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TO: The Honorable Members of the Board of Regents
FROM: Elizabeth R. Berlin 
DATE: September 15, 2015
RE: APPR Regulations

The attached item and regulations have been modified since sent to you on Friday, September 11, 2015 to address unique challenges experienced by certain school districts relating to the independent observer requirement as noted below. For ease of reference, outlined below are the changes made to the regulations (both contained in the version sent on Friday as well as the one additional modification made in this submission) and the page number such changes can be found within the regulations.

As you know, 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 required 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. At its June 2015 meeting, the Board of Regents adopted regulations to implement the new law.

I would like to note that following the 45-day public comment period required under the State Administrative Procedure Act, the attached regulations make the following three substantive changes:

First, the Department has decided to re-examine 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 appeals language appears at pp. 18-21 and 64-67 of the attached regulations.

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 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. The revised independent evaluator/other evaluator language appears at pp. 39-40, 48-49 of the regulations.

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 revised data privacy language appears at p. 64 of the regulations.

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. This language appears at pp. 41, 50 of the regulations.

Attachment