

*Guidance on New York State's  
Annual Professional Performance Review  
Law and Regulations*

Updated 9/15/11



**NEW YORK STATE EDUCATION DEPARTMENT**

## Purpose of the Guidance

The purpose of this guidance is to answer questions that educators, administrators, and community stakeholders may have about Education Law §3012-c (Chapter 103 of the Laws of 2010) and Section 100.2(o) and Subpart 30-2 of the Commissioner's regulations.

The New York State Education Department will provide additional or updated guidance as necessary on its website, [www.nysed.gov](http://www.nysed.gov).

If you have further questions that are not answered here, please email [educatoreval@mail.nysed.gov](mailto:educatoreval@mail.nysed.gov).

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## A. Introduction

Education Law §3012-c requires a new performance evaluation system for classroom teachers (“teachers”) and building principals (“principals”). New York State will implement a statewide comprehensive evaluation system for school districts and boards of cooperative educational services (BOCES). The evaluation system is designed to measure teacher and principal effectiveness based on performance, including measures of student achievement and evidence of educator effectiveness in meeting New York State teacher or school leader standards.

The new statewide evaluation system established by section 3012-c builds on, and does not eliminate, New York’s existing APPR process, which is set forth in §100.2(o) of the Commissioner’s regulations. For guidance on how the new law relates to the APPR regulations found in §100.2(o), see paragraph N4(a) of this document.

Under the new law, New York State will differentiate teacher and principal effectiveness using four rating categories – Highly Effective, Effective, Developing, and Ineffective (HEDI). Education Law §3012-c(2)(a) requires annual professional performance reviews (APPRs) to result in a single composite teacher or principal effectiveness score, which incorporates multiple measures of effectiveness. The results of the evaluations shall be a significant factor in employment decisions, including but not limited to promotion, retention, tenure determinations, termination, and supplemental compensation, as well as teacher and principal professional development (including coaching, induction support, and differentiated professional development).

The statute can be found at

[http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=\\$\\$EDN3012-C\\$\\$@TXEDN03012-C+&LIST=LAW+&BROWSER=EXPLORER+&TOKEN=16942100+&TARGET=VIEW](http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=$$EDN3012-C$$@TXEDN03012-C+&LIST=LAW+&BROWSER=EXPLORER+&TOKEN=16942100+&TARGET=VIEW)

The Commissioner’s regulations to implement the new law can be found at <http://www.regents.nysed.gov/meetings/2011Meetings/May2011/511bra4.pdf>

The regulations are organized as follows:

**Section 30-2.1 of the Regulations** clarifies that the existing APPR regulations (section 100.2[o] of the Commissioner’s regulations) remain in effect for teachers and principals who are not subject to the provisions of the new law. For “teachers” and “building principals” subject to the new law, school districts and BOCES must comply with the requirements in Subpart 30-2 of the Rules of the Board of Regents. 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.

It also reiterates the language from the statute that says the regulations do not override 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. This section also clarifies 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** provides that, for the 2011-2012 school year, only classroom teachers in the common branch subjects who teach English language arts and/or mathematics to students in grades 4 through 8 shall be subject to the requirements of the new law. This section lays out the requirements for such teachers. It provides 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 (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. 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 evaluations will be scored and rated. **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 appeals procedures.

On August 24, 2011, Justice Lynch of State Supreme Court, Albany County, 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)(i)(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. Only those specific provisions of the regulations were challenged in the litigation – the remainder of the regulations remains in full force and effect. An appeal is being taken by the Board of Regents and the Commissioner from that Decision and Order. As a result, to the extent provided in the Decision and Order,

the invalidated provisions are not enforceable, and should not be relied upon as valid by school districts and BOCES unless and until they are determined to be valid on appeal.

For more information regarding the specific provisions that were declared invalid and the impact of the Court's ruling on New York's teacher and principal evaluation system, please see Section R of this guidance.

## **B. Educators Covered by the New Law; Implementation Timeline**

### **B1. Who must be evaluated, and when?**

The statute provides for a phase-in of the new evaluation system. In the 2011-2012 school year, the new evaluation system must include teachers of English Language Arts or mathematics in grades 4-8 (including common branch teachers who teach ELA or mathematics) and the building principals of the schools in which those teachers are employed.

Beginning in the 2012-2013 school year, the evaluation system must include all classroom teachers and building principals.

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. The purpose of the comprehensive evaluation system is to measure teacher and principal effectiveness based on multiple measures, including student achievement to ensure that there is an effective teacher in every classroom and an effective leader in every school. The evaluation system will also foster a culture of continuous professional growth for educators to grow and improve their instructional practices.

### **B2. How often must teachers and principals be evaluated?**

The new law requires that all teachers and principals be evaluated on an annual basis, based on multiple measures of teacher and principal effectiveness. For teachers, the evaluation must be comprised of multiple classroom observations and for principals, the evaluation must be comprised of one or more school visits by a supervisor, so districts must structure an annual cycle that incorporates these requirements.

*For a discussion of the impact of the Court's Decision and Order in New York State United Teachers, et al. v. Board of Regents, et al., on the regulatory provisions relating to the requirement that multiple observations be conducted and that school visits by a supervisor be conducted for principals, please see Section R of this guidance.*

- B3. What if a district has not completed the collective bargaining necessary to evaluate all teachers and principals by 2012-2013?

See Section N for more information about collective bargaining issues.

- B4. What teachers are considered classroom teachers under the new law? Are school psychologists, librarians, career and technical teachers, teachers performing instructional support services, adult education teachers and/or social workers classroom teachers that are required to be evaluated under the new law?

The law requires that all classroom teachers be evaluated under the new law. This section of the Commissioner's regulations defines classroom teacher as a teacher in the classroom teaching service as defined in section 80-1.1 of the Commissioner's regulations.

School librarians and career and technical teachers are teachers in the classroom teaching service and are, therefore, subject to the new law beginning in the 2012-2013 school year.

Section 80-1.1 of the Commissioner's regulations specifically excludes pupil personnel services from the definition of classroom teaching services. Therefore, school psychologists and school social workers who are pupil personnel service providers are not covered by the new law.

A classroom teacher performing instructional support services for more than 40% of his/her time will not be included in the definition of classroom teacher.

Supplemental school personnel (e.g., teacher aides and teaching assistants) and teachers of adult, community and continuing education are also excluded from the definition.

- B5. What is a "teacher of record"?

Generally, a Teacher of Record is defined as an individual (or individuals, such as in co-teaching assignments) who has been assigned responsibility for a student's learning in a subject/course with aligned performance measures.

Making these teacher-of-record determinations is complicated by the fact that effective instruction is often the outcome of a complex set of instructional relationships that change over time between multiple teachers and students. Regularly updated teacher-of-record policy guidance will respond and advise on how to approach these complexities for evaluation purposes.

For the 2011-2012 school year, the teacher(s) of record is the teacher (or more than one teacher in the case of co-teaching assignments) who is primarily and

directly responsible for a student's learning activities that are aligned to the performance measures of a course.

For the 2012-2013 school year and school years thereafter, NYSED will use additional data elements to support teacher-of-record determinations for evaluation purposes. These data elements will allow for identification of additional teachers of record for a course, if applicable, and will allow for the adjustment of the weighting of a student-learning result on a teacher evaluation (for example, based on partial-course student enrollment or teacher assignment). SED will work with its growth/VA measures provider, the Regents Task Force, and industry-standards groups to determine how these additional data will affect the way students, teachers, courses and assessments are connected for evaluation purposes.

- B6. What constitutes ELA and math? For example, what if a teacher teaches creative writing in middle school?

ELA and math courses associated with a State test in that subject area are, for the purpose of the regulations, considered ELA and math. Because the State does not have a creative writing State test, the middle school creative writing class would be considered a "non-tested course."

- B7. What if a teacher is teaching grades 4-8 ELA and/or math to just a few of his/her students? Will that teacher be subject to evaluation in the 2011-12 school year?

In order for a teacher to be evaluated under the new law in the 2011-2012 school year, at least 50% of the teacher's students must be in grades 4-8 ELA and/or math, and there must be enough such students with sufficient State assessment data to enable the State to generate a student growth score (see paragraphs D11 and D12). If not, then the teacher is subject to Section 100.2(o).

- B8. Will all common branch teachers be evaluated under the new law in the 2011-12 school year?

No, the new law and implementing regulations only apply to those common branch teachers who teach English language arts and/or mathematics to students in grades 4 through 8. Most common branch teachers in grades 4 and above will be required to be evaluated under the new law in the 2011-12 school year. Common branch teachers in grades k-3 will not be covered in the 2011-12 school year.

- B9. Must special education teachers in self-contained classrooms be evaluated in the 2011-12 school year?

Many special education teachers across the State teach students in grades 4-8 in the common branch subjects, ELA, and math.

In order for a special education teacher in a “self-contained” class to be evaluated under the new evaluation system in the 2011-12 school year, at least 50% of the teacher’s students must take the English language arts and/or math State assessment in the 2011-2012 school year, and there must be enough students with sufficient data to enable the State to generate a student growth score on such assessments (see paragraphs D11 and D12).

**B10. What about special education teachers who co-teach? Will they be subject to evaluation in the 2011-12 school year?**

For special education teachers in team-teaching classrooms in grades 4-8 ELA and math, the district will receive state growth results for all the students in the class who take the standardized state assessment. If the district or BOCES is able to provide two teachers of record for a given class, the results for all students in the class will be provided for both teachers. If the district’s or BOCES’ data system does not yet allow for reporting of more than one teacher of record, the district has the option to manually apply the classroom’s growth results to both teachers. The district or BOCES must then evaluate both teachers pursuant to the requirements of the new law and implementing regulations for the remaining subcomponents (i.e., locally selected measures and other measures of teacher effectiveness).

**B11. What about “push in” and “pull out” teachers?**

“Push-in” and “pull-out” teachers, including academic intervention services (AIS) specialists, who are not primarily responsible for the learning of a group of students, even if the push-in or pull-out teacher teaches ELA or math to students in grades 4-8, are not required to be evaluated in 2011-12. NYSED is developing with districts the capability to track multiple teachers of record for students and to associate a share of instructional time or “dosage” to the push-in or pull-out teachers for evaluations conducted in the 2012-2013 school year and thereafter.

**B12. What is the definition of a “building principal”? What types of administrators are included under this definition? Does it include BOCES administrators?**

A building principal is a certified administrator designated by the school’s controlling authority to have executive authority, management, and instructional leadership responsibility for all or a portion of a school or BOCES-operated program.

Teachers who perform administrative functions less than 50% of their time are not included in the definition of building principal.

**B13. What is the definition of a co-principal?**

A co-principal means a certified administrator designated by the school's controlling authority to have executive authority, management, and instructional leadership responsibility for all or a portion of a school or BOCES-operated program, in a situation in which more than one such administrator is so designated. The term co-principal implies equal line authority, with each administrator so designated reporting to a district-level or comparable BOCES-level supervisor.

**B14. What if fewer than 30% of the students in a principal's school are in grades 4-8 ELA and math?**

A principal must be evaluated under the requirements of the new law in the 2011-2012 school year if at least 30% of the students in his/her school or program are being taught ELA and/or math in grades 4-8. This will include most principals of schools with grade configurations of K-5, PK-5, 6-8, and 6-12, or similar grade configurations.

If fewer than 30% of the students in his/her school or program are being taught ELA and/or math in grades 4-8, then the principal is subject to evaluation under Section 100.2(o).

**B15. How will other administrators, such as assistant principals, subject-area directors, or teachers who are also assigned administrative duties be evaluated?**

The new law only applies to classroom teachers and building principals. A teacher who devotes 40% or more of his/her time in teaching duties and less than 50% of his/her time to administrative duties is considered a teacher, not an administrator, and should be evaluated as a teacher only. If a teacher spends 40% or more of his/her time in teaching duties and 50% or more of his/her time in administrative duties as a building principal, he or she should be evaluated as both a teacher and a building principal.

**B16. How will superintendents and school boards be held accountable?**

Superintendents of schools and members of the board of education or other governing board of a school district or BOCES are required to comply with Education Law section 3012-c, and section 100.2(o) of the Commissioner's regulations and Subpart 30-2 of the Regents Rules, and thus will be held accountable for implementation of the new evaluation system to the extent described below.

*On August 24, 2011, Justice Lynch of State Supreme Court, Albany County, 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)(i)(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. Only those specific provisions of the regulations were challenged in the litigation – the remainder of the regulations remains in full force and effect. An appeal is being taken by the Board of Regents and the Commissioner from that Decision and Order. As a result, to the extent provided in the Decision and Order, the invalidated provisions are not enforceable, and should not be relied upon as valid by school districts and BOCES unless and until they are determined to be valid on appeal. For more information regarding the specific provisions that were declared invalid and the impact of the Court's ruling on New York's teacher and principal evaluation system, please see Section R of this guidance.*

The Department has the authority to remove school officers, including board members, pursuant to section 306 of the Education Law for the willful failure of a school officer to obey the Education Law or rules or regulations of the Commissioner or the Regents. The Commissioner also has the power to withhold from any district or city its share of the public money of the state for willfully disobeying any provision of law or regulation.

Superintendents are also required to be evaluated under the existing APPR regulations (100.2[o]) on an annual basis by the governing body of the school district or BOCES. When evaluating a superintendent's performance under section 100.2(o) of the Commissioner's regulations, the governing body should take into consideration the effectiveness of the superintendent in implementing the new evaluation system for teachers and principals.

## **C. Annual Professional Performance Review (APPR) Plan**

### **C1. When is a district or BOCES required to adopt its APPR plan?**

By September 1, 2011, the governing body of each school district and BOCES must adopt a new APPR plan that provides for the evaluation of teachers of English language arts or mathematics in grades 4-8 (including common branch teachers who teach ELA or mathematics) and the building principals of the schools in which those teachers are employed pursuant to Education Law §3012-c. In accordance with §100.2(o) of the Commissioner's regulations, such APPR plan must also address the evaluation of all other classroom teachers and building principals.

By September 1, 2012, the governing body of each school district and BOCES the governing body of each school district and BOCES must adopt an APPR plan—which may be an annual or multi-year APPR plan—that provides for the evaluation of all its classroom teachers and building principals pursuant to Education Law §3012-c.

- C2. Where and when must a district or BOCES file the APPR plan? Do they have to post the plan on the Internet?

By September 10 of each school year, or within 10 days of adopting the APPR plan—whichever is later—each district or BOCES must file its APPR plan in the district or BOCES office and make the plan available on its website.

- C3. What happens if any of the items required to be included in the APPR plan are not finalized by September 1 in a given school year, as a result of pending collective bargaining negotiations?

If any of the items required to be included in an APPR are not finalized by September 1 as a result of pending collective bargaining negotiations, the plan must identify those specific parts that are not finalized, and the school district or BOCES must file an amended plan upon completion of such negotiations.

- C4. What is a district or BOCES required to include in its APPR plan?

The APPR plan must include a description of the school district or BOCES' process for ensuring that the Department receives accurate teacher and student data and verification of rosters and course linkage data; reporting requirements; assessment development and security and scoring processes; details of the district's or BOCES' evaluation system; how the district or BOCES will provide timely and constructive feedback to teachers and principals; the appeal procedures utilized and any required certifications required under the Subpart.

- C5. What are a district's or BOCES' obligations to ensure that there is a fair and consistent evaluation process for teachers and principals?

All districts and BOCES should ensure that their evaluation process is fair and transparent and that the district or BOCES provides all teachers with regular, useful feedback on their performance – no matter how long they have been in the classroom or school. School leaders must be held accountable for supporting each teacher's development, and ensuring that all teachers receive appropriate professional development. Everyone within the system should be focused on the goal of improving student achievement.

## **D. Student Growth on State Assessments or Other Comparable Measures**

- D1. How will the teacher and principal growth score be determined for 2011-2012?

For school year 2011-2012, 20 points of a teacher's or principal's composite effectiveness score shall be based on results of their students' growth on state assessments compared to similarly achieving students. The State has selected

an expert provider through competitive bidding who will determine how to estimate student growth using the state's existing assessment programs in these subjects and produce the resulting scores for each educator along with detailed reports that will provide clear and useful information to interpret the results.

For the 2011-2012 school year, the state will calculate a "student growth percentile score" (SGP) for each student that takes the ELA and/or mathematics State assessment. The SGP score is a measure of a student's progress compared to other students with similar past academic performance on the assessment. This is the same methodology used in the Colorado Growth Model and adopted by many states including Colorado, Massachusetts, and Rhode Island, among others.

The growth score provider will adjust the students' SGP scores before assigning the teacher or principal a score for this subcomponent so that a teacher's or principal's student growth percentile result takes into account one or more of the following characteristics: student poverty, students with disabilities, and English language learners. This result will be the teacher or principal student growth percentile score (TSGPS or PSGPS).

Each teacher of record in 4-8 ELA or mathematics will have a TSGPS that represents the mean or median (adjusted for student characteristics mentioned) of the SGPs of his or her assigned students. ("Teacher of record" is defined in Section **Error! Reference source not found.**) Each building principal employed in a school or program where the state assessments in grades 4-8 ELA or mathematics were administered shall have a similarly calculated PSGPS based on the adjusted SGPs of students who took the aforementioned state assessments.

Where necessary, results from different tested grades and/or subjects will be combined according to a formula to be determined by the Commissioner.

The state will then assign a score of 0-20 points for this subcomponent, which will contribute to the educator's composite effectiveness score using the standards and scoring ranges for this subcomponent as prescribed in the regulation.

D2. What is a "value-added score" and how is it different from the Teacher or Principal Student Growth Percentile Score?

If the Board of Regents approves the use of a "value-added model" for 2012-13 or later years, educators will receive from 0-25 points on their evaluations based on their teacher or principal value-added (VA) score. As with the "growth score", the State plans to calculate, where possible, a student growth percentile for each student comparing the progress each student makes each year on the applicable State assessments to the progress of other students in that grade/subject with similar past achievement on New York State assessments.

To determine the teacher or principal value-added score, the state will assign students to their teacher of record according to rules in effect at that time (see paragraph L5) and to their principal. The value-added score provider will then take into account any of a wide range of student, classroom, and/or school characteristics that the provider, with approval the Board of Regents, determines are necessary, for empirical and policy reasons, to compare the growth performance of classes and schools to those with similar characteristics.

The value-added score provider will be required to recommend how best to account for test measurement error and statistical uncertainty in modeling results in determining scores for individual educators.

The provider will also be asked to provide analysis in support of policy decisions. One example: how to be sure that small changes in student learning do not result in extreme positive or negative results for educators because of students clustered at either the high or low end of achievement scales or other statistical anomalies.

The result of this analysis will be a teacher or principal value-added score, and it will lead to the assignment of 0-25 points for evaluation purposes using the standards and scoring bands then in effect.

Where necessary, results from different grades and/or subjects will be combined according to a formula to be determined by the Commissioner.

**D3. What characteristics of students, classrooms, and schools will be considered in constructing the value-added scores?**

All of the data in Table 1 will be provided to the value-added score provider by NYSED for empirical analysis and recommendation of the specifics of the State's value-added methodology for teachers and principals. Policy considerations and empirical results will determine the final specifications, which could differ for teachers and principals. The specifics of the recommendations will be determined before the 2012-13 school year begins after consultation with representatives of the Regents Task Force and approval by the Board of Regents.

**Table 1. State Data Elements (items for which NYSED believes it has a valid data source now or in the near future)**

<u>Student Characteristics</u>	<u>Other Characteristics</u>
<ul style="list-style-type: none"> <li>• Student State assessment history</li> </ul>	<b><u>Classroom characteristics</u></b>
<ul style="list-style-type: none"> <li>• Poverty indicators</li> </ul>	<ul style="list-style-type: none"> <li>• Class size</li> </ul>
<ul style="list-style-type: none"> <li>• Disability indicators (disaggregated indicators)</li> </ul>	<ul style="list-style-type: none"> <li>• % with each demographic characteristic in a class</li> </ul>
<ul style="list-style-type: none"> <li>• English language learner indicators (disaggregated indicators)</li> </ul>	<b><u>School characteristics</u></b>
<ul style="list-style-type: none"> <li>• Ethnicity/race</li> </ul>	<ul style="list-style-type: none"> <li>• % with each demographic characteristic</li> </ul>
<ul style="list-style-type: none"> <li>• Gender</li> </ul>	<ul style="list-style-type: none"> <li>• Average class size</li> </ul>
<ul style="list-style-type: none"> <li>• % daily student attendance</li> </ul>	<ul style="list-style-type: none"> <li>• Grade configuration</li> </ul>
<ul style="list-style-type: none"> <li>• Student suspension data</li> </ul>	
<ul style="list-style-type: none"> <li>• Retained in grade</li> </ul>	<b>Educator experience level in role</b>
<ul style="list-style-type: none"> <li>• Summer school participation</li> </ul>	
<ul style="list-style-type: none"> <li>• Student new to school in a non-articulation year</li> </ul>	
<ul style="list-style-type: none"> <li>• Student age (especially overage for grade)</li> </ul>	

D4. When will the percentage of the composite score that is based on this component increase from 20 to 25 points?

In school year 2012-13 and beyond, if a value-added scoring methodology has been approved by the Board of Regents for use with a state assessment that is associated with a given course, it will be the basis for the teacher or principal value-added scores and the state will determine the score for each educator from 0-25 points.

D5. Which subjects besides ELA/math grades 4-8 will have value-added models and when? Will there be any new State tests because of this?

We plan new State test sequences in grades 6-8 science and social studies and 3 years of high school ELA. These new tests, along with the Regents exams that exist in 2010-2011, could be the basis of value-added scores. The exact schedule depends on whether and when NYSED determines, with its value-added score provider, that a valid and reliable methodology can be constructed for existing State assessments.

D6. How will the teacher and principal growth score be determined if there is no value-added or growth model based on State assessments?

Beginning in the 2012-13 school year, it is expected the State will have an approved value-added model in ELA and math for grades 4-8; however, if a value-added model is not approved for these subjects in these grades, the State will continue to use the student growth percentile method to calculate student growth (as outlined above), and the State growth portion of these teachers' and principals' evaluations will count for 20 points until such time that the State is able to calculate a value-added model for these subjects in these grades.

In all other grades and subjects (i.e., those for which the State does not have an approved growth or value-added model), Education Law §3012-c requires that teachers' and principals' evaluations be based in part on measures of student learning growth. For these grades/subjects, districts will be required to engage in a state-determined district-wide process for student growth goal-setting that identifies some type of assessment of student learning and sets targets for student growth as measured by that assessment. Districts will be required to assign 0-20 points to each educator based on the students' results compared to the targets set in the goal-setting process.

For classroom teachers who teach one of the core subjects (grades 6-8 science and social studies courses and high school courses in English language arts, math, science, and social studies that lead to a Regents examination in the 2010-2011 school year, or to a State assessment in the 2012-2013 school year or thereafter), where there is no approved growth or value-added model:

- The school district or BOCES shall measure student growth based on a State-determined district- or BOCES-wide student growth goal-setting process using a State assessment, if one exists, or a Regents examination or Department-approved alternative examination.
- If State assessments/Regents examinations do not exist for these subjects/grade levels, districts or BOCES must use the growth goal-setting process with an assessment from the list of State-approved assessments or a Department-approved alternative examination.

For all other grades/subjects, the district/BOCES must use the growth goal-setting process with one or more of the following types of district-selected student assessments:

- Assessment from the list of State-approved student assessments,
- District, regional or BOCES-developed assessments, provided that the district or BOCES verifies comparability and rigor,
- School-wide, group, or team results based on state assessments,
- School- or teacher-created assessments.

- D7. What research does NYSED have that growth and value-added measures should be part of evaluation?

There are many articles and studies that discuss the use of "value-added" or "growth" measures to assess teacher and principal impact on student achievement based on state assessments. Among the places to learn more are the National Comprehensive Center for Teacher Quality (<http://www.tqsource.org/webcasts/evaluateEffectiveness/resources.php>) and The Center for Public Education (<http://www.centerforpubliceducation.org/Main-Menu/Staffingstudents/Building-A-Better-Evaluation-System/References.html>).

- D8. How can we be sure that educators with a high number of students at the highest or lowest ends of the achievement spectrum receive fair results?

NYSED has instructed its provider for the growth and value-added measures that every precaution must be taken to avoid false extreme results for educators (either negative or positive). We have required use of confidence intervals and inclusion of measures of test measurement error. We have also explicitly required that the provider ensure that the highest and lowest scores for student growth go to teachers and principals whose students demonstrated meaningful differences in learning, not small changes that somehow become statistical outliers.

- D9. What is the status of the work to determine how to construct teacher and principal student growth scores? When will educators know the specific formulas used to evaluate them in 2011-2012?

Task Force researchers Drs. Hamilton Lankford (SUNY Albany), Jim Wyckoff (University of Virginia), and Jonah Rockoff (Columbia Business School) are currently analyzing student growth percentile (SGP) scores for all students who took ELA or mathematics assessments in grades 4-8 during the 2009-2010 school year (and several prior years) for which NYSED has sufficient prior performance on New York assessments, and the relationships of those data to student characteristics including poverty, disability, and English language learner status. This analysis will provide an illustrative approach to teacher and principal student growth percentile scores in 2011.

By the end of the 2010-2011 school year, NYSED will collect the data needed from districts to assign students to teachers of record (see Section L. Data Management for a discussion of "teacher of record.") This data is needed to analyze student growth percentile scores at the teacher level.

NYSED has chosen a provider of teacher and principal growth and value-added measures through a competitive "request for proposal" process. This provider will do the data management and empirical analyses required to construct teacher

and principal student growth percentile scores using 2010-11 school year data for modeling.

- D10. When will the 2011-2012 school year results be provided to educators and their supervisors?

SED will provide the (0-20) scores for the growth measures component of each educator's evaluation by June 15, 2012, or as soon as possible after the state student assessment results are available. All information will be transmitted electronically via secure protocol to the appropriate schools and educators.

- D11. What data is required for a student in grades 4-8 ELA and/or math to have a growth score?

At least 2 consecutive years of state assessment data in that subject.

- D12. Is there a minimum number of students with growth scores required in order for NYSED to calculate a growth score for a teacher/principal in the 2011-2012 school?

Yes, there will be minimum numbers of students required for a growth score to be generated. The specific number will be determined by NYSED in consultation with the provider of the growth and/or value-added model based on empirical and policy considerations.

- D13. What is the State-determined district- or BOCES-wide student growth goal-setting process for non-tested subjects?

NYSED is working with representatives of the Regents Task Force and other states and districts who are currently utilizing student-growth goal-setting processes to prescribe standards and best practices for districts and BOCES to implement the State-determined district- or BOCES-wide growth goal setting process, at a minimum for teachers of non-tested grades and subjects. The Department is developing the State-determined growth goal-setting process and expects to make it available in fall 2011. Districts may choose to use the process for all teachers and to incorporate locally selected measures of student achievement into the goal-setting process where allowed by the Commissioner's Regulations.

- D14. How and when will the state determine its list of approved third-party assessment providers for use where a state assessment is not available to determine student growth?

See paragraph F1.

- D15. How would you factor in multiple scores for a teacher of record who is responsible for ELA/math and NYSESLAT scores (i.e., a self-contained fifth-grade bilingual teacher)?

SED will work with its value-added provider to determine whether and how the NYSESLAT score may be utilized in a value-added measure for students who are English language learners. Districts may also utilize the NYSESLAT as the basis of locally selected measures for classrooms with students who take this assessment.

- D16. How will students who take the NYSAA assessment count for teacher evaluation in each of the three subcomponents of the evaluation system?

Regardless of whether or not children take a state assessment, *all* students' achievement should in some way be represented in a teacher's evaluation score. The State will not be able to generate a state growth or VA score for students who take the current NYSAA test and do not take a State assessment with a growth/VA model. Districts, however, are encouraged to take the NYSAA into account through growth goal-setting processes for these students as either a "growth" or locally selected measure of student achievement. Districts may also use their choice of different locally selected measures to hold teachers accountable for these students. Additionally, classroom observation will look for evidence of practices that engage *all* students in learning.

- D17. How will a teacher or principal's score on the State assessment or other comparable measures subcomponent be calculated for teachers who teach some "tested" and some "non-tested" subjects?

For purposes of the 2011-12 school year, teachers who have more than 50% of their students in subjects other than grades 4-8 ELA and math will not be required to be evaluated under the new evaluation system. This is true even if some of their students are in tested subjects in grades 4-8, ELA and math. Instead, these teachers must be evaluated in accordance with the provisions in section 100.2(o) of the Commissioner's regulations.

For common branch teachers who teach math and/or English in grades 4-8, such teachers will be considered teachers of tested subjects unless the number of their students who take the State assessments is less than the minimum number required to generate a Teacher Student Growth Percentile Score.

For purposes of the 2012-2013 school year and thereafter, student growth will be measured for both tested and non-tested subjects, and all classroom teachers will be subject to the new evaluation law. The Commissioner will develop a formula to determine how a teacher's score will be calculated for purposes of the student growth subcomponent score when the teacher teaches some "tested" and some "non-tested subjects".

D18. How will measures of student growth be calculated for principals who have both tested and non-tested subjects in their school?

In the 2011-2012 school year, measures of student growth will be based solely on the result of student growth on State assessments in grades 4-8 ELA and math, as long as at least 30% of students in the school generate State assessment results.

In 2012-2013 and beyond, the score shall be based on a methodology prescribed by the Commissioner.

D19. What is meant by the term “measure of central tendency,” which is referenced in regulations as how a teacher’s or principal’s student growth percentile (SGP) result will be reported??

There are many measures of central tendency, with the three most commonly used being mean, median, and mode. NYSED, with its growth score vendor, will determine whether mean (determined by adding all scores and dividing by the number of scores) or the median (found by arranging each teacher’s students’ SGPs in order from lowest to highest and selecting the middle number) is most appropriate for this purpose.

D20. How will you take into account factors like whether students are homeless or living in transitional housing or shelters in the value-added growth scores?

Currently NYSED collects data that may be able to account for whether students are homeless or living in transitional housing or shelter. We will provide the data to our growth/value-added provider to determine empirically if these characteristics should be factored into the value-added scores.

D21. How many years of teacher or principal growth scores or value-added scores will factor into each educator’s evaluation?

For 2011-12, only one year of teacher or principal student growth percentile scores will factor into each educator’s evaluation. When more years of data are available, NYSED will consider whether each evaluation year should include more than one year of educator student growth results. Empirical and policy considerations will determine the decision

## E. Locally-Selected Measures of Student Achievement

E1. How and when will the state determine its list of approved third-party assessment providers for use as locally selected assessments?

See paragraph F1.

E2. What are the options for local assessment?

Locally selected options for the evaluation of teachers include:

- Assessments from list of State-approved or 3rd-party-developed, State, or Regents-equivalent assessments
- district-, regional-, or BOCES-developed assessments whose rigor and comparability is verified by the district or BOCES;
- school-wide, group, or team metrics using State assessments or a district, regional or BOCES-developed assessment;
- student achievement on State assessments, Regents examinations and/or Department approved alternative examinations (AP, IB, SAT II, etc.) or,
- structured district-wide goal setting process with any State- or other school- or teacher-created assessment agreed to by an evaluator and teacher.

Other evaluation options for principals include:

- student performance on any of the options listed above; and
- student achievement levels on State assessments in ELA and/or math in grades 4-8 (e.g., percentage of students in the school whose performance levels on State assessments are proficient or advanced); or
- student growth or achievement on State assessments in ELA and/or mathematics in grades 4-8 for students with disabilities and ELA in grades 4-8.

For building principals in a school with high school grades, the following additional locally selected options exist:

- 4,5 and/or 6-year high school graduation and/or dropout rates for principals employed in a school with high school grades;
- Percentage of students who earn a Regents diploma with advanced designation and/or honors;
- Percentage of a cohort of students that achieve specified scores on Regents examinations and/or Department approved alternative examinations as described in section 100.2(f) of this Title ; and/or

- Students progress toward graduation in the school using strong predictive indicators, including but not limited to 9<sup>th</sup> and/or 10<sup>th</sup> grade credit accumulation and/or the percentage of students that pass 9<sup>th</sup> and/or 10<sup>th</sup> grade subjects most commonly associated with graduation and/or students' progress in passing the number of required Regents examinations for graduation.

*For a discussion of the impact of the Court's Decision and Order in New York State United Teachers, et al. v. Board of Regents, et al., on the use of "student achievement on State assessments, Regents examinations and/or Department approved alternative examinations" for the 20% locally selected measures subcomponent, please see Section R of this guidance.*

**E3. Do the regulations require that 40% of a teacher or principal's evaluation be based on State assessments?**

The regulation does not require that 40% of a teacher or principal's evaluation be based on State assessments. Education Law 3012-c requires that 20% of a teacher or principal's evaluation (increases to 25% with an approved value-added model) be based on student growth on State assessments or other comparable measures. The statute also requires that 20% be based on other locally selected measures of student achievement (decreases to 15% with an approved value-added model). The regulations provide several local options for the 20% based on locally selected measures of student achievement, including the use of State assessments and several other options as described above. The choice of whether to use State assessments for this portion of the evaluation is a local decision.

*For a discussion of the impact of the Court's Decision and Order in New York State United Teachers, et al. v. Board of Regents, et al., on the use of "student achievement on State assessments, Regents examinations and/or Department approved alternative examinations" for the 20% locally selected measures subcomponent, please see Section R of this guidance.*

**E4. If districts or BOCES develop their own assessments, do the assessments have to be reviewed by the state for inclusion on the *Approved List*?**

No, district-, regional-, or BOCES-developed assessments will not be reviewed by the State, provided the district/BOCES intends to use the assessment for the local portion of their educators' evaluations or as a comparable growth measure for subjects that are not considered "core" subjects under the regulations. Districts and BOCES that develop their own assessments for the local portion of educators' evaluations must include in their APPR plan an assurance that their district- or BOCES-developed assessment is rigorous and comparable across classrooms in accordance with the Commissioner's Regulations.

- E5. How will evaluation points be assigned to educators using locally selected assessments?

Districts must determine locally the details of their approach to assigning 0-20 points to educators for this subcomponent of evaluation, within the scoring ranges and text descriptions for each rating category for this subcomponent, as prescribed in section 30-2.6 of the Commissioner's regulations. The district's process for the assignment of points within this subcomponent must be transparent and provided in advance to those who will be rated. The district or BOCES must also include such process in their APPR plan, which shall be made publicly available on its website.

- E6. If districts hired a provider who currently provides commercially available assessments but asks the provider to develop new assessments for the district or BOCES, do those assessments have to be submitted for inclusion in the state *Approved List*?

No, if a school district or BOCES contracts with a third-party provider to develop a new assessment for the district or BOCES, this would be considered a district- or BOCES-developed assessment. Therefore, a district/BOCES could use the assessment for the locally selected measures subcomponent or for the State assessment or other comparable measures subcomponent to the extent permitted by the regulation. As with any other locally selected measure, the district/BOCES would need to provide assurances that their district- or BOCES-developed assessment is comparable and rigorous in accordance with the Commissioner's Regulations.

- E7. Can districts or BOCES use student-growth percentile or value-added statistical methodologies to calculate growth in connection with locally selected assessments?

This is a local decision. Districts may choose to utilize student growth percentile or value-added methodologies in assigning evaluation points based on local assessment results if the district or BOCES has the capacity to ensure that the assessments they have selected are suitable for these kinds of measures.

- E8. In the case where there is no state-provided growth measure and the district must determine growth using a goal-setting process, may they use the same growth measure for the locally selected measures subcomponent?

Education Law §3012-c requires that 20% of a teacher or principal's evaluation (increases to 25% with an approved value-added model) be based on student growth on State assessments or other locally selected measures of student achievement (decreases to 15% with an approved value-added model). There are several options for locally selected measures and other comparable

measures; the choice of whether to use student growth for both is a local decision.

*For a discussion of the impact of the Court's Decision and Order in New York State United Teachers, et al. v. Board of Regents, et al., on the use of "student achievement on State assessments, Regents examinations and/or Department approved alternative examinations" for the 20% locally selected measures subcomponent, please see Section R of this guidance.*

E9. Can the district release test items ahead of time to help prepare students?

The Commissioner's Regulations prohibit teachers and principals from releasing or distributing test items (including pretest items) to students that will later contribute to their annual performance evaluation. As such, a district can release sample items and sample test forms that will help familiarize students with the testing format; however, districts cannot release actual operational test items, including performance tasks and writing prompts to students, ahead of time. Districts or BOCES must describe in their APPR plan their processes for ensuring that any assessments and/or measures used to evaluate their teachers and principals are not disseminated to students before administration.

E10. Can a teacher score his or her own students' work for the purposes of the local portion of the teacher's annual evaluation?

No. Because New York State's teacher and principal evaluation policies are designed to make strong and equitable inferences about the effectiveness of our state's educators, the Commissioner's Regulations prohibit teachers and principals from having a vested interest in the outcome of the assessments they score. Teachers should not score their own students examinations, and principals should not score the assessments of the students in their building. Teachers and principals may only view students' assessments after the assessment scores have been finalized. Districts must provide an assurance in their APPR plan that the district's scoring plans ensure that teachers and principals do not have a vested interest in the outcomes of the assessments they score.

## F. Department Review and Approval of Student Assessments

F1. What is the process and timeline for the Department to review and approve 3<sup>rd</sup>-party-developed assessments for use in teacher and principal evaluation?

On May 17, 2011, the Department issued a Request for Qualification (RFQ) for Student Assessments to be Used by New York State Districts for a Portion of

Teachers' and Principals' Evaluations, soliciting applications for assessments that will be used as measures of student achievement or growth (<http://usny.nysed.gov/rttt/rfq/assessment.html>). Applications were due by June 17, 2011.

Submitted assessments that met the criteria in the Commissioner's regulations and the RFQ are included on the State's *Approved List* at <http://usny.nysed.gov/rttt/teachers-leaders/assessments/>.

The RFQ does not obligate the state or individual districts to purchase any services from any specific provider.

- F2. Will the Department consider applications submitted after June 17, 2011?

The Department will review submissions received after the June 17, 2011 deadline. There is no limit to the number of assessments on the *Approved List*, and districts should encourage providers of any assessments currently in use to submit the information requested in the RFQ. However, the assessments will not be added to the List of Approved Student Assessments until the next update period. The Department will update the list of approved assessments at least annually, with the next update occurring in January/February 2012.

## G. Other Measures for Teachers and Principals

- G1. What are the other 60 points of a teacher's evaluation based on?

Evaluations of classroom teachers are to be based on multiple measures, aligned with the New York State Teaching Standards. A teacher's performance must be assessed using a teacher practice rubric approved by the Department. For more on teacher practice rubrics, see Section H. Department Review and Approval of Teacher and Principal Practice Rubrics.

Any of the Teaching Standards not addressed in classroom observation must be assessed at least once a year through one or more of the activities described in question G3, above, for the remainder of the 60 points.

- G2. What are the requirements for teacher observations?

The regulations require that districts must allocate between 40 and 60 points to classroom observations. The 40-plus points allocated to teacher observation must include multiple observations – meaning 2 or more – by a principal or other trained administrator and may also include observations by trained independent evaluators or in-school peers. Classroom observations may be performed in person or by video.

*For a discussion of the impact of the Court's Decision and Order in New York State United Teachers, et al. v. Board of Regents, et al., on the regulatory provisions relating to classroom observations and the remaining 60 points of the evaluation, please see Section R of this guidance.*

**G3. Besides classroom observations, on what measures can districts or BOCES base the remainder of the 60 points for teachers?**

The remaining points of the 60 points can be based on a combination of any of the following criteria:

- structured review of student work;
- teacher artifacts using portfolio or evidence binder processes;
- feedback from students, parents, and/or other teachers using structured survey tools;
- teacher self-reflection and progress on professional growth goals (maximum of 5 points).

*For a discussion of the impact of the Court's Decision and Order in New York State United Teachers, et al. v. Board of Regents, et al., on the regulatory provisions relating to teacher professional growth goals, please see Section R of this guidance.*

**G4. What are the other 60 points of a principal's evaluation based on?**

Evaluations of building principals are to be based on multiple measures, aligned with the Educational Leadership Policy Standards (ISLLC 2008). A principal's performance must be assessed using a principal practice rubric approved by the Department. For more on principal practice rubrics, see Section H. Department Review and Approval of Teacher and Principal Practice Rubrics.

Any of the Educational Leadership Policy Standards (ISLLC 2008) not addressed in the broad assessment must be assessed at least once a year.

**G5. What are the requirements for assessment of a principal's leadership and management actions? Are school visits required as part of the evaluation of principals?**

The regulations require that at least 40 out of the 60 points is to 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.

Each year, this assessment must incorporate at least one school visit by the principal's supervisor and at least two other sources of evidence from the following options: structured feedback from teachers, students, and/or families; school visits by other trained evaluators; review of school documents, records, and/or state accountability processes; and/or other locally-determined sources.

Because the 60 points must be based on multiple measures, the broad assessment of leadership and management actions cannot count for the entire 60 points.

*For a discussion of the impact of the Court's Decision and Order in New York State United Teachers, et al. v. Board of Regents, et al., on the regulatory provisions relating to the requirement that 40 out of 60 points be based upon assessment of a principal's leadership and management actions and the required site visits, please see Section R7 of this guidance.*

- G6. Besides the broad assessment of principal leadership and management actions, on what measures can districts or BOCES base the remainder of the 60 points for principals? Are districts or BOCES required to use measures other than the broad assessment as part of the 60 points?

The remaining points must be based on results of one or more ambitious and measurable goals set collaboratively between the principal and the superintendent or district superintendent.

At least one of those goals must address the principal's contribution to improving teacher effectiveness, including but not limited to:

- improved retention of high performing teachers;
- the correlation between student growth scores of teachers granted tenure vs. those denied tenure;
- quality of feedback provided to teachers throughout the year;
- facilitation of teacher participation in professional development opportunities;
- the quality and effectiveness of teacher evaluations.

Any other goals may address quantifiable and verifiable improvements in academic results or the school's learning environment resulting from principal's leadership and commitment to their own professional growth.

- G7. Can districts or BOCES allocate the full 60 points to classroom observations?

All NYS Teaching Standards must be assessed at least once a year. A district could combine multiple classroom observations and address all standards, but this is a local decision. A minimum of 40 points must be allocated.

*For a discussion of the impact of the Court's Decision and Order in New York State United Teachers, et al. v. Board of Regents, et al., on the regulatory provisions relating to the requirement that 40 out of 60 points be dedicated to classroom observations and that multiple observations be conducted, please see Section R of this guidance.*

**G8. Who may conduct the observations that count as part of the minimum 40 out of 60 points?**

Principals or other trained administrators must conduct multiple classroom observations. The other trained administrators may be employed in the school or independent of the school. They must, however, be certified administrators, not teachers or retired teachers

*For a discussion of the impact of the Court's Decision and Order in New York State United Teachers, et al. v. Board of Regents, et al., on the regulatory provisions relating to the requirement that 40 out of 60 points be dedicated to classroom observations and that multiple observations be conducted, please see Section R of this guidance.*

## **H. Department Review and Approval of Teacher and Principal Practice Rubrics**

**H1. How will districts and BOCES use teacher and principal practice rubrics in evaluations?**

Under the 60% Other Measures subcomponent of the evaluation, districts and BOCES are required to assess teacher and principal performance using teacher and principal practice rubrics approved by the Department. For more about that subcomponent, see Section G. Other Measures for Teachers and Principals. Teacher and principal practice rubrics will not be used for either of the other two subcomponents.

**H2. What is the process and timeline for the Department to review and approve teacher and principal practice rubrics for use in teacher and principal evaluation?**

On May 17, 2011, the Department issued a Request for Qualification (RFQ) for Teacher and Principal Practice Rubrics (<http://usny.nysed.gov/rttt/rfq/rubric.html>). Applications were due by June 17, 2011. The list of Approved Teacher and Principal Practice Rubrics is posted at <http://usny.nysed.gov/rttt/teachers-leaders/practicerubrics/home.html>.

**H3. Will the Department consider applications submitted after June 17, 2011?**

The Department will review submissions received after the June 17, 2011 deadline. However, the assessments will not be added to the list of Approved Teacher and Principal Practice Rubrics until the next update period. The Department will update the list of approved rubrics at least annually.

H4. What if the rubric my district is using is not on the *Approved List*?

Districts that are using a rubric that is not on the *Approved List* will need to apply for a variance using the application form posted at <http://usny.nysed.gov/rttt/teachers-leaders/rubricvariance/home.html>. If the rubric is not approved through the variance process, then it will no longer be permissible for use in evaluations.

H5. Under what circumstances may a district apply for a variance to use a teacher or principal practice rubric not on the *Approved List*, and what is the application process?

SED has posted a variance application and instructions on how to apply for a rubric variance at <http://usny.nysed.gov/rttt/teachers-leaders/rubricvariance/>. The circumstances under which variances will be granted are extremely limited.

If applying to use an existing rubric (already in use by the LEA) that is self-developed, developed by a third party, or an adaptation of a rubric on the Department's *Approved List*, applicants will need to meet all the approval criteria outlined in §30-2.7 of the Rules of the Board of Regents. In addition, applicants will need to demonstrate:

- evidence that the LEA has made a significant investment in the rubric, particularly in training and implementation; and
- evidence that the LEA has a history of use that would justify continued use of that rubric. This includes evidence that:
  - the LEA's use of the rubric to date has generated differentiated ratings and assessments of educators' skill and proficiency; and
  - the degree of differentiation in the ratings is justified by student achievement results.

If applying to use a new, innovative rubric, applicants must establish that the proposed rubric meets all of the approval criteria outlined in §30-2.7 of the Rules of the Board of Regents. In addition, applicants will need to provide:

- a training and implementation plan including, but not limited to, the LEA's plan for ensuring inter-rater reliability; and
- a plan for collecting evidence that demonstrates:
  - the LEA's use of the rubric generates differentiated ratings and assessments of educator skill and proficiency; and
  - the degree of differentiation in the ratings is justified by student achievement results.

- H6. Is there an approved list of other kinds of assessment tools, such as student/parent/teacher surveys? Student work and teacher artifact portfolios?

No, at this time there is no list of approved assessment tools, other than teacher/principal practice rubrics and State assessments. A district or BOCES may select any assessment tool, provided that use of the tool is permitted in the Commissioner's regulations.

- H7. Are the teacher practice rubrics supposed to cover all seven of the NYS Teaching Standards, whether or not they are observable, or are they supposed to cover skills that are observable only? Must rubrics also cover the 40 points of student achievement results?

The rubric must "broadly align" with the NYS Teaching Standards. Some approved rubrics may focus exclusively on evidence obtained in classroom observation, while others may require evidence obtained in other ways (for example through review of lesson plans or other artifacts of teacher practice). A tool listed as "observation-only" on the *Approved Teacher and Principal Practice Rubric Providers* list was ONLY required to be broadly aligned with Standards III, IV, and V of the NYS Teaching Standards or Standards I, II, III, and IV of the ISLLC 2008 Standards for a teacher or principal rubric, respectively. NY regulations require that all seven NYS Teaching Standards be assessed at least once a year, and how districts choose to do this is a matter of local decision-making.

The teacher practice rubrics are only required to be used for the 60% "other measures" subcomponent of the new teacher evaluation system. The NYS Teaching Standards reflect practices that research suggests leads to student learning, but the rubrics and the 60 point "other measures" do not need to directly include results of student learning as measured by the 40% student achievement portion of the evaluation (i.e., the State assessment or other comparable measures and the locally selected measures subcomponents).

- H8. If a tool on the *Approved List* is an "observation-only" tool, how many points out of the "other" 60 points can it satisfy?

The regulations require that at least 40 out of the 60 points are to be based on classroom observations. This must include multiple observations—meaning 2 or more—by a principal or other trained administrator. It may also include observations by trained independent evaluators or in-school peers. Classroom observations may be performed by person or by video.

*For a discussion of the impact of the Court's Decision and Order in New York State United Teachers, et al. v. Board of Regents, et al., on the regulatory provisions relating to classroom observations and the remaining 60 points of the evaluation, please see Section R of this guidance.*

NY regulations require that all seven NYS Teaching Standards be assessed at least once a year. How districts choose to do this is a matter of local decision-making.

- H9. Is there a cost associated with all of the rubrics on the *Approved List*? Do we need to use the implementation services being offered by providers?

Some of the providers of practice rubrics on the *Approved List* have made their rubric available for free, whereas others charge a fee to license the rubric or to purchase the associated implementation support services. If the provider's services are listed as "required," then you must collaborate with that service provider to successfully implement their evaluation tool.

The costs posted on the website are for information only, and LEAs may wish to contact providers directly to discuss their specific needs in line with their APPR plan and their plans for training evaluators and certifying lead evaluators.

- H10. Can we adopt our own procedures for implementing a rubric on the *Approved List*, or would a variance be required? For example, can we develop our own evaluation form to support the use of the rubrics that have been made available? Or can we choose to give greater weight to certain components of the rubric while de-emphasizing other components?

An LEA is NOT required to request a variance for procedural differences in implementation of a rubric on the *Approved List*. Procedural differences include but are not limited to:

- providing additional or more detailed guidance on how to implement the rubric that is not available from the original rubric provider;
- developing (or working with the rubric provider to develop) an evaluation form to support district use of the rubric; or
- maintaining all components of the rubric but choosing to emphasize certain components of the rubric over others.

- H11. Can we adapt a rubric from the *Approved List* by deleting, adding to, or otherwise editing the content?

In general, the Department discourages LEAs from making any adaptations to other providers' rubrics. Any change by an LEA to the content of a rubric on the Department's *Approved List* (including deletions, additions, or other edits) constitutes an adaptation for which a variance would be required. Information on this process can be found at <http://usny.nysed.gov/rttt/teachers-leaders/rubricvariance/>

## I. Scoring and Rating of Evaluations

11. How is each teacher and principal rated? What is “HEDI”?

Each classroom teacher and building principal is rated Highly Effective, Effective, Developing, or Ineffective (HEDI) based on a single composite effectiveness score that is calculated based on the scores received by the teacher or principal in each of the subcomponents.

12. How are points assigned to each subcomponent of the evaluation?

Each district/BOCES must assign points for the three subcomponents based on the standards and requirements prescribed in the Commissioner’s regulations, which contain scoring ranges (scoring bands) for the HEDI rating categories for the State assessment or other comparable measures subcomponent and the locally selected measures subcomponent and textual descriptions for how points should be assigned for each rating category in each of the subcomponents. The process by which points are assigned in subcomponents and the scoring ranges for each of the subcomponents must be transparent and provided in advance to those who will be rated. Each district and BOCES must describe its process for assigning the points for each subcomponent in its APPR plan, which must be published on its website.

For the 2011-12 school year, the Commissioner has set the following scoring ranges for the overall rating categories and the rating categories for the State assessment and other comparable measures subcomponent and the locally selected measures subcomponent.

**Table 2. Subcomponent and Composite Scoring Ranges for 2011-12 School Year**

Level	Student Growth on State Assessments or Other Comparable Measures	Locally Selected Measures of Student Achievement	Other 60 Points	Overall Composite Score
Ineffective	0-2	0-2	Scoring ranges locally determined	0-64
Developing	3-11	3-11		65-74
Effective	12-17	12-17		75-90
Highly Effective	18-20	18-20		91-100

The Commissioner will review the scoring ranges annually before the start of each school year and recommend any changes to the Board of Regents.

*For a discussion of the impact of the Court's Decision and Order in New York State United Teachers, et al. v. Board of Regents, et al., on the regulatory provisions relating to composite scoring bands, please see Section R of this guidance.*

13. How was the composite scoring range determined?

The Regents Task Force on Teacher and Principal Effectiveness spent considerable time discussing how the scoring ranges should be set. The Task Force did not come to a full agreement on the scoring ranges. Based on the Task Force discussions and recommendations, Staff recommendations and on comments received on the initial draft regulations which were posted on our website in April 2011, the scoring ranges in Table 2 were presented to the Board of Regents for approval at its May 2011 meeting.

*For a discussion of the impact of the Court's Decision and Order in New York State United Teachers, et al. v. Board of Regents, et al., on the regulatory provisions relating to composite scoring bands, please see Section R of this guidance.*

14. Why is the cut-off score to get into the "developing" category so high (at 64)? Why not phase in the scoring ranges so that it wasn't as hard in the first year?

Upon consideration of the Task Force's recommendations and the comments we received on the April draft regulations, the scoring ranges were developed. The reason the cut-off score to get into the developing category is set at 64 is to ensure that a teacher who scores in the Ineffective range in both the Student Growth and Locally Selected Measures of Student Achievement subcomponents receives an overall rating of Ineffective. The Commissioner will review the scoring ranges each year and recommend any changes to the Board of Regents.

*For a discussion of the impact of the Court's Decision and Order in New York State United Teachers, et al. v. Board of Regents, et al., on the regulatory provisions relating to composite scoring bands, please see Section R of this guidance.*

15. Is it true that the state's HEDI scoring ranges will cause many more principals in NYC to receive the lowest rating than currently do under NYC's principal performance review?

It is not possible to compare NYC's current principal performance review and approach to arriving at composite scores and ratings for principals to the one in the new NYS regulations. New York City will have to revise aspects of their system including the final composite scoring and rating to comply with the new regulations. In the meantime, it is not possible to compare a score of 60 points on New York's current principal performance review to a score of 60 under the new regulations.

16. Why is there an option to use a team measure of student learning (school-wide, grade or subject) as part of an individual teacher's evaluation? It doesn't seem fair that one teacher's rating would depend on other teachers' performance?

Districts have the option of using group or team measures of student learning as a locally-selected measure or, in some non-tested subjects, as a comparable measure of student growth. The option is provided because some districts may decide that having one team or group measure promotes collaboration. Districts may also decide that using team measures is the most practical, rigorous and comparable way to assess teachers of subjects where student growth is difficult to measure, like arts or CTE, but which support student learning in subjects like English and math.

17. Will there be any further guidance for assignment of points for the subcomponents? Particularly for the 60% other measures?

The Regents Task Force felt that text descriptions of the four levels of performance would be helpful guidance for districts to determine assignment of points within the subcategories. Table 3 gives further guidance for how points should be awarded within the four performance levels for the 60% other measures subcomponent.

**Table 3. Subcomponent and Composite Scoring Ranges for 2011-12 School Year**

Level	Student Growth on State Assessments or Other Comparable Measures	Locally Selected Measures of Student Achievement	60% Other Measures
<b>Ineffective</b>	Results are well-below State average for similar students (or district goals if no State test).	Results are well-below district or BOCES-adopted expectations for growth or achievement of student learning standards for grade/subject.	Overall performance and results are well below standards.
<b>Developing</b>	Results are below State average for similar students (or district goals if no State test).	Results are below district or BOCES-adopted expectations for growth or achievement of student learning standards for grade/subject.	Overall performance and results need improvement in order to meet standards.
<b>Effective</b>	Results meet State average for similar students (or district goals if no State test).	Results meet district or BOCES-adopted expectations for growth or achievement of student learning standards for grade/subject.	Overall performance and results meet standards.
<b>Highly Effective</b>	Results are well-above State average for similar students (or district goals if no State test).	Results are well-above district or BOCES-adopted expectations for growth or achievement of student learning standards for grade/subject.	Overall performance and results exceed standards.

18. Will common branch teachers receive two scores, one each for ELA and math?

Common branch teachers will receive a growth or value-added score for ELA and another one for mathematics. NYSED, through its vendor, will combine these scores into a single measure to determine a state-provided growth score for this subcomponent of the educator’s evaluation. The Commissioner will determine the formula for combining these two scores, which we will describe in a separate guidance document.

19. When will educator scores based on state tests be available, and how does that relate to end-of-year evaluation timing?

SED will provide the scores for the growth measures component of each educator’s evaluation by June 15, 2012, or as soon as possible after the State student assessment results are available. All information will be transmitted electronically via secure protocol to the appropriate schools and educators. Upon receipt of such scores, districts must then report the subcomponent scores for a teacher or principal on the locally selected measures subcomponent and the

other measures subcomponent and the total composite effectiveness score for each applicable educator.

- I10. If districts are given the autonomy to determine the point allocation for the locally selected measures and the other 60%, how does the State plan to explain comparisons that will inevitably result?

Section 3012-c of the Education Law and the implementing regulations provide for a new teacher evaluation system. Some of the elements of the new system are determined by the State, but the statute and regulation provide districts and BOCES with flexibility in other areas. NYSED will conduct ongoing monitoring and reporting to analyze trends and patterns in evaluation results to identify districts whose evaluation results appear to have low correlation results with other evidence of student learning. NYSED may require corrective action if low correlation results exists.

- I11. Will NYSED provide guidance on whether to take into account teacher experience in a teacher's evaluation?

SED does not plan to consider educator experience level in calculating teacher or principal growth or value-added scores and recommends that districts not do so either for locally-selected measures of student achievement or the other 60 point measures. While it is true that teachers tend to have worse results in their first year and improve rapidly in their early career years, the overall evaluation rating should reflect where an educator's performance is on an absolute scale. Feedback and development, however, should be targeted to the needs of the educator and will likely differ based on career stage. An early career teacher rated developing needs different support than a seasoned teacher whose results have not yet reached the effective level or who has fallen from it.

- I12. Will NYSED provide guidance on whether to take into account student characteristics in a teacher's evaluation?

When setting district expectations for results on locally-selected measures of student achievement, districts will have to determine how student characteristics should be considered. For the 60 % other measures subcomponent, the NYS Teaching Standards and ISLLC require that educators take steps to reach all students and advance their learning. Evaluators should ensure that educators are utilizing pedagogical practices that differentiate instruction effectively for all students.

- I13. Can you provide some concrete examples of scoring for the 60 points? We are required to provide "transparent" scoring information at the start of the year.

NYSED has provided guidance for scoring the other 60 measures by way of the text descriptions of the four levels of performance (see I7). Districts must

determine locally the details of their approach to assigning 0-60 points to educators for this subcomponent of the evaluation, within the scoring ranges and text descriptions for each rating category for this subcomponent, as prescribed in section 30-2.6 of the Commissioner's regulations. NYSED does not plan to develop example scenarios for these scoring ranges.

- I14. How will the locally selected measure be converted into a point system?

NYSED has provided guidance for scoring locally selected measures by way of the text descriptions of the four levels of performance (see I7). Districts must determine locally the details of their approach to selecting local measures of student achievement consistent with the regulations and to assigning 0-20 points to educators for this subcomponent of the evaluation, within the scoring ranges and text descriptions for each rating category for this subcomponent, as prescribed in section 30-2.6 of the Commissioner's regulations.

- I15. How will the teacher evaluation rubric be converted into a point system?

The process by which points are assigned and the scoring range is determined locally and must be transparent and provided in advance to those who will be rated. Each district and BOCES must describe its process for assigning the other 60 points in its APPR plan, which must be published on its web site.

- I16. Some rubric providers recommend that teachers be assessed at the domain level versus the component level. Will that be acceptable to NYSED?

The details of how the rubric is used to determine points for the other 60 points subcomponent are a matter for local decision-making.

## **J. Evaluators, Training, and Certification**

- J1. Who conducts evaluations of teachers and principals? What is the difference between an "evaluator" and a "lead evaluator"?

The lead evaluator is the primary person responsible for a teacher or principal's evaluation. Typically, the lead evaluator is the person who completes and signs the summative annual professional performance review. To the extent possible, the principal or his/her designee should be the lead evaluator of a classroom teacher. The lead evaluator of a principal should be the superintendent or BOCES district superintendent or his/her designee.

An evaluator is any individual who conducts an evaluation of a teacher or principal, including any person who conducts an observation or assessment as

part of a teacher or principal evaluation. For teachers, an evaluator may be a principal or other trained administrator, or an independent trained evaluator or in-school peer teachers. For principals, an evaluator must be the building principal's supervisor or a trained independent evaluator.

**J2. Are there different training requirements for an evaluator and a lead evaluator? Which evaluators must be certified?**

All evaluators must be appropriately trained, but only lead evaluators need to be certified to conduct evaluations. Districts and BOCES will be required to provide appropriate training and certify their lead evaluators. In-depth state-developed evaluator training will be provided to Network Teams (for teacher evaluation) and representative administrators, potentially in collaboration with a partner organization, (for principal evaluation). Once certified themselves, these staff will be able to "turn-key" the training and oversee the certification of district staff. Districts may choose to take advantage of this training program or they may develop or contract for their own training and evaluator certification programs.

Training must address the areas identified in the regulations. The regulation authorizes a certified school administrator to conduct observations or school visits as part of the APPR prior to completing of evaluator training, so long as he or she becomes properly certified to conduct evaluations prior to the completion of the evaluation. Lead evaluators must be periodically recertified to ensure reliability.

Lead evaluators may provide training in the areas addressed in regulations to evaluators. The capacity and authority of evaluators is determined at the local level. Evaluators who do not hold State certification as a school administrator or superintendent of schools must be fully trained and calibrated before conducting any part of an evaluation.

**J3. What does it mean to be "certified" as a lead evaluator? Who certifies the lead evaluator?**

A certified lead evaluator is an individual who has been trained and calibrated consistent with state regulations to conduct evaluations using the district's selected tools and assessments. Once an evaluator is certified by the district as a lead evaluator, he or she may conduct the entire evaluation, including scoring and rating the teacher/principal.

**J4. What is the timeline of evaluator training roll-out from the State?**

NYSED will offer a model for training lead evaluators, beginning in August 2011 and extending through May 2012, to BOCES network teams and other BOCES - level stakeholders. Districts and BOCES that opt to have evaluators trained by another provider associated with selected teacher and leader practice rubrics may determine the rollout of training, provided all evaluators are fully trained prior

to conducting an evaluation. Evaluators who do not hold State certification as school administrators must be fully trained and calibrated before conducting any part of an evaluation.

- J5. If I am not fully certified as a lead evaluator in time for the 2011-2012 school year, does this mean I am unable to conduct classroom observations?

Not necessarily. A lead evaluator who is certified by the State as a school administrator or superintendent of schools may conduct classroom observations or school visits as part of an APPR prior to completion of the required training provided such training is successfully completed prior to completion of the evaluation.

## K. Teacher and Principal Improvement Plans

- K1. When/under what circumstances must a district or BOCES implement a teacher or principal improvement plan?

Upon rating a teacher or principal as “developing” or “ineffective” through an annual professional performance review, a school district or BOCES must develop and commence implementation of a teacher or principal improvement plan (TIP and PIP, respectively) for such teacher or principal.

A TIP or PIP must be implemented no later than 10 days after the date on which teachers are required to report prior to the opening of classes for the school year.

- K2. How will teacher and principal improvement plans be developed?

The plans will be developed locally through negotiations.

- K3. What are some potential elements of improvement plans?

An improvement plan defines specific standards-based goals that a teacher or principal must make progress toward attaining within a specific period of time, such as a 12-month period, and may include the identification of areas that need improvement, a timeline for achieving improvement, the manner in which improvement will be assessed, and, where appropriate, differentiated activities to support improvement in these areas.

The plan should clearly describe the professional learning activities that the educator must complete. These activities should be connected directly to the areas needing improvement. The artifacts that the teacher or principal must produce that can serve as benchmarks of their improvement and as evidence for the final stage of their improvement plan should be described and could include items such as lessons, student work, or unit plans. The supervisor must clearly

state in the plan the additional support and assistance that the educator will receive. In the final stage of the improvement plan, the teacher or principal should meet with their supervisor to review the plan alongside any artifacts and evidence from evaluations in order to provide a final, summative rating for the teacher or principal.

## L. Data Management

- L1. Why is it important for districts and BOCES to follow the Department's data guidelines and definitions?

In order for New York to meet its federal and State requirements, as well as to ensure that the policies on teacher/principal evaluation system are fair and understandable, the Department needs to develop clear guidelines for determining the teachers and principals who are responsible for student instruction for evaluation purposes.

- L2. What kinds of data will districts and BOCES need to collect in order to determine who is the teacher of record for evaluation purposes?

“Teacher of record” is defined in paragraph **Error! Reference source not found.** Districts and BOCES will need to collect additional data elements to support teacher of record determinations. These new data elements include information about the multiple teachers who may be assigned to a course section; differential instructional weightings between teachers and individual students; and changes in teacher assignment, student enrollment, and student attendance over the duration of a course.

- L3. What happens to teachers/principals who move from one district to another? Does their score move? What if they only have part of a score by the end of the school year?

Teachers or principals who change employers in the middle of the year will be evaluated by each employer in accordance with the APPR. The student growth portion will only be part of this evaluation if the teacher or principal was employed at the time that the assessment was administered, and the teacher of record weighting applied to this calculation will be in proportion to the percent of the course duration that the teacher was assigned to the course section.

- L4. What is the student-teacher link verification process? How will you provide guidance to districts regarding collection, verification, and submission of all data and especially student attendance data at the classroom level?

See <http://www.p12.nysed.gov/irs/sirs/documentation/Teacher-CourseDataCollection-final-5-2-11-2.pdf> for detailed guidance related to the collection and reporting of student-teacher linkage data. Additional information will be provided through future field memos, as well as the Student Information Repository System (SIRS) manual found at <http://www.p12.nysed.gov/irs/sirs>.

As with all other performance accountability submitted to the State, each local district will be responsible for developing a process for teachers, principals, and superintendents to verify that the data submitted to the State are complete and accurate. The State will provide roster verification reports to assist this process using a to-be-determined distribution process.

**L5. What new types of information will districts be required to report on teacher and student data?**

To ensure comparability among schools and districts, a statewide comprehensive course catalog is required for the reporting of course information. Although schools do not need to adopt these statewide codes for local use, it will be necessary to map local codes to State codes when reporting data to the SIRS. Appendix A (later in this document) lists statewide course codes for all elementary/middle-level courses linked to a State assessment (e.g., Grades 3-8 ELA and mathematics) and for secondary-level courses that prepare students to take a Regents exam upon completion of the course (e.g., Integrated Algebra). NYSED will be working with representatives from the field to develop a course catalog for all remaining courses, to be introduced during the 2011-2012 school year.

The data elements to be reported for teacher of record purposes by BOCES, charter schools, and other public schools are captured in the table below.

Table 4 below is specific to teacher/principal evaluation data reporting requirements. It is not comprehensive for all staff/course reporting.

**Table 4. Data Elements to be Reported for Teacher/Principal Evaluation, by Year Required**

	<b>Data Element</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>
1	Unique statewide identifier for all teachers assigned to reported courses	Yes	Yes	Yes
2	Student enrollment in all elementary/middle-level courses linked to a state assessment (e.g., Grades 3-8 ELA and mathematics), using the statewide standardized course codes contained in <u>Appendix A</u>	Yes	Yes	Yes

3	Student enrollment in all secondary-level courses that prepare students to take a Regents exam upon completion of the course (e.g., Integrated Algebra) using statewide standardized course codes contained in <u>Appendix A</u>	Yes (Grades 9 to 12) plus lower grades if the student is taking a Regents examination	Yes (Grades 9 to 12) plus lower grades if the student is taking a Regents examination	Yes (Grades 7 to 12) plus lower grades if the student is taking a Regents examination
4	Duration of reported course section		Yes*	Yes
5	Student-teacher linkage start/end dates for reported course section		Yes*	Yes
6	Duration of student enrollment - teacher assignment linkage duration for reported course section		Yes*	Yes
7 <sup>NC</sup>	Duration of student attendance - teacher assignment linkage duration for course section		Yes*	Yes
8 <sup>NC</sup>	Student-teacher instructional weightings for reported course section **		Yes*	Yes
9 <sup>NC</sup>	Student exclusion-from-evaluation flag for reported course section **		Yes*	Yes
10	Student enrollment in all remaining courses, using to- be-determined statewide standardized course codes		Optional	Yes
11	Evaluation composite score (highly effective, effective, developing, ineffective)		Yes	Yes
12 <sup>NC</sup>	Evaluation component scores (student growth, local student achievement, other local)		Yes	Yes
13	Other personnel data to be used for value-added modeling and policy purposes (teacher preparation program, teacher preparation pathway, certifications earned, highest degree status, years in teacher or principal role)	Yes***	Yes	Yes
14 <sup>NC</sup>	Other personnel data to be used for policy purposes (tenure status)			Yes

\* Student management system vendors were provided with these reporting requirements and are expected to provide their customers with this functionality for the 2011-12 school year.

\*\* Additional requirements to be determined.

\*\*\* Data are currently provided by the TEACH Online Services and BEDS Online reporting systems.

<sup>NC</sup> Data element is not required to be reported by charter schools.

**2011–2012 School Year**

Data elements (1) through (3) are required for all school districts, charter schools and other public schools, **and BOCES**. Elementary school students must be assigned to teachers on a subject-by-subject basis. The comprehensive course catalog will be developed to support the collection of student enrollment and teacher assignment for all elementary-, middle-, and secondary-level courses during the 2012-13 school year. Students will be associated with the principal(s) of their building of enrollment through a matching process with information contained in the NYSEDREF system (see <http://www.oms.nysed.gov/sedref/home.html>).

Data elements (4) through (9) will be collected from school districts and BOCES to support an expanded Teacher of Record policy for the 2011-12 school year and beyond, in particular the capacity to assign multiple teachers to course sections and track student-teacher linkages when student enrollments and teacher assignments change over time. Charter schools must report elements (4) through (6), but are not required to report elements (7) through (9).

Data elements (11) through (13) will be collected to support value-added modeling and other policy purposes. These data will be sourced as described below. Charter schools are not required to report data element (12)

Please use the following Teacher of Record guidance when reporting these data for the 2011-11 school year:

For courses included in the 2011-12 school year collection (grades 3-8 ELA and mathematics, grade 4/8 science, and secondary-level courses associated with a Regents exam), the Teachers of Record are those **teachers** who are **primarily and directly responsible** for a student's learning activities that are aligned to the performance measures of the course consistent with guidelines prescribed by the Commissioner.

### **2012–2013 School Year**

Data elements (1) through (14) will be collected for all courses offered by school districts, other public schools, and BOCES. Students will be associated with the principal(s) of their building of enrollment through data collected in the SIRS. Tenure status will be collected to support value-added modeling and other policy purposes, and will be sourced as described below. Charter schools are not required to report elements (7 through (9), (12), and (14).

#### **L6. What does my district/BOCES/charter school need to do to implement the new data-reporting requirement?**

The procedures for reporting these data are similar to those already in place for reporting student demographic, enrollment, program service, assessment, and special education data to the SIRS. For technical support, please contact your regional data center personnel listed at <http://www.p12.nysed.gov/irs/nystart/tips.html#contax>.

L7. What steps can a district or BOCES take to facilitate participation in the statewide data system in 2011-2012?

The key to successful participation in the statewide data system are student and human resource management systems that contain accurate and complete data for State reporting and subscribes to the appropriate standards for format and content. Schools and districts that have these systems in place will find that transferring data to the SIRS is an efficient process. To ensure that this process is as seamless as possible, please consider the additional recommended steps below:

1. Schools and districts are strongly advised to empower a data coordinator to provide leadership on the collection of data, oversee changes in and maintenance of the local data management systems, and chair a committee of school/district staff charged with ensuring the accuracy of data. This individual should have the authority to assign tasks and deadlines, as required.
2. Verify that your human resource and student management system will be capable of storing these Teacher of Record and other required data elements in the 2011-12 school year.
3. Plan to report subject-level course enrollment for elementary school students no later than the 2011–12 school year.
4. BOCES-operated programs and other schools that may not have a student management system with the capacities described above should continue to make the necessary arrangements to comply with these State requirements.
5. Develop the procedures and train staff to implement the collection, reporting, and verification steps outlined above.

L8. What is the process for reporting professional staff and student course data?

1. For the initial teacher data collection, NYSED provided a statewide unique identifier for every certified professional or person who has been fingerprinted to meet public school employment requirements, who was reported as employed by a school district or charter school or BOCES as of October 6, 2010 (“BEDS Day”), and whose information was contained in the TEACH Online Services system (additional information on TEACH can be found at <http://www.highered.nysed.gov/tcert/teach/home.html>). These identifiers were extracted from TEACH and are available through the Information and Reporting Services Portal (IRSP) application on the NYSED Business Portal at <http://portal.nysed.gov>. Information on how to access this application can be found at <http://www.p12.nysed.gov/irs/irs-portal>. Information on how to

provision accounts for authorized users can be found at <http://www.p12.nysed.gov/seddas/seddashome.html>.

Statewide unique identifiers for professionals not contained in the file provided by NYSED (e.g., a new staff member not employed by the school or district on BEDS Day) are available through TEACH via the NYSED Business Portal at <http://portal.nysed.gov>. Authorized school district personnel may retrieve these identifiers on an as-needed basis.

2. Schools and districts should develop a process to enter and maintain the statewide unique staff identifier in the local human resource data system for all existing and newly hired staff.
3. Local course codes will need to be matched to the statewide standardized course codes in Appendix A.
4. For the 2011-12 school year, data elements (2) through (9) above will need to be extracted from your school's student management system and reported to the SIRS. Data element (1) will need to be extracted from your school's human resource management system to be reported. This process is similar to those used when using current SIRS data reporting extracts.

The guidelines for use of student-teacher instructional weighting and student exclusion flags will be distributed once additional policies have been formulated.

It is anticipated that data elements (11) and (12) above will be extracted from your school's human resource management system. It is anticipated that data elements (13) will be available through the TEACH system (teacher preparation program, teacher preparation pathway, and certifications earned) and the BEDS Online reporting system (highest degree status, years in teacher or principal role, see <http://www.p12.nysed.gov/irs/beds/>).

5. Beginning with the 2012-13 school year, data elements (1) through (13) will be sourced as described above through your school's student or human resource management system. It is anticipated that data element (14) will be sourced from your school's human resource management system.

L9. When can districts and schools begin the process of verifying their data?

Preliminary teacher/course verification reports for districts and schools will be available in June 2011. Additional roster verification reports will be available to teachers and principals during the 2011-12 school year. Schools are encouraged to begin to plan their data verification processes now, including identifying those responsible for coordinating and supporting these verification efforts.

- L10. Which students in a course will be included in the growth-score subcomponent of a teacher's evaluation?

Each student enrolled in a course will contribute toward the learning results measure for all teachers assigned to that course as long as the student has an assessment score associated with that course and, in the case of growth calculations, at least one previous, comparable score.

- L11. Is "teacher of record" determined differently for different subcomponents of the evaluation score? Does the same teacher-of-record policy apply to local assessments and to non-tested subjects?

The teacher-of-record policy applies to all student course enrollments, teacher course assignments, and any assessment that is reported to the State for evaluation or instructional reporting purposes or is not reported to the State but is used by the district for the local achievement portion of the evaluation.

For non-assessment measures, like classroom observation, evaluators should consider all students in the class to be that teacher's responsibility during the observation whether or not the student has enough assessment data to generate a state or local assessment score for the teacher.

- L12. Who is the teacher of record for students at BOCES that belong to a particular district?

Teacher of record determinations will be made for evaluation purposes for every course. The teacher of a course in a BOCES-operated program will be the teacher of record for that course and the students who enroll. Teachers in local districts will be teachers of record for district courses those students enroll in.

- L13. Is there a minimum amount of time a teacher must spend with a student to be considered the teacher of record?

No. There is no minimum time. The State expects to weight partial-course enrollment (or teacher assignment) differently than full-course, but does not plan to set a minimum time before a student is included in the course. The weighting of the amount of time of each student's linkage to the teacher of record for evaluation purposes will be defined through the work of the Task Force and the vendor contracted to perform the value-added analyses.

- L14. What criteria will be used to "flag out" certain students from the class growth score?

Students will be excluded from teacher of record aggregations for evaluation purposes only in extremely limited situations to be determined and published at a future date. Once the rules for the student exclude flag are determined, this data element, like all other data elements used for performance accountability

purposes, will need to be certified as accurate by the principal of a charter school or superintendent of a school district.

**L15. How will the BEDS system capture co-principal information?**

For the 2011-2012 school year, the principal(s) responsible for a school building or BOCES-operated program will be sourced by the data contained in the NYSEDREF system. As with all data contained in NYSEDREF, the information will need to be updated regularly through official district channels.

In 2011-12, the State will have the ability to associate multiple co-principals with a location or program code for evaluation purposes. However co-principals will be considered equally responsible for all students within the school or a BOCES program

For the 2012-13 school year and onward, it will be possible for districts to associate students to principals directly, therefore allowing students within a school or BOCES-operated program to have different principals (e.g., grades K-2 students are assigned to one principal; grades 3-5 to another).

**L16. When can districts and schools begin the process of verifying their data?**

Preliminary teacher/course verification reports for districts and schools will be available in June 2011. Additional roster verification reports will be available to teachers and principals throughout the 2011-12 school year. Schools are encouraged to begin to plan their data verification processes now, including identifying those responsible for coordinating and supporting these verification efforts.

**L17. Will the State collect and aggregate local student assessment results data for evaluation purposes?**

No, the State will not collect local assessment results for the purposes of determining a teacher or principal score on this subcomponent of evaluation. Districts will be responsible for this calculation. However, the state will collect the resulting subcomponent score for each educator (i.e., the score between 0 and 20 assigned as the score on the locally-selected measures subcomponent). Local assessment results may be reported to the State for instructional reporting purposes.

**L18. Is it optional for districts or required that districts (not NYSED) manually adjust student-growth scores to assign co-teachers? Is another option not to assign student growth scores to either teacher; that is, to place the teachers in the “exclude” category in the data submission?**

SED recognizes that not all districts will know the proportion of instruction administered by both teachers in a co-teaching situation in 2011-2012, but encourages districts to assign growth scores in cases where these proportions are known.

## M. Charter Schools

### M1. How does 3012-c apply to charter schools?

Although public charter schools are not legally required to implement Education Law §3012-c, for purposes of participation in the State's RTTT plan and receiving funds to implement Section D activities, charter schools must evaluate all classroom teachers and building principals using a comprehensive annual evaluation system that is consistent with the following elements of Education Law §3012-c:

- (1) is based on multiple measures of effectiveness, including 40% student achievement measures, which would result in a single composite effectiveness score for every teacher and principal;
- (2) differentiates effectiveness for teachers and principals using the following four rating categories: Highly Effective, Effective, Developing, and Ineffective; and use such annual evaluations as a significant factor for employment decisions including promotion, retention, supplemental compensation, and professional development; and
- (3) provides for the development and implementation of improvement plans for teachers or principals rated Developing or Ineffective.

If a public charter school's teachers and/or principals are represented by a collective bargaining agent, such charter school must certify that any contracts comply with the relevant provisions of Education Law §3012-c as stated above before the Section D apportionment will be available to spend on implementation activities. If a public charter school's teachers and/or principals are not represented by a collective bargaining agent, such charter school must certify that it has established a teacher and principal evaluation system that is consistent with the three elements of Education Law §3012-c described above.

### M2. What data must charter schools submit?

Section 119.3 of the Regulations of the Commissioner of Education requires charter schools to submit basic educational data and data on academic and fiscal performance. Additionally, Education Law section 215, which applies to both school districts and educational corporations such as charter schools, requires the submission of reports containing such information as the Regents or the Commissioner may prescribe.

The specific data elements that must be submitted by charter schools are outlined in the table above and at <http://www.p12.nysed.gov/irs/sirs/documentation/Teacher-CourseDataCollection-final-5-2-11-2.pdf>.

## N. Collective Bargaining

### QUESTIONS AND ANSWERS RELATED TO COLLECTIVE BARGAINING AGREEMENTS AND THE NEW COMPREHENSIVE TEACHER AND PRINCIPAL EVALUATION LAW (EDUCATION LAW §3012-c AS ADDED BY CHAPTER 103 OF THE LAWS OF 2010)

**Disclaimer:** This document constitutes the position of the Department relating its interpretation of Education Law §3012-c and other applicable laws. Please note that any matters relating to collective bargaining issues are within the jurisdiction of the New York State Public Employee Relations Board. Therefore, please consult with your school district attorney on matters relating to interpretation of the Taylor Law.

#### N1. RELATIONSHIP OF THE NEW LAW TO EXISTING AGREEMENTS

- (a) What is the relationship of the new law to evaluation provisions contained in existing collective bargaining agreements? What are the immediate obligations of school districts and BOCES?

Education Law §3012-c requires that all collective bargaining agreements for teachers and building principals entered into after July 1, 2010 be consistent with its provisions. It further provides that any conflicting provisions of collective bargaining agreements in effect on July 1, 2010 are not abrogated and remain in effect until there is a successor agreement. In such case, upon entry into a successor agreement, the provisions of Education Law §3012-c apply and the successor agreement must be consistent with the provisions of this section. For example, a successor agreement cannot require that only 15% of all classroom teachers' evaluations be based on student growth on State assessments. This would be inconsistent with Education Law §3012-c.

- (b) What if my district's or BOCES' collective bargaining agreement is effective for three more years? Does the law permit us to modify the evaluation provisions of our contract sooner?

Yes. The law specifically permits districts, BOCES and their local collective bargaining agents to re-negotiate the evaluation provisions in their collective bargaining agreements at any time. It is also possible for a school district or BOCES and their respective teachers' or principals' union to enter into agreements outside their collective bargaining contract to re-negotiate their evaluation process to be consistent with the provisions of Education Law

§3012-c. The Department strongly encourages parties with ongoing contracts to consider re-negotiating any inconsistent provisions in their agreements as soon as possible to hasten statewide implementation of the new evaluation system.

- (c) If we have entered into a new contract, do we have to have the APPR plan completed by September 1, 2011? If not, how long do we have before we have to show teachers the document upon which they will be evaluated in 2011-2012?

Yes, you are required to have the APPR plan completed by September 1, 2011, though if there are portions of the APPR plan that are subject to collective bargaining and collective bargaining has not been completed, you need to identify those provisions that may change a result of collective bargaining and file an amended plan upon completion of such negotiations.

Section 30-2.3(a)(1) of the Commissioner's regulations provides, in pertinent part:

By September 1, 2011, the governing body of each school district shall adopt a plan in accordance with the requirements of this Subpart for the annual professional performance review of its classroom teachers of common branch subjects, English language arts or mathematics in grades four to eight and building principals of schools in which such teachers are employed. 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, 2011 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.

Section 30-2.3(a)(3) of the Commissioner's regulations also requires that:

The plan shall be made available to the public on its web-site no later than September 10 of each school year, or within ten days after its adoption, whichever shall later occur.

Therefore, your governing body must adopt its APPR plan by September 1, 2011 and the plan must be made available to the public on its web-site no later than September 10.

- (d) To the extent that an existing CBA, which has material relative to evaluation, does not cover all aspects of what Chapter 103 and the new regulations require, must the district adopt an APPR plan that fills in the holes? In other words, except for inconsistencies between the existing CBA and the law, must an APPR plan be developed to

cover every aspect of the new law and regulations that is NOT inconsistent with the CBA?

Yes, Education Law 3012-c provides that any conflicting provisions of collective bargaining agreements in effect on July 1, 2010 are not abrogated and remain in effect until there is a successor agreement. Therefore, the legislation only provides an exemption from conflicting provisions and the school district or BOCES must comply with the remaining provisions of the new statute to the extent they are inconsistent with provisions of the collective bargaining agreement.

- (e) If there are conflicts between the new APPR law and a district's existing collective bargaining agreement, can the district wait until its next contract to resolve those differences, as Dr. King seemed to say in the June 2011 webinar?

Education Law §3012-c requires that all collective bargaining agreements for teachers and building principals entered into after July 1, 2010 be consistent with its provisions. It further provides that any conflicting provisions of collective bargaining agreements in effect on July 1, 2010 are not abrogated and remain in effect until there is a successor agreement. Therefore, to the extent there are conflicting provisions in the current contract, the school district or BOCES is not required to comply with the conflicting provisions in Education Law §3012-c.

However, the law also permits districts, BOCES and their local collective bargaining agents to re-negotiate the evaluation provisions in their collective bargaining agreements at any time. It is also possible for a school district or BOCES and their respective teachers' or principals' union to enter into agreements outside their collective bargaining contract to re-negotiate their evaluation process to be consistent with the provisions of Education Law §3012-c. The Department strongly encourages parties with ongoing contracts to consider re-negotiating any inconsistent provisions in their agreements as soon as possible to hasten statewide implementation of the new evaluation system.

- (f) I'm told that we should "keep this out of the regular contract and regular contract negotiations." What does this mean? Does whatever is negotiated need to be finalized in a memorandum of agreement?

It is a local decision on whether to negotiate provisions relating to the new teacher/principal evaluation in a separate agreement or in conjunction with the primary collective bargaining agreement. A school district or BOCES should consult with their local attorney as to how and when these items should be negotiated and whether a memorandum of agreement is needed.

- (g) What should my district include in the APPR plan required to be posted on September 1, 2011 if a conflict with an existing collective

bargaining agreement prevents the district from adopting a new APPR plan in accordance with Education Law §3012-c?

The district should post its existing APPR plan applicable to all its classroom teachers and principals, with a notation that the district was unable to adopt a new APPR plan because of a conflict with existing collective bargaining agreements and identifying what provisions are in conflict.

- (h) Section 30-2.3 of the Commissioner's regulations provides: "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, 2011 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".

Does this mean that a school district or BOCES that is at impasse or is otherwise unable to complete collective negotiations on portions of the plan by September 1, 2011 is not obligated to submit a complete APPR plan by that date?

No. In this situation, the school district or BOCES must submit an APPR plan that addresses every element required under the APPR regulations. To the extent permissible by law, where negotiations have not been completed by September 1, 2011, the school district or BOCES must include a provision addressing the matter in negotiations, identify it in the plan as subject to continuing negotiations and submit an amended plan when negotiations are completed.

- (i) Our existing negotiated teachers' contract expires on June 30, 2012. It contains provisions for an Alternative Supervisory Process that can replace the standard written teacher performance review in a given year. Would such an alternative process be permissible after July 1, 2011?

If the alternative supervisory process conflicts with the provisions of Education Law §3012-c, which an alternative evaluation process most likely would, the district or BOCES may use the alternative process until expiration of the contract and a successor agreement is reached. However, upon expiration of the current agreement and entry into a successor agreement, the provisions of Education Law §3012-c shall apply and the successor agreement must be consistent with the provisions of Education Law §3012-c.

## N2. INCORPORATING THE PROVISIONS OF THE NEW LAW INTO AGREEMENTS

- (a) Do new contracts need to reference all the provisions of the new law, i.e., percentages relating to teacher and principal effectiveness and student growth?

No. New collective bargaining agreements do not need to reference all the provisions of the new law. The new agreements and any evaluation system for teachers and principals, however, shall not be inconsistent with the provisions of Education Law 3012-c.

- (b) Must agreements negotiated after July 1, 2010, include provisions linking teacher and principal evaluations and ratings to supplemental compensation?

Pursuant to Education Law section 3012-c all collective bargaining agreements applicable to classroom teachers and building principals entered into after July 1, 2010 shall be consistent with the new law. The law requires that the new evaluations be a significant factor for employment decisions, including, but not limited to promotion, retention, tenure determination, termination and supplemental compensation as well as teacher and principal professional development.

What this means is that any new agreements entered into after this date must allow for the new teacher and principal evaluations to be a significant factor in employment decisions, including, but not limited to, supplemental compensation, in accordance with the phase in schedule required by the law.

- (c) What happens if a CBA is silent on evaluations? Would it be a violation of the Taylor Law to enforce?

Education Law §3012-c provides as follows:

Nothing in this section shall be construed to 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, provided that notwithstanding any other provision of law to the contrary, upon expiration of such term and the entry into a successor collective bargaining agreement the provisions of this section shall apply.

However, this section further provides that "nothing in this section or in any rule or regulation promulgated hereunder shall in any way, alter, impair or diminish the rights of a local collective bargaining representative to negotiate evaluation procedures in accordance with article 14 of the Civil Service Law with the school district or board of cooperative educational services."

The New York State Court of Appeals has held that "[w]here [a collective bargaining agreement] is silent respecting the matter in dispute, unilateral action

by a public employer changing terms and conditions of employment violates the statutory duty to bargain and constitutes an improper practice” (Roma, et al. v. Ruffo, et al., 92 NY2d 489 [1998]). At that point, the district and the union have a duty to bargain these issues. However, to the extent that the collective bargaining agreement is silent on issues that are not considered terms and conditions of employment or evaluation procedures (i.e., evaluation criteria or the standards of evaluation) in Education Law §3012-c, it appears a district could unilaterally impose these requirements. A district should consult with their school attorney to determine what aspects of the new law the district must comply with in light of the Taylor Law.

- (d) The law and regulations provide that “an improvement plan shall be developed locally through negotiations pursuant to article 14 of the Civil Service Law and shall include, but need not be limited to, identification of needed areas of improvement, a timeline for achieving improvement, the manner in which the improvement will be assessed, and, where appropriate, differentiate activities to support a teacher's or principal's improvement in those areas.” Does this mean that each plan must be negotiated individually or can the plans be negotiated collectively?

Education Law section 3012-c(4) explicitly requires that teacher improvement plans be developed locally through collective negotiations. The Department interprets this provision to mean that teacher improvement plans may be negotiated collectively and need not be negotiated individually with every teacher. The specifics of the required elements, such as the areas in need of improvement and the activities to support the teacher's improvement, will vary, but there is no language in Education Law section 3012-c(4) indicating that those elements must be individually negotiated. However, we recognize that the scope of collective negotiations must ultimately be decided by the Public Employees Relations Board. Therefore, we recommend that you consult with your local school district or BOCES attorney on this issue.

### N3. IMPASSE

- (a) What happens if my district's or BOCES' collective bargaining agreement expires after July 1, 2010, but contract negotiations are stalled and a new agreement cannot be reached?

Education Law §3012-c provides that any inconsistent provisions in an agreement in effect on July 1, 2010 continue until entry into a successor agreement. While contract provisions may not be abrogated during this period, districts and BOCES must continue to abide by the applicable provisions of the current APPR regulation for the evaluation of their teachers and building principals (section 100.2[o] of the Commissioner's regulations) (see below).

- (b) What if a school district and its teacher and/or principal bargaining unit(s) are at an impasse in negotiations? Can the district unilaterally decide to comply with Education Law §3012-c?

Under section 209-a(1)(d) of the Civil Service Law school districts must “negotiate in good faith with the duly recognized or certified representatives of its public employees.” The Public Employee Relations Board has held that in certain circumstances, boards can unilaterally impose its bargaining position on the union (see Wappingers Falls [5 PERB 3074]).

The Public Employees Relations Board has held that a school board may unilaterally change a term and condition of employment where: (1) the board has negotiated a change in good faith by negotiating with the employee organization to the point of impasse; (2) it continues thereafter to negotiate the issue; and (3) there are compelling reasons for the board to unilaterally act.

Ultimately, the Public Employee Relations Board will need to make a determination as to whether these factors exist.

- (c) It appears that it will be difficult to successfully negotiate the necessary components of the APPR prior to the mandated implementation date. That said we would then be out of compliance with the statute. We don't want to be out of compliance but could be forced into non-compliance if negotiations are unsuccessful. What are the potential ramifications of this, and do you have any advice moving forward?

Education Law §3012-c requires that all collective bargaining agreements for teachers and building principals entered into after July 1, 2010 be consistent with its provisions. It further provides that any conflicting provisions of collective bargaining agreements in effect on July 1, 2010 are not abrogated and remain in effect until there is a successor agreement. In such case, upon entry into a successor agreement, the provisions of Education Law §3012-c apply and the successor agreement must be consistent with the provisions of this section.

However, under section 209-a(1)(d) of the Civil Service Law, school districts must “negotiate in good faith with the duly recognized or certified representatives of its public employees” and the Public Employee Relations Board has held that in certain circumstances, boards can unilaterally impose its bargaining position on the union (see Wappingers Falls [5 PERB 3074]).

The Public Employees Relations Board has held that a school board may unilaterally change a term and condition of employment where: (1) the board has negotiated a change in good faith by negotiating with the employee organization

to the point of impasse; (2) it continues thereafter to negotiate the issue; and (3) there are compelling reasons for the board to unilaterally act.

Ultimately, the Public Employee Relations Board will need to make a determination as to whether these factors exist.

#### N4. INTERPLAY BETWEEN NEW LAW (Education Law §3012-c) AND EXISTING APPR REGULATION (8 NYCRR §100.2[o])

- (a) How does the new law relate to §100.2(o) of the Commissioner's regulations governing the Annual Professional Performance Review (APPR) of teachers and principals? Are school districts and BOCES required to comply with §100.2(o) of the Commissioner's regulations governing the APPR of teachers and principals for the 2011-2012 school year?

The new statewide evaluation system established by section 3012-c builds on, and does not eliminate, the existing APPR regulations. Specifically, Education Law §3012-c(3) provides:

Nothing in this section shall be construed to excuse school districts or boards of cooperative educational services from complying with the standards set forth in the regulations of the Commissioner for conducting annual professional performance reviews of classroom teachers or principals, including but not limited to required quality rating categories, in conducting evaluations prior to July first, two thousand eleven, or, for classroom teachers or principals subject to paragraph (c) of subdivision two of this section, prior to July 1, two thousand twelve.

Therefore, the APPR plan required to be submitted by September 1, 2011 must address how **all** classroom teachers and principals will be evaluated in 2011-2012:

- Certain teachers and principals are required to be evaluated under §3012-c(2)(b) in 2011-2012.
- The rest (for whom the new statutory system has not yet phased in) are required to be evaluated under §100.2(o).

In effect, during the phase-in of the new system, districts and BOCES will be operating a dual system of evaluations. School districts and BOCES that have not negotiated agreements for the evaluation of all classroom teachers and building principals in accordance with section 3012-c by September 1, 2011, should so indicate in their APPR plans.

In addition to the various requirements for the evaluation of classroom teachers contained in §100.2(o) of the Commissioner's Regulations, there is a **new requirement** that each school district and BOCES must annually review the performance of **all building principals**, according to procedures developed by such body in consultation with such building principals.

However, certain aspects of §100.2(o) that would have been imposed by an emergency rule have not been continued. Therefore, for those classroom teachers and building principals who are subject to §100.2(o) in 2011-2012 (i.e., all who are not yet subject to §3012-c), school districts and BOCES are encouraged—**but not required**—to

- use the four rating categories (highly effective, effective, developing and ineffective); and
- incorporate student growth—

—except where required to do so under the School Improvement Grant (SIG) program.

- (b) Can a school district or BOCES still seek a variance from the requirements set forth in §100.2(o) of the Commissioner's regulations?

Yes, limited variances continue to be available. Section 100.2(o)(2)(vi) of the Commissioner's regulations provides:

- (a) A variance shall be granted from a requirement of this paragraph, upon a finding by the commissioner that a school district or BOCES has executed prior to May 1, 2010, an agreement negotiated pursuant to article 14 of the Civil Service Law whose terms continue in effect and are inconsistent with such requirement.

Therefore, a school district or BOCES may be granted a variance from certain provisions of §100.2(o) if the Commissioner finds that a provision in a collective bargaining agreement executed prior to May 1, 2010 is inconsistent with a requirement in the regulation. Any such variance would only be effective until the school district or BOCES enters into a successor agreement. As noted above, all agreements entered into after July 1, 2010 must be consistent with the new law and incorporate its provisions.

## N5. OTHER LOCALLY SELECTED MEASURES SUBCOMPONENT

- (a) Sections 3012-c(2)(e)(ii) and (f)(ii) require that 20% of an APPR be based on other locally selected measures of student achievement that are determined to be rigorous and comparable across classrooms in accordance with the Commissioner's regulations.

Does this mean that a school district or BOCES is required to negotiate what assessments or locally selected measures the school district or BOCES uses for the evaluation of its classroom teachers and building principals?

*The Court's Decision and Order in New York State United Teachers, et al. v. Board of Regents, et al. states that the locally selected measures of student achievement must be developed locally through the collective bargaining process. School districts and BOCES should consult with their school attorneys about the impact of that portion of that Decision and Order on collective bargaining. The Decision and Order is being appealed. See section R of this guidance for a fuller discussion of that Decision and Order.*

The APPR Regulations do not specify the scope of what are procedures that must be collectively bargained and what is reserved to the employer as management prerogative. Those issues are for the Public Employment Relations Board (PERB) and the courts.

- (b) If a district enters into contract negotiations exactly what does it mean that the district is required to “negotiate the procedures for selecting the local measures of student achievement”? For example, if the district wants to use an assessment like NWEA for the local achievement measure, does the district just negotiate that it will use a measure from the state *Approved List*, and then the district can choose the measure to use? The *procedure vs. substance* piece is not clear.

The Department believes that the selection of assessments and/or measures of student achievement are inextricably intertwined with curriculum decisions and the setting of educational standards, which are within the exclusive province of school district and BOCES officials and are not subject to collective bargaining. However, under the applicable provisions of Education Law section 3012-c(2)(e),(f) or (g) a school district or BOCES is required to negotiate the procedures for the locally selected measures of student achievement. The distinction between the standards or the substance of a decision and procedures derives from the Taylor Law, as it has been interpreted by PERB. Decisions on standards or substance are regarded as management prerogative and are not subject to collective bargaining, while decisions on procedures are [(Matter of the Application of the Board of the Newburgh Enlarged City School Dist., 22 PERB 7009; Elwood Union Free School District v Elwood Teachers Alliance, 10 PERB 3107; Somers Faculty Assn 9 PERB 3014)].

There is no doubt that the dividing line between what constitutes an evaluation procedure vs. the substance of an evaluation or evaluation criteria is not completely clear and will be subject to interpretation. The process for selecting a

local measure of student achievement should be subject to collective bargaining, as that is procedural in nature. Ultimately, however, what constitutes a procedure that must be bargained will be decided by the Public Employees Relations Board. Therefore, where there is a question about procedure versus substance on particular facts, you should consult with your local attorney on this issue.

## N6. APPEAL PROCEDURES

- (a) Does the locally negotiated appeal process override a school district's or BOCES' authority to terminate a probationary teacher?

No, the appeal procedures do not erode the authority of a governing body of a school district or BOCES to terminate probationary teachers or principals during their probationary term consistent with applicable laws and regulations (see Commissioner's regulations §§30-2.1(d); 30-2.11[c]). Generally, a board of education has the unfettered right to terminate a probationary teacher or administrator's employment for any reason unless the employee establishes that he or she was terminated for a constitutionally impermissible reason or in violation of a statutory proscription (Education Law §3012[1][b]).

*On August 24, 2011, Justice Lynch of State Supreme Court, Albany County, issued a Decision and Order in New York State United Teachers, et al. v. Board of Regents, et al., finding several sections of the proposed regulations, including 30-2.1(d) and 2.11(c), invalid to the extent set forth in the Decision and Order. An appeal is being taken by the Board of Regents and the Commissioner from that Decision and Order. Accordingly, we recommend that districts and BOCES consult with their school attorneys regarding the impact of the Court's decision on the law governing employment and tenure decisions. For more information regarding the specific provisions that were declared invalid and the impact of the Court's ruling on New York's teacher and principal evaluation system, please see Section R of this guidance.*

- (b) Can a locally negotiated appeal procedure cause a teacher or principal to acquire tenure by estoppel when an evaluation appeal is pending?

No, section 3012-c of the Education Law requires that annual professional performance reviews be a significant factor in tenure determinations. However, there is nothing that requires that an appeal be exhausted before a tenure determination can be made. On the contrary, appeal procedures shall not cause a teacher or principal to acquire tenure by estoppel when an evaluation appeal is pending that would otherwise prevent the governing body of a school district or BOCES from making tenure decisions with statutorily prescribed timelines (see Commissioner's regulations §§30-2.1(d); 30-2.11[c]).

*On August 24, 2011, Justice Lynch of State Supreme Court, Albany County, issued a Decision and Order in New York State United Teachers, et al. v. Board of Regents, et al.*

*finding several sections of the proposed regulations, including 30-2.1(d) and 2.11(c), invalid to the extent set forth in the Decision and Order. An appeal is being taken by the Board of Regents and the Commissioner from that Decision and Order. Accordingly, we recommend that districts and BOCES consult with their school attorneys regarding the impact of the Court's decision on the law governing employment and tenure decisions. For more information regarding the specific provisions that were declared invalid and the impact of the Court's ruling on New York's teacher and principal evaluation system, please see Section R of this guidance.*

- (c) Section 3012-c indicates that annual professional performance reviews must be a significant factor in employment decisions, including tenure determinations? Must a district or BOCES wait until all three annual professional performance reviews are conducted before a tenure decision can be made?

No, use of annual professional performance reviews as a significant factor in employment decisions does not alter the statutory authority of the governing body of a school district or BOCES to make tenure decisions (see Commissioner's regulations §30-12.1[d]). A school district or BOCES shall factor in any annual professional reviews that have been conducted at the time the employment decision is made. However, it need not wait until all three annual professional reviews are conducted (if an employee has a three year probationary appointment) to make a tenure determination.

*On August 24, 2011, Justice Lynch of State Supreme Court, Albany County, issued a Decision and Order in New York State United Teachers, et al. v. Board of Regents, et al., finding several sections of the proposed regulations, including 30-2.1(d) and 2.11(c), invalid to the extent set forth in the Decision and Order. An appeal is being taken by the Board of Regents and the Commissioner from that Decision and Order. Accordingly, we recommend that districts and BOCES consult with their school attorneys regarding the law governing employment and tenure decisions in light of the Court's decision. For more information regarding the specific provisions that were declared invalid and the impact of the Court's ruling on New York's teacher and principal evaluation system, please see Section R of this guidance.*

- (d) What suggestions do you have for an appeals process in a small district with only two administrators in which many of the APPR's will need to be written by the superintendent?

We would recommend that the appeal process be similar to what the Department has recommended in the model appeal procedure described in our guidance document issued on June 3, 2011. However, the appeal may not be decided by the same individual who was responsible for making the final rating decision. Therefore, if the superintendent evaluated the teacher, he or she cannot render a decision on appeal. The Department would recommend that the board of education appoint another person to decide the appeal.

## O. Model Appeal Procedures

Section 3012-c of the Education Law establishes a comprehensive annual evaluation system for classroom teachers and building principals, as well as the issuance and implementation of improvement plans for teachers and principals whose performance is assessed as either developing or ineffective.

To the extent that a teacher/principal wishes to challenge a performance review and/or improvement plan under the new evaluation system, the law requires the establishment of an appeals procedure, the specifics of which are to be locally negotiated pursuant to article XIV of the Civil Service Law.

To assist the field in developing these procedures, the Department is sharing the following model appeal procedure with school districts and BOCES for use in their negotiations.

This model appeal procedure addresses a teacher's or principal's due process rights while ensuring that appeals are resolved in an expeditious manner.

### **APPEALS OF INEFFECTIVE AND DEVELOPING RATINGS ONLY**

Appeals of annual professional performance reviews should be limited to those that rate a teacher/principal as ineffective or developing only. Additional procedures may be appropriate where compensation decisions are linked to rating categories.

### **WHAT MAY BE CHALLENGED IN AN APPEAL**

Appeal procedures should limit the scope of appeals under Education Law §3012-c to the following subjects:

- (1) the school district's or board of cooperative educational services' adherence to the standards and methodologies required for such reviews, pursuant to Education Law §3012-c;
- (2) the adherence to the Commissioner's regulations, as applicable to such reviews;
- (3) compliance with any applicable locally negotiated procedures applicable to annual professional performance reviews or improvement plans; and
- (4) the school district's or board of cooperative educational services' issuance and/or implementation of the terms of the teacher or principal improvement plan under Education Law §3012-c.

### **PROHIBITION AGAINST MORE THAN ONE APPEAL**

A teacher/principal may not file multiple appeals regarding the same performance review or teacher improvement plan. All grounds for appeal must be raised with

specificity within one appeal. Any grounds not raised at the time the appeal is filed shall be deemed waived.

### **BURDEN OF PROOF**

In an appeal, the teacher or principal has the burden of demonstrating a clear legal right to the relief requested and the burden of establishing the facts upon which petitioner seeks relief.

### **TIMEFRAME FOR FILING APPEAL**

All appeals must be submitted in writing no later than 15 calendar days of the date when the teacher or principal receives their annual professional performance review. If a teacher/principal is challenging the issuance of a teacher or principal improvement plan, appeals must be filed with 15 days of issuance of such plan. The failure to file an appeal within these timeframes shall be deemed a waiver of the right to appeal and the appeal shall be deemed abandoned.

When filing an appeal, the teacher or principal must submit a detailed written description of the specific areas of disagreement over his or her performance review, or the issuance and/or implementation of the terms of his or her improvement plan and any additional documents or materials relevant to the appeal. The performance review and/or improvement plan being challenged must also be submitted with the appeal. Any information not submitted at the time the appeal is filed shall not be considered.

### **TIMEFRAME FOR DISTRICT/BOCES RESPONSE**

Within 15 calendar days of receipt of an appeal, the school district or BOCES staff member(s) who issued the performance review or were or are responsible for either the issuance and/or implementation of the terms of the teacher's or principal's improvement plan must submit a detailed written response to the appeal. The response must include any and all additional documents or written materials specific to the point(s) of disagreement that support the school district's or BOCES' response and are relevant to the resolution of the appeal. Any such information that is not submitted at the time the response is filed shall not be considered in the deliberations related to the resolution of the appeal. The teacher or principal initiating the appeal shall receive a copy of the response filed by the school district or BOCES, and any and all additional information submitted with the response, at the same time the school district or BOCES files its response.

### **DECISION-MAKER ON APPEAL**

A decision shall be rendered by the superintendent of schools or the superintendent's designee, or the chancellor of a city school district in a city having a population of one million or more or such Chancellor's designee, except that an appeal may not be decided by the same individual who was responsible for making the final

rating decision. In such case, the board of education, or the chancellor in the case of a city having a population of one million or more, shall appoint another person to decide the appeal.

**DECISION**

A written decision on the merits of the appeal shall be rendered no later than 30 calendar days from the date upon which the teacher or principal filed his or her appeal. The appeal shall be based on a written record, comprised of the teacher’s or principal’s appeal papers and any documentary evidence accompanying the appeal, as well as the school district or BOCES’ response to the appeal and additional documentary evidence submitted with such papers. Such decision shall be final.

The decision shall set forth the reasons and factual basis for each determination on each of the specific issues raised in the teacher’s or principal’s appeal. If the appeal is sustained, the reviewer may set aside a rating if it has been affected by substantial error or defect, modify a rating if it is affected by substantial error or defect or order a new evaluation if procedures have been violated. A copy of the decision shall be provided to the teacher or principal and the evaluator or the person responsible for either issuing or implementing the terms of an improvement plan, if that person is different.

**EXCLUSIVITY OF SECTION 3012-C APPEAL PROCEDURE**

The 3012-c appeal procedure shall constitute the exclusive means for initiating, reviewing and resolving any and all challenges and appeals related to a teacher/principal performance review and/or improvement plan. A teacher/principal may not resort to any other contractual grievance procedures for the resolution of challenges and appeals related to a professional performance review and/or improvement plan, except as otherwise authorized by law.

**P. State Course Codes for 2010-2011 and 2011-2012**

<b>(State) Course Code</b>	<b>Course Name</b>
01300	Grade 3 English Language Arts
02300	Grade 3 Mathematics
01400	Grade 4 English Language Arts
02400	Grade 4 Mathematics
01500	Grade 5 English Language Arts
02500	Grade 5 Mathematics
01600	Grade 6 English Language Arts
02600	Grade 6 Mathematics

01700	Grade 7 English Language Arts
02700	Grade 7 Mathematics
01800	Grade 8 English Language Arts
02800	Grade 8 Mathematics
03400	Grade 4 Science
03800	Grade 8 Science
01003	English/Language Arts III
02052	Algebra I
02072	Geometry
02106	Trigonometry/Algebra
03051	Biology
03101	Chemistry
03001	Earth Science
03151	Physics
06123	French III
06203	German III
06703	Hebrew III
06143	Italian III
06303	Latin III
06103	Spanish III
04101	U.S. History—Comprehensive
04052	World History and Geography
<b>(State) Course Code</b>	<b>Course Name</b>
01300	Grade 3 English Language Arts

The courses listed above are associated with the assessments listed below. (In some instances, an accelerated student in a Regents course may also take a grade level assessment to meet his or her testing requirements.)

<b>Course Name</b>	<b>Assessment</b>	<b>Assessment Code</b>
Grade 3 English Language Arts	ELA	00800
Grade 3 Mathematics	Math	00801
Grade 4 English Language Arts	ELA	00006
Grade 4 Mathematics	Math	00008
Grade 4 Science (Final Test Score)	Science	00029
Grade 5 English Language Arts	ELA	00802
Grade 5 Mathematics	Math	00803
Grade 6 English Language Arts	ELA	00804
Grade 6 Mathematics	Math	00805
Grade 7 English Language Arts	ELA	00806
Grade 7 Mathematics	Math	00807

Grade 8 English Language Arts	ELA	00009
Grade 8 Mathematics	Math	00010
Grade 8 Science (Final Test Score)	Science	00034

<b>Course Name</b>	<b>Assessment Code</b>
Regents Comprehensive English – January	01040
Regents Comprehensive English – June	06040
Regents Comprehensive English – January/June	16040
Regents Examination in Integrated Algebra – January	01204
Regents Examination in Integrated Algebra – June	06204
Regents Examination in Geometry – January	01205
Regents Examination in Geometry – June	06205
Regents Examination in Algebra 2/Trigonometry - January	01206
Regents Examination in Algebra 2/Trigonometry – June	06206
Regents Living Environment – January	01059
Regents Living Environment – June	06059
Regents Physical Setting/Chemistry – January	01201
Regents Physical Setting/Chemistry – June	06201
Regents Physical Setting/ Earth Science – January	01200
Regents Physical Setting/ Earth Science – June	06200
Regents Physical Setting/Physics – January	01202
Regents Physical Setting/Physics – June	06202
Regents Comprehensive French – January	01053
Regents Comprehensive French – June	06053
Regents Comprehensive Italian – June	06056
Regents Comprehensive Spanish – January	01058
Regents Comprehensive Spanish – June	06058
Regents U.S. History and Government – January	01052
Regents U.S. History and Government – June	06052
Regents Global History and Geography – January	01203
Regents Global History and Geography – June	06203

- P1. There is not currently a course code for a school library course. Should school librarians be thinking about building courses, getting courses into the course catalog, and getting data and tags around the students they collaboratively teach?

A comprehensive course catalog will be available prior to the start of the 2012-13 school year. It will include courses related to the professional activities of school librarians. School librarians may wish to consult with their building principals to discuss the relationship between their programs and the school's course offerings.

## Q. Scoring and Security of State Assessments

### Q1. How will security measures for assessments change?

If the tests are developed at the local level, the tests should be stored in a central, secure place at the school. If tests are photocopied, all copies need to be accounted for and handled in a secure manner.

If the tests come directly from a vendor, inventory the material as soon as it arrives and then place the tests inside the secure location immediately after the inventory is completed.

Test booklets should not be opened until the test administration date, and then just early enough to permit the distribution of booklets prior to the scheduled starting time. The location where test materials are being stored should be checked daily to ensure that the test materials have not been tampered with and that they remain secure. Only authorized persons should have access to the test materials. After the tests have been administered, all test books should be collected and returned to the secure location. Tests should not be used for instructional purposes until all testing and scoring is completed. Tests should not be removed from the secure location until it is time to score them.

To preserve the integrity of the test materials, it is suggested that all staff be directed that they are not to discuss test questions or other specific test content with students or each other, with others online via e-mail or listserv, or through any other electronic means. See the section on test security in the ELA and math School Administrator's Manuals.

To ensure the consistency and fairness of testing, Districts should establish a uniform testing window for each grade and test. Proctors should be trained in the protocols involved in test administration. Proctors should circulate periodically around the room during the administration of the test to ensure that students are recording their responses to test questions in the proper manner and to answer any questions relating to the mechanics of taking the test. However, proctors should never comment to the student on the correctness or sufficiency of any answer. In addition, no one should alter the student's responses on the test once the student has handed in his or her test materials. Proctors should also be familiar with providing testing accommodations to students with disabilities and English language learners. See the sections on proctoring, students with disabilities, and English language learners in the ELA and math School Administrator's Manuals.

Q2. Are there any security measures a district can take for teacher-created assessments?

Districts can employ security measures for teacher-created assessments by overseeing the scoring of these assessments. Districts can arrange to securely store the answer keys and to form scoring committees from schools throughout the district. Staff from three or more schools in a district could be allowed to participate in the scoring process. Districts could train scoring leaders, who in turn could train scorers in order to create consistency and fairness in scoring. Districts could arrange for the actual scoring to take place at a central location during a specified time period.

If schools score their own tests, it is prohibited for teachers to score their own students' tests when scores are used for the purposes of the teacher's evaluation, and it is encouraged that a minimum of three scorers be used for each test/student artifact. See the section "Planning the Scoring Operations" in the ELA and math School Administrator's Manuals

## R. Impact of August 2011 Court Decision Declaring Certain Provisions of the APPR Regulations (Subpart 30-2) Invalid

R1. To what extent have the provisions of Subpart 30-2 been declared invalid by a State Supreme Court Justice in the New York State United Teachers v. Board of Regents litigation?

On August 24, 2011, Justice Lynch of State Supreme Court, Albany County issued a Decision and Order in New York State United Teachers, et al. v. Board of Regents, Sup. Ct. Albany Co., (Lynch J.) 8/24/11, Index No. 4320-11, RJI No. 01-11-104073, finding sections 30-2.4(c)(3)(i)(d)<sup>1</sup>, 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. Only those specific provisions of the regulations were challenged in the litigation—the remainder of the regulations remains in full force and effect. An appeal is being taken by the Board of Regents and the Commissioner from that Decision and Order.

The specific provisions that were declared invalid are discussed below.

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<sup>1</sup> The Decision and Order incorrectly references one of the provisions being declared invalid to be section 30-2.4(c)(3)(d), but it is clear from the decision that the intended reference is to section 30-2.4(c)(3)(i)(d).

- R2. Are the provisions invalidated by the State Supreme Court Decision and Order enforceable while an appeal by the State Education Department is pending?

No. The terms of the Decision and Order declare the challenged provisions of the regulations to be invalid, but do not direct any action by the Board of Regents or the Department or otherwise provide for enforcement. In such circumstances, the provisions declared invalid remain invalid to the extent provided in the Decision and Order while an appeal is pending. Therefore, to the extent provided in the Decision and Order, the invalidated provisions are not enforceable, and should not be relied upon as valid by school districts and BOCES unless and until they are determined to be valid on appeal.

Actions taken by the Board of Regents to extend the effectiveness of the emergency rule promulgating Subpart 30-2 while an appeal is pending are intended to preserve the Department's right to appeal, and any invalidated provisions included in such emergency rules will be treated by the Department as unenforceable and not binding on school districts, BOCES, teachers or principals unless and until they are declared valid on appeal.

- R3. How should school districts and BOCES proceed with teacher and principal evaluations in the 2011-2012 school year?

The vast majority of the provisions in Subpart 30-2 are not affected by the lawsuit and some of the provisions declared to be invalid will not have a direct impact on the conduct of teacher and principal evaluations in the 2011-2012 school year. For example, invalidation of the regulatory provisions in sections 30-2.1[d] and 2.11[c] relating to tenure and dismissal of probationary teachers and the provisions of §30-2.12[b] on the Commissioner's authority to order appointment of independent evaluators will not directly impact the conduct of evaluations in 2011-2012.

We anticipate that judicial appeals will be completed before the end of the 2011-2012 school year, so that final regulations can be adopted to prescribe the requirements for critical components of the evaluations such as scoring bands. In the interim, school districts and BOCES should complete the negotiations needed to implement the new APPR system, assuming the provisions declared invalid are not in effect.

- R4. To what extent does the Court's decision preclude the use of State assessments as a locally-selected measure of student achievement?

Section 30-2.4(c)(3)(i)(d) of the proposed APPR regulations adopted as an emergency rule in May 2011 authorized the use of "student achievement on State assessments, Regents examinations and/or Department approved alternative examinations" for the 20% locally selected measures subcomponent without restriction. The Court's Decision and Order declared a part of this

provision to be invalid while leaving in place the option for districts to choose local measures based on State assessments in some circumstances.

Specifically, the Court's decision precludes Districts from choosing as a local assessment the same measure of student achievement utilized under the first State assessment or comparable measures ("growth") subcomponent of evaluation. The Court concluded that this would violate the multiple measures requirement of the statute.

However, the Court held that "§30-2.4[c][3][d] of the regulations is invalid only to the extent that the same 'student growth measures' utilized to measure the first 20% category of §3012-c[2][e] may not be utilized to measure the second category." Thus, the decision permits school districts and BOCES to select different measures of student achievement for local assessments even if they use data from the same State assessment other than the growth data that is used for the first "growth" subcomponent.

The Department interprets the decision to mean that the use of the same State-provided student growth measure on both the growth and local subcomponents is prohibited. However, use of student achievement on the same state assessment (e.g. % of students achieving levels 3 or 4) rather than student growth or a measure involving student growth for student subpopulations only, or other "distinctly different measures of student achievement" should be permissible. We recommend that districts and BOCES consult with their school attorneys over the range of options available to them in light of the Court's decision.

Similarly, SED interprets the Court decision to mean that when there is no State-provided growth measure for a State assessment, (for example, 7<sup>th</sup> grade Spanish) and a "comparable growth measure" is used, districts must choose a different locally-selected measure from the one utilized as a comparable growth measure in the first 20% State assessment or comparable measures or "growth" subcomponent.

The Court also states, however, that the measures of student achievement from State assessments applied for the locally-selected measures evaluation category must be developed locally through collective bargaining.

- R5. How should school districts and BOCES implement the remaining 60 points of the evaluation in light of the Court's decision striking down the provisions of the APPR regulations requiring that 40% of the remaining 60 points of the evaluation be dedicated to classroom observations, that multiple observations be held and that no more than 5 points be used for teacher progress on professional growth goals?

The Court invalidated these provisions relating to classroom observations and the remaining 60 points of the evaluation on the basis that Education Law §3012-c requires that the evaluation measures for the 60 point category be collectively bargained. Under the Court's decision, school districts and BOCES are not prohibited from bargaining for provisions that provide for multiple observations, require that 40 of the 60 points be dedicated to classroom observations and set a 5 point limit on teacher professional growth goals.

We recommend that districts and BOCES negotiate such provisions, since they will be imposed if we are successful on appeal.

This recommendation is grounded in research that supports the use of multiple and rigorously designed classroom observations as an effective means of evaluating teacher performance. Such research indicates that multiple classroom observations provide a more valid and reliable gauge of teacher effectiveness than a single observation. Also, no other measure of teacher practice has been found to be as reliable as classroom observation.

It should also be noted that the Court decision did not invalidate the provisions of the regulations that require that a teacher's performance under the "60 percent other measures" category be based on a Department-approved teacher practice rubric that, among other things, broadly covers the New York State Teaching Standards. To fully and effectively utilize these rubrics and assess every New York State Teaching Standard at least once a year for all teachers, as the regulations require, would effectively necessitate multiple classroom observations by the lead evaluator.

- R6. How should school districts and BOCES negotiate provisions relating to scoring bands in light of the Court's invalidation of the scoring bands established in the APPR regulation?

The Court declared the scoring bands prescribed in the proposed APPR regulation and included in the emergency rule adopted in May 2011 to be invalid to the extent they violate the multiple measures requirement of the statute. In so doing, the Court explicitly upheld the Commissioner's authority to prescribe the minimum and maximum scoring ranges for each rating category. The scoring bands will be prescribed in the Commissioner's regulations and not in collective bargaining agreements, and the Department will be appealing on this issue. We

recommend that districts and BOCES consult with their school attorneys regarding the range of options available to them in light of the Court's decision.

R7. How does the Court decision affect the regulations around evaluation for building principals?

Although the Court's decision did not explicitly address the regulatory provisions regarding evaluation for principals, we interpret the decision as applying to principals to the same extent that it applies to teachers since the language of Education Law §3012-c relied upon by the Court applies equally to teachers and building principals.

Accordingly, SED interprets the Court's decision to invalidate for principals as well as for teachers the provisions of the regulations to the extent they can be interpreted to allow Districts to select as a local assessment the same measure of student achievement utilized under the first State assessment or comparable measures ("growth") subcomponent of evaluation. Specifically, the provisions of §30-2.4(c)(4)(b)-(d) may not be interpreted to allow the same student growth measures from State assessments to be used for both the State assessment or comparable measures (growth) and the locally-selected assessment subcomponents. However, districts may select as local measures different measures based on the same State assessments, among other options. In other words, such provisions must be interpreted to permit the use of measures from State assessments for principals to the same extent as the use of such measures are permitted for teachers.

Similarly, the provisions of §30-2.4(d)(2)(iii) that require that at least 40 of the 60 points assigned to other measures of principal performance be based upon the principal's leadership and management actions and incorporate one or more visits by a supervisor, even though not challenged in the litigation, would conflict with the holding in the Court's decision that this subcomponent of the evaluation must be determined through collective bargaining. While we regard such provisions to be unenforceable at present, we are appealing the Court's decision and recommend that school districts and BOCES negotiate such provisions, since they will be imposed if we are successful on appeal.

It should also be noted that the Court decision did not invalidate the provisions of the regulations that require that a teacher's or a principal's performance under the "60 percent other measures" category be based on a Department-approved teacher or principal practice rubric. Principal practice rubrics must be grounded in research about leadership practice and, among other things, broadly cover the Leadership Standards. To fully and effectively utilize these rubrics and assess every Leadership Standard at least once a year for all building principals, as the regulations require, would effectively necessitate one or more school visits by the principal's supervisor and an assessment of the building principal's leadership and management actions.

- R8. What did the Court determine with respect to the provisions of the regulations that provided that nothing in Subpart 30-2 shall be construed to affect the statutory right of a school district or BOCES to terminate a probationary teacher or restrict their discretion in making tenure determinations or to terminate or deny tenure to a probationary teacher during the pendency of an appeal from an APPR rating?

The Court's Decision and Order cited to the language of Education Law §3012-c requiring that the APPR be a significant factor for employment decisions, including tenure determinations and termination and stated that "tenure determinations, including both the granting and denial of tenure, must be performed in compliance with the statute." The Court then held that the provisions of §30-2.1(d) and 2.11(c) are invalid "[t]o the extent these regulations provide otherwise."

The Court did not explain what "compliance with the statute" means or how the APPR must be made a significant factor in employment decisions. The Department is appealing the Decision and Order. In the interim, school districts and BOCES should consult with their school attorneys regarding the impact of the Decision and Order on the law governing employment and tenure decisions.