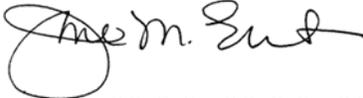




THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: The Honorable the Members of the Board of Regents

FROM: Jhone M. Ebert 

SUBJECT: Amendment to sections 30-2.3, 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

DATE: July 5, 2016

AUTHORIZATION(S):  

### SUMMARY

#### **Issue for Decision (Consent Agenda)**

Should the Board of Regents adopt the proposed amendments to §§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 of classroom teachers and building principals?

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

Review of Policy.

#### **Proposed Handling**

The proposed amendment is submitted to the full Board for adoption as an emergency rule at its July 2016 meeting. The proposed amendment is attached as Attachment A.

## **Procedural History**

The proposed amendment was adopted as an emergency measure at the May Regents meeting. A Notice of Emergency Adoption and Proposed Rule Making was filed in the State Register on June 14, 2014. The emergency action will expire on September 11, 2016. Therefore, a second emergency action is needed. A Notice of Emergency Adoption will be published in the State Register on September 28, 2016. Supporting materials are available upon request to the Secretary of the Board of Regents. A Statement of Facts and Circumstances is attached as Attachment B.

## **Background**

### **2010 Evaluation Law**

On May 28, 2010, the Governor signed Chapter 103 of the Laws of 2010, which added a new Education Law §3012-c, establishing a comprehensive evaluation system for classroom teachers and building principals. The 2010 law required each classroom teacher and building principal to receive an annual professional performance review (APPR) resulting in a single composite effectiveness score and a rating of “highly effective,” “effective,” “developing,” or “ineffective.” The composite score is determined as follows:

- 20% is based on student growth on State assessments or other comparable measures of student growth (increased to 25% upon implementation of a value-added growth model);
- 20% is based on locally-selected measures of student achievement that are determined to be rigorous and comparable across classrooms as defined by the Commissioner (decreased to 15% upon implementation of value-added growth model);
- The remaining 60% is based on other measures of teacher/principal effectiveness consistent with standards prescribed by the Commissioner in regulation.

At its May 2011 meeting, the Board of Regents adopted emergency regulations to implement the new evaluation system established in the 2010 law.

### **2012 Evaluation Law**

On March 27, 2012, the Governor signed Chapter 21 of the Laws of 2012, making significant changes to enhance the 2010 evaluation law, including requiring the submission of APPR plans to the Commissioner for approval. Subpart 30-2 of the Rules of the Board of Regents was amended in March 2012 to conform to the new law. 2013

Evaluation Law In 2013, the Governor signed Chapter 57 of the Laws of 2013 to, among other things, require that all APPR plans continue in effect until a successor collective bargaining agreement (“CBA”) is reached and the plan is approved by the Commissioner. The evaluation law was also revised to provide the Commissioner with authority to impose an APPR plan on the New York City School District through arbitration.

#### 2014 Evaluation Law

In 2014, the Legislature made additional changes to the evaluation law to expedite material changes to reduce testing, to prohibit the administration of traditional standardized assessments in grades kindergarten through second, and to limit the amount of instructional time spent on testing and test preparation.

#### 2015 Evaluation Law

On April 13, 2015, the Governor signed Chapter 56 of the Laws of 2015 to add a new Education Law §3012-d, to establish a new evaluation system for classroom teachers and building principals.

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

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

In accordance with the requirements of the statute, the Department created an email box to accept comments on the new evaluation system ([eval2015@nysed.gov](mailto:eval2015@nysed.gov)). The Department received and reviewed nearly 4,000 responses and took these comments into consideration in formulating the proposed amendments. In addition, the Department held a Learning Summit on May 7, 2015, wherein the Board of Regents hosted a series of panels to provide recommendations to the Board on the new evaluation system. Such panels included experts in education, economics, and psychometrics and statewide stakeholder groups including but not limited to NYSUT, UFT, NYSSBA, NYSCOSS and principal and parent organizations. Since the new law was enacted in April 2015, the Department also met with individual stakeholder groups and experts in psychometrics to discuss their recommendations on the new evaluation

system and at its June 2015 meeting, the Board of Regents adopted regulations to implement the new law.

At its December 2015 meeting, in order to implement the recommendations of the Governor's Common Core Task Force Report (released December 10, 2015) that the results of the grades 3-8 ELA/math State assessments and the use of any State-provided growth model based on these tests or other State assessments shall not have consequence for teachers or students as the State transitions to higher learning standards through new State assessments aligned to the higher learning standards, and a revised State-provided growth model, during the 2015-16 through 2018-19 school years, the Board of Regents adopted sections 30-2.14 and 30-3.17 of the Rules of the Board of Regents as an emergency measure. Pursuant to sections 30-2.14 and 30-3.17, during the transition period (2015-16 through 2018-19), transition scores and HEDI ratings will be generated and used to replace the scores and HEDI ratings for teachers and principals whose HEDI scores are based, in whole or in part, on State assessments in grades 3-8 ELA or math (including where State-provided growth scores are used) or on State-provided growth scores on Regents examinations. At its February 2016 meeting, the Board of Regents revised the transition regulation to eliminate the requirement that districts implementing APPR plans pursuant to Education Law §3012-d be required to develop an alternate SLO (in place of the State-provided growth score and/or the SLO based on State assessments) during the 2015-2016 school year in an effort to provide the same protections that the new transition regulations provide districts implementing APPR plans pursuant to Education Law §3012-c during the 2015-16 school year.

The Department has continued to solicit feedback and input from the various stakeholder groups regarding the implementation of the requirements of the transition period, and of the implementation of the requirements of Subpart 30-3 of the Rules of the Board of Regents generally. The proposed amendment reflects areas where there has been consistent feedback from stakeholders requesting a revision to the regulations.

### **Proposed amendment**

The proposed amendment seeks to provide districts and BOCES with greater flexibility in implementing the provisions of Education Law §3012-d and Subpart 30-3 of the Rules of the Board of Regents, as follows:

Sections 30-2.3(c) and 30-3.3(c) are amended to clarify that transition scores and ratings, calculated pursuant to Sections 30-2.14 and 30-3.17, must be provided to teachers and principals, no later than September 1<sup>st</sup> of the school year immediately following the school year for which the teacher or principal's performance is evaluated during the transition period (2015-16 through 2018-19 school years). Original final ratings for such teachers and principals must be provided by September 1<sup>st</sup>, or as soon as practicable thereafter, during the transition period.

Educators whose APPRs are *not* based on 3-8 ELA/math State assessments or State-provided growth scores and do not receive transition scores and ratings shall continue to receive their final APPR ratings no later than September 1<sup>st</sup>.

### **Teacher Evaluation Requirements**

Section 30-3.4 is amended to clarify the measures that may be used in the student performance category of a teacher's evaluation, and the methodology by which subcomponent and overall scores must be calculated in the teacher observation category.

#### *Student performance category*

The proposed amendment seeks to provide additional options and flexibility for districts and BOCES in the student performance category as follows:

- First mandatory subcomponent: For a teacher whose course does not end in a State-created or administered test or where a State-provided growth measure is not determined, districts may determine whether to use SLOs based on district or BOCES-wide or school or program-wide group, team, or linked results based on State/Regents assessments or other student assessments approved by the Department, as defined by the Commissioner in guidance.
- First mandatory subcomponent: For any teacher whose course ends in a State-created or administered assessment for which there is no State-provided growth model, such assessment must be used as the underlying assessment for such SLO. Provided, however, that during the 2015-16 school year, while the Department transitions to a new computer-based examination, the district shall determine whether to use the New York State Alternate Assessment (NYSAA) as the underlying assessment for such SLO. In instances where a district determines not to use the NYSAA, the district must determine whether to use SLOs based on a list of approved student assessments, or a district- or-BOCES-wide or school- or program-wide group, team, or linked results based on State/Regents assessments, or other assessments approved by the Department, as defined by the commissioner in guidance.
- In the optional second subcomponent: A district may locally select a second measure that shall be applied in a consistent manner, to the extent practicable, across the district based on the State/Regents assessments or State-designed assessments. If a measure based on a second State-provided growth score on a state-created or administered test is selected, this measure may incorporate district- or BOCES-wide or school- or program-wide, group, team, or linked growth results using available State-provided growth scores that are locally-computed. If a growth score is

based on a State-designed supplemental assessment, such growth score may include district- or BOCES-wide or school- or program-wide group, team, or linked results where the State-approved growth model is capable of generating such a score.

### **Teacher observation category**

The proposed amendment clarifies that each subcomponent of the observation category 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 each observation category shall be generated between 1-4. Such subcomponent 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 subparagraph (xiv) of this paragraph, 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.

The proposed amendment provides districts with flexibility to locally determine how to compute a score for each teacher observation category subcomponent within the constraints imposed by Subpart 30-3.

### **Principal Evaluation Requirements**

Section 30-3.5 is amended to clarify the measures that may be used in the student performance category of a principal's evaluation, and to clarify that back-up SLOs must be set for all principals whose buildings or programs include courses covered by a State-provided growth model. Section 30-3.5 is also amended to clarify the methodology by which subcomponent and overall scores must be calculated in the principal school visit category.

### **Student performance category**

The measures available in the student performance category are clarified as follows:

- In the first mandatory subcomponent of the student performance category, for a principal of a building or program whose courses do not end in a State-created or administered test or where a principal growth score is not determined, districts shall use SLOs based on a list of State-approved student assessments. SLOs set for courses in the principal's building which do not end in a State-created or administered test may incorporate district or BOCES-wide or school or program-wide results from State-created or administered tests, or other student assessments approved by the Department.

- In the first mandatory subcomponent of the student performance category, for a principal of a building or program whose courses end in a State-created or administered assessment for which there is no State-provided growth model, such assessment must be used as the underlying assessment for such SLO. Provided, however, that during the 2015-16 school year, while the Department transitions to a new computer-based examination, the district shall determine whether to use the New York State Alternate Assessment (NYSAA) as the underlying assessment for such SLO. In instances where a district determines not to use the NYSAA, the district must determine whether to use SLOs based on a list of approved student assessments, or district- or BOCES-wide results based on State/Regents assessments, or other assessments approved by the Department, as defined by the Commissioner in guidance.
  - The proposed amendment also requires districts to develop back-up SLOs for all principals whose buildings or programs contain courses that end in a State-created or administered test for which there is a State-provided growth model, to use in the event that no State-provided growth score can be generated for such principals.
- In the optional second subcomponent of the student performance category, a district may locally select a second measure that shall be applied in a consistent manner, to the extent practicable, across the district based on the State/Regents assessments or State-designed assessments. If a measure based on a second State-provided growth score on a state-created or administered test is selected, this measure may incorporate district- or BOCES-wide or school- or program-wide, group, team, or linked growth results using available State-provided growth scores that are locally-computed. If a growth score based on a State-designed supplemental assessment, calculated using a State-provided or approved growth model is selected, such growth score may include district- or BOCES-wide or school- or program-wide group, team, or linked results where the State-approved growth model is capable of generating such a score.

### **Principal school visit category**

The proposed amendment clarifies that each school visit must be evaluated based on a state-approved rubric aligned to the ISLLC standards and an overall score for each principal school visit category subcomponent (i.e., supervisor or other trained administrator, impartial independent trained evaluator(s), and trained peer observer) shall be generated between 1-4. Such principal school visit category subcomponent scores must incorporate all evidence collected and observed over the course of the school year and shall also generate scores between 1-4.

The proposed amendment provides districts with flexibility to locally determine how to compute a score for each principal school visit category subcomponent within the constraints imposed by Subpart 30-3.

### **Teacher or principal improvement plans**

Based on comments from the field, section 30-3.11 is amended to clarify that teacher and principal improvement plans shall be subject to collective bargaining *to the extent required* under Article 14 of the Civil Service Law.

### **Monitoring and consequences for non-compliance**

Section 30-3.13 is amended to clarify that corrective action plans *may* require changes to a collective bargaining agreement subject to collective bargaining under Article 14 of the Civil Service Law.

### **Recommendation**

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

VOTED: That 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 be amended, effective September 12, 2016, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare in order to immediately adopt revisions to the proposed amendment to provide districts with additional flexibility when negotiating their annual professional performance review plans for the 2016-2017 school year.

### **Timetable for Implementation**

If adopted as an emergency measure at the July 2016 meeting, the proposed amendment will become effective as an emergency rule on September 12, 2016. It is anticipated that the proposed amendment will come before the Board of Regents at its September meeting. If adopted at its September meeting, the proposed amendment will become effective as a permanent rule on September 28, 2016.

AMENDMENT TO THE RULES OF THE BOARD OF REGENTS

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

1. Subdivision (c) of section 30-2.3 shall be amended, effective September 12, 2016, to read as follows:

(c) (1) Subject to the provisions of Education Law 3012-c(2)(k), 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 being measured. The teacher's and principal's score and rating on the locally selected measures subcomponent, if available, and on the other measures of teacher and principal effectiveness subcomponent for a teacher's or principal's annual professional performance review 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. Nothing in this subdivision shall be construed to authorize a teacher or principal to commence the appeal process prior to receipt of their composite effectiveness score and rating. Each such annual professional performance review shall be based on the State assessments or other comparable measures subcomponent, the locally selected measures of student achievement subcomponent and the other measures of teacher and principal effectiveness subcomponent, determined in accordance the applicable provisions of Education Law section 3012-c and this Subpart, for the school year for which the teacher's or principal's performance is measured.

(2) Notwithstanding any provisions in this subdivision to the contrary, for the 2015-16 school year, teachers or principals whose annual professional performance reviews are based, in whole or in part, on the results of the grades 3-8 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 30-2.14 of this Subpart as soon as practicable but in no case later than September 1<sup>st</sup> of the school year next following the school year for which the teacher or principal's performance is being measured. During the 2015-16 school year, such teachers and principals shall also be provided with their original composite rating computed pursuant to section 3012-c of the Education Law and this Subpart by September 1<sup>st</sup> of the school year next following the school year for which the teacher or principal's performance is being measured, or as soon as practicable thereafter.

2. Subdivision (c) of section 30-3.3 of the Rules of the Board of Regents, effective September 12, 2016, is amended to read as follows:

(c) (1) [The] Except as otherwise provided in paragraph (2) of this subdivision, 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. 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. Nothing in this subdivision shall be construed to authorize a teacher or principal to commence the appeal process prior to receipt of his or her 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 and this Subpart, for the school year for which the teacher's or principal's performance is measured.

(2) Notwithstanding any provisions in this subdivision to the contrary, during the 2015-16 through 2018-19 school years, teachers or principals whose annual professional performance reviews are based, in whole or in part, on the results of the grades 3-8 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 1<sup>st</sup> of the school year next following the school year for which the teacher or principal's performance is being measured. During the 2015-16 through 2018-19 school years, such teachers and principals shall also be provided with their original composite rating computed pursuant to section 3012-d of the Education Law and this Subpart by September 1<sup>st</sup> of the school year next following the school year for which the teacher or principal's performance is being measured, or as soon as practicable thereafter.

3. Subparagraph (ii) of paragraph (1) of subdivision (b) of section 30-3.4 of the Rules of the Board of Regents is amended, effective September 12, 2016, to read as follows:

(ii) for a teacher whose course does not end in a State-created or administered test or where less than 50 percent of the teacher's students are covered by a State-provided growth measure, such teacher shall have a student learning objective (SLO) developed and approved by his/her superintendent or his or her designee, 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; provided that, for any teacher whose course ends in a State-created or administered assessment for which there is no State-provided growth model, such assessment must be used as the underlying assessment for such SLO. Provided, however, that during the 2015-16 school year, while the Department transitions to a new computer based examination, the district shall determine whether to use the New York State Alternate Assessment (NYSAA) as the underlying assessment for such SLO. In instances where a district determines not to use the NYSAA, the district must determine whether to use SLOs based on a list of approved student assessments, or a district- or- BOCES-wide or school- or program-wide group, team, or linked results based on State/Regents assessments, or other assessments approved by the Department, as defined by the commissioner in guidance. 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 his or her designee. Such targets, as determined by the superintendent or his or her designee, may take the following characteristics into

account: poverty, students with disabilities, English language learners status and prior academic history. SLOs shall include the following SLO elements, as defined by the commissioner in guidance:

- (a) . . .
- (b) . . .
- (c) . . .
- (d) . . .
- (e) . . .
- (f) . . .
- (g) . . .
- (h) . . .

4. Subparagraph (iii) of paragraph (1) of subdivision (b) of section 30-3.4 of the Rules of the Board of Regents is amended, effective September 12, 2016, to read as follows:

(iii) for a teacher whose course does not end in a State-created or administered test or where a State-provided growth measure is not determined, districts may determine whether to use SLOs based on a list of approved student assessments, or a [school-or-BOCES-wide] district or BOCES-wide or school or program-wide group, team, or linked results based on State/Regents assessments or other student assessments approved by the Department, as defined by the commissioner in guidance.

5. Paragraph (2) of subdivision (b) of Section 30-3.4 of the Rules of the Board of Regents is amended, effective September 12, 2016, to read as follows:

(2) Optional second subcomponent. A district may locally select a second measure that shall be applied in a consistent manner, to the extent practicable, across the district based on the State/Regents assessments or State-designed assessments and be either:

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

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

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

(c) district- or BOCES-wide or school-wide, group, team, or linked growth results using available State-provided growth scores that are locally-computed; or

(ii) a growth score based on a State-designed supplemental assessment, calculated using a State-provided or approved growth model. Such growth score may include [school] district- or BOCES-wide or school- or program-wide group, team, or linked results where the State-approved growth model is capable of generating such a score.

6. Subparagraph (xii) of paragraph (2) of subdivision (d) of section 30-3.4 of the Rules of the Board of Regents is amended, effective September 12, 2016, to read as follows:

(xii) Each subcomponent of the observation category 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 [each] the observation category shall be generated between 1-4. Such subcomponent scores shall incorporate all evidence collected and observed over the course of the school year. [Multiple] Scores for each [observations] subcomponent of the observation category shall be combined using a weighted average pursuant to subparagraph (xiv) of this paragraph, 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.

7. Subparagraph (ii) of paragraph (1) of subdivision (b) of section 30-3.5 of the Rules of the Board of Regents is amended, effective September 12, 2016, to read as follows:

(ii) for a principal where less than 30 percent of his/her students are covered under the State-provided growth measure, such 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; provided that, for any principal whose building or program includes courses that end in a State-created or administered assessment for which there is no State-provided growth model, such assessment must be used as the underlying assessment for such SLO. Provided, however, that during the 2015-16 school year, while the Department

transitions to a new computer based examination, the district shall determine whether to use the New York State Alternate Assessment (NYSAA) as the underlying assessment for such SLO. In instances where a district determines not to use the NYSAA, the district must determine whether to use SLOs based on a list of approved student assessments, or a district- or-BOCES-wide or school- or program-wide group, team, or linked results based on State/Regents assessments, or other assessments approved by the Department, as defined by the commissioner in guidance. 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 his or her designee. Such targets, as determined by the superintendent or his or her designee, may take the following characteristics into account: poverty, students with disabilities, English language learners status and prior academic history. SLOs shall include the following SLO elements, as defined by the commissioner in guidance:

- (a) . . .
- (b) . . .
- (c) . . .
- (d) . . .
- (e) . . .
- (f) . . .
- (g) . . .
- (h) . . .

(8) Subparagraph (iii) of paragraph (1) of subdivision (b) of section 30-3.5 of the Rules of the Board of Regents is amended, effective September 12, 2016, to read as follows:

(iii) For a principal of a building or program whose courses do not end in a State-created or administered test or where a principal growth score is not determined, districts shall use SLOs based on a list of State-approved student assessments. SLOs set for courses in the principal's building which do not end in a State-created or administered test may incorporate district or BOCES-wide or school or program-wide results from State-created or administered tests, or other student assessments approved by the Department.

(9) A new subparagraph (iv) of paragraph (1) of subdivision (b) of section 30-3.5 of the Rules of the Board of Regents is added, effective September 12, 2016, to read as follows:

(iv) districts shall develop back-up SLOs for all principals whose buildings or programs contain courses that end in a State-created or administered test for which there is a State-provided growth model, to use in the event that no State-provided growth score can be generated for such principals.

(10) Paragraph (2) of subdivision (b) of section 30-3.5 of the Rules of the Board of Regents is amended, effective September 12, 2016, to read as follows:

(2) Optional second subcomponent. A district may select 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 either:

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

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

(b) district- or BOCES-wide or school- or program -wide growth results using available State-provided growth scores that are locally-computed; or

(ii) a growth score based on a State-designed supplemental assessment, calculated using a State-approved growth model. Such growth score may include [school] district- or BOCES-wide or school- or program-wide group, team, or linked measures where the State-approved growth model is capable of generating such a score.

(11) Paragraph (13) of subdivision (d) of section 30-3.5 of the Rules of the Board of Regents is amended, effective September 12, 2016, to read as follows:

(13) Each subcomponent of the school visit category shall be evaluated on a 1-4 scale based on a state-approved rubric aligned to the ISLLC standards and an overall score for [each] the school visit category shall be generated between 1-4. Such subcomponent scores must incorporate all evidence collected and observed over the course of the school year in that subcomponent. [Multiple] Scores for each [observations] subcomponent of the school visit category shall be combined using a weighted average, producing an overall [observation] 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. Weighting of Subcomponents with Principal School Visit Category. The weighting of the

subcomponents within the principal school visit category shall be established locally within the following constraints:

(i)...

(ii)...

(iii)...

(12) Subdivision (b) of section 30-3.11 shall be amended, effective September 12, 2016, to read as follows:

(b) Such improvement plan shall be developed by the superintendent or his or her 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.

(13) Subdivision (c) of section 30-3.13 of the Rules of the Board of Regents, effective September 12, 2016, is amended to read as follows:

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

**8 NYCRR Subpart 30-3**

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE  
EMERGENCY ACTION

The purpose of the proposed amendment is to provide districts and BOCES with additional options for measures to use in the student performance category and greater flexibility in scoring observations in the observation category. It also seeks to clarify that the Department *may* require changes to a collective bargaining agreement in a corrective action plan subject to collective bargaining under Article 14 of the Civil Service Law and that teacher/principal improvement plans are required to negotiated, to the extent required under Article 14 of the Civil Service Law.

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

Emergency action at the July 2016 Regents meeting is therefore necessary for the preservation of the general welfare in order to immediately adopt revisions to the proposed amendment to provide immediate notice to districts of the additional allowable measures in the student performance category, the increased flexibility in scoring observations in the observation category and to clarify the collective bargaining

requirements surrounding teacher/principal improvement plans and to clarify that corrective action plans may require changes to collective bargaining agreements, subject to negotiation under Article 14 of the Civil Service Law, while they are negotiating their annual professional performance review plans under Education Law §3012-d for the 2016-2017 school year. It is also necessary to ensure that the emergency rule adopted at the May 2016 Regents meeting remains continuously in effect until it can be adopted as a permanent rule at the September 2016 Regents meeting.

