

ANNUAL PROFESSIONAL PERFORMANCE REVIEW (APPR)



Fact Sheet 15-13 *UPDATED*

October 2015

The 2015 state budget included replacing the current Annual Professional Performance Review (APPR) law section 3012-c of the Education Law with a new section 3012-d. The state budget also included language that requires districts to have new APPR plans approved by the State Education Department (SED) by November 15, 2015 in order to receive the district's scheduled increase in state aid for the 2015-2016 school year. The new APPR law gave SED authority to make important decisions about implementation of the law through commissioner's regulations. The following is an overview of the new law and SED's regulations that were adopted by the Board of Regents through emergency action on June 15, 2015, as well as revisions to the regulations adopted by the Board of Regents through emergency action on September 16, 2015. NYSUT's Next Steps appear at the end of the fact sheet.

TIMELINE

Putting together a timeline requires combining dates from the law, regulations and the waiver process. Below is the timeline based on the dates from the three sources.

- Application of the new law begins with 2015-2016 evaluations. **New APPR plans approved on or before March 1, 2016 will apply to the 2015-2016 school year. New plans approved after March 1, 2016 will apply to the 2016-2017 school year.**
- APPR plans that were in effect on April 1, 2015 remain in place until a new plan is agreed to by the district and local.
- New plans must be locally negotiated and approved by SED by November 15, 2015, or the district will receive no increase in state aid for the 2015-2016 school year and thereafter until a new plan is in place. **SED will offer a four month hardship waiver that will extend the November 15 deadline for plan approval based on a district's demonstration of good-faith efforts to negotiate a new APPR plan.** Districts may receive additional waivers to extend the deadline to September 1, 2016. Every district will be eligible to receive a waiver.
- The final deadline for plan approval to secure 2015-2016 state aid increases is September 1, 2016.

HARDSHIP WAIVER

SED has developed a hardship waiver which will allow districts to extend the November 15th deadline. The hardship waiver must be submitted by October 30, 2015 to have the waiver approved by the November 15 deadline (submission period October 1- 30, 2015). The four-month waivers will be provided to all districts bargaining in good faith. Waivers can be renewed until September 1, 2016. If a new plan is not approved by September 1, 2016, the district will not receive its 2015-16 and 2016-17 aid increases.

Evidence of good faith bargaining

Attached to the hardship waiver application, districts/BOCES must provide evidence of their good faith efforts to collectively bargain an APPR system consistent with 3012-d. Acceptable evidence could include:

- Minutes of meetings between the district and unions
- Records of dates and times on which meetings were held

- Signed confirmation from all parties that attempts were made to meet to discuss the new plan
- Evidence that student assessments have been submitted to SED’s assessment RFQ and are awaiting approval

Also attached to the hardship waiver application, districts/BOCES must provide evidence of the steps taken to train administrators, evaluators, teachers, and other relevant staff on the new APPR system.

Acceptable evidence could include:

- Calendar of training dates and activities
- Sample training activities conducted to date
- Recertification training as long as it is aligned to 3012-d

THE NEW APPR SYSTEM

The new system replaces the three subcomponent system (20% state growth or Student Learning Objectives (SLO); 20% student achievement or growth on locally selected measures; and 60% evidence of teaching practice) with a two category matrix system that includes student performance and teacher observation. (Note: The matrix appears on page 6).

APPR Plan Requirements

The regulations require districts to submit the APPR plan to SED for approval. The plan must describe:

- The district’s process for submission of data;
- How the district will report individual teacher scores and ratings;
- The assessment development, security and scoring processes utilized by the district;
- The details of the district’s evaluation system; and
- How the district will provide timely and constructive feedback to classroom teachers on their APPR.

Student Performance Category

The student performance category has one required and one optional subcomponent. State growth is a required component, and a second assessment selected through collective bargaining is an option. Here is how it will look for the two types of teachers:

Grade 4-8 Common Branch, ELA and Math Classroom Teachers:

- Continue to receive a State-provided growth score based on the growth model; and all of these teachers will also be required to have a back-up SLO in place in case the state cannot produce a growth score.
- Optional second state-provided growth score on a state-created or administered test provided it uses a different measure, or a supplemental assessment selected from SED’s approved list.

All Other Classroom Teachers:

- Continue the Student Learning Objectives (SLO) process with either a state assessment or state approved assessment. SED has posted an RFQ for SLO assessments; currently approved assessments do not automatically meet the new SED requirements.
- Optional second state-provided growth score on a state-created or administered test provided it uses a different measure, or a supplemental assessment selected from SED’s approved list.

SLO Target Setting

Superintendents or their designees have sole discretion to use pedagogical judgment to determine SLO targets. The current process for target setting in the 2014-2015 plans may be continued.

- These targets must reflect a year of expected growth, which can vary by a student’s academic preparedness (i.e., prior achievement) and learning needs (i.e., economic disadvantage, disability, English language learner status). This means targets can factor in these characteristics.
- SLOs may incorporate group measures, including school-wide measures.

Optional Locally Selected Measure or Assessment Subcomponent

Use of an optional second measure must be agreed to through collective bargaining and can be a growth measure based on existing state exams or on new assessments approved by the state. The decision on which measure or assessment to use is also collectively bargained. Under the regulation, many of the group measures based on state assessments currently used in the local subcomponent will be available for use as this optional subcomponent. Achievement measures are not allowed at this time. Currently, the SED definition of a growth model narrowly defines it as a statistical model. Some examples of measures or assessments for this subcomponent are:

- Measure computed by the state of the percent of students who achieve a state-determined level of growth on a state assessment.
- State-calculated school-wide results based on the state provided growth scores of all students in the school taking the 4-8 state ELA or math assessment.
- Locally computed school-wide results based on all or a subset of state provided growth scores.
- Locally selected, state-designed supplemental assessment with a state-provided or approved growth model.
 - These would be locally negotiated and come from a state provided list of assessments.
 - SED has posted an RFQ for supplemental assessments; currently approved assessments do not automatically meet the growth model requirement.
 - If a teacher is rated ineffective on the student performance category and a supplemental assessment is used as the optional student growth component, then the teacher can be rated no higher than ineffective overall. (Note: If one of the first three options above is used in this subcomponent this provision does not apply).

Calculating a Student Performance Rating

The law gave the Board of Regents the authority to set weights for the two subcomponents of the student performance category, combining the scores into one rating and determining how teachers receive a rating of Highly Effective, Effective, Developing or Ineffective.

The commissioner’s regulations state that each measure used in the student performance category must result in a score between 0-20. The state will generate a 0-20 score for the state provided growth score. Districts will calculate scores for SLOs using the following table designed by SED. All other measures shall be computed locally in accordance with the state-provided or approved growth model used.

SLO Score Setting

<i>Percent of Students meeting target</i>	<i>Score</i>	<i>Percent of Students meeting target</i>	<i>Score</i>
0-4%	0	49-54%	11
5-8%	1	55-59%	12
9-12%	2	60-66%	13
13-16%	3	67-74%	14
17-20%	4	75-79%	15
21-24%	5	80-84%	16
25-28%	6	85-89%	17
29-33%	7	90-92%	18

34-38%	8	93-96%	19
39-43%	9	97-100%	20
44-48%	10		

A local may negotiate the use of a second measure in the student performance rating.

- If a local chooses to use only the required state growth or SLO component, it would count as 100% of the student performance category.
- If a local agrees with the district to use the optional student growth subcomponent along with the mandatory growth/SLO subcomponent, then the mandatory subcomponent must be weighted at a minimum of 50% and the optional subcomponent must be weighted no more than 50% of the student performance category. (Note: Section 3012-d requires that if a teacher is rated ineffective on the student performance category and a supplemental assessment is used as the optional student growth component, then the teacher must be rated ineffective overall).

An overall score of 0-20 shall be generated for the student performance category. If an optional second measure is used, the two scores will be combined using a weighted average to produce an overall score.

Overall Student Performance Category Score and Rating

<i>Rating</i>	<i>Minimum</i>	<i>Maximum</i>
Highly Effective	18	20
Effective	15	17
Developing	13	14
Ineffective	0	12

Teacher Observation Category

The new law requires a minimum of two observations: one by a principal or other trained administrator, and another by an impartial independent trained evaluator. If locally negotiated, observations by trained peer observers are also allowed.

- Independent evaluators must be trained and selected by the district:
 - May include other administrators, department chairs, or peers (such as teacher leaders on career ladders).
 - Cannot be from the same school building as the teacher being observed but may be from another school in the district (same building is defined as same BEDS code).
 - Hardship waivers may be available for rural schools and one-building districts.
- Peer evaluators must have been rated effective or highly effective on his/her overall rating the prior school year and can be from the same school or another school in the district.
- Commissioner’s regulations allow for local flexibility on frequency and duration of observations. Plans may exceed the minimum of two observations. All of these procedures must be collectively bargained.
- Commissioner’s regulation requires one observation to be unannounced.
- Videotaped observations are allowed but must be collectively bargained.

Teacher Practice Rubrics

The selection of the teacher practice rubric to be used in the teacher observation category must be locally negotiated from a menu of state-approved rubrics. The currently approved list of rubrics will remain available until the new menu is issued.

- All observations for a teacher for the school year must use the same approved rubric.

- However, the parties may locally negotiate whether to use different rubrics for teachers who teach different grades and/or subjects.
- Observations must be based only on observable rubric subcomponents and all observable teaching standards must be addressed across the total number of annual observations. However, not every element or indicator needs to be observed or included in each observation.
- Teaching standards that are part of the rubric but are not observable during the classroom observation may be observed during any optional pre-observation or post-observation review or other natural conversations between the teacher and evaluator and incorporated into the observation score.
- Under Education Law 3012-d, artifacts are a prohibited element of teacher evaluations. However, an artifact may be documented as part of an observation cycle (e.g., a lesson plan viewed during the course of the observation cycle may constitute evidence of professional planning).

Evaluator Training

The regulations continue the requirement for evaluators to be trained. All lead evaluators, independent observers and peer observers must complete training.

The training course for lead evaluators shall include:

- The New York State Teaching Standards;
- Evidence-based observation techniques that are grounded in research;
- Application and use of the student growth percentile model and any other growth model approved by SED;
- Application and use of the state-approved teacher practice rubrics;
- Application and use of any assessment tools the district utilizes to evaluate classroom teachers;
- Application and use of any locally selected measures of student growth used in the optional assessment subcomponent;
- Use of the statewide instructional reporting system;
- The scoring methodology used by the district to evaluate a teacher; and
- Specific considerations in evaluating teachers of English language learners and students with disabilities.

The training course for independent evaluators and peer evaluators shall include:

- The New York State Teaching Standards;
- Evidence-based observation techniques that are grounded in research; and
- Application and use of the state-approved teacher practice rubrics.

Overall Teacher Observation Score and Rating

- Each observation type (principal/supervisor, independent, peer) would be completed using a 1-4 rubric scale, producing an overall score between 1-4.
 - In the event that a teacher earns a score of 1 on all rated components of the practice across all observations, a score of 0 will be assigned.
- Observation types would be combined using a weighted average, producing an overall observation category score between 1-4. The weights are determined locally through collective bargaining using parameters established by SED.
 - The weight of the principal/supervisor observation is established locally, but must be at least 80% and could be as high as 90%.
 - The weight of the independent observation is established locally, but must be at least 10%.
 - The weight of the optional peer observation is established locally within these constraints.

- This overall observation category score of 1-4 would be converted into a HEDI rating using the locally bargained ranges, that meet the overall rubric score conversion guidelines below. The NYSUT recommended scoring ranges are included in the SED regulations and are bolded in the chart below.
- The resulting rating will be the teacher observation rating used in the matrix to determine a teacher’s overall rating.

Overall Rubric Score Conversion

	<i>Permissible Statewide Ranges (actual cut scores determined locally)</i>	
	<i>Minimum</i>	<i>Maximum</i>
Highly Effective (H)	3.5 to 3.75	4.0
Effective (E)	2.5 to 2.75	3.49 to 3.74
Developing (D)	1.5 to 1.75	2.49 to 2.74
Ineffective (I)	0	1.49 to 1.74

Overall Rating

The final rating will be determined using the following matrix. The teacher’s rating for each category is applied to the rubric to determine the overall rating.

Matrix

		<i>Teacher Observation</i>			
		<i>Highly Effective (H)</i>	<i>Effective (E)</i>	<i>Developing (D)</i>	<i>Ineffective (I)</i>
Student Performance	Highly Effective (H)	H	H	E	D
	Effective (E)	H	E	E	D
	Developing (D)	E	E	D	I
	Ineffective (I)	D*	D*	I	I

*If a teacher is rated ineffective on the Student Performance category, and a local selected state-designed supplemental assessment was included as an optional subcomponent of the Student Performance category, the teacher must be rated Ineffective overall.

Prohibited Elements

The new law contained a list of elements prohibited from being used in teacher evaluation. These include:

- Evidence of student development and performance derived from lesson plans and student portfolios that are not part of an approved rubric;
- Parent and student surveys;
- Professional goal setting;
- Any district or regional assessment not approved by SED; and
- Any growth or achievement target that does not meet minimum standards.

Use of APPR Results

- A student may not be instructed, for two consecutive years, in the same subject by teacher(s) who received a rating of ineffective. If a district feels it is impractical to comply, the district can request a teacher-specific waiver from SED. Waivers may be granted if the district cannot make alternate

arrangements, a true hardship is demonstrated and the district has an improvement and /or removal plan in place for the teacher in question.

- If a teacher receives two consecutive ineffective ratings, the district may bring a 3020-a proceeding and the burden of proof shifts to the teacher with the hearing completed within 90 days.
- If a teacher receives three consecutive ineffective ratings, the district must bring a 3020-a and the only defense a teacher can use is fraud or mistaken identity with the hearing completed within 30 days.

Privacy Law

- SED’s June 15, 2015 regulations change the privacy law to allow parents to receive not only an overall rating for their child’s teacher but also the rating and score for the student performance category and the observation category. **This was reversed in the September 16, 2015 revised regulations to allow parents to receive the overall rating only.**

Teacher Improvement Plans (TIPs)

According to the regulations, a district must develop and implement a teacher improvement plan for teachers receiving a rating of Developing or Ineffective from an APPR conducted under section 3012-d by October 1, in the school year following the school year the teacher received the rating. The improvement plan “shall be developed by the superintendent or his or her designee in the exercise of their pedagogical judgment” and must include at a minimum:

- Identification of needed areas of improvement;
- A timeline for achieving improvement;
- The manner in which the improvement will be assessed; and
- Where appropriate, differentiated activities to support a teacher’s improvement in those areas.

Notwithstanding language in the regulations and guidance, the TIP process should not change without the District bargaining any changes with the union.

Appeals

The regulations continue the appeals process requirements from section 3012-c. The district’s APPR plan must describe the appeals process through which a teacher may challenge her or his APPR rating. A teacher may only challenge the following in an appeal:

- The substance of the APPR which includes:
 - Where a teacher is rated Ineffective on the student performance category but rated Highly Effective on the observation category based on an anomaly, as determined locally.
- The district’s adherence to the standards and methodologies of the APPR.
- The adherence to the regulations and compliance with locally negotiated procedures.
- District’s issuance and /or implementation of the terms of the teacher improvement plan.

New Appeals Process for Growth Scores

September 16, 2015 regulations include a new appeals process for teachers who wish to challenge their State-provided growth score, which **begins with 2014-15 scores** and future years until the growth model has been re-examined.

- Teachers should send challenges to their state provided growth score to the department and the district within 20 days of receipt of the overall annual rating. For appeals of 2014-15 scores, the appeal must be filed by **October 19, 2015**. In order to appeal the growth score, the teacher must provide sufficient documentation that he/she meets the following criteria:

- Teacher was rated Ineffective on his/her state provided growth score and Highly Effective on the other measures of teacher/leader effectiveness subcomponent in the current year and was rated either Effective or Highly Effective on his/her state provided growth score in the previous year.

The district has 10 days from receipt of appeal to submit a reply to the department, confirming the teacher meets the criteria. Based on the documentation received, if the department overturns a rating on the state provided growth score, the district shall substitute the teacher's back-up SLO score for the growth score. If a back-up SLO is used, a teacher shall not receive a score/rating higher than developing on such SLO. If a back-up SLO was not developed, then the teacher's overall composite score and rating will be based on the portions of their APPR not affected by the nullification of the state provided growth score.

Corrective Action Plans

In the new regulations, SED is claiming to have the authority as part of a corrective action plan, to require school districts and their local unions to return to the bargaining table to change negotiated parts of the plan.

New Workgroup

The regulations create a new assessment and evaluation workgroup comprised of stakeholders and experts in the field to make recommendations on assessments and metrics that could be used for APPRs in the future.

NEXT STEPS WITH NEW YORK STATE EDUCATION DEPARTMENT (SED)

The 30-day comment period on the latest emergency regulations began on October 7, 2015. NYSUT will be requesting changes to the following areas.

- The current regulations define a growth model to be a statistical calculation. Very few districts will have the capacity to have their current tests qualify as a growth model for use as an optional supplemental assessment. The definition of growth model should be expanded to allow simple calculations of growth similar to the SLO growth calculation in order to make the optional supplemental assessments available to more districts.
- The current regulations set the scoring bands for SLOs and the optional second assessment at unrealistic levels. NYSUT will propose giving districts the ability to choose scoring bands with more reasonable expectations for students to meet.
- The current regulations apparently attempt to shift the Teacher Improvement Plans from collective bargaining to management discretion. We will request a return to the original requirements of section 3012-c.
- The regulations expand SED's authority to require corrective action plans to permit SED to send the parties back to the bargaining table, without any change in the current law. We will request a return to the original requirements of section 3012-c.
- Expand the State Provided Growth Score appeal process to cover more teachers, including those using group measures.