



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:** John L. D'Agati *John L. D'Agati*

**SUBJECT:** Amendment of Subparts 30-2 and 30-3 of the Rules of the Board of Regents Relating to Annual Professional Performance Reviews (APPR) of Classroom Teachers and Building Principals to Implement Chapter 59 of the Laws of 2019

**DATE:** November 21, 2019

**AUTHORIZATION(S):** *Sharon L. Takee*

## SUMMARY

### Issue for Decision (Consent Agenda)

Should the Board of Regents adopt, as a second emergency action, the proposed amendment to establish a revised APPR for evaluations completed beginning in the 2019-20 school year and thereafter to implement the provisions of Chapter 59 of the Laws of 2019?

### Reason(s) for Consideration

Required by State statute.

### Proposed Handling

The proposed amendment is submitted to the Full Board for adoption as a second emergency measure at its December 2019 meeting. The proposed amendment is included as Attachment A, and a Statement of Facts and Circumstances which necessitate emergency action is included as Attachment B.

## **Procedural History**

The proposed amendment was presented to the Full Board for adoption as an emergency measure at the October 2019 meeting of the Board of Regents, effective October 8, 2019. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on October 23, 2019. Because the October emergency action will expire on January 5, 2020, a second emergency action is necessary to ensure that the emergency rule remains continuously in effect until it can be permanently adopted at the February 2020 Regents meeting. A Notice of Emergency Adoption will be published in the State Register on January 3, 2020. Supporting materials are available upon request from the Secretary of the Board of Regents.

## **Background Information**

The 2019-20 Enacted Budget makes several changes to Education Law §3012-d, which governs annual teacher and principal evaluations. The key changes include:

- Required Student Performance Measures
  - Eliminates the requirement to use the State Growth Model for teachers of grades 4-8, building principals covering those grade levels, and high school principals (all of grades 9-12).
    - All educators would instead have a Student Learning Objective (SLO).
  - Eliminates the requirement that State-created or administered assessments be used as the evidence for SLOs where they exist.
  - The selection and use of the assessment(s) for an educator's SLO is now subject to collective bargaining, rather than district determined.
- Optional Student Performance Measures
  - Eliminates the requirement that optional student performance measures be based either on a second State-provided growth score or a growth score based on a supplemental assessment that uses a State-provided or approved statistical growth model.
    - Instead, the Department will define optional measures of student performance based on State-created, administered, or approved assessments that districts may then collectively bargain to use.
  - Where a school district collectively bargains to use optional student performance measures, the statutory amendments also eliminate the existing requirement that an educator receive a rating of Ineffective on his/her overall evaluation if his/her Student Performance Category rating is Ineffective.

Although the Enacted Budget makes significant changes to the Student Performance Category of the evaluation system, it does not substantively change any other aspects of the current system, including:

- Requirements for teacher observations and principal school visits, including the requirement that at least one be conducted by an independent evaluator.
- Requirements for calculating overall ratings using the statutory matrix.

- Requirements for teacher and principal improvement plans for educators who receive an overall rating of Developing or Ineffective in the prior school year.
- Requirements for summative evaluation ratings to be a “significant factor” in all employment-related decisions.

### **Proposed Amendments**

The proposed rule conforms the regulations to the provisions of the 2019 legislation by making the following substantive changes to Subparts 30-2 and 30-3 of the Rules of the Board of Regents.

The existing Subpart 30-2, relating to evaluations conducted pursuant to Education Law §3012-c, is repealed.

The existing Subpart 30-3 is renumbered to Subpart 30-2. The title of this new Subpart 30-2 and Sections 30-2.1, 30-2.3, and 30-2.17 are amended to clarify that Subpart 30-2 only applies to APPRs conducted prior to the 2019-20 school year or those conducted pursuant to a collective bargaining agreement (CBA) entered into on or before April 12, 2019 which remains in effect on or after April 12, 2019 until a subsequent agreement is reached; provided further, however, that any assessments used in determining transition scores and ratings shall be used in determining scores and ratings pursuant to Subpart 30-2 instead of the grades 3-8 English language arts and mathematics State assessments and/or any State growth model until the entry into a successor collective bargaining agreement.

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

Where practicable, existing requirements for teacher and principal evaluations are carried over in their entirety. Below is a description of the areas where substantive changes from existing requirements have been made to implement the provisions of Chapter 59 of the Laws of 2019.

Section 30-3.1 clarifies that the new evaluation system only applies to CBAs entered into after April 12, 2019. It further clarifies that nothing in the new Subpart shall be construed to abrogate any conflicting provisions of any CBA in effect on and after April 12, 2019 during the term of such agreement and until entry into a successor CBA; provided further, however, that any assessments used in determining transition scores and ratings shall be used in determining scores and ratings pursuant to Subpart 30-2 instead of the grades 3-8 English language arts and mathematics State assessments and/or any State growth model until the entry into a successor collective bargaining agreement. As required by the Education Law, it further clarifies that APPRs shall be a significant factor for employment decisions and teacher and principal development, consistent with the requirements of the law. It also clarifies the unfettered right to terminate a probationary teacher or principal for any statutorily and constitutionally permissible reason.

## **New Teacher Evaluation Requirements**

Section 30-3.4 describes the standards and criteria for conducting APPRs of classroom teachers under the amended law. The 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 required and one optional. For the first required subcomponent, teachers shall be evaluated as follows:

All teachers shall have an SLO consistent with a goal setting process determined or developed by the Commissioner that results in a student growth score based on a State-created or administered assessment or other State-approved student assessment. Such SLO may be either teacher-specific or based on school- or district-wide group, team, or linked results.

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

- A second SLO, provided that this SLO is different than that used in the required subcomponent;
- A growth score based on a statistical growth model, where available, for either a State-created or -administered assessment or a State-designed supplemental assessment;
- A measure of student growth, other than an SLO, based on State-created or -administered assessments or State-designed supplemental assessments;
- A performance index based on State-created or -administered assessments or approved student assessments;
- An achievement benchmark on State-created or -administered assessments or approved assessments; or
- Any other collectively bargained measure of student growth or achievement included in the district's evaluation plan.

The selection and use of an assessment in the required or optional subcomponents of the Student Performance Category of a teacher or principal's evaluation pursuant to this Subpart shall be subject to collective bargaining pursuant to Article 14 of the Civil Service Law.

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 percent.

- If the optional subcomponent is selected, the weightings shall be established locally, subject to approval by the Commissioner, in the submitted evaluation plan.

Each measure used in the student performance category must result in a score between 0 and 20. 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 prescribed by the Commissioner in guidance. For all other measures, scores of 0-20 shall be computed using the methodology described in the approved evaluation plan. For the City School District of the City of New York, scores for SLOs that are based on the percentage of students meeting a target shall be calculated in accordance with alternate tables provided in the proposed amendment. Other districts in the rest of the State may also apply for a variance to use these alternate tables for SLOs that are based on the percentage of students meeting a target. Because the City School District of the City of New York uses multiple measures of student performance for the required subcomponent of the student performance category, the Department has been advised by the City that the alternate tables will help ensure that the overall rating assigned to an educator reflects the teacher’s performance.

### **Teacher Observation Category**

The teacher observation category includes three subcomponents: two mandatory and one optional. The two mandatory subcomponents shall be based on:

- at least one observation that shall be conducted by a principal or other trained administrator; and
- at least one 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.
- At least one of the 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 observation category.

The law further requires the Commissioner to establish weightings and scoring ranges for the subcomponents of the teacher observation 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 percent.
- observations conducted by independent impartial observers shall be weighted at a minimum of 10 percent.
- 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 amended law. The law requires the Commissioner to establish a principal evaluation system that is aligned to the teacher evaluation system set forth in Education Law §3012-d.

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

### **Student Performance Category**

The student performance category has two subcomponents, one required and the other optional. For the first required subcomponent, principals shall be evaluated as follows:

- All principals shall have an SLO consistent with a goal setting process determined or developed by the Commissioner that results in a student growth score based on a State-created or -administered assessment or other State-approved student assessment. Such SLO may be either principal specific or based on district-wide group, team, or linked results.

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

- A second SLO, provided that this SLO is different than that used in the required subcomponent;
- A growth score based on a statistical growth model, where available, for either a State-created or -administered assessment or a State-designed supplemental assessment;
- A measure of student growth, other than an SLO, based on State-created or -administered assessments or State-designed supplemental assessments;

- A performance index based on State-created or -administered assessments or approved student assessments;
- An achievement benchmark on State-created or -administered assessments or approved assessments;
- Four-, five-, or six-year high school graduation rates; or
- Any other collectively bargained measure of student growth or achievement included in the district's evaluation plan.

The selection and use of an assessment in the required or optional subcomponents of the Student Performance Category of a teacher or principal's evaluation pursuant to this Subpart shall be subject to collective bargaining pursuant to Article 14 of the Civil Service Law.

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 percent.
- If the optional subcomponent is selected, the weightings shall be established locally, subject to approval by the Commissioner in the submitted evaluation plan.

Each measure used in the student performance category must result in a score between 0 and 20. Districts shall calculate scores for SLOs in accordance with the table provided in the proposed amendment; provided, however, that for principals of a building or program with small "n" sizes as defined by the Commissioner in guidance, districts shall calculate scores for SLOs using a methodology prescribed by the Commissioner in guidance. For all other measures, scores of 0-20 shall be computed using the methodology described in the approved evaluation plan.

### **Principal School Visit Category**

The school visit category includes three subcomponents: two required and one optional. The two required subcomponents shall be based on:

- at least one school visit that shall be conducted by the building principal's supervisor or other trained administrator; and
- at least one school visit 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 principal being evaluated.
- At least one of the required school visits must be unannounced.

The third optional subcomponent may include:

- school visits conducted by a trained peer principal 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 allows the frequency and duration of school visits to be established locally.

This section also requires all school visits to be conducted using a principal practice rubric approved by the Commissioner pursuant to an RFQ process, unless the district has an approved variance from the Commissioner and prescribes parameters for the school visit category.

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

- School visits conducted by a principal’s supervisor or other trained administrator shall be weighted at a minimum of 80 percent.
- School visits conducted by independent impartial evaluators shall be weighted at a minimum of 10 percent.
- If a district selects to use the optional third school visit 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 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 amended law, which combines the teacher’s or principal’s ratings on the student performance category and the observation/school visit category:

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



Although the matrix table is carried over from the existing statute, the provision of the Education Law requiring that a teacher or principal be rated Ineffective on their overall evaluation if the teacher or principal earns a rating of Ineffective on the student performance category and the optional subcomponent of the student performance category is used has been eliminated.

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 30-3.16 describes a process which permits a district or BOCES to apply for a variance from one or more of the provisions of this Subpart to meet specific needs and circumstances of the district or BOCES so long as such plan remains consistent with the requirements of Education Law §3012-d.

Section 30-3.17 provides for the severability of each section of this Subpart.

### **Recommendation**

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

VOTED: That the existing Subpart 30-2 is repealed, that the existing Subpart 30-3 be renumbered to Subpart 30-2, that the title of the new Subpart 30-2 and Section 30-2.1 are amended, and addition of a new Subpart 30-3 of the Rules of the Board of Regents be added as an emergency action, effective January 6, 2020, upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare in order to timely implement the provisions of Section 52-m of Part YYY of Chapter 59 of the Laws of 2019 relating to a revised annual teacher and principal evaluation system.

### **Timetable for Implementation**

If adopted at the December 2019 Regents meeting, the proposed amendment will become effective as an emergency rule on January 6, 2020. It is anticipated that the rule will be presented for permanent adoption at the February 2020 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required pursuant to the State Administrative Procedure Act.

## **Related Regents Items**

### [2015-2016 Enacted Budget Education Reform Initiatives](http://www.regents.nysed.gov/common/regents/files/meetings/Apr%202015/415p12d10.pdf)

(<http://www.regents.nysed.gov/common/regents/files/meetings/Apr%202015/415p12d10.pdf>)

### [APPR Discussion May 2015](http://www.regents.nysed.gov/common/regents/files/meetings/May%202015/APPR.pdf)

(<http://www.regents.nysed.gov/common/regents/files/meetings/May%202015/APPR.pdf>)

### [Amendment of Subpart 30-2 and Addition of a New Subpart 30-3 to the Rules of the Board of Regents, Relating to Annual Professional Performance Reviews of Classroom Teachers and Building Principals to Implement Subparts D and E of Part EE of Chapter 56 of the Laws of 2015](http://www.regents.nysed.gov/common/regents/files/meetings/Jun%202015/615p12a5.pdf)

(<http://www.regents.nysed.gov/common/regents/files/meetings/Jun%202015/615p12a5.pdf>)

### [Addition of Sections 30-2.14 and 30-3.17 to the Rules of the Board of Regents Relating to Transition Ratings for Teachers and Building Principals During the Transition to Higher Standards through New State Assessments aligned to Revised Learning Standards and a Raised State Approved Growth Model - December 2015](http://www.regents.nysed.gov/common/regents/files/1215p12a5.pdf)

<http://www.regents.nysed.gov/common/regents/files/1215p12a5.pdf>

### [Addition of Sections 30-2.14 and 30-3.17 to the Rules of the Board of Regents Relating to Transition Ratings for Teachers and Building Principals During the Transition to Higher Standards through New State Assessments aligned to Revised Learning Standards and a Revised State-Approved Growth Model – February 2016](http://www.regents.nysed.gov/common/regents/files/216p12a2.pdf)

(<http://www.regents.nysed.gov/common/regents/files/216p12a2.pdf>)

### [Amendment to sections 30-2.3, 30-3.3, 30-3.4, 30-3.5, 30-3.11 and 30-3.13 of the Rules of the Board of Regents Relating to Annual Professional Performance Reviews for Classroom Teachers and Building Principals – May 2016](http://www.regents.nysed.gov/common/regents/files/516p12a1.pdf)

(<http://www.regents.nysed.gov/common/regents/files/516p12a1.pdf>)

### [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](http://www.regents.nysed.gov/common/regents/files/616p12a7.pdf)

(<http://www.regents.nysed.gov/common/regents/files/616p12a7.pdf>)

### [Amendment to Sections 30-3.4 and 30-3.5 of the Rules of the Board of Regents Relating to the Calculation of Scores for Student Learning Objectives in the Student Performance Category of Annual Professional Performance Reviews for Teachers and Principals in the City School District of the City of New York – October 2016](http://www.regents.nysed.gov/common/regents/files/1016p12a2.pdf)

<http://www.regents.nysed.gov/common/regents/files/1016p12a2.pdf>

(<http://www.regents.nysed.gov/common/regents/files/218hep12d1.pdf>)

[APPR Update - May 2018](#)

(<https://www.regents.nysed.gov/common/regents/files/P-12%20Education%20Committee%20-%20APPR%20Review.pdf>)

[Update on Teacher and Principal Evaluations - May 2019](#)

(<https://www.regents.nysed.gov/common/regents/files/519p12hed1.pdf>)

[Update on Teacher and Principal Evaluations – June 2019](#)

(<https://www.regents.nysed.gov/common/regents/files/619p12hed1.pdf>)

[Amendment of Subparts 30-2 and 30-3 of the Rules of the Board of Regents Relating to Annual Professional Performance Reviews \(APPR\) of Classroom Teachers and Building Principals to Implement Chapter 59 of the Laws of 2019](#)

(<https://www.regents.nysed.gov/common/regents/files/1019p12hea1.pdf>)

AMENDMENT TO THE RULES OF THE BOARD OF REGENTS

Pursuant to sections 101, 207, 215, 305, 3009, and 3012-d of the Education Law and Chapter 59 of the Laws of 2019.

1. Subpart 30-2 of the Rules of the Board of Regents is repealed and sections 30-3.1 – 30-3.17 of the Rules of the Board of Regents are renumbered to be sections 30-2.1 – 30-2.17.

2. The title of newly renumbered Subpart 30-2 is amended as follows:

Subpart 30-2

Annual Professional Performance Reviews of Classroom Teachers and Building Principals [for the 2015-2016 School Year and Thereafter] Conducted Prior to the 2019-20 School Year or for Annual Professional Performance Reviews Conducted Pursuant to a Collective Bargaining Agreement Entered into on or Before April 12, 2019 Which Remains in Effect After April 12, 2019 Until a Subsequent Agreement is Reached.

3. Subdivision (a) of the newly renumbered section 30-2.1 of the Rules of the Board of Regents is amended to read as follows:

(a) For annual professional performance reviews conducted by districts [for the 2015-16 school year and any school year thereafter,] prior to the 2019-20 school year or for any annual professional performance review conducted pursuant to a collective bargaining agreement entered into on or before April 12, 2019 that remains in effect after April 12, 2019 until a successor agreement is reached, the governing body of each district shall ensure that the reviews of all classroom teachers and building principals are conducted in accordance with the requirements of Education Law section

3012-d and this Subpart[, except as otherwise provided in subdivision (b) of this section] during the term of such agreement and until entry into a successor collective bargaining agreement, provided that upon expiration of such term and the entry into a successor collective bargaining agreement, the provisions of Education Law section 3012-d, as amended by Chapter 59 of the Laws of 2019, and Subpart 30-3 of the Rules of the Board of Regents shall apply; and, provided further, however, that any assessments used in determining transition scores and ratings pursuant to this Subpart shall be used instead of the grades three through eight English language arts and mathematics state assessments and/or any State growth model until the entry into a successor collective bargaining agreement.

4. Subdivisions (b), (c), and (e) of section 30-2.1 of the Rules of the Board of Regents are repealed and subdivision (d) of section 30-2.1 is renumbered as subdivision (b).

5. Paragraph (2) of subdivision (c) of section 30-2.3 of the Rules of the Board of Regents is amended as follows:

(2) Notwithstanding any provisions in this subdivision to the contrary, during the 2015-16 through [2018-19] 2017-18 school years...

6. A new subparagraph (i) is added to Paragraph (2) of subdivision (c) of section 30-2.3 of the Rules of the Board of Regents as follows:

(i) For annual professional performance reviews conducted by districts for the 2018-19 school year or for any annual professional performance review conducted pursuant to a collective bargaining agreement entered into on or before April 12, 2019 that remains in effect after April 12, 2019 until a successor agreement is reached,

teachers or principals whose annual professional performance reviews are based, in whole or in part, on the results of the grades three through eight English language arts or mathematics State assessments and/or State-provided growth scores on Regents examinations shall be provided with their annual professional performance review transition scores and ratings computed pursuant to section 30-3.17 of this Subpart as soon as practicable but in no case later than September 1st of the school year next following the school year for which the teacher or principal's performance is being measured.

7. The title of section 30-2.17 of the Rules of the Board of Regents is amended as follows:

Section 30-2.17

Annual professional performance review ratings [for the 2015-2016 through the 2018-2019 school years] for annual professional performance reviews conducted pursuant to Education Law section 3012-d and this Subpart prior to the 2019-20 school year or for any annual professional performance review conducted pursuant to a collective bargaining agreement entered into on or before April 12, 2019 that remains in effect after April 12, 2019 until a successor agreement is reached, during a transition to higher learning standards.

8. Subdivision (b) of section 30-2.17 of the Rules of the Board of Regents is amended as follows:

(b) Notwithstanding any other provision of this Subpart to the contrary, the commissioner shall establish procedures in guidance for determining transition scores and ratings for teachers and principals whose annual professional performance reviews

conducted pursuant to Education Law section 3012-d and this Subpart [for the 2015-2016 through the 2018-2019 school years] are based, in whole or in part, on State assessments and/or State-provided growth scores on Regents examinations[, while the State completes the transition to higher learning standards through new State assessments aligned to higher learning standards, and a revised State-provided growth model] pursuant to a collective bargaining agreement entered into on or before April 12, 2019 that remains in effect after April 12, 2019 until a successor agreement is reached.

9. Paragraphs (1) and (2) of subdivision (b) of section 30-2.17 of the Rules of the Board of Regents are repealed and paragraph (3) is renumbered as paragraph (1).

10. Subparagraph (ii) of the newly renumbered paragraph (1) of subdivision (b) of section 30-2.17 of the Rules of the Board of Regents is amended as follows:

(ii) [for the 2016-2017 through 2018-2019 school years,] in instances where no scores/ratings in the subcomponents of the student performance category can be generated, notwithstanding any other provision of this Subpart to the contrary, a SLO shall be developed by the district/BOCES consistent with guidelines prescribed by the commissioner using assessments approved by the department that are not State assessments.

11. Subdivision (d) of section 30-2.17 of the Rules of the Board of Regents is amended as follows:

For purposes of public reporting of aggregate data and disclosure to parents pursuant to paragraph b of subdivision 10 of section 3012-c of the Education Law as made applicable to this Subpart, the original composite rating pursuant to section 3012-d of the Education Law and this Subpart shall be reported with (i) the overall transition

rating and (ii) an explanation of such overall transition rating[.] ; provided, however, for annual professional performance reviews conducted for the 2018-19 school year and thereafter pursuant to a collective bargaining agreement entered into on or before April 12, 2019 that remains in effect after April 12, 2019 until a successor agreement is reached, only the transition rating shall be reported.

12. A new subdivision (e) is added to section 30-2.17 of the Rules of the Board of Regents as follows:

(e) Notwithstanding any other provision of this section to the contrary, for annual professional performance reviews conducted for the 2018-19 school year and thereafter pursuant to a collective bargaining agreement entered into on or before April 12, 2019 that remains in effect after April 12, 2019 until a successor agreement is reached, any assessments used in determining transition scores and ratings pursuant to this Subpart shall be used instead of the grades three through eight English language arts and mathematics state assessments and/or any State growth model until the entry into a successor collective bargaining agreement.

13. A new Subpart 30-3 of the Rules of the Board of Regents shall be added to read as follows:

Subpart 30-3

ANNUAL TEACHER AND PRINCIPAL EVALUATIONS FOR THE 2019-20 SCHOOL  
YEAR AND THEREAFTER

§30-3.1 Applicability.



(a) For classroom teacher and building principal evaluations conducted by districts pursuant to a collective bargaining agreement entered into after April 12, 2019 for the 2019-2020 school year and each school year thereafter, the governing body of each district shall ensure that such evaluations are conducted in accordance with the requirements of Education Law section 3012-d, as amended by Chapter 59 of the Laws of 2019 and this Subpart.

(b) The requirements of Education Law section 3012-d as enacted by Chapter 56 of the Laws of 2015 and Subpart 30-2 of this Part shall continue to apply to annual professional performance reviews conducted prior to the 2019-2020 school year or for any annual professional performance review conducted on or after the 2019-2020 school year pursuant to a collective bargaining agreement entered into on or before April 12, 2019 that remains in effect after April 12, 2019 until a successor agreement is reached.

(c) In accordance with Education Law section 3012-d(1), annual professional performance reviews of classroom teachers and building principals shall be a significant factor for employment decisions, including but not limited to, promotion, retention, tenure determination, termination, and supplemental compensation. Such evaluations shall also be a significant factor in teacher and principal development, including but not limited to coaching, induction support, and differentiated professional development. Nothing herein shall be construed to affect the unfettered statutory right of a district to terminate a probationary (non-tenured) teacher or principal for any statutorily and constitutionally permissible reasons, including the performance of a classroom teacher or building principal evaluated pursuant to the requirements of this Subpart.

§30-3.2 Definitions.

As used in this Subpart:

(a) *Approved teacher or principal practice rubric* shall mean a rubric approved by the commissioner for inclusion on the State Education Department's list of approved rubrics in teacher or principal evaluations.

(b) *Approved student assessment* shall mean a student assessment approved by the commissioner for inclusion in the State Education Department's lists of approved student assessments to measure student growth for use in the mandatory subcomponent and/or for use in the optional subcomponent of the student performance category.

(1) *Approved assessments in grades kindergarten through grade two.* Traditional standardized assessments in grades kindergarten through grade two shall not be on the approved list. However, an assessment that is not a traditional standardized assessment shall be considered an approved student assessment if the superintendent, district superintendent, or chancellor of a district that chooses to use such assessment certifies in its annual professional performance review plan that the assessment is not a traditional standardized assessment, and that the assessment meets the minimum requirements prescribed by the commissioner in guidance.

(c) *Building principal or principal* shall mean a building principal or an administrator in charge of an instructional program of a board of cooperative educational services.

(d) *Classroom teacher or teacher* shall mean a teacher in the classroom teaching service as that term is defined in section 80-1.1 of this Title who is a teacher of record

as defined in this section, except evening school teachers of adults enrolled in nonacademic, vocational subjects, and supplemental school personnel as defined in section 80-5.6 of this Title.

(e) *Developing* means an overall rating of developing received by a teacher or building principal, based on the ratings an educator received in the student performance category and observation/school visit category pursuant to the matrix prescribed in section 30-3.6 of this Subpart.

(f) *District* means school district and/or board of cooperative educational services, unless otherwise provided in this Subpart.

(g) *Effective* means an overall rating of effective received by a teacher or building principal, based on the ratings an educator received in the student performance category and observation/school visit category pursuant to the matrix prescribed in section 30-3.6 of this Subpart.

(h) *Evaluator* shall mean any individual who conducts an evaluation of a classroom teacher or building principal under this Subpart.

(i) *Highly effective* means an overall rating of highly effective received by a teacher or building principal, based on the ratings an educator received in the student performance category and observation/school visit category pursuant to the matrix prescribed in section 30-3.6 of this Subpart.

(j) *Ineffective* means an overall rating of ineffective received by a teacher or building principal, based on the ratings an educator received in the student performance category and observation/school visit category pursuant to the matrix prescribed in section 30-3.6 of this Subpart.

(k) Lead evaluator shall mean the primary individual responsible for conducting and completing an evaluation of a classroom teacher or building principal under this Subpart. To the extent practicable, the building principal, or their designee, shall be the lead evaluator of a classroom teacher in this Subpart. To the extent practicable, the lead evaluator of a principal should be the superintendent or BOCES district superintendent or his/her designee.

(l) Leadership standards shall mean:

(1) for annual professional performance reviews conducted prior to the 2022-23 school year, the Educational Leadership Policy Standards: ISLLC 2008 as adopted by the National Policy Board for Educational Administration (Council of Chief State School Officers, Washington DC, One Massachusetts Avenue, NW, Suite 700, Washington, DC 20001-1431; available at the Office of Counsel, State Education Department, State Education Building, Room 148, 89 Washington Avenue, Albany, NY 12234). The Leadership Standards provide that an education leader promotes the success of every student by:

(i) facilitating the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by the school community;

(ii) advocating, nurturing and sustaining a school culture and instructional program conducive to student learning and staff professional growth;

(iii) ensuring management of the organization, operations and resources for a safe, efficient, and effective learning environment;

(iv) collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources;

(v) acting with integrity, fairness, and in an ethical manner; and

(vi) understanding, responding to, and influencing the larger political, social, economic, legal, and cultural context;

(2) for annual professional performance reviews conducted commencing in the 2022-23 school year, the Professional Standards for Educational Leaders: PSEL 2015 as adopted by the National Policy Board for Educational Administration (1904 Association Drive, Reston, VA 20191 -- available at the Office of Counsel, State Education Department, State Education Building, Room 148, 89 Washington Avenue, Albany, NY 12234), as modified by the Board of Regents. The New York State Leadership Standards provide that an education leader shall:

(i) develop, advocate, and enact a shared mission, vision, and core values of high-quality education and academic success and well-being of each student;

(ii) act ethically and professionally and according to professional norms to promote each student's academic success and well-being;

(iii) strive for equity of educational opportunity and culturally responsive practices to promote each student's academic success and well-being;

(iv) develop and support intellectually rigorous, culturally relevant, and coherent systems of curriculum, instruction, and assessment to promote the academic success and well-being of all students;

(v) cultivate an inclusive, caring, and supportive school community that promotes the academic success and well-being of all students;

(vi) develop the professional capacity, cultural competence, and practice of school personnel to promote the love of learning, academic success, and well-being of all students;

(vii) foster a professional community of teachers and other professional staff to promote each student's academic success and well-being;

(viii) engage families and the community in meaningful, reciprocal, and mutually beneficial ways to promote each student's academic success and well-being;

(ix) manage school operations and resources to promote each student's academic success and well-being; and

(x) act as agents of continuous improvement to promote each student's academic success and well-being.

Provided, however, that nothing shall be construed to abrogate any conflicting provisions of any collective bargaining agreement in effect on and after December 1, 2022 that requires the use of the ISLLC: 2008 standards until entry into a successor collective bargaining agreement.

(m) *School building* shall mean a school or program identified by its Basic Educational Data System (BEDS) code, as determined by the commissioner.

(n) *State-designed supplemental assessment* shall mean a selection of state tests or assessments developed or designed by the department, or that the department purchased or acquired from:

(1) another state;

(2) an institution of higher education; or

(3) a commercial or not-for-profit entity, provided that such entity must be objective and may not have a conflict of interest or appearance of a conflict of interest; and tests or assessments that have been previously designed or acquired by local districts, but only if the department significantly modifies growth targets or scoring bands for such tests or assessments or otherwise adapts the test or assessment to the department's requirements.

(o) *Student growth* means the change in student achievement for an individual student between two or more points in time.

(p) *Student learning objective(s) (SLOs)* are academic goals for an educator's students that are set at the start of a course, except in rare circumstances as defined by the commissioner; provided, however, that the selection and use of the assessment for the SLO shall be subject to collective bargaining. SLOs must be specific and measurable, based on available prior student learning data, and aligned to the New York State learning standards, as well as to any other school and district priorities. An educator's scores are based upon the degree to which their goals were attained.

(q) *Superintendent* shall mean the chief school officer of a district or the district superintendent of a board of cooperative educational services, provided that in the case of the City School District of the City of New York, *superintendent* shall mean the Chancellor of the City School District of the City of New York or his or her designee.

(r) *Teacher(s) of record* shall be defined in a manner prescribed by the commissioner.

(s) *Teaching Standards* are enumerated below:

(1) the teacher acquires knowledge of each student, and demonstrates knowledge of student development and learning to promote achievement for all students;

(2) the teacher knows the content they are responsible for teaching, and plans instruction that ensures growth and achievement for all students;

(3) the teacher implements instruction that engages and challenges all students to meet or exceed the learning standards;

(4) the teacher works with all students to create a dynamic learning environment that supports achievement and growth;

(5) the teacher uses multiple measures to assess and document student growth, evaluate instructional effectiveness, and modify instruction;

(6) the teacher demonstrates professional responsibility and engages relevant stakeholders to maximize student growth, development, and learning; and

(7) the teacher sets informed goals and strives for continuous professional growth.

(t) Testing standards shall mean the Standards for Educational and Psychological Testing (American Psychological Association, National Council on Measurement in Education, and American Educational Research Association; available at the Office of Counsel, State Education Department, State Education Building, Room 148, 89 Washington Avenue, Albany, NY 12234).

(u) The governing body of each district shall mean the board of education of each district, provided that, in the case of the City School District of the City of New York, governing body shall mean the Chancellor of the City School District of the City of New



York or, to the extent provided by law, the board of education of the City School District of the City of New York and, in the case of BOCES, governing body shall mean the board of cooperative educational services.

(v) *Traditional standardized assessment* shall mean a systematic method of gathering information from objectively scored items that allow the test taker to select one or more of the given options or choices as their response. Examples include multiple-choice, true-false, and matching items. Traditional standardized assessments are those that require the student (and not the examiner/assessor) to directly use a “bubble” answer sheet. Traditional standardized assessments do not include performance assessments or assessments in which students perform real-world tasks that demonstrate application of knowledge and skills; assessments that are otherwise required to be administered by Federal Law; and/or assessments used for diagnostic or formative purposes, including but not limited to assessments used for diagnostic screening required by Education Law section 3208(5).

§30-3.3 Requirements for annual professional performance review plans submitted under this Subpart.

(a) *Applicability.*

(1) The governing body of each district shall adopt a plan, in a form and timeline prescribed by the commissioner, for the annual professional performance review of all of the district’s classroom teachers and building principals in accordance with the requirements of Education Law section 3012-d as amended by Chapter 59 of the Laws of 2019 and this Subpart and shall 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 provisions of Education Law section 3012-d as amended by Chapter 59 of the Laws of 2019 and the requirements of this Subpart. Absent a finding by the commissioner of extraordinary circumstances, if any material changes are made to the plan, the district must submit the material changes by March 1st of each school year, on a form prescribed by the commissioner, to the commissioner for approval. The provisions of Education Law section 3012-c(2)(k) shall only apply to the extent provided in this paragraph.

(2) Such plan shall be filed in the district office, as applicable, and made available to the public on the district's web-site no later than September 10th of each school year, or within 10 days after the plan's approval by the commissioner, whichever shall later occur.

(3) Any plan submitted to the commissioner shall include a signed certification on a form prescribed by the commissioner, by the superintendent, district superintendent or chancellor, attesting that:

(i) the amount of time devoted to traditional standardized assessments that are not specifically required by State or Federal law for each classroom or program of the grade does not exceed, in the aggregate, one percent of the minimum in required annual instructional hours for such classroom or program of the grade; and

(ii) the amount of time devoted to test preparation under standardized testing conditions for each grade does not exceed, in the aggregate, two percent of the minimum required annual instructional hours for such grade. Time devoted to teacher administered classroom quizzes or exams, portfolio reviews, or performance assessments shall not be counted towards the limits established by this subdivision. In

addition, formative and diagnostic assessments shall not be counted towards the limits established by this subdivision and nothing in this subdivision shall be construed to supersede the requirements of a section 504 plan of a qualified student with a disability or Federal law relating to English language learners or the individualized education program of a student with a disability.

(b) Content of the plan.

The annual professional performance review plan shall:

(1) describe the district's process for ensuring that the department receives accurate teacher and student data, including enrollment and attendance data and any other student, teacher, school, course and teacher/student linkage data necessary to comply with this Subpart, in a format and timeline prescribed by the commissioner. This process shall also provide an opportunity for every classroom teacher and building principal to verify the subjects and/or student rosters assigned to them;

(2) describe how the district will report to the department the individual scores and ratings for each subcomponent and category and overall rating for each classroom teacher and building principal in the district, in a format and timeline prescribed by the commissioner;

(3) describe the assessment development, security, and scoring processes utilized by the district. Such processes shall ensure that any assessments and/or measures used to evaluate teachers and principals under this section 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;

(4) describe the details of the district's evaluation system, which shall include, but not be limited to, whether the district chose to use each of the optional subcomponents in the student performance and observation/school visit categories and the assessments and/or measures, if any, that are used in each subcomponent of the student performance category and the observation/school visit category and the name of the approved teacher and/or principal practice rubrics that the district uses or evidence that a variance has been granted by the commissioner from this requirement;

(5) describe how the district will provide timely and constructive feedback to classroom teachers and building principals on their annual professional performance review;

(6) describe the appeal procedures that the district is using pursuant to section 30-3.12 of this Subpart; and

(7) include any certifications required under this Subpart.

(c) Timeline for completing evaluations.

(1) The entire annual professional performance review shall be completed and provided to the teacher or the principal as soon as practicable but in no case later than September 1st of the school year next following the school year for which the teacher or principal's performance is measured absent a finding by the commissioner of extraordinary circumstances. 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 1st of the school year next following the school year for which the teacher or principal's performance is measured.

(2) Nothing in this subdivision shall be construed to authorize a teacher or principal to commence the appeal process prior to receipt of their overall rating. Districts shall ensure that there is a complete evaluation for all classroom teachers and building principals, which shall include scores and ratings on the subcomponent(s) of the student performance category and the observation/school visit category and the combined category scores and ratings, determined in accordance with the applicable provisions of Education Law section 3012-d as amended by Chapter 59 of the Laws of 2019 and this Subpart, for the school year for which the teacher's or principal's performance is measured.

30-3.4 Standards and criteria for conducting annual professional performance reviews of classroom teachers under Education Law section 3012-d.

(a) Annual professional performance reviews conducted under this section shall differentiate teacher effectiveness resulting in a teacher being rated highly effective, effective, developing or ineffective based on multiple measures in two categories: the student performance category and the teacher observation category.

(b) Student performance category.

The student performance category shall have one required subcomponent and one optional subcomponent as follows:

(1) Required first subcomponent.

(i) Each teacher shall have a student learning objective (SLO) using a form prescribed by the commissioner, consistent with the SLO process determined or

developed by the commissioner, that results in a student growth score based on a State-created or -administered assessment or other approved student assessment. The SLO process determined by the commissioner shall include a minimum growth target of one year of expected growth. Such targets may take the following characteristics into account: poverty, students with disabilities, English language learner status, and prior academic history; provided, however, that the selection and use of the assessment for the SLO shall be subject to collective bargaining. SLOs shall include the following SLO elements, as defined by the commissioner in guidance:

(a) student population;

(b) learning content;

(c) interval of instructional time;

(d) evidence;

(e) baseline;

(f) target;

(g) criteria for rating a teacher highly effective, effective, developing or ineffective

(HEDI); and

(h) rationale.

(ii) Districts shall collectively bargain the selection and use of a State-created or administered assessment or other approved student assessment as the underlying evidence for a teacher's SLO. Such SLO may be either teacher- and course-specific or based on school-, program-, district-, or BOCES-wide group, team, or linked results.

(2) Optional second subcomponent.

(i) A district may collectively bargain a second measure that shall be applied in a consistent manner, to the extent practicable, across the district based on a State-created or administered assessment or other approved student assessment. Such second measure shall be either:

(a) A second SLO, provided that this SLO is different than that used in the required subcomponent of the teacher's evaluation;

(b) a growth score based on a statistical growth model, where available, for either a State-created or -administered assessment or a State-designed supplemental assessment;

(c) a measure of student growth, other than an SLO, based on State-created or -administered assessments or State-designed supplemental assessments;

(d) a performance index based on State-created or administered assessments or approved student assessments;

(e) an achievement benchmark on State-created or administered assessments or approved student assessments; or

(f) any other collectively bargained measure of student growth or achievement included in the district's evaluation plan as approved by the commissioner.

(ii) Where appropriate, growth or achievement targets may consider the following student-level characteristics: poverty, English language learner status, disability status, and/or prior academic history.

(iii) The district shall measure student growth or achievement in the optional subcomponent using the same measure(s) for all classroom teachers in a course and/or grade level in a district.

(3) Weighting of subcomponents within student performance category.

(i) If a district does not locally select to use the optional second student performance subcomponent, then the required subcomponent shall be weighted at 100 percent.

(ii) If the optional second student performance subcomponent is selected, then the weighting of the required and optional subcomponents shall be determined locally, subject to approval by the commissioner in the submitted evaluation plan.

Each measure used in the student performance category (i.e., required SLOs, collectively bargained second student performance measures) must result in a score between 0 and 20. Except as otherwise provided in subparagraph (iii) of this paragraph, districts shall calculate scores for SLOs in accordance with the minimum percentages prescribed in the table below; 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 prescribed by the commissioner in guidance and for teachers in the City School District of the City of New York, districts shall calculate scores for SLOs using the methodology approved by the commissioner in its APPR plan. For all other measures that are not SLOs, scores of 0-20 shall be computed pursuant to a process described in the district’s annual professional performance review plan as approved by the commissioner.

<u>SLOs</u>	
<u>Percent of Students Meeting Target</u>	<u>Scoring Range</u>
<u>0-4%</u>	<u>0</u>
<u>5-8%</u>	<u>1</u>
<u>9-12%</u>	<u>2</u>
<u>13-16%</u>	<u>3</u>
<u>17-20%</u>	<u>4</u>
<u>21-24%</u>	<u>5</u>



<u>25-28%</u>	<u>6</u>
<u>29-33%</u>	<u>7</u>
<u>34-38%</u>	<u>8</u>
<u>39-43%</u>	<u>9</u>
<u>44-48%</u>	<u>10</u>
<u>49-54%</u>	<u>11</u>
<u>55-59%</u>	<u>12</u>
<u>60-66%</u>	<u>13</u>
<u>67-74%</u>	<u>14</u>
<u>75-79%</u>	<u>15</u>
<u>80-84%</u>	<u>16</u>
<u>85-89%</u>	<u>17</u>
<u>90-92%</u>	<u>18</u>
<u>93-96%</u>	<u>19</u>
<u>97-100%</u>	<u>20</u>

(iii) For the City School District of the City of New York, scores for SLOs that are based on the percentage of students meeting a target shall be calculated in accordance with the minimum percentages below:

<u>SLOs</u>	
<u>Percent of Students Meeting Target</u>	<u>Scoring Range</u>
<u>0-9%</u>	<u>0</u>
<u>10-19%</u>	<u>1</u>
<u>20-29%</u>	<u>2</u>
<u>30-39%</u>	<u>3</u>
<u>40-49%</u>	<u>4</u>
<u>50-59%</u>	<u>5</u>
<u>60-62%</u>	<u>6</u>
<u>63-65%</u>	<u>7</u>
<u>66-68%</u>	<u>8</u>
<u>69-71%</u>	<u>9</u>
<u>72-74%</u>	<u>10</u>
<u>75-77%</u>	<u>11</u>
<u>78-80%</u>	<u>12</u>
<u>81-83%</u>	<u>13</u>
<u>84-86%</u>	<u>14</u>
<u>87-89%</u>	<u>15</u>
<u>90-91%</u>	<u>16</u>
<u>92-93%</u>	<u>17</u>
<u>94-95%</u>	<u>18</u>
<u>96-97%</u>	<u>19</u>

<u>98-100%</u>	<u>20</u>
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Any other district may submit a variance request to the department pursuant to section 30-3.16 of this Subpart to use the scoring ranges described in this subparagraph.

(4) Overall rating on student performance category.

(i) Multiple student performance measures shall be combined using a weighted average pursuant to paragraph (3) of subdivision (b) of this section to produce an overall student performance category score of 0 to 20. Except as otherwise provided in subparagraph (ii) of this paragraph, based on such score, an overall student performance category rating shall be derived from the table below:

	<u>Minimum</u>	<u>Maximum</u>
<u>H</u>	<u>18</u>	<u>20</u>
<u>E</u>	<u>15</u>	<u>17</u>
<u>D</u>	<u>13</u>	<u>14</u>
<u>I</u>	<u>0</u>	<u>12</u>

(ii) For the City School District of the City of New York, an overall student performance category rating shall be derived from the table below:

	<u>Minimum</u>	<u>Maximum</u>
<u>H</u>	<u>16</u>	<u>20</u>
<u>E</u>	<u>11</u>	<u>15</u>
<u>D</u>	<u>6</u>	<u>10</u>
<u>I</u>	<u>0</u>	<u>5</u>

Any other district may submit a variance request to the department pursuant to section 30-3.16 of this Subpart to use the table above to compute the overall student performance rating category rating.

(c) Teacher observation category. The observation category for teachers shall be based on at least two observations, one of which must be unannounced.

(1) Two required subcomponents.

(i) At least one observation shall be conducted by a principal or other trained administrator; and

(ii) At least a second observation shall be conducted by 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 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 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 observation shall be conducted as prescribed in clause (b) of this subparagraph. 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.

(a) a rural school district, as defined by the commissioner in guidance, or a school district with only one registered school pursuant to section 100.18 of the commissioner's regulations may apply to the department for a hardship waiver on an annual basis, in a timeframe and manner prescribed by the commissioner, if due to the size and limited resources of the school district, it is unable to obtain an independent evaluator within a reasonable proximity without an undue burden to the school district;

(b) 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 requirement 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 clause 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 2019-2020 school year for teachers who receive a rating of highly effective, effective, or developing for the 2018-2019 school year; school districts would be required to conduct observations by impartial independent trained evaluators for the 2019-2020 school year for, at a minimum, teachers who receive a rating of ineffective for the 2018-2019 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 clause, 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) Optional third subcomponent. The observation category may include a third optional subcomponent based on classroom observations conducted by a trained peer teacher rated effective or highly effective on their overall rating in the prior school year from the same school or from another school in the district.

(3) Frequency and duration of observations. The frequency and duration of observations shall be determined locally.

(4) All observations must 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.

(i) Variance for existing rubrics. A variance may be granted to a district that seeks to use a 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, upon a finding by the commissioner that the rubric meets the criteria described in the request for qualification and the district has demonstrated that it has made a significant investment in the rubric and has a history of use that would justify continuing the use of that rubric.

(ii) Variance for use of new innovative rubrics. A variance may be granted to a district that seeks to use a newly developed rubric, upon a finding by the commissioner that the rubric meets the criteria described in the RFQ, has demonstrated how it will

ensure inter-rater reliability and the rubric's ability to provide differentiated results over time.

(5) All observations for a teacher for the school year must use the same approved rubric; provided that districts may locally determine whether to use different rubrics for teachers who teach different grades and/or subjects during the school year.

(6) At least one of the required observations must be unannounced.

(7) Observations may occur either live or via recorded video, as determined locally.

(8) Nothing in this Subpart shall be construed to limit the discretion of a board of education, superintendent or a principal or other trained administrator to conduct observations in addition to those required by this section for non-evaluative purposes.

(9) The evaluator may select a limited number of rubric subcomponents for focus within a particular observation, so long as all observable subcomponents are addressed across the total number of annual observations.

(10) New York State teaching standards/domains that are part of the rubric but not observable during the classroom observation may be observed during any optional pre-observation conference or post-observation review or other natural conversations between the teacher and the evaluator and incorporated into the observation score.

(11) Points shall not be allocated based on any artifacts, unless such artifact constitutes evidence of an otherwise observable rubric subcomponent (e.g., a lesson plan viewed during the course of the observation may constitute evidence of professional planning).

(12) Each subcomponent of the selected practice rubric shall be evaluated on a 1-4 scale based on a State-approved rubric aligned to the New York State teaching standards and an overall score for the observation subcomponents and category shall be generated between 1-4. Such subcomponent and category scores shall incorporate all evidence collected and observed over the course of the school year. Scores for each subcomponent of the observation category shall be combined using a weighted average pursuant to paragraph (13) of this subdivision, producing an overall observation category score between 1-4. In the event that a teacher earns a score of 1 on all rated components of the practice rubric across all observations, a score of 0 will be assigned.

(13) Weighting of subcomponents within teacher observation category. The weighting of the subcomponents within the teacher observation category shall be established locally within the following constraints:

(i) observations conducted by a principal or other trained administrator shall be weighted at a minimum of 80 percent;

(ii) observations conducted by independent impartial observer(s), or other evaluators selected by the district if a hardship waiver is granted, shall be weighted at a minimum of 10 percent;

(iii) 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 in subparagraphs (i) and (ii) of this paragraph.

(14) Overall rating on the teacher observation category. The overall observation score calculated pursuant to this subdivision shall be converted into an overall rating, using cut scores determined locally for each rating category; provided that such cut scores shall be consistent with the permissible ranges identified below:

<u>Overall Observation Category Score and Rating</u>		
	<u>Minimum</u>	<u>Maximum</u>
<u>H</u>	<u>3.5 to 3.75</u>	<u>4.0</u>
<u>E</u>	<u>2.5 to 2.75</u>	<u>3.49 to 3.74</u>
<u>D</u>	<u>1.5 to 1.75</u>	<u>2.49 to 2.74</u>
<u>I</u>	<u>0</u>	<u>1.49 to 1.74</u>

30-3.5 Standards and criteria for conducting annual professional performance reviews of building principals under Education Law section 3012-d.

(a) Ratings.

Annual professional performance reviews conducted under this section shall differentiate principal effectiveness resulting in a principal being rated highly effective, effective, developing or ineffective based on multiple measures in the following two categories: the student performance category and the school visit category.

(b) Student performance category.

Such category shall have at least one required subcomponent and an optional second subcomponent as follows:

(1) Required first subcomponent.

(i) Each principal shall have a student learning objective (SLO), on a form prescribed by the commissioner, consistent with the SLO process determined or developed by the commissioner, that results in a student growth score based on a State-created or –administered assessment or other State-approved student assessment. The SLO process determined by the commissioner shall include a



minimum growth target of one year of expected growth, as determined by the superintendent or their designee. Such targets, as determined by the superintendent or their designee, may take the following characteristics into account: poverty, students with disabilities, English language learner status and prior academic history. SLOs shall include the following elements, as defined by the commissioner in guidance:

(a) student population;

(b) learning content;

(c) interval of instructional time;

(d) evidence;

(e) baseline;

(f) target;

(g) criteria for rating a principal highly effective, effective, developing or ineffective (HEDI); and

(h) rationale;

(ii) Districts shall select, or if applicable, collectively bargain the selection and use of assessments used as the underlying evidence for SLOs. Such SLO may be either principal- and building- or program-specific or based on district-, or BOCES-wide group, team, or linked results.

(2) Optional second subcomponent. A district may select, or if applicable, collectively bargain one or more other measures for the student performance category that shall be applied in a consistent manner, to the extent practicable, across the district based on a State-created or administered assessment or other approved student assessment. Such second measure shall be either:

- (i) a second SLO, provided that this SLO is different than that used in the required subcomponent of the principal's evaluation;
  - (ii) a growth score based on a statistical growth model, where available, for either a State-created or administered assessment or a State-designed supplemental assessment;
  - (iii) a measure of student growth, other than an SLO, based on State-created or administered assessments or State-designed supplemental assessments;
  - (iv) a performance index based on State-created or administered assessments or approved student assessments;
  - (v) an achievement benchmark on State-created or administered assessments or approved student assessments;
  - (vi) four, five, or six year high school graduation rates; or
  - (vii) any other collectively bargained measure of student growth or achievement as described in the district's evaluation plan, subject to approval by the commissioner.
- (3) Where appropriate, growth or achievement targets may consider the following student-level characteristics: poverty, English language learner status, disability status, and/or prior academic history.
- (4) The district shall measure student growth or achievement in the optional subcomponent using the same measure(s) for all building principals within the same building configuration or program.
- (5) Weighting of subcomponents within student performance category.

(i) If a district does not locally select to use the optional second student performance subcomponent, then the mandatory subcomponent shall be weighted at 100 percent.

(ii) If the optional second student performance subcomponent is selected, then the weighting of the required and optional subcomponents shall be determined locally, subject to approval by the commissioner in the submitted evaluation plan.

(iii) Each measure used in the student performance category (i.e., required SLOs, second student performance measures) must result in a score between 0 and 20. Except as otherwise provided in subparagraph (iv) of this paragraph, districts shall calculate growth scores for SLOs in accordance with the minimum percentages prescribed in the table below; provided, however, that for principals of a building or program with small “n” sizes as defined by the commissioner in guidance, districts shall calculate scores for SLOs using a methodology prescribed by the commissioner in guidance and for principals in the City School District of the City of New York, districts shall calculate scores for SLOs using the methodology approved by the commissioner in its APPR plan. For all other measures that are not SLOs, scores of 0-20 shall be computed pursuant to a process described in the district’s evaluation plan as approved by the commissioner.

<u>Percent of Students Meeting Target</u>	<u>Scoring Range</u>
<u>0-4%</u>	<u>0</u>
<u>5-8%</u>	<u>1</u>
<u>9-12%</u>	<u>2</u>
<u>13-16%</u>	<u>3</u>
<u>17-20%</u>	<u>4</u>
<u>21-24%</u>	<u>5</u>
<u>25-28%</u>	<u>6</u>
<u>29-33%</u>	<u>7</u>
<u>34-38%</u>	<u>8</u>

<u>39-43%</u>	<u>9</u>
<u>44-48%</u>	<u>10</u>
<u>49-54%</u>	<u>11</u>
<u>55-59%</u>	<u>12</u>
<u>60-66%</u>	<u>13</u>
<u>67-74%</u>	<u>14</u>
<u>75-79%</u>	<u>15</u>
<u>80-84%</u>	<u>16</u>
<u>85-89%</u>	<u>17</u>
<u>90-92%</u>	<u>18</u>
<u>93-96%</u>	<u>19</u>
<u>97-100%</u>	<u>20</u>

(iv) For the City School District of the City of New York, scores for SLOs that are based on the percentage of students meeting a target shall be calculated in accordance with the minimum percentages below:

<u>SLOs</u>	
<u>Percent of Students Meeting Target</u>	<u>Scoring Range</u>
<u>0-9%</u>	<u>0</u>
<u>10-19%</u>	<u>1</u>
<u>20-29%</u>	<u>2</u>
<u>30-39%</u>	<u>3</u>
<u>40-49%</u>	<u>4</u>
<u>50-59%</u>	<u>5</u>
<u>60-62%</u>	<u>6</u>
<u>63-65%</u>	<u>7</u>
<u>66-68%</u>	<u>8</u>
<u>69-71%</u>	<u>9</u>
<u>72-74%</u>	<u>10</u>
<u>75-77%</u>	<u>11</u>
<u>78-80%</u>	<u>12</u>
<u>81-83%</u>	<u>13</u>
<u>84-86%</u>	<u>14</u>
<u>87-89%</u>	<u>15</u>
<u>90-91%</u>	<u>16</u>
<u>92-93%</u>	<u>17</u>
<u>94-95%</u>	<u>18</u>
<u>96-97%</u>	<u>19</u>
<u>98-100%</u>	<u>20</u>

Any other district may submit a variance request to the department pursuant to section 30-3.16 of this Subpart to use the scoring ranges described in this subparagraph.

(v) Overall rating on student performance category. Multiple measures shall be combined using a weighted average, to produce an overall student performance category score of 0 to 20. Except as otherwise provided in subparagraph (vi) of this paragraph, based on such score, an overall student performance category rating shall be derived from the table below:

	<u>Minimum</u>	<u>Maximum</u>
<u>H</u>	<u>18</u>	<u>20</u>
<u>E</u>	<u>15</u>	<u>17</u>
<u>D</u>	<u>13</u>	<u>14</u>
<u>I</u>	<u>0</u>	<u>12</u>

(vi) For the City School District of the City of New York, an overall student performance category rating shall be derived from the table below:

	<u>Minimum</u>	<u>Maximum</u>
<u>H</u>	<u>16</u>	<u>20</u>
<u>E</u>	<u>11</u>	<u>15</u>
<u>D</u>	<u>6</u>	<u>10</u>
<u>I</u>	<u>0</u>	<u>5</u>

Any other district may submit a variance request to the department pursuant to section 30-3.16 of this Subpart to use the table above to compute the overall student performance category rating.

(c) Principal school visit category. The school visit category for principals shall be based on a State-approved rubric and shall include up to three subcomponents; two of which are required and one of which is optional.

(1) Two required subcomponents. A district shall evaluate a principal based on at least:

(i) at least one school visit shall be based on a State-approved principal practice rubric conducted by the building principal's supervisor or other trained administrator;

and

(ii) at least 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 clause, 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 clause (b) of this subparagraph. 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) a rural school district, as defined by the commissioner in guidance, or a school district with only one registered school pursuant to section 100.18 of the commissioner's regulations may apply to the department for a hardship waiver on an annual basis, in a timeframe and manner prescribed by the commissioner, if due to the size and limited resources of the school district, it is unable to obtain an independent evaluator within a reasonable proximity without an undue burden to the school district;

(b) 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 requirement 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.

(2) Optional third subcomponent. The school visit category may also include a third optional subcomponent based on school visits conducted by a trained peer administrator rated effective or highly effective on their overall rating in the prior school year from the same or another school in the district.

(3) Frequency and duration of school visits. The frequency of school visits shall be established locally.

(4) All school visits must be conducted using a principal practice rubric approved by the commissioner pursuant to an RFQ process, unless the district has a currently approved variance from the commissioner.

(i) Variance for existing rubric. A variance may be granted to a district that seeks to use a 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, upon a finding by the commissioner that the rubric meets the criteria described in the RFQ, and the district has demonstrated that it has made a significant investment in the rubric and has a history of use that would justify continuing the use of that rubric.

(ii) Variance for use of new innovative rubrics. A variance may be granted to a district that seeks to use a newly developed rubric, upon a finding by the commissioner that the rubric meets the criteria described in the RFQ and the district has demonstrated how it will ensure inter-rater reliability and the rubric's ability to provide differentiated results over time.



(5) All school visits for a principal for the year must use the same approved rubric; provided that districts may locally determine whether to use different rubrics for a principal assigned to different grade level configurations or building types.

(6) At least one of the required school visits must be unannounced.

(7) School visits may not be conducted via video.

(8) Nothing in this Subpart shall be construed to limit the discretion of a board of education, superintendent, or other trained administrator from conducting school visits of a principal in addition to those required under this section for non-evaluative purposes.

(9) The evaluator may select a limited number of rubric subcomponents on which to focus in a particular school visit, so long as all observable rubric subcomponents are addressed across the total number of annual school visits.

(10) Leadership standards and their related functions that are part of the rubric but not observable during the course of the school visit may be observed through other natural conversations between the principal and the evaluator and incorporated into the school visit score.

(11) Points shall not be allocated based on any artifacts, unless such artifact constitutes evidence of a rubric subcomponent observed during a school visit. Points shall not be allocated based on professional goal-setting; however, organizational goal-setting may be used to the extent it is evidence from the school visit and related to a component of the principal practice rubric.

(12) Each subcomponent of the selected practice rubric shall be evaluated on a 1-4 scale based on a State-approved rubric aligned to the leadership standards and an

overall score for the school visit subcomponents and category shall be generated between 1-4. Such subcomponent and category scores must incorporate all evidence collected and observed over the course of the school year. Scores for each subcomponent of the school visit category shall be combined using a weighted average, producing an overall school visit category score between 1-4. In the event that a principal earns a score of 1 on all rated components of the practice rubric across all school visits, a score of 0 will be assigned.

(13) Weighting of Subcomponents with Principal School Visit Category. The weighting of the subcomponents in the principal school visit category shall be established locally within the following constraints:

(i) school visits conducted by a superintendent or other trained administrator shall be weighted at a minimum of 80 percent;

(ii) school visits conducted by independent impartial trained evaluators or other evaluators selected by the district if a hardship waiver is granted, shall be weighted at a minimum of 10 percent;

(iii) if a district selects to use the optional third school visit subcomponent, then the weighting assigned to the optional school visits conducted by peers shall be established locally within the constraints outlined in clauses (a) and (b) of this subparagraph.

(14) Overall rating on the principal school visit category. The overall principal school visit score shall be converted into an overall rating, using cut scores determined locally for each rating category; provided that such cut scores shall be consistent with the permissible ranges identified below:

<u>Overall School Visit Category Score and Rating</u>		
	<u>Minimum</u>	<u>Maximum</u>
<u>H</u>	<u>3.5 to 3.75</u>	<u>4.0</u>
<u>E</u>	<u>2.5 to 2.75</u>	<u>3.49 to 3.74</u>
<u>D</u>	<u>1.5 to 1.75</u>	<u>2.49 to 2.74</u>
<u>I</u>	<u>0</u>	<u>1.49 to 1.74</u>

§30-3.6 Rating determination.

(a) The overall rating determination for a teacher or principal shall be determined according to a methodology as follows:

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

(b) The district shall ensure that the process by which weights and scoring ranges are assigned to subcomponents and categories is transparent and available to those being rated before the beginning of each school year. Such process must ensure that it is possible for a teacher or principal to obtain any number of points in the applicable scoring ranges, including zero, in each subcomponent. In the event that a teacher/principal earns a score of 1 on all rated components of the practice rubric across all observations, a score of 0 will be assigned. The superintendent, district superintendent or chancellor and the representative of the collective bargaining unit (where one exists) shall certify in the district's plan that the evaluation process shall use the weights and scoring ranges provided by the commissioner.

§30-3.7 Prohibited elements.

Pursuant to Education Law section 3012-d (6), the following elements shall no longer be eligible to be used in any evaluation subcomponent pursuant to this Subpart:

(a) 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;

(b) use of an instrument for parent or student feedback;

(c) use of professional goal-setting as evidence of teacher or principal effectiveness;

(d) any district or regionally-developed assessment that has not been approved by the department; and

(e) any growth or achievement target that does not meet the minimum standards as set forth in regulations of the commissioner adopted hereunder.

§30-3.8 Approval process for student assessments.

(a) Approval of student assessments for the evaluation of classroom teachers and building principals.

An assessment provider who seeks to place an assessment on the list of approved student assessments under this section shall submit to the commissioner a written application in a form and within the time prescribed by the commissioner.

(b) The commissioner shall evaluate a student assessment(s) for inclusion on the department's list(s) of approved student assessments for use in the required and/or optional subcomponents of the student performance category based on the criteria outlined in the RFQ or request for proposal (RFP); provided, however, that assessments utilized as an alternative assessment for calculating transition scores and ratings for

educators whose original evaluations are based, in whole or in part, on the grades three through eight ELA and mathematics State assessments approved by the commissioner on or before April 12, 2019, shall be included on the Department's approved list.

(c) Termination of approval.

Approval shall be withdrawn for good cause, including, but not limited to, a determination by the commissioner that:

(1) the assessment does not comply with one or more of the criteria for approval set forth in Subpart or in the RFQ or RFP;

(2) the department determines that the assessment is not identifying meaningful and/or observable differences in performance levels across schools and classrooms; and/or

(3) high quality academic research calls into question the correlation between high performance on the assessment and positive student learning outcomes.

§30-3.9 Approval process for approved teacher and principal practice rubrics.

(a) A provider who seeks to place a teacher or principal practice rubric on the list of approved rubrics under this section shall submit to the commissioner a written application in a form and within the time prescribed by the commissioner.

(b) Teacher practice rubric.

The commissioner shall evaluate a rubric for inclusion on the department's list of approved practice rubrics for classroom teachers pursuant to a request for qualification (RFQ) process. Such proposals shall meet the criteria outlined by the commissioner in the RFQ process.

(c) Principal practice rubric.

The commissioner shall evaluate a rubric for inclusion on the department's list of approved practice rubrics for building principals pursuant to a request for qualification (RFQ) process. Such proposals shall meet the criteria outlined by the commissioner in the RFQ process.

(d) Termination of approval of a teacher or principal scoring rubric.

Approval for inclusion on the department's list of approved rubrics may be withdrawn for good cause, including, but not limited to, a determination by the commissioner that the rubric:

(1) does not comply with one or more of the criteria for approval set forth in this section or the criteria set forth in the request for qualification;

(2) the department determines that the practice rubric is not identifying meaningful and/or observable differences in performance levels across schools and classrooms; and/or

(3) high-quality academic research calls into question the correlation between high performance on this rubric and positive student learning outcomes.

(e) The department's lists of approved rubrics established pursuant to section 30-2.7 of the Part shall continue in effect until superseded by a list generated from a new RFQ issued pursuant to this section or the list is abolished by the commissioner as unnecessary.

#### §30-3.10 Training of evaluators and lead evaluators.

(a) The governing body of each district shall ensure that evaluators, including impartial and independent observers and peer observers, have appropriate training before conducting a teacher or principal's evaluation under this section. The governing

body shall also ensure that any lead evaluator has been certified by such governing body as a qualified lead evaluator before conducting and/or completing a teacher's or principal's evaluation in accordance with the requirements of this Subpart, except as otherwise provided in this subdivision. Nothing herein shall be construed to prohibit a lead evaluator who is properly certified by the department as a school administrator or superintendent of schools from conducting classroom observations or school visits as part of an annual professional performance review under this Subpart prior to completion of the training required by this section provided such training is successfully completed prior to completion of the evaluation.

(b) To qualify for certification as a lead evaluator, individuals shall successfully complete a training course that meets the minimum requirements prescribed in this subdivision. The training course shall provide training on:

(1) the New York State teaching standards and their related elements and performance indicators and the leadership standards and their related functions, as applicable;

(2) evidence-based observation techniques that are grounded in research;

(3) application and use of any methodology as part of an SLO and any optional second measures of student performance used by the district to evaluate its teachers or principals;

(4) application and use of the State-approved teacher or principal rubric(s) selected by the district for use in evaluations, including training on the effective application of such rubrics to observe a teacher or principal's practice;

(5) application and use of any assessment tools that the district utilizes to evaluate its classroom teachers or building principals;

(6) application and use of any locally selected measures of student performance in the optional subcomponent of the student performance category used by the district to evaluate its teachers or principals;

(7) use of the statewide instructional reporting system;

(8) the scoring methodology utilized by the department and/or the district to evaluate a teacher or principal under this Subpart, including the weightings of each subcomponent within a category; how overall scores/ratings are generated for each subcomponent and category and application and use of the evaluation matrix(es) prescribed by the commissioner for the four designated rating categories used for the teacher's or principal's overall rating and their category ratings; and

(9) specific considerations in evaluating teachers and principals of English language learners and students with disabilities.

(c) Independent evaluators and peer evaluators shall receive training on the following elements:

(1) the New York State teaching standards and their related elements and performance indicators and the leadership standards and their related functions, as applicable;

(2) evidence-based observation techniques that are grounded in research; and

(3) application and use of the State-approved teacher or principal rubric(s) selected by the district for use in evaluations, including training on the effective application of such rubrics to observe a teacher or principal's practice;



(d) Training shall be designed to certify lead evaluators.

Districts shall describe in their annual professional performance review plan the duration and nature of the training they provide to evaluators and lead evaluators and their process for certifying lead evaluators under this section.

(e) Districts shall also describe in their annual professional performance review plan their process for ensuring that all evaluators maintain inter-rater reliability over time (such as data analysis to detect disparities on the part of one or more evaluators; periodic comparisons of a lead evaluator's assessment with another evaluator's assessment of the same classroom teacher or building principal; annual calibration sessions across evaluators) and their process for periodically recertifying all lead evaluators.

(f) Any individual who fails to receive required training or achieve certification or re-certification, as applicable, by a district pursuant to the requirements of this section shall not conduct or complete an evaluation under this Subpart.

#### §30-3.11 Teacher or principal improvement plans.

(a) Upon rating a teacher or a principal as developing or ineffective through an annual professional performance review conducted pursuant to Education Law section 3012-d as amended by Chapter 59 of the Laws of 2019 and this Subpart, a district shall formulate and commence implementation of a teacher or principal improvement plan for such teacher or principal by October 1st in the school year following the school year for which such teacher's or principal's performance is being measured or as soon as practicable thereafter.

(b) Such improvement plan shall be developed by the superintendent or their designee in the exercise of their pedagogical judgment, and subject to collective bargaining to the extent required under article 14 of the Civil Service Law, and shall include, but need not be limited to, 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 a teacher's or principal's improvement in those areas.

§30-3.12 Appeal procedures.

(a) An annual professional performance review plan under this Subpart shall describe the appeals procedure utilized by a district through which an evaluated teacher or principal may challenge their annual professional performance review. Pursuant to Education Law section 3012-d, as amended by Chapter 59 of the Laws of 2019, a teacher or principal may only challenge the following in an appeal:

(1) the substance of the annual professional performance review; which shall include the following:

(i) in the instance of a teacher or principal rated Ineffective on the student performance category but rated highly effective on the observation/school visit category based on an anomaly, as determined locally.

(2) the district's adherence to the standards and methodologies required for such reviews, pursuant to Education Law section 3012-d as amended by Chapter 59 of the Laws of 2019 and this Subpart;

(3) the adherence to the regulations of the commissioner and compliance with any applicable locally negotiated procedures, as required under Education Law section 3012-d and this Subpart; and

(4) district's issuance and/or implementation of the terms of the teacher or principal improvement plan under Education Law section 3012-d as amended by Chapter 59 of the Laws of 2019 and this Subpart.

(b) Appeal procedures shall provide for the timely and expeditious resolution of any appeal.

(c) An evaluation that is the subject of an appeal shall not be sought to be offered in evidence or placed in evidence in any proceeding conducted pursuant to Education Law sections 3020-a and 3020-b or any locally negotiated alternate disciplinary procedure until the appeal process is concluded.

(d) Nothing in this section shall be construed to alter or diminish the authority of the governing body of a district to grant or deny tenure to or terminate probationary teachers or probationary building principals during the pendency of an appeal pursuant to this section for statutorily and constitutionally permissible reasons, including the teacher's or principal's performance that is the subject of the appeal.

(e) Nothing in this Subpart shall be construed to authorize a teacher or principal to commence the appeal of their rating prior to receipt of their rating from the district.

#### §30-3.13 Monitoring and consequences for non-compliance.

(a) The department will annually monitor and analyze trends and patterns in teacher and principal evaluation results and data to identify districts and/or schools where evidence suggests that a more rigorous evaluation system is needed to improve

educator effectiveness and student learning outcomes. The department will analyze data submitted pursuant to this Subpart to identify:

(1) schools or districts with unacceptably low correlation results between student growth on the student performance category and the teacher observation/principal school visit category used by the district to evaluate its teachers and principals; and/or

(2) schools or districts whose teacher and principal overall ratings and subcomponent scores and/or ratings show little differentiation across educators and/or the lack of differentiation is not justified by equivalently consistent student achievement results; and/or schools or districts that show a pattern of anomalous results in the student performance and observation/school visits categories.

(b) A district 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, which may include, but not be limited to, a timeframe for the district to address any deficiencies or the plan will be rejected by the commissioner, changes to the district's target setting process, a requirement that the district arrange for additional professional development, that the district provide additional in-service training and/or utilize independent trained evaluators to review the efficacy of the evaluation system.

(c) Corrective action plans may require changes to a collective bargaining agreement, subject to collective bargaining under article 14 of the Civil Service Law.

§30-3.14 Prohibition against student being instructed by two consecutive ineffective teachers.

(a) A student may not be instructed, for two consecutive school years, in the same subject by any two teachers in the same district, each of whom received a rating of Ineffective under an evaluation conducted pursuant to this section in the school year immediately prior to the school year in which the student is placed in the teacher's classroom; provided, that if a district deems it impracticable to comply with this subdivision, the district shall seek a teacher-specific waiver from the department from such requirement, on a form and timeframe prescribed the commissioner.

(b) If a district assigns a student to a teacher rated ineffective in the same subject for two consecutive years, the district must seek a waiver from this requirement for the specific teacher in question. The commissioner may grant a waiver from this requirement if:

(1) the district cannot make alternative arrangements and/or reassign a teacher to another grade/subject because a hardship exists (for example, too few teachers with higher ratings are qualified to teach such subject in that district); and

(2) the district has an improvement and/or removal plan in place for the teacher at issue that meets certain guidelines prescribed by the commissioner.

§30-3.15 Applicability of the provisions in Education Law section 3012-c.

The provisions of Education Law section 3012-c shall apply to annual professional performance reviews pursuant to this Subpart as follows:

(a) the provisions of paragraphs (d) and (k) of subdivision (2), subdivision (4), subdivision (5) and subdivision (9) of Education Law section 3012-c that apply are set forth in the applicable language of this Subpart;

(b) the provisions of paragraphs (k-1), (k-2) and (l) of subdivision (2) of Education Law section 3012-c shall apply without any modification; and

(c) the provisions of subdivision (5-a) of Education Law section 3012-c shall apply without modification except:

(d) Any reference in subdivision (5-a) to a proceeding pursuant to Education Law section 3020-a based on a pattern of ineffective teaching shall be deemed to be a reference to a proceeding pursuant to Education Law section 3020-b against a teacher or principal who receives two or more consecutive composite Ineffective ratings; and in accordance with Education Law section 3020(3) and (4)(a), notwithstanding any inconsistent language in subdivision (5-a), any alternate disciplinary procedures contained in a collective bargaining agreement that becomes effective on or after July 1, 2015 shall provide that two consecutive Ineffective ratings pursuant to annual professional performance reviews conducted in accordance with the provisions of Education Law section 3012-c or 3012-d shall constitute prima facie evidence of incompetence that can only be overcome by clear and convincing evidence that the employee is not incompetent in light of all surrounding circumstances, and if not successfully overcome, the finding, absent extraordinary circumstances, shall be just cause for removal, and that three consecutive Ineffective ratings pursuant to annual professional performance reviews conducted in accordance with the provisions of Education Law section 3012-c or 3012-d shall constitute prima facie evidence of incompetence that can only be overcome by clear and convincing evidence that the calculation of one or more of the teacher's or principal's underlying components on the annual professional performance reviews pursuant to Education Law section 3012-c or

3012-d was fraudulent, and if not successfully overcome, the finding, absent extraordinary circumstances, shall be just cause for removal;

(e) the provisions of subdivision (10) of Education Law section 3012-c shall apply without modification, except that there is no composite effectiveness score under Education Law section 3012-d.

#### §30-3.16 Variance

(a) A variance from one or more of the requirements of this Subpart and the district's approved evaluation plan may be granted to a district that seeks to develop and implement new and innovative approaches to evaluation that meets the specific needs of the applicant upon a finding by the commissioner that the new and innovative approach meets the criteria described in this section and the district has demonstrated how it will ensure differentiated results over time and how the results of the evaluation will be used to provide personalized professional learning opportunities to teachers and principals.

(b) A district requesting a variance from one or more provisions of this Subpart and their approved evaluation plan must submit such request for approval on a form and in a timeframe prescribed by the commissioner. The commissioner shall approve or reject the variance application. The variance application shall include, but not be limited to:

(1) A description of one or more specific provisions of this Subpart for which the district is seeking a variance.

(2) A rationale for each provision for which a variance is sought.

(3) A description of the standards and procedures that will be used in lieu of those described in this Subpart and their approved evaluation plan for each specific provision for which a variance is sought.

(4) A description of how the district will ensure that evaluations are rigorous and enable strong and equitable inferences about the effectiveness of the district's educators.

(5) A description of how the district will use the information collected through the evaluation system, including the assigned effectiveness ratings, to provide personalized professional learning opportunities for teachers and principals.

(6) A description of how the district will assess the effectiveness of the implementation of the variance.

(c) Conditions. Variance approvals are subject to the following conditions:

(1) The provisions of the variance shall remain in compliance with all requirements of Education Law section 3012-d as amended by Chapter 59 of the Laws of 2019;

(2) A district may only seek a variance from provisions of this Subpart and their approved evaluation plan for which Education Law section 3012-d delegates responsibility to the commissioner to establish the standards and procedures;

(3) Upon approval of a variance, the district shall implement such variance along with all other remaining provisions of the district's approved evaluation plan consistent with the requirements of this Subpart;

(4) A district with an approved variance shall provide to the department, upon its request, any documentation related to the implementation and efficacy of the approach



proposed in the variance, including but not limited to: reports on the correlation in assigned ratings for different measures of the district's evaluation system and differentiation among educators within each subcomponent and category of the evaluation system .

(5) A district with an approved variance may amend its variance application prior to the end of the approval period for purposes of seeking a variance from additional provisions of this Subpart and their approved evaluation plan and/or to end implementation of one or more previously approved variance provisions.

(6) Where required pursuant to Article 14 of the Civil Service Law, the district must collectively bargain the terms and procedures of the variance request that is submitted to the Department. The district and its collective bargaining representatives shall assure that the district will fully implement the variance and all other provisions of the approved evaluation plan during the effective term of the variance and that any collective bargaining agreements related to the evaluation plan shall be made consistent with such variance and evaluation plan.

(7) Prior to or with the submission of a variance application, the district must submit and receive approval of an evaluation plan that complies with all requirements of Education Law section 3012-d and Subpart 30-3 of this Subpart.

(d) Implementation Timeframe.

(1) A variance application approved after December 1 of any school year shall be implemented in the following school year.

(2) A variance application approved prior to December 1 of any school year may be implemented either for such school year or in the following school year, as indicated by the district in its variance application.

(3) Variances shall be approved for up to a three school year period, subject to renewal by the district.

(e) Revocation and non-renewal of variance.

(1) Revocation. The commissioner may revoke a variance at any time for good cause, including but not limited to: a finding that the district has not implemented the variance and all other provisions of its evaluation plan in good faith; a finding that the evaluation system does not differentiate teacher and principal performance at each of the four HEDI performance levels; a failure by the district to provide the department any requested documentation related to the implementation of the variance.

(2) Non-renewal. Prior to the expiration of the variance term, the district shall determine whether to renew its variance and shall submit to the commissioner, on a form and in a timeframe prescribed by the commissioner, a request for renewal. A district may choose not to renew its variance application.

(3) Upon a revocation or non-renewal of a variance application, the district shall implement its approved evaluation plan, consistent with all requirements of this Subpart and absent any terms of the variance.

#### §30-3.17 Severability.

If any provision of this Subpart or its application to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of the Subpart or their application to other

persons and circumstances, and those remaining provisions shall not be affected but shall remain in full force and effect.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE  
EMERGENCY ACTION

The 2019-2020 Enacted Budget makes several changes to Education Law §3012-d, which governs annual teacher and principal evaluations. The key changes include:

- Required Student Performance Measures
  - Eliminates the requirement to use the State Growth Model for teachers of grades 4-8, building principals covering those grade levels, and high school principals (all of grades 9-12).
    - All educators would instead have a Student Learning Objective (SLO).
  - Eliminates the requirement that State-created or administered assessments be used as the evidence for SLOs where they exist.
  - The selection and use of the assessment(s) for an educator's SLO is now subject to collective bargaining, rather than district determined.
- Optional Student Performance Measures
  - Eliminates the requirement that optional student performance measures be based either on a second State-provided growth score or a growth score based on a supplemental assessment that uses a State-provided or approved statistical growth model.

- Instead, the Department will define optional measures of student performance based on State-created, administered, or approved assessments that districts may then collectively bargain to use.
- Where a school district collectively bargains to use optional student performance measures, the statutory amendments also eliminate the existing requirement that an educator receive a rating of Ineffective on their overall evaluation if their Student Performance Category rating is Ineffective.

The changes made to Education Law §3012-d became effective on April 1, 2019 and the proposed amendment implements those requirements.

The proposed amendment was presented to the Full Board for adoption as an emergency action at the October 2019 meeting of the Board of Regents, effective October 8, 2019. Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for permanent adoption, after expiration of the required 60-day comment period provided for in the State Administrative Procedure Act (SAPA) Sections 202(1) and (5), is the February 2020 Regents meeting. Furthermore, pursuant to SAPA Section 203(1), the earliest effective date of the proposed amendment, if adopted at the February Regents meeting, is February 26, 2020, the date a Notice of Adoption would be published in the State Register. However, the October 2019 emergency rule will expire on January 5, 2020. This second emergency action is therefore necessary now for the preservation of the general welfare in order to conform Subpart 30 of the Rules of the Board of Regents with the amendments made to Education Law §3012-d, as amended by Chapter 59 of the Laws of 2019 and to ensure that the

emergency rule remains in effect until it can be adopted as a permanent rule.

It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the February 2020 Regents meeting, which is the first scheduled meeting after the 60-day public comment period prescribed in SAPA for State agency rule makings.