

Guidance for Level 4 Schools: Collective Bargaining and Using the Joint Resolution Process to Resolve Disputes

Introduction

In developing a turnaround plan for an underperforming school pursuant to Chapter 69, section 1J, the superintendent may identify certain contract provisions to be altered which he or she believes are necessary to facilitate the rapid achievement of students at the applicable school. These contract alterations may include the compensation, hours, working conditions or other existing provisions of the administrators, teachers and staff at the school. The superintendent may request that the school committee and any union bargain or reopen the bargaining of the relevant collective bargaining agreement or contract to facilitate such achievement. Once the superintendent makes the request, the parties must engage in and complete the bargaining within 30 days. If the parties are not able to reach agreement during the 30 days or if an agreement is not ratified by the bargaining unit members of the school within 10 business days, they must submit the unresolved issues to a three-person Joint Resolution Committee (JRC) made up of one member from each party and a neutral member. The JRC must complete its deliberation within 10 business days.

Once the JRC renders its decision, the superintendent finalizes the Turnaround Plan with the new contract provisions and submits it to the Commissioner of the Department of Elementary and Secondary Education (ESE) for review and approval. The timelines for plan submission in the statute apply again once the JRC process is completed.

Outlined below for your convenience, you will find some useful information to help guide you through this process.

More information about the Turnaround Plan process and support for Level 4 schools through the Office of District and School Turnaround is available here:

<http://www.doe.mass.edu/apa/sss/turnaround/level4/default.html>

Summary of key points about the logistics of the Joint Resolution Committee (JRC) process

- The 30-day period for “good faith bargaining” commences when the superintendent sends a letter to the union and the school committee to request that bargaining begin.
- If the parties are unable to reach an agreement after 30 days of good faith bargaining, or if the agreement is not ratified by the bargaining unit members of the school within 10 business days, then the parties submit the remaining unresolved issues to a joint resolution committee on the next business day following the end of the 30-day bargaining period or failure to ratify. The following steps should be taken:

- The parties should initiate the process by sending a letter to the American Arbitration Association (AAA), with a copy to the Commissioner, requesting the initiation of the JRC process. In the letter, each party should identify the individual who will represent the respective party at the JRC.
- The school committee and the union have three business days to appoint a member to the JRC. The parties should take into account, especially in cases when more than one JRC is taking place concurrently, their appointee(s)'s availability to meet within the period of 10 business days. The parties should notify the AAA as soon as they have identified their appointees to the JRC.
- When the AAA sends each party a list of three conciliators to choose from, the parties have three business days to agree upon a singular conciliator – if this is not possible after three days, the AAA will name one from the list.
- Once the conciliator is named, the JRC has 10 business days to conduct a dispute resolution process.
- The JRC submits its decision to the parties within 10 business days of the conclusion of the dispute resolution process.
- If a decision is not submitted to the parties within 10 business days, the commissioner will resolve all outstanding issues.
- The fee for the neutral party is shared equally between the 2 parties.
- It is important to note that the steps in the law related to collective bargaining (i.e. good faith bargaining and the JRC) may require negotiations with multiple unions. For example, there were three JRCs in one city: one each for the teachers, paraprofessionals, and administrators. Typically, the negotiations are required when there is a change in working conditions.
- It is important to note that there is nothing in the law that prevents the parties from continuing two-party negotiations or mediation after the conclusion of the 30-day good faith bargaining period. The time it takes for the JRC to officially be created and the time within the 10 business days of the JRC meetings can be used to negotiate additional issues that may be resolved before a final JRC decision is rendered. For example, during Boston Public School's JRC process, one of the JRCs did not render a decision because the outstanding issues were all resolved by the two parties during the course of the JRC meetings.
- The ESE role in the JRC process is generally as "guardian" of the process to ensure that the parties adhere to the timetables specified in the statute.
- For your convenience, the section of Chapter 69 1J is included at the end of this document.

Examples of Level 4 school autonomy and flexibility to implement turnaround efforts that could impact collective bargaining agreements

- Addressing aspects of collective bargaining agreements that can impede turnaround efforts, such as adjusting “bidding and bumping” language to insulate staff recruited to work at Level 4 schools and to allow principals with the greatest amount of flexibility when hiring staff.
- Extending learning time to increase opportunities for additional learning and enrichment for students.
- Extending the school day, week and/ or year for professional development and common planning opportunities.

Determining what needs to be negotiated

- The subject matter needs to be connected to objectives contained in the turnaround plan.
- General rule of thumb: there is a change in terms and conditions of employment, especially when these have been incorporated into a contract or collective bargaining agreement: (compensation, hours, working conditions, etc.):

“...if the superintendent considers it necessary to maximize the rapid academic achievement of students at the applicable school by altering the compensation, hours and working conditions of the administrators, teachers, principal and staff at the school or by altering other provisions of a contract or collective bargaining agreement...”

- Typically, provisions of a contract or collective bargaining agreement which may be altered include:
 - Staffing (retain current or have staff reapply)
 - Staffing model (self-contained classrooms, co-teaching, enhanced paraprofessional role, outside vendor support, etc.)
 - Length of school day, week, and/or year for student learning and/or teacher planning
 - Compensation for extended learning time:
 - Hourly rate
 - Per diem rate
 - Stipend Amount
 - Other considerations:
 - Use of outside vendors (contracting out)
 - Governance (school-based decision making)
 - Length of the agreement
 - Ability to make mid-term changes

- School district employees who are represented by unions have terms and conditions of employment specified in collective bargaining agreements. Some employees may have individual contracts.. As stated above, districts will likely need to negotiate over changes in working conditions. Districts and unions should refer to their respective legal counsel for advice.

Basics of the JRC Process

What happens to items not agreed to by the parties?

All items in dispute go to the JRC unless both parties agree to withdraw items.

How does the JRC make decisions?

By majority vote of the three member committee; by the Commissioner if not decided through JRC.

When is the JRC required to conclude the process?

The JRC must submit a report to the parties within ten days of the conclusion of the dispute resolution process.

What authority does the JRC have?

The JRC decision is final regarding the matters in dispute. Once the Superintendent receives the JRC decision, he or she should review the decision and make appropriate adjustments to the turnaround plan prior to submitting it to the Commissioner for final review and approval.

What role does ESE have over the JRC Process?

The ESE role in the JRC process is as “guardian” of the process to ensure that the parties adhere to the timetables specified in the statute.

Examples of authorities*

* Exercising many of these authorities do not necessarily require bargaining. Consult with legal counsel.

Authority, per MGL Chapter 69, Sec 1J	Description/ Examples from current Level 4 schools
Reallocate the uses of the existing budget of the school.	Maximum budget authority to principals , in order to best meet the needs of students, allow for innovation, and/or reallocate staffing to other positions/services.
Limit, suspend or change 1 or more provisions of any contract or collective bargaining agreement, as the contract or agreement applies to the school	<p>Increased staffing authority for principals, including the authority to excess teachers and involuntarily transfer underperforming staff and authority over transfers into the school.</p> <p>Authority for principals to bring in non-bargaining unit professionals to provide extra supports for students.</p> <p>Provide teachers options for voluntary transfer out of Level 4 schools.</p>
Provide funds to increase the salary of any administrator, or teacher in the school, to attract or retain highly-qualified administrators, or teachers or to reward administrators, or teachers who work in underperforming schools that achieve the annual goals set forth in the turnaround plan	<p>Financial incentives for improved school performance/ “pay for excellence.”</p> <p>Differentiated compensation/ leadership development opportunities through increased leadership responsibilities.</p>
Require the principal and all administrators, teachers and staff to reapply for their positions in the school	Staffing fallibility -All staff required to reapply for positions.
Expand the school day	Expanded learning time – Expand length of day and/or year to increase instructional time and provide enrichment opportunities for students.
Provide increased opportunities for teacher planning time and collaboration focused on improving student instruction	Additional planning time - Additional required, compensated work hours for teacher collaboration and/or professional development.
Other	<p>Principal authority – Decentralize decision-making over the master schedule, including staggered start/end time for staff.</p> <p>Develop other school-based strategies based on needs of the students such as data-review teams, Teacher Leadership Team, etc.</p>
Establish strategies to address mobility and transiency among the student population of the school	Analyze student data - assignment and movement patterns to inform strategies

Appendix - Relevant section of the statute

Chapter 69 Section 1J:

“(g): If, after considering the recommendations of the group of stakeholders, the superintendent considers it necessary to maximize the rapid academic achievement of students at the applicable school by altering the compensation, hours and working conditions of the administrators, teachers, principal and staff at the school or by altering other provisions of a contract or collective bargaining agreement applicable to the administrators, teachers, principal and staff, the superintendent may request that the school committee and any union bargain or reopen the bargaining of the relevant collective bargaining agreement to facilitate such achievement. The bargaining shall be conducted in good faith and completed not later than 30 days from the point at which the superintendent requested that the parties bargain. The agreement shall be subject to ratification within 10 business days by the bargaining unit members in the school. If the parties are unable to reach an agreement within 30 days or if the agreement is not ratified within 10 business days by the bargaining unit members of the school, the parties shall submit remaining unresolved issues to a joint resolution committee for dispute resolution process on the next business day following the end of the 30-day bargaining period or failure to ratify.

The joint resolution committee shall be comprised of 3 members, 1 of whom shall be appointed by the employee organization within 3 business days following the submission of unresolved issues to the joint resolution committee, 1 of whom shall be appointed by the school committee within 3 business days following the submission of unresolved issues to the joint resolution committee and 1 who shall be selected through the American Arbitration Association who shall forthwith forward to the parties a list of 3 conciliators, each of whom shall have professional experience in elementary and secondary education, from which the parties may agree upon a single conciliator provided, however, that if the parties cannot select a conciliator from among the 3 within 3 business days, the American Arbitration Association shall select a conciliator from the remaining names. The joint resolution committee shall conduct a dispute resolution process to be concluded within 10 business days of selection. This process shall be conducted in accordance with the rules of the American Arbitration Association and consistent with this section. The fee for the process shall be shared equally between the 2 parties involved.

The joint resolution committee shall consider the positions of the parties, the designation of the school as underperforming and the needs of the students in the school. Notwithstanding any other provision of this chapter, the decision of the joint resolution committee shall be dispositive of all the issues in dispute and shall be submitted to the parties within 10 business days of the completion of the process. Under no circumstance, shall a time extension be granted beyond 10 business days of the completion of the process. If a decision is not submitted to the parties within 10 business days, the commissioner will resolve all outstanding issues.”