

APPR 3012d 2018



Fact Sheet No. 18-11

October 2018

The 2015 state budget included replacing the Annual Professional Performance Review (APPR) law section 3012-c of the Education Law with a new section 3012-d. 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 3012-d law and Commissioner's Regulations that were adopted by the Board of Regents.

3012-d Transition Rating

On December 15, 2015 the Board of Regents voted to implement a four year moratorium (2016/17 – 2018/19 school years) on the consequences of using the 3-8 ELA and math Common Core State Assessments, in any form, and state-provided growth scores on Regents exams in teacher and principal evaluations. The new regulation replaces “original” APPR ratings containing outcomes from these 3-8 ELA and math assessments/metrics with a “transition” rating. During the transition period only the transition rating will be used for purposes of APPR employment decisions, including tenure determinations and for purposes of proceedings under Education Law 3020-a and 3020-b and teacher and principal improvement plans. During the transition period State-provided growth scores will continue to be computed for advisory purposes and overall original HEDI ratings compliant with the districts approved APPR plan will continue to be provided to teachers and principals.

During the transition period in instances where no scores or ratings in the subcomponents of the Student Performance Category can be generated because they are all linked to 3-8 ELA and/or math state assessment outcomes, a transition SLO shall be developed by the district using assessments approved by SED. These transition SLOs can include a school or district-wide measure based on State assessments other than the grades 3-8 ELA and math assessments (e.g., 4th, 8th Science and/or Regents exams).

Note: Transition does not apply to all teachers, only to those whose original score was tied to the 3-8 ELA and math state assessments. Teachers teaching courses where the majority of their students are taking New York State assessments other than the 3-8 ELA and Math are still required to do their own SLOs linked to their students and their state assessment.

3012-d APPR System

The system replaces the 3012-c 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 5).

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:

- 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.

Note: during transition, back-up SLOs to the 4-8 ELA and math State Assessments are not required.

- 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:

- Student Learning Objectives (SLO) process with either a state assessment or state approved assessment.
- 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.

- 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 or district -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).

Note: During transition, use of any of the first three options above would not be allowed since they are based on the 3-8 ELA and Math assessments.

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 law requires a minimum of two observations: one by a principal or other trained administrator, and another by an impartial independent trained evaluator. Observations by trained peer observers are also allowed as an optional third category, if locally negotiated.

- 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 are available but must be negotiated and requested annually.

- 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.

- 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 rubric 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/3020-b 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/3020-b and the only defense a teacher can use is fraud or mistaken identity with the hearing completed within 30 days.

Privacy Law

- Regulations allow parents to receive, upon request, an overall rating for their child's teacher.

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.

State Appeals Process for Growth Scores

September 16, 2015 regulations included an appeals process for teachers who wish to challenge their State-provided growth score, which began 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. 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.

Appeals

The 3012-d regulations continued 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.

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. SED has conducted APPR audits in some districts.

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