§ 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. Provided, however, that for the two thousand twenty-four--two thousand twenty-five school year and thereafter, school districts and boards of cooperative educational services may conduct annual professional performance reviews pursuant to section three thousand twelve-e of this article. In such case, the provisions of this section shall not be applicable. Provided, however, annual teacher and principal evaluation plans adopted pursuant to this section shall not be applicable after the two thousand thirty-one--two thousand thirty-two school year.

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;

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 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 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, such assessment may 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) based on a state-created or administered test, or (B) based on a state-designed supplemental assessment. 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 part EE of chapter fifty-six 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.

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 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 shall also determine the minimum number of observations to be conducted annually, including frequency and duration, and any parameters therefor. The commissioner shall set such weights and scores consistent with the terms contained herein.

5. Rating determination. The overall rating determination shall be determined as follows:

a. If a teacher receives an H in the teacher observation category, and

an H in the student performance category, the teacher's composite score shall be H;

b. If a teacher receives an H in the teacher observation category, and an E in the student performance category, the teacher's composite score shall be H;

c. If a teacher receives an H in the teacher observation category, and a D in the student performance category, the teacher's composite score shall be E;

d. If a teacher receives an H in the teacher observation category, and an I in the student performance category, the teacher's composite score shall be D;

e. If a teacher receives an E in the teacher observation category, and an H in the student performance category, the teacher's composite score shall be H;

f. If a teacher receives an E in the teacher observation category, and an E in the student performance category, the teacher's composite score shall be E;

g. If a teacher receives an E in the teacher observation category, and a D in the student performance category, the teacher's composite score shall be E;

h. If a teacher receives an E in the teacher observation category, and an I in the student performance category, the teacher's composite score shall be D;

i. If a teacher receives a D in the teacher observation category, and an H in the student performance category, the teacher's composite score shall be E;

j. If a teacher receives a D in the teacher observation category, and an E in the student performance category, the teacher's composite score

shall be E;

k. If a teacher receives a D in the teacher observation category, and a D in the student performance category, the teacher's composite score shall be D;

l. If a teacher receives a D in the teacher observation category, and an I in the student performance category, the teacher's composite score shall be I;

m. If a teacher receives an I in the teacher observation category, and an H in the student performance category, the teacher's composite score shall be D;

n. If a teacher receives an I in the teacher observation category, and an E in the student performance category, the teacher's composite score shall be D;

o. If a teacher receives an I in the teacher observation category, and a D in the student performance category, the teacher's composite score shall be I;

p. If a teacher receives an I in the teacher observation category, and an I in the student performance category, the teacher's composite score shall be I.

6. 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 portfolios, 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. use of professional goal-setting as evidence of teacher or principal effectiveness;

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

e. any growth or achievement target that does not meet the minimum standards as set forth in regulations of the commissioner adopted hereunder.

7. The commissioner 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.

8. 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. 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. 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;

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

c. the selection and use of an assessment in a teacher or principal's evaluation pursuant to subdivision four of this section and paragraphs a and b of subdivision sixteen of this section.

11. Each school district or board of cooperative educational services, as applicable, shall certify by September first of each year that their school district or board of cooperative educational services has a teacher and principal evaluation plan that is in compliance with the requirements of this section or a performance review plan that is in compliance with the requirements of section three thousand twelve-e of this article, as applicable, and that the district or board of cooperative educational services conducted evaluations in accordance with their most recently approved plan during the preceding school year. Provided, however, that a school district or board of cooperative educational services may only have an approved teacher and principal evaluation plan pursuant to this section until June thirtieth, two thousand thirty-two.

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.

16. a. Notwithstanding any other provision of law, rule or regulation to the contrary, the grades three through eight English language arts and mathematics state assessments and all other state-created or administered tests shall not be required to be utilized in any manner to determine a teacher or principal evaluation required by this section.

b. The commissioner shall promulgate rules and regulations providing alternative assessments that may be used in grades three through eight instead of all other state-created or administered tests, which shall include all of the assessments that have been approved by the commissioner for use in determining transition scores and ratings.

c. The selection and use of an assessment in a teacher or principal's evaluation pursuant to paragraphs a and b of this subdivision and subdivision four of this section shall be subject to collective bargaining pursuant to article fourteen of the civil service law.

d. Notwithstanding any provision of subdivision twelve of this section to the contrary, nothing in this section shall be construed to abrogate any conflicting provisions of any collective bargaining agreement in effect on the date this subdivision takes effect 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 subdivision shall apply; and, provided further, however, that any assessments used in determining transition scores and ratings shall be used in determining scores and ratings pursuant to this section instead of the grades three through eight English language arts and mathematics state assessments until the entry into a successor collective bargaining agreement.

17. Notwithstanding any other provision of this section, for the two thousand twenty--two thousand twenty-one and the two thousand twenty-one--two thousand twenty-two school years, no school district or board of cooperative educational services shall be required to complete an annual teacher and principal evaluation required by this section for any classroom teacher or building principal.