



TO: The Honorable the Members of the Board of Regents

FROM: Jhone M. Ebert 

SUBJECT: Amendment of Subpart 30-2 and Addition of a New Subpart 30-3 to the Rules of the Board of Regents and Section 100.2(o) of the Commissioner's Regulations, 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

DATE: November 9, 2015

AUTHORIZATION(S): 

**SUMMARY**

**Issue for Decision (Consent Agenda)**

Should the Board of Regents adopt the proposed amendments to amend Subpart 30-2 and add 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, in order to implement Education Law §3012-d?

**Reason(s) for Consideration**

Required by June 30, 2015 by State statute.

**Proposed Handling**

The proposed amendment is submitted to the P-12 Education Committee for a recommendation to the Full Board for adoption as an emergency measure at its November 2015 meeting. The proposed amendment is attached as Attachment A.

## **Procedural History**

At its June meeting, the Board of Regents adopted the proposed amendment as an emergency rule, effective June 30, 2015. A Notice of Proposed Rule Making and Emergency Adoption was published in the State Register on July 8, 2015. Following the 45-day public comment period under the State Administrative Procedure Act, the proposed amendment was revised in response to certain comments. At the September meeting, the Board of Regents adopted the revised amendment as an emergency rule, effective September 28, 2015. A Notice of Revised Rule Making and Emergency Adoption was published in the State Register on October 7, 2015. A Statement of the Facts and Circumstances which necessitate emergency action is attached as Attachment B. Supporting materials are available upon request to the Secretary of the Board of Regents.

## **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 has received and reviewed nearly 4,000 responses and has taken 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 State-wide stakeholder groups including but not limited to NYSUT, UFT, School Boards, NYSCOSS and principal and parent organizations. Since the new law was enacted in April, the Department has also been separately meeting with individual stakeholder groups and experts in psychometrics to discuss their recommendations on the new evaluation system.

The proposed amendment reflects areas of consensus among the groups, and in areas where there were varying recommendations, the Department attempted to reconcile those differences to reflect best practices while also taking into consideration recommendations in the Testing Reduction Report regarding the reduction of unnecessary testing.

### **Proposed amendment**

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

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

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

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

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

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

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

### **New Teacher Evaluation Requirements**

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

#### **Student performance category**

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

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

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

- A second State-provided growth score on a State-created or administered test; provided that the State provided growth measure is different than that used in the required subcomponent of the student performance category, which may include one or more of the following measures:
  - a teacher-specific growth score computed by the State based on percentage of students who achieve a State-determined level of growth (e.g., percentage of students whose growth is above the median for similar students);

- school-wide growth results based on a State-provided school-wide growth score for all students attributable to the school who took the State English language arts or math assessment in grades 4-8; or
- school-wide, group, team, or linked growth results using available State-provided growth scores that are locally-computed;
- A growth score based on a state designed supplemental assessment calculated using a State provided or approved growth model.

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

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

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

### **Teacher observation category**

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

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

may not be assigned to the same school building as the teacher being evaluated.

- One of the mandatory observations must be unannounced.

The third optional subcomponent may include:

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

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

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

The law further requires the Commissioner to establish weightings and scoring ranges for the subcomponents of the teacher 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%.
- observations conducted by independent impartial observers shall be weighted at a minimum of 10%.
- if a district selects to use the optional third observation subcomponent, then the weighting assigned to the optional observations conducted by peers shall be established locally within the constraints outlined above.

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

### **New Principal Evaluation Requirements**

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

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

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

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

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

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

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

- If a district does not locally select to use the optional second student growth subcomponent, then the mandatory subcomponent shall be weighted at 100%.

- If the optional second student growth subcomponent is selected, then the mandatory subcomponent shall be weighted at a minimum of 50% and the optional second subcomponent shall be weighted at no more than 50%.

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

### **Principal school visit category**

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

- one school visit shall be conducted by the principal’s supervisor or other trained administrator; and
- a second school visit shall be conducted by one or more impartial independent trained evaluator(s) selected and trained by the district. An independent trained evaluator may be employed within the district, but may not be assigned to the same school building as the principal being evaluated.

One of the mandatory school visits must be unannounced.

The third optional subcomponent may include:

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

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

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

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

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

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

Section 30-3.6 describes how the overall rating is computed, based on the evaluation matrix established by the new law, which combines the teacher’s or principal’s ratings on the student performance category and the observation/school visit category:

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

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

This section also provides that it must be possible to obtain each point in the scoring ranges, including 0, for each subcomponent and category. It further requires that the superintendent, district superintendent or Chancellor and the president of the collective bargaining representative, where one exists, must certify in the APPR plan that the evaluation system will use the weights and scoring ranges provided by the Commissioner and that the process by which weights and scorings are assigned to subcomponents and categories is transparent and available to those being rated before the beginning of each school year.

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

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

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

Section 30-3.10 sets forth the training requirements for evaluators and lead evaluators; which now requires evaluators and lead evaluations to be trained on certain prescribed elements relating to observations and the applicable teacher/principal practice rubrics pursuant to Education Law §3012-d(15).

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

Section 30-3.12 addresses appeal procedures. Currently, the regulations set forth the grounds for an appeal which includes the ability of a teacher or principal to challenge the substance of their APPR in an appeal. The proposed amendment defines

the substance of an APPR to include appeals in circumstances where a teacher or principal is rated Ineffective on the student performance category, but rated Highly Effective on the observation/school visit category based on an anomaly, as determined locally pursuant to Education Law §3012-d(15).

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

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

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

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

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

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

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

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

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

In response to comments received (which are described in detail in the Assessment of Public Comment, which is attached as Exhibit C), while not required to do so, the Department has revised the Regulatory Impact Statement for the proposed amendment to recite the analysis and research behind the State-provided growth model and the proposed amendment, which implements the provisions of Education Law §3012-d.

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

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

The Department clarified that a teacher's and principal's score and rating on the observation/school visit category *and in the student performance category*, if available, shall be computed and provided to the teacher or principal, in writing, by no later than the last day of the school year for which the teacher or principal is being measured, but in no case later than September 1<sup>st</sup> of the school year next following the school year for which the teacher or principal's performance is measured. This will ensure that a teacher's or principal's score on SLO's used for the mandatory component and their scores on the optional subcomponent, if used, are provided on or before September 1<sup>st</sup>.

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

Consistent with the requirements for the teacher evaluation system, the Department revised the proposed amendment to eliminate references to a supervisor or other trained administrator from the requirement for unannounced school visits and

instead just generally provides that at least one mandatory school visit shall be unannounced in an effort to be aligned to the teacher evaluation system.

Pursuant to the State Administrative Procedure Act, the Revised Rule Making was published in the State Register on October 7, 2015 and a 30-day public comment period followed. An Assessment of the Public Comment received is attached as Attachment C.

### **Recommendation**

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

VOTED: That the Title of Subpart 30-2, subdivisions (b) and (d) of section 30-2.1, subdivision (c) of section 30-2.11 of the Rules of the Board of Regents and subdivision (o) of section 100.2 of the Commissioner's regulations be amended and a new section 30-2.13 and Subpart 30-3 of the Rules of the Board of Regents be added, as submitted, effective November 27, 2015, 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 timely implement the provisions of Subpart E of Part EE of Chapter 56 of the Laws of 2015 relating to a new annual evaluation system for classroom teachers and building principals and thereby ensure that school districts and BOCES may timely implement the new evaluation requirements for classroom teachers and building principals in accordance with the statute and to ensure that the emergency rule adopted at the June and September 2015 meetings remains continuously in effect until it can be adopted as a permanent rule.

### **Timetable for Implementation**

If adopted as an emergency measure at the November 2015 meeting, the emergency rule will take effect on November 27, 2015.

## **Attachment A**

### AMENDMENT TO THE RULES OF THE BOARD OF REGENTS

Pursuant to sections 101, 207, 215, 305, 3009, 3012-c and section 3012-d of the Education Law and Chapter 56 of the Laws of 2015.

1. Subparagraph (ii) of paragraph (1) of section 100.2(o) of the Commissioner's regulations is amended, effective November 27, 2015, to read as follows:

(ii) Annual review. The governing body of each school district and BOCES shall ensure that the performance of all teachers providing instructional services or pupil personnel services, as defined in section 80-1.1 of this Title, is reviewed annually in accordance with this subdivision, except evening school teachers of adults enrolled in nonacademic, vocational subjects; and supplementary school personnel, as defined in section 80-5.6 of this Title, and any classroom teacher subject to the evaluation requirements prescribed in [Subpart] Subparts 30-2 and 30-3 of this Title.

2. The title of Subpart 30-2 of the Rules of the Board of Regents is amended effective November 27, 2015, to read as follows:

#### SUBPART 30-2

ANNUAL PROFESSIONAL PERFORMANCE REVIEWS OF CLASSROOM  
TEACHERS AND BUILDING PRINCIPALS CONDUCTED PRIOR TO THE 2015-2016  
SCHOOL YEAR OR FOR ANNUAL PROFESSIONAL PERFORMANCE REVIEWS  
CONDUCTED PURSUANT TO A COLLECTIVE BARGAINING AGREEMENT  
ENTERED INTO ON OR BEFORE APRIL 1, 2015 WHICH REMAINS IN EFFECT ON  
OR AFTER APRIL 1, 2015 UNTIL A SUBSEQUENT AGREEMENT IS REACHED

3. Subdivision (b) of section 30-2.1 of the Rules of the Board of Regents is amended, effective November 27, 2015, to read as follows:

(b) For annual professional performance reviews conducted by school districts or BOCES [in] from the 2012-2013 school year [and any school year thereafter] through the 2015-2016 school year or for any annual professional performance review conducted pursuant to a collective bargaining agreement entered into on or before April 1, 2015 that remains in effect on and after April 1, 2015 until a successor agreement is reached, the governing body of each school district and BOCES shall ensure that the reviews of all classroom teachers and building principals are conducted in accordance with the requirements of section 3012-c of the Education Law and the provisions of this Subpart.

4. Subdivision (d) of section 30-2.1 of the Rules of the Board of Regents is amended, effective November 27, 2015, to read as follows:

(d) Annual professional performance reviews of classroom teachers and building principals conducted pursuant to this Subpart shall be a significant factor for employment decisions, including but not limited to, promotion, retention, tenure determinations, termination and supplemental compensation, in accordance with Education Law §3012-c(1). Nothing in this Subpart shall be construed to affect the unfettered statutory right of a school district or BOCES to terminate a probationary teacher or principal for any statutorily and constitutionally permissible reasons [other than the performance of the teacher or principal in the classroom or school,] including but not limited to misconduct, and until a tenure decision is made, the performance of the teacher or principal in the classroom or school. [For purposes of this subdivision,

Education Law §3012-c(1) and (5)(b), performance shall mean a teacher's or principal's overall composite rating pursuant to an annual professional performance review conducted under this Subpart.]

5. Subdivision (c) of section 30-2.11 of the Rules of the Board of Regents is amended, effective November 27, 2015, to read as follows:

(c) Nothing in this section shall be construed to alter or diminish the authority of the governing body of a school district or BOCES 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 [other than] including the teacher's or principal's performance that is the subject of the appeal.

6. A new section 30-2.13 of the Rules of the Board of Regents is added, effective November 27, 2015, to read as follows:

§30-2.13. Challenges to State-Provided Growth Score Results for the 2014-2015 School Year and Thereafter.

(a) A teacher/principal shall have the right to challenge their State-provided growth score under this Subpart; provided that the teacher/principal provides sufficient documentation that he/she meets at least one of the following criteria in their annual evaluation:

(1) a teacher/principal was rated Ineffective on his/her State-provided growth score and Highly Effective on the other measures of teacher/leader effectiveness subcomponent in the current year and was rated either Effective or Highly Effective on his/her State-provided growth score in the previous year; or

(2) a high school principal of a building that includes at least all of grades 9-12, was rated Ineffective on the State-provided growth score but such percent of students as shall be established by the Commissioner in his/her school/program within four years of first entry into grade 9 received results on department-approved alternative examinations in English Language Arts and/or or mathematics as described in section 100.2(f) of this Title (including, but not limited to, advanced placement examinations, and/or International Baccalaureate examinations, SAT II, etc.) scored at proficiency (i.e., a Level 3 or higher).

(b) A teacher/principal shall submit an appeal to the Department, in a manner prescribed by the Commissioner, within 20 days of receipt of his/her overall annual professional performance review rating or the effective date of this section, whichever is later, and submit a copy of the appeal to the school district and/or BOCES. The school district and/or BOCES shall have ten days from receipt of a copy of such appeal to submit a reply to the Department.

(c) Based on the documentation received, if the Department overturns a teacher's/principal's rating on the State-provided growth score, the district/BOCES shall substitute the teacher's/principal's results on the back-up SLO developed by the district/BOCES for such teacher/principal. If a back-up SLO was not developed, then the teacher's/principal's overall composite score and rating shall be based on the portions of their annual professional performance review not affected by the nullification of the State-provided growth score. Provided, however, that following a successful appeal under paragraph (1) of subdivision (a) of this section, if a back-up SLO is used a teacher/principal shall not receive a score/rating higher than developing on such SLO.

(d) 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.

(e) 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/principal's performance that is the subject of the appeal.

(f) Nothing in this Subpart shall be construed to authorize a teacher/principal to commence the appeal process prior to receipt of his/her overall rating from the district/BOCES.

(g) During the pendency of an appeal under this section, nothing shall be construed to alter the obligation of a school district/BOCES to develop and implement a teacher improvement plan or principal improvement plan during the pendency of an appeal.

(h) Nothing in this section shall be construed to limit any rights of a teacher/principal under section 30-2.11 of this Subpart.

(i) Notwithstanding any other provision of rule or regulation to the contrary, a high school principal of a building that includes at least all of grades 9-12 who meets either of the criteria in paragraphs (1) or (2) of this subdivision shall not receive a State-provided growth score and shall instead use back-up SLOs:

(1) the principal would be rated Ineffective or Developing on the State-provided growth score but the graduation rate of the students in that school building exceeded 90%, and the proportion of the student population included in either the ELA Regents Median Growth Percentile or the Algebra Regents Median Growth Percentile was less than ten percent of the total enrollment for the school; or the principal

(2) has no Combined Median Growth Percentile rating or score, and the proportion of the student population included in the ELA Regents Median Growth Percentile and Algebra Regents Median Growth Percentile was less than five percent of the total enrollment for the school in one subject, and less than ten percent of the total enrollment in the other subject.

(3) If a back-up SLO was not developed, then the principal's overall composite score and rating shall be based on the remaining portions of their annual professional performance review.

7. A new Subpart 30-3 of the Rules of the Board of Regents shall be added, effective November 27, 2015, to read as follows:

SUBPART 30-3

ANNUAL PROFESSIONAL PERFORMANCE REVIEWS OF CLASSROOM  
TEACHERS AND BUILDING PRINCIPALS FOR THE 2015-2016 SCHOOL YEAR AND  
THEREAFTER

§30-3.1 Applicability.

(a) For annual professional performance reviews conducted by districts for the 2015-2016 school year and any school year thereafter, 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 §3012-d and this Subpart, except as otherwise provided in subdivision (b) of this section.

(b) The requirements of Education Law §3012-c and Subpart 30-2 of this Part shall continue to apply to annual professional performance reviews conducted prior to the 2015-2016 school year and thereafter, where such reviews are conducted pursuant to a collective bargaining agreement entered into on or before April 1, 2015 that remains in effect on and after April 1, 2015 until entry into a successor agreement.

(c) In accordance with Education Law §3012-d(12), all collective bargaining agreements entered into after April 1, 2015 shall be consistent with the requirements of Education Law §3012-d and this Subpart, unless such agreement related to the 2014-2015 school year only. Nothing in this Subpart shall be construed to abrogate any conflicting provisions of any collective bargaining agreement in effect on and after April 1, 2015 during the term of such agreement and until entry into a successor collective bargaining agreement, provided that notwithstanding any other provision of law to the contrary, upon expiration of such term and the entry into a successor collective bargaining agreement, all the requirements of Education Law §3012-d and this Subpart shall apply.

(d) 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, in accordance with Education Law §3012-d(1). 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.

(e) The Board of Regents shall convene an assessment and evaluation workgroup or workgroups, comprised of stakeholders and experts in the field to provide recommendations to the Board of Regents on assessments and evaluations that could be used for annual professional performance reviews in the future.

§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) 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.

(d) Common branch subjects shall mean common branch subjects as defined in section 80-1.1 of this Title.

(e) Co-principal means a certified administrator under Part 80 of this Title, designated by the school's controlling authority to have executive authority, management, and instructional leadership responsibility for all or a portion of a school or BOCES-operated instructional program in a situation in which more than one such administrator is so designated. The term co-principal implies equal line authority, with each designated administrator reporting to a district-level or comparable BOCES-level supervisor.

(f) 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.

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

(h) 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.

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

(j) 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.

(k) 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.

(l) 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 his or her 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.

(m) Leadership standards shall mean 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; 2008- available at the Office of Counsel, State Education Department, State Education Building, Room 148, 89 Washington Avenue, Albany, New York 12234). The Leadership Standards provide that an education leader promotes the success of every student by:

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

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

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

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

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

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

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

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

(p) State approved student growth model means a statistical model that uses prior academic history, poverty, students with disabilities and English language learners, and any additional factors approved by the Commissioner to measure student growth.

(q) 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 (i) another state; (ii) an institution of higher education; or (iii) 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. Such assessments may only be used in the optional student performance subcomponent in order to produce a growth score calculated pursuant to a State-provided or approved growth model.

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

(s) Student growth percentile score shall mean the result of a statistical model that calculates each student's change in achievement between two or more points in time on a State assessment or other comparable growth measure and compares each student's performance to that of similarly achieving students.

(t) 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. SLOs represent the most important learning for the year (or semester, where applicable). They 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 his or her goals were attained.

(u) Superintendent of schools 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.

(v) Teacher or principal state provided growth scores shall mean a measure of central tendency of the student growth percentile scores through the use of standard deviations and confidence ranges to identify with statistical certainty educators whose students' growth is well above or well below average compared to similar students for a teacher's or principal's students after the following student characteristics are taken into consideration: poverty, students with disabilities and English language learners. Additional factors may be added by the Commissioner, subject to approval by the Board of Regents.

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

(x) 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.

(y) 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; 2014- available at the Office of Counsel, State Education Department, State Education Building, Room 148, 89 Washington Avenue, Albany, New York 12234).

(z) 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.

(aa) 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 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 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 1 of each school year, on a form prescribed by the commissioner, to the commissioner for

approval. The provisions of Education Law §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 section; and

(7) include any certifications required under this Subpart.

(c) 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 1<sup>st</sup> of the school year next following the school year for which the teacher or principal's performance is measured. The teacher's and principal's score and rating on the observation/school visit category and in the student performance category, if available, shall be computed and provided to the teacher or principal, in writing, by no later than the last day of the school year for which the teacher or principal is being measured, but in no case later than September 1<sup>st</sup> of the school year next following the school year for which the teacher or principal's performance is measured. 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 §3012-d 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 §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 mandatory subcomponent and one optional subcomponent as follows:

(1) Mandatory first subcomponent.

(i) for a teacher whose course ends in a State-created or administered test for which there is a State-provided growth model and at least 50% of a teacher's students are covered under the State-provided growth measure, such teacher shall have a State-provided growth score based on such model; and

(ii) for a teacher whose course does not end in a State-created or administered test or where less than 50% of the teacher's students are covered 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. 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) 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.

(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 group, team, or linked results based on State/Regents assessments, as defined by the Commissioner in guidance.

(iv) Districts shall develop back-up SLOs for all teachers whose courses 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 teachers.

(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 State/Regents assessments or State-designed supplemental 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; or

(c) 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 or BOCES –wide group, team, or linked results where the State-approved growth model is capable of generating such a score.

(3) All State-provided or approved growth model scores must control for poverty, students with disabilities, English language learners status and prior academic history. For SLOs, these characteristics may be taken into account through the use of targets based on one year of “expected growth”, as determined by the superintendent or his or her designee.

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

(c) Weighting of Subcomponents Within Student Performance Category.

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

(2) If the optional second student growth subcomponent is selected, then the mandatory subcomponent shall be weighted at a minimum of 50% and the optional second subcomponent shall be weighted at no more than 50%.

(3) Each measure used in the student performance category (State provided growth score, SLOs, State-designed supplemental assessments) must result in a score between 0 and 20. The State will generate scores of 0-20 for measures using a State-provided growth score. Districts shall calculate scores for SLOs in accordance with the 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. For all other measures that are not State-provided growth measures, scores of 0-20 shall be computed locally in accordance with the State provided or approved growth model used.

<b>SLOs</b>	
<b>Percent of Students Meeting Target</b>	<b>Scoring Range</b>
0-4%	0
5-8%	1
9-12%	2
13-16%	3
17-20%	4
21-24%	5
25-28%	6
29-33%	7
34-38%	8
39-43%	9
44-48%	10
49-54%	11
55-59%	12
60-66%	13
67-74%	14
75-79%	15
80-84%	16
85-89%	17
90-92%	18
93-96%	19
97-100%	20

(d) Overall Rating on Student Performance Category.

(1) Multiple student performance measures shall be combined using a weighted average pursuant to subdivision (c) of this section to produce an overall student performance category score of 0 to 20. Based on such score, an overall student performance category rating shall be derived from the table below:

	<b>Overall Student Performance Category Score and Rating</b>	
	<i>Minimum</i>	<i>Maximum</i>
H	18	20
E	15	17
D	13	14
I	0	12

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

(i) Two Mandatory subcomponents.

(a) One observation shall be conducted by a principal or other trained administrator and;

(b) a second observation shall be conducted by: either one or more impartial independent trained evaluator(s) selected and trained by the district or in cases where a hardship waiver is granted by the Department pursuant to subclause (1) of this clause, a second observation shall be conducted by one or more evaluators selected and trained by the district, who are different than the evaluator(s) who conducted the evaluation pursuant to clause (a) of this paragraph. An independent trained evaluator may be

employed within the district, but may not be assigned to the same school building as the teacher being evaluated.

(1) 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.

(ii) Optional third subcomponent. The observations category may include a third optional subcomponent based on 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.

(iii) Frequency and Duration of Observations. The frequency and duration of observations shall be determined locally.

(iv) 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.

(a) 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.

(b) 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.

(v) 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.

(vi) At least one of the mandatory observations must be unannounced.

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

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

(ix) Observations must be based only on observable rubric subcomponents. The evaluator may select a limited number of observable rubric subcomponents for focus within a particular observation, so long as all observable Teaching Standards/Domains are addressed across the total number of annual observations.

(x) 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.

(xi) 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).

(xii) Each observation 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 shall be generated between 1-4. Multiple observations 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.

(xiii) 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:

(a) observations conducted by a principal or other trained administrator shall be weighted at a minimum of 80%.

(b) 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%.

(c) 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 clause (1) and (2) of this subparagraph.

(xiv) Overall Rating on the Teacher Observation Category. The overall observation score calculated pursuant to paragraphs (xii) and (xiii) 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:

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

§30-3.5 Standards and criteria for conducting annual professional performance reviews of building principals under Education Law §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 mandatory first subcomponent and an optional second subcomponent as follows:

(1) Mandatory first subcomponent.

(i) for a principal with at least 30% of his/her students covered under the State-provided growth measure, such principal shall have a State-provided growth score based on such model; and

(ii) for a principal where less than 30% 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. 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 in the exercise of their pedagogical judgment, may take the following characteristics into account: poverty, students with disabilities, English language learners 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.

(iii) for a principal of a building or program whose courses do not end in a State-created or administered test or where a State-provided growth score is not determined, districts shall use SLOs based on a list of State approved student assessments.

(2) Optional second subcomponent. A district may locally 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 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 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 or BOCES –wide group, team, or linked measures where the state-approved growth model is capable of generating such a score.

(3) All State-provided or approved growth scores must control for poverty, students with disabilities, English language learners status and prior academic history. For SLOs, these characteristics may be taken into account through the use of targets based on one year of “expected growth”, as determined by the superintendent or his or her designee.

(4) The district shall measure student growth using the same measure(s) of student growth for all building principals within the same building configuration or program.

(c) Weighting of Subcomponents Within Student Performance Category.

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

(2) If the optional second student growth subcomponent is selected, then the mandatory subcomponent shall be weighted at a minimum of 50% and the optional second subcomponent shall be weighted at no more than 50%.

(3) Each measure used in the student performance category (State provided growth score, SLOs, State-designed supplemental assessments) must result in a score between 0 and 20. The State will generate scores of 0-20 for measures using a State-provided growth score. Districts shall calculate 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. For all other measures that are not State-provided growth measures, scores of 0-20 shall be computed locally in accordance with the State provided or approved growth model used.

<b>SLOs</b>	<b>Scoring Range</b>
<b>Percent of Students Meeting Target</b>	
0-4%	0
5-8%	1
9-12%	2
13-16%	3
17-20%	4
21-24%	5
25-28%	6
29-33%	7
34-38%	8
39-43%	9
44-48%	10
49-54%	11
55-59%	12
60-66%	13
67-74%	14
75-79%	15
80-84%	16
85-89%	17
90-92%	18
93-96%	19

97-100%	20
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(4) 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. Based on such score, an overall student performance category rating shall be derived from the table below:

	<b>Overall Student Performance Category Score and Rating</b>	
	<i>Minimum</i>	<i>Maximum</i>
H	18	20
E	15	17
D	13	14
I	0	12

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

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

(i) 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) a second school visit shall be conducted by: either one or more impartial independent trained evaluator(s) selected and trained by the district or in cases where a hardship waiver is granted by the Department pursuant to clause (a) of this

subparagraph, a second school visit shall be conducted by one or more evaluators selected and trained by the district, who are different than the evaluator(s) who conducted the evaluation pursuant to subparagraph (i) of this paragraph. 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.

(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 his or her 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 mandatory 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 of schools, or other trained administrator from conducting school visits of a principal in addition to those required under this section for non-evaluative purposes.

(9) School visits may be based only on observable rubric subcomponents.

(10) The evaluator may select a limited number of observable rubric subcomponents for focus on within a particular school visit, so long as all observable ISLLC Standards are addressed across the total number of annual school visits.

(11) 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 observation score.

(12) 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.

(13) Each school visit 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 school visit shall be generated between 1-4. Multiple observations shall be combined using a weighted average, producing an overall observation 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 observations, a score of 0 will be assigned. Weighting of Subcomponents Within Principal School Visit Category. The weighting of the subcomponents within 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%.

(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%.

(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 clause (i) and (ii) of this subparagraph.

(14) Overall Rating on the Principal School Visits 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:

(15) 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:

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

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

(b) Notwithstanding subdivision (a) of this section, a teacher or principal who is rated using both subcomponents in the student performance category and receives a rating of Ineffective in such category shall be rated Ineffective overall; provided, however, that if the measure used in the second subcomponent is a State-provided growth score on a state-created or administered test, a teacher or principal who receives a rating of Ineffective in the student performance category shall not be eligible to receive a rating of Effective or Highly Effective overall;

(c) 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 §3012-d(7), 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 proposals ("RFP).

(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 the student growth percentile model and any other growth model approved by the Department as defined in section 30-3.2 of this Subpart;

(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 growth used 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 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 and this Subpart, a district shall formulate and commence implementation of a teacher or principal improvement plan for such teacher or principal by October 1 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 his or her designee in the exercise of their pedagogical judgment 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 §3012-d, 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 §3012-d 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 §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 §3012-d 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 §§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 process prior to receipt of his or her 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.

§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 §3012-c. The provisions of Education Law §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 §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 §3012-c shall apply without any modification;

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

(1) Any reference in subdivision (5-a) to a proceeding pursuant to Education Law §3020-a based on a pattern of ineffective teaching shall be deemed to be a reference to a proceeding pursuant to Education Law §3020-b against a teacher or principal who receives two or more consecutive composite Ineffective ratings; and in accordance with Education Law §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 §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 §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 §3012-c or 3012-d was fraudulent, and if not successfully overcome, the finding, absent extraordinary circumstances, shall be just cause for removal.

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

#### §30-3.16. Challenges to State-Provided Growth Scores.

(a) A teacher/principal shall have the right to challenge their State-provided growth score under this Subpart; provided that the teacher/principal provides sufficient documentation that he/she meets at least one of the following criteria in their annual evaluation:

(1) a teacher/principal was rated Ineffective on his/her State-provided growth score and Highly Effective on the Observation/School Visit category in the current year and was rated either Effective or Highly Effective on his/her State-provided growth score in the previous year; or

(2) a high school principal of a building that includes at least all of grades 9-12, was rated Ineffective on the State-provided growth score but such percent of students as shall be established by the Commissioner in his/her school/program within four years of first entry into grade 9 received results on department-approved alternative examinations in English Language Arts and/or or mathematics as described in section 100.2(f) of this Title (including, but not limited to, advanced placement examinations, and/or International Baccalaureate examinations, SAT II, etc.) scored at proficiency (i.e., a Level 3 or higher).

(b) A teacher/principal shall submit an appeal to the Department, in a manner prescribed by the Commissioner, within 20 days of receipt of his/her overall annual professional performance review rating or the effective date of this section, whichever is later, and submit a copy of the appeal to the school district and/or BOCES. The school district and/or BOCES shall have ten days from receipt of a copy of such appeal to submit a reply to the Department.

(c) Based on the documentation received, if the Department overturns a teacher's/principal's rating on the State-provided growth score, the district/BOCES shall substitute the teacher's/principal's results on the back-up SLO developed by the district/BOCES for such teacher/principal. If a back-up SLO was not developed, then the teacher's/principal's overall composite score and rating shall be based on the

portions of their annual professional performance review not affected by the nullification of the State-provided growth score. Provided, however, that following a successful appeal under paragraph (1) of subdivision (a) of this section, if a back-up SLO is used a teacher/principal shall not receive a score/rating higher than developing on such SLO.

(d) 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.

(e) 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/principal's performance that is the subject of the appeal.

(f) Nothing in this Subpart shall be construed to authorize a teacher/principal to commence the appeal process prior to receipt of his/her overall rating from the district/BOCES.

(g) During the pendency of an appeal under this section, nothing shall be construed to alter the obligation of a school district/BOCES to develop and implement a teacher improvement plan or principal improvement plan during the pendency of an appeal.

(h) Nothing in this section shall be construed to limit any rights of a teacher/principal under section 30-2.11 of this Subpart.

(i) Notwithstanding any other provision of rule or regulation to the contrary, a high school principal of a building that includes at least all of grades 9-12 who meets either of the criteria in paragraphs (1) or (2) of this subdivision shall not receive a State-provided growth score and shall instead use back-up SLOs:

(1) the principal would be rated Ineffective or Developing on the State-provided growth score but the graduation rate of the students in that school building exceeded 90%, and the proportion of the student population included in either the ELA Regents Median Growth Percentile or the Algebra Regents Median Growth Percentile was less than ten percent of the total enrollment for the school; or the principal

(2) has no Combined Median Growth Percentile rating or score, and the proportion of the student population included in the ELA Regents Median Growth Percentile and Algebra Regents Median Growth Percentile was less than five percent of the total enrollment for the school in one subject, and less than ten percent of the total enrollment in the other subject.

(3) If a back-up SLO was not developed, then the principal's overall composite score and rating shall be based on the remaining portions of their annual professional performance review.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE  
EMERGENCY ACTION

The proposed rule is necessary to implement Education Law sections 3012-c and 3012-d, as amended and added by Subpart E of Part EE of Chapter 56 of the Laws of 2015, regarding annual professional performance reviews (APPRs) of classroom teachers and building principals.

The proposed amendment was adopted by emergency action at the June 15-16, 2015 Board of Regents meeting. A Notice of Proposed Rule Making was published in the State Register on July 8, 2015. The Department subsequently revised the proposed rule to address public comment received. The Board of Regents adopted the revised rule as an emergency measure at its September meeting, effective September 28, 2015. A Notice of Revised Rule Making was published in the State Register on October 7, 2015. 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 30-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 202 (4-a), would be the November 16-17, 2015 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the November meeting, would be December 2, 2015, the date a Notice of Adoption would be published in the State Register.

However, the September emergency rule will expire on November 26, 2015, 60 days after its filing with the Department of State. Emergency action is therefore necessary for the preservation of the general welfare to ensure that the proposed

amendment adopted by emergency action at the June 2015 Regents meeting and revised at the September 2015 Regents meeting, remains continuously in effect until the effective date of its permanent adoption in order to timely implement provisions of Subpart E of Part EE of Chapter 56 of the Laws of 2015 relating to a new annual evaluation system for classroom teachers and building principals.

**8 NYCRR §30-2 and 30-3**

**ASSESSMENT OF PUBLIC COMMENT**

Since publication of a Notice of Revised Rule Making in the State Register on October 7, 2015, the State Education Department (SED) received the following comments:

1. COMMENT:

We received some comments requesting the trigger for an appeal of a State-provided growth score be expanded to include the following:

First, the definition should be expanded to include teachers who receive an Effective rating on their observations and an Ineffective growth score. Teachers receiving an Effective score on their observations are deemed by their lead evaluator to be an effective teacher. A two rating category difference between the growth score and the observation rating should be enough to trigger an appeal.

Second, any teacher who receives a group measure score based on a principal's growth score should have the same ability to appeal as the principal does. Simple fairness says if the growth score is not correct for the principal it cannot be correct for the teachers in the building. When the group measure was part of the state growth SLO process, the teacher had no say in the decision to use the measure and the measure may not be related to their subject area.

Third, any teacher teaching students that are in the 95th percentile of scores or the 5th percentile of scores who receives an Ineffective should be eligible to appeal their growth score. This change would address the questions raised by teachers of students

falling into the extremes of performance where the tests do not always have enough items to measure growth properly at either end of the scale.

Fourth, it was suggested that the appeals process be expanded for teachers who receive a growth rating of Ineffective or Developing in the prior year and the results in both years were based on the NYSAA and NYSESLAT.

Fifth, one commenter suggested that the appeals process be expanded to include teachers who have fewer than 20 assessment results who were continuously enrolled.

#### DEPARTMENT RESPONSE:

The process for teachers to challenge State-provided growth scores was added to the regulations to address certain limited circumstances where there is a significant fluctuation in growth scores from one year to the next and other non-statistical measures of effectiveness strongly indicate that the teacher was otherwise Highly Effective and that the score on the State-provided growth score was an anomaly. Accordingly, the Department believes that to be eligible for an appeal, it is appropriate to require that a teacher receive a rating of Highly Effective in the Other Measures subcomponent.

With respect to scores based on school-wide/group/team measures, the appeal process was intended to allow teachers or principals to challenge only State-provided growth scores. In the case of school-wide/group/team measures, these scores are not generated by the State, but instead are assigned by the district. Therefore, these scores cannot be challenged through the State appeal process. However, depending on a district/BOCES local appeal process, such scores may be appealed locally.

Regarding allowing appeals in instances where the students in a teacher's class or principal's building have a very low or high proficiency level on the underlying assessment, the Department does not recommend changes to the State appeal process because the State-provided growth model does not measure proficiency, but instead growth, as required by Education Law §§3012-c and 3012-d. Moreover, the Department's regulations provide for a workgroup to be convened to examine evaluations, including the growth model. The Department believes that the impact of students with very high and very low scores may have on the growth model is an appropriate topic for the workgroup to consider.

With respect to the comment that the appeals process be expanded for teachers who receive a growth rating of Ineffective or Developing in the prior year and the results in both years were based on the NYSAA and NYSESLAT, the summative results of the State-provided growth model do not include results from the NYSAA or NYSESLAT. Therefore, the Department does not recommend any changes to the appeal process.

Another commenter suggested that the appeals process be expanded to include teachers with fewer than 20 assessment results who were continuously enrolled. A State-provided growth score is not generated for teachers who have fewer than 16 assessment scores. The Department, after consultation with its vendor, believes that a minimum "n" size of 16 is appropriate and that no changes to the proposed amendment are needed.

Another commenter suggests that the appeals process should be available to any teacher who is rated Developing on a growth measure, and whose composite rating has resulted in a rating of Ineffective or Developing because of potential adverse

consequences related to obtaining tenure. The appeals process was intended to address certain limited circumstances where there is a significant fluctuation in growth scores from one year to the next and other non-statistical measures of effectiveness strongly indicate that the teacher was otherwise Highly Effective and that the score on the State-provided growth score was an anomaly. The Department does not believe such a change would be consistent with the intent of the appeals process.

## 2. COMMENT:

The emergency regulations define a growth model as a statistical calculation. This definition severely limits what can be submitted for approval to SED to growth models such as the model currently used by SED under the state growth category. As the Regents have acknowledged with the growth score appeals process, these types of models have significant limitations and can produce serious anomalies. Districts and local unions would like to have options in this category that teachers can understand and have confidence in. Statistical growth models do not offer this type of option. On the State growth side of the calculation, SED has acknowledged for teachers not covered by the growth model, which is 80 percent of teachers, that student learning objectives that utilize a target setting methodology is a comparable measure of growth. This option should be made available in the second optional assessment category to give districts and local unions a real choice. We urge you to change the definition of growth model to allow more options in this category.

## DEPARTMENT RESPONSE:

The Department's regulations provide for a workgroup to be convened to examine evaluations and review the existing State growth model. The Department

believes that the definition of “growth model” in the optional subcomponent is a topic best left to further study by the Department and the workgroup.

3. COMMENT:

The SLO scoring bands contained in the emergency regulations will significantly change the SLO process in many school districts around the State. In the observation category, districts were given a range on the scoring bands for the rubrics to allow for local flexibility and to maintain the current process which has been working well. The same type of option should be available for the SLO scoring bands to create less disruption. A change in the scoring bands will require the districts to re-train teachers and administrators on the SLO process. We urge you to allow districts to avoid these new training costs by giving them the option to continue their current SLO scoring bands

DEPARTMENT RESPONSE:

After lengthy discussion and debate at the June Board of Regents meeting, and after taking into account the recommendations from the May Learning Summit and other stakeholder feedback, the Board of Regents chose to adopt the SLO scoring ranges. Further, these ranges mimic the ranges that the Department has recommended through guidance under Education Law §3012-c.

4. COMMENT:

Section 3012-c(4) required that TIPs be developed locally through collective bargaining. The emergency regulations attempt to change this provision and remove TIPs from the bargaining process. However, section 3012-d did not give SED the authority to modify the TIPs provision in this way. In addition, TIPs are a mandatory subject of bargaining because they are procedures related to both the evaluation process under 3012-d and the disciplinary process under 3020-b. Also, virtually every

plan in the state has a collectively bargained TIPs process, and even if these agreements include non-mandatory provisions, such provisions are now mandatorily negotiable pursuant to the Taylor Law. SED cannot alter the mandatory nature of a subject of bargaining through regulation, so districts that refuse to bargain over TIPs will be violating the Taylor Law. If the regulation remains in its current form, it is likely that bargaining over the new APPR will be disrupted and there will be significant delays in getting plans completed. We therefore urge you to amend the regulations to simply continue the statutory provisions from section 3012-c regarding TIPs.

#### DEPARTMENT RESPONSE:

Pursuant to Education Law §3012-d(15), the Commissioner shall determine *the extent to which* Teacher Improvement Plans and/or Principal Improvement plans of §3012-c apply to §3012-d. The Department believes that the changes made in the regulation to TIP/PIPs, were within its statutory authority to change.

#### 5. COMMENT:

The emergency regulations purport to give SED the power to require changes to collective bargaining agreements as part of a corrective action plan. However, section 3012-d did not give SED the authority to modify the terms of the corrective action provision as written in 3012-c in this manner. In addition, the Taylor Law precludes SED from dictating the terms of a collective bargaining agreement or requiring changes in a collectively bargained APPR plan that has been approved by SED. Such actions if taken by SED could also unconstitutionally impair duly negotiated agreements. We therefore urge you to amend the regulations to delete the reference to requiring changes to collective bargaining agreements.

DEPARTMENT RESPONSE:

Pursuant to Education Law §3012-d(15), the Commissioner shall determine *the extent to which* the corrective action requirements of §3012-c apply to §3012-d. The Department believes that the changes made in the regulation to corrective action were within its statutory authority to change.

6. COMMENT:

Current APPR guidance requires teachers who administer the NYSAA or NYSESLAT to their students to use these assessments as the summative assessment for their SLOs. Since these exams were not created for this purpose, we are requesting local flexibility in determining the summative assessment to be used for the SLOs for these teachers. We urge you to provide this flexibility by amending current guidance.

DEPARTMENT RESPONSE:

Education Law §3012-d(4)(a)(1)(B) states that any teacher whose course ends in a state-created or administered assessment for which there is no state-provided growth model must use that assessment as the underlying evidence for the SLO. The Department believes that the current regulations and guidance are consistent with this statutory requirement.

7. COMMENT:

An area of principal concern relates to that part of the September emergency Rule that proposes the addition of a new section 30-3.16. That section would allow teachers and principals to challenge their state-provided growth score and obtain a revised APPR rating if they are successful in such challenge.

Specifically, section 30-3.16(c) provides that:

... if the Department overturns a teacher's/principal's rating on the State-provided growth score, the district/BOCES shall substitute the teacher's/principal's results on the back-up SLO developed by the district/BOCES for such teacher/principal. **If a back-up SLO was not developed**, then the teacher's/principal's overall composite score and rating shall be based on the portions of their annual professional performance review not affected by the nullification of the State-provided growth score... (emphasis added).

Pursuant to the text of the bolded language, it would be reasonable to conclude that the development of back-up SLOs is not mandatory. In contrast, however, the plain terms of section 30-3.4(b)(1)(iv) expressly state that:

Districts shall develop back-up SLOs for all teachers whose courses 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 teachers.

Clearly, the apparent conflict between both sections of the proposed Rule thus creates confusion regarding the mandatory/non-mandatory nature of back-up SLOs. Are school districts required to develop back-up SLOs or not? If SLOs are required by section 30-3.4(b)(1)(iv), then there should be no language in section 30-3.16 that can be interpreted to suggest the contrary.

Thus, the Association urges that, to avoid confusion over the proper implementation of the proposed rules, the Board of Regents adopt revisions that remove the ambiguities presented by the language discussed above.

#### DEPARTMENT RESPONSE:

Section 30-3.4(b)(1)(iv) requires districts to develop back-up SLOs for all teachers whose courses 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 teachers. Section 30-3.4(b)(1)(iv) applies to annual professional performance review plans negotiated pursuant to Education Law §3012-d. However, the appeals process described in section 30-3.16 applies to APPRs conducted in the 2015-2016 school year and thereafter. Therefore, there may be some rare circumstances under Education Law §3012-c where the district did not develop back-up SLOs even though the Department recommended that they be set. Therefore, no change is needed.

8. COMMENT:

The Westchester Putnam School Boards Association strongly supports a two-year moratorium on the implementation of 3012-d and the concurrent establishment of a panel of experts (including school district practitioners) to provide guidance on the development of a reliable, valid, educationally sound accountability system. This new accountability system must serve the best interests of our children's K-12 education; it should be clear in intent, yet broad enough to allow SED to develop and implement a system that has the flexibility to address the diverse needs of our school districts. And its implementation must not be linked to state aid payments.

DEPARTMENT RESPONSE:

The Department has considered this comment. However since this comment seeks legislative amendments, no response is necessary.

9. COMMENT:

Based on the current interpretation of Subpart section 30-3.4(b)(1)(iii), identified below, my district is being encouraged to link some teachers in our K-2 Primary School

to state assessments used in our 3-6 Intermediate School. I do not believe the current interpretation of Subpart section 30-3.4(b)(1)(iii) makes sense because will not measure the true contribution of some of our teachers.

The language in this subpart does not indicate that SLOs for teachers whose courses do not end in a state test need to be tied to "course specific" assessments... it indicates the option of "using SLOs" based on "approved assessments" or linked to state assessments. In our case, it does not make sense for instance, to link our K-2 Physical Education teacher to any state assessment used in a building where he does not teach. It does make sense, however, to link him to the students in the building where he works using the state approved assessment results, as measured by SLOs, since he will have more of a direct impact on their learning for the given year. For instance, he may use a Common Core Tier 2 Vocabulary word wall during PE classes that will directly impact the performance of K-2 students on the actual state-approved third party STAR Reading assessment that his students will take at the end of the year for ELA... as measured by the SLOs created by each teacher in the building. The K-2 Principal will be tied to the SLOs for all students in the building, and I believe the regulation language above provides enough latitude to do the same for those K-2 teachers whose course does not end in a State test. However, that does not seem to be how it is being interpreted.

**DEPARTMENT RESPONSE:**

Education Law §3012-d(6)(d) requires that all district or regionally-developed assessments that are intended to be used for APPR purposes be approved by the Department. As part of the Assessment Request for Qualifications (RFQ) process,

applicants must specify the grades and subjects for which their assessments meet all of the required criteria. Accordingly, if an assessment provider only indicates that their assessment can be used to measure student learning in certain grades and subjects as part of their RFQ application, the Department can only approve the assessment for use in those grades and subjects.

#### 10. COMMENT:

The "observable" aspect of these regulations has been confusing to those in the field. As a group the leaders at this conference were befuddled by the idea that aspects of the NY State Learning Standards could be eliminated at the local level from the evaluation process. The guidance that was reiterated today was that it is a local decision for each district to determine what is observable in their rubric. Many of us would respectfully ask for this language to be reconsidered.

Each approved rubric was approved because it corresponded back to the NY State Teaching Standards. Every leader in my work groups today said they could very easily make a case for observability in each of the seven NY State Teaching Standards.

We discussed that it made much more sense to us to say that all the NY State Teaching Standards need to be observed and rated but that it is a local decision, based upon the varying rubrics, to determine which rubric sub-components are observable.

The current language allows for far too much inconsistency in the scoring and comparability of the teacher performance half. For instance, my BOCES weighted the professional responsibilities aspects of the rubric at 20%. Meanwhile, a neighboring district removed these teaching standards from their evaluations all together and their teachers will not be rated on any of those standards.

#### DEPARTMENT RESPONSE:

Rubric providers will be asked to identify the observable teaching standards in the rubrics in the new RFQ being issued by the Department. With regard to consideration of the observable standards and their respective indicators, Education Law §3012-d(6) prohibits the use of artifacts of teacher practice in any subcomponent of a teacher's evaluation. Accordingly, sections 30-3.4(d)(2)(ix) and (x) of the Rules of the Board of Regents limit observations to only those subcomponents of the practice rubric that are observable, while at the same time recognizing that parts of the rubric that are not observable during classroom observations may be incorporated into the observation score where they are observed during any optional pre- or post-observation review or other natural conversations between teachers and their evaluators. The intention of the regulatory language is provide flexibility to districts and BOCES to implement observation procedures that provide meaningful feedback to educators on their practice while maintaining fidelity to the requirements of Education Law §3012-d.

#### 11. COMMENT:

There appears to be confusion over what constitutes an "observation cycle" Some interpret this as an entire school year with a teacher's scores growing in a fluid manner throughout the year. Others interpret an observation cycle to be attached to an observation type (i.e. in our district the observation cycle for an announced observation begins with the pre-observation, ends with the post-observation and is contractually completed in an 18 day window). It is our interpretation that after the 18 days of this cycle, the score earned for this observation type remains static. The teacher will receive additional scores from their other observation types during additional observation cycles throughout the school year. The scores from the observation cycles

will be averaged and then weighted by observer type in determining the 1-4 score to be put into the matrix.

**DEPARTMENT RESPONSE:**

Neither the law nor the regulations mention or define “observation cycle” and Education Law §3012-d(10)(b) requires districts and BOCES to collectively bargain how to implement the provisions of the teacher observation/principal school visit category.. Therefore, the parameters for what will or will not be included as part of the observation process shall be determined locally.

**12. COMMENT:**

Out of the 90 students in my charge, 9 chose to sit for the NYS Math assessment. Because I did not have at least 16 students take the assessment, I could not generate an individual state provided growth score. The back up plan my district put in place was for me, and others just like me, to receive the principal’s score. His score is derived from all the students who took both the ELA and Math assessments. This negatively impacts me, as the score I received does not correlate with the students I teach. This is a problem for me because I am now rated in my growth component as a developing teacher. This rating is based on student performance of students I do not teach.

It is important to note that I could not appeal the score the district assigned to me because according to the NYSED growth score appeal process, if I received a building level score, I was not eligible for the appeal. However, my administrative colleagues may appeal their scores. How is this fair? How does the Board of Regents rationalize this system of evaluation?

DEPARTMENT RESPONSE:

See response to comment #1. With respect to scores based on school-wide/group/team measures, the appeal process was intended to allow teachers or principals to challenge only State-provided growth scores. In the case of school-wide/group/team measures, these scores are not generated by the State, but instead are assigned by the district. Therefore, these scores cannot be challenged through the State appeal process. However, depending on a district/BOCES local appeal process, such scores may be appealed locally.

13. COMMENT: Another commenter asks the Department to define an independent evaluator to mean:

- a. The evaluator must not work or have previously worked in the school where the teacher being observed works;
- b. The evaluator must not work or have previously worked for or with the principal or any assistant principal of the school where the teacher being observed works;
- c. The evaluator's own performance review or any salary, rate of pay or benefit must not be based on or affected in any way by the ratings given to teachers; and
- d. The evaluator may not confer with the teacher's supervisor during the school supervisor.

RESPONSE: Education Law §3012-d(4)(b)(2) requires that teachers be evaluated based on a classroom observation by an impartial independent trained evaluator or evaluators selected by the district. The statute allows an independent

trained evaluator to be employed in the same district, but not the same building. The proposed amendment is consistent with the statute. The Department has received numerous comments from districts, requesting flexibility from this requirement and the proposed amendment allows certain districts in limited situations to apply for a hardship waiver from this requirement. In light of the numerous comments received requesting flexibility from this requirement, the Department does not believe that more stringent requirements are needed.

14. COMMENT: One comment suggests that the Department make explicit that “other natural conversations” refer to conversations about an observed lesson or other parts of the rubric that relate to the lesson observed that may not have been directly observed.

RESPONSE: The proposed amendment provides districts/BOCES with the flexibility to observe the New York State Teaching Standards/Domains that are part of the rubric but not observable during the classroom observation 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. In an effort to provide districts/BOCES with flexibility, the Department does not believe that a single definition of “other natural conversations” is necessary.

15. COMMENT: Another commenter suggests that the Department expand the district waiver regarding placement of students by allowing the teacher improvement plan to constitute the improvement plan that allows a district to be eligible for a waiver from the requirement that no student be placed in the classes of teachers with

Ineffective ratings for two years. In addition, the waiver should be automatically granted in schools that have only one teacher of a subject.

RESPONSE: Section 30-3.14 of the proposed amendment allows the Commissioner to grant a waiver from the statutory prohibition of a student receiving a teacher rated ineffective for two consecutive years if a 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 the district has an improvement and/or removal plan in place for the teacher at issue that meets certain guidelines prescribed by the Commissioner. The Department will consider whether a TIP is acceptable when drafting its guidelines. Moreover, the waiver may already be granted for districts that only have one teacher in a certain subject area if they have an improvement and/or removal plan in place. Therefore, the Department does not believe a change is needed.