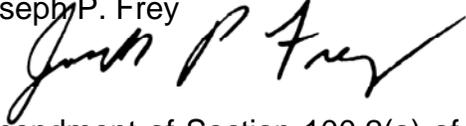




THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

**TO:** Higher Education Committee

**FROM:** Joseph P. Frey  


**SUBJECT:** Amendment of Section 100.2(o) of the Regulations of the Commissioner of Education Relating to the Annual Professional Performance Review for Teachers in the Classroom Teaching Service

**DATE:** April 19, 2010

**AUTHORIZATION(S):**

### **SUMMARY**

#### **Issue for Decision**

Should the Board of Regents amend Section 100.2(o) of the Regulations of the Commissioner of Education relating to the Annual Professional Performance Review of Teachers?

#### **Reason(s) for Consideration**

Review of Policy.

#### **Proposed Handling**

This item is presented to the Higher Education Committee for adoption, as an emergency measure, at the April 2010 Regents meeting. A Notice of Proposed Rule Making will be published with the Department of State on April 22, 2010.

#### **Background Information**

In 2000, in collaboration with teachers, principals, district superintendents, BOCES, and other educational partners, the Board of Regents developed and approved Section 100.2(o) of the Regulations of the Commissioner of Education, governing the Annual Professional Performance Review (APPR) of teachers. These regulations require the governing body of each school district and BOCES to ensure that the performance of all teachers providing instructional services be reviewed annually, with

the exception of evening school teachers of adults enrolled in nonacademic, vocational subjects and supplementary school personnel. As part of the current Annual Professional Performance Review set forth in Section 100.2 of the Commissioner's Regulations, school districts and BOCES are required to evaluate teachers based on at least eight evaluation criteria prescribed in regulation, which include:

- Content knowledge of the subject matter and curriculum;
- Preparation, including knowledge and application of the best pedagogical practice to support instruction;
- Instructional delivery, ensuring that the teacher's delivery of instruction results in active student involvement and that the teacher develops meaningful lesson plans resulting in student learning;
- Classroom management, in which the teacher creates a learning environment supportive of diverse learning styles and needs;
- Knowledge of student development, which includes the application of developmentally appropriate instructional strategies for the benefit of all students;
- Student assessment, wherein the teacher must demonstrate that he or she implements assessment techniques based on appropriate learning standards designed to measure a student's progress in learning;
- Reflective and responsive practice, which includes reviewing practice to ensure that appropriate adjustments are made on a continuing basis;
- Collaboration with colleagues, families and others to meet the learning needs of students.

As part of its reform agenda for strengthening teaching, the Board of Regents have made a policy determination to make three major changes to the current APPR for teachers. The proposed amendment (Attachment A) is consistent with the Regents reform agenda.

First, the proposed amendment to the APPR requires school districts and BOCES to include student growth as a mandatory criteria in the evaluation of teachers.

- The proposed amendment includes student growth as one of multiple evaluation criteria to be used in the evaluation of teachers and defines student growth as a positive change in student achievement between at least two points in time as determined by the school district or BOCES, taking into consideration the unique abilities or disabilities of each student, including English language learners.

Existing student achievement data from State and local assessments can be used to assess student growth until the P-20 student data system is completed. Moreover, the proposed amendment also permits school districts and BOCES to use

students' scores on pre-tests and end-of-course tests, student performance on English language proficiency assessments and other measures of student achievement determined by the school district or BOCES to be rigorous and comparable across classrooms for non-tested grades and subjects.

Secondly, at the December 2009 Regents meeting, the Regents approved the concept of the inclusion in the APPR a requirement that each school district and BOCES implement uniform qualitative rating categories/criteria to evaluate teachers.

- The proposed amendment is consistent with this policy and amends Section 100.2(o) of the Commissioner's Regulations to require school districts and BOCES to rate all teachers in the classroom teaching service utilizing the following uniform quality rating categories: Highly Effective, Effective, Developing and Ineffective. The proposed amendment also defines each of these quality rating categories.

A school district's designation of such quality categories or measurements has been determined by the New York Public Employment Relations Board, the agency charged with enforcing the Taylor Law, to constitute the imposition of criteria for teacher evaluation, which does not need to be collectively bargained.<sup>1</sup> However, the procedures used to implement these categories, which may include any implications on teacher compensation, etc. would need to be collectively bargained consistent with Article 14 of the Civil Service Law.<sup>2</sup>

Lastly, the proposed amendment requires all school districts and BOCES to provide timely and constructive feedback to the teacher.

- The proposed amendment requires school districts and BOCES to include in their professional performance plan a description of how it will provide timely and constructive feedback to its teachers, including data on student growth for each of their students, the class and the school as a whole and feedback and training on how the teacher can use such data to improve instruction as part of the teacher's APPR.

Where the Commissioner finds that a collective bargaining agreement was executed by a school district or BOCES pursuant to Article 14 of the Civil Service Law prior to the effective date of this regulation and whose terms are inconsistent with the new provisions of this regulation the Commissioner will grant a variance from that portion of the regulation for the duration of the existing collective bargaining agreement.

The Department shared the proposed amendments with:

- District Superintendents
- Professional Standards and Practices Board for Teaching

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<sup>1</sup> Matter of Elwood, 10 PERB ¶3107 (1977).

<sup>2</sup> Matter of Cohoes City School Dist. v Cohoes Teachers Associations, 40 NY2d 774 (1976); Board of Educ. v Bellmore-Merrick United Secondary Teachers, 39 NY2d 167 (1976); Somers Central School Dist., 9 PERB ¶3014 (1976).

- New York State Council of School Superintendents
- The Big 5 Conference
- New York State United Teachers
- School Administrators Association of New York State
- New York State School Boards Association
- Council of School Supervisors and Administrators – New York City

As a result of suggestions from interested parties, the preliminary draft amendment was adjusted as follows:

- The descriptions of the four rating categories were streamlined to eliminate duplication.
- Because there are a number of procedures relating to the evaluation process that will need to be developed locally as a result of the proposed changes, districts will not be required to implement these changes until the beginning of the 2011-2012 school year.
- The mandated reporting requirements relating to efforts by the school districts to address teachers rated as unsatisfactory were deleted from the proposed amendment.

Various interested parties had other suggestions and comments upon which there was no consensus. Therefore, those suggestions were not incorporated.

### Recommendation

VOTED: That subparagraph (o) of Section 100.2 of the Regulations of the Commissioner of Education be amended, as submitted, effective May 1, 2010, as an emergency action upon a finding by the Board of Regents that such action is necessary to ensure that school districts and BOCES can implement the provisions of this section before the 2011-2012 school year.

### Timetable for Implementation

If adopted at the April 2010 meeting as an emergency measure, the proposed amendment will become effective on May 1, 2010 and the new APPR will apply for school years commencing on or after July 1, 2011.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF  
EDUCATION

Pursuant to sections 207, 3001 and 3004 of the Education Law.

1. Subdivision (o) of section 100.2 of the Regulations of the  
Commissioner of Education is repealed, effective May 1, 2010.

2. A new subdivision (o) of section 100.2 of the Regulations of the  
Commissioner of Education is added, effective May 1, 2010, as follows:

(o) Annual professional performance review.

(1) For school years commencing on or after July 1, 2000 and ending prior  
to June 30, 2011, each school district and BOCES shall be subject to the  
requirements of this paragraph.

(i) For purposes of this paragraph, the governing body of each school  
district shall mean the board of education of each school district, and in the case  
of the City School District of the City of New York it shall mean the Board of  
Education of the City School District of the City of New York.

(ii) Annual review. The governing body of each school district and BOCES  
shall ensure that the performance of all teachers providing instructional services  
or pupil personnel services, as defined in section 80-1.1 of this Title, is reviewed  
annually, except evening school teachers of adults enrolled in nonacademic,  
vocational subjects; and supplementary school personnel, as defined in section  
80-5.6 of this Title.

(iii) Professional performance review plan.

(a) Development and adoption of the plan.

(1) By September 1, 2000, the governing body of each school district and  
BOCES shall adopt a plan, which may be an annual or multi-year plan, for the

annual professional performance review of its teachers providing instructional services or pupil personnel services, as defined in section 80-1.1 of this Title, that meets the content requirements prescribed in clause (b) of this subparagraph.

(2) Each superintendent and in the case of the City School District of the City of New York, the chancellor, in collaboration with teachers, pupil personnel professionals, administrators and parents selected by the superintendent or in the case of the City School District of New York, the chancellor, with the advice of their respective peers, shall develop the professional performance review plan, which shall be approved by the governing body of each school district or BOCES, filed in the district or BOCES office, as applicable, and available for review by any individual no later than September 10th of each year. The governing body of each school district and BOCES shall provide organizations representing parents and the recognized representative of the teachers' bargaining unit with an opportunity to comment on such plan prior to its adoption.

(b) Content of the plan.

(1) Criteria for evaluation of teachers providing instructional services. The professional performance review plan shall describe the criteria that the school district or BOCES shall use to evaluate its teachers providing instructional services, which shall include but not be limited to an evaluation of the following:

(i) content knowledge, the teacher shall demonstrate a thorough knowledge of the subject matter area and curriculum;

(ii) preparation, the teacher shall demonstrate appropriate preparation employing the necessary pedagogical practices to support instruction;

(iii) instructional delivery, the teacher shall demonstrate that the delivery of instruction results in active student involvement, appropriate teacher/student interaction and meaningful lesson plans resulting in student learning;

(iv) classroom management, the teacher shall demonstrate classroom management skills supportive of diverse student learning needs which create an environment conducive to student learning;

(v) student development, the teacher shall demonstrate knowledge of student development, an understanding and appreciation of diversity and the regular application of developmentally appropriate instructional strategies for the benefit of all students;

(vi) student assessment, the teacher shall demonstrate that he or she implements assessment techniques based on appropriate learning standards designed to measure students' progress in learning and that he or she successfully utilizes analysis of available student performance data (such as State test results, student work, school-developed assessments, teacher-developed assessments, etc.) and other relevant information (such as documented health or nutrition needs, or other student characteristics affecting learning) when providing instruction;

(vii) collaboration, the teacher shall demonstrate that he or she develops effective collaborative relationships with students, parents or caregivers, as needed, and appropriate support personnel to meet the learning needs of students; and

(viii) reflective and responsive practice, the teacher shall demonstrate that practice is reviewed, effectively assessed and appropriate adjustments are made on a continuing basis.

(2) Criteria for the evaluation of teachers providing pupil personnel services. The plan shall describe the criteria that the school district or BOCES shall use to evaluate teachers providing pupil personnel services, as defined in section 80-1.1 of this Title.

(3) Assessment approaches. The plan shall describe the methods that the school districts or BOCES shall employ to assess teachers' performance, which may include but is not limited to the following: classroom observation, videotape assessment, self review, peer review and portfolio review. For teachers possessing a transitional or initial certificate, the plan shall require the teacher to be evaluated based on portfolio review, which may include but is not limited to: a video of teaching performance, a sample lesson plan, a sample of student work, student assessment instruments and the teacher's reflection on his or her classroom performance.

(4) Teacher improvement. The plan shall describe how the school district or BOCES addresses the performance of teachers whose performance is evaluated as unsatisfactory, and shall require the development of a teacher improvement plan for teachers so evaluated, which shall be developed by the district or BOCES in consultation with such teacher.

(5) Training in performance evaluation. The plan shall describe how the school district or BOCES provides training in good practice for the conducting of performance evaluations to staff who perform such evaluations, or alternatively, shall state the fact that the school district or BOCES permits such personnel to participate in training in this subject offered by the department.

(iv) Performance review of superintendent. The governing body of each school district shall annually review the performance of the superintendent of

schools according to procedures developed by such body in consultation with the superintendent. Such procedures shall be filed in the district office and available for review by any individual no later than September 10th of each year.

(v) Formal procedures for the review of the performance of teachers shall be determined by the school district or BOCES, consistent with the requirements of article 14 of the Civil Service Law.

(vi) Variance.

(a) A variance shall be granted from a requirement of this paragraph, upon a finding by the commissioner that a school district or BOCES has executed prior to September 3, 1999 an agreement negotiated pursuant to article 14 of the Civil Service Law whose terms continue in effect and are inconsistent with such requirement.

(b) A variance shall be granted from the criteria for the evaluation of teachers providing instructional services, prescribed in subclause (ii)(b)(1) of this paragraph, upon a finding by the commissioner that the school district or BOCES has demonstrated that a local model for the evaluation of such teachers has produced successful results.

(2) For school years commencing on or after July 1, 2011, each school district and BOCES shall be subject to the requirements of this paragraph.

(i) For purposes of this paragraph:

(a) "the governing body of each school district" shall mean the board of education of each school district, and in the case of the City School District of the City of New York it shall mean the Board of Education of the City School District of the City of New York; and

(b) “teacher providing instructional services” shall mean a teacher in the classroom teaching service, as defined in section 80-1.1 of this Title.

(ii) Annual review. The governing body of each school district and BOCES shall ensure that the performance of all teachers providing instructional services or pupil personnel services, as defined in section 80-1.1 of this Title, is reviewed annually, except evening school teachers of adults enrolled in nonacademic, vocational subjects; and supplementary school personnel, as defined in section 80-5.6 of this Title.

(iii) Quality Rating Categories/Criteria. The governing body of each school district and BOCES shall also ensure that the effectiveness of each teacher providing instructional services is rated annually in one of the following quality rating categories: Highly Effective, Effective, Developing and Ineffective.

(a) Highly Effective means a teacher who is performing at a higher level than typically expected of a teacher based on the evaluation criteria prescribed in this subdivision, including but not limited to acceptable rates of student growth.

(b) Effective means a teacher who is performing at the level typically expected of a teacher based on the evaluation criteria prescribed in this subdivision, including but not limited to acceptable rates of student growth.

(c) Developing means a teacher, who is not performing at the level typically expected of a teacher and the reviewer determines that the teacher needs to make improvements based on the evaluation criteria set forth in this subdivision, including but not limited to less than acceptable rates of student growth.

(d) Ineffective means a teacher whose performance is unacceptable based on the evaluation criteria prescribed in this subdivision, including but not limited to unacceptable or minimal rates of student growth.

(iv) Professional performance review plan.

(a) Development and adoption of the plan.

(1) By September 1, 2011, the governing body of each school district and BOCES shall adopt a plan, which may be an annual or multi-year plan, for the annual professional performance review of its teachers providing instructional services or pupil personnel services, as defined in section 80-1.1 of this Title, that meets the content requirements prescribed in clause (b) of this subparagraph.

(2) Each superintendent and in the case of the City School District of the City of New York, the chancellor, in collaboration with teachers, pupil personnel professionals, administrators and parents selected by the superintendent or in the case of the City School District of New York, the chancellor, with the advice of their respective peers, shall develop the professional performance review plan, which shall be approved by the governing body of each school district or BOCES, filed in the district or BOCES office, as applicable, and available for review by any individual no later than September 10th of each year. The governing body of each school district and BOCES shall provide organizations representing parents and the recognized representative of the teachers' bargaining unit with an opportunity to comment on such plan prior to its adoption.

(b) Content of the plan.

(1) Criteria for evaluation of teachers providing instructional services. The professional performance review plan shall describe the criteria that the school

district or BOCES shall use to evaluate its teachers providing instructional services, which shall include but not be limited to an evaluation of the following:

(i) content knowledge, the teacher shall demonstrate a thorough knowledge of the subject matter area and curriculum;

(ii) preparation, the teacher shall demonstrate appropriate preparation employing the necessary pedagogical practices to support instruction;

(iii) instructional delivery, the teacher shall demonstrate that the delivery of instruction results in active student involvement, appropriate teacher/student interaction and meaningful lesson plans resulting in student learning;

(iv) classroom management, the teacher shall demonstrate classroom management skills supportive of diverse student learning needs which create an environment conducive to student learning;

(v) student development, the teacher shall demonstrate knowledge of student development, an understanding and appreciation of diversity and the regular application of developmentally appropriate instructional strategies for the benefit of all students;

(vi) student assessment, the teacher shall demonstrate that he or she implements assessment techniques based on appropriate learning standards designed to measure students' progress in learning and that he or she successfully utilizes analysis of available student performance data (for example: State test results, student work, school-developed assessments, teacher-developed assessments, etc.) and other relevant information (for example: documented health or nutrition needs, or other student characteristics affecting learning) when providing instruction;

(vii) student growth, the teacher shall demonstrate a positive change in student achievement for his or her students between at least two points in time as determined by the school district or BOCES, taking into consideration the unique abilities and/or disabilities of each student, including English language learners. For purposes of this subdivision, student achievement means a student's scores on State assessments for tested grades and subjects and other measures of student learning, including student scores on pre-tests and end-of-course tests, student performance on English language proficiency assessments and other measures of student achievement determined by the school district or BOCES to be rigorous and comparable across classrooms.

(viii) collaboration, the teacher shall demonstrate that he or she develops effective collaborative relationships with students, parents or caregivers, as needed, and appropriate support personnel to meet the learning needs of students; and

(ix) reflective and responsive practice, the teacher shall demonstrate that practice is reviewed, effectively assessed and appropriate adjustments are made on a continuing basis.

(2) Criteria for the evaluation of teachers providing pupil personnel services. The plan shall describe the criteria that the school district or BOCES shall use to evaluate teachers providing pupil personnel services, as defined in section 80-1.1 of this Title.

(3) Assessment approaches. The plan shall describe the methods that the school districts or BOCES shall employ to assess teachers' performance, which may include but is not limited to the following: classroom observation, videotape

assessment, self review, peer review and portfolio review. For teachers possessing a transitional or initial certificate, the plan shall require the teacher to be evaluated based on portfolio review, which may include but is not limited to: a video of teaching performance, a sample lesson plan, a sample of student work, student assessment instruments and the teacher's reflection on his or her classroom performance.

(4) Quality Rating Categories/Criteria. The plan shall describe how the designated quality rating categories (Highly Effective, Effective, Developing and Ineffective) are used to differentiate professional development, compensation, and promotion for teachers providing instructional services. The procedures for implementation of these rating categories shall be consistent with the requirements of article 14 of the Civil Service Law.

(5) Timely and Constructive Feedback. The plan shall describe how the school district or BOCES will provide timely and constructive feedback to teachers on all criteria evaluated as part of their annual evaluation, including, but not limited to, providing teachers with data on student growth for each of their students, the class and the school as a whole and feedback and training on how the teacher can use such data to improve instruction.

(6) Teacher improvement. The plan shall describe how the school district or BOCES addresses the performance of teachers whose performance is evaluated as ineffective, and shall require a teacher improvement plan for teachers so evaluated or documentation of a prior teacher improvement plan.

which shall be developed by the district or BOCES in consultation with such teacher.

(7) Training in performance evaluation. The plan shall describe how the school district or BOCES provides training in good practice for the conducting of performance evaluations to staff who perform such evaluations, or alternatively, shall state the fact that the school district or BOCES permits such personnel to participate in training in this subject offered by the department.

(v) Performance review of superintendent. The governing body of each school district shall annually review the performance of the superintendent of schools according to procedures developed by such body in consultation with the superintendent. Such procedures shall be filed in the district office and available for review by any individual no later than September 10th of each year.

(vi) Formal procedures for the review of the performance of teachers shall be determined by the school district or BOCES, consistent with the requirements of article 14 of the Civil Service Law.

(vii) Variance.

(a) A variance shall be granted from a requirement of this paragraph, upon a finding by the commissioner that a school district or BOCES has executed prior to May 1, 2010, an agreement negotiated pursuant to article 14 of the Civil Service Law whose terms continue in effect and are inconsistent with such requirement.

(b) A variance shall be granted from the criteria for the evaluation of teachers providing instructional services, prescribed in subclause (iv)(b)(1) of this paragraph, upon a finding by the commissioner that the school district or BOCES

has demonstrated that a local model for the evaluation of such teachers has produced successful results.