

# STATE OF NEW YORK

4390

2017-2018 Regular Sessions

## IN SENATE

February 13, 2017

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

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 § 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[+]

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

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1 ~~e. "Student growth" shall mean the change in student achievement for~~  
2 ~~an individual student between two or more points in time.~~

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

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

19 4. Categories. The annual evaluation system shall consist of [~~multiple~~  
20 ~~measures in two categories: student performance~~] teacher evaluations and  
21 teacher observations.

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

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

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

55 ~~The commissioner shall determine the weights and scoring ranges for~~  
56 ~~the subcomponent or subcomponents of the student performance category~~

1 ~~that shall result in a combined category rating. The commissioner shall~~  
2 ~~also set parameters for appropriate targets for student growth for both~~  
3 ~~subcomponents, and the department must affirmatively approve and shall~~  
4 ~~have the authority to disapprove or require modifications of district~~  
5 ~~plans that do not set appropriate growth targets, including after~~  
6 ~~initial approval. The commissioner shall set such weights and parameters~~  
7 ~~consistent with the terms contained herein.] Teacher evaluation category.~~  
8 The evaluation category for teachers shall be based on and created  
9 from the findings of a committee established by the board of regents  
10 consisting of certified educators who are residents of this state  
11 created by the board of regents pursuant to subdivision five of this  
12 section.

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

25 The [~~commissioner~~] board of regents shall determine the weights,  
26 and/or weighting options and scoring ranges for the subcomponents of the  
27 observations category that result in a combined category rating. The  
28 [~~commissioner~~] board of regents shall also determine the minimum number  
29 of observations to be conducted annually, including frequency and dura-  
30 tion, and any parameters therefor. The [~~commissioner~~] board of regents  
31 shall set such weights and scores consistent with the terms contained  
32 herein.

33 5. The board of regents shall establish a committee consisting of  
34 certified educators who are residents of this state to develop a  
35 research based evaluation model to measure a teacher's performance. The  
36 committee shall present its findings to the board of regents no later  
37 than one year after the committee's creation.

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

40 a. The following rules shall apply: a teacher or principal who is (1)  
41 [~~rated using two subcomponents in the student performance category and~~  
42 ~~receives a rating of ineffective in such category shall be rated inef-~~  
43 ~~fective overall; provided, however, that if the measure used in the~~  
44 ~~second subcomponent is a state-provided growth score on a state-created~~  
45 ~~or administered test pursuant to clause (A) of subparagraph one of para-~~  
46 ~~graph a of subdivision four of this section, a teacher or principal who~~  
47 ~~receives a rating of ineffective in such category shall not be eligible~~  
48 ~~to receive a rating of effective or highly effective overall; (2) rated~~  
49 ~~using only the state measure subcomponent in the student performance~~  
50 ~~category and receives a rating of ineffective in such category shall not~~  
51 ~~be eligible to receive a rating of effective or highly effective over-~~  
52 ~~all; and (3)] rated ineffective in the teacher observations category  
53 shall not be eligible to receive a rating of effective or highly effec-  
54 tive overall and (2) rated ineffective in the teacher evaluation category  
55 shall not be eligible to receive a rating of effective or highly  
56 effective overall.~~

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

3 (1) If a teacher receives an H in the teacher observation category,  
4 and an H in the [~~student performance~~] teacher evaluation category, the  
5 teacher's composite score shall be H;

6 (2) If a teacher receives an H in the teacher observation category,  
7 and an E in the [~~student performance~~] teacher evaluation category, the  
8 teacher's composite score shall be H;

9 (3) If a teacher receives an H in the teacher observation category,  
10 and a D in the [~~student performance~~] teacher evaluation category, the  
11 teacher's composite score shall be E;

12 (4) If a teacher receives an H in the teacher observation category,  
13 and an I in the [~~student performance~~] teacher evaluation category, the  
14 teacher's composite score shall be D;

15 (5) If a teacher receives an E in the teacher observation category,  
16 and an H in the [~~student performance~~] teacher evaluation category, the  
17 teacher's composite score shall be H;

18 (6) If a teacher receives an E in the teacher observation category,  
19 and an E in the [~~student performance~~] teacher evaluation category, the  
20 teacher's composite score shall be E;

21 (7) If a teacher receives an E in the teacher observation category,  
22 and a D in the [~~student performance~~] teacher evaluation category, the  
23 teacher's composite score shall be E;

24 (8) If a teacher receives an E in the teacher observation category,  
25 and an I in the [~~student performance~~] teacher evaluation category, the  
26 teacher's composite score shall be D;

27 (9) If a teacher receives a D in the teacher observation category, and  
28 an H in the [~~student performance~~] teacher evaluation category, the  
29 teacher's composite score shall be E;

30 (10) If a teacher receives a D in the teacher observation category,  
31 and an E in the [~~student performance~~] teacher evaluation category, the  
32 teacher's composite score shall be E;

33 (11) If a teacher receives a D in the teacher observation category,  
34 and a D in the [~~student performance~~] teacher evaluation category, the  
35 teacher's composite score shall be D;

36 (12) If a teacher receives a D in the teacher observation category,  
37 and an I in the [~~student performance~~] teacher evaluation category, the  
38 teacher's composite score shall be I;

39 (13) If a teacher receives an I in the teacher observation category,  
40 and an H in the [~~student performance~~] teacher evaluation category, the  
41 teacher's composite score shall be D;

42 (14) If a teacher receives an I in the teacher observation category,  
43 and an E in the [~~student performance~~] teacher evaluation category, the  
44 teacher's composite score shall be D;

45 (15) If a teacher receives an I in the teacher observation category,  
46 and a D in the [~~student performance~~] teacher evaluation category, the  
47 teacher's composite score shall be I;

48 (16) If a teacher receives an I in the teacher observation category,  
49 and an I in the [~~student performance~~] teacher evaluation category, the  
50 teacher's composite score shall be I.

51 [~~6-~~] 7. Prohibited elements. The following elements shall no longer be  
52 eligible to be used in any evaluation subcomponent pursuant to this  
53 section:

54 a. [~~evidence of student development and performance derived from~~  
55 ~~lesson plans, other artifacts of teacher practice, and student portfo-~~

1 ~~lios, except for student portfolios measured by a state-approved rubric~~  
2 ~~where permitted by the department;~~

3 ~~b.~~] use of an instrument for parent or student feedback;

4 [~~a.~~] b. use of professional goal-setting as evidence of teacher or  
5 principal effectiveness;

6 [~~d.~~] c. any district or regionally-developed assessment that has not  
7 been approved by the department; [~~and~~]

8 [~~e.~~] d. any growth or achievement target that does not meet the mini-  
9 mum standards as set forth in regulations of the [~~commissioner~~] board of  
10 regents adopted hereunder; and

11 e. any state-created or administered test.

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

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

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

36 ~~e.~~] rated ineffective in the observations category shall not be eligi-  
37 ble to receive a rating of effective or highly effective overall; and

38 b. rated ineffective in the evaluation category shall not be eligible  
39 to receive a rating of effective or highly effective overall.

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

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

51 [~~10.~~] 11. The local collective bargaining representative shall negoti-  
52 ate with the district:

53 a. whether to use a second measure, [~~and, in the event that a second~~  
54 ~~measure is used, which measure to use, pursuant to subparagraph two of~~  
55 ~~paragraph a of subdivision four of this section~~] and

1 b. how to implement the provisions of paragraph b of subdivision four  
2 of this section, and associated regulations as established by the  
3 [~~commissioner~~] board of regents, in accordance with article fourteen of  
4 the civil service law.

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

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

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

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

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

50 § 2. This act shall take effect on the first of August next succeeding  
51 the date on which it shall have become a law.