

BEFORE THE TENNESSEE DEPARTMENT OF EDUCATION

In the Matter of:)
 Cynthia Greer, Linda Weaver, and Metropolitan)
 Nashville Education Association,)
Petitioners,)
)
 and)
)
 Tennessee Department of Education, and)
 Metropolitan Government of Nashville and)
 Davidson County,)
Respondents.)

Docket No. 07.01-159513A

PETITION FOR DECLARATORY ORDER

In accordance with Tenn. Code Ann. § 4-5-223 and Tenn. Comp. R. & Regs. 1360-04-01-.07, the Petitioners Cynthia Greer, Linda Weaver, and the Metropolitan Nashville Education Association petition the Tennessee Department of Education for a declaratory order and state:

Names of Petitioners: Cynthia Greer, Linda Weaver, and Metropolitan Nashville Education Association

Addresses of Petitioners:

Cynthia Greer:	1212 Misty Glen Court, Old Hickory, TN 37138
Linda Weaver:	1104 Forestpointe Road, Hendersonville, TN 37075
Metropolitan Nashville Education Association:	531 Fairground Court, Nashville, TN 37211

Agency rule, order, or statutory provision on which declaratory order is sought:

- Uniform Administrative Procedures Act (UAPA) (Tenn. Code Ann. §§ 4-5-101, *et seq*)
- Tenn. Comp. R. & Regs. 1360-04-01-.07
- Tenn. Code Ann. § 49-1-302(d)(2)(A)
- Tenn. Comp. R. & Regs. 0520-02-01-.01(4)
- Tennessee State Board of Education Policy 5.201

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Statement of the facts of the controversy and description of how this rule, order or statute affects or should affect the Petitioner:

This action concerns administration of the requirements of the First to the Top Act contained in Tenn. Code Ann. § 49-1-302, and in particular the administration of the local level evaluation grievance procedure mandated by Tenn. Code Ann. § 49-1-302(d)(2)(A), Tenn. Comp. R. & Regs. 0520-02-01-.01(4), and Tennessee State Board of Education Policy 5.201. (**Exhibit 1**).

The Petitioners, Cynthia Greer (“Greer”) and Linda Weaver (“Weaver”), hold professional licenses issued by the Tennessee State Board of Education to teach in the public schools of Tennessee. Greer and Weaver were teachers in the Metro Nashville Public school system at the time of the events giving rise to this action.

The Petitioner, Metropolitan Nashville Education Association (“MNEA”), is a voluntary association whose members are teachers and other professional employees in the Metro Nashville Public school system. Among the purposes and goals of the MNEA are advocacy for Metro Nashville educators, the defense of the civil and professional rights of Metro Nashville educators, the securing and enforcement of fair and equitable employment procedures for Metro Nashville educators, and assistance to Metro Nashville educators whose rights have been violated, disregarded, or impaired. The Petitioner MNEA is a “professional employees’ organization” as defined in Tenn. Code Ann. § 49-5-602(9). Greer and Weaver are members of MNEA.

The Respondent, Tennessee Department of Education (“TDOE”), is an agency of the State of Tennessee. Among its relevant responsibilities, the TDOE, under the supervision of the Commissioner of Education, is responsible for the implementation, administration, supervision, and faithful execution of the law, regulations, policies, standards, and guidelines of the Tennessee State Board of Education.

The Respondent, Metropolitan Government of Nashville and Davidson County, operates a local public school system, known as the Metro Nashville Public Schools (“MNPS”), for the school-age children of residents of Davidson County, and that public school system is administered by the Metro Nashville Public Schools Board of Education. The matter in controversy involves the ability of MNPS to implement the resolution of an evaluation grievance under the local-level grievance procedure required by Tennessee law and State Board of Education policy; and accordingly, the Metropolitan Government of Nashville and Davidson County is an indispensable party to this proceeding.

Greer and Weaver are among a group of Kindergarten teachers and Pre-K teachers in the MNPS who in 2018 filed grievances regarding portfolio errors in their evaluation results. The Petitioners, both excellent teachers, received collection scores of “1” on a portion of their respective student growth portfolios because of minor “submission errors.” The scores of “1” were not a reflection of the quality of the Petitioners’ work, but were instead solely the function of inadvertent input errors or minor submission errors.

According to initial guidance from the TDOE after release of the portfolio scores, the cause of the submission errors was a glitch in the platform developed by the system vendor, Educopia, which allowed for erroneous mismatched data to be submitted without alerting the submitter to the apparent mismatch. Educopia had no mechanism to notify teachers of these potential submission errors before the submissions became final. Instead of flagging such collections for further human review and possible correction, the Educopia platform proceeded to “autoscore” the mismatched collections and assigned a default score of “1.” The result was that for both Greer and Weaver, as well as many other similarly situated teachers who are members of MNEA, minor submission

errors materially affected the integrity of their portfolio scores, which in turn comprised a significant portion of their overall evaluation results.

Guidance provided by the TDOE prior to release of the portfolio scores did not advise teachers such as Greer and Weaver that errant mismatched data submissions were possible or that such mismatches could result in an autoscore of “1” for the collection. To the contrary, TDOE guidance repeatedly suggested all collections would be subjected to a progressive human review process in response to any discrepancies greater than one performance level. There was no way teachers, including those who were members of MNEA such as Greer and Weaver, could reasonably have known that these mismatch errors had occurred or could occur, and there was nothing to alert them that mismatched collections would receive an autoscore of “1” without any additional review.

At all relevant times, Tennessee law mandated local-level evaluation grievance procedures for teaching personnel such as Greer and Weaver, as reflected in Tenn. Code Ann. § 49-1-302(d)(2)(A), Tenn. Comp. R. & Regs. 0520-02-01-.01(4), and State Board Policy 5.201. The purpose of the local-level evaluation grievance procedure was to provide a mechanism for teachers to challenge the accuracy of the data used in an evaluation and to assure adherence to the evaluation policies adopted by the Tennessee State Board of Education. State Board Policy 5.201 further mandated that minor procedural errors in implementing the evaluation model would be resolved at the lowest possible level in the grievance procedure.

Greer and Weaver filed local evaluation grievances in accordance with guidance provided by the TDOE and pursuant to the local-level evaluation grievance procedure mandated by Tenn. Code Ann. § 49-1-302(d)(2)(A), Tenn. Comp. R. & Regs. 0520-02-01-.01(4), and State Board Policy 5.201. With respect to each of the grievances, Shannon Black, the MNPS Executive

Director for Talent Management, Human Resources, and Organizational Development, determined that the “submission errors” amounted to minor procedural errors in the evaluation process. On behalf of MNPS, Ms. Black decided to resolve the confirmed grievances by overriding the growth scores that included the erroneous scored collections and recalculating the growth scores based on the average of the remaining scored collections. As a result, Ms. Black requested, in correspondence to TDOE representatives dated September 25, 2018, the ability to administratively edit the student growth portfolios for the teachers, including Greer and Weaver, whose portfolio scores were affected by submission errors and whose grievances were confirmed. **(Exhibit 2)**.

Despite the local-level evaluation grievance procedure mandated by law, regulation, and policy, the TDOE intervened and refused to allow MNPS to resolve the grievances in the proposed fashion. In correspondence dated October 11, 2018, Paul Fleming, Assistant Commissioner of the TDOE, responded to Ms. Black and confirmed that the portfolio submission errors were “procedural errors” but claimed that the errors could not be addressed at the local level through the local-level grievance process. **(Exhibit 3)**.

By preventing the MNPS from implementing its resolution of the procedural errors and Greer’s and Weaver’s grievances, as well as grievances filed by other members of MNEA, the TDOE exceeded its authority under Tenn. Code Ann. § 49-1-302(d)(2)(A), Tenn. Comp. R. & Regs. 0520-02-01-.01(4), and State Board Policy 5.201, and usurped the authority of MNPS to resolve evaluation grievances.

As a result of the TDOE’s improper intervention to prevent local-level resolution of the grievances as contemplated by law, regulation, and policy, Greer and Weaver have been deprived of the opportunity to have their evaluation results corrected, and they have therefore received an

overall evaluation result that is below the result they would have received had the grievance resolution been properly processed. TDOE's improper intervention and interference has also caused and will continue to cause injuries to the MNEA and its members, including Greer and Weaver. In addition, the TDOE interfered with the ability of MNPS to resolve the grievances as required by Tenn. Code Ann. § 49-1-302(d)(2)(A), Tenn. Comp. R. & Regs. 0520-02-01-.01(4), and Tennessee State Board of Education Policy 5.201.

Description of requested ruling:

For the foregoing reasons, the Petitioners respectfully requests that the Department grant this Petition; convene a contested-case hearing in accordance with Tenn. Code Ann. § 4-5-223(a)(1); and issue a Declaratory Order providing:

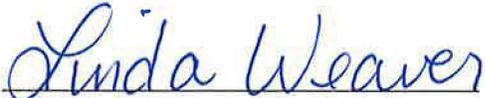
1. That the actions of the Tennessee Department of Education interfered with the ability of MNPS to resolve the grievances in contravention of Tenn. Code Ann. § 49-1-302(d)(2)(A), Tenn. Comp. R. & Regs. 0520-02-01-.01(4), and Tennessee State Board of Education Policy 5.201;
2. That the actions of the Tennessee Department of Education were undertaken without authority and were *ultra vires*;
3. That the Tennessee Department of Education cease and desist from interfering with the implementation of the resolution of the grievances by the MNPS;
4. That the Tennessee Department of Education take such affirmative actions as are necessary to enable the MNPS to implement the resolution of the grievances; and
5. For such further and general relief as the equities of this cause may require and the Department may deem just and proper.

Dated this 19th day of June, 2019.

Respectfully submitted,



Cynthia Greer
Petitioner

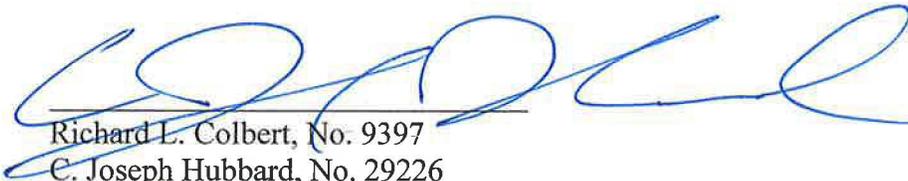


Linda Weaver
Petitioner

For: Metropolitan Nashville Education Association



By: *Erick E. Nuth*
Its: *President*
Petitioner



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*Attorneys for Petitioners Cynthia Greer, Linda Weaver,
and Metropolitan Nashville Education Association*

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Local-Level Grievance Procedure

(1) Purpose.

- (a) T.C.A. § 49-1-302 requires, “the development of a local-level evaluation grievance procedure to provide a means for evaluated teachers and school administrators to challenge only the accuracy of the data used in the evaluation and the adherence to the evaluation policies adopted by the State Board of Education.”
 - 1. “Accuracy of the data” means only that the data identified with a particular teacher is correct.
 - 2. Minor procedural errors in implementing the evaluation model shall be resolved at the lowest possible step in the grievance procedure but shall not constitute grounds for challenging the final results of an evaluation. Minor procedural errors shall be defined as errors that do not materially affect or compromise the integrity of the evaluation results. The final results of an evaluation may only be challenged if the person being evaluated can demonstrate, no later than during step II of the grievance procedure, that the procedural errors made could materially affect or compromise the integrity of the evaluation results. The Department of Education shall provide guidance on which procedural errors may materially effect of compromise the results of the evaluation.
- (b) To efficiently and fairly resolve grievances regarding procedural errors in the evaluation process, not to address disputes regarding employment actions taken based on the results of an evaluation. More significant due process rights are provided pursuant to state law to teachers when actual employment actions are taken.
- (c) To ensure evaluations are fundamentally fair because correct procedures have been followed.
- (d) To address grievances objectively, fairly, and expeditiously by resolving them at the lowest possible step in the procedure.
- (e) To provide teachers and school administrators a process for resolving grievances without fear, discrimination, or reprisal.

(2) Responsibility.

- (a) LEAs shall be responsible for the proper effectuation of this policy at the local level.
- (b) Local Boards of Education shall charge directors with the responsibility for ensuring that all teachers, school administrators, and administrators are aware of the provisions of this policy, including the identification of the administrator designated to conduct Step I of this procedure.



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5.201

- (3) Basic Standards.
- (a) To resolve grievances as expeditiously as possible pursuant to section (1)(d) above, grievances may be filed at the end of each of the three components of the evaluation model – 1) qualitative appraisal; 2) student growth measures; and 3) other measures of student achievement. A grievance must be filed no later than fifteen (15) days from the date teachers and school administrators receive the results for each component, otherwise the grievance will be considered untimely and invalid. Nothing shall preclude a teacher or school administrator from filing a grievance at any time prior to the deadlines stated herein.
 - (b) The department of education or LEAs may develop and make available standard grievance forms. No grievance may be denied because a standard form adopted by an LEA has not been used as long as the components required by this policy are included.
 - (c) At the informal hearing before the director of schools, an attorney or a representative of an employee may speak on behalf of the employee.
 - (d) An attorney may represent a grievant before the local board of education, which is the final step of this procedure. The grievant and the local board of education may have counsel present at discussions prior to the final step.
 - (e) Each grievance submitted at every step of the process provided below shall contain:
 - 1. The teacher or school administrator's name, position, school, and additional title, if any;
 - 2. The name of the teacher or school administrator's immediate supervisor;
 - 3. The name of the evaluator/reviewer;
 - 4. The date the challenged evaluation was received;
 - 5. The evaluation period in question;
 - 6. The basis for the grievance;
 - 7. The corrective action desired by grievant; and
 - 8. Sufficient facts or other information to begin an investigation.
 - (f) A failure to state specific reasons shall result in the grievance being considered improperly filed and invalid.
 - (g) All student achievement data used in evaluations must be made available to individual educators prior to the completion of their evaluations.
- (4) Procedures. Grievances shall be processed by working through the following three (3) steps to finality as follows:
- (a) Step I—Evaluator

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1. Written grievance submitted to the evaluator pursuant to the timeline listed in section (3)(a).
 2. Administrative investigation and fact finding.
 3. Decision clearly communicated in writing to grievant within fifteen (15) days of receipt of the complaint.
 4. To allow disputes to be resolved at the lowest level possible, the evaluator may take any action necessary, based on the circumstances, to immediately correct any procedural errors made in the evaluation process.
- (b) Step II—The director of schools or his/her designee who shall have had no input or involvement in the evaluation for which the grievance has been filed.
1. Written grievance and prior step decision submitted to the Director of Schools or his/her designee within fifteen (15) days of receipt of decision from Step I. The designee cannot be used in cases involving a school administrator's evaluation.
 2. Informal discussion or hearing of facts, allegations, and testimony by appropriate witnesses as soon as practical.
 3. Investigation, fact finding, and written final decision communicated to grievant in writing within fifteen (15) days of discussion.
 4. To allow disputes to be resolved at the lowest level possible, the director of schools may take any action necessary, based on the circumstances, to immediately correct any procedural errors made in the evaluation process.
- (c) Step III—Local Board of Education
1. Teachers and school administrators may request a hearing before the local board of education by submitting a written grievance and all relevant documentation to the local board of education within fifteen (15) days of receipt of decision from Step II.
 2. The board of education, based upon a review of the record, may grant or deny a request for a full board hearing and may affirm or overturn the decision of the director of schools with or without a hearing before the board.
 3. Any hearing granted by the board of education shall be held no later than thirty (30) days after receipt of a request for a hearing.
 4. The local board of education shall give written notice of the time and place of the hearing to the grievant, director of schools and all administrators involved.
 5. The local board of education's decision shall be communicated in writing to all parties, no later than thirty (30) days after conclusion of the hearing.
 6. The local board of education shall serve as the final step for all grievances.

Swinney, Cassandra

From: Black, Shannon
Sent: Tuesday, November 13, 2018 11:42 AM
To: Swinney, Cassandra
Subject: FW: Support Needed and Action Required: MNPS PreK and K Confirmed Portfolio Grievances
Attachments: MNPS Confirmed Grievance Documentation for TDOE 9.25.18.pdf
Importance: High

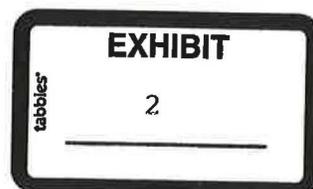
From: Black, Shannon
Sent: Tuesday, September 25, 2018 10:58 AM
To: 'Team Questions' <team.questions@tn.gov>
Cc: 'Rene Diamond' <Rene.Diamond@tn.gov>; North, Mark <Mark.North@mnps.org>; Enterline, Katherine <Katherine.Enterline@mnps.org>
Subject: Support Needed and Action Required: MNPS PreK and K Confirmed Portfolio Grievances
Importance: High

Good morning,

Metropolitan Nashville Public Schools requests 17-18 administrative edits for Pre-K and K educators that filed local grievances regarding their student-growth portfolios. MNPS confirms these educators received one or more submission errors on 2017-18 Pre-K and K student growth portfolios. This request is a result of confirmed grievances. Per TSBOE Teacher and Administrator Evaluation Policy 5.201 "to allow disputes to be resolved at the lowest level possible, the evaluator may take any action necessary based on the circumstances, to immediately correct any procedural errors made in the evaluation process." MNPS does not have the ability to apply an administrative edit in TNCompass for this function. To correct the procedural errors, MNPS is requesting these edits in TNCompass by Thursday September 27, 2018.

Thanks,
Shannon

Shannon Black
Executive Director, Talent Management
Human Resources and Organizational Development
2601 Bransford Avenue
Nashville, TN 37204



Swinney, Cassandra

From: Enterline, Katherine
Sent: Tuesday, November 13, 2018 1:02 PM
To: Swinney, Cassandra
Subject: FW: Portfolio memo
Attachments: Portfolio Submission Error Notification Process_080318.pdf; MNPS Confirmed Grievance Documentation for TDOE 9.25.18.pdf

Katy Enterline Miller
Coordinator, Talent Management

From: Black, Shannon
Sent: Thursday, October 11, 2018 2:07 PM
To: Harkey, Corey (Legal) <Corey.Harkey@nashville.gov>; North, Mark <Mark.North@mnps.org>; Enterline, Katherine <Katherine.Enterline@mnps.org>
Cc: Director of Schools <DirectorOfSchools@mnps.org>
Subject: FW: Portfolio memo

Good afternoon,
The TDOE has denied our request for assistance with confirmed local grievances. This is specific to PreK and K student growth portfolios.
Shannon

From: Paul Fleming <Paul.Fleming@tn.gov>
Sent: Thursday, October 11, 2018 1:17 PM
To: Black, Shannon <Shannon.Black@mnps.org>
Cc: Director of Schools <DirectorOfSchools@mnps.org>; Candice McQueen <Candice.McQueen@tn.gov>
Subject: Portfolio memo

Ms. Black,
I am receipt of your letter from September 25, 2018 regarding portfolio growth scores. As we have previously communicated to you, while a portfolio submission error made by a teacher is a procedural error, it is not an error that can be addressed at the local level through the local-level grievance process. Therefore, there is no action that can be taken on the request you made. The department has provided a one-time remedy for teachers who made a portfolio submission error and believe the submission error materially affected the integrity of their overall portfolio score. Please make sure your teachers are aware of the attached guidance document that provides the allowable options for addressing submission errors.

Thank you,
Paul

 **Department of Education**
Paul Fleming, Ed.D. | Assistant Commissioner
Teachers and Leaders Division

