

## **8 NYCRR 30-2, 30-3**

### REGULATORY IMPACT STATEMENT

#### 1. STATUTORY AUTHORITY:

Education Law 101 charges the Department with the general management and supervision of the educational work of the State and establishes the Regents as head of the Department.

Education Law 207 grants general rule-making authority to the Regents to carry into effect State educational laws and policies.

Education Law 215 authorizes the Commissioner to require reports from schools under State educational supervision.

Education Law 305(1) authorizes the Commissioner to enforce laws relating to the State educational system and execute Regents educational policies. Section 305(2) provides the Commissioner with general supervision over schools and authority to advise and guide school district officers in their duties and the general management of their schools.

Education Law 3012-c establishes requirements for the conduct of annual professional performance reviews (APPR) of classroom teachers and building principals employed by school districts and boards of cooperative educational services (BOCES).

Education Law 3012-d, as added by Section 2 of Subpart E of Part EE of Chapter 56 of the Laws of 2015 establishes a new evaluation system for classroom teachers and building principals employed by school districts and BOCES for the 2015-16 school year and thereafter.

Section 1 of Subpart E of Part EE of Chapter 56 of the Laws of 2015 requires the Commissioner of Education to adopt regulations of the Commissioner no later than June 30, 2015, to implement a statewide annual teacher and principal evaluation system in New York state pursuant to Education Law §3012-d, after consulting with experts and practitioners in the fields of education, economics and psychometrics and with the Secretary of the United States Department of Education on weights, measures and ranking of evaluation categories and subcomponents. Section 3 of Subpart C of Chapter 20 of the Laws of 2015 amends Education Law §3012-d to require the State-provided growth score to be based on such model, which shall take into consideration certain student characteristics, as determined by the commissioner, including but not limited to students with disabilities, poverty, English language learner status and prior academic history and which shall identify educators whose students' growth is well above or well below average compared to similar students for a teacher's or principal's students after the certain student characteristics above are taken into account.

## 2. LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the above authority vested in the Regents and Commissioner to carry into effect State educational laws and policies and Ch.56, L.2015, as amended by Ch.20, L.2015, and is necessary to support the commitment made by the Legislature, the Governor, the Regents and Commissioner to ensure effective evaluation of classroom teachers and building principals.

## 3. NEEDS AND BENEFITS:

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 new law requires the Commissioner to adopt regulations necessary to implement the evaluation system by June 30, 2015, after consulting with experts and practitioners in the fields of education, economics and psychometrics. It also required the Department to establish a process to accept public comments and recommendations regarding the adoption of regulations pursuant to the new law and consult in writing with the Secretary of the United States Department of Education on weights, measures and ranking of evaluation categories and subcomponents. It further required the release of the response from the Secretary upon receipt thereof, but in any event, prior to the publication of the regulations.

By letter dated April 28, 2015, the Department sought guidance from the Secretary of the United States Department of Education on the weights, measures and ranking of evaluation, as required under the new law and the Secretary responded.

In accordance with the requirements of the statute, the Department created an email box to accept comments on the new evaluation system ([eval2015@nysed.gov](mailto:eval2015@nysed.gov)). The Department has received and reviewed over 4,000 responses and has taken these comments into consideration in formulating the proposed amendments. In addition, the Board of Regents convened on May 7, 2015 to hold a Learning Summit, wherein the Board of Regents hosted a series of panels to provide recommendations to the Board on the new evaluation system. Such panels included experts in education, economics, and psychometrics and State-wide stakeholder groups including but not limited to

NYSUT, UFT, School Boards, NYSCOSS and principal and parent organizations. A video recording and the submitted materials for the Learning Summit are available on the Department's website at <http://www.nysed.gov/learning-summit>. The national experts and the representatives of stakeholder groups who presented at the Learning Summit are listed at <http://www.nysed.gov/content/learning-summit-presenter-biographies>. The materials submitted by the national experts and stakeholder groups are listed at <http://www.nysed.gov/content/learning-summit-submitted-materials>.

The proposed amendment reflects areas of consensus among the groups, and in areas where there were varying recommendations, the Department attempted to reconcile those differences to reflect best practices while also taking into consideration recommendations in the Testing Reduction Report regarding the reduction of unnecessary testing. The Department distilled the various recommendations received at the Learning Summit into a powerpoint presentation presented to the Board of Regents at their May 20, 2015 meeting, which is posted at <http://www.regents.nysed.gov/common/regents/files/meetings/May%202015/APPR.pdf>.

Based on the statutory language in Education Law §3012-d and Subpart C of the Chapter 20 of the Laws of 2015, the State-provided growth model used under Education Law §3012-c has been continued under the new regulations promulgated under Education Law §3012-d. The growth model used under Education Law §3012-c was based on recommendations from the Regents Task Force on Teacher and Leader Effectiveness, which can be found at <http://www.regents.nysed.gov/common/regents/files/documents/meetings/2011Meetings/April2011/RegentsTaskforceonTeacherandPrincipalEffectiveness.pdf> and the

recommendations of the Metrics Workgroup of the Task Force and a Technical Advisory Committee, comprised of psychometric experts in the field. Additional research supporting evaluations, including the use of a growth model, can be found on our website at <https://www.engageny.org/resource/research-supporting-all-components-of-teacherprincipal-evaluation>. A variety of other research materials/analyses regarding the growth model can be found on the Department's website at <http://www.engageny.org/resource/resources-about-state-growth-measures>.

### **Proposed amendment**

The proposed rule conforms the regulations to the provisions of the 2015 legislation by making the following major changes to Subpart 30-2 of the Rules of the Board of Regents.

The title of section 30-2 and section 30-2.1 are amended to clarify that Subpart 30-2 only applies to APPRs conducted prior to the 2015-2016 school year or APPRs conducted pursuant to a CBA entered into on or before April 1, 2015 that remains in effect on or after April 1, 2015 until a subsequent agreement is reached.

Section 30-2.1(d) is amended to clarify that a school district or BOCES has an unfettered statutory right to terminate a probationary teacher or principal for any statutorily and constitutionally permissible reason, including but not limited to misconduct, and until a tenure decision is made, the performance of a teacher or principal in the classroom or school. Section 30-2.11 also clarifies that a school district or BOCES may terminate a probationary teacher or principal during an appeal for any statutorily and constitutionally permissible reason, including a teacher's or principal's performance.

A new Subpart 30-3 is added to implement the new evaluation system.

Section 30-3.1 clarifies that the new evaluation system only applies to CBA's entered into after April 1, 2015 unless the agreement relates to the 2014-2015 school year only. The section further clarifies that nothing in the new Subpart shall be construed to abrogate any conflicting provisions of any CBA in effect on effect on or after April 1, 2015 during the term of such agreement and until entry into a successor CBA agreement. The section further clarifies that APPRs shall be a significant factor for employment decisions and teacher and principal development, consistent with the prior law. The section also clarifies the unfettered right to terminate a probationary teacher or principal for any statutorily and constitutionally permissible reason. This section also provides that the Board will convene workgroup(s) comprised of stakeholders and experts in the field to provide recommendations to the Board on assessments and evaluations that could be used for APPRs in the future.

Section 30-3.2 defines several terms used in the Subpart.

Section 30-3.3 prescribes the requirements for APPR plans submitted under the new Subpart.

### **New Teacher Evaluation Requirements**

Section 30-3.4 describes the standards and criteria for conducting APPRs of classroom teachers under the new law. The new law requires teachers to be evaluated based on two categories: the student performance category and the teacher observation category.

### **Student performance category**

The first category has two subcomponents, one mandatory and the other optional. For the first mandatory component, teachers shall be evaluated as follows:

- For teachers whose courses end in a State created or administered test for which there is a State-provided growth model and at least 50% of a teacher's students are covered under the State-provided growth measure, such teachers shall have a State-provided growth score based on such model.
- For a teachers whose course does not end in a State created or administered test or where less than 50% of the teacher's students are covered under the State-provided growth measure, such teachers shall have a Student Learning Objective ("SLO") consistent with a goal setting process determined or developed by the Commissioner that results in a student growth score; provided that for any teacher whose course ends in a State created or administered assessment for which there is no State-provided growth model, such assessment must be used as the underlying assessment for such SLO.

The second optional subcomponent shall be comprised of the one or more the following options, as determined locally:

A second State-provided growth score on a State-created or administered test; provided that the State provided growth measure is different than that used in the required subcomponent of the student performance category, which may include one or more of the following measures:

- a teacher-specific growth score computed by the State based on percentage of students who achieve a State-determined level of growth (e.g., percentage of students whose growth is above the median for similar students);
- school-wide growth results based on a State-provided school-wide growth score for all students attributable to the school who took the State English language arts or math assessment in grades 4-8; or
- school-wide, group, team, or linked growth results using available State-provided growth scores that are locally-computed;
- A growth score based on a state designed supplemental assessment calculated using a State provided or approved growth model.

The law requires the Commissioner to establish weightings and scoring ranges for the subcomponents of the student performance category. The proposed amendment applies the following weights to each of the subcomponents:

- If a district does not locally select to use the optional second student growth subcomponent, then the mandatory subcomponent shall be weighted at 100%.
- If the optional second student growth subcomponent is selected, then the mandatory subcomponent shall be weighted at a minimum of 80% and the optional second subcomponent shall be weighted at no more than 20%; provided, however, that if the optional second subcomponent does not include traditional standardized tests, the

weightings shall be established locally, provided that the mandatory student growth subcomponent shall be weighted at a minimum of 50% and the optional student growth subcomponent shall be weighted no more than 50%.

Each measure used in the student performance category (State provided growth score, SLOs, State-designed supplemental assessments) must result in a score between 0 and 20. The State will generate scores of 0-20 for measures using a State-provided growth score. Districts shall calculate scores for SLOs in accordance with the table provided in the proposed amendment; provided however that for teachers with courses with small “n” sizes as defined by the Commissioner in guidance, districts shall calculate scores for SLOs using a methodology specified by the Commissioner in guidance. For all other measures that are not State-provided growth measures, scores of 0-20 shall be computed locally in accordance with the State provided or approved growth model used.

### **Teacher observation category**

The second subcomponent shall be comprised of three subcomponents; two mandatory and one optional. The two mandatory subcomponents shall be based on:

- one observation that shall be conducted by a principal or other trained administrator and;
- a second observation that shall be conducted by one or more impartial independent trained evaluator(s) selected and trained by the district. 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.

One of the mandatory observations must be unannounced. The third optional subcomponent may include:

- classroom observations conducted by a trained peer teacher rated Effective or Highly Effective on his or her overall rating in the prior school year from the same school or from another school in the district.

The law also requires the Commissioner to establish the frequency and duration of observations in regulations. The proposed amendment allows the frequency and duration of observations to be established locally.

This section also requires all observations to be conducted using a teacher practice rubric approved by the commissioner pursuant to a Request for Qualification (“RFQ”) process, unless the district has an approved variance from the Commissioner and prescribes parameters for the observations category.

The law further requires the Commissioner to establish weightings and scoring ranges for the subcomponents of the teacher observations category. The proposed amendment provides that the weighting of the subcomponents within the teacher observation category shall be established locally within the following constraints:

- observations conducted by a principal or other trained administrator shall be weighted at a minimum of 80%.
- observations conducted by independent impartial observers shall be weighted at a minimum of 10%.
- if a district selects to use the optional third observation subcomponent, then the weighting assigned to the optional observations conducted by peers shall be established locally within the constraints outlined above.

The overall observation score shall be converted into an overall rating pursuant to the ranges identified in the proposed amendment.

### **New Principal Evaluation Requirements**

Section 30-3.5 describes the standards and criteria for conducting APPRs of building principals under the new law. The new law requires the Commissioner to establish a principal evaluation system that is aligned to the new teacher evaluation system set forth in Education Law §3012-d.

To implement the new law, the proposed amendment requires building principals to be evaluated based on two categories: the student performance category and the school visit category.

The first category has two subcomponents, one mandatory and the other optional. For the first mandatory component, teachers shall be evaluated as follows:

For principals with at least 30% of their students covered under a State-provided growth measure, such principal shall have a State-provided growth score based on such model; except for if: (1) the principal would be rated Ineffective or Developing on the State-provided growth score but the graduation rate of the students in that school building exceeded 90%, and the proportion of the student population included in either the ELA Regents Median Growth Percentile or the Algebra Regents Median Growth Percentile was less than ten percent of the total enrollment for the school; or the principal

(2) has no Combined Median Growth Percentile rating or score, and the proportion of the student population included in the ELA Regents

Median Growth Percentile and Algebra Regents Median Growth Percentile was less than five percent of the total enrollment for the school in one subject, and less than ten percent of the total enrollment in the other subject.

- For principals where less than 30% of their students are covered under a State-provided growth measure, such principals shall have a SLO consistent with a goal setting process determined or developed by the Commissioner that results in a student growth score; provided that for any teacher whose course ends in a State created or administered assessment for which there is no State-provided growth model, such assessment must be used as the underlying assessment for such SLO.

If the district opts to use the second optional subcomponent, it shall be comprised of one or more of the following measures:

- A second State-provided growth score on a State-created or administered test; provided that the State provided growth measure is different than that used in the required subcomponent of the student performance category, which may include one or more of the following measures:
  - a principal-specific growth score computed by the State based on percentage of students who achieve a State-determined level of growth (e.g., percentage of students whose growth is above the median for similar students); and/or
  - school-wide, group, team, or linked growth results using available State-provided growth scores that are locally-computed

- A growth score based on a state designed supplemental assessment calculated using a State provided or approved growth model.

The law requires the Commissioner to establish weightings and scoring ranges for the subcomponents of the student performance category. The proposed amendment applies the following weights to each of the subcomponents:

- If a district does not locally select to use the optional second student growth subcomponent, then the mandatory subcomponent shall be weighted at 100%.
- If the optional second student growth subcomponent is selected, then the mandatory subcomponent shall be weighted at a minimum of 80% and the optional second subcomponent shall be weighted at no more than 20%; provided, however, that if the optional second subcomponent does not include traditional standardized tests, the weightings shall be established locally, provided that the mandatory student growth subcomponent shall be weighted at a minimum of 50% and the optional student growth subcomponent shall be weighted no more than 50%.

Each measure used in the student performance category (State provided growth score, SLOs, State-designed supplemental assessments) must result in a score between 0 and 20. The State will generate scores of 0-20 for measures using a State-provided growth score. Districts shall calculate scores for SLOs in accordance with the table provided in the proposed amendment; provided however that for teachers with courses with small “n” sizes as defined by the Commissioner in guidance, districts shall calculate

scores for SLOs using a methodology specified by the Commissioner in guidance. For all other measures that are not State-provided growth measures, scores of 0-20 shall be computed locally in accordance with the State provided or approved growth model used.

### **Principal school visit category**

The principal school visit category shall be comprised of three subcomponents; two mandatory and one optional. The two mandatory subcomponents shall be based on:

- one observation shall be conducted by the principal's supervisor or other trained administrator; and
- a second observation shall be conducted by one or more impartial independent trained evaluator(s) selected and trained by the district. 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.

One of the mandatory school visits by the principal's supervisor must be unannounced.

The third optional subcomponent may include:

- School visits conducted by a trained peer administrator rated Effective or Highly Effective on his or her overall rating in the prior school year from the same school or from another school in the district.

The law also requires the Commissioner to establish the frequency and duration of school visits in regulations. The proposed amendment requires the frequency and duration of observations to be set locally.

The section also requires all observations to be conducted using a principal practice rubric approved by the commissioner pursuant to a Request for Qualification (“RFQ”) process, unless the district has an approved variance from the Commissioner.

This section further prescribes parameters for the school visits category. The law requires the Commissioner to establish weightings and scoring ranges for the subcomponents of the school visits category. The proposed amendment provides that the weighting of the subcomponents within the principal school visits category shall be established locally within the following constraints:

- School visits conducted by the principal’s supervisor or other trained administrator shall be weighted at a minimum of 80%.
- School visits conducted by independent impartial trained evaluators shall be weighted at a minimum of 10%.
- If a district selects to use the optional third observation subcomponent, then the weighting assigned to the optional school visits conducted by peers shall be established locally within the constraints outlined above.

The overall school visit category score shall be converted into an overall rating pursuant to the ranges identified in the proposed amendment.

Section 30-3.6 describes how the overall rating is computed, based on the evaluation matrix established by the new law, which combines the teacher’s or

principal's ratings on the student performance category and the observation/school visit category:

		<u>Observation / School Visit</u>			
		<u>Highly Effective (H)</u>	<u>Effective (E)</u>	<u>Developing (D)</u>	<u>Ineffective (I)</u>
<u>Student Performance</u>	<u>Highly Effective (H)</u>	<u>H</u>	<u>H</u>	<u>E</u>	<u>D</u>
	<u>Effective (E)</u>	<u>H</u>	<u>E</u>	<u>E</u>	<u>D</u>
	<u>Developing (D)</u>	<u>E</u>	<u>E</u>	<u>D</u>	<u>I</u>
	<u>Ineffective (I)</u>	<u>D*</u>	<u>D*</u>	<u>I</u>	<u>I</u>

*\*If a teacher is rated ineffective on the student performance category and a State-designed supplemental assessment was included as an optional subcomponent of the student performance category, the teacher can be rated no higher than ineffective overall pursuant to Education Law §§5(a) and 7.*

This section also provides that it must be possible to obtain each point in the scoring ranges, including 0, for each subcomponent and category. It further requires that the superintendent, district superintendent or Chancellor and the president of the collective bargaining representative, where one exists, must certify in the APPR plan

that the evaluation system will use the weights and scoring ranges provided by the Commissioner and that the process by which weights and scorings are assigned to subcomponents and categories is transparent and available to those being rated before the beginning of each school year.

Section 30-3.7 lists the prohibited elements set forth in Education Law §3012-d, which precludes districts/BOCES from using the following as part of a teacher's and/or principal's evaluation:

- evidence of student development and performance derived from lesson plans, other artifacts of teacher practice, and student portfolios, except for student portfolios measured by a State-approved rubric where permitted by the department;
- use of an instrument for parent or student feedback;
- use of professional goal-setting as evidence of teacher or principal effectiveness;
- any district or regionally-developed assessment that has not been approved by the department; and
- any growth or achievement target that does not meet the minimum standards as set forth in regulations of the commissioner adopted hereunder.

Sections 30-3.8 and 30-3.9 set forth the approval processes for student assessments and teacher and principal practice rubrics.

Section 30-3.10 sets forth the training requirements for evaluators and lead evaluators; which now requires evaluators and lead evaluations to be trained on certain

prescribed elements relating to observations and the applicable teacher/principal practice rubrics pursuant to Education Law §3012-d(15).

Section 30-3.11 addresses teacher and principal improvement plans, which now allows the superintendent in the exercise of his or her pedagogical judgment to develop and implement the improvement plans pursuant to Education Law §3012-d(15).

Section 30-3.12 addresses local appeal procedures. Currently, the regulations set forth the grounds for an appeal which includes the ability of a teacher or principal to challenge the substance of their APPR in an appeal. The proposed amendment defines the substance of an APPR to include appeals in circumstances where a teacher or principal is rated Ineffective on the student performance category, but rated Highly Effective on the observation/school visit category based on an anomaly, as determined locally pursuant to Education Law §3012-d(15).

Section 30-3.13, which addresses monitoring and consequences for non-compliance, which now allows the Department to require changes to a CBA pursuant to Education Law §3012-d(15).

Section 30-3.14 codifies the statutory requirement that no student be assigned to two teachers in the same subject in two consecutive school years, each of whom received a rating of Ineffective pursuant to an evaluation conducted pursuant to Education Law §3012-d in the school year immediately prior to the year in which the student is placed in the teacher's classroom. The proposed amendment provides for a teacher-specific waiver from the Department from such requirement where it is impracticable to comply with this requirement.

Section 30-3.15 describes the extent to which provisions of Education Law §3012-c(2)(d), (k), (k-1), (k-2) and (l), (4), (5), (5-a), (9) and (10) are carried over into the new evaluation system, as required by Education Law §3012-d(15).

### **Revisions to the Proposed Amendment following the public comment period**

Following the 45-day public comment period required under the State Administrative Procedure Act, the proposed amendment was revised in several places as follows:

First, the Department has decided to reexamine the State growth model, which will take additional time. In the interim, the Department has amended Subpart 30-2 and 30-3 to prescribe an appeals process whereby certain teachers or principals who were rated Ineffective on their State-provided growth score may appeal to the Department based on certain anomalies described in the regulation. The appeals process would apply to growth scores for the 2014-2015 school year and thereafter until the growth model has been re-examined by the Department and appropriate experts in the field.

The Department has also revised the regulation to provide for a hardship waiver from the requirement for an independent observer for rural school districts and for school districts with one registered school building who would be unduly burdened if the district were required to retain an independent evaluator. A school district would need to demonstrate that due to the size and limited resources of the school district it is unable to obtain an independent evaluator within a reasonable proximity to the school district. In lieu of an independent evaluator, the school district would be required to provide a

second observation conducted by a trained evaluator who is different than the supervisor or evaluator who conducted the first observation.

Also, in response to concerns relating to a teacher's/principal's privacy, the Department revised the provisions in the June regulations relating to teacher/principal privacy to eliminate the requirement that parents be provided with the scores/ratings on the student performance and observation categories and instead, are requiring that Education Law §3012-c apply without modification, except that there is no composite effectiveness score under Education Law §3012-d.

The Department also received several comments on the use of artifacts. Education Law §3012-d(10)(b) requires implementation of the observation category to be subject to local negotiation. Therefore, while no additional changes were made in response to these comments, the regulations adopted by the Board at its June meeting recognize that parts of the rubric that are not observable during classroom observations may be incorporated into the observation score where they are observed during any optional pre- or post-observation review or other natural conversations between teachers and their evaluators.

The Department also made the following technical amendments to the proposed amendment:

The Department modified section 100.2(o) of the Commissioner's regulation to conform to Education Law §3012-d.

The Department clarified that a teacher's and principal's score and rating on the observation/school visit category *and in the student performance category*, if available, shall be computed and provided to the teacher or principal, in writing, by no later than

the last day of the school year for which the teacher or principal is being measured, but in no case later than September 1<sup>st</sup> of the school year next following the school year for which the teacher or principal's performance is measured. This will ensure that a teacher's or principal's score on SLOs used for the required subcomponent and their scores on the optional subcomponent, if used, are provided on or before September 1<sup>st</sup>.

The Department further clarified that nothing in this Subpart shall be construed to limit the discretion of a board of education or superintendent of schools *or other trained administrator* to conduct observations/school visits of a teacher/principal in addition to those required under this section for non-evaluative purposes.

Consistent with the requirements for the teacher evaluation system, the Department revised the proposed amendment to eliminate references to a supervisor or other trained administrator from the requirement for an unannounced school visit for principals and instead just generally provides that at least one mandatory school visit shall be unannounced in an effort to be aligned to the teacher evaluation system.

#### 4. COSTS:

a. Costs to State government: The rule implements Education Law section 3012-d and does not impose any costs on State government, including the State Education Department, beyond those costs imposed by the statute. The new appeal process for the State-provided growth score will be performed by existing staff and therefore, the Department believes there will be no additional costs to the State government.

b. Costs to local government: Education Law section 3012-d, as added by Chapter 56 of the Laws of 2015, establishes requirements for the conduct of annual

professional performance reviews (APPR) of classroom teachers and building principals employed by school districts and boards of cooperative educational services (BOCES) for the 2015-2016 school year and thereafter.

The proposed rule may result in additional costs on school districts and BOCES related to collective bargaining. However, Education Law §3012-d(10) explicitly requires collective bargaining relating to the decision on whether to use the optional second subcomponent in the student performance category and which measure is to be used in such subcomponent, and collective bargaining relating to how to implement the observation/school visit category in accordance with the Taylor Law. Since collective bargaining is already required by the statute and it is impossible to ascertain in advance what issues might trigger additional bargaining in more than 700 school districts and BOCES in the State, the State Education Department has no basis for determining whether and to what extent provisions of the proposed rule might result in additional costs attributable to collective bargaining beyond those required by statute.

The costs discussed below are based on the following assumptions: (1) an estimated hourly rate for teachers of \$53.18 (based on an average annual teacher salary of \$76,572.00 divided by 1,440 hours per school year (180 days, 8 hours each day)); (2) an estimated hourly rate for principals of \$67.20 (based on an average annual principal salary of \$118,269.00 divided by 1,760 hours per school year (220 days, 8 hours each day)); and (3) an estimated hourly rate for superintendents of \$86.59 (based on an average annual superintendent of schools salary of \$166,244.00 divided by 1,920 hours per school year (240 days, 8 hours each day)). The Department anticipates that the proposed rule will impose the following costs on school

districts/BOCES. The estimated costs below assume that school districts and BOCES will need to pay for extra time for personnel at current rates. However, most districts and BOCES are or should be performing these activities currently, but the State does not have data on the amount of hours currently dedicated to these activities.

### **Required Student Performance Category**

The statute requires that a teacher or principal's evaluation be based on one required and one optional measure of student performance. For the required subcomponent, for teachers whose courses end in a State created or administered test for which there is a State-provided growth model and at least 50% of a teacher's students are covered under the State-provided growth measure, such teachers shall have a State-provided growth score based on such model. There are no additional costs beyond those imposed by statute for evaluating a teacher based on State assessments. For the required subcomponent, for principals with at least 30% of their students covered under a State-provided growth measure, such principal shall have a State-provided growth score and there are no additional costs beyond those imposed by statute.

For a teacher whose course does not end in a State created or administered test or where less than 50% of the teacher's students are covered under the State-provided growth measure, such teachers shall have a Student Learning Objective ("SLO") consistent with a goal setting process determined or developed by the Commissioner that results in a student growth score; provided that for any teacher whose course ends in a State created or administered assessment for which there is no State-provided growth model, such assessment must be used as the underlying assessment for such

SLO. For a principal where less than 30% of their students are covered under a State-provided growth measure, such principals shall have a SLO consistent with a goal setting process determined by the Commissioner that results in a student growth score; provided that for any principal whose course building or program includes courses that ends in a State created or administered assessment for which there is no State-provided growth model, such assessment must be used as the underlying assessment for such SLO. The Department estimates that for teachers or principals who require SLOs, a teacher or principal will spend approximately 3 hours to set his/her goals for the year and that a principal/superintendent will take approximately 1 hour per year to work with a teacher/principal on the goal setting process. Based on the estimated hourly rates described above, the Department estimates that the goal-setting process will cost a school district/BOCES \$226.74 per teacher (3 teacher hours to set goals plus 1 principal hour to review goals with teacher) and \$288.19 per principal (3 principal hours to set goals plus 1 superintendent hour to review goals with principal). Moreover, districts and BOCES should have been setting SLOs for teachers and principals since 2012-2013 when districts and BOCES were first required to set SLOs under the evaluation system; except for the New York City School District, whose plan was imposed on them for the 2013-2014 school year pursuant to Education Law §3012-c.

The SLO process also requires the use of a student assessment. In grades/subjects where no State created or administered assessment exists for such grades/subjects, the district/BOCES must use the SLO process with either an approved third-party assessment (at a cost per student of approximately \$2.50-\$14.00 per student), an approved district, regional, or BOCES developed assessment (which the

Department expects would have minimal, if any costs), or a State assessment (which the Department expects would have no additional cost).

### **Optional Student Performance Category**

For teachers, the second optional subcomponent shall be comprised of one or more the following options, as determined locally:

- A second State-provided growth score on a State-created or administered test; provided that the State provided growth measure is different than that used in the required subcomponent of the student performance category, which may include one or more of the following measures:

- o a teacher-specific growth score computed by the State based on percentage of students who achieve a State-determined level of growth (e.g., percentage of students whose growth is above the median for similar students);

- o school-wide growth results based on a State-provided school-wide growth score for all students attributable to the school who took the State English language arts or math assessment in grades 4-8; or

- o school-wide, group, team, or linked growth results using available State-provided growth scores that are locally-computed;

- A growth score based on a State designed supplemental assessment calculated using a State provided or approved growth model.

Since the second subcomponent is optional, there are no additional costs imposed by the statute or regulation for this subcomponent. However, if a district/BOCES elects to use a State-designed supplemental assessment, the

Department estimates that the cost of purchasing an assessment may cost approximately \$2.50-\$14.00 per student, depending on the particular assessment selected. If a district/BOCES elects to use the second subcomponent and utilizes a second State-provided growth score, there should be no additional costs.

For principals, the second optional subcomponent shall be comprised of the one or more the following options, as determined locally:

- A second State-provided growth score on a State-created or administered test; provided that the State provided growth measure is different than that used in the required subcomponent of the student performance category, which may include one or more of the following measures:

- o a principal-specific growth score computed by the State based on percentage of students who achieve a State-determined level of growth (e.g., percentage of students whose growth is above the median for similar students); or

- o school-wide, group, team, or linked growth results using available State-provided growth scores that are locally-computed;

- A growth score based on a State designed supplemental assessment calculated using a State provided or approved growth model.

Since the second subcomponent is optional, there are no additional costs imposed by the statute or regulation for this subcomponent. However, if a district/BOCES elects to use a State-designed supplemental assessment, the Department estimates that the cost of purchasing an assessment may cost approximately \$2.50-\$14.00 per student, depending on the particular assessment

selected. If a district/BOCES elects to use the second subcomponent and utilizes a second State-provided growth score, there should be no additional costs.

### **Teacher Observation/Principal School Visit Category**

For the teacher observation/principal school visit category of the evaluation, the proposed amendment requires that ratings be based on at least two classroom observations for teachers and at least two school visits for principals. The proposed amendment requires at least one observation for teachers and at least one school visit for principal to be conducted by the supervisor/other trained administrator. The proposed amendment also requires at least one observation for teachers and at least one school visit for principals by trained independent evaluator(s) selected by the district. For teacher observations, the Department estimates the following costs:

Teacher Observations: While the regulation does not specifically prescribe how a district must conduct its observations, based on models currently in use, the Department expects a teacher will spend approximately 3 hours per classroom observation for pre- and post-conference meetings with the principal/evaluator and the 1 hour in the observation itself, which would equate to 6 hours per year (1 hour for the pre-conference, 1 hour for the observation, and 1 hour for the post-observation). Depending on the model used, these estimates could decrease to 1 hour and 10 minutes for classroom observations that include a post-conference and walkthrough observation with the principal/evaluator, which would equate to 2 hours and 20 minutes for the year. Based on the more extended observation model, the Department expects that a principal/evaluator would spend approximately 1 hour for a teacher classroom observation and 3 additional hours for pre-conference and post-conference meetings

associated with the conference (1 hour for each pre-conference, 1 hour for preparation for post-conference, and 1 hour in post-conference), which would equate to 4 hours per observation or 8 hours per teacher per year. Therefore, for each teacher, a school district or BOCES would spend approximately \$856.68 per year on classroom observations, under the proposed rule. The regulations allow for districts and BOCES to identify trained independent evaluators from within the district and, therefore, these estimates remain accurate as a yearly estimate for classroom observations. However, this cost may vary depending on what external independent evaluators the district selects.

Moreover, the Department has also revised the regulation to provide for a hardship waiver from the requirement for an independent observer for rural school districts and for school districts with one registered school who be unduly burdened if they were required to retain an independent evaluator. A school district would need to demonstrate that due to the size and limited resources of the school district it is unable to find an independent evaluator within a reasonable proximity to the school district. In lieu of an independent evaluator, the school district would be required to have a second evaluation conducted by a trained evaluator, who is different from the supervisor or evaluator who conducted the first evaluation.

Since the use of peer observers is optional, there are no additional costs imposed by the statute or regulation for this subcomponent. However, if a district/BOCES elects to use peer observers, the Department estimates that the use of a peer observer for teachers may cost approximately \$372.26 per observation (total time for teacher observation cycle plus total time for peer observer in the teacher observation

cycle times the teacher hourly rate), and will be dependent upon the particular parameters determined locally. Principal Assessment: The Department expects that a principal will spend approximately 3 hours preparing for a school visit by a supervisor/other trained administrator and that a supervisor/other trained administrator will spend approximately 3 hours assessing and observing a principal's practice per visit. Therefore, for each principal, a school district or BOCES would spend approximately \$1325.94 per year on school site visits, under the proposed rule. The regulations allow for districts and BOCES to identify trained independent evaluators from within the district, therefore the estimate of \$1325.94 remains accurate as a yearly estimate for school visits. This cost may vary upon the use of external independent evaluators.

Since the use of peer observers is optional, there are no additional costs imposed by the statute or regulation for this subcomponent. However, if a district/BOCES elects to use peer observers, the Department estimates that the use of a peer observer for principals may cost approximately \$604.80 per site visit (total time for principal observation cycle plus total time for peer observer in the principal observation cycle times the principal hourly rate), and will dependent upon the particular parameters determined locally.

The proposed amendment also requires that the observations/school visits be based on a teacher or principal practice rubric approved by the Department or a rubric approved through a variance process. The majority of rubrics on the State's approved list are available to districts/BOCES at no cost. While some rubrics may offer training for a fee and others may require proprietary training, any costs incurred for training are

costs imposed by the statute. Most rubric providers do not require a school district/BOCES to receive training through the provider and some providers even provide free online training. The Department estimates that districts/BOCES can obtain a teacher or principal practice in the following price range: \$0-\$360 per educator evaluated. Some practice rubrics may charge an additional fee for training on the rubric, estimated to cost approximately \$0-\$8,000, although most rubric providers do not require a user to receive training through the rubric provider.

### **Reporting and Data Collection**

The proposed amendment requires that school districts or BOCES report information to the Department on enrollment and attendance data and any other student, teacher, school, course and teacher/student linkage data. The majority of this data is required to be reported under the America COMPETES Act (20 U.S.C. 9871). Therefore, no additional costs are imposed by the proposed amendment. To the extent such information is not required to be reported under federal law, the Department expects that most districts/BOCES already compile this information and, therefore, these reporting requirements are minimal and should be absorbed by existing district or BOCES resources.

The proposed amendment also requires that every teacher and principal be required to verify the subjects and/or student rosters assigned to them. This verification is part of the normal BEDS data verification process and therefore the Department believes that any costs imposed by this requirement in the regulation are minimal, if any. As for the additional reporting requirements contained in section 30-3.3 of the Rules of the Board of Regents, school districts or BOCES are required to report many of

these requirements under the existing APPR regulations (section 30-2.3 of the Rules of the Board of Regents). Therefore, reporting of such information would not impose any additional costs on a school district or BOCES.

### **Vested Interest**

The proposed amendment also requires that districts certify that teachers and principals not have a vested interest in the test results of students whose assessments they score. The Department believes that most districts already have this security mechanism in place, since it is a current requirement for evaluations conducted pursuant to Education Law §3012-c. However, in the event a district currently allows a teacher to score their own assessment, the Department expects that districts/BOCES can assign other teachers or faculty to score such assessments. Therefore, the Department believes that any costs imposed by this requirement in the regulation are minimal, if any.

### **Scoring**

The statute requires that a teacher receive an overall evaluation rating based on their ratings on the two categories (student performance and teacher observation/principal school visit). The proposed amendment sets forth the scoring ranges for the rating categories in these two categories and the overall rating category is prescribed by statute. The proposed amendment does not impose any additional costs beyond those imposed by statute.

### **Training**

The statute requires that all evaluators be properly trained before conducting an evaluation. The proposed amendment requires that a lead evaluator be certified by the

district/BOCES before conducting and/or completing a teacher's or principal's evaluation and that evaluators be properly trained. Since the training is required by statute, the only additional cost imposed are associated with the district or BOCES' certification and recertification of lead evaluators, which costs are expected to be negligible and capable of absorption using existing staff and resources.

### **Teacher and Principal Improvement Plans and Appeal Procedures**

The statute, in subdivision 15 of §3012-d, requires the Commissioner to determine the extent to which subdivisions 4, 5 and 5-a of §3012-c should apply to the new evaluation system under §3012-d. Subdivision 4 of §3012-c requires school districts/BOCES to develop teacher and principal improvement plans for teachers rated Ineffective or Developing. Subdivision 5 of §3012-c requires school districts and BOCES to develop an appeals procedure through which a teacher or principal may challenge their APPR. Subdivision 5-a of §3012-c establishes special appeals procedures for the New York City School District. The proposed amendment does not impose any additional costs on districts/BOCES relating to the development of TIP/PIPs or an appeal procedure, beyond those currently imposed by statute under Education Law §3012-c(4) and (5). The only changes made to the TIP/PIP requirement are with respect to its timing and the clarification that the superintendent or his/her designee, in the exercise of their pedagogical judgment develops the TIP/PIP. Neither change should generate additional costs. The only change made to the appeals provision is the clarification that an appeal from the substance of the evaluation, which is a ground for appeal under Education Law §3012-c(5), includes an instance in which the teacher or principal receives a Highly

Effective rating on the observation/school visit category and an Ineffective rating on the student performance category and challenges the result based on an anomaly, as determined locally. If a district/BOCES locally determines that an appeal based on an anomaly may be taken where such an appeal could not be brought previously, the Department believes this additional grounds for an appeal could be incorporated into the district's/BOCES' current appeal process and therefore no additional costs should incur. The new appeal process for the State-provided growth score will be performed by existing staff and therefore, the Department believes there will be no additional costs to the State government.

(c) Costs to private regulated parties: none, except that if a teacher/principal chooses to appeal his/her State-provided growth score, he/she must file an appeal within 20 days of receipt of his/her score or within 20 days of the effective date of the regulation, whichever is later.

(d) Costs to regulating agency for implementation and continued administration: See above.

## 5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

## 6. PAPERWORK:

Section 30-3.3 of the proposed amendment requires that each school district shall adopt an APPR plan for its classroom teachers and building principals and submit such plan to the Commissioner for approval. The Commissioner shall approve or reject

the plan. The Commissioner may reject a plan that does not rigorously adhere to the regulations and the law. The regulations also provide that if any material changes are made to the plan, the district must submit the material changes by March 1 of each school year, on a form prescribed by the Commissioner, to the Commissioner for approval. This section also requires that the APPR plan describe the school district's or BOCES' process for ensuring that the Department receives accurate teacher and student data, including certain identified information; the assessment development, security and scoring processes utilized by the school district or BOCES, which includes a requirement that any process and assessment or measures are not disseminated to students before administration and that teachers and principals do not have a vested interest in the outcome of the assessments they score; describe the details of the evaluation system used by the district or BOCES; how the district or BOCES will provide timely and constructive feedback to teachers and building principals and the appeal procedures used by the district or BOCES.

If a school district or BOCES seeks to use a teacher or principal practice rubric that is either a close adaptation of a rubric on the approved list, or a rubric that was self-developed or developed by a third-party or a newly developed rubric, the school district or BOCES must seek a variance from the Department for the use of such rubric.

The proposed amendment also requires that the process by which points are assigned in the various subcomponents and the scoring ranges for the subcomponents must be transparent and available to those being rated before the beginning of each school year.

The proposed amendment requires that the entire annual professional performance review be completed and provided to the teacher or principal as soon as practicable but in no case later than September 1<sup>st</sup> of the school year next following the school year for which the teacher or principal's performance is measured. The teacher's and principal's score and rating on the observation/school visit category and in the student performance category, if available, shall be computed and provided to the teacher or principal, in writing, by no later than the last day of the school year for which the teacher or principal is being measured, but in no case later than September 1<sup>st</sup> of the school year next following the school year for which the teacher or principal's performance is measured.

A provider seeking to place a practice rubric in the list of approved rubrics, or an assessment on the list of approved assessments, shall submit to the Commissioner a written application that meets the requirements of sections 30-2.7 and 30-2.8, respectively. An approved rubric or approved assessment may be withdrawn for good cause. The governing body of each school district is required to ensure that evaluators have appropriate training before conducting an evaluation under this section and the lead evaluator must be appropriately certified and periodically recertified.

If a teacher or principal is rated "Developing" or "Ineffective," the school district or BOCES is required to develop and implement a teacher or principal improvement plan (TIP or PIP) that complies with section 30-3.11. Such plan shall be developed by the Superintendent or his or her designee, as part of his/her pedagogical judgement, and include identification of needed areas of improvement, a timeline for achieving

improvement, the manner in which the improvement will be assessed and, where appropriate, differentiated activities to support improvement in those areas.

In accordance with the requirements of the statute, the proposed amendment also requires a school district or BOCES to develop an appeals procedure through which a teacher or principal may challenge their annual professional performance review.

Education Law §3012-d also requires the Commissioner to annually monitor and analyze trends and patterns in teacher and principal evaluation results and data to identify districts, BOCES and/or schools where evidence suggests a more rigorous evaluation system is needed to improve educator effectiveness and student learning outcomes. A school district or BOCES identified by the Department in one of the categories enumerated above may be highlighted in public reports and/or the Commissioner may order a corrective action plan.

The proposed amendment also prohibits a student from being instructed by two teachers in the same subject, in two consecutive years, by teachers who are rated ineffective. If a school district assigns a student to a teacher in the same subject for two consecutive years, and the teacher is rated ineffective for two consecutive years, the school district must seek a waiver from the Commissioner for the specific teacher if (1) the district cannot make alternative arrangements to reassign the teacher to another grade/class due to a hardship and (2) the district has an improvement or removal plan in place for the teacher that meets guidelines prescribed by the Commissioner. The regulation also establishes an appeals process for teachers/principals who wish to challenge their State provided growth score. Teachers/ principals would be required to

submit an appeal within 20 days of their receipt of a State-provided growth score or within 20 days of the effective date of the regulation, whichever is later, and school districts would have 10 days to reply.

#### 7. DUPLICATION:

The rule does not duplicate existing State or Federal requirements.

#### 8. ALTERNATIVES:

As explained in the Needs and Benefits section of this Statement, the Department considered the over 4,000 comments it received before the regulations were adopted and reviewed the materials submitted by stakeholders and experts at the Learning Summit, which are available on the Department's website at <http://www.nysed.gov/content/learning-summit-submitted-materials>. The Department presented its recommendations based on its analysis of the materials and presentations at the Learning Summit and sought feedback on various components of the new evaluation system from the Board of Regents at its May meeting. The Department presented a powerpoint presentation or slide deck to the Board of Regents, posted on our website at <http://www.regents.nysed.gov/common/regents/files/meetings/May%202015/APPR.pdf>, which explained the guiding principles and rationale for the Department's recommendations (see pp. 7-10). It further explained the 1-4 rubric scoring ranges recommended by NYSED, NYSUT and the NYC-Commissioner imposed rubric ranges for observations under Ed. Law §3012-c (p.12) and the differences in differentiation that are produced using the NYSUT recommended and the Commissioner imposed NYC ranges (p.13).

The Department also provided recommendations for the number, frequency and duration of observations and the subcomponent weights for the observation category and recommendations on observation rubrics for the Board of Regents to consider, balancing the feedback it received from the field (p. 16, 18, 20).

It then produced the current scoring ranges for SLOs out of a 0-20 scale and the current method for determining points within the 0-20 scoring range for the State-provided growth score. The Department presented NYCDOE's and NYSUT's suggested cut scores (pp. 21-25) and recommended that the Board maintain the existing normative method to establish growth scores for the required and optional subcomponents of the student performance category. The Department further recommended that the Board maintain the full current list of characteristics in the growth model and that it explore with stakeholders and experts future options, new co-variates and possible adjustments to normative method and/or criterion referenced measures of growth (p. 26). The Department provided further recommendations on the optional subcomponent of the student performance category and the weightings for the student performance category (p. 27-30).

The Department then recommended that the principal system be aligned to the teacher evaluation system (p. 33) and provided recommendations to the Board on which provisions in Education Law §3012-c should be continued under Education Law §3012-d(15) (pg. 34-35). Recommendations were also provided on the waiver to assign students to an ineffective teacher for two consecutive years and the Hardship Waiver for November 15 approval deadline (p. 37).

After receiving input from the Board of Regents and stakeholders, the Department modified many of its May recommendations, which are reflected in red in the slide deck presented to the Board at its June meeting (<http://www.regents.nysed.gov/common/regents/files/meetings//Revised%20Version%20of%20PowerPoint%20Presentation.pdf>). The green text in the slide deck represents changes made to the recommendations during the June 2015 Regents meeting.

In response to field feedback, the Department revised its recommended rubric scoring ranges (pg. 7) to provide a range of permissible cut scores that reflected evidence of standards consistent with the four levels of the observation rubrics. The Department further recommended that the actual cut scores within the ranges be determined locally. The Department also changed its recommendations on the subcomponent weightings on the observation category (pg. 8) to lower the weightings for independent observers and provide for more local flexibility by setting minimum weights. The Department also changed its recommendations on the frequency and duration of observations to instead provide a statewide minimum standard of two observations, with the frequency and duration of such observations to be determined locally. Based on comment, the Department also changed its recommendation to require all annual observations to use the same rubric across all observer types (p. 11). The Department further clarified its recommendation around adjustments in performance measures for student characteristic and for small numbers of students (p. 15). The Department also changed its recommendations on scoring ranges for growth scores (p. 18) and the weightings for the student performance category (p. 19) when the optional subcomponent is used.

In response to feedback from the Board, the Department also adjusted its recommendations to include as possible grounds for a local appeal in instances where the student performance and observation categories produce anomalous results.

The Department further amended its recommendations regarding the continuation of the corrective action provisions in Education Law §3012-c to §3012-d.

#### 9. FEDERAL STANDARDS:

There are no applicable Federal standards concerning the APPR for classroom teachers and building principals as established in Education Law §§3012-c and 3012-d.

#### 10. COMPLIANCE SCHEDULE:

The proposed amendment will become effective on its stated effective date. No further time is needed to comply.