

Professional Educators Collaborative Conferencing Act of 2011 Frequently Asked Questions

In 2011, the TN General Assembly passed a law creating the Professional Educators Collaborative Conferencing Act (PECCA). PECCA replaces the Education Professional Negotiations Act (EPNA). EPNA allowed teachers to engage in collective bargaining. Collective bargaining for teachers is now prohibited in Tennessee. PECCA creates an avenue of communication between teachers and school boards that allows inclusiveness of all professional employees' organizations.

1. 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.

2. 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.

3. 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.

4. 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.

5. Do all licensed employees vote in the collaborative conferencing poll or 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 are excluded from the teachers' collaborative conferencing unit.

6. 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.

7. How is representation determined 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. The same number of professional employees are entitled to be part of collaborative conferencing.

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

9. 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.

10. 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.

11. Does PECCA prohibit certain terms and conditions from being discussed in 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.

12. How are agreements between the prof. employees and the board confirmed and ratified under PECCA?

If agreement is reached, the parties jointly prepare a memorandum of understanding that is valid for a period not to exceed three years. The MOU is then presented to the board of education as an item on the agenda of a regular or special called board meeting. Ratification will only be required by the Board, not the employees. If the Board approves a MOU, it is then binding.

13. What if an agreement cannot be reached on certain terms and conditions through the 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.