

**Written Comments Submitted to the
State Board Office**

February 24 – March 1, 2011

(SB 191 Appeals Rules)

February 24, 2012

Dear Members of the Colorado State Board of Education,

We greatly appreciated the opportunity to weigh in on the proposed rules regarding the appeals process set forth through Senate Bill 10-191. As we provided feedback during the initial rules process, we respectfully submit to you our feedback and suggestions for the final component of the 2012 rules package.

Most importantly, in our initial, robust discussion about appeals, we agreed that an external committee or panel would not be necessary to support the bill's goal of offering teachers a fair and rigorous process for appeals. It is important to remember that a teacher does not lose non-probationary status for two years after an initial finding of ineffectiveness, and even after this period there is nothing that requires a teacher be dismissed, so there are multiple opportunities for improvement. In this case the two consecutive years of evaluation, support, and improvement plans are an important and fair part of the due process every teacher receives. For this reason, we believe that any appeal at that point in the process should be a confirmation that the fair process put in place was correctly followed. We believe there are three potential challenges a teacher would raise on appeal:

1. The teacher is substantively an effective teacher even though he or she received a rating of ineffective: the evaluator just got it wrong.
2. Data was not an accurate representation of how much students grew: the data just got it wrong.
3. The fair process for evaluation was not followed: the evaluator just didn't follow the process fairly.

We believe that the problem with the panel is that educators, both teachers and principals alike, will be inclined to apply their expertise to try and solve the first two questions: did the evaluator get it wrong or did the data get it wrong, and these are questions that are fundamentally non-appealable. It would be impossible for any panel or secondary inspector to try to apply their own expertise over the evaluator's decision without completely re-doing an evaluation: conducting classroom observations, observing professional development work, and sitting in on parent teacher conferences and student interventions. The appeals process does not and could not give the appellate body authority to substantively change the teacher's rating.

Similarly, it is not the position of any panel to question the validity of an assessment or a growth score. They could not and should not be asked to determine whether the CSAP is a valid assessment, or whether the assessment tool offered accurately portrayed student growth. This also would open a bottomless inquiry where each panel was reviewing assessment questions, evaluating pre- and post-test data, and questioning psychometric decisions on validity – all measures that are distinctly beyond the skill set and statutory power of any review process.

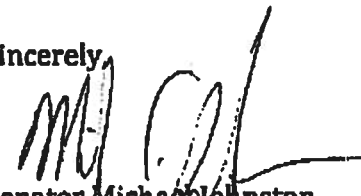
Therefore, the only issue that a superintendent or a panel could evaluate is whether the process was followed correctly. This is a human resource and administrative question that does not require educational expertise. The appellate person or body should only be able to confirm that the students in the measured data set were in fact students in the teacher's classroom. The appeal could only address whether the evaluation process was followed closely enough to prevent any material prejudice as to the final decision.

We worry that a panel could pose an undue burden on teachers and administrators to give up valuable time to a process where they cannot appropriately apply their academic expertise.

If a panel does become an option, that panel must be voluntary for districts at a minimum but at a maximum the panel's decision must be advisory and the superintendent or his/her designee must retain final decision-making authority.

We thank you again for your work to move forward the implementation of Senate Bill 10-191.

Sincerely,


Senator Michael Johnston


Senator Nancy Spence


Representative Carole Murray


Christine Scanlan

February 24, 2012

Dear Members of the Colorado State Board of Education,

We want to thank the State Council for Educator Effectiveness and the Department of Education for the hard work done to produce an initial set of recommendations for the teacher appeals process under Senate Bill 10-191. We agree with many of the recommendations given thus far, however we are concerned that the current draft rules allow a myriad of options for implementation that may undermine the overall intent of the legislation. Respectfully, we ask for your consideration of the following concerns and subsequent suggestions.

First and foremost, rather than the multiple appeals options outlined in the draft rules, we recommend that there be one statewide appeals process that provides local districts with flexibility on how they meet the requirements of this standardized process.

Our additional recommendations regarding other aspects of the draft rules are as follows:

- We believe the decision of who is eligible to appeal their rating needs to be limited in scope. The permissible grounds for appeals should only include a teacher who has received their second consecutive ineffective rating and where there was an incongruence/disparity between student achievement data and evaluations, substantial non-compliance by the school or district regarding the teacher's improvement plan or inaccurate assessment data used to make evaluation decision.
- The appeals process should be timely and streamlined in order to provide teachers with feedback on their rating and provide schools the flexibility to move forward with next steps pending the appeals decision. For that reason, we believe a 45-day appeals timeline is appropriate (15 days for the teacher to notify and submit grounds for appeal and 30 days for appeal to be heard and decision to be made).
- We would strongly prefer that appeals be decided solely and directly by the district superintendent or his/her designee
 - o If a panel structure remains an option for districts it is imperative that the structure is defined in rule as, 1) the panel is only advisory in scope, 2) the panel is composed of five members – three from the school administrator level and two teachers, 3) one of the administrator members is appointed by the superintendent or his/her designee, and 4) the superintendent or his/her designee retains the final decision making authority in all appeals. Additionally, under a panel appeals process, we recommend that collective bargaining only apply to 1) the two teachers selected to serve on the panel and 2) the decisions relating to the terms (length of time) they serve on the panel.
- Finally, it is imperative that we clearly state that each teacher is only allowed one appeal and may only appeal on the grounds covered through their initial written appeal.

Please see our attached recommendations in alignment with the first rules draft provided by the Colorado Department of Education, dated 2.7.12. We appreciate your time and dedication to continuing the successful implementation of this critically important piece of legislation.

Thank you,

Chris Watney – President and CEO, Colorado Children's Campaign
Moira Cullen – State Director, Democrats for Education Reform, Colorado
Paul Lhevine – Executive Director, Stand for Children, Colorado
Tim Taylor – President, Colorado Succeeds
Kelly Brough – President and CEO, Denver Metro Chamber
Tamara Ward – President and CEO, Colorado Concern

Draft Proposed Rules—Prepared by CDE Staff 2.7.12

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), required 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.

...

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

5.04 (A) **Statutory Requirements.** The following requirements are outlined in statute, in section 22-9-106 (3.5) (b) (II), C.R.S., and are in effect beginning with the 2013-14 academic school year:

5.04 (A) (1) Each School District shall ensure that a nonprobationary Teacher who objects to a Performance Evaluation Rating of ineffective or partially effective has an opportunity to appeal that rating, in accordance with a fair and transparent process developed, where applicable, through collective bargaining.

5.04 (A) (2) At a minimum, the appeal process provided shall allow a 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) (3) The appeal process shall take no longer than ninety (90) days, and the nonprobationary Teacher shall not be subject to a possible loss of nonprobationary status until after a final determination regarding the Performance Evaluation Rating of ineffective or partially effective is made.

5.04 (A) (4) For a Teacher who receives a Performance Evaluation Rating of ineffective, the evaluator shall either make additional recommendations for improvement or may recommend the dismissal of the Teacher, which dismissal shall be in accordance with the provisions of article 63 of Title 22.

5.04 (B) **Additional Requirements for All School Districts.** In addition, the following requirements shall apply to the appeals process developed by School Districts for a nonprobationary Teacher to appeal a **second** consecutive Performance Evaluation Rating of ineffective or partially effective. This appeals 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 (B)(1) The appeals process shall adhere to the following principles:

5.04 (B) (1) (a) the appeals process shall be appropriate to the size, demographics, and location of the School District;

5.04 (B) (2) (b) the appeals process shall be fair and transparent to Teachers, evaluators, Principals, and, where appropriate, students and parents of students;

5.04 (B) (3) (c) the appeals 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; and

5.04 (B) (4) (d) the appeals process shall be clearly connected to the School District's educator evaluation process;

5.04 (B) (4) (e) the appeals process shall be constructed to produce appeals decision in a timely and decisive manner; and

5.04 (B) (4) (f) the appeals ~~process-panel make up shall~~ may only be developed through use collective bargaining in relation to the teachers that serve on the panel and the terms of their participation on the panel, ~~where applicable.~~

5.04 (B) (2) Eligibility to appeal a rating of partially effective or ineffective must be limited to: A teacher who has received their second consecutive ineffective rating and where there was an incongruence/disparity between student achievement data and evaluations, substantial non-compliance by the school or district regarding the teacher's improvement plan or inaccurate assessment data used to make evaluation decision.

5.04 (B) (32) The appeals 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) ninety (90)~~ calendar days after he or she receives the Performance Evaluation Rating.

5.04 (B) (43) A Teacher wishing to appeal his or her second consecutive Performance Evaluation Rating of ineffective or partially effective shall ~~submit notice of intent to appeal to the appropriate School District authority no later than fifteen (15) calendar days after receiving his or her rating. The Teacher shall then~~ have an additional fifteen (15) calendar days ~~after to submitting~~ a notice of intent to appeal to file an appeal. Except for the requirement that the entire appeals process be completed in no more than ~~ninety (90)forty-five (45) days, these deadlines may be waived, by mutual agreement of both the Teacher and the School District.~~

5.04 (B) (45) A Teacher filing an appeal shall include all grounds for the appeal within one appeal. Any grounds not raised at the time the appeal is filed shall be deemed waived.

5.04 (B) (6) All appeals decisions are decided solely and directly by the district superintendent or his/her designee

5.04 (B) (7) If a school district chooses to have an advisory panel as part of the appeals process the panel shall: 1) be advisory in scope, 2) be composed of five members – three school administrators and two teachers 3) of the three administrators on the panel, at least one shall be appointed by the superintendent or his/her designee, and 4) the superintendent or his/her designee retains the final decision making authority in all appeals. Additionally, under a panel appeals process collective bargaining may only apply to 1) the two teachers selected to serve on the panel and 2) the decisions relating to the terms (length of time) served on the panel.

5.04 (B) (85) The appeals process for nonprobationary Teachers receiving their second consecutive Performance Evaluation Rating of ineffective or partially effective shall be the final determination in regard to the final Performance Evaluation Rating and loss or retention of nonprobationary status.

~~5.04 (C) **State Model System.** The Department shall include in the State Model System a model appeals process for a nonprobationary Teacher to appeal a second consecutive Performance Evaluation Rating of ineffective or partially effective. Each School District may adopt the model appeals process or develop its own distinctive appeals process that satisfies the requirements in section 5.04 (A) and 5.04 (B) of these rules. In addition to meeting the requirements outlined in section 5.04 (A) and 5.04 (B) of these rules, the Department's model appeals process shall include the following components.~~

~~5.04 (C) (1) The model appeals process shall ensure that the local superintendent is 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, but the model appeals process shall also incorporate the use of a standing review panel.~~

~~5.04 (C) (2) The review panel may serve in an advisory capacity or the superintendent may delegate his or her decision-making authority to the review panel. If the review panel serves in an advisory capacity and the superintendent disagrees with the review panel's recommendations, the superintendent shall provide a written rationale for his or her determination to the Teacher.~~

~~5.04 (C) (3) The superintendent may appoint himself or herself to the review panel.~~

~~5.04 (C) (4) A simple majority of the review panel shall have the authority to recommend or decide, if so authorized by the superintendent, that a Performance Evaluation Rating of effective was appropriate.~~

~~5.04 (C) (5) The review panel shall be comprised of members that were not directly involved in the evaluation process for the appealing Teacher.~~

~~5.04 (C) (6) School Districts shall select and train panel members in a manner designed to ensure the credibility and expertise of the panel members. School Districts shall develop a process to ensure continuity of the review panel members.~~

~~5.04 (C) (7) 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 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 (D) **Continuous Improvement.** As a part of its review of local personnel evaluation systems and implementation of the ~~State Model System~~ appeals process, 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 (D) (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 (D) (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 (D) (3) a process to ensure that effective Teachers are not inappropriately rated as ineffective or partially effective; and

5.04 (D) (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.