

**A 9554** Silver Same as Uni. [S 6732](#) **RULES Governor Program # 28**

Education Law

TITLE....Relates to annual professional performance review of classroom teachers and building principals

03/14/12 referred to ways and means

03/14/12 reported referred to rules

03/14/12 reported

03/14/12 rules report cal.16

03/14/12 substituted by s6732

**S06732 RULES**

03/14/12 REFERRED TO RULES

03/14/12 ORDERED TO THIRD READING  
CAL.365

03/14/12 MESSAGE OF NECESSITY - 3 DAY  
MESSAGE

03/14/12 PASSED SENATE

03/14/12 DELIVERED TO ASSEMBLY

03/14/12 referred to ways and means

03/14/12 substituted for a9554

03/14/12 ordered to third reading rules cal.16

03/14/12 message of necessity - 3 day message

03/14/12 passed assembly

03/14/12 returned to senate

03/15/12 DELIVERED TO GOVERNOR

**S6732 RULES** Same as Uni. [A 9554](#) Silver  
**Governor Program # 28**

ON FILE: 03/14/12 Education Law

TITLE....Relates to annual professional performance review of classroom teachers and building principals

03/14/12 REFERRED TO RULES

03/14/12 ORDERED TO THIRD READING  
CAL.365

03/14/12 MESSAGE OF NECESSITY - 3 DAY  
MESSAGE

03/14/12 PASSED SENATE

03/14/12 DELIVERED TO ASSEMBLY

03/14/12 referred to ways and means

03/14/12 substituted for a9554

03/14/12 ordered to third reading rules cal.16

03/14/12 message of necessity - 3 day message

03/14/12 passed assembly

03/14/12 returned to senate

03/15/12 DELIVERED TO GOVERNOR

**STATE OF NEW YORK**

S. 6732

A. 9554

**SENATE - ASSEMBLY**

March 14, 2012

IN SENATE -- Introduced by COMMITTEE ON RULES -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

IN ASSEMBLY -- Introduced by M. of A. SILVER -- (at request of the Governor) -- read once and referred to the Committee on Ways and Means

AN ACT to amend the education law, in relation to annual professional performance review of classroom teachers and building principals and the teacher evaluation appeal process in the city of New York

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 1 of section 3012-c of the education law, as  
2 added by chapter 103 of the laws of 2010, is amended to read as follows:  
3 1. Notwithstanding any other provision of law, rule or regulation to  
4 the contrary, the annual professional performance reviews of all class-  
5 room teachers and building principals employed by school districts or  
6 boards of cooperative educational services shall be conducted in accord-  
7 ance with the provisions of this section. Such performance reviews which  
8 are conducted on or after July first, two thousand eleven, or on or  
9 after the date specified in paragraph c of subdivision two of this  
10 section where applicable, shall include measures of student achievement  
11 and be conducted in accordance with this section. Such annual profes-  
12 sional performance reviews shall be a significant factor for employment  
13 decisions including but not limited to, promotion, retention, tenure  
14 determination, termination, and supplemental compensation, which deci-  
15 sions are to be made in accordance with locally developed procedures  
16 negotiated pursuant to the requirements of article fourteen of the civil  
17 service law where applicable. Provided, however, that nothing in this  
18 section shall be construed to affect the statutory right of a school  
19 district or board of cooperative educational services to terminate a  
20 probationary teacher or principal for statutorily and constitutionally  
21 permissible reasons other than the performance of the teacher or princi-  
22 pal in the classroom or school, including but not limited to misconduct.  
23 Such performance reviews shall also be a significant factor in teacher

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

LBD12117-02-2

S. 6732

2

A. 9554

1 and principal development, including but not limited to, coaching,  
2 induction support and differentiated professional development, which are  
3 to be locally established in accordance with procedures negotiated  
4 pursuant to the requirements of article fourteen of the civil service  
5 law.

6 § 2. Paragraph a of subdivision 2 of section 3012-c of the education  
7 law, as added by chapter 103 of the laws of 2010, is amended to read as  
8 follows:

9 a. (1) The annual professional performance reviews conducted pursuant  
10 to this section for classroom teachers and building principals shall  
11 differentiate teacher and principal effectiveness using the following  
12 quality rating categories: highly effective, effective, developing and  
13 ineffective, with explicit minimum and maximum scoring ranges for each  
14 category, for the state assessments and other comparable measures  
15 subcomponent of the evaluation and for the locally selected measures of  
16 student achievement subcomponent of the evaluation, as prescribed in the  
17 regulations of the commissioner. There shall be: (i) a state assessments  
18 and other comparable measures subcomponent which shall comprise twenty  
19 or twenty-five percent of the evaluation; (ii) a locally selected meas-  
20 ures of student achievement subcomponent which shall comprise twenty or  
21 fifteen percent of the evaluation; and (iii) an other measures of teach-  
22 er or principal effectiveness subcomponent which shall comprise the  
23 remaining sixty percent of the evaluation, which in sum shall constitute  
24 the composite teacher or principal effectiveness score. Such annual  
25 professional performance reviews shall result in a single composite  
26 teacher or principal effectiveness score, which incorporates multiple  
27 measures of effectiveness related to the criteria included in the regu-  
28 lations of the commissioner.

29 (2) For annual professional performance reviews conducted in accord-  
30 ance with paragraph b of this subdivision for the two thousand eleven--  
31 two thousand twelve school year and for annual professional performance  
32 reviews conducted in accordance with paragraphs f and g of this subdivi-  
33 sion for the two thousand twelve--two thousand thirteen school year, the  
34 overall composite scoring ranges shall be in accordance with this  
35 subparagraph. A classroom teacher and building principal shall be deemed  
36 to be:

37 (A) Highly Effective if they achieve a composite effectiveness score  
38 of 91-100.

39 (B) Effective if they achieve a composite effectiveness score of  
40 75-90.

41 (C) Developing if they achieve a composite effectiveness score of  
42 65-74.

43 (D) Ineffective if they achieve a composite effectiveness score of  
44 0-64.

45 (3) For annual professional performance reviews conducted in accord-  
46 ance with paragraph b of this subdivision for the two thousand eleven--  
47 two thousand twelve school year and for annual professional performance  
48 reviews conducted in accordance with paragraph f of this subdivision for  
49 the two thousand twelve--two thousand thirteen school year for classroom  
50 teachers in subjects and grades for which the board of regents has not  
51 approved a value-added model and for building principals employed in  
52 schools or programs for which there is no approved principal value-added  
53 model, the scoring ranges for the student growth on state assessments or  
54 other comparable measures subcomponent shall be in accordance with this  
55 subparagraph. A classroom teacher and building principal shall receive:

S. 6732

3

A. 9554

1 (A) a highly effective rating in this subcomponent if the teacher's or  
2 principal's results are well-above the state average for similar  
3 students and they achieve a subcomponent score of 18-20;

4 (B) an effective rating in this subcomponent if the teacher's or prin-  
5 icipal's results meet the state average for similar students and they  
6 achieve a subcomponent score of 9-17; or

7 (C) a developing rating in this subcomponent if the teacher's or prin-  
8 icipal's results are below the state average for similar students and  
9 they achieve a subcomponent score of 3-8; or

10 (D) an ineffective rating in this subcomponent, if the teacher's or  
11 principal's results are well-below the state average for similar  
12 students and they achieve a subcomponent score of 0-2.

13 (4) For annual professional performance reviews conducted in accord-  
14 ance with paragraph g of this subdivision for the two thousand twelve--  
15 two thousand thirteen school year for classroom teachers in subjects and  
16 grades for which the board of regents has approved a value-added model  
17 and for building principals employed in schools or programs for which  
18 there is an approved principal value-added model, the scoring ranges for  
19 the student growth on state assessments or other comparable measures  
20 subcomponent shall be in accordance with this subparagraph. A classroom  
21 teacher and building principal shall receive:

22 (A) a highly effective rating in this subcomponent if the teacher's or  
23 principal's results are well-above the state average for similar  
24 students and they achieve a subcomponent score of 22-25;

25 (B) an effective rating in this subcomponent if the teacher's or prin-  
26 icipal's results meet the state average for similar students and they  
27 achieve a subcomponent score of 10-21; or

28 (C) a developing rating in this subcomponent if the teacher's or prin-  
29 icipal's results are below the state average for similar students and  
30 they achieve a subcomponent score of 3-9; or

31 (D) an ineffective rating in this subcomponent, if the teacher's or  
32 principal's results are well-below the state average for similar  
33 students and they achieve a subcomponent score of 0-2.

34 (5) For annual professional performance reviews conducted in accord-  
35 ance with paragraph b of this subdivision for the two thousand eleven--  
36 two thousand twelve school year and for annual professional performance  
37 reviews conducted in accordance with paragraph f of this subdivision for  
38 the two thousand twelve--two thousand thirteen school year for classroom  
39 teachers in subjects and grades for which the board of regents has not  
40 approved a value-added model and for building principals employed in  
41 schools or programs for which there is no approved principal value-added  
42 model, the scoring ranges for the locally selected measures of student  
43 achievement subcomponent shall be in accordance with this subparagraph.  
44 A classroom teacher and building principal shall receive:

45 (A) a highly effective rating in this subcomponent if the results are  
46 well-above district-adopted expectations for student growth or achieve-  
47 ment and they achieve a subcomponent score of 18-20; or

48 (B) an effective rating in this subcomponent if the results meet  
49 district-adopted expectations for growth or achievement and they achieve  
50 a subcomponent score of 9-17; or

51 (C) a developing rating in this subcomponent if the results are below  
52 district-adopted expectations for growth or achievement and they achieve  
53 a subcomponent score of 3-8; or

54 (D) an ineffective rating in this subcomponent if the results are  
55 well-below district-adopted expectations for growth or achievement and  
56 they achieve a subcomponent score of 0-2.

S. 6732

4

A. 9554

1 (6) For annual professional performance reviews conducted in accord-  
2 ance with paragraph b of this subdivision for the two thousand eleven--  
3 two thousand twelve school year and for annual professional performance  
4 reviews conducted in accordance with paragraph g of this subdivision for  
5 the two thousand twelve--two thousand thirteen school year for classroom  
6 teachers in subjects and grades for which the board of regents has  
7 approved a value-added model and for building principals employed in  
8 schools or programs for which there is an approved principal value-added  
9 model, the scoring ranges for the locally selected measures of student  
10 achievement subcomponent shall be in accordance with this subparagraph.  
11 A classroom teacher and building principal shall receive:

12 (A) a highly effective rating in this subcomponent if the results are  
13 well-above district-adopted expectations for student growth or achieve-  
14 ment and they achieve a subcomponent score of 14-15; or

15 (B) an effective rating in this subcomponent if the results meet  
16 district-adopted expectations for growth or achievement and they achieve  
17 a subcomponent score of 8-13; or

18 (C) a developing rating in this subcomponent if the results are below  
19 district-adopted expectations for growth or achievement and they achieve  
20 a subcomponent score of 3-7; or

21 (D) an ineffective rating in this subcomponent if the results are  
22 well-below district-adopted expectations for growth or achievement and  
23 they achieve a subcomponent score of 0-2.

24 (7) For the two thousand thirteen--two thousand fourteen school year  
25 and thereafter, the commissioner shall review the specific scoring rang-  
26 es for each of the rating categories annually before the start of each  
27 school year and shall recommend any changes to the board of regents for  
28 consideration.

29 (8) Except for the student growth measures on the state assessments or  
30 other comparable measures of student growth prescribed in paragraphs e,  
31 f and g of this subdivision, the elements comprising the composite  
32 effectiveness score and the process by which points are assigned to  
33 subcomponents shall be locally developed, consistent with the standards  
34 prescribed in the regulations of the commissioner and the requirements  
35 of this section, through negotiations conducted, pursuant to the  
36 requirements of article fourteen of the civil service law.

37 § 3. Paragraphs b and c of subdivision 2 of section 3012-c of the  
38 education law, as added by chapter 103 of the laws of 2010, are amended  
39 to read as follows:

40 b. (1) Annual professional performance reviews conducted by school  
41 districts ~~[on or after July first, two thousand eleven]~~ or boards of  
42 cooperative educational services for the two thousand eleven--two thou-  
43 sand twelve school year of classroom teachers of common branch subjects  
44 or English language arts or mathematics in grades four to eight and all  
45 building principals of schools in which such teachers are employed shall  
46 be conducted pursuant to this subdivision and shall use two thousand  
47 ten--two thousand eleven school year student data as the baseline for  
48 the initial computation of the composite teacher or principal effective-  
49 ness score for such classroom teachers and principals.

50 (2) Subject to paragraph k of this subdivision the entire annual  
51 professional performance review shall be completed and provided to the  
52 teacher or principal as soon as practicable but in no case later than  
53 September first, two thousand twelve. The provisions of subparagraphs  
54 two and three of paragraph c of this subdivision shall apply to such  
55 reviews.

S. 6732

5

A. 9554

1 c. (1) Annual professional performance reviews conducted by school  
2 districts or boards of cooperative educational services [~~on or after~~  
3 ~~July first, two thousand twelve~~] for the two thousand twelve--two thou-  
4 sand thirteen school year and thereafter of all classroom teachers and  
5 all building principals shall be conducted pursuant to this subdivision  
6 and shall use two thousand eleven--two thousand twelve school year  
7 student data as the baseline for the initial computation of the compos-  
8 ite teacher or principal effectiveness score for such classroom teachers  
9 and principals. For purposes of this section, an administrator in charge  
10 of an instructional program of a board of cooperative educational  
11 services shall be deemed to be a building principal.

12 (2) Subject to paragraph k of this subdivision the entire annual  
13 professional performance review shall be completed and provided to the  
14 teacher or principal as soon as practicable but in no case later than  
15 September first of the school year next following the school year for  
16 which the classroom teacher or building principal's performance is being  
17 measured. The teacher's and principal's score and rating on the locally  
18 selected measures subcomponent, if available, and on the other measures  
19 of teacher and principal effectiveness subcomponent for a teacher's or  
20 principal's annual professional performance review shall be computed and  
21 provided to the teacher or principal, in writing, by no later than the  
22 last day of the school year for which the teacher or principal is being  
23 measured. Nothing in this subdivision shall be construed to authorize a  
24 teacher or principal to trigger the appeal process prior to receipt of  
25 his or her composite effectiveness score and rating.

26 (3) Each such annual professional performance review shall be based on  
27 the state assessments or other comparable measures subcomponent, the  
28 locally selected measures of student achievement subcomponent and the  
29 other measures of teacher and principal effectiveness subcomponent,  
30 determined in accordance with the applicable provisions of this section  
31 and the regulations of the commissioner, for the school year for which  
32 the teacher's or principal's performance is measured.

33 § 4. Paragraphs e, f and g of subdivision 2 of section 3012-c of the  
34 education law, as added by chapter 103 of the laws of 2010, are amended  
35 to read as follows:

36 e. (1) For annual professional performance reviews conducted in  
37 accordance with paragraph b of this subdivision [~~in~~] for the two thou-  
38 sand eleven--two thousand twelve school year, forty percent of the  
39 composite score of effectiveness shall be based on student achievement  
40 measures as follows: (i) twenty percent of the evaluation shall be  
41 based upon student growth data on state assessments as prescribed by the  
42 commissioner or a comparable measure of student growth if such growth  
43 data is not available; and (ii) twenty percent shall be based on other  
44 locally selected measures of student achievement that are determined to  
45 be rigorous and comparable across classrooms in accordance with the  
46 regulations of the commissioner and as are developed locally in a manner  
47 consistent with procedures negotiated pursuant to the requirements of  
48 article fourteen of the civil service law.

49 (2) Such locally selected measures may include measures of student  
50 achievement or growth on state assessments, regents examinations and/or  
51 department approved equivalent, provided that such measures are differ-  
52 ent from those prescribed by the commissioner pursuant to clause (i) of  
53 subparagraph one of this paragraph. The regulations of the commissioner  
54 shall describe the types of measures of student growth or achievement  
55 that may be locally selected. The selection of the local measure(s) as  
56 described in this paragraph to be used by the school district or board

S. 6732

6

A. 9554

1 of cooperative educational services shall be determined through collec-  
2 tive bargaining.

3 f. (1) For annual professional performance reviews conducted in  
4 accordance with paragraph c of this subdivision [~~in any school year~~  
5 ~~prior to the first school year for which the board of regents has~~  
6 ~~approved use of a value-added growth model, but not earlier than~~] for  
7 the two thousand twelve--two thousand thirteen school year and thereaft-  
8 er for classroom teachers in subjects and grades for which the board of  
9 regents has not approved a value-added model and for building principals  
10 employed in schools or programs for which there is no approved principal  
11 value-added model, forty percent of the composite score of effectiveness  
12 shall be based on student achievement measures as follows: (i) twenty  
13 percent of the evaluation shall be based upon student growth data on  
14 state assessments as prescribed by the commissioner or a comparable  
15 measure of student growth if such growth data is not available; and (ii)  
16 twenty percent shall be based on other locally selected measures of  
17 student achievement that are determined to be rigorous and comparable  
18 across classrooms in accordance with the regulations of the commissioner  
19 and as are developed locally in a manner consistent with procedures  
20 negotiated pursuant to the requirements of article fourteen of the civil  
21 service law.

22 (2) One or more of the following types of locally selected measures of  
23 student achievement or growth may be used for the evaluation of class-  
24 room teachers:

25 (i) student achievement or growth on state assessments, regents exam-  
26 inations and/or department approved alternative examinations as  
27 described in the regulations of the commissioner including, but not  
28 limited to, advanced placement examinations, international baccalaureate  
29 examinations, and SAT II, using a measure that is different from the  
30 growth score prescribed by the department for student growth on such  
31 assessments or examinations for purposes of the state assessment or  
32 other comparable measures subcomponent that is either:

33 (A) the change in percentage of a teacher's students who achieve a  
34 specific level of performance as determined locally, on such  
35 assessments/examinations compared to those students' level of perform-  
36 ance on such assessments/examinations in the previous school year such  
37 as a three percentage point increase in students earning the proficient  
38 level (three) or better performance level on the seventh grade math  
39 state assessment compared to those same students' performance levels on  
40 the sixth grade math state assessment, or an increase in the percentage  
41 of a teacher's students earning the advanced performance level (four) on  
42 the fourth grade English language arts or math state assessments  
43 compared to those students' performance levels on the third grade  
44 English language arts or math state assessments; or

45 (B) a teacher specific growth score computed by the department based  
46 on the percent of the teacher's students earning a department determined  
47 level of growth. The methodology to translate such growth into the  
48 state-established subcomponent scoring ranges shall be determined local-  
49 ly; or

50 (C) a teacher-specific achievement or growth score computed in a  
51 manner determined locally based on a measure of student performance on  
52 the state assessments, regents examinations and/or department approved  
53 alternative examinations other than the measure described in item (A) or  
54 (B) of this subparagraph;

55 (ii) student growth or achievement computed in a manner determined  
56 locally based on a student assessment approved by the department pursu-

S. 6732

7

A. 9554

1 ant to a request for qualification process established in the regu-  
2 lations of the commissioner;  
3 (iii) student growth or achievement computed in a manner determined  
4 locally based on a district, regional or BOCES-developed assessment that  
5 is rigorous and comparable across classrooms;  
6 (iv) a school-wide measure of either student growth or achievement  
7 based on either:  
8 (A) a state-provided student growth score covering all students in the  
9 school that took the state assessment in English language arts or math-  
10 ematics in grades four through eight;  
11 (B) a school-wide measure of student growth or achievement computed in  
12 a manner determined locally based on a district, regional or board of  
13 cooperative educational services developed assessment that is rigorous  
14 and comparable across classrooms or a department approved student  
15 assessment or based on a state assessment; or  
16 (v) where applicable, for teachers in any grade or subject where there  
17 is no growth or value-added growth model approved by the board of  
18 regents at that grade level or in that subject, a structured district-  
19 wide student growth goal-setting process to be used with any state  
20 assessment or an approved student assessment or a district, regional or  
21 BOCES-developed assessment that is rigorous and comparable across class-  
22 rooms.  
23 (3) One or more of the following types of locally selected measures of  
24 student achievement or growth may be used for the evaluation of princi-  
25 pals, provided that each measure is rigorous and comparable across  
26 classrooms and that any such measure shall be different from that used  
27 for the state assessment or other comparable measures subcomponent:  
28 (i) student achievement levels on state assessments in English  
29 language arts and/or mathematics in grades four to eight such as  
30 percentage of students in the school whose performance levels on state  
31 assessments are proficient or advanced, as defined in the regulations of  
32 the commissioner;  
33 (ii) student growth or achievement on state or other assessments in  
34 English language arts and/or mathematics in grades four to eight for  
35 students in each of the performance levels described in the regulations  
36 of the commissioner;  
37 (iii) student growth or achievement on state assessments in English  
38 language arts and/or mathematics in grades four to eight for students  
39 with disabilities and English language learners in grades four to eight;  
40 (iv) student performance on any or all of the district-wide locally  
41 selected measures approved for use in teacher evaluations;  
42 (v) for principals employed in a school with high school grades, four,  
43 five and/or six-year high school graduation and/or dropout rates;  
44 (vi) percentage of students who earn a regents diploma with advanced  
45 designation and/or honors as defined in the regulations of the commis-  
46 sioner, for principals employed in a school with high school grades;  
47 (vii) percentage of a cohort of students that achieve specified scores  
48 on regents examinations and/or department approved alternative examina-  
49 tions including, but not limited to, advanced placement examinations,  
50 international baccalaureate examinations and SAT II, for principals  
51 employed in a school with high school grades such as the percentage of  
52 students in the two thousand nine cohort that scored at least a three on  
53 an advanced placement examination since entry into the ninth grade;  
54 and/or  
55 (viii) students' progress toward graduation in the school using strong  
56 predictive indicators, including but not limited to ninth and/or tenth



S. 6732

8

A. 9554

1 grade credit accumulation and/or the percentage of students that pass  
2 ninth and/or tenth grade subjects most commonly associated with gradu-  
3 ation and/or students' progress in passing the number of required  
4 regents examinations for graduation, for principals employed in a school  
5 with high school grades.

6 (ix) For school districts or boards of cooperative educational  
7 services that choose to use more than one set of locally selected meas-  
8 ures described in this paragraph for principals in the same or similar  
9 grade configuration or program such as one set of locally selected meas-  
10 ures is used to evaluate principals in some K-5 schools and another set  
11 of locally selected measures is used to evaluate principals in the other  
12 K-5 schools in the district, the superintendent or district superinten-  
13 dent shall, in their professional performance review plan, certify that  
14 the sets of measures are comparable, in accordance with the testing  
15 standards as defined in regulations of the commissioner.

16 (x) For building principals employed in schools or programs for which  
17 there is no approved principal value-added model, the types of locally  
18 selected measures of student achievement or growth specified in subpara-  
19 graph three of paragraph g of this subdivision may be used. In addition,  
20 a structured district-wide student growth goal-setting process to be  
21 used with any state assessment or an approved student assessment or a  
22 district, regional or BOCES-developed assessment that is rigorous and  
23 comparable across classrooms may be a locally selected measure.

24 (4) The selection of the local measure or measures as described in  
25 subparagraphs two and three of this paragraph to be used by the school  
26 district or board of cooperative educational services shall be deter-  
27 mined through collective bargaining.

28 g. (1) For annual professional performance reviews conducted in  
29 accordance with paragraph c of this subdivision [in] for the [first  
30 school year for which the board of regents has approved use of a value-  
31 added growth model] two thousand twelve--two thousand thirteen school  
32 year and thereafter for classroom teachers in subjects and grades in  
33 which there is a value-added growth model approved by the board of  
34 regents and for building principals employed in schools or programs for  
35 which there is an approved principal value-added model, forty percent of  
36 the composite score of effectiveness shall be based on student achieve-  
37 ment measures as follows: (i) twenty-five percent of the evaluation  
38 shall be based upon student growth data on state assessments as  
39 prescribed by the commissioner or a comparable measure of student growth  
40 if such growth data is not available; and (ii) fifteen percent shall be  
41 based on other locally selected measures of student achievement that are  
42 determined to be rigorous and comparable across classrooms in accordance  
43 with the regulations of the commissioner and as are locally developed in  
44 a manner consistent with procedures negotiated pursuant to the require-  
45 ments of article fourteen of the civil service law. The department shall  
46 develop the value-added growth model and shall consult with the advisory  
47 committee established pursuant to subdivision seven of this section  
48 prior to recommending that the board of regents approve its use in eval-  
49 uations.

50 (2) One or more of the following types of locally selected measures of  
51 student achievement or growth may be used for the evaluation of class-  
52 room teachers:

53 (i) student achievement or growth on state assessments, regents exam-  
54 inations and/or department approved alternative examinations as  
55 described in the regulations of the commissioner including, but not  
56 limited to, advanced placement examinations, international baccalaureate

S. 6732

9

A. 9554

1 examinations and SAT II, using a measure that is different from the  
2 growth score prescribed by the department for student growth on such  
3 assessments or examinations for purposes of the state assessment or  
4 other comparable measures subcomponent that is either:

5 (A) the change in percentage of a teacher's students who achieve a  
6 specific level of performance as determined locally, on such  
7 assessments/examinations compared to those students' level of perform-  
8 ance on such assessments/examinations in the previous school year such  
9 as a three percentage point increase in students earning the proficient  
10 level (three) or better performance level on the seventh grade math  
11 state assessment compared to those same students' performance levels on  
12 the sixth grade math state assessment, or an increase in the percentage  
13 of a teacher's students earning the advanced performance level (four) on  
14 the fourth grade English language arts or math state assessments  
15 compared to those students' performance levels on the third grade  
16 English language arts or math state assessments; or

17 (B) a teacher specific growth score computed by the state based on the  
18 percent of the teacher's students earning a state determined level of  
19 growth. The methodology to translate such growth into the state-estab-  
20 lished subcomponent scoring ranges shall be determined locally; or

21 (C) a teacher-specific achievement or growth score computed in a  
22 manner determined locally based on a measure of student performance on  
23 the state assessments, regents examinations and/or department approved  
24 alternative examinations other than the measure described in item (A) or  
25 (B) of this subparagraph;

26 (ii) student growth or achievement computed in a manner determined  
27 locally based on a student assessment approved by the department pursu-  
28 ant to a request for qualification process established in the regu-  
29 lations of the commissioner;

30 (iii) student growth or achievement computed in a manner determined  
31 locally based on a district, regional or BOCES-developed assessment that  
32 is rigorous and comparable across classrooms;

33 (iv) a school-wide measure of either student growth or achievement  
34 based on either:

35 (A) a state-provided student growth score covering all students in the  
36 school that took the state assessment in English language arts or math-  
37 ematics in grades four through eight; or

38 (B) a school-wide measure of student growth or achievement computed in  
39 a manner determined locally based on a district, regional or board of  
40 cooperative educational services developed assessment that is rigorous  
41 and comparable across classrooms or a department approved student  
42 assessment or based on a state assessment.

43 (3) One or more of the following types of locally selected measures of  
44 student achievement or growth may be used for the evaluation of princi-  
45 pals, provided that each measure is rigorous and comparable across  
46 classrooms and that any such measure shall be different from that used  
47 for the state assessment or other comparable measures subcomponent:

48 (i) student achievement levels on state assessments in English  
49 language arts and/or mathematics in grades four to eight such as  
50 percentage of students in the school whose performance levels on state  
51 assessments are proficient or advanced, as defined in the regulations of  
52 the commissioner;

53 (ii) student growth or achievement on state or other assessments in  
54 English language arts and/or mathematics in grades four to eight for  
55 students in each of the performance levels described in the regulations  
56 of the commissioner;

S. 6732

10

A. 9554

1 (iii) student growth or achievement on state assessments in English  
2 language arts and/or mathematics in grades four to eight for students  
3 with disabilities and English language learners in grades four to eight;

4 (iv) student performance on any or all of the district-wide locally  
5 selected measures approved for use in teacher evaluations;

6 (v) for principals employed in a school with high school grades, four,  
7 five and/or six-year high school graduation and/or dropout rates;

8 (vi) percentage of students who earn a regents diploma with advanced  
9 designation and/or honors as defined in the regulations of the commis-  
10 sioner, for principals employed in a school with high school grades;

11 (vii) percentage of a cohort of students that achieve specified scores  
12 on regents examinations and/or department approved alternative examina-  
13 tions including, but not limited to, advanced placement examinations,  
14 international baccalaureate examinations and SAT II, for principals  
15 employed in a school with high school grades such as the percentage of  
16 students in the two thousand nine cohort that scored at least a three on  
17 an advanced placement examination since entry into the ninth grade;  
18 and/or

19 (viii) students' progress toward graduation in the school using strong  
20 predictive indicators, including but not limited to ninth and/or tenth  
21 grade credit accumulation and/or the percentage of students that pass  
22 ninth and/or tenth grade subjects most commonly associated with gradu-  
23 ation and/or students' progress in passing the number of required  
24 regents examinations for graduation, for principals employed in a school  
25 with high school grades.

26 (ix) For school districts or boards of cooperative educational  
27 services that choose to use more than one set of locally selected meas-  
28 ures described in this paragraph for principals in the same or similar  
29 grade configuration or program, the superintendent or district super-  
30 intendent shall, in their professional performance review plan, certify  
31 that the sets of measures are comparable, in accordance with the testing  
32 standards as defined in regulations of the commissioner.

33 (4) The selection of the local measure or measures as described in  
34 subparagraphs two and three of this paragraph to be used by the school  
35 district or board of cooperative educational services shall be deter-  
36 mined through collective bargaining.

37 (5) The department shall develop the value-added growth model and  
38 shall consult with the advisory committee established pursuant to subdi-  
39 vision seven of this section prior to recommending that the board of  
40 regents approve its use in evaluations.

41 § 5. Paragraph h of subdivision 2 of section 3012-c of the education  
42 law, as added by chapter 103 of the laws of 2010, is amended to read as  
43 follows:

44 h. The remaining sixty percent of the evaluations, ratings and effec-  
45 tiveness scores shall be locally developed, consistent with the stand-  
46 ards prescribed in the regulations of the commissioner, through negoti-  
47 ations conducted pursuant to article fourteen of the civil service law.

48 (1) A majority of the sixty points for classroom teachers shall be  
49 based on multiple classroom observations conducted by a principal or  
50 other trained administrator, which may be performed in-person or by  
51 video. For evaluations for the two thousand twelve--two thousand thir-  
52 teen school year and thereafter, at least one such observation shall be  
53 an unannounced visit.

54 (2) For the remaining portion of these sixty points for evaluations  
55 for the two thousand eleven--two thousand twelve school year, the

S. 6732

11

A. 9554

1 commissioner's regulation shall prescribe the other forms of evidence of  
2 teacher and principal effectiveness that may be used.

3 (3) For evaluations of classroom teachers for the two thousand twelve-  
4 -two thousand thirteen school year and thereafter, the remaining portion  
5 of these sixty points shall be based on one or more of the following:

6 (i) one or more classroom observations by independent trained evalu-  
7 ators selected by the school district or board of cooperative educa-  
8 tional services who are teachers or former teachers with a demonstrated  
9 record of effectiveness and have no prior affiliation with the school in  
10 which they are conducting the evaluation and no other relationship with  
11 the teachers being evaluated that would affect their impartiality;

12 (ii) classroom observations by trained in-school peer teachers; and/or

13 (iii) use of a state-approved instrument for parent or student feed-  
14 back; and/or

15 (iv) evidence of student development and performance through lesson  
16 plans, student portfolios and other artifacts of teacher practices  
17 through a structured review process.

18 (4) A majority of these sixty points for building principals shall be  
19 based on a broad assessment of the principal's leadership and management  
20 actions based on the principal practice rubric by the building princi-  
21 pal's supervisor, a trained administrator or a trained independent eval-  
22 uator, with one or more visits conducted by the supervisor, and, for  
23 evaluations for the two thousand twelve--two thousand thirteen school  
24 year and thereafter, that such assessment must incorporate multiple  
25 school visits by a supervisor, a trained administrator or other trained  
26 evaluator, with at least one visit conducted by the supervisor and at  
27 least one unannounced visit. For the remaining portion of these sixty  
28 points for evaluations for the two thousand eleven--two thousand twelve  
29 school year, such regulations shall also prescribe the other forms of  
30 evidence of principal effectiveness that may be used consistent with the  
31 standards prescribed by the commissioner.

32 (5) For evaluations of building principals for the two thousand  
33 twelve--two thousand thirteen school year and thereafter, the remaining  
34 portion of these sixty points shall include, in addition to the require-  
35 ments of subparagraph three of this paragraph, at least two other sourc-  
36 es of evidence from the following options: feedback from teachers,  
37 students, and/or families using state-approved instruments; school  
38 visits by other trained evaluators; and/or review of school documents,  
39 records, and/or state accountability processes. Any such remaining  
40 points shall be assigned based on the results of one or more ambitious  
41 and measurable goals set collaboratively with principals and their  
42 superintendents or district superintendents as follows:

43 (i) at least one goal must address the principal's contribution to  
44 improving teacher effectiveness, which shall include one or more of the  
45 following: improved retention of high performing teachers, the corre-  
46 lation between student growth scores of teachers granted tenure as  
47 opposed to those denied tenure; or improvements in the proficiency  
48 rating of the principal on specific teacher effectiveness standards in  
49 the principal practice rubric.

50 (ii) any other goals shall address quantifiable and verifiable  
51 improvements in academic results or the school's learning environmental  
52 such as student or teacher attendance.

53 (6) The district or board of cooperative educational services shall  
54 establish specific minimum and maximum scoring ranges for each perform-  
55 ance level within this subcomponent before the start of each school year  
56 and shall assign points to a teacher or principal for this subcomponent

S. 6732

12

A. 9554

1 based on the standards prescribed in the regulations of the commissioner,  
2 all in accordance with, and subject to, the requirements of para-  
3 graph j of this subdivision.

4 § 6. Subdivision 2 of section 3012-c of the education law is amended  
5 by adding a new paragraph j to read as follows:

6 j. (1) The process by which points are assigned in subcomponents and  
7 the scoring ranges for the subcomponents must be transparent and avail-  
8 able to those being rated before the beginning of each school year. The  
9 process by which points are assigned in the respective subcomponents are  
10 to be determined as follows:

11 (i) For the state assessment or other comparable measures subcompo-  
12 nent, that process shall be formulated by the commissioner with the  
13 approval of the board of regents.

14 (ii) For the locally selected measures of the student achievement  
15 subcomponent, that process shall be established locally through negoti-  
16 ations conducted under article fourteen of the civil service law.

17 (iii) For the other measures of teacher and principal effectiveness  
18 subcomponent, that process shall be established locally through negoti-  
19 ations conducted under article fourteen of the civil services law.

20 (2) Such process must ensure that it is possible for a teacher or  
21 principal to obtain each point in the applicable scoring ranges, includ-  
22 ing zero, for the state assessment or other comparable measures subcom-  
23 ponent, the locally selected measures of student achievement subcompo-  
24 nent and the overall rating categories. The process must also ensure  
25 that it is possible for a teacher or principal to obtain each point in  
26 the scoring ranges prescribed by the district or board of cooperative  
27 educational services for the other measures of teacher and principal  
28 effectiveness subcomponent.

29 (3) The superintendent, district superintendent or chancellor and the  
30 president of the collective bargaining representative (where one exists)  
31 shall certify in its plan that the process will use the narrative  
32 descriptions of the standards for the scoring ranges provided in the  
33 regulations of the commissioner to effectively differentiate a teacher  
34 or principal's performance in each of the subcomponents and in their  
35 overall ratings to improve student learning and instruction.

36 (4) The scoring ranges for the other measures of teacher and principal  
37 effectiveness subcomponent shall be established locally through negoti-  
38 ations conducted under article fourteen of the civil service law.

39 § 7. Subdivision 2 of section 3012-c of the education law is amended  
40 by adding a new paragraph k to read as follows:

41 k. Notwithstanding any other provision of law, rule or regulation to  
42 the contrary, by July first, two thousand twelve, the governing body of  
43 each school district and board of cooperative educational services shall  
44 adopt a plan, on a form prescribed by the commissioner, for the annual  
45 professional performance review of all of its classroom teachers and  
46 building principals in accordance with the requirements of this section  
47 and the regulations of the commissioner, and shall submit such plan to  
48 the commissioner for approval. The plan may be an annual or multi-year  
49 plan, for the annual professional performance review of all of its  
50 classroom teachers and building principals. The commissioner shall  
51 approve or reject the plan by September first, two thousand twelve, or  
52 as soon as practicable thereafter. The commissioner may reject a plan  
53 that does not rigorously adhere to the provisions of this section and  
54 the regulations of the commissioner. Should any plan be rejected, the  
55 commissioner shall describe each deficiency in the submitted plan and  
56 direct that each such deficiency be resolved through collective bargain-

S. 6732

13

A. 9554

1 ing to the extent required under article fourteen of the civil service  
2 law. If any material changes are made to the plan, the school district  
3 or board of cooperative educational services must submit the material  
4 changes, on a form prescribed by the commissioner, to the commissioner  
5 for approval. To the extent that by July first, two thousand twelve, or  
6 by July first of any subsequent year, if all the terms of the plan have  
7 not been finalized as a result of unresolved collective bargaining nego-  
8 tiations, the entire plan shall be submitted to the commissioner upon  
9 resolution of all of its terms, consistent with article fourteen of the  
10 civil service law.

11 § 8. Subdivision 4 of section 3012-c of the education law, as added by  
12 chapter 103 of the laws of 2010, is amended to read as follows:

13 4. Notwithstanding any other law, rule or regulation to the contrary,  
14 upon rating a teacher or a principal as developing or ineffective  
15 through an annual professional performance review conducted pursuant to  
16 subdivision two of this section, the school district or board of cooper-  
17 ative educational services shall formulate and commence implementation  
18 of a teacher or principal improvement plan for such teacher or principal  
19 as soon as practicable but in no case later than ten school days after  
20 [~~the date on which teachers are required to report prior to~~] the opening  
21 of classes for the school year. Such improvement plan shall be consist-  
22 ent with the regulations of the commissioner and developed locally  
23 through negotiations conducted pursuant to article fourteen of the civil  
24 service law. Such improvement plan shall include, but need not be limit-  
25 ed to, identification of needed areas of improvement, a timeline for  
26 achieving improvement, the manner in which improvement will be assessed,  
27 and, where appropriate, differentiated activities to support a teacher's  
28 or principal's improvement in those areas.

29 § 9. Subdivision 5 of section 3012-c of the education law, as added by  
30 chapter 103 of the laws of 2010, is amended to read as follows:

31 5. a. An appeals procedure shall be locally established in each school  
32 district and in each board of cooperative educational services by which  
33 the evaluated teacher or principal may only challenge the substance of  
34 the annual professional performance review, the school district's or  
35 board of cooperative educational services' adherence to the standards  
36 and methodologies required for such reviews, pursuant to this section,  
37 the adherence to the regulations of the commissioner and compliance with  
38 any applicable locally negotiated procedures, as well as the school  
39 district's or board of cooperative educational services' issuance and/or  
40 implementation of the terms of the teacher or principal improvement  
41 plan, as required under this section. Appeal procedures shall provide  
42 for the timely and expeditious resolution of any appeal under this  
43 subdivision. The specifics of the appeal procedure shall be locally  
44 established through negotiations conducted pursuant to article fourteen  
45 of the civil service law. An evaluation which is the subject of an  
46 appeal shall not be sought to be offered in evidence or placed in  
47 evidence in any proceeding conducted pursuant to either section three  
48 thousand twenty-a of this article or any locally negotiated alternate  
49 disciplinary procedure, until the appeal process is concluded.

50 b. Nothing in this section shall be construed to alter or diminish  
51 the authority of the governing body of a school district or board of  
52 cooperative educational services to grant or deny tenure to or terminate  
53 probationary teachers or probationary building principals during the  
54 pendency of an appeal pursuant to this section for statutorily and  
55 constitutionally permissible reasons other than the teacher's or princi-  
56 pal's performance that is the subject of the appeal.

S. 6732

14

A. 9554

1 c. Nothing in this section shall be construed to authorize a teacher  
2 or principal to trigger the appeal process prior to receipt of their  
3 composite effectiveness score and rating from the district or board of  
4 cooperative educational services.

5 § 10. Section 3012-c of the education law is amended by adding a new  
6 subdivision 9 to read as follows:

7 9. a. The department shall annually monitor and analyze trends and  
8 patterns in teacher and principal evaluation results and data to identi-  
9 fy school districts, boards of cooperative educational services and/or  
10 schools where evidence suggests that a more rigorous evaluation system  
11 is needed to improve educator effectiveness and student learning  
12 outcomes. The criteria for identifying school districts, boards of coop-  
13 erative educational services and/or schools shall be prescribed in the  
14 regulations of the commissioner.

15 b. A school, school district or board of cooperative educational  
16 services identified by the department in one of the categories enumer-  
17 ated in paragraph a of this subdivision may be highlighted in public  
18 reports and/or the commissioner may order a corrective action plan,  
19 which may include, but not be limited to, requirements that the district  
20 or board of cooperative educational services arrange for additional  
21 professional development, provide additional in-service training and/or  
22 utilize independent trained evaluators to review the efficacy of the  
23 evaluation system, provided that the plan shall be consistent with law  
24 and not in conflict with any applicable collective bargaining agreement.

25 § 11 Section 3012-c of the education law is amended by adding a new  
26 subdivision 5-a to read as follows:

27 5-a. In the city school district of the city of New York, notwith-  
28 standing any provision of law to the contrary, the following shall apply  
29 to classroom teachers:

30 a. A teacher who did not receive an ineffective rating in the annual  
31 professional performance review for the prior school year is in "year  
32 one status".

33 b. A teacher who received an ineffective rating in the previous school  
34 year is in "year two status", until and unless that rating is either  
35 changed by the principal or reversed on appeal in accordance with the  
36 provisions of this subdivision, or until and unless the teacher reverts  
37 to year one status in accordance with the provisions of this subdivi-  
38 sion.

39 c. A teacher who is rated ineffective for a school year in which the  
40 teacher has year one status shall have a right to appeal that rating to  
41 the chancellor of the city school district, who shall make a final  
42 determination, unless an appeal is initiated to a three-member panel  
43 subject to the following requirements. The united federation of teachers  
44 (UFT) may appeal to a three-member panel the ineffective ratings of up  
45 to thirteen percent of teachers who received such ineffective ratings  
46 for a school year. Any such appeal may only be made on the ground that  
47 the ineffective rating was given due to harassment or reasons not  
48 related to job performance. These appeals shall be known as a "panel  
49 appeals". The three-member panel shall consist of a person selected by  
50 the UFT, a person selected by the chancellor of the city school district  
51 and an independent person, not affiliated with the UFT or the district  
52 and selected by the state education department, who shall be the chair  
53 of the panel and conduct the appeal hearing. If the panel sustains the  
54 appeal, the principal must submit to the panel a different rating, which  
55 must be approved by the panel. Any ineffective rating that is appealed

S. 6732

15

A. 9554

1 to the panel may not be appealed to the chancellor of the city school  
2 district.

3 d. The chancellor of the city school district shall notify the UFT of  
4 all ineffective ratings. Each school year, if the UFT is notified of an  
5 ineffective rating prior to October first, a panel appeal of that rating  
6 must be initiated by the UFT by November first, provided that more than  
7 thirteen percent of these ratings may be appealed to the panel. The UFT  
8 and the board of education shall negotiate, pursuant to article fourteen  
9 of the civil service law, a procedure for ensuring that each school  
10 year, not more than thirteen percent of the ratings received by the UFT  
11 after October first are appealed to the panel. The board of education  
12 shall make all reasonable efforts to issue ratings and notify the UFT of  
13 ineffective ratings by October first. Any rating not appealed to the  
14 panel may be appealed by the individual teacher to the chancellor of the  
15 city school district. Appeals made to the chancellor of the city school  
16 district must be filed within ten school days after the UFT would other-  
17 wise be required to notify the board of education of a panel appeal.

18 e. For all teachers in year two status, unless and until the ineffec-  
19 tive rating they received in the prior year is changed by a principal or  
20 otherwise changed in accordance with the provisions of this subdivision,  
21 an independent validator shall be appointed to evaluate the teacher on  
22 each component of the annual professional performance review in which  
23 the scoring of the component is at the discretion of the principal.  
24 These components shall not necessarily be limited to teacher perform-  
25 ance, but shall not include any components in which the scoring of the  
26 component is outside the discretion of the principal, even if the prin-  
27 cipal has discretion in a related goal-setting process prior to scoring.  
28 The independent validator shall perform three observations during the  
29 course of the school year. The terms and conditions of the observations  
30 shall be negotiated pursuant to the requirements of article fourteen of  
31 the civil service law.

32 f. The UFT and the board of education shall jointly select an organ-  
33 ization or organizations that employ certified educators, including  
34 teachers, to perform the work as independent validators. Independent  
35 validators shall not be employed simultaneously by the board of educa-  
36 tion or simultaneously have an individual contract with the board of  
37 education. Should either the board of education or the UFT notify the  
38 department that after a good faith effort the board of education and the  
39 UFT are unable to jointly select organizations, the commissioner shall  
40 name organizations subject to the following requirements. The board of  
41 education shall set forth a required number of validators, and the  
42 commissioner shall name organizations that can provide at least this  
43 number of validators whom the commissioner deems qualified. The commis-  
44 sioner shall name organizations based on the criteria set forth in this  
45 subdivision that apply to the mutual selection process for the board of  
46 education and the UFT and shall also consider potential conflicts of  
47 interest.

48 g. In an instance in which the independent validator does not complete  
49 the review process due to circumstances beyond the control of the board  
50 of education, the teacher shall remain in year two status the following  
51 school year. Should the independent validator not complete the review  
52 process for a second consecutive school year and for any reason in the  
53 second year for other than a leave of absence or chronic absence on the  
54 part of the teacher, the teacher shall return to year one status the  
55 following school year.



S. 6732

16

A. 9554

1 h. An independent validator shall be deemed to have agreed with the  
2 principal when an independent validator's scoring, in conjunction with  
3 the scoring of components not reviewed by the independent validator in  
4 accordance with this subdivision, would result in a rating in the same  
5 category on the annual professional performance review than would result  
6 from the principal's rating.

7 i. For purposes of this subdivision, an independent validator shall be  
8 deemed to have disagreed with the principal when an independent  
9 validator's scoring, in conjunction with the scoring of components not  
10 reviewed by the independent validator in accordance with this subdivi-  
11 sion, would result in a rating in a different category on the annual  
12 professional performance review than would result from the principal's  
13 rating.

14 j. If a teacher receives an ineffective rating for a school year in  
15 which the teacher is in year two status and the independent validator  
16 agrees, the district may bring a proceeding pursuant to sections three  
17 thousand twenty and three thousand twenty-a of this article based on a  
18 pattern of ineffective teaching or performance. In such proceeding, the  
19 charges shall allege that the employing board has developed and substan-  
20 tially implemented a teacher improvement plan in accordance with subdivi-  
21 vision four of this section for the employee following the evaluation  
22 made for the year in which the employee was in year one status and was  
23 rated ineffective. The pattern of ineffective teaching or performance  
24 shall give rise to a rebuttable presumption of incompetence and if the  
25 presumption is not successfully rebutted, the finding, absent extraor-  
26 ordinary circumstances, shall be just cause for removal. In these hear-  
27 ings, the teacher shall have up to three days to present his or her case  
28 for every one day used by the district to present its case. The hearing  
29 officer shall render a written decision within ten days of the last day  
30 of the hearing.

31 k. If the teacher receives an ineffective rating by the principal in a  
32 school year in which they are in year two status and the independent  
33 validator disagrees, the ineffective rating remains but the district may  
34 not bring proceeding based on a pattern of ineffective teaching or  
35 performance, as defined in this section, provided however that nothing  
36 in this section shall prevent the board of education from charging a  
37 teacher based on incompetence and entering the principal's evaluations  
38 into evidence.

39 l. If upon the completion of a hearing pursuant to sections three  
40 thousand twenty and three thousand twenty-a of this article, based  
41 either on a pattern of ineffective teaching or performance or charges of  
42 incompetence in which year one or year two evaluations were entered into  
43 evidence, and a hearing officer finds the teacher incompetent, but  
44 decides not to terminate, the teacher remains in year two status for the  
45 school year in progress or the following school year if the finding is  
46 made in between school years. If upon the completion of the hearing, the  
47 hearing officer exonerates the teacher of charges of incompetence the  
48 teacher shall revert to year one status if in the middle of the school  
49 year or at the beginning of the following school year if the finding is  
50 made in between school years.

51 m. If the teacher receives an ineffective rating in year two by the  
52 principal and the validator agrees, and the district does not bring an  
53 expedited proceeding pursuant to sections three thousand twenty and  
54 three thousand twenty-a of this article, the teacher may appeal the year  
55 two ineffective rating to the chancellor of the city school district,  
56 who shall make a final determination. If the rating is upheld, the

S. 6732

17

A. 9554

1 teacher shall remain in year two status for the subsequent school year,  
2 but if following that year the teacher is not charged, the teacher  
3 reverts to year one status for the next school year.

4 n. A process shall be established to evaluate the effectiveness of the  
5 specific procedures established in this subdivision after two years from  
6 the effective date of this subdivision, provided however that a failure  
7 or delay in establishing that process shall not invalidate any  
8 provisions of this subdivision.

9 o. Notwithstanding any other provision of law to the contrary, the  
10 board of education and the UFT may alter any provisions of this subdivi-  
11 sion through collective bargaining.

12 § 12. This act shall take effect immediately; provided that: (a) The  
13 appeals process will go into effect on January 16, 2013, unless the city  
14 school district of the city of New York enters into a collectively  
15 bargained teacher evaluation and appeals plan in conformity with section  
16 3012-c of the education law and with the approval of the commissioner of  
17 education.

18 (b) The chancellor of the District shall notify the legislative bill  
19 drafting commission upon the occurrence of the events provided for in  
20 subdivision (a) of this section in order that the commission may main-  
21 tain an accurate and timely effective data base of the official text of  
22 the laws of the state of New York in furtherance of effectuating the  
23 provisions of section 44 of the legislative law and section 70-b of the  
24 public officers law.

---

**NEW YORK STATE ASSEMBLY  
MEMORANDUM IN SUPPORT OF LEGISLATION  
submitted in accordance with Assembly Rule III, Sec 1(f)**

**BILL NUMBER:** A9554

**SPONSOR:** Silver

**TITLE OF BILL:**

An act to amend the education law, in relation to annual professional performance review of classroom teachers and building principals and the teacher evaluation appeal process in the city of New York

**PURPOSE:**

This bill would create a statewide teacher and principal evaluation system to be implemented by local school districts and would make changes to the teacher evaluation appeals process for the city of New York.

**SUMMARY OF PROVISIONS:**

Section 1 of the bill would amend subdivision 1 of section 3012-c of the education law to clarify that this section would not affect a school district or board of cooperative educational services (BOCES) ability to terminate a probationary teacher or principal.

Section 2 of the bill would amend section 3012-c of the education law and add subdivisions 2-8 to establish state and local assessments (objective) and teacher performance (subjective) measures of the annual professional performance review (i.e. the teacher and principal evaluation system, hereinafter referred to as "the evaluation system") and to develop and assign scoring ranges for each of the rating categories within the evaluation system.

Section 3 of the bill would amend paragraphs b and c of subdivision 2 of section 3012-c of the education law to establish a timeline and set forth parameters, including the standards for selecting local measures for student achievement and the implementation of the evaluation system.

Section 4 of the bill would amend paragraphs e, f, g of subdivision 2 of section 3012-c of the education law to explicitly describe the types of locally selected assessments that may be used in the evaluation system.

Section 5 of the bill would amend paragraph h of subdivision 2 of section 3012-c of the education law to establish rigorous standards and scoring of the remaining 60 percent of the evaluation system including, but not limited to multiple classroom observations.

Section 6 of the bill would add a new paragraph j to subdivision 2 of section 3012-c of the education law to add an "anti-gaming" provision requiring that it be possible for a teacher or principal to receive one of the four ratings (highly effective, effective, developing, ineffective) in the applicable scoring range, for each subcomponent. This section would also require that a superintendent, district superinten-

dent or chancellor, and where applicable the president of the collective bargaining representative, certify that it has incorporated and will follow the scoring standards set forth in this section.

Section 7 of the bill would amend subdivision 2 of section 3012-c of the education law by adding a new paragraph k to set forth the requirements and timeline for the governing body of each district or BOCES to adopt a plan for the annual professional performance review of its classroom teachers and principals. This section would also require that the commissioner to approve or reject each plan by September first, two thousand twelve, or as soon as practicable thereafter. Finally, this section would require that if all the terms of the plan are not finalized by July first of any subsequent year as a result of unresolved collective bargaining, the entire plan shall be submitted to the commissioner upon resolution of its terms.

Section 8 of the bill would amend subdivision 4 of section 3012-c of the education law to make a technical correction.

Section 9 of the bill would amend subdivision 5 of section 3012-c of the education law to provide for a timely and expeditious appeals process. Section 9 of the bill would also add a new paragraph b and c. Paragraph b would ensure that nothing in this section shall be construed to alter or diminish the authority of the governing body of a school district or BOCES to grant or deny tenure to or terminate probationary teachers or building principals. Paragraph c would set forth that nothing in this section shall trigger the appeals process prior to the receipt of a composite effectiveness score.

Section 10 of the bill would add a new subdivision 9 to section 3012-c of the education law to allow the department to monitor and analyze trends and patterns around the teacher and principal evaluation plan.

Section 11 of the bill would amend section 3012-c of the education law by adding a new subdivision 5-a to make changes to the ineffective rating appeals process in New York City. Paragraphs a-o of this section set forth the parameters for an expedited appeals process, including:

- The process for a teacher to appeal an ineffective rating.
- The creation of an independent three-member panel where the United Federation of Teachers may appeal up to thirteen percent of cases.
- Timelines for initiating and implementing the appeals process.
- The establishment of an independent evaluator.
- The process for the New York City Department of Education to bring 3020a charges under the new provision.

Section 12 of the bill provides that this bill would take effect immediately, provided that the appeals process would take effect on January 16, 2013, unless the city school district of the city of New York enters into a collectively bargained teacher evaluation and appeals plan in conformity with section 3012-c of the education law before.

**EXISTING LAW:**

Education Law §3012-c (APPR) and section 100.2(o) of the Commissioner's

Regulations were enacted in 2010 and 2011 respectively to create a teacher and principal evaluation system in New York State, but to date neither has been implemented.

Education Law §3012-c also establishes the parameters for a teacher to appeal an ineffective evaluation rating. Education Law §3020-a establishes the process a school district must follow before removing or disciplining a tenured teacher. In New York City, alternative procedures specified in the collective bargaining agreement between the teachers union and the New York City Department of Education may also be used. (§§ 25904(1)(c), 3020(4)).

#### STATEMENT IN SUPPORT:

New York's public schools spend more money per pupil than those in any other state. Yet, in measures of student performance, New York ranks 38th nationally in graduation rates. Teacher quality is one of the most important factors in a student's achievement and success. In 2010, the federal government created the Race to the Top program which, among other things, required a teacher and principal evaluation system. New York was a winner, yet has failed to implement an evaluation system. Such a system is critical in strengthening and supporting teachers so that they best serve our student's needs by preparing all students for college and careers.

This bill would make New York State a national leader in education by creating a new groundbreaking statewide teacher and principal evaluation system. The proposed teacher evaluation system would provide clear standards and significant guidance to local school districts for the implementation of a teacher evaluation system that is based on multiple measures of performance including student achievement and rigorous classroom observations.

This bill follows through on the state's commitment to put in place a real and effective teacher evaluation system as a condition of the \$700 million granted through the federal Race to the Top program.

Details of the teacher and principal evaluation plan are as follows:

Teacher and Principal Performance - 60 points

The bill would provide that 60 percent of a teacher's evaluation be based on rigorous and nationally recognized measures of teacher performance, This bill would also require that a majority of the teacher performance points be based on multiple classroom observations by an administrator or principal, at least one of which must be unannounced. The remaining points would be based upon defined standards including observations by independent trained evaluators, peer classroom observations, student and parent feedback, and evidence of performance through student portfolios.

This bill would also provide that 60 percent of a principal's evaluation be based on broad assessments of leadership and management actions, which would include multiple school visits by a supervisor and trained evaluator, of which one must be unannounced.

Student Achievement in State and Local Assessments- 40 points

Under this provision, forty percent of a teacher's evaluation would be

based on student academic achievement, with 20 percent (25 percent beginning in 2012-2013) from state testing and 20 percent (15 percent beginning in 2012-2013) from a list of three testing options including state tests, third party assessments/tests approved by the SED and locally developed tests that would be subject to SED review and approval. Under this proposal, school districts would also have the option of using state tests (but applying a different growth formula than the one used by the state) to measure up to 40 percent of a teacher's rating.

#### Rating System

The teacher evaluation scoring system to ensure student achievement and teacher performance would be significantly tightened under this provision. The new rating system would prohibit a teacher or principal who is rated ineffective in the objective measures of student growth (40pts) from receiving a developing score overall. The scoring system would be as follows:

Ineffective: 0 - 64  
Developing: 65 - 74  
Effective: 75 - 90  
Highly Effective: 91 - 100

#### Assigning a Curve for the Ratings

For the first time, this bill would establish a standard for school districts and teacher unions to set the allocation of points or the "curve" for the teacher ratings. The curve would be allocated in a manner that a teacher could receive one of the four ratings, and the SED Commissioner would be able to reject insufficiently set curves.

#### SED Commissioner Final Review

The bill would also give the Commissioner of Education the authority to approve evaluation plans, or deny local evaluation plans that are deemed insufficient, thereby adding rigor to the process and ensuring evaluation plans comply with the law.

#### Appeals

A teacher and principal evaluation plan must contain a locally established appeals procedure to allow a teacher or principal to challenge the substance of an annual professional performance review. This bill would clarify that this appeals process be timely and expeditious and allow districts to terminate probationary teachers and principals or grant or deny tenure while an appeal is pending. This bill would also codify an agreement reached by the United Federation of Teachers and the New York City School District to implement such an appeals system as part of its teacher and principal evaluation plan, should alternative procedures not be collectively bargained by January 16, 2013.

#### LEGISLATIVE HISTORY:

Chapter 103 of the Laws of 2010 enacted a statewide system of teacher evaluation, which has not been implemented.

#### BUDGET IMPLICATIONS:

This bill would ensure that New York met its commitment to put in place a real and effective teacher evaluation system as a condition of the \$700 million granted through the federal Race to the Top program.

School districts that have not implemented a teacher and principal evaluation system consistent with this proposal by January 17, 2013, would not receive their share of state school aid increases for the 2012-2013 school year and thereafter.

**EFFECTIVE DATE:**

This bill would take effect immediately, provided that the appeals process would take effect on January 16, 2013, unless the city school district of the city of New York enters into a collectively bargained teacher evaluation and appeals plan in conformity with section 3012-c of the education law before.

---