

**STATEMENT OF CONSIDERATION
RELATING TO 704 KAR 3:370
Professional Growth and Effectiveness System**

**Kentucky Department of Education
Office of Next Generation Learners
Division of Next Generation Professionals**

Amended After Comments

1. A public hearing was scheduled on the above regulation on May 22, 2014 at 10:00 a.m. Eastern Time, in the State Board Room, Kentucky Department of Education, 500 Mero Street, 1st Floor, Frankfort, Kentucky but was cancelled when no one registered to attend or attended the hearing.

2. The following individuals submitted written comments:

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
David Baird, Interim Executive Director	Kentucky School Boards Association (KSBA)
Gina Truax Biever, Supervisor of Instruction	Hancock County Public Schools
Mary Ann Blankenship, Executive Director	Kentucky Education Association (KEA)
Nate Bordeaux, Supervisor of Instruction	Mercer County Public Schools
John Fogle, Staff Attorney	Kentucky School Boards Association (KSBA)
Chris Kindred, Supervisor of Instruction and Curriculum	Bourbon County Public Schools
Don Meade, Attorney	Jefferson County Teachers Association (KCTA)
Stephanie Winkler, President	Kentucky Education Association (KEA)

3. The following people from the promulgating administrative body responded to written comments:

<u>Name and Title</u>
Kevin C. Brown, General Counsel/Associate Commissioner, Office of Guiding Support Services
Dr. Amanda Ellis, Associate Commissioner, Office of Next Generation Learners
David Wickersham, Assistant General Counsel, Office of Guiding Support Services
Todd Davis, Assistant Director, Division of Next Generation Professionals
Kevin Stull, Branch Manager, Educator Effectiveness Branch, Division of Next Generation Professionals

Robin Chandler, Policy Advisor, Office of Next Generation Learners

Summary of Comments and Responses

(1) Subject Matter: Training Requirements for Evaluators

(a) Comment: A commenter stated concerns about the following language in Section 6 (7) (b) of the proposed regulation: “A minimum of six (6) hours of evaluation training on changes to the district’s System plan, policies, or procedures, or to statutes or administrative regulations related to the evaluation of certified personnel”. The commenter suggested that a minimum number of hours should not be stated because if only minimal changes are made to the district’s Certified Evaluation Plan, the training needed would not require six hours. The commenter recognized that the agency’s intent was to include recalibration in the six hours, but indicated that cited language does not clearly state that intent.

A commenter requested a narrowing and clarification of the six (6) hour requirement. The commenter stated that the training on changes in the plan should focus only on personnel affected by the changes. The commenter also suggested that a minimum of six (6) hours of evaluation training may be excessive. The commenter proposed that Section 6 (7) be amended to read as follows: “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.”

Those offering written comments related to training requirements for evaluators were Chris Kindred (Bourbon County Public Schools) and David Baird (KSBA)

(b) Response: The agency has carefully reviewed these thoughtful comments. The commenters are correct that Section 6 (7) is not clear. The Teacher Steering Committee recommended that evaluators be certified as observers and also recalibrate annually. The requirement for a minimum of six hours of training is the same requirement included in 704 KAR 3:345, the present version of the proposed regulation, which states, “[c]ontinued approval as an evaluator shall be contingent upon the completion of a minimum of twelve (12) hours of evaluation training every two (2) years.” The requirement for a minimum of six (6) hours of update training is not new. To clarify that completing recalibration is intended to be included in the six (6) hour requirement, the agency will change Section 6 (7) to read, “Years two (2) and three (3) of the district’s evaluator training and testing cycle shall include a minimum of six (6) hours each year to include: (a) Observer recalibration, in the department-approved technology platform, for all evaluators who observe teachers for the purpose of evaluation; and an update on Professional Growth and Effectiveness statutes and regulations and training for evaluators on any changes to the Professional Growth and Effectiveness System and the district’s certified evaluation plan. In

response to the comment that only evaluators affected by changes should be required to have training on the changes, the agency offers, and will continue to offer, the following guidance: since the training in years two (2) and three (3) can be provided by the district, as long as the minimum content requirements in 704 KAR 3:370 are met, the district can determine, based on the needs of individual evaluators, the content of the remaining hours of the six (6) hour requirement. Guidance will also be provided that includes suggestions on how the update training can support the needs of evaluators as identified in their growth plans.

(2) Subject Matter: Alternative Programs

(a) Comment: A commenter requested that the regulation be amended to provide for a pilot process for alternative school teachers. Teachers in alternative programs are certified teachers and are subject to 704 KAR 3:370. The commenter indicated that students transition quickly in and out of a wide variety of alternative programs and that it is difficult to determine an appropriate student growth measure that takes into account these unique circumstances. The request from the commenter was to get system right for these educators who are working with a very different student population.

Submitting a written comment related to alternative programs was: Nate Bordeaux (Mercer County Public Schools).

(b) Response: The agency agrees that the evaluation of certified school personnel who work in alternative programs presents unique issues. From conversations prior to the public comment period with alternative program principals and Department of Juvenile Justice (DJJ) schools, concerns were raised regarding Student Growth, Student Voice, Val-Ed 360 and TELL KY results. Some alternative education programs will encounter no issues. In other alternative education program settings; each of these will create challenges. With the promulgation, in 2013, of 704 KAR 19:002, Alternative Education Programs, the agency has developed a framework to address issues in alternative programs. Districts must ensure that each alternative education program aligns with college and career readiness outcomes; is not limited in scope or design; and includes staff training to build the capacity of staff and administrators to deliver high-quality services and programming that conform with best practices and guide all students to college and career readiness. Each student in an alternative education program has an individual learning plan addendum (ILPA), which is an action plan that addresses the changed educational needs of the student based upon entry into and exit from an alternative education program. The ILPA includes, as appropriate, the academic and behavioral needs of the student, criteria for the student's re-entry into a traditional program, and provisions for regular review of the student's progress throughout the school year. Through 704 KAR 19:002, the agency will continue to provide guidance and support to alternative programs around student growth, student voice, Val-Ed and TELL data. No amendments have been made in response to this comment.

(3) Subject Matter: Implementation Timeline

(a) Comment: A commenter shared that administrators in the commenter's district are concerned about the timeline for the implementation of the proposed regulation. Another commenter requested that the agency consider implementation of the new system on a one-year pilot basis, if such a pilot would not jeopardize Kentucky's NCLB waiver request.

Those providing comments regarding the implementation timeline were: Gina Truax Biever (Hancock County Public Schools) and David Baird (KSBA)

(b) Response: The agency appreciates these thoughtful comments about implementation. The timeline for implementation cannot be modified and no changes have been made in response to these comments. HB 180 (2013), codified as KRS 156.557, requires that prior to the beginning of the 2014-2015 school year, the Kentucky Department of Education, in consultation with the Kentucky teacher and principal steering committees and other groups deemed appropriate by the commissioner of education, shall develop a framework for a statewide personnel evaluation system. The Kentucky Board of Education shall promulgate administrative regulations to establish a statewide professional growth and effectiveness system for the purposes of supporting and improving the performance of all certified school personnel. This legislation aligned with the requirements of Kentucky's federal No Child Left Behind (NCLB) waiver. Kentucky requested an extension to permit a delay in the use of the PGES for personnel decisions and school and district accountability. In January 2014, the United States Department of Education granted Kentucky this extension. Beginning in the 2015-2016 school year, all districts must fully implement the PGES for all certified school personnel and use the system for personnel decisions. Results from the PGES will also be included in the overall school and district accountability scores. Another delay in implementation, to introduce a one-year pilot of the PGES, would not only jeopardize the NCLB waiver and conflict with the intent of HB 180 (2013), but also indicates a lack of support for the five years spent developing the system.

(4) Subject Matter: Consideration of Waiver Requests

(a) Comment: A commenter requested that the agency fully consider waivers from the new system due to the additional requirements contained in the PGES.

Providing written comments on the consideration of waiver requests was: David Baird (KSBA).

(b) Response: KRS 156.557 provides that:

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

(a) Is as rigorous, reliable, valid, and educationally sound as the statewide professional growth and effectiveness system;

- (b) Uses multiple measures of effectiveness, including student growth data as a significant factor in determining the effectiveness of teachers and administrators, that utilize both state standardized tests and local formative growth measures that are rigorous and comparable across schools in a local district;*
- (c) Includes both formative and summative evaluation components;*
- (d) Measures professional effectiveness;*
- (e) Supports professional growth;*
- (f) Has at least three (3) performance levels;*
- (g) Is used to inform personnel decisions;* *(h) Is considerate of the time requirements of evaluators at the local level and does not require that all certified school personnel have a formal summative evaluation each year; and*
- (i) Rates teachers and administrators by multiple measures instead of a single measure.*

Districts have already used this waiver provision. On April 9, 2014, the Kentucky Board of Education granted a prospective waiver to Kenton County Public Schools to implement an alternative system, relying on this statutory grant of authority. The agency will continue to evaluate waiver requests as prescribed by statute. Because this comment addresses the exercise of the waiver provision contained in KRS 156.557, and did not request an amendment to the regulation, no change has been made in response to the comment.

(5) Subject Matter: Training to Implement the PGES

(a) Comment: A commenter reported that administrators in the commenter's district identified lack of training to implement the system and concerns about how that issue will impact the consistency and fidelity of implementation across the state.

Those submitting written comments regarding training to implement the PGES were: Gina Truax Biever (Hancock County Public Schools).

(b) Response: The agency appreciates this thoughtful comment, which focuses on successful implementation. Based on recommendations from the Teacher Steering Committee, KDE's Office of Next Generation Learners has responded to feedback and provided necessary tools for districts to succeed in writing evaluation plans. Regional work sessions were conducted in the educational cooperatives to explain exactly what steps districts must take, and a model Certified Education Plan (CEP) has gone through four iterations based on field feedback. Dates for the regional work sessions were shared with superintendents in the commissioner's January 2014 webcast. The agency will conduct a PGES simulcast, on July 21, 2014, for all regions. In addition to the training led by the agency, the Kentucky Education Association, Kentucky Association of School Superintendents, the Kentucky Association of School Councils, and the educational cooperatives have hosted or will be hosting summer conferences with PGES as an element of the training. The Kentucky Association of School Administrators will continue to provide training modules.

The Model Certified Evaluation Plan (CEP) 4.0 reflects feedback that has been obtained through these outreach efforts. Professional Growth and Effectiveness coaches are located in each

educational cooperative region to assist districts in implementing the PGES and in writing the CEP for submission to the agency. A PGES consultant has been funded by the agency in each region to provide just-in-time support. The PGES coaches have led training tailored specifically to districts. Once the CEP is received, the agency is providing feedback on the plan.

Since certification and recalibration of observers is critical to the validity and reliability of observation, and this requirement is new to evaluators in Kentucky, beginning in July 2013, KDE partnered with the Kentucky Association of School Administrators (KASA) and Battelle for Kids to develop and deliver a yearlong professional learning experience for school leaders, focused on implementing the PGES through the Kentucky Leadership Academy (KLA). KLA provided principals with “just-in-time” support throughout the statewide pilot on issues such as observation and providing quality feedback. KLA and Battelle collaborated to create a social media site for KLA participants. This platform is managed by principals across the state and includes at least one representative from each region. The KLA platform continues to provide daily support for principals regarding the Teacher Professional Growth and Effectiveness System (TPGES) and the Principal Professional Growth and Effectiveness System (PPGES).

The agency has also provided other implementation support.

A Peer Observer Course was developed through a collaboration between KDE and Kentucky Educational Television (KET). Educators have found the course useful for learning more about the Framework for Teaching, providing quality feedback, and getting the most from the peer observation process. The Peer Observation Course consists of three modules that can be completed in a self-paced manner, and takes approximately three hours to complete. Upon completion, a certificate is awarded by KET. KDE provides PD 360 in CIITS, which is free professional learning activities aligned with the domains and with the PGES.

To support implementation, the agency has created resources on student growth. These resources can be found on the agency’s website. Information about those resources has been distributed through the Commissioner’s Fast Five and Monday emails, the PGES webcasts, regional trainings, and through the Instructional Supervisors Network newsletters and webcasts.

Because the agency has long been actively engaged in providing training and support to implement the PGES, no changes have been made in response to this comment.

(6) Subject matter: Student Growth

(a) Comment: A commenter noted that student growth is one of the most critical attributes of the PGES. The commenter also cited the complexities of student growth related to varying content and grade levels of teachers, and the fact that some teachers have state-contributed student growth and some do not.

Those providing comments regarding student growth concerns were: Gina Truax Biever (Hancock County Public Schools).

(b) Response: The agency welcomes this thoughtful comment. As the commenter stated, some districts have expressed concern about the student growth provisions of the proposed regulation. KRS 156.557 requires that student growth data be used as “a significant factor in determining the effectiveness of teachers and administrators.” This statutory requirement aligns with the requirements of the federal No Child Left Behind (NCLB) waiver. The PGES outlines two types of student growth, a state contribution and a local contribution. Only those teachers who have state assessment data for grades four (4) through eight (8) in reading and mathematics will have a state contribution to be considered with multiple sources of evidence for student growth. Every teacher will have a local contribution as student growth evidence.

As noted previously, the agency has created specific resources on student growth. The resources can be found on the agency’s PGES website. Information about those resources has been distributed through the Commissioner’s Fast Five and Monday emails, the PGES webcasts, regional trainings, and through the Instructional Supervisors Network newsletters and webcasts. Also, each cooperative region has a PGES consultant assigned to assist member districts with implementation.

The agency is providing guidance to districts related to comparability and rigor across schools in a district. The guidance explains that the local contribution to student growth is a measure designed to account for the complexities of teaching and learning. Student Growth Goals provide a common framework of measuring growth for all teachers, including those in non-tested grades and subjects. Student Growth Goals incentivize the positive practices of setting empirically-based goals for each student (or class), monitoring progress over time, and assessing the degree to which students met the intended outcomes. Additionally, Student Growth Goals allow the instructional sensitivity of assessment to be enhanced by relying on exercises and scoring criteria linked directly to the teacher’s specific instructional targets (informed, of course, by the Kentucky Core Academic Standards).

Rigor and comparability are determined by the degree to which: The student growth goal is congruent with the Kentucky Core Academic Standards and appropriate for the grade level and content area for which it was developed; The student growth goal represents or encompasses an enduring skill, process, understanding, or concept that students are expected to master by taking a particular course (or courses) in school; The student growth goal will allow high-achieving and low-achieving students to adequately demonstrate their knowledge; and The focus of the student growth goal provides access and opportunity for all students, including those with disabilities, ELLs, and who are gifted/talented.

To fulfill the criteria of measuring student growth at the local level, a protocol must be established to ensure that rigorous and comparable growth measures are used for all teachers. This protocol must be articulated in the district’s Certified Evaluation Plan. There are three options from which districts may choose to ensure rigor and comparability of student growth goals: A commonly applied rubric used to assess the rigor and quality of a goal (KDE has

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published a model rubric for districts to consider); A commonly applied peer-review and/or jury process; or Other district-determined.

The guidance provided by the agency notes that since the requirement to use the PGES for personnel decisions has been extended to the 2015-2016 school year, districts have this school year to plan for and implement student growth goals, without consequences. The agency will collect best practices for implementation and share those statewide.

In response to concerns about the variety of settings where student growth would be applicable as a measure, 704 KAR 3:370 allows for a pilot in 2014-2015 for those defined as other professionals (certified school personnel, not including teachers, administrators, assistant principals, or principals). During that pilot, issues related to student growth for other professionals will be investigated and guidance will be provided to districts.

No amendments have been made in response to this comment.

(7) Subject matter: Student voice and issues with Infinite Campus

(a) Comment: A commenter stated that there have been issues with Infinite Campus (IC) and the administration of student voice. However, the commenter did not provide details.

Providing comments regarding infinite campus and student voice concerns was: Gina Truax Bieber (Hancock County Public Schools).

(b) Response: The agency appreciates this comment regarding implementation. Through a continuous improvement process, KDE has identified issues within IC that have caused the greatest concerns for schools and districts relative to the student voice survey during field test and pilot years. The agency's Student Voice Team is actively working to determine the best possible solutions. Staff is researching ways to improve the efficiency of the student voice survey administration in the 2014-2015 school year.

No amendments have been made in response to this comment, which did not indicate what action the commenter wished the agency to take.

(8) Subject Matter: Funding/Costs of Implementation

(a) Comment: A commenter stated that the implementation timeline should be delayed due to a lack of funding for implementation. The commenter outlined examples of requirements in 704 KAR 3:370 such as: more observations required (4 observations required in the summative cycle), peer observations, student growth and professional practice ratings, elimination of the ability for the evaluator to select a third party observer, student voice, documentation of requirements, and training requirements as creating additional demands on districts.

Those providing comments regarding funding/costs of implementation were: Gina Truax Biever (Hancock County Public Schools) and David Baird (KSBA)

(b) Response: The agency appreciates these comments and has carefully considered the cost of implementation. The PGES is a funded mandate required by state law (HB180 (2013)) and the federal No Child Left Behind (NCLB) waiver. Funding will be provided through the increase of Flex Focus Professional Development dollars and the redirection of Title II dollars. Additionally, the agency is providing substantial savings for professional learning through the Continuous Instructional Improvement Technology System (CIITS), PD 360, and common templates in the Education Development Suite (EDS) of CIITS.

Title II, Part A funds are provided to districts to increase student academic achievement through strategies such as improving teacher and principal effectiveness and increasing the numbers of effective teachers in the classroom and effective administrators in schools. Districts must ensure that professional learning paid for with Title II, Part A funds is also aligned with needs identified through the Consolidated School Improvement Plan (CSIP) and/or the Consolidated District Improvement Plan (CDIP), the TELL KY survey, and student assessments. Title II must also be evaluated for effectiveness of implementation.

The agency recently inquired of the U.S. Department of Education regarding the possible use of Title II, Part A funds to support the PGES. Normally, the use of federal funds to support a state requirement would be considered supplanting, or replacing, that requirement. However, because HB 180 (2013) was enacted as a result of the flexibility granted to Kentucky for NCLB, this is an allowable expenditure for Title II, Part A.

Accordingly, districts may use Title II, Part A funds to pay for principal certification, calibration and recertification through Teachscape. Although funds can be used for principal certification through Teachscape, they cannot be used to cover the costs of the Val-Ed 360 survey.

Schools and districts may pay peer observers a stipend or bonus using Title II funds. Title II funds can be used to help defray the cost of substitutes (to cover release time for observations). However, Title II funds may not be used to pay the peer observer for additional time to input data which would be part of their regular peer observer work. This cost should be addressed in the school and district policy.

Title II funds may be used to support professional learning opportunities that improve teacher and leader effectiveness. Some other related costs, such as travel, may be allowable: districts can contact their KDE Title II consultant for assistance in making this determination. A listing of the agency's consultants by district, as well as additional guidance and resources for the use of Title II, Part A funds, can be found on the agency's webpage.

No amendments have been made in response to these thoughtful comments.

(9) Subject matter: Administrative Time

(a) Comment: A commenter stated that even though the administrators in their district love the instructional focus required through the PGES and the fact that principals will be in classrooms focusing on instruction, there are other aspects to a principal's job that will be unfulfilled due to PGES implementation. The commenter suggested that since many principals do not have assistants, the time necessary to implement PGES will be an issue.

A commenter stated that the removal of language from 704 KAR 3:345, Section 4 (2) (a), allowing the evaluator to select a third party observer, is of concern related to the demands on administrator's time.

A commenter stated that KRS 156.557 (3) (g) mandates that the new evaluation system established by 704 KAR 3:370 is to "be considerate of the time requirements of evaluators at the local level" and suggested that the regulation is not.

Those providing comments regarding the consumption of administrative time were: Gina Truax Bieber (Hancock County Public Schools) and David Baird (KSBA)

(b) Response: The agency has carefully considered concerns regarding administrators, especially principals, related to implementation of the PGES and has worked to minimize administrative burdens. For example, 704 KAR 3:370 Section 5 (2) (a) states, "[t]he district may require the utilization of additional trained administrative personnel to observe and provide information to the evaluator." This provision of the proposed regulation is intended to assist principals in the collection of data for the summative evaluation. Also, the agency has been collecting best practices being used across the state and sharing those with administrators. Principals can utilize the professional learning community (PLC)/team structures already in place to help with the development of student growth goals and professional growth planning. New PLCs can be formed based on similar professional growth plans to alleviate the number of individual meetings. Also, districts determine the type of observations required. For example, observations may consist of mini observations and one full observation. A district has the flexibility to balance the requirements of the PGES based on the capacity of the district.

In the predecessor regulation, the selection of a third party observer was at the request of the teacher, not the administrator. Relying on teachers to select a third-party observer did not ensure a time savings for the administrator. Section 5 (2) (a) provides an option for districts, and can provide relief to the administrator. No amendment has been made in response to this comment.

(10) Subject Matter: Superintendent Evaluation

(a) Comment: A commenter stated that the inclusion of superintendent evaluation references in the regulation is unnecessary and may cause confusion since requirements for superintendent

evaluation are included in KRS 156.557. The commenter also asserted that the inclusion of superintendents in the regulation exceeds the scope of the agency's authority.

Those providing written comments regarding superintendent evaluation were: David Baird (KSBA).

(b) Response: The agency appreciates and has carefully considered this thoughtful comment. KRS 156.557 (2) specifically states that “the Kentucky Board of Education shall promulgate administrative regulations to establish a statewide professional growth and effectiveness system for purposes of supporting and improving the performance of all certified school personnel.” [emphasis added] The system shall promote the continuous professional growth and development of skills needed to be a highly effective teacher or highly effective administrator in a school or district.

The agency has concluded that this language creates a specific obligation for the agency to make some regulatory provision for the evaluation of superintendents. The agency has, consistent with the letter and spirit of KRS 156.557, provided for significant leeway in the evaluation of superintendents by local boards of education, while making it clear that such evaluations must be consistent with statute and focused upon supporting and improving the performance of superintendents.

No amendment has been made in response to this comment.

(11) Subject Matter: Board Authority To Approve Plans and Forms

(a) Comment: A commenter noted that the so-called 50/50 committee develops evaluation forms and procedures, and stated that “forms and procedures” are coextensive with the evaluation “plan”. The commenter added that the common practice in Kentucky has been that boards of education take action to approve the evaluation plan. The commenter stated that, contrary to the statement contained in the proposed regulation, school boards review [emphasis in original], but do not “adopt” school board procedures. The commenter stated that the longstanding practice has been for school boards to “approve” the statutorily mandated evaluation “plan” developed by the 50/50 committee, and that the statutory framework regarding this matter has not changed. The commenter suggested that Section 5 (2) be modified to reflect that boards “approve” rather than “adopt” the procedures and forms (effectively the “plan”) to avoid confusion regarding the board's oversight role relating to plan documents that are developed by the 50/50 committee.

A commenter stated that the work of the 50/50 committee, consistent with KRS 156.557, the prior regulation, and past practice, has been to develop, design, or change the District Evaluation Program. The commenter stated that the role of the local board is to review for compliance and then approve. The commenter stated that the board's function is not accurately described by the

phrase “shall act upon” in Section 5 (1) and that the ambiguity could lead to conflict and misrepresentation regarding the role of the local board. The commenter proposed that Section 5 (1) be revised to read “[t]he 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 commenter suggested that 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.

A commenter stated that 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. The commenter stated that Section 5, and subsection 5 (2) specifically, appear, incorrectly, to give a local board significant independent authority over evaluation procedures and forms. The commenter stated that a local 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. The commenter concluded that the proposed regulation cannot restrict the statutory authority of a local evaluation committee or delegate the committee’s authority to local boards. This commenter proposed the deletion of Section 5 (2) because of inconsistency with Section 5 (1), KRS 156.557 (5) (c), and Section 15 of the proposed regulation, or, in the alternative, the reworking of Section 5 (2) to clarify that the subsections of Section 5 (2) apply to local evaluation committees and not to local boards. Additionally, this commenter requested that Section 15 (2) be expanded to explicitly require a local board to use the services and resources of the local evaluation committee if the local board determines that its evaluation plan does not comply with KRS 156.557. Finally, this commenter requested substantial revision of Section 15 (3) to state that a local board must submit a compliance plan to the department, and return revisions to the 50/50 committee for additional study and amendment.

Those offering written comments on authority regarding evaluation forms and evaluation procedures were: David Baird (KSBA), Don Meade on behalf of the Jefferson County Teachers Association (JCTA), and Stephanie J. Winkler and Mary Ann Blankenship (KEA.)

(b) Response: The agency has carefully considered these comments, which were not wholly congruent. Each comment sought changes to Section 5 of the proposed regulation. One comment also proposed changes to Section 15.

Two of the three commenters agreed that the proposed regulation should clarify that the role of the local board, regarding the statutorily prescribed committee comprised of an equal number of teachers and administrators and charged with developing evaluation forms and procedures, is to review and approve evaluation forms and procedures. One commenter proposed that this change be made in Section 5 (2); another commenter suggested that this revision be made to Section 5 (1).

One commenter explicitly objected to the phrase “shall act upon” in Section 5 (1) as not accurately characterizing the local board’s function. One commenter explicitly endorsed the phrase “shall act upon” in Section 5 (1) as consistent with Section 15. This commenter proposed the deletion of Section 5 (2) or, in the alternative, a redrafting of that section.

The Teacher Steering Committee recommended local boards establish an annual review for implementation and that school districts ensure that timelines are followed, appropriate forms are used and time is created to allow for full implementation of the PGES.

To remove ambiguity within Section 5, and to ensure consistency between Section 5 and Section 15, which describes the role of the board’s role as “review and approve”, and also clarifies that local boards are to use the 50/50 committee to formulate plan revisions, the agency will amend the regulation as follows:

Section 5 (1) will read “[t]he 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.”

Section 5 (2) will read “[t]he local board of education shall review and approve procedures and forms that meet the requirements of KRS 156.557(5) (c)...”

No changes will be made to Section 15, with which Section 5 is now consistent.

(12) Subject Matter: Evaluator authority in the development of goals and plans

(a) Comment: A commenter expressed that 704 KAR 3:370 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 if corrective actions are necessary in relation to the performance of assignments. The commenter cited KRS 160.290, which gives boards of education authority regarding the qualifications and duties of employees. The commenter cited KRS 160.370 and KRS 160.390 in support of the assertion that superintendents have the general supervision of schools and that the regulation usurps that authority. The commenter cited KRS 160.345 for the proposition that the principal shall be the instructional leader in an SBDM school and 703 KAR 5:225 and KRS 158.649 for the responsibilities of administrators in school improvement.

The commenter stated that KRS 157.556 requires the implementation of a meaningful process to be used when corrective actions are necessary in relation to the performance of assignments.

The commenter expressed concern that, under the proposed regulation, supervisors will not have the final authority to require that growth plan goals conform to the targets in the school or district improvement plans or to address unprofessional conduct. The commenter also expressed concern that districts will be unable to ensure comparability across schools within districts without the

authority to resolve disagreements after collaborative efforts at goal setting are exhausted. The commenter requested the following changes to the regulation:

The modification of the definition of professional growth plan to reflect “the plan shall be produced in collaboration with the evaluator with the latter having final authority to establish the plan in the event of a disagreement.” The student growth goals definition should be modified to reflect the same grant of authority.

Because the district has to ensure rigor and comparability across schools, evaluators need to be given authority regarding student growth goals if the district is to be held to a comparability standard.

The section of the regulation that discusses the development of the teacher’s student growth goals should be modified to allow the evaluator to determine growth goals without collaboration of the lowest performing teachers. The same modification should apply to the development of principal student growth goals.

The commenter stated that these changes would correct a disconnect between the statutes related to the supervisory authority of evaluators.

Those providing written comments regarding evaluator authority in the development of goals and plans were: David Baird (KSBA).

(b) Response: The agency appreciates these comments and agrees that, to clarify evaluator roles, some amendments are appropriate. The Professional Growth Plan definition aligns with the 704 KAR 3:035, Annual Professional Development Plan, and supports professional learning as a collaborative process driven by the needs of the evaluatee. Accordingly, this definition will not be amended. However, some clarity can be provided around professional development plans and improvement plans.

The agency does not agree that the authority of the evaluator is compromised by the proposed regulation. As outlined in Section 9 (1) (d) and (e), if a teacher’s professional practice rating is developing, with low student growth, or ineffective, with expected or high student growth, the teacher shall have a professional growth plan with goals, **determined by the evaluator**, that focus on professional practice and student growth. The evaluatee will have a formative review each year with a summative evaluation that occurs at the end of one (1) year. A teacher whose professional practice rating is ineffective, with low student growth, will have an improvement plan, with goals **determined by the evaluator**. The goals shall focus on low performance areas and a summative evaluation is conducted at the end of the plan. The duration of the plan is **determined by the evaluator** and may last up to one (1) year. Pursuant to Section 12 (1) (d) and (e) of the proposed regulation, if a principal or assistant principal’s professional practice rating is developing, with low to expected student growth, the principal or assistant principal shall have a

professional growth plan with goals **determined by the evaluator**, and a summative evaluation at the end of each school year. If a principal or assistant principal's professional practice rating is ineffective, no matter the student growth rating, the principal or assistant principal will have a professional growth plan with goals **determined by the evaluator**, and a summative evaluation at the end of the plan. The duration of the plan shall not exceed one year. These sections of the proposed regulation show that evaluators maintain authority over the plans and goals of teachers, principals and assistant principals who are determined to be ineffective, with low student growth.

In reviewing the proposed regulation in response to this comment, the agency detected an error. In Section 12 (1) (e), the term "professional growth plan", and not "improvement plan" is incorrectly used. To mirror the intent and the plan for teachers in Section 9 (1) (e), a definition of improvement plan will also be added, at the request of the commenter, to provide clarity and the statement in Section 9 (1) (e) will now reference an "improvement plan" rather than a "professional growth plan". The following additional changes will be made:

On page 16, line 14, the word "growth" will be removed; the statement will read, "A teacher shall be placed on an appropriate plan and summative evaluation cycle based on the professional practice rating and the overall student growth rating".

On page 22, lines 7 and 8, language will be modified to match the language of the teacher plan and will read, "The evaluator shall place an assistant principal or principal on an appropriate plan based on the professional practice rating and student growth overall rating."

On page 23, lines 4 and 5, language will be modified to read, "an evaluatee whose professional practice rating is ineffective, shall have, at a minimum, an improvement plan with goals determined by the evaluator."

A definition of improvement plan will be added to Section 1 of the regulation and will read, "'Improvement Plan' means a plan for improvement of up to twelve months in duration for teachers who are rated ineffective in professional practice and have a low overall student growth rating and for principals who are rated ineffective in professional practice and have a high, expected or low overall student growth rating."

In the Kentucky Professional Growth Plan Model for Tenured Teachers graphic, the word "Model" will be replaced with the word "Graphic". The word "Model" may cause confusion and "Graphic" is a more appropriate reference.

In the top left-hand box of the Kentucky Professional Growth Plan Model for Tenured Teachers graphic, the phrase, "summative evaluation at the end of year three (3)" will be added to the bulleted list. The same will be done in the center middle and far right boxes.

(13) Subject Matter: Evaluation Cycle

(a) Comment: A commenter stated that the evaluation cycle for non-tenured teachers needs to be clarified. The regulation states that a summative evaluation for tenured teachers occurs at the end of year three (3), but does not clarify that non-tenured teachers are evaluated annually, as is stated earlier in the proposed regulation.

Providing comments on the evaluation cycle was: David Baird (KSBA).

(b) Response: To clarify that non-tenured teachers are to be evaluated each year, as stated in Section 5 (2) (i), an amendment will be made in the Section 9 heading to clarify that the section is describing the Professional Growth Plan and Cycle for “Tenured” teachers.

(14) Subject Matter: State Evaluation Appeals Panel Jurisdiction

(a) Comment: A commenter suggested that, for clarity, the agency should reconfigure language that establishes the State Evaluation Appeals Panel’s (SEAP’s) jurisdiction to consider whether a district failed to implement an evaluation plan as approved by the agency.

The commenter also recommended the removal of a phrase regarding the review of submitted documents to avoid confusion and to clarify that an aggrieved evaluatee is not permitted to raise issues for the first time, before the SEAP, when such issues were not presented on the record below.

Those providing written comments regarding SEAP jurisdiction were: David Baird (KSBA).

(b) Response: The agency has carefully considered these thoughtful comments and agrees with the commenter that clarifications are appropriate. The agency will relocate text as suggested by the commenter as follows: the second sentence of Section 19 (2) (a) will be amended to read, “The 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 subsequent sentence shall be amended to omit reference to documents submitted pursuant to paragraph (c) of the subsection.

(15) Subject Matter: Conferences

(a) Comment: Commenters stated that the proposed definition for “conference” does not mention pre-observation conferences or conferences that are initiated by an evaluated educator. Commenters advised that “conference” is a two-way street and not just an opportunity for an evaluator to criticize or direct work. Commenters also suggested that pre-conferences be mandated.

Those providing written comments regarding the definition of conference were: Stephanie Winkler (KEA) and Mary Ann Blankenship (KEA).

(b) Response: The agency appreciates the comment relating to the definition of conference. The guidance provided to districts related to conferencing has been that best practice suggests that a pre-observation conference be held, but districts determine if pre-observation conferences will be required. The agency has provided this guidance due to the statutory requirement in KRS 156.557 (3) (g) that the PGES shall “be considerate of the time requirements of evaluators”. A required pre-conference before each observation would add significant time for evaluators. The regulation will not be amended to mandate pre-conferences. However, the agency will continue to provide guidance about the importance of pre-conferencing and offer suggestions how this can be accomplished in an efficient way.

The definition of conference will be modified. Section 1 (5) will now read, “‘Conference’ means a meeting between the evaluator and the evaluatee for the purpose of providing feedback, analyzing the results of an observation or observations, reviewing other evidence to determine the evaluatee’s accomplishments and areas of growth, and leading to the establishment of a professional growth plan.”

(16) Subject Matter: Observations

(a) Comment: Commenters stated that the use of “certified observer” in Section 1(12) is confusing. The commenters stated that it is not clear if certified observer means certified by the Education Professional Standards Board through KRS 161.020 or certified through the observer certification and recalibration processes outlined in Section 6 of the proposed regulation.

These commenters also stated that the definition of observation in Section 1 (12) should be expanded to include a minimum duration of at least twenty minutes. The commenters stated that 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.

Commenters stated that Section 5 (2) (j) should not allow any teacher, including a teacher who is struggling with professional effectiveness, to be harassed with needless or counter-productive observations. The comments added that only teachers with an ineffective professional practice rating need and deserve multiple observations.

Those providing written comments regarding observation were: Stephanie Winkler (KEA) and Mary Ann Blankenship (KEA).

(b) Response: The agency has considered the comment related to the observation definition. Because, the current definition of “observation” clearly states that observation means a data collection process conducted by a certified observer for the purpose of evaluation, and because the agency does not promulgate regulations for the Education Professional Standards Board, no change will be made in response to this comment.

The guidance being shared with districts related to the duration of observations is that a full observation is a full class or lesson that is observed and a mini observation is approximately twenty to thirty minutes. A formal observation is conducted by a certified observer for the purpose of evaluation. In a district's Certified Evaluation Plan, the district must explain the observation model they are using in order to comply with the minimum requirements. Observation criteria that do not meet these guidelines would not be approved by the agency. Because the agency is addressing the duration of observations through this process, no amendment to establish a minimum duration will be made.

(17) Subject Matter: Monitoring and Observation may not be covert

(a) Comment: Commenters stated that school district administrators are placing cameras in school classrooms with increasing frequency. Commenters added that many students carry cameras with them in their cellular telephones. Commenters noted that KRS 156.557 (5) (c) (3) forbids covert monitoring or observations. Commenters suggested that evaluated educators are entitled to know when and by whom they are being observed. The commenters stated that the regulation cannot authorize the use of cameras for the purpose of monitoring or observation unless the evaluator knows of the use of cameras in advance.

Those providing written comments that monitoring and observation may not be covert were: Stephanie Winkler (KEA) and Mary Ann Blankenship (KEA).

(b) Response: KRS 156.557 (5) (c) (3) addresses the need for teachers to be fully aware of observations and forbids surreptitious observations. However, the agency has determined that this section of the statute does not mean that all observations must be announced in advance. Neither the statute nor the proposed regulation expressly state or imply that "openly and with full knowledge" means "announced ahead of time." The guidance being provided in the PGES FAQ is as follows:

Mini observations do not have to be announced. However, the observer must be visible and the teacher must be aware that an observation is occurring. Formal observations do not have to be announced. However, the observer must be visible and the teacher must be aware that an observation is occurring. The impact this will have on pre-conferencing should be considered. If a district chooses unannounced formal observations, the CEP should disclose that plan. Inherent in the concept of an effectiveness system is collaboration and continuous improvement. Such collaboration is enhanced by the full disclosure of evaluation methods. The carrying of cameras by students is beyond the scope of the proposed regulation, as such students would not be using such cameras to conduct evaluative observations. Cameras in classrooms may be placed for reasons other than evaluative observations, such as to promote student safety.

The proposed regulation and statute are congruent and no amendment will be made in response to the comments.

(18) Subject Matter: Supervisors and Observation

(a) Comment: Commenters stated that Section 1 (12), (13), (14), and (18) do not make clear that only supervisors may conduct an observation for the purpose of determining an evaluatee's professional practice rating. The commenters requested that these paragraphs be clarified to state that observers are supervisors. The commenters stated that this was not consistent with KRS 156.557 (5) (c) (2) which designates that the immediate supervisor of certified school personnel shall be designated as the primary evaluator. The commenters also stated that KRS 156.557 provides that only at the request of the teacher may additional observations by other teachers be incorporated into the formative process.

Those providing written comments regarding supervisors and observation were: Stephanie Winkler (KEA) and Mary Ann Blankenship (KEA).

(b) Response: The agency carefully considered these comments and agrees that KRS 156.557 (5) (c) (2), states that "the immediate supervisor of the certified school personnel member shall be designated as the primary evaluator." KRS 156.557 does not specify that all observations of certified school personnel shall be conducted by the immediate supervisor. Nor does the statute state that observers are supervisors. The proposed regulation clearly distinguishes between observation and evaluation. To meet the requirements of KRS 156.557 (3) (g), "be considerate of the time requirements of evaluators", the agency proposes no amendment in response to these comments. The proposed regulation will continue to allow additional trained administrative personnel to observe and provide information to the evaluator. This allowance does not permit a person who is not the immediate supervisor to conduct an evaluation.

(19) Subject Matter: Definition of Other Professionals

(a) Comment: Commenters stated that the definition of "other professionals" is seriously lacking. Commenters queried whether the proposed regulation would characterize resource teachers, instructional coaches, interventionists, and athletic coaches as other professionals. Commenters queried whether an individual could, for the purposes of the proposed regulation, be both a teacher and an other professional.

Those providing written comments regarding other professionals were: Stephanie Winkler (KEA) and Mary Ann Blankenship (KEA).

(b) Response: The agency appreciates the commenters's desire to make the proposed regulation clear. An Other Professional Steering Committee has been working throughout the 2013-2014 school year to flesh out the requirements for other professionals. The proposed

regulation, through the definitions in Section 1 (35) [teacher] and 1(15) [other professionals] has clarified which certified school personnel must participate fully in PGES in the 2014-15 school year. The agency proposes no amendments in response to these comments.

(20) Subject Matter: Peer Assistance and Review Process

(a) Comment: Commenters stated that the reference to the Peer Assistance and Review Process should be removed because the process is not a component of PGES.

Those providing written comments regarding the Peer Assistance and Review Process were: Stephanie Winkler (KEA) and Mary Ann Blankenship (KEA).

(b) Response: The agency has carefully reviewed these comments and will remove references to Peer Assistance and Review Process. Districts may create a Peer Assistance and Review Process if they choose to do so, even if the option is not described in the proposed regulation. The agency chooses to leave this choice to the discretion of the district.

(21) Subject Matter: Peer Observer

(a) Comment: Commenters stated that the definition of peer observation in section 1 (18), should be expanded to state that peer observation is formative in nature and may not be reflected in the summative evaluation of the educator. Commenters also expressed concern that Section 5 (2) (b) requires at least one peer observation during the summative evaluation year. Commenters questioned whether peer observation during the summative year is more appropriate than during the formative years leading up to the summative evaluation to allow teachers to correct any perceived deficiencies. Commenters also stated that the proposed regulation does not specify how peer observations will be documented in the department-approved technology platform. The commenters suggested that documenting only the date and time of the peer observation and any peer conferences should be sufficient unless the evaluatee chooses to use the peer observation in the summative evaluation process.

Those providing written comments regarding peer observation were: Stephanie Winkler (KEA) and Mary Ann Blankenship (KEA).

(b) Response: The agency has carefully considered the comments, and has concluded that the definition of peer observation is appropriate because Section 5 (2) (b) provides that at the request of a teacher, peer observations may be used in the formative process. Section 5 (2) (l) provides that the district, upon the request of a teacher, may use peer observation data in the formative process. Since the regulation makes it clear in two parts of Section 5 that peer observations are for formative purposes only unless the teacher wants them used for summative purposes, no changes will be made in response to this comment.

Regarding the requirement of peer observation during the summative year, this inclusion was made to provide the evaluatee with current formative information to identify any deficiencies so that they might be addressed before the summative evaluation. Data collected by a peer in years one or two of the summative evaluation year would be outdated and of limited use to the evaluatee in making improvements. The proposed regulation establishes a minimum peer observation requirement, which may be increased at the option of the district. No amendment has been made in response to this comment.

(22) Subject Matter: Definition of performance rating

(a) Comment: Commenters stated that the definition of “performance rating” refers only to teachers, principals and assistant principals and does not reference the evaluation of other administrators and other professionals.

Those providing written comments regarding the definition of performance rating were: Stephanie Winkler (KEA) and Mary Ann Blankenship (KEA).

(b) Response: The agency has carefully reviewed the definition of performance rating. The evaluations of other certified administrators and other professionals are outlined in Sections 14 and 13 respectively. The proposed regulation includes specific provisions for the evaluation of other certified administrators and other professionals in the 2014-2015 school year. The agency is studying implementation for these two identified groups. The regulation will be amended prior to the 2015-2016 school year to further define performance ratings for those groups. KRS 156.557 and the federal NCLB waiver required the agency to move forward with a system including at least three performance levels for teachers, principals and assistant principals. The agency is unwilling to jeopardize these broad and immediate goals while working toward permanent evaluation system components for the entire population of certified personnel. No amendments have been made in response to these comments.

(23) Subject Matter: Definition of preschool teacher

(a) Comment: Commenters stated that the regulation defines “preschool teacher” differently than “teacher” without an explanation of how they differ.

Those providing comments regarding the definition of preschool teacher were: Stephanie Winkler (KEA) and Mary Ann Blankenship (KEA).

(b) Response: The agency has carefully considered these comments and notes that “preschool teachers” are defined in Section 1 (21) of the proposed regulation and teachers in Section 1 (35). Preschool teachers are certified pursuant to a different regulatory scheme than teachers. Preschool teachers will use the same Framework for Teaching as teachers, but will pilot during the 2014-15 school year to address the unique blending situations that may occur in the

preschool environment. In describing the pilot, it was necessary to define the subjects of the pilot as to distinguish the certifications of the two groups. Because this comment did not request an amendment, none has been considered, nor is one required.

(24) Subject Matter: Definition of professional growth plan

(a) Comment: The “Professional growth plan” definition should include a reference to sections 9 and 12 of the proposed regulation.

Those providing written comments regarding the definition of professional growth plan were Stephanie Winkler (KEA) and Mary Ann Blankenship (KEA).

(b) Response: The agency has carefully considered this well-taken comment and the definition will be modified to include the suggested references.

(25) Subject Matter: Student voice survey

(a) Comment: Commenters stated that the definition of “student voice survey” includes reference to “department-approved” and “administered annually.” Comments advised that it is important that student voice surveys be consistent from one school year to another so that one survey may be compared to another.

Those providing written comments regarding student voice survey were: Stephanie Winkler (KEA) and Mary Ann Blankenship (KEA).

(b) Response: The agency appreciates the comments and acknowledges that the language in Section 1 (33) should be clarified to avoid the misconception that districts can adopt their own student voice survey each year, possibly resulting in inconsistent data over time. The student voice survey is provided by the agency and administered on an annual basis. The fact that the agency provides the survey will ensure consistency of data across the state and within districts. The definition in Section 1 (33) will be modified to read, “‘student voice survey’ means the student perception survey provided by the department that is administered annually to a minimum of one district-designated group of students per teacher evaluatee and provides data on specific aspects of the classroom experience and professional practice of the teacher evaluatee.”

(26) Subject: Technical Edits

(a) Comment: Commenters offered the following technical edits for consideration:

p. 15 line 7 – Believe the regulatory reference should be to 703 KAR Section 1(11), rather than (9). (11) addresses the referenced student growth percentile.

p. 25, line 14 – The word “apply” should be “applicable.”

Sections 8(5) and (6) should be 7(9) and (10); Sections 11(4) and (5) should be Section 10(8).

Definition of certified school personnel.

Those providing written comments related to technical edits were: John Fogle (KSBA) and Stephanie Winkler (KEA) and Mary Ann Blankenship (KEA).

(b) Response: The agency has considered and evaluated these comments and these technical amendments will be made.

(27) Subject Matter: Benefits of PGES implementation

(a) Comment: A commenter stated that the foundation of the Teacher Professional Growth and Effectiveness System is beneficial. The commenter stated that district administrators support the changes and the theory behind the system. The administrators in the commenter's district reportedly embrace the system because it puts principals in classrooms, focusing on instruction, and believe that the system has the power to transform teaching and learning. The commenter stated that implementation of the PGES needs to be smooth to positively impact teaching and learning.

Those providing writing comments recognizing the benefits of the PGES implementation were: Gina Truax Biever (Hancock County Public Schools).

(b) Response: The agency agrees with comments about the benefits of the system and commends the Teacher and Principal Steering Committees for their thoughtful approach to their recommendations regarding the design and implementation of the PGES. The agency shares the desire for implementation of the PGES to be smooth. The agency has invested, in collaboration with stakeholders, the past five years in designing and implementing the PGES. Because the comment did not request amendments, none will be made in response.

(28) Subject Matter: Professional Practice and Student Growth Ratings

(a) Comment: Commenters stated that Section 7 (5)-(7) of the proposed regulation should not be considered an exhaustive list of evidences to be used for a teacher's professional practice rating. The commenters asserted that teacher-generated evidence should be included in the proposed regulation. Also, the commenters stated that Section 7 (10) requires local districts to use growth trends consisting of the three most recent years of student growth data, when available. The commenters suggest that it will be a while until teachers have three years of valid student growth data and that, in the interim, the professional practice rating should be the teacher's overall performance rating.

Those providing comments on Professional Practice and Student Growth Ratings were: Stephanie Winkler (KEA) and Mary Ann Blankenship (KEA).

(b) Response: Section 7 (5)-(7) of the proposed regulation includes the sources of evidence to be used in determining a teacher's professional practice rating. The Teacher Steering Committee recommended that each teacher receive data from all available measures, every year. One of those sources of evidence can be, if included in the district's evaluation plan, other district-determined sources of evidence. If the district evaluation plan includes teacher-generated evidence, then that evidence can be used in determining the professional practice rating of a teacher.

Regarding the suggestion to allow the professional practice rating to be the overall performance rating for teachers in the absence of three years of reliable student growth data, the agency will not be making amendments. KRS 156.557 and Kentucky's federal NCLB waiver require the use of student growth data as a significant factor in determining the effectiveness of teachers and principals. If the agency recommends delaying, any longer, the use of student growth in the determination of a teacher's overall performance rating, the agency will jeopardize the waiver. In April 2012, the Teacher Effectiveness Steering Committee discussed, with the commissioner, the use of three years of student growth data. The commissioner charged the Steering Committee to help determine how student growth would be used in the summative model. Also, the recommendation of the teacher steering committee to use the summative model contained in the proposed regulation allows for the principal to exercise professional judgment when determining the overall rating of a teacher. The number of years of student growth data the teacher has and the context in which the teacher teaches can all be taken into consideration when determining the overall performance rating of a teacher. Also, the inclusion of two contributions to student growth (state and local) assures that no teacher's student growth rating or overall performance category will be determined by state assessment data alone. If three years of student growth data are required before teachers can receive an overall performance rating that includes professional practice and student growth, the requirements of the regulation that non-tenured teachers be evaluated each year using professional practice and student growth to determine their overall performance rating would not be possible. Three years of student growth data is optimum for the determination of the impact that a teacher has had on student growth. However, in the absence of all three years of student growth data, teachers and principals can still have constructive conversations that lead to continuous improvement of instruction and improved student learning.

(29) Subject Matter: Documentation of Summative Evaluation

(a) Comment: Commenters suggested a revision to the proposed regulation's inclusion of sources of evidence.

Those providing written comments regarding documentation of summative evaluation were: Stephanie Winkler (KEA) and Mary Ann Blankenship (KEA).

(b) Response: The agency has carefully considered this comment and agrees that modification is appropriate and the agency will adopt the following alternative language: "All
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evidence used to produce a certified school personnel's overall performance rating shall be included in the documentation of the summative evaluation.”

(30) Subject Matter: Documents Incorporated by Reference

(a) Comment: Commenters stated that the proposed regulation incorporates too many external documents by reference.

Those providing written comments regarding documents incorporated by reference were: Stephanie Winkler (KEA) and Mary Ann Blankenship (KEA).

(b) Response: The agency has fully considered this comment. The agency determined that including the documents by reference reduced the length of the regulation significantly. Also, the agency felt that sharing the graphic representations of the proposed regulation would complement the regulation, show alignment, and provide greater clarity. KRS 156.557 specifies that the PGES include eight specific elements and 10 performance criteria. The agency determined that it was necessary and appropriate to fully explore these required elements through the regulation and the documents incorporated by reference. As the comment requests no amendment of the regulation, none will be made in response.

Summary of Statement of Consideration And Action Taken by Promulgating Administrative Body

The Kentucky Department of Education has responded to comments from the public regarding 704 KAR 3:370. The agency received multiple and detailed comments. These comments can be broadly categorized as related to: 1) Definitions; 2) Responsibilities of the local evaluation committee and local board of education; 3) Observations; 4) Student Growth; 5) Implementation timeline; 6) Training and timeline; 7) Waiver provisions; 8) Superintendent evaluations; 9) Comparability and fidelity of implementation; 10) State Evaluation Appeals Panel; 11) Pilots; and 12) Training requirements.

The agency received comments upon the definitions of: conference, those regarding observations, the peer assistance and review process, peer observation, performance ratings, preschool teachers, professional growth plans, student voice survey, and improvement plans. Comments prompted the agency to reconsider the definitions for conference and student survey. The definition of Peer Assistant and Review Process and references to that Process will be removed. The agency will add a definition of improvement plan to clarify the plan options and will clarify evaluator authority that exists with low performing teachers and principals. To clarify the type of professional growth plans that teachers and principals will have determined by the professional practice and student growth ratings, the definition of professional growth plan will include references to those sections of the proposed regulation.

The agency received comments regarding the responsibilities of the local evaluation committee as it relates to the local board of education and made amendments for clarity and consistency.

Commenters expressed concerns about several aspects of observations including duration, frequency, and purpose. The agency has provided guidance on best practices related to observations and recognizes the additional demands put on principals in relation to observations. The agency has not made amendments in response to the comments.

The agency received comments about student growth. One commenter pointed out the complexities of student growth implementation. Two other comments stated that because teachers will not have three years of valid student growth data for several years, the overall performance rating, for now, should be the professional practice rating. The agency recognizes the complexities of student growth but has provided numerous resources to support its implementation. The agency will not make any changes in response to the suggested use of the professional practice rating as the overall performance rating; the agency will honor the summative model recommended by the Teacher and Principal Steering Committees, which permits the professional judgment to the evaluator to consider the context of the teacher when assigning ratings. Also, consideration of student growth is required to meet the requirements of KRS 156.557 and Kentucky's federal NCLB waiver.

Some comments requested that the implementation timeline be delayed again. The agency notes that the requirements of KRS 156.557 and Kentucky's federal NCLB waiver makes it impossible to further postpone implementation. Kentucky has received an extension from the United States Department of Education allowing the delay of personnel decisions and accountability until 2015-16.

A commenter stated that a lack of training has made the implementation timeline difficult. The agency has implemented a wide variety of training opportunities and resources that are available to districts free of charge, including coaches in each cooperative region who are tasked to work with districts individually to meet their unique implementation needs.

The agency received a comment that the agency should fully consider waivers for districts who want to have alternative systems. The agency is doing so, and recommended approval of a waiver request by the Kentucky Board of Education at the April, 2014 meeting. No additional waiver requests have been submitted at this time.

The agency received comments stating that references to the superintendent evaluation in the proposed regulation were unnecessary because KRS 156.557 addresses superintendent evaluation. The agency has determined that the inclusion of superintendent evaluation in the proposed regulation is appropriate and required by statute.

Comments expressed concern about comparability and fidelity related to student growth. The agency identified the resources provided to districts to address comparability and fidelity in the student growth component of the system.

The agency received and made amendments consistent with comments regarding the State Evaluation Appeals Panel.

Comments asked for clarity around other professionals and preschool teachers. The agency explained that pilots will be conducted during the 2014-2015 school year and the regulation will be amended at the completion of those pilots to incorporate the results. The proposed regulation specifically addresses how educators in those groups will be evaluated in the 2014-2015 school year.

The agency received comments related to the training requirements for evaluators in years 2 and 3 of the evaluator training and testing cycle. Commenters suggested that the six hour requirement seemed unnecessary. The agency has clarified that section of the regulation.

The agency proposes the following changes to the administrative regulation:

Page 11

Section 6 (7)

Lines 16-22

Delete:

(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 certified school personnel.

Replace with:

(7) Years two (2) and three (3) of the district's evaluator training and testing cycle shall include a minimum of six (6) hours each year to include: (a) Observer recalibration, in the department-approved technology platform, for all evaluators who observe teachers for the purpose of evaluation; and an update on Professional Growth and Effectiveness statutes and regulations and training for evaluators on any changes to the Professional Growth and Effectiveness System.