

DEPARTMENT OF EDUCATION

Colorado State Board of Education

RULES FOR ADMINISTRATION OF A STATEWIDE SYSTEM TO EVALUATE THE EFFECTIVENESS OF LICENSED PERSONNEL EMPLOYED BY SCHOOL DISTRICTS AND BOARDS OF COOPERATIVE SERVICES

1 CCR 301-87

0.0 STATEMENT OF BASIS AND PURPOSE

The statutory basis for the addition of section 5.04 to these rules is found in Colorado Revised Statutes section 22-2-107 (1) (c), section 22-9-104 (2) and section 22-9-105.5 (10), which requires the State Board of Education to promulgate rules concerning a process by which a nonprobationary teacher may appeal his or her second consecutive performance rating of ineffective.

These rules are promulgated pursuant to Colorado Revised Statutes section 22-2-107 (1) (c), section 22-9-104 (2) and section 22-9-105.5 (10). Senate Bill 10-191, codified at section 22-9-101, C.R.S., *et seq.* creates a system to evaluate the effectiveness of licensed personnel in school districts and boards of cooperative services throughout the state as a means of improving the quality of education in Colorado.

The basic purposes of the statewide system to evaluate the effectiveness of licensed personnel are:

To ensure that all licensed personnel are evaluated using multiple, fair, transparent, timely, rigorous, and valid methods, fifty percent of which evaluation is determined by the academic growth of their students;

To ensure that all licensed personnel receive adequate feedback and professional development support to provide them a meaningful opportunity to improve their effectiveness; and

To ensure that all licensed personnel are provided the means to share effective practices with other Educators throughout the state.

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5.04 Process for Nonprobationary Teacher to Appeal Second Consecutive Performance Evaluation Rating of Ineffective or Partially Effective

5.04 (A) **Requirements for All School Districts.** The following requirements shall apply to the appeal process developed by School Districts for a nonprobationary Teacher to appeal a **second** consecutive Performance Evaluation Rating of ineffective or partially effective. For purposes of the appeal process, a rating of ineffective and a rating partially effective carry the same consequence; a Teacher shall lose nonprobationary status after receiving two consecutive ratings of either ineffective or partially effective. The appeal process shall allow for a final determination of the appealing Teacher's Performance Evaluation Rating and a final determination of whether that Teacher retains nonprobationary status; it shall not serve the purpose of determining employment and/or termination.

5.04 (A) (1) Beginning with the 2015-16 academic school year, each School District shall ensure that a nonprobationary Teacher who objects to a second consecutive Performance Evaluation Rating of ineffective or partially effective has an opportunity to appeal that rating.

- 5.04 (A) (2) The appeal process shall adhere to the following principles:
- 5.04 (A) (2) (a) the appeal process shall be appropriate to the size and location of the School District;
 - 5.04 (A) (2) (b) the appeal process shall be fair and clearly communicated to Teachers, evaluators, Principals, and, where appropriate, students and parents of students;
 - 5.04 (A) (2) (c) the appeal process shall be a component of a larger system designed to increase the number of educators able to be successful rather than provide excuses for failure;
 - 5.04 (A) (2) (d) the appeal process shall be clearly connected to the School District's educator evaluation process; and
 - 5.04 (A) (2) (e) the appeal process shall be constructed to produce appeals decisions in a timely and decisive manner;
- 5.04 (A) (3) As required by section 22-9-106 (3.5) (b) (II), C.R.S., the appeal process shall be developed, where applicable, through collective bargaining.
- 5.04 (A) (4) The appeal process shall be voluntary for a Teacher, and initiated only if he or she chooses to file an appeal. As required by section 22-9-106 (3.5) (b) (II), C.R.S., at a minimum, the appeal process provided shall allow the nonprobationary Teacher to appeal the rating of ineffectiveness to the superintendent of the School District and shall place the burden upon the nonprobationary Teacher to demonstrate that a rating of effective was appropriate.
- 5.04 (A) (5) The appeal process shall begin on the date that a Teacher receives his or her second consecutive Performance Evaluation Rating of ineffective or partially effective and shall conclude no more than forty-five (45) calendar days after he or she receives the Performance Evaluation Rating. A Teacher shall file an appeal within fifteen (15) calendar days after receiving his or her rating. These time requirements may be waived, by mutual agreement of both the Teacher and the School District.
- 5.04 (A) (6) A Teacher is permitted only one appeal for the second consecutive Performance Evaluation Rating of ineffective or partially effective. A Teacher filing an appeal shall include all grounds for the appeal within a single written document. Any grounds not raised at the time the written appeal is filed shall be deemed waived.
- 5.04 (A) (7) The grounds for an appeal shall be limited to the following:
- 5.04 (A) (7) (a) The evaluator did not follow evaluation procedures that adhere to the requirements of statute and rule and that failure had a material impact on the final Performance Evaluation

Rating that was assigned (e.g., an observation was never completed or feedback was never shared with the Teacher); and/or

5.04 (A) (7) (b) The data relied upon was inaccurately attributed to the Teacher (e.g., data included in the evaluation was from students for whom the Teacher was not responsible).

5.04 (A) (8) Any documents and/or proceedings related to the appeal process shall be confidential.

5.04 (A) (9) The superintendent, or his or her designated individual, shall be the final decision-making authority in determining a Teacher's final Performance Evaluation Rating and whether a nonprobationary Teacher shall lose his or her nonprobationary status. The superintendent shall provide a written rationale for his or her final determination.

5.04 (A) (10) The appeal process shall be the final determination in regard to the final Performance Evaluation Rating and loss or retention of nonprobationary status.

5.04 (A) (11) If the superintendent determines that a rating of ineffective or partially effective was not accurate but there is not sufficient information to assign a rating of effective, the Teacher shall receive a "no score" and shall not lose his or her nonprobationary status. However, if in the following academic school year that Teacher receives a final Performance Evaluation Rating of ineffective or partially effective, this rating shall have the consequence of a second consecutive ineffective rating and the Teacher shall be subject to loss of nonprobationary status.

5.04 (B) **State Model System.** The Department shall include in the State Model System a model appeal process for a nonprobationary Teacher to appeal a second consecutive Performance Evaluation Rating of ineffective or partially effective.

Each School District that adopts the State Model System may choose either of the following options: (1) to use the model appeal process that incorporates the use of a review panel; or (2) to develop its own distinctive appeal process that adheres to the requirements in section 5.04 (A) of these rules.

In addition to meeting the requirements outlined in section 5.04 (A) of these rules, the Department's model appeal process shall include the following components.

5.04 (B) (1) In the model process, the review panel shall serve in an advisory capacity to the superintendent. The superintendent shall be the final decision-making authority in determining the Teacher's final Performance Evaluation Rating

5.04 (B) (2) In the model process, the review panel shall be comprised of members that were not directly involved in the evaluation process for the appealing Teacher. The superintendent may appoint himself or herself to the review panel.

- 5.04 (B) (3) In the model process, panel members shall be selected and trained in a manner designed to ensure the credibility and expertise of the panel members. The panel shall be comprised of equal numbers of Teachers and administrators, with no more than six panel members total. A process shall be developed to ensure continuity of the review panel members.
- 5.04 (B) (4) In the model process, the appealing Teacher shall be given the opportunity to address and provide evidence to the review panel in person or in writing. The review panel shall review any written information provided by the appealing Teacher prior to meeting to render a recommendation.
- 5.04 (B) (5) In the model process, the review panel may invite the Teacher or Teacher's Principal to present in person or in writing where clarification is necessary; however, the Teacher and Principal shall have the right of refusal without prejudice.
- 5.04 (B) (6) In the model process, in order to overturn a rating of ineffective or partially effective, the panel must unanimously find that the rating of ineffective or partially effective was inaccurate, with the potential for submission of a majority opinion to the superintendent if the panel is not able to reach unanimous consent.

- 5.04 (C) **Continuous Improvement.** As a part of its review of local personnel evaluation systems and implementation of the State Model System, the Department shall report on the role of the model system appeals process as a lever to ensure broader system accountability. Specifically, the Department shall report on how the appeals process supports the following:
 - 5.04 (C) (1) early identification to Teachers of any performance deficiencies, well in advance of a second consecutive Performance Evaluation Rating of partially effective or ineffective;
 - 5.04 (C) (2) the provision of targeted and timely opportunities, including resources and training, to Teachers to address any identified areas of deficiency promptly after they receive an initial Performance Evaluation Rating of partially effective or ineffective and throughout the following school year;
 - 5.04 (C) (3) a process to ensure that effective Teachers are not inappropriately rated as ineffective or partially effective; and
 - 5.04 (C) (4) the completion of performance evaluations only by individuals who have completed a training in evaluation skills that has been approved by the Department, as required by section 22-9-106 (4) (a), C.R.S.