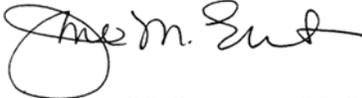




THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: The Honorable the Members of the Board of Regents

FROM: Jhone M. Ebert 

SUBJECT: Amendment to sections 30-3.4 and 30-3.5 of the Rules of the Board of Regents Relating to a Hardship Waiver for Independent Evaluators for Annual Professional Performance Reviews for Classroom Teachers and Building Principals Commencing in the 2016-2017 School Year

DATE: September 1, 2016

AUTHORIZATION(S):  

**SUMMARY**

**Issue for Decision (Consent Agenda)**

Should the Board of Regents adopt the proposed amendments to §§30-3.4 and 30-3.5 of the Rules of the Board of Regents, relating to annual professional performance reviews of classroom teachers and building principals commencing in the 2016-2017 school year?

**Reason(s) for Consideration**

Review of Policy.

**Proposed Handling**

The proposed amendment is submitted to the Full Board for adoption as an emergency measure and as a permanent rule at its September 2016 meeting. The proposed amendment is attached as Attachment A. A Statement of Facts and Circumstances is attached as Attachment B.

## **Procedural History**

The proposed amendment was adopted as an emergency measure at the June 2016 Regents meeting. A Notice of Proposed Rule Making and Emergency Adoption was published on June 29, 2016. Supporting materials are available upon request to the Secretary of the Board of Regents. Following the 45-day public comment period required under the State Administrative Procedure Act, the Department received no comments on the proposed amendment.

## **Background**

On April 13, 2015, the Governor signed Chapter 56 of the Laws of 2015 to add a new Education Law §3012-d, to establish a new evaluation system for classroom teachers and building principals. The Department implemented regulations to implement the new law in June 2015 and has revised those regulations over the course of the last year to provide school districts and BOCES with as much flexibility as possible to comply with the new law. Education Law §3012-d(12) and the corresponding appropriation language require school districts to comply with the new law by September 1, 2016 in order to receive their State aid increases.<sup>1</sup> The Department received numerous concerns about the requirement for the use of independent evaluators in teacher observations and principal school visits, notwithstanding the fact that the Department revised the regulation in September 2015 to provide a hardship waiver for rural and single building school districts. In an effort to provide more flexibility to districts (particularly the large city school districts), at its June 2016 meeting, the Board of Regents adopted the proposed amendment to provide an additional hardship waiver from the independent evaluator requirement.

The proposed amendment revises sections 30-3.4 and 30-3.5 of the Rules of the Board of Regents to provide a hardship waiver to school districts and BOCES commencing with the 2016-2017 school year who believe that compliance with the independent evaluator requirement would create an undue burden on the school district/BOCES in one or more of the following areas:

1. compliance with the independent evaluator requirement would result in financial hardship to the district or BOCES;
2. the district or BOCES lacks professionally trained staff to comply with the independent evaluator requirement;
3. the district or BOCES has a large number of teachers and principals; and/or

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<sup>1</sup> The Legislature subsequently extended this deadline until December 31, 2016 (see, Chapter 73 of the Laws of 2016).

4. compliance with the independent evaluator requirement could impact safety and management of a building (e.g., would result in the principal being absent from the school building).

Any hardship waiver granted by the Department excuses, but does not prohibit, school districts/BOCES from conducting observations/school visits by impartial independent trained evaluators for teachers/principals who received an APPR rating of highly effective, effective, or developing in the preceding school year (e.g., school districts would be excused, but not prohibited, from conducting observations/school visits by impartial independent trained evaluators for the 2016-2017 school year for teachers/principals who receive an APPR rating of highly effective, effective, or developing for the 2015-2016 school year; teachers/principals who, at a minimum, receive an APPR rating of ineffective for the 2015-2016 school year would continue to be subject to the requirement for evaluation by an independent evaluator for the 2016-2017 school year APPR process). **However, teachers/principals who are not subject to the independent evaluator requirement pursuant to the hardship waiver must still receive a second observation/school visit. The second observation/school visit may be conducted by the building principal/supervisor or any individual selected and trained by the school district or BOCES. The two observations/school visits for such teachers/principals could be performed by the same individual.**

As part of its hardship waiver request, a school district is required to submit a plan for conducting observations/school visits by the building principal/supervisor or other trained administrators and for conducting the second observation/school visit by the building principal/supervisor or by an individual selected and trained by the school district or BOCES. For the other teachers/principals in the school district/BOCES who must still receive a second observation/school visit by an impartial, independent trained evaluator (those who, at a minimum, receive an APPR rating of ineffective in the preceding school year), the district/BOCES must submit a plan for conducting such observations/school visits. Once a hardship waiver is approved by the Department, it is considered part of the school district's annual professional performance review plan for such school year.

### **Related Regents Items**

June 2016: <http://www.regents.nysed.gov/common/regents/files/616p12a7.pdf>

### **Recommendation**

Staff recommends that the Board of Regents take the following action:

VOTED: That sections 30-3.4 and 30-3.5 of the Rules of the Board of Regents shall be amended, effective September 18, 2016, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare in order to immediately adopt revisions to the proposed amendment to

provide districts with notice of the ability to obtain a hardship waiver in an effort to provide additional flexibility to school districts when negotiating their annual professional performance review plans for the 2016-2017 school year and to ensure that the emergency rule adopted at the June Regents meeting remains continuously in effect until it can be adopted as a permanent rule; and

VOTED: That sections 30-3.4 and 30-3.5 of the Rules of the Board of Regents shall be amended, as submitted, effective September 28, 2016.

**Timetable for Implementation**

If adopted at the September 2016 meeting, the proposed amendment will become effective as an emergency measure on September 18, 2016 and as a permanent rule on September 28, 2016.

AMENDMENT TO THE RULES OF THE BOARD OF REGENTS

Pursuant to Education Law sections 101, 207, 210, 212, 215, 3001, 3012-d.

1. Clause (b) of subparagraph (i) of paragraph (2) of subdivision (d) of section 30-3.4 of the Rules of the Board of Regents shall be amended, effective September 18, 2016, to read as follows:

(b) a second observation shall be conducted by either one or more impartial independent trained evaluator(s) selected and trained by the district or in cases where a hardship waiver is granted by the department pursuant to subclause (1) of this clause, a second observation shall be conducted by one or more evaluators selected and trained by the district, who are different than the evaluator(s) who conducted the evaluation pursuant to clause (a) of this paragraph; or in cases where a hardship waiver is granted by the department pursuant to subclause (2) of this subparagraph, a second observation shall be conducted as prescribed in subclause (2). An independent trained evaluator may be employed within the district, but may not be assigned to the same school building as the teacher being evaluated;

(1) . . .

(2) Commencing with the 2016-2017 school year, a school district may apply to the Department for a hardship waiver on an annual basis, in a timeframe and manner prescribed by the commissioner, if the school district believes that compliance with this clause would create an undue burden on the school district in one or more of the following areas: compliance with the independent evaluator requirement would result in financial hardship; the district lacks professionally trained staff to comply with the

independent evaluator requirement; the district has a large number of teachers; and/or compliance with the independent evaluator requirement could impact safety and management of a building. A hardship waiver granted by the Department under this subclause shall excuse, but not prohibit, school districts from conducting observations by impartial independent trained evaluators for teachers who received a rating of highly effective, effective, or developing in the preceding school year (e.g., school districts would be excused, but not prohibited, from conducting observations by impartial independent trained evaluators for the 2016-2017 school year for teachers who receive a rating of highly effective, effective, or developing for the 2015-2016 school year; school districts would be required to conduct observations by impartial independent trained evaluators for the 2016-2017 school year for, at a minimum, teachers who receive a rating of ineffective for the 2015-2016 school year). For teachers who are excused from the impartial independent trained evaluator requirement pursuant to a hardship waiver granted by the Department under this subclause, school districts shall conduct a second observation, provided that such second observation may be conducted by the building principal/supervisor or any individual selected and trained by the school district. The two observations for such teachers could be performed by the same individual. As part of its hardship waiver request, a school district shall submit a plan for conducting observations by the building principal or other individual selected and trained by the school district in lieu of the impartial independent trained evaluator subcomponent. For the other teachers in the district who must still receive a second observation by an impartial, independent trained evaluator (teachers who, at a minimum, received an ineffective rating in the preceding school year), the district must

submit a plan for conducting such observations. Once a hardship waiver is approved by the Department, it shall be considered part of the school district's annual professional performance review plan for such school year.

2. Subparagraph (ii) of paragraph (1) of subdivision (d) of section 30-3.5 of the Rules of the Board of Regents shall be amended, effective September 18, 2016, to read as follows:

(ii) a second school visit shall be conducted by either one or more impartial independent trained evaluator(s) selected and trained by the district or in cases where a hardship waiver is granted by the department pursuant to clause (a) of this subparagraph, a second school visit shall be conducted by one or more evaluators selected and trained by the district, who are different than the evaluator(s) who conducted the evaluation pursuant to subparagraph (i) of this paragraph; or in cases where a hardship waiver is granted by the department pursuant to clause (b) of this subparagraph, a second school visit shall be conducted as prescribed in clause (b). An independent trained evaluator may be employed within the district, but may not be assigned to the same school building as the principal being evaluated;

(a) . . .

(b) Commencing with the 2016-2017 school year, a school district may apply to the Department for a hardship waiver on an annual basis, on a form and in a timeframe prescribed by the commissioner, if the school district believes that compliance with this clause would create an undue burden on the district in one or more of the following areas: compliance with the independent evaluator requirement would result in financial hardship; the district lacks professionally trained staff to comply with the independent

evaluator requirement; the district has a large number of principals; and/or compliance with the independent evaluator requirement could impact safety and management of a building. A hardship waiver granted by the Department under this clause shall excuse, but not prohibit, school districts from conducting school visits by impartial independent trained evaluators for principals who received a rating of highly effective, effective, or developing in the preceding school year (e.g., school districts would be excused, but not prohibited, from conducting school visits by impartial independent trained evaluators for the 2016-2017 school year for principals who receive a rating of highly effective, effective, or developing for the 2015-2016 school year; school districts would be required to conduct school visits by impartial independent trained evaluators for the 2016-2017 school year for, at a minimum, principals who receive a rating of ineffective for the 2015-2016 school year). For principals who are excused from the impartial independent trained evaluator requirement pursuant to a hardship waiver granted by the Department under this clause, school districts shall conduct a second school visit, provided that such second school visit may be conducted by the principal's supervisor or any individual selected and trained by the school district. The two school visits for such principals could be performed by the same individual. As part of its hardship waiver request, a school district shall submit a plan for conducting school visits by the principal's supervisor or other individual selected and trained by the school district in lieu of the impartial independent trained evaluator subcomponent. For the other principals in the district who must still receive a second school visit by an impartial, independent trained evaluator (principals who, at a minimum, received an ineffective rating in the preceding school year), the district must submit a plan for conducting such

school visits. Once a hardship waiver is approved by the Department, it shall be considered part of the school district's annual professional performance review plan for such school year.

**8 NYCRR §100.19**

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE  
EMERGENCY ACTION

The purpose of the proposed amendment is to provide districts and BOCES with a hardship waiver commencing with the 2016-2017 school year from certain aspects of the independent observation requirements under Education Law §3012-d for both teacher and principal evaluations.

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(4-a), would be the September 12-13, 2016 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the September meeting, would be September 28, 2016, the date a Notice of Adoption would be published in the State Register. However, the emergency measure taken at the June 2016 Regents meeting will expire on September 17, 2016.

Emergency action at the September 2016 Regents meeting is therefore necessary for the preservation of the general welfare in order to immediately adopt revisions to the proposed amendment to provide notice to districts of the ability to apply for a hardship waiver for districts who believe that using independent observers will create an undue burden on their districts and to ensure that districts can receive approval of their annual professional performance review plans by the September 1

deadline to receive State aid increases pursuant Education Law §3012-d(12) for the 2016-2017 school year and to ensure that the emergency rule adopted at the July Regents meeting remains continuously in effect until it can be adopted as a permanent rule on September 28, 2016.