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## Education Department

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### EMERGENCY RULE MAKING

#### Annual Professional Performance Reviews for Classroom Teachers and Building Principals

**I.D. No.** EDU-23-11-00006-E

**Filing No.** 92

**Filing Date:** 2012-02-03

**Effective Date:** 2012-02-04

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Amendment of section 100.2(o); and addition of Subpart 30-2 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1), (2) and 3012-c(1) - (8), as added by L. 2010, ch. 103

**Finding of necessity for emergency rule:** Preservation of general welfare.

**Specific reasons underlying the finding of necessity:** On May 28, 2010, the Governor signed Chapter 103 of the Laws of 2010, which added a new section 3012-c to the Education Law, establishing a comprehensive evaluation system for classroom teachers and building principals. The new law requires each classroom teacher and building principal to receive an annual professional performance review (APPR) resulting in a single composite effectiveness score and a rating of "highly effective," "effective," "developing," or "ineffective." The composite score is determined as follows:

- 20% is based on student growth on State assessments or other comparable measures of student growth (increased to 25% upon implementation of a value-added growth model)
- 20% is based on locally-selected measures of student achievement that are determined to be rigorous and comparable across classrooms as defined by the Commissioner (decreased to 15% upon implementation of value-added growth model)
- The remaining 60% is based on other measures of teacher/principal effectiveness consistent with standards prescribed by the Commissioner in regulation

For the 2011-2012 school year, the law applies to classroom teachers in the common branch subjects, English language arts or mathematics in grades 4-8 and the building principals of schools in which such teachers are employed. In the 2012-2013 school year, the new law applies to all classroom teachers and building principals. However, the Department recommends that, to the extent possible, districts and BOCES begin the process of rolling this system out for evaluation of all classroom teachers and building principals in the 2011-2012 school year so that New York can quickly move to a comprehensive teacher and principal evaluation system.

By law, the APPR is required to be a significant factor in employment decisions such as promotion, retention, tenure determinations, termination, and supplemental compensation, as well as a significant factor in teacher and principal professional development.

If a teacher or principal is rated "developing" or "ineffective," the school district or BOCES is required to develop and implement a teacher or principal improvement plan (TIP or PIP). Tenured teachers and principals with a pattern of ineffective teaching or performance - defined by law as two consecutive annual "ineffective" ratings - may be charged with incompetence and considered for termination through an expedited hearing process.

The law further provides that all evaluators must be appropriately trained consistent with standards prescribed by the Commissioner and that appeals procedures must be locally developed in each school district and BOCES.

Section 3012-c of the Education Law requires that any regulations needed to implement the new evaluation system be implemented no later than July 1, 2011, after consultation with an advisory committee. In September 2010, the Department convened an advisory committee known as the Regents Task Force on Teacher and Principal Effectiveness ("Task Force"), which is comprised of representatives of teachers, principals, superintendents of schools, school boards, school districts and board of cooperative educational services officials, and other interested parties. The Task Force has been meeting since September 2010 and they have

been divided into workgroups to provide guidance and consider certain aspects of Education Law 3012-c. Throughout its deliberations, the Task Force has been supported by the active participation of teams of research advisors, and numerous experts have made presentations to the Task Force. Research and best practice examples were disseminated and discussed at length.

After months of discussion and deliberations, the Task Force generated a written report of their recommendations. At the April 2011 Regents meeting, the Task Force presented their recommendations to the Board of Regents. Thereafter, the Department presented their recommendations, which incorporated most of the Task Force's recommendations. At that point, the Regents directed the Department to draft regulations reflecting the Department's recommendations. At its May meeting, the Board of Regents adopted the proposed amendment as an emergency measure.

The proposed regulations implement the new law, by adding a new Subpart 30-2 to the Rules of the Board of Regents to establish the requirements for the new evaluation system.

Section 30-2.1 of the Rules of the Board of Regents explains that during the 2011-12 school year, teachers and principals who are not covered by the new law must still be evaluated under the existing APPR regulations and districts and BOCES must comply with the requirements in Subpart 30-2 for classroom teachers and building principals covered by the new law. It also reiterates the language from the statute that says the regulations do not override any conflicting provisions of any collective bargaining agreement in effect on July 1, 2010 until the agreement expires and a successor agreement is entered into; at that point, however, the new evaluation regulations apply. In response to comments, a revision to this section was also made to clarify that nothing in the regulations shall be construed to affect the statutory right of a school district or BOCES to terminate a probationary teacher or principal or to restrict a school district's or BOCES' discretion in making a tenure determination pursuant to the law.

Section 30-2.2 defines the terms used throughout the regulations. Section 30-2.3 lists the information that every district or BOCES must include in its APPR plan.

Section 30-2.4 lays out all the requirements for evaluating classroom teachers in common branch subjects, English language arts (ELA), and math in grades 4-8 and their building principals for the 2011-12 school year. This section explains that 20 points of the evaluation will be based on student growth on State assessments and 20 points will be based on locally selected measures; explains what types of locally selected measures of student achievement may be used (first for teachers, then for principals); and describes what types of other measures of effectiveness may be used for the remaining 60 points, including observations, surveys, etc. (first for teachers, then for principals).

Section 30-2.5 lays out the requirements for evaluating all classroom teachers and building principals for the 2012-13 school year and thereafter, following the same order as the preceding section. This section explains how the requirements for the State assessment and locally selected measures subcomponents will differ, including the points assigned for each subcomponent, depending on whether the Board of Regents has approved a value-added growth model for particular grades/courses and subjects. The remaining 60 points will be assigned based on the same criteria as the preceding section.

Section 30-2.6 explains how the subcomponents should be scored and provides scoring ranges for the State assessment and locally selected measures subcomponents and the overall rating categories. Sections 30-2.7 and 30-2.8 outline the processes by which the Department will review and approve teacher and principal practice rubrics and student assessments, respectively, for use in districts' and BOCES' teacher and principal evaluation systems. Section 30-2.9 describes the requirements for evaluator training; Section 30-2.10 covers teacher and principal improvement plans; and Section 30-2.11 covers appeal procedures.

The proposed amendment was adopted as an emergency rule at the May 2011 Regents meeting, with the provisions regarding the new Subpart 30-2 becoming effective on May 20, 2011 and the amendments to section 100.2(o) becoming effective on July 1, 2011. On June 28, 2011, litigation was commenced against the proposed amendment in State Supreme Court. On August 24, 2011, State Supreme Court, Albany County (Lynch, J.) issued a Decision and Order in *New York State United Teachers, et al. v. Board of Regents, et al.* finding sections 30-2.4(c)(3)(d), 30-2.4(d)(1)(iii), 30-2.4(d)(1)(iv)(c), 30-2.12(b), 30-2.1(d) and 2.11(c), and 30-2.6(a)(1) of the proposed regulations invalid to the extent set forth in the Decision and Order. An appeal is being taken from that Decision and Order.

The proposed amendment was subsequently readopted as an emergency rule at the July 18-19, 2011 and September 12-13, 2011 Regents meetings. The September emergency adoption was filed with the Department of State on October 7, 2011 and will expire on December 5th, before the December 12-13, 2011 Regents meeting. Another emergency adoption is therefore necessary at the November 14-15, 2011 Regents meeting to

ensure the emergency rule remains continuously in effect while litigation is pending on certain of its provisions until all appeals are final and it can be adopted as a permanent rule.

The recommended action is proposed as an emergency measure upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare in order to ensure that emergency rule remains continuously in effect until it can be adopted as a permanent rule.

**Subject:** Annual professional performance reviews for classroom teachers and building principals.

**Purpose:** Establish standards and criteria for conducting annual professional performance reviews of classroom teachers and building principal.

**Substance of emergency rule:** The Board of Regents has amended section 100.2(o) of the Commissioner's Regulations and has added a new Subpart 30-2 to the Rules of the Board of Regents, as an emergency action, effective December 6, 2011, to implement Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010, by establishing standards and criteria for conducting annual professional performance reviews of classroom teachers and building principals employed by school districts and boards of cooperative educational services. The following is a summary of the substance of the emergency rule.

Section 100.2(o) is amended to clarify that classroom teachers who are not subject to the provisions of Education Law section 3012-c in the 2011-2012 school year must still comply with the existing annual professional performance review set forth in section 100.2(o). A new provision was also added to section 100.2(o) to require that beginning July 1, 2011, all building principals that are not required to be evaluated under Education Law § 3012-c must be evaluated on an annual basis based on a plan agreed to by the building principal and the governing body of the school district or BOCES.

A new Subpart 30-2 is added to the Rules of the Board of Regents to establish requirements for the new annual professional performance review (APPR) system established by Education Law section 3012-c.

Section 30-2.1 sets forth applicability provisions. For the 2011-2012 school year, school districts shall ensure that the APPR of all classroom teachers of common branch subjects or English language arts or mathematics in grades four to eight, and of all building principals of schools in which such teachers are employed, are conducted in accordance with the requirements of section 3012-c and Subpart 30-2; and that reviews of classroom teachers and building principals (other than classroom teachers in the common branch subjects or English language arts (ELA) or mathematics in grades four to eight) are conducted in accordance with section 100.2(o) of the Commissioner's regulations.

For an APPR conducted in the 2012-2013 school year and thereafter, the school district or BOCES shall ensure that the reviews of all classroom teachers and building principals are conducted in accordance with the requirements of section 3012-c and Subpart 30-2. However, nothing shall be construed to preclude a school district or BOCES from adopting an APPR for the 2011-2012 school year that applies to all classroom teachers and building principals in accordance with this Subpart or for BOES, for classroom teachers of common branch subjects or English language arts or mathematics in grades four to eight and all building principals in which such teachers are employed.

The section also provides that nothing in Subpart 30-2 shall abrogate any conflicting provisions of any collective bargaining agreement in effect on July 1, 2010 during the term of such agreement and until the entry into a successor collective bargaining agreement, at which time the provisions in Subpart 30-2 will apply.

This section further provides that nothing in the Subpart shall be construed to affect the statutory rights of a school district or BOCES to terminate a probationary teacher or principal or to restrict a school district's or BOCES' discretion in making a tenure determination pursuant to the new law.

Section 30-2.2 provides definitions for certain terms used in the Subpart.

Section 30-2.3 sets forth the content requirements for APPR plans submitted under Subpart 30-2. By September 1, 2011, each school district shall adopt an APPR plan for its classroom teachers of common branch subjects, ELA or mathematics in grades four to eight and building principals of schools in which such teachers are employed. By September 1, 2012, each school district/BOCES shall adopt an APPR plan, which may be an annual or multi-year plan, for the APPR of all of its classroom teachers and building principals. To the extent that any of the items required to be included in the plan are not finalized by such date, as a result of pending collective bargaining negotiations, the plan shall identify those specific parts of the plan and the school district or BOCES shall file an amended plan upon completion of such negotiations.

Section 30-2.4 sets forth requirements for evaluating classroom teachers of common branch subjects, ELA or mathematics in grades four to eight for the 2011-2012 school year. 20 points of the evaluation will be

based on student growth on State assessments or other comparable measures and 20 points will be based on locally selected measures as described in the section. 60 points of the evaluation will be based on multiple measures of teacher and principal effectiveness as described in this section. A teacher's performance must be assessed based on a teacher practice rubric(s) approved by the Department. A principal's performance must be assessed based on an approved principal practice rubric. Provision is made for granting a variance for use of existing rubrics. At least 40 of the 60 points for teachers shall be based on classroom observations. At least 40 of the 60 points for principals shall be based on a broad assessment of the principal's leadership and management actions by the principal's supervisor or a trained independent evaluator.

Section 30-2.5 sets forth requirements for evaluating all classroom teachers and building principals for the 2012-2013 school year and thereafter. The section explains how the requirements for the State assessment and locally selected measures subcomponents will differ, including the points assigned for each subcomponent, depending on whether the Board of Regents has approved a value-added growth model for particular grades, courses. This section also describes the options that may be used for the State assessment subcomponent for non-tested subjects. The choice of locally selected measures and the other measures of teacher and principal effectiveness are based on the same criteria as in 30-2.4.

Section 30-2.6 describes the procedures for scoring and rating the evaluations, including a requirement that the rating category ("Highly Effective", "Effective", "Developing", or "Ineffective") assigned to teacher and building principal is determined by a single composite effectiveness score that is calculated based on the scores received by the teacher or principal in each of the subcomponents. This section prescribes specific scoring ranges for each rating category for the State assessment subcomponent and the locally selected measures subcomponent and the overall rating categories.

Section 30-2.7 describes the criteria and approval process for teacher and principal practice rubrics to be used in the evaluation of teachers and building principals.

Section 30-2.8 describes the criteria and approval process for student assessments to be used in the evaluation of teachers and building principals.

Section 30-2.9 describes requirements for the training of evaluators and the training and certification of lead evaluators.

Section 30-2.10 describes requirements for teacher and principal improvement plans.

Section 30-2.11 describes requirements for appeals procedures through which an evaluated teacher or principal may challenge their APPR.

Section 30-2.12 provides that the Department will annually monitor and analyze trends and patterns in teacher and principal evaluation results and data to identify districts, BOCES and/or schools where evidence suggests that a more rigorous evaluation system is needed to improve educator effectiveness and student learning outcomes. A school, district or BOCES identified by the Department may be highlighted in public reports and/or the Commissioner may order a corrective action plan, which may include, but not be limited to, a requirement that the school district or BOCES utilize independent trained evaluators, where appropriate.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-23-11-00006-EP, Issue of June 8, 2011. The emergency rule will expire April 2, 2012.

**Text of rule and any required statements and analyses may be obtained from:** Mary Gammon, NYS Education Department, Office of Counsel, 89 Washington Avenue, Room 112, Albany, NY 12234, (518) 474-8857, email: legal@mail.nysed.gov

#### **Regulatory Impact Statement**

##### **1. STATUTORY AUTHORITY:**

Education Law section 101 charges the Department with the general management and supervision of the educational work of the State and establishes the Regents as head of the Department.

Education Law section 207 grants general rule-making authority to the Regents to carry into effect State educational laws and policies.

Education Law section 215 authorizes the Commissioner to require reports from schools under State educational supervision.

Education Law section 305(1) authorizes the Commissioner to enforce laws relating to the State educational system and execute Regents educational policies. Section 305(2) provides the Commissioner with general supervision over schools and authority to advise and guide school district officers in their duties and the general management of their schools.

Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010, establishes requirements for the conduct of annual professional performance reviews (APPR) of classroom teachers and building principals

employed by school districts and boards of cooperative educational services (BOCES), including the use of measures of student achievement; differentiation of teacher and principal effectiveness using quality rating categories of “highly effective”, “effective”, “developing” and “ineffective”, with explicit minimum and maximum scoring ranges for each category as prescribed in Commissioner’s Regulations; use of a single composite effectiveness score which incorporates multiple measures of effectiveness related to criteria included in Commissioner’s Regulations; the training of individuals conducting evaluations in accordance with Commissioner’s Regulations; and implementation of improvement plans consistent with Commissioner’s regulations.

## 2. LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the above authority vested in the Regents and Commissioner to carry into effect State educational laws and policies, and is necessary to implement Education Law section 3012-c by prescribing criteria for APPR of classroom teachers and building principals.

## 3. NEEDS AND BENEFITS:

Education Law section 3012-c establishes a comprehensive evaluation system for classroom teachers and building principals. This evaluation system is a critical element of the Regents reform agenda—an agenda aimed at improving teaching and learning in New York and increasing the opportunity for all students to graduate from high school ready for college and careers.

A primary objective of the evaluation system is to foster a culture of continuous professional growth. The system’s three components are designed to complement one another:

- Statewide student growth measures will identify those educators whose students’ progress exceeds that of their peers, as well as those whose students are falling behind compared to similar students.
- Locally selected measures of student achievement will reflect local priorities, needs, and targets.
- Teacher observations, school visits, and other measures will provide educators with detailed, structured feedback on their professional practice.

Together, this information will be used to tailor professional development and support for educators to grow and improve their instructional practices, with the ultimate goal of ensuring an effective teacher in every classroom and an effective leader in every school.

## 4. COSTS:

a. Costs to State government: The rule implements Education Law section 3012-c and does not impose any costs on State government, including the State Education Department, beyond those costs imposed by the statute.

b. Costs to local government: Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010, establishes requirements for the conduct of annual professional performance reviews (APPR) of classroom teachers and building principals employed by school districts and boards of cooperative educational services (BOCES).

The costs discussed here are based on the following: (1) an estimated hourly rate for teachers of \$46.46 (based on an average annual teacher salary of \$66,902 divided by 1,440 hours per school year); (2) an estimated hourly rate for principals of \$71.90 (based on an average annual principal salary of \$126,544 divided by 1,760 hours per school year); and (3) an estimated hourly rate for superintendents of \$85.71 (based on a median annual superintendent of schools salary of \$150,850 divided by 1,760 hours per school year). The Department anticipates that the proposed rule will impose the following costs on school districts/BOCES. The estimated costs below assume that school districts and BOCES will need to pay for extra time for personnel at current rates. However, most districts and BOCES are or should be performing these activities currently, but the State does not have data on the amount of hours currently dedicated to these activities. Moreover, \$700 million in Race to the Top funds have been or will be made available to school districts and BOCES and portions of those monies will be available to offset some of these costs.

### State assessments or Other Comparable Measures

The statute requires that 20% of a teacher or principal’s evaluation be based on student growth on State assessments or other comparable measures (increases to 25% upon implementation of a value-added growth model). There are no additional costs beyond those imposed by statute for evaluating a teacher based on State assessments.

For non-tested subjects where there is no approved growth or value-added model for such grade/subject, the proposed amendment requires the district/BOCES to evaluate teachers and principals using a State-determined district- or BOCES-wide student growth goal setting process with an approved student assessment. The Department estimates that for non-tested subjects, a teacher or principal will spend approximately 4 hours to set his/her goals for the year and that a principal/superintendent will take approximately 1 hour per year to work with a teacher/principal on the goal setting process. Based on the estimated hourly rates described

above, the Department estimates that the goal-setting process will cost a school district/BOCES \$257.74 per teacher (4 teacher hours to set goals plus 1 principal hour to review goals with teacher) and \$373.31 per principal (4 principal hours to set goals plus 1 superintendent hour to review goals with principal).

The goal-setting process also requires the use of a student assessment. In core subjects where no State assessment or Regents examination exists for such grades/subjects, the district/BOCES must use the goal setting process with an approved third-party assessment (at a cost per student of \$10-\$20 per student) or a Department-approved alternative examination (which the Department expects would have no additional cost). For all other non-tested grades/subjects, districts must use the goal-setting process with either an approved third-party assessment (at a cost of \$10-\$20 per student), a district- or BOCES-created assessment or a teacher-created assessments (which the Department expects would have minimal, if any, costs).

### Locally Selected Measures

An additional 20% of the evaluation must be based on locally selected measures. The regulation provides districts/BOCES with several options for this component. For teacher evaluations, the regulation provides the following options: approved third-party assessments; district-, regional- or BOCES-developed assessments; a school-wide, group or team metric based on such assessments; student achievement on State assessments Regents examinations and/or Department approved alternative examinations; and a structured district-wide student growth goal-setting process to be used with any State assessment, an approved student assessment, or other school or teacher-created assessment. If districts/BOCES select the State assessment option or use of the group or team metric, the Department estimates that there are no additional costs. If the district/BOCES uses the goal-setting process, the costs are the same as those described above for a goal-setting process. If the district/BOCES already uses a student assessment from the State’s approved list, which the Department expects will be the case in many instances, there will be no additional costs imposed by the proposed amendment. If a district/BOCES does not already use an approved local assessment and does not opt to use a measure based on a State assessment, the Department estimates the cost of purchasing a third-party student assessment will cost approximately \$10-\$20 per student, depending on the particular assessment selected. If a district/BOCES selects a school or teacher-created assessment, it will need to implement a growth goal setting process at a similar cost to the one described above. The estimated costs for a teacher-created assessment itself are negligible and capable of being absorbed using existing staff and resources.

For principals, the regulation provides many options for the locally selected measures subcomponent, which include, but are not limited to, student achievement on State assessments for certain subgroups, student performance on district-wide locally selected measures approved for use in teacher evaluations, graduation and drop out rates for high school grades, progress toward graduation, etc. As described above, if the district/BOCES selects a locally selected measure based on State assessments, Regents examinations, graduation rates, the percent of students who earn a Regents diploma, Department approved alternative examination or progress toward graduation rates, the Department expects these costs to be negligible and to be absorbed by existing staff. If the district/BOCES selects student performance on any or all of the district-wide locally selected measures for teachers, the Department expects that there will be no additional cost for principals that wasn’t already incurred for teachers.

### Other Measures

For the remaining 60% of the evaluation, the proposed amendment requires that 40 of the 60 points be based on multiple classroom observations for teachers and at least 40 of the 60 points be based on a broad assessment of the principal’s leadership and management actions by the building principal’s supervisor or a trained independent evaluator. The proposed amendment requires at least 2 observations for teachers and at least 1 principal assessment. For a teacher observation, the Department estimates the following costs:

Teacher Observations: While the regulation does not specifically prescribe how a district must conduct its observations. Based on a model currently in use, the Department expects a teacher will spend approximately 2 hours per classroom observation for pre- and post-conference meetings with the principal/evaluator, which would equate to 4 hours per year. Based on the same model, the Department expects that a principal/evaluator would spend approximately 1 hour for a teacher classroom observation and 2 additional hours for pre-conference and post-conference meetings associated with the conference, which would equate to 3 hours per observation or 6 hours per teacher per year. Therefore, for each teacher, a school district or BOCES would spend approximately \$617.24 per year on classroom observations, under the proposed rule. The Department believes that many districts currently conduct classroom observations and some districts conduct more than 2 observations per year, so for many districts there will be no additional costs imposed by the regulation.

Principal Assessment: The Department expects that a principal will spend approximately 4 hours preparing for a school visit by a superintendent and that a superintendent will spend approximately 2 school days assessing and observing a principal's practice. Therefore, the cost for a district to assess a principal's performance under the requirements of the proposed amendment are estimated to be \$287.60 for the principal and \$1,371.36 for the superintendent.

The proposed amendment also requires that the 60 points be based on a teacher or principal practice rubric approved by the Department or a rubric approved through a variance process. The Department estimates that more than one rubric on the State's approved list will be available to districts/BOCES at no cost. While some rubrics may offer training for a fee and others may require proprietary training, any costs incurred for training are costs imposed by the statute. Many rubric providers do not require a school district/BOCES to receive training through the provider and some providers even provide free online training. The Department estimates that districts/BOCES can obtain a principal practice in the following range: \$0-\$360 per principal evaluated. Some principal practice rubrics may charge an additional fee for training on the rubric, although most rubric providers do not require a user to receive training through the rubric provider.

#### Reporting and Data Collection

The proposed amendment requires that school districts or BOCES report information to the Department on enrollment and attendance data and any other student, teacher, school, course and teacher/student linkage data. The majority of this data is required to be reported under the America COMPETES Act (20 U.S.C. 9871). Therefore, no additional costs are imposed by the proposed amendment. To the extent that such information is not required to be reported under federal law, the Department expects that most districts/BOCES already compile this information and, therefore, these reporting requirements are minimal and should be absorbed by existing district or BOCES resources.

The proposed amendment also requires that every teacher and principal be required to verify the subjects and/or student rosters assigned to them. The Department estimates that it will take a teacher 4 hours to review his/her student roster. This will cost a district or BOCES \$185.84 per teacher. For principals, the Department estimates that it will take a principal 8 hours to review his/her student roster. This will cost a district/BOCES \$575.20 per principal.

As for the additional reporting requirements contained in section 30-2.3 of the Rules of the Board of Regents, school districts or BOCES are required to report many of these requirements under the existing APPR regulations (section 100.2[o]) - i.e., explanation of evaluation system used and description of timely and constructive feedback) and the Department expects that most districts or BOCES would put their evaluation process, including appeal procedures in writing and, therefore, reporting of such information would not impose any additional costs on a school district or BOCES.

#### Vested Interest

The proposed amendment also requires that districts certify that teachers and principals not have a vested interest in the test results of students whose assessments they score. The Department believes that most districts already have this security mechanism in place. However, in the event a district currently allows a teacher to score their own assessment, the Department expects that districts/BOCES can assign other teachers or faculty to score such assessments. Therefore, the Department believes that any costs imposed by this requirement in the regulation are minimal, if any.

#### Scoring

The statute requires that a teacher receive a teacher or principal composite effectiveness score based on their score on three subcomponents (student growth on State assessments or other comparable measures; locally selected measures of student achievement and other measures of teacher and principal effectiveness). The proposed amendment sets forth the scoring ranges for the rating categories in two of these subcomponents and overall rating categories. The proposed amendment does not impose any additional costs beyond those imposed by statute.

#### Training

The statute requires that all evaluators be properly trained before conducting an evaluation. The proposed amendment requires that a lead evaluator be certified by the district/BOCES before conducting and/or completing a teacher's or principal's evaluation and that evaluators be properly trained. Since the training is required by statute, the only additional cost imposed are associated with the district or BOCES' certification and recertification of lead evaluators, which costs are expected to be negligible and capable of absorption using existing staff and resources.

#### Teacher and Principal Improvement Plans and Appeal Procedures

The statute also requires school districts/BOCES to develop teacher and principal improvement plans for teachers rated ineffective or developing and to develop an appeals procedure through which a teacher or principal

may challenge their APPR. The proposed amendment reiterates these statutory requirements and does not impose any additional costs on districts/BOCES relating to the development of TIP/PIP's or an appeal procedure, beyond those imposed by statute.

c. Costs to private regulated parties: None. The rule applies to annual professional performance reviews of teachers and building principals that are conducted by school districts/BOCES and does not impose any costs on private parties.

d. Cost to regulatory agency for implementing and continued administration of the rule: See above cost to State government.

#### 5. LOCAL GOVERNMENT MANDATES:

Education Law section 3012-c establishes a comprehensive evaluation system for classroom teachers and building principals. The majority of the requirements in the proposed amendment do not impose any program, service, duty or responsibility on school districts and BOCES beyond those imposed by the statute.

The statute requires each classroom teacher and building principal to receive an APPR resulting in a single composite effectiveness score and rating of "highly effective," "effective," "developing," or "ineffective." The composite score is determined as follows:

- 20% is based on student growth on State assessments or other comparable measures of student growth (increased to 25% upon implementation of a value-added growth model).
- 20% is based on locally-selected measures of student achievement that are determined to be rigorous and comparable across classrooms as defined by the Commissioner (decreased to 15% upon implementation of value-added growth model).
- The remaining 60% is based on other measures of teacher/principal effectiveness consistent with standards prescribed by the Commissioner in regulation.

For the 2011-2012 school year, the new law only applies to classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8 and the building principals of schools in which such teachers are employed. In the 2012-2013 school year, the new evaluation system will apply to all classroom teachers and building principals. However, the Department recommends that, to the extent possible, districts and BOCES begin the process of rolling this system out for the evaluation of all classroom teachers and building principals in the 2011-2012 school year so that New York can quickly move to a comprehensive teacher and principal evaluation system. By law, the APPR is required to be a significant factor in employment decisions such as promotion, retention, tenure determinations, termination, and supplemental compensation, as well as a significant factor in teacher and principal professional development.

If a teacher or principal is rated "developing" or "ineffective," the law requires the school district/BOCES to develop and implement a teacher or principal improvement plan (TIP or PIP). Tenured teachers and principals with a pattern of ineffective teaching or performance - defined by law as two consecutive annual ineffective ratings - may be charged with incompetence and considered for termination through an expedited hearing process.

The statute also requires all evaluators to be appropriately trained consistent with standards prescribed by the Commissioner and that appeals procedures be locally developed in each school district/BOCES.

#### 6. PAPERWORK:

In addition to the paperwork requirements described in Section 5 of this document, the proposed amendment contains the following paperwork requirements.

Section 100.2(o) of the Commissioner's regulations requires that beginning July 1, 2011, each school district evaluate their building principals on an annual basis according to procedures developed by the governing body of each school district. Such procedures shall be filed in the district office and available for review by an individual no later than September 10th of each year.

Section 30-2.3 of the proposed amendment requires that by September 1, 2011, each school district shall adopt an APPR plan for its classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8 and its building principals of schools in which such teachers are employed. By September 1, 2012, each school district/BOCES shall adopt an APPR plan, which may be an annual or multi-year plan, for all of its classroom teachers and building principals. To the extent that any of the items required to be included in the annual professional performance review plan are not finalized by September 1 of each year as a result of pending collective bargaining negotiations, the plan shall identify those specific parts of the plan and the school district shall file an amended plan upon completion of such negotiations. Such plan shall be filed in the district or BOCES office, as applicable, and made available to the public on its web-site no later than September 10th of each school year, or within ten days after its adoption, whichever shall later occur.

This section requires that the APPR plan describe the school district's

or BOCES' process for ensuring that the Department receives accurate teacher and student data, including certain identified information; how the district or BOCES will report subcomponent scores and the total composite effectiveness score for each classroom teacher and building principal in the school district or BOCES; the assessment development, security and scoring processes utilized by the school district or BOCES, which includes a requirement that any process and assessment or measures are not disseminated to students before administration and that teachers and principals do not have a vested interest in the outcome of the assessments they score; describe the details of the evaluation system used by the district or BOCES; how the district or BOCES will provide timely and constructive feedback to teachers and building principals and the appeal procedures used by the district or BOCES.

The proposed amendment also requires any school district or BOCES that uses a district, regional or BOCES-developed assessment; a school-wide, group or team metric or a structured district-wide student growth goal setting process to certify, in its annual professional performance review plan, that the measure is rigorous and comparable across classrooms and explain how the locally selected measure meets these requirements. For school districts or BOCES that use more than one locally selected measure for a grade/subject, they must certify in their APPR plan that the measures are comparable, in accordance with the Testing Standards.

If a school district or BOCES seeks to use a teacher or principal practice rubric that is either a close adaptation of a rubric on the approved list, or a rubric that was self-developed or developed by a third-party or a newly developed rubric, the school district or BOCES must seek a variance from the Department for the use of such rubric.

The proposed amendment also requires that the process by which points are assigned in the various subcomponents and the scoring ranges for the subcomponents must be transparent and available to those being rated before the beginning of each school year.

A provider seeking to place a practice rubric in the list of approved rubrics, or an assessment on the list of approved assessments, shall submit to the Commissioner a written application that meets the requirements of sections 30-2.7 and 30-2.8, respectively. An approved rubric or approved assessment may be withdrawn for good cause. The provider may reply in writing within 10 calendar days of receipt of Commissioner's notification of intent to terminate approval.

The governing body of each school district is required to ensure that evaluators have appropriate training before conducting an evaluation under this section and the lead evaluator must be appropriately certified and periodically recertified.

If a teacher or principal is rated "developing" or "ineffective," the school district or BOCES is required to develop and implement a teacher or principal improvement plan (TIP or PIP) that complies with section 30-2.10. Such plan shall be developed locally through negotiations pursuant to Civil Service Law Article 14, and include 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 improvement in those areas.

In accordance with the requirements of the statute, the proposed amendment also requires a school district or BOCES to develop an appeals procedure through which a teacher or principal may challenge their annual professional performance review.

#### 7. DUPLICATION:

The rule is necessary to implement Education Law section 3012-c and does not duplicate existing State or Federal requirements.

#### 8. ALTERNATIVES:

In September 2010, the Department convened an advisory committee known as the Regents Task Force on Teacher and Principal Effectiveness ("Task Force"), which is comprised of representatives of teachers, principals, superintendents of schools, school boards, school districts and board of cooperative educational services officials, and other interested parties. The Task Force has been meeting since September 2010 and they have been divided into workgroups to provide guidance and consider certain aspects of Education Law 3012-c.

After months of discussion and deliberations, the Task Force generated a written report of their recommendations. At the April 2011 Regents meeting, the Task Force presented their recommendations to the Board of Regents. Thereafter, the Department presented their recommendations, which incorporated most of the Task Force's recommendations. At that point, the Regents directed the Department to draft regulations reflecting the Department's recommendations.

On April 15, 2010, the Department posted draft regulatory language on our website for the public to review and provide informal comment. The Department received and reviewed over 250 comments on the proposed amendment, including comments from district superintendents, the Council of School Superintendents, the School Boards Association, the Governor's Office, NYSUT, SAANYS and teachers and administrators

across the State. Many of these comments have been incorporated in the proposed amendment or will be addressed in guidance.

#### 9. FEDERAL STANDARDS:

The rule is necessary to implement Education Law section 3012-c. There are no applicable Federal standards concerning the APPR for classroom teachers and building principals as established in Education Law section 3012-c.

#### 10. COMPLIANCE SCHEDULE:

The proposed amendment will become effective on its stated effective date. No further time is needed to comply. By 9/01/11, each school district shall adopt a plan for the APPR of its classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8 and its building principals of schools in which such teachers are employed, and by 9/01/12, each school district and BOCES shall adopt a plan, which may be an annual or multi-year plan, for the APPR of all classroom teachers and building principals.

#### *Regulatory Flexibility Analysis*

##### (a) Small businesses:

The purpose of the proposed rule is to implement Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010, by establishing standards and criteria for conducting annual professional performance reviews of classroom teachers and building principals employed by school districts and boards of cooperative educational services. The proposed rule does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small business. Because it is evident from the nature of the amendment that it does not affect small businesses, no further steps were needed to ascertain that fact and one were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

##### (b) Local governments:

#### 1. EFFECT OF RULE:

The rule applies to all school districts and boards of cooperative educational services ("BOCES") in the State.

#### 2. COMPLIANCE REQUIREMENTS:

Education Law section 3012-c establishes a comprehensive evaluation system for classroom teachers and building principals. The majority of the requirements in the proposed amendment do not impose any program, service, duty or responsibility on school districts and BOCES beyond those imposed by the statute.

The statute requires each classroom teacher and building principal to receive an APPR resulting in a single composite effectiveness score and rating of "highly effective," "effective," "developing," or "ineffective." The composite score is determined as follows:

- 20% is based on student growth on State assessments or other comparable measures of student growth (increased to 25% upon implementation of a value-added growth model).
- 20% is based on locally-selected measures of student achievement that are determined to be rigorous and comparable across classrooms as defined by the Commissioner (decreased to 15% upon implementation of value-added growth model). The rule provides a list of local options/measures for the evaluation of teachers and principals under this subcomponent.
- The remaining 60% is based on other measures of teacher/principal effectiveness consistent with standards prescribed by the Commissioner in regulation. The rule requires that, for teachers, at least 40 of the 60 points be based on multiple classroom observations, including at least one observation by a principal or other trained administrator and, for principals, at least 40 of the 60 points be based on a broad assessment of leadership and management actions by the supervisor or a trained independent evaluator, including one or more school visits by a supervisor.

For the 2011-2012 school year, the new law only applies to classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8 and the building principals of schools in which such teachers are employed. In the 2012-2013 school year, the new evaluation system will apply to all classroom teachers and building principals. However, the Department recommends that, to the extent possible, districts and BOCES begin the process of rolling this system out for the evaluation of all classroom teachers and building principals in the 2011-2012 school year so that New York can quickly move to a comprehensive teacher and principal evaluation system. By law, the APPR is required to be a significant factor in employment decisions such as promotion, retention, tenure determinations, termination, and supplemental compensation, as well as a significant factor in teacher and principal professional development.

The proposed amendment also prescribes the following requirements:

The amendments to section 100.2(o) of the Commissioner's regulations require that beginning July 1, 2011, each school district evaluate their building principals on an annual basis according to procedures developed by the governing body of each school district. Such procedures shall be

filed in the district office and available for review by an individual no later than September 10th of each year.

Section 30-2.3 of the proposed amendment requires that by September 1, 2011, each school district shall adopt an APPR plan for its classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8 and its building principals of schools in which such teachers are employed. By September 1, 2012, each school district/BOCES shall adopt an APPR plan, which may be an annual or multi-year plan, for all of its classroom teachers and building principals. To the extent that any of the items required to be included in the annual professional performance review plan are not finalized by September 1 of each year as a result of pending collective bargaining negotiations, the plan shall identify those specific parts of the plan and the school district shall file an amended plan upon completion of such negotiations. Such plan shall be filed in the district or BOCES office, as applicable, and made available to the public on its web-site no later than September 10th of each school year, or within ten days after its adoption, whichever shall later occur.

This section also requires that the APPR plan describe the school district's or BOCES' process for ensuring that the Department receives accurate teacher and student data, including certain identified information; how the district or BOCES will report subcomponent scores and the total composite effectiveness score for each classroom teacher and building principal in the school district or BOCES; the assessment development, security and scoring processes utilized by the school district or BOCES, which includes a requirement that any process and assessment or measures are not disseminated to students before administration and that teachers and principals do not have a vested interest in the outcome of the assessments they score; describe the details of the evaluation system used by the district or BOCES; how the district or BOCES will provide timely and constructive feedback to teachers and building principals and the appeal procedures used by the district or BOCES.

The proposed amendment also requires a school district or BOCES that uses a district, regional or BOCES-developed assessment; a school-wide, group or team metric or a structured district-wide student growth goal setting process to certify, in its annual professional performance review plan, that the measure is rigorous and comparable across classrooms and explain how the locally selected measure meets these requirements. For school districts or BOCES that use more than one locally selected measure for a grade/subject, they must certify in their APPR plan that the measures are comparable, in accordance with the Testing Standards.

If a school district or BOCES seeks to use a teacher or principal practice rubric that is either a close adaptation of a rubric on the approved list, or a rubric that was self-developed or developed by a third-party or a newly developed rubric, the school district or BOCES must seek a variance from the Department for the use of such rubric.

The proposed amendment also requires that the process by which points are assigned in the various subcomponents and the scoring ranges for the subcomponents must be transparent and available to those being rated before the beginning of each school year.

A provider seeking to place a practice rubric in the list of approved rubrics, or an assessment on the list of approved assessments, shall submit to the Commissioner a written application that meets the requirements of sections 30-2.7 and 30-2.8, respectively. An approved rubric or approved assessment may be withdrawn for good cause. The provider may reply in writing within 10 calendar days of receipt of Commissioner's notification of intent to terminate approval.

The governing body of each school district is required to ensure that evaluators have appropriate training before conducting an evaluation under this section and the lead evaluator must be appropriately certified and periodically recertified.

If a teacher or principal is rated "developing" or "ineffective," the school district or BOCES is required to develop and implement a teacher or principal improvement plan (TIP or PIP) that complies with section 30-2.10. Such plan shall be developed locally through negotiations pursuant to Civil Service Law Article 14, and include 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 improvement in those areas.

In accordance with the requirements of the statute, the proposed amendment also requires a school district or BOCES to develop an appeals procedure through which a teacher or principal may challenge their annual professional performance review.

### 3. COMPLIANCE COSTS:

See the Costs Section of the Regulatory Impact Statement that is published in the State Register on this publication date for an analysis of the costs of the proposed rule.

### 4. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The rule does not impose any additional technological requirements on school districts or BOCES. Economic feasibility is addressed above under Compliance Costs.

### 5. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement Education Law section 3012-c. The rule has been carefully drafted to meet statutory requirements while providing flexibility to school districts and BOCES.

Regarding how student growth should be measured in non-tested subjects, the rule strikes a balance between prescriptiveness and choice by requiring, for teachers in grades 6-11 core subjects where there is no State assessment used as part of a growth or value-added growth model, use of a State-determined, district-wide growth goal-setting process with standardized student assessments chosen from a State-approved list; and, in other grades/subjects where there is no State assessment used as part of a growth or value-added growth model, requiring use of a State-determined, district-wide growth goal-setting process with an assessment selected by districts from a range of choices (including State-approved commercially available assessments, district or BOCES developed assessments, school-wide, group, or team results based on State assessments, and teacher-created assessments).

The rule also provides flexibility in the allocating the 20 points assigned to locally selected measures. The Department has provided a list of local options for the evaluation of teachers and principals for the 20 points of the teacher or principal composite effectiveness score attributed to this subcomponent (15 points once value-added model is implemented).

Consistent with providing flexibility, the rule does not set scoring ranges for the rating categories within the 60 point other measures subcomponent and the rule provides for a variance process for school districts or BOCES that wish to use an existing rubric or a new innovative rubric.

### 6. LOCAL GOVERNMENT PARTICIPATION:

In September 2010, the Department convened an advisory committee known as the Regents Task Force on Teacher and Principal Effectiveness ("Task Force"), which is comprised of representatives of teachers, principals, superintendents of schools, school boards, school districts and board of cooperative educational services officials, and other interested parties. The Task Force has been meeting since September 2010 and they have been divided into workgroups to provide guidance and consider certain aspects of Education Law 3012-c.

After months of discussion and deliberations, the Task Force generated a written report of their recommendations. At the April 2011 Regents meeting, the Task Force presented their recommendations to the Board of Regents. Thereafter, the Department presented their recommendations, which incorporated most of the Task Force's recommendations. At that point, the Regents directed the Department to draft regulations reflecting the Department's recommendations.

On April 15, 2010, the Department posted draft regulatory language on our website for the public to review and provide informal comment. The Department received and reviewed over 250 comments on the proposed amendment, including comments from district superintendents, the Council of School Superintendents, the School Boards Association, the Governor's Office, the Council of School Supervisor & Administrators, New York City, the Conference of Big 5 School Districts NYSUT, SAANYS and teachers and administrators and public interest groups across the State. Many of these comments have been incorporated in the proposed amendment or will be addressed in guidance.

### *Rural Area Flexibility Analysis*

#### 1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all school districts and boards of cooperative educational services (BOCES) in the State, including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

#### 2. REPORTING, RECORDKEEPING, AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

Education Law section 3012-c establishes a comprehensive evaluation system for classroom teachers and building principals. The majority of the requirements in the proposed amendment do not impose any program, service, duty or responsibility on school districts and BOCES beyond those imposed by the statute.

The statute requires each classroom teacher and building principal to receive an APPR resulting in a single composite effectiveness score and rating of "highly effective," "effective," "developing," or "ineffective." The composite score is determined as follows:

- 20% is based on student growth on State assessments or other comparable measures of student growth (increased to 25% upon implementation of a value-added growth model).
- 20% is based on locally-selected measures of student achievement that are determined to be rigorous and comparable across classrooms as defined by the Commissioner (decreased to 15% upon implementation of value-added growth model). The rule provides a list of local options/measures for the evaluation of teachers and principals under this subcomponent.

- The remaining 60% is based on other measures of teacher/principal effectiveness consistent with standards prescribed by the Commissioner in regulation. The rule requires that, for teachers, at least 40 of the 60 points be based on multiple classroom observations, including at least one observation by a principal or other trained administrator and, for principals, at least 40 of the 60 points be based on a broad assessment of leadership and management actions by the supervisor or a trained independent evaluator, including one or more school visits by a supervisor.

For the 2011-2012 school year, the new law only applies to classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8 and the building principals of schools in which such teachers are employed. In the 2012-2013 school year, the new evaluation system will apply to all classroom teachers and building principals. However, the Department recommends that, to the extent possible, districts and BOCES begin the process of rolling this system out for the evaluation of all classroom teachers and building principals in the 2011-2012 school year so that New York can quickly move to a comprehensive teacher and principal evaluation system. By law, the APPR is required to be a significant factor in employment decisions such as promotion, retention, tenure determinations, termination, and supplemental compensation, as well as a significant factor in teacher and principal professional development.

The proposed amendment also prescribes the following requirements:

The amendment to section 100.2(o) of the Commissioner's regulations requires that beginning July 1, 2011, each school district evaluate their building principals on an annual basis according to procedures developed by the governing body of each school district. Such procedures shall be filed in the district office and available for review by an individual no later than September 10th of each year.

Section 30-2.3 of the proposed amendment requires that by September 1, 2011, each school district shall adopt an APPR plan for its classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8 and its building principals of schools in which such teachers are employed. By September 1, 2012, each school district/BOCES shall adopt an APPR plan, which may be an annual or multi-year plan, for all of its classroom teachers and building principals. To the extent that any of the items required to be included in the annual professional performance review plan are not finalized by September 1 of each year as a result of pending collective bargaining negotiations, the plan shall identify those specific parts of the plan and the school district shall file an amended plan upon completion of such negotiations. Such plan shall be filed in the district or BOCES office, as applicable, and made available to the public on its web-site no later than September 10th of each school year, or within ten days after its adoption, whichever shall later occur.

This section also requires that the APPR plan describe the school district's or BOCES' process for ensuring that the Department receives accurate teacher and student data, including certain identified information; how the district or BOCES will report subcomponent scores and the total composite effectiveness score for each classroom teacher and building principal in the school district or BOCES; the assessment development, security and scoring processes utilized by the school district or BOCES, which includes a requirement that any process and assessment or measures are not disseminated to students before administration and that teachers and principals do not have a vested interest in the outcome of the assessments they score; describe the details of the evaluation system used by the district or BOCES; how the district or BOCES will provide timely and constructive feedback to teachers and building principals and the appeal procedures used by the district or BOCES.

The proposed amendment also requires a school district or BOCES that uses a district, regional or BOCES-developed assessment; a school-wide, group or team metric or a structured district-wide student growth goal setting process to certify, in its annual professional performance review plan, that the measure is rigorous and comparable across classrooms and explain how the locally selected measure meets these requirements. For school districts or BOCES that use more than one locally selected measure for a grade/subject, they must certify in their APPR plan that the measures are comparable, in accordance with the Testing Standards.

If a school district or BOCES seeks to use a teacher or principal practice rubric that is either a close adaptation of a rubric on the approved list, or a rubric that was self-developed or developed by a third-party or a newly developed rubric, the school district or BOCES must seek a variance from the Department for the use of such rubric.

The proposed amendment also requires that the process by which points are assigned in the various subcomponents and the scoring ranges for the subcomponents must be transparent and available to those being rated before the beginning of each school year.

A provider seeking to place a practice rubric in the list of approved rubrics, or an assessment on the list of approved assessments, shall submit to the Commissioner a written application that meets the requirements of

sections 30-2.7 and 30-2.8, respectively. An approved rubric or approved assessment may be withdrawn for good cause. The provider may reply in writing within 10 calendar days of receipt of Commissioner's notification of intent to terminate approval.

The governing body of each school district is required to ensure that evaluators have appropriate training before conducting an evaluation under this section and the lead evaluator must be appropriately certified and periodically recertified.

If a teacher or principal is rated "developing" or "ineffective," the school district or BOCES is required to develop and implement a teacher or principal improvement plan (TIP or PIP) that complies with section 30-2.10. Such plan shall be developed locally through negotiations pursuant to Civil Service Law Article 14, and include 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 improvement in those areas.

In accordance with the requirements of the statute, the proposed amendment also requires a school district or BOCES to develop an appeals procedure through which a teacher or principal may challenge their annual professional performance review.

### 3. COSTS:

See the Costs Section of the Regulatory Impact Statement that is published in the State Register on this publication date for an analysis of the costs of the proposed rule, which include costs for school districts and BOCES across the State, including those located in rural areas.

### 4. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement Education Law section 3012-c. The rule has been carefully drafted to meet statutory requirements while providing flexibility to school districts and BOCES. Since the statute applies to all school districts and BOCES throughout the State, it was not possible to establish different compliance and reporting requirements for regulated parties in rural areas, or to exempt them from the rule's provisions.

Regarding how student growth should be measured in non-tested subjects, the rule strikes a balance between prescriptiveness and choice by requiring, for teachers in grades 6-11 core subjects where there is no State assessment used as part of a growth or value-added growth model, use of a State-determined, district-wide growth goal-setting process with standardized student assessments chosen from a State-approved list; and, in other grades/subjects where there is no State assessment used as part of a growth or value-added growth model, requiring use of a State-determined, district-wide growth goal-setting process with an assessment selected by districts from a range of choices (including State-approved commercially available assessments, district or BOCES developed assessments, school-wide, group, or team results based on State assessments, and teacher-created assessments).

The rule also provides flexibility in the allocating the 20 points assigned to locally selected measures. The Department has provided a list of local options for the evaluation of teachers and principals for the 20 points of the teacher or principal composite effectiveness score attributed to this subcomponent (15 points once value-added model is implemented).

Consistent with providing flexibility, the rule does not set scoring ranges for the rating categories within the 60 point other measures subcomponent and the rule provides for a variance process for school districts or BOCES that wish to use an existing rubric or a new innovative rubric.

### 5. RURAL AREA PARTICIPATION:

In September 2010, the Department convened an advisory committee known as the Regents Task Force on Teacher and Principal Effectiveness ("Task Force"), which is comprised of representatives of teachers, principals, superintendents of schools, school boards, school districts and board of cooperative educational services officials, and other interested parties. The Task Force has been meeting since September 2010 and they have been divided into workgroups to provide guidance and consider certain aspects of Education Law 3012-c.

After months of discussion and deliberations, the Task Force generated a written report of their recommendations. At the April 2011 Regents meeting, the Task Force presented their recommendations to the Board of Regents. Thereafter, the Department presented their recommendations, which incorporated most of the Task Force's recommendations. At that point, the Regents directed the Department to draft regulations reflecting the Department's recommendations.

On April 15, 2010, the Department posted draft regulatory language on our website for the public to review and provide informal comment. The Department received and reviewed over 250 comments on the proposed amendment, including comments from district superintendents, the Council of School Superintendents, the School Boards Association, the Governor's Office, the Council of School Supervisor & Administrators, New York City, the Conference of Big 5 School Districts NYSUT, SAANYS and teachers and administrators and public interest groups

across the State. Many of these comments have been incorporated in the proposed amendment or will be addressed in guidance.

#### Job Impact Statement

The purpose of the proposed rule is to implement Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010, by establishing standards and criteria for conducting annual professional performance reviews of classroom teachers and building principals employed by school districts and boards of cooperative educational services. Because it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

#### Assessment of Public Comment

The agency received no public comment.

## State Board of Elections

### PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

#### Disclosure of Independent Expenditures

I.D. No. SBE-08-12-00020-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** Amendment of section 6200.10 of Title 9 NYCRR.

**Statutory authority:** Election Law, section 3-102; L. 2011, ch. 399 (Unconsolidated Law)

**Subject:** Disclosure of Independent Expenditures.

**Purpose:** Set requirements relative to disclosure of independent expenditures.

**Text of proposed rule:** Subtitle V of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended by adding thereto a new Part, to be Part 6200.10 to read as follows:

#### § 6200.10 Disclosure of Independent Expenditures

##### (a) Purpose and Overview

The purpose of this Regulation is to set forth the requirements under existing law that individuals, organizations, corporations, political committees, or any entity making independent expenditures must follow to disclose independent expenditures.

The New York State Election Law mandates how financial activity, including independent expenditures, is to be disclosed. Article 14 of the Election Law sets forth the requirement that independent expenditures be disclosed through the filing of campaign financial disclosure reports. Those making independent expenditures must register a committee with the New York State Board of Elections (State Board), and/or a local board of elections as defined in Election Law section 1-104 (26), as appropriate, or with a village clerk as applicable, through which to report the activity.

##### (b) Definitions

(1) "Independent expenditure" means an expenditure made in support or opposition of a candidate:

(i) that expressly advocates for the election or defeat of a candidate; and

(ii) that the candidate or his/her agents or authorized political committee(s) did not authorize, request, suggest, foster or cooperate with in any way.

(2) "Express advocacy", a standard created by the United States Supreme Court in *Buckley v. Valeo*, 424 U. S. 1 (1976), means a communication that contains express words such as vote, oppose, support, elect, defeat, or reject, which call for the election or defeat of a candidate.

##### (c) Registration

(1) Election Law 14-100(1) requires that an independent expenditure be disclosed, and a political committee is the sole vehicle through which individual(s) or entities disclose an independent expenditure.

(2) Election Law 14-118 requires that before a political committee may receive any receipt or contribution, or make any expenditure or incur any liability, the treasurer of such political committee must register with the appropriate board of elections or village clerk, as applicable, pursuant to the procedures set forth by the State Board. Registration forms are available from the State Board.

(3) Election Law 14-110, 14-112, 14-118, and NYCRR 6200.1

determine the appropriate board(s) of elections or village clerk at which to register a committee. Where to register is determined by:

(i) whether the candidate being supported or opposed is running for a state office or a local office; and

(ii) the monetary level of the independent expenditure (s).

(4) Committees making independent expenditures supporting and/or opposing candidates running for state offices, which include: Governor, Lt. Governor, State Comptroller, Attorney General, State Senate, State Assembly, and State Supreme Court Justice, must register and file financial disclosure reports with the State Board pursuant to EL14-110.

(5) Committees making independent expenditures in support or opposition of Local candidates must register with the local board of elections or village clerk, as applicable:

(i) Committees making independent expenditures supporting and/or opposing candidates running for local offices must register and file financial disclosure reports with the appropriate local board of elections or village clerk, as applicable, pursuant to EL 14-110, NYCRR 6200.1.

(ii) Local filers should contact the appropriate local board of elections or village clerk, as applicable, for information about how to submit a report locally (i.e. paper or electronically) pursuant to EL 14-102.

(iii) Local filers, filing with a local board of elections, who raise or spend, or expect to raise or spend, more than \$1,000 in any calendar year are also required to register and file campaign financial disclosure reports with the State Board, in addition to filing with the appropriate local board of elections pursuant to EL 14-102 (4), NYCRR 6200.1(d).

(iv) Any local filer required to file with the State Board, and who actually does so, is not required to make a duplicate filing with their local board of elections. The State Board filing will satisfy the local filing obligation pursuant to NYCRR 6200.1(d). Election Law 14-110 requires that the filer will still be obligated to register the committee locally.

##### (d) Filing Financial Disclosure Statements

(1) Committees making independent expenditures are obligated, as are all political committees, to file campaign financial disclosure reports pursuant to and in the matter set forth in EL 14-102. For each election in which they support or oppose candidates, the committee must submit election reports (3 primary, and 3 general and/or special, as applicable), as well as campaign financial disclosure periodic reports, due on January 15 and July 15 of each year in accordance with EL 14-108, NYCRR 6200.2.

(2) A committee receiving a contribution or loan greater than \$1,000 during the period from the day after the cut-off date of the 11-day pre-election report but before election day, must within 24 hours of its receipt, file a 24 hour notice disclosure.

All contributions or loans that are required to be disclosed via a 24 hour notice filing must also be disclosed on the applicable post election financial disclosure report. EL 14-108.

(3) Campaign Materials Disclosure: Pursuant to EL 14-106, all filers whose activity requires the filing of primary, general and/or special election reports, must at the same time the applicable post-election campaign financial disclosure report is due and made, submit copies of all the filer's campaign materials associated with that election. These campaign materials include copies of all broadcast, cable or satellite schedules and scripts, internet, print and other types of advertisements, pamphlets, circulars, flyers, brochures, letter heads and other printed material.

##### (e) Resignation of a Treasurer

(1) To resign as treasurer of a registered political committee, the treasurer must comply with the provisions of NYCRR 6200.7.

##### (f) Termination of a Committee

(1) Termination ends a treasurer's obligation to file campaign financial disclosure reports for that committee. To terminate a committee, a treasurer must comply with the provisions of EL 14-108, 14-110, NYCRR 6200.2. All filing obligations continue until the termination process is finalized and approved by the State Board and/or local board(s) of elections, or village clerk, as applicable.

(2) Any post election report (if the filer is actively supporting or opposing candidates in that election) or a periodic report, can be designated as a termination report. At other times, a treasurer can submit an off-cycle campaign financial disclosure report. The termination report must include all transaction from the cut-off date of the last report filed, up to the date of the termination request.

(3) Terminations are subject to review and approval by the board(s) of elections or village clerk, as applicable, for compliance with the applicable statutes and regulations of the Board, and are not deemed final until appropriate processing has taken place. If all requirements are not met, the treasurer will receive a letter outlining remaining issues to be resolved to qualify for termination. A treasurer has a continuing obligation to file campaign financial disclosure reports with the applicable board(s) of elections or village clerk until the termination request is approved.

##### (g) Record Retention

Records shall be retained pursuant to the requirements of EL 14-118.