**Review of Statutory, Regulatory, and Contractual Provisions**

**Governing Certified Employee Evaluation Plan Development**

The purpose of this document is to review current statutory, regulatory, and contractual provisions governing the process for modifying the certified employee evaluation plans for teachers and administrators below the level of superintendent.

**Statute:**

KRS 156.557 mandates that the Kentucky Department of Education implement a statewide professional growth and effectiveness system. The statute (KRS 156.557 (3), KRS 156.557 (4), and KRS 156.557 (5)) specifies an extensive list of required elements and procedures for the system:

*(3) The professional growth and effectiveness system shall:*

*(a) Use multiple measures of effectiveness, including student growth data as a significant factor in determining the effectiveness of teachers and administrators, that utilize both state standardized tests and local formative growth measures that are rigorous and comparable across schools in a local district;*

*(b) Include both formative and summative evaluation components;*

*(c) Measure professional effectiveness;*

*(d) Support professional growth;*

*(e) Have at least three (3) performance levels;*

*(f) Be used to inform personnel decisions;*

*(g) Be considerate of the time requirements of evaluators at the local level and shall not require that all certified school personnel have a formal summative evaluation each year; and*

*(h) Rate teachers or administrators by multiple measures instead of a single measure.*

*(4) The performance criteria by which teachers and administrators shall be evaluated shall include but not be limited to:*

1. *Performance of professional responsibilities related to his or her assignment, including attendance and punctuality and evaluating results;*
2. *Demonstration of effective planning of curricula, classroom instruction, and classroom management, based on research-based instructional practices, or school management skills based on validated managerial practices;*
3. *Demonstration of knowledge and understanding of subject matter content or administrative functions and effective leadership techniques;*
4. *Promotion and incorporation of instructional strategies or management techniques that are fair and respect diversity and individual differences;*
5. *Demonstration of effective interpersonal, communication, and collaboration skills among peers, students, parents, and others;*
6. *Performance of duties consistent with the goals for Kentucky students and mission of the school, the local community, laws, and administrative regulations;*
7. *Demonstration of the effective use of resources, including technology;*
8. *Demonstration of professional growth;*
9. *Adherence to the professional code of ethics; and*
10. *Attainment of the teacher standards or the administrator standards as established by the Education Professional Standards Board that are not referenced in paragraphs (a) to (i) of this subsection.*

*(5) The following provisions shall apply to the statewide professional growth and effectiveness system:*

1. *Certified school personnel, below the level of superintendent, shall be evaluated by using the system developed by the Kentucky Department of Education;*
2. *The evaluation system shall include formative evaluation and summative evaluation components; and*
3. *The Kentucky Board of Education shall adopt administrative regulations incorporating written guidelines for a local school district to follow in implementing the professional growth and effectiveness system and shall require the following:*
4. *All evaluations of certified school personnel below the level of the district superintendent shall be in writing on evaluation forms and under evaluation procedures developed by a committee composed of an equal number of teachers and administrators;*
5. *The immediate supervisor of the certified school personnel member shall be designated as the primary evaluator. At the request of a teacher, observations by other teachers trained in the teacher's content area or curriculum content specialists may be incorporated into the formative process for evaluating teachers;*
6. *All monitoring or observation of performance of a certified school personnel member shall be conducted openly and with full knowledge of the personnel member;*
7. *Evaluators shall be trained, tested, and approved in accordance with administrative regulations adopted by the Kentucky Board of Education in the proper techniques for effectively evaluating certified school personnel. Evaluators shall receive support and resources necessary to ensure consistent and reliable ratings;*
8. *The professional growth and effectiveness system shall include a plan whereby the person evaluated is given assistance for professional growth as a teacher or administrator. The system shall also specify the processes to be used when corrective actions are necessary in relation to the performance of one's assignment; and*
9. *The training requirement for evaluators contained in subparagraph 4 of this paragraph shall not apply to district board of education members.*

While this is an extensive list of requirements, many of the details regarding how these elements and procedures will be designed and implemented can be local decisions. Beyond these local decisions, the statute also allows local school districts to design and implement an alternative effectiveness and evaluation system if the alternative system meets specific requirements and has been approved by the Kentucky Board of Education:

*(7) Local districts may submit a written request to use an alternative effectiveness and evaluation system to the Kentucky Board of Education. The Kentucky Board of Education shall consider and approve a local district's use of an alternative effectiveness and evaluation system instead of the statewide system only if the Kentucky Board of Education determines the alternative system:*

1. *Is as rigorous, reliable, valid, and educationally sound as the statewide professional growth and effectiveness system;*
2. *Uses multiple measures of effectiveness, including student growth data as a significant factor in determining the effectiveness of teachers and administrators, that utilize both state standardized tests and local formative growth measures that are rigorous and comparable across schools in a local district;*
3. *Includes both formative and summative evaluation components;*
4. *Measures professional effectiveness;*
5. *Supports professional growth;*
6. *Has at least three (3) performance levels;*
7. *Is used to inform personnel decisions;*
8. *Is considerate of the time requirements of evaluators at the local level and does not require that all certified school personnel have a formal summative evaluation each year; and*
9. *Rates teachers and administrators by multiple measures instead of a single measure.*

KRS 156.557 also specifies how these local decisions regarding the details of evaluation procedures are to be made. KRS 156.557(5)(c)(1) states:

*The following provisions shall apply to the statewide professional growth and effectiveness system:*

*(c)  The Kentucky Board of Education shall adopt administrative regulations incorporating written guidelines for a local school district to follow in implementing the professional growth and effectiveness system and shall require the following:*

*1.  All evaluations of certified school personnel below the level of the district superintendent shall be in writing on evaluation forms and under evaluation procedures developed by a committee composed of an equal number of teachers and administrators; ...*

The “*committee composed of an equal number of teachers and administrators*” is sometimes referred to statewide as the local school district’s 50/50 committee. In the case of JCPS, the 50/50 committee is referred to as the Educator Quality Oversight Committee (EQOC).

It is important to note that, unlike most district committees that are established by (and thereby empowered by) the local board of education, the 50/50 committee is established and empowered by state law. This leads to the question of what role, if any, the local school board is legally authorized to play in the adoption of certified evaluation plans. The answer can be found in the corresponding regulation promulgated by the Kentucky Board of Education.

**Regulation:**

District evaluation committees, often referred to as 50/50 committees, are statutorily established in KRS 156.557.  The details of the 50/50 committees’ operations are codified in regulation 704 KAR 3:345 which states:

*Section 4.*

*(1) An evaluation committee consisting of equal numbers of teachers and administrators shall develop evaluation procedures and forms for certified positions below the level of the district superintendent.*

This regulation goes on to state that the 50/50 committees must be utilized in order to develop substantive changes in district evaluation plans.  The specific regulatory language states:

*Section 8.*

*(1) The local board of education shall review as needed the evaluation plan to ensure compliance with KRS 156.557 and this administrative regulation.*

*(2) If a substantive change is made to the evaluation plan, the local board of education shall utilize the evaluation committee, as provided for in Section 4(1) of this administrative regulation, in formulating the revision.*

*(3) Examples of substantive change shall include a change in:*

*(a) Cycle;*

*(b) Observation frequency;*

*(c) A form; or*

*(d) An appeal procedure.*

*(4) A revision to the plan shall be reviewed and approved by the local board of education and submitted to the Kentucky Department of Education for approval.*

Notice at the beginning of Section 8 the regulation states that “*The local board of education shall review as needed the evaluation plan to ensure compliance with KRS 156.557 and this administrative regulation.*”  The regulation goes on to state that the 50/50 committee must be utilized if “substantive” changes are to be made to the district evaluation plan.  The regulation concludes by saying that any such revisions to the plan “*shall be reviewed and approved by the local board of education and submitted to the Kentucky Department of Education for approval.*”

Given the language at the beginning of Section 8 of the regulation, focusing on the responsibility of local school boards to ensure compliance with state statute and regulation and the use of the word “shall” in (4), the regulation indicates that local school boards are required to approve revisions to the district evaluation plan developed by the 50/50 committee (“the plan shall be reviewed and approved by the local board”) UNLESS the school board finds that the revisions to the district evaluation plan do not comply with state statute and/or regulation, in which case the school board shall not substantively amend the revisions directly, but rather, must again “utilize” the 50/50 committee, as required, by returning the revisions to the plan to the 50/50 committee and directing the 50/50 committee to make the necessary substantive changes required to ensure compliance.

**Contract:**

Modifications to the certified employee evaluation plan are addressed by the contract in Article 8 and in the “Joint Statement of Commitment for the Collaborative Development of a Jefferson County Educator Growth System” which was incorporated into the contract in 2013. (Both documents are attached.)

Article 8 (Employee Evaluation) states:

*The performance of all employees shall be evaluated according to procedures developed by the Employer or its agents. Such procedures shall be limited by the provisions of Section A. Upon the observation of significant deficiencies in work performance, the provisions of Section B or C, whichever is applicable, shall be followed in addition to those in Section A.*

Section A of Article 8 states:

*12. An Advisory Committee, including employees nominated by the Association shall be established annually for the purpose of reviewing and recommending modification, if any, to the evaluation plan.*

This “*Advisory Committee*” is the 50/50 committee, known within JCPS as the Educator Quality Oversight Committee (EQOC).

The “Joint Statement of Commitment for the Collaborative Development of a Jefferson County Educator Growth System” identifies the following collaborative goal:

*In order to improve student learning, growth and development, we will design, field test, pilot, and recommend for approval a comprehensive and congruent Educator Growth System (EGS) that will support continuous professional growth and development, throughout an educator's career in JCPS, including induction, goal setting, evaluation and peer learning.*

Consistent with the afore mentioned statute, regulation, and contract language, the Joint Commitment charges the JCPS 50/50 committee (the EQOC), with the responsibility to design appropriate substantive changes to the certified evaluation plan in order to accomplish this goal. The Joint Commitment specifies:

*The purpose of this agreement is to define the framework for the development and recommended implementation of this Educator Growth System. To this end, the parties agree to the following:*

1. *The development and recommended implementation of the EGS will be done by a jointly appointed Core Design Committee, which shall be the Educator Quality Oversight Committee (EQOC).*
2. *The EQOC is comprised of five representatives appointed by the JCTA president and five representatives appointed by the Superintendent.*
3. *The EQOC will make decisions by organizational consensus within the group, not majority vote. Organizational consensus shall mean that JCPS and JCTA must agree that each organization, respectively, can accept/support a decision in order for the decision to be enacted.*

*…*

1. *The EQOC will have the power to recommend changes in the collective bargaining agreement, in School Board Policy and District practices and procedures. The right to accept/reject these recommendations is reserved exclusively to each separate party. This agreement does not compromise the authority and roles of these parties.*

*…*

1. *There will be joint communications for the purpose of educating teachers, administrators, school board members, and the community regarding the goals and progress of the EQOC's work on the EGS.*

The Joint Commitment goes on to identify the following specific charges for the EQOC:

*The charges to the EQOC will be to:*

1. *Develop a design, field test, pilot, and potential implementation timeline for the Educator Growth System, ensuring alignment to a common language and set of expectations as established in the KDE Teacher Effectiveness Framework based on Charlotte Danielson.*
2. *Oversee the development and/or the revision of component parts to support the whole in an Educator Growth System.*
3. *Develop recommendations, as needed, for changes in the collective bargaining agreement, in School Board Policy, and District practices and procedures. The right to accept/reject these recommendations is reserved exclusively to each separate party.*
4. *Communicate with all internal and external stakeholders regarding the goals and progress of the committee's work on the EGS.*

It is important to note that both Article 8 in the contract and the Joint Commitment specify that modifications cannot be made to the evaluation process without being developed by and agreed upon by the 50/50 committee (EQOC) and approved by all appropriate parties.

**Conclusion:**

Taken collectively, state statute, state regulation, and the JCBE-JCTA contract all affirm the obligation for all substantive modifications to the certified employee evaluation plan to be developed, approved, and communicated by the EQOC. Any and all final modifications to the evaluation plan, and thereby to Article 8 of the contract, must also be approved by the JCBE and the JCTA; however, neither entity is authorized to edit or otherwise amend the modifications proposed by the EQOC.