teacher-evaluation guidelines. Several states’ plans for doing so:

**Minnesota**
The state will create an annual evaluation system. Probationary teachers would receive at least three formal observations each year. Tenured teachers would undergo a three-year “professional review” cycle, with at least one evaluation performed by a trained evaluator and the others by peers.

**Status:** A state work group is now fleshing out all the details of a model to be used if districts and unions do not devise their own model.

**Kentucky**
A state steering committee has recommended a teaching framework and, with 50 volunteer districts, is working to define multiple measures of student achievement that could factor into the evaluations.

**Status:** The state board of education must propose and adopt a regulation for statewide adoption. It anticipates completion of this work by spring.

**New Mexico**
A task force has recommended replacing a “binary” teacher-evaluation system linked to the state’s tiered-licensing structure. It proposed a system with five levels of performance, based on at least four observations of each teacher. In tested grades and subjects, at least half the

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**Clarity Lacking**

As reauthorization of the NCLB law stalled in Congress earlier this year, Mr. Duncan said he would use his broad waiver authority under the law to grant relief from some of its mandates, such as the requirement that states ensure all students can perform at grade level in reading and math by 2014. To gain the flexibility, states would have to adopt reforms roughly in line with those mandated in the 2009 economic-stimulus package.

In the teacher-quality area, the waivers, which will be granted for an initial period of three years, are based on two main principles. States must adopt guidelines for teacher evaluation, and then school districts must adopt them, flesh out the details and bargain them with unions where applicable, and begin to pilot them by the completion of the three-year initial waiver period.

The NCLB law’s consequences for states and districts that do not have all teachers achieve "highly qualified" status are relatively minimal. But because the flexibility is an all-or-nothing deal, states must commit to the more-rigorous evaluation systems in order to gain leeway from the law’s stringent school accountability features.

Five states in the first application round—Colorado, Florida, Indiana, Massachusetts, and Tennessee—have recently passed laws or adopted regulations requiring annual performance evaluations that meet the federal Education Department’s requirements.

The remaining states have promised to adopt their guidelines by the end of the 2011-12 school year.

In Georgia, state officials need a law or regulation in order to implement a statewide teacher-evaluation system; currently, only 26 districts out of the state’s 180 are adopting a model using Race to the Top funding. New Mexico also needs a law to replace its tiered-licensing system with annual evaluations.

Kentucky and New Jersey have set up work groups or committees to outline principles for new regulations to update current teacher-evaluation strictures.

But leaders in those states say their applications should meet the teacher-quality criteria.

"Unlike some states which didn't have it, we've had [annual evaluation] in place since 1978, and it includes an indicator for pupil progress," said Martha DeBlieu, an associate director of the New Jersey Education Association.
The union disagrees, however, with the state committee's recommendations about how much weight to give to standardized test scores in the evaluation.

Some observers say the federal Education Department's guidance for the peer reviewers could have been more detailed.

"We would have liked a stronger, more forceful definition on what it means when you say you're going to use evaluations for continuous improvement. Words like 'professional development' are a throwaway," said Mr. Weil, who was considered as a reviewer but won't participate in the first round due to the small number of applications received. "For lack of a better word, if you're going to have a national framework to do these evaluations, you have to be clear about it."

Plans that look good on paper can prove difficult to implement in reality, said Ms. Jacobs, pointing to the challenges Hawaii, an RTT winner, has faced in reaching an accord with its teachers' union over performance evaluation.

"I'm hoping the department will feel free to let the experts use not just their subject expertise, but also what they know about where states are and what's realistic and doable," said Ms. Jacobs.

But Raegen T. Miller, the associate director of education research for the Center on American Progress, said that the Education Department's guidance should help reviewers ask the tough questions.

"The questions they're asking are the right ones: Can you actually bring these down to a district level and have parties engaged mutually in seriously implementing them," he said. (Mr. Miller is not a peer reviewer, though CAP Vice President for Education Policy Cynthia G. Brown was selected as an alternate.)

**Evaluation Consequences**

An element that remains somewhat unclear is how the proposals will mesh with laws that specify whether teacher evaluation falls under the scope of collective bargaining. In all but Indiana and Tennessee, evaluation is a permissible subject of bargaining.

The Department of Education took pains to note in its application guidance that the waivers do not give school districts any new legal authority they did not hold beforehand.

Where not spelled out in state law or regulations, such factors as procedures for conducting teacher observations, pre- and post-observation tools, and so on, must still be individually negotiated. That is the case in New Jersey and Massachusetts, among other states.
The peer reviewers will also be instructed to check whether the systems will be used to inform personnel decisions, which could mean such policies as pay, promotion, and tenure-granting. Yet few of the states provided details.

For some states, those features are now spelled out in new state laws. Colorado's SB 191, passed in 2010, for instance, requires teachers to be deemed effective on the evaluations before they are granted tenure. Florida's law, passed in March, requires the evaluations to factor into layoff decisions.

But for others, such as Kentucky, those features remain an unknown area.

"Current legislation places authority for personnel decisions at the local level," Lisa Gross, the director of the division of communications and community engagement, wrote in an email.

Legislative or regulatory changes in those areas are possible, but any such decisions "will be made later in the process," she said.

The thorniest issue of all, dismissal, could prove challenging for peer reviewers to make sense of. While most states have laws on the books for dismissing teachers for incompetence, the criteria are often not detailed, or must be interpreted via case law.

Such laws are "a long way away from saying that classroom ineffectiveness based on these evaluations is grounds for dismissal," Ms. Jacobs said.

**Following Through**

Still unclear is how the department will intervene in those states and districts that win the waiver flexibility—but face challenges translating plans into reality. The first major hurdle for states is to adopt the statewide teacher-evaluation guidelines by the end of this school year. Education Department officials said that states approved under the condition that they do so could have their flexibility terminated if they do not meet that deadline.

But beyond that, they declined to specify exactly under which circumstances the department might revoke the flexibility.

"I don't think I could answer that hypothetically," said Elizabeth Utrup, an Education Department spokeswoman. "Each state's plans would lay out milestones for how to achieve it, and they'd have to miss those milestones.

"Obviously, this might not just be in the evaluation area," she added. "They're very comprehensive plans."