An Initial Framework for Considering the Release of Individual Educators' Evaluation Results

PURPOSE

As states and districts redesign their systems for evaluating teachers and principals, it is critical that they have deliberate, appropriate rules governing the release of individual educators' evaluation data. This paper provides guidance for states and districts to help establish those rules in a manner that best balances core values and advances educational goals. States and districts should attend to this issue as an immediate, achievable obligation and put necessary rules in place to support their decisions.

BACKGROUND

Nearly all states are moving to reform the way they evaluate teachers and principals and are developing evaluation systems based on multiple measures of student achievement. This work has occurred in response to new requirements in state laws, the federal Race to the Top (RTTT) grant program, and the Elementary and Secondary Education Act (ESEA) waiver opportunity. The central goal of this reform effort is to improve educator effectiveness and elevate the educator profession to promote college- and career-ready outcomes for all students. States and districts are contemplating a number of uses for their evaluation systems, including for professional development purposes and to make personnel decisions, such as hiring, compensation, tenure acquisition or loss, and dismissal. In leading this effort, states and districts must balance the

urgent need for reforms with the need to ensure that the redesigned evaluation systems are high-quality in terms of validity and legitimacy, as well as impact on educator development and capacity.

One concrete issue that has arisen quite dramatically in this movement is whether and to what extent the state or district will make evaluation data for individual teachers and principals (e.g., value-added scores or summative ratings) publicly available, whether broadly or to certain stakeholders in certain circumstances. While there is broad agreement regarding the public release of aggregated educator evaluation data for purposes of transparency, accountability, and school improvement, releasing individual educator evaluation raises more acute issues and has not generally received sufficient attention.

Rather than find itself in a reactionary position, faced with a lawsuit or information request, it is imperative that a state or district be proactive and formally establish clear policies regarding the release of individual educators' evaluation data. A state or district's decision must be deliberate and based on a clear sense of its theory of action for the evaluation system. The question of releasability also requires a close examination of legal requirements as well as purposeful balance of an array of educational goals/values and stakeholder interests.

States and districts need clear policies regarding the release of individual educators' evaluation data that are deliberate and based on a clear sense of the theory of action for the evaluation system.

Despite the need for clear decisions on this important issue, many states and districts have yet to resolve it. Without definitive rules, releasability may be left to unpredictable administrative and/or judicial interpretations that attempt to balance two general legal principles - sunshine and related laws that embrace transparency, on the one hand, and personnel records and related protections that guard the privacy of individual employees, on the other.

Ultimately, there is a relatively limited spectrum of options regarding the releasability of individual educator evaluation data that can and should inform ongoing policy decisions. A state or district could:

- prohibit the release of individual educators' evaluation data;
- release individual, contextualized evaluation data (whether value-added data or summative ratings) to certain stakeholders in certain circumstances; or
- release this information broadly.

States and districts may legitimately reach different conclusions about releasability along this spectrum, but it is essential that those decisions be developed purposely through a deliberative, communicative process, and that those rules be clearly established.

Regardless of which these approaches a state or district may chose, the uncontrolled release of individual educator evaluation information, or raw data, from one component (such as value-added measures) of the evaluation system without broader context is the wrong choice for effective policy. It would seem to do little to fully empower educators, parents, or other stakeholders and risks significant harm to other core values.

The uncontrolled release of individual educator evaluation information, or raw data, from one component of the evaluation system without broader context is the wrong choice for effective policy.

Although this paper does not provide legal advice, nor advocate for any specific position in state legislation or action, it unequivocally asserts that the decision about whether to release evaluation data about individual educators is an essential issue in reforming educator evaluation systems, and one that states and districts must - and can - resolve clearly in law and policy. This paper is intended to assist states and districts in reaching a decision about whether and how to release individual educators' evaluation data by 1) presenting important contextual information, 2) examining the range of educational values and interests implicated by this issue, and 3) discussing the spectrum of options so that states and districts can make purposeful decisions.

UNDERSTANDING THE LEGAL AND POLICY CONTEXT

There are a number of potential legal and related pressures at the state and federal levels that may drive state or district action on the issue of the releasability of individual educators' evaluation data.

States have broad discretion with regard to the releasability of individual educator evaluation, and the decision generally will turn on state law. Thus, state statutes, regulations, and case law will drive the analysis regarding whether individual educator evaluation results may not, may, or must be released publicly. [1] Existing state public

States have broad discretion with regard to the releasability of individual educator evaluation, and the decision will generally turn on state law.

information/sunshine laws generally speak to the issue of public employees' personnel records. While some state laws may expressly bar disclosure of an individual evaluation rating and/or the data that inform that rating, others may allow or even require it. Many laws are currently silent on the issue. Where the state has not clearly addressed the question of the releasability of individual educators' evaluation data in state law, a state's position will likely depend on interpretation of the balance of 1) its public information/sunshine law and 2) exemptions regarding the privacy of personnel records. Broadly speaking, these two legal standards reflect competing interests - the public's right to know and the educator's interest in privacy.

Federal law largely leaves the issue of whether individual educators' evaluation data can or should be made publicly available to state discretion; however, there are some facets of federal law that are relevant to this issue. For more than a decade, No Child Left Behind (NCLB) and its Highly Qualified Teacher (HQT) provisions have required that states publicly release aggregate data regarding the percentages of highly qualified teachers (defined by certification/licensure, postsecondary degree attainment, and competency) at school and district levels. Moreover, under this regime, states and districts have been required to notify parents of students with teachers who do not meet HQT requirements.[ii]

Additionally, while the Family Education Rights Privacy Act does not protect the privacy of teachers or records about teachers, it generally prohibits the disclosure of personally identifiable information regarding students and their families derived from education records. Although unlikely, it is possible that a disclosure of a teacher's evaluation results, whether a summative rating or value-added data, could unintentionally disclose personally identifiable, and therefore protected, information about students. For example, if disaggregated student achievement results with very small cell sizes are disclosed for teachers, it may be possible to link specific results to particular students. States must address the possibility of small "n" sizes and ensure that student identities are not compromised to the degree educator evaluation results are made public.

EXPLORING KEY EDUCATIONAL GOALS AND VALUES

As states and districts consider their choices regarding releasability, there are a number of potentially competing educational values that may reinforce core education goals and the central theory of action. In establishing a deliberate policy on release of educator

In establishing a deliberate policy on release of educator evaluation data, a number of potentially competing values should be considered and addressed – from a policy, legal, and communications standpoint.

evaluation data, these values should be considered and addressed - from a policy, legal, and communications standpoint. States and districts should seek to find an approach that harmonizes these values, recognizing that this could mean that the state or district prioritizes some of these values over others. Although not exhaustive, some key values for consideration include the following:

a. **Protecting the privacy of educators:** While state sunshine laws respect the public's interest in government accountability and transparency, these laws nonetheless carve out certain exceptions, often recognizing the right of the public employee to have certain expectations of privacy. Privacy rights may help encourage individuals to consider public employment and can facilitate more efficient government work.

b. **Fostering cultures of trust and collaboration in schools to sustain educator morale:** Schools, like many organizational structures, generally function best where stakeholders work together toward a common purpose. Many new systems of educator evaluation call for an emphasis on collaboration through professional learning communities, mentorship and induction opportunities, and the like. States and districts should consider the effect that a release of individual educators' evaluation data may have on school cultures and on educator morale.

c. **Ensuring systems that build instructional capacity and effectiveness:** The central theory of action behind improving evaluation systems is that providing educators with better information about their performance will improve instructional and leadership practices and lead to improved student achievement. States and districts should consider whether making evaluation data about individual educators available either to certain stakeholders (like parents) or to the public will help advance this theory of action.

d. **Managing the level of change associated with implementing new systems of educator evaluation:** States and districts should contemplate whether releasing individual educators' evaluation data will assist them in their efforts or will place additional pressure on the systems during a time of immense change, potentially diverting the evaluation from its central purpose. Additionally, states and districts should consider possible effects of the releasability decision on the broad operations of districts and schools, such as the management of parent relationships and teacher-class assignments.

e. **Guarding against unintended consequences:** States and districts should consider whether release or the prohibition of release might lead to certain unintended

consequences. For example, if individual data are released, will evaluators accurately evaluate low-performing teachers or rather could they be reluctant to rate an educator as ineffective because it could be publicly embarrassing? States and districts should think through possible unintended consequences that could diminish the value of the evaluation.

f. **Ensuring room for ongoing improvement and refinement of the evaluation instrument, particularly in early years, to support validity:** Given accelerated timelines and the complexity of this work, new state and district systems likely will need to be refined throughout the first few years of implementation. There is a strong likelihood that the validity and reliability of instruments in early years will vary across different types of teachers, schools, and districts - and especially as new college- and career-ready standards and assessments are introduced. States and districts will need to continually improve and refine evaluation instruments.

g. **Supporting students' and parents' right to know about the effectiveness of their educators and empowering them to take action:** States and districts must consider how parents and students can be empowered by the redesigned evaluation systems, including the degree to which access to educator evaluation results can aid families in putting appropriate pressure on the system to ensure their children receive a quality education. States and districts also should contemplate the range of appropriate options for parents in using this data - such as school or classroom choice for students with teachers rated ineffective or access to information about the professional learning and support being provided to ineffective educators - and district/school capacity to respond to these actions.

h. **Affirming the public interest in transparency and accountability for public spending:** State sunshine laws protect the right of the public to access and review activities of the government. Public education is a public good, and a state's citizens have an interest in assessing the performance of the schools they fund.

i. **Acknowledging the public interest in providing effective educators:** Beyond the parents of children in the public school system, there is a broader set of state stakeholders who have an interest in ensuring that students are receiving the education necessary to prepare them to be productive citizens. This interest corresponds with many states' constitutional obligations to provide all students with equitable, adequate, and/or uniform systems of education.

Each of these values will play a role in every state and district decision, although different states and districts are likely to strike different balances based on their unique blend of values, traditions, legal obligations, and political climates. States and districts should consider how the release of evaluation results will support or potentially undermine the objectives of their evaluation systems. Moreover, states and districts should think about how the release of evaluation results connects to other key educator effectiveness policies such as professional development, hiring/placement/dismissal, tenure, compensation, and career ladder progression.

THE SPECTRUM OF RELEASABILITY OPTIONS

A state or district policy regarding the release of individual educators' evaluation data should be informed by the values discussed above, the priorities of the evaluation system, and legal obligations in state statute or regulation. Evidenced in part by action among fastest-moving states, there generally are three options, along a relatively limited spectrum, for the releasability of individual educators' evaluation data at either the state or district level. None of these options is fundamentally better than the others, and a state or district's choice will depend on its priorities, values, and objectives. Regardless of the option selected, states and districts should review existing laws to determine whether they need to be revised or clarified to clearly identify the policy decision made. The three general policy options for states and districts are as follows:

1. Exempt from open records laws or explicitly prohibit the release of an individual educator's evaluation rating and/or data that informs that rating.

2. Require/permit the limited release of contextualized evaluation data about individual educators to certain stakeholders in certain circumstances - for example, notification to parents of students assigned to ineffective teachers, building from NCLB reporting requirements (discussed above). [iii]

3. Require/permit the broad release of contextualized evaluation data regarding individual educators. [iv]

This policy choice could be a statewide mandate. Alternatively, the state might permit district variance on the question of releasability, and district leaders would have the discretion to choose from among or within select options.

Sample State Practices

- Colorado developed its educator evaluation system through the legislatively appointed State Council for Educator Effectiveness, which included a range of stakeholders. The Council reported recommendations to the state educational agency, which developed specific regulatory rules that were later approved by the state legislature. Release of evaluation results was one issue decided through this process, and state and local leaders decided to bar the release of individual evaluation results. Under final department regulations, Colorado only reports data related to evaluations in the aggregate at the school, district, and state levels. To protect against unintentional identification when cell sizes are too small, the state will not report data for cohorts smaller than five educators.
- While Florida reports annual aggregated evaluation results statewide to the public, the state requires districts to annually report individual educator results to the parents of any student assigned to a teacher or administrator who receives one of the following evaluation results: two consecutive annual evaluation ratings of unsatisfactory, two unsatisfactory ratings in a three-year period, or three consecutive ratings of needs improvement or unsatisfactory.
- In Michigan, beginning in 2015-16, a school district board must notify the parents of a teacher's evaluation results before the school year begins (by July 15) if the parents' children are assigned to a teacher who has been rated ineffective on his/her two most recent annual year-end evaluations.
- Tennessee did not decide the issue of whether to release individual evaluation results when it first authorized and designed its evaluation system. Two years after the authorizing legislation was passed, the state educational agency decided to release individual evaluation results. Public outcry over the state's decision brought the state legislature in on the issue. Legislators acted quickly to pass a measure that would close teacher evaluation records to parents and other members of the public, but would make data available to school officials. The measure was unanimously passed by both houses and signed by the governor.

Option 1: Complete prohibition of the release of individual educator evaluation results. This approach, popular among many early adopter states, reflects a strong emphasis on key values such as the privacy of educators; the protection of school cultures based on trust, collaboration, and strong educator morale; the limitation of unintended consequences; and/or the importance of empowering the state or district with the freedom to modify and improve the evaluation system over time. At the same time, while this option does not necessarily prioritize individual student and parental rights, the state or district nonetheless can provide transparency regarding educator effectiveness through the aggregate reporting of school- or district-wide data.

A state or district choosing to prohibit the release of individual educators' evaluation data should be prepared to answer the following questions:

- In the event of a request for information under public information/sunshine laws, is the state or district adequately prepared to defend its prohibition on releasing individual evaluation results?
- How will the state or district communicate its decision to prohibit release to key stakeholders (particularly parents), especially with regard to its commitments to transparency and quality education for all students?
- How can aggregate data that is released be useful for informing decisions (including those of parents and the public) in order to continuously improve the public education system?

Option 2: Limited release of contextualized individual educator evaluation results. This option prioritizes the individual student and his or her parents, providing these stakeholders with actionable information, while still placing some importance on the value of the privacy of the educator. Here, states and districts might aspire to provide some measure of educator privacy to value the interests of educators, to ensure more effective implementation of the evaluation system, or both.

A state or district opting to release individual educators' evaluation data selectively (for example, only to parents or only to certain parents) should be prepared to answer the following questions:

- What information will be released, in what circumstances, and to whom? For example, if a teacher is found ineffective, what information is released, how, and to whom? How are those data put in a complete, constructive context to best reflect core values and avoid harm to other core values?

- Is a limited release of individual evaluation data mandated, such that districts must proactively provide all (or some subset of) parents with information, or is the release simply permitted such that districts must release data if a parent requests it?
- What process is appropriate to promote meaningful, constructive parental engagement around evaluation data/results? What follow-up actions should the district or school take? What are the appropriate actions with regard to each stakeholder group, in particular the students and parents of students of that teacher and the teacher him/herself?
- How will the state or district ensure dissemination is controlled? Recognizing that we live in an age of easy public dissemination, has it taken steps to ensure information is shared in a secure manner? How has the state or district ensured that the limited release does not create a "public" document subject to release under its public information/sunshine laws?
- Are districts and schools prepared and do they have capacity to address these issues?

Option 3: Broad release of contextualized individual evaluation results. This option prioritizes not only the individual student and his or her parents but the larger public interest in an effective public education system with effective educators, the transparency of government information, and accountability for public spending.

In addition to many of the questions outlined above for the limited release option, a state or district opting to release individual educators' evaluation data broadly should be prepared to answer the following questions:

- What information about individual teachers is released publicly, in what format, and through what process? How are those data put in a complete, constructive context to best reflect core values and avoid harm to other core values?
- How is the state or district tailoring communications and managing the message in the press and among broader stakeholder groups, such as civil rights organizations, teachers unions, and other interested parties?
- How is the state or district communicating the broad release to its educators so that greater transparency can reinforce school cultures of collaboration and educator morale?

CONCLUSION

States and districts need to prioritize the issue of releasability in order to avoid the harm to core values - and, potentially, costly litigation - that could result if decisions are left to the random reconciliation of general sunshine laws and privacy protections. At a minimum, a

deliberate state or district policy must guard against unfettered releases of raw data or partial information that fail to provide the framing and context necessary to make the information useful for stakeholders and that can cause harm to educators.

States should consider including language in their educator evaluation law or public information law that expressly addresses whether and in what way individual educators' evaluation records can be disclosed. In legislating on this issue, states should acknowledge distinctions among the different types of data in the system; states should be clear not only about release of individual teachers' summative ratings but also about release of the underlying data sets used to reach the summative rating, such as value-added data and observation results.

Although states and districts will vary on the degree to which they release individual educators' evaluation data, all states and districts should be proactive about putting in place a communications strategy that appropriately sequences, frames, and contextualizes decisions about the release of evaluation data.[v] To the extent the state decides to release individual results, the state should be clear about what evaluation results mean. States and districts also should ensure districts are ready to address questions from various stakeholders pertaining to evaluation results. These stakeholder groups include, but are not limited to, students, parents, news organizations, public officials, teachers, school leaders, and teachers' unions or representative organizations. In the event that individual results are made available, the state or district must be prepared with an action plan that, at a minimum, addresses how it will provide professional development opportunities to specific educators and ensure support to the students of those teachers, recognizing that parents may request new teacher assignments.

Although states and districts will vary on the degree to which they release individual educators' evaluation data, all states and districts should be proactive about putting in place a communications strategy.

Ultimately, determining whether and to what extent individual educators' evaluation data will be released is an important decision point that requires the attention of each state and its districts. In reaching a decision about releasability, states and districts must comply with state legal requirements and should consider an array of (sometimes competing) values and stakeholder interests. Public and parental interests in transparency must be weighed along with the potential right to privacy of individual educators, as well as the state's or district's goals for the evaluation system. Whatever decision is reached, states and districts will need to reflect on messaging to a broad set of stakeholders - from teachers to students to the general

public. Although there is not a single right policy choice, states and districts must examine this issue and must clearly and definitely establish policies regarding the release of individual educators' evaluation data.

---

i. Additionally, every state constitution has an education clause that establishes the state's responsibility to operate a system of public schools. These clauses represent an affirmative acknowledgement by the state of the importance of public education, and often have served as a basis for private litigation. Phrases used to describe public schools in these clauses include "general and efficient," "uniform," and "free." Many clauses characterize education as a democratic imperative with language that addresses "secur[ing for] the people the advantages and opportunities of education" or similar phrasing. States can anticipate that in school finance litigation regarding adequate access to resources, litigants may subpoena information regarding the distribution of quality teachers.

ii. The impact of this reporting requirement was relatively low, with the U.S. Department of Education estimating in 2010 that roughly 98% of teachers were considered "highly qualified." States' redesigned educator evaluation systems likely will result in more teachers receiving sub-par ratings, and states' experience with HQT reporting requirements may not be an adequate indication of the scope and likely reactions to releasing individual results.

iii. New state laws, the RTTT grant program, and the ESEA waiver opportunity shift the focus away from educator "inputs" (i.e., certification, licensure, degree attainment) to a focus on educator effectiveness. As a matter of policy, some states may determine that, similar to the NCLB HQT reporting requirement, notifying parents of individual teacher effectiveness results, particularly in those cases where a teacher is rated ineffective, is appropriate.

iv. States may think it reasonable to provide information about aggregate - or even individual - educator effectiveness as a matter of public interest, particularly as it pertains to the state's obligation to ensure all students are receiving an adequate and equitable education.

v. For more information about communications strategies, see EducationCounsel's TLE Roadmap: A Guide for the Development of Systems of Educator Evaluation and Support.

For questions, please contact:

- Scott Palmer, Managing Partner, at scott.palmer@educationcounsel.com or (202) 545-2916;
- Robin Gelinas Berkley, Senior Policy Advisor, at robin.berkley@educationcounsel.com or (202) 545-2919; or
- Kate Lipper, Policy and Legal Advisor, at kate.lipper@educationcounsel.com or (202) 545-2905.