



COMMONWEALTH OF KENTUCKY  
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Mr. Don Meade  
800 Republic Building  
429 West Muhammad Ali  
Louisville, KY 40202

Dear Mr. Meade:

Thank you for contacting the Office of the Attorney General. Although this letter is not a formal opinion of this office, we hope the views expressed will be of assistance.

In your representation of the Jefferson County Teachers Association (JCTA), you asked our office to address three questions:

1. Does HB 176 specify a mechanism by which retention decisions must be made by a school district under the restaffing option?
2. May a superintendent delegate the retention decisions to a committee that includes his appointments and make the committee his designee without violating HB 176?
3. May the parties to a teacher collective bargaining agreement collaborate and otherwise agree to apply provisions of the collective bargaining agreement, or fashion a memorandum of agreement regarding implementation of the provisions of HB 176, so long as those agreements do not violate the express provisions of HB 176?

In response to the first question, it is the view of this office that HB 176 does not specify a mechanism by which retention decisions must be made, other than noting that "personnel actions shall comply with KRS Chapter 161 and notwithstanding KRS 160.380(1)(c) relating to filling vacant positions and KRS 160.345(2)(h)1 relating to transfers." However, Jefferson County Public Schools ("JCPS") currently receives School Improvement Grants ("SIGs") from the U.S. Department of Education and, consequently, should be aware that any mechanism for making retention decisions under the restaffing option must comply with federal guidelines applicable to recipients of such grants.



In response to your second question, HB 176 does not prohibit the superintendent from developing a collaborative model that involves a committee making a recommendation on retention decisions. The silence of HB 176 on the mechanisms for making retention decisions should not be interpreted as prohibiting the superintendent to delegate the decision making on retention decisions. However, as a SIG recipient, JCPS should be aware of federal guidelines that address the use of a collaborative model, e.g., a committee, vested with decision-making authority regarding retention decisions. We refer you to Sections B-1 and B-4 of *Guidance on Fiscal Year 2010 School Improvement Grants Under Section 1003(g) of the Elementary and Secondary Education Act of 1965* (the “Guidelines”), relevant portions attached hereto as Exhibit A:

Section B-1: “A turnaround model is one in which an LEA [Local Education Association] must do the following: (1) replace the principal and grant the principal sufficient operational flexibility (including in staffing, calendars/time, and budgeting) to implement fully a comprehensive approach in order to substantially improve student achievement outcomes and increase high school graduation rates[...].”

Section B-4: “...As part of a rigorous recruitment, screening and selection process, assessments of turnaround teachers’ competencies can be used by the principal or district leader to distinguish between very high performers and more typical or lower-performing teachers in a turnaround setting. (...)”

In response to your third question, parties to a teacher collective bargaining agreement may collaborate and otherwise agree to apply provisions of the collective bargaining agreement as long as those agreements do not violate the express provisions of HB 176. We refer you to Section F-7(a) of the Guidelines, which directly addresses the issue of adherence to collective bargaining agreements in school intervention models:

“Nothing in the SIG final requirements gives an LEA the authority to take action that it is not otherwise permitted to take. Accordingly an LEA must implement the school intervention models in a manner that complies with all governing laws, regulations, and agreements, which includes providing the rights, remedies, and procedures afforded to LEA employees *under existing collective bargaining agreements*. For example, in many States, an LEA has an obligation to bargain with its union over issues that are affected by elements of the school intervention models before those elements may be implemented. At the same time, however, an LEA may not fail to implement specific components of a school intervention model because they conflict with one or more of those rights, remedies, or procedures. For example, under the transformational model, an LEA must implement a teacher evaluation system that includes student growth as a significant factor; an LEA would not be exempt from this requirement because its collective bargaining agreement prohibits teacher evaluation based on student achievement. Therefore, as discussed in F-7, an LEA that has such a collective bargaining agreement and wishes to apply for SIG funds to implement a transformation model must negotiate with its collective bargaining unit to modify the collective bargaining agreement in a manner that enables the LEA to comply with the SIG final requirements without violating

**the agreement. If an LEA cannot resolve the conflict in a way that permits it to implement one of the school intervention models fully and effectively, it would not be able to apply for SIG funds. (New for FY 2010 Guidance)”**

(Emphasis added).

We believe that this provision protects the right of workers under the collective bargaining agreement. However, if there is a conflict between the collective bargaining agreement and federal regulations applicable to the recipients of SIGs, the JCTA and the JCPS must negotiate, pursuant to the terms of the collective bargaining agreement, and agree to waive or otherwise modify the conflicting provisions with respect to the school in question.

If you have any questions, please feel free to call me at (502) 696-5650.

Sincerely,

JACK CONWAY  
ATTORNEY GENERAL

BY:

  
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Aaron S. Ament, Assistant Attorney General