

## Frequently Asked Questions – Challenges to a State-Provided Growth Score

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## General information

### ***Q1. Why did the Board of Regents adopt a process for teachers/principals to challenge their State-provided growth score (SPGS)?***

In light of concerns raised by the field, the Department has decided to reexamine the State growth model. In the interim, during the September 2015 Board of Regents meeting, Subparts 30-2 and 30-3 of the Rules of the Board of Regents were amended to prescribe an appeals process for a teacher or principal who wishes to challenge their SPGS for the 2014-2015 school year and thereafter, in certain limited circumstances as described in Q2.

### ***Q2. Who is eligible to submit an appeal to challenge their SPGS and what is the timeline for doing so?***

For APPR composite scores and ratings that were received during the 2014-15 school year and thereafter, teachers and principals that meet the criteria below can submit an appeal to the Department using the application available at: <https://www.engageny.org/resource/appr-3012-d>. This application, and all corresponding evidence, must be submitted to the Department within 20 days of receipt of an overall APPR rating or within 20 days of the effective date of the amended regulation, whichever is later.<sup>1</sup> For SPGS for the 2014-15 school year, the deadline for submitting an appeal is October 19, 2015.<sup>2</sup> A copy of this appeal must be provided to the teacher's/principal's school district or BOCES, who shall have ten days from receipt to submit a reply to the Department.

Eligible applicants include:

1. A teacher or principal who was rated:
  - Ineffective on his/her SPGS in the current year;
  - Highly Effective on his/her Other Measures of Educator Effectiveness Subcomponent OR Observation/School Visit Category<sup>3</sup> in the current year; and
  - Effective or better on his/her SPGS in the previous year.
  
2. A high school principal of a building with at least all of grades 9-12 who was:
  - Rated Ineffective on his/her SPGS in the current year; and
  - At least 50% of students in his/her school/program, within four years of first entry into grade 9, took a Department-approved alternative examination in English language arts (ELA) and/or mathematics<sup>4</sup>; and
  - At least 90% of those students that took a Department-approved alternative

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<sup>1</sup> Sections 30-2.13 and 30-3.16 of the Rules of the Board of Regents became effective on September 28, 2015.

<sup>2</sup> Thirty days after the September 28 effective date falls on a Sunday, October 18, so under General Construction Law §25-a, the time to appeal is extended to the next business day, October 19.

<sup>3</sup> This depends on whether the APPR plan was implemented under Education Law §3012-c or §3012-d.

<sup>4</sup> Such examinations include, but are not limited to, Advanced Placement examinations, International Baccalaureate examinations, SAT II, etc. For a complete list of Department-approved alternatives, please see: <http://www.p12.nysed.gov/assessment/hsgen/archive/list.pdf>.

examination in ELA and/or mathematics scored proficient or better on the exam.<sup>5</sup>

Please note that a teacher/principal cannot commence the appeal process prior to receipt of his/her overall APPR rating from their district/BOCES.

***Q3. If the deadline for filing an appeal (e.g., October 18, 2015) falls on a weekend or holiday, i.e., Labor Day, when must an educator submit his/her appeal?***

Applying General Construction Law §25-a, if the application deadline falls on a weekend or holiday, the actual deadline for submitting the application is the next business day.

***Q4. Which Department-approved alternative examinations in ELA and/or math can be used to meet the criteria identified for a high school principal?***

Department-approved alternative examinations include, but are not limited to, Advanced Placement examinations, International Baccalaureate examinations, SAT II, etc. For a complete list of Department-approved alternatives, please see:

<http://www.p12.nysed.gov/assessment/hsgen/archive/list.pdf>.

***Q5. If my rating on the State Growth or Other Comparable Measures subcomponent (under Education Law §3012-c) or the required subcomponent of the Student Performance Category (under Education Law §3012-d) only partially used my SPGS, can I still submit an appeal?***

A teacher or principal is eligible to challenge *their own* SPGS, regardless of whether it represented their entire subcomponent or category rating or was weighted with other student learning objectives (SLOs). However, educators whose measure was part of a school- or BOCES-wide group, team, or linked result that used the building SPGS or disaggregated SPGS, e.g., for a grade level or subject, are not eligible to appeal.

***Q6. Can my district/BOCES/union representative submit an appeal on my behalf?***

No. Only educators that meet the criteria identified in Q2 are eligible to appeal. The Department will reject appeals that are not filed by a teacher or principal on his/her own behalf or by his/her attorney.

***Q7. I would like to appeal, or have already commenced an appeal, of my overall composite APPR rating pursuant to my district's collectively bargained local appeal under Education Law §3012-c or §3012-d, can I still submit this appeal to challenge my SPGS?***

Yes. Nothing in §§ 30-2.13 or 30-3.16 shall be construed to limit the right of a teacher or principal to appeal their overall composite score/rating pursuant to their district's/BOCES' locally established appeals procedure.

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<sup>5</sup> For the purposes of this appeals process, "proficient or better" on a Department-approved alternative examination is defined as the minimum acceptable score for using such examination as an alternative to a Regents examination.

***Q8. My district/BOCES has an approved APPR plan for the current school year. Does it need to make a material change to incorporate this appeals process?***

No. The SPGS appeals process added by §§ 30-2.13 and 30-3.16 is separate from your district's/BOCES' locally bargained appeals process pursuant to §§ 30-2.11 and 30-3.12. This is a State appeal process, not a local process. Accordingly, the information provided in Tasks 6 and 11 of your district's/BOCES' APPR plan related to local appeals is unaffected by this new appeals process of a SPGS.

Further, please note that pursuant to Education Law §3012-d(12), all collective bargaining agreements entered into after April 1, 2015 must be consistent with the requirements of Education Law §3012-d.

***Q9. If my district submits a Hardship Waiver in lieu of getting a §3012-d APPR plan approved by November 15, 2015, can I still submit an appeal to challenge my SPGS?***

Yes. An appeal by a teacher/principal to challenge a SPGS is not connected to the APPR plan that your district will be implementing.

***Q10. If my district/BOCES submits a reply to my appeal to the Department, do I have a right to see it?***

A district/BOCES should submit a copy of any reply sent to the Department to a teacher/principal.

***Q11. If a district/BOCES wishes to submit a reply, where does it get submitted? What format should the reply use?***

Districts/BOCES must submit their reply to an appeal, if any, to the Department within ten days of receipt of the teacher's/principal's appeal to the following email address: [SPGSAppeal@nysed.gov](mailto:SPGSAppeal@nysed.gov). All emails sent to [SPGSAppeal@nysed.gov](mailto:SPGSAppeal@nysed.gov) must include "SPGS Challenge" in the subject line. A copy should also be sent to teacher/principal as well.

***Q12. Who do I contact if there are questions?***

For non-technical questions regarding the appeal to challenge a SPGS or the application process, please contact [SPGSAppeal@nysed.gov](mailto:SPGSAppeal@nysed.gov).

## **Evidence**

***Q13. What evidence will a teacher/principal be required to provide when submitting this appeal?***

Teachers that meet criteria #1, as listed in Q2 above, will need to provide evidence of:

- (a) The SPGS and rating for that subcomponent/category that they received for the current school year,
- (b) The SPGS and rating that they received in the previous year, and
- (c) The score and rating received on his/her Other Measures subcomponent (§3012-c) or Observation Category (§3012-d) in the current year, as applicable.<sup>6</sup>

Principals that meet criteria #1, as listed in Q2 above, will need to provide evidence of:

- (a) The SPGS and rating for that subcomponent/category that they received in the current school year,
- (b) The SPGS and rating for that subcomponent/category that they received in the previous year, and
- (c) The score and rating received on the Other Measures subcomponent (§3012-c) or School Visit Category (§3012-d) in the current year, as applicable.<sup>7</sup>

Principals that meet criteria #2, as listed in Q2 above, will need to provide evidence of<sup>8</sup>:

- (a) The SPGS and rating for that subcomponent/category in the current school year,
- (b) The number and percentage of students in the school/program, within four years of first entry into grade 9, that took a Department-approved alternative examination in English language arts and/or mathematics in the school year for which the SPGS was calculated,
- (c) The number and percentage of those students that scored proficiency or better in that school year, and
- (d) Which Department-approved alternative examinations in ELA and/or mathematics are part of the above numbers.

***Q14. What types of evidence are sufficient for determining the percentage of students in the high school cohort who took, and scored proficient, on a Department-approved alternative examination? How should I submit this evidence in my appeal?***

In order to count a student as having taken, and scored proficient, on a Department-approved alternative to the Regents Examination in ELA and/or mathematics, the principal must use a transcript or other written record provided by his/her district/BOCES or the assessment provider. In determining the percentage of students who took and scored proficient on these assessments, the principal should only count each student once. In determining the proficiency percentage, the principal should use the ELA and/or math assessment for which the student earned the highest score. For example, if a student took an AP exam in ELA and earned a score of 2 (not proficient) and also took an IB exam in ELA and earned a score of 5 (proficient), then the student should be counted once as having taken a Department-approved alternative (he has taken two) and once as having scored proficient on an alternative examination (he scored proficient on one of the two). In other words, students should not be double-counted in either the percentage taking alternative

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<sup>6</sup> This depends on whether the APPR plan was implemented under Education Law §3012-c or §3012-d.

<sup>7</sup> This depends on whether the APPR plan was implemented under Education Law §3012-c or §3012-d.

<sup>8</sup> Such evidence must be based on a transcript or other written record provided by the district/BOCES or assessment provider. When submitting evidence to the Department, the applicant must use the form, “Principal’s State-provided Growth Score Appeals-Supporting Form,” found on the Information and Reporting Services Portal (IRSP): <http://www.p12.nysed.gov/irs/irs-portal/>. Please see the SIRS Manual, available at: <http://www.p12.nysed.gov/irs/sirs/>, for additional information regarding course codes.

examinations or the percentage scoring proficient on an alternative examination – regardless of the total number of exams taken.

The applicant should supply this information through the Information and Reporting Services Portal (IRSP): <http://www.p12.nysed.gov/irs/irs-portal/>. Information about the IRSP can be found here: <http://www.p12.nysed.gov/irs/irs-portal/>. This information must be submitted using the attached form along with the appropriate identifiers for each Regents alternative. Please see the SIRS Manual, available at: <http://www.p12.nysed.gov/irs/sirs/>, for additional information regarding assessment codes.

***Q15. Isn't it a violation of my privacy as an educator to submit my APPR score and rating data to the Department or to my district/BOCES since they are personally identifiable information?***

No. Education Law §3012-c(10)(d) explicitly provides that nothing in subdivision (10) shall prohibit the Department from collecting the APPR data and materials it needs to carry out its functions and duties. Pursuant to Education Law §3012-c(10)(c), an individual teacher's/principal's APPR score and rating data that are provided to the Department as evidence of a challenge of a SPGS will not be disclosed to members of the public

***Q16. If I forgot to submit a particular piece of evidence with my appeal, can I send it to the Department separately? Can I re-submit my entire appeal?***

The application submitted to the Department to challenge a SPGS must represent the individual teacher's/principal's complete and accurate appeal and shall include all supporting documentation and sufficient evidence that the teacher/principal is eligible for an appeal. Unless specifically requested, the Department will not review any additional materials, addendums, or revisions that are submitted apart from the initial application or a re-submission as described in the following paragraph or Q24 below.

However, a teacher/principal may contact the Department through [SPGSAppeal@nysed.gov](mailto:SPGSAppeal@nysed.gov) to withdraw their submitted application and then submit a completely new challenge. This must be done within the regulatory deadlines for submission of appeals to a SPGS (discussed in Q2 above). No extensions of these deadlines will be granted unless the Department, in its discretion, determines that a limited extension should be granted because the teacher/principal was unable to file the complete submission within the regulatory deadline for reasons beyond the control of the teacher/principal.

***Q17. Who has the burden of proof of demonstrating that the score should be set aside/sustained?***

In an appeal, the teacher/principal has the burden of demonstrating a clear legal right to the relief requested and the burden of establishing the facts upon which petitioner seeks relief. However, if the teacher's/principal's district/BOCES wishes to dispute the educator's appeal, the burden would be with the district/BOCES to demonstrate that the information in the educator's appeal is inaccurate.

For example, in an application to challenge a SPGS, a principal indicates that, of the students in his building that took Department-approved alternative examinations in ELA and/or math, 75% scored proficient or better. However, the principal's district believes this number to be only 55%. Thus, it would be up to the district to submit evidence<sup>9</sup> of:

- The number of students in the principal's building that took Department-approved alternative examinations within four years of first entry into grade 9,
- Which specific Department-approved alternative examinations were administered, and
- The number of students that scored proficient or better<sup>10</sup> on those exams.

As a reminder, districts/BOCES shall have ten days from receipt of an appeal to submit a reply to the Department.

***Q18. What does a district/BOCES need to address in its reply?***

The district/BOCES should indicate whether they agree or disagree with the claim made by the applicant. For appeals based on Criteria #1, if the district/BOCES disagrees, they must provide evidence of one of the following conditions:

- (a) The SPGS and rating that the teacher/principal received for the current school year was not Ineffective, and/or
- (b) The SPGS and rating that the teacher/principal received in the previous year was not Effective or Highly Effective, and/or
- (c) The score and rating that the teacher/principal received on the Other Measures subcomponent (§3012-c) or Observation Category (§3012-d) in the current year was not Highly Effective.

For appeals based on Criteria #2, if the district/BOCES disagrees, they must provide evidence of one of the following conditions:

- (a) The SPGS and rating that the principal received in the current school year was not Ineffective, and/or
- (b) Less than 50% of students in the building, within four years of first entry into grade 9, took a Department-approved alternative examination in ELA and/or mathematics, and/or
- (c) Less than 90% of students, within four years of first entry into grade 9, who took a Department-approved alternative examination in ELA and/or mathematics, scored proficient or better on such examinations.

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<sup>9</sup> As indicated in Q14, such evidence must be based on a transcript or other written record provided by the district/BOCES or assessment provider. The applicant should supply this information through the Information and Reporting Services Portal (IRSP): <http://www.p12.nysed.gov/irs/irs-portal/>. When submitting evidence to the Department, the applicant must use the excel form attached to this application along with the appropriate identifiers for each Regents alternative. Please see the SIRS Manual, available at: <http://www.p12.nysed.gov/irs/sirs/>, for additional information regarding course codes.

<sup>10</sup> For the purposes of this appeals process, "proficient or better" on a Department-approved alternative examination is defined as the minimum acceptable score for using such examination as an alternative to a Regents examination.

For additional information regarding what constitutes sufficient evidence of taking and scoring proficient on a Department-approved alternative to the Regents examinations in ELA and/or math, and the appropriate manner for providing such evidence to the Department, please see Q14.

### **Notification of status**

***Q19. When will I be notified of the Department's determination? Will my district/BOCES be notified?***

The Department will review appeals on a rolling basis in the order in which they are received. A formal approval/denial letter will be sent from the Department to the petitioner, a copy of which will be sent to the superintendent/district superintendent of the petitioner's district/BOCES.

***Q20. Can this appeal be used as evidence in a proceeding under Education Law §3020-a or §3020-b?***

Pursuant to §30-2.13(d) and §30-3.16(d), an evaluation that 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 Education Law sections 3020-a and 3020-b or any locally negotiated alternate disciplinary procedure until the appeal process is concluded.

***Q21. Can a probationary educator be granted or denied tenure during the pendency of this appeal?***

Pursuant to §30-2.13(e) and §30-3.16(e), nothing under Subparts 30-2 or 30-3, shall be construed to alter or diminish the authority of the governing body of a district 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/principal's performance that is the subject of the appeal.

***Q22. If I was rated Ineffective or Developing on my overall APPR evaluation but I am currently awaiting the results of my appeal, do I still need to be put on a teacher/principal improvement plan (TIP/PIP)?***

Pursuant to §30-2.13(g) and §30-3.16(g), nothing shall be construed to alter the obligation of a district/BOCES to develop and implement a teacher improvement plan or principal improvement plan during the pendency of an appeal.

***Q23. Will the results of my appeal be publically available?***

No, Education Law §3012-c(10) prohibits the Department, school districts, and BOCES from releasing to the public APPR data, or any other data that are used as a component of APPRs that includes personally identifying information for any teachers or principals, provided however, that nothing shall impair the right of parents and legal guardians to review and receive the final quality rating of individual teachers and principals. Therefore, individual teacher/principal

APPR data will not be made available to the public, only aggregate data that meets certain suppression rules will be disclosed. For more information, please see Question P6 of the [§3012-d APPR Guidance document](#).

***Q24. If my appeal is technically flawed, such as having incomplete signatures or issues with incomplete or missing attachments, etc., can I resubmit the appeal? What happens if my appeal is denied on merit?***

If a teacher/principal discovered that their submission has technical errors, e.g., incomplete signatures or missing documents or portions of documents referenced in the submission, he/she must contact the Department through [SPGSAppeal@nysed.gov](mailto:SPGSAppeal@nysed.gov) to withdraw the submitted application and then must submit a new appeal within the regulatory deadlines for submission of such a challenge (discussed in Q2 above), except that the Department, in its discretion, may grant a limited extension of the time to file the appeal upon a finding that the teacher/principal was unable to submit a complete appeal within the time prescribed in the regulations due to the circumstances beyond his/her control.

If the Department denies an appeal, then the teacher's/principal's SPGS will constitute their full/partial<sup>11</sup> score for the State Growth or Other Comparable Measures subcomponent or required subcomponent of the Student Performance Category.

***Q25. What are the next steps if the Department grants my appeal? Will my SPGS be recalculated?***

If the Department grants a teacher's/principal's appeal and rating on the SPGS, the district/BOCES shall substitute the teacher's/principal's results on the back-up SLO developed by the district/BOCES for such teacher/principal. If a back-up SLO was not developed, then the teacher's/principal's overall composite score and rating shall be based on the portions of their APPR not affected by the nullification of the SPGS.<sup>12</sup> Provided, however, that following a successful appeal under criteria #1, as listed in Q2 above, if a back-up SLO is used a teacher/principal shall not receive a score/rating higher than Developing on such SLO.

If the teacher/principal and district/BOCES receive the Department's determination within the submission window for staff evaluation data, such revised score/rating must be submitted to the Department as the educator's official score/rating for the applicable subcomponent and their overall score/rating must be revised accordingly. Further, if the Department's determination is received after the deadline for submitting staff evaluation but within the window for submitting the Statement of Confirmation of Staff Evaluation Rating Verification Report(s), such revised data must be provided accordingly. Please see the [APPR Data Submission Tips](#) memo and webinar for more information about the timeline and process for submitting data.

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<sup>11</sup> The educator will use the SPGS fully if it represents at least 50% of their students for a teacher or at least 30% of their students for a principal. Otherwise, the SPGS will be weighted proportionately with other SLOs, as applicable.

<sup>12</sup> The scores of the remaining portions of the teacher's/principal's APPR can be scaled up by the district/BOCES in a proportional manner (e.g., both the Local subcomponent and the Other Measures subcomponent could be multiplied by 1.25 to derive a new score out of 100).

However, if the Department's determination is received after the above deadlines for submission of staff evaluation data and the Verification Report(s), districts/BOCES will be responsible for submitting changes for staff evaluation data through the [Level 0 Historical application](#) for LEAs. Please see Question M56 of the [§3012-d APPR Guidance document](#) for more information.