

**Responses to Written Comments on Draft SB 191 Appeals Rules  
Received March 2 - 23, 2012**

	<b>Comment/Question</b>	<b>CDE Response</b>
1	<p>The grounds for an appeal must be limited to substantive procedural violations and/or the misattribution of data. We strongly disagree with the idea that the local appeal process should be used to address systemic issues related to the reliability of the evaluation tools, including the scoring matrix and rubrics. Districts will engage in a collaborative process when they design and implement their evaluation tools and any concerns that arise upon implementation should be addressed as part of that process. Additionally, any such concerns should arise (and be addressed) after a teacher’s first ineffective rating, which is beyond the scope of the State Board rules. Finally, we believe it is critically important that districts using the state model system be able to rely on the validity and reliability of that system. Simply put, local districts should not be put in a position to defend the state model system at the local level. <i>(CASB March 6, 2012 letter)</i></p>	<p>CDE recommends that the following language be added to the rules:</p> <p>5.04 (A) (7) The grounds for an appeal shall be limited to the following:</p> <p>5.04 (A) (7) (a) A systemic inaccuracy in the evaluation procedures (e.g., evidence for each of the Teacher Quality Standards was not included in the summative evaluation); and/or</p> <p>5.04 (A) (7) (b) The data relied upon in calculating the Performance Evaluation Rating was incomplete or was inaccurately attributed to the Teacher (e.g., data included in the evaluation was from students for whom the Teacher was not responsible).</p>
2	<p>We defer to the council’s expertise as to the utility of the appeals panels and have no objection to any reference to such panels, so long as they remain advisory in nature and are not mandates for use in any district, including those that elect to use the state’s model system. <i>(CASB March 6, 2012 letter)</i> We recognize the value of the “shared leadership” concept underlying the panel approach and have no reason to doubt the Council’s conclusion that an appeals panel may be an effective tool in some districts. However, for many districts, particularly the smaller, rural districts, it will be utterly impossible to convene a panel comprised of administrators who were not responsible for the teacher’s evaluation, because there are only one or two administrators (including the superintendent) in the district. Moreover, due to the close nature of the relationships in smaller</p>	<p>CDE recommends that the following language be added to the rules:</p> <p>5.04 (B) <b>State Model System.</b> The Department shall include in the State Model System a model appeal process for a nonprobationary Teacher to appeal a second consecutive Performance Evaluation Rating of ineffective or partially effective. The model appeal process shall include one method that incorporates the use of a review panel and one method that does not use a review panel. Each School District that</p>

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	<p>communities, individuals may be reluctant to participate on panels that force them to review the work of their peers. Allowing districts to use teachers/administrators from other districts will only increase the potential burden of such panels in light of the geographic limitations and increased workloads across the state. Therefore, we ask that Rule 5.04 (C)(1) – (C)(7) be revised to eliminate the language limiting the State’s model system to the use of appeals panels and ask that the rules direct CDE to develop an alternate appeals process for use by those districts that don’t (or can’t) embrace the panel concept upon implementation of their new evaluation systems. We share Paul Lundeen’s concern, as stated at the March 7, 2012 hearing, regarding potential political pressures related to the panels and don’t want the panels to serve as a disincentive for districts to consider the State’s model. At a minimum, the rules should direct CDE to include guidance regarding both approaches in the resource bank. <i>(CASB March 20, 2012 letter)</i></p>	<p>adopts the State Model System shall incorporate an appeal process that meets the requirements in section 5.04 (A) of these rules, but may choose either to use the model appeal process that incorporates the use of a review panel, to use the model appeal process that does not use a review panel, or to develop its own distinctive appeals process that satisfies the requirements in section 5.04 (A) of these rules.</p>
3	<p>We believe that section 5.04 (A) is confusing in light of the limited scope of the State Board’s rules, particularly where the rules seem to conflict with statutory requirements; i.e., the statute allows up to 90 days for the appeals process, while the rules limit the appeal of the second consecutive rating to 45 days. Therefore, we ask that section 5.04 (A), which does nothing more than restate the statutory requirements, be deleted in its entirety to avoid unnecessary confusion. Alternatively, we ask that the language be modified to clarify that the statutory requirements (as restated in the rules) apply to all appeals, but that the State Board rules apply only to a teacher’s appeal of their second consecutive ineffective rating. Additionally, the statute does not require an appeal following a rating of “partially ineffective,” and the language in 5.04 (A) and 5.04 (A) (4) should be deleted or revised to clarify this point. <i>(CASB March 20, 2012 letter)</i></p>	<p>CDE agrees and recommends removing the section of rules that restates the statutory requirements and instead including references to the statutory requirements, as appropriate, in the following manner:</p> <p>5.04 (A) (3) As required by section 22-9-106 (3.5) (b) (II), C.R.S., the appeal process shall be developed, where applicable, through collective bargaining.</p> <p>5.04 (A) (4) The appeal process shall be voluntary for a Teacher, and initiated only if he or she chooses to file an appeal. As required by section 22-9-106 (3.5) (b) (II), C.R.S., the appeal process shall allow the nonprobationary Teacher to appeal the rating of ineffectiveness to the superintendent of the School District and shall place the burden upon the</p>

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		nonprobationary Teacher to demonstrate that a rating of effective was appropriate.
4	<p>Rule 5.04 (B) exceeds the scope of the State Board’s authority under the Act, which directs the State Board to “promulgate guidelines” that districts “may” follow when designing and implementing their evaluation systems. Therefore, we believe that the language in 5.04 (B) (2), (B) (3), (B)(4), and (B)(5) should be revised to allow local districts discretion to determine whether the stated procedures are appropriate for their unique needs and circumstances. Additionally, the statute allows up to 90 days for the appeal. While we recognize the strong interest behind completing the appeal process in a timely fashion, districts must have the right to extend the 45-day timeline if necessary. <i>(CASB March 20, 2012 letter)</i></p>	<p>CDE believes that including these requirements in rule does not exceed the State Board’s rulemaking authority. Statute, in section 22-9-104(2)(c), C.R.S., requires the State Board to “work with the council to promulgate rules concerning the planning, development, implementation, and assessment of a system to evaluate the effectiveness of licensed personnel.” Among the issues that the rules must incorporate are the State Council’s guidelines for a process by which a nonprobationary teacher may appeal his or her second consecutive performance rating of ineffective.</p>
5	<p>The appeal should only be available for individuals who have received two consecutive ineffective ratings. It should not be activated by teachers who receive partially effective ratings because that would raise a gray area for appeals that would be very difficult to address. <i>(CASE March 16, 2012 letter)</i></p>	<p>CDE believes that the purpose of the appeal process is to allow a nonprobationary Teacher who is at risk for losing his probationary status due to the results of his evaluation rating to have an opportunity to present a case that will allow him to receive a better rating and thereby retain his nonprobationary status. Since the consequences for receiving a rating of either ineffective or partially effective are the same (two consecutive ratings of either ineffective or partially effective result in loss of nonprobationary status), CDE recommends that the appeal process be available to a nonprobationary Teacher who receives a second consecutive rating of either ineffective or partially effective.</p>
6	<p>The appeal should occur on a timeline that allows an employment decision to occur in a timely manner. We would recommend that there be a 45-day appeals</p>	<p>In order to keep the process efficient, CDE recommends keeping the current rule language, which</p>

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	timeline that starts when an appeal is submitted. <i>(CASE March 16, 2012 letter)</i>	requires the appeal process to conclude no later than 45 calendar days after a teacher receives his or her rating of ineffective or partially effective.
7	The appeal decision should be made solely by the superintendent or designee. <i>(CASE March 16, 2012 letter)</i>	CDE agrees and recommends that the rules include the following:  5.04 (A) (8) The superintendent, or his or her designee, shall be the final decision-making authority in determining a Teacher's final Performance Evaluation Rating and whether a nonprobationary Teacher shall lose his or her nonprobationary status.
8	The superintendent or designee should have the option to assemble an advisory panel that is composed of a majority of administrative leaders. <i>(CASE March 16, 2012 letter)</i>	Based on feedback shared by the State Board at its March 7, 2012 meeting, CDE recommends that rules do not prescribe any membership requirements, other than that panels should be comprised of members who were not directly involved in the evaluation process for the appealing teacher.
9	A teacher should be allowed only one appeal, so that his process does not become backlogged at a time when there are fewer people involved in school administration. <i>(CASE March 16, 2012 letter)</i>	CDE agrees and recommends keeping the following rule language:  5.04 (A) (6) A Teacher is permitted only one appeal for the second consecutive Performance Evaluation Rating of ineffective or partially effective. A Teacher filing an appeal shall include all grounds for the appeal within a single written document. Any grounds not raised at the time the written appeal is filed shall be deemed waived.
10	The appeal should only be considered when there is substantial noncompliance with the process, or if there are clear mistakes in the data used to determine	See recommendations in row 1, above.

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	effectiveness. <i>(CASE March 16, 2012 letter)</i>	
11	An appeal should not be raised unless there is a preponderance of evidence to do so. <i>(CASE March 16, 2012 letter)</i>	Other than limiting the grounds upon which an appeal can be made, CDE does not recommend limiting the opportunity for a nonprobationary Teacher to access the appeals process.
12	<p>Clarify the statutory requirement that each local school district make available an appeals process for a nonprobationary teacher who receives his or her second consecutive rating of “Ineffective” or “Partially Effective”.</p> <p>Revise the second sentence of Section 5.04 (C) as follows: Each School District <del>may</del> <u>shall</u> adopt the model appeals process or develop its own distinctive appeals process that satisfies the requirements in section 5.04 (A) and 5.04 (B) of these rules.</p> <p>CRS 22-6-4.5 requires access to an appeals process and so the “may” is inconsistent with statute. To the extent that the intent of the language was to offer the flexibility to school districts to choose the model appeals system or to develop their own locally, that option is afforded in other sections of the rules. However, the Council feels strongly that in order for the pilot to facilitate a meaningful opportunity to assess the quality of the State Model System, the Council feels strongly that during the pilot period, Districts shall use the state model appeals system as part of piloting the State Model Evaluation System. Once the evaluation system is implemented statewide, districts may adopt the model appeals system or develop its own distinctive appeals process that satisfies the requirements in section 5.04(A) and 5.04(B) of these rules. You may also consider moving this sentence, once revised, to appear immediately after the Section Title for Section 5.04 or to Section 5.04 (A) in order to further clarify that it applies to all school district appeals processes, rather than the State Model System.</p>	<p>CDE recommends that the rules include the following language in section 5.04 (B):</p> <p>Each School District that adopts the State Model System shall incorporate an appeal process that meets the requirements in section 5.04 (A) of these rules, but may choose either to use the model appeal process that incorporates the use of a review panel, to use the model appeal process that does not use a review panel, or to develop its own distinctive appeals process that satisfies the requirements in section 5.04 (A) of these rules.</p>
13	Clarify Section 5.04(C)(4) as follows:	Based on feedback shared by the State Board at its

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	<p>A simple majority of the panel shall <del>have the authority to recommend</del> <u>determine the recommendation</u> that a Performance Evaluation Rating of “Effective” was appropriate.</p>	<p>March 7, 2012 meeting, CDE recommends that this section be removed from the rules, in order to not prescribe how a review panel arrives at its recommendations.</p>
14	<p>The panel included within the state model appeals process should be comprised of an equal number of teachers and administrators. The total number of panel members should be determined by the local school district. The Council’s original recommendations were supported by five guiding principles. We believe that fidelity to these principles is critical to the success of adopting and implementing the statewide evaluation system. The fourth of these principles emphasizes the important role of collaboration in this process – “The development and implementation of educator evaluation systems must continue to involve all stakeholders in a collaborative process.” The promise of SB 191 lies in its ability to set higher expectations for all educators in Colorado and achieve greater results for students by creating a system of shared leadership and shared accountability. This system of shared accountability and shared leadership requires that educators share equally in the responsibility of holding high expectations and taking action when those expectations have not been met after two years of demonstrated poor performance.</p> <p>We acknowledge that for many of our state’s small and rural districts it may be difficult if not impossible to find an educator who is willing to serve on an appeal panel, has the requisite expertise and is without personal relationships that make it difficult for them to remain objective or impartial in an appeal review. We believe there are opportunities to address this very real situation (consider a state-level cohort of trained peers, or peers from neighboring districts, for example). We also believe that the need for an appeal process will be commensurate with the number of teachers employed by a school district – meaning, that the greatest number of appeals will be in those school districts employing the greatest number of teachers.</p>	<p>Based on feedback shared by the State Board at its March 7, 2012 meeting, CDE recommends that rules do not prescribe any membership requirements, other than that panels should be comprised of members who were not directly involved in the evaluation process for the appealing teacher.</p>

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15	<p>In the state model appeals process, teacher representatives should be appointed to serve on an appeals panel through collective bargaining, where applicable. The use of collective bargaining to appoint teacher representatives to an appeals panel is consistent with the statutory requirement in CRS section 22-9-106 (4.5) (b) that the process be “developed, where applicable, through collective bargaining”.</p>	<p>See response in row 15, above.</p>
16	<p>Clarify language in section 5.04(C)(5) of the rules as follows:  The review panel shall be comprised of members who were not <del>directly involved in</del> <u>responsible for</u> the evaluation process for the appealing teacher.</p>	<p>CDE recommends keeping the current language in this section. The intent of the current language is to ensure that an appeal panel be comprised of individuals who can offer objective opinions and will not be biased by their role in assigning the rating that is being appealed. The appeal panel would not include principals or their designees who were responsible for assigning the rating, and also would not include peer-observers or other individuals who contributed evidence or observations that were used in determining the initial rating.</p>
17	<p>We support the proposed language in section 5.04 (B) (2) and (3) that an any appeal be concluded no later than 45 days after receiving the Performance Evaluation Rating, except under a very limited number of extenuating circumstances, and only with mutual agreement of the teacher and the district. Having an appeal process that concludes within 45 days or less is desirable for both the employing school district and the appealing teacher. A final decision will free up the school district to make necessary hiring or placement decisions, and resolves uncertainty for the teacher regarding their personal employment status. In a very limited number of extenuating circumstances it may be necessary for the timeline to exceed 45 days in order to comply with the statutory guidelines and rules. For example, a small, remote school district may require more time to identify qualified, impartial members to serve on its appeal panel. Alternatively, a large district may lack the staff and capacity to process a large number of appeals</p>	<p>In order to ensure that appeals decisions are made efficiently, CDE recommends that the rules require decisions be made in 45 days, without exceptions. Ideally, districts will consider their capacity and the resources that are available to them as they design their appeals process.</p>

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	<p>within the 45 day period, which may occur early in the process of implementing a new system. The need to extend an appeal beyond 45 days should be rare and should only occur if both the district and the appealing teacher mutually agree.</p>	
18	<p>An appeal should not consist merely of a reconsideration of the initial Performance Evaluation Rating based upon the evidence used to determine that rating, but should include the opportunity to consider whether the evidence relied upon was accurate and appropriate, as well as whether the process was adequate.</p> <p>In the interest of facilitating the State Board’s ability to consider other comments received in response to the draft rules, we offer the following responses to the “three potential challenges a teacher would raise on appeal” identified in the letter, dated February 24, 2012, submitted by the sponsors of SB 191. <i>Italicized text was copied from that letter.</i></p> <p><i>1. The teacher is substantially an effective teacher even though he or she received a rating of ineffective: the evaluator just got it wrong.</i></p> <p>We agree with the bill sponsors that an appeal should not serve simply as “another bite at the apple” and that an appeal should not be an opportunity to look at the same evidence and simply arrive at a different conclusion. However, we anticipate that in certain instances a portion of the evidence used to determine the evaluation was incomplete (no evidence was collected on Quality Standards I-V, for example), or inaccurate (for example, an evaluator reviewed the student work from students that the teacher did not teach). In such cases, the appeal should provide an opportunity to reconsider the performance rating in light of the full body of evidence, after making appropriate corrections.</p> <p><i>2. Data was not an accurate representation of how much students grew: the data just got it wrong.</i></p>	<p>See recommendations in row 1, above.</p>

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	<p>We agree with the bill sponsors that an appeal should not provide a forum to debate the validity and reliability of TCAP or other data that comprises the 50% of the teacher’s performance based upon the academic growth of their students. However, there are instances when such data may be inaccurate for reasons that should be properly considered in an appeal. There are several examples of when this might occur. Among others, possible reasons for debating the data used could include:</p> <ul style="list-style-type: none"> <li>• The data used was clearly outside the bounds of the technical guidelines set by CDE</li> <li>• Several of the students’ scores used were based upon the performance of highly mobile students such that they should not have been attributed to the teacher</li> <li>• The number of student scores included in the measure was so small as to make them unreliable</li> <li>• Interim assessment data was included for only some not all of the periods for which such data is available</li> </ul> <p><i>3. The fair process for evaluation was not followed: the evaluator just didn’t follow the process fairly.</i></p> <p>We agree with the bill sponsors that the appeal should provide an opportunity to review flaws in the process used to collect the evaluation evidence and make a final determination. An appeal should not consider a fictitious ideal process for conducting evaluations and invalidate a rating simply because the process used fell short of that ideal. Rather, it should be used to invalidate a rating when the process was clearly flawed in material and significant ways. In this way, it provides an opportunity for continuous improvement of the system to the benefit of all educators and students.</p>	