

**MEMORANDUM OF UNDERSTANDING BETWEEN DENVER PUBLIC SCHOOLS
AND THE DENVER CLASSROOM TEACHERS ASSOCIATION REGARDING AN
APPEAL OF A SECOND INEFFECTIVE RATING**

This Memorandum of Understanding (MOU) is entered into between the Denver Public Schools (District or DPS) and the Denver Classroom Teachers Association (DCTA) regarding a teacher's right to appeal a second ineffective rating.

WHEREAS, C.R.S. § 22-63-103(7) and C.R.S. § 22-9-106(4.5)(b) provide that a non-probationary teacher (Teacher) who receives two consecutive years of ineffective performance evaluation ratings will become a probationary teacher again for the subsequent year; and

WHEREAS, state law provides that any Teacher who objects to a second consecutive ineffective rating has an opportunity to appeal the rating in accordance with a fair and transparent process that has been developed through collective bargaining; and

WHEREAS, the District and DCTA seek to establish a fair and transparent appeal process that is accessible to Teachers before they lose non-probationary status; and

NOW THEREFORE, the Parties agree as follows:

1. This Memorandum of Understanding shall be effective for the 2015-2016 school year only. The parties will begin to renegotiate this MOU as soon as possible after all the appeals are complete for the 2015-16 school year.
2. The process in this Memorandum of Understanding is available to any Teacher who is eligible to lose his/her non-probationary status as a result of a second consecutive Ineffective evaluation rating.
3. The provisions regarding the appeal of a second ineffective rating will be incorporated into Article 10 of the DPS/DCTA Agreement when it is renegotiated.
4. **Definitions**
 - a. An Ineffective rating is one where the evaluation has been scored as "Not Meeting" or "Approaching" on the Leading Effective Academic Practice (LEAP) system.
 - b. For the 2015-16 school year, a Teacher rated under any district evaluation system other than LEAP, shall not be eligible to lose non-probationary status.
 - c. "Academic year" shall mean that school year according to the traditional DPS school calendar, normally starting in August and normally ending sometime in June.
 - d. "Appellant" shall mean the person who is appealing the second consecutive Ineffective evaluation rating.

5. Timelines

- a. A Notice of Appeal must be filed within 15 calendar days following the last student contact day of the academic year in which the second Ineffective rating was received by the Appellant (e.g. June 18th for the 2015-16 school year).
- b. All appeals must be concluded within 90 calendar days after the last student contact day of the academic year calendar in which the second Ineffective rating is received. If the Appellant has requested DCTA assistance, no Panel hearing will be scheduled during the two weeks the DCTA offices are closed (June 27 – July 9, 2016) and the window will be extended as appropriate.
- c. The timelines can be extended by mutual agreement of the District and the Teacher.

6. Grounds for Appeal: Pursuant to the State Board of Education rules at 1 CCR 301-87, the grounds for appeal shall be limited to the following:

- a. The evaluator did not follow evaluation procedures that adhere to the requirements of statute or rule and that failure had a material impact on the final performance evaluation rating that was assigned (e.g., an observation was never completed or feedback was never shared with the Teacher).
- b. The data relied on to determine the final performance evaluation rating was inaccurately attributed to the Teacher (e.g., data included in the evaluation was from students for whom the Teacher was not responsible).

7. Procedures

- a. The Appellant or his/her chosen representative must file a timely Notice of Appeal with the appropriate office or department designated and published by the District.
- b. The Notice of Appeal will contain all the written grounds for the Appeal using a form that will be mutually developed between the District and the Association.
- c. The appropriate official or department designated by the District will convene the Appeals Hearing Panel and set the hearing date according to the terms of this Article.
- d. The District and the Association shall develop appropriate timelines for when the following will occur:
 - i. The Appellant shall provide a copy of any evidence intended to support the Appeal prior to the hearing. The District shall make additional copies for panel members as needed.

- ii. The Appellant may request evidence from the District and the District shall provide the requested evidence if the request is reasonably related to a permitted ground for appeal.
- e. Any documents and/or proceedings related to the appeal process shall not be disclosed to entities outside the District unless the District is required to do so by law.
- f. Burden of Proof: The Appellant has the burden of demonstrating that a rating of Effective was appropriate.
- g. The Appellant is allowed an advocate of his/her choice to represent him/her through the appeal process, such as a DCTA representative or DPS colleague. Attorneys shall not represent the Teacher or the District at the hearing. A non-practicing attorney who is a DCTA or District representative may participate.
- h. The Appellant is allowed to provide evidence in the form of testimony by the Appellant, and/or other witnesses, documents, or other materials.
- i. The District is allowed to provide evidence in the form of a District representative, witness testimony (e.g. Evaluator), and/or documents and other materials.
- j. Any presentation to the Panel shall be limited to one hour for the Teacher and one hour for the District. Time may be extended at the discretion of a majority of the Panel members.

8. Panel

- a. The Panel will be chosen from a list of up to 30 standing panel members. For the standing panel pool, up to 15 will be chosen by the Association and up to 15 chosen by the District; however, in the process of comprising the final list, the Association may veto any panel member recommended by the District, and the District may veto any panel member recommended by the Association. To ensure the credibility of the Panel, all Panel members shall have had an effective LEAP, LEAD, or EPMP evaluation the prior year and shall have prior teaching experience.
- b. The Panel shall be comprised of equal numbers of teachers and administrators, with no more than six panel members total. The Association shall be responsible for selecting its members from the standing pool for each Panel hearing and the District shall be responsible for selecting its members for each Panel hearing. A process shall be jointly developed to ensure continuity of the review panel members.
- c. All panel members will be trained on LEAP and any other tools, rubrics, or best practices used in the evaluation of the Appellant.

9. Results

a. Panel decision:

- i. The Panel shall render its decision in writing.
- ii. In order for the Panel to recommend an overturn of the rating, a majority of the members of the panel must agree based on a preponderance of the evidence that the Ineffective rating was inaccurate. In that situation, the Appellant's rating will be deemed Effective and the Appellant will retain his/her non-probationary status.
- iii. If a majority of the Panel determines by a preponderance of the evidence that the rating should not be changed, the Teacher will be deemed probationary.
- iv. If the majority of the Panel decides that a rating of Ineffective was not accurate, but there is not sufficient information to assign a rating of Effective, the Teacher receives a "no score" and retains non-probationary status. However, if the following academic year that Teacher receives a second consecutive Ineffective rating, the "no score" rating will have the consequence of a second consecutive Ineffective rating and the Teacher will be subject to loss of non-probationary status. The Teacher retains the right to appeal the following year's rating.
- v. A majority decision of the Panel shall be final and binding.

b. Superintendent and/or designee decision:

- i. If the Panel is deadlocked on a decision, the Superintendent or designee shall serve as the tie-breaking vote. Each cluster of votes is expected to provide a summary of the rationale informing their opinion for the Superintendent or designee's consideration.
- ii. If the Superintendent or designee decides that there is sufficient information to overturn the rating, the teacher receives a rating of Effective and retains non-probationary status.
- iii. If the Superintendent or designee decides that a rating of Ineffective was not accurate, but there is not sufficient information to assign a rating of Effective, the Teacher receives a "no score" and retains non-probationary status. However, if the following academic year that Teacher receives a second consecutive Ineffective rating, the "no score" rating will have the consequence of a second consecutive Ineffective rating and the Teacher will be subject to loss of non-probationary status. The Teacher retains the right to appeal the following year's rating.

- iv. If the Superintendent and/or designees confirm the rating, the Teacher will be deemed probationary.
- v. The Superintendent and/or designee's decision will be final.

DCTA Representative

By: Henry Boyer

Date: 05-10-2016

DPS District 1 Representative

By: J. Harty

Date: 10 May 2016

