



To: DPS Innovation School Leaders
From: Grant Guyer, Chief of Strategy and Portfolio Services
Michelle Berge, General Counsel
Miguel Perretta, Senior Director, People Experience
Re: Executive Limitation Policy for Standard Teacher Rights and Protections
Date: April 11, 2022

The purpose of this memo is to provide innovation school leaders with a summary of the implications associated with the Executive Limitation (EL-12) that was approved by the DPS Board of Education on March 24, 2022.

Background

The passage of the [Executive Limitation Policy for Standard Teacher Rights and Protections EL-12 Employee Treatment](#) (EL-12) will have significant implications with respect to future flexibilities that can be included in innovation plans. This memo outlines overarching effects of that policy on ‘flexibilities’ currently included in innovation plans. ‘Flexibilities’ will refer to specific areas in which schools had the autonomy to make changes from state and district policy and/or the Denver Classroom Teachers Association (DCTA) Collective Bargaining Agreement (CBA). Most of these flexibilities are facilitated by at least one policy waiver, with some being the result of multiple interrelated waivers.

Timeline for implementation

As [stated in this FAQ](#), EL-12 will take effect for current innovation schools upon renewal. For innovation schools undergoing renewal in the upcoming year, which is most schools, this means that your current innovation plan will continue through June 2023. Innovation plans designed in the 2022-23 school year will implement EL-12 in the 2023-24 school year.

Summary of EL-12

EL-12 prevents the superintendent from recommending the approval or renewal of any innovation plan that includes waivers to the Teacher Employment Compensation and Dismissal Act (TECDA) (with the exception of C.R.S. 22-63-201), or the [DCTA collective bargaining agreement \(DCTA CBA\)](#). EL-12 allows the superintendent to recommend (1) plans that provide rights greater than those outlined in the DCTA CBA and/or (2) plans with waivers to these policies as a result of the State’s Accountability Clock. Under the Innovation Schools Act, a school could still present a plan to the Board of Education that includes DCTA and TECDA waivers; however, the superintendent would be required under EL-12 to forward the plan with a recommendation to deny approval.

Flexibilities still permitted

Schools may continue to request waivers from all policies that do not require a waiver from either TECDA or the DCTA collective bargaining agreement, provided school leaders follow the consent process outlined in the [Innovation Schools Act of 2008](#).

Flexibility: Principals have flexibility from attending district professional development
Related policies that may still be waived: <ul style="list-style-type: none">• 22-32-109(1)(jj): Identify Areas in which the Principal/s Require Training or Development
Flexibility: The school is guaranteed autonomy over the educational program including selecting curriculum and textbooks, unit planning, pacing guides, etc. This flexibility does not override the district's universal flexibilities process which is currently available to all schools, but would maintain schools' curriculum flexibility if the district ever changed central policies relating to choice of curriculum
Related policies that may still be waived: <ul style="list-style-type: none">• 22-32-109(1)(t): Determine Educational Program and Prescribe Textbooks;• Section 22-32-109(1)(aa): Adopt Content Standards and Plan for Implementation of Content Standards
Flexibility: Schools may not require a teaching license for supplemental and enrichment instruction only
Related policies that may still be waived: <ul style="list-style-type: none">• GDF/GCF: Staff Recruitment/Hiring;• 22-63-402: Disbursements• 22-63-201: Employment - License; (Note: this policy in TECDA has been specifically flagged in EL-12 as waivable)
Flexibility: Schools can budget on the actual cost of teacher salaries rather than district average teacher salaries, allowing some schools to maximize their budget
Related policies that may still be waived: <ul style="list-style-type: none">• N/A
Flexibility: Schools can create unique job descriptions when unique support staff roles are needed to effectively implement the innovation plan
Related policies that may still be waived: <ul style="list-style-type: none">• Section 22-32-109(1)(f): Local Board Duties Concerning Selection of Personnel and Pay

Flexibilities no longer permitted

The following innovation flexibilities were enabled primarily through waivers to TECDA or the DCTA CBA. As directed by Executive Limitation 12, the superintendent will not recommend the approval of plans that include these flexibilities. Additionally, the associated waivers for these flexibilities will not be recommended for DPS Board approval.

Outside of the innovation school processes, there is a provision in the DCTA agreement that has a process for waiving provisions of the DCTA agreement. Section 2-4-1 says: "Unless otherwise provided in this Agreement, requests for waivers from this Agreement shall be made by the principal and the Association Representative to the Board of Education and the Association." Any waivers from the DCTA agreement would need to be approved by both the DCTA Board and the DPS Board of Education. District staff will develop a process outlining how schools may pursue these waivers.

The flexibilities reflected below represent the 2017-22 DCTA Master Agreement, which may change in the current round of negotiations. If you have any feedback for the current round of negotiations, please email: Employee_Relations@dpsk12.org

No longer flexible: Schools could allow DPS HR and DCTA to remedy a grievance without resorting to arbitration level III, as defined in the DCTA CBA Article 7: Grievance Policy
Related policies that can no longer be waived: <ul style="list-style-type: none">• Article 7: Grievance Policy
No longer flexible: Schools could use the DPS basic fairness policy for investigations, corrective action, and administrative leave instead of completing the process outlined in the DCTA CBA Article 11: Complaints Against Teachers/ Administrative Leave/ Teachers/ Administrative Leave
Related policies that can no longer be waived: <ul style="list-style-type: none">• Article 11: Complaints Against Teachers/ Administrative Leave/ Teachers/ Administrative Leave
No longer flexible: Schools could make Reduction in Building (RIB) decisions based on school determined needs identified with the CSC using a school defined process instead of the process defined in the DCTA CBA
Related policies that can no longer be waived: <ul style="list-style-type: none">• Article 13-8 Personnel Committee
No longer flexible: Schools could set school-defined collaborative planning time; extend school day with school-defined pay
Related policies that can no longer be waived: <ul style="list-style-type: none">• Article 8: Professional Standards- Calendar, Year, Day, Class Size & Load

Note: Schools can still provide more planning time than allotted for in the contract as long as they comply with all the other expectations in the contract.

No Longer Flexible: Schools could develop a school-specific calendar

Related policies that can no longer be waived:

- Article 1-7: Definition of "School year";
- Article 8: Professional Standards- Calendar, year, Day, Class Size & Load

No longer flexible: Schools could hire employees on school-determined status (at-will or annual contracts)

Related policies that can no longer be waived:

- Article 10: Teacher Evaluation;
- 22-63-202: Contracts in Writing & Renewal and Nonrenewal;
- 22-63-203: Contracts in Writing & Renewal and Nonrenewal;
- 22-63-301: Grounds & Procedure for dismissal;
- 22-63-302: Grounds & Procedure for dismissal

A Note re: Acquiring and Losing Non-Probationary Status, which is a part of the TECDA law. Prior to the passage of the Executive Limitation 12, DCTA and the district signed an [MOU](#) that says teachers' years of service in an innovation school (that waives TECDA) will count toward gaining and losing non-probationary status. However, when an innovation school waived TECDA, the rights associated with non-probationary status did not apply to the teacher while they were at an innovation school that waived TECDA. Only when the teacher moved to a school that recognizes TECDA were they able to take advantage of the rights associated with non-probationary status under TECDA. This MOU will remain in effect and teachers at innovation schools that waived TECDA will continue to accrue years toward their non-probationary status while they are waiting for their innovation plans to be renewed.

Once the innovation school goes through the renewal process and the TECDA waivers are eliminated in accordance with EL-12, teachers who have accrued three years of effective evaluations will start receiving the benefits of non-probationary status.

For example, teacher A has been at an innovation school for four years and has received effective ratings every year. While teacher A is at the innovation school that waived TECDA, the teacher does not have rights associated with non-probationary status (e.g. access to a limited term assignment and higher protections against dismissal). However, when teacher A transfers to a school that does have TECDA, the teacher will be able to count the four effective years of service and will immediately start as a non-probationary teacher at that school. Similarly, when teacher A's innovation school goes through renewal in the upcoming years and the TECDA waivers are eliminated from the plan, teacher A will be able to count the past years of effective service, will immediately qualify as non-probationary, and will start receiving all the benefits of being a non-probationary teacher.

No longer flexible: Schools could refuse the direct placement of teachers from the district

Related policies that can no longer be waived:

- 22-63-206: Transfer of Teachers - Compensation

No longer flexible: Schools could implement an alternative discipline plan that would not result in the expectation that students could be removed from a teachers' roster for the remainder of the term after three removals from a class related to "disruptive" behavior

Related policies that can no longer be waived:

- Article 18-3/18-4: Student Discipline

No longer flexible: Schools could recruit and make offers to applicants outside the district hiring timeline & process

Related policies that can no longer be waived:

- Article 13-7 Hiring timelines

No longer flexible: Schools could allow peer evaluators or other school identified LEAP evaluators to conduct staff evaluations and complete the minimum number of LEAP observations necessary to generate an end of year score

Related policies that can no longer be waived:

- Article 10: Teacher Evaluation

No longer flexible: Schools could determine extra compensation for extended time, additional responsibilities, and incentives for teachers. This compensation could be in the form of a lump sum stipend and would require the school to complete a compensation philosophy with HR oversight

Related policies that can no longer be waived:

- Article 28: Extra Duty Compensation;
- 22-63-401: Teachers Subject to Adopted Salary Schedule

Note: Schools could still pay extra duty at an hourly rate that is higher than the hourly rate in the DCTA contract. But they could not pay for that work through a flat stipend.

No Longer Flexible: Schools had flexibility to define responsibilities & membership of school committees differently – for example merging multiple committees into one group (CSC and SLT into one); provide school defined committee input into recommendations regarding principal hiring.

Related policies that can no longer be waived:

- Article 5-5: School Leadership Team

Note: Schools can still increase the responsibilities of the CSC, such as involvement of the CSC in principal hiring.

IKE, IKE-R

- As previously determined through Board regulation [ADE-R](#), waivers to Board administration policy and regulation [IKE](#), [IKE-R](#) (specifically, the requirement that parents/guardians agree with a retention decision) will no longer be approved in innovation plans.