



**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:** Joseph P. Frey

**SUBJECT:** Amendment of Section 100.2(o) of the Regulations of the Commissioner of Education Relating to the Annual Professional Performance Review for Teachers in the Classroom Teaching Service

**DATE:** November 2, 2010

**AUTHORIZATION(S):**

### **SUMMARY**

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

Should the Board of Regents amend Section 100.2(o) of the Regulations of the Commissioner of Education relating to the Annual Professional Performance Review of Teachers?

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

Review of Policy.

#### **Procedural History**

At its April 2010 meeting, the Board of Regents adopted the proposed amendment as an emergency measure, effective May 1, 2010. A Notice of Proposed Rule Making was published with the Department of State on May 5, 2010. At their July and September meetings, the Board of Regents adopted the proposed amendment as a second and third emergency measure, effective July 29, 2010 and September 26, 2010.

#### **Proposed Handling**

The proposed amendment is submitted to the Full Board for adoption as a fourth emergency measure at its November 2010 meeting. A statement of facts and circumstances justifying the emergency action is attached.

#### **Background Information**

As part of the current Annual Professional Performance Review (“APPR”) set forth in section 100.2 of the Commissioner’s regulations, school districts and BOCES are required to perform annual evaluations of their teachers and the evaluation must be based on at least eight evaluation criteria prescribed in regulation. As part of its reform agenda for strengthening teaching, the Board of Regents have made a policy determination to make four major changes to the current requirements for the annual professional performance reviews of teachers.

First, the proposed amendment requires school districts and BOCES to include student growth as a mandatory criteria to be used in the evaluation of teachers. The proposed amendment also defines student growth.

Secondly, the proposed amendment requires school districts and BOCES to implement the following uniform qualitative rating categories/criteria in the evaluation of its teachers: Highly Effective, Effective, Developing and Ineffective and defines each of these quality rating categories/criteria.

The proposed amendment also requires that school districts and BOCES provide timely and constructive feedback to the teacher, including data on student growth for each of their students, the class and the school as a whole and feedback and training on how the teacher can use such data to improve instruction as part of the teacher’s APPR.

Following the Regents’ adoption of the proposed amendments at its April 2010 meeting, the Legislature and the Governor enacted Chapter 103 of the Laws of 2010. This new law establishes a new comprehensive annual evaluation system for teachers and principals based on multiple measures of effectiveness, including student achievement measures, which will result in a single composite effectiveness score for every teacher and principal. It also provides for the establishment of an advisory committee comprised of representatives of teachers, principals and other stakeholders that will make recommendations to the Commissioner and Regents prior to the adoption of implementing regulations and the use of a value-added growth model in evaluations. Department staff are conducting a review of the provisions of the statute and evaluating its impact on the existing APPR regulation. We anticipate coming to the Regents next Spring with any recommended revisions to the regulations based upon the new law, the Department’s work and the input of the advisory committee.

Emergency action is necessary at the November 2010 Board of Regents meeting in order to ensure that the rule remains continuously in effect until such time as it can be revised to conform to Chapter 103 of the Laws of 2010 and adopted as a permanent rule, after expiration of the 30-day public comment period for revised rule makings prescribed in the State Administrative Procedure Act, and thereby avoid disruption in the annual professional performance reviews of teachers.

### Recommendation

VOTED: That subdivision (o) of Section 100.2 of the Regulations of the Commissioner of Education be repealed and a new subdivision (o) shall be added to

section 100.2 of the Regulations of the Commissioner of Education, as submitted, effective November 23, 2010, as an emergency action upon a finding by the Board of Regents that such action is necessary to ensure that the emergency rule remains continuously in effect until it can be adopted and made effective as a permanent rule.

#### Timetable for Implementation

The September emergency adoption will expire on November 24, 2010. If adopted at the November 2010 meeting as an emergency measure, the proposed amendment will become effective on November 23, 2010.

## AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 3001 and 3004 of the Education Law.

1. Subdivision (o) of section 100.2 of the Regulations of the Commissioner of Education is repealed, effective November 23, 2010.

2. A new subdivision (o) of section 100.2 of the Regulations of the Commissioner of Education is added, effective November 23, 2010, as follows:

(o) Annual professional performance review.

(1) For school years commencing on or after July 1, 2000 and ending prior to June 30, 2011, each school district and BOCES shall be subject to the requirements of this paragraph.

(i) For purposes of this paragraph, the governing body of each school district shall mean the board of education of each school district, and in the case of the City School District of the City of New York it shall mean the Board of Education of the City School District of the City of New York.

(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, 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.

(iii) Professional performance review plan.

(a) Development and adoption of the plan.

(1) By September 1, 2000, the governing body of each school district and BOCES shall adopt a plan, which may be an annual or multi-year plan, for the annual professional performance review of its teachers providing instructional services or pupil

personnel services, as defined in section 80-1.1 of this Title, that meets the content requirements prescribed in clause (b) of this subparagraph.

(2) Each superintendent and in the case of the City School District of the City of New York, the chancellor, in collaboration with teachers, pupil personnel professionals, administrators and parents selected by the superintendent or in the case of the City School District of New York, the chancellor, with the advice of their respective peers, shall develop the professional performance review plan, which shall be approved by the governing body of each school district or BOCES, filed in the district or BOCES office, as applicable, and available for review by any individual no later than September 10th of each year. The governing body of each school district and BOCES shall provide organizations representing parents and the recognized representative of the teachers' bargaining unit with an opportunity to comment on such plan prior to its adoption.

(b) Content of the plan.

(1) Criteria for evaluation of teachers providing instructional services. The professional performance review plan shall describe the criteria that the school district or BOCES shall use to evaluate its teachers providing instructional services, which shall include but not be limited to an evaluation of the following:

(i) content knowledge, the teacher shall demonstrate a thorough knowledge of the subject matter area and curriculum;

(ii) preparation, the teacher shall demonstrate appropriate preparation employing the necessary pedagogical practices to support instruction;

(iii) instructional delivery, the teacher shall demonstrate that the delivery of instruction results in active student involvement, appropriate teacher/student interaction and meaningful lesson plans resulting in student learning;

(iv) classroom management, the teacher shall demonstrate classroom management skills supportive of diverse student learning needs which create an environment conducive to student learning;

(v) student development, the teacher shall demonstrate knowledge of student development, an understanding and appreciation of diversity and the regular application of developmentally appropriate instructional strategies for the benefit of all students;

(vi) student assessment, the teacher shall demonstrate that he or she implements assessment techniques based on appropriate learning standards designed to measure students' progress in learning and that he or she successfully utilizes analysis of available student performance data (such as State test results, student work, school-developed assessments, teacher-developed assessments, etc.) and other relevant information (such as documented health or nutrition needs, or other student characteristics affecting learning) when providing instruction;

(vii) collaboration, the teacher shall demonstrate that he or she develops effective collaborative relationships with students, parents or caregivers, as needed, and appropriate support personnel to meet the learning needs of students; and

(viii) reflective and responsive practice, the teacher shall demonstrate that practice is reviewed, effectively assessed and appropriate adjustments are made on a continuing basis.

(2) Criteria for the evaluation of teachers providing pupil personnel services. The plan shall describe the criteria that the school district or BOCES shall use to evaluate teachers providing pupil personnel services, as defined in section 80-1.1 of this Title.

(3) Assessment approaches. The plan shall describe the methods that the school districts or BOCES shall employ to assess teachers' performance, which may include but is not limited to the following: classroom observation, videotape assessment,

self review, peer review and portfolio review. For teachers possessing a transitional or initial certificate, the plan shall require the teacher to be evaluated based on portfolio review, which may include but is not limited to: a video of teaching performance, a sample lesson plan, a sample of student work, student assessment instruments and the teacher's reflection on his or her classroom performance.

(4) Teacher improvement. The plan shall describe how the school district or BOCES addresses the performance of teachers whose performance is evaluated as unsatisfactory, and shall require the development of a teacher improvement plan for teachers so evaluated, which shall be developed by the district or BOCES in consultation with such teacher.

(5) Training in performance evaluation. The plan shall describe how the school district or BOCES provides training in good practice for the conducting of performance evaluations to staff who perform such evaluations, or alternatively, shall state the fact that the school district or BOCES permits such personnel to participate in training in this subject offered by the department.

(iv) Performance review of superintendent. The governing body of each school district shall annually review the performance of the superintendent of schools according to procedures developed by such body in consultation with the superintendent. Such procedures shall be filed in the district office and available for review by any individual no later than September 10th of each year.

(v) Formal procedures for the review of the performance of teachers shall be determined by the school district or BOCES, consistent with the requirements of article 14 of the Civil Service Law.

(vi) Variance.

(a) A variance shall be granted from a requirement of this paragraph, upon a finding by the commissioner that a school district or BOCES has executed prior to September 3, 1999 an agreement negotiated pursuant to article 14 of the Civil Service Law whose terms continue in effect and are inconsistent with such requirement.

(b) A variance shall be granted from the criteria for the evaluation of teachers providing instructional services, prescribed in subclause (ii)(b)(1) of this paragraph, upon a finding by the commissioner that the school district or BOCES has demonstrated that a local model for the evaluation of such teachers has produced successful results.

(2) For school years commencing on or after July 1, 2011, each school district and BOCES shall be subject to the requirements of this paragraph.

(i) For purposes of this paragraph:

(a) “the governing body of each school district” shall mean the board of education of each school district, and in the case of the City School District of the City of New York it shall mean the Board of Education of the City School District of the City of New York; and

(b) “teacher providing instructional services” shall mean a teacher in the classroom teaching service, as defined in section 80-1.1 of this Title.

(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, 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.

(iii) Quality Rating Categories/Criteria. The governing body of each school district and BOCES shall also ensure that the effectiveness of each teacher providing



instructional services is rated annually in one of the following quality rating categories:

Highly Effective, Effective, Developing and Ineffective.

(a) Highly Effective means a teacher who is performing at a higher level than typically expected of a teacher based on the evaluation criteria prescribed in this subdivision, including but not limited to acceptable rates of student growth.

(b) Effective means a teacher who is performing at the level typically expected of a teacher based on the evaluation criteria prescribed in this subdivision, including but not limited to acceptable rates of student growth.

(c) Developing means a teacher, who is not performing at the level typically expected of a teacher and the reviewer determines that the teacher needs to make improvements based on the evaluation criteria set forth in this subdivision, including but not limited to less than acceptable rates of student growth.

(d) Ineffective means a teacher whose performance is unacceptable based on the evaluation criteria prescribed in this subdivision, including but not limited to unacceptable or minimal rates of student growth.

(iv) Professional performance review plan.

(a) Development and adoption of the plan.

(1) By September 1, 2011, the governing body of each school district and BOCES shall adopt a plan, which may be an annual or multi-year plan, for the annual professional performance review of its teachers providing instructional services or pupil personnel services, as defined in section 80-1.1 of this Title, that meets the content requirements prescribed in clause (b) of this subparagraph.

(2) Each superintendent and in the case of the City School District of the City of New York, the chancellor, in collaboration with teachers, pupil personnel professionals,

administrators and parents selected by the superintendent or in the case of the City School District of New York, the chancellor, with the advice of their respective peers, shall develop the professional performance review plan, which shall be approved by the governing body of each school district or BOCES, filed in the district or BOCES office, as applicable, and available for review by any individual no later than September 10th of each year. The governing body of each school district and BOCES shall provide organizations representing parents and the recognized representative of the teachers' bargaining unit with an opportunity to comment on such plan prior to its adoption.

(b) Content of the plan.

(1) Criteria for evaluation of teachers providing instructional services. The professional performance review plan shall describe the criteria that the school district or BOCES shall use to evaluate its teachers providing instructional services, which shall include but not be limited to an evaluation of the following:

(i) content knowledge, the teacher shall demonstrate a thorough knowledge of the subject matter area and curriculum;

(ii) preparation, the teacher shall demonstrate appropriate preparation employing the necessary pedagogical practices to support instruction;

(iii) instructional delivery, the teacher shall demonstrate that the delivery of instruction results in active student involvement, appropriate teacher/student interaction and meaningful lesson plans resulting in student learning;

(iv) classroom management, the teacher shall demonstrate classroom management skills supportive of diverse student learning needs which create an environment conducive to student learning;

(v) student development, the teacher shall demonstrate knowledge of student development, an understanding and appreciation of diversity and the regular application of developmentally appropriate instructional strategies for the benefit of all students;

(vi) student assessment, the teacher shall demonstrate that he or she implements assessment techniques based on appropriate learning standards designed to measure students' progress in learning and that he or she successfully utilizes analysis of available student performance data (for example: State test results, student work, school-developed assessments, teacher-developed assessments, etc.) and other relevant information (for example: documented health or nutrition needs, or other student characteristics affecting learning) when providing instruction;

(vii) student growth, the teacher shall demonstrate a positive change in student achievement for his or her students between at least two points in time as determined by the school district or BOCES, taking into consideration the unique abilities and/or disabilities of each student, including English language learners. For purposes of this subdivision, student achievement means a student's scores on State assessments for tested grades and subjects and other measures of student learning, including student scores on pre-tests and end-of-course tests, student performance on English language proficiency assessments and other measures of student achievement determined by the school district or BOCES to be rigorous and comparable across classrooms.

(viii) collaboration, the teacher shall demonstrate that he or she develops effective collaborative relationships with students, parents or caregivers, as needed, and appropriate support personnel to meet the learning needs of students; and

(ix) reflective and responsive practice, the teacher shall demonstrate that practice is reviewed, effectively assessed and appropriate adjustments are made on a continuing basis.

(2) Criteria for the evaluation of teachers providing pupil personnel services. The plan shall describe the criteria that the school district or BOCES shall use to evaluate teachers providing pupil personnel services, as defined in section 80-1.1 of this Title.

(3) Assessment approaches. The plan shall describe the methods that the school districts or BOCES shall employ to assess teachers' performance, which may include but is not limited to the following: classroom observation, videotape assessment, self review, peer review and portfolio review. For teachers possessing a transitional or initial certificate, the plan shall require the teacher to be evaluated based on portfolio review, which may include but is not limited to: a video of teaching performance, a sample lesson plan, a sample of student work, student assessment instruments and the teacher's reflection on his or her classroom performance.

(4) Quality Rating Categories/Criteria. The plan shall describe how the designated quality rating categories (Highly Effective, Effective, Developing and Ineffective) are used to differentiate professional development, compensation, and promotion for teachers providing instructional services. The procedures for implementation of these rating categories shall be consistent with the requirements of article 14 of the Civil Service Law.

(5) Timely and Constructive Feedback. The plan shall describe how the school district or BOCES will provide timely and constructive feedback to teachers on all criteria evaluated as part of their annual evaluation, including, but not limited to, providing teachers with data on student growth for each of their

students, the class and the school as a whole and feedback and training on how the teacher can use such data to improve instruction.

(6) Teacher improvement. The plan shall describe how the school district or BOCES addresses the performance of teachers whose performance is evaluated as ineffective, and shall require a teacher improvement plan for teachers so evaluated or documentation of a prior teacher improvement plan, which shall be developed by the district or BOCES in consultation with such teacher.

(7) Training in performance evaluation. The plan shall describe how the school district or BOCES provides training in good practice for the conducting of performance evaluations to staff who perform such evaluations, or alternatively, shall state the fact that the school district or BOCES permits such personnel to participate in training in this subject offered by the department.

(v) Performance review of superintendent. The governing body of each school district shall annually review the performance of the superintendent of schools according to procedures developed by such body in consultation with the superintendent. Such procedures shall be filed in the district office and available for review by any individual no later than September 10th of each year.

(vi) Formal procedures for the review of the performance of teachers shall be determined by the school district or BOCES, consistent with the requirements of article 14 of the Civil Service Law.

(vii) Variance.

(a) A variance shall be granted from a requirement of this paragraph, upon a finding by the commissioner that a school district or BOCES has executed prior to May 1, 2010, an agreement negotiated pursuant to article 14 of the Civil Service Law whose terms continue in effect and are inconsistent with such requirement.

(b) A variance shall be granted from the criteria for the evaluation of teachers providing instructional services, prescribed in subclause (iv)(b)(1) of this paragraph, upon a finding by the commissioner that the school district or BOCES has demonstrated that a local model for the evaluation of such teachers has produced successful results.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE  
EMERGENCY ADOPTION

The proposed amendment relates to annual professional performance reviews of teachers in the classroom teaching service.

As part of the current Annual Professional Performance Review (“APPR”) set forth in section 100.2 of the Commissioner’s regulations, school districts and BOCES are required to perform annual evaluations of their teachers and the evaluation must be based on at least eight evaluation criteria prescribed in regulation. As part of its reform agenda for strengthening teaching, the Board of Regents have made a policy determination to make four major changes to the current requirements for the annual professional performance reviews of teachers.

First, the proposed amendment requires school districts and BOCES to include student growth as a mandatory criteria to be used in the evaluation of teachers. The proposed amendment defines student growth as a positive change in student achievement between at least two points in time as determined by the school district or BOCES, taking into consideration the unique abilities or disabilities of each student, including English language learners.

Secondly, the proposed amendment requires school districts and BOCES to implement the following uniform qualitative rating categories/criteria in the evaluation of its teachers: Highly Effective, Effective, Developing and Ineffective. The proposed amendment also defines each of these quality rating categories/criteria.

The proposed amendment also requires that school districts and BOCES to provide timely and constructive feedback to the teacher. The proposed amendment requires school districts and BOCES to include in their professional performance review plan a description of how it will provide timely and constructive feedback to its teachers

on all criteria evaluated, including data on student growth for each of their students, the class and the school as a whole and feedback and training on how the teacher can use such data to improve instruction as part of the teacher's APPR.

Lastly, the proposed amendment eliminates the reporting requirements which previously required school districts and BOCES to annually report information related to the school district's efforts to address the performance of teachers whose performance is rated as unsatisfactory.

Following the Board of Regents adoption of the proposed amendment by emergency action at its April 2010 meeting, the Legislature and the Governor enacted Chapter 103 of the Laws of 2010. This new law establishes a new comprehensive annual evaluation system for teachers and principals based on multiple measures of effectiveness, including student achievement measures, which will result in a single composite effectiveness score for every teacher and principal. It also provides for the establishment of an advisory committee comprised of representatives of teachers, principals and other stakeholders that will make recommendations to the Commissioner and Regents prior to the adoption of implementing regulations and the use of a value-added growth model in evaluations. Department staff are conducting a review of the provisions of the statute and evaluating its impact on the existing APPR regulation. When the Department's review and the work of the advisory committee is complete, we anticipate making further revisions to the proposed amendment. Pursuant to section 202 of the State Administrative Procedure Act, these revisions may not be adopted until publication of a Notice of Revised Rule Making in the State Register and expiration of a 30-day public comment period. However, the emergency rule adopted at the September 2010 Regents meeting will expire on November 24, 2010. A lapse in the



emergency rule will cause disruptions in the administration of annual professional performance reviews of teachers.

Emergency action is necessary at the November 2010 Board of Regents meeting in order to ensure that the rule remains continuously in effect until such time as it can be revised to conform to Chapter 103 of the Laws of 2010 and adopted as a permanent rule, after expiration of the 30-day public comment period for revised rule makings prescribed in the State Administrative Procedure Act, and thereby avoid disruption in the annual professional performance reviews of teachers.