

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

~~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 (AB)

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. 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~~ 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 (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 appeals process shall adhere to the following principles:

5.04 (A) (2) (a) the appeals process shall be appropriate to the size, ~~demographics,~~ and location of the School District;

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

5.04 (A) (2) (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 (A) (2) (d) the appeals process shall be clearly connected to the School District's educator evaluation process; ~~and~~

5.04 (A) (2) (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 shall be developed through collective bargaining, where applicable.~~

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 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 ~~ninety (90)~~forty-five (45) calendar days after he or she receives the Performance Evaluation Rating. A Teacher ~~wishing to appeal his or her second consecutive Performance Evaluation Rating of ineffective or partially effective~~ shall file an appeal within fifteen (15) calendar days after receiving his or her rating ~~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 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) days, these deadlines~~ 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~~ one appeal. 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 School District did not follow evaluation procedures that adhere to the requirements of statute and rule (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 in calculating the Performance Evaluation Rating was incomplete (e.g., evidence for each of the Teacher Quality Standards I-V and/or multiple measures of Student Academic Growth were not included in the Teacher's summative evaluation) or 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) The appeal proceedings shall not be public.
- 5.04 (A) (9) The superintendent, or his or her designee, 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 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 (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 appeals 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 to use the model appeal process that incorporates the use of a review panel or to 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 () (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 (B) (1) In the model process, ~~the review panel may~~ shall serve in an advisory capacity to the superintendent ~~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 () (3) — The superintendent may appoint himself or herself to the review panel.~~

~~5.04 () (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 (B) (3) 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) (4) In the model process, ~~School Districts shall select and train~~ panel members ~~shall be selected and trained~~ in a manner designed to ensure the credibility and expertise of the panel members. ~~School Districts shall develop a~~ A process ~~shall be developed~~ to ensure continuity of the review panel members.

5.04 (B) (5) 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) (6) 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.

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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 to use the model appeal process or to develop its own distinctive appeal process that satisfies the requirements in section 5.04 (A) of these rules.

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.