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I N   A S S E M B L Y

May 9, 2016

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Introduced by M. of A. BRINDISI -- read once and referred to the Committee on Education

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]  
20    TWELVE of 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.  
26    d. "State-designed supplemental assessment" shall mean a selection of  
27    state tests or assessments developed or designed by the state education  
28    department, or that the state education department purchased or acquired

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

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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; such definition may include tests or assessments that have been previously designed or acquired by local districts, but only if the state education department significantly modifies growth targets or scoring bands for such tests or assessments or otherwise adapts the test or assessment to the state education department's requirements].

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

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

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

(1) For the first subcomponent, (A) for a teacher whose course ends in a state-created or administered test for which there is a state-provided growth model, such teacher shall have a state-provided growth score based on such model, which shall take into consideration certain student characteristics, as determined by the commissioner, including but not limited to students with disabilities, poverty, English language learner status and prior academic history and which shall identify 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 certain student characteristics above are taken into account; and (B) for a teacher whose course does not end in a state-created or administered test such teacher 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;

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

The commissioner shall determine the weights and scoring ranges for the subcomponent or subcomponents of the student performance category that shall result in a combined category rating. The commissioner shall 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

1 initial approval. The commissioner shall set such weights and parameters  
2 consistent with the terms contained herein.] TEACHER EVALUATION CATEGO-  
3 RY. THE EVALUATION CATEGORY FOR TEACHERS SHALL BE BASED ON AND CREATED  
4 FROM THE FINDINGS OF A COMMITTEE ESTABLISHED BY THE BOARD OF REGENTS  
5 CONSISTING OF CERTIFIED EDUCATORS WHO ARE RESIDENTS OF THIS STATE  
6 CREATED BY THE BOARD OF REGENTS PURSUANT TO SUBDIVISION FIVE OF THIS  
7 SECTION.

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

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

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

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

35 a. The following rules shall apply: a teacher or principal who is (1)  
36 [rated using two subcomponents in the student performance category and  
37 receives a rating of ineffective in such category shall be rated inef-  
38 fective overall; provided, however, that if the measure used in the  
39 second subcomponent is a state-provided growth score on a state-created  
40 or administered test pursuant to clause (A) of subparagraph one of para-  
41 graph a of subdivision four of this section, a teacher or principal who  
42 receives a rating of ineffective in such category shall not be eligible  
43 to receive a rating of effective or highly effective overall; (2) rated  
44 using only the state measure subcomponent in the student performance  
45 category and receives a rating of ineffective in such category shall not  
46 be eligible to receive a rating of effective or highly effective over-  
47 all; and (3)] rated ineffective in the teacher observations category  
48 shall not be eligible to receive a rating of effective or highly effec-  
49 tive overall AND (2) RATED INEFFECTIVE IN THE TEACHER EVALUATION CATEGO-  
50 RY SHALL NOT BE ELIGIBLE TO RECEIVE A RATING OF EFFECTIVE OR HIGHLY  
51 EFFECTIVE OVERALL.

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

54 (1) If a teacher receives an H in the teacher observation category,  
55 and an H in the [student performance] TEACHER EVALUATION category, the  
56 teacher's composite score shall be H;

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

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

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

6 E. ANY STATE-CREATED OR ADMINISTERED TEST.

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

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

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

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

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

35 [8.] 9. A student may not be instructed, for two consecutive school  
36 years, by any two teachers in the same district, each of whom received a  
37 rating of ineffective under an evaluation conducted pursuant to this  
38 section in the school year immediately prior to the school year in which  
39 the student is placed in the teacher's classroom; provided, that if a  
40 district deems it impracticable to comply with this subdivision, the  
41 district shall seek a waiver from the department from such requirement.

42 [9.] 10. Nothing in this section shall be construed to affect the  
43 unfettered statutory right of a district to terminate a probationary  
44 (non-tenured) teacher or principal for any statutorily and constitu-  
45 tionally permissible reasons.

46 [10.] 11. The local collective bargaining representative shall negoti-  
47 ate with the district:

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

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

55 [11.] 12. Notwithstanding any inconsistent provision of law, no school  
56 district shall be eligible for an apportionment of general support for

1 public schools from the funds appropriated for the [2015--2016] TWO  
2 THOUSAND FIFTEEN--TWO THOUSAND SIXTEEN school year and any year there-  
3 after in excess of the amount apportioned to such school district in the  
4 respective base year unless such school district has submitted documen-  
5 tation that has been approved by the commissioner by November fifteenth,  
6 two thousand fifteen, or by September first of each subsequent year,  
7 demonstrating that it has fully implemented the standards and procedures  
8 for conducting annual teacher and principal evaluations of teachers and  
9 principals in accordance with the requirements of this section and the  
10 regulations issued by the commissioner. Provided further that any appor-  
11 tionment withheld pursuant to this section shall not occur prior to  
12 April first of the current year and shall not have any effect on the  
13 base year calculation for use in the subsequent school year. For  
14 purposes of this section, "base year" shall mean the base year as  
15 defined in paragraph b of subdivision one of section thirty-six hundred  
16 two of this chapter, and "current year" shall mean the current year as  
17 defined in paragraph a of subdivision one of section thirty-six hundred  
18 two of this chapter.

19 [12.] 13. Notwithstanding any other provision of law, rule or regu-  
20 lation to the contrary, all collective bargaining agreements entered  
21 into after April first, two thousand fifteen shall be consistent with  
22 the requirements of this section, unless the agreement relates to the  
23 two thousand fourteen--two thousand fifteen school year only. Nothing in  
24 this section shall be construed to abrogate any conflicting provisions  
25 of any collective bargaining agreement in effect on April first, two  
26 thousand fifteen during the term of such agreement and until the entry  
27 into a successor collective bargaining agreement, provided that notwith-  
28 standing any other provision of law to the contrary, upon expiration of  
29 such term and the entry into a successor collective bargaining agreement  
30 the provisions of this section shall apply.

31 [13.] 14. Any reference in law to "annual professional performance  
32 review" shall be deemed to refer to an annual professional performance  
33 review pursuant to section three thousand twelve-c of this article or  
34 annual teacher and principal evaluations pursuant to this section and  
35 any references to section three thousand twelve-c of this article shall  
36 be deemed to refer to section three thousand twelve-c of this article  
37 and/or this section, as applicable.

38 [14.] 15. The commissioner shall adopt regulations to align the prin-  
39 cipal evaluation system as set forth in section three thousand twelve-c  
40 of this article with the new teacher evaluation system set forth herein.

41 [15.] 16. The provisions of paragraphs d, k, k-1, k-2 and l of subdi-  
42 vision two and subdivisions four, five, five-a, nine, and ten of section  
43 three thousand twelve-c of this article, as amended, shall apply to this  
44 section to the extent determined by the commissioner.

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