



Robert J. Reidy, Jr.  
*Executive Director*  
reidy@nyscoss.org

Robert B. McClure  
*Superintendent-in-Residence*  
mcclure@nyscoss.org

Robert N. Lowry, Jr.  
*Deputy Director for Advocacy, Research and Communications*  
boblowry@nyscoss.org

Kelly O. Masline  
*Senior Associate Director*  
kelly@nyscoss.org

Michele V. Handzel  
*General Counsel*  
michele@nyscoss.org

Theresa A. Wutzer  
*Associate Director*  
theresa@nyscoss.org

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*President*  
Grand Island  
1100 Ransom Road  
Grand Island, NY 14972

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May 27, 2011

Dear HOD Colleague,

It is evident from the recently approved APPR (Sec 3012-c) regulations that significant items remain for the local collective bargaining process. The following points have been taken from the four (4) white papers developed by THE COUNCIL's Task Force on Teacher/Principal Effectiveness and are presented for your consideration as you approach APPR bargaining. These items do not represent a legal opinion and as always we advise Council members to consult with your school attorney prior to engaging in bargaining.

#### General Comments

Over the past few weeks I have been sharing my personal philosophy with superintendents as they plan for the upcoming APPR negotiations. Simply stated, I would not be offering/giving up district resources to negotiate a state mandate. In addition, I would stay away from contract "place holders" if at all possible. Providing place holders and negotiating the remainder of the contract leaves you with little or no leverage when it is time to negotiate your place holder items. You will have to weigh the impact of these suggestions in relation to your unique situation and discuss them with your school attorney.

#### Points from white papers/suggested guidelines for negotiations

This is an extensive list and I know from experience you will not be successful in negotiation of these all of these items. If you have to prioritize I would suggest you focus on the first four (4) bullets.

#### Appeals Process

- Evaluation appeals should be limited to tenured teachers/principals.
- Evaluation appeals should be limited to ineffective evaluation ratings.

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Seven Elk Street, Third Floor • Albany, New York 12207-1002 • 518.449.1063 FAX 518.426.2229 • www.nyscoss.org

- All appeals should commence and end with the superintendent of schools or their designee. The superintendent should be the determiner of all appeals.
- A principal/teacher may not file more than one appeal on the same evaluation and/or teacher/principal improvement plan (TIP/PIP). This should include any and all parts of the evaluation and/or the improvement plan.
- In districts where superintendents are the evaluator of teachers and/or principals, the designation of the reviewer should be determined by the superintendent.
- The written determination from the superintendent or designee should be a final and binding decision. The appeals process should not be subject to the grievance or other dispute resolution processes included in locally negotiated collective bargaining agreements.
- Appeals should be submitted in writing to the superintendent or designee within no more than fourteen (14) calendar days of the completion of the evaluation. The written appeal should include the reason for the appeal with specific evidence and documentation.
- A written response to the appeal from the evaluator should be submitted to the superintendent or designee within 20 days of the filing of the appeal.
- The decision in an appeal shall be issued in writing within no more than sixty (60) calendar days from the filing of the written appeal.
- The burden of proof should lie with the teacher or principal initiating the appeal.
- The appeal is on the record only and a hearing with the evaluator or reviewer is not required.
- The rating of the evaluator should not be a basis for an appeal.
- Appeals related to improvement plans should be limited to compliance with the requirements in the statute.
- The superintendent or designee should have the option to uphold a rating, modify a rating, order a re-evaluation or determine another option as a response to the appeal.
- Prior to the implementation of an appeals process, those designated to adjudicate appeals of evaluations, Teacher Improvement Plans (TIPs) and/or Principal Improvement Plans (PIPs) pursuant to the statute, must be trained in a similar manner to those conducting evaluations.

- The written appeal and the determination in the appeal including all related information should be included in the respective teacher's or principal's personnel file.

Note: SED will be developing a guidance document on the appeals process.

#### Locally Selected Assessments

- Negotiate only procedures/process for selecting such measures. Do not lock yourself into identifying assessments in your collective bargaining agreement.
- 20 % Local assessment options must come from the options provided by the commissioner.

#### Teacher and Principal Improvement Plans

- It appears that you only need to negotiate TIP/PIP format. Please check with your school attorney.

NOTE: SED has indicated they will be developing a TIPs and PIPs guidance document. You may wish to compare your proposals with the SED document.

Prior to your entering into bargaining be prepared for significant resistance when/if you propose the suggestions included in this communication. NYSUT is publicly on the record regarding negotiations and the new APPR regulations. Do not extend negotiations beyond what is required. We have been recommending that superintendents work collaboratively and share with BOCES staff and colleagues. This is not the time to go at it alone. Proceed cautiously, in good faith and communicate with your district superintendent, colleagues and school attorney.

Sincerely,



Robert J. Reidy, Jr., Ph. D.

Executive Director

THE COUNCIL

RR/rg