

# Colorado State Council for Educator Effectiveness

## APPEALS PROCESS

WORKING GROUP INFORMATION	
Names of Individuals in Working Group:	Full 15 Member State Council for Educator Effectiveness (SCEE) Linda Barker, CEA Jami Goetz, CDE Mike Gradoz, CDE Kady Lanoha, CDE Michele Murphy, CASB Alyssa Whitehead-Bust, Facilitator Angela Baber, SCEE staff
Topic of Working Group:	<b>Develop Recommendations for an Appeals Process for Teachers after Second Rating of Ineffectiveness</b>
Purpose	<input type="checkbox"/> Research Review <input type="checkbox"/> Discussion/Concept Development <input checked="" type="checkbox"/> Product/Delivery Creation <input type="checkbox"/> Creation of Recommendation for 1 <sup>st</sup> Read <input type="checkbox"/> Revision of Recommendation for 2 <sup>nd</sup> Read <input type="checkbox"/> Other:
Meeting Date	January 20, 2012
Timeline	Recommendations are due to the State Board on or before March 1, 2011 and to the General Assembly House and Senate Education Committees on or before the first day of the January, 2013 legislative session.
DOCUMENTS/RESOURCES REFERENCED	
Draft appeals recommendations developed by staff based on SCEE and work group feedback via the December 9, 2011 Web meeting.	
RELEVANT STATUTORY LANGUAGE	
<b>CRS 22-9-105.5.</b> State council for educator effectiveness – legislative declaration - membership - duties - recommendations - rules.  ...(3) THE COUNCIL SHALL HAVE THE FOLLOWING DUTIES:  ...(e) ON OR BEFORE MARCH 1, 2011, TO DEVELOP AND RECOMMEND TO THE STATE BOARD GUIDELINES FOR ADEQUATE IMPLEMENTATION OF A HIGH-QUALITY EDUCATOR EVALUATION SYSTEM THAT SHALL ADDRESS, AT A MINIMUM, THE FOLLOWING ISSUES:  ...(VII) A PROCESS BY WHICH A NONPROBATIONARY TEACHER MAY APPEAL HIS OR HER SECOND CONSECUTIVE PERFORMANCE RATING OF INEFFECTIVE AND SUBMIT SUCH PROCESS BY THE FIRST DAY OF CONVENING OF THE FIRST REGULAR SESSION OF THE SIXTY-NINTH GENERAL ASSEMBLY [January 2013] TO THE EDUCATION COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND THE SENATE, OR ANY SUCCESSOR	

COMMITTEES.

Summary of related language in the Licensed Personnel Performance Evaluation Act regarding requirements applicable to districts:

- Language to be repealed:
  - CRS 22-9-106(3.5)(a): Educator receiving unsatisfactory rating must be provided with notice of deficiencies, remediation plan, and reasonable time to remediate deficiencies.
    - This provision is repealed upon notice of full statewide implementation
  - 22-9-106(3.5)(b)(II): Provides for appeal by nonprobationary teacher of ineffective rating to superintendent, and in districts without a collective bargaining agreement, to binding arbitration
    - This provision is repealed effective February 15, 2013
  - 22-9-106(4.5)(a): Provides that person receiving remediation plan shall be given an opportunity to improve, and if the next evaluation shows improvement, no further action will be taken. If performance is still unsatisfactory, evaluator may make additional recommendations for improvement or recommend dismissal.
    - This provision is repealed upon notice of full statewide implementation
- Language to take effect upon full statewide implementation:
  - CRS 22-9-106(3.5)(b)(1): “A teacher or principal whose performance is deemed to be ineffective ... shall receive written notice that his or her performance evaluation shows a rating of ineffective, a copy of the documentation relied upon in measuring his or her performance, and identification of deficiencies.”
  - CRS 22-9-106(4.5)(b): “Any person whose performance evaluation includes a remediation plan shall be given an opportunity to improve his or her effectiveness through the implementation of the plan. If the next performance evaluation shows that the person is performing effectively, no further action shall be taken concerning the original performance evaluation. If the evaluation shows the person is still not performing effectively, he or she shall receive a written notice that his or her performance evaluation shows a rating of ineffective, a copy of the documentation relied upon in measuring the person’s performance, and identification of deficiencies. Each school district shall ensure that a nonprobationary teacher who objects to a rating of ineffectiveness has an opportunity to appeal that rating, in accordance with a fair and transparent process developed, where applicable, through collective bargaining. At a minimum, the appeals process shall allow a nonprobationary teacher to appeal the rating of ineffectiveness to the superintendent ... and shall place the burden upon the nonprobationary teacher to demonstrate that a rating of effectiveness was appropriate. The appeal process shall take no longer than ninety days, and the nonprobationary teacher shall not be subject to a possible loss of nonprobationary status until after a final determination of ineffectiveness is made. For a person who receives a performance rating of ineffective, the evaluator shall either make additional recommendations for improvement or may recommend the dismissal of the

person ...”

Relevant language in the Teacher Employment, Compensation, and Dismissal Act:

- “The chief administrative officer shall have the burden of proving that the recommendation for the dismissal of the teacher was for the reasons given in the notice of dismissal and that the dismissal was made in accordance with the provisions of this article. Where unsatisfactory performance is a ground for dismissal, the chief administrative officer shall establish that the teacher had been evaluated pursuant to the written system to evaluate licensed personnel adopted by the school district pursuant to section 22-9-106 [which specifies district obligations under the Licensed Personnel Performance Evaluation Act].” (CRS 22-63-302(8)).

## RECOMMENDATIONS

### QUESTIONS AND CONSIDERATIONS

The six recommendations included in this document for an appeals process for teachers were developed by CLF staff based on SCEE and Appeals work group feedback at the December 9<sup>th</sup> Web meeting. These draft recommendations were reviewed in confidence by select stakeholders. This review generated a number of questions for consideration by the Council. Council members will work through these and any additional questions first and will then move into specific questions raised at the recommendation level as outlined in the next section.

#### **Overarching Questions and Considerations**

- The purpose and authority of the appeals process seems limited and confusing. Because the appeals process does not replace due process, it adds a layer of process that is neither final nor binding. This means that teachers will be allowed to litigate this system twice. No other state in the Union has two parallel due processes.
  - Does the Council want to consider addressing the issue that this appeals process is neither final nor binding? If so, some considerations include:
    - Recommending that if there is a super-majority decision made by the appeals review board, that this be the only process for appeal; and/or
    - Recommending that a finding of ineffectiveness confirmed under appeals be considered a final determination of ineffectiveness.
- Does the Council want to focus on a professional rather than procedural appeals process?
- How should the Council frame recommendations to reflect the belief that both partially effective and ineffective result in the same outcome(s) for teachers?
- Does the appeals process proposed ensure that teachers are being evaluated by trained and competent evaluators?
- Other?

DRAFT RECOMMENDATIONS – QUESTIONS AND DECISION POINTS		
Recommendation	Considerations/Questions/Concerns	SCEE and Work Group Reaction(s)
<p>1. <b><i>CDE shall develop a state model evaluation system appeals process for teachers.</i></b> The Colorado Department of Education (CDE) shall develop an appeals process for nonprobationary teachers receiving a second consecutive performance rating of ineffective based on the recommendations of the State Council for Educator Effectiveness and State Board of Education SB 10-191 Rules that meets the above guidelines as part of its model evaluation system.</p>		
<p>2. <b><i>The statewide model evaluation system appeals process shall include a defined set of criteria.</i></b> The appeals process shall be embedded in the statewide evaluation system for educators and shall include, at a minimum, the following criteria.</p>		
<p>i. The appeals process shall be based on appeals of effectiveness ratings and shall not deal with procedural issues.</p>		
<p>ii. The appeals process shall ensure all evaluators are certified as evaluators.</p>		

<p>iii. The appeals process shall ensure involvement of peers in the observation, support, and appeals process (peer evaluators must meet certification requirements as defined above).<sup>i</sup></p>		
<p>iv. The appeals process shall include an evaluation appeals panel for teachers. Due to the diverse needs of districts, the following are two options districts may use in forming an appeals panel.</p> <ul style="list-style-type: none"> <li>• A second rating of ineffectiveness may be appealed to a district review board consisting of three teachers and three administrators (peers may be recruited from the same or other schools in the district and must meet certification requirements). The review board shall recommend either nonrenewal or additional opportunity for improvement, and that recommendation, together with the recommendation of the building administrator, shall be forwarded to the superintendent for review. The superintendent will be responsible for making the final determination based on the review panel's recommendation.</li> <li>• A second rating of ineffectiveness may be appealed to a regional review</li> </ul>	<p>Do we really want to recommend a panel of 6 (or any specific number)? What happens when there is a tie? Do we need to be explicit about who makes final decision?</p> <p>Should failure of the review panel to reach consensus uphold the rating of ineffective?</p>	

<p>board coordinated by districts, BOCES, and/or the CDE regional support office (peers may be recruited from other districts, through the area BOCES, or through CDE’s regional support office and must meet competency requirements). The superintendent will be responsible for making the final determination based on the review panel’s recommendation.</p>		
<p>v. An appeals process shall not allow a teacher to file multiple appeals regarding the same performance review. All grounds for appeal must be raised with specificity within one appeal. Any grounds not raised at the time the appeal is filed shall be deemed waived.</p>		
<p>vi. The appeals process shall not take longer than 90 calendar days. Local boards of education shall determine and communicate subsequent timelines for teachers, review panels, superintendents and all other parties participating in a teacher review process to ensure that the process takes no longer than 90 calendar days and is aligned with related district</p>	<p>While the law stipulates 90 calendar days, this is a very long timeline. Should the Council recommend a shorter timeline?</p>	

<p>staffing policies and timelines.</p>		
<p>vii. The appeals process shall define a timely process for communicating the result of an appeal to a teacher. A written decision on the merits of the appeal shall be rendered no later than 90 calendar days from the date upon which the teacher filed his or her appeal. The appeal shall be based on a written record, comprised of the teacher’s appeal papers and any documentary evidence accompanying the appeal, as well as the school district or BOCES’ response to the appeal and additional documentary evidence submitted with such papers. Such decision shall be final.</p>		
<p><b>3. Local boards shall develop or adopt the appeals process for implementation by the district.</b> Local boards of education shall develop or adopt an appeals process for nonprobationary teachers receiving a second consecutive performance rating of ineffective for implementation at the district (or BOCES<sup>ii</sup>) level. Local boards may choose to use the process outlined in the state model evaluation system, or may develop their own, provided it meets or exceeds the criteria outlined in the state model evaluation system appeals process.</p>		

<p><b>4. <i>The appeals process shall be implemented on or before the beginning of the 2015-16 school year.</i></b> The 2014-15 school year is the first year a performance rating of ineffectiveness counts toward potential removal of a teacher’s nonprobationary status. Therefore, the 2015-16 school year is the first year a nonprobationary teacher receiving two consecutive performance ratings of ineffective will be at risk of losing nonprobationary status. Districts shall have an appeals process in place that meets or exceeds the state model evaluation system appeals process on or before the beginning of the 2015-16 school year. It is strongly recommended that districts put an appeals system aligned to the statewide model evaluation system in place well in advance of this timeline.</p>		
<p><b>5. <i>Existing appeals processes shall be used until new appeals processes are implemented.</i></b></p> <p>Until February 14, 2013, a nonprobationary teacher may appeal an ineffective rating to the superintendent, and in districts without a collective bargaining agreement, to binding arbitration.</p> <p>From February 15, 2013 forward, a nonprobationary teacher in a district that has formally adopted an appeals process that meets the above guidelines shall use that appeals process to appeal a second rating of ineffectiveness.</p>		

<p>Districts that have not adopted an appeals process by February 15, 2013 shall continue to use the pre-February 15 process for teacher appeals of second ratings of ineffectiveness up until the 2015-16 school year at which time all districts are required to have in place either the state model evaluation system appeals process or an appeals process that meets or exceeds the state model system appeals process.</p>		
<p><b>6. <i>The appeals process shall be a lever to ensure broader system accountability.</i></b> As a part of its annual review of the educator evaluation system, the Colorado Department of Education shall review the functionality of the model appeal process and shall report on its role as a lever to ensure broader system accountability. Specifically, CDE will report on how the appeals process supports:</p> <ul style="list-style-type: none"> <li>a. Early identification of performance problems, well in advance of a second consecutive ineffectiveness rating.</li> <li>b. Targeted and timely opportunities for teachers to address their identified areas of deficiency immediately after an initial ineffectiveness rating and throughout the following school year.</li> </ul>		
<p>Other?</p>		

Other?		
Other?		
<b>TIMELINE AND NEXT STEPS</b>		
<ul style="list-style-type: none"><li>February 3<sup>rd</sup>: Wrap up appeals work, recommendations to State Board and initiate work on other licensed personnel</li></ul>		

---

<sup>i</sup> It was mentioned that making peer involvement a “shall” goes against Board rules for SB 10-191. This could not be verified. Please send reference.

<sup>ii</sup> Statue only indicates local boards, not BOCES. The Council needs to make a final decision on whether (and how) to include BOCES.

DRAFT