

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

March 2 - 23, 2012

(SB 191 Appeals Rules)

March 16, 2012

Dear Members of the State Board of Education,

First, we would like to acknowledge the hard and thoughtful work that has gone into SB 191, since it passed into law in 2010. This includes significant effort from members of the State Council of Educator Effectiveness to inform the rulemaking process and the State Board's time and commitment to the process. Your efforts have put Colorado ahead of the game in terms of implementation and piloting of this new way of doing business. This effort should improve the teaching and learning cycle for all children.

CASE members play key roles in the evaluation process as superintendents, principals and human resources professionals, and we wanted to weigh in on a key aspect of rulemaking: the appeal. This process must preserve professional judgment and fairness. The professionals doing the work should not be challenged unless there is "material prejudice." The appeal is a critical juncture that can either preserve the status quo, or move the system in a significant new direction. The appeal safeguards a valuable part of the process, but it cannot be wide open to interpretation, or it will inexorably harm intended outcomes.

CASE recommend the following "guardrails" be put in place for the appeals process, so it does not have multiple and unintended results.

1. The appeal should only be available for those individuals who have received two consecutive ineffective ratings. It should not be activated for teachers who receive partially effective ratings because that would raise a gray area for appeals that would be very difficult to address.
2. The appeal should occur on a timeline that allows an employment decision to occur in a timely manner. We would recommend that there be a 45-day appeals timeline that starts when an appeal is submitted.
3. The appeal decision should be made solely by the superintendent or designee.
4. The superintendent or designee should have the option to assemble an advisory panel that is composed of a majority of administrative leaders.
5. A teacher should be allowed only one appeal, so that this process does not become backlogged at a time when there are fewer people involved in school administration.

CASE Departments

Letter to the Members of the State Board of Education

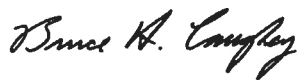
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6. The appeal should only be considered when there is substantial non compliance with the process, or if there are clear mistakes in the data used to determine effectiveness.
7. An appeal should not be raised unless there is a preponderance of evidence to do so.

Thank you for your efforts.

Sincerely,



Bruce Caughey

Executive Director, CASE – Colorado Association of School Executives

CASE Departments:

CAES – Colorado Association of Educational Specialists

CAESP – Colorado Association of Elementary School Principals

CALET – Colorado Association of Leaders in Educational Technology

CASPA – Colorado Association of School Personnel Administrators

CASSA – Colorado Association of Superintendents/Senior Administrators

CASSP – Colorado Association of Secondary School Principals

DBO – Department of Business Officials



1200 Grant Street
Denver, CO 80203-2306
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MEMORANDUM

TO: State Board of Education
FROM: Kenneth DeLay, Executive Director
Jane Urschel, Deputy Executive Director
DATE: March 20, 2012
RE: Senate Bill 191: Appeals Rules

CAS.B. was pleased to participate, along with CEA and CDE, in the State Council's deliberations on the S.B. 191 appeals process. We applaud the Council members' commitment to consensus building and their thoughtful approach to the recommendations on this complex issue. In our March 6, 2012 comments (attached), we weighed in on the current debate around the appeals panels and the scope of a teacher's right to appeal, and submit the following concerns with regard to the language of the draft rules dated March 1, 2012:

1. **Statutory Requirements.** S.B. 191 affords nonprobationary teachers the right to appeal an ineffective rating pursuant to a process determined at the local level. The statute includes certain minimum requirements applicable to all appeals, as stated in Section 5.04(A), but the State Board rules only apply to appeals challenging a teacher's second consecutive ineffective rating (prior to the loss of a teacher's nonprobationary status). We believe that Section 5.04(A) is confusing in light of the limited scope of the State Board's rules, particularly where the rules seem to conflict with the statutory requirements; i.e., the statute allows up to 90 days for the appeals process, while the rules limit the appeal of the second consecutive rating to 45 days. Therefore, we ask that Section 5.04(A), which does nothing more than restate the statutory requirements, be deleted in its entirety to avoid unnecessary confusion. Alternatively, we ask that the language be modified to clarify that the statutory requirements (as restated in the rules) apply to all appeals, but that the State Board rules apply only to a teacher's appeal of their second consecutive ineffective rating. Additionally, the statute does not require an appeal following a rating of "partially ineffective," as indicated by the latest amendment to this section, and the language in 5.04(A) and 5.04(A)(4) should be deleted or revised to clarify this point.

2. Minimum Requirements Applicable to All Districts. Rule 5.04(B) exceeds the scope of the State Board's authority under the Act, which directs the State Board to "promulgate guidelines" that districts "may" follow when designing and implementing their evaluation systems. Therefore, we believe that the language in 5.04(B)(2), (B)(3), (B)(4) and (B)(5) should be revised to allow local districts discretion to determine whether the stated procedures are appropriate for their unique needs and circumstances. Additionally, the statute allows up to 90 days for the appeal. While we recognize the strong interest behind completing the appeal process in a timely fashion, districts must have the right to extend the 45-day timeline if necessary.

3. Appeals Panels and the State's Model System. Our prior comments state that we have no issue with the appeals panels, so long as they are advisory in nature and not required to be used by any district, including those that elect to use the State's model system. We support the language in Section 5.04(C), which allows districts to adopt the State's model system, but not the State's model appeal process.

We recognize the value in the "shared leadership" concept underlying the panel approach and have no reason to doubt the Council's conclusion that an appeals panel may be an effective tool in some districts. However, for many districts, particularly the smaller, rural districts, it will be utterly impossible to convene a panel comprised of administrators who were not responsible for the teacher's evaluation, because there are only one or two administrators (including the superintendent) in the district. Moreover, due to the close nature of the relationships in smaller communities, individuals may be reluctant to participate on panels that force them to review the work of their peers. Allowing districts to use teachers/administrators from other districts will only increase the potential burden of such panels in light of geographic limitations and increased workloads across the state.

Therefore, we ask that Rule 5.04(C)(1)-(C)(7) be revised to eliminate the language limiting the State's model system to the use of appeals panels and ask that the rules direct CDE to develop an alternate appeals process for use by those districts that don't (or can't) embrace the panel concept upon implementation of their new evaluation systems. We share Paul Lundeen's concern, as stated at the March 7, 2012 hearing, regarding potential political pressures related to the panels and don't want the panels to serve as a disincentive for districts to consider the State's model. At a minimum, the rules should direct CDE to include guidance regarding both approaches in the resource bank required by C.R.S. 22-9-105.5(11). This will minimize any related political concerns and allow all districts to benefit from the resources available through the State consistent with the requirements of the law.

Thank you for your consideration. We will be happy to answer any questions you may have regarding our position at the hearing on March 30, 2012.



1200 Grant Street
Denver, CO 80203-2306
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MEMORANDUM

TO: State Board of Education
FROM: Kenneth DeLay, Executive Director
Jane Urschel, Deputy Executive Director
DATE: March 6, 2012
RE: Rules to Implement the Appeals Process Required by Senate Bill 191

CASB shares many of the concerns set forth in the comments submitted on February 24, 2012 by the sponsors of S.B. 191. Our position is also largely consistent with that expressed by CASE and the Northern Superintendents. We firmly believe that the grounds for an appeal must be limited to substantive procedural violations and/or the misattribution of data. This is consistent with the position of the State Council on Educator Effectiveness, as expressed by its members during their work on this issue. We defer to the Council's expertise as to the utility of appeals panels and have no objection to any reference to such panels, so long as they remain advisory in nature and are not mandated for use in any district, including those that elect to use the state's model system.

However, we strongly disagree with idea that the local appeal process should be used to address systemic issues related to the reliability of the evaluation tools, including the scoring matrix and rubrics. Districts will engage in a collaborative process when they design and implement their evaluation tools and any concerns that arise upon implementation should be addressed as part of that process. Additionally, any such concerns should arise (and be addressed) after a teacher's first ineffective rating, which is beyond the scope of the State Board rules.¹ Finally, we believe it is critically important that districts using the state model be able to rely on the validity and reliability of that system. Simply put, *local districts should not be put in a position to defend the state model system at the local level.*

We recognize the rather Herculean burden the state and local districts have with regard to the design of a system that adequately measures teacher performance under all circumstances. We also recognize that the only way to learn some of the critical lessons will be through actual implementation and revision. However, we must not confuse the continuous learning process necessary to develop an evaluation system that is fair and reliable with a teacher's right to appeal an ineffective rating under that fair and reliable system.

Thank you for your consideration of this important issue. CASB will submit formal comments on the individual rules prior to the hearing on March 30, 2012.

¹ SB 191 expressly limits the scope of the State Board's rules to *guidelines* regarding the "process by which a nonprobationary teacher may appeal his or her *second* consecutive performance rating of ineffectiveness." C.R.S. 22-9-105.5(3)(e)(VII) (emphasis added).



State Council for Educator Effectiveness

March 22, 2012

Colorado State Board of Education
Office of the Colorado State Board of Education
201 East Colfax Avenue
Denver, CO 80203

Members of the Colorado State Board of Education:

Thank you for considering our recommendations for an appeals process under SB 10-191 submitted to you on February 8, 2012. We were pleased to see those recommendations reflected in the draft rules prepared by the Colorado Department of Education (CDE) staff. At a meeting held on March 2, 2012, members of the State Council for Educator Effectiveness (the Council) reviewed the most recent available draft of the rules, and public comments received as of that date. The Council met again on March 16, 2012 with three of the initial sponsors of SB 10-191 (Senators Michael Johnson and Nancy Spence and Christine Scanlan, Director of Legislative Affairs and Strategic Initiatives and Senior Education Policy Advisor to Governor John Hickenlooper) to discuss perceived differences in the Council recommendations and their written comments submitted to you on February 24.

In an effort to assist you with considering those comments and further revisions to the rules, we submit this letter for the purpose of clarifying our initial recommendations, and highlighting additional issues we urge you to consider as you finalize the rules for appeals.

Background for the Council's Recommendations

The Council recommendations built upon current promising practices. As with all of our prior recommendations, the Council's recommendations for teacher appeals are intended to reflect the most promising evidence available, and promote a *systemic* approach to supporting effective educators. However, Colorado does not have the benefit of having a portfolio of proven choices to choose from in building the system we seek to create. We are indeed in uncharted territory. The opportunity for our state then is to build upon the experiences of others and build a model that will serve as the standard for how to support effective educators across a state in a meaningful way that benefits students.

The appeals process is one step within a larger system designed to improve the effectiveness of educators, and provide opportunities for systemic improvements. During the pilot process and initial implementation of the evaluation system, it is inevitable that there will be some degree of imperfection and a corresponding need for refinement and improvement of the system. Appeals provide an opportunity to identify and respond to these issues. For that reason, the State Council believes that the appeals should provide an opportunity to revisit the Performance Evaluation Rating to the extent that the basis of the appeal is a systematic inaccuracy in either the observation procedures and process or the validity of the data used. An appeal is *not* a de novo review of the evidence collected and whether it supports the

Performance Rating of “Effective”. However, it is the final step in a system that should, in its entirety, provide opportunities to identify deficiencies early, resolve conflicts or differing judgments, respond promptly and at all times prompt a shared responsibility for improving performance.

In addition, the appeals process provides an opportunity to identify deficiencies in the system itself. The appeals process provides a unique opportunity for a local district or CDE to identify potential patterns of systematic failure within a system. Depending upon the nature of such findings, local districts can address them locally and/or CDE can identify areas that merit additional support.

Use of a panel in the appeals process does not change the substance or process of the appeal. It simply creates a structure that promotes shared leadership and accountability among district educators and administrators. Many of the concerns previously posed in the written comments to the draft rules are not unique to the existence of a panel. For example, concerns with whether an appeal might be a *de novo* review, or an opportunity to debate the validity of the data used, could fairly be directed at an appeal process conducted exclusively by a superintendent. We agree with many of these concerns and offer suggestions below for how to address many of them. However, these are not concerns that arise solely by the existence of a panel. They are issues that warrant clarity under any circumstances. By using a panel, however, important shifts in accountability and shared leadership – which are embedded throughout the evaluation process – are reinforced again at the appeals stage.

The state model system appeals process should be efficient and effective. As discussed in the Council’s letter of February 6, 2012, the appeals process proposed to be included in the state model system is an efficient and effective process that is not envisioned as a formal legal proceeding. Following is an outline of the system that the Council envisions:

- A. The appeals process begins on the date a teacher submits a written notice of intent to appeal and shall conclude no more than 45 calendar days thereafter.
- B. The appeal is submitted to a local appeals panel, which is constituted as follows:
 - o The superintendent may appoint him/herself to the review panel.
 - o The panel shall have equal numbers of peers and district appointed members. Local school districts shall determine the total number of members.
 - o The process of appointing members to the panel shall be determined, where applicable, through collective bargaining. In the absence of a collective bargaining agreement, peers shall be appointed in collaboration with the local association.
 - o Local districts/BOCES shall select and train panel members in a manner designed to ensure the credibility and expertise of the panel members.
 - o Districts/BOCES shall develop a process to ensure continuity of the review panel members.
 - o Small districts may choose to use a panel drawn from members representing multiple districts across a region.
- C. The process proposed by the Council would proceed as follows:
 - A teacher wishing to appeal a second consecutive performance rating of partially effective or ineffective shall submit written notice of intent to appeal to the appropriate district representative no later than 15 calendar days after receiving the second ineffective or partially effective rating;

- The appealing teacher shall have an additional fifteen days from the date of submitting a written notice to appeal to file a completed appeal;
- All reasons for appeal shall be described within one appeal. Any grounds not raised at the time the appeal is filed shall be deemed waived;
- The panel shall review the written information provided by the appealing teacher prior to meeting to render a recommendation;
- The panel shall meet to consider the information provided and determine whether the information supports a determination that the teacher was “effective”
- The panel meeting is not open to the public; however, the panel may invite individuals to provide to the panel additional information that is relevant to their deliberations. Some examples might include an appearance by the teacher or evaluating principal to clarify information provided, or information from another educator with experience in the subject and/or grade taught by the appealing teacher, or others; however, either the teacher or the principal may refuse to meet with the panel without prejudice.
- The panel provides its recommendation to the local superintendent, who has the authority to render a decision in regard to loss of nonprobationary status for nonprobationary teachers receiving their second consecutive rating of partially effective or ineffective.
- If the superintendent’s decision differs from the recommendation of the panel, the superintendent would provide to the panel a written explanation of the rationale for such decision.
- The appeals process for nonprobationary teachers receiving their second consecutive performance rating of partially effective or ineffective shall be the final determination in regard to performance rating and loss of nonprobationary status.

Recommendations for Improving the Draft Rules

Based upon a review of the “Draft Proposed Rules – Revised 3/1/12”, we urge you to consider the following further recommendations. Please note that proposed edits to the current draft rules are expressed as follows - proposed deletions shown in ~~strike through~~, and additions are underlined.

- 1. Clarify the statutory requirement that each local school district make available an appeals process for a nonprobationary teacher who receives his or her second consecutive rating of “Ineffective” or “Partially Effective”.**

Revise the second sentence of Section 5.04 (C) as follows:

Each School District ~~may~~ shall 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.

CRS 22-6-4.5 requires access to an appeals process and so the “may” is inconsistent with statute. To the extent that the intent of the language was to offer the flexibility to school districts to choose the model appeals system or to develop their own locally, that option is afforded in other sections of the rules. However, the Council feels strongly that in order for the pilot to facilitate a meaningful opportunity to assess the quality of the State Model System, the Council feels strongly that during the pilot period, Districts shall use the state model appeals system as part of piloting the State Model Evaluation System. Once the evaluation system is implemented

statewide, districts may adopt the model appeals system or develop its own distinctive appeals process that satisfies the requirements in section 5.04(A) and 5.04(B) of these rules.

You may also consider moving this sentence, once revised, to appear immediately after the Section Title for Section 5.04 or to Section 5.04 (A) in order to further clarify that it applies to all school district appeals processes, rather than the State Model System.

2. Clarify Section 5.04(C)(4) as follows:

A simple majority of the panel shall ~~have the authority to recommend~~ determine the recommendation that a Performance Evaluation Rating of “Effective” was appropriate.

3. The panel included within the state model appeals process should be comprised of an equal number of teachers and administrators. The total number of panel members should be determined by the local school district.

The Council’s original recommendations were supported by five guiding principles. We believe that fidelity to these principles is critical to the success of adopting and implementing the statewide evaluation system. The fourth of these principles emphasizes the important role of collaboration in this process – “The development and implementation of educator evaluation systems must continue to involve all stakeholders in a collaborative process.” The promise of SB 191 lies in its ability to set higher expectations for all educators in Colorado and achieve greater results for students by creating a system of shared leadership and shared accountability. This system of shared accountability and shared leadership requires that educators share equally in the responsibility of holding high expectations and taking action when those expectations have not been met after two years of demonstrated poor performance.

We acknowledge that for many of our state’s small and rural districts it may be difficult if not impossible to find an educator who is willing to serve on an appeal panel, has the requisite expertise and is without personal relationships that make it difficult for them to remain objective or impartial in an appeal review. We believe there are opportunities to address this very real situation (consider a state-level cohort of trained peers, or peers from neighboring districts, for example). We also believe that the need for an appeal process will be commensurate with the number of teachers employed by a school district – meaning, that the greatest number of appeals will be in those school districts employing the greatest number of teachers.

4. In the state model appeals process, teacher representatives should be appointed to serve on an appeals panel through collective bargaining, where applicable.

The use of collective bargaining to appoint teacher representatives to an appeals panel is consistent with the statutory requirement in CRS section 22-9-106 (4.5) (b) that the process be “developed, where applicable, through collective bargaining”.

5. Clarify language in section 5.04(C)(5) of the rules as follows:

The review panel shall be comprised of members who were not ~~directly involved in~~ responsible for the evaluation process for the appealing teacher.

6. **We support the proposed language in section 5.04 (B) (2) and (3) that an any appeal be concluded no later than 45 days after receiving the Performance Evaluation Rating, except under a very limited number of extenuating circumstances, and only with mutual agreement of the teacher and the district.**

Having an appeal process that concludes within 45 days or less is desirable for both the employing school district and the appealing teacher. A final decision will free up the school district to make necessary hiring or placement decisions, and resolves uncertainty for the teacher regarding their personal employment status. In a very limited number of extenuating circumstances it may be necessary for the timeline to exceed 45 days in order to comply with the statutory guidelines and rules. For example, a small, remote school district may require more time to identify qualified, impartial members to serve on its appeal panel. Alternatively, a large district may lack the staff and capacity to process a large number of appeals within the 45 day period, which may occur early in the process of implementing a new system. The need to extend an appeal beyond 45 days should be rare and should only occur if both the district and the appealing teacher mutually agree.

7. **An appeal should not consist merely of a reconsideration of the initial Performance Evaluation Rating based upon the evidence used to determine that rating, but should include the opportunity to consider whether the evidence relied upon was accurate and appropriate, as well as whether the process was adequate.**

In the interest of facilitating the State Board's ability to consider other comments received in response to the draft rules, we offer the following responses to the "three potential challenges a teacher would raise on appeal" identified in the letter, dated February 24, 2012, submitted by the sponsors of SB 191. *Italicized text was copied from that letter.*

1. *The teacher is substantially an effective teacher even though he or she received a rating of ineffective: the evaluator just got it wrong.*

We agree with the bill sponsors that an appeal should not serve simply as "another bite at the apple" and that an appeal should not be an opportunity to look at the same evidence and simply arrive at a different conclusion. However, we anticipate that in certain instances a portion of the evidence used to determine the evaluation was incomplete (no evidence was collected on Quality Standards I-V, for example), or inaccurate (for example, an evaluator reviewed the student work from students that the teacher did not teach). In such cases, the appeal should provide an opportunity to reconsider the performance rating in light of the full body of evidence, after making appropriate corrections.

2. *Data was not an accurate representation of how much students grew: the data just got it wrong.*

We agree with the bill sponsors that an appeal should not provide a forum to debate the validity and reliability of TCAP or other data that comprises the 50% of the teacher's performance based upon the academic growth of their students. However, there are instances when such data may be inaccurate for reasons that should be

properly considered in an appeal. There are several examples of when this might occur. Among others, possible reasons for debating the data used could include:

- The data used was clearly outside the bounds of the technical guidelines set by CDE
- Several of the students' scores used were based upon the performance of highly mobile students such that they should not have been attributed to the teacher
- The number of student scores included in the measure was so small as to make them unreliable
- Interim assessment data was included for only some not all of the periods for which such data is available

3. *The fair process for evaluation was not followed: the evaluator just didn't follow the process fairly.*

We agree with the bill sponsors that the appeal should provide an opportunity to review flaws in the process used to collect the evaluation evidence and make a final determination. An appeal should not consider a fictitious ideal process for conducting evaluations and invalidate a rating simply because the process used fell short of that ideal. Rather, it should be used to invalidate a rating when the process was clearly flawed in material and significant ways. In this way, it provides an opportunity for continuous improvement of the system to the benefit of all educators and students.

In conclusion, we appreciate your thoughtful attention to our recommendations and feel confident that together we are all working to create a more aligned, systematic approach to teacher effectiveness.

Thank you for your time and consideration.

Members of the State Council for Educator Effectiveness

Matt Smith, Vice President, Engineering, United Launch Alliance — Chair
Nina Lopez, Vice President of Strategy and Partnerships, Colorado Legacy Foundation — Vice Chair
Amie Baca-Oehlert, Teacher and President, Adams Twelve Five Star Schools
Jo Ann Baxter, Former Member, Board of Education, Moffat County School District RE-1
Bill Bregar, Former Member, Board of Education, Pueblo County School District 70
Margaret Crespo, Director of Secondary Education, Thompson School District
Kerrie Dallman, President, Jefferson County Education Association, Jefferson County Public Schools
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Shelby Gonzales-Parker, Student, Metropolitan State College of Denver
Towanna Henderson, Parent, Denver Public Schools
Colin Mullaney, Executive Director, Cheyenne Mountain Charter Academy, Cheyenne Mountain Schools
Lorrie Shepard, Dean, School of Education, University of Colorado-Boulder
Brenda Smith, President, Douglas County Federation of Teachers, Douglas County School District
Jim Smyth, President, Mesa Valley Education Association
Sandra Smyser, Superintendent, Eagle County School District
