

# **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(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 as 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:*

- A. 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).*
- B. The EQOC is comprised of five representatives appointed by the JCTA president and five representatives appointed by the Superintendent.*
- C. 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.*

...

*H. 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.*

...

*J. 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.

ARTICLE 8 – EMPLOYEE EVALUATION

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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. Any evaluation used as a basis for adverse action shall be conducted according to Section B or C in addition to Section A.

Section A      General Evaluation Procedure

- 1 1. All monitoring or observation of work performance of an employee  
2 shall be conducted openly and with full knowledge of the employee.  
3
- 4 2. All evaluations shall be in writing. If evaluation forms not requiring  
5 narrative style are used, they shall be jointly designed by the Parties.  
6
- 7 3. Observations by the evaluator shall be required prior to the evaluation of  
8 an employee's classroom work performance.  
9
- 10 4. Evaluations shall acknowledge the strengths of employees, as well as  
11 deficiencies, and shall note all data used to support the conclusions  
12 made by the evaluator. The evaluator shall make a fair and objective  
13 effort to determine whether deficiencies have been corrected.  
14
- 15 5. Employees shall be evaluated only by appropriate administrators with  
16 rating authority in compliance with state law and regulation.  
17
- 18 6. The evaluator shall take into consideration and note in writing any  
19 circumstances that may adversely affect an employee's performance.  
20
- 21 7. Student test scores may be used to evaluate achievement and  
22 progress of students and the district's instructional program; however,  
23 these scores shall not be used in any way to evaluate the work  
24 performance of employees unless they agree voluntarily.  
25
- 26 8. A conference shall be held between the evaluator and the employee  
27 after the written evaluation is received by the employee.  
28
- 29 9. The employee shall be notified in advance of the time and date of one  
30 (1) observation for evaluative purposes.  
31
- 32 10. Evaluations must be completed no later than April 15 and submitted to  
33 the employees by no later than May 1 except for those employees who  
34 have been identified as having significant deficiencies in which case  
35 the provisions in Section B of this article will apply.  
36
- 37 11. The performance of all Special Area Teachers/Traveling employees  
38 shall be evaluated by each principal.  
39
- 40 12. An Advisory Committee, including employees nominated by the  
41 Association shall be established annually for the purpose of reviewing  
42 and recommending modification, if any, to the evaluation plan.  
43
- 44 13. Tenured employees will be evaluated at least every three years. Non-  
45 tenured employees will be evaluated yearly. Employees on deficiency  
46 may be evaluated within the year of the deficiency.

1  
2 Section B When significant deficiencies in work performance have been  
3 observed:

- 4  
5 1. They shall be noted in writing and discussed with the employee in a  
6 conference.  
7
- 8 2. The evaluator shall observe the employee's work performance a  
9 minimum of four (4) 30-minute periods within a twelve-week period (60  
10 worked days) beginning with notification. For the employee not  
11 assigned to a classroom, the evaluator must observe the work  
12 performance of the employee for four (4) 30-minute periods when the  
13 employee is fulfilling the employee's job responsibilities.  
14
- 15 3. Each observation shall be followed by an evaluator/evaluatee  
16 conference within the first five (5) days the employee is at work  
17 following the observation.  
18
- 19 4. The evaluator shall identify professional staff services and/or materials  
20 that the employee may use to help correct the identified deficiencies.  
21 There shall be identified at least one (1) professional staff person who  
22 will not evaluate the employee, but who will be available to assist/help  
23 a teacher on deficiency correct the identified deficiency areas.  
24
  - 25 a) Once the Employer has identified the professional staff person to  
26 be assigned, the employee on deficiency will have the option of  
27 waiving any contractual right to assistance from the non-evaluative  
28 professional staff person assigned.  
29
  - 30 b) The employee, the Association and the Employer will confirm in  
31 writing via a mutually agreeable form that the required assistance  
32 has been offered and/or the employee has waived their right to the  
33 assistance. This will occur within the first ten (10) days after the  
34 notice of significant deficiency is issued. Should the employee  
35 refuse to confirm the offer in writing, the Employer will confirm the  
36 refusal in writing and provide the Association a copy.  
37
  - 38 c) The Association and the Employer agree that the non-evaluative  
39 professional staff person assigned to provide assistance will not  
40 provide any testimony or evidence, before any arbitrator,  
41 concerning the teacher on deficiency. However, the Employer may  
42 provide evidence of dates, times, and description of assistance  
43 provided.  
44
- 45 5. The Evaluator shall summarize the observations and conferences in  
46 writing and provide a copy to the employee.

1  
2 Section C Exception

3  
4 When a significant deficiency in work performance is recurring but does not lend  
5 itself to 30-minute observations, the evaluator shall note the deficiency in writing  
6 and hold a conference with the employee to discuss the deficiency, identify  
7 professional staff services and/or materials and to establish a specific timeline of  
8 no more than forty-five (45) worked days for correcting the deficiency. Periodic  
9 conferences shall take place within the specified time to assess progress towards  
10 correcting the deficiency. At the end of the specified timeline, the evaluator shall  
11 write a summary of the conferences and provide a copy to the employee.

12  
13 Section D KTIP interns will be provided release time to observe other  
14 employees if recommended by their KTIP committee.

15  
16 Section E Non-Renewal

17  
18 The Superintendent's right of non-renewal will be exercised according to the  
19 following terms and conditions:

- 20  
21 1. Non-tenured teachers shall have a mid-year performance evaluation if  
22 the teacher worked full time in the classroom at least two-thirds (2/3) of  
23 the period before the Evaluation Deadline. This mid-year evaluation  
24 will replace one of the observations/E-2 required by the current  
25 evaluation process. The mid-year evaluation process will include:  
26  
27 a) A checklist consisting of the ten (10) teacher standards found on  
28 the standard teacher evaluation form;  
29  
30 b) A narrative section where specific recommendations for  
31 improvement will be listed; and  
32  
33 c) A recitation of support services offered for areas of improvement  
34 noted  
35  
36 2. When issuing a mid-year performance evaluation, the principal shall  
37 meet and discuss the evaluation with the teacher. The evaluation will  
38 be placed in the teacher's personnel file after the teacher has had the  
39 opportunity to comment upon the evaluation in writing [which must be  
40 received by the principal within twenty-one (21) calendar days  
41 following receipt by the teacher of the evaluation] and said comment, if  
42 timely received, shall also be included in the personnel file.  
43  
44 3. The performance evaluation will be provided to the teacher by  
45 February 15.  
46



- 1 4. Mid-year evaluations will only be done for teachers the principal  
2 believes could be recommended for non-renewal based on  
3 performance.  
4
- 5 5. The Parties agree that the Superintendent retains the right to non-  
6 renew the limited contract of a teacher pursuant to KRS 161.750 and  
7 such right to non-renewal is not impacted, abrogated or diminished by  
8 or subject to the Agreement between the Employer and the  
9 Association. The Association will not arbitrate or litigate the non-  
10 renewal of the limited contract of any teacher, or seek the re-  
11 employment of a teacher who has been non-renewed as a remedy to  
12 any grievance or litigation, except that the Association may file a  
13 grievance seeking renewal on behalf of a non-renewed teacher if that  
14 teacher worked full time in the classroom at least two-thirds (2/3) of the  
15 period before the Evaluation Deadline and did not receive a mid-year  
16 performance evaluation prior to February 15. The subject of the  
17 grievance shall be expressly limited to whether the mid-year  
18 performance evaluation was drafted and made available to the teacher  
19 by the principal before the Evaluation Deadline.  
20
- 21 6. The Parties agree that non-renewal based on employee  
22 misconduct/discipline is not subject to the procedural requirements of  
23 Article 8 of the Agreement. Employee misconduct/discipline that  
24 occurs during a contract term may be grieved under Article 9 of the  
25 Agreement; however, the grievant may not seek as a remedy in such  
26 grievance-arbitration process renewal of the contract.  
27
- 28 7. The Employer will agree not to report to EPSB the non-renewal of a  
29 non-tenured teacher's contract for failure to meet local standards for  
30 quality of teaching performance unless such a report is otherwise  
31 required by law.  
32
- 33 8. In a non-tenured teacher's fourth year, the Superintendent shall use  
34 the following process prior to not renewing the teacher's contract for  
35 performance reasons (and thereby denying the teacher tenure):  
36
- 37 a) If performance issues are noted that could lead to non-renewal, the  
38 teacher shall be notified of the potential for non-renewal by March 1  
39 and shall be provided assistance, including but not limited to:  
40
- 41 i) An evaluator shall observe the employee's work  
42 performance a minimum of two (2) 30-minute periods within  
43 a six-week period (30 worked days) beginning with  
44 notification. For the employee not assigned to a classroom,  
45 the evaluator must observe the work performance of the

1 employee for two (2) 30-minute periods when the employee  
2 is fulfilling the employee's job responsibilities.  
3

4 ii) An evaluator/evaluatee conference within the first ten (10)  
5 days the employee is in attendance following each  
6 observation. The evaluator will provide recommendations  
7 for improvement.  
8

9 iii) The evaluator's written summary of observations and  
10 conferences.  
11

12 b) Following the recommendation of non-renewal by a principal, the  
13 matter shall be referred to a Review Committee:  
14

15 i) The Review Committee will be selected on an annual basis  
16 and shall consist of five (5) persons: three (3) teachers  
17 designated by the Association and two (2) administrators  
18 designated by the Employer, hereinafter referred to as the  
19 "Review Committee." The teachers will be excused from  
20 their normal duties and there will be no Association Leave  
21 charged for the time spent on Review Committee activities;  
22

23 ii) The Review Committee shall review the personnel record of  
24 the teacher and hear presentations, if any, from: the  
25 teacher, his or her Association Representative, the  
26 principal, the evaluator discussed above, and a  
27 representative of Human Resources;  
28

29 iii) The Review Committee shall also consider the teacher's  
30 performance since the mid-year performance evaluation  
31 and any other matter that the Parties wish to present;  
32

33 iv) The Review Committee shall then issue a recommendation  
34 to the Superintendent concerning the teacher's request for  
35 an additional contract. If possible, the Review Committee  
36 will submit a joint recommendation. If not, differing  
37 recommendations will be submitted.  
38

39 c) The Superintendent, after considering the recommendation(s) of  
40 the Review Committee, shall determine whether the teacher's  
41 contract will or will not be renewed. However, if no  
42 recommendations are received prior to the fifteen (15) days before  
43 the deadline established by KRS 161.750 for issuing non-renewal  
44 notices, the Superintendent shall make a determination based on  
45 any information he or she deems appropriate. A fourth-year  
46 teacher will have no right to grieve the Superintendent's decision

1 not to renew, except on the grounds that the required evaluation  
2 and non-renewal process described herein was not followed.

3

4 9. All the preceding provisions of Article 8, Section E, do not apply to  
5 tenured teachers.



## JEFFERSON COUNTY BOARD OF EDUCATION

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January 28, 2013

**Agenda Item:** **V.AA. Approval of Joint Statement of Commitment for the Collaborative Development of a Jefferson County Educator Growth System**

**Recommendation:** Superintendent Donna Hargens recommends that the Board of Education approve the design, field test, and pilot of a comprehensive and congruent Educator Growth System and authorize the Superintendent to sign the attached Statement of Commitment Letter.

**Rationale:** The Jefferson County Board of Education, the administration of Jefferson County Public Schools, and the leadership of the Jefferson County Teachers' Association will develop an Educator Growth System (EGS) that will support continuous professional growth and development throughout an educator's career.

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).

This system will insure high quality educators and high quality instruction in all classrooms throughout the district.

Committee Members are as follows:

- Allen Young, resource teacher, Liberty High School;
- Jo McKim, resource teacher, Central High School Magnet Career Academy;
- Royce Whitman, librarian, Crums Lane Elementary School;
- Tony Prince, teacher, Atherton High School;
- Beverly Chesterburton, ECE teacher, Stuart Middle School;
- Tiffeny Gerstner, director, Recruitment and Development;
- John Ansman, principal, Tully Elementary School;
- Marty Pollio, principal, Jeffersontown High School;
- Faith Stroud, principal, Knight Middle School; and
- Janet Leitner, evaluation and transition coordinator.

Submitted by: Dr. Michael Raisor

Attachment

## **Joint Statement of Commitment for the Collaborative Development of a Jefferson County Educator Growth System**

With this Statement of Commitment, the Jefferson County Board of Education, the administration of Jefferson County Public Schools and the leadership of the Jefferson County Teachers' Association agree on the following:

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.

1. To improve the quality of hiring we will screen candidates using the Charlotte Danielson domains for high quality teaching.
2. To improve teacher efficacy and retention in the early years, we will improve the induction experience (including revamping KTIP so that it aligns with the Danielson domains of high quality teaching) and provide orientation to cultures, systems, processes, procedures, practices, routines and school-wide PLC norms.
3. To continue to improve teacher efficacy throughout an educator's career, we will recommend implementation of an Educator Growth System (EGS). The EGS will resolve teacher isolation, foster continuous professional growth, and ensure high quality instruction in every classroom. The EGS will recognize the complexity and importance of teaching in a high-performing school system, one in which there is an emphasis on continuous improvement and shared responsibility for student learning. Good teaching is nurtured and cultivated in a school and district culture that values continuous feedback, analysis, and refinement of the quality of teaching. The EGS integrates two important components: professional growth and a meaningful approach to teacher evaluation.
4. To ensure consistency and quality control, all aspects and components of the EGS will be aligned to a common language and set of expectations as established in the KDE Teacher Effectiveness Framework based on Charlotte Danielson. To further achieve consistency and quality control, we will explore systems of checks and balances, such as peer assistance and/or peer assistance and review.

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:

- A. 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).
- B. The EQOC is comprised of five representatives appointed by the JCTA president and five representatives appointed by the Superintendent.
- C. 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.
- D. A full-time JCPS Project Manager will facilitate the collaborative work of the EQOC. The Project Manager shall be collaboratively selected from among the members of the EQOC and shall be mutually agreeable to both JCPS and JCTA.
- E. To facilitate collaborative decision-making and efficient use of time, the EQOC will be trained in interest-based decision-making processes.
- F. A facilitator for interest-based decision-making will be retained for at least six months to maintain these processes and culture.
- G. Mutually agreed upon entities, will, with agreement of both parties, provide coaching and facilitation to the EQOC.
- H. 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.
- I. Recommendations to make certain changes may require state agency approval. The parties agree to jointly advocate for such changes that are mutually accepted.
- J. 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 charges to the EQOC will be to:**

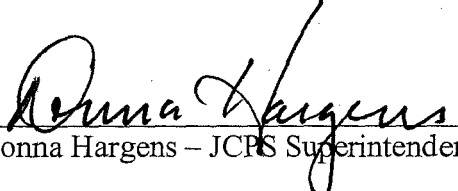
1. Develop a design, field test, pilot, and potential implementation timeline for the Educator Growth System, ensuring alignment to a common language and set of expectations as established in the KDE Teacher Effectiveness Framework based on Charlotte Danielson.

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 further agreed that any party, for any reason, can terminate this collaborative endeavor at any time, by giving written notice to the other parties with two-weeks notice.**

**Note: This agreement does not in any way alter the collectively bargained JCTA-JCBE labor agreement.**

The undersigned parties hereby commit to collaboratively develop an Educator Growth System, as outlined above:

  
\_\_\_\_\_  
Donna Hargens – JCPD Superintendent

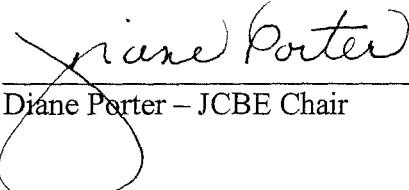
1-28-13  
Date

  
\_\_\_\_\_  
Brent McKim – JCTA President

1 Feb 2013  
Date

  
\_\_\_\_\_  
DeeAnn Flaherty – JCTA Executive Director

2-4-13  
Date

  
\_\_\_\_\_  
Diane Porter – JCBE Chair

28 January 13  
Date