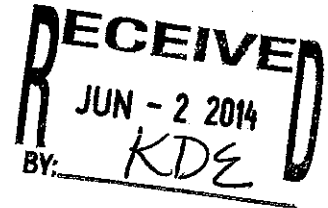




May 29, 2013



Mr. Kevin C. Brown, General Counsel  
Kentucky Department of Education  
First Floor, Capital Plaza Tower  
500 Mero Street  
Frankfort, Kentucky 40601

Re: 704 KAR 3:370: Comments on proposed regulation

Dear Mr. Brown:

The Kentucky Education Association submits the following written comments on the proposed administrative regulation, 704 KAR 3:370, entitled "Professional Growth and Effectiveness System." Written comments on the proposed regulation shall be accepted until June 2, 2014.

The proposed regulation must comply with the requirements of KRS 13A.120. Relevant portions of KRS 131A.120 provide as follows:

- (2) An administrative body shall not promulgate administrative regulations...
  - (d) When the administrative body is not authorized by statute to regulate that particular matter;
  - (e) When a statute prescribes the same or similar procedure for the matter regulated;
  - (f) When a statute sets forth a comprehensive scheme of regulation of the particular matter;
  - (g) On any matter which is not clearly within the jurisdiction of the administrative body;
  - (h) On any matter which is beyond the statutory authorization of the administrative body to promulgate administrative regulations or which is not clearly authorized by statute; and
  - (i) Which modify or vitiate a statute or its intent...
- (4) Any administrative regulation in violation of this section or the spirit thereof is null, void, and unenforceable.

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401 Capital Avenue  
Frankfort, KY 40601  
1 502/875-2889 or 1 800/231-4532  
Fax: 1 502/227-9002  
Internet: [www.kea.org](http://www.kea.org)

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## COMMENTS ON THE PROPOSED REGULATION

### 1. Some definitions are imprecise or incomplete and require clarification.

Section 1(5) defines the word "conference." However, the proposed definition does not mention pre-observation conferences or conferences that are initiated by an evaluated educator. Conferencing is a two-way street. Professional growth conferences are not simply opportunities for the evaluator to criticize or direct the work of evaluated educators.

Section 1(12) defines the word "observation" as "a data collection process conducted by a certified observer." This use of the phrase "certified observer" is confusing. Not just anyone who is certified by the Education Professional Standards Board in compliance with KRS 161.020 is qualified to serve as a PGES observer. PGES observers must satisfactorily complete "observer certification" and "observer recalibration," as defined in sections 1(13) and 1(14) of the proposed regulation. The precise phrases defined in sections 1(13) and 1(14) should be used in section 1(12) to describe the observer.

Section 1(12) also says that "observation" includes "classroom or work site visits of any duration." However, KRS 156.557(5) forbids surreptitious observation and does not authorize momentary "fly-by" or "walk-through" observations. KEA suggests that the phrase "of any duration" should be replaced with the phrase "with a duration of at least twenty minutes." It is not realistic to assume that an observer can draw accurate and meaningful conclusions about an evaluated educator's professional growth and effectiveness at a glance, without understanding the environment and context surrounding the evaluated educator's actions.

Section 1(12) permits video observations. School district administrators are placing cameras in school classrooms with increasing frequency. Many students carry cameras with them in their cellular telephones. The proposed regulation cannot authorize the use of these cameras for purposes of monitoring or observation unless the evaluated educator is made aware of the monitoring or observation *in advance*. KRS 156.557(5)(c)(3) specifically forbids covert monitoring or observation. Evaluated educators are always entitled to know when and by whom they are being observed.

Section 1, paragraphs 12, 13, 14, and 18, do not make it clear that only supervisors conduct an "observation" for the purpose of determining an evaluated educator's "professional practice rating." Those paragraphs should be clarified to state that observers are supervisors. On the other hand, "peer observation" is never performed by an evaluated educator's supervisor.

Section 1(15) purports to define the phrase "other professionals." However, the definition is seriously lacking. Who are these "other professionals?" School boards employ certified employees in a wide variety of positions. For example, are resource teachers, instructional coaches, interventionists, and athletic coaches "teachers," as defined in section 1(35) or are they "other professionals" as defined in section 1(15)? Could a single evaluated educator be a "teacher" or "administrator" for part of a work day or work week and an "other professional" for another part of the same work day or work week?

Section1(16) contains erroneous references to sections of the regulation that do not exist. The reference to "Sections 8(5) and (6)" should probably say "Sections 7(9) and (10)". The reference to "Sections 11(4) and (5)" should probably say "Section 10(8)."

Section1(17) should be deleted. A "Peer Assistance and Review Process" is not part of PGES.

Section1(18) defines the phrase "peer observation." However, the definition does not state the purpose of "peer observation." The definition should be expanded to state that peer observation is formative in nature and may not be reflected in the summative evaluation of an educator.

Section 1(20) defines the phrase "performance rating." However, the definition does not refer to any certified personnel other than teachers, principals, and assistant principals. The definition omits any reference to the evaluation of other administrators and "other professionals."

Section 1(21) defines the phrase "preschool teacher." However, the regulation does not explain why a "preschool teacher" is separately defined from any other "teacher" or explain how the evaluation of a "preschool teacher" differs from the evaluation of any other teacher.

Section1(24) defines the phrase "professional growth plan." For purposes of clarity and ease of use, the definition should include a reference to sections 9 and 12 of the proposed regulation. For example, the phrase "produced in consultation with the evaluator" should be revised to say "produced in consultation with the evaluator as described in Sections 9 and 12...."

Section1(33) defines the phrase "student voice survey." The definition mentions that the survey is "department-approved" and "administered annually." It is important that these surveys be consistent from one school year to another so that one survey may be compared to another. Allowing the Kentucky Department of Education to annually approve surveys on an *ad hoc* basis will limit the usefulness of the gathered data. The Kentucky Board of Education should approve the student voice survey and stick with the approved survey until revisions are shown to be absolutely necessary.

## **2. The regulation does not consistently describe the statutory responsibility of a local evaluation committee.**

KRS 156.557(5)(c) requires the Kentucky Board of Education to adopt administrative regulations for the local implementation of PGES whereby "all evaluations of certified school personnel shall be in writing *on evaluation forms and under evaluation procedures developed by a committee composed of an equal number of teachers and administrators.*" Italics added. Section 15 of the proposed regulation recognizes this statutory authority and is consistent with the preexisting regulation, 704 KAR 3:345:

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

(2) If a substantive change is made to the district's evaluation plan, the local board of education shall utilize the evaluation committee, described in KRS 156.557(5)(c)1, in formulating the revision. Examples of substantive change shall include changes in the evaluation cycle, observation frequency, forms, or appeal procedures.

Section 5(1) of the proposed regulation must be interpreted in a manner that is consistent with the quoted portion of section 15. In that light, section 5(1) correctly recognizes that "*a local evaluation committee shall develop, and the local board of education shall act upon,* System procedures and forms for the evaluation of certified school personnel positions."

Despite the language that is included in sections 15(1)-(2) and section 5(1), section 5(2) of the proposed regulation says that "the local board of education shall adopt procedures and forms that meet the requirements of KRS 156.557(5)(c)...." Section 5(2) then goes on to specify a long list of minimum requirements for these procedures and forms. By structuring section 5 of the proposed regulation in this way, the subparagraphs under section 5(2) appear to give a school board significant, independent authority over evaluation procedures and forms. A school board does not have the power to veto or ignore the evaluation forms and procedures developed by an evaluation committee, or to develop and adopt its own evaluation forms and procedures independent of the committee. For this reason, section 5(2) should either be deleted from the proposed regulation because of its inconsistency with sections 15 and 5(1) and KRS 156.557(5)(c), or section 5(2) should be reworded to make it clear that the section's subparagraphs apply to local evaluation committees, not local school boards.. The proposed regulation cannot restrict the statutory authority of a local evaluation committee or delegate the committee's authority to local school boards.

Section 15(1) requires school boards to ensure that the district's evaluation plan complies with KRS 156.557 and the requirements of the proposed regulation. Section 15(2) acknowledges that a school board must utilize the local evaluation committee to make substantive changes in the evaluation plan. KEA requests that section 15(2) be expanded so as to explicitly require a school board to use the services and resources of the local evaluation committee if the school board determines pursuant to section 15(1) that its evaluation plan does not comply with KRS 156.557 or the requirements of the proposed regulation. In a similar fashion, section 15(3) should be revised to read substantially as follows: "The local board of education shall review revisions to the plan to ensure compliance with KRS 156.557 and this administrative regulation. If deemed in compliance, the local board of education shall submit the revised plan to the department for approval. If still deemed noncompliant, the revisions shall be returned to the certified evaluation committee for additional study and amendment."

**3. The minimum requirements for evaluation procedures and forms should be clarified.**

Section 5(2)(a) states that a "district may require the utilization of additional trained administrative personnel to observe and provide information to the evaluator." This provision is not consistent with KRS 156.557(5)(c)(2). The statute does not authorize anyone except the evaluated educator's "immediate supervisor" to serve as the primary evaluator. It also prescribes the circumstances under which an evaluated educator may *request* additional observations:

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.

School districts should not be permitted to use multiple evaluators to intimidate an evaluated educator or try to add additional weight to the immediate supervisor's contested conclusions about the evaluated educator's performance.

Section 5(2)(b) requires at least one peer observation during the summative evaluation year. Why require peer observation in that year? It would be more helpful to the evaluated educator to allow a local school district to require peer observations of a continuing status teacher in a formative year of the evaluation cycle so as to allow the evaluated teacher a reasonable period of time before the summative evaluation to correct any perceived deficiencies. The regulation does not specify how peer observations will be documented "in the department-approved technology platform." KEA believes that recording the date and time of a peer observation and any associated observation conferences should be sufficient unless the evaluated educator chooses to use the peer observation in the summative evaluation process. In all other instances, the comments of a peer observer should be of no concern to anyone other than the evaluated educator.

Section 5(2)(c) allows local school districts to require an unlimited number of formative observations, with the duration of each observation being unspecified. These vague standards could be unfair to both evaluators and evaluated educators. Requiring frequent observations would violate KRS 156.557(3)(g): "The professional growth and effectiveness system shall... 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." Allowing short "walk-through" or "fly-by" or "peek-through-the-door" observations will cause the evaluator to draw inaccurate conclusion about an evaluated educator's performance. These observations are too short to allow the evaluator to observe the context and flow of the evaluated educator's presentation. It takes at least twenty minutes for an evaluator to make a meaningful observation of a teacher's classroom performance. Furthermore, allowing each local school district to set standards for the frequency and

duration of observations will threaten the state's ability to create the "statewide professional growth and effectiveness system" that KRS 156.557(2) requires.

Neither section 5(2)(g) nor any other provision in the proposed regulation requires the use of pre-observation conferences. Pre-observation conferences ensure that the evaluated educator always knows what the evaluator is looking for and prevents the unlawful use of unannounced observations. KRS 156.557(5)(c)(3) says that "all monitoring or observation of performance of a certified school personnel member shall be conducted openly and with full knowledge of the personnel member." The use of pre-observation conferences should be mandated in the proposed regulation.

Section 5(2)(j) should not allow any teacher, including a teacher who is struggling with professional effectiveness, to be harassed with needless or counterproductive observations. Overzealous school districts could establish local procedures and district-determined evaluation criteria that would subject teachers to nearly endless observations. Not all deficiencies reported in "observation results" justify subjecting an evaluated educator to repetitive observations. Only teachers with an ineffective professional practice rating need and deserve multiple observations.

Section 5(c)(p) is clumsily worded. (Does "a certified school personnel" ever have a summative evaluation?) KEA suggests this alternative language: "All evidence used to produce a certified employee's overall performance rating shall be included in the documentation of the employee's summative evaluation."

KRS 13A.120(1)(a) provides that "an administrative body may promulgate administrative regulations to implement a statute...." KRS 13A.120(2) provides that administrative bodies must have specific statutory authority in order to regulate a particular matter or topic. No statute specifically authorizes or prohibits the creation of a Peer Assistance and Review process. No statute empowers the Kentucky Board of Education to require or encourage local school authorities to establish or implement a Peer Assistance and Review process. Therefore, there is no legal basis for the Kentucky Board of Education to promulgate section 5(c)(r). The subparagraph should be deleted from the proposed regulation.

### **3. The professional practice rating and student growth rating for teachers can be clarified and improved.**

Sections 7(5)-(7) should not be considered to be an exhaustive listing of the evidence that determines a teacher's ratings on each of the four domains. The Teacher Effectiveness Steering Committee has made it very clear that teacher-generated must be considered. However, teacher-generated evidence is not specifically listed in section 7(5)-(7). It should be included in the proposed regulation.

Section 7(10) requires a local school district to use "growth trends consisting of the three most recent years..., when available," to determine the overall student growth rating. It is apparent that the specified data will not be available for a considerable period of time. In the interim, KEA suggests that the professional practice rating

should be the overall performance rating until three continuous years of valid student growth percentile and student growth goal data are collected.

**4. The proposed regulation incorporates too many external documents by reference.**

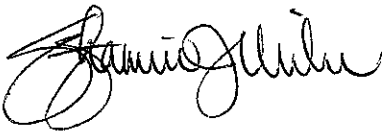
To the extent pertinent, KRS 131A.100 requires an administrative body to adopt administrative regulations in order to give reasonable notice of "each statement of general applicability, policy, procedure, memorandum, or other form of action that implements; interprets; prescribes law or policy; describes the organization, procedure, or practice requirements of any administrative body; or affects private rights or procedures available to the public." Notwithstanding its impressive length, the proposed regulation fails to accomplish this statutory goal because, after more than twenty-seven pages of regulation, section 20 of 704 KAR3:370 incorporates eight additional, external documents, many having equal or even greater length than the regulation itself. As a result of this incorporation by reference, no reader can study KRS 156.557 and 704 KAR 3:370 and fully understand PGES. The regulated subject is apparently too complicated to be codified in any meaningful way.

**CONCLUSION**

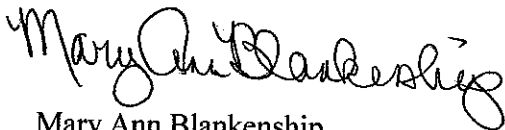
The Kentucky Education Association urges thorough revision of the proposed regulation, 704 KAR 3:370, so as to address the concerns that we have raised in this letter. Should you wish to discuss these issues, please contact our SB 1 implementation specialist, Brenda McGown, at 270-991-9389.

Thank you for considering our concerns on these very important matters.

Sincerely,



Stephanie J. Winkler  
President



Mary Ann Blankenship  
Executive Director

PRIDDY,  
CUTLER,  
NAAKE & PLLC  
MEADE

Don Meade

Direct Dial: 632-5290

Direct Fax: 632-5291

dmeade@pcmmlaw.com

800 REPUBLIC BUILDING  
429 WEST MUHAMMAD ALI BLVD.  
LOUISVILLE, KY 40202  
PHONE: 502.587.8600  
TOLL FREE: 800.288.3592  
WWW.PCMMLAW.COM

June 2, 2014

Kevin C. Brown, General Counsel  
Kentucky Department of Education  
1<sup>st</sup> Floor, Capital Plaza Tower  
500 Mero Street  
Frankfort, KY 40601

Via email: kevin.brown@education.ky.gov

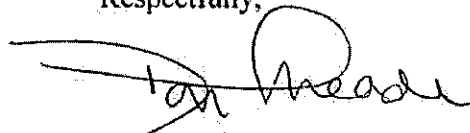
**Re: Evaluation Reg; 704 KAR 3:370**

Dear Kevin:

Attached to this letter are the written comments of the Jefferson County Teachers Association (JCTA) with regard to the new administrative regulation which is designed to replace the current evaluation guidelines found in 704 KAR 3:345. The attached Memo concentrates on one particular provision of the regulation, Section 5, as it relates to the authority of the 50/50 Committee as defined by KRS 156.557.

Please file these written comments into the record as public comment on the new regulation, and submit for review for KDE's Statement of Consideration.

Respectfully,



Don Meade

DM/sks

Attachment

cc: Brent McKim  
DeeAnn Flaherty



**JEFFERSON COUNTY TEACHERS ASSOCIATION  
REQUEST FOR MODIFICATION OF PROPOSED  
ADMINISTRATIVE REGULATION 704 KAR 3:370**

The statute, the prior regulation and past practice establishes jurisdiction in the 50/50 Committee to develop, design or change the District Evaluation Program. This concept is clearly carried forward in the KDE Model Certified Evaluation Plan 3.0. The work of the 50/50 Committee is not advisory. The role of the local board is to review for compliance and approve. Only the 50/50 Committee has the authority for original development of the evaluation system or changes to it. The local board's interest in the evaluation system are fully represented by its 50% membership on the Committee. The legislature intended a consensus model that places the issue of professional evaluation in the hands of those most intimately affected by it – the local teachers and administrators. The Board's function is not accurately described by the use of the words "shall act upon" as reflected in Section 5(1) of the proposed reg. This ambiguity could lead to conflict and misinterpretation regarding the role of the local board, and actions that are inconsistent with the purpose of the statute.

The independence and autonomy of the 50/50 Committee is preserved in the proposed regulation with the exception of Section 5(1):

**Local Evaluation Procedures and Forms.**

- (1) The local evaluation committee shall develop, and the local board of education shall act upon, system procedures and forms for the evaluation of certified school personnel positions.

The words "the local board of education shall act upon ..." do not reflect the same clarity as the other sections of both the statute and the existing regulation regarding the function of a local board of education in review and approval of the work of the District 50/50 Committee. The regulation should be revised to read as follows:

**Local Evaluation Procedures and Forms.**

- (1) The local evaluation committee shall develop, and the local board of education shall *review and approve* system procedures and forms for the evaluation of certified school personnel positions.

The existing regulation, 704 KAR 3:345 sets forth that "The local board of education shall review as needed the evaluation plan to ensure compliance with KRS 156.557 and this administrative regulation." Subsection 4 of that same section states:

- (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.

This section is carried forward in the new regulation in Section 15: "(1) The local board of education shall review as needed, the District's evaluation plan to ensure compliance with KRS 156.557 and this administrative regulation." Section 2 of the proposed regulation also acknowledges the authority of the 50/50 Committee and the limited role of the local board:

(2) If a substantive change is made to the District's evaluation plan, the local board of education shall utilize the evaluation committee, described in KRS 156.557(5)(c)(1), in formulating the revision. Examples of substantive change shall include changes in the evaluation cycle, observation frequency, forms, or appeals procedures.

The proposed Section 5(1) fails to express the clearly delineated separation of power between the 50/50 Committee and the local board of education. The use of the words "shall act upon" creates unnecessary ambiguity. This is particularly true in light of Section 5(2) which sets forth the long list of standards which should be reflected in the new forms and procedures. Reading Section 5(1) and 5(2) together, there is room for a mistaken interpretation that it is the responsibility of the local board to develop and adopt evaluation forms and procedures. While the local board of education may have the ultimate responsibility for review and approval of these procedures, it has no authority to veto or reject or otherwise act independently of the work of the 50/50 Committee. It is only this Committee which has the statutory charge of developing the forms and procedures which are compliant with the minimum requirements of Section 5(2).

The use of the words "review" and "approve" are carried forward in the KDE Model Certified Evaluation Plan 3.0, which has been circulated to the districts to guide the development of the PGES for local implementation. The Overview, contained on page 3, provides: "This document serves as a model plan for a district evaluation team (50/50 Committee) to revise their existing Certified Evaluation Plans (CEP) to meet the assurances of the Professional Growth and Effectiveness System." The instructions regarding the role of the local board of education are stated as follows:

Once all sections are completed, the District must submit the plan to the local board for approval and adoption prior to submission to the KDE.

**Guiding Questions for Local Boards of Education**

The following questions may be useful to local boards as they consider approval and adoption of their District's revised CEPs.

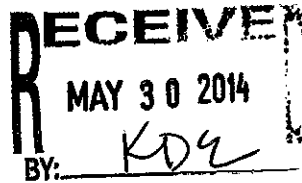
The use of the words "review and approve" in the new Section (5) would be consistent with other references which define the role of the local board of education. The current wording - "shall act upon" - creates ambiguity in the regulation regarding the otherwise well established respective roles between the 50/50 Committee, for the development of the PGES system, and the local board for compliance review and approval.

# Hancock County Public Schools

83 STATE ROUTE 3543  
HAWESVILLE, KENTUCKY 42348  
PHONE (270) 927-6914  
FAX (270) 927-6916



May 27, 2014



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Dear Members of the Kentucky Board of Education:

The Administrators of the Hancock County School System would first like to express our appreciation to each member of the Kentucky Board of Education for their commitment to the students, teachers and staff of all Kentucky Public Schools. We would like to add comments to the discussion of the PGES for board members.

We believe that the foundation of the Teacher Professional Growth and Effectiveness System is good and much needed across our state. We support the changes and the theory behind the system. We would like for the board to consider that the implementation timeline and the lack of training and funding for training in every district is causing concern about the consistency and fidelity of implementation across the state.

Certain aspects of the TPGES and PPGES are highly critical to the success of the entire system. One of the most critical attributes is student growth. This is so complex and intricate when you consider content and levels that have state growth, those that do not, special area classes, special education collaborative teachers, co-teachers, and the plethora of other configurations that exist within our state. Another aspect is student voice. A most important aspect to include in a system designed to improve teaching and learning. However, there are still many issues in Infinite Campus.

Teachers are working diligently to implement new standards, a new assessment system, CIITS (which is also a great tool that exhibits many issues weekly – but continues to improve), College and Career Readiness Initiatives at all levels, and the TPGES. With the potential this has to positively impact teaching and learning, it will only do so if the teachers' experience with TPGES is positive. That will only happen if implementation is smooth.

The final concern is dealing with administrative time. We absolutely love the instructional focus required of TPGES. Principals will be in classrooms focusing on instruction. However, reality is that the other aspects of being a principal (ARC's, discipline, parent meetings, facility issues, planning meetings, etc...) will not subside. Many principals across this state do not have assistants, staff developers or even guidance counselors to assist with any of these "other" issues. Unfortunately, the TPGES did not come funded to assist districts to manage these concerns.

With all of that said, we do believe in TPGES and the power it has to transform teaching and learning in Kentucky. We just want to make sure that it is implemented in such a way that it is meaningful to every teacher and administrator across the state.

Sincerely,

Gina Truax Bieber

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May 30, 2014

*Via Email (PDF) and U.S. Mail*

Kevin Brown, Associate Commissioner and General Counsel  
Kentucky Department of Education  
First Floor, Capital Plaza Tower  
500 Mero Street  
Frankfort, KY 40601

Re: KSBA Comments – 704 KAR 3:370

Dear Mr. Brown:

These comments are submitted on behalf of the Kentucky School Boards Association ("KSBA") in compliance with the comment period on the above regulation which ends June 2, 2014.

Introduction

This comment will focus on two major issues related to the scope of the regulation affecting the authority of school boards (the inclusion of language in two places covering superintendent evaluations and the manner of school board approval of the forms and procedures developed by the local evaluation committee). This comment will also address several additional specific areas of concern.

We note at the outset that the new regulation is thirty-four (34) pages, plus one-hundred-twenty-three (123) pages of incorporated forms and is intended to replace the former three (3) page regulation. Notwithstanding the statutory mandate that the new evaluation system established by KBE regulation is to "[b]e considerate of the time requirements of evaluators at the local level", KRS 156.557(3)(g), numerous additional requirements are set forth in the new regulation including, but not limited to: four (4) observations are required in conjunction with each summative evaluation cycle (replacing the current minimum two (2) for non-tenured and one (1) for tenured staff);

development, oversight, funding of mandatory peer observations; the utilization of student growth and professional practice ratings (the former, in particular, will require considerable additional administrative time and expense); the apparent elimination of an evaluator's ability to select a third party observer (compare 704 KAR 3:345, section 4(2)(a)); the student voice survey requirement; the requirement that the summative evaluation be documented in the KDE approved technology platform; and new evaluation system training requirements. Collectively, these and other new requirements stand to place significant new time demands on staff and fiscal demands on districts.

While we are aware that the student growth component speaks to the pending KBE NCLB waiver request, we would urge the KBE and KDE to consider implementation of the new system on a one year pilot basis for teachers and principals if such could be undertaken without jeopardizing the waiver request or – at the very least – that KBE give full consideration to waivers from the new System standards due to the number and breadth of the additional requirements. Specific comments follow:

I. Scope of Regulation

A. Superintendent Evaluation

The regulation addresses the school board's evaluation of a superintendent in two places. See Section 4 (p. 7) (local board to develop, adopt, and submit to the department for approval a policy for evaluation of the district superintendent to be consistent with statute "and this administrative regulation"). See also Section 5 (3) (p. 10) (local board to develop, adopt, and submit to department for approval procedures for evaluation of the district superintendent to be consistent with statute "and this administrative regulation.")

The above language should be stricken as redundant and beyond the scope of statutory enabling authority. As for the latter, KRS 156.557(5)(a) provides that "[c]ertified school personnel, below the level of superintendent, shall be evaluated using the system developed by the Kentucky Department of Education." (emphasis added) Consistent with this legislative mandate, the new regulation defines "certified school personnel" as a "certified employee, below the level of superintendent." Section 1(4) (emphasis added). Accordingly, the regulatory language addressing superintendents' evaluations and purporting to dictate that these policies and procedures must be consistent with the new regulation exceed the scope of statutory enabling authority. KRS 13A.120(2)(b). Further, the statutory language governing superintendents' evaluations (KRS 156.557(6)) sets forth a comprehensive scheme of regulation of the particular matter, thereby precluding or rendering additional regulation unnecessary. KRS 13A.120(2)(e) and (f). Finally, we submit that inclusion of the superintendent evaluation language in the system regulation for certified employees (which by statute excludes superintendents) will create unnecessary confusion.

B. Board Authority to Approve Plans and Forms

The current version of the regulation provides that the so-called 50/50 committee develops forms and procedures. See KRS 156.557(5)(c)(1). We believe the “forms and procedures” are coextensive with the evaluation “plan”. The common practice in the Commonwealth has been that boards of education take action to approve the evaluation plan. The new regulation provides that the local board “shall act upon” the forms and procedures developed by the 50/50 committee. See Section 5(1) lines 1-3. The regulation goes on to state that “[t]he local board of education shall adopt” procedures and forms in conformity with statute. See Section 5(2).

KSBA assists the vast majority of Kentucky School Boards in developing policies and procedures consistent with statute. School boards promulgate or adopt policies, see e.g. KRS 160.290; KRS 160.340. Procedures are developed by or under the authority of the superintendent to flesh out board policy. School boards review, but do not “adopt,” school board procedures. As noted, the longstanding practice has been for school boards to “approve” the statutorily mandated evaluation “plan” developed by the 50/50 committee. The statutory framework regarding this process has not changed. We respectfully submit that Section 5(2) should be modified to reflect that boards “approve” rather than “adopt” the procedures and forms (effectively the “plan”) so that the regulation conforms with statutorily compliant practice and to avoid confusion regarding board’s oversight role relating to plan documents developed by the 50/50 committee.

II. Specific Issues

A. Evaluator Authority

Under KRS 160.290, boards of education are authorized to adopt rules “for the qualifications and duties of employees.” Under KRS 160.370, and KRS 160.390, superintendents are vested with general supervision of schools. Under KRS 160.345 a school principal shall be the “instructional leader” of an SBDM school. A district improvement plan is required to include, among other things, prioritization of needs and goals, as well as targets and strategies. 703 KAR 5:225. The school improvement plan requires, among other things, “[e]valuation and assessment strategies to continuously monitor and modify instruction to meet student needs support proficient student work.” KRS 158.649.

The proposed regulation undermines the statutory authority of evaluators and supervisors to provide meaningful supervision to target instructional improvement or unprofessional conduct and to implement meaningful “processes to be used when corrective actions are necessary in relation to the performance of one’s assignment,” see KRS 156.557(5)(c)5, by failing to vest ultimate authority over certified growth plans in evaluators except with the most extreme underperforming employees. While the vast majority of growth plans can and should be arrived at through a process of collaboration, supervisors should be vested with final authority to require

growth plan goals in conformity with targets in school or district improvement plans or as needed to address unprofessional conduct when there is disagreement. Compare: Section 4(2)(a) of the current evaluation regulation (third party observer may be selected by mutual agreement but is to be selected by evaluator when no agreement can be reached).

The following portions of the proposed regulation should be modified:

- Section 1(24) (p. 5) (definition of “professional growth plan”) should be modified to provide at line 1 and lines 3 - 4 that the plan shall be produced in collaboration with the evaluator with the latter having final authority to establish the plan in the event of disagreement.
- Section 1(31) lines 2 -4 (definition of “student growth goal”) should be similarly modified.
- Section 7(9)(c) This language provides that the teacher develops one (1) student growth goal each year, yet mandates that the district is to “ensure” rigor and comparability across schools. This raises the question how that such comparability be accomplished when supervisory evaluators are not given authority regarding the development of this goal. We submit that it is arbitrary to enable individual employees to unilaterally develop this goal while purporting to hold districts to a comparability standard.
- See also Section 9, pp. 16-17. These portions of the regulation should be modified to provide evaluators authority to establish growth plans for teacher evaluatees if there is still disagreement after collaboration. Evaluators should be enabled to determine the goals without collaboration for the lowest performing teachers described in Section 9(1)(d) and (e).
- The same modifications should apply to the development of growth plans of principals. See Section 12, pp. 22-23. Further, it is likewise arbitrary to vest unilateral authority in principals to determine student growth goals while imposing the obligation on the district to “ensure” comparability across schools. See Section 10(8)(d) and (g).

While we emphasize again that in the vast majority of cases evaluators and evaluatees will agree on growth plan goals, we submit that there is a fundamental “disconnect” between the statutorily supported supervisory authority of evaluators and the regulation’s purported vesting of unilateral authority in certified employees to dictate growth plan goals for all but the most egregiously underperforming employees. There is a similar “disconnect” between vesting this near unilateral growth plan authority in evaluatees and the authority of the district or school to consistently “target” areas of growth identified in school and district improvement plans.

Another area related to growth plans needs clarification. At the end of Section 9(1)(a), (b), and (c) (covering teacher growth plan and evaluation cycles), the regulation provides that the evaluatee shall receive “a summative

evaluation that occurs at the end of year (3) of the evaluation cycle". However, this would only apply to tenured teachers and should be so clarified. Under the proposed regulation, as under current law, non-tenured teachers are to receive a summative evaluation annually. Section 4(2)(i).

Finally, in light of the statutory requirement that the evaluation system shall specify the processes to be used when corrective actions are necessary, we believe it would be helpful to include a definition of the term "improvement plan" as used in Section 9(1)(e) and we also submit that there should be enabling language permitting the use of an improvement plan or corrective action plan for any evaluatee with an ineffective practice rating or low student growth rating.

B. Clarification of Training Requirement Regarding Changes

The proposed regulation requires a minimum of six (6) hours of evaluation training in years (2) and (3) of the evaluation training cycle on any changes to the school districts' plans, policies, procedures, or applicable statutes and regulations. Section 6(7)(b). This language should be narrowed and clarified.

For example, if one assumes that a district adds an additional observation for certain administrators in its evaluation plan and the only evaluators affected are the superintendent and assistant superintendents, it would be arbitrary to require other evaluators to have six hours of training on such a change. Moreover, given the limited scope of such a change, additional need for training for affected evaluators would be minimal. Six hours would be excessive. We submit this language should be changed to allow common sense flexibility such as: "after consultation with the school district's designated evaluation plan contact, the superintendent shall direct that additional training be provided to affected evaluators as necessary to address changes in the district's plan, policy, procedures, or applicable statutes and regulations".

C. The SEAP'S Appellate Jurisdiction Should be Clarified

The governing statutory subsection directs the KBE to establish "an appeals procedure for certified school personnel who believe that the local school district failed to properly implement the evaluation system." KRS 156.557(8) (emphasis added). The proposed regulation adds the following underlined phrase to regulatory language defining the jurisdiction of the SEAP: "[t]he SEAP's jurisdiction shall be limited to procedural matters already addressed by the local appeals panel or the district's failure to implement an evaluation plan as approved by the department." The regulation goes on to state that SEAP review is limited to the record "and any documents submitted pursuant to paragraph (c) of this subsection." (Quoted language is new). Read in tandem, the quoted language appears to contemplate a review limited to the record below consistent with the "appeal" mandate in the statute as well as the general administrative law requirement that one must exhaust administrative remedies before the primary agency as a pre-requisite to an appeal. E.g.




*Goodwin v. City of Louisville, Ky.*, 215 S.W.2d 557 (1948); cf. KRS 13B.140(2)

The limited SEAP jurisdiction should be clarified by relocating the phrase following "or" in the first quoted, underlined statement above to provide that "[t]he SEAP's jurisdiction shall be limited to procedural matters already addressed by the local appeals panel related to the district's alleged failure to implement an evaluation plan as approved by the department". The second newly added phrase quoted and underlined above beginning with "and any documents submitted. . ." should be eliminated. These changes will clarify that the SEAP conducts a record review of procedural matters that were presented to the LEAP and avoids any implication that an aggrieved evaluatee is enabled to raise issues for the first time before the SEAP that were not preserved on the record below. This clarification is fully consistent with current practice, statute, as well as the exhaustion doctrine.

We thank you and the KBE for your consideration of the foregoing.

Sincerely,

A handwritten signature in cursive script that reads "David A Baird".

David Baird  
Interim Executive Director  
Kentucky School Boards Association

## **Drury, Tina - Office of Guiding Support Services**

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**From:** Brown, Kevin - Associate Commissioner, Office of Guiding Support Services  
**Sent:** Monday, May 19, 2014 3:55 PM  
**To:** Wickersham, David - Office of Guiding Support Services; Drury, Tina - Office of Guiding Support Services; Chandler, Robin - Office of Next Generation Learners  
**Cc:** Ellis, Amanda - Office of Next Generation Learners  
**Subject:** FW: Public Comment on KAR 7.770  
  
**Importance:** High

Another comment, please review and add to the SOC.

Tina, print to master reg file.

Kevin C. Brown  
Associate Commissioner and General Counsel  
Kentucky Department of Education  
Office of Guiding Support Services  
500 Mero Street, CPT 131  
Frankfort, KY 40601  
502-564-4474  
502-564-9321 (fax)  
[kevin.brown@education.ky.gov](mailto:kevin.brown@education.ky.gov)

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**From:** Bordeaux, Nate - Mercer  
**Sent:** Monday, May 19, 2014 3:52 PM  
**To:** Brown, Kevin - Associate Commissioner, Office of Guiding Support Services  
**Subject:** Public Comment on KAR 7.770

I would like to request some type of pilot process for alternative school teachers. In the new regulation, they are being absorbed along with all certified teachers, but their students transition so quickly in their programs (and there are so many different programs) that it is difficult to get a handle currently on what student growth needs to look like. Please consider taking time to get the system right for these educators who are working with a very different student population. Thank you.

Respectfully,

**Nate Bordeaux**  
Supervisor of Instruction  
859-733-7000 (Ext. 1137)  
Mercer County Schools

371 East Lexington Street  
Harrodsburg, KY 40330

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May 22

**Drury, Tina - Office of Guiding Support Services**

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**From:** Brown, Kevin - Associate Commissioner, Office of Guiding Support Services  
**Sent:** Thursday, May 08, 2014 1:01 PM  
**To:** Wickersham, David - Office of Guiding Support Services; Chandler, Robin - Office of Next Generation Learners; Drury, Tina - Office of Guiding Support Services  
**Cc:** Ellis, Amanda - Office of Next Generation Learners  
**Subject:** FW: Public comment Eval. System  
**Importance:** High

FYI, first comment on PGES received. Please add to your files and begin preparing the SOC.

KB

Kevin C. Brown  
Associate Commissioner and General Counsel  
Kentucky Department of Education  
Office of Guiding Support Services  
500 Mero Street, CPT 131  
Frankfort, KY 40601  
502-564-4474  
502-564-9321 (fax)  
[kevin.brown@education.ky.gov](mailto:kevin.brown@education.ky.gov)

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**From:** Kindred, Chris (Bourbon County)  
**Sent:** Thursday, May 01, 2014 1:40 PM  
**To:** Brown, Kevin - Associate Commissioner, Office of Guiding Support Services  
**Subject:** Public comment Eval. System

Mr. Brown,

I am not sure to the protocol for public comment, but I did have you contact address, but thought I would send you an e-mail. The only problem I have with regulations is below:

It is in the section for recalibration, (page 12, line 5). I was just confused on the wording. I don't think the wording is the true intent or meaning. I have highlighted the part that I have a concern about below, the wording verbatim.

- (7) Years two (2) and three (3) of the district's evaluator training and testing cycle shall include in each year:
- (a) Observer recalibration training, in the department-approved technology platform, for all evaluators who observe teachers for the purpose of evaluation; and
  - (b) A minimum of six (6) hours of evaluation training on any changes to the district's System plan, policies, or procedures, or to statutes or administrative regulations related to the evaluation of 6 certified school personnel.

What concerns me with this wording is: 1.) It list specific things such as procedures, policies, and etc. 2.) If a district were to make a small change this should not have to have a minimum time limit attached to it. It states a 6 hour minimum, but something may only take 30 minutes. If a district makes on small change, it is a 6 hour training (that doesn't make sense). **I know the intent is for recalibration**, but the wording of this part is very confusing.

If you could please advise me on who I need to contact or what my next steps would be I would greatly appreciate it. Or am I reading too much into this? Thank you for your time.

Sincerely,

Chris Kindred

*Supervisor of Instruction/Curriculum*

*Bourbon County Schools*

*Paris, Ky 40361*

*859-987-2180*

"It's so hard when I have to, and so easy when I want to." Unknown