



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

TO: Higher Education Committee
P-12 Education Committee

FROM: John D'Agati *John L. D'Agati*
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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: September 11, 2015

AUTHORIZATION(S): *Richard A. Trentacosta*

SUMMARY

Issue for Decision

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 Joint Committee of the Higher Education Committee and the P-12 Education Committee for a recommendation to the

Full Board for adoption as an emergency measure at its September 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 has been revised in response to certain comments. A Notice of Revised Rule Making and Emergency Adoption will be 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. A copy of the Department’s letter to the Secretary and the Secretary’s response are attached as Attachment C.

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). 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 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 80% and the optional second subcomponent shall be weighted at no more than 20%; provided, however, that if the optional second subcomponent does not include traditional standardized tests, 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 observations 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 component, teachers 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 80% and the optional second subcomponent shall be weighted at no more than 20%; provided, however, that if the optional second subcomponent does not include traditional standardized tests, 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.

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 observation shall be conducted by the principal’s supervisor or other trained administrator; and
- a second observation 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 observations 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>
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		<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 45-day public comment period required under the State Administrative Procedure Act, the proposed amendment was revised in several places 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 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 1st 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 1st.

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 visit 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.

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 September 28, 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 2015 meeting remains and revised at the September meeting, remains continuously in effect until it can be adopted as a permanent rule.

Timetable for Implementation

If the Board of Regents adopt the proposed amendment at their September meeting, the proposed amendment will become effective as an emergency rule on September 28, 2015. It is anticipated that the rule will be presented for permanent adoption at the November Regents meeting, after publication of the revised proposed amendment in the State Register and expiration of the 30-day public comment period required pursuant to the State Administrative Procedure Act. If adopted at the

November meeting, the proposed amendment will become effective on December 2, 2015.

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 September 28, 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 September 28, 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 September 28, 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 September 28, 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 September 28, 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 September 28, 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 September 28, 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 1st of the school year next following the school year for which the teacher or principal's performance is measured. The teacher's and principal's score and rating on the observation/school visit category and in the student performance category, if available, shall be computed and provided to the teacher or principal, in writing, by no later than the last day of the school year for which the teacher or principal is being measured, but in no case later than September 1st of the school year next following the school year for which the teacher or principal's performance is measured. Nothing in this subdivision shall be construed to authorize a teacher or principal to commence the appeal process prior to receipt of his or her overall rating. Districts shall ensure that there is a complete evaluation for all classroom teachers and building principals, which shall include scores and ratings on the subcomponent(s) of the student performance category and the observation/school visit category and the combined category scores and ratings, determined in accordance with the applicable provisions of Education Law §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.

SLOs	
Percent of Students Meeting Target	Scoring Range
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:

	Overall Student Performance Category Score and Rating	
	<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.

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

(iii) 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.

(iv) 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.

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

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

(vii) 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.

(viii) 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.

(ix) 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.

(x) 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).

(xi) 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.

(xii) 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:

	Overall Observation Category Score and Rating	
	<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.

SLOs	
Percent of Students Meeting Target	Scoring Range
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:

	Overall Student Performance Category Score and Rating	
	<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:

	Overall Observation Category Score and Rating	
	<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>Observation/School Visit</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 Regents meeting. The Department recommends that the proposed rule be amended to address public comment received. A Notice of Revised Rule Making will be 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 201(1) and (5), 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.

The June emergency rule will expire on September 27, 2015, 90 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 Proposed Rule Making in the State Register on July 8, 2015, the State Education Department (SED) received the following comments:

1. COMMENT:

Revise provision in §30-3.4(d)(2)(i)(b) requiring an impartial independent trained evaluator who may be employed within the district, but may not be assigned to the same school building as the teacher being evaluated to instead allow for small one-building districts to use “trained in-houses [sic] peer evaluators.”

DEPARTMENT RESPONSE: Education Law §3012-d(4)(b) provides that 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. Section 30-3.4(d)(2)(i)(b) repeats this statutory language without change. However, please note that §30-3.2(o) defines “school building” to mean a school or program identified by its Basic Educational Data System (BEDS) code, as determined by the Commissioner.

The evaluator may be a district-wide employee reported to NYSED using the district BEDS code, not the school building BEDS code where the evaluation is taking place. For example, if the staff member is a Director of Special Education in a one-building district, the District BEDS code could be used to identify this person as an eligible independent trained evaluator.

Moreover, the Department has revised the regulation to provide for a hardship waiver for rural school districts and school districts with one registered school who, due

to the size and limited resources of the district, is unable to find an independent evaluator within a reasonable proximity and who would be substantially harmed if they were required to obtain an independent evaluator. A district granted a hardship waiver would be required to conduct a second observation by one or more other evaluators selected and trained by the district who are different than the evaluators selected for the first mandatory subcomponent.

2. COMMENT:

Several comments expressed concern over the outside observers requirement, specifically the cost of independent evaluators, the impact of requiring principals to observe teachers in other schools given the lack of evidence to suggest that principals will be more reliable when observing teachers outside their school and the fact that any time spent off-site would clearly diminish their capability to effectively manage their own school, and sought to maintain authority for teacher-observations with school-based administrators rather than outside evaluators.

DEPARTMENT RESPONSE: See Response to Comment #1.

3. COMMENT:

Several comments expressed support for accountability and high standards but request that SED gather input on the evaluation proposal from qualified practitioners and independent experts and reject the portions of the Cuomo Educational Reform Agenda which place undue reliance on state tests and are inappropriate reforms to APPR.

DEPARTMENT RESPONSE:

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, the New York State United Teachers (NYSUT), the United Federation of Teachers (UFT), the New York State School Boards Association (NYSBA), the New York State Council of School Superintendents (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 to discuss their recommendations on the new evaluation system. Additionally, the Department created an email box (eval2015@nysed.gov) to accept comments on the new evaluation system. In addition, section 30-3.1 of the proposed amendment 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.

4. COMMENT:

Several comments requested delays in the implementation schedule, including moving the deadline for submission of modified APPR plans to September 1, 2016.

DEPARTMENT RESPONSE:

Education Law 3012-d(11) requires that APPR plans be submitted by November 15, 2015 for a district to be eligible for their State aid increase. However, the appropriation language in Chapter 61 of the Laws of 2015 that links increases in school aid for the 2015-2016 and 2016-2017 school years to submission of documentation that the district has implemented the APPR in accordance with Education Law §3012-d

requires such submission by November 15, 2015 or by September 1, 2016.

Accordingly, the Department has provided for a hardship waiver that would give districts additional time to complete collective bargaining and adopt an APPR plan to implement §3012-d, provided that they must do so by September 1, 2016. Districts and BOCES that have collectively bargained in good faith but have been unable to meet the November 15th deadline are required to submit a Hardship Waiver application to the Department between October 1 and October 30, 2015. For districts, this is required in order to extend this deadline without risk of losing their eligibility for a State aid increase. More information on the hardship waiver can be found on the EngageNY website at <https://www.engageny.org/resource/hardship-waiver-implementation-education-law-3012-d>.

5. COMMENT:

Several comments requested that the Board of Regents convene a task force to review the reliability, transparency, developmental appropriateness, and length of state tests and ensure test validity and linkage to the evaluation system.

DEPARTMENT RESPONSE:

Section 30-1.3(e) of the new regulation requires the Board of Regents to 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.

6. COMMENT:

Several commenters expressed concern that policy deadlines are being tied to funding for public education and the very short time frame given to develop a teacher evaluation system and urged decoupling of school aid from the November 2015 APPR deadline. Commenters urged the Board of Regents and State Education Department “to freeze its current system and use the rest of 2015 to design a thoughtful evaluation system that is aligned to research and will yield reliable results. In redesigning the system, the State Education Department and the Board of Regents should elicit feedback from a representative group of educators from across NY State before finalizing any teacher evaluation system.”

DEPARTMENT RESPONSE:

See Response to Comment No. 4 relating to the State aid deadlines for implementing the new statute. Increases in State school aid for the 2015-2016 and 2016-2017 school years are linked by statute to full implementation of the APPR pursuant to Education Law §3012-d, in both Education Law §3012-d(11) and in appropriation language in Chapter 61 of the Laws of 2015. The State Education Department does not have the authority to modify these statutes and decouple the State aid increases from APPR compliance. 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. In this way, the Department has

sought to elicit feedback from educators, administrators and members of the public from across NY State.

7. COMMENT:

Several comments recommended an expansion of the measures allowable in a teacher evaluation system, including student portfolios and performance-based assessments, decoupling of teacher evaluations from student test scores and ending the use of value-added measures.

DEPARTMENT RESPONSE:

Education Law §3012-d(4)(a) requires that an APPR include a student performance component that is explicitly linked to student test scores. The State Education Department cannot decouple teacher evaluations from test scores because that would conflict with statute.

Education Law §3012-d(6) sets forth a list of prohibited elements that can no longer be used in any subcomponent. This list prohibits the use of artifacts, including student portfolios from being used in any subcomponent of a teacher's evaluation; except where the student portfolios measured by a State approved rubric where permitted by the Department. 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.

Performance assessments continue to be an allowable option in the statute. A Request for Qualifications (“RFQ”) for allowable assessments has been issued and a list of the performance based assessments approved by the Department for use in evaluations will be posted on our website as they are approved. If your district or BOCES would like to use a performance assessment in its evaluations, it should submit the assessment through the RFQ process for consideration by the Department, which can be found at <http://www.p12.nysed.gov/comprocontracts/rfq-15-001-assessments/home.html>.

8. COMMENT:

Comments support local decision making in the hiring, tenure and discipline decisions of educators rather than requiring the filing of mandatory 3020-b charges based on APPR scores.

DEPARTMENT RESPONSE:

Section 3020-b(2) of the Education Law requires a school district to bring charges of incompetence against any classroom teacher or building principal who receives three consecutive ineffective ratings. As such charges are required by statute and the Department has no authority or discretion in this regard. However, section 3020-b(2) of the Education Law leaves it to district/BOCES discretion as to whether they want to pursue charges against a classroom teacher or building principal who receives two consecutive ratings.

9. COMMENT:

When issuing guidance and/or amending the regulations, please consider defining who constitutes an “other trained administrator.” Many districts use subject area department chairs at the secondary level to evaluate teaching staff. These department chairs are typically administratively certified, but are considered teachers because they continue to teach some classes and are represented by the teachers’ union, sometimes in the same unit as other teachers and sometimes in a different bargaining unit. Many districts are asking if they are able to continue to have these administratively certified teachers evaluate other teachers.

DEPARTMENT RESPONSE:

Section 30-3.4(d)(2) of the Rules of the Board of Regents requires that observations be conducted by a principal or other trained administrator. This language is the same as the language used in Section 30-2.4(d)(1)(iii), and, thus, this is not a new or modified requirement for evaluations. Regarding the use of department chairs as impartial, independent evaluators, these evaluators may be employed within the school district, but may not be assigned to the same school building as the teacher or principal being evaluated.

10.COMMENT:

Expressed belief that the reliance upon students’ scores on the common core state tests for fifty (50%) percent of a teacher’s evaluation is misplaced.

DEPARTMENT RESPONSE:

There are no longer percentages assigned to each of the categories that make up a teacher’s overall composite rating. Rather, the teacher’s rating is based on a matrix prescribed by Education Law 3012-d(5)(b).

Nonetheless, the student performance category is comprised of two subcomponents, one of which is based on a State-provided growth score on State assessments, if available, and a district may choose to use a second optional subcomponent based on a supplemental assessment for the student performance category if they do not want a teacher's/principal's rating on the student performance category to be based solely on State assessments.

11.COMMENT:

Expressed concern that the use of independent observers to evaluate our teachers places an undue financial and/or administrative burden on districts without any proven benefit.

DEPARTMENT RESPONSE: See Response to Comment #1.

12.COMMENT:

Requested that the Department interpret the new legislation governing the APPR as broadly as possible in order to minimize its potentially negative impact.

DEPARTMENT RESPONSE:

The Department believes it has done its best to ensure that the intent of the law is upheld while maintaining the maximum amount of local discretion where possible and to minimize any potential adverse effects from the new law.

13.COMMENT:

Urged the Department to draft a strong appeal to the Legislature and the Governor to amend the Education Transformation Act of 2015 requirements that the Board of Regents adopt new Commissioner's Regulations in June 2015 and that school districts receive Department approval for new APPR plans by November 15, 2015.

DEPARTMENT RESPONSE:

The Department worked to meet the statutory requirement that new regulations be adopted in June 2015, as required by Education Law 3012-d.

Additionally, Education Law 3012-d(11) provides that APPR plans must be submitted by November 15, 2015 for a district to be eligible for their State aid increase. However, the appropriation language in Chapter 61 of the Laws of 2015 that links increases in school aid in for the 2015-2016 and 2016-2017 school years to submission of documentation that the district has implemented the APPR in accordance with Education Law §3012-d requires such submission by November 15, 2015 or by September 1, 2016. Accordingly, the Department has, however, provided for a Hardship Waiver. Districts and BOCES that have collectively bargained in good faith but have been unable to meet the November 15th deadline are required to submit a Hardship Waiver application to the Department between October 1st and October 30th. For districts, this is required in order to extend this deadline without risk of losing their eligibility for a State aid increase. More information on the hardship waiver can be found on the EngageNY website at <https://www.engageny.org/resource/hardship-waiver-implementation-education-law-3012-d>.

14.COMMENT:

The Department should provide scoring ranges for the performance categories so that uniformity is achieved across the state, accompanied by a detailed discussion of the process by which the scoring ranges were determined.

DEPARTMENT RESPONSE:

Sections 30-3.4 and 30-3.5 of the Rules of the Board of Regents established scoring ranges for student learning objectives, the overall student performance category, and the overall observation and school visit category.

15. COMMENT:

Final APPR ratings for teachers should reduce the weight given to New York State tests.

DEPARTMENT RESPONSE:

There are no longer percentages assigned to either of the two categories that make up the overall evaluation rating of a teacher's evaluation. Rather, the teacher's rating is based on a matrix prescribed by Education Law 3012-d(5)(b). Nonetheless, the student performance category is comprised of two subcomponents, one of which is based on a State-provided growth score on State assessments, if available, and a district may choose to use a second optional subcomponent, based on a supplemental assessment, for the student performance if they do not want a teacher's/principal's rating on the student performance category to be based solely on State assessments.

16. COMMENT:

Disclose and clearly define the criteria for the establishment of cut scores, scoring bands, and weighting of the various components of performance evaluations for teachers and principals.

DEPARTMENT RESPONSE:

The Department believes that the criteria for scoring ranges and weighting of the various components of performance evaluations for teachers and principals are clearly defined in the Commissioner's regulations, as required by Education Law 3012-d. The

criteria were developed based on information received from the APPR Learning Summit held in May 2015.

17. COMMENT:

The Department should differentiate between the performance evaluation process to be applied to tenured teachers and principals rated “Effective” or “Highly Effective” and those in the “Developing” and “Ineffective” categories. Commenter also suggested that the frequency and duration of observations for effective and highly effective teachers and should be less than those required for colleagues demonstrating less proficiency.

DEPARTMENT RESPONSE:

Education Law 3012-d(4)(b) requires the Commissioner to determine the minimum amount of observations, including the frequency, duration and parameters of observations. The Department has provided flexibility to school districts and BOCES in the observation subcomponent through sections 30-3.4 and 30-3.5 of the Rules of the Board of Regents, which require the frequency and duration of observations to be locally determined. Therefore, if a district/BOCES chooses to make the frequency and duration of observations for teachers rated effective and highly effective less than those required for other educators, they may do so.

18. COMMENT:

Teacher and principal ratings should be based on performance over a two or three year period in order to increase reliability.

DEPARTMENT RESPONSE:

The requirement that evaluations be conducted annually is prescribed by Education Law §3012-d. Therefore, the Department has no discretion to change the requirements for annual evaluations.

19.COMMENT:

If the requirement for independent evaluators cannot be eliminated through changes in legislation, ensure that definition of “independent evaluator” includes principals, assistant principals, and department directors or chairs from other buildings, as well as central office administrators. If the definition must include persons not currently employed by the school district, draft language that minimizes the weight of any such observation in the teacher’s final rating. Should districts be able to hire “outside evaluators” to participate in the observation process, additional funding should be provided by New York State so such a mandate does not impose additional financial burdens on the school districts.

DEPARTMENT RESPONSE:

The use of an independent evaluator is prescribed by Education Law §3012-d(4) for teacher evaluations. Further, Education Law §3012-d(14) requires the Commissioner to adopt regulations to align the principal evaluation system with the teacher evaluation system set forth in Education Law §3012-d. Therefore, in order to align the principal evaluation system, the use of independent evaluators for principals is required.

20.COMMENT:

Ensure that approved observation rubric include consideration of such elements as lesson planning, accommodations for students with IEPs or 504 Plans, and the quality of teacher reflection on the lesson during the post observation conference.

DEPARTMENT RESPONSE:

Evaluation rubric(s) are selected by each individual district, not the Department. Thus a district/BOCES may select any observation rubric from the list of approved rubrics established pursuant to 30-2.7 of the Rules of the Board of Regents. Additionally, a number of rubrics from the State approved list can be used in a variety of classroom settings (e.g., the Danielson Framework has certain indicators that are intended to assess teachers' abilities to instruct students with a variety of different learning needs).

21. COMMENT:

Add flexibility for SLOs to include portfolios of student work to be assessed for growth against a mandated New York State rubric.

DEPARTMENT RESPONSE:

Education Law §3012-d(6) allows student portfolios to be used with State approved rubrics. Districts/BOCES may submit a rubric through the assessment RFQ, which is currently available on our website at:

<http://www.p12.nysed.gov/comcontracts/rfq-15-001-assessments/home.html>.

22. COMMENT:

The Department should provide a standardized template for APPR plans with the format and wording required for district submissions.

DEPARTMENT RESPONSE:

The Department has provided a template for APPR plans on the EngageNY website. It can be found by at the following link: <https://nysed-appr3.fluidreview.com/>.

Additionally, two sample plans have been posted on EngageNY at:

<https://www.engageny.org/resource/sample-appr-plans-aligned-education-law-3012-d>.

23. COMMENT:

It is mentioned in the regulation that other domains that are not observed during an observation but in the standards can be incorporated into the score through “other natural conversations”. These other domains needs to be clearly contained in the observation component of the APPR plan and is of the utmost importance in the evaluation of a teacher. A teacher who continually arrives late to school, does not give extra help, is delinquent with entering scores into the student information system, to name a few, needs to be held accountable via the evaluation system.

DEPARTMENT RESPONSE:

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.

24.COMMENT:

The scale for determining the growth factor (0-20) is improperly skewed towards a preponderance of teachers achieving an ineffective score. This scale should be normally distributed because the data would lend itself to be normally distributed. It is a faulty premise to assume the data should be calculated using a “common sense” (as coined by Ken Wagener) 100% scale where 65% is passing.

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 scoring ranges specified in sections 30-3.4(c)(3) and 30-3.4(d)(1).

25.COMMENT:

Commenter urged that the “independent” evaluator be eliminated from the new requirements. Having "outside" observers come in to observe, even for a small percentage of a teacher's APPR Score, is counter-productive and quite frankly a waste of time (given the nominal percentage of impact) and resources. It should be understood by now that the "high scores" that teachers were receiving out of 60 was due to the way that NYSED set up 3 of the 4 scoring bands, not because principals and other administrators cannot be "trusted" to appropriately observe their teachers.

DEPARTMENT RESPONSE: See Response to Comment #1.

26.COMMENT:

Teacher evaluations should be performed by local School Boards and Administrations using local assessments and observations which stress growth and professional development for at least 80% of the assessment.

DEPARTMENT RESPONSE:

The weightings for a teacher's/principal's overall score and ratings for teacher and principal evaluations are prescribed by a matrix set forth in Education Law §3012-d. Therefore, the Department does not have the ability to change the impact that ratings in the student performance and observation categories have on the overall composite rating.

27.COMMENT:

Classroom observation protocols instituted through the APPR have provided notable results and have received praise from across the education spectrum. What is the purpose of casting these measures aside and substituting a costly, unwieldy and unnecessary system of mandated "independent evaluators"?

DEPARTMENT RESPONSE: See Response to Comment #1.

28.COMMENT:

Lengthen the public comment period to ensure that all New Yorkers have their voices heard and can offer specific input to shape the teacher evaluation process by expanding the official public comment period until December 31, 2015. Require the Department to report public comments by March 31, 2016.

DEPARTMENT RESPONSE:

The State Administrative Procedure Act ("SAPA") requires a 45-day public comment period from the date of publication of the Notice of Proposed Rule Making in

the State Register. The proposed amendment is being revised based on the public comment received to date. Therefore, under the State Administrative Procedure Act, a second 30-day public comment period from the date of publication of a Notice of Revised Rule Making is required. As a result, the Department will continue to accept comments on the new evaluation system through both eval2015@nysed.gov and REGCOMMENTS@nysed.gov.

29. COMMENT:

Conduct 13 public forums, one in each Regents District, as part of the formal public comment period.

DEPARTMENT RESPONSE:

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, New York State United Teachers (NYSUT), the United Federation of Teachers (UFT), the New York State School Boards Association, the New York State Council of School superintendents (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. Additionally, the Department created an email box (eval2015@nysed.gov) to accept comments on the new evaluation system. In addition, section 30-3.1 of the proposed amendment 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.

30.COMMENT:

Adopt regulations and guidelines by new State Education Commissioner Elia by December 31, 2016 and implement the approved APPR by schools on January 1, 2019 to coincide with the beginning of the use of Common Core test scores in assessing students.

DEPARTMENT RESPONSE:

Education Law §3012-d prescribes the timeline for implementation of the new evaluation system and required that regulations be adopted by June 30, 2015. The Department adopted regulations by the statutory deadline and does not have authority to extend the deadline for when regulations must be promulgated. However, see Response to Comment #4.

31.COMMENT:

In developing the new APPR system, any resolution must include meaningful participation from all stakeholders and that all stakeholders need to not just be allowed to provide testimony in regards to the new system, which must be genuinely examined and considered; they must be partners in all phases of its crafting.

DEPARTMENT RESPONSE:

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, New

York State United Teachers (NYSUT), the United Federation of Teachers (UFT), the New York State School Boards Association, the New York State Council of School superintendents (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. Additionally, the Department created an email box (eval2015@nysed.gov) to accept comments on the new evaluation system. In addition, section 30-3.1 of the proposed amendment 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.

32. COMMENT:

Expressed support for high standards for our students and teachers. In developing the testing reduction report, go into classrooms throughout the State and witness the proctoring of the exams. As part of your work with students, parents, educators, school districts and other relevant stakeholders, come to the Finger Lakes region for a public hearing and hear recommendations and experiences of Senator Funke's constituents.

DEPARTMENT RESPONSE:

Since the new law was enacted in April, the Department has also been separately meeting with individual stakeholder groups and experts in their field to discuss their recommendations on the new evaluation system. The Department will also reach out to Senator Funke's office on this issue.

33.COMMENT:

Commenter is seeking more flexibility in the evaluation process. Propose that special consideration be made in regards to special education teachers and their evaluations as these teachers work with the most vulnerable populations and should not be punished because their students do not always perform at the same level as other students their age. Additionally, the matrix that is adopted should take into account both high performing schools and the needs of schools in high poverty areas that may need additional assistance.

DEPARTMENT RESPONSE:

The Department provides school districts and BOCES flexibility in setting targets for SLOs. Sections 30-3.4 and 30-3.5 of the Rules of the Board of Regents require that SLOs include a minimum growth target of one year of expected growth, as determined by the Superintendent or his or her designee. In determining what constitutes one year of expected growth, the regulations allow the Superintendent or his or her designee to take into account poverty, students with disabilities, English language learner status and prior academic history. Thus, targets may vary based on a student's present level of performance and learning needs in order to close achievement gaps or move low-performance towards grade-level expectations. The proposed amendment also requires that all State-provided or approved growth scores control for poverty, students with disabilities, English language learner status and prior academic history. The Department will continue to review the evaluation system to ensure that special education teachers are not adversely affected by this system.

The matrix is prescribed in statute and the Department does not have authority to modify it.

34. COMMENT:

Expressed support for Chancellor Tisch's comments regarding schools that are rated as high performing and the possibility for an exemption from the new evaluation matrix

DEPARTMENT RESPONSE:

The Department believes that it has done its best to provide significant flexibility to districts in the proposed amendment while at the same time ensuring the intent of the statute has been met.

35. COMMENT:

Request that the Department adopt a flexible definition for the term "school building" to address the unique challenges faced by rural school districts in complying with the independent evaluator requirement.

DEPARTMENT RESPONSE:

See Response to Comment #1. In addition, section 30-3.4(d)(2)(i)(b) provides that 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. Please note that "school building" shall mean a school or program identified by its Basic Educational Data System (BEDS) code, as determined by the Commissioner.

The evaluator may be a district-wide employee reported to NYSED using the district BEDS code, not the school building BEDS code where the evaluation is taking

place. For example, if the staff member is a Director of Special Education in a one-building district or BOCES, the District BEDS code or the overarching BOCES could be used to identify this person as an eligible independent trained evaluator.

In addition, if the staff member is a BOCES employee and is reported to NYSED with a different virtual location code than the school or location BEDS code associated with the educator being evaluated, they too could be identified as an eligible independent trained evaluator.

For more information with regard to the proper use of BEDS codes, LEAs are encouraged to work with their Regional Information Centers (RICs).

36. COMMENT:

Expressed support for position paper signed onto by seven Regents. Included in the position paper and emphasized by the commenter: on the student performance side of the matrix, the calculations (which are under the regulatory authority of the Board of Regents) should be: (a) 80 percent of the overall student performance side of the matrix would be on local assessments, student portfolios, etc.; and (b) No more than 20 percent of the overall student performance side of the matrix could be state tests; observation scores should be based on the NYSUT scoring ranges, which have been submitted to the Board of Regents, are more fair to educators and better aligned to the previous APPR law; no more than 10 percent of an observation score could be external or peer evaluators, and only at a local option; addressing needs of English Language Learners and students with disabilities in the APPR system; creation of a work group of practitioners to study a new accountability system, also allowing for submission of

locally developed plans; and creation of a work group to analyze the Common Core Learning Standards and Common Core assessments.

DEPARTMENT RESPONSE:

The position paper was considered by the Board of Regents at its June Board of Regents meeting. After lengthy discussion and debate at that meeting, and after taking into account the recommendations from the May Learning Summit and other stakeholder feedback, the Board of Regents voted to adopt the regulations in their current form.

37.COMMENT:

For the Student Performance category, weigh student performance at no more than 40% of the composite score. Regarding a process for Student Learning Objectives, I favor a process that grants teachers partial credit for student achievement that moves toward proficiency, such as those illustrated in the EngageNY Alternative Target Setting webinar. Do not adopt a one size fits all growth target parameter for students with disabilities! Avoid a universal parameter for SWDs such as one year growth in achievement being the outcome that is aligned with an effective teacher rating. This presumption is seriously flawed and ignores the wide range of abilities across disability classifications or severity of disabilities. Rather, develop growth target bands as a model to be used locally in setting appropriate and rigorous growth targets in the SLO process. For the Observation Category, weigh the observation category at 60% of the composite score. Keep the Marzano Rubric on the approved list, it does a better job of scoring special education instructional strategies and it is evidence based.

Have the Principal conduct two observations and limit the outside evaluator to one observation per year so that the administrator who is most familiar with the students and curriculum has more input. I feel strongly that Section 5a-c of Education Law 3012-c, which assures my due process rights through a locally established appeal process, should be applied to the new teacher evaluation law. Keeping the appeal process locally negotiated is fair and will keep the burden/expense at the local level.

DEPARTMENT RESPONSE:

The impact of the Student Performance Category on a teacher's overall evaluation rating is prescribed by Education Law §3012-d(5). Section 30-3.6 of the Rules of the Board of Regents merely conforms to the provisions of the new law.

Concerning student growth targets, Education Law §3012-d(4)(a)(2) requires the Commissioner to set appropriate targets for student growth in the Student Performance category. Sections 30-3.4 and 30-3.5 of the Rules of the Board of Regents require that SLOs include a minimum growth target of one year of expected growth, as determined by the Superintendent or his or her designee. In determining what constitutes one year of expected growth, the regulations allow the Superintendent or his or her designee significant flexibility and allow them to take into account poverty, students with disabilities, English language learner status and prior academic history. Thus, targets may vary based on a student's present level of performance and learning needs in order to close achievement gaps or move low-performance towards grade-level expectations.

Concerning the list of approved rubrics, section 30-3.9(e) provides that 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. The Department anticipates that a new RFQ will be issued in the near future.

Concerning the frequency and duration of observations by principals and independent evaluators, section 30-3.4(d)(2)(i) of the Rules of the Board of Regents requires a minimum of one observation by the principal or other trained administrator and a minimum of one observation by one or more impartial independent trained evaluators selected and trained by the district. Thus a district may choose to have two observations conducted by a building principal and only one conducted by an independent evaluator or other trained evaluators.

Moreover, section 30-3.15(c)(1) maintains the substantive provisions of Education Law §3012-c(5-a) without modification except any reference in subdivision (5-a) to a proceeding pursuant to Education Law section 3020-a based on a pattern of ineffective teaching shall be deemed to be a reference to a proceeding pursuant to Education Law section 3020-b against a teacher or principal who receives two or more consecutive composite Ineffective ratings; and in accordance with Education Law section 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 section 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 section 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 section 3012-c or 3012-d was fraudulent, and if not successfully overcome, the finding, absent extraordinary circumstances, shall be just cause for removal.

38. COMMENT:

Regulations should be developed in a way that provides for a foundation for further development rather than something temporary that will be completely revised in the near future. Greater emphasis should be on the area that has been perceived as the most successful part of the current APPR teacher observations. There should be a reduction in the impact of student growth scores that would lead to "ineffective" ratings to avoid as much as possible the instances on the matrix that an ineffective in that area impacts negatively on a higher observation score. I recommend using a scoring chart for teacher observations that is more in line with the NYCDOE recommendation. The SED proposed scoring chart requires a 2.59 to be considered "developing." That would mean that a teacher with half of their scores being "3" and half being "2" could end up with a 2.5 average and be considered "ineffective." It would not be plausible to rate a teacher according to the rubric along the lines of effective and developing and then end with an "ineffective" rating. The 1.76 threshold that the NYCDOE recommended requires that there be some "1's" or ineffective ratings on the rubric. That is certainly

more justifiable. We suggest using the NYSUT recommendation of two or more standard deviations below the mean for an ineffective rating on the student growth scores. This would allow for a smaller percentage of ineffective scores on the student growth measure, thus placing greater emphasis on the teacher observation portion of the process. This would also lessen the number of instances of an ineffective rating on the student growth measure impacting negatively on a higher observation score.

DEPARTMENT RESPONSE:

The recommendations of the NYCDOE and NYSUT on the observation scoring ranges were considered by the Board of Regents at its May meeting. The Board of Regents weighed all the recommendations it received at the May Learning Summit and from stakeholders and at its June meeting ultimately adopted the scoring ranges embedded in section 30-3.4(c)(2)(xiv).

39.COMMENT:

Merit pay should not be used in education. This proposed change will create competition among educators encouraging people to care more about their pay, discouraging collaboration among educators which will negatively impact their professional growth. It will create animosity between teachers and administrators leading already over stretched administrators to spend precious time arguing with teachers over points as they fight to get higher scores and increased pay. This puts the focus on additional composition versus where it should be focused: what is best for kids. I have yet to find a place where merit pay improved the educational setting.

DEPARTMENT RESPONSE:

Education Law §3012-d provides that APPRs be a significant factor in supplemental compensation decisions. The proposed amendment implements this provision without modification and does not otherwise address merit pay.

40.COMMENT:

There is great disparity between the teachers who receive a state generated score in grades 4-8 and educators who receive a score based on Student Learning Objectives (SLO). While, as administrators, we do the best we can to increase the rigor on these exams, most teachers with an SLO exam are extremely successful, contributing to the reported 95% of all teachers being deemed Highly Effective or Effective in NYS overall. Not to mention, in addition to my lost time on NYS exam prep, I lose at least another month preparing and organizing SLO exams in my building.

DEPARTMENT RESPONSE:

The Department believes that SLO results should be correlated with State-provided growth scores. However, SLOs are a locally determined measure and, thus, are outside the control of the Department. Sections 30-3.4 and 30-3.5 of the proposed amendment require that SLOs include a minimum growth target of one year of expected growth, as determined by the Superintendent or his or her designee. In determining what constitutes one year of expected growth, the regulations allow the Superintendent or his or her designee to take into account poverty, students with disabilities, English language learner status and prior academic history, which is also consistent with the growth model.

41.COMMENT:

Stephen Caldas, a panelist at the State Education Department's May 7 APPR Summit, shared that the APPR system has an error rate up to 55 percent. Any teacher rated ineffective two years in row and is fired will fight this in a court of law. How well will this challenge hold up with such a great error rate?

DEPARTMENT RESPONSE:

We believe that Dr. Caldas, in discussing an error rate of up to 55 percent in the State-provided growth model, was referring to a statistic called the R-square. This statistic is commonly used to describe the goodness-of-fit of a regression model, and it indicates the amount of variance in student outcomes that we can account for with the predictors in the model. That is, the R-square tells us how well differences between how students were expected to perform and how they actually performed on a particular assessment are explained by the factors in our model. It is important to note that the amount of variance *not* explained by the model is neither an indication of error nor an error rate. It is an indication that student scores are determined by additional factors not already contained in the model. Because the New York State growth model is run separately for each subject in grades 4-8, and for each Regents Exam included in grades 9-12 results, multiple R-square values are reported annually. The R-square value in question was reported for the ELA Common Core Regents Exam in 2013-14, which had a value of 0.45 and is used as part of the model for high school principals, not teachers. For teachers, the R-square in 2014-15 ranged between .68 and .77.

Because this particular model explained about 45 percent of the variance in scores in 2013-14, and the remaining 55 percent of the variance was due to other factors (e.g., teachers, community, measurement variance in the test itself), we use a

larger confidence interval in making our determinations the principal or school than we do with the models for teachers in grades 4-8. The fact that this particular ELA Common Core Regents model explained less variance than other models is therefore built into the reported results because we take the level of precision into account by using the confidence interval around the MGP when assigning HEDI ratings.

COMMENT:

The following questions are based on the May Board of Regents APPR Discussion slides. The slide number is indicated in parenthesis before each inquiry.

(Slide 8) Will the observable teaching standards be clearly outlined by the Department? Many of the state approved rubrics contain observable and non-observable indicators. Are we only going to address the observable standards and their respective indicators (e.g., NYSUT rubric)?

(Slide 18) Must there be a pre- and post-conferences for a minimum of one observation since one observation is unannounced?

(Slide 19) The slide references non-observable standards/domains. Must teachers be scored on all standards as we have done in the past or just the observable?

(Slide 26) Still concerned about SLOs because it has been creating problems between grades 4-8 ELA and math teachers receiving a growth score from the state and all other teachers having local control of SLOs. There still needs to be training on this – perhaps standardize SLOs for Regents exams and other state exams – at least the 1-20 point scale. The language is still very loose.

(Slide 28) Is the Department able to provide examples of State-designed supplemental assessments?

(Slide 33) Does a superintendent need to utilize an external evaluator in addition to them when it comes to evaluating principals?

(Slide 9) The slide indicates, with regard to the testing reduction report, “Offer flexibility to district to further reduce local testing time required by APPR: Allow the use of a school-wide, group, team, or linked measures for APPR purposes.” Is this for all other teachers besides grade 4-8 ELA and math teachers receiving a growth score from the state?

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.

Pre-observation and post-observation conferences are not required by the law or regulations. Such conferences are within the discretion of the districts.

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.

The Department has posted guidance on SLOs under Education Law §3012-d which can be found on Engage NY at: <https://www.engageny.org/resource/student-learning-objectives-guidance-document>. Additionally, all evaluators receive mandatory training on SLOs prior to conducting evaluations.

The Department does not have any approved state designed or approved supplemental assessments at this time but an RFQ has been issued for these assessments and the Department will notify the field once they are available.

A superintendent is required to utilize a trained independent evaluator or other trained evaluators in evaluations of principals, in accordance with section 30-3.5(d) of the Rules of the Board of Regents; which is aligned to the teacher evaluation system as required by Education Law §3012-d(14). See Response to Comment #1.

The flexibility for districts to allow the use of a school-wide, group, team or linked measures for APPR purposes is an allowable option for all teachers, except those who receive a State-provided growth score or whose courses end in a State assessment or Regents examination.

42. COMMENT:

Commenter expressed concern over unreasonable deadlines, including the June 30, 2015 deadline for regulations; the September 1, 2015 deadline for submission of

updated APPR plans; and the November 15, 2015 deadline for final approval of submitted APPR plans.

DEPARTMENT RESPONSE:

The Department worked to meet the statutory requirement that new regulations be adopted in June 2015, as required by Education Law 3012-d.

Additionally, Education Law 3012-d(11) provides that APPR plans must be submitted by November 15, 2015 for a district to be eligible for their State aid increase. However, the appropriation language in Chapter 61 of the Laws of 2015 that links increases in school aid in for the 2015-2016 and 2016-2017 school years to submission of documentation that the district has implemented the APPR in accordance with Education Law §3012-d requires such submission by November 15, 2015 or by September 1, 2016. Accordingly, the Department has, however, provided for a Hardship Waiver. Districts and BOCES that have collectively bargained in good faith but have been unable to meet the November 15th deadline are required to submit a Hardship Waiver application to the Department between October 1st and October 30th. For districts, this is required in order to extend this deadline without risk of losing their eligibility for a State aid increase. More information on the hardship waiver can be found on the EngageNY website at <https://www.engageny.org/resource/hardship-waiver-implementation-education-law-3012-d>.

43. COMMENT:

Several comments expressed concern over the scoring bands under the new regulations and the disproportionate amount of teachers that will receive ineffective ratings thereunder.

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 scoring ranges specified in sections 30-3.4(c)(3) and 30-3.4(d)(1). Although the Ineffective range is now 0-12 points, the percentage of students meeting targets that this corresponds to (0-59%) is similar to the Department's longstanding guidance and recommendations under Education Law §3012-c (see, e.g., D70 of the APPR guidance document posted at <https://www.engageny.org/resource/guidance-on-new-york-s-annual-professional-performance-review-law-and-regulations>). By expanding the number of points to which this percentage range corresponds, these percentages are being more evenly distributed across the entire 0-20 scoring range.

Additionally, the Department does not believe that there is a disproportionate amount of teachers that will receive an ineffective rating under the new regulations. However, the Department is required by law to review the impact annually and will amend the regulations if it finds that there is an unreasonably disproportionate amount of teachers that receive an ineffective rating, if necessary.

44.COMMENT:

Why are Charter Schools not subject to APPR when they have the ability to select students and fire the low performing ones? Why are charter schools exempt from imposing this evaluation system when they have the ability to select students through admissions criteria?

DEPARTMENT RESPONSE:

Pursuant to Education Law §2854(1)(b), charter schools are exempt from all other state and local laws, rules, regulations or policies governing public or private schools, boards of education, school districts and political subdivisions, including those relating to school personnel and students, except as specifically provided in the school's charter or in Article 56 of the Education Law. There is nothing in Article 56 of the Education Law that requires charter schools to be subject to APPR. Therefore, unless the school's charter requires them to comply with Education Law §3012-d, charter schools are not required to comply with Education Law §3012-d.

45.COMMENT:

In order to ensure that teachers don't have two consecutive years of failing grades, the school has started moving the teachers around which has wreaked havoc and in the end hurts the quality of teaching. Teachers who normally teach kindergarten do not belong teaching 5th or 6th grade and vice versa. There are different skill sets and patience levels these teachers have developed over the years and shouldn't have to move around just to avoid a failing mark.

DEPARTMENT RESPONSE:

Pursuant to section 30-3.14(b), a district may seek a waiver to assign a student to a teacher rated Ineffective in the same subject for two consecutive years. The Commissioner may grant a waiver if 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 the district has an improvement and/or removal plan in place for the teacher at issue that meets certain guidelines prescribed by the Commissioner.

46.COMMENT:

Will charter schools (those that accepted RTTT funds OR those that did not) have to follow all the new regulations for APPR as non-charter public schools will?

DEPARTMENT RESPONSE:

Pursuant to Education Law §2854(1)(b), charter schools are exempt from all other state and local laws, rules, regulations or policies governing public or private schools, boards of education, school districts and political subdivisions, including those relating to school personnel and students, except as specifically provided in the school's charter or in Article 56 of the Education Law. There is nothing in Article 56 of the Education Law that requires charter schools to be subject to APPR. Therefore, unless the school's charter requires them to comply with Education Law §3012-d, charter schools are not required to comply with Education Law §3012-d.

47.COMMENT:

If a district wants to use the optional student growth subcomponent do they have to do it for ALL teachers or can they do a subset of teachers/groups? Can they do the following: 4-8 core teachers use 100% spg; Art teachers use one SLO 100%; PE teacher use one SLO 50-80% and optional site based state score measure 50%-20%.

DEPARTMENT RESPONSE:

Pursuant to section 30-3.4(b)(2), a district may locally select to use an optional second subcomponent, that shall be applied in a consistent manner, to the extent practicable, across the district.

48.COMMENT:

Request that the emergency rules relating to the APPR be declared invalid because they were adopted under emergency rule making provisions, rather than traditional rule making provisions, and no emergency existed; the notice of emergency rule making lacks the requisite detail describing the emergency; and the notice of the emergency rule making lacks the required detail on the research supporting the rule. Also request that the Department halt the current proposed rulemaking regarding the APPR because the notice of emergency rulemaking is insufficient and public comment would be undermined by the lack of the particular information.

DEPARTMENT RESPONSE:

Section 202(6) of the State Administrative Procedure Act provides as follows:

Notwithstanding any other provision of law, if an agency finds that the immediate adoption of a rule is necessary for the preservation of the public health, safety or general welfare and that compliance with the requirements of subdivision one of this section would be contrary to the public interest, the agency may dispense with all or part of such requirements and adopt the rule on an emergency basis.

With respect to the adoption of regulations to implement the new Annual Professional Performance Review (APPR) statute, Section 1 of Part E of Subpart EE of Chapter 56 of the Laws of 2015 provides in relevant part as follows:

Section 1. Authority of the commissioner. Notwithstanding any provisions of section 3012-c of the education law to the contrary, the commissioner of the state education department, is hereby authorized and directed to, subject to the provisions of section 207 of the education law, adopt regulations of the commissioner and guidelines no later than June 30, 2015, to implement a statewide annual teacher and principal evaluation system in New York state pursuant to section 3012-d of the education law, as added by this act, after consulting with experts and practitioners in the fields of education, economics and psychometrics The commissioner shall also establish a process to accept public comments and recommendations regarding the adoption of regulations pursuant to

section 3012-d of the education 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 and shall release the response from the Secretary upon receipt thereof but in any event prior to publication of the regulations hereunder.

The Legislature itself, when it enacted Subpart E of Part EE of Ch. 56 of the Laws of 2015 on April 13, 2015, determined that immediate adoption of the regulations to implement the APPR law (Education Law section 3012-d) was necessary when it required the Department to adopt regulations to implement the requirements of the new law by no later than June 30, 2015, after consultation with experts and practitioners and after seeking comments and recommendations, in writing, from the U.S. Secretary of Education. In addition, APPRs are conducted on a school year basis and subdivision 12 of Education Law §3012-d requires that collective bargaining agreements entered into on or after April 1, 2015 that relate to the 2015-2016 school year or thereafter comply with new §3012-d, which would not be possible until implementing regulations are adopted. In order for the Department to provide the full 45 day notice period in advance of the June 15-16 Regents meeting and comply with the legislative directive that regulations be adopted by June 30, 2015, a proposed rulemaking would have needed to be filed by April 7 for publication in the State Register on April 22nd. This was clearly impossible since the statute did not take effect until April 13th and in any case such early publication would not have allowed the Department sufficient time to analyze a complex statute, conduct the statutorily required consultation with experts and practitioners and develop the necessary comprehensive set of implementing regulations. Therefore, the Department believes it acted properly when it enacted regulations on an emergency basis in June, or the Department would be in violation of

the provision of Chapter 56 providing for timely of Education Law section 3012-d by June 30, 2015.

This was also clearly stated in the Statement of Facts and Circumstances Justifying the Emergency Adoption of the proposed rule, which was included in the materials presented to the Regents at the June meeting and published in the State Register on July 15, 2015.

The Department also believes that it properly noted the needs and benefits of the rule in its Regulatory Impact Statement (RIS):

Section 202-a(3)(b) of the State Administrative Procedure Act provides that a Regulatory Impact Statement include a Needs and Benefits analysis as follows:

(b) Needs and benefits. A statement setting forth the purpose of, necessity for, and benefits derived from the rule, a citation for and summary, not to exceed five hundred words, of each scientific or statistical study, report or analysis that served as the basis for the rule, an explanation of how it was used to determine the necessity for and benefits derived from the rule, and the name of the person that produced each study, report or analysis;

The Department's RIS clearly provided a description of the needs and benefits of the rule and an analysis of what served as a basis for the rule. The Needs and Benefits section of the Regulatory Impact Statement provides as follows:

The regulations were adopted to implement the new provisions of the new law to implement the evaluation system by June 30, 2015, after consulting with experts and practitioners in the fields of education, economics and psychometrics and provided an analysis of the proposed rule. 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 and the Secretary responded.

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). 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.

The Department believes that this description of the needs and benefits of the APPR regulation is consistent with section 202-a(3)(b) of the State Administrative Procedure Act, particularly where the Department was implementing statutory requirements on an emergency basis.

Furthermore, reference to scientific/statistical studies, reports or analyses in the RIS is required only *when there are such studies, reports, analyses that serve as the basis for the proposed regulations*. As described above, consistent with the statute, the proposed regulations were developed through the over 1,000 comments received and through the submissions and testimony of the panel of stakeholders/experts as part of the May 7, 2015 Learning Summit, which are referenced in the Regulatory Impact

Statement. A video recording and the submitted materials for the Learning Summit are available on the Department's website at <http://www.nysed.gov/learning-summit>. The national experts and the representatives of stakeholder groups who presented at the Learning Summit are listed at <http://www.nysed.gov/content/learning-summit-presenter-biographies>. The materials submitted by the national experts and stakeholder groups are listed at <http://www.nysed.gov/content/learning-summit-submitted-materials>.

The Department believes that part of the public's misunderstanding concerning the emergency regulations may result from the fact that in this case the RIS exceeded 2,000 words, so only a Summary of the RIS was published. Where a Regulatory Impact Statement would exceed 2,000 words, SAPA §202(1)(f)(vi) requires that only a summary of the RIS is published with the Notice of Proposed Rule Making. Such a summary, of necessity, could not include all the information in the full text of the Regulatory Impact Statement. However, the full text is made available to the public upon request, as noted in the Notice published in the *State Register*.

49.COMMENT:

When creating SLOs, the State specifies one year worth of growth. Can districts decide what one year worth of growth means? For example, based on historical data, can kindergarten one year be a different number than grade six? Also, sub groups, SE and ESL, what would their one year look like? Does one year need to be equivalent to 1.0 GE growth or is one year up to districts? For example, can districts start GE 2.5 and end GE 3.5. Also, can teachers get more points if they go beyond their target for GE growth?

DEPARTMENT RESPONSE:

Sections 30-3.4 and 30-3.5 of the Rules of the Board of Regents require that SLOs include a minimum growth target of one year of expected growth, as determined by the Superintendent or his or her designee. In determining what constitutes one year of expected growth, the regulations allow the Superintendent or his or her designee to take into account poverty, students with disabilities, English language learner status and prior academic history. Thus, targets may vary based on a student's present level of performance and learning needs in order to close achievement gaps or move low-performance towards grade-level expectations.

50. COMMENT:

See Response to Comment #1.

In addition, section 30-3.4(d)(2)(i)(b) provides that 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. Please note that "school building" shall mean a school or program identified by its Basic Educational Data System (BEDS) code, as determined by the Commissioner.

The evaluator may be a district-wide employee reported to NYSED using the district BEDS code, not the school building BEDS code where the evaluation is taking place. For example, if the staff member is a Director of Special Education in a one-building district or BOCES, the District BEDS code or the overarching BOCES could be used to identify this person as an eligible independent trained evaluator.

In addition, if the staff member is a BOCES employee and is reported to NYSED with a different virtual location code than the school or location BEDS code associated

with the educator being evaluated, they too could be identified as an eligible independent trained evaluator.

For more information with regard to the proper use of BEDS codes, LEAs are encouraged to work with their Regional Information Centers (RICs).

51. COMMENT:

Since value-added models have been used as a means for rating teachers, the inadequacies and inequities of the method have come to the forefront. How could any state education system sign on to a method for evaluating teachers through which such flawed results occurred? How could any state Board of Regents endorse such policies?

DEPARTMENT RESPONSE:

The Department disagrees with this comment. There are numerous studies and articles that support the use of student growth models, including value-added models.¹

52. COMMENT:

With the recent changes to the evaluation system endorsed by this Board of Regents, the only test scores that can be used to assess teachers must come from state standardized tests. In my district (a Long Island district), and many, many more like it, more than 50% of the teachers DO NOT teach subjects whose subject matter is

¹ See, e.g., Chetty, R. Friedman, J., Rockoff, J., Measuring the Impacts of Teachers II: Teacher Value-Added and Student Outcomes in Adulthood. Retrieved July 15, 2015, from <http://obs.rc.fas.harvard.edu/chetty/w19424.pdf>. Chamberlain, G., Predictive effects of teachers and schools on test scores, college attendance and earnings. Retrieved July 15, 2015, from <http://www.pnas.org/content/110/43/17176.abstract>. Kane, T., (2008), National Bureau of Economic Research, Estimating Teacher Impacts on Student Achievement: An Experimental Evaluation. Retrieved July 15, 2015, from <http://www.nber.org/papers/w14607>. Gates, B. & M., (2013), The Gates Foundation; The MET Project; Have we Identified Effective Teachers? Validating Measures of Effective Teaching Using Random Assignment, Retrieved July 16, 2015, from <http://files.eric.ed.gov/fulltext/ED540959.pdf>. Chetty, R. Friedman, J., Rockoff, J., Measuring the Impacts of Teachers I: Evaluating Bias in Teacher Value-Added Estimates, Retrieved July 15, 2015, from <http://obs.rc.fas.harvard.edu/chetty/w19424.pdf>. Bacher-Hicks, Kane, T. Staiger, D. Retrieved July 16, 2015 from https://scholar.harvard.edu/files/andrewbacherhicks/files/bacher-hicks_kane_staiger_validating_teacher_effects.pdf.

directly tied to a state test. So if you are an elementary school art teacher, a high school music teacher, or a middle school second language teacher, your APPR score is going to depend upon the performance of students on a test which does not cover ANY of the curriculum you teach to the students in your classes, is not exclusive to the specific students you have worked with during the school year, and does in no way, shape or form evaluate the growth of your students in your classroom in your subject. Not to mention the fact that, in many schools, over 50% of the students enrolled are not even taking the state tests in the first place because their parents have elected to opt them out.

DEPARTMENT RESPONSE:

The Department disagrees with this comment. Section 30-3.4(b)(1)(iii) of the proposed amendment provides a district/BOCES with options for constructing SLOs for teachers whose courses do not end in a State assessment. These options include the use of a SLO with an assessment approved by the Department for the grade and subject taught by the teacher. Please also note another option is the use of school-or-BOCES-wide group, team, or linked results based on State/Regents assessments. Linked results on a State assessment would limit the measure to the teacher's own student population.

53.COMMENT:

While the transition is being made from Pearson to Questar to develop valid, curriculum based, developmentally appropriate standardized tests, remove the state growth score completely from any teacher evaluation. Allow districts to continue to perform teacher observations. Use the results from those observations, along with

locally developed assessments for a teacher's APPR. Local assessments can itemize specific district performance objectives through an analysis of historical data of the performance of students in those local schools. Teachers can then design instruction specifically to meet the curricular goals and objectives of their unique classroom environments. If the failure of No Child Left Behind has taught us anything, it is that a "one size fits all" approach to setting education goals simply does not meet the needs of any student. If state standardized tests can be created which are valid assessments of student performance, AND, can be utilized by teachers as a means for professional growth, then reintroduce the concept of a state growth score utilizing the data from these tests. However, the data cannot be tabulated through use of a value-added model. Instead, a system must be used which calculates student growth fairly, taking into consideration past levels of achievement of students in the district in question.

DEPARTMENT RESPONSE:

Education Law §3012-d prescribes the components of the student performance category, which includes a State-provided growth score on State assessments and its impact on a teacher's/principal's overall growth score. The Department does not have authority to change this requirement.

In addition, see response to Comment No. 52 regarding value-added models.

54. COMMENT:

Several comments urge that the proposed APPR rules should be rejected because the legal "Notice" doesn't identify "each scientific or statistical study, report or analysis that served as the basis for the rule ... and the name of the person that produced each study, report or analysis," as the State Administrative Procedure Act,

Section 202-a(3)(b) requires. The commenters also state that, if there are no underlying studies, reports or analyses validating the proposed rules, or if they are inadequate, then the rules must be rejected because of this lack of support.

DEPARTMENT RESPONSE:

See Response to Comment #48.

55.COMMENT:

Comment expressed concern regarding the Value Added Model, stating that it has been proven time and again that VAM are not an effective way to measure teacher performance.

DEPARTMENT RESPONSE:

The Department disagrees with this comment. There are numerous studies and articles that support the use of student growth models, including value-added models.²

56.COMMENT:

According to the new summary, a teacher is to be evaluated on what is seen during the actual lesson or pre/post observation discussions. There is so much more to a teacher than that! NYS Teaching Standards #6 and #7 are not "observable" in a classroom observation but certainly are part of what makes a teacher effective (or they wouldn't be part of the standards). You have nullified entire portions of every rubric the state has approved. Watching a handful of lessons, an administrator can easily rate a

² See, e.g., Chetty, R. Friedman, J., Rockoff, J., [Measuring the Impacts of Teachers II: Teacher Value-Added and Student Outcomes in Adulthood](http://obs.rc.fas.harvard.edu/chetty/w19424.pdf). Retrieved July 15, 2015, from <http://obs.rc.fas.harvard.edu/chetty/w19424.pdf>. Chamberlain, G., [Predictive effects of teachers and schools on test scores, college attendance and earnings](http://www.pnas.org/content/110/43/17176.abstract). Retrieved July 15, 2015, from <http://www.pnas.org/content/110/43/17176.abstract>. Kane, T., (2008), National Bureau of Economic Research, [Estimating Teacher Impacts on Student Achievement: An Experimental Evaluation](http://www.nber.org/papers/w14607). Retrieved July 15, 2015, from <http://www.nber.org/papers/w14607>. Gates, B. & M., (2013), The Gates Foundation; The MET Project; [Have we Identified Effective Teachers? Validating Measures of Effective Teaching Using Random Assignment](http://files.eric.ed.gov/fulltext/ED540959.pdf), Retrieved July 16, 2015, from <http://files.eric.ed.gov/fulltext/ED540959.pdf>. Chetty, R. Friedman, J., Rockoff, J., [Measuring the Impacts of Teachers I: Evaluating Bias in Teacher Value-Added Estimates](http://obs.rc.fas.harvard.edu/chetty/w19424.pdf), Retrieved July 15, 2015, from <http://obs.rc.fas.harvard.edu/chetty/w19424.pdf>. Bacher-Hicks, Kane, T. Staiger, D. Retrieved July 16, 2015 from https://scholar.harvard.edu/files/andrewbacherhicks/files/bacher-hicks_kane_staiger_validating_teacher_effects.pdf.

developing teacher as effective because of the small "observable" windows they are allowed to judge; what if that teacher never contacted on parent all year? Of course, the opposite can occur as well, where an effective teacher could end as developing because the administrator is not allowed to judge the "entire" picture. Our administrators know us, and see much more than those few glimpses now allowed as evidence. All of the rubrics have domains or sections specifically designed for the purpose of rating a teacher on these "unobservable" classroom activities, and yet we are to discount that portion of our teaching. The state is ignoring its own standards. Please change this before finalizing the APPR.

DEPARTMENT RESPONSE:

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.

57.COMMENT:

The emergency regulations narrowly define a "growth model" to be a statistical calculation. Very few districts will have the capacity to have their current tests qualify as a statistical growth model for use as an optional supplemental assessment. The

definition of growth model should be adjusted to allow calculations of student growth similar to the SLO growth calculation, which is recognized as a comparable growth measure under section 3012-d of the education law, in order to make the optional supplemental assessments available to more districts. If no change is made, most teachers will be evaluated based on one student measure rather than multiple measures. Research indicates that the information generated by growth models is too statistically unreliable to be made into the only measure of student performance used in a teacher's evaluation

DEPARTMENT RESPONSE:

Education Law §3012-d makes a clear distinction between SLOs and growth models. Growth models are traditionally known as a statistical measure of performance, while SLO's are a locally determined measure of growth. The regulatory definition is consistent with the traditional definition of "growth model" and the State-provided growth model.

58.COMMENT:

The emergency regulations set the scoring bands for SLOs at unrealistic levels. In small sample size SLOs, one or two students could be the difference between a rating of effective and ineffective due to the lack of range in the scoring bands. NYSUT has proposed and continues to propose fairer scoring bands with more reasonable expectations for students to meet. NYSUT's recommended scoring bands are 0 to 29% of students meeting the target = ineffective; 29 to 54% = developing; 54 to 84% = effective and 84 to 100% = highly effective. While the Regents cannot change the

matrix, they can impact the final rating a teacher receives by setting more reasonable scoring bands.

DEPARTMENT RESPONSE:

The Department recognizes that small “n” sizes require a different method for calculating HEDI scores. Therefore, districts shall calculate scores for SLOs in accordance with the tables provided in section 30-3.4 of the Rules of the Board of Regents; provided however that, for teachers with courses with small “n” sizes, districts shall calculate scores for SLOs using the methodology prescribed by the Commissioner in guidance, which can be found in D95 of the APPR guidance document posted at <https://www.engageny.org/resource/guidance-on-new-york-s-annual-professional-performance-review-law-and-regulations>.

59. COMMENT:

The new statute, unlike 3012-c, does not require an unannounced observation. The Legislature clearly intended to remove this requirement and restore it to the local bargaining table with the other observation procedures. NYSUT is requesting that the decision on whether or not to use unannounced observations be recognized as a matter of procedure that is subject to bargaining.

DEPARTMENT RESPONSE:

Education Law 3012-d(4)(b) requires the Commissioner to determine the minimum amount of observations, including the frequency, duration and parameters of observations. Section 30-3.4(d)(2)(vi) of the proposed amendment requires that at least one of the mandatory observations be unannounced. The Department believes that an

unannounced observation is considered to be a parameter of the observations and, therefore, is within the discretion of the Commissioner.

60.COMMENT:

Section 3012-d allowed the Regents to decide whether certain provisions of section 3012-c should remain in effect. In three instances the regulations make changes to the statute. NYSUT is requesting these changes be eliminated in the final regulations. The emergency regulations purport to change the development of Teacher Improvement Plans from a matter of collective bargaining to one of management prerogative. We are requesting continuation of the original requirements of section 3012-c regarding Teacher Improvement Plans. Additionally, the emergency regulations expand the individual teacher data that would be released to parents to include the category scores and ratings. We are requesting continuation of the original requirements of section 3012-c that will provide parents with only the final rating. Finally, the emergency regulations purport to expand SED's authority over corrective action plans to include sending the parties back to the bargaining table. This expansion of power goes beyond what is allowed by section 3012-c and interferes with the collective bargaining process, therefore we are requesting continuation of the original requirements of section 3012-c.

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 and the parental ratings and corrective action requirements of §3012-c apply to §3012-d. The Department believes that the changes made in the regulation to TIP/PIPs, parental

rights to ratings and corrective action were within its statutory authority to change. Nevertheless, in an effort to protect teacher privacy, while at the same time providing parents with the information they need, the Department has revised the regulation to require the privacy provisions in §3012-c to remain in effect without modification, except there is no composite effectiveness score under Education Law §3012-d..

61. COMMENT:

The application/approval procedure contemplated by SED for hardship extensions, requiring an initial application in mid-October and re-applications by school districts and BOCES every two months will be burdensome for school districts, BOCES and the department. Implement hardship extension application procedures once. Hardship Extensions should be approved for ALL school districts and BOCES that qualify, without any cap or other restrictions.

DEPARTMENT RESPONSE:

The Department agrees that submission of a hardship waiver every two months would be burdensome on the districts and the regulation therefore only requires re-application every four months. The initial application, required to be submitted in October, will cover the time period from November 2015 through March 2016. Districts will then be required to apply for an extension of the hardship waiver for the period of March 2016 through July 2016. The Department decided on four months in an attempt to balance the needs of districts, while trying to adhere to the intent of Education Law §3012-d and to ensure the continued negotiation with regard to these issues and continued training of educators and administrators on APPR.

62. COMMENT:

For all students, but especially for subpopulations of students such as English language learners and students with disabilities, the factors, controls and filters used for the comparative function of the state-developed growth score must be publically re-examined and modified if warranted. Additionally, the HEDI cut scores included in the slide deck presented at the Board of Regents meeting should be revised downward. SAANYS supports the following HEDI cut points: H = 85-100%, E = 55-84%, D = 30-54%, I = 0-29%.

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 score ranges specified in sections 30-3.4(c)(3) and 30-3.4(d)(1). Although the Ineffective range is now 0-12 points, the percentage of students meeting targets that this corresponds to (0-59%) is similar to the Department's longstanding guidance and recommendations under Education Law §3012-c. By expanding the number of points to which this percentage range corresponds, these percentages are being more evenly distributed across the entire 0-20 scoring range.

63. COMMENT:

SAANYS supports the setting of minimum requirements in regard to the number and duration of observations, allowing actual requirements to be set through local level collective bargaining. SAANYS also supports maintaining the availability of all current SED-approved rubrics for local negotiation by teacher collective bargaining units. Classroom visits conducted by the school principal or other administrator should be weighted to the maximum extent practicable – 90 or 95 percent, rather than 80 percent

(as presented in the SED slide deck). In a corresponding manner, it is recommended that the class observation conducted by the independent observer receive no more than 5% weighting and that peer review, if collectively bargained, should be weighted at 5%.

DEPARTMENT RESPONSE:

Education Law 3012-d(4)(b) requires the Commissioner to determine the minimum amount of observations, including the frequency, duration and parameters of observations. The Department has provided flexibility in the observation subcomponent through sections 30-3.4 and 30-3.5 of the Rules of the Board of Regents, which require the frequency and duration of observations to be locally determined. Therefore, if a district/BOCES chooses to make the frequency and duration of observations for teachers rated effective and highly effective less than those required for other educators, they may do so. See also Response to Comment #1.

Section 30-3.4(d)(2)(xiii)(b) requires observations conducted by independent impartial observers be weighted at a minimum of 10 percent. Therefore, districts may collectively bargain to have only 10% of the observation category based on independent observers. See also response to Comment #1.

64. COMMENT:

The student performance subcomponent for all principals should be completed based on locally determined measures that are locally negotiated, including the setting of growth targets. At the very least, for all principals, SLOs should be authorized for the student performance category.

DEPARTMENT RESPONSE:

Education Law §3012-d(14) requires the Commissioner to adopt regulations for principals that aligns to the teacher evaluation system. Education Law §3012-d(4)(a)(2) requires the Commissioner to set appropriate targets for student growth in the Student Performance Category for teachers. The proposed amendment requires at a minimum one year of expected growth and provides the superintendent and his/her designee with flexibility as to how that one year of growth is calculated and authorizes the superintendent or his/her designee, in the exercise of their pedagogical judgment, to take the following characteristics into account: poverty, students with disabilities, English language learners status and prior academic history. This is statutorily required for teachers by Education Law §3012-d(4)(a)(1) , as amended by §3 of Subpart C of Part B of Chapter 20 of the Laws of 2015.

65.COMMENT:

School districts and principals' collective bargaining units should continue to collectively bargain the manner in which observations of school principals shall be conducted by their superintendent/supervisor including the number, frequency and duration of observations. The current requirement for at least one unannounced observation is artificial and inefficient, and it is recommended that such a requirement not be continued through regulation. This subcomponent should be weighted as heavily as possible for school principals.

DEPARTMENT RESPONSE:

The Department agrees that school districts and principals' collective bargaining units should continue to collectively bargain various aspects of principal observations, including the number, frequency and duration of school visits, as reflected in section 30-3.5(d) of the proposed amendment. However, Education Law 3012-d(4)(b) requires the Commissioner to determine the minimum amount of observations. The Department believes that an unannounced observation is considered to be a parameter of the observations and, therefore, is within the discretion of the Commissioner. Unannounced informal observations can often be a more authentic evaluation of a teacher's daily performance in the classroom.

The use of an independent evaluator is prescribed by Education Law §3012-d(4) for teacher evaluations. Further, Education Law §3012-d(14) requires the Commissioner to adopt regulations to align the principal evaluation system with the teacher evaluation system set forth in Education Law §3012-d. Therefore, in order to align the principal evaluation system, the use of independent evaluators for principals is required. See also Response to Comment No. 1.

66.COMMENT:

The independent observer subcomponent should not apply to school principals. Such a provision is problematic for the observation of principals for largely the same reasons it is problematic for teachers – it would be disruptive and reduce the authority of the school superintendent. Implementation of such a procedure would add no value to the evaluation process and would necessarily result in a significant unfunded mandate for school districts. At the department's May 7 APPR meeting, all groups expressed opposition to such a requirement. Regulations should not include such a requirement

for the observation of principals. It is not necessary to repeat the mistake made in statute for teachers, in regulation for principals. If, despite our recommendation, there is in fact an individual observer subcomponent, the weighting for the subcomponent should be limited to 5 percent.

DEPARTMENT RESPONSE:

The use of an independent evaluator is prescribed by Education Law §3012-d(4) for teacher evaluations. Further, Education Law §3012-d(14) requires the Commissioner to adopt regulations to align the principal evaluation system with the teacher evaluation system set forth in Education Law §3012-d. Therefore, in order to align the principal evaluation system, the use of independent evaluators for principals is required.

See Response to Comment No. 1.

67.COMMENT:

The optional peer observation subcomponent, involving observation by a school principal within the school district or from another school district, who has been rated Effective or Highly Effective in the most recent APPR evaluation, should be included as a subject for local collective bargaining. If included as a negotiated subcomponent, peer observation should be weighted no more than 5 percent of the category.

DEPARTMENT RESPONSE:

The peer observation subcomponent is optional. If a district/BOCES 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 subparagraphs (i) and (ii) of section 30-3.5(d)(13) of the Rules of

the Board of Regents. These weights were established by the Board of Regents at its June meeting after reviewing the recommendations from the May 7 Learning Summit and receiving input from stakeholders.

68.COMMENT:

The listing of SED-approved rubrics for the annual evaluation of principals should be maintained, and school districts should continue to collectively bargain which rubric shall be adopted.

In addition, the prohibited elements applicable to teachers, listed in Section 3012-d(6) should not be prohibited for the evaluation of principals. Several of the prohibited elements, such as lesson plans and artifacts of student performance, are used in the State Education Department's DTSDE protocols that are applicable to all schools – from Priority Schools to Reward Schools.

DEPARTMENT RESPONSE:

The listing of SED-approved rubrics for the annual evaluation of principals will be maintained. It is anticipated that any rubric currently on the approved list for Education Law §3012-c will remain on the approved list for Education Law §3012-d (see 30-3.9[e] of Regents Rules).

Several of the prohibited elements for teacher observations may continue to be used for DTSE protocols, however Education Law §3012-d(14) requires alignment between the standards for teachers and principals, therefore the prohibited elements may only be used in principal evaluations only to the extent allowable in teacher evaluations. See Response to Comment No. 7 relating to prohibited elements.

69.COMMENT:

It is SAANYS' recommendation that the weighting of the observation of performance category should constitute 80 percent of principals' overall APPR scores. Normal rounding should be consistently applied to determine an average score matching the conversion chart numbers when the actual average is between two points on the chart (e.g., 2.44 is rounded down to 2.4 to be within the 1.5 to 2.4 range, resulting in a "Developing" Rating; whereas, 2.45 is rounded up to 2.5 and results in an "Effective" Rating.) .

DEPARTMENT RESPONSE:

The Department agrees that normal rounding should be consistently applied when the actual average is between two points. The format currently used by the Department allows for rounding to the hundredth decimal place.

70. COMMENT:

With regard to the hardship extension under the regulation, SAANYS recommends that "hardship" be defined as "the unanticipated and significant consumption of time, personnel and fiscal resources necessary for the implementation of the new APPR system (§3012-d) prior to the commencement of the 2015-16 school year" and further provides relevant considerations in making the determination of hardship.

DEPARTMENT RESPONSE:

The Department has provided significant guidance on its website as to what constitutes a hardship and the process for reviewing hardship applications. See the Frequently Asked Questions and Answers on Hardship Waiver, which can be found on

the Engage NY website at: <https://www.engageny.org/resource/hardship-waiver-implementation-education-law-3012-d>.

71. COMMENT:

With regard to §3012-d(8) and the prohibition on placement of a student with teachers rated ineffective for two consecutive years unless impracticable, SAANYS recommends that “impracticable” be defined as “the expectation of a detrimental impact upon finances, student placement, staff assignments, program quality or scheduling,” and states that the overall needs of students and families must be included for consideration and further provides relevant considerations in making the determination of impracticability.

DEPARTMENT RESPONSE:

Section 30-3.14 of the Regents Rules provides that 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 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 the district has an improvement and/or removal plan in place for the teacher at issue that meets certain guidelines prescribed by the Commissioner. Therefore, the Department believes that the regulation adequately addresses the concerns in this comment.

72. COMMENT:

Eliminate the new requirement for back-up SLOs. It mandates unnecessary work for most, and everyone already has more than enough to do that is more important to the mission of public education. The opt-out movement, which appears to be the motivation from requiring back-up SLOs, is parent-driven, involving personal choices which are out of the control of principals and teachers. Additionally, the continued impact of this movement is speculative. Even if it is sustained or increases, the impact may equally be on SLOs as any state generated achievement score.

DEPARTMENT RESPONSE:

The Department has previously recommended the setting of back-up SLOs for the State Growth or Other Comparable Measures subcomponent under Education Law §3012-c and that districts and BOCES consult with their local counsel regarding the implementation of back-up SLOs for APPR purposes. As this is a continuing requirement, the Department does not believe that it requires any additional work on the part of districts and BOCES.

73.COMMENT:

The emergency regulations narrowly define a “growth model” to be a statistical calculation. The definition of growth model should be adjusted to allow calculations of student growth similar to the SLO growth calculation, which is recognized as a comparable growth measure under section 3012-d of the education law, in order to make the optional supplemental assessments available to more districts.

DEPARTMENT RESPONSE:

Education Law §3012-d makes a clear distinction between SLOs and growth models. Growth models are traditionally known as a statistical measure of

performance, while SLO's are a locally determined measure of growth. The regulatory definition is consistent with the traditional definition of "growth model" and the State-provided growth model.

74. COMMENT:

SAANYS proposes fairer scoring bands with more reasonable expectations for students to meet and includes a table of recommended scoring bands based on a scale of 1 through 4.

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 scoring ranges specified in sections 30-3.4(c)(3) and 30-3.4(d)(1).

Additionally, the Department does not believe that there is a disproportionate amount of teachers that will receive an ineffective rating under the new regulations. However, the Department is required by law to review the impact annually and will amend the regulations if it finds that there is an unreasonably disproportionate amount of teachers that receive an ineffective rating, if necessary.

75. COMMENT:

SAANYS requests that the decision to use an unannounced observation be the subject of collective bargaining.

DEPARTMENT RESPONSE:

Education Law 3012-d(4)(b) requires the Commissioner to determine the minimum amount of observations, including the frequency, duration and parameters of

observations. Section 30-3.4(d)(2)(vi) of the proposed amendment requires that at least one of the mandatory observations be unannounced. The Department believes that it is within its authority to require an unannounced observation because it is considered to be a parameter of the observations and, therefore, is within the discretion of the Commissioner.

76.COMMENT:

Section 3012-d allowed the Regents to decide whether certain provisions of section 3012-c should remain in effect. It did not provide SED with the authority to unilaterally change those provisions. In three instances, the regulations make changes to the statute - the moving of TIP from a matter of collective bargaining to a management prerogative; the extent of individual teacher data to be disclosed to parents; and the expansion of SED's authority over corrective action plans to include sending the parties back to the bargaining table. SAANYS requests these changes be eliminated in the final regulations.

DEPARTMENT RESPONSE:

Education Law §3012-d(15) authorizes the Commissioner to determine "the extent to which" certain provisions of Education Law §3012-c shall apply to §3012-d. Thus, it was within the discretion of the Board of Regents to determine the applicability of what portions of certain provisions in §3012-c relating to TIPs/PIPs, corrective action and teacher data apply to Education Law §3012-d.

77.COMMENT:

Disaggregate APPR ratings in order to track the impact of the teacher evaluation system on teachers of MLLs and determine if these teachers have disproportionately

low ratings due to flaws in the APPR system and its inability to accurately assess true growth in MLL population in NYS. Ensure that every district has a meaningful, locally developed appeals process in place to correct any APPR rating that has been negatively affected by these unintended consequences. Encourage and facilitate the use of portfolio assessment and performance-based assessments and factor these into student performance metrics for schools that implement them.

DEPARTMENT RESPONSE:

The Department did consider various student subgroups, including students with disabilities and English language learners, in developing the regulations. Additionally, Sections 30-3.4 and 30-3.5 of the Rules of the Board of Regents require that SLOs include a minimum growth target of one year of expected growth, as determined by the Superintendent or his or her designee. In determining what constitutes one year of expected growth, the regulations allow the Superintendent or his or her designee to take into account poverty, students with disabilities, English language learner status and prior academic history. Thus, targets may vary based on a student's present level of performance and learning needs in order to close achievement gaps or move low-performance towards grade-level expectations.

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.

Moreover, performance assessments continue to be an allowable option in the statute. A Request for Qualifications (“RFQ”) for allowable assessments has been issued and a list of the performance based assessments approved by the Department for use in evaluations will be posted on our website as they are approved. If your district or BOCES would like to use a performance assessment in its evaluations, it should submit the assessment through the RFQ process for consideration by the Department. The RFQ is available on the Department’s website at <http://www.p12.nysed.gov/comprocontracts/rfq-15-001-assessments/home.html>.

78.COMMENT:

Ensure that all principals and/or evaluators who observe teachers of MLLs have the necessary expertise to do so. If outside evaluators are brought in, limit the weight of the outside observer to no more than 10% of the observation component, with the exact percentage to be determined at the local level. Ensure that any outside evaluators for teachers of MLLs are knowledgeable of the particular approach being used in the school in which teachers work.

DEPARTMENT RESPONSE:

All evaluators receive mandatory training prior to conducting teacher and principal evaluations. Section 30-3.10(b)(9) of the Rules of the Board of Regents

requires that evaluators be trained on specific considerations in evaluating teachers and principals of ELLs and students with disabilities. Section 30-3.4(d)(2)(xiii)(b) requires observations conducted by independent impartial observers be weighted at a minimum of 10 percent. Therefore, districts may collectively bargain to have only 10% of the observation category based on independent observers. See also Response to Comment #1.

79.COMMENT:

Recommend that the state test portion is decreased and that the locally developed assessments have the greatest weight. Recommend that the use of independent evaluators be limited as much as possible and that the weight of that observation be reduced. Ensure continuity the use of the already approved observation rubrics.

DEPARTMENT RESPONSE:

The weightings of the subcomponents within the student performance category were considered and, after lengthy discussion and debate at the May and June Board of Regents meetings, and after taking into account the recommendations from the May Learning Summit and other stakeholder feedback, the Board of Regents chose to adopt the current scores and weightings within the student performance category.

See Response to Comment #1 on use of independent evaluators.

Concerning the list of approved rubrics, section 30-3.9(e) of the Rules of the Board of Regents provides that 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.

80.COMMENT:

Recommend adding the following specific language regarding observations, “All observations must be followed with timely feedback to improve teacher performance and student learning.”

DEPARTMENT RESPONSE:

The Department encourages timely feedback following observations in order to improve teacher performance and student learning. However, at this time, it is not a requirement that feedback be given by a deadline as timing of observation feedback is currently determined at the local level.

81.COMMENT:

In order to clarify communication to the field, the use of the phrase “locally determined” should be explicitly referenced wherever applicable and the Department should develop a guidance document, using clear, concise, and consistent language that will be available to the field prior to the beginning of the 2015-16 school year.

DEPARTMENT RESPONSE:

The Department has not defined locally determined because mandatory subjects of collective bargaining are determined by the Civil Service Law and are not within the jurisdiction of the Department.

82.COMMENT:

Require all observers (including independent evaluators) to demonstrate proficiency according to locally determined evidence based observation metrics to ensure inter-rater reliability and inter-rater agreement. Recommend that dialogue between the observer and the teacher take place prior to the observation, in the

observation cycle, to assure the observers (including independent evaluators) understand the instructional context and intent.

DEPARTMENT RESPONSE:

Section 30-3.10(c) of the Rules of the Board Regents requires independent evaluators and peer evaluators to receive training on the teacher and leader standards, evidence-based observation techniques grounded in research and application and use of the State-approved rubric. Section 30-3.10(e) also requires districts to describe in their APPR plan their process for ensuring that all evaluators maintain inter-rater reliability over time and their process for recertifying evaluators. The Department encourages districts/BOCES to train evaluators on any additional information they may need to understand the instructional context and intent and to ensure inter-rater reliability, and such additional training shall be determined at the local.

83. COMMENT:

Recommend that the Department encourages the consideration of differentiated evaluation processes which recognize differences in teacher strengths and development areas which are locally determined, such as: National Board Certification, or participating in the National Board process; New York State Master Teacher; or focus on a target area such as content or instructional strategy, e.g. use of questioning.

DEPARTMENT RESPONSE:

The evaluation system for teachers and principals is prescribed by Education Law §3012-d. Thus, the Department has no discretion in this regard.

84. COMMENT:

To have the principal or assistant principal out of the building for observations in other buildings, as well as the pre and post meetings that will need to take place will take a significant amount of time and leave our students, teachers and support staff with inadequate access to administration. This will also take away from an administrator's ability to be visible and build a school culture where we are regularly in the classrooms, not just when we have an observation. Overall, if the goal is to have an authentic model of evaluation, where teachers are held to higher standards, their building administrators need to be responsible for that.

DEPARTMENT RESPONSE:

Education Law §3012-d(4)(b) requires that classroom observations be conducted by independent trained evaluators or other evaluators selected by the district. See response to Comment No. 1 on the use of independent observers.

85.COMMENT:

Remove the requirement in 30-3.5(d)(6) that the Superintendent must do at least one unannounced observation for principals so that the regulations more align with the teacher observations.

DEPARTMENT RESPONSE:

The Department has revised the regulation to allow an independent evaluator *or a supervisor* to conduct the unannounced observation for principals to make the regulation more aligned with the teacher evaluation system.

86.COMMENT:

It is recommended that, in regards to teacher and principal observation, it should be a superintendent's decision on the 80/20 or 90/10 decisions. For example: If we

want to use the 80/20 split, we would want the independent evaluator to do the announced portion at 20% and the principal to do the unannounced portion at 80%. This should not be negotiable; it should be superintendent's decision. One of the biggest challenges for leaders is trying to figure out what is negotiable and what is not. Can you clarify?

DEPARTMENT RESPONSE:

The Public Employee Relations Board and the Civil Service Law are responsible for determining what constitutes a mandatory subject of negotiation. Such decisions are not within the jurisdiction of the Department.

87.COMMENT:

Allowing outside observers is absurd as the principals and assistant principals are the ones that best know the makeup of a class and can use the observations for improving teacher performance.

DEPARTMENT RESPONSE:

See Response to Comment #1.

88.COMMENT:

Could you explain the formula used to create a teacher or principal's growth score used in APPR? How does this benefit children? It doesn't, but you can certainly see how it benefits the myth that public schools are failing. How did you allow this nonsense to become a practice in schools? Why are we destroying our public schools to create a bell curve of accountability performance, which is created when we compare teachers to each other using student test score growth?

DEPARTMENT RESPONSE:

State-provided growth scores for educators in grades 4-8 are based on the Student Growth Percentiles (SGPs) of students in a particular course or school. SGPs are a measure of academic growth compared to similar students. Students enter teachers' classrooms at different levels of proficiency or prior academic achievement. A growth measure, rather than a measure of proficiency, gives all educators a chance to do well regardless of the academic starting points of their students. In addition to prior achievement, a number of other factors have also been demonstrated to impact student achievement, including disability status, economic disadvantage, and English language learner status. These types of characteristics are also included in the growth model when measuring growth compared to similar students in order to better isolate the impact of the educator on student performance. In fact, Education Law §3012-d(4)(a)(1), as amended by §3 of Subpart C of Part B of Chapter 20 of the Laws of 2015, now requires that the New York State Growth model include these characteristics. The New York State growth model therefore does not favor certain educators over others on the basis of their classroom make ups. Any teacher has the opportunity to receive any growth rating.

At a high level, student growth is measured by comparing the current year performance of similar students – students with the same prior achievement and other characteristics. The SGP indicates where a particular student falls in a distribution of similar students, that is, what proportion of similar students he or she performed as well as or better than. More specifically, this comparison of current year performance to similar students is done through a linear regression. A covariate adjustment model is used to form the comparison point against which a student's current performance is

measured, based on similar students. A comprehensive description of this statistical model is available in the technical report on the growth model released annually. The most recent version, “2013-14 Growth Model for Educator Evaluation” is available here (<https://www.engageny.org/resource/technical-report-growth-measures-2013-14>).

SGPs are then aggregated into educator-level Mean Growth Percentiles (MGPs). MGPs indicate what proportion of similar students, on average, an educator’s students performed as well as or better than. MGPs are then used to assign particular effectiveness ratings (Highly Effective, Effective, Developing, Ineffective) and scores (0-20) to educators, a process which also takes into account the level of precision in the MGP in order to ensure statistical certainty in the rating. This process is described more in the technical report referenced above, as well as guides for educators to interpret their State-provided growth scores available on www.engageny.org (the principal guide is available here, and the teacher guide is available here).

Not only does a measure of growth compared to similar students enable all educators to do well on this measure, but it also provides new information that district leaders, principals, and teachers can use to consider instructional practices and areas for development. Educators can look for patterns in growth that may indicate particular groups of students are growing more or less than others. How do MGPs compare across grades or subjects? Are there differences in teachers’ MGPs that are surprising? For two teachers whose students demonstrate similar levels of proficiency, does one teacher have a higher MGP, indicating higher growth among his/her students compared to similar students? How might these teachers work together and share practices so that both teachers’ students show high levels of growth in the future? Alongside other

data about student and teacher performance, educator and student level growth measures provide additional information that schools and districts can use to inform their practices going forward.

89. COMMENT:

How can SED base an educator's performance on a state assessment which the public does not have faith in? More than 20% of students in New York State opted out of the 3 to 8 state tests due to poor quality and the recent firing of Pearson confirms that SED agrees with the general public. Furthermore, the debacle of the Algebra I Common Core Regents, which included material from Algebra II, further supports the notion that the New York assessments are not valid indicators of student performance. It is time to acknowledge a lack of oversight and professionalism, not exacerbate it with 3012-d that acts as if the state assessments are in fact valid measures of teacher performance.

DEPARTMENT RESPONSE:

The current evaluation system is prescribed by Education Law §3012-d and thus the Department has no discretion in this regard. The Department will publish full technical documentation, including information on opt outs later this fall. Preliminary analysis shows that the model's technical characteristics – specifically, model fit and reliability – are consistent with prior years. In addition, we see no systematic relationships between teacher or school MGPs and the percent of SWD, ELL, or economically disadvantaged students in classrooms or schools. This means that teachers and schools with many and few ELL, SWD, and economically disadvantaged students receive high and low MGPs, also consistent with prior years.

90.COMMENT:

If a 7 - 12 Jr./Sr. High School building adopts a school-wide SLO based on the passing rates for all Regents exams, would grade 7 - 12 teachers, with appropriate Certifications within that building, be allowed to grade Regents exams now that they have a "vested interest" in the results? Can a teacher whose course ends in a NYS Assessment or NYS Regents exam, use a school-wide SLO for their student performance measure if the exam is contained within the school-wide SLO?

DEPARTMENT RESPONSE:

Section 30-3.3(b)(3) of the Rules of the Board of Regents requires that the assessment development, security and scoring processes utilized by a school district/BOCES must ensure that any assessments and/or measures used to evaluate teachers and principals 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. Please see G6 of the §3012-d APPR guidance document, which can be found on Engage NY at <https://www.engageny.org/resource/guidance-on-new-york-s-annual-professional-performance-review-law-and-regulations>.

91.COMMENT:

Several comments expressed concern that the Notice of Proposed Rulemaking is fatally defective, as it fails to identify the underlying science and research to support the rules, as required by the State Administrative Procedure Act (SAPA). The Notice's response to the "Needs and Benefits" section admits that expert input is required by law -- but then fails entirely to identify any study, report or analysis, or the producers of those reports or the citations, all in violation of the law. Not only is this omission in plain

violation of the law -- depriving the public of its statutory right to give meaningful comment -- but the omission goes to the heart of the public's concerns about the rules. The public has been deeply troubled by the apparent arbitrariness and lack of science in prior APPR plans as well as in the new one, so much so that over 25,000 New Yorkers, including our state's most respected educators, signed a petition on this point. The need for the science and research is also imperative -- and legally required -- as some of the most controversial elements of the rules were not decided by the legislature, but instead were specifically delegated by the legislature to SED and the BOR, and their materials are essential to the rules' validity, as well as for public comment. Because of the failure to identify any science, research, analysis, or report, the proposed rule must be revoked.

The failure is against the law; as stated above, SAPA specifically requires this information, and SED chose to ignore that law. The failure also impedes democracy, as the public cannot meaningfully comment without the required information. The public comment is mandatory because the rule makers were appointed, not elected, and the comment is the only input that the public has on these rules. The failure also may indicate that in fact there is no support for these rules, that no science or research supports this. If this is the case, then the rules must be revoked on that basis

DEPARTMENT RESPONSE:

See Response to Comment #48.

92. COMMENT:

The Westchester Putnam School Boards Association (WPSBA) expressed concerns that the new regulations rely on an untested, opaque, Value-Added Model

(VAM); focus on three snapshots in time out of an entire school year (the student assessment and two evaluations - one by a principal and one by an outside evaluator); and, use a basic scoring grid rather than a matrix based on multiple measures. A VAM based on state assessments in a single classroom in a single year is neither research-based nor validated, and to date has not helped to inform instruction, support professional development or enhance student learning. The recent decision to allow school districts to opt to include local assessments does not nullify the VAM issue. The Senate and House versions of a reauthorized Elementary and Secondary Education Act (ESEA) allow for more flexibility in developing State accountability systems than is currently prescribed, with the House version promoting an optional link between standardized test results and accountability and the Senate version linking state tests and accountability at a weighting determined at the State level. NYS's emphasis on the VAM is out of synch with the federal direction.

DEPARTMENT RESPONSE:

The Department disagrees with this comment. There are numerous studies and articles that support the use of student growth models, including value-added models.³

³ See, e.g., Chetty, R. Friedman, J., Rockoff, J., Measuring the Impacts of Teachers II: Teacher Value-Added and Student Outcomes in Adulthood. Retrieved July 15, 2015, from <http://obs.rc.fas.harvard.edu/chetty/w19424.pdf>. Chamberlain, G., Predictive effects of teachers and schools on test scores, college attendance and earnings. Retrieved July 15, 2015, from <http://www.pnas.org/content/110/43/17176.abstract>. Kane, T., (2008), National Bureau of Economic Research, Estimating Teacher Impacts on Student Achievement: An Experimental Evaluation. Retrieved July 15, 2015, from <http://www.nber.org/papers/w14607>. Gates, B. & M., (2013), The Gates Foundation; The MET Project; Have we Identified Effective Teachers? Validating Measures of Effective Teaching Using Random Assignment, Retrieved July 16, 2015, from

93.COMMENT:

It is in the best interest of the students, staff and public education across NYS that we develop and implement an appropriate APPR evaluation system that incorporates the following steps: Board of Regents convenes a task force of qualified practitioners and independent experts to review the reliability, transparency, developmental appropriateness, and length of the state tests and to re-assess the validity of linking the State tests to the proposed evaluation system; move the deadline for school district submission of all modified APPR plans to September 2016; and Board of Regents, Commissioner of Education and State legislators perform a detailed review of the evaluation system, gather input from qualified practitioners and independent experts, and reject the elements of 3012-d which place undue reliance on the state test and two observations.

DEPARTMENT RESPONSE:

Education Law §3012-d required the Board of Regents to adopt regulations to implement the new statute by June 30, 2015. 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, New York State United Teachers (NYSUT), the United Federation of Teachers (UFT), the New York State School Boards Association, the New York State Council of School superintendents (NYSCOSS) and principal and parent

<http://files.eric.ed.gov/fulltext/ED540959.pdf>. Chetty, R. Friedman, J., Rockoff, J., Measuring the Impacts of Teachers I: Evaluating Bias in Teacher Value-Added Estimates, Retrieved July 15, 2015, from <http://obs.rc.fas.harvard.edu/chetty/w19424.pdf>. Bacher-Hicks, Kane, T. Staiger, D. Retrieved July 16, 2015 from https://scholar.harvard.edu/files/andrewbacherhicks/files/bacher-hicks_kane_staiger_validating_teacher_effects.pdf.

organizations. Since the new law was enacted in April, the Department has also been separately meeting with individual stakeholder groups to discuss their recommendations on the new evaluation system. Additionally, the Department created an email box (eval2015@nysed.gov) to accept comments on the new evaluation system. In addition, section 30-3.1 of the proposed amendment 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. Therefore, experts in the field and stakeholders recommendations were considered in the proposed amendment and they continue to be considered.

Education Law 3012-d(11) provides that APPR plans must be submitted by November 15, 2015 for a district to be eligible for their State aid increase. However, the appropriation language in Chapter 61 of the Laws of 2015 that links increases in school aid in for the 2015-2016 and 2016-2017 school years to submission of documentation that the district has implemented the APPR in accordance with Education Law §3012-d requires such submission by November 15, 2015 or by September 1, 2016.

Accordingly, the Department has, however, provided for a Hardship Waiver. Districts and BOCES that have collectively bargained in good faith but have been unable to meet the November 15th deadline are required to submit a Hardship Waiver application to the Department between October 1st and October 30th. For districts, this is required in order to extend this deadline without risk of losing their eligibility for a State aid increase.

More information on the hardship waiver can be found on the EngageNY website at <https://www.engageny.org/resource/hardship-waiver-implementation-education-law-3012-d>.

94. COMMENT:

Requested that the Department allow for flexibility in time needed to reach agreement on new teacher evaluations (APPR) and recognize – and provide districts that request “hardship” in this process – with the time and support they require to reach and implement these new requirements. Also requested flexibility in the proposed evaluative matrix that would allow local districts to develop appropriate systems that accurately reflect the effectiveness of its educators.

Further, commenter requested permanent separation of the link between approved evaluation systems under APPR with state aid. State leadership has been critical of the federal government guidelines which hold states hostage to receive federal funding, yet we, as a state, engage in the same extortion of districts.

DEPARTMENT RESPONSE:

Education Law 3012-d(11) provides that APPR plans must be submitted by November 15, 2015 for a district to be eligible for their State aid increase. However, the appropriation language in Chapter 61 of the Laws of 2015 that links increases in school aid in for the 2015-2016 and 2016-2017 school years to submission of documentation that the district has implemented the APPR in accordance with Education Law §3012-d requires such submission by November 15, 2015 or by September 1, 2016.

Accordingly, the Department has, however, provided for a Hardship Waiver. Districts and BOCES that have collectively bargained in good faith but have been unable to meet the November 15th deadline are required to submit a Hardship Waiver application to the Department between October 1st and October 30th. For districts, this is required in order to extend this deadline without risk of losing their eligibility for a State aid increase.

More information on the hardship waiver can be found on the EngageNY website at <https://www.engageny.org/resource/hardship-waiver-implementation-education-law-3012-d>.

95. COMMENT:

To remove the aspects of goal setting and professional development in conjunction with that seems illogical. Some of my BEST discussions with teachers were around goal setting, professional development, and how it impacted learning in the classroom. There may not be a perfect bell curve in overall evaluations. Why must this be forced? This system appears overly punitive in general toward teachers instead of empowering them as the professionals they are. If “we” are talking about the few that just go through the motions etc., can’t “we” find a way to get at that cancer instead of killing off the whole?

DEPARTMENT RESPONSE:

Education Law §3012-d(6) sets forth a list of prohibited elements that can no longer be used in any subcomponent, which includes use of professional goal setting as evidence of teacher or principal effectiveness. The Department does not have authority to change this statutory prohibition.

96. COMMENT:

Policy makers are strongly encouraged to revisit the position papers and comments that preceded the enactment of 3012-c regulations and New York State Education Law 3012-d and its regulations (note: no educators were involved in the enactment of the original law; involvement in designing the regulations was patronizing at best) prior to finalizing regulations for 3012-d.

DEPARTMENT RESPONSE: Education Law §3012-d required the Department to promulgate regulations by June 30, 2015. See Response to Comment #3.

97.COMMENT:

Technical parameters alone will not ensure that teachers receive meaningful feedback. This will require extensive communication, transparency, capacity-building, professional development, and a comprehensive approach to talent management by school districts. The evaluation system must be void of technical parameters that inhibit, prohibit, and solely quantify meaningful feedback. Necessary extensive communication, transparency, capacity-building, professional development, and a comprehensive approach to talent management by school districts are neither inherently quantifiable technical actions nor quantifiable means to the ends of quality evaluation. Restrictions in regulations in review of artifacts and exclusive use of a minimum number of “observation cycles” eliminates any “extensive communication, transparency, capacity-building, and professional development are critical.”

DEPARTMENT RESPONSE:

Pursuant to Education Law §3012-d(6)(a), districts/BOCES are prohibited from using artifacts of teacher practice. §30-3.4(d)(2)(xi) of the Rules of the Board of Regents incorporate this statutory requirement, while allowing some flexibility in cases where artifacts constitute 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). Further, the minimum number of observations required by §30-3.4(d)(2)(i) is not a maximum, and so does not restrict the ability for districts/BOCES to locally determine whether to conduct more observations.

Furthermore, §30-3.4(d)(2)(viii) explicitly states: “Nothing in this Subpart shall be construed to limit the discretion of a board of education or superintendent of schools to conduct observations in addition to those required by this section for non-evaluative purposes.”

APPR is one part of educator evaluations. It is important to leverage results from APPR into a comprehensive statewide strategy to support the continuous improvement of every educator with special emphasis on supporting high-need students, improving learning of English language learners and students with disabilities, advancing student learning in STEM (Science, Technology, Engineering, and Mathematics) disciplines, and improving the equitable distribution of highly effective teachers and leaders. This has been done through programs like STLE.

98. COMMENT:

Although emergency adoption occurred in June; no state regulations or local practices should be enacted until all components are deemed valid, reliable, and practical.

DEPARTMENT RESPONSE:

The Department disagrees with this comment and believes that the regulation is valid, reliable and practical and that properly adopted as an emergency action 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.

99. COMMENT:

Revise the 30-3.7 regarding observations as follows, “Observations should focus on specific observable professional behaviors, while ensuring that all observable teaching standards are assessed each year. Artifacts should be allowed to the extent they constitute evidence of an otherwise observable rubric subcomponent including curriculum development, lesson planning, instruction, and assessments for learning and collected / cover an entire year (not solely an “observation cycle”).”

DEPARTMENT RESPONSE:

Education Law §3012-d(6) sets forth a list of prohibited elements that can no longer be used in any subcomponent. This list prohibits the use of artifacts, including student portfolios from being used 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.

100. COMMENT:

Revise the regulations such that multiple observations (principal/supervisor, independent, peer) MAY be combined through a weighted average. Weights should

reflect the role of the principal as the instructional leader of a school. Using points for an observation should not be required although law appears to require it.

DEPARTMENT RESPONSE:

The impact of the observation component on a principal's overall evaluation rating is prescribed by Education Law §3012-d(5). Accordingly, the matrix found in section 30-3.6 of the Rules of the Board of Regents, which is used to determine a principal's overall evaluation rating, conforms to those statutory requirements.

101. COMMENT:

The HEDI ratings for the observation category is an algorithmic conundrum that reduces planning, instruction, and assessment for learning (for example: strategies to motivate students or posing questions which require higher-order thinking) to a metric, quantifiable point system moments. This reduces what surveys show to be the most productive component of 3012-c, dialogue between supervisor and teacher, into a debate over points and scripted performance.

DEPARTMENT RESPONSE:

Education Law §3012-d(6) sets forth a list of prohibited elements that can no longer be used in any subcomponent. This list prohibits the use of artifacts, including student portfolios from being used 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.

102. COMMENT:

There is no stipulation in law that the observation 1-4 score be calculated from observation subcomponents with points assigned to each; why is this regulation necessary?

DEPARTMENT RESPONSE:

Education Law 3012-d(4)(b) requires that the Commissioner determine the weights, and/or weighting options and scoring ranges for the subcomponents of the observations category that result in a combined category rating. Therefore, the law requires the Department to prescribe these ranges for the observation category.

103. COMMENT:

How does one write, legislate, and enact this restriction to evaluation over a few days in a 180 day year with any sense of professionalism? "Observation cycle" MUST be defined/interpreted as the annual cycle of evaluation from process review and goal setting to final submission of the evaluation. If "observation cycle" includes only the single observation, approximately 175 days of teacher preparation and examples of those lessons are not admissible in this process.

DEPARTMENT RESPONSE:

Please note that Subpart 30-3 of the Rules of the Board of Regents does not define what constitutes an observation cycle. Pursuant to Education Law §3012-

d(10)(b), the local collective bargaining representative shall negotiate with the district/BOCES how to implement the provisions of paragraph b of subdivision four of this section, which address the requirements for the observation category and associated regulations as established by the Commissioner, in accordance with article fourteen of the civil service law.

104. COMMENT:

The regulation states that teaching Standards/Domains that are part of the rubric but not observable during the classroom observation may be observed during a pre-observation conference or post-observation review or other natural conversations between the teacher and the principal/supervisor and incorporated into the observation score. This component MUST allow the “observation” of an artifact that relates to any component of the rubric any time during the year. It presumed that “points” in this component relate to a classroom observation; not points assigned to components of a rubric. “...other natural conversations between the teacher” must be defined to mean “during the entire school year.”

DEPARTMENT RESPONSE:

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, but allows parts of the rubric that are not observable during classroom observations to 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(6).

105. COMMENT:

One half of the statutory matrix is devoted to scoring teachers and principals based upon student performance, however this weight is excessive and reduces the value of classroom observations, which superintendents believe to have greater value in determining teacher effectiveness. It is the recommendation of the NYS Council of School Superintendents that the Department utilize its statutory authority in establishing weights for student performance measures to adjust the scoring ranges so as to lessen the value placed on student performance in relation to measures of observable professional practice.

DEPARTMENT RESPONSE:

The impact of the Student Performance Category on a teacher's overall evaluation rating is prescribed by Education Law §3012-d(5). Accordingly, the matrix found in section 30-3.6 of the Rules of the Board of Regents, which is used to determine a teacher's or principal's overall evaluation rating, conforms to those statutory requirements and cannot be changed.

106. COMMENT:

The second half of the statutory matrix relies on observable measures of professional practice. Superintendents believe this should be the primary measure of teacher effectiveness. In the previous iteration of APPR, superintendents found the

most value in what was referred to as “the other 60%” measures, with more than half of that category derived from principal-led classroom observations. By prohibiting the use of some elements now in the “other 60 percent” measures and by mandating use of independent observers, the new law is likely to damage the one part of APPR that seems to have been working, while creating a complicated and unfunded new mandate for schools to satisfy. With the addition of a scaled score for each observation, the currently beneficial conversations around improving instruction may be diminished to conversations surrounding allocation of points.

DEPARTMENT RESPONSE:

The subcomponents of the observation category are prescribed in statute and the requirement to use an independent evaluator in teacher and principal observations is prescribed by Education Law §3012-d(4). Therefore the Department has no discretion in this regard. Additionally, Education Law §3012-d(4)(a) requires that an APPR include a student performance component that is explicitly linked to student test scores. The State Education Department cannot decouple teacher evaluations from test scores because that would conflict with statute. Additionally, Education Law §3012-d(6) sets forth a list of prohibited elements that can no longer be used in any subcomponent. This list prohibits the use of artifacts, including student portfolios from being used 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.

See also Response to Comment #1 on use of independent observers.

107. COMMENT:

While the use of an independent evaluator is statutorily mandated, the Department has the authority to establish weights to such observations. Within the regulations, the Department has chosen to establish a weight of no less than 10% of the overall observation score and no more than 20% (with principal-led evaluation and peer evaluations to make up the remaining percentage, subject to local negotiation). It is the opinion of the NYS Council of School Superintendents that the weight given to observations by an independent evaluator be minimized to the maximum extent possible. Additionally, the use of independent evaluators should not be required for every teacher or principal every year but rather, should be utilized to differentiate a “fork in the road” where added scrutiny is given to those educators or administrators who have shown below-average scoring in another measure or on a previous evaluation.

DEPARTMENT RESPONSE:

Under Education Law 3012-d(10)(b), the local collective bargaining representative shall negotiate with the district how to implement the provisions of 3012-d(4)(b), i.e., teacher observations, and associated regulations as established by the Commissioner, in accordance with Article 14 of the Civil Service Law. Thus, districts

have local discretion to determine what weight, within the constraints set forth by the Commissioner, to use for observations by independent evaluators.

See also Response to Comment #1 on use of independent evaluators.

108. COMMENT:

With respect to weights and scoring of observations, the establishment of statewide scoring bands is supported by NYS Council of School Superintendents, however the ranges to be locally negotiated are not ideal. The Council recommends adoption of scoring ranges that are universal, minimizing the need for local collective bargaining and minimizing potential for future claims of skewed local outcomes.

DEPARTMENT RESPONSE:

Education Law §3012-d(4)(b) requires that the Commissioner determine the weights, and/or weighting options and scoring ranges for the subcomponents of the observations category that result in a combined category rating. Recognizing that there are over 700 districts and BOCES in New York State, the Department made the decision to provide districts and BOCES will flexibility to locally determine what works best in their unique context, but still defining minimum and maximum ranges of performance. Pursuant to Education Law §3012-d(10)(b), the local collective bargaining representative shall negotiate with the district how to implement the provisions of §3012-d(4)(b), i.e., teacher observations, and associated regulations as established by the Commissioner, in accordance with Article 14 of the Civil Service Law. Thus, districts/BOCES have local discretion to determine what weight, within the constraints set forth by the Commissioner, to use for observations by independent evaluators.

109. COMMENT:

While the prohibition from using artifacts of teacher practice within the evaluation is a component of the law itself, the statutory language can be read as narrowly drawn to exclude these elements only as “evidence of student development and performance...” The law contains no prohibition from using them elsewhere, such as evidence of classroom preparation or good teacher practices. The regulations adopted by the department appear to be more restrictive than the law. The NYS Council of School Superintendents recommends the regulations be amended to expressly allow for use of lesson plans, other artifacts of teacher practice, and student portfolios for any purpose other than evidence of student development and performance.

DEPARTMENT RESPONSE:

Education Law §3012-d(6) prohibits the use of artifacts of teacher practice in any subcomponent of a teacher’s evaluation, except for student portfolios measured by a State approved rubric where permitted by the Department. 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.

110. COMMENT:

Within the adopted emergency regulations, the NYS Council of School Superintendents suggests that waivers be created from the independent evaluation requirement for administrators where a school district employs a joint superintendent-

principal or where two school districts share a superintendent. Waivers should be created from the independent evaluation requirement for teachers where a school district has a single principal. Flexibility should be provided to school districts to limit or use independent evaluations for both teachers and principals on a periodic or priority basis.

DEPARTMENT RESPONSE:

See Response to Comment #1.

111. COMMENT:

The NYS Council of School Superintendents recommends that the Department limit the use of collective bargaining in determining scoring ranges and observational metrics.

DEPARTMENT RESPONSE:

Pursuant to Education Law §3012-d(10)(b), local collective bargaining representatives shall negotiate with the district how to implement the provisions of §3012-d(4)(b), i.e., teacher observations, and associated regulations as established by the Commissioner, in accordance with Article 14 of the Civil Service Law. Thus, consistent with the law, the regulation provides districts/BOCES with local discretion to determine what weight, within the constraints set forth by the Commissioner, to use for observations by independent evaluators.

112. COMMENT:

The NYS Council of School Superintendents requests that the Department's decision to issue four-month waivers (up to September 1, 2016) to school districts unable to meet the November 15 deadline be placed directly within the regulations,

along with specific guiding criteria to ensure that school districts are able to determine eligibility and likelihood of waiver approval.

DEPARTMENT RESPONSE:

Since this requirement is only in effect for one year, the Department does not believe it is necessary to put this waiver in regulation. Moreover, the Department has already released guidance and the application for hardship waivers can be found on Engage NY at <https://www.engageny.org/resource/hardship-waiver-implementation-education-law-3012-d>.

113. COMMENT:

We are concerned about the impact of using inappropriate measures of student performance for Multilingual Learners (MLLs) and the impact of those measures within the APPR system. To address these concerns, NYSED should take action to disaggregate APPR ratings in order to track the impact of the teacher evaluation system on teachers of MLLs and determine if these teachers have disproportionately low ratings due to flaws in the APPR system and its inability to accurately assess real growth in MLL populations. This data should be made publicly available; ensure that every district has a meaningful, locally determined appeals process in place to correct any APPR rating that has been negatively affected by these unintended consequences; and, encourage and facilitate the use of portfolio assessments and performance-based assessments and factor these into student performance metrics for schools that implement them.

DEPARTMENT RESPONSE:

Section 30-3.4(b)(1)(ii) of the Rules of the Board of Regents requires that all SLOs measure at least one year's worth of academic growth for all students. Further, 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. Further, for teachers who receive a growth score, §30-3.2(p) and Education Law §3012-d(4)(a)(1) as amended by §3 of Subpart C of Part B of Chapter 20 of the Laws of 2015, each require that the growth model control for those same characteristics.

Concerning appeals, the law requires all districts to collectively bargain an appeals process. The criteria and eligibility are to be locally determined by the district (within the parameters set forth in Subpart 30-3 of the Rules of the Board of Regents).

Concerning portfolio assessments, such assessments can be submitted to the Assessment RFQ so long as they are accompanied by a rubric that must also be approved by the State as required by Education Law §3012-d(6). All assessments used for APPR must be able measure a year's worth of academic growth. See §30-3.4(b)(1)(ii) of the Rules of the Board of Regents.

114. COMMENT:

For teachers of MLLs, observations must be conducted by evaluators who are knowledgeable about appropriate instructional practices for these students. Outside evaluators may have limited understanding of the best approaches to teaching MLLs and may not be familiar with the schools' particular instructional approach. In order to ensure that teachers of MLLs are fairly and accurately evaluated in ways that promote their growth and the growth of their students, NYSED should limit the weight of the

outside observer to no more than 10% of the observation component, if the external evaluator component is required, with the exact percentage to be determined locally; ensure that any outside evaluators for teachers of MLLs have demonstrated expertise in Multilingual Learner instruction and knowledge of best practices in the education of these students; and ensure that any outside evaluators for teachers of MLLs are knowledgeable of the particular research/evidenced-based approach being used in the school in which teachers work.

DEPARTMENT RESPONSE:

Pursuant to Education Law §3012-d(4)(b)(2) and §30-3.4(d)(2)(i)(b), independent evaluators are trained and selected by the district/BOCES. Therefore, there is nothing that restricts the ability of districts/BOCES to have those observations conducted by evaluators who are knowledgeable about appropriate instructional practices for particular student populations so long as those evaluators, if employed by the district, work in a different school building (defined by its BEDS Code) as the person being evaluated.

Concerning the weight for independent evaluators, under Education Law 3012-d(10)(b), the local collective bargaining representative shall negotiate with the district how to implement the provisions of 3012-d(4)(b), i.e., teacher observations, and associated regulations as established by the Commissioner, in accordance with Article 14 of the Civil Service Law within the constraints for weightings set forth by the Commissioner. See also Response to Comment #1.

