

Regulatory Changes to Teacher and Principal APPR

As previously discussed in our April 15, 2015 information memo, classroom teacher and principal Annual Professional Performance Reviews (APPR) will be governed by new statutory and regulatory requirements beginning July 1, 2015. On June 15, 2015, the Board of Regents adopted emergency regulations, 8 N.Y.C.R.R. Subpart 30-3 ("Subpart 30-3"), as required by the new APPR legislation, Education Law § 3012-d ("§ 3012-d"). This article provides an outline of the new APPR requirements (attached); highlights significant differences between the current APPR system and the new system; identifies which APPR provisions are subject to negotiation; and discusses the ability of school districts to apply for short-term "hardship" waivers.

APPR – "Old" and New

One of the more significant changes to APPR evaluations is the elimination of one of the evaluation components. Under the "old" APPR, Education Law § 3012-c ("§ 3012-c"), teacher and principal evaluations consisted of three components: student growth measures ("Student Growth"), local measures of student performance ("Local Measures"), and other measures of teacher/principal effectiveness ("Other Measures"). Under § 3012-d, evaluations will consist of student performance ("Student Performance") and teacher observation/principal school visits ("Observation") components. These new components are most similar to the prior Student Growth and Other Measures components, which are used in the comparisons below.

Student Performance

As was required for Student Growth, the calculation of the Student Performance component is either based upon a State-provided growth score (i.e., grades 4-8 ELA and Math), if available, or a student learning objective ("SLO"), if no State-provided growth score is available.¹

Assessments

Also as with Student Growth, if a course ends in a State-created or State-administered assessment (e.g. Regents examinations, 3rd grade ELA or Math assessment, etc.), that assessment must be used as the underlying assessment for a teacher's SLO.

For teachers of subjects that do not have a State-created or State-administered assessment, the old and new laws diverge. § 3102-d and Subpart 30-3 do not allow for locally developed assessments, unless such assessments have been approved by the State. Now, an SLO must be based upon either a selection from a list of State-approved student assessments or school-wide group, team or linked results based upon State/Regents assessments. For grades kindergarten through second, the State is prohibited from approving "traditional standardized assessments" to determine Student Performance, but the regulations provide that K-2 assessments will be "approved" if they are not "traditional standardized assessments" and the superintendent certifies their validity. Thus, it appears that, unless the State is able to identify and approve assessments for all untested subject areas and courses in all school districts, some teachers may necessarily be evaluated based upon assessments that are not directly linked to their classrooms.

Optional Student Performance subcomponent

The new APPR system also allows for an optional, second Student Performance subcomponent. If selected, the second subcomponent only can be either (1) a second State-provided growth score on a State-created or administered test, different from the growth score used in the mandatory subcomponent; or (2) a growth score based on a State-designed supplemental assessment, calculated using a State-provided or approved growth model.² Remember, however, that, if a second subcomponent is selected, a teacher or principal must receive an Ineffective APPR rating if s/he receives Ineffective on the Student Performance component, unless the second subcomponent is based upon a State-provided growth score.

If Student Performance is based solely on the mandatory subcomponent, it will comprise 100% of the teacher's or principal's component score. If the optional, second subcomponent is selected, the second subcomponent may comprise no more than 50% of the teacher's or principal's component score.

¹ Districts must develop "back-up SLOs" for all teachers who should receive a State-provided growth score in the event that a score cannot be generated.

² The State-approved growth model will be developed through Commissioner's guidance.

Student Learning Objectives

The elements of an SLO will not change under the new law.³ The regulations do, however, set a minimum expectation for growth targets of one year's expected growth, *as determined by the superintendent or his/her designee*. When establishing targets, the superintendent may consider poverty status, students with disabilities, ELL status, and prior academic history. All State-provided or approved growth model scores must control for these factors when accounting for one year's expected growth. Notably absent from this list of considerations is student attendance, but it is possible that attendance would be included as part of prior academic history. The regulations contemplate further guidance from the Commissioner, which might clarify this issue.

Like in past years, teachers' SLO component scores will be based upon the percentage of students who meet their targets. Unlike in past years, school districts will no longer establish their own scoring ranges for these targets. Subpart 30-3 sets specific percentages for each score of 0 through 20 for the Student Performance component. The conversion charts for converting student targets to a teacher's score and for converting a teacher's score to a HEDI rating are contained in the attached outline.⁴ It is important to note that at least 75% of students will have to meet their targets for a teacher to receive an Effective rating and at least 60% of the students will have to meet their targets to receive a Developing rating on the Student Performance component.

Teacher Observation/Principal School Visits

Number and frequency

Like the Student Performance component, the Observation component has mandatory and optional subcomponents. Beginning with the 2015-2016 school year, teacher and principal evaluation must be based upon at least two observations, using a State-approved teacher or principal practice rubric. One of the mandatory observations must be conducted by a principal or other trained administrator for teachers and the principal's supervisor or other trained administrator for principals; the other mandatory observation must be conducted by an "independent trained evaluator," selected and trained by the district.⁵ As in the past, at least one of the mandatory observations must be unannounced. Teachers may be observed with a video recording.⁶

In addition to the two mandatory observations, school districts may, subject to negotiation, have peer review. A peer observer must have been rated Effective or Highly Effective on his or her overall rating in the prior school year. This requirement could prove challenging for those school districts that release peer reviewers from teaching duties to facilitate their ability to conduct observations, without disrupting their own classrooms. Under prior guidance, teachers who taught less than 0.4 FTE were not evaluated under APPR.

Although so directed in § 3012-d, the Commissioner did not establish the frequency or duration of observations. Instead, the regulations provide that these, "shall be determined locally." While the regulations expressly do not limit administrators' "discretion ... to conduct observations in addition to those required by the regulations for *non-evaluative purposes*," the language suggests that administrators might now be limited to using information gleaned from only "official" observations when completing an APPR evaluation. With the legislative edict neutralized, evaluation procedures, such as the length and frequency of observations are mandatory subjects of bargaining.⁷ If the regulations are interpreted this way, it could hinder the ability accurately evaluate teachers.

Finally, the regulations dictate that observations must be based only on observable rubric elements. An evaluator may focus on a limited number of observable elements in a single observation, but all observable Teaching/Leadership Standards must be addressed across the total number of annual observations. To this end, school districts, at a minimum, should ensure that their APPR agreements have a caveat that allows for additional observations in the event that all observable elements are not captured in the two mandatory observations. Teaching/Leadership Standards that are not observable during classroom teaching may be observed during any optional pre-observation or post-observation conference or "other natural conversations," and incorporated into the observation score. An evaluator cannot award points for artifacts unless it constitutes evidence of an observable rubric element. For example, a lesson plan viewed during an observation may constitute evidence of professional planning.

³ SLOs include student population, learning content, interval of instructional time, evidence, baseline, target, HEDI criteria, and rationale.

⁴ The Commissioner will establish guidelines for scoring SLOs for teachers with "small 'n' values", i.e. few assigned students.

⁵ The regulations do not provide criteria for the "independent trained evaluator," except that such person cannot be assigned to the same school building as the teacher or principal being evaluated.

⁶ Presumably, the video recording option does not apply to the unannounced observation.

⁷ See *Plainview-Old Bethpage Central School District*, 46 PERB ¶601 (June 18, 2013), "[I]f the Commissioner wished to remove the procedures for performance evaluations from mandatory bargaining his remedy was to convince the Legislature and the Governor of this State that amendment of the statute is in the best interest of our educational system citing *Newburgh Enlarged City School District*, 30 NY2d 122, 5 PERB P7507 (1972).

Rubrics

As in previous years, teacher practice rubrics must be selected from a State-approved list. Until a new list is created pursuant to an RFQ process conducted by the State, the current list of State-approved rubrics will continue. The regulations have mechanisms for approval of existing school district rubrics, where districts can show that they have expended significant resources to implement the rubric and the rubric meets the RFQ standards, and also for “new innovative” rubrics not on the approved list.

Unlike past years, the regulations now allow for the use of multiple rubrics. Previously, all classroom teachers and principals had to be evaluated using the same rubric. Now, while teachers or principals within the same grade(s)/subject areas must be evaluated using a single rubric, different grade(s)/subject areas may use different rubrics. It may seem enticing to be able to differentiate, but school districts should take care to consider the administrative burden of training administrators and independent evaluators on multiple rubrics.

Weighting and scoring

Each observation that is conducted for APPR purposes must be rated on a 1 to 4 scale. Only if a teacher or principal receives a score of 1 on all rated elements of the practice rubric across all observations will s/he receive a score of 0 for the Observation component. Pursuant to the regulations, the scores for all observations are to be combined using the weighted average discussed below and converted into a HEDI score for the Observation component.

While each observation is scored in the same manner, they do not all carry the same weight. The weight of the principal's observation must be at least 80% of a teacher's Observation component score. The independent impartial observer's observation must be at least 10% of the teacher's score; and a peer observation may only constitute up to 10% of a teacher's score. The weight given within these ranges is subject to negotiation.

The regulations also establish ranges for the cut-scores for Observation HEDI ratings. The score/rating table for the Observation component is included in the attached outline.

APPR Provisions Subject to Negotiation

§ 3012-d sets two primary areas of an APPR plan that must be negotiated under the new law. These include (1) whether to use a second measure of student performance; and (2) how to implement the Observation component. Subpart 30-3 appears to further clarify by identifying items, within these two primary areas, that are “determined locally”. These items include:

- The frequency and duration of teacher and principal observations
- The selection of teacher and principal observation rubrics
- Whether to use different rubrics for teachers of different grades/classes or principals with different school configurations
- Whether to allow observation by video recording (for teachers)
- Whether to have an optional peer observation
- The weight of Observation subcomponents (administrative, independent, peer), *within the parameters set by the Commissioner*
- The cut scores for HEDI ratings for the teacher or principal Observation component, *within the ranges set by the Commissioner*
- If the optional second Student Performance subcomponent is selected, which measure will be used

§ 3012-c requirements that provide for the negotiation of an appeal process to challenge an APPR rating have been retained as part of § 3012-d. Most of the original grounds for an appeal remain intact: school district's adherence to the standards and methodologies required for evaluations, adherence to the regulations and any negotiated procedures, the issuance/implementation of a TIP/PIP. But, the regulations now restrict grounds for an appeal to these issues and, “the instance of a teacher or principal rated Ineffective on the student performance category but rated Highly Effective on the observation/school visit category based upon an anomaly.” Therefore, it appears that generalized disagreements with the content of an APPR evaluation are no longer subject to an appeal.

As with § 3012-c, SLOs and growth targets are not subject to negotiation and are, “developed and approved by the Superintendent [or designee]”. They must, however, comply with any SLO process established by the Commissioner. As many school districts found with § 3012-c, SLOs may be non-negotiable, but unions can still attempt to disrupt the development of an APPR plan by refusing to agree on negotiable items unless they were satisfied with the SLO process in the plan. Presumably, insistence on negotiating over SLO terms (a non-mandatory subject of bargaining) would constitute an improper practice, but the filing of a PERB charge may not necessarily solve the problem of meeting the deadline to submit a negotiated APPR plan for approval so that State aid increases will not be forfeited. Now that the SLO will be 40% to 50% of an APPR rating, rather than 20%, it is likely that unions will be more concerned with SLOs and targets than before.

Waivers

November 15, 2015 plan deadline

It is expected that school districts will have new APPR plans in place no later than November 15, 2015, or risk losing increases in State aid. The Department of Education has recommended that Board of Regents create a hardship waiver that would allow school districts acting in good faith to request a waiver and avoid financial penalties. While in the Department's June 15, 2015 presentation to the Board of Regents, Subpart 30-3 does not contain express provisions for such a waiver. Nevertheless, set forth below are the suggested, non-regulatory parameters for granting a waiver:

- Submission of evidence of good-faith attempts to negotiate a new APPR plan consistent with § 3012-d and to train staff in the new required procedures prior to November 15, 2015
- Waivers may be granted for four-month periods
- Each subsequent waiver request must include evidence of additional good-faith collective bargaining and appropriate training
- Plans approved by March 1, 2016 will apply to the 2015-2016 school year
- If a waiver is not granted, the school district will forfeit the increase in state aid for 2015-2016
- The previously approved APPR plan remains in effect during any approved waiver period
- The final deadline for plan approval to secure 2015-16 state aid increases is September 1, 2016

Consecutive Ineffective teachers

§ 3012-d and Subpart 30-3 also generally prohibit school districts from placing students in classrooms for consecutive years with teachers rated ineffective. School districts, however, may request hardship waivers from this restriction if it is impracticable to comply (for example, if there are an insufficient number of teachers to provide alternate assignments). School districts may request teacher specific waivers if they can demonstrate that they cannot make alternative arrangements or reassign a teacher to another grade/subject and that they have an improvement and/or removal plan in place for the teacher.

Outline Of New APPR Requirements

Education Law § 3012-d

- I. Applicability
 - a. Classroom teachers of record
 - i. Not defined – “defined in a manner prescribed by the Commissioner”
 - b. Principals
 - i. Building principal
 1. In charge of “school building” or program identified by BEDS code
 - ii. An administrator in charge of BOCES instructional program
 - c. Timing –
 - i. Applies to all APPR plans negotiated on or after April 1, 2015
 - ii. § 3012-c and Subpart 30-2 apply to plans negotiated prior to April 1, 2015
 - iii. § 3012-c plans will remain in effect until a new plan under § 3012-d is approved

APPR Components

Student Performance and Teacher Observation

- II. Student Performance – mandatory and optional subcomponents
 - a. Mandatory subcomponent:
 - i. For principals and teachers of subjects with a State-provided growth score – State provided score is used;
 1. Includes teachers who have at least 50% of students covered by a State-provided growth score
 2. **Districts must create “back-up” SLOs for all teachers who do not receive a State-provided growth score**
 - ii. For classroom teachers of subjects without a State-provided growth score § SLO is used:
 1. Form “prescribed by the Commissioner” and “consistent with a process determined by the Commissioner”
 2. SLO must be based upon a State-created test (e.g. Regents exam) if available.
 3. If no State-created test, then must be based upon State-approved test
 - a. K-2 assessments cannot be “traditional standardized test”
 4. Superintendent sets targets, with minimum target of **one year’s expected growth**, which may take into consideration:
 - i. Poverty
 - ii. Students with disabilities
 - iii. English language learners
 - iv. Prior academic history
 - b. Optional second subcomponent – subject to negotiation
 - i. Must be consistently applied across the school district to the extent practicable, based upon
 1. State/Regents assessments, or
 2. State-designed supplemental assessments AND
 - ii. Be either:
 1. Second State provided growth score on a State-created/administered test;
 - a. Teacher-specific growth score computed by the State based on percentage of students who achieve a state-determined level of growth
 - b. School-wide growth results based upon a State-provided school-wide growth score for all students attributable to the school who took the 4-8 ELA or Math assessments
 - c. School-wide, group, or team growth results using available State provided growth scores that are locally computed
 2. Or growth score based upon “state designed supplemental assessment” using State-provided/approved growth model;
 - a. Assessment developed or acquired by the State from:
 - i. Another state,
 - ii. A post-secondary educational institution,
 - iii. A not-for-profit educational corporation,
 - iv. May be an assessment currently authorized by SED if it “significantly modified growth targets and scoring bands” for those assessments.

- b. Must provide options for multiple assessment measures that are aligned to existing classroom and school best practices and consider recommendations for less student testing.
- c. Weighting of subcomponents
 - i. No optional subcomponent – mandatory subcomponent = 100%
 - ii. Includes optional subcomponent
 - 1. Mandatory subcomponent \geq 50%
 - 2. Optional subcomponent \leq 50%
- d. Scoring of subcomponents
 - i. Must be 0-20 based upon percentage of students meeting goals using Commissioner created chart

% of Students Meeting Targets	Scoring Range
0-4%	0
5-8%	1
9-12%	2
13-16%	3
17-20%	4
21-24%	5
25-28%	6
29-33%	7
34-38%	8
39-43%	9
44-48%	10
49-54%	11
55-59%	12
60-66%	13
67-74%	14
75-79%	15
80-84%	16
85-89%	17
90-92%	18
93-96%	19
97-100%	20

- ii. Courses with small “n” sizes (not defined) may use locally calculated scores using methodology prescribed in Commissioner’s guidance

e. Rating of Component

	Minimum	Maximum
H	18	20
E	15	17
D	13	14
I	0	12

II. Teacher Observation/Principal School Visit: two mandatory subcomponents and one optional subcomponent

- a. Must use State-approved rubric
 - i. Current list is valid until SED completes the RFQ process
 - ii. Can request variance to use an existing, unlisted rubric if
 1. Rubric meets criteria in the RFQ
 2. District has made a significant investment in the rubric
 3. History of use justifies continuing using the rubric
 - iii. Can request variance for “new innovative” rubric
 - iv. **Can use different rubrics for teachers who teach different grades and or subject and for principals of schools with different grade configurations**
- b. Mandatory subcomponents:
 - i. Teacher observation by a trained principal or trained administrator/School visit by supervisor or trained administrator;
 1. Must constitute a minimum of 80% of the component score
 - ii. Observation by “impartial, independent trained evaluator”:
 1. May be employed by the district, but cannot be in the same building as evaluated teacher;
 2. Selected by the District.
 3. Must constitute a minimum of 10% of the component score
 - iii. At least one mandatory subcomponent must be unannounced
- c. Optional subcomponent:
 - i. Peer Observation
 1. May be a trained teacher in the same or another building
 2. May constitute maximum 10% of the component score
- d. Number and length of observations
 - i. Subject to local decision making
 1. Not specified in regulations, but must assume that this is negotiable as evaluation procedures are mandatory subjects are bargaining
 - ii. Teacher observations may be live or video recorded as determined locally; Principal school visits cannot be recorded
- e. Prohibited considerations – APPR plans may no longer include evaluations based upon the following factors:
 - i. Parent/student surveys
 - ii. Teacher artifacts or lesson plans (can be considered if they are evidence of observable rubric elements)
 - 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

- f. Component HEDI ratings – subject to negotiation

	Permissible Statewide Range	
	Minimum	Maximum
H	3.5 to 3.75	4
E	2.5 to 2.75	3.49 to 3.74
D	1.5 to 1.75	2.49 to 2.74
I	0	1.49 to 1.74

- ii. If a teacher or principal receives a 1 on all observable
- III. APPR Ratings
 - a. Commissioner’s responsibilities:
 - i. Set weights and scoring ranges for all APPR components and subcomponents
 - 1. Student Performance scoring not subject to negotiation
 - 2. Teacher observation ratings subject to negotiation within ranges set by Commissioner
 - 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:

	Student Performance			
Teacher Observation	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. The Commissioner did not 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.
- IV. Appeals
 - a. Basis of the appeal
 - i. Substance of the evaluation, which includes
 - 1. Teacher or principal rated ineffective in Student Performance but Highly Effective on the observation/school visit component based on an anomaly (anomalies determined locally)
 - 2. School district’s adherence to the standards and methodologies required for the evaluation
 - 3. School district’s adherence to the regulations and locally negotiated procedures
 - 4. Issuance and/or implementation of a TIP/PIP

- b. Process must provide for timely and expeditious resolution
- c. Evaluation under appeal cannot be used as evidence in § 3020-a or § 3020-b proceeding
- d. Pending appeal does not limit school district's ability to terminate the probationary period or to deny tenure even if based upon performance
- V. Waivers
 - a. November 15, 2015 plan deadline
 - i. Recommended by Commissioner, but not actually in regulations
 - ii. Requires evidence of good faith effort to negotiate plan with unions
 - iii. Good for two-month periods
 - iv. If a plan is not approved by September 1, 2016, increased aid for 2015-2016 will be forfeit
 - v. Previous plan remains in effect until new plan approves; plans approved by March 1, 2016 will apply to the 2015-2016 school year
 - b. Consecutive Ineffective teachers
 - i. Requires evidence that compliance is impracticable (e.g. not enough teachers to reassign student)
 - ii. School districts must have TIP or removal plan in place for Ineffective teacher

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