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:

Section 1. Section 3012-d of the education law, as added by section 2 of subpart E of part EE of chapter 56 of the laws of 2015 and subparagraph 1 of paragraph a of subdivision 4 as amended by section 3 of subpart C of part B of chapter 20 of the laws of 2015, is amended to read as follows:

§ 3012-d. Annual teacher and principal evaluations. 1. General provisions. Notwithstanding any other provision of law, rule or regulation to the contrary, the annual teacher and principal evaluations (hereinafter, evaluations) implemented by districts shall be conducted in accordance with the provisions of this section. Such annual evaluations shall be a [~~significant~~] factor for employment decisions including but not limited to, promotion, retention, tenure determination, termination, and supplemental compensation. 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.

2. Definitions.

a. "District" shall mean school district and/or board of cooperative educational services[~~, except that for purposes of subdivision eleven of this section it shall only mean a school district~~];

b. "Principal" shall mean a building principal or an administrator in charge of an instructional program of a board of cooperative educational services[~~;~~

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

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

~~d. "State-designed supplemental assessment" shall mean a selection of state tests or assessments developed or designed by the state education department, or that the state education 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; 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 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) If a teacher receives an H in the teacher observation category, and an H in the [~~student performance~~] teacher evaluation category, the teacher's composite score shall be H;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~lios, 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.~~] b. use of professional goal-setting as evidence of teacher or principal effectiveness;

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

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

e. any state-created or administered test.

[~~7.~~] 8. The [~~commissioner~~] board of regents 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. 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 standards for the scoring ranges provided by the [~~commissioner~~] board of regents. Provided, however, that in any event, the following rules shall apply: a teacher or principal who is:

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

~~b. 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~~

~~c.~~] rated ineffective in the observations category shall not be eligible to receive a rating of effective or highly effective overall; and

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

[~~8.~~] 9. A student may not be instructed, for two consecutive school years, 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 waiver from the department from such requirement.

[~~9.~~] 10. Nothing in this section 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.

[~~10.~~] 11. The local collective bargaining representative shall negotiate with the district:

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

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

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

12. Notwithstanding any other provision of law, rule or regulation to the contrary, all collective bargaining agreements entered into after April first, two thousand fifteen shall be consistent with the requirements of this section, unless the agreement relates to the two thousand fourteen--two thousand fifteen school year only. Nothing in this section shall be construed to abrogate any conflicting provisions of any collective bargaining agreement in effect on April first, two thousand fifteen during the term of such agreement and until the 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 the provisions of this section shall apply.

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

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

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

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