

**From:** Witt Ken  
**Sent:** Thursday, August 28, 2014 6:21 PM  
**To:** Neal Helen E  
**Subject:** Please share with board

>> I recommend that the board approve a compensation model that recognizes and rewards great teachers, and supports the goal of an effective teacher in every classroom, by adhering to the following constraints and costing no more than the \$18.2M budgeted for compensation increases, inclusive of all Jeffco compensation increases, in addition to the legislated annual 0.5% SAED PERA increase in lieu of other compensation increase and the 0.4% PERA increase. Those constraints are:

- 1) Compensation increases should be based on the most recent employee evaluation ratings and shall be retroactive to the beginning of the 2014-2015 compensation period start date;
- 2) Every effective and highly effective Jeffco teacher shall receive a compensation increase;
- 3) All full-time Jeffco teachers shall have their compensation raised to \$38,000/yr, if their salary is lower than ~\$37.6K;
- 4) No teacher rated ineffective and no non-probationary teacher rated partially effective shall have any compensation increase other than the PERA increases, except if a full-time teacher annual salary is below \$38K, in which case it will be raised to \$38K;
- 5) Highly effective teachers shall receive a compensation increase that is at least 50% higher than the compensation increase of effective teachers;
- 6) Effective teachers whose salary is greater than an amount identified by the administration and approved by the board as above market shall receive bonuses in lieu of salary increases; and
- 7) The district should provide numerical detail of a compensation plan consistent with these constraints by Sep 2, so the board may consider the compensation plan for approval on Sep 4.

Ken Witt  
Jeffco Board of Education

**IN THE MATTER OF FACT-FINDING BETWEEN:**

**JEFFERSON COUNTY PUBLIC SCHOOLS**

**AND**

**JEFFERSON COUNTY EDUCATION ASSOCIATION**

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**REPORT AND RECOMMENDATIONS OF THE FACT-FINDER**

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A fact-finding hearing in this matter was conducted on August 16, 2014 before Marshall A. Snider, the Fact-Finder selected by the parties. Jefferson County Public Schools was represented at the fact-finding hearing by Michael Schreiner, Esq. and James C. Branum, Esq. Bradley Bartels, General Counsel, Colorado Education Association and Kris Gomez, Esq., attorney for the Colorado Education Association, represented the Jefferson County Education Association.

**I. INTRODUCTION AND STATEMENT OF THE ISSUES**

Jefferson County Public Schools (the District) and the Jefferson County Education Association (the Association) are parties to a collective bargaining agreement effective from September 1, 2011 to August 31, 2015. Section 5-5-1 of that agreement provides that if the parties are at impasse when negotiating successor agreements the issues in dispute will be submitted to mediation. If mediation fails to bring about an agreement on all issues, the contract further provides that the mediator or another fact-finder will conduct fact-finding (Collective Bargaining Agreement, Section 5-6-4).

This matter is before the undersigned Fact-Finder pursuant to these contractual provisions. On July 11, 2014 the parties and the Fact-Finder participated in a conference at which the issues for fact-finding were agreed upon. The matters for fact-finding were identified as those contained in the proposed revised contract language of May 9, 2014 (the May 9 proposal). The parties agreed that at the fact-finding hearing evidence would be taken on the matters set forth in paragraphs 1 and 2 of the May 9 proposal. Those paragraphs provide as follows:

1. For the 2014-2015 school year, all teachers rated effective as described below will move one step on the salary schedule.
2. Beginning in the 2014-2015 school year, there will be no salary increase for any non-probationary teachers rated partially effective or ineffective as per the professional practices standards, and no salary increase for probationary teachers rated ineffective. To

insure a fair and rigorous evaluation system, the District commits to additional evaluation training to be incorporated into the leadership training program for all administrators. If an evaluator does not follow the process with fidelity, for the purposes of pay increases, the evaluation rating will be considered as effective.

At the July 11 conference the parties also agreed that no evidence needed to be presented on the items contained in paragraphs 3 through 11 of the May 9 proposal and that the Fact-Finder can report that these items should not be changed. At the July 11 conference the Association reserved the right to object to the re-opening of the matters set forth in paragraphs 3 through 11 of the May 9 proposal.

As agreed upon at the July 11 conference, the evidence at the fact-finding hearing was limited to the matters set forth in paragraphs 1 and 2 of the May 9 proposal. The Fact-Finder hereby issues his report on the facts and the Fact-Finder's recommendations, as contemplated by Section 5-6 of the collective bargaining agreement.

## **II. THE 2014 NEGOTIATIONS**

Although the parties' labor agreement is effective between September 1, 2011 and August 31, 2015, Section 5-2-3 of the contract provides that compensation is to be negotiated annually. In addition, under this section of the contract each party has the option to submit two other items for negotiation each year.

In March, 2014 the parties entered into negotiations over compensation as well as two items proposed by each party. The District's issues involved class size and leave for Association business, and the Association presented as issues an extension of the labor agreement and workload. As negotiations proceeded the Association's bargaining team became concerned that the District's school board was not negotiating in good faith. In the Association's view the District was not engaging in interest based bargaining in good faith because the Association believed that it had agreed to proposals that met the stated interests of the District, yet the District rejected those proposals. As an example of such an issue, the Association believed it had met all of the District's interests regarding extension of the contract, yet the District would not agree to an extension.

For this reason the Association declared an impasse on April 7, 2014. The District's school board then made a request of the Association to identify what it would take for the Association to return to the bargaining table. On April 14, 2012 the Association presented a letter to the board in which it stated that in order to return to bargaining the Association wanted to see a concrete demonstration of good faith bargaining. The Association identified a three year extension of the labor agreement as something that would demonstrate good faith. The District's board declined to extend the labor agreement.

Because the parties remained at impasse the next step in the process, as set forth in the labor agreement, was to engage in mediation. The parties entered into mediation with a mediator from the Federal Mediation and Conciliation Service.

### **III. The Mediation and the Tentative Agreement**

The federal mediator met with the parties on May 8, 2014. One of the compensation issues discussed at the mediation was the extent to which teacher pay would be tied to performance. At the end of the day the negotiating teams reached a tentative agreement, on which both parties signed off. As relevant to this fact-finding, the tentative agreement contained the following two paragraphs regarding the relationship between pay and performance:

1. For the 2014-2015 school year, all teachers not rated ineffective as described below will move one step on the salary schedule.
2. Beginning in the 2014-2015 school year, there will be no salary increase for any teacher rated ineffective as per the professional practices standards. To insure a fair and rigorous evaluation system, if an evaluator does not follow the process with fidelity, for the purposes of pay increases, the evaluation rating will be considered as effective.

At the time of this negotiation the District's performance evaluation instrument permitted four ratings: highly effective, effective, partially effective and ineffective. The effect of the two paragraphs quoted above was that any non-probationary teacher who was not rated ineffective for the 2013-14 school year (that is, teachers rated highly effective, effective and partially effective) would receive a step increase in the 2014-15 school year, and that teachers rated partially effective in ensuing years would also receive step increases.<sup>1</sup> At one point in the negotiations the Association proposed that non-probationary teachers rated partially effective would not receive step increases, for the 2015-16 school year. The concept behind this proposal was that, unlike the tentative agreement, non-probationary teachers rated partially effective would not receive a salary increase. However, this proposed term of the contract would not be implemented until the 2015-16 school year so that the parties would have an additional year to improve the District's performance evaluation system before that system could be used to deny pay increases to teachers rated partially effective, and also to give teachers advance notice of this potential impact on salary. This Association proposal was not included in the tentative agreement.

The evidence at the fact-finding hearing was conflicting regarding the effect of the May 8 tentative agreement. According to Amy Weber, the District's Executive Director of Human Resources and the lead negotiator of the District's bargaining team, the parties' negotiating teams had an unwritten understanding that the content of the tentative agreement would have to be acceptable to the District's board and to the

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1. A step increase is an increase in pay based upon a teacher's years of service with the District.

Association's council.<sup>2</sup> According to Weber, it was understood by both parties that if either the school board or the Association's council had problems with any items in the tentative agreement, those items would be reopened for additional negotiation. In short, the District's negotiating team believed that neither party considered the tentative agreement to be a final agreement.

The Association's evidence at the hearing painted a different picture of the effect of the tentative agreement. According to Lisa Elliott, the Association's executive director and staff liaison to the bargaining team, the Association did not understand that the tentative agreement would be open to further negotiations. Elliott knew that the District's bargaining team was contacting school board members after the tentative agreement was reached, but thought that those discussions were only about the total dollars committed in the tentative agreement. Elliott did not expect any substantive changes to the tentative agreement.

On the night of May 8 or the morning of May 9 the District's negotiators advised the Association's bargaining team that the District's board would not accept the tentative agreement. In particular, the school board members were not in agreement with paragraphs 1 and 2 of the tentative agreement regarding pay increases for non-probationary teachers rated above an ineffective rating. Elliott was surprised to learn that the District's board would not agree to pay increases for non-probationary teachers rated partially effective.

On May 9 the negotiators contacted the federal mediator in an attempt to resolve the differences regarding this issue. On May 9 the District made a proposal to revise paragraphs 1 and 2 of the tentative agreement (the May 9 proposal). This proposed revision contained the following language:

1. For the 2014-2015 school year, all teachers rated effective as described below will move one step on the salary schedule.
2. Beginning in the 2014-2015 school year, there will be no salary increase for any non-probationary teachers rated partially effective or ineffective as per the professional practices standards, and no salary increase for probationary teachers rated ineffective. To insure a fair and rigorous evaluation system, the District commits to additional evaluation training to be incorporated into the leadership training program for all administrators. If an evaluator does not follow the process with fidelity, for the purposes of pay increases, the evaluation rating will be considered as effective.

The effect of the May 9 proposal was that teachers rated partially effective for the 2013-14 school year would not receive a step increase in 2014-15. Teachers rated partially effective in the future would similarly not receive step increases under the May

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2. The Association's council is a body consisting of elected representatives from all of the District's schools.

9 proposal. The District included the language in paragraph 2 of this proposal, committing to additional training for evaluators, in an attempt to address the Association's concerns with the validity and consistency among evaluators of an evaluation process that could deny pay raises to some teachers. However, this language was not sufficient to persuade the Association to accept this revised proposal.

The Association presented the May 9 proposal to its council. Rather than accept the May 9 proposal, the council voted to send the May 8 tentative agreement to the Association's members for a ratification vote, knowing that there was a good chance the District's board would not approve the tentative agreement. Some days later the Association's members voted to ratify the tentative agreement. At a June 5, 2014 school board meeting the District's board rejected the tentative agreement by a 3-2 vote and moved to send the matter to fact-finding.

#### **IV. The District's Teacher Evaluation System**

The parties' collective bargaining agreement requires that non-probationary teachers have one observation by an evaluator prior to winter break. Evaluators who have "performance concerns about the overall effectiveness of a non-probationary teacher" are required to schedule at least one more observation (Collective Bargaining Agreement, Section 16-11-2). The District trains evaluators pursuant to this contractual provision that if an evaluator observes less than effective performance the evaluator must complete at least one more formal observation. In addition evaluators may make informal classroom visits of varied lengths (Collective Bargaining Agreement, Section 16-11-3).<sup>3</sup> Accordingly, a teacher who is rated partially effective will have been observed at least twice. In addition, a teacher can ask an evaluator to return to the classroom for another observation and teachers who receive partially effective ratings can file grievances under the collective bargaining agreement.

The current evaluation system has been in place since the 2007-08 school year. This performance evaluation system has been developed and refined by a joint committee of the District and the Association known as the 1338 Committee.<sup>4</sup> While this committee in the past included four or five teachers, currently only two Association members serve on the 1338 committee.

##### **A. The District's Evaluation and Scoring Systems**

A teacher's overall evaluation as highly effective, effective, partially effective or ineffective is based on a rubric that evaluates a teacher in three broad categories: professional preparation, professional techniques and professional responsibilities.<sup>5</sup>

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3. The contractually required classroom observation, known as a formal observation, is of an entire class period. Informal classroom visits under Section 16-11-3 are for less than an entire period.

4. Section 16-9 of the collective bargaining agreement requires that teachers be members of the 1338 Committee.

5. Evaluation in these three areas is mandated by Section 16-12-1 of the collective bargaining agreement.

Each of these categories is evaluated on the basis of a number of indicators, and each indicator is assessed pursuant to a descriptor that guides the evaluator. For example, under the category of professional preparation the first indicator is whether the teacher demonstrates accurate, up-to-date knowledge of the subject. An effective teacher is described as someone who accesses and uses current research and professional resources to increase and apply knowledge. A partially effective teacher under this indicator is a teacher who accesses a few resources.

As another example, again in the category of professional preparation, one indicator is whether a teacher plans and implements research-based best practices. An effective teacher under this indicator purposefully aligns instructional practices with content knowledge in the planning process, while a partially effective teacher is described as a teacher who does so occasionally.

A teacher's overall evaluation is determined by assigning a score to each ranking for each indicator. A teacher who is rated as highly effective in a particular indicator receives three points, an effective teacher two points, a partially effective teacher one point, and an ineffective teacher in that indicator receives no points. These scores within each of the three overall categories (professional preparation, professional techniques and professional responsibilities) are added to obtain a rating of highly effective, effective, partially effective or ineffective in each category. Those three categorical ratings are then added to reach the overall rating. Professional preparation and professional techniques are scored by awarding three points to a teacher who is considered highly effective in those categories, two points for an effective rating, one point for partially effective and zero points for a teacher rated ineffective in either of these categories. Ratings for professional responsibility (communication, collaboration, keeping records of student progress and participating in professional learning opportunities) are given less weight, as they are considered less important than classroom performance. A highly effective teacher gets 1.5 points in this category, an effective teacher one point, a partially effective teacher .5 points and an ineffective teacher in the professional responsibility category receives zero points.

Under the previous evaluation system, before the 2007-08 school year, an evaluator could assign a final rating regardless of how the individual indicators were rated. So, for example, of two teachers with the same number of partially effective ratings, one teacher could have been rated effective while the other was rated partially effective. The scoring system described above was designed to correct this inconsistency in rating results.

Nevertheless, the District's evaluation and scoring system can lead to some fine lines being drawn between a teacher being rated effective and that same teacher receiving a partially effective evaluation. Some of the lines being drawn are quantitative. For example, an evaluator must distinguish between a teacher who does something consistently and a teacher who does something occasionally, or must assess whether a teacher has an understanding of content or a limited understanding. In addition, the scoring system can theoretically move a teacher from effective to partially



effective based on a lower rating in just one of the 23 indicators on the rubric. Conversely, the teacher may theoretically move from partially effective to effective based on a higher rating in just one indicator.

## B. Inter-Rater Reliability and Validity of Evaluations

Inter-rater reliability (or “rater bias”) is the concept that evaluations should be consistent within schools as well as across schools. That is, a teacher should receive the same rating no matter who performs the evaluation, and a particular evaluator should be consistent in how he or she rates different teachers. No evaluation system can have 100% inter-rater reliability; human judgment is involved in any teacher evaluation process and some subjectivity will always exist in such a system.

Nevertheless, an evaluation system can be designed to reduce the effects of subjectivity and rater bias and to lead to results that are increasingly valid and reliable. When a rating is based on a single observation, that evaluation can be questioned as to its validity and reliability. One observation does not provide sufficient data points to result in a valid or reliable rating. In the District’s evaluation system, if a rater has “concerns about the overall effectiveness of a teacher”, that is, has rated a teacher as partially effective or ineffective, at least a second observation is required.

Reliability and credibility of an evaluation system can be improved by collecting data from a number of sources over time. For example, a system could involve multiple observations, having a teacher’s principal evaluate the teacher along with a trained peer evaluator, and having a principal from a different school evaluate a teacher. However, collecting more data over time and involving principals or peers from other schools involves increased costs to a school district.

The results of the District’s current evaluation system raise questions regarding inter-rater reliability, and thus the validity of evaluations between schools. A review of recent evaluation results in the District’s schools having more than 20 teachers reveals that in over 45 per cent of the schools all teachers were rated highly effective or effective; that is, no teachers were rated partially effective or ineffective in nearly half of the District’s schools. One school rated all of its teachers as being effective (none highly effective or partially effective). In three other schools 76 per cent, 72 per cent and 64 per cent of teachers respectively were rated highly effective.

By comparison, while nearly a majority of the District’s schools contained no partially effective or ineffective teachers, in one-tenth of the schools (12 out of 123), 10 per cent or more of the teachers were rated as partially effective; in three of these schools 20 per cent or more of the teachers were rated partially effective. There are many variables that theoretically could account for these differences among schools, and no one suggests that the ratio of highly effective to effective to partially effective ratings must be the same in every school. Nevertheless, these figures reflect extreme variations in ratings from school to school. The totality of the evidence at the fact-finding hearing establishes that teachers in different schools are treated differently in

their evaluations. To a significant extent the District's evaluation process lacks the degree of inter-rater reliability necessary to make valid salary distinctions.

### C. The Strategic Compensation Program

The District has in place a pilot project at 20 schools known as the Strategic Compensation Program, or Strat Comp. One purpose of this program is to look at the relationship between evaluations and compensation. Non-probationary teachers in Strategic Compensation schools are evaluated in two formal evaluations every year. In addition, there are between 5 and 12 informal evaluations during the year. Teachers in Strat Comp schools are evaluated by at least two evaluators: either an administrator and a peer evaluator or two peer evaluators. Peer evaluators are teachers on full-time special assignment who have had intensive training on the evaluation rubric and feedback. Peer evaluators receive more training in evaluations than some principals in non-Strat Comp schools.<sup>6</sup>

A review of the evaluation ratings in Strategic Compensation schools compared to other District schools reveals that while two percent of the teachers in the other schools received a partially effective rating, 12% of Strat Comp school teachers were rated as partially effective. While there are variables in the schools that could account for this difference, the difference in percentages of partially effective teachers is statistically significant, and reflects that it is more likely than not that teachers in Strategic Compensation schools are rated differently than other teachers in the District. Evaluations in Strat Comp schools are more rigorous and stringent than in other schools.

The number of observations, the existence of two evaluators, the presence of peer evaluators and the increased level of training of evaluators in the Strat Comp program all address the issue of inter-rater reliability and provide increased validity to evaluations conducted under that program, compared to a system involving only a single evaluator making one or two observations. Evaluations under the Strategic Compensation pilot program thus have greater inter-rater reliability and validity than evaluations in other District schools. Most teachers in the District feel that Strat Comp is a fair evaluation system.

## V. SALARY IMPACTS OF THE PROPOSALS

In the 2011-12 school year teacher salaries in the District were cut by three percent, and work days were reduced accordingly. Pay continued at the reduced level in the 2012-13 school year. In the 2013-14 school year the three percent pay cut was restored, but teachers received no increase in steps (that is, no increase tied to years of service) or levels (that is, no increase tied to increased level of teacher education).

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6. Teachers in the District who are not in the Strategic Compensation Program are not evaluated by their peers.

In May, 2013 the District and the Association agreed that the District would fund salary increases for the 2014-15 school year. The District has funds available to implement step increases to teachers rated as partially effective. Therefore, funding is not an issue in the present dispute. Eighty-three teachers out of approximately 4,500 licensed teachers in the District were rated as partially effective in the 2013-14 school year.

With the exception of Strategic Compensation schools, the District does not base pay determinations on performance. Four school districts in Colorado tie pay to performance evaluations: Douglas County School District; Denver Public Schools; Harrison School District Two; and Eagle County School District. There was no evidence at the fact-finding hearing regarding the specifics of these pay for performance plans.

## **VI. POSITIONS OF THE PARTIES**

The Preamble to the collective bargaining agreement states that “[T]he success of an exceptional educational program depends upon a qualified staff dedicated to high standards and professional development”. Both parties agree with the goal of having an effective educator in every classroom.

The District’s board views its authority to set salaries as a means of ensuring that it meets the goal of having an effective teacher in every classroom. The District does not believe that giving salary increases to teachers rated as less than effective is consistent with that goal. In addition, the District believes that it is unfair to give the same salary increase to less than effective teachers as it does to those who are rated highly effective.

While the District recognizes that no system of evaluation will be 100% accurate, the District points out that the current evaluation process was bargained for by the Association and was developed with the input of the Association. The Association has recognized the validity of the evaluation system; in the 2014 negotiations the Association agreed to use evaluations to exclude ineffective teachers from salary increases, and also offered to exclude partially effective teachers from salary increases in the 2015-16 school year. The District argues that it is in the best interests of students to provide step increases only to teachers who are effective or highly effective. The District asks the Fact-Finder to recommend the adoption of the May 9 proposal.

The Association takes the position that after several years of salary cuts and freezes teachers have only now been restored to pay levels of several years ago. It would be unfair to again freeze salaries for some teachers retroactively.

In the current negotiations the Association was willing to agree that teachers rated as ineffective would not obtain a step increase for two reasons: first, that offer was made in the spirit of compromise; and second, the Association believed that the difference in the evaluation system between effective and ineffective was sufficiently wide that the Association could be confident that ineffective teachers are properly rated.

However, with regard to the difference between an effective rating and a partially effective rating, the Association asserts that the distinctions between these ratings are too narrow, and sufficient inter-rater reliability does not exist. The Association claims that as a result the evaluation system cannot validly distinguish between teachers at these two levels. According to the Association, the evaluation system is not sufficiently reliable to distinguish between an effective teacher and a partially effective teacher on a matter as important as salary. The Association is concerned that under the current evaluation process teachers of equal merit are treated differently depending on what school they work in. The Association argues that the evaluation system needs improvement before it can be tied to salaries.

The Association also argues that the District's board was guilty of bad faith bargaining and that the tentative agreement, as a legal matter, is binding on the District. The Association seeks a recommendation from the Fact-Finder that the District is contractually bound by the tentative agreement, that teachers rated partially effective should receive a step increase in the 2014-15 school year, and that the parties should work collaboratively to improve the evaluation system.

## **VII. DISCUSSION**

### **A. Bad Faith Bargaining and the Tentative Agreement**

The Association claims that the District did not bargain in good faith during the 2014 negotiations regarding compensation. The Association also argues that Section 5-4-1 of the contract requires the District to adopt the tentative agreement.

If the parties reach impasse in their negotiations, the collective bargaining agreement directs that they engage in mediation and, if mediation fails to bring about agreement, fact-finding. Collective Bargaining Agreement, Sections 5-5-1, 5-6. Mediation and fact-finding are processes designed to assist the parties in reaching voluntary agreement on contract terms.<sup>7</sup> The focus of these processes is thus forward-looking: to help the parties reach agreement going forward, not to adjudicate past grievances. Adjudication of grievances is the province of arbitration, in which an arbitrator interprets the labor agreement and recommends remedies for past failures to comply with the contract. Arbitration is a separate process under Article 7 of the labor agreement.

Accordingly, it is not the role of a fact-finder to decide if a party has bargained in bad faith or violated the collective bargaining agreement regarding the effect of a tentative agreement. Those decisions are more properly left to an arbitrator. The goal of the fact-finding process, which is to assist the parties to reach a voluntary agreement going forward, will not be enhanced by making recommendations or assigning blame regarding the conduct of past negotiations.

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7. Section 5-5-1 of the collective bargaining agreement provides that mediation and fact-finding are "for the purpose of inducing the District and the Association . . . to reach a voluntary agreement".

## B. Step Increases for Partially Effective Teachers

The core of the dispute in the 2014 negotiations is whether teachers who received a partially effective evaluation rating for the 2013-14 school year should receive a step increase for the 2014-15 school year. The District seeks a recommendation that those step increases not be made because to do so runs contrary to the goal of both parties to place an effective teacher in each classroom. The District points out that the evaluation system on which a partially effective rating is based has been developed collaboratively with the District and is sufficiently valid and reliable. The Association argues that the evaluation system is not valid or reliable for the purposes of salary determinations, and that it is unfair to retroactively freeze salaries for the teachers in question.

1. The Fact-Finder recommends that teachers who were rated partially effective in the 2013-14 school year receive a step increase in 2014-15. The current method of evaluating teachers is not a sufficiently valid and reliable basis on which to make salary determinations. As evidenced by the extreme variations in ratings from school to school, inter-rater reliability is lacking in the evaluation process with the result that teachers in different schools are treated differently in their evaluations. In nearly half of the District's schools raters determined that no teachers were partially effective or ineffective, while in a tenth of the schools 10 per cent or more of teachers were rated as partially effective. While there are variables that might theoretically account for these differences, the data strongly suggests that differences in ratings are affected by what school a teacher works in and who evaluates that teacher. In addition, the quantitative line drawing between an effective rating and a partially effective rating in any indicator can be so fine that in the absence of greater inter-rater reliability, the ability to accurately draw those lines is brought into question.

The District argues that the Association bargained for the evaluation system, participated in the development of the current system, and that the Association has had no complaint about this process since it first was used in the 2007-08 school year. The Association did agree in the labor agreement to one observation, with more observations if the evaluator has performance concerns. In addition, the Association has collaborated with the District in the development of the evaluation system and apparently acquiesced in its use since 2007. Nevertheless, it does not follow that the Association has agreed that this system is valid for the purpose of salary determinations. The Association may have been satisfied with the current evaluation process as a means of improving teacher performance, but once that system is proposed to be used to set salaries the Association should not be prohibited from raising concerns regarding the reliability and validity of the system for that purpose. Indeed, the Association raised these concerns as soon as the evaluation process was discussed as a potential element in setting salaries.

The District also argues that teachers are protected from invalid evaluations because a teacher can grieve a less than effective evaluation, and because both the tentative agreement and the May 9 proposal provide that if an evaluator does not follow

the process with fidelity the evaluation will be rated as effective for the purposes of salary determinations. Neither of these supposed safeguards is particularly effective as a practical matter. The grievance process can be long, costly, time consuming and emotionally stressful to both teachers and administrators. As to the safeguard provision in the two proposals, trained evaluators should almost always be able to procedurally comply with the evaluation process; it is possible to “follow the process with fidelity”, even if the results are skewed by rater bias.

The goal of both parties is to have an effective teacher in every classroom. Given the lack of reliability of the current evaluation system, however, it cannot be said that teachers who are rated as partially effective are in fact not effective. A more rigorous and valid evaluation process is required before it can be concluded that granting a step increase to teachers rated as partially effective equates with placing ineffective teachers in classrooms or rewarding ineffective teachers.

Finally, it would be unfair in the 2014-15 school year to retroactively freeze the salaries of teachers rated partially effective in 2013-14. During the 2013-14 school year teachers were not put on notice that their salaries would be based on a performance evaluation. If the purpose of the District’s proposal is to reward effective and highly effective teachers, that goal can better be accomplished if teachers are put on notice that they need to work toward those evaluations.

2. The Fact-Finder additionally recommends that for the 2015-16 school year teachers who are not rated effective or above during the 2014-15 school year should not receive salary increases that are available to teachers rated effective and highly effective, provided that the parties jointly develop an improved evaluation system.<sup>8</sup> The Association has not rejected the notion of basing pay increases on evaluation results. The Association was willing in the 2014 negotiations to agree to a salary freeze in 2014-15 for teachers rated as ineffective. In addition, the Association made a proposal in those negotiations to freeze salaries for partially effective teachers in 2015-16. The Association only seeks a more reliable evaluation system than that currently in place if that system is to be used to determine salaries.

The Fact-Finder has found that the current evaluation system lacks sufficient validity and reliability as a basis for setting salaries. The Strategic Compensation pilot program, on the other hand, provides greater inter-rater reliability and validity than the current process and is considered fair by teachers in general.

The Fact-Finder is not necessarily recommending that the Strategic Compensation Program be instituted in all District schools, but that program does

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8. Although the current contract does not cover the 2015-16 school year, in the 2014 negotiations the parties discussed matters related to 2015-16. Not only did the Association propose a salary freeze for partially effective teachers in 2015-16, but in the tentative agreement the parties agreed to a provision related to employer contributions to health insurance premiums for the 2015-16 school year. It is therefore appropriate for this report to discuss the 2015-16 compensation scheme to this extent, in order to completely address the matter in question.

provide a template for improving the existing system. An evaluation process such as Strategic Compensation that includes more data points (such as increased numbers of observations), more than one evaluator, peer evaluators, and increased training of evaluators will be a large step toward reliability of the system and acceptance by all parties as a valid basis on which to set salaries.<sup>9</sup> The Fact-Finder is not an expert in designing such a system, and recognizes that any process involving increased observations, enhanced training and additional raters comes with an increased cost. It is up to the parties to continue their collaborative efforts to improve the evaluation process in a fashion that is workable for both the Association and the District if compensation is to be tied to performance evaluations.

3. If the parties are unable to jointly develop an improved evaluation system for the 2014-15 school year, the Fact-Finder recommends that in 2015-16 teachers rated partially effective receive the same salary increases, if any, available to teachers rated effective and above. The reasons for this recommendation are the same as the reasons for recommending that partially effective teachers receive step increases in the 2014-15 school year, as described in Section VII, B, 1, above.

## **VIII. RECOMMENDATIONS**

On the basis of the above facts and discussion the Fact-Finder makes the following recommendations:

1. Teachers who were rated partially effective in the 2013-14 school year should receive a step increase in 2014-15.

2. For the 2015-16 school year, teachers who are not rated effective or above during the 2014-15 school year should not receive salary increases that are available to teachers rated effective and highly effective, provided that the parties jointly develop an improved evaluation system.

3. If the parties are unable to jointly develop an improved evaluation system for the 2014-15 school year, for the 2015-16 school year teachers rated partially effective should receive the same salary increases, if any, available to teachers rated effective and above.

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9. The Association is not seeking a lax evaluation system that will reward ineffective teachers. Most teachers in the District feel that Strategic Compensation is a fair evaluation process, even though based on its results to date more teachers would be rated partially effective, and therefore be subject to a wage freeze, than under the current evaluation system.

4. Pursuant to the agreement of the parties, the provisions of paragraphs 3 through 11 of the May 9 proposal should be adopted by the parties.

Dated: August 26, 2014

original signature on file  
Marshall A. Snider  
Fact-Finder



BOARD OF EDUCATION  
JEFFERSON COUNTY SCHOOL DISTRICT R-1

**RESOLUTION ACTING UPON THE AUGUST 26, 2014 REPORT AND  
RECOMMENDATIONS OF THE FACT-FINDER**

WHEREAS, the Board entered into an agreement with the Jefferson County Education Association (“JCEA”) setting forth the terms and conditions of employment of teachers within the District for a term beginning on September 1, 2011 and ending on August 31, 2015 (the “Negotiated Agreement”)

WHEREAS, the Board is committed to having an effective educator in every classroom and to paying employees based on performance; and

WHEREAS, the Board has discussed the need to increase starting salaries for new teachers in order to remain competitive in the marketplace; and

WHEREAS, Jeffco teachers have not had a pay increase since school year 2010-2011; and

WHEREAS, the Board engaged in negotiations with JCEA concerning potential revisions to the terms and provisions of the Negotiated Agreement for the 2014-2015 year, including compensation, that would allow the Board to meet the budget and appropriation requirements of Colorado law; and

WHEREAS, the Board proposed a salary schedule step increase for the 2014-2015 school year for all teachers who received an evaluation rating in the 2013-2014 school year of effective or highly effective and for probationary teachers rated partially effective; which proposal would result in a salary increase for the vast majority of the teachers in the District; and

WHEREAS, JCEA rejected the Board’s proposal and insisted on salary step increases for all partially effective teachers; and

WHEREAS, the Board and JCEA did not reach agreement on compensation and other issues for the 2014-2015 contract year; and

WHEREAS, on August 16, 2014, the Board and JCEA participated in fact finding in accordance with the Negotiated Agreement; and

WHEREAS, the District presented evidence at the fact-finding hearing regarding the system of evaluation used for teachers during the 2013-2014 school year, including evidence that the evaluation system was developed in cooperation with JCEA and that the system has been used without complaint since the 2007-2008 school year; and

WHEREAS, the District presented evidence regarding the validity and fairness of the evaluation system and data reflecting the number of teachers rated highly effective, effective, partially effective, and ineffective in the 2013-2014 school year; and

WHEREAS, on August 26, 2014, the Fact Finder issued his report and recommended that the dispute between the District and JCEA be resolved by providing salary step increases for all teachers except those rated ineffective; and


WHEREAS, on August 28, 2014, representatives of the District and the Association met to discuss the fact finder's recommendations and attempted to resolve the outstanding issues; however, no resolution was reached; and

WHEREAS, pursuant to Article 5-5-6 of the Agreement, the Board must now act upon the fact finder's recommendations and make a final determination regarding those issues that were the subject of negotiation for the 2014-2015 school year, including compensation increases for teachers.

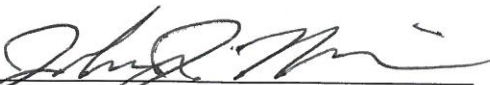
NOW, THEREFORE, BE IT RESOLVED, by the Board of Education as follows:

1. The Fact Finder's recommendations are rejected.
2. Staff is directed to provide the Board information regarding funding of the teacher compensation proposal presented to the Board at its meeting on August 28, 2014.
3. The Board will make a final determination regarding those issues that were the subject of negotiations for the 2014-2015 school year, including compensation increases for teachers, no later than October 10, 2014.

JEFFERSON COUNTY SCHOOL DISTRICT R-1

By:   
\_\_\_\_\_  
Ken Witt, President  
Board of Education

Attest:

  
\_\_\_\_\_  
John J. Newkirk, Secretary  
Board of Education

RESOLUTION OF THE BOARD OF EDUCATION OF JEFFERSON COUNTY PUBLIC SCHOOLS  
REGARDING STATE EDUCATION FUNDING

WHEREAS, to ensure that every student in Colorado has the same educational opportunities regardless of where the student lives, Colorado's school finance formula since 1994 has included both a base amount per pupil funding and an additional amount based on "factors" to account for unique local conditions and equalize total per pupil funding across school districts; and

WHEREAS, the factors funded through Colorado's school finance formula address significant variables, including district size, personnel costs, cost of living and the number of at-risk students in a district; and

WHEREAS, in order to provide the constitutionally required balanced budget, the legislature reduced funding via the "negative factor" which has, to date, extracted more than \$1 billion from the state's support for public education; and

WHEREAS, over the past three years, Jefferson County public schools have thereby lost the opportunity to invest approximately \$275 million; and

WHEREAS, without said "negative factor," the School Finance Act formula would have provided Jeffco Public Schools with significant additional annual funding since the 2010/2011 school year; and

WHEREAS, when these reductions in spending were necessitated each school district was given latitude to make the decisions on program priorities that were uniquely tailored to its students' needs, and we therefore believe that each school district should be given the same latitude in determining the priorities in restoring or funding programs as revenues are increased, a concept completely in concert with the principle of local control; and

WHEREAS, the legislature has passed multiple significant reform efforts, including but not limited to: the Preschool to Postsecondary Education Alignment Act (CAP4K) – Senate Bill 08-212, the Education Accountability Act of 2009- Senate Bill 09-163, the Educator Effectiveness Law- Senate Bill 10-191, and the Colorado READ Act- House Bill 12-1238, without adequate revenue support; and

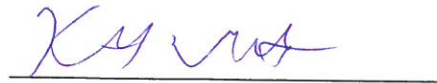
WHEREAS, these laws impose additional unfunded obligations on Jeffco Public Schools already burdened by reduced funding due to the "negative factor;" and

WHEREAS, the majority of superintendents have asked for increases in funding to be given to districts to allocate as the constitution dictates allowing for local control,

NOW THEREFORE, BE IT RESOLVED that the Jefferson County Public Schools Board of Education calls upon the Colorado Legislature to make it a priority to return to a sensible and constitutional system of school finance, thereby allowing local boards of education the flexibility in funding as deemed necessary at the local level.

Approved this 28<sup>th</sup> day of August, 2014, by a vote of

  
John J. Newkirk  
Secretary, Board of Education

  
Ken Witt  
President, Board of Education