

# Changes to Annual Professional Performance Review (APPR)



Fact Sheet 22-07 (Replaces 21-11)

MAY 2022

## 2022 APPR Bill

On May 13, the Governor signed Chapter 201 of the laws of 2022. This bill, which passed unanimously in both the senate and assembly, eliminates the requirement for school districts and BOCES to complete an annual professional performance review (APPR) for any classroom teacher or building principal for the 2021-22 school year. The bill also assures that state funding will not be withheld from any school district for not completing the APPR in these school years. This bill acts as an extension of Chapter 112 of the laws of 2021.

## 2021 APPR Bill

On June 7, the Governor signed Chapter 112 of the laws of 2021. This bill, which passed unanimously in both the senate and assembly, eliminates the requirement for school districts and BOCES to complete an annual professional performance review (APPR) for any classroom teacher or building principal for the 2020-21 school year. The bill also assures that state funding will not be withheld from any school district for not completing the APPR in the 2020-21 school year. A chapter amendment requested by the Governor makes it clear that districts do not have to complete an APPR this year.

## Teacher Tenure Eligibility

Classroom teachers or building principals appointed during the 2017-18, 2018-19, 2019-20 or 2020-21 school years, at the expiration of their probationary term, shall be eligible for tenure if he or she received composite APPR ratings pursuant to section 3012-c or 3012-d, of either effective or highly effective in at least one of the four preceding years and did not receive an ineffective rating in the final year of his or her probationary period, or during the most recent school year where a rating was

## Contents

2022 APPR Bill.....	1
2021 APPR Bill.....	1
Teacher Tenure Eligibility.....	1
Shortened Probationary Period.....	2
2020 Executive Order.....	2
2019 Budget .....	3
APPR System .....	3
Student Performance Category.....	3
Calculating a Student Performance Rating .....	4
SLO Score Setting .....	4
SLO Score Setting City of NY .....	4
Overall Students Performance Category Score & Rating .....	5
Overall Students Performance Category Score & Rating – NYC.....	5
Teacher Observation Category .....	5
Teacher Practice Rubrics .....	6
Evaluator Training.....	6
Overall Teacher Observation Score and Rating.....	7
Overall Rubric Score Conversion.....	7
Overall Rating.....	7
Matrix .....	8
Prohibited Elements .....	8
Use of APPR Results.....	8
Privacy Law .....	8
Teacher Improvement Plans (TIPs) .....	9
Appeals .....	9
Corrective Action Plans .....	9
Variance .....	9
Advice to Local Leaders.....	10

received, and would have been in the superintendents discretion qualified for appointment on tenure based upon performance. In the case of a classroom teacher or building principal appointed during the 2018-19 or 2019-20 school year who has not received composite APPR ratings for 3 consecutive years, no ratings shall be required for the superintendent of schools to recommend for appointment on tenure such teacher or building principal if the teacher or principal would have been, in the superintendent's discretion, qualified for appointment on tenure based upon performance. Classroom teachers or building principals appointed during the 2021-22 school year would be eligible for tenure if they have received composite APPR ratings of either effective or highly effective in at least 2 of the 4 preceding years and did not receive an ineffective rating in the final year of his or her probationary period, or during the most recent school year where a rating was received, and would have been in the superintendent's discretion qualified for appointment on tenure based on performance. These changes ensure teachers hired during these years will not be penalized because of the lack of APPR ratings in the 2019-20, 2020-21 and 2021-22 school years.

### **Shortened Probationary Period**

Any probationary classroom teacher hired in a district during the 2020-21, the 2021-22 or the 2022-23 school year who was appointed on tenure in another school district within the state, the school district where currently employed or a BOCES and who was not dismissed as a result of charges brought pursuant to subdivision one of section 3020-a or 3020-b, shall be appointed for a probationary period of three years; provided that, in the case of a classroom teacher such individual demonstrates that he or she received a 3012-c or 3012-d APPR rating in the 2017-18 or 2018-19 school year. As was written in the law previously, when a shortened probationary appointment based on a prior award of tenure is being made by a BOCES the APPR rating in the final year of service at such other district or BOCES must have been either effective or highly effective. The new law amends this language for 2020-21, 2021-22 or 2022-23 school year BOCES appointments to ratings of effective or highly effective in the 2017-18 or 2018-19 school year in the previous district or BOCES, to account for the ratings gap.

### **2020 Executive Order**

As part of New York State's COVID-19 emergency actions, Governor Cuomo signed an executive order on June 7, 2020 addressing the 2019-20 school year APPR ratings and tenure decisions dependent upon those ratings. As a result of the state's earlier emergency actions of school building closures, virtual teaching and the cancelation of state assessments, districts were unable to complete and comply with the approved Annual Professional Performance Review plans. Required in-person teacher observations were not complete in most districts prior to the buildings being closed and the required student performance measure assessments used for most teachers in their approved plans were canceled due to the pandemic.

The Governor's executive order exempts, to the extent necessary, school districts from completing annual professional performance reviews for classroom teachers and building principals during the 2019-20 school year without the loss of state aid.

The order further addresses tenure decisions for educators in their final year of probation. Under the order, a board of education or the trustees of a common school district, are allowed, for the 2019-20 school year, to grant tenure to those classroom teachers and building principals recommended by the superintendent of schools. These educators must have received the previous requisite annual professional performance review ratings pursuant to §3012-d of the education law, notwithstanding that their annual professional performance review had not been completed and they had not received the necessary effectiveness rating for the 2019-20 school year would have been, in the discretion of the superintendent, qualified for tenure appointment based upon past performance. The ability for the

Board of Education or trustees of a common school district to extend tenure determination for an additional year continues to be an option.

The executive order does not address the lack of 2019-20 APPR ratings on teachers in their first three years of tenure or for tenured teachers seeking a shortened probationary appointment.

### **2019 Budget**

The 2019-2020 State Budget made important changes to the student performance portion of the Annual Professional Performance Review, APPR (3012-c and 3012-d). The Board of Regents adopted emergency regulations on October 8, 2019. The new APPR language eliminated 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 8).

### **Student Performance Category**

All decisions regarding the student performance category will be made locally through the collective bargaining process. The 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		

For the City School District of the City of New York, scores for SLOs that are based on the percentage of students meeting a target shall be calculated in accordance with the minimum percentages below.

#### SLO Score Setting City of NY

<i>Percent of Students meeting target</i>	<i>Score</i>	<i>Percent of Students meeting target</i>	<i>Score</i>
0-9%	0	75-77%	11
10-19%	1	78-80%	12
20-29%	2	81-83%	13
30-39%	3	84-86%	14
40-49%	4	87-89%	15
50-59%	5	90-91%	16
60-62%	6	92-93%	17
63-65%	7	94-95%	18
66-68%	8	96-97%	19
69-71%	9	98-100%	20
72-74%	10		

Any other district may submit a variance request to the department pursuant to section 30-3.16 of Commissioner’s Regulations to use the scoring ranges described in this specific NYC chart.

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 weights shall be established locally, subject to approval by the commissioner in the submitted plan.

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

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

For the City School District of the city of New York, an overall student performance category rating shall be derived from the table below.

### Overall Students Performance Category Score and Rating – NYC

<b>Rating</b>	<b>Minimum</b>	<b>Maximum</b>
Highly Effective	16	20
Effective	11	15
Developing	6	10
Ineffective	0	5

Any other district may submit a variance request to the department pursuant to section 30-3.16 of Commissioner’s Regulations to use the scoring ranges described in this specific NYC chart.

### 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 1st; 274 districts have 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 any methodology as part of an SLO and any optional second measures of student performance used by the district to evaluate its teachers;
- ▶ 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 performance 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</b> to 3.75	<b>4.0</b>
Effective (E)	<b>2.5</b> to 2.75	<b>3.49</b> to 3.74
Developing (D)	<b>1.5</b> to 1.75	<b>2.49</b> to 2.74
Ineffective (I)	<b>0</b>	<b>1.49</b> to 1.74

### 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>			
		<i>Highly Effective (H)</i>	<i>Effective (E)</i>	<i>Developing (D)</i>	<i>Ineffective (I)</i>
Student Performance	<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 1st 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.

## **Variance**

Although newly negotiated plans must adhere to the law (3012-d as amended by Chapter 59 of the Laws of 2019), districts can apply for a variance from one or more of the requirements, outlined in APPR regulations, where the Law delegated responsibility to the commissioner to establish the standards and procedures. These variances may be granted to a district that negotiates the development and implementation of new and innovative approaches to evaluation. These approaches must meet specific criteria and the district must demonstrate how it will ensure differentiated results over time and how the results of the evaluation will be used to provide personalized professional learning opportunities to teachers. Districts must submit and receive approval of an evaluation plan that complies with all the requirements of Education Law section 3012-d and Subpart 30-3 of commissioners regulations prior to or at the same time as the variance submission.

## 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. Districts do not have to complete an APPR in the 2021-2022 school years.
2. The 2019 amendment keeps in place your current transition plan until a new plan is agreed to at the bargaining table, with no loss of state aid.
3. 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.
4. In addition to eliminating the growth model, the 2019 amendment 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.
5. Group measures can also be used for teachers covered by the NYSESLAT, Alternative Assessment or the 4th and 8th 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.
6. Once all of these decisions are made, you are ready to negotiate a new plan under the amended 2019 language.
7. If you have any questions, contact Heather Adams at [Heather.Adams@nysut.org](mailto:Heather.Adams@nysut.org)

*DK/HA/mc*

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