

Professional Educators Collaborative Conferencing Act of 2011

Frequently Asked Questions

On June 1, 2011, Governor Haslam signed into law the Professional Educators Collaborative Conferencing Act (PECCA). The PECCA replaces the Education Professional Negotiations Act (EPNA), effectively substituting collaborative conferencing for Tennessee's traditional collective bargaining process. While there are some similarities between the two laws, the PECCA is substantially different from the EPNA, creating new avenues of communication between teachers and school boards and stressing inclusiveness of all professional employees' organizations.

1. The board is in the second year of a three-year collective bargaining agreement with the recognized professional employees' association. Does the new law void the agreement?

No. The PECCA replaces the EPNA; however, the new law does not terminate an existing agreement. Once any existing agreement has expired, the provisions of the new law govern any future agreements between the board and its professional employees relative to certain terms and conditions of employment.

2. Our current agreement contains re-opener language relative to insurance benefits. Does the PECCA prohibition against bargaining pertain to discussions on re-opener issues?

No. Because re-opener language is contained in your existing contract and because existing contracts remain valid, boards and the recognized professional employees' organizations that are parties to the contract must continue to abide by all provisions and negotiate re-opener items.

3. The board and the recognized professional employees' association are currently negotiating a new agreement pursuant to the EPNA. Should negotiations continue?

No. As of June 1, 2011, the effective date of the PECCA, all bargaining on a new contract pursuant to the EPNA must cease and no new collective bargaining agreement may be ratified.

4. What is collaborative conferencing?

Pursuant to the PECCA, collaborative conferencing is the process by which the chair of the board of education and the board's professional employees, or representatives designated by either party, meet to confer, consult, discuss and exchange information, opinions and proposals on matters relating to terms and conditions of professional service using the principles and techniques of interest-based collaborative problem-solving.

5. What is interest-based collaborative problem-solving?

Interest-based collaborative problem solving is not defined in the PECCA; however, it is likely the General Assembly modeled the communication method after interest-based bargaining – a process by which the parties discuss areas of concern in an open, non-adversarial manner. To assist school districts and employees with this process, the PECCA directs the Tennessee Organization of School Superintendents (TOSS) to develop a training program in the principles and techniques of interest-based collaborative problem-solving by January 1, 2012.

6. Our district never participated in collective bargaining. Are all districts required to participate in collaborative conferencing?

No. Collaborative conferencing is required only if the professional employees vote to conduct collaborative conferencing with the board. In other words, just like the EPNA, the PECCA does not force participation by the professional employees.

7. How is collaborative conferencing initiated?

Upon submission of a written request to conduct collaborative conferencing by 15 percent or more of the professional employees in the district, the board must establish a special question committee for the purpose of conducting a confidential poll of eligible employees to determine if a majority of the employees desire to participate in collaborative conferencing. The poll will contain two questions. First, eligible employees will be asked the following:

Shall the professional employees of this LEA undertake collaborative conferencing with the board of education?

The employee will answer “Yes” or “No”.

Second, the employee will be asked to indicate which of the professional employees’ organizations having a presence in the LEA he or she prefers to represent the employee in collaborative conferencing. This second question will include an option for a response of “Unaffiliated” in the event the employee has no preference. If the employee answers “No” to the first question, the second question will additionally contain an option for the response of “None of the above.” This “None of the above” response will indicate that the employee does not want to be represented in collaborative conferencing even if such conferencing is approved and takes place.

8. Who serves on the special question committee and how are the members appointed?

The board of education appoints an equal number of professional employees and board members to serve on the committee.

9. Do all licensed employees vote in the collaborative conferencing poll and, if approved, subsequently participate in collaborative conferencing?

No. Only “professional employees” as defined by the PECCA participate in the process. Unlike the EPNA, which included all licensed employees within the definition of “professional employee” and therefore included all such employees within the same negotiating unit, the PECCA excludes members of the “management team.” These individuals are defined in the new law as employees who devote a majority of their time to system-wide areas of professional management, fiscal affairs or general management. Specifically, principals, assistant principals, supervisors and others whose principal responsibilities are administration rather than teaching are included within the definition of management team employees, meaning they excluded from the teachers’ collaborative conferencing unit.

10. Who does the board collaborate with?

If a majority of the eligible employees vote to support collaborative conferencing, the board will collaborate with representatives of those professional employees' organizations that receive 15 percent or more support pursuant to the second question contained in the confidential poll. If 15 percent or more indicate a preference for "Unaffiliated," then the special question committee will appoint a person or persons to serve as an unaffiliated representative. For the purposes of particular representation, the option of "None of the above" is not considered a professional employees' organization.

11. Does this mean that the board will no longer negotiate solely with one "recognized" professional employees' association?

Correct, provided more than one professional employees' organization receives at least 15 percent or more of the vote relative to the second question contained in the confidential poll. Unlike the EPNA, which provided for exclusive recognition of a professional employees' organization, the PECCA is inclusive of all professional employees' organizations that receive the specified minimum level of support (15 percent) through the voting process.

12. Who represents the board in collaborative conferencing?

The board appoints at least seven but no more than 11 persons to serve as "management personnel." These individuals represent the board in the collaborative conferencing process.

13. How many individuals represent the professional employees in collaborative conferencing?

The professional employees are entitled to the same number of representatives as the number of management personnel selected by the board to represent it in the process.

14. How is representation for the professional employees determined?

Representation is determined according to each employees' organization's proportional share of the responses to the confidential poll and limited only to those organizations receiving at least 15 percent of the vote.

15. If the category of "Unaffiliated" is entitled to representation, who chooses the representative(s)?

The special question committee will appoint the person or persons to serve as unaffiliated representatives.

16. When does the district have to begin collaborative conferencing?

Collaborative conferencing cannot take place until the LEA implements the training program in the principles of interest-based collaborative problem solving developed by TOSS (See Question 5). Such training must be implemented by the LEA by July 1, 2012. Therefore, it's possible the employees could initiate an election for collaborative conferencing and vote for such conferencing as early as October of 2011. However, until the training program has been developed by TOSS and implemented by the LEA, collaborative conferencing may not take place.

17. What terms and conditions of employment must be discussed in collaborative conferencing?

The following items are required for discussion:

- 1) Salaries or wages;
- 2) Grievance procedures;
- 3) Insurance;
- 4) Fringe benefits;
- 5) Working conditions, except those working conditions prescribed by federal law, state law, private act, municipal charter or rules and regulations of the state board of education, the department of education or any other department or agency of state or local government;
- 6) Leave; and
- 7) Payroll deductions, except such deductions for political activities.

18. Are there certain terms and conditions that are prohibited from being discussed as part of collaborative conferencing?

Yes. The following items are prohibited:

- 1) Differentiated pay plans or other incentive compensation programs tied to performance that exceed expectations or that aid in hiring and retaining highly qualified teachers for hard-to-staff schools and subject areas;
- 2) Expenditure of grants or awards from federal, state or local governments; foundations; or other private organizations that are expressly designated for specific purposes;
- 3) Evaluation of professional employees;
- 4) Staffing decisions and policies relative to innovative educational programs under T.C.A. 49-1-207; innovative high school programs under Title 49, Chapter 15; virtual education programs; and other innovative schools or school districts that may be enacted by the General Assembly;
- 5) All personnel decisions concerning assignment of professional employees, including, but not limited to, filling of vacancies, assignments to specific schools, positions, professional duties, transfers, layoffs, reductions in force and recall. In addition, no agreement may include provisions that require personnel decisions to be determined on the basis of tenure, seniority or length of service; and
- 6) Payroll deductions for political activities.

19. How are agreements between the professional employees and the board during collaborative conferencing confirmed and ratified?

If agreement is reached, the parties jointly prepare a memorandum of understanding that is valid for a period not to exceed three years. The memorandum of understanding is then presented to the board of education as an item on the agenda of a regular or special called board meeting.

20. Is the memorandum presented to the professional employees or their organizations for approval?

No. Once the memorandum has been agreed to by the parties involved in the collaborative conferencing process, only the board of education must approve its adoption.

21. Is the memorandum of understanding binding?

Yes. If the board of education approves the memorandum of understanding, the terms and conditions contained therein are binding.

22. What if an agreement cannot be reached on certain terms and conditions through the collaborative conferencing process?

Absent an agreement and memorandum of understanding memorializing such agreement, the board of education has the authority to address any terms and conditions through board policy. In other words, while the board is required to participate in conferencing if the professional employees vote to participate, nothing in the PECCA requires the board to agree on terms or conditions or enter into a memorandum of understanding if agreement has not been reached.

This is one of the primary differences between the PECCA and the EPNA. The EPNA prevented the board from implementing policy relative to a mandatory subject of negotiations until either an agreement was reached or the two parties had met a legal determination of impasse. Many legal disputes relative to the EPNA revolved around the issue of whether a true impasse had been met and whether the board's subsequent implementation of policy translated into bad faith bargaining. The PECCA removes the confusion and legal implications of implementing policy after impasse by making it clear the board may address terms and conditions of employment through policy if an agreement has not or cannot be reached.

23. Are teachers permitted to strike under the new law?

No. Just as with the EPNA, the PECCA prohibits teachers from engaging in a strike.

24. Are individual teachers required to be represented by a professional employees' organization relative to terms and conditions of employment?

No. In fact, the PECCA specifically permits each professional employee to represent himself or herself in the types of discussions authorized by the law. In addition, the director of schools is permitted to communicate with professional employees concerning any subject relative to the operation of the school system through any means he or she chooses.

25. Is technical assistance available to school districts relative to the PECCA and its requirements?

Yes. The Tennessee Department of Education is available to assist districts with questions and concerns. In addition, we encourage districts to consult with their local board attorneys and professional organizations for clarification and advice.

These FAQs will continue to be updated as we communicate with districts and receive additional questions and insight. For more information, contact Stephen Smith, Assistant Commissioner, Legislation & External Affairs, at 615-741-1111 or Stephen.M.Smith@tn.gov.