

Changes to APPR and Teacher Tenure

While not as extensive as first proposed by the Governor, the enacted 2015-2016 budget bill will result in significant changes to the structure of Annual Professional Performance Reviews (APPR) for classroom teachers and principals, and to tenure laws. This memorandum first provides an outline of the new structure for APPR, under Education Law § 3012-d, and then discusses the changes to Education Law § 3020-a and the new Education Law § 3020-b.

APPR

As of July 1, 2015, APPR requirements will be governed by Education Law § 3012-d. School districts that fail to have an approved plan in place by November 15, 2015 will not be eligible to receive increased State funding. § 3012-d simplifies the APPR structure, providing for two, rather than three, components, but gives Districts (and unions) less discretion in the formulation of plans. Where the statute provides options, such as the ability to include a locally selected student performance measure, the Commissioner is charged with creating regulations that establish a specific menu for those options. Further, the Commissioner must develop regulations that set the weights and scoring ranges of each APPR component and subcomponent;¹ establish goal setting procedures; set parameters for appropriate SLO targets; and establish the parameters for teacher and principal observations.

Thus, it goes without saying that much of what will be expected under § 3012-d has yet to be determined by Commissioner's regulations, which must be issued by June 30, 2015. Nevertheless, the basic APPR structure is outlined in § 3012-d and is set forth below.

Education Law § 3012-d

- I. APPR Components – (1) Student Performance and (2) Teacher Observation
 - a. Student Performance – mandatory and optional subcomponents:
 - i. Mandatory subcomponent:
 1. For principals and teachers of subjects with a State-provided growth score → State provided score is used;
 2. For classroom teachers of subjects without a State-provided growth score → SLO is used:
 - a. SLO must be based upon a State-created test (e.g. Regents exam) if available.
 - b. The Commissioner will develop regulations governing the SLO goal-setting process and parameters for appropriate student growth targets.
 - ii. Optional second subcomponent:
 1. Must be consistently applied across the school district to the extent practicable.
 2. Locally selected second measure must be either:
 - a. Second State provided growth score on a State-created test; or
 - b. Growth score based upon “state designed supplemental assessment” using State-provided growth model;
 - i. Assessment developed or acquired by the State from:
 1. Another state,
 2. A post-secondary educational institution,
 3. A not-for-profit educational corporation,
 4. May be an assessment currently authorized by SED if it “significantly modified growth targets and scoring bands” for those assessments.
 - ii. Must provide options for multiple assessment measures that are aligned to existing classroom and school best practices and consider recommendations for less student testing.
 3. Whether the optional second subcomponent is used and, if so, which assessment is used, is subject to negotiation.

¹ Note that, while the Commissioner is charged with setting the weight that the two components will carry, statutorily prescribed provisions related to the overall ratings determination effectively create a 50/50 split between the student performance and teacher observation components.

- b. Teacher Observation: there are two mandatory subcomponents and one optional subcomponent
 - i. Must use State-approved rubric.
 - ii. Mandatory subcomponents:
 - 1. Observation by a trained principal or trained administrator;
 - 2. Observation by “impartial, independent trained evaluator”:
 - a. May be an administrator within district, but cannot be in the same building as evaluated teacher;
 - b. Selected by the District.
 - iii. Optional subcomponent:
 - 1. Peer Observation:
 - a. May be a trained teacher in the same or another building
 - iv. How to implement the Teacher Observation component and associated Commissioner’s regulations is subject to negotiation.
- c. Prohibited considerations – APPR plans may no longer include evaluations based upon the following factors:
 - i. Parent/student surveys;
 - ii. Teacher artifacts or lesson plans;
 - iii. Student portfolios (unless there is an SED approved rubric);
 - iv. Goal setting;
 - v. District/regionally developed assessments (unless SED approved);
 - vi. Any growth or achievement target that does not meet minimum standards set by Commissioner.

II. APPR Ratings

- a. Commissioner’s responsibilities:
 - i. Set weights and scoring ranges for all APPR components and subcomponents:
 - 1. No longer subject to negotiation.
- b. Composite Rating Matrix – § 3012-d establishes required overall APPR ratings based upon teacher/principal ratings on each of the components as indicated in the chart below:

Teacher Observation	Student Performance			
	H	E	D	I
H	H	H	E	D
E	H	E	E	D
D	E	D	D	I
I	D	D	I	I

- i. As noted above, while the Commissioner is to set weights for the Student Performance and Teacher Observation components, the statutory rating matrix effectively creates a 50/50 split between the two components.
- c. Other requirements:
 - a. Ineffective component ratings:
 - i. If a teacher/principal receives an Ineffective rating on either the Student Performance or the Teacher Observation component → s/he is ineligible to receive an Effective or Highly Effective rating.
 - ii. If an APPR plan includes a locally selected second Student Performance subcomponent → an Ineffective rating on the Student Performance component must result in an Ineffective overall APPR rating, unless:
 - 1. The second subcomponent is also a State provided growth score.

Teacher Tenure and Discipline

In addition to the changes to APPR outlined above, significant changes to laws establishing teacher tenure and the disciplinary process once tenure is established were included in the budget.

Tenure

Under the amended tenure laws, teachers and administrators “appointed” to probationary appointments on or after July 1, 2015 will have longer probationary periods.² The amended law recognizes the same categories of probationary appointments as are included in the current statute - administrators, “new” teachers, teachers who have previously received tenure In New York State, and teachers who have served as regular substitute teachers – and generally extends the probationary periods by one year. As has been the case until now, administrators are not eligible for shorter probationary periods. However, the shorter probationary periods for teachers who have previously received tenure and those who have worked as regular substitute teachers apply only if these teachers were evaluated under Education Law § 3012-c or § 3012-d in the year (or two years, in the case of a regular substitute) immediately prior to receiving a probationary appointment. The table below sets forth current probationary periods and probationary periods for teachers appointed on or after July 1, 2015.

	Current Probationary Period	Probationary Period as of 7/1/15
Administrative position	3 years	4 years
New Teacher	3 years	4 years
Teacher w/ prior tenure	2 years	3 years*
Teacher w/ up to 2 years of regular substitute service	As short as 1 year	As short as 2 years*

*Subject to APPR evaluation.

In addition to extending the length of probationary periods, the amendments establish minimum performance requirements to support recommendations for tenure. Recommendations to grant tenure to classroom teachers and principals who were appointed on or after July 1, 2015, may be made only if a teacher or principal receives Effective or Highly Effective APPR ratings in three of the four years preceding the tenure recommendation.

Further, a recommendation to grant tenure cannot be made if the teacher or principal receives an Ineffective rating in his or her final probationary year, although probationary extensions may be granted. Where a probationary period would normally expire in the middle of a school year, the statute provides that it is automatically extended to the end of the school year to allow for a final APPR rating to be determined. Conditions for tenure recommendations for classroom teachers or principals who received probationary appointments prior to July 1, 2015 have not changed.

Discipline of Tenured Teachers

Changes found in the budget bill improve, from the school district perspective, some requirements contained in Education Law § 3020-a and create Education Law § 3020-b, which establishes procedures for terminations based upon Ineffective APPR ratings.

Currently under § 3020-a, school districts may suspend charged teachers and administrators pending their disciplinary hearing, but are required, with few exceptions, to continue to pay them.³ For disciplinary charges involving the sexual or physical abuse of a student brought on or after July 1, 2015, school districts may issue unpaid suspensions pending the disciplinary hearing. If an unpaid suspension is issued, a probable cause hearing⁴ must be held within ten days and the charges will be subject to an expedited hearing. Expedited hearings must be completed within 60 days of a pre-hearing conference and teachers or administrators cannot be on unpaid suspension for more than 120 days and must receive all other benefits of employment (e.g. health insurance) while suspended.

2 The statute does not clearly specify whether “appointed” refers to the date an appointment is made or the effective date of the probationary appointment. Prior Commissioner’s decisions and case-law suggest that the appointment date is not the same as the date s/he actually begins work. Therefore, if possible, it is recommended that Boards of Education vote to approve any new probationary appointments on or after July 1, 2015.

3 The only exceptions to this rule were in the case of uncertified teachers, who legally were not eligible to teach (and, therefore, could not be paid), and teachers who had been convicted of a drug related felony.

4 The Commissioner is to establish procedures for probable cause hearings.

Other changes to § 3020-a include the elimination of hearing panels and a broadening of pre-hearing disclosure requirements. Teachers and administrators charged with pedagogical incompetence on or after July 1, 2015, will no longer have the option to have a panel hear the charges against them and the statute expressly provides that, “All hearings commenced by the filing of charges on or after July 1, 2015 shall be heard by a single hearing officer.” The amendments to § 3020-a also impose a new disclosure requirement on charged teachers and administrators. Previously, case law restricted school districts from obtaining any pre-hearing disclosure from charged teachers or administrators. Now, charged teachers and administrators must disclose their witnesses and evidence prior to the hearing.

Under the new Education Law § 3020-b, the legislature has created “streamlined” removal procedures for teachers who have been rated Ineffective for two or more consecutive years. Specifically, § 3020-b permits school districts to file disciplinary charges based upon incompetence for classroom teachers who have been rated Ineffective for two consecutive years and requires the filing of charges for classroom teachers who have been rated Ineffective for three consecutive years. School districts are still required to bring charges within three-years of the alleged incompetency. It is uncertain at this early date if the “alleged incompetency” occurs on the date of the first Ineffective rating or when a teacher or principal receives the second or third Ineffective rating. If the former, school districts may face an impossible situation, where they are required to bring charges as a result of a third Ineffective APPR rating that the hearing officer is statutorily prohibited from considering.

§ 3020-b provides that either two consecutive Ineffective ratings or three consecutive Ineffective ratings constitute prima facie proof of incompetence. In the case of two consecutive Ineffective ratings, the charges must allege that the school district has developed and substantially implemented a teacher or principal improvement plan, and a charged teacher or administrator can prevail only by providing “clear and convincing evidence” that he or she is not incompetent. In the case of three consecutive Ineffective ratings, the school district does not need to allege that it developed or implemented an improvement plan and the teacher or administrator can prevail only with clear and convincing evidence that the calculation of the APPR components was fraudulent.

As with appointments, it is recommended that new 3020-a charges be brought on or after July 1, 2015, which delay the filing of charges against a tenured teacher to September 2015 due to the prohibition against filing charges against a teacher during July or August when school is not in session. Districts should take care, however, to ensure that a delay in filing charges will not result in the loss of evidence due to the three-year statute of limitations on bringing charges.

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