



INFORMATION BULLETIN

New Tenure Determination Law Use of Peer Review

This bulletin provides information to Local Leaders and members about the use of peer review in making tenure determinations. A new Section 3012-b of the Education Law, (as added by Chapter 57 of the Laws of 2007) resulted in new standards and procedures for making tenure determinations for teachers in the instructional services employed in school districts and BOCES. The tenure determination process must now include:

- An evaluation of the extent to which the teacher successfully utilized analysis of available student performance data and other relevant information when providing instruction;
- Peer review by other teachers, as far as practicable; and
- An assessment of the teacher's performance by the teacher's building administrator.

Section 3012-b, as amended by Chapter 57 of the Laws of 2008 (Attachment 1):

1. Changed the effective date of the law so that these new standards apply to teachers whose probationary period commences on or after July 1, 2008;
2. Provided that a teacher shall not be denied or granted tenure based on student performance data; and
3. Established a two-year sunset on Section 3012-b, which means the Legislature will revisit the law in 2010.

The law also requires that the Board of Regents Rules and Commissioner's Regulations regarding Annual Professional Performance Review (APPR) conform to minimum standards and procedures for making tenure decisions as required by Section 3020-b. Amendments to Part 30 of the Rules of the Board of Regents and Section 100.2 of the Regulations of the Commissioner were adopted by the Board of Regents at their June 2008 meeting, effective July 1, 2008 (Attachment 2).

Within the context of Section 3012-b, peer review involves the use of teachers in assessing the performance of probationary teachers. The peer review process is in addition to the building administrator's evaluation of teaching staff required by Section 3012-b of Education Law. The process for evaluating teachers is a mandatory subject of collective bargaining. Both NYSUT and the State Education Department (SED) agree that "as far as practicable" means that peer review by other teachers can only occur when collectively bargained. The implementing rules and regulations provide no guidance on the design of a peer review process, leaving all operational choices and decisions to be determined through collective bargaining.

Local leaders should periodically check the NYSUT website at www.nysut.org for further information.

Questions on these changes should be directed to your regional Labor Relations Specialist or

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QUESTIONS AND ANSWERS

1. What is peer review?

Peer review involves teachers assessing the performance of teachers. Peer review should focus on promoting instructional improvement based on a set of locally adopted standards or criteria that define teaching expectations. Peer reviewers, commonly referred to as consulting teachers, work with probationary teachers to improve their knowledge and instructional skills and provide assessments of their teaching performance. The results of the assessments may be considered by the school district in making tenure determinations for probationary teachers.

According to the publication *Peer Assistance and Review: An AFT/NEA Handbook* published by the National Education Association and American Federation of Teachers, “peer review programs are an extension of our longstanding efforts to maintain high standards for the teaching profession. Peer review programs help improve teaching and learning. Where it's worked, the program has helped teachers struggling with an intellectually, emotionally, and physically difficult job--either through improving skills or, in rare cases, encouraging them to leave the profession. Peer review isn't for every school district, but peer assistance programs ought to be the standard in every community.”

2. What does “peer review by other teachers, as far as practicable” mean?

The process for evaluating teachers is a mandatory subject of collective bargaining. Both NYSUT and the State Education Department (SED) agree that “as far as practicable” means that peer review by other teachers can only occur when collectively bargained. Local school districts can not impose a process that involves peer review by other teachers, unless agreement to do so is reached through collective bargaining.

3. Is peer review currently part of the Annual Professional Performance Review (APPR)?

Yes. Section 100.2(o) of the Regulations regarding Annual Professional Performance Review (APPR) requires each school district and BOCES to develop an annual professional performance review plan that describes the methods that the school district or BOCES uses to assess teacher performance. Peer review is one of the allowable methods that may be used to assess a teacher's performance, but is not required.

4. What is the role of the mentor in making tenure determinations?

According to the State Education Department, “Current Department Regulations 100.2(dd), make it clear that the mentoring process is not part of the tenure evaluation process unless the school district and the collective bargaining agent have negotiated a mentoring system with that as an agreed upon purpose. Accordingly, staff believes there are already protections in current regulation so as not to disrupt the confidentiality of mentoring relationships.”

5. What is the role of the building administrator in making tenure determinations for probationary teachers?

Section 3012-b also explicitly requires that building administrators conduct an evaluation of a teacher's performance as part of the evaluation procedures in making a tenure determination. The responsibility of the building administrator to assess a teacher's performance is separate and distinct from the peer review process.

6. If a peer review process is used by the school district or BOCES, does this change the authority of the superintendent and Board of Education in making the final employment decision or tenure determination for the probationary teacher?

No. According to New York State law, the school board, upon the recommendation of the superintendent, makes the final tenure decision for a probationary teacher. A common misconception regarding peer review is that consulting teachers have the final authority to make decisions regarding employment. In reality, while the local union in New York State may share a role in establishing a peer review process with the school

district to review teachers' performance, tenure is granted by the board of education based on the recommendation of the Superintendent.

While consulting teachers, in accordance with the collective bargaining agreement, may conduct formal assessments and make recommendations regarding the continued employment of teachers, a distinction must be made between recommendations and decisions. In some collectively bargained peer review processes, the consulting teacher's recommendations are shared with a governing body (see response to question 9) in the form of a written report, which summarizes their observations and evidence to support whether a colleague's teaching performance is satisfactory. The governing body, then, considers the consulting teacher's assessment and recommends to the superintendent whether a probationary teacher should be retained or dismissed.

7. What components of a peer review process should be collectively bargained?

Peer review programs will vary depending on the program's purpose; however, there are numerous issues that should be addressed in the collective bargaining agreement, including:

- Composition, powers and operating procedures of the joint peer review governing body;
- The identification of participating teachers and whether and under what circumstances such participation is mandatory;
- The qualifications, selection, training, compensation, and length of service of consulting teachers;
- The rights and obligations of participating and consulting teachers;
- The process for resolution of disputes that may arise regarding the operation of the program;
- The method of funding the program; and
- The procedure for terminating the peer review program, if unanticipated conditions and consequences occur.

8. Does the union have a responsibility to represent all bargaining unit members?

According to the AFT and NEA, the rights of teachers must not be diminished by the peer review process. The union has a responsibility to inform participants of the collectively bargained peer review program about their legal and contractual rights as teachers, according to state law and local district policies. As the exclusive representative of all employees in the bargaining unit, the union has the duty to represent every one fairly.

9. What is the role of the peer review governing body?

A governing body may be established to oversee the peer review program. The governing body (called a governing board or review panel) is composed of representatives from the union and administration with a majority of teachers appointed by the teachers' union. Chairmanship generally rotates on a yearly basis between union and district officials. Decisions of the governing body should be based on more than a simple majority vote, as evidence of consensus, by the district and union members. Other common duties assigned to a governing body include:

- Ensuring fair treatment for all participating teachers;
- Selecting, overseeing, training, and evaluating consulting teachers;
- Reviewing and accepting or rejecting reports and recommendations of the consulting teachers;
- Making employment recommendations and acting on appeals; and,
- Monitoring and evaluating the program.

10. How are consulting teachers selected and what are their qualifications?

Generally, consulting teachers are chosen by the peer review governing body. The success of a peer review program depends heavily on who and how consulting teachers are selected. The highest standards should be applied in the selection of consulting teachers, because the credibility of consulting teachers is critical to the success of a peer review process.

Peer reviewers should be experienced teachers, who are released from their regular teaching duties to work with a limited number of probationary teachers. The AFT/NEA Handbook suggests that consulting teachers should be:

- Tenured teachers with a minimum of five years of classroom teaching experience;
- Viewed as respected professionals and outstanding teachers by their peers;
- Exemplary knowledge of curriculum content, materials, and methods;
- Capable communicators, adept both in verbal and written forms;
- Knowledgeable about teaching in general, but aware that good teaching does not fit into a single prescribed pattern; and,
- Able to solve problems and trust their own observations and judgments.

11. What preparation do consulting teachers require to carry out their responsibilities?

Section 100.2 of the APPR plan must describe how the school board or BOCES will provide training on good practice to staff who conducts performance evaluations. Peer reviewers should not begin their work with probationary teachers until they have been provided with appropriate training on the assessment of teachers' performance based on the locally agreed upon teaching standards. These areas may include:

- Use of standards and criteria that define what teachers should know and be able to do;
- Collecting relevant information and data to support whether teachers achieve the level expected of them;
- Preparing reports that provide objective evidence to support the peer reviewer's recommendations; and
- Allowable uses of documents, written reports and confidentiality procedures.

12. Are there locals in New York State which have peer review programs?

Yes. Several locals in New York State, including Rochester, Hamburg, Kenmore, and Syracuse, have collectively bargained peer review programs. The United Federation of Teachers (UFT) has a collectively bargained peer assistance program. These programs involve peers, working as either consulting teachers, mentors, coaches, or lead teachers, in assessing teaching practice for probationary teachers. Peer review programs vary depending on local factors. Appendix A describes the key components of the peer review programs in the locals listed above.

ADVICE TO LOCAL LEADERS

Local leaders should:

- 1) Discuss the merits of a peer review process with your Labor Relations Specialist (LRS) and union's executive committee. The American Federation of Teachers/National Education Association's (1998) *Peer Assistance and Review: An AFT/NEA's Handbook* is a good resource to review prior to this discussion. The handbook is available at:
<http://www.aft.org/pubs-reports/downloads/teachers/parhndbk.pdf>
- 2) Help your members understand that a long term commitment of time and resources are necessary to research, develop, and negotiate a sound defensible peer review process.

Appendix A - Sample of NYSUT Locals Implementing Peer Assistance and Review (PAR) Programs

	Rochester Career in Teaching (CIT) Program	Kenmore Mentor Program	Hamburg Mentor Program	Syracuse Peer Assistance and Review (PAR) Program
Initiated	1986	1989	2004	2005
Program Elements				
Collectively bargained	Details in contract.	Details in Memorandum of Understanding.	Details in the contract and Memorandum of Agreement.	Details in contract and Memorandum of Agreement.
Uses teaching standards either locally or nationally developed	Professional expectations based on the National Board for Professional Teaching Standards (NBPTS).	Locally developed teacher performance criteria.	Based on Charlotte Danielson's Framework for Teaching.	Locally developed "Model of Practitioner Evaluation" standards adopted by Board of Education
Who is served	<ul style="list-style-type: none"> • New teachers. • Experienced teachers identified as having performance problems. • Tenured teachers who volunteer. 	<ul style="list-style-type: none"> • Probationary teachers. • Tenured teachers. 	<ul style="list-style-type: none"> • Probationary teachers. • Tenured teachers who volunteer. 	<ul style="list-style-type: none"> • Serves probationary teachers in first year.
Length of Program	<ul style="list-style-type: none"> • Mentoring in year one. • Experienced teachers receive intervention for one year. 	<ul style="list-style-type: none"> • Length of probationary period. 	<ul style="list-style-type: none"> • Mentoring in year one • Peer coach in years two and three. 	<ul style="list-style-type: none"> • Peer review in year one. • Mentoring in years two and three.
Oversight and Governance	CIT Panel	Professional Performance Review Board	Mentor Review Panel	PAR Panel
1. Board Composition	1. Twelve members- 50% are teachers appointed by the union, and 50% administrators.	1. Nine members- the majority teachers appointed by the union.	1. Seven members – the majority are teachers appointed by the union.	1. Nine members - the majority are teachers appointed by the union.
2. Chairmanship	2. Co-chairs from each group.	2. By consensus of board.	2. Rotates annually	2. Rotates between the union president and superintendent annually.
3. Decision-making	3. Seven votes required for decisions, goal is consensus.	3. Six votes are required to reverse a consulting teacher's recommendation.	3. Five votes required for decisions.	3. Six votes are required to reverse a Consultant teacher's recommendation.
Role of peer teacher	<p>Mentor provides instructional support and recommends continuance in year one.</p> <p>Lead Teacher serves as both mentor and evaluator.</p>	<p>Mentor provides guidance and support in year one.</p> <p>Peer Coach provides support; facilitates communication with the principal; Prepares written assessments.</p>	<p>Mentor provides support, guidance, and evaluation of new teachers in year one.</p> <p>Peer Coach works with teachers on identified areas of need based on principal's evaluation; oversees all professional development for new</p>	<p>Consultant Teacher provides guidance, and works with administrators to provide support; evaluates teachers in year one.</p> <p>Mentor provides support and guidance in years two and three.</p>

	Rochester Career in Teaching (CIT) Program	Kenmore Mentor Program	Hamburg Mentor Program	Syracuse Peer Assistance and Review (PAR) Program
Selection process, term, and release time for peer teachers	<ul style="list-style-type: none"> Selected by governing panel. Consulting teachers serve up to half-time for two year terms. Mentors released up to half-time. Building mentors work before and after school. 	<ul style="list-style-type: none"> Selected by the review board. Serve up to three years. Released 20% time. 	teachers. <ul style="list-style-type: none"> Mentors selected by Mentor Review Panel. Mentors serve full-time with no term limit. Peer coaches selected by Article Seven Committee consisting of a majority teachers appointed by the union. 	<ul style="list-style-type: none"> Selected by the PAR panel. Serve full-time for three years.
Training and professional development	<ul style="list-style-type: none"> Mentors receive training. 	<ul style="list-style-type: none"> Mentors receive training. Review Board members receive training. 	<ul style="list-style-type: none"> Mentors and peer coaches receive training. 	<ul style="list-style-type: none"> Mentors receive training.
Role of the principal	<ul style="list-style-type: none"> Evaluates teachers; information informs employment/tenure decisions. Part of assessment process for mentors. 	<ul style="list-style-type: none"> Prepares an assessment of the teacher. 	<ul style="list-style-type: none"> Evaluates teachers in years two and three. 	<ul style="list-style-type: none"> Observe new teachers in year one, but does not conduct formal evaluation. Evaluates and makes recommendations for probationary teachers in years two and three.
Employment decisions – who is involved	<ul style="list-style-type: none"> Mentors. Principals. School Board makes final decision. 	<ul style="list-style-type: none"> Mentors. Principals. 	<ul style="list-style-type: none"> Principal makes employment decision in years two and three. 	<ul style="list-style-type: none"> Consultant teacher presents evaluations/recommendations to the PAR Panel.
Who makes the tenure determination	Final decision made by the school board based on recommendation of superintendent.	Review Board recommends to the Superintendent who makes recommendations to school board.	Principal recommends to Superintendent who makes recommendations to school board.	PAR Panel recommends to superintendent who makes recommendations to school board.
Salary and Stipends	<ul style="list-style-type: none"> Mentors receive stipend Panel members receive \$5,000 stipend. 	Mentors receive salary increase.	<ul style="list-style-type: none"> Mentors receive additional salary; Peer coaches receive stipend. 	<ul style="list-style-type: none"> Consultant teachers receive an additional 10% salary differential PAR Board members receive - \$2,000 stipend.
NYSUT Research and Educational Services				

Attachment 1: Excerpt – Chapter 57 Laws of 2008
Section 3012-b of Education Law: Tenure Determinations

S 3012-b. Tenure determinations. 1. The regents shall promulgate rules establishing minimum standards {and procedures} for tenure determinations for {members of the teaching staff} TEACHERS of all school districts and boards of cooperative educational services {made} WHOSE PROBATIONARY PERIOD COMMENCES on or after July first, two thousand eight. Such rules shall require a superintendent of schools or district superintendent of schools, prior to recommending tenure, to evaluate all relevant factors, including the candidates effectiveness over the applicable probationary period, or over three years in the case of a regular substitute with a one-year probationary period, in contributing to the successful academic performance of his or her students, using a process that complies with subdivision two of this section.

2. The REGENTS SHALL, PRESCRIBE RULES FOR THE MANNER IN WHICH THE process for evaluation of a candidate for tenure {shall} IS TO be conducted {in the manner prescribed in the regents"}. SUCH rules {and} shall include, but need not be limited to,) a combination of THE FOLLOWING MINIMUM STANDARDS:

- a. evaluation of the extent to which the teacher successfully utilized analysis of available student performance data and other relevant information when providing instruction BUT THE TEACHER SHALL NOT BE GRANTED OR DENIED TENURE BASED ON STUDENT PERFORMANCE DATA;
- b. peer review by other teachers, as far as practicable; and
- c. an assessment of the teacher's performance by the teacher's building principal or other building administrator in charge of the school or program.

3. The trustees and board of education of every school district and every board of cooperative educational services, and the chancellor of a city school district of a city with a population of one million or more shall, consistent with existing contractual provisions, make any changes in local rules, regulations{,} AND policies {and procedures} that are necessary to ensure that tenure determinations made FOR TEACHERS WHOSE PROBATIONARY PERIOD COMMENCES on or after July first, two thousand eight shall be made in compliance with this section.

S 2. Section 3012-b of the education law is REPEALED.

S 3. Legislative commission on value added. Pursuant to a chapter of the laws of 2008, the legislative commission on value added is hereby established to study the merits of value added assessment models in school accountability, including improving instruction, evaluating teacher practice standards and informing -the best methods of professional development.

S 4. This act shall take effect immediately, except that section two of this act shall take effect July 1, 2010, when upon such date all authority vested in the board of regents immediately prior to the effective date of 3012-b of the education law shall be reinstated thereto.

Attachment 2: A new Subpart 30-2 of the Rules of the Board of Education and Amendment to Section 100.2(o) of the Regulations of the Commissioner of Education

Teacher Tenure Determinations

§30-2.1 Definitions.

As used in this Subpart:

(a) Teacher means a teacher in the classroom teaching service, as that term is defined in section 80-1.1 of the Regulations of the Commissioner.

(a) §30-2.2 Applicability.

(b) The provisions of this Subpart shall apply to tenure determinations for teachers of all school districts and boards of cooperative educational services whose probationary periods commence on or after July 1, 2008.

(c) Nothing herein shall be construed to make the requirements of this Subpart applicable to teaching assistants, administrative or supervisory staff or pupil personnel service providers.

(d) Each school district and board of cooperative educational services shall in accordance with section 3012-b of the Education Law make tenure determinations for teachers whose probationary periods commence on or after July 1, 2008 in accordance with the provisions of this Subpart.

2.3 Minimum Standards for Tenure Determinations for Teachers.

(a) A superintendent of schools or district superintendent of schools, prior to recommending tenure for a teacher, shall evaluate all relevant factors, including the teacher's effectiveness over the applicable probationary period, or over three years in the case of a regular substitute with a one-year probationary period, in contributing to the successful academic performance of his or her students. When evaluating a teacher for tenure, each school district and board of cooperative educational services shall utilize a process that complies with subdivision (b) of this section.

(b) The process for evaluation of a teacher for tenure shall be consistent with Article 14 of the Civil Service Law and shall include a combination of the following minimum standards:

(1) evaluation of the extent to which the teacher successfully utilized analysis of available student performance data (for example: State test results, student work, school-developed assessments, teacher-developed assessments, etc.) and other relevant information (for example: documented health or nutrition concerns, or other student characteristics affecting learning) when providing instruction but the teacher shall not be granted or denied tenure based on student performance data:

(2) peer review by other teachers, as far as practicable: and

(3) an assessment of the teacher's performance by the teacher's building principal or other building administrator in charge of the school or program, which shall consider all the annual professional performance review criteria set forth in section 100.2(o)(2)(iii)(b)(1) of the Regulations of the Commissioner.

(c) Nothing herein shall be construed to impose a mandatory collective bargaining obligation, over any locally developed standards that are not required by Article 14 of the Civil Service Law.

(d) The trustees and board of education of every school district and every board of cooperative educational services, and the chancellor of a city school district of a city with a population of one million or more shall, consistent with existing contractual provisions, make any changes in local rules, regulations and policies that are necessary to ensure that tenure determinations for teachers whose probationary periods commence on or after July 1, 2008 shall be made in compliance with section 3012-b of the Education Law and this section.

11. Item (vi) of subclause (1) of clause (b) of subparagraph (iii) of paragraph (2) of subdivision (o) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective July 1, 2008, as follows:

(vi) student assessment, the teacher shall demonstrate that he or she implements assessment techniques based on appropriate learning standards designed to measure students' progress in learning and that he or she successfully utilizes analysis of available student performance data (for example: State test results, student work, school-developed assessments, teacher-developed assessments, etc.) and other relevant information (for example: documented health or nutrition needs, or other student characteristics affecting learning) when providing instruction.