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I N   S E N A T E

May 3, 2016

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Introduced by Sens. GRIFFO, AVELLA, BOYLE, FUNKE, KAMINSKY, LATIMER, SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to annual teacher evaluations

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Section 3012-d of the education law, as added by section 2  
2     of subpart E of part EE of chapter 56 of the laws of 2015 and subpara-  
3     graph 1 of paragraph a of subdivision 4 as amended by section 3 of  
4     subpart C of part B of chapter 20 of the laws of 2015, is amended to  
5     read as follows:  
6     S 3012-d. Annual teacher and principal evaluations. 1. General  
7     provisions. Notwithstanding any other provision of law, rule or regu-  
8     lation to the contrary, the annual teacher and principal evaluations  
9     (hereinafter, evaluations) implemented by districts shall be conducted  
10    in accordance with the provisions of this section. Such annual evalu-  
11    ations shall be a [significant] factor for employment decisions includ-  
12    ing but not limited to, promotion, retention, tenure determination,  
13    termination, and supplemental compensation. Such evaluations shall also  
14    be a [significant] factor in teacher and principal development including  
15    but not limited to coaching, induction support, and differentiated  
16    professional development.  
17    2. Definitions.  
18    a. "District" shall mean school district and/or board of cooperative  
19    educational services[, except that for purposes of subdivision eleven of  
20    this section it shall only mean a school district];  
21    b. "Principal" shall mean a building principal or an administrator in  
22    charge of an instructional program of a board of cooperative educational  
23    services[;  
24    c. "Student growth" shall mean the change in student achievement for  
25    an individual student between two or more points in time.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [ ] is old law to be omitted.

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1 d. "State-designed supplemental assessment" shall mean a selection of  
2 state tests or assessments developed or designed by the state education  
3 department, or that the state education department purchased or acquired  
4 from (i) another state; (ii) an institution of higher education; or  
5 (iii) a commercial or not-for-profit entity, provided that such entity  
6 must be objective and may not have a conflict of interest or appearance  
7 of a conflict of interest; such definition may include tests or assess-  
8 ments that have been previously designed or acquired by local districts,  
9 but only if the state education department significantly modifies growth  
10 targets or scoring bands for such tests or assessments or otherwise  
11 adapts the test or assessment to the state education department's  
12 requirements].

13 3. Ratings. The annual evaluations conducted pursuant to this section  
14 shall rate teacher and principal effectiveness using the following cate-  
15 gories: highly effective or "H", effective or "E", developing or "D" and  
16 ineffective or "I".

17 4. Categories. The annual evaluation system shall consist of [multiple  
18 measures in two categories: student performance] TEACHER EVALUATIONS and  
19 teacher observations.

20 a. [Student performance category. Such category shall have at least  
21 one subcomponent and an optional second subcomponent as follows:

22 (1) For the first subcomponent, (A) for a teacher whose course ends in  
23 a state-created or administered test for which there is a state-provided  
24 growth model, such teacher shall have a state-provided growth score  
25 based on such model, which shall take into consideration certain student  
26 characteristics, as determined by the commissioner, including but not  
27 limited to students with disabilities, poverty, English language learner  
28 status and prior academic history and which shall identify educators  
29 whose students' growth is well above or well below average compared to  
30 similar students for a teacher's or principal's students after the  
31 certain student characteristics above are taken into account; and (B)  
32 for a teacher whose course does not end in a state-created or adminis-  
33 tered test such teacher shall have a student learning objective (SLO)  
34 consistent with a goal-setting process determined or developed by the  
35 commissioner, that results in a student growth score; provided that, for  
36 any teacher whose course ends in a state-created or administered assess-  
37 ment for which there is no state-provided growth model, such assessment  
38 must be used as the underlying assessment for such SLO;

39 (2) For the optional second subcomponent, a district may locally  
40 select a second measure in accordance with this subparagraph. Such  
41 second measure shall apply in a consistent manner, to the extent practi-  
42 cable, across the district and be either: (A) a second state-provided  
43 growth score on a state-created or administered test under clause (A) of  
44 subparagraph one of this paragraph, or (B) a growth score based on a  
45 state-designed supplemental assessment, calculated using a state-provid-  
46 ed or approved growth model. The optional second subcomponent shall  
47 provide options for multiple assessment measures that are aligned to  
48 existing classroom and school best practices and take into consideration  
49 the recommendations in the testing reduction report as required by  
50 section one of subpart F of the chapter of the laws of two thousand  
51 fifteen which added this section regarding the reduction of unnecessary  
52 additional testing.

53 The commissioner shall determine the weights and scoring ranges for  
54 the subcomponent or subcomponents of the student performance category  
55 that shall result in a combined category rating. The commissioner shall  
56 also set parameters for appropriate targets for student growth for both

subcomponents, and the department must affirmatively approve and shall have the authority to disapprove or require modifications of district plans that do not set appropriate growth targets, including after initial approval. The commissioner shall set such weights and parameters consistent with the terms contained herein.] TEACHER EVALUATION CATEGORY. THE EVALUATION CATEGORY FOR TEACHERS SHALL BE BASED ON AND CREATED FROM THE FINDINGS OF A COMMITTEE ESTABLISHED BY THE BOARD OF REGENTS CONSISTING OF CERTIFIED EDUCATORS WHO ARE RESIDENTS OF THIS STATE CREATED BY THE BOARD OF REGENTS PURSUANT TO SUBDIVISION FIVE OF THIS SECTION.

b. Teacher observations category. The observations category for teachers shall be based on a state-approved rubric and shall include [up to three subcomponents. Such category must include: (1)] a subcomponent based on classroom observations conducted by a principal or other trained administrator [and must also include (2) a subcomponent based on classroom observations by an impartial independent trained evaluator or evaluators selected by the district. An independent trained evaluator may be employed within the school district, but not the same school building, as the teacher being evaluated. Such category may also include a subcomponent based on classroom observations conducted by a trained peer teacher rated effective or highly effective from the same school or from another school in the district].

The [commissioner] BOARD OF REGENTS shall determine the weights, and/or weighting options and scoring ranges for the subcomponents of the observations category that result in a combined category rating. The [commissioner] BOARD OF REGENTS shall also determine the minimum number of observations to be conducted annually, including frequency and duration, and any parameters therefor. The [commissioner] BOARD OF REGENTS shall set such weights and scores consistent with the terms contained herein.

5. THE BOARD OF REGENTS SHALL ESTABLISH A COMMITTEE CONSISTING OF CERTIFIED EDUCATORS WHO ARE RESIDENTS OF THIS STATE TO DEVELOP A RESEARCH BASED EVALUATION MODEL TO MEASURE A TEACHER'S PERFORMANCE. THE COMMITTEE SHALL PRESENT ITS FINDINGS TO THE BOARD OF REGENTS NO LATER THAN ONE YEAR AFTER THE COMMITTEE'S CREATION.

6. Rating determination. The overall rating determination shall be determined according to a methodology as follows:

a. The following rules shall apply: a teacher or principal who is (1) [rated using two 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 pursuant to clause (A) of subparagraph one of paragraph a of subdivision four of this section, a teacher or principal who receives a rating of ineffective in such category shall not be eligible to receive a rating of effective or highly effective overall; (2) rated using only the state measure subcomponent in the student performance category and receives a rating of ineffective in such category shall not be eligible to receive a rating of effective or highly effective overall; and (3)] rated ineffective in the teacher observations category shall not be eligible to receive a rating of effective or highly effective overall AND (2) RATED INEFFECTIVE IN THE TEACHER EVALUATION CATEGORY SHALL NOT BE ELIGIBLE TO RECEIVE A RATING OF EFFECTIVE OR HIGHLY EFFECTIVE OVERALL.

b. Except as otherwise provided in paragraph a of this subdivision, a teacher's composite score shall be determined as follows:

1 (1) If a teacher receives an H in the teacher observation category,  
2 and an H in the [student performance] TEACHER EVALUATION category, the  
3 teacher's composite score shall be H;  
4 (2) If a teacher receives an H in the teacher observation category,  
5 and an E in the [student performance] TEACHER EVALUATION category, the  
6 teacher's composite score shall be H;  
7 (3) If a teacher receives an H in the teacher observation category,  
8 and a D in the [student performance] TEACHER EVALUATION category, the  
9 teacher's composite score shall be E;  
10 (4) If a teacher receives an H in the teacher observation category,  
11 and an I in the [student performance] TEACHER EVALUATION category, the  
12 teacher's composite score shall be D;  
13 (5) If a teacher receives an E in the teacher observation category,  
14 and an H in the [student performance] TEACHER EVALUATION category, the  
15 teacher's composite score shall be H;  
16 (6) If a teacher receives an E in the teacher observation category,  
17 and an E in the [student performance] TEACHER EVALUATION category, the  
18 teacher's composite score shall be E;  
19 (7) If a teacher receives an E in the teacher observation category,  
20 and a D in the [student performance] TEACHER EVALUATION category, the  
21 teacher's composite score shall be E;  
22 (8) If a teacher receives an E in the teacher observation category,  
23 and an I in the [student performance] TEACHER EVALUATION category, the  
24 teacher's composite score shall be D;  
25 (9) If a teacher receives a D in the teacher observation category, and  
26 an H in the [student performance] TEACHER EVALUATION category, the  
27 teacher's composite score shall be E;  
28 (10) If a teacher receives a D in the teacher observation category,  
29 and an E in the [student performance] TEACHER EVALUATION category, the  
30 teacher's composite score shall be E;  
31 (11) If a teacher receives a D in the teacher observation category,  
32 and a D in the [student performance] TEACHER EVALUATION category, the  
33 teacher's composite score shall be D;  
34 (12) If a teacher receives a D in the teacher observation category,  
35 and an I in the [student performance] TEACHER EVALUATION category, the  
36 teacher's composite score shall be I;  
37 (13) If a teacher receives an I in the teacher observation category,  
38 and an H in the [student performance] TEACHER EVALUATION category, the  
39 teacher's composite score shall be D;  
40 (14) If a teacher receives an I in the teacher observation category,  
41 and an E in the [student performance] TEACHER EVALUATION category, the  
42 teacher's composite score shall be D;  
43 (15) If a teacher receives an I in the teacher observation category,  
44 and a D in the [student performance] TEACHER EVALUATION category, the  
45 teacher's composite score shall be I;  
46 (16) If a teacher receives an I in the teacher observation category,  
47 and an I in the [student performance] TEACHER EVALUATION category, the  
48 teacher's composite score shall be I.  
49 [6.] 7. Prohibited elements. The following elements shall no longer be  
50 eligible to be used in any evaluation subcomponent pursuant to this  
51 section:  
52 a. [evidence of student development and performance derived from  
53 lesson plans, other artifacts of teacher practice, and student portfo-  
54 lios, except for student portfolios measured by a state-approved rubric  
55 where permitted by the department;  
56 b.] use of an instrument for parent or student feedback;

1 [c.] B. use of professional goal-setting as evidence of teacher or  
2 principal effectiveness;

3 [d.] C. any district or regionally-developed assessment that has not  
4 been approved by the department; [and]

5 [e.] D. any growth or achievement target that does not meet the mini-  
6 mum standards as set forth in regulations of the [commissioner] BOARD OF  
7 REGENTS adopted hereunder; AND

8 E. ANY STATE-CREATED OR ADMINISTERED TEST.

9 [7.] 8. The [commissioner] BOARD OF REGENTS shall ensure that the  
10 process by which weights and scoring ranges are assigned to subcompo-  
11 nents and categories is transparent and available to those being rated  
12 before the beginning of each school year. Such process must ensure that  
13 it is possible for a teacher or principal to obtain any number of points  
14 in the applicable scoring ranges, including zero, in each subcomponent.  
15 The superintendent, district superintendent or chancellor and the repre-  
16 sentative of the collective bargaining unit (where one exists) shall  
17 certify in the district's plan that the evaluation process shall use the  
18 standards for the scoring ranges provided by the [commissioner] BOARD OF  
19 REGENTS. Provided, however, that in any event, the following rules  
20 shall apply: a teacher or principal who is:

21 a. [rated using two subcomponents in the student performance category  
22 and receives a rating of ineffective in such category shall be rated  
23 ineffective overall, except that if the measure used in the second  
24 subcomponent is a second state-provided growth score on a state-adminis-  
25 tered or sponsored test pursuant to clause (A) of subparagraph one of  
26 paragraph a of subdivision four of this section, a teacher or principal  
27 that receives a rating of ineffective in such category shall not be  
28 eligible to receive a rating of effective or highly effective overall;

29 b. rated using only the state measure subcomponent in the student  
30 performance category and receives a rating of ineffective in such cate-  
31 gory shall not be eligible to receive a rating of effective or highly  
32 effective overall; and

33 c.] rated ineffective in the observations category shall not be eligi-  
34 ble to receive a rating of effective or highly effective overall; AND

35 B. RATED INEFFECTIVE IN THE EVALUATION CATEGORY SHALL NOT BE ELIGIBLE  
36 TO RECEIVE A RATING OF EFFECTIVE OR HIGHLY EFFECTIVE OVERALL.

37 [8.] 9. A student may not be instructed, for two consecutive school  
38 years, by any two teachers in the same district, each of whom received a  
39 rating of ineffective under an evaluation conducted pursuant to this  
40 section in the school year immediately prior to the school year in which  
41 the student is placed in the teacher's classroom; provided, that if a  
42 district deems it impracticable to comply with this subdivision, the  
43 district shall seek a waiver from the department from such requirement.

44 [9.] 10. Nothing in this section shall be construed to affect the  
45 unfettered statutory right of a district to terminate a probationary  
46 (non-tenured) teacher or principal for any statutorily and constitu-  
47 tionally permissible reasons.

48 [10.] 11. The local collective bargaining representative shall negoti-  
49 ate with the district:

50 a. whether to use a second measure, [and, in the event that a second  
51 measure is used, which measure to use, pursuant to subparagraph two of  
52 paragraph a of subdivision four of this section] and

53 b. how to implement the provisions of paragraph b of subdivision four  
54 of this section, and associated regulations as established by the  
55 [commissioner] BOARD OF REGENTS, in accordance with article fourteen of  
56 the civil service law.

1 [11. Notwithstanding any inconsistent provision of law, no school  
2 district shall be eligible for an apportionment of general support for  
3 public schools from the funds appropriated for the 2015--2016 school  
4 year and any year thereafter in excess of the amount apportioned to such  
5 school district in the respective base year unless such school district  
6 has submitted documentation that has been approved by the commissioner  
7 by November fifteenth, two thousand fifteen, or by September first of  
8 each subsequent year, demonstrating that it has fully implemented the  
9 standards and procedures for conducting annual teacher and principal  
10 evaluations of teachers and principals in accordance with the require-  
11 ments of this section and the regulations issued by the commissioner.  
12 Provided further that any apportionment withheld pursuant to this  
13 section shall not occur prior to April first of the current year and  
14 shall not have any effect on the base year calculation for use in the  
15 subsequent school year. For purposes of this section, "base year" shall  
16 mean the base year as defined in paragraph b of subdivision one of  
17 section thirty-six hundred two of this chapter, and "current year" shall  
18 mean the current year as defined in paragraph a of subdivision one of  
19 section thirty-six hundred two of this chapter.]

20 12. Notwithstanding any other provision of law, rule or regulation to  
21 the contrary, all collective bargaining agreements entered into after  
22 April first, two thousand fifteen shall be consistent with the require-  
23 ments of this section, unless the agreement relates to the two thousand  
24 fourteen--two thousand fifteen school year only. Nothing in this section  
25 shall be construed to abrogate any conflicting provisions of any collec-  
26 tive bargaining agreement in effect on April first, two thousand fifteen  
27 during the term of such agreement and until the entry into a successor  
28 collective bargaining agreement, provided that notwithstanding any other  
29 provision of law to the contrary, upon expiration of such term and the  
30 entry into a successor collective bargaining agreement the provisions of  
31 this section shall apply.

32 13. Any reference in law to "annual professional performance review"  
33 shall be deemed to refer to an annual professional performance review  
34 pursuant to section three thousand twelve-c of this article or annual  
35 teacher and principal evaluations pursuant to this section and any  
36 references to section three thousand twelve-c of this article shall be  
37 deemed to refer to section three thousand twelve-c of this article  
38 and/or this section, as applicable.

39 14. The commissioner shall adopt regulations to align the principal  
40 evaluation system as set forth in section three thousand twelve-c of  
41 this article with the new teacher evaluation system set forth herein.

42 15. The provisions of paragraphs d, k, k-1, k-2 and l of subdivision  
43 two and subdivisions four, five, five-a, nine, and ten of section three  
44 thousand twelve-c of this article, as amended, shall apply to this  
45 section to the extent determined by the commissioner.

46 S 2. This act shall take effect on the first of August next succeeding  
47 the date on which it shall have become a law.