



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

TO: The Honorable the Members of the Board of Regents

FROM: John L. D'Agati 

SUBJECT: Proposed Amendments to Section 30-2.1 of the Rules of the Board of Regents to Define Performance for Purposes of Termination Decisions for Probationary Teachers Relating to Annual Professional Performance Reviews (APPR)

DATE: September 8, 2014

AUTHORIZATION(S):  

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents amend section 30-2.1 of the Rules of the Board of Regents to define performance for purposes of termination decisions for probationary teachers related to Annual Professional Performance Reviews (APPRs)?

Reason(s) for Consideration

Review of Policy.

Proposed Handling

The proposed amendment is submitted to the Full Board for emergency adoption and confirmation at its September 2014 meeting (see Attachment A - Amendment to the Regulations). A Statement of Facts and Circumstances Justifying the Emergency Adoption is attached as Attachment B. Supporting materials are available upon request to the Secretary to the Board of Regents.

Procedural History

The proposed rule was approved by the Board by emergency action at the June Regents meeting and a Notice of Proposed Rule Making and Emergency Adoption was published in the State Register on July 9, 2014. Supporting materials are available upon request to the Secretary to the Board of Regents.

Background

On March 14, 2012, the Governor signed Chapter 21 of the Laws of 2012; which amended, among other provisions, Education Law §3012-c(1) to provide, in pertinent part, as follows:

“nothing in this section shall be construed to affect the statutory right of a school district or board of cooperative educational services to terminate a probationary teacher or principal for 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.”

This amendment was embedded in section 30-2.1(d) of the Rules of the Board of Regents in March 2012 and the Department shortly thereafter issued guidance interpreting the statutory and regulatory language. However, school officials have continued to express the need to clarify the extent of a board of education’s discretion to terminate a probationary classroom teacher or building principal for reasons other than their composite effectiveness rating under their APPR plan. The Legislature and the Governor have asked the Commissioner to consider proposing a clarifying amendment to Subpart 30-2 of the Regents Rules on this issue that would codify the Department’s position in guidance.

The proposed amendment would clarify that the references to “performance” of the teacher or principal in the classroom or school for purposes of Education Law §3012-c(1) and (5)(b) and sections 30-2.1(d) and 30-2.11(c) of the Rules of the Board of Regents are references to the teacher’s or principal’s performance on the APPR, as measured by the teacher’s or principal’s overall composite rating. Section 30-2.1(d) is thus amended to define “performance” for purposes of these statutory and regulatory provisions as the teacher’s or principal’s overall composite rating on the APPR.

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That Section 30-2.1 of the Rules of the Board of Regents be amended, as submitted, effective September 22, 2014 as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to clarify current regulation by defining performance for termination decisions related to APPR ratings; and it is further

VOTED: That Section 30-2.1 of the Rules of the Board of Regents be amended, as submitted, effective October 1, 2014.

Timetable for Implementation

If adopted at the September 2014 meeting, the proposed amendment will be effective as an emergency rule on September 22, 2014 and as a permanent rule on October 1, 2014.

AMENDMENT TO THE RULES OF THE BOARD OF REGENTS

Pursuant to sections 101, 207, 215, 305 and section 3012-c of the Education Law.

1. Subdivision (d) of section 30-2.1 of the Rules of the Board of Regents is amended effective September 22, 2014, 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 section 3012-c(1). Nothing herein shall be construed to affect the statutory right of a school district or BOCES to terminate a probationary teacher or principal for 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. For purposes of this subdivision, section 30-2.11(c) of this Subpart, and Education Law section 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.

Attachment B

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5) for revised rule makings, is the September 2014 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the September 2014 meeting, would be October 1, 2014, the date a Notice of Adoption would be published in the State Register. Therefore, emergency action to adopt the proposed rule is necessary now for the preservation of the general welfare in order to ensure that school districts and boards of cooperative educational services are notified of the clarifying definition of performance for termination decisions made based on APPR results for the 2013-2014 school year and thereafter and to ensure that the emergency rule adopted at the June Regents meeting remains continuously in effect until it can be adopted as a permanent rule.