## 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 [eignifieant] 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[, exeept that for purposes of subdivision eleven of this section it shall only mean a sehool 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.

LBD01874-01-7
e. "Student growth" shall mean the ohange in student aohievement fox an individual student between two-or more points in time.
d. "State-designed oupplemental aosesoment" shall mean a seleetion of otate testo or asoesomento developed or deoigned by the otate education department, or that the state edueation department purehased or aequired from (i) another state; (ii) an institution of higher edueation; or (iii) a commexcial or not-for-profit entity, provided that sueh entity must be objective and may not have a confliet of interest ox appearanee of a confliet of interest; sueh definition may inelude tests ox assesc ments that have been previously designed or aequired by loeal dietriete, but only if the state edueation department signifieantly modifiec growth targeto or seoring bando for oueh teoto or zoseosmento or otherwise adapto the teot or asesement to the otate edueation department's requiremento].
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-eategeries: student performanee] teacher evaluations and teacher observations.
a. [Student pexformanee eategery. Sueh eategexy shall have at leaft one oubeompenent and an optional seeond oubeomponent as followe:
(1) For the first subeomponent, ( $A$ ) for a teacher whose couxse ends in a state-ereated or administered test for which there is a state-provided growth model, sueh teacher shall have a state-provided growth seore based on sueh model, which shall take into consideration eertain student eharaeteristies, as determined by the eommiscionex, ineluding but not Iimited to students-with disabilities, porexty, Fnglish language learnex status and prier aeademie history and whieh shall identify edueators whoee otudento' growth io well above or well below arerage eempared te oimilar otudento for a teacher's or prineipal'g otudento after the eextain otudent eharaeterioties above are taken into aeeount; and (B) for a teacher whose course does not end in a state-ereated or administered test such teacher shall have a student learning objective (SLO) eonsistent with a goal-setting proeess determined or developed by the eommiscienex, that results in a student growth seere; provided that, fer any teacher whose course ends in a state-oreated or administered assessment for which there is no-state-provided growth model, wueh assesement must be used as the undexlying assescment for sueh SIO;
(2) Fox the optional seeond oubeomponent, a diotriet may loeally ofleet a seeond meaoure in aeeoxdanee with thig oubparagraph. Sueh second measure shall apply in a consistent mannex, to the extent practieable, aexoss the distriet and be either: (A) a second state-provided growth seore on a state-ereated or administered test under elause ( $A$ ) of subparagraph one of this paragraph, or (B) a growth seore based on a state-designed supplemental assessment, ealeulated-using a state-provided or approved growth model. The optional second subeomponent shall provide options for multiple assescment measures that are aligned to existing elascroom and sehool best practiees and take into eonsideration the reeommendationg in the teoting reduetion repert as required by eection one of oubpart $\Gamma$ of the chapter of the lawe of two thoueand fifteen which added this section regarding the reduetion of unnecessaxy additional testing.

The commissionex shall determine the weights and seoring ranges for the subeempenent or subeempenents-of the student performanee eategexy
that shall result in a combined oategoxy rating. The oommissionex shall alse set parameters for appropriate targets for student growth for both oubeomponento, and the department mut affixmatively approve and ohall have the authority to dioapprove or require modifieationg of digtriet plans that do not set appropriate growth targets, ineluding aftex initial approval. The commissionex shall set sueh weights and parameters eonsistent 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-te three subeomponents. Sueh eategory must inelude: (1)] a subcomponent based on classroom observations conducted by a principal or other trained administrator [and must also inelude (2) a subeomponent based on elacexoom observations by an impartial independent trained evaluator or evaluaters selected by the distriet. An independent trained ewaluator may be employed within the sehool distriet, but not the same sehool building, as the teacher being evaluated. Sueh eategory may also inelude a oubeomponent based on elaofroom obsexvationo condueted by a trained peex teachex rated effective or highly effective from the same sehool ox from another school in the distriet].

The [eommissionex] 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 [eommiscienex] board of regents shall also determine the minimum number of observations to be conducted annually, including frequency and duration, and any parameters therefor. The [eommissienex] 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) [xated using two-subeomponentg in the otudent perfoxmanee-eategoxy and receiveg a rating of ineffective in ouch eategoxy ohall be wated ineffective overall; provided, however, that if the measure used in the second subeomponent is a state-provided growth score on a state-ereated or administered test pursuant to clause ( $A$ ) of subparagraph one of paragraph a of subdivision four of this section, a teacher or prineipal whe reeeives a rating of ineffective in sueh eategexy shall not be eligible to reeeive a rating of effeetive or highly effective overalli (2) rated using only the state meacure subeompenent in the student performanee eategery and reeeives a rating of ineffeetive in suoh eategery shall not be eligible to receive a rating of effeetive-or highly effeetive-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 [otudent performanee] 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 performanee] teacher evaluation category, the teacher's composite score shall be H;
(3) If a teacher receives an $H$ in the teacher observation category, and $a \operatorname{D}$ in the [student performanee] 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 [otudent performanee] 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 performanee] teacher evaluation category, the teacher's composite score shall be E;
(7) If a teacher receives an $E$ in the teacher observation category, and $a \operatorname{D}$ in the [otudent performanee] 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 pexformanee] 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 [etudent pexformanee] teacher evaluation category, the teacher's composite score shall be E;
(11) If a teacher receives a D in the teacher observation category, and $a \operatorname{D}$ in the [student performanee] 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 performanee] 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 performanee] 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 pexformanee] teacher evaluation category, the teacher's composite score shall be D;
(15) If a teacher receives an $I$ in the teacher observation category, and $a \quad D$ in the [student performanee] 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 pexformanee] 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 performanee derived from lesson plans, other artifacts of teachex practiee, and student portfo-
lios, exeept for student portfolios measured by a state-approved rubrie where permitted by the department;
b-] use of an instrument for parent or student feedback;
[e.] 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 [eommisienex] board of regents adopted hereunder; and
e. any state-created or administered test.
[7-] 8. The [eomionionex] 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 [eommiscionex] board of regents. Provided, however, that in any event, the following rules shall apply: a teacher or principal who is:
a. [rated using two subeomponents in the student performance eategoxy and receives a rating of ineffective in sueh eategory shall be rated ineffective overall, exeept that if the measure used in the second subeompenent is a second state-provided growth seore on a state-administered or sponsored test purcuant to olause ( $\lambda$ ) of subparagraph one of paragraph a of subdivision four of this section, a teacher or prineipal that reeeives a rating of ineffective in sueh eategery shall not be eligible to reeeive a rating of effeetive or highly effeetive overalli
b. rated uring only the otate meaoure oubeomponent in the otudent performanee eategery and reeeiveg a rating of ineffeetive in ouch eategexy shall not be eligible to receive a rating of effective or highly effective overall; and
e-] 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 [eommiofienex] board of regents, in accordance with article fourteen of the civil service law.
[11. Notwithstanding any inconsistent provision of law, no-sehool distriet shall be eligible for an apportionment of general support for public sehools from the funds appropriated for the 2015-2016 sehool year and any year thereafter in exeess of the amount appoxtioned to sueh sehool distriet in the respeotive base year unless suoh sohool distriet has submitted doeumentation that has been approved by the oommiscionex by November fifteenth, two theusand fifteen, or by september firet of eaeh oubsequent year, demenotrating that it has fully implemented the otandards and proeedureg for eondueting annual teacher and prineipal evaluationg of teachere and prineipalo in aeeordanee with the requirements of this section and the regulations issued by the commissioner. Provided furthex that any apportionment withheld pursuant to this section shall not oceur prior to April first of the eurrent year and shall not have any effect on the base year ealoulation for use in the subsequent sehool year. For purpeses of this section, "base year" shall mean the base year as defined in paragraph b-of subdivicion one of section thirty-cix hundred two of this ohaptex, and "ourrent year" shall mean the eurrent year ao defined in paragraph a of oubdivioion one of ecetion thirty-oix hundred two-of thig ehapter.]
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.

