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JOINT E-NSSA & JMT LUNCHEON

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Teacher Evaluation: What Can We Do Now?

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What Must Be Negotiated

- Appeals Process.
- Teacher and Principal Improvement Plans/Process.
- The "procedures" that will be used to develop and select local measures of student achievement, rigorous and comparable across classrooms, representing 20% of the composite score, consistent with Commissioner's regulations.
- The 60% of the composite effectiveness score (non-student achievement measures), consistent with Commissioner's regulations.



Pending Regulations


- UNDER DEVELOPMENT
- MIGHT MANDATE MUCH OF COMPLIANCE
- LIKELY WILL BE TOO LATE FOR IMPLEMENTATION BY JULY 1



STEPS TO TAKE NOW

PENDING REGULATIONS ON TEACHER EVALUATION


1. **Clean House:** Use your existing system to recycle poor performers this year.
 - Move out any probationary staff with questionable performance now if there are any doubts about their performance.



STEPS TO TAKE NOW

2. **Strengthen Your Hiring Process:** to identify and hire the strongest candidates


- Check references
- Check experience
- Train interviewers
- Set standards high, with identified criteria



STEPS TO TAKE NOW


3. **Train Evaluators:** Strengthen training of administrators on supervision and evaluation:

- Get administrators "on board" on high standards and the necessity to write thorough, accurate observation reports as well as evaluations.
 - e.g., train them to be careful with positive comments & not write "references,"
- Especially train principals about their obligation to write the now mandated evaluation based on all elements of the APPR.



STEPS TO TAKE NOW


4. **Models for Evaluation Pending:** Await models for procedures (which are anticipated to be coming from NYSSBA, NYSCOSS, and various commentators) rather than be the "first" or creating a unique system in your district that is different from all others.



STEPS TO TAKE NOW

5. **Prepare for Negotiations about Evaluations:**


- **Set Your Goal:** For example, to embrace these legal changes to improve education, or take the minimal action required ("let this fad" pass over time).
- **Do Not Relinquish Management Rights to Evaluate Staff:**
 - If your contract is open now, insist on an Appeal procedure in exchange for increases in salary:
 - Appeal to be final and binding with Superintendent/Designee with no appeal (i.e., no grievance/arbitration);
 - Models are available;




STEPS TO TAKE NOW

(#5 Continued)

- **Defer Negotiations on the Rest of Section 103** pending the regulations:
 - Reportedly, regulations will specify most of the changes (e.g., criteria/rubric);
 - **Do not put deferrals of Section 103 in the contract;** so they are not subject to the grievance procedures (use side letters).
- **Prepare to Negotiate Criteria/Rubric Away from Table:** (to the extent not specified in the regulations) because these are issues of professional expertise rather than suited to labor bargaining at the table (e.g., perhaps assign to your APPR Planning Committee).



QUESTIONS?





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STEPS TO TAKE NOW **PENDING REGULATIONS ON TEACHER EVALUATION**

1. **Clean House**: Use your existing system to recycle poor performers this year.
 - Move out any probationary staff with questionable performance now if there are any doubts about their performance.

2. **Strengthen Your Hiring Process**: to identify and hire the strongest candidates
 - Check references
 - Check experience
 - Train interviewers
 - Set standards high, with identified criteria

3. **Train Evaluators**: Strengthen training of administrators on supervision and evaluation:
 - Get administrators “on board” on high standards and the necessity to write thorough, accurate observation reports as well as evaluations.
 - e.g., train them to be careful with positive comments & not write “references;”
 - Especially train principals about their obligation to write the now mandated evaluation based on all elements of the APPR.

4. **Models for Evaluation Pending**: Await models for procedures (which are anticipated to be coming from NYSSBA, NYSCOSS, and various commentators) rather than be the “first” or creating a unique system in your district that is different from all others.

5. Prepare for Negotiations about Evaluations:

- Set your goal: For example, to embrace these legal changes to improve education, or take the minimal action required (“let this fad” pass over time).
- Do Not Relinquish Management Rights: to evaluate staff:
 - If your contract is open now, insist on an Appeal procedure in exchange for increases in salary;
 - Appeal to be final and binding with Superintendent/Designee with no appeal (i.e., no grievance/arbitration);
 - Models are available;
 - There is a split among experts as to whether contracts that are retroactive to July 1, 2010 must address these new items.
- Defer Negotiations on the Rest of Section 103: pending the regulations:
 - Reportedly, regulations will specify most of the changes (e.g. criteria/rubric);
 - Do not put Deferrals of Section 103 in the Contract: so they are not subject to the grievance procedures (use side letters).
- Prepare to Negotiate Criteria/Rubric Away from Table: (to the extent not specified in the regulations) because these are issues of professional expertise rather than suited to labor bargaining at the table (e.g., perhaps assign to your APPR Planning Committee).

6. Consider Long-Term Strategy: Comply, Revise, Repeal, or Resist Changes:

- Build grass roots support for legislative action based on these blatant exercises of power and based on support by media reports (movie, articles on media, etc.)

WHAT SCHOOL MANAGEMENT MIGHT LOSE WITH SECTION 103

- A. All matters pertaining to retention, tenure decisions, and termination now appear to be subject to negotiations with the union. These topics previously were a non-mandatory subject of negotiation. (But, Districts may say “no” in negotiations.)
- B. Sixty percent of the criteria for evaluating teachers and administrators are now negotiable. The criteria previously was a management prerogative. This likely will be prescribed to a large extent by regulations.
- C. Commissioner’s Regulations to be issued will now require specific training for evaluators be conducted prior to July 1, 2011. Those evaluators not trained might have their evaluations invalidated. There is no provision stating who will develop the training, who will conduct training, or who pays for its cost [but we know who pays].
- D. TIPS and PIPS must now be negotiated with the union. It is not explicit whether this mandates each individual TIP must be negotiated, or only the procedure or a template. NYSUT will seek to negotiate each; Districts should only negotiate a template or a procedure. If no mutual agreement is reached, an employee may not be removed (except, perhaps, based on insubordination based on evidence of a refusal to formulate a TIP and/or to perform the TIP’s elements).
- E. Probationary and tenured employees may challenge evaluations’ substance, methodology, and adherence to standards. The procedure for such appeals challenging the annual evaluation must be negotiated. The union likely will seek to appeal negative evaluations to arbitration using the grievance procedure or to a panel such as a “peer review” procedure. Districts must protect the key management right to evaluate staff by agreeing to a procedure that is short, based on written appeal (no hearings), and concludes with a decision by the Superintendent that is final and binding (no arbitration, no peer review panels).
- F. This law might be construed to require that a tenured teacher receive two consecutive annual ineffective evaluations before charges can be filed. That would mean that alternating years of ineffective performance cannot be prosecuted under Section 3020-a, at least by the expedited procedure.
- G. The administrators will be under great pressure not to give ineffective ratings to subordinates to avoid challenges and testifying in 3020-a hearings.
- H. The law does not define who evaluates administrators.
- I. There is concern that this law could be interpreted – despite the Commissioner’s statements to the contrary – by courts or arbitrators as requiring that a District issue a probationary teacher two annual “ineffective” evaluations before denying tenure, or as otherwise ending Board discretion on awarding tenure. This concern is based on the provision that performance reviews shall be considered in all employment decisions, including tenure.

INTERESTING READING ON UNION POWER

“The Teachers’ Unions’ Last Stand,” Steven Brill, May 17, 2010; <http://www.nytimes.com/2010/05/23/magazine/23Race-t.html?pagewanted=print> Very informative description of events leading to New York’s new legislation for Race to the Top funding.

“The Key to Saving American Education (We Must Fire Bad Teachers),” Evan Thomas and Pat Wingert, *Newsweek*, March 15, 2010; <http://www.newsweek.com/2010/03/05/why-we-must-fire-bad-teachers.html>

“Invisible Ink in Collective Bargaining: Why Key Issues are not Addressed,” Emily Cohen, Kate Walsh and RiShawn Biddle, July 2008, www.nctq.org/p/publications/docs/nctq_invisible_ink.pdf Describes union power in state legislation including New York.

“Targeting Teachers,” *The Week Magazine*, October 15, 2010

“The New Tammany Hall: Public Sector unions have become a labor aristocracy – and they are bankrupting states and municipalities,” *The Weekly Standard* (Vol. 15, No. 04, October 12, 2009); <http://www.weeklystandard.com>

“Taylor Made: The Costs and Consequences of New York’s Public – Sector Labor Laws,” Terry O’Neil and E.J. McMahon, October 17, 2007; <http://www.empirecenter.org/Special-Reports/2007/10/TaylorMadeReport2.cfm>

The Worm in the Apple: How the Teacher Unions Are Destroying American Education, Peter Brimelow, HarperCollins Publishers (2003) (A critique of teacher unions as a monopoly choking education that must be broken, with a list of “what must be done” that includes ending “agency shop” that requires teachers to pay dues or be dismissed and, also, promoting alternatives.)

Power Grab: How the National Education Association is Betraying Our Children, G. Gregory Moo, Regnery Publishing, Inc. (1999) (A former teacher and principal, the author shows that the teacher union controls education for the union’s ends based upon its right to compel teachers to pay union dues and to submit to union representation; an anti-liberal theme.)

Sample Union Proposals for Contract Provision to Defer Negotiation

The parties recognize their obligation to comply with the New York State Education Department's guidelines concerning the implementation of the new APPR requirements specified in 3012-c of the Laws of New York (Education) and 100.2 (o) of the Regulations of the Commissioner of Education and shall fulfill such obligation in compliance with all applicable laws and regulations.

"The parties agree to re-open negotiations for the purpose of compliance with the New York State Education Department's guidelines concerning the implementation of the new APPR requirements specified in Section 3012-c of the Laws of New York (Education) and Section 100.2(o) of the Regulations of the Commissioner of Education. Said negotiations shall take place when the necessary Commissioner's Regulations and studies by the Regents Task Force on Teacher and Principal Effectiveness have been completed."

Sample Contract Language for Appeals :

Sample Appeal Proposal

- Adopt an appeal procedure for teacher evaluations consistent with the amended Education Law and regulations to be effective on and after July 1, 2011 as a separate document and revise the grievance and arbitration definition of a violation to exclude evaluations.
- To the extent where and effective when teachers may appeal evaluations of their performance (such as where rights under Section 103, Education Law, and Regulations provide for such appeals), the following procedures shall apply and be the exclusive, final and binding remedy and procedure for such appeals (the grievance and arbitration procedures of this contract shall not apply to evaluations, appeals, or this appeal procedure, and the NTA waives any right to pursue any such appeals of teacher evaluations to the Commissioner through Education Law Section 310 or other provisions).
- Any and all appeals of teacher evaluations must be presented in writing to the Superintendent or the Superintendent's designee no later than 10 calendar days from the date the teacher is provided with a copy of the evaluation to be appealed. The teacher's written appeal must present the proof of the grounds on which the appeal is based. The Superintendent or his/her designee must review the written appeal, determine whether the teacher has sufficiently proven the grounds for the appeal, and provide a final and binding written determination of the appeal to the teacher and the NTA within 10 calendar days from the date the Superintendent received the written appeal.

