



Legislative Research Commission

Analysis of Collective Bargaining Agreements in Kentucky Districts

Research Report No. 377

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Foreword

In December 2009, the Education Assessment and Accountability Review Subcommittee approved the Office of Education Accountability's 2010 research agenda, which included an analysis of collective bargaining agreements in Kentucky districts.

Staff would like to thank district personnel who were interviewed as part of this research project for their time and insights.

Robert Sherman
Director

Legislative Research Commission
Frankfort, Kentucky
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Summary

This report focuses on the impact of collective bargaining agreements (CBAs) on teacher hiring, teacher evaluation, and school-based decision making in nine Kentucky districts: Boone, Bullitt, Jefferson, Kenton, Knott, Martin, McCracken, and Wolfe Counties; and Newport Independent. About 22 percent of all Kentucky students and 23 percent of all Kentucky teachers are in districts with CBAs. Review of CBAs is important because contract provisions affect education reform efforts such as differential pay for highly effective teachers, the use of student performance data in teacher evaluations, tenure reform initiatives, and the implementation of charter schools in struggling districts. All districts struggle with recruitment and retention of high-quality teachers. The staffing challenges vary by district depending on factors such as region and location of the district and school, and the student body demographic.

This report finds that CBAs create different challenges across the state, with Jefferson County's CBA the most comprehensive and cumbersome. KRS 160.380(1)(c) permits CBAs to set out processes for staffing before declaring a vacancy. All CBAs except Jefferson County's have limited impacts on school staffing. The Jefferson County contract, however, strongly affects the staffing policies in the district. The staffing policy is seniority driven, providing the most experienced teachers preference in transferring to open positions across the district. In addition, Jefferson County's contract includes a paper transfer provision that constrains the autonomy of principals and councils to potentially retain new hires made after August 1 of each school year.

Review of staffing data in Jefferson County raises concerns about the distribution of high-quality teachers. Analysis of transfer list requests shows that an inordinate number of teachers request to transfer to high-performing schools that are often magnet or traditional schools. Conversely, lower-performing schools tend to attract fewer transfer requests. Lower-performing schools have more inexperienced teachers and higher turnover rates than higher-performing schools. In the six Jefferson County schools identified as persistently low performing in April 2010, a large percentage of teachers being hired were teacher interns with less than 1 year of experience.

Most other districts have had seniority and paper transfer provisions similar to those of Jefferson County, but these districts in the last decade have renegotiated their contracts to remove such procedures. While seniority can still guarantee an existing employee in a district an interview for a position, it does not guarantee a transfer. With the exception of Jefferson County, the hiring authority remains, by and large, with the principal and the school council. According to administrators in districts that have removed seniority transfer guarantees, the process for filling vacancies used today is far superior to the process used in the past.

Given the experiences of other districts and the concerns of administrators in Jefferson County about the transfer process, the Office of Education Accountability (OEA) makes the following recommendations:

Recommendation 3.1

Districts should ensure that seniority-based transfer provisions in collective bargaining agreements are aligned with education reforms such as SB 1 (2009) and HB 176 (2010) that focus on improving student learning and performance.

Contract Modification

Several contracts permit the use of memoranda of agreement (MOAs) to modify contract contents in the interim between contract ratification and renegotiation. MOAs are typically not used extensively in most districts; however, more than 200 MOAs have been negotiated between Jefferson County Public Schools and the Jefferson County Teachers Association since 1983. The MOAs cover issues ranging from school restaffing to curriculum. Once negotiated and agreed upon, MOAs become de facto policy, but the individual MOAs are not reflected in formal contract language. Consequently, it is unclear whether the Jefferson County Board of Education is aware of MOAs and their effect on district policy.

The Kentucky Department of Education does not collect or monitor CBAs to determine their compliance with statutes. In addition, the MOAs submitted to OEA were not easily accessible or organized in a way that promotes transparency. As a result, OEA makes the following recommendations.

Recommendation 1.1

A board policy or memorandum of agreement that places extra restrictions on a school-based decision making council should be reviewed by the Kentucky Department of Education to ensure that it does not restrict the legal duties of a school council.

Recommendation 1.2

The Kentucky Department of Education should ask districts to annually submit copies of all collective bargaining agreements, memoranda of agreement, and other contract modifications.

Recommendation 1.3

Memoranda of agreement, or other modifications to the contract used to modify, explain, or alter a bargained agreement, should be maintained in a manner that allows for ease of access and should refer to the specific contract provision modified.

Recommendation 1.4

A district that modifies terms and conditions of collective bargaining agreements should have a written policy defining the practice and a method for documenting the modified contract terms.

Teacher Evaluation

Analysis of CBAs found that districts are complying with statutes when evaluating teachers. The analysis found that four contracts forbid the use of student performance data in teacher evaluations. The teacher association presidents interviewed all expressed concern and opposition regarding differential pay and performance pay. Administrators interviewed in some districts expressed concern about tenure and the difficulty of removing tenured teachers using evaluation. However, this concern is related more to tenure law than to contract provisions.

Other Issues

Outside of Jefferson County, few administrators reported that teacher associations had a major influence on school administration. However, most of the administrators interviewed said CBAs tend to center on adult problems, diverting much-needed attention away from student performance. Likewise, administrators interviewed expressed concern that CBAs can make it difficult to implement new policies and initiatives in a timely manner. Anything that affects working conditions might require negotiation and teacher association endorsement.

One final issue of importance—political activity—applies only to Jefferson County. Staff analysis of campaign finance data found that Better Schools Kentucky PAC—a political action committee affiliated with the Jefferson County Teachers Association—contributes hundreds of thousands of dollars per election cycle in independent expenditures on behalf of their endorsed school board candidates. These independent expenditures provide candidates with substantial resources that include radio advertisements, yard signs, T-shirts, and billboards; the committee also pays members to hold signs supporting endorsed candidates on election day. Although such expenditures are governed by statute and recorded with the Kentucky Board of Election, it is important to note that resources of the Jefferson County Teachers Association provide substantial political clout in the election of school board members.

Chapter 1

Contract Overview

Introduction

This report focuses on the effects of collective bargaining agreements on teacher hiring, teacher evaluation, and school-based decision making.

In November 2009, the Education Assessment and Accountability Review Subcommittee directed the Office of Education Accountability (OEA) to study the effects of collective bargaining agreements (CBAs) on school districts. This report focuses on the effect of CBAs on teacher hiring, teacher evaluation, and school-based decision making councils. Currently, 9 of Kentucky's 174 school districts operate under collective bargaining agreements.

The effects of union teacher contracts on districts are largely unknown.

School districts and state departments of education across the country are exploring new techniques to evaluate, compensate, and reward teachers. Leadership in schools and districts needs flexibility to implement such strategies. Therefore, it is important to evaluate the effect CBAs have on potential reforms. While a handful of national studies on teacher contracts have been conducted, no recent study has been conducted in Kentucky (Price; Riley; Cohen). Overall, the effects of CBAs on student performance are largely unknown.

New federal policy initiatives can be at odds with the policies found in collective bargaining agreements.

Federal education policy, as witnessed by the No Child Left Behind Act, can spur state-level changes in education policy. President Barack Obama's Race to the Top program and school improvement grants are recent attempts by the federal government to encourage changes in state education policy. A major component of these federal initiatives involves recruiting, hiring, creating, and retaining great teachers and leaders through better training, more rigorous evaluation systems, and monetary incentives. These initiatives are provoking strong reaction in school systems across the country, as states pass new legislation to change policies on teacher evaluation, compensation, and school management. In many cases, the new initiatives are at odds with long-standing practices and policies supported by teacher labor unions.

Organization of This Report

This study is organized into four chapters. The remainder of Chapter 1 addresses the scope of CBAs in Kentucky and briefly covers the national debates regarding the merits of teacher unions.

The impact of contracts on school councils and their effects on school reform are discussed. The latter part of the chapter presents data on the political clout of teachers associations and the Kentucky Education Association.

Chapter 2 provides a statutory overview of CBAs, focusing on the delegation of authority in Kentucky, including school board and school council authority.

Chapter 3 focuses on teacher hiring and school staffing provisions found in CBAs. It covers the process of teacher transfers, new hires, and the role of seniority in school staffing. It presents findings from interviews with union representatives, superintendents, and principals in districts with CBAs. In addition, interview data from superintendents and principals in four control districts are presented.

Chapter 4 presents findings from interviews on the effect of CBAs on teacher evaluation. In this chapter, issues such as nonrenewal of nontenured teachers, termination of tenured teachers, and the tribunal process are analyzed.

A detailed explanation of the research methods used in this report is included in Appendix A.

Kentucky Contract Overview

Nine Kentucky districts negotiate bargained contract agreements: Boone, Bullitt, Jefferson, Kenton, Knott, Martin, McCracken, and Wolfe Counties; and Newport Independent.

CBAs operate in nine Kentucky districts: Boone, Bullitt, Jefferson, Kenton, Knott, Martin, McCracken, and Wolfe Counties; and Newport Independent. Approximately 22 percent of the state's total K-12 pupil population attends schools in CBA districts, and 23 percent of all Kentucky teachers work in CBA districts. Each of Kentucky's nine CBAs is different, but they all cover similar topics. The contracts cover teacher working conditions, school staffing procedures, the grievance process, and teacher evaluations. Some contracts are more precise than others and lay out detailed steps, for example, in how a teacher should be evaluated. Some of the contracts are more than 50 pages long while others cover less detail and are about 20 pages long.

Teachers association membership in each district varies from a high of 94 percent in Jefferson County to a low of about 30 percent in Newport Independent.

Information regarding teacher membership in a collective bargaining organization is not publicly reported; however, teacher representatives of the nine teachers associations provided estimates of membership, as shown in Table 1.1. Estimates of teacher membership in each association range from a low of about 30

percent in Newport Independent to a high of about 94 percent in Jefferson County.

Table 1.1
Estimated Teachers Association Membership

District	Number of Certified Teachers in District	Estimated Percentage of Dues-paying Union Membership
Boone	1,161	78%
Bullitt	769	73
Jefferson	6,327	94
Kenton	824	60
Knott	170	40
Martin	153	78
McCracken	424	82
Newport Ind.	146	30
Wolfe	89	76

Source: Staff compilation of district interview data.

Teachers in CBA districts are not required to join the teachers association, but new teachers are automatically enrolled in the association unless they specifically opt out of membership. The time frame for opting out is usually limited to 10 to 15 days at the beginning of each school year. When the window for opting out closes, teachers are locked into membership for an entire year, at a minimum. The time given to new teachers to opt out may be insufficient for them to determine the full benefits and costs of membership.

Organization of Teachers Associations

Each teachers association has an organizational structure that includes elected officers who are responsible for negotiating new contracts and managing association business.

Each teachers association, or education association as they are sometimes called, has an elected president and other officers. The elected leadership conducts general business meetings on behalf of the association and is responsible for negotiating the contract with district administration and the board of education. The association leadership structure includes building representatives in each school. In most contracts, the principal is required to meet regularly with the building representative.

The presidents of the Boone County Education Association and the Jefferson County Teachers Association are granted full-time leave from their teaching responsibilities. The president of the Bullitt County Education Association is granted half-time leave.

In three of the contracts analyzed, the association president is granted leave from teaching. The president is granted a full-time, paid leave of absence to perform association duties in Boone County and Jefferson County. The president of the Bullitt County Education Association is granted half-time leave. In all three contracts, the president of the association is returned to his or her

original position and school, with no loss of experience, seniority, or retirement credit, upon relinquishing the presidency.

The fiscal impacts of these provisions vary from district to district. The Bullitt County contract states:

The Board shall pay the President all of the salary and employment benefits to which he/she would be entitled if he/she worked as a full-time teacher in Bullitt County Public Schools. BCEA [Bullitt County Education Association] will pay the Board in advance for all salary and benefits to be paid to, or which accrue to, said President during the time that the President devotes to his/her duties as BCEA President.

Thus, Bullitt County Public Schools does not subsidize the Bullitt County Education Association's president's salary.

The president of the Boone County Education Association is paid on the 187-day teacher salary, and the association has been responsible for reimbursing the district for the majority of the salary.

The president of the Boone County Education Association is paid on the standard 187-day teacher salary schedule. According to the Boone County contract, the association agrees to compensate the district at a rate based tied to the district salary schedule. In the first year of the contract—2007-2008—the association reimbursed the district an amount equal to a Rank III teacher with 0 years of experience. In the second year of the contract, the association reimbursed the district an amount equal to a Rank II teacher with 0 years of experience. In 2009-10, the association reimbursed the district the equivalent of a Rank I teacher with 0 years of experience. The association was required to reimburse the district the actual salary schedule of the president in 2010-2011. Before 2007, the contract stipulated that the association reimburse the district the equivalent of a Rank III teacher with 0 years of experience. While the contract requires the association only to reimburse the full salary of the president during 1 contract year, the majority of the president's salary has been covered by the association.

Article 26, Section K of the current Jefferson County Teachers Association contract defines the terms of Association President Leave as follows:

The duly elected President of the Association will be assigned by the District to the Association for the duration of his/her 187 day contract. During this time he/she will work on the areas/issues of mutual concern to the welfare of the students of Jefferson County Public Schools as determined by the Association. For this 187 day period, he/she shall be considered in an active duty status and

receive compensation and benefits in accordance with the labor agreement.

In June 2003, then Superintendent Stephen Daeschner entered into a memorandum of agreement (MOA) with the Jefferson County Teachers Association (JCTA), which was subsequently approved by the Jefferson County Board of Education (JCBE). This agreement included the above quoted language but added an additional provision: “Should the Association elect to extend the President’s work year beyond the 187 days the Association will reimburse the district for any cost associated with the extension.”

The president of the Jefferson County Teachers Association is paid on the standard 187-day contract that is covered by Jefferson County Public Schools. The president also receives pay from the Jefferson County Teachers Association and additional perks.

Starting in the 2002 school year, the acting president has been paid on a 261-day contract. This amount was paid before the MOA or contract language provided for days in excess of 187. JCBE pays this entire salary, including benefits and pension, and JCTA reimburses JCBE for salary and benefits paid over the 187 contract days. There are additional provisions in the JCTA policy that require a salary of 1½ times that of a 260-day employee. Additional amounts may be paid directly to the association president from JCTA. Other association president perks in the JCTA policy include a car, gas reimbursement, and trips for union business.

Contract Language

Contract language can be ambiguous.

Contract language is ambiguous in many cases, making it difficult to interpret how certain provisions are implemented within a district. This ambiguity results in vague language that can be interpreted differently by different people (Cohen). Some of the clauses found in Kentucky collective bargaining agreements are open to interpretation. For instance, the clause “The parties recognize that optimum school facilities for both students and employees are desirable to enhance a high quality of education” is vague. While most would agree with the statement, the interpretation of optimum school facilities would likely vary from school to school. Similarly, the clause “Classrooms in which classes are being held should be free of unnecessary interruptions by maintenance, custodial, or construction workers, intercommunication systems, or other such disturbances” is ambiguous. The term “unnecessary interruptions” is a subjective phrase and could be interpreted differently by administrators and teachers.

Even in school staffing language, the interpretation of some contract clauses is subjective. The Knott County contract states

“All insider applications shall be considered by the Council before outsider applications are accepted or considered.” The term “considered” is not defined. This statement could be interpreted to mean applications from current district employees are to be read before applications from candidates who are not employed in the district. Ultimately, the school council and the principal have the authority to hire the best candidate.

Some of the language in contracts appears to contradict the spirit of school-based decision making.

Staff review of contracts identified numerous potential conflicts with school council law, but most of the areas of concern were minor. For example, some contracts require the provision and maintenance of a school faculty lounge. This could interfere with the authority of school councils to allocate school space, but most schools across the Commonwealth provide teacher lounges. Staff did not focus on these minor issues because OEA has not received an inordinate number of complaints on these potential conflicts in CBA districts.

While contract language documents the terms of the agreement, implementation of the provisions provides some flexibility. There are a few ways in which parties to the agreement can interpret and modify the terms through the use of memoranda of agreement, deviations, and reopeners.

Some districts negotiate memoranda of agreement (MOAs) during the interim between contract ratification and contract renegotiation. MOAs are most frequently used in Jefferson County.

Memoranda of Agreement. In Jefferson, Boone, Kenton, Martin, and Bullitt Counties, MOAs are sometimes negotiated between the teachers association and district administration to change or amend the contract. In districts that negotiate MOAs, they are used to deal with issues that require a deviation from the written provisions of the contract. MOAs are most frequently used in Jefferson County and are rarely used in other districts. For example, Kenton County negotiates MOAs only for grants, limiting MOA impacts to individual schools receiving the funds. While Martin County’s contract permits MOAs, interviewees could not think of any recent examples that had required the negotiation of an MOA.

Jefferson County Public Schools (JCPS) board policy permits the superintendent to develop memoranda of agreement between the employee organizations and the superintendent. Jefferson County MOAs cover a breadth of topics ranging from school staffing to retirement benefits to adoption of math and science curricula with funding from the General Electric Corporation. They are used to reopen the contract when issues arise that are not adequately addressed or when language deviation is desirable to both sides of the agreement. They are regularly negotiated by and between representatives of the JCPS human resources department and

JCTA representatives. These MOAs become effective, with the force of a contract, when signed by these representatives. JCPS has not always obtained school board approval for the terms before signing off on the MOA, yet some MOAs have received board approval.

Details of MOAs in Jefferson County are not mentioned in the contract. Thus, the public and the board of education might not be aware of the effects of MOAs on the contract.

JCPS provided OEA staff with more than 200 MOAs dating back as far as 1983. The MOAs are not maintained or organized in an easily accessible format. Also, details of MOAs are not mentioned or indexed to the appropriate sections in the contracts, leaving the public and the board without adequate notice of the content. Consequently, board members with responsibility for ratifying the negotiated CBA are potentially unaware of the existence of an MOA and its impact on contract terms.

According to JCPS staff, MOAs have no specific expiration date or timeline and remain in effect regardless of when they were negotiated. On occasion, MOA terms are incorporated into the subsequent written CBA; however, it is not required, and most are not included. Some MOAs contain specific language relating to their expiration. MOAs typically include a disclaimer that states:

this specific resolution/settlement is recognized as being no precedent, shall not be construed in any way to be precedent or be used to substantiate any present or future claim by any party to rights by past practice.

An MOA without an expiration date creates precedent and past practice with ongoing enforcement consequences.

The Jefferson County Teachers Association (JCTA) often includes members on committees created by MOAs. For example, JCTA members were included on committees responsible for restaffing six persistently low-performing schools in 2010. Staffing issues are normally the responsibility of the principal and school council.

MOAs affect the district in several ways. First, they give JCPS and JCTA flexibility that is not contained in the written agreement and is generally outside the view of the board. Second, through the negotiation of MOAs, JCTA is able to influence the outcome of critical district issues by including JCTA members on committees created by MOAs. For example, when implementing the provisions of HB 176 (2010), the MOAs included a provision mandating the inclusion of JCTA and JCPS members on committees responsible for restaffing the affected schools. Finally, MOAs are used to influence staffing issues that would normally be the responsibility of the principal and school council or the superintendent. JCPS provided OEA staff 29 MOAs entered into in the past 5 years that settled grievances over terminations, transfers, or disciplinary matters.

Deviation clauses are included in some contracts, and they are used to negotiate outside the parameters of written contracts. Deviations are typically used on issues that affect working conditions, but they cannot be used to usurp school council authority.

Deviation. Deviation procedures are included in some contracts, and they are used to negotiate outside the parameters of written contracts. For example, JCTA permits deviation from contract terms if two-thirds of the teachers in a particular school vote to do so. In Article 5, Section L the contract states:

If any school chooses to consider a deviation from this Agreement the decision making process shall include an opportunity for all employees to share their opinion. Such a decision shall not be implemented in any school year without two-thirds (2/3) concurrence of the employees. It is expressly understood that any and all contract deviations sunset at the end of each school year.

The Jefferson County CBA contains many provisions that cover issues that are statutorily granted to the school council. While these provisions are binding on each council, Article 5, Section M acknowledges the school council's authority to modify the terms of the contract. Revision to the provisions listed in Section M are acknowledged to be under the control of the school council and do not require a contract deviation vote.

Despite the specific language excluding provisions from the required deviation vote, several schools in JCPS have required a deviation vote to modify CBA provisions such as changing the deadline for turning in final student grades or changing to a block schedule. Clarification of the requirements of deviation votes is necessary to keep schools from unnecessary actions that restrict school council authority.

JCPS and JCTA entered into an MOA regarding a \$25 million grant from General Electric. Schools receiving money from the grant were required to have a deviation vote to signal acceptance of the grant and adoption of the curriculum supported through the grant. School curriculum adoption is granted by statute to school councils, and an additional requirement of a deviation vote could prohibit a school council from exercising its authority granted them by KRS 160.345(2)(i).

The deviation clause is not permitted to be used on other major issues related to items such as transfers, teacher evaluation, compensation, or grievances.

Reopeners. Several contracts, such as that for Wolfe County, include provisions that allow the contract to be reopened annually in the areas of salary, school calendar, fringe benefits, and other mutually agreed-on items.

Recommendation 1.1

Recommendation 1.1

A board policy or memorandum of agreement that places extra restrictions on a school-based decision making council should be reviewed by the Kentucky Department of Education to ensure that it does not restrict the legal duties of a school council.

Recommendation 1.2

Recommendation 1.2

The Kentucky Department of Education should ask districts to annually submit copies of all collective bargaining agreements, memoranda of agreement, and other contract modifications.

Recommendation 1.3

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Memoranda of agreement, or other modifications to the contract used to modify, explain, or alter a bargained agreement, should be maintained in a manner that allows for ease of access and should refer to the specific contract provision modified.

Past Practice

Past practice refers to established behaviors, often undocumented, that set precedence for future policies. Past practices can result in changes to the terms of a written contract without the knowledge or approval of the board of education. However, it is important to point out that past practice affects both contract and noncontract districts.

In any employee/employer agreement, customs and practices may develop that differ from the terms in the written document. In districts with or without CBAs, a custom or past practice may be as enforceable as the written agreement itself. The past practices become part of the parties' "whole" agreement. Districts start on the path to developing a past practice when district office staff allows for deviation from the specific terms of the agreement on a regular basis, without amending the written language in the agreement. In many instances, the district office does not know that a past practice exists because the practice is neither written down nor subject to a formal approval process. When an effort to enforce the written terms of the agreement is made, claims of a past practice can be raised. There may be a lack of interest in incorporating these practices into the written contract or into an MOA because formalizing a process could limit the flexibility of an informal practice.

Use of past practice may result in changes to the terms of the written contract without the knowledge or approval of the board of education. Such modifications may have a financial impact on the district. In 2007, OEA reviewed the use of past practice in

Jefferson County when investigating an allegation regarding the use of “association leave.” In that investigation, OEA discovered that the number of days permitted by JCPS Human Resources staff far exceeded the number of days allowed in the contract. OEA recommended that the board and its counsel revisit its board policies and clarify what procedures to follow when the district seeks to modify a contract through the use of MOAs, informal agreements, or past practice. Clarification is necessary to determine who can enter into such modifications and the role of the board in the process.

Recommendation 1.4

Recommendation 1.4

A district that modifies terms and conditions of collective bargaining agreements should have a written policy defining the practice and a method for documenting the modified contract terms.

Teacher Unions and School Reform

Proponents of unions argue that collective bargaining agreements protect teachers from arbitrary dismissal, promote better working conditions, and negotiate favorable salaries and benefits, thus attracting teachers to the field. Critics contend that unions stifle needed reforms, protect underperforming teachers, and focus on adults more than on children.

Recent education reform efforts in Washington, D.C., constitute a good primer for understanding the debate between teacher unions and school administrators. Both groups claim they want what is best for children and student performance. Proponents of unions believe that CBAs protect teachers from arbitrary dismissal, promote better working conditions (that result in a more productive staff) and more favorable salaries with greater fringe benefits for the teaching profession. Proponents of unions contend that all of these factors attract new teachers into the field. A study conducted by the American Federation of Teachers found that union districts have lower transfer rates than nonunion districts, especially within low-income schools (Nelson). Opponents of teacher unions counter that the organizations stifle needed reforms, protect underperforming teachers, and focus on teacher satisfaction more than on student performance.

Efforts to change teacher contracts and pay rates of in Washington, D.C., have been contentious.

A case study of the union-versus-nonunion debate has been playing out in Washington, D.C. Michelle Rhee was hired as chancellor of the Washington, D.C., school system in 2007 to generate radical student performance increases in a district plagued by low achievement for decades. Rhee fought to dismantle and redevelop union contract provisions that affect teacher hiring, transfers, dismissals, compensation, and tenure. One strategy Rhee presented was to offer tenured teachers higher salaries in exchange for their tenure rights. Her goal was to create strong financial

incentives for high-performing teachers and to simplify the process of teacher removal. She resigned in 2010 after a contentious tenure.

Several states have been experimenting with school reforms focusing on merit pay, tenure, seniority, and using student performance data to analyze teacher effectiveness.

Other states have also examined controversial plans to reform teacher contracts. The House of Representatives in Florida passed a bill to eliminate teacher tenure and implement merit pay for teachers, but the bill was vetoed by then Governor Charlie Crist. New York passed a bill that allows principals to disregard seniority when making layoff decisions. Tennessee passed a bill that mandates the use of student performance data in evaluating teachers that can also be used to analyze the performance of teacher preparation programs.

As part of its Race to the Top application, Colorado passed legislation that requires 50 percent of a teacher's evaluation to be determined by student achievement.

Colorado's passage of SB 191 in 2010, as part of its Race to the Top application, is emblematic of the changes that reformers advocate. The initiative reforms tenure by using student performance data to validate tenure decisions. When tenure is granted, "non-probationary status is revocable following two consecutive years of insufficient growth" (Passage). At the heart of SB 191 is the implementation of a system that requires 50 percent of a teacher's evaluation to be determined by student achievement. It also eliminates the practice of forced teacher placement in favor of mutual-consent hiring. Thus, teacher placement decisions must be mutually agreed upon by both the principal and the teacher, not dictated by teacher seniority. The Colorado program also uses teacher performance rather than teacher seniority to determine who is retained whenever a reduction-in-force decision is made. These program components effectively dismantle the seniority-based hiring model prevalent in many union districts.

These examples reflect a concern about teacher quality that may or may not be grounded in empirical research. They illustrate the issues school reform efforts will encounter when states try to implement new accountability programs that conflict with traditional hiring and evaluation protocols based on teacher seniority.

Adult-centered Issues

Some school leaders complained that contracts often elevate adult-centered needs above student needs. However, in schools with contracts, the percentage of teachers using the contract to undermine leadership initiatives is reported to be very low.

A common complaint from interviewees was that the contract takes the attention away from student issues and focuses it on adult issues. Interviewees provided multiple examples of conflicts that stem from activities that happen after the school day ends. Each CBA restricts the amount of time available to administrators for after-school meetings. A representative comment from principals

was that a handful of teachers might “wave the contract in my face” when meetings exceed contractual limits on school meetings. However, most principals said teachers in their schools do not use contracts to fight the administration. The amount of time reportedly devoted to post-school meetings in noncontract districts was about the same as in contract districts.

One superintendent opined that restrictions on meetings could affect student performance. As Kentucky transitions to new academic standards, it is critical that teachers receive needed training well in advance of test dates. However, contract restrictions on meetings could interfere with providing needed professional development, which could negatively affect student test scores.

Some districts require teachers to volunteer at school events such as ball games. In a small number of contract districts, teachers associations are attempting to bargain pay stipends for what has traditionally been volunteer work. Teachers association representatives said requiring teachers to volunteer is not fair because some teachers are forced to work events during Christmas or spring breaks when school is not in session. These sorts of debates redirect time and resources away from students to adults.

Many administrators reported that the contract can slow the implementation of programs and policies.

Overall, most administrators interviewed said the CBA hinders the leaders’ ability to take quick action, and it is used by some teachers as a tool to retain the status quo. As one leader put it, “The contract limits my creativity.” The contract restricts the freedom of district leadership to implement swift changes in policy to deal with underperforming schools. Leaders consistently pointed out that changing evaluation instruments, reconfiguring a school, or changing teacher assignments necessitates renegotiation of the teacher contract. Kenton County implemented a new evaluation process and instrument in the 2009-2010 school year, but it took more than 5 years to finalize and adopt.

Teachers associations contend that teacher productivity is highly correlated with job satisfaction and high-quality working conditions. Teachers who work in schools that are under threat of reorganization or who feel that their jobs are in jeopardy because of low student performance can become defensive and distrustful of administration. Consequently, open negotiation and collaboration are needed to promote stable environments where teachers can thrive.

All the interviewees in one district said the contract's impact on the district is positive. The contract mirrors school council policies and supports them. They said that the district has worked hard to build a cooperative and collaborative relationship with the teachers association, and as a result there have been very few grievances in the last 6 years. Their view was that the contract provides a framework for justifying decisions that, if followed, leads to mutually supported outcomes.

In most of the districts, teachers associations are transitioning from adversarial to more collaborative relationships with school and district leadership.

In most districts, the teachers associations are transitioning from adversarial to collaborative relationships with administration. In some of the smaller districts, administrators reported that the teachers association is not as strong as in the past. Younger teachers typically are not passionately involved in the teachers association as more veteran teachers are. New teachers have been trained under the accountability rubric; thus, activities such as working in professional learning communities or spending extra time after school analyzing data and meeting with learning teams are not considered impositions. An association leader in one district revealed that teacher attendance at association meetings rarely exceeds five or six members.

Political Activism

While the primary purpose of CBAs is to promote teacher productivity, JCTA also engages in political activism by spending hundreds of thousands of dollars per election cycle to support their preferred school board candidates.

Staff interviewed the presidents of teachers associations to identify the purpose of CBAs. The presidents overwhelmingly stated that a primary purpose of the contract is to enhance teacher productivity through better working conditions and to promote due process for teachers. None of the presidents interviewed mentioned political activism as part of the association's mission, except for the JCTA president. Some associations use their clout to encourage members to contact elected officials concerning education issues, but they do not actively fund candidates for the board of education. Staff review of data from the Kentucky Registry of Election Finance found that JCTA spends hundreds of thousands of dollars per election cycle on behalf of school board candidates it endorses.

The majority of school board candidates raise less than \$3,000 to get elected, and individual donations to school board candidates were capped at \$100. A recent court case, *Foster and Britton v. Dilger*, acknowledged that candidates who rely solely on individual contributions in Jefferson County cannot compete. Consequently, the individual cap was raised to \$1,000.

JCTA makes independent expenditures through its two political action committees: the Jefferson County Teachers Association and Better Schools Kentucky. Individual donations to school board candidates were limited by KRS 121.150(6) to \$100, and a committee or organization could not give more than \$200 per candidate.

The Registry of Election Finance found that the overwhelming majority of school board candidates raise less than \$3,000 per

campaign from individual donors. In a 2010 lawsuit out of Jefferson County, *Foster and Britton v. Dilger*, the plaintiffs argued that the independent expenditure cap of \$100 nullifies the ability of nonendorsed candidates to mount a campaign based on individual donations. The individual contribution limit was originally established in 1989 by *Rose v. Council for Better Education, Inc.* through a provision stating that “common schools shall be monitored by the General Assembly to assure that they are operated with no waste, no duplication, no mismanagement and with no political influence” (US 9).

The federal court concluded that “the Registry did not advance any precedent which holds ‘eliminating political influence’ is sufficiently important to justify abridgement of associational rights” (US 10). However, the court did acknowledge that candidates who rely on individual contributions in Jefferson County cannot compete with the donations made by political action committees, other committees, and organizations. Consequently, the court has allowed school board candidates to solicit \$1,000 donations from individuals.

In the 2006 election cycle, JCTA made indirect expenditures totaling \$311,224 to three school board candidates. In 2008, JCTA spent \$341,018 on behalf of two board candidates. The indirect expenditures cover postage, T-shirts, printing, radio advertisements, yard signs, billboards, and compensation of JCTA members for holding signs at election precincts on election day.

According to staff analysis of Registry of Election finance data, JCTA reported indirect expenditures in support of three board members totaling \$311,224 in 2006. In 2008, JCTA reported \$341,018 on behalf of two board candidates. These independent expenditures funded postage, T-shirts, printing, radio advertisements, yard signs to support endorsed candidates, and compensation of JCTA members who held signs supporting endorsed candidates at voting precincts. On election day in 2008, 133 JCTA members held signs supporting one JCTA-endorsed candidate, with 114 earning \$300 each for their service. The largest single independent expenditure on behalf of a board candidate in 2008 was \$46,600 for radio ads. In both 2006 and 2008, the candidates endorsed by JCTA won their races. In the 2010 election, JCTA actively opposed an incumbent, who ultimately won reelection, whom it had supported through indirect payments of \$107,000 in 2006.

The JCTA, through the CBA and through indirect election expenditures, has influenced the composition of the board by endorsing candidates who share JCTA’s agenda.

Kentucky Education Association

The Kentucky Education Association (KEA) does not negotiate contracts on behalf of individual districts; thus, it was not included in this study. However, it is active in all districts in Kentucky and is aligned with the National Education Association on most issues.

Staff did not include the Kentucky Education Association (KEA) in this study because it does not negotiate contracts on behalf of teachers in local districts. Yet, KEA was mentioned by many interviewees as a provider of teacher representation in grievance and tribunal procedures. In many cases, KEA Uniserv associates represents teachers in dispute resolution and other employment-related issues. Most interviewees agreed that KEA provides high-quality counsel to teachers involved in employment disputes with districts.

KEA is involved in all districts throughout the state and is affiliated with the National Education Association. Both groups share similar attitudes regarding several education reform issues. For instance, KEA is actively opposed to the introduction of charter schools in Kentucky, is generally opposed to the use of student performance data in teacher evaluations, and is not an advocate of merit pay for highly effective teachers or differential pay for teachers of hard-to-staff subjects. Interviews with teachers association presidents in CBA districts found similar opposition to these reform initiatives.

Critics of teachers unions might assume that KEA is a bargaining agent responsible for crafting collective bargaining agreements favorable to teachers. However, more than 75 percent of Kentucky teachers do not work under the guidelines of a labor contract.

It is important to distinguish between the impact of CBAs in Kentucky and the impact of KEA in Kentucky. Other than the Jefferson County contract, review of CBAs for this report found limited impacts on teacher hiring, teacher evaluation, and school-based management. For these reasons, it is possible that critics of teacher unions in Kentucky are confusing the nine collective bargaining agreements with state and national labor organizations. Over three-quarters of the teachers in Kentucky school districts are not represented by a CBA, and interviewees in some districts said the union's power in their districts is waning. JCTA is the only district-level entity with the financial resources and political clout to aggressively lobby on behalf of typical teacher union issues mentioned above.

Both KEA and JCTA are active in lobbying on behalf of education issues across the state.

KEA, though, is an active political lobbying entity, spending \$48,928 in the 2009 legislative session and \$99,348 in 2010. JCTA, in comparison, spent \$35,944 on lobbying during the 2010 session, according to statistics from the Registry of Election Finance. No other teachers associations in CBA districts reported lobbying expenses in 2009 or 2010. Given the visibility of KEA and JCTA in political activity, it is possible that external observers assume that all teachers associations and CBAs engage in similar behaviors.

Chapter 2

Contract Authority and Contract Contents

Authority for Employee/Employer Bargained Contracts

The right for public school teachers to form unions was established in the National Labor Relations Act of 1935.

The legal basis for public school teachers to organize and negotiate CBAs goes back to 1935, when Congress passed the National Labor Relations Act. Also known as the Wagner Act, it guaranteed the right of private employees to form unions for the purpose of collective bargaining. Individual states have since extended this right to public employees such as teachers in public school districts. The Wagner Act allows for a range of issues to be negotiated. In order to determine what an appropriate subject for collective bargaining is, state laws must be analyzed. A collective bargaining agreement cannot violate or contradict existing statutory law or constitutional provisions.

In Kentucky, KRS 336.130 confers on employees the right to organize, strike, and picket. Schoolteachers may organize and engage in collective bargaining with boards of education.

In Kentucky, the court of appeals decided in the case of *Board of Trustees Fayette County Educ. Ass'n v. Hardy*, 626 S.W. 2d 217, 219 (Ky. App. 1980) that the right to organize and join an employee organization is protected by the Bill of Rights of the Kentucky Constitution and the First Amendment of the US Constitution. Further, KRS 336.130 confers on employees the right to organize, strike, and picket. More specifically, it grants schoolteachers the right to organize themselves into labor unions and bargain in a collective manner with the board of education. However, the Attorney General rendered an opinion in 1965 that stated:

the Board may listen or not, as it chooses and cannot, by negotiations with a teacher's union, tie its own hands, since to do so would rob it of its legal prerogative to have the last word concerning all matters pertaining to schools (OAG 65-84).

The opinion of the Attorney General indicates that the board of education cannot divest itself of responsibilities that are its own while negotiating a contract.

Kentucky statutes do not define "employee," and it is not clear if the initial intent was to give the abovementioned rights to public as well as private employees. The court of appeals in the 1970 case of *Jefferson County Teachers Association v. Board of Education* (463 S.W.2d 627) decided that public employees such as teachers in public schools do have a right to unionize but do not have the right to strike. The court reached this conclusion mostly based on

the fact that in common law it was recognized that public employees did not have a right to strike. The court also found a reasonable basis for distinguishing between public and private employees and decided that denying public employees the right to strike did not violate their due process or equal protection rights under the federal or Kentucky constitutions. The National Labor Relations Act guaranteed rights only of private employees and not public employees; thus, each state could limit or expand on the rights it was extending under its statutes.

Kentucky Statutory Recognition of Bargained Contracts

Case law supports the rights of teachers to organize, and statutory language has recognized collective bargaining acts since 1990.

While there are no specific state statutes authorizing teacher unions, case law supports the rights of teachers to organize. Since 1990, statutory language has recognized CBAs. These statutes provide exemptions from statutory mandates to districts if their contracts also address the issue.

KRS 160.345(2)(h)(1) granted hiring and staffing authority to principals and school councils. The statute allowed districts with collective bargaining agreements to follow transfer provisions before declaring a position vacant.

In 1990, KRS 160.345(2)(h)(1) was implemented, granting certain hiring and staffing authority to schools and their respective councils. The statute recognized the right of a CBA to deviate from school council hiring protocol in the limited situation of requests for transfers. This allowed contract language to establish a process for transfer requests.

KRS 160.380(1)(c) grants collective bargaining agreements substantial authority to determine the staffing and hiring process within districts. The language of the statute allows districts with contracts to implement their own procedures for defining and filling teacher positions before declaring vacancies. This provides substantial leeway to contract districts that is not afforded noncontract districts.

In 1992, the General Assembly expanded the authority of the CBA to supersede the statutory mandates regarding staffing by including additional language in KRS 160.380(1)(c). The provisions in this statute grant districts with contracts almost unfettered authority in determining the staffing and hiring process in the district. The statute defines “vacancy” as

any certified position opening created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member of a local school district, or a new position created in a local school district for which certification is required.

This definition is critical to implementation of the other hiring requirements found in the statute:

However, if an employer-employee bargained contract contains procedures for filling certified position openings created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member, or creation of a new position for which certification is required, a vacancy shall not exist, unless certified

positions remain open after compliance with those procedures.

This language effectively allows districts with CBAs to implement their own procedures for defining and filling teacher positions, postponing the creation of a vacancy. This can result in circumvention of other hiring and staffing rights granted to principals and school councils.

Collective Bargaining Provisions

Kentucky statutes provide no guidance on what a collective bargaining act can control; however, it is generally understood that contract provisions must comply with statute.

Kentucky statutes provide no other guidance or restrictions on what a CBA can control. Without such guidance, each union contract provision must be considered against the governing statute and regulation. Contract provisions must be in compliance with statute, unless exempted by statute, and they cannot circumvent or control any rights granted to district boards of education, principals, or school councils.

Each contract contains similar provisions dealing with myriad topics. The contracts typically include provisions for length of contract and the negotiation process, teacher and association rights, working conditions, hiring and transfer, teacher evaluation, grievances, and employee compensation and fringe benefits.

The typical items found in each CBA are defined below.

Recognition. The recognition section of each contract lays out the broad rights of the union to negotiate exclusively with the board on behalf of a district's teachers. This section sometimes addresses the contract's relationship with Kentucky statutes. For example, the Boone County contract states:

The Boone County Education Association agrees to and understands that any portion, statement, or agreement written herein or implied that is presently in conflict with the Kentucky Revised Statutes shall become null and void.

Definitions. Eight of the contracts include a list of definitions for terminology used in the contract. One district simply defines the terms as they arise in the contract.

Negotiations Procedures. In general, this section outlines negotiable items and designates negotiation powers and duties for each party. The section includes provisions dealing with meeting dates, tentative agreements, and final contract approval. The section also includes a list of mediation options available when an

impasse is reached. In each contract, all negotiating meetings are closed.

Teacher and Association Rights. This section establishes the ground rules for teacher and association rights under the contract. For example, the Boone County Education Association contract includes in this section teacher discipline, nondiscrimination, rights of representation, guidelines for inspecting personnel files, the right to organize, and academic freedom.

In all contracts, collective bargaining agreements codify the types of rights bestowed upon the teachers association, including the use of schools to host meetings, teacher representation on districtwide committees, and processes for deducting dues from teachers.

In all contracts, teacher and association rights codify the types of rights bestowed to the teachers association, including using schools for meetings, making announcements at faculty meetings, receiving agendas of board and faculty meetings in advance, deducting membership dues from faculty members' pay, having association representatives meet regularly with school principals and the superintendent, and ensuring teacher representation on districtwide committees.

Leaves of Absence. Each contract specifies the types and amounts of leave granted to association members. The contract includes details on jury duty and pay, political leave, emergency and bereavement leave, medical and disability leave, professional leave, sick leave, adoption and child rearing leave, and military leave. In addition, the contract covers the resumption of benefits accruing to teachers returning from leave.

Kentucky statute governs the types and amount of leave that teachers are entitled to receive annually. KRS 161.154 allows boards of education to provide teachers up to 3 personal leave days per school year. Contracts also include provisions relating to leaves of absence in KRS 161.770. A review of all CBAs found that policies regarding leaves of absence complied with the statutes.

Each contract grants teacher association leaders and members annual leave hours to attend regional, state, or national meetings.

One additional form of leave found in CBAs is association leave granted to leaders and members to attend regional, state, or national meetings or to conduct necessary association business. Teacher association members are typically required to request leave to attend appropriate events that must be approved by the district human resources department. Table 2.1 shows the number of days granted to the teacher association by each contract.

Table 2.1
Association Leave Days Granted by District

District	Days Granted
Boone	40
Bullitt	45
Jefferson	175
Kenton	120
Knott	40
Martin	20
McCracken	10
Newport Ind.	No specific number
Wolfe	30

Source: Staff analysis of contracts.

All contracts detail the process for new hires, transfers, and reductions in force.

Employment Conditions. In general, “employment conditions” covers the school calendar, the work environment, teacher work hours and planning periods, changes of duties and responsibilities, teacher assignment, vacancies, voluntary and involuntary transfers, the transfer process, provision of lavatories and teacher lounges, provision and materials and facilities, excuse of teachers during school hours, reduction orders, protocols for dealing with students’ and parents’ complaints, duty-free lunches, and assignment of extra duties.

In some contracts, the process for filling teacher vacancies and transfers is spelled out in the employment conditions section of the contract. In others, school staffing issues are included in a unique section. Regardless, all contracts detail the process for new hires, transfers, and reductions in force.

The process teachers follow to file grievances is spelled out in each contract.

Grievance Procedures. All contracts lay out grievance procedures for teachers to follow. In general, the first step is for a teacher to file an informal grievance with the school principal. If the teacher is dissatisfied with the outcome or chooses to skip the process, more formal procedures are spelled out in the contract. The grievance procedure is broken down into levels ranging from an informal grievance to arbitration. Each contract specifies the chain of authority in processing a grievance, and it establishes the time lines for completing each grievance stage. The final grievance stage is arbitration.

A teacher evaluation section is included in eight of the nine contracts in Kentucky. In general, the contracts mirror KRS 156.557 which governs teacher evaluation.

Teacher Evaluation. All but one of the CBAs in Kentucky include provisions dealing with the teacher evaluation process that mirrors KRS 156.557. This section of the contract identifies the appropriate personnel responsible for conducting interviews, time lines for conducting evaluations, a framework for postevaluation

consultation, the development of growth plans, and limits on the use of informal observations and student test data on summative evaluations. The deadline for recommending reemployment of nontenured teachers is usually found in this section of the contract. The contract typically gives teachers the option of having union representation at a review, and it generally includes restrictions on access to teacher records.

Employee Nonrenewal or Termination. This section identifies the procedures districts can use to cancel a teacher's contract. Many contracts directly reference KRS 161.720–161.810 as the statutes that address employee nonrenewal or termination.

All contracts include language related to compensation and fringe benefits. In many cases, the salary schedule is renegotiated annually.

Compensation and Fringe Benefits. Contracts include agreed-upon salary schedules and other bargained-for benefits. The array of fringe benefits varies from contract to contract. Some include life insurance, dental insurance, vision insurance, and accidental death and dismemberment insurance. In most instances, the salary schedule is renegotiated annually, and procedural issues such as the number of pay periods are included in the compensation section.

Emergency School Closing. Seven contracts outline procedures for closing schools because of inclement weather or emergencies. The contracts often require the school district to broadcast a school closing by a certain time, when applicable. This section also identifies procedures for dealing with bomb threats or inclement weather that occurs after the start of the school day.

Professional Development/In-service Training. The majority of contracts reiterate Kentucky statutes regarding professional development requirements for teachers.

Reduction of Teaching Staff. On occasion, school districts are forced to reduce the number of teachers because of decreases in school enrollment or territorial changes affecting pupil assignment. KRS 161.800 outlines the process for suspending the contracts of teachers affected by such changes. According to statute, the district must consider teaching field and seniority when choosing rehires. CBAs mirror statute language and use seniority as the determining factor on reductions in force and any subsequent rehires.

Employee Discipline. In general, this section of a contract outlines due process procedures the employer should follow when disciplining a teacher. Teachers are generally allowed union representation in meetings with school and district administrators,

are informed of charges and evidence against them, and have the option to pursue a mediated tribunal as provided for by statute.

Effect of Agreement/Duration. Each contract includes information on the length of time that the contract is in force.

Table 2.2 highlights common contract provisions found in most of the nine CBAs.

Table 2.2
Contract Items

Contract Item	Number of Districts in Which Item Is Part of Contract
Recognition	9
Definitions	8
Negotiations procedures	9
Teacher and association rights	9
Leaves of absence	9
Employment conditions	9
Hiring/assignment/transfers	9
Grievance procedures	9
Teacher evaluation	8
Employee nonrenewal or termination	8
Compensation and fringe benefits	9
Emergency school closing	7
Professional development/training/ in-service	7
Reduction of teaching staff	8
Employee discipline	7
Effect of agreement/duration	9

Source: Staff analysis of contracts.

Chapter 3

School Staffing

Hiring provisions vary from contract to contract, but the Jefferson County contract is the only one that retains strict seniority preferences in fulfilling transfer requests.

While all CBAs contain similar hiring provisions, there are differences in how contract provisions are implemented. The consensus of the administrators interviewed is that in all but Jefferson County, CBAs are not a major impediment to hiring and maintaining a high-quality teaching staff. The staffing and hiring provisions in the Jefferson County contract are the most comprehensive and restrictive in the state. Jefferson County administrators who were interviewed explained multiple challenges to hiring the best teachers to meet the needs of their schools. Some said the contract provisions basing transfer rights on seniority are in conflict with evolving standards regarding teacher and administrator accountability.

Because of significant differences in district staffing needs, teacher availability, and contract restrictions, it is impossible to specifically evaluate the terms of each contract. However, OEA staff collected and analyzed staffing data such as transfer requests, teacher experience, and length of time employed at a school. These data, along with the input from administrators, provide insight into the influence of each CBA on school staffing.

Overview

When a vacancy occurs because of resignation, retirement, or other cause or because the school council approves a new position, the position is posted by the Kentucky Department of Education for 30 days. Following that, applications of qualified applicants are forwarded from the superintendent to the principal for consideration.

Since 1990, staffing of schools has been the responsibility of principals and school councils. KRS 160.345(h) outlines how personnel decisions at the school level are to be made. When a vacancy occurs because of resignation, retirement, or other cause or because the school council approves a new position, the position is posted with the Kentucky Department of Education (KDE) for 30 days, as required by KRS 160.380(2)(b). A waiver can be requested from KDE that can reduce the 30-day requirement. After the posting period ends, the superintendent submits a list of qualified applicants to the principal for consideration.

In most schools, the principal forms a committee to interview candidates and give a hiring recommendation to the school council for consultation. The principal then makes a selection and informs the superintendent, who completes the hiring process.

In most schools, the council's consultation policy requires the principal to form an interview committee that includes personnel such as department chairs, teachers from the department with the vacancy, school council members, and the principal. The committee interviews applicants and makes a recommendation that is then taken to the school council for consultation. Upon request

of the council, the superintendent provides additional applicants when qualified applicants are available.

After consulting with the school council, the principal then selects the person to fill the vacancy and informs the superintendent, who completes the hiring process.

Staffing Process in Bargained Contract Districts

In districts with collective bargaining agreements, the process for declaring and filling vacancies can limit the principal's and school council's autonomy to hire their preferred candidate.

Among the nine districts that have CBAs that prescribe a process for filling vacancies, the process of hiring teachers differs. Eight of the nine contracts include transfer provisions that modify the process set out in statute. Jefferson County's contract contains the most provisions that affect the hiring process and severely limit principal and council participation in teacher selection.

Transfer procedures that grant transfer preferences to the most senior teachers have been substantially changed in the last 10 years in every district except Jefferson County.

Interviews with district leaders revealed that hiring procedures have changed dramatically over the last 10 years in CBA districts. Seniority was once the leading factor used to make hiring decisions in most contract districts. Before a vacancy was declared in a school, teachers within the district were allowed to apply for transfers. The most senior transfer applicant was then granted the position. In contract renegotiations over the last decade, the practice of seniority-based transfers has been essentially dismantled in all districts except for Jefferson County. Leaders in districts that have removed seniority-based transfer provisions described the change as having positive outcomes.

Vacant Position

A vacancy is defined by KRS 160.380 as an opening created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member. All vacancies are required to be posted and made available to the public.

School council involvement in staffing decisions, both teachers and principals, is one of the key components of the Kentucky Education Reform Act. KRS 160.380 establishes a process for filling a teacher vacancy, which is defined in as an opening created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member. The statute further states:

When a vacancy occurs in a local school district, the superintendent shall notify the chief state school officer thirty (30) days before the position shall be filled. The chief state school officer shall keep a registry of local district vacancies which shall be made available to the public. The local school district shall post position openings in the local board office for public viewing.

The statute restricts the definition of vacancy in districts with CBAs that include procedures for filling certified position openings. The statute states that no vacancy shall exist unless

certified positions remain open after compliance with those procedures. Determining when a vacancy occurs, for purposes of this statute, is dependent on the procedures for filling a position opening contained in the CBA.

While eight of the contracts include transfer provisions, Jefferson County's procedures are more comprehensive and complicated than other contract district's procedures.

In Jefferson County, a vacancy is not possible until after all transfer provisions have been completed, which is after July 31. Due to the comprehensive transfer provision in the contract, very few school-level vacancies are declared and posted in Jefferson County. However, CBAs in other districts have limited contract transfer provisions, resulting in hiring procedures that are only slightly modified from the statutory process.

In most contract districts, the transfer provisions recognize seniority as a factor that may be considered when filling a position by transfer. Some districts guarantee an interview to senior teachers in the district who request transfers.

In most contract districts, the transfer provisions give experienced teachers working in the district some consideration when applying for a vacant position. For example, in Kenton County, a teacher with seniority can request a transfer to another school. Should a position become vacant, that teacher would be entitled to an interview but would not have hiring rights over other teachers in the district who are less senior or over applicants who are not currently employed by the school district. Therefore, when a vacancy occurs in a school, the vacant position is posted according to the statutory process: Teachers with seniority are granted the right to an interview but hold no inherent privileges over other teachers who apply.

In Jefferson County, vacancies are announced through a general anticipated vacancy posting once or twice per year. Most of these vacancies are districtwide positions and not specific postings for a school.

In JCPS, most positions are filled through the transfer process; thus, few positions are declared vacant and posted on the KDE website. Typically, JCPS announces positions on the KDE Kentucky Educator Placement Service (KEPS) through a general anticipated vacancy posting once or twice per year. These postings list almost every vacancy as a "districtwide" position; they are not specific postings for a position in a particular school. During this process, JCPS estimates the number of teachers it will need the following school year. After factoring in the number of positions filled through transfers, the district attempts to prehire other needed teachers. Some of the individuals recruited through anticipated vacancy postings on KEPS and other recruitment efforts are given a contract with JCPS, though they are not assigned to a school. These prehired teachers are placed into vacant positions in the district after the transfer window for current teachers closes, and principals with remaining open positions in their buildings are required to select from these prehires. The process of prehiring teachers, who are then placed in schools, conflicts with the statutory mandates of KRS 160.345(2)(h), which

requires the principal to select personnel to fill vacancies at the schools.

JCPS and OEA entered into an agreement in the 1990s that JCPS uses to justify the anticipated vacancy posting procedure. In this agreement, OEA agreed it was acceptable to use a general anticipated vacancy posting for principal positions on the condition that when an actual vacancy occurred, JCPS would post it on its internal job posting board, known as the “Job List.” JCPS has now expanded the terms of this agreement to include all certified positions, not just principal positions. Review of postings on KEPS indicates that JCPS continues to post general anticipated vacancies and very few school-specific job announcements.

After the transfer process plays out in Jefferson County, few vacant positions remain.

The JCPS staffing process set out in contract results in few vacancies that would be subject to the KRS 160.380(2)(c) requirement to announce and post school-level vacancies.

Transfer Provisions

Voluntary transfer is initiated by the teacher, whereas an involuntary transfer usually involves a teacher being placed in a school not by choice.

Each contract includes provisions that guide the process for voluntary and involuntary transfers. A voluntary transfer is one initiated by the teacher, whereas an involuntary transfer usually involves a teacher being placed in a school not by choice.

Noncontract districts generally have personnel policies that guide voluntary and involuntary transfers. The transfer process in noncontract districts involves a teacher applying to move from one school to another. The teacher is granted no seniority advantages. In fact, in noncontract districts, most voluntary transfer provisions include language similar to Fayette County’s personnel policy stating “there is no requirement for principals to interview or recommend for hiring any voluntary transfer candidate.”

Involuntary transfers in noncontract districts are subject to the provisions of KRS 161.760 and are usually used when a program is eliminated or a school council approves a curriculum change that results in the elimination of a teaching position. Consequently, the affected teacher is placed on an involuntary transfer list and is allowed to transfer to another position within the district for which he or she is certified.

Statutory exemptions allow districts with CBAs to design their own systems for filling teacher positions before declaring vacancies. Table 3.1 highlights the role of seniority in the transfer process for each CBA district. Overall, seniority remains a factor

to various degrees, ranging from a guaranteed interview to guaranteed placement based on seniority.

Table 3.1
Transfer Provisions and Seniority

District	Transfer Policy
Boone	The two most senior transfer applicants are guaranteed interviews, not positions; the principal and council use a rubric to select the best fit for the school.
Bullitt	Transfer applicants with seniority are guaranteed consideration, not positions.
Jefferson	The principal can choose from the three most senior transfer applicants until the transfer list clears. After that, the district involuntarily places overstaffed and new teachers in vacant positions. Paper transfers are permitted after the school year begins.
Kenton	Seniority is a factor in the order of interviews, but the principal and council use a rubric to select the best fit for the school.
Knott	Teachers within the district are given first “consideration” for an opening but are not guaranteed interviews or positions.
Martin	Teachers working in the district are given courtesy interviews but are not guaranteed positions.
McCracken	No transfer provision is included in contract.
Newport Ind.	The school council and principal choose best candidate; seniority can be a factor.
Wolfe	The school council and principal choose best candidate; there are no seniority rights.

Source: Staff analysis of contracts

Analysis of Staffing

In this section of the report, interview data are presented to illustrate how contract provisions affect hiring and retaining effective staff.

Jefferson County Public Schools

Jefferson County’s collective bargaining agreement is considered one of the most restrictive in the nation. Any open position in a school is subject to transfer rights, which limits principal and school council choice.

Jefferson County’s CBA has been classified as one of the most restrictive in the nation (Hess). The restrictive nature of the contract is most pronounced in the area of teacher seniority. Jefferson County’s transfer provision allows a teacher working in one school to request transfer to another school. Both tenured and nontenured teachers can benefit from this provision, allowing any teacher to be placed in line for transfer into another school should

an opening occur. Any open position in a school is subject to transfer rights, limiting the choices and options available to the principal and school council.

As the largest district in the state, JCPS has greater logistical challenges for staffing than other districts have. JCPS has 174 schools, almost 100,000 students, and 6,941 certified staff members. Jefferson County has more racial diversity than any other county in Kentucky, numerous low-performing schools, and multiple schools in hard-to-staff areas of town. Each year, thousands of teachers retire, transfer, move into administration, or leave the teaching profession. The process developed through the contract provisions, and implemented through the district office, is intended to manage the complex system. The transfer provision, based on tenure and seniority, is a system that many analysts consider to be at odds with the best interests of students (Levin).

Even though Jefferson County administrators said the staffing policy effectively manages the personnel needs of the district, a recent report concluded that the staffing procedures are flawed.

JCPS and JCTA have implemented a staffing model that administrators said effectively manages the needs of the district. However, a report conducted on behalf of JCPS concluded that the staffing procedure used in the district is flawed, especially in terms of distributing high-quality teachers throughout the district (Greater). The model establishes time lines that guide principals and councils in making staffing decisions. The staffing model assumes that granting teachers the flexibility to choose their schools will result in high-quality teachers at each school. However, a review of staffing data and administrator interviews suggests that transfer provisions limit choice, resulting in situations where neither the principal nor the school council has any input in filling a vacancy. Some schools are left with high rates of teacher turnover and inadequate staff to meet the needs of the school and students.

Staffing Model. The staffing model agreed on by the Jefferson County Public Schools and the Jefferson County Teachers Association is seniority based. Table 3.2 highlights the key dates for filling teacher positions. In each phase, principal and school council choice is limited by procedures that preclude the creation of a vacancy.

Table 3.2
Jefferson County Hiring Process

Time Frame	Options
Before June 10 Voluntary transfer	Before a vacancy is declared, open positions are filled by transfer. Principals can choose from the three most senior members on the transfer list. If no teachers request a transfer to a school, new teachers can be placed.
June 10-August 1 Involuntary transfer	During this time, teachers are placed by JCPS, and principals and councils conduct no interviews. Placements include voluntary transfers, overstaff, and then new hires if there are no teachers to place.
After August 1 Emergency placement	If a vacancy remains after August 1, JCPS places remaining teachers or applicants in a school. If a new hire is made after August 1, a teacher who had selected that school for a voluntary transfer—but who remained on the transfer list—is offered the opportunity to submit a paper transfer for the next school year

Source: Staff analysis of contracts.

JCPS compiles a transfer list that is made available to teachers in the district on April 18. Teachers can apply for transfers to five schools. The voluntary transfer process ends on June 10.

Transfer List. During the school year, principals and school councils inform the district human resources office of anticipated openings for the upcoming academic year. These positions are posted internally by JCPS, and current JCPS teachers, both tenured and nontenured, have until April 18 to request a voluntary transfer to fill any anticipated open positions. The contract allows teachers to choose up to five voluntary transfer schools. Position openings are filled from the transfer list until June 10. The transfer provision allows teachers working in low-performing schools or elsewhere the opportunity to transfer out for any reason. Teachers can apply for transfers after successfully completing the Kentucky Teacher Internship Program (KTIP).

Within each school, a transfer selection committee is formed that includes the principal and three elected teachers. The committee must interview the three most senior transfer applicants, but it does not have to hire one of them. However, failure to choose from the volunteer transfer list can lead to a situation where overstaffed teachers are placed in schools without interviews.

The district generates a list of voluntary transfers sorted by seniority, and then it forwards the three most senior transfer applicants to the principal. The principal organizes a transfer selection committee that includes the principal and three teachers elected by their peers, pursuant to Article 16, Section B of the contract. The transfer selection committee interviews the three most senior candidates, and a majority vote determines the hire. At this point in the process, principals are not forced to choose one of the three most senior applicants. However, most principals interviewed agreed that it is risky to turn down one of these

candidates because the district can involuntarily place a teacher into a school after the voluntary transfer list is cleared on June 10.

After the voluntary transfer process ends on June 10, involuntary transfers and newly hired teachers in the district are placed in the remaining position openings until July 31. During this phase, the principal and school council exercise little authority on personnel decisions.

Involuntary Placement. Between June 11 and July 31, the transfer process is closed, and the district begins the process of placing involuntarily transfers. Involuntary transfers involve teachers moved against their will; this includes overstaffed teachers, teachers moved because of grievance agreements, and prehired teachers. In an effort to recruit staff, JCPS prehires teachers it deems as high quality, possibly in critical shortage areas, such as mathematics, or with desired skills. Otherwise, these teachers would likely accept positions in other districts instead of waiting until after June 10 to be hired by JCPS. During this window of time, the district places these individuals into open positions.

As a result of the involuntary transfer provisions, the majority of positions that become available or remain unfilled after the voluntary transfer window is closed are filled by the district. This means the principal and school council have no authority during this phase of the hiring process.

After July 31, principals and school councils have more autonomy to choose from remaining personnel in the applicant pool. However, most principals do not like to fill multiple vacancies in the two weeks before the beginning of a new school year.

Emergency Hire. After July 31, principals only have a few weeks before school opens to fill any remaining or declared vacancies. During this phase, principals, after consultation with the school council, can choose whomever they like from the remaining applicant pool. While waiting until August 1 to declare a vacancy might seem like a good strategy if the principal wishes to avoid the contract staffing provisions, principals do not like to assemble their teaching staff so soon before the start of school, when the quality of the remaining teachers in the available pool might be limited.

Paper transfers allow teachers with seniority to claim a position that opens after August 1 for the next academic year. This practice limits principal and council authority to retain teachers they want to work in their schools.

Paper Transfer. The paper transfer provision is the final provision in the contract that rewards seniority. The paper transfer allows a more senior teacher to bump a new hire from a position that is filled after July 31. A vacancy announced on or after August 1 is posted, and a principal, in consultation with the school council, has the freedom to hire an available applicant from the applicant pool. The selected teacher is placed in the classroom and allowed to finish the year at that school. However, if a more senior person was originally on the transfer list for the school, the senior teacher has a right to claim that position for the next academic year and, if choosing to exercise that option, is transferred on paper for the next school year. It is another process that restricts the ability of a school council and principal to choose.

If a new hire is selected after August 1, the principal has an entire school year to evaluate that teacher's ability and fit with the needs of the school. If the teacher is deemed to be an excellent addition to the staff, it is possible that the principal will lose the position to a paper transfer in the next year. Principals consider this situation to be unfair to other teachers and students alike. If the emergency hire is an excellent teacher, the principal cannot override the paper transfer provision and can lose that teacher after 1 year.

Staffing Policy Implications. The impact of the transfer provisions on schools is most felt in the areas of hiring and retaining high-quality teachers in lower-performing schools. Administrators repeatedly mentioned the dearth of volunteer transfer requests to fill position openings in low-performing schools. As a result of this limited transfer demand, some low-performing schools hire an inordinate number of inexperienced teachers who, after finishing their internships, are eligible to submit transfer requests elsewhere.

Administrators expressed concern about the restrictive hiring provisions that give staffing advantages to senior teachers in the district. Principals are held responsible for student performance in their schools, but they do not have substantial control over who is hired.

In interviews, administrators overwhelmingly expressed concern about the current hiring and staffing provisions in the JCTA contract. The principals know that they are being held to high accountability standards, and they believe their jobs are at risk if their schools fail to meet mandated objectives. Yet, the current staffing policy severely restricts the autonomy of the principal and school council to choose the best candidates for their school. All administrators interviewed agreed that the transfer list can produce good hires, but they also think that the seniority-based system can force them to accept teachers who are not the best candidates.

The transfer process does not adequately balance teacher demand and supply with school-level needs. Teachers inordinately choose transfer opportunities in high-performing schools over lower-performing schools.

Low-performing Schools. One frequently cited concern about the transfer system in Jefferson County is that it does not balance teacher demand and supply with school-level needs. Teachers have the right to request transfers to the schools of their choice, and this often does not include low-performing schools. A study found that more than half of the teacher transfers in JCPS between 2006 and 2009 were from high-need to low-need schools (Greater). OEA staff analyzed transfer request data for the 2009 school year and found that teachers disproportionately requested transfers to higher-performing schools than to lower-performing schools. It is important to point out that a transfer request does not necessarily lead to a position. The requests simply show where teachers want to work. The review also found that traditional schools and some magnet schools tend to attract more transfer requests than do schools without respected programs. Furthermore, demand for transfers is also geographically based. Schools in more affluent

areas of Jefferson County—for example, eastern Jefferson County—tend to have higher transfer demand than schools in lower-income communities in south central, southwest, and west Louisville.

Teacher transfer preferences in elementary schools are strongly influenced by student performance. Schools that score high on the Kentucky Core Content Test (KCCT) attract more transfer requests. In addition, high-performing schools have higher percentages of veteran teachers and lower percentages of new teachers than the low-performing schools.

Table 3.3 shows the staffing patterns in Jefferson County elementary schools in 2009. High-demand schools are those that had more than 20 transfer requests, and low-demand schools are those that had fewer than 8 transfer requests. The data show that the schools with the highest transfer demand—16 schools—had a median 25.5 transfer requests compared to 3 for the 20 schools with the lowest number of transfer requests. In terms of performance, the high-demand schools had higher percentages of students who scored proficient or distinguished in the Kentucky Core Content Test (KCCT) than students in the low-demand schools. The gap in the median scores was 22.5 points. The table also shows that low-demand schools have a much higher percentage of teachers with no experience and 0-3 years of experience. However, the high-demand schools have roughly double the percentage of teachers with 20 or more years of experience.

Table 3.3
2009 Transfer Requests and Teaching Experience
in Jefferson County Elementary Schools

Type of Elementary School	Number of Schools	Median Number of Requests	Percent Proficient or Distinguished in Math and Reading		Percentage of Teachers by Years of Experience		
			Range	Median	0	0-3	20+
High demand	16	25.5	69-89	73.5	2.0	10.2	27.4
Low demand	20	3	41-72	51	9.0	32.2	14.3

Source: Staff compilation of KDE data.

Middle schools with higher numbers of transfer requests have better KCCT scores, more senior faculty, and fewer inexperienced faculty than low-demand middle schools.

High transfer demand in middle schools is defined as 28 or more requests, and low demand is defined as fewer than 10 requests. The transfer request pattern in middle schools is the same as that for elementary schools. Transfer requests to higher-performing middle schools are much more numerous than teacher requests to lower-performing schools. As Table 3.4 shows, high-demand schools had a median value of 42 transfer requests, compared to 5 for lower-performing middle schools. In addition, schools with high transfer demand performed better on KCCT than lower-demand schools. Staffing data show that 15.4 percent of teachers in low-demand schools had 0 years of experience and almost 50 percent had 3 or

fewer years of experience. Twenty-three percent of teachers in high-demand middle schools had 20 or more years of experience, compared to 7 percent of teachers in low-demand schools.

Table 3.4
2009 Transfer Requests and Teaching Experience
in Jefferson County Middle Schools

Type of Middle School	Number of Schools	Median Number of Requests	Percent Proficient and Distinguished in Math and Reading		Percentage of Teachers by Years of Experience		
			Range	Median	0	0-3	20+
High demand	5	42	63-85	72	4.0	11.3	23.0
Low demand	7	5	25-42	32	15.4	48.2	6.9

Source: Staff compilation of KDE data.

The percentage of students scoring proficient or distinguished in high-demand high schools is substantially higher than in low-demand high schools.

For high schools, Table 3.5 shows that transfer requests follow patterns similar to those shown in the elementary and middle school samples. High-demand schools are those that had more than 35 transfer requests, and low-demand schools are defined as those that had fewer than 15 requests. The high-demand high schools had a median 38.5 requests, compared to a median 9 requests to low-demand high schools. The percentage of students scoring proficient/distinguished in high-demand high schools is substantially higher than in low-demand high schools. The percentage of less-experienced teachers is also high in lower-demand schools, while the percentage of teachers with 20 or more years of experience is higher in high-demand schools.

Table 3.5
2009 Transfer Requests and Teaching Experience
in Jefferson County High Schools

Type of High School	Number of Schools	Median Number of Requests	Percent Proficient and Distinguished in Math and Reading		Percentage of Teachers by Years of Experience		
			Range	Median	0	0-3	20+
High demand	8	38.5	37-88	58	6.1	16.6	19.6
Low demand	7	9	29-41	31	9.5	33.9	13.6

Source: Staff compilation of KDE data.

The transfer policy in Jefferson County provides teachers with flexibility, but students in lower-performing schools tend to have access to fewer highly experienced teachers.

Teacher turnover rates are higher in low-demand schools than in high-demand schools. The transfer provision gives teachers an easy option to leave a challenging school environment.

The teacher transfer request data combined with the student performance and teacher experience data show that the staffing policy in JCPS provides teachers with considerable choice and flexibility. Yet, students in lower-performing schools tend to have access to fewer highly experienced teachers.

Teacher Turnover. Teacher turnover is another factor that suggests contract provisions exacerbate existing staffing problems in Jefferson County. Teacher turnover is calculated by analyzing KDE’s Professional Staff Data, and it is the percentage of certified staff members who were at a school in one year but not the next. Table 3.6 shows high rates of teacher turnover in low-demand schools. Teacher turnover rates in high-demand schools from the 2007 school year to the 2008 school year ranged from 11.2 percent in elementary schools to 14.7 percent in high schools. From the 2008 school year to the 2009 school year, teacher turnover in high-demand schools ranged from 10 percent to 11.2 percent. In low-demand schools, teacher turnover rates were about 18 percent in elementary and high schools from the 2007 school year to the 2008 school year. The high turnover rate in middle schools at this time, 42.7 percent, was a consequence of restaffing North Olmstead, South Olmstead, and Westport Middle Schools. However, low-demand schools also exhibited high turnover rates from the 2008 school year to the 2009 school year, more than double the rate of high-demand schools at the middle and high school level.

Table 3.6
Percentage of Teacher Turnover in Low-demand and High-demand Schools
School Years 2008 and 2009

School	Low demand		High demand	
	2008	2009	2008	2009
Elementary	18.5	17.7	11.2	10.0
Middle	42.7	25.1	13.7	10.5
High school	18.4	22.3	14.7	11.2

Source: Staff compilation of KDE professional staffing data.

Teacher interns make up large percentages of teacher hires in some persistently low-achieving schools—for example, 47 percent in Frost Middle School and 32 percent in Western Middle School.

Staff also analyzed restaffing data for Jefferson County’s six persistently low-achieving schools announced in April 2010: Shawnee High School, Western High School, Valley High School, Western Middle School, Fern Creek High School, and Frost Middle School. Pursuant to HB 176, the district was provided additional funds to turn around these schools. The district had four turnaround options to select from and chose the restaffing

option.¹ Review of the teachers hired for those schools found a high number of teacher interns with 0 years of experience hired in Frost Middle School, Valley High School, and Western Middle School. Of the teachers hired for those schools, interns made up a large percentage of hires—47 percent in Frost Middle School and 32 percent in Western Middle School. While the hiring of interns did not violate the statute, it is a concern that schools identified as persistently low achieving, where students need high-quality teachers, hired a substantial number of teachers lacking any experience. Table 3.7 shows restaffing data for persistently low-achieving schools in the 2011 school year.

Table 3.7
Restaffing in Persistently Low-achieving Schools
School Year 2011

School	Hires		Interns	
	Number of teachers	Percent new to school	Number hired	Percent interns
Frost Middle	32	69	15	47
Western Middle	38	60	12	32
Fern Creek High	86	44	8	10
Shawnee High	46	54	1	2
Valley High	59	32	11	19
Western High	61	41	11	18

Source: Staff compilation of unpublished Jefferson County Public Schools data.

The JCTA contract allows the superintendent to execute transfers for good cause. However, JCTA opposes widespread use of this practice to involuntarily transfer teachers throughout the district.

Forced Transfers. Article 16, Section F of the JCPS contract states: “The Superintendent or designee for good cause and extenuating circumstances will execute transfers as may be necessary for the efficient operation of the school district.” This provision is used sparingly in the district, and JCTA representatives expressed support for its “judicious” use of Section F. However, JCTA representatives would oppose widespread use of forced transfers to move teachers to different schools within the district.

As in most districts in the nation, there is no formal mechanism to more equitably distribute teachers in Jefferson County. If a school or its students are perceived to be challenging, the school may receive few transfer requests for its vacant positions, offering principals limited opportunity to hire the most qualified staff.

¹ The restaffing option in KRS 160.346 requires schools to hire at least 50 percent new teachers.

A major challenge facing Jefferson County Public Schools is implementing a staffing model that attracts and retains highly effective teachers in persistently low-achieving schools.

District Challenges. The underlying challenge in JCPS is implementing a model that attracts and retains highly effective teachers in low-performing schools, some located in remote or low-income parts of the district. Several administrators said better incentives are needed to attract talented teachers to low-performing schools and hard-to-staff schools. For example, some administrators support higher salaries for teachers in hard-to-fill schools, and they favor improved working conditions as potential options to overcome negative perceptions of some schools. In an interview, a JCTA representative said it is “open to discussion” on the issue of differential pay in hard-to-staff schools. However, JCTA steadfastly supports a single salary schedule based on rank, certification, and classroom experience and is opposed to merit pay (Jefferson).

Principals in high-performing schools reported that they rarely have an opportunity to hire a new teacher because vacancies are filled by transfers.

Even principals in high-performing schools are affected by the transfer provisions. Because so many position openings are filled by voluntary transfer, some administrators interviewed reported that they rarely have an opportunity to make a new hire. In general, the most popular schools are those that are perceived to have fewer disciplinary and classroom management problems. A principal at a high-performing middle school who usually receives 30 to 40 transfer requests for any opening in his school said that many teachers assume “the grass is greener” in his building.

The academic programs available at a school are another factor that affects the attractiveness of a school to more senior teachers. As one administrator pointed out, it is extremely challenging to attract teachers to a school that does not have a magnet program or other specialty that draws students from outside the neighborhood boundaries. In effect, some schools are at a competitive disadvantage with their peers. A principal in a school without a special program reported that there are “over 60 kids in my neighborhood zone who attend the STEM [science, technology, engineering, and math] middle school down the road.” The principal acknowledged that his school is forced to compete for both high-performing students and teachers without the benefit of a popular magnet or traditional program.

Administrators said that many teachers transfer to be closer to their homes. However, they also said that the negative perceptions of some schools contribute to the problem of attracting and retaining teachers in low-performing schools.

Several administrators explained that geographic factors are the best explanation for the transfer patterns. Teachers want to be close to their homes and their daycare providers, and they want shorter commutes. However, several principals said that negative perceptions of certain schools complicate attracting and retaining high-quality teachers. These perceptions, coupled with the

district's transfer policy, lead to situations where low-performing schools are staffed by less experienced teachers.

The transfer policy ignores contextual factors that could affect the ability of a teacher to be successful.

The transfer policy also ignores contextual factors that should be considered when staffing for unique needs. An administrator expressed concern that the transfer process does not take into consideration the needs of a school with a specialized program, for example a Montessori school or a school with a specialized technology curriculum. A duly certified teacher with 20 years of experience may want to transfer to a science, technology, engineering, and mathematics magnet school but may not have the skills and expertise such a school needs. The transfer policy allows an experienced teacher to qualify for an interview, but the teacher could lack any actual work experience or specialized knowledge needed to be successful in a technology magnet school. If hired, the outcome would likely be a poor fit for the school.

Another administrator reported that he has had some success with grooming student teachers to succeed in low-performing schools. Despite the fact that several good teaching candidates have worked in his school, the transfer policy can interfere with his ability to retain a promising young teacher with the skills needed to succeed in a difficult environment.

On rare occasions, struggling teachers are placed in schools as part of a memorandum of agreement to settle a performance grievance.

As referenced earlier, some grievance settlements result in involuntary transfers of teachers to resolve ongoing problems between a teacher and a principal. Staff found four cases where JCTA and JCPS agreed to give a struggling teacher a final opportunity to improve classroom performance. A condition of such transfers is that the teacher signs a letter of resignation with the district before being involuntarily placed in a school. At the end of one semester, the principal at the receiving school has the option to renew or remove the teacher. JCTA's role in this process is to protect the due process rights of the teacher. When JCPS agrees to such arrangements, it is responsible for the placement of the struggling teacher.

Although education analysts have expressed concern about the distributional consequences of the contract's staffing policy, the 2011 Comprehensive District Improvement Plan does not address the issue.

Teacher Distribution. As recognized in the Greater Louisville Education Project Report, staffing provisions in the teacher union's contract need to be altered to insure the distribution of quality teachers can be more equitably spread across high and low risk schools" (7).

Since this report was published in 2009, it appears little progress has been made to address the distribution of teachers in the district. JCPS' draft version of the 2011 Comprehensive District

Improvement Plan does not include any policies or programs related to teacher distribution or transfer provisions.

In response to the 2010 mandates of HB 176, six JCPS schools were named persistently low achieving and were forced to choose from four turnaround options. In November 2010, another set of low-achieving schools was identified, adding six more Jefferson County schools to the list. JCPS leaders again chose the restaffing option, which requires schools to hire at least 50 percent new staff. While KRS 160.346(10) clearly stipulates that “professionally negotiated contracts by a local board of education shall not take precedence over the requirements” associated with the option selected, JCPS and JCTA entered into an MOA as to how the restaffing would take place.

Several administrators interviewed in Jefferson County expressed concern about the impact of HB 176. While they consider the bill well intentioned, they said it will likely lead to a shuffling of teachers throughout the district. Teachers deemed to be poor fits in a low-performing school are not released from their contracts. Instead, they are moved to other positions within the district, sometimes to schools that are also struggling.

Boone County Public Schools

The second-largest teachers union in the state is the Boone County Education Association. The transfer provisions in Boone County guarantee a teacher an interview, but they do not require principals or councils to hire the most senior candidate.

Boone County has the second-largest teachers association in the state—about 78 percent of teachers in the district are members. The hiring process in Boone County largely follows statutory guidelines that require principal and school council consultation. In the past, the transfer provision in the Boone County Education Association contract was based on seniority. The most senior teacher who applied for a transfer to an open position was guaranteed the position. The transfer provision was renegotiated in the last contract, and seniority is no longer the dominant factor controlling transfer policy. The contract states that “transfers will be granted and positions staffed from the transfer requests according to program needs, certification, and district seniority.” The contract states that district seniority is used “to determine the order of contact” for interviews.

Each school council in Boone County is responsible for developing a rubric for any vacancy that includes “weights” for competencies desired in the position. For example, experience might count 20 percent, certification 25 percent, evidence of prior excellence in teaching 35 percent, and collaboration skills 20 percent. The order of interviews is based on seniority, but the determining factor in

hiring a teacher is the rubric score. It is possible that the most senior applicant for the position scores highest on the rubric and is granted the position. The superintendent said the rubric put an end to rare cases of frivolous transfers. It is incumbent upon councils to develop rigorous rubrics that weed out candidates who might be interested in transferring for inappropriate reasons. Administrators interviewed said that Boone County teachers tend to stay put and that there are no hard-to-staff schools.

As a growing district, Boone County has had to manage several new school openings. Opening a new school usually is accompanied by redistricting and changes in school enrollments. When a new school opens, teachers are often reassigned to meet the needs of the district. In these cases, teachers can be voluntarily or involuntarily transferred into other schools. None of the principals interviewed said they had inherited ineffective teachers through involuntary transfers, but the process did limit their free choice.

Bullitt County Public Schools

The contract in Bullitt County was recently renegotiated, resulting in the removal of seniority-based transfers.

The Bullitt County Teachers Association was formally recognized in 1992. Through recent contract negotiations, seniority-based transfer rights and paper transfers were eliminated from the contract. When asked about the influence of the contract on the district's performance, the superintendent responded, "I cannot use the contract as an excuse for anything; leadership has to lead despite the contract." He also pointed out that the contract provides valid protections for some teachers.

In Bullitt County, teacher vacancies are posted per statute, and principals can access all applicant materials via an online human resources portal. Administrators said that principals and councils can interview whomever they want.

Since the removal of seniority rights and the right of teachers to claim future vacancies—also known as claiming provisions—the use of transfers has been rare. Most of the transfer requests are made for geographic reasons. Bullitt County has some low-performing schools, but few schools are stigmatized as undesirable locations to teach. According to interviewees, the newest high school, East Bullitt High School, is an attractive transfer location. It is located in a growing, affluent area of the district that borders Jefferson County, and many teachers reportedly live near this area. Administrators interviewed all

agreed that the less restrictive model now in place is superior to the previously used seniority-based model.

Kenton County Public Schools

The transfer provisions in the Kenton County contract allow senior teachers to apply for transfers but guarantee them only an interview. Employment in the district does not bestow on a teacher a right to claim another position in the district.

The Kenton County Education Association is the third largest teachers association in the state and represents about 60 percent of all teachers in the district. Administrators in Kenton County reported that the provisions in their contract have no influence on school staffing. Most vacancies are filled by new hires, and the transfer provision guarantees current employees only an interview. Senior teachers who request transfers to schools with vacancies are not guaranteed positions. If current teachers in the district apply for transfers and do not get the position, they can request an explanation for the denial. Employment in the district does not bestow on a teacher the right to claim a vacant position elsewhere in the district.

The contract states that vacancies will be filled by voluntary transfers or new hires. It does not allow for paper transfers. All currently employed teachers who submit a transfer request to a particular school, either for an anticipated vacancy or in response to a vacancy notice, will be considered in the first pool of candidates to be interviewed for that vacancy, provided that the individual meets the certification requirements. The principal and the school council establish the criteria to be used in filling a vacancy, and those criteria are included in the notice of the vacancy.

Each school council is responsible for developing a rubric for each vacancy, and it is used to screen candidates. Principals and the school councils have the autonomy to hire the best teacher to meet their needs. The district does not dictate the rubric. Good rubrics are developed to attract the best candidates who have the requisite skills needed to succeed. Administrators explained that the district uses questionnaires to identify teacher candidates with dispositions that match the goals of the school system. Kenton County worked with Northern Kentucky University to develop disposition questionnaires customized to meet board learning goals, and the district trained all principals on interpreting disposition questionnaires to identify good teacher candidates.

According to the superintendent, the district averages about 100 new hires per year and 10 transfers. Most transfers reflect a teacher's desire to work closer to home, to make a fresh start, or to accompany newly hired leadership to a different building.

Involuntary transfers are rarely made and are not used to move bad teachers around. One interviewee reported that he has not hired a transfer in 4 years. Teachers in the district tend to remain in the same school.

In terms of staffing challenges, none of Kenton County's schools is a persistent low performer, and there are no challenging schools that teachers try to avoid. In addition, those interviewed stated that teachers from elsewhere aspire to get into Kenton County schools. Consequently, there are no subject matter teacher shortages. The Master of Arts in Teaching programs at Thomas More College and Northern Kentucky University provide an ample supply of high-quality science, technology, mathematics, and world language teachers.

Knott County Public Schools

The Knott County Education Association represents about 40 percent of the district's 176 teachers. Seniority-based transfers were negotiated out of the contract in 2007. "Inside" candidates are granted consideration, but principals and school councils have the authority to interview and hire the applicant who best meets the needs of the school.

Knott County is a relatively small district in southeastern Kentucky that includes eight schools and 176 teachers. According to district estimates, about 70 teachers, or 40 percent, are dues-paying members of the Knott County Education Association.

The CBA in Knott County was renegotiated in 2007, resulting in the removal of the seniority-based transfer provision. The contract divides the applicant pool into two categories: inside candidates who already work in the district and outsider candidates who have never worked in the district. All vacancies are posted internally for 10 days, and inside candidates are given first consideration for any anticipated vacancies. After 10 days, the position is posted at KDE for 30 days, and outsider candidates are considered.

Knott County has hired considerably more outsider candidates since the contract was changed in 2007. Administrators explained that the district received few outsider applications before 2007 because the district was perceived to lack opportunities for outsider applicants. One administrator stated that less than 10 percent of teacher hires before 2007 were outsider candidates—or new hires. However, in the last 3 years, the majority of teacher hires at that school have been from outside the district. Another administrator with more than 15 years of experience in the district explained that he hired only one outsider applicant before 2007. Since then, the majority of hires have been outsider candidates. It was the consensus that teacher quality has improved substantially since 2007.

The Knott County contract no longer contains a paper transfer or claiming provision. Administrators interviewed said the contract has had little impact on hiring and school staffing decisions since the changes were made. In addition, they reported that changes in district leadership and a renewed focus on teacher accountability have eroded the “contract for life” attitude that allegedly pervaded the Knott County system in the past.

Martin County Public Schools

Martin County is a small district with limited transfer opportunities. Administrators interviewed in Martin County agreed that the contract did not affect school staffing in the district. Overall, the district follows the process laid out in statute.

Martin County is a small, geographically isolated district with little teacher turnover. The Martin County Teachers Association is the recognized bargaining agent for teachers in the district, and 78 percent of the teachers in the district are dues-paying members. The administrators interviewed agreed that the contract has no impact on school staffing. The district follows statute in posting positions, interviewing candidates, and including school councils in the consultation process. The contract includes a transfer clause, and senior teachers are often granted an interview if they request a transfer, but principals and councils have the ultimate authority to choose the best candidate to fill the needs of the school. Given the size of the district and the limited number of annual vacancies, the number of transfer requests is small.

Administrators explained that the biggest school staffing problem is attracting a sizable pool of qualified candidates for hard-to-fill positions in math and science. The superintendent has focused on recruitment and has had some success recruiting teachers from other districts, and in one case another country, to come to Martin County.

The CBA does not allow for paper transfers or seniority-based claiming provisions.

McCracken County Public Schools

Eighty-two percent of the teachers in McCracken County are dues-paying members of the McCracken County Education Association. Among teachers associations with collective bargaining rights, it is second only to JCTA in the percentage of teacher membership.

The contract in McCracken County has no effect on hiring, and transfers take place only in accordance with statute. Teachers who want to transfer to a position in another school must apply and interview for the position like all other applicants.

According to administrators interviewed, the CBA has no effect on hiring. The contract states:

transfers will only take place in accordance with the Kentucky Revised Statutes and Kentucky Administrative

Regulations and within the process outlined in this agreement.

All vacancies are posted, the principal chooses the interview candidates, school council members are encouraged to sit in on interviews, and the council is consulted before the selection is made.

The contract does not allow for seniority transfer rights or paper transfers. Administrators explained that the teacher turnover rate is low because McCracken County is one of the best-paying districts in the region. One principal said the union does not pressure administrators or interfere with the hiring process. Association members who want a transfer must apply and interview like any other candidate.

According to those interviewed, the voluntary transfer provision does not result in redistributing ineffective teachers across the district—a process also known as churning. One elementary school received 140 applications for two open positions for the 2010 school year; the majority were from new teachers. This level of competition for the limited number of job openings promotes high-quality outcomes. However, finding high-quality foreign language, physics, and math teachers at the middle and high schools is a challenge. The supply of highly qualified middle school teachers is low. These challenges aside, the CBA has little impact on principal and school council autonomy to hire the best applicants for a given vacancy.

Newport Independent

Newport Independent has four schools and has experienced substantial student population decreases over the last decade. Administrators complained that the district loses good teachers to surrounding districts but that this is not related to the contract.

Newport Independent is a small district made up of four schools and 146 certified teachers, about one-third of whom are members of the Newport Teachers Association. Administrators interviewed said the district experiences a significant amount of teacher turnover because of regional competition in the job market. The teacher turnover rate was 22 percent between 2008 and 2009 and 21 percent between 2009 and 2010; however, Newport Independent has lost 300 students in the last 10 years, resulting in the elimination of several teaching positions. Newport Independent competes for teachers with public and private schools in Cincinnati, Kenton County, Boone County, and Campbell County.

Administrators stated that starting salaries compared to the Cincinnati district, the perception that Newport students are challenging, and old facilities make staffing difficult—not the contract. In addition, many Newport teachers live in Campbell,

Administrators said the contract does not pose any significant challenges to principals and school councils when filling open positions.

Kenton, and Boone Counties and often want to teach in the districts where their children attend school. As teachers gain experience in Newport, they often look to other districts. Overall, hiring is not a problem; the problem is retention.

Given the small size of the district, teacher churning via the transfer provision is rare. Seniority is a contractual issue in any transfer request, but principals can use “individual qualifications” as a hiring factor to weed out an unwanted transfer. The administrators interviewed did not consider the contract to have much of a role in school staffing.

Wolfe County Public Schools

Wolfe County is a small district with limited opportunities to transfer within the district. Administrators interviewed said the contract does not have an impact on school staffing. Seniority preferences were removed from the contract by the previous superintendent.

The Wolfe County school district is relatively small compared to most other contract districts. The Wolfe County Teachers Association represents about 76 percent of the district’s 89 certified teachers. The current superintendent of the district is also the former president of the association. By his account, the contract has not had an impact on school staffing since the seniority-based transfer provision was removed by a previous superintendent.

In general, there is not a lot of teacher movement within the district because there is only one high school, one middle school, and three elementary schools. For the 2010 school year, there were four certified openings, and they were filled by three new hires and one experienced hire from outside the district.

Wolfe County follows the statutory process for hiring by posting all positions internally and at KDE for 30 days. Applicants are screened by certification and then forwarded to principals and school councils. There are no seniority guarantees for existing teachers. If teachers from within the district are interested in a position open within the district, they must apply and go through the interview process.

All the administrators interviewed echoed the superintendent’s observations about principal and school council autonomy to hire the best applicant for the position. The biggest staffing challenge in Wolfe County is attracting high-quality applicants to a rural, impoverished district, especially in math and science positions. Given this problem, the administrators were all supportive of the concept of differential pay to attract teacher applicants to hard-to-fill schools.

Noncontract Districts

In order to provide a contrast to the staffing issues encountered in districts with CBAs, staff interviewed administrators in noncontract districts: one large district, one medium-size district, one small district, and one independent district. Vacancies in noncontract districts are filled pursuant to the statutory process. Positions are posted, and the applications of qualified candidates are forwarded to principals. Some principals forward all of the applications to the school council, and some cull the stack of applicants down to a manageable number of the most highly qualified. Applicants are then invited to the school for interviews, the principal consults with the school council, and a hiring decision is made. Principals and school councils have full autonomy to hire the most-qualified candidate regardless of the applicant's seniority.

Teachers in noncontract districts can move to other schools within the district, but they must apply and compete for a position like any other applicant. Most principals in noncontract districts reported that they had hired teachers from other schools in the past because they were the most qualified applicants for the positions. There are no seniority rights or paper transfer provisions that grant an employed teacher within a district a right to claim a vacant position.

Chapter Conclusion

With the exception of Jefferson County, collective bargaining agreements have a limited impact on how vacancies are filled in contract districts.

With the exception of JCPS, CBAs have a limited impact on how vacancies are filled in contract districts. The role of seniority as the primary factor in filling teacher vacancies is most pronounced in JCPS, where some principals in high-performing schools reported rarely hiring new teachers or teachers from outside the system. Principals in low-performing schools have more opportunities to hire new teachers because of limited transfer demand for open positions in their schools. This has resulted in a large number of interns and inexperienced teachers at low performing schools.

The number of teacher interns hired in Jefferson County's persistently low-performing schools is troublesome, and it highlights the weakness of the transfer policy to meet strategic district needs.

While researchers have found that the influence of teacher experience on student performance is not particularly strong, they also point out that new teachers need 3 to 4 years of experience to reach a level of parity with more experienced peers (Sanders). OEA staff analyzed the teachers hired in the 12 turnaround schools in JCPS and found high numbers of teacher interns hired in Frost Middle School and Valley High School. This pattern highlights the difficulty of attracting more experienced teachers to

low- performing schools and could complicate efforts to improve student performance in the short term.

Jefferson County is the only district in the state that routinely uses blanket postings to advertise job openings.

In terms of job postings, analysis of KEPS vacancy postings showed that both large and small noncontract districts advertise positions at specific schools. Blanket posting is not used anywhere outside Jefferson County.

The seniority-based transfer system used in Jefferson County sometimes forces principals to accept teachers who are not the best candidates.

The seniority-based and paper transfer provisions in the Jefferson County CBA have created a system that allows for high teacher turnover and high levels of new teachers and interns as staff in low-performing schools. In addition, the transfer provision sometimes forces principals to accept teachers whom they would not ordinarily hire.

The seniority-based transfer process is considered an example of policy that places the interests of adults over the interests of students.

The overwhelming sentiment among administrators interviewed in all CBA districts is that the seniority-based transfer provisions are not associated with best practices and meeting the goal of improving student performance. Rather, the transfer rights are about meeting the desires of adults in the district, which can be detrimental to student performance.

Recommendation 3.1

Recommendation 3.1

Districts should ensure that seniority-based transfer provisions in collective bargaining agreements are aligned with education reforms such as SB 1 (2009) and HB 176 (2010) that focus on improving student learning and performance.

Chapter 4

Teacher Evaluation and Contract Impacts

Eight of the nine contracts analyzed include guidelines that affect teacher evaluations. The guidelines mirror statute regarding the frequency and content of evaluations.

Eight of the nine contracts analyzed for this report include guidelines that affect teacher evaluation. By statute, all tenured teachers are typically on a 3-year evaluation cycle characterized by a formative evaluation in the first year, a formative evaluation in the second year, and a summative evaluation in the third year. Nontenured teachers receive two formative assessments per year and one summative evaluation per year. In addition, administrators use informal walk-throughs and classroom visits to monitor a teacher's effectiveness.

According to administrators interviewed, the contracts have little impact on teacher evaluation. The biggest problems with teacher evaluations are weak evaluation instruments and the difficulty of removing ineffective teachers, both of which are not strictly CBA issues.

All CBAs reviewed follow statutory requirements regarding the frequency and process of evaluating teachers. According to those interviewed, the contracts have little direct impact on teacher evaluation as practiced. Most administrators gave suggestions to make the evaluation process more useful, but the critiques focused on two noncontract issues:

- The evaluation instruments used are flawed and perform poorly for identifying teacher weaknesses and for designing effective individual growth plans
- Superintendents have difficulty removing ineffective teachers, especially those with tenure.

The use of student performance data to evaluate teachers is expressly forbidden in four contracts, and it is not used in the other five contract districts. However, the use of student performance data on individual teacher evaluation is rare in all districts across the state.

The impact of CBAs on evaluation is manifest through what is not permitted as part of an evaluation. Use of student test score data in evaluating teachers is expressly prohibited in four contracts, and data are not used to evaluate teachers in the other contract district. However, it is important to point out that OEA is unaware of any district in Kentucky that has used student test data or student performance growth as a factor in summative teacher evaluations. Lawrence County High School, which was declared low performing through HB 176 provisions, approved a transformation model that includes the use of student performance data in evaluating teachers. Many districts, including some contract districts, use the Measures of Academic Progress program to gauge student growth, but these data are not part of a teacher's evaluation. The Kentucky Education Association is generally opposed to using student test data to evaluate teachers, and this opposition is not restricted to CBA districts.

Contract Impacts on Teacher Evaluation

Contract provisions governing teacher evaluation are closely aligned with 704 KAR 3:345. Contracts spell out due process procedures for teachers who feel that any written evaluation is incomplete, inaccurate, or unjust.

Contract provisions governing teacher evaluation are closely aligned with 704 KAR 3:345. In general, the teacher's supervisor is responsible for conducting the reviews. The CBAs outline a communication process between the administrator and the teacher. For example, guidelines and time lines for preconference meetings, written evaluations, and postconference meetings are specified in the contract. These process-related topics are important because a teacher can invalidate a negative evaluation if proper contract protocol is not followed. The contracts spell out due process procedures for teachers who feel any written evaluation is incomplete, inaccurate, or unjust. In such cases, teachers have a right to put their concerns in writing and attach formal responses to their personnel files.

All contracts include a full-knowledge clause used in Kenton County: "All monitoring or observations of performance of a certified employee shall be conducted openly and with the full knowledge of the teacher or administrator." The full-knowledge clause is required by 704 KAR 3:345. As some administrators observed, though, preannounced evaluations give teachers ample opportunity to create and implement an effective class; however, the class observation might not reflect the reality of the class on other, nonobserved days.

In many districts, the evaluation instrument is codeveloped by teachers and administrators as required by contract. This is important to build consensus and promote ownership across the district. However, it gives teachers who are members of the teachers association a strong hand in determining their evaluation measurements. Given national pressures to improve teacher evaluation and accountability, the current system may not produce challenging and innovative evaluation techniques.

Many contracts use language similar to that used in Martin County to state that the purpose of evaluation is to

...improve instruction, provide a measure of performance accountability, and to provide encouragement and incentives for certified employees to improve their performance in carrying out their instruction duties.

The overriding theme in collective bargaining agreements is that evaluation should not be punitive and should focus on making teachers better.

The overriding theme in CBAs is that evaluation should not be punitive. Instead, the evaluation process should be used to assist teachers who are struggling in certain areas. Several superintendents and principals agreed that evaluations should help

teachers be better instructors. While this approach is likely warranted in the vast majority of evaluations, it seems to contradict the desire by principals to more easily remove ineffective teachers. A strong evaluation instrument coupled with strong performance indicators would be necessary to provide objective documentation of poor performance.

CBA's have little direct influence on teacher evaluations in any of the districts.

According to those interviewed, the CBAs have little direct impact on teacher evaluations in any of the districts. Administrators follow statute and require all nontenured teachers to be evaluated three times per year and all tenured teachers to be evaluated once every 3 years. Some administrators reported that they go beyond the state requirements and evaluate all teachers annually. Similarly, several administrators said they evaluate any teacher new to their schools, including those who are already tenured, in the first year at the schools.

Corrective Action Plans

Few administrators admitted to giving negative evaluations. And very few administrators reported any cases where teachers filed grievances for those negative evaluations. Some administrators admitted that the low number of grievances might reflect the fact that because there are so few negative evaluations, few teachers are placed on corrective action plans.

Administrators are required to work with teachers who receive negative evaluations to develop a corrective action plan. However, some interviewees cautioned that a teacher can meet the requirements of a plan without necessarily becoming a better teacher.

The process for managing an underperforming teacher is laid out in eight of the nine CBAs. In general, the contracts require administrators to develop a corrective action plan (CAP) for any teacher who receives a negative evaluation. Administrators all agreed that the CAP is extremely important to turn around poor teacher performance. However, some principals complained that teachers can meet the requirements of the corrective action plan without necessarily becoming better teachers. For example, the corrective action plan may require a teacher to read a book on differentiated instruction and attend related professional development training. Principals in both CBA and noncontract districts did not report high use of corrective action plans or high rates of teacher contract renewals or teacher terminations. This finding reflects national literature that criticizes administrators for not aggressively evaluating teachers.

The Jefferson County contract includes the most time-intensive CAP procedures. According to Article 8, Section B of the contract, when significant deficiencies in a teacher's work performance have been observed, five steps must be followed. The deficiencies must

be documented in writing and discussed with the teacher in a conference. The evaluator is responsible for observing the teacher a minimum of four 30-minute periods over a 12-week period. The evaluator is required to meet with the teacher within 5 days of each observation. The evaluator is responsible for identifying and providing professional services or materials to help correct the identified deficiencies. Finally, the evaluator must summarize the observations and conferences in writing and provide copies to the teacher. Thus, placing a teacher on a CAP is a labor-intensive process. The workload associated with managing multiple teachers on CAPs would be tremendous and could be a disincentive to placing a teacher on a CAP.

Managing Ineffective Teachers

Most administrators in contract and noncontract districts manage ineffective teachers in similar ways. Principals reported that making persistent observations and suggestions for improving the teacher can often result in the teacher requesting a transfer or leaving the system. This solution, though, can have negative consequences. Principals in Jefferson County complained that the seniority-based transfer system can promote frivolous transfers, churning less-effective teachers throughout the district. Teachers who are on a corrective action plans are not allowed to transfer, but some principals said that marginal teachers can use the transfer policy to escape an environment of high expectations.

Principals explained a process where administrators sometimes meet with an ineffective teacher and encourage the teacher to transfer. In exchange for transferring, the teacher is not put on a corrective action plan, or a negative evaluation is not placed in the personnel file. The use of this strategy, as explained by those interviewed, was more prevalent in the past than in the present. Principals said they must take ownership of poor teacher performance, and that rigorous evaluation is essential to stopping the process of churning teachers throughout the district. The solution is principal accountability. All the principals who mentioned this issue stated that they are forthcoming and honest when a fellow principal calls them to inquire about the quality of a transfer applicant.

All districts encounter underperforming teachers. The methods to deal with such teachers vary. Administrators in a noncontract district reported that some principals and school councils used to eliminate positions to remove an ineffective teacher. In such cases, the unwanted teacher was placed in another school. Afterward, the

position at the original school would be reposted and a new teacher hired. District leadership has since communicated to principals that this practice is unacceptable and irresponsible, even though it was allowed by statute.

Some administrators try to minimize the harm of less effective teachers by placing them in alternative schools.

Some administrators said ineffective teachers are placed in positions that limit their exposure to students. For example, an ineffective teacher might be placed in an alternative school with high student turnover or given more administrative duties.

Most administrators interviewed supported the use of some student growth data and test scores as part of teacher evaluation. However, there are numerous concerns about the appropriate use of test data in measuring a teacher's impact.

Many administrators expressed support for teacher accountability initiatives that include using student performance growth data and test scores as a part of the evaluation process. While there is no consensus on what percentage test scores should play in an overall evaluation score, the majority of principals mentioned that test results are another data point that could be used to identify highly effective and less effective teachers. Removing a teacher on the grounds of incompetency is more difficult in an evaluation system that focuses on process, not performance.

Challenges to Rigorous Evaluation

While the CBA does not seem to hinder rigorous teacher evaluation, several administrators interviewed for this report highlighted circumstances that complicate realistic teacher assessments. In hard-to-staff districts, some administrators pointed out that difficulty attracting qualified applicants can affect teacher evaluation and removal. Given the difficulty of attracting teacher applicants to remote districts, the security of having a marginal teacher who will remain in the district might be a better option than termination and potentially finding a less suitable candidate. Smaller districts also are affected by the politics of teacher evaluation and removal. In some small districts, a marginal teacher is a fellow church member and neighbor, who might have family ties with elected officials. These informal relationships can make objective evaluation difficult. The politics of evaluation and its link to teacher removal can test the mettle of an evaluator. A superintendent reported that a teacher can stir up controversy in the community that can pressure administrators into keeping a poor performer employed.

Many principals complained that predecessors had not rigorously evaluated teachers, making it difficult to quickly remove an ineffective teacher who has a history of positive evaluations to use as a defense.

Numerous principals expressed frustration about weak teacher evaluations from former administrators, and how a history of lax, positive evaluations constrains their ability to remove an ineffective teacher. The situation complicates teacher removal because an ineffective teacher can point to his or her personnel file

as evidence of exemplary performance before the arrival of the new principal. Teachers can use the change from a positive to a negative evaluation to suggest that the principal has a personality conflict with the teacher. In any case, inconsistent evaluations that vary from administrator to administrator make it difficult to identify teacher growth needs, and they force new principals to start corrective action plans on tenured teachers.

Some administrators said better training is needed for evaluators. For evaluation to be effective, the evaluation needs to have high inter-rater reliability. That is, different users of the evaluation instrument should yield similar evaluation outcomes. Some administrators said assistant principals or other evaluators can be nonconfrontational and value niceness over thorough evaluation. An evaluator who is more interested in maintaining staff harmony than in strong evaluation can hamper efforts to improve teacher performance.

Tenure and Contract Renewal

Teachers in Kentucky, as defined in KRS 161.720, are employed under either a limited contract for a term of 1 year or less, known as nontenure, or under a continuing service contract, known as tenure. A teacher reaches tenure status in one of two ways:

- A teacher is reemployed by the superintendent after teaching 4 consecutive years in the same district and begins work in the fifth year; or
- A currently employed teacher has taught 4 years in the same district within a period not to exceed the preceding 6 years and is reemployed and begins work in the fifth year. The years of employment do not need to be consecutive (KRS 161.740).

Both nontenured and tenured teachers are subject to evaluation and termination; however, the processes for terminating ineffective tenured and nontenured teachers differ.

In an OEA survey of all Kentucky principals, 99 percent of respondents agreed that removing an ineffective teacher should be easier than it is.¹ Both tenure and the due process procedures associated with removing any teacher are governed by Kentucky statute, not CBAs. While the CBA is perceived by many outsiders to be a contributing factor in protecting less effective teachers, all tenured teachers in Kentucky are guaranteed due process through

¹ Data come from the Office of Education Accountability's survey of all principals and teachers in Kentucky, as part of its forthcoming 2010 Evaluation and Compensation study.

tenure law. Even though most administrators interviewed complained about the difficulty of terminating ineffective tenured teachers, few have actually attempted such terminations. Thus, the validity of the claim that it is nearly impossible to remove a tenured teacher is hard to assess because most administrators are basing their convictions on the perception rather than the reality of removing an ineffective tenured teacher.

Several administrators interviewed said tenure needs to be reformed in light of evolving accountability standards.

Most administrators interviewed agree that tenure is needed but said it needs to be reformed. Several reported that tenure is an incentive for low-performing teachers not to improve and that it is disconnected from the accountability framework.

The process of observing, documenting, and providing resources to ineffective tenured teachers consumes time and resources.

Administrators overwhelmingly claimed that removing an ineffective tenured teacher is extremely time consuming and potentially expensive. Several administrators raised the issue of balancing teacher termination with other school priorities. The time consumed observing an ineffective teacher; documenting performance; and providing resources, assistance, and one-on-one conferences takes time away from providing instructional assistance to all teachers in the school. In addition, several administrators said the tribunal process, should a grievance go that far, is fraught with uncertainty.

Teachers association presidents strongly support existing tenure statutes. They argued that any administrator who follows the procedural guidelines of documenting and intervening to improve teacher performance can successfully terminate a teacher who does not improve.

Teachers association representatives unanimously disagreed with principals on the difficulty of removing ineffective tenured teachers. They point out that tenure is nothing more than due process and is protected by statute. They argued that any administrator who follows the rules of documenting, intervening, providing the teacher opportunities to improve, and following up with the teacher to monitor progress should satisfy the requirements for teacher removal. Teachers association presidents mentioned that some efforts to remove a teacher are based on a teacher's personality, not performance. Two superintendents said they support tenure because due process is critical in the teaching profession.

Teachers association leaders claimed that principal complaints about terminating an ineffective tenured teacher are unwarranted. Association leaders argued that school administrators sometimes lack the discipline needed to document and remediate struggling teachers. Whatever the reason, tenured teachers are rarely dismissed for performance reasons. The role of tenure law, not the presence of a CBA, is the dominant factor complicating the timely removal of ineffective tenured teachers.

Teachers association leaders see tenure as due process; thus, teacher removal should be difficult.

Teachers association leaders also said removing an ineffective tenured teacher should be difficult. A tenured teacher has completed a 4-year educator preparation program that is accredited by the Education Professional Standards Board and, in many cases, by the National Council for Accreditation of Teacher Education. Tenured teachers have passed the Kentucky Teacher Internship Program, met all Education Professional Standards Board licensing requirements, and completed a 4-year probationary program in which their contracts cannot be terminated without due process. In many cases, the tenured teacher has also completed a state-approved master's of education program and satisfied state criteria for promotion to a higher rank. At a minimum, an 8- to 10- year window exists during which ineffective teacher candidates and underperformers could be culled from the system.

Another factor that complicates removing a tenured teacher is inconsistent evaluation. Teachers association leaders ask how a teacher who has satisfied all of the requirements of becoming a teacher, who has received tenure, and who has a history of good evaluations can suddenly become an ineffective teacher when the school gets a new principal. Principals acknowledged that trying to remove a teacher with a history of positive evaluations requires extra diligence in evaluation and documentation.

Nontenure and Contract Renewal

Contracts of nontenured teachers can be nonrenewed without cause prior to the granting of tenure. Teachers association presidents said 4 years is ample time to remove a low-performing teacher.

Nontenured teachers must successfully complete a 1-year internship followed by an additional 3 years of teaching experience prior to obtaining tenure in Kentucky. The 4-year timeline to attain tenure in Kentucky is longer than in most other states. During this time frame, administrators can decide not to renew a teacher's contract without due process. Teachers association presidents said that this 4-year window is ample time to remove a teacher for performance reasons. Furthermore, the CBA provides no protection to a nontenured teacher. A nonrenewed teacher can file a grievance for a negative evaluation in an attempt to remove it from his or her personnel record, but the decision not to renew cannot be challenged unless the district makes a procedural error. For example, JCTA filed a lawsuit on behalf of 18 nonrenewed teachers in 2008 because it alleged that JCPS did not inform nonrenewed teachers by May 15, as required by KRS 161.750.

Administrators said that the number of nonrenewals has increased over the last 5 years because district leaders have proactively responded to concerns about teacher quality by removing teachers before they attain tenure. Leaders in three districts stated that

teacher interns, like tenured teachers, previously interpreted getting a job in the district as a job for life. Some of the larger CBA districts reported that nonrenewals are becoming more common. Data from the Education Professional Standards Board show that more than 98 percent of Kentucky Teacher Intern Program participants from 2007 to 2009 consistently completed their internships in Jefferson County, Fayette County, and the rest of the state. Few of these teachers' contracts were not renewed after their first year of teaching.

According to administrators, teacher removal at the front end of a teacher's career is preferable to posttenure removal. Several administrators said they need 2 years to accumulate enough data to determine whether a nontenured teacher should be retained.

Tribunal Process

A few administrators were highly critical of the tribunal process. They complained that it is broken, but complaints are based on individual anecdotes instead of a comprehensive database of arbitration cases.

A few administrators in contract and noncontract districts were highly critical of the tribunal process established in KRS 161.790. They complain that the process is highly uncertain and that the metrics needed to prove incompetency are unknown. Different tribunals made up of different panel members do not always make similar conclusions. There is no established threshold for sufficient evidence. Superintendents used anecdotes from their personal experiences to support their contentions that the system is flawed.

Superintendents also had different opinions on the merits of taking a teacher dismissal case to tribunal. One superintendent said that when a case goes to tribunal, other teachers in the district will see that high-quality teaching is valued; thus, taking a case to tribunal sends a strong message, whatever the outcome. Another superintendent said superintendents need a solid 3 to 4 years to build a strong case for dismissal. "It is critical that the principal wins; otherwise the winning teacher owns the building," explained the superintendent. A teachers association president asserted that his organization lost more teacher dismissal cases than it won.

Focusing solely on the cases that go to tribunal can be misleading because the majority of cases are settled before reaching a tribunal. The Kentucky Education Association plays a stronger role in defending teachers in the tribunal system than the teachers associations.

The Kentucky Department of Education maintains data on tribunal outcomes, but the data do not permit detailed analysis of the cases and their dispositions.

OEA staff analyzed data from the Kentucky Department of Education on tribunal outcomes. The database covered tribunal cases from 1991 to 2010 and included 476 cases. Overall,

40 percent of the cases were settled, but the database did not include information on the nature of the settlements or the type of alleged infraction. Eleven percent of the cases were withdrawn, 10 percent affirmed, 9 percent dismissed, and 5 percent were labeled “termination reversed.” CBA districts make up 17 percent of the tribunal cases.

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Appendix A

Research Methods

To complete this research, staff acquired copies of current contracts and analyzed their contents in relation to statute. While this was a valuable exercise, the best data were gleaned from administrators and educators in face-to-face interviews. The interviews provided practitioner-level feedback on how teacher contracts either complement or interfere with school and district goals. OEA staff interviewed superintendents, principals, and union representatives in nine districts. In addition, staff conducted interviews in four nonunion districts.

Interviewees were not randomly selected. Ideally, staff sought to interview three principals in each district with a minimum of 3 years of experience as principal in the same school. Additionally, staff attempted to identify one elementary, one middle, and one high school principal in each district to get an array of responses. Similarly, the sample included schools that are high performing, average performing, and low performing on Kentucky Core Content Tests.

Random sampling was used to identify schools in large districts, but some small districts have only one high school or middle school. Consequently, the sample is less random in small districts than in large districts.

A total of 56 interviews were conducted. The interviews focused on school staffing, teacher evaluation, and school management. Interviewees were encouraged to discuss any other contract issues that were not covered on the survey instrument.

