

# Changes to Annual Professional Performance Review (APPR)



Fact Sheet No: 19-09

April 2019 (Rev 18-12)

The 2019-2020 State Budget makes important changes to the student performance portion of the Annual Professional Performance Review, APPR (3012-c and 3012-d). The new APPR language eliminates the requirement to use state tests and gives the local collective bargaining representative the right to negotiate the selection and use of an assessment in a teacher or principal's evaluation with the district. The following is an overview of the amended APPR language and how those amendments fit into the entire APPR process for teachers.

## APPR SYSTEM

The system continues the two category matrix system that includes student performance and teacher observation. This matrix system has produced the lowest number of ineffective ratings since the original law was adopted (Note: The matrix appears on page 5).

## Student Performance Category

All decisions regarding the student performance category will be made locally through the collective bargaining process. The new language eliminates the two tier system where teachers in "tested" subjects must have individual SLOs or growth scores and teachers in "non-tested" subjects individual or group SLO's. It eliminates the calculation and use of the state provided growth model from APPR. The law also eliminates the *requirement* to use state tests in the APPR. This change allows locals to determine whether or not to use the state 3-8 ELA and Math, 4 & 8 Science, NYSESLAT, Alternative Assessment and Regents exams as either individual or group measures in the APPR at the bargaining table.

Each local can choose to continue their current 3012-d transition APPR plan until a new collective bargaining agreement is agreed to that adheres to the new law, with no loss of state aid. All measures already approved for use in APPR are required to remain options under the new law. For example, if locally negotiated, all teachers, including high school Regents teachers, could be covered by group measures, removing the high stakes nature of individual SLOs. The amendments do not give any new authority to the commissioner, the commissioner cannot remove any of the student performance measures already approved nor can the commissioner mandate a new test.

The student performance category continues to have one required and one optional subcomponent, all locally negotiated. The first subcomponent is an SLO consistent with a goal-setting process determined or developed by the commissioner, which results in a student growth score. This subcomponent could be a group measure covering all teachers. This determination is made through collective bargaining. The optional second subcomponent can be either based on a state-created or administered test or based on a state-designed or approved supplemental assessment. The language from 3012-d that created a disincentive to have a second optional subcomponent, effecting the matrix for districts with these subcomponents, has been eliminated from the language.

### Calculating a Student Performance Rating

The Board of Regents has the authority to set weights for the two subcomponents of the student performance category, combining the scores into one rating and determining how teachers receive a rating of Highly Effective, Effective, Developing or Ineffective.

The commissioner’s regulations state that each measure used in the student performance category must result in a score between 0-20. Districts will calculate scores for SLOs using the following table designed by SED.

#### SLO Score Setting

<i>Percent of Students meeting target</i>	<i>Score</i>	<i>Percent of Students meeting target</i>	<i>Score</i>
0-4%	0	49-54%	11
5-8%	1	55-59%	12
9-12%	2	60-66%	13
13-16%	3	67-74%	14
17-20%	4	75-79%	15
21-24%	5	80-84%	16
25-28%	6	85-89%	17
29-33%	7	90-92%	18
34-38%	8	93-96%	19
39-43%	9	97-100%	20
44-48%	10		

A local may negotiate the use of a second measure in the student performance rating.

- If a local chooses to use only the required SLO component, it would count as 100% of the student performance category.
- If a local agrees with the district to use the optional second subcomponent along with the mandatory SLO subcomponent, then the mandatory subcomponent must be weighted at a minimum of 50% and the optional subcomponent must be weighted no more than 50% of the student performance category.

An overall score of 0-20 shall be generated for the student performance category. If an optional second measure is used, the two scores will be combined using a weighted average to produce an overall score.

#### Overall Students Performance Category Score and Rating

<i>Rating</i>	<i>Minimum</i>	<i>Maximum</i>
Highly Effective	18	20
Effective	15	17
Developing	13	14
Ineffective	0	12

### Teacher Observation Category

The new language doesn’t change the 3012-d requirement of a minimum of two observations: one by a principal or other trained administrator, and another by an impartial independent trained evaluator. Observations by trained peer observers are also allowed as an optional third category, if locally negotiated.

- Independent evaluators must be trained and selected by the district:

- May include other administrators, department chairs, or peers (such as teacher leaders on career ladders.)
- Cannot be from the same school building as the teacher being observed but may be from another school in the district (same building is defined as same BEDS code.)
- Hardship waivers are available but must be negotiated and requested annually by February 1. In 2017-2018 247 districts received a waiver. NYSUT is not aware of any waiver requests from a district being turned down.
- Peer evaluators must have been rated effective or highly effective on his/her overall rating the prior school year and can be from the same school or another school in the district.
- Commissioner’s regulations allow for local flexibility on frequency and duration of observations. Plans may exceed the minimum of two observations. All of these procedures must be collectively bargained.
- Commissioner’s regulation requires one observation to be unannounced.
- Videotaped observations are allowed but must be collectively bargained.

### Teacher Practice Rubrics

The selection of the teacher practice rubric to be used in the teacher observation category must be locally negotiated from a menu of state-approved rubrics.

- All observations for a teacher for the school year must use the same approved rubric.
- However, the parties may locally negotiate whether to use different rubrics for teachers who teach different grades and/or subjects.
- Observations must be based only on observable rubric subcomponents and all observable teaching standards must be addressed across the total number of annual observations. However, not every element or indicator needs to be observed or included in each observation.
- Teaching standards that are part of the rubric but are not observable during the classroom observation may be observed during any optional pre-observation or post-observation review or other natural conversations between the teacher and evaluator and incorporated into the observation score.
- Under Education Law 3012-d, artifacts are a prohibited element of teacher evaluations. However, an artifact may be documented as part of an observation cycle (e.g., a lesson plan viewed during the course of the observation cycle may constitute evidence of professional planning).

### Evaluator Training

The regulations continue the requirement for evaluators to be trained. All lead evaluators, independent observers and peer observers must complete training.

The training course for lead evaluators shall include:

- The New York State Teaching Standards;
- Evidence-based observation techniques that are grounded in research;
- Application and use of the student growth percentile model and any other growth model approved by SED;
- Application and use of the state-approved teacher practice rubrics;
- Application and use of any assessment tools the district utilizes to evaluate classroom teachers;
- Application and use of any locally selected measures of student growth used in the optional assessment subcomponent;
- Use of the statewide instructional reporting system;
- The scoring methodology used by the district to evaluate a teacher; and

- Specific considerations in evaluating teachers of English language learners and students with disabilities.

The training course for independent evaluators and peer evaluators shall include:

- The New York State Teaching Standards;
- Evidence-based observation techniques that are grounded in research; and
- Application and use of the state-approved teacher practice rubrics.

### Overall Teacher Observation Score and Rating

- Each observation type (principal/supervisor, independent, peer) would be completed using a 1-4 rubric scale, producing an overall score between 1-4.
  - In the event that a teacher earns a score of 1 on all rated components of the practice rubric across all observations, a score of 0 will be assigned.
- Observation types would be combined using a weighted average, producing an overall observation category score between 1-4. The weights are determined locally through collective bargaining using parameters established by SED.
  - The weight of the principal/supervisor observation is established locally, but must be at least 80% and could be as high as 90%.
  - The weight of the independent observation is established locally, but must be at least 10%.
  - The weight of the optional peer observation is established locally within these constraints.
- This overall observation category score of 1-4 would be converted into a HEDI rating using the locally bargained ranges, that meet the overall rubric score conversion guidelines below. The NYSUT recommended scoring ranges are included in the SED regulations and are bolded in the chart below.
- The resulting rating will be the teacher observation rating used in the matrix to determine a teacher’s overall rating.

### Overall Rubric Score Conversion

	<i>Permissible Statewide Ranges (actual cut scores determined locally)</i>	
	<i>Minimum</i>	<i>Maximum</i>
Highly Effective (H)	<b>3.5 to 3.75</b>	<b>4.0</b>
Effective (E)	<b>2.5 to 2.75</b>	<b>3.49 to 3.74</b>
Developing (D)	<b>1.5 to 1.75</b>	<b>2.49 to 2.74</b>
Ineffective (I)	<b>0</b>	<b>1.49 to 1.74</b>

### Overall Rating

The final rating will be determined using the following matrix or decision table. The teacher’s rating for each category is applied to the rubric to determine the overall rating. While the perception is the matrix means the evaluation is 50 percent tests and 50 percent observation, the reality is there are no percentages attached to the matrix, because it is not mathematical. It is a decision chart. The decision favors the teacher. Neither side of the matrix is 50 percent.

## Matrix

<i>Teacher Observation</i>					
Student Performance		<i>Highly Effective (H)</i>	<i>Effective (E)</i>	<i>Developing (D)</i>	<i>Ineffective (I)</i>
	<b>Highly Effective (H)</b>	H	H	E	D
	<b>Effective (E)</b>	H	E	E	D
	<b>Developing (D)</b>	E	E	D	I
	<b>Ineffective (I)</b>	D	D	I	I

### Prohibited Elements

3012-d contained a list of elements prohibited from being used in teacher evaluation. These were not changed in the amendment and include:

- Evidence of student development and performance derived from lesson plans and student portfolios that are not part of an approved rubric;
- Parent and student surveys;
- Professional goal setting;
- Any district or regional assessment not approved by SED; and
- Any growth or achievement target that does not meet minimum standards.

### Use of APPR Results

- A student may not be instructed, for two consecutive years, in the same subject by teacher(s) who received a rating of ineffective. If a district feels it is impractical to comply, the district can request a teacher-specific waiver from SED. Waivers may be granted if the district cannot make alternate arrangements, a true hardship is demonstrated and the district has an improvement and /or removal plan in place for the teacher in question.
- If a teacher receives two consecutive ineffective ratings, the district may bring a 3020-a/3020-b proceeding and the burden of proof shifts to the teacher with the hearing completed within 90 days.
- If a teacher receives three consecutive ineffective ratings, the district must bring a 3020-a/3020-b and the only defense a teacher can use is fraud or mistaken identity with the hearing completed within 30 days.

### Privacy Law

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

### Teacher Improvement Plans (TIPs)

According to the regulations, a district must develop and implement a teacher improvement plan for teachers receiving a rating of Developing or Ineffective from an APPR conducted under section 3012-d by October 1, in the school year following the school year the teacher received the rating. The improvement plan “shall be developed by the superintendent or his or her designee in the exercise of their pedagogical judgment” and must include at a minimum:

- Identification of needed areas of improvement;
- A timeline for achieving improvement;
- The manner in which the improvement will be assessed; and
- Where appropriate, differentiated activities to support a teacher’s improvement in those areas.

Notwithstanding language in the regulations and guidance, the TIP process should not change without the District bargaining any changes with the union.

## Appeals

The 3012-d regulations continued the appeals process requirements from section 3012-c. The district's APPR plan must describe the appeals process through which a teacher may challenge her or his APPR rating. A teacher may only challenge the following in an appeal:

- The substance of the APPR which includes:
  - Where a teacher is rated Ineffective on the student performance category but rated Highly Effective on the observation category based on an anomaly, as determined locally.
- The district's adherence to the standards and methodologies of the APPR.
- The adherence to the regulations and compliance with locally negotiated procedures.
- District's issuance and /or implementation of the terms of the teacher improvement plan.

## Corrective Action Plans

SED is claiming to have the authority as part of a corrective action plan, to require school districts and their local unions to return to the bargaining table to change negotiated parts of the plan. SED has conducted APPR audits in some districts.

## Advice to Local Leaders

Now that the amendments to the APPR Law have been signed, it is important to focus on next steps at the local level.

1. Nothing has to be done immediately. The new language keeps in place your current transition plan until a new plan is agreed to at the bargaining table, with no loss of state aid.
2. You should review your transition plan to see how it is working for your members. Negotiating a new plan under the amended language gives you the opportunity to make adjustments to the transition plan.
3. In addition to eliminating the growth model, the new language allows you to eliminate individual SLOs for teachers currently required to have an individual SLO ending in a state test. This means all teachers who teach a Regents course can be covered by a group measure.
4. Group measures can also be used for teachers covered by the NYSESLAT, Alternative Assessment or the 4<sup>th</sup> and 8<sup>th</sup> grade science tests. Before beginning to negotiate a new plan, you should determine if the teachers covered by individual SLOs want to be included in a group measure.
5. Once all of these decisions are made, you are ready to negotiate a new plan under the amended language.
6. If you have any questions, contact Dan Kinley at [dkinley@nysutmail.org](mailto:dkinley@nysutmail.org).