



By electronic transmission

January 27, 2017

CRAIG WATERMAN
DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
75 PLEASANT STREET
MALDEN, MA 02148

RE: Public Comment on Proposed Amendments to 603 CMR 35.00

Dear Mr. Waterman:

The Massachusetts Teachers Association and the American Federation of Teachers Massachusetts have reviewed the proposed amendments to 603 CMR 35.00 and wish to make the following public comment and observations.

First, with the demise of No Child Left Behind and the expiration of Race to the Top, the legal, political and funding justifications for the Board's or the Department's regulatory control over district evaluation systems have come to an end. The Massachusetts General Laws themselves do not grant authority to the Board or the Department to enact the proposed regulations. Quite to the contrary, Massachusetts law identifies the school district as the locus of decision-making. More specifically, the Board's own enabling statute provides that it "shall establish guidelines for establishing systems of personnel evaluation..." G.L. c. 69, § 1B, para. 13 (emphasis supplied). While the Board establishes the guidelines, or principles, for local use, the establishment of evaluation systems themselves clearly occurs in the school districts, and it should not be the subject of the extensive state regulations found in 603 CMR 35.00. Under G.L. c. 71, § 38, school superintendents must "cause the performance of all teachers ... to be evaluated" using the Board's guidelines. However, § 38 explicitly reserves the establishment of any "procedures for conducting such evaluations" to G.L. c. 150E and to collective bargaining at the local level. Likewise, G.L. c. 71, § 38 explicitly leaves to local determination the performance standards that are the measures used in the evaluation process. The law could not be more explicit: "Where teachers are represented for collective bargaining purposes, all teacher performance standards shall be

determined” as set forth in § 38, which provides for a unique interest-arbitration process. (Emphasis supplied.)

The proposed regulations ignore these state education laws entirely. The complex teacher evaluation system that DESE has devised through regulatory process and in sub-regulatory materials far exceeds the statutory authorization found in G.L. c. 69, § 1B and infringes on the statutory mandates and obligations in G.L. c. 71 and c. 150E. It would require a lengthy exposition to identify the manifest and multiple entrenchments that DESE’s regulations visit upon a local system of negotiated evaluation procedures and established performance standards, and the MTA and AFT MA decline to do so in these comments. Far from providing state “guidelines” or “principles” that inform school districts and teachers in the establishment of local performance evaluation systems, DESE has usurped the power of school committees and the rights of teachers through detailed and overreaching state control.

This degree of control was countenanced by all parties during the period when substantial amounts of federal funding were tied to the existence of systems of evaluation that included many of the measures found in DESE’s existing regulations and that are perpetuated in the proposed revisions. With the end of NCLB and the expiration of the RTTT money, the Commonwealth no longer owes any obligation of compliance with those federal laws and programs. It is time for DESE and the Board to return the entire performance evaluation process back to the school districts, which is exactly what the Legislature intended in no uncertain terms through its enactments.

Second, MTA and AFT MA communicated with the members of the Board on November 23, 2016, regarding our deep concerns with the commissioner’s regulatory proposals and the vision of teacher development and evaluation expressed in these proposals. Our prior comments are attached, and they remain germane. In fact, from early September 2016, when we first saw a draft of the proposed revisions, until today, we have clearly and consistently expressed our deeply held concerns to the commissioner and the department, and we proposed alternative approaches that integrated our differing perspectives on a teacher evaluation system. Our alternatives were rejected. The commissioner chose not to incorporate our points of view in any meaningful way, although we quite frankly are the stakeholders most deeply and directly engaged in the pursuit of excellence in our public schools. As the state agency with the public duty to advance educational excellence, DESE should carefully consider the broad arguments and specific points advanced here and in our prior letter. We also ask DESE to reconsider the alternative proposals that we previously advanced.

The pressing need for a revised teacher evaluation system that is workable, productive and acceptable to teachers and administrators alike should not be the occasion for government legerdemain. Nonetheless, the commissioner’s proposals are not simply the *same* as the existing unsuccessful program, they are in fact *more* of the same and arguably *worse* than the existing regulations. When a revision simply slaps new names on

old concepts, it is safe to suggest that no meaningful revision was intended. For example, and as previously pointed out, when a reform idea is to change the terminology for a teacher's impact on student test outcomes from "low, moderate or high" to "less than expected" or "at least expected," no genuine change is afoot. When "Student Impact Rating" becomes "Student Learning Indicator," nothing has changed.

A meaningful and implementable teacher evaluation system is one that focuses on improving professional practice because improving professional practice is the best way to improve student learning. The appropriate way to incorporate student learning into an evaluation system is to require review and reflection on student learning at each step of the evaluation cycle so that evidence of learning informs practice. A system that treats student learning as a quantifiable and supposedly objective teacher performance standard makes it less likely that the educators — both the evaluators and the evaluated alike — can engage in an open and authentic discussion of how the evidence of student learning can be used most effectively. When evidence of student learning is assigned such high stakes and when a system introduces evaluation penalties that could prove to be unfair, inaccurate and demoralizing, the system fails.

The best approach to address the problems of the current system is to eliminate the use of student test results to inform any rating of a teacher's performance. The "Student Impact Rating" has been in the works for six years and has proven itself to be a failed concept. Neither state standardized test results nor District-Determined Measures have ever provided a true measure of a teacher's effectiveness in the classroom. The commissioner's proposed "Student Learning Indicator" is the same concept — with the same negative consequences — under a different banner.

For the foregoing reasons, the MTA and AFT MA offer the following responses to the commissioner's proposed revisions of 603 CMR 35.00 and suggest an alternative set of revisions.

Thank you.

Sincerely,



Barbara Madeloni
MTA President



Thomas J. Gosnell
AFT MA President

	DESE Proposal – Current Language	DESE Proposal – Revised Language	MTA and AFT MA Comments
1. 603 CMR 35.02 (Definitions) <i>District-Determined Measures</i>	<i>District-determined Measures</i> shall mean measures of student learning, growth, and achievement related to the Massachusetts Curriculum Frameworks, Massachusetts Vocational Technical Education Frameworks, or other relevant frameworks, that are comparable across grade or subject level district-wide. These measures may include, but shall not be limited to: portfolios, approved commercial assessments and district-developed pre and post unit and course assessments, and capstone projects.		Agree.
		<u><i>Common Assessments</i> shall mean identical or comparable assessments of student learning, growth, and achievement related to the Massachusetts Curriculum Frameworks, Massachusetts Vocational Technical Education Frameworks, or other relevant frameworks used by educators in the same role across the district. These assessments may be commercial assessments or district-developed, and may include, but are not limited to: portfolios, pre- and post-tests, unit and course assessments, performance assessments, and capstone</u>	The unions do not have a dispute with the newly added definition of “common assessments.” However, insofar as the commissioner’s proposal uses common assessments to replace DDMs as the measure for informing a rating of teachers, the unions oppose them.

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		<u>projects.</u>	
2. 603 CMR 35.02(Definitions) <i>Impact on Student Learning, Patterns, Trends</i>	DESE deletes: <i>Impact on Student Learning</i> shall mean at least the trend in student learning, growth, and achievement and may also include patterns in student learning, growth, and achievement. <i>Patterns</i> shall mean consistent results from multiple measures. <i>Trends</i> shall be based on at least two years of data		Agree that all three definitions should be removed from current regulations.
		<u><i>Expected Impact</i> shall mean the educator meets or exceeds anticipated student learning gains on multiple measures of student learning, growth, and achievement. The evaluator shall use professional judgment to determine whether the educator is having expected impact on student learning, based on student learning gains on common assessments and, where available, statewide student growth measures. The evaluator’s professional judgment may include, but is not limited to, consideration of the educator’s student population and specific learning context. Anticipated student learning gains must be</u>	Delete revision for the foundational reasons described in the narrative above and in our Nov. 23 letter. Furthermore, contrary to the proposed regulation, judgments concerning an educator’s performance should always take into account an “educator’s student population and specific learning context” as a matter of fair and educationally sound practice.

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		<u>consistent across the district for common assessments and agreed upon by the educator and evaluator for other assessments. The Department shall establish anticipated student learning gains for statewide student growth measures in guidance.</u>	
3. 35.03: Standards and Indicators of Effective Teaching Practice Adds Student Learning Indicator (2) (c)		Adds to Standard 2 - Teaching All Students standard: Promotes the learning and growth of all students through instructional practices that establish high expectations, create a safe and effective classroom environment, and demonstrate cultural proficiency. <u>(c) Student learning indicator: Consistently demonstrates expected impact on student learning based on multiple measures of student learning, growth, and achievement. For teachers who are responsible for direct instruction, these measures must include student progress on common assessments and, where available, statewide student growth measures.</u>	The unions oppose the implementation of a “Student Learning Indicator” as part of the evaluation rubric for the reasons stated in the narrative above and in our Nov. 23 letter.
4. 35.04: Standards and Indicators of Effective Administrative		Adds an indicator to Standard 1 - Promotes the learning and growth of all students and the success of all staff by	See comment 3, above.

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Leadership Practice Adds Student Learning Indicator (2)(f)		cultivating a shared vision that makes effective teaching and learning the central focus of schooling. <u>(f) Student learning indicator: Consistently demonstrates expected impact on student learning based on multiple measures of student learning, growth, and achievement, including student progress on common assessments and statewide student growth measures where available.</u>	
5. Use of Student Learning Indicator – Education Plan 35.06 (3) (e): Evaluation Cycle	(e) An educator shall be placed on an Educator Plan based on his or her overall rating and his or her impact on student learning, growth and achievement, provided that educators who have not yet earned Professional Teacher Status and any other employee at will shall be placed on an Educator Plan solely at the discretion of the district. 1. The Developing Educator Plan is for all administrators in their first three years with the district, teachers without Professional Teacher Status, and, at the discretion of the evaluator, educators in new assignments.	(e) An educator shall be placed on an Educator Plan based on his or her overall rating and his or her impact on student learning, growth and achievement, provided that educators who have not yet earned Professional Teacher Status and any other employee at will shall be placed on an Educator Plan solely at the discretion of the district. 1. The Developing Educator Plan is for all administrators in their first three years with the district, teachers without Professional Teacher Status, and, at the discretion of the evaluator, educators in new assignments.	The unions oppose the use of impact ratings regardless of nomenclature. Basing the length of an educator’s growth plan on whether the teacher had “expected” impact on student learning or “less than expected” impact on student learning is no different from basing the length of the plan on whether the educator’s impact was “high, moderate or low.” For the exemplary or proficient educator whose impact on student learning is “less than expected,” the revised language

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	2. The Self-directed Growth Plan is for all experienced educators rated Exemplary or Proficient. For educators whose impact on student learning is either moderate or high, the Educator Plan may be for up to two years. For educators whose impact on student learning is low, the Educator Plan shall be for one year and shall include one or more goals related to student learning developed on the basis of an analysis of the educator's professional practice. 3. Directed Growth Plan for all experienced educators rated Needs Improvement. 4. Improvement Plan for all experienced educators rated Unsatisfactory.	2. The Self-directed Growth Plan is for all experienced educators rated Exemplary or Proficient. For educators whose impact on student learning is <u>at least expected</u>, the Educator Plan may be for up to two years. For <u>all experienced</u> educators <u>rated Exemplary or Proficient</u> whose impact on student learning is <u>less than expected</u>, the evaluator <u>shall review and discuss the educator's impact on student learning with the educator</u>, and the Educator Plan shall be for one year and shall include one or more goals related to student learning developed on the basis of an analysis of the educator's professional practice. 3. Directed Growth Plan for all experienced educators rated Needs Improvement. 4. Improvement Plan for all experienced educators rated Unsatisfactory.	requires the evaluator to “review and discuss the educator’s impact on student learning,” but, regardless of that discussion, the educator “shall” be placed on a one-year plan. In other words, the penalizing feature of the evaluation system remains unchanged despite the new nomenclature and discussion requirement. The unions propose the deletion of “and his or her impact on student learning, growth and achievement” in 35.06(3)(e) and all but the first sentence in 35.06(3)(e)(2).
6. 35.06 (5) (b): Evaluation Cycle	(b) For an experienced educator rated proficient or higher and whose impact on student learning is moderate or high ,	(b) For an experienced educator rated proficient or higher and whose impact on student learning is <u>at least expected</u> ,	Again, DESE’s revision is a name change but not a policy change. By replacing “moderate

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	a formative evaluation takes place at the end of the first year of the two-year cycle. The educator's rating for that year shall be assumed to be the same as the previous summative rating unless evidence demonstrates a significant change in performance in which case the rating on Performance Standards may change.	a formative evaluation takes place at the end of the first year of the two-year cycle. The educator's rating for that year shall be assumed to be the same as the previous summative rating unless evidence demonstrates a significant change in performance in which case the rating on Performance Standards may change.	or high” with “at least expected,” DESE’s proposed revision leaves intact the penalizing effects of a low student impact rating. See comment 5, above.
7. 35.06 (7) (a) 1 and 2: Evaluation Cycle	1. For the educator whose impact on student learning is either moderate or high, the evaluator shall place the educator on a Self-directed Growth Plan. a. The educator shall receive a summative evaluation at least every two years. b. The educator may receive a formative evaluation at the end of the first year of the Educator Plan. c. The educator may be eligible for additional roles, responsibilities and compensation, as determined by the district and through	1. For the educator whose impact on student learning is <u>at least expected</u>, the evaluator shall place the educator on a Self-directed Growth Plan. a. The educator shall receive a summative evaluation at least every two years. b. The educator may receive a formative evaluation at the end of the first year of the Educator Plan. c. The educator may be eligible for additional roles, responsibilities and compensation, as determined by the district and through	See comments 5 and 6, above.

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	collective bargaining, where applicable. 2. For the educator whose impact on student learning is low, the evaluator shall place the educator on a Self-directed Growth Plan. a. The educator and evaluator shall analyze the discrepancy in practice and student performance measures and seek to determine the cause(s) of such discrepancy. b. The plan shall be for one school year in duration. c. The plan may include a goal related to examining elements of practice that may be contributing to low impact. d. The educator shall receive a summative evaluation at the end of the period determined in the plan, but at least annually.	collective bargaining, where applicable. 2. For the educator whose impact on student learning is <u>less than expected</u>, the evaluator shall place the educator on a Self-directed Growth Plan. a. The educator and evaluator shall analyze the discrepancy in practice and student performance measures and seek to determine the cause(s) of such discrepancy. b. The plan shall be for one school year in duration. c. The plan may include a goal related to examining elements of practice that may be contributing to <u>less than expected</u> impact. d. The educator shall receive a summative evaluation at the end of the period determined in the plan, but at least annually.	

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8. 35.07: Evidence Used in Evaluation (Categories 1 – 5)	(1) The following categories of evidence shall be used in evaluating each educator: (a) Multiple measures of student learning, growth, and achievement, which shall include: 1. Measures of student progress on classroom assessments that are aligned with the Massachusetts Curriculum Frameworks or other relevant frameworks and are comparable within grades or subjects in a school; 2. Measures of student progress on learning goals set between the educator and evaluator for the school year; 3. Statewide growth measure(s) where available, including the MCAS Student Growth Percentile and the Massachusetts English Proficiency Assessment (MEPA); and 4. District-determined Measure(s) of student learning comparable across grade or subject district-wide. 5. For educators whose primary		See below.

	DESE Proposal – Current Language	DESE Proposal – Revised Language	MTA and AFT MA Comments
	role is not as a classroom teacher, the appropriate measures of the educator's contribution to student learning, growth, and achievement set by the district.		
		(1) The following categories of evidence shall be used in evaluating each educator: (a) Multiple measures of student learning, growth, and achievement, which shall include: 1. Measures of student progress on classroom assessments that are aligned with the Massachusetts Curriculum Frameworks or other relevant frameworks and are comparable within grades or subjects in a school; 2. Measures of student progress on learning goals set between the educator and evaluator for the school year; 3. Statewide growth measure(s) where available, including the MCAS Student Growth Percentile and the Massachusetts English proficiency assessment; and	The unions agree that student learning can be a category of evidence. However, the specific sources of student learning evidence used by districts should be determined at the local level, not mandated by DESE. Therefore, the language should read: “(a) Multiple measures of student learning, growth, and achievement, which MAY include...” Additionally, the unions strongly object to the use of MCAS Student Growth Percentile in evaluation systems. The Student Growth Percentile is not a valid and reliable measure of teacher effectiveness, as extensive research has shown. Therefore,

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		4. <u>Common assessments of student learning, growth, and achievement.</u> 5. For educators whose primary role is not as a classroom teacher, the appropriate measures of the educator's contribution to student learning, growth, and achievement set by the district.	#3 should be deleted from the list. We accept that common assessments may be a source of evidence in the evaluation process. But it is unclear how common assessments (#4) are different from “measures of student progress on classroom assessments...” (#1). How are districts supposed to distinguish between the two? Furthermore, we are opposed to using common assessment outcomes as the basis for determining “expected impact” and/or for informing a rating. As discussed in our narrative, student learning evidence should be used for review, reflection and possible changes to practice.
9. 35.07 (c)	(2) Student feedback (with respect to teachers and support personnel) collected by the district, starting in the 2013-2014 school year. On or before July 1, 2013, the Department shall identify one or more instruments for		The unions agree with the deletion of implementation deadlines that have already expired.

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	collecting student feedback and shall publish protocols for administering the instrument(s), protecting student confidentiality, and analyzing student feedback. In the 2011-2012 and 2012-2013 school years, districts are encouraged to pilot new systems, and to continue using and refining existing systems, for collecting and analyzing student feedback as part of educator evaluation. (3) Staff feedback (with respect to administrators) collected by the district starting in the 2013-2014 school year. On or before July 1, 2013, the Department shall identify one or more instruments for collecting staff feedback and shall publish protocols for administering the instrument(s), protecting staff confidentiality, and analyzing staff feedback. In the 2011-2012 and 2012-2013 school years, districts are encouraged to pilot new systems, and to continue using and refining existing systems, for collecting and analyzing staff feedback as part of administrator evaluation.		

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	(4) The Department shall research the feasibility and possible methods for districts to collect and analyze parent feedback as part of educator evaluation and shall issue a report and recommendation on or before July 1, 2013. (5) Any other relevant evidence from any source that the evaluator shares with the educator.		
10. 35.08: Performance Level Ratings (7)	(7) Educators whose summative performance rating is exemplary and whose impact on student learning is rated moderate or high shall be recognized and rewarded with leadership roles, promotion, additional compensation, public commendation or other acknowledgement.	(7) Educators whose summative performance rating is exemplary and whose impact on student learning is <u>either expected or more than expected</u> may be recognized and rewarded with leadership roles, promotion, additional compensation, public commendation or other acknowledgement.	The absence of any genuine move away from what proved to be an unworkable, harmful and unpopular teacher rating system is evident again in this section. Recognition and rewards for an exemplary educator still turn on the outcome of a system measuring and rating the educator’s impact on student learning. The unions propose removing the words “and whose impact on student learning is rated moderate or high” from the existing regulation.

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			We accept the change from “shall” to “may” here, as any recognition or rewards should be a district decision, subject to collective bargaining as applicable.
11. 35.08: Performance Level Ratings (8) relocates and revises language that is currently in 35.09 (4)	(4) For an educator whose overall performance rating is exemplary or proficient and whose impact on student learning is low, the evaluator's supervisor shall discuss and review the rating with the evaluator and the supervisor shall confirm or revise the educator's rating. In cases where the superintendent serves as the evaluator, the superintendent's decision on the rating shall not be subject to such review. When there are significant discrepancies between evidence of student learning, growth, and achievement and the evaluator's judgment on educator performance ratings, the evaluator's supervisor may note these discrepancies as a factor in the evaluator's evaluation.	(8) <u>Where there is a discrepancy between the rating an evaluator has provided for an educator on the Teaching all Students Standard and evidence of the educator’s impact on student learning, growth and achievement, the evaluator’s supervisor shall discuss the discrepancy with the evaluator. The evaluator’s supervisor may note the discrepancy as a factor in the evaluator’s evaluation.</u>	Since we oppose the inclusion of an impact determination/rating in the evaluation system, we oppose this addition for the reasons cited in our narrative and Nov. 23 letter. We do not oppose using student learning evidence as a cross-check against evidence of teacher practice to spur dialogue, reflection and possible changes to practice. That concept was central to the alternative proposals we shared with DESE, which were rejected by the commissioner.
12. 35.09: Student Performance Measures	35.09: Student Performance Measures (1) Student Performance Measures as described in 603 CMR 35.07(1)(a)(3-5) shall be the basis for determining an	Delete 35.09	Agree

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	educator's impact on student learning, growth, and achievement. (2) The evaluator shall determine whether an educator is having a high, moderate, or low impact on student learning based on trends and patterns in the following student performance measures: (a) At least two state or district wide measures of student learning gains shall be employed at each school, grade, and subject in determining impact on student learning, as follows: 1. MCAS Student Growth Percentile and the Massachusetts English Proficiency Assessment (MEPA) shall be used as measures where available, and 2. Additional District determined Measures comparable across schools, grades, and subject matter district wide as determined by the superintendent may be used in conjunction with MCAS Student Growth Percentiles and MEPA scores to meet this requirement, and shall be used		

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	when either MCAS growth or MEPA scores are not available. (b) For educators whose primary role is not as a classroom teacher, appropriate measures of their contribution to student learning, growth, and achievement shall be determined by the district. (3) Based on a review of trends and patterns of state and district measures of student learning gains, the evaluator will assign the rating on growth in student performance consistent with Department guidelines: (a) A rating of high indicates significantly higher than one year's growth relative to academic peers in the grade or subject. (b) A rating of moderate indicates one year's growth relative to academic peers in the grade or subject. (c) A rating of low indicates significantly lower than one year's student learning growth relative to academic peers in the grade or subject. (4) For an educator whose overall performance rating is exemplary or proficient and whose impact on student learning is low, the evaluator's		

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		supervisor shall discuss and review the rating with the evaluator and the supervisor shall confirm or revise the educator's rating. In cases where the superintendent serves as the evaluator, the superintendent's decision on the rating shall not be subject to such review. When there are significant discrepancies between evidence of student learning, growth, and achievement and the evaluator's judgment on educator performance ratings, the evaluator's supervisor may note these discrepancies as a factor in the evaluator's evaluation.		
10.	35.11(1)	(1) 603 CMR shall take effect according to the following schedule:	Deleted.	Agree.
	35.11 (2) (renumbered as § 35.10(1))	(2) All evaluation systems and changes to evaluation systems shall be subject to the Department's review to ensure the systems are consistent with the Boards' Principles of Evaluation. A District may continue to use its existing evaluation systems until the District has fully implemented its new system.	All evaluation systems and changes to evaluation systems shall be subject to the Department's review to ensure the systems are consistent with the Boards' Principles of Evaluation. A District may continue to use <u>an</u> evaluation system <u>that it had submitted for review under 603 CMR 35.00.</u>	For the reasons stated in the narrative portion of this submission, the unions do not concede that under the authority set forth in G.L. c. 69, § 1B to establish “guidelines” for district in establishing evaluation systems, the Department has the power to create a system of performance standards and evaluation procedures as is set

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35.11 (3)	(3) The model system developed by the Department need not be submitted for review under 603 CMR 35.00 if the district implements it as written.	Deleted.	forth in these regulations and sub-regulatory documents. Agree.
35.11 (4)	(4) By September 2013, each district shall identify and report to the Department a district-wide set of student performance measures for each grade and subject that permit a comparison of student learning gains. (a) The student performance measures shall be consistent with 603 CMR 35.09(2). (b) By July 2012, the Department shall supplement these regulations with additional guidance on the development and use of student performance measures. (c) Until such measures are identified and data is available for at least two years, educators will not be assessed as having high, moderate, or low impact on student learning outcomes consistent with	Deleted.	Agree.

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	603 CMR 35.09(3).		
11. 35:11 (5) (renumbered as § 35.10 (2))	(5) Districts shall provide the Department with individual educator evaluation data for each educator in the district in a form and manner prescribed by the Commissioner, including, but not limited to: (a) the educator's performance rating on each standard and overall; (b) the educator has Professional Teacher Status; (c) the educator's impact on student learning, growth, and achievement (high, moderate, low).	(5) Districts shall provide the Department with individual educator evaluation data for each educator in the district in a form and manner prescribed by the Commissioner, including, but not limited to: (a) the educator's performance rating on each standard and overall; <u>and</u> (b) the educator has Professional Teacher Status.	Agree.