§ 3012-c. Annual professional performance review of classroom teachers and building principals. 1. Notwithstanding any other provision of law, rule or regulation to the contrary, the annual professional performance reviews of all classroom teachers and building principals employed by school districts or boards of cooperative educational services shall be conducted in accordance with the provisions of this section. Such performance reviews which are conducted on or after July first, two thousand eleven, or on or after the date specified in paragraph c of subdivision two of this section where applicable, shall include measures of student achievement and be conducted in accordance with this section. Such annual professional performance reviews shall be a significant factor for employment decisions including but not limited to, promotion, retention, tenure determination, termination, and supplemental compensation, which decisions are to be made in accordance with locally developed procedures negotiated pursuant to the requirements of article fourteen of the civil service law where applicable. Provided, however, that nothing in this section shall be construed to affect the unfettered statutory right of a school district or board of cooperative educational services to terminate a probationary teacher or principal for any statutorily and constitutionally permissible reasons, including but not limited to misconduct and until a tenure decision is made, the performance of the teacher or principal in the classroom. Such performance reviews shall also be a significant factor in teacher and principal development, including but not limited to, coaching, induction support and differentiated professional development, which are to be locally established in accordance with procedures negotiated pursuant to the requirements of article fourteen of the civil service law.

2. a. (1) The annual professional performance reviews conducted pursuant to this section for classroom teachers and building principals shall differentiate teacher and principal effectiveness using the following quality rating categories: highly effective, effective, developing and ineffective, with explicit minimum and maximum scoring ranges for each category, for the state assessments and other comparable measures subcomponent of the evaluation and for the locally selected measures of student achievement subcomponent of the evaluation, as prescribed in the regulations of the commissioner. There shall be: (i) a

state assessments and other comparable measures subcomponent which shall comprise twenty or twenty-five percent of the evaluation; (ii) a locally selected measures of student achievement subcomponent which shall comprise twenty or fifteen percent of the evaluation; and (iii) an other measures of teacher or principal effectiveness subcomponent which shall comprise the remaining sixty percent of the evaluation, which in sum shall constitute the composite teacher or principal effectiveness score. Such annual professional performance reviews shall result in a single composite teacher or principal effectiveness score, which incorporates multiple measures of effectiveness related to the criteria included in the regulations of the commissioner.

(2) For annual professional performance reviews conducted in accordance with paragraph b of this subdivision for the two thousand eleven--two thousand twelve school year and for annual professional performance reviews conducted in accordance with paragraphs f and g of this subdivision for the two thousand twelve--two thousand thirteen school year, the overall composite scoring ranges shall be in accordance with this subparagraph. A classroom teacher and building principal shall be deemed to be:

(A) Highly Effective if they achieve a composite effectiveness score of 91-100.

(B) Effective if they achieve a composite effectiveness score of 75-90.

(C) Developing if they achieve a composite effectiveness score of 65-74.

(D) Ineffective if they achieve a composite effectiveness score of 0-64.

(3) For annual professional performance reviews conducted in accordance with paragraph b of this subdivision for the two thousand eleven--two thousand twelve school year and for annual professional performance reviews conducted in accordance with paragraph f of this subdivision for the two thousand twelve--two thousand thirteen school year for classroom teachers in subjects and grades for which the board of regents has not approved a value-added model and for building principals employed in schools or programs for which there is no approved principal value-added model, the scoring ranges for the student growth on state assessments or other comparable measures subcomponent

shall be in accordance with this subparagraph. A classroom teacher and building principal shall receive:

(A) a highly effective rating in this subcomponent if the teacher's or principal's results are well-above the state average for similar students and they achieve a subcomponent score of 18-20;

(B) an effective rating in this subcomponent if the teacher's or principal's results meet the state average for similar students and they achieve a subcomponent score of 9-17; or

(C) a developing rating in this subcomponent if the teacher's or principal's results are below the state average for similar students and they achieve a subcomponent score of 3-8; or

(D) an ineffective rating in this subcomponent, if the teacher's or principal's results are well-below the state average for similar students and they achieve a subcomponent score of 0-2.

(4) For annual professional performance reviews conducted in accordance with paragraph g of this subdivision for the two thousand twelve--two thousand thirteen school year for classroom teachers in subjects and grades for which the board of regents has approved a value-added model and for building principals employed in schools or programs for which there is an approved principal value-added model, the scoring ranges for the student growth on state assessments or other comparable measures subcomponent shall be in accordance with this subparagraph. A classroom teacher and building principal shall receive:

(A) a highly effective rating in this subcomponent if the teacher's or principal's results are well-above the state average for similar students and they achieve a subcomponent score of 22-25;

(B) an effective rating in this subcomponent if the teacher's or principal's results meet the state average for similar students and they achieve a subcomponent score of 10-21; or

(C) a developing rating in this subcomponent if the teacher's or principal's results are below the state average for similar students and they achieve a subcomponent score of 3-9; or

(D) an ineffective rating in this subcomponent, if the teacher's or principal's results are well-below the state average for similar students and they achieve a subcomponent score of 0-2.

(5) For annual professional performance reviews conducted in accordance with paragraph b of this subdivision for the two thousand

eleven--two thousand twelve school year and for annual professional performance reviews conducted in accordance with paragraph f of this subdivision for the two thousand twelve--two thousand thirteen school year for classroom teachers in subjects and grades for which the board of regents has not approved a value-added model and for building principals employed in schools or programs for which there is no approved principal value-added model, the scoring ranges for the locally selected measures of student achievement subcomponent shall be in accordance with this subparagraph. A classroom teacher and building principal shall receive:

(A) a highly effective rating in this subcomponent if the results are well-above district-adopted expectations for student growth or achievement and they achieve a subcomponent score of 18-20; or

(B) an effective rating in this subcomponent if the results meet district-adopted expectations for growth or achievement and they achieve a subcomponent score of 9-17; or

(C) a developing rating in this subcomponent if the results are below district-adopted expectations for growth or achievement and they achieve a subcomponent score of 3-8; or

(D) an ineffective rating in this subcomponent if the results are well-below district-adopted expectations for growth or achievement and they achieve a subcomponent score of 0-2.

(6) For annual professional performance reviews conducted in accordance with paragraph b of this subdivision for the two thousand eleven--two thousand twelve school year and for annual professional performance reviews conducted in accordance with paragraph g of this subdivision for the two thousand twelve--two thousand thirteen school year for classroom teachers in subjects and grades for which the board of regents has approved a value-added model and for building principals employed in schools or programs for which there is an approved principal value-added model, the scoring ranges for the locally selected measures of student achievement subcomponent shall be in accordance with this subparagraph. A classroom teacher and building principal shall receive:

(A) a highly effective rating in this subcomponent if the results are well-above district-adopted expectations for student growth or achievement and they achieve a subcomponent score of 14-15; or

(B) an effective rating in this subcomponent if the results meet

district-adopted expectations for growth or achievement and they achieve a subcomponent score of 8-13; or

(C) a developing rating in this subcomponent if the results are below district-adopted expectations for growth or achievement and they achieve a subcomponent score of 3-7; or

(D) an ineffective rating in this subcomponent if the results are well-below district-adopted expectations for growth or achievement and they achieve a subcomponent score of 0-2.

(7) For the two thousand thirteen--two thousand fourteen school year and thereafter, the commissioner shall review the specific scoring ranges for each of the rating categories annually before the start of each school year and shall recommend any changes to the board of regents for consideration.

(8) Except for the student growth measures on the state assessments or other comparable measures of student growth prescribed in paragraphs e, f and g of this subdivision, the elements comprising the composite effectiveness score and the process by which points are assigned to subcomponents shall be locally developed, consistent with the standards prescribed in the regulations of the commissioner and the requirements of this section, through negotiations conducted, pursuant to the requirements of article fourteen of the civil service law.

b. (1) Annual professional performance reviews conducted by school districts or boards of cooperative educational services for the two thousand eleven--two thousand twelve school year of classroom teachers of common branch subjects or English language arts or mathematics in grades four to eight and all building principals of schools in which such teachers are employed shall be conducted pursuant to this subdivision and shall use two thousand ten--two thousand eleven school year student data as the baseline for the initial computation of the composite teacher or principal effectiveness score for such classroom teachers and principals.

(2) Subject to paragraph k of this subdivision the entire annual professional performance review shall be completed and provided to the teacher or principal as soon as practicable but in no case later than September first, two thousand twelve. The provisions of subparagraphs two and three of paragraph c of this subdivision shall apply to such

reviews.

c. (1) Annual professional performance reviews conducted by school districts or boards of cooperative educational services for the two thousand twelve--two thousand thirteen school year and thereafter of all classroom teachers and all building principals shall be conducted pursuant to this subdivision and shall use two thousand eleven--two thousand twelve school year student data as the baseline for the initial computation of the composite teacher or principal effectiveness score for such classroom teachers and principals. For purposes of this section, an administrator in charge of an instructional program of a board of cooperative educational services shall be deemed to be a building principal.

(2) Subject to paragraph k of this subdivision the entire annual professional performance review shall be completed and provided to the teacher or principal as soon as practicable but in no case later than September first of the school year next following the school year for which the classroom teacher or building principal's performance is being measured. The teacher's and principal's score and rating on the locally selected measures subcomponent, if available, and on the other measures of teacher and principal effectiveness subcomponent for a teacher's or principal's annual professional performance review shall be computed and provided to the teacher or principal, in writing, by no later than the last day of the school year for which the teacher or principal is being measured. Nothing in this subdivision shall be construed to authorize a teacher or principal to trigger the appeal process prior to receipt of his or her composite effectiveness score and rating.

(3) Each such annual professional performance review shall be based on the state assessments or other comparable measures subcomponent, the locally selected measures of student achievement subcomponent and the other measures of teacher and principal effectiveness subcomponent, determined in accordance with the applicable provisions of this section and the regulations of the commissioner, for the school year for which the teacher's or principal's performance is measured.

d. Prior to any evaluation being conducted in accordance with this section, each individual who is responsible for conducting an evaluation

of a teacher or building principal shall receive appropriate training in accordance with the regulations of the commissioner of education.

e. (1) For annual professional performance reviews conducted in accordance with paragraph b of this subdivision for the two thousand eleven--two thousand twelve school year, forty percent of the composite score of effectiveness shall be based on student achievement measures as follows: (i) twenty percent of the evaluation shall be based upon student growth data on state assessments as prescribed by the commissioner or a comparable measure of student growth if such growth data is not available; and (ii) twenty percent shall be based on other locally selected measures of student achievement that are determined to be rigorous and comparable across classrooms in accordance with the regulations of the commissioner and as are developed locally in a manner consistent with procedures negotiated pursuant to the requirements of article fourteen of the civil service law.

(2) Such locally selected measures may include measures of student achievement or growth on state assessments, regents examinations and/or department approved equivalent, provided that such measures are different from those prescribed by the commissioner pursuant to clause (i) of subparagraph one of this paragraph. The regulations of the commissioner shall describe the types of measures of student growth or achievement that may be locally selected. The selection of the local measure(s) as described in this paragraph to be used by the school district or board of cooperative educational services shall be determined through collective bargaining.

f. (1) For annual professional performance reviews conducted in accordance with paragraph c of this subdivision for the two thousand twelve--two thousand thirteen school year and thereafter for classroom teachers in subjects and grades for which the board of regents has not approved a value-added model and for building principals employed in schools or programs for which there is no approved principal value-added model, forty percent of the composite score of effectiveness shall be based on student achievement measures as follows: (i) twenty percent of the evaluation shall be based upon student growth data on state assessments as prescribed by the commissioner or a comparable measure of

student growth if such growth data is not available; and (ii) twenty percent shall be based on other locally selected measures of student achievement that are determined to be rigorous and comparable across classrooms in accordance with the regulations of the commissioner and as are developed locally in a manner consistent with procedures negotiated pursuant to the requirements of article fourteen of the civil service law.

(2) One or more of the following types of locally selected measures of student achievement or growth may be used for the evaluation of classroom teachers:

(i) student achievement or growth on state assessments, regents examinations and/or department approved alternative examinations as described in the regulations of the commissioner including, but not limited to, advanced placement examinations, international baccalaureate examinations, and SAT II, using a measure that is different from the growth score prescribed by the department for student growth on such assessments or examinations for purposes of the state assessment or other comparable measures subcomponent that is either:

(A) the change in percentage of a teacher's students who achieve a specific level of performance as determined locally, on such assessments/examinations compared to those students' level of performance on such assessments/examinations in the previous school year such as a three percentage point increase in students earning the proficient level (three) or better performance level on the seventh grade math state assessment compared to those same students' performance levels on the sixth grade math state assessment, or an increase in the percentage of a teacher's students earning the advanced performance level (four) on the fourth grade English language arts or math state assessments compared to those students' performance levels on the third grade English language arts or math state assessments; or

(B) a teacher specific growth score computed by the department based on the percent of the teacher's students earning a department determined level of growth. The methodology to translate such growth into the state-established subcomponent scoring ranges shall be determined locally; or

(C) a teacher-specific achievement or growth score computed in a manner determined locally based on a measure of student performance on

the state assessments, regents examinations and/or department approved alternative examinations other than the measure described in item (A) or (B) of this subparagraph;

(ii) student growth or achievement computed in a manner determined locally based on a student assessment approved by the department pursuant to a request for qualification process established in the regulations of the commissioner;

(iii) student growth or achievement computed in a manner determined locally based on a district, regional or BOCES-developed assessment that is rigorous and comparable across classrooms;

(iv) a school-wide measure of either student growth or achievement based on either:

(A) a state-provided student growth score covering all students in the school that took the state assessment in English language arts or mathematics in grades four through eight;

(B) a school-wide measure of student growth or achievement computed in a manner determined locally based on a district, regional or board of cooperative educational services developed assessment that is rigorous and comparable across classrooms or a department approved student assessment or based on a state assessment; or

(v) where applicable, for teachers in any grade or subject where there is no growth or value-added growth model approved by the board of regents at that grade level or in that subject, a structured district-wide student growth goal-setting process to be used with any state assessment or an approved student assessment or a district, regional or BOCES-developed assessment that is rigorous and comparable across classrooms.

(3) One or more of the following types of locally selected measures of student achievement or growth may be used for the evaluation of principals, provided that each measure is rigorous and comparable across classrooms and that any such measure shall be different from that used for the state assessment or other comparable measures subcomponent:

(i) student achievement levels on state assessments in English language arts and/or mathematics in grades four to eight such as percentage of students in the school whose performance levels on state assessments are proficient or advanced, as defined in the regulations of the commissioner;

(ii) student growth or achievement on state or other assessments in English language arts and/or mathematics in grades four to eight for students in each of the performance levels described in the regulations of the commissioner;

(iii) student growth or achievement on state assessments in English language arts and/or mathematics in grades four to eight for students with disabilities and English language learners in grades four to eight;

(iv) student performance on any or all of the district-wide locally selected measures approved for use in teacher evaluations;

(v) for principals employed in a school with high school grades, four, five and/or six-year high school graduation and/or dropout rates;

(vi) percentage of students who earn a regents diploma with advanced designation and/or honors as defined in the regulations of the commissioner, for principals employed in a school with high school grades;

(vii) percentage of a cohort of students that achieve specified scores on regents examinations and/or department approved alternative examinations including, but not limited to, advanced placement examinations, international baccalaureate examinations and SAT II, for principals employed in a school with high school grades such as the percentage of students in the two thousand nine cohort that scored at least a three on an advanced placement examination since entry into the ninth grade; and/or

(viii) students' progress toward graduation in the school using strong predictive indicators, including but not limited to ninth and/or tenth grade credit accumulation and/or the percentage of students that pass ninth and/or tenth grade subjects most commonly associated with graduation and/or students' progress in passing the number of required regents examinations for graduation, for principals employed in a school with high school grades.

(ix) For school districts or boards of cooperative educational services that choose to use more than one set of locally selected measures described in this paragraph for principals in the same or similar grade configuration or program such as one set of locally selected measures is used to evaluate principals in some K-5 schools and another set of locally selected measures is used to evaluate principals in the other K-5 schools in the district, the superintendent or district

superintendent shall, in their professional performance review plan, certify that the sets of measures are comparable, in accordance with the testing standards as defined in regulations of the commissioner.

(x) For building principals employed in schools or programs for which there is no approved principal value-added model, the types of locally selected measures of student achievement or growth specified in subparagraph three of paragraph g of this subdivision may be used. In addition, a structured district-wide student growth goal-setting process to be used with any state assessment or an approved student assessment or a district, regional of BOCES-developed assessment that is rigorous and comparable across classrooms may be a locally selected measure.

(4) The selection of the local measure or measures as described in subparagraphs two and three of this paragraph to be used by the school district or board of cooperative educational services shall be determined through collective bargaining.

g. (1) For annual professional performance reviews conducted in accordance with paragraph c of this subdivision for the two thousand twelve--two thousand thirteen school year and thereafter for classroom teachers in subjects and grades in which there is a value-added growth model approved by the board of regents and for building principals employed in schools or programs for which there is an approved principal value-added model, forty percent of the composite score of effectiveness shall be based on student achievement measures as follows: (i) twenty-five percent of the evaluation shall be based upon student growth data on state assessments as prescribed by the commissioner or a comparable measure of student growth if such growth data is not available; and (ii) fifteen percent shall be based on other locally selected measures of student achievement that are determined to be rigorous and comparable across classrooms in accordance with the regulations of the commissioner and as are locally developed in a manner consistent with procedures negotiated pursuant to the requirements of article fourteen of the civil service law. The department shall develop the value-added growth model and shall consult with the advisory committee established pursuant to subdivision seven of this section prior to recommending that the board of regents approve its use in evaluations.

(2) One or more of the following types of locally selected measures of student achievement or growth may be used for the evaluation of classroom teachers:

(i) student achievement or growth on state assessments, regents examinations and/or department approved alternative examinations as described in the regulations of the commissioner including, but not limited to, advanced placement examinations, international baccalaureate examinations and SAT II, using a measure that is different from the growth score prescribed by the department for student growth on such assessments or examinations for purposes of the state assessment or other comparable measures subcomponent that is either:

(A) the change in percentage of a teacher's students who achieve a specific level of performance as determined locally, on such assessments/examinations compared to those students' level of performance on such assessments/examinations in the previous school year such as a three percentage point increase in students earning the proficient level (three) or better performance level on the seventh grade math state assessment compared to those same students' performance levels on the sixth grade math state assessment, or an increase in the percentage of a teacher's students earning the advanced performance level (four) on the fourth grade English language arts or math state assessments compared to those students' performance levels on the third grade English language arts or math state assessments; or

(B) a teacher specific growth score computed by the state based on the percent of the teacher's students earning a state determined level of growth. The methodology to translate such growth into the state-established subcomponent scoring ranges shall be determined locally; or

(C) a teacher-specific achievement or growth score computed in a manner determined locally based on a measure of student performance on the state assessments, regents examinations and/or department approved alternative examinations other than the measure described in item (A) or (B) of this subparagraph;

(ii) student growth or achievement computed in a manner determined locally based on a student assessment approved by the department pursuant to a request for qualification process established in the regulations of the commissioner;

(iii) student growth or achievement computed in a manner determined locally based on a district, regional or BOCES-developed assessment that is rigorous and comparable across classrooms;

(iv) a school-wide measure of either student growth or achievement based on either:

(A) a state-provided student growth score covering all students in the school that took the state assessment in English language arts or mathematics in grades four through eight; or

(B) a school-wide measure of student growth or achievement computed in a manner determined locally based on a district, regional or board of cooperative educational services developed assessment that is rigorous and comparable across classrooms or a department approved student assessment or based on a state assessment.

(3) One or more of the following types of locally selected measures of student achievement or growth may be used for the evaluation of principals, provided that each measure is rigorous and comparable across classrooms and that any such measure shall be different from that used for the state assessment or other comparable measures subcomponent:

(i) student achievement levels on state assessments in English language arts and/or mathematics in grades four to eight such as percentage of students in the school whose performance levels on state assessments are proficient or advanced, as defined in the regulations of the commissioner;

(ii) student growth or achievement on state or other assessments in English language arts and/or mathematics in grades four to eight for students in each of the performance levels described in the regulations of the commissioner;

(iii) student growth or achievement on state assessments in English language arts and/or mathematics in grades four to eight for students with disabilities and English language learners in grades four to eight;

(iv) student performance on any or all of the district-wide locally selected measures approved for use in teacher evaluations;

(v) for principals employed in a school with high school grades, four, five and/or six-year high school graduation and/or dropout rates;

(vi) percentage of students who earn a regents diploma with advanced designation and/or honors as defined in the regulations of the commissioner, for principals employed in a school with high school

grades;

(vii) percentage of a cohort of students that achieve specified scores on regents examinations and/or department approved alternative examinations including, but not limited to, advanced placement examinations, international baccalaureate examinations and SAT II, for principals employed in a school with high school grades such as the percentage of students in the two thousand nine cohort that scored at least a three on an advanced placement examination since entry into the ninth grade; and/or

(viii) students' progress toward graduation in the school using strong predictive indicators, including but not limited to ninth and/or tenth grade credit accumulation and/or the percentage of students that pass ninth and/or tenth grade subjects most commonly associated with graduation and/or students' progress in passing the number of required regents examinations for graduation, for principals employed in a school with high school grades.

(ix) For school districts or boards of cooperative educational services that choose to use more than one set of locally selected measures described in this paragraph for principals in the same or similar grade configuration or program, the superintendent or district superintendent shall, in their professional performance review plan, certify that the sets of measures are comparable, in accordance with the testing standards as defined in regulations of the commissioner.

(4) The selection of the local measure or measures as described in subparagraphs two and three of this paragraph to be used by the school district or board of cooperative educational services shall be determined through collective bargaining.

h. The remaining sixty percent of the evaluations, ratings and effectiveness scores shall be locally developed, consistent with the standards prescribed in the regulations of the commissioner, through negotiations conducted pursuant to article fourteen of the civil service law.

(1) A majority of the sixty points for classroom teachers shall be based on multiple classroom observations conducted by a principal or other trained administrator, which may be performed in-person or by video. For evaluations for the two thousand twelve--two thousand

thirteen school year and thereafter, at least one such observation shall be an unannounced visit.

(2) For the remaining portion of these sixty points for evaluations for the two thousand eleven--two thousand twelve school year, the commissioner's regulation shall prescribe the other forms of evidence of teacher and principal effectiveness that may be used.

(3) For evaluations of classroom teachers for the two thousand twelve--two thousand thirteen school year and thereafter, the remaining portion of these sixty points shall be based on one or more of the following:

(i) one or more classroom observations by independent trained evaluators selected by the school district or board of cooperative educational services who are teachers or former teachers with a demonstrated record of effectiveness and have no prior affiliation with the school in which they are conducting the evaluation and no other relationship with the teachers being evaluated that would affect their impartiality;

(ii) classroom observations by trained in-school peer teachers; and/or

(iii) use of a state-approved instrument for parent or student feedback; and/or

(iv) evidence of student development and performance through lesson plans, student portfolios and other artifacts of teacher practices through a structured review process.

(4) A majority of these sixty points for building principals shall be based on a broad assessment of the principal's leadership and management actions based on the principal practice rubric by the building principal's supervisor, a trained administrator or a trained independent evaluator, with one or more visits conducted by the supervisor, and, for evaluations for the two thousand twelve--two thousand thirteen school year and thereafter, that such assessment must incorporate multiple school visits by a supervisor, a trained administrator or other trained evaluator, with at least one visit conducted by the supervisor and at least one unannounced visit. For the remaining portion of these sixty points for evaluations for the two thousand eleven--two thousand twelve school year, such regulations shall also prescribe the other forms of evidence of principal effectiveness that may be used consistent with the standards prescribed by the commissioner.

(5) For evaluations of building principals for the two thousand twelve--two thousand thirteen school year and thereafter, the remaining portion of these sixty points shall include, in addition to the requirements of subparagraph three of this paragraph, at least two other sources of evidence from the following options: feedback from teachers, students, and/or families using state-approved instruments; school visits by other trained evaluators; and/or review of school documents, records, and/or state accountability processes. Any such remaining points shall be assigned based on the results of one or more ambitious and measurable goals set collaboratively with principals and their superintendents or district superintendents as follows:

(i) at least one goal must address the principal's contribution to improving teacher effectiveness, which shall include one or more of the following: improved retention of high performing teachers, the correlation between student growth scores of teachers granted tenure as opposed to those denied tenure; or improvements in the proficiency rating of the principal on specific teacher effectiveness standards in the principal practice rubric.

(ii) any other goals shall address quantifiable and verifiable improvements in academic results or the school's learning environmental such as student or teacher attendance.

(6) The district or board of cooperative educational services shall establish specific minimum and maximum scoring ranges for each performance level within this subcomponent before the start of each school year and shall assign points to a teacher or principal for this subcomponent based on the standards prescribed in the regulations of the commissioner, all in accordance with, and subject to, the requirements of paragraph j of this subdivision.

i. For purposes of this section, student growth means the change in student achievement for an individual student between two or more points in time.

j. (1) The process by which points are assigned in subcomponents and the scoring ranges for the subcomponents must be transparent and available to those being rated before the beginning of each school year. The process by which points are assigned in the respective subcomponents

are to be determined as follows:

(i) For the state assessment or other comparable measures subcomponent, that process shall be formulated by the commissioner with the approval of the board of regents.

(ii) For the locally selected measures of the student achievement subcomponent, that process shall be established locally through negotiations conducted under article fourteen of the civil service law.

(iii) For the other measures of teacher and principal effectiveness subcomponent, that process shall be established locally through negotiations conducted under article fourteen of the civil services law.

(2) Such process must ensure that it is possible for a teacher or principal to obtain each point in the applicable scoring ranges, including zero, for the state assessment or other comparable measures subcomponent, the locally selected measures of student achievement subcomponent and the overall rating categories. The process must also ensure that it is possible for a teacher or principal to obtain each point in the scoring ranges prescribed by the district or board of cooperative educational services for the other measures of teacher and principal effectiveness subcomponent.

(3) The superintendent, district superintendent or chancellor and the president of the collective bargaining representative (where one exists) shall certify in its plan that the process will use the narrative descriptions of the standards for the scoring ranges provided in the regulations of the commissioner to effectively differentiate a teacher or principal's performance in each of the subcomponents and in their overall ratings to improve student learning and instruction.

(4) The scoring ranges for the other measures of teacher and principal effectiveness subcomponent shall be established locally through negotiations conducted under article fourteen of the civil service law.

k. Notwithstanding any other provision of law, rule or regulation to the contrary, by July first, two thousand twelve, the governing body of each school district and board of cooperative educational services shall adopt a plan, on a form prescribed by the commissioner, for the annual professional performance review of all of its classroom teachers and building principals in accordance with the requirements of this section and the regulations of the commissioner, and shall submit such plan to

the commissioner for approval. The plan may be an annual or multi-year plan, for the annual professional performance review of all of its classroom teachers and building principals. The commissioner shall approve or reject the plan by September first, two thousand twelve, or as soon as practicable thereafter. The commissioner may reject a plan that does not rigorously adhere to the provisions of this section and the regulations of the commissioner. Should any plan be rejected, the commissioner shall describe each deficiency in the submitted plan and direct that each such deficiency be resolved through collective bargaining to the extent required under article fourteen of the civil service law. If any material changes are made to the plan, the school district or board of cooperative educational services must submit the material changes, on a form prescribed by the commissioner, to the commissioner for approval. To the extent that by July first, two thousand twelve, or by July first of any subsequent year, if all the terms of the plan have not been finalized as a result of unresolved collective bargaining negotiations, the entire plan shall be submitted to the commissioner upon resolution of all of its terms, consistent with article fourteen of the civil service law.

k-1. If material changes are submitted pursuant to paragraph k of this subdivision for an approved plan that solely relates to the elimination of student assessments that are not required by state or federal law, the commissioner shall expedite his or her review of such material changes and solely review those sections of the plan that relate to the eliminated student assessments to ensure compliance with this section and the regulations of the commissioner, provided that the governing body of such school district or board of cooperative educational services provide a written explanation of the material changes submitted for approval, on a form prescribed by the commissioner, and certify that no other material changes have been made to any other sections of the currently approved plan, and provided further that the commissioner shall complete such review of material changes properly and completely submitted under this paragraph within ten business days of submission.

k-2. The commissioner shall take actions to reduce time spent on field tests for students taking the state administered standardized English

language arts and mathematics assessments for grades three through eight to the extent federal funds are allowable for such purpose under the state stabilization fund of the American Recovery and Reinvestment Act of 2009 or are otherwise available.

l. In the event a school district does not have an annual professional performance review plan approved by the commissioner for the applicable school year as of September first of that year, the collectively bargained plan most recently approved or the plan determined by the commissioner shall remain in effect until a subsequent plan is agreed to by the parties in accordance with this section and is approved by the commissioner.

3. Nothing in this section shall be construed to excuse school districts or boards of cooperative educational services from complying with the standards set forth in the regulations of the commissioner for conducting annual professional performance reviews of classroom teachers or principals, including but not limited to required quality rating categories, in conducting evaluations prior to July first, two thousand eleven, or, for classroom teachers or principals subject to paragraph c of subdivision two of this section, prior to July first, two thousand twelve.

4. Notwithstanding any other law, rule or regulation to the contrary, upon rating a teacher or a principal as developing or ineffective through an annual professional performance review conducted pursuant to subdivision two of this section, the school district or board of cooperative educational services shall formulate and commence implementation of a teacher or principal improvement plan for such teacher or principal as soon as practicable but in no case later than ten school days after the opening of classes for the school year. Such improvement plan shall be consistent with the regulations of the commissioner and developed locally through negotiations conducted pursuant to article fourteen of the civil service law. Such improvement plan shall include, but need not be limited to, identification of needed areas of improvement, a timeline for achieving improvement, the manner in which improvement will be assessed, and, where appropriate,

differentiated activities to support a teacher's or principal's improvement in those areas.

5. a. An appeals procedure shall be locally established in each school district and in each board of cooperative educational services by which the evaluated teacher or principal may only challenge the substance of the annual professional performance review, the school district's or board of cooperative educational services' adherence to the standards and methodologies required for such reviews, pursuant to this section, the adherence to the regulations of the commissioner and compliance with any applicable locally negotiated procedures, as well as the school district's or board of cooperative educational services' issuance and/or implementation of the terms of the teacher or principal improvement plan, as required under this section. Appeal procedures shall provide for the timely and expeditious resolution of any appeal under this subdivision. The specifics of the appeal procedure shall be locally established through negotiations conducted pursuant to article fourteen of the civil service law. An evaluation which is the subject of an appeal shall not be sought to be offered in evidence or placed in evidence in any proceeding conducted pursuant to either section three thousand twenty-a of this article or any locally negotiated alternate disciplinary procedure, until the appeal process is concluded.

b. Nothing in this section shall be construed to alter or diminish the authority of the governing body of a school district or board of cooperative educational services to grant or deny tenure to or terminate probationary teachers or probationary building principals during the pendency of an appeal pursuant to this section for statutorily and constitutionally permissible reasons including the teacher's or principal's performance that is the subject of the appeal.

c. Nothing in this section shall be construed to authorize a teacher or principal to trigger the appeal process prior to receipt of their composite effectiveness score and rating from the district or board of cooperative educational services.

5-a. In the city school district of the city of New York,

notwithstanding any provision of law to the contrary, the following shall apply to classroom teachers:

a. A teacher who did not receive an ineffective rating in the annual professional performance review for the prior school year is in "year one status".

b. A teacher who received an ineffective rating in the previous school year is in "year two status", until and unless that rating is either changed by the principal or reversed on appeal in accordance with the provisions of this subdivision, or until and unless the teacher reverts to year one status in accordance with the provisions of this subdivision.

c. A teacher who is rated ineffective for a school year in which the teacher has year one status shall have a right to appeal that rating to the chancellor of the city school district, who shall make a final determination, unless an appeal is initiated to a three-member panel subject to the following requirements. The united federation of teachers (UFT) may appeal to a three-member panel the ineffective ratings of up to thirteen percent of teachers who received such ineffective ratings for a school year. Any such appeal may only be made on the ground that the ineffective rating was given due to harassment or reasons not related to job performance. These appeals shall be known as a "panel appeals". The three-member panel shall consist of a person selected by the UFT, a person selected by the chancellor of the city school district and an independent person, not affiliated with the UFT or the district and selected by the state education department, who shall be the chair of the panel and conduct the appeal hearing. If the panel sustains the appeal, the principal must submit to the panel a different rating, which must be approved by the panel. Any ineffective rating that is appealed to the panel may not be appealed to the chancellor of the city school district.

d. The chancellor of the city school district shall notify the UFT of all ineffective ratings. Each school year, if the UFT is notified of an ineffective rating prior to October first, a panel appeal of that rating

must be initiated by the UFT by November first, provided that more than thirteen percent of these ratings may be appealed to the panel. The UFT and the board of education shall negotiate, pursuant to article fourteen of the civil service law, a procedure for ensuring that each school year, not more than thirteen percent of the ratings received by the UFT after October first are appealed to the panel. The board of education shall make all reasonable efforts to issue ratings and notify the UFT of ineffective ratings by October first. Any rating not appealed to the panel may be appealed by the individual teacher to the chancellor of the city school district. Appeals made to the chancellor of the city school district must be filed within ten school days after the UFT would otherwise be required to notify the board of education of a panel appeal.

e. For all teachers in year two status, unless and until the ineffective rating they received in the prior year is changed by a principal or otherwise changed in accordance with the provisions of this subdivision, an independent validator shall be appointed to evaluate the teacher on each component of the annual professional performance review in which the scoring of the component is at the discretion of the principal. These components shall not necessarily be limited to teacher performance, but shall not include any components in which the scoring of the component is outside the discretion of the principal, even if the principal has discretion in a related goal-setting process prior to scoring. The independent validator shall perform three observations during the course of the school year. The terms and conditions of the observations shall be negotiated pursuant to the requirements of article fourteen of the civil service law.

f. The UFT and the board of education shall jointly select an organization or organizations that employ certified educators, including teachers, to perform the work as independent validators. Independent validators shall not be employed simultaneously by the board of education or simultaneously have an individual contract with the board of education. Should either the board of education or the UFT notify the department that after a good faith effort the board of education and the UFT are unable to jointly select organizations, the commissioner shall

name organizations subject to the following requirements. The board of education shall set forth a required number of validators, and the commissioner shall name organizations that can provide at least this number of validators whom the commissioner deems qualified. The commissioner shall name organizations based on the criteria set forth in this subdivision that apply to the mutual selection process for the board of education and the UFT and shall also consider potential conflicts of interest.

g. In an instance in which the independent validator does not complete the review process due to circumstances beyond the control of the board of education, the teacher shall remain in year two status the following school year. Should the independent validator not complete the review process for a second consecutive school year and for any reason in the second year for other than a leave of absence or chronic absence on the part of the teacher, the teacher shall return to year one status the following school year.

h. An independent validator shall be deemed to have agreed with the principal when an independent validator's scoring, in conjunction with the scoring of components not reviewed by the independent validator in accordance with this subdivision, would result in a rating in the same category on the annual professional performance review than would result from the principal's rating.

i. For purposes of this subdivision, an independent validator shall be deemed to have disagreed with the principal when an independent validator's scoring, in conjunction with the scoring of components not reviewed by the independent validator in accordance with this subdivision, would result in a rating in a different category on the annual professional performance review than would result from the principal's rating.

j. If a teacher receives an ineffective rating for a school year in which the teacher is in year two status and the independent validator agrees, the district may bring a proceeding pursuant to sections three thousand twenty and three thousand twenty-a of this article based on a

pattern of ineffective teaching or performance. In such proceeding, the charges shall allege that the employing board has developed and substantially implemented a teacher improvement plan in accordance with subdivision four of this section for the employee following the evaluation made for the year in which the employee was in year one status and was rated ineffective. The pattern of ineffective teaching or performance shall give rise to a rebuttable presumption of incompetence and if the presumption is not successfully rebutted, the finding, absent extraordinary circumstances, shall be just cause for removal. In these hearings, the teacher shall have up to three days to present his or her case for every one day used by the district to present its case. The hearing officer shall render a written decision within ten days of the last day of the hearing.

k. If the teacher receives an ineffective rating by the principal in a school year in which they are in year two status and the independent validator disagrees, the ineffective rating remains but the district may not bring proceeding based on a pattern of ineffective teaching or performance, as defined in this section, provided however that nothing in this section shall prevent the board of education from charging a teacher based on incompetence and entering the principal's evaluations into evidence.

l. If upon the completion of a hearing pursuant to sections three thousand twenty and three thousand twenty-a of this article, based either on a pattern of ineffective teaching or performance or charges of incompetence in which year one or year two evaluations were entered into evidence, and a hearing officer finds the teacher incompetent, but decides not to terminate, the teacher remains in year two status for the school year in progress or the following school year if the finding is made in between school years. If upon the completion of the hearing, the hearing officer exonerates the teacher of charges of incompetence the teacher shall revert to year one status if in the middle of the school year or at the beginning of the following school year if the finding is made in between school years.

m. If the teacher receives an ineffective rating in year two by the

principal and the validator agrees, and the district does not bring an expedited proceeding pursuant to sections three thousand twenty and three thousand twenty-a of this article, the teacher may appeal the year two ineffective rating to the chancellor of the city school district, who shall make a final determination. If the rating is upheld, the teacher shall remain in year two status for the subsequent school year, but if following that year the teacher is not charged, the teacher reverts to year one status for the next school year.

n. A process shall be established to evaluate the effectiveness of the specific procedures established in this subdivision after two years from the effective date of this subdivision, provided however that a failure or delay in establishing that process shall not invalidate any provisions of this subdivision.

o. Notwithstanding any other provision of law to the contrary, the board of education and the UFT may alter any provisions of this subdivision through collective bargaining.

6. For purposes of disciplinary proceedings pursuant to sections three thousand twenty and three thousand twenty-a of this article, a pattern of ineffective teaching or performance shall be defined to mean two consecutive annual ineffective ratings received by a classroom teacher or building principal pursuant to annual professional performance reviews conducted in accordance with the provisions of this section.

7. The regulations adopted pursuant to this section shall be developed in consultation with an advisory committee consisting of representatives of teachers, principals, superintendents of schools, school boards, school district and board of cooperative educational services officials and other interested parties. The regulations shall also take into account any (i) professional teaching standards; (ii) standards for professional contexts; and (iii) standards for a continuum of system support for teachers and principals developed in consultation with the advisory committee. Regulations promulgated pursuant to this section shall be effective no later than July first, two thousand eleven, for implementation in the two thousand eleven--two thousand twelve school

year.

8. Notwithstanding any other provision of law, rule or regulation to the contrary, all collective bargaining agreements applicable to classroom teachers or building principals entered into after July first, two thousand ten shall be consistent with requirements of this section. Nothing in this section shall be construed to abrogate any conflicting provisions of any collective bargaining agreement in effect on July first, two thousand ten 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. Furthermore, nothing in this section or in any rule or regulation promulgated hereunder shall in any way, alter, impair or diminish the rights of a local collective bargaining representative to negotiate evaluation procedures in accordance with article fourteen of the civil service law with the school district or board of cooperative educational services.

9. a. The department shall annually monitor and analyze trends and patterns in teacher and principal evaluation results and data to identify school districts, boards of cooperative educational services and/or schools where evidence suggests that a more rigorous evaluation system is needed to improve educator effectiveness and student learning outcomes. The criteria for identifying school districts, boards of cooperative educational services and/or schools shall be prescribed in the regulations of the commissioner.

b. A school, school district or board of cooperative educational services identified by the department in one of the categories enumerated in paragraph a of this subdivision may be highlighted in public reports and/or the commissioner may order a corrective action plan, which may include, but not be limited to, requirements that the district or board of cooperative educational services arrange for additional professional development, provide additional in-service training and/or utilize independent trained evaluators to review the

efficacy of the evaluation system, provided that the plan shall be consistent with law and not in conflict with any applicable collective bargaining agreement.

10. Each school district and board of cooperative educational services shall fully disclose and release to the public and the department the final quality ratings and composite effectiveness scores from the annual professional performance reviews of its teachers and principals as provided in this subdivision.

a. The commissioner shall fully disclose professional performance review data for teachers and principals in each school district and board of cooperative educational services on the department website and in any other manner to make such data widely available to the public. Such data shall be suitable for research, analysis and comparison of professional performance review data for teachers and principals. Such public disclosure shall include but not be limited to the final quality ratings and composite effectiveness scores by school district for principal evaluation data, by school building for teacher evaluation data and, within each district and school building, by class, subject and grade; final quality ratings and composite effectiveness scores by region, district wealth, district need category, student enrollment, type of school (i.e. elementary, middle and high school), student need (e.g., poverty level), and district spending; final quality ratings and composite effectiveness scores by the percentage or number of teachers and principals in each final quality rating category, moving to a higher rating category than the previous year, moving to a lower rating category than the previous year, and retained in each rating category; and data on tenure granting and denial based on the final quality rating categories.

b. Each school district and board of cooperative educational services shall fully disclose and release to the parents and legal guardians of a student the final quality rating and composite effectiveness score for each of the teachers and for the principal of the school building to which the student is assigned for the current school year upon the request of such parents and legal guardians. The governing body of each

school district and board of cooperative educational services shall provide conspicuous notice to parents and legal guardians of the right to obtain such information. Parents and legal guardians may review and receive such data in any manner, including by phone or in person; shall receive an oral or written explanation of the composite effectiveness scoring ranges for final quality ratings; and be offered opportunities to understand such scores in the context of teacher evaluation and student performance. Reasonable efforts shall be made to verify that any such request is a bona fide request by a parent or guardian entitled to review and receive such data pursuant to this paragraph.

c. The department and each school district and board of cooperative educational services shall ensure that any release to the public of annual professional performance review data, or any other data that is used as a component of annual professional performance reviews, does not include personally identifying information for any teacher or principal, provided, however, that nothing shall impair the right of parents and legal guardians to review and receive the final quality rating and composite effectiveness score of individual teachers and principals as provided in paragraph b of this subdivision. Annual professional performance reviews of individual teachers and principals shall not be subject to disclosure pursuant to article six of the public officers law.

d. Nothing in this subdivision shall prohibit the department from collecting such data and materials from school districts and boards of cooperative educational services as is necessary to carry out its functions and duties, including its responsibilities related to the federal Race to the Top program.