Honorable Andrew Cuomo
Governor
Executive Chamber
The Capitol
Albany, New York 12224

February 8, 2012

Dear Governor Cuomo:

School district superintendents and boards of education have been doing their best to lead local implementation of new teacher and principal evaluation procedures throughout the state. That work would be demanding under any circumstances because of its complexity and importance. But the complexity has been compounded by unprecedented collective bargaining requirements and the uncertainties raised by pending litigation between the teachers' union and State Education Department.

You have taken an aggressive approach in attempting to expedite implementation of new evaluation practices across the state and have said that if the teachers' union and the Department cannot negotiate a resolution within the next few days, you will propose legislative changes.

As representatives of the officials charged by the public and by state law with leading school systems, we are writing to provide our recommendations for how the evaluation law should be changed.

School districts are caught in the quandary posed by the need for clarity in regulations and the impact of the pending litigation, and the need to move forward. As a result, they face a risk of having their work compromised by subsequent legal developments or perhaps worse, having to live with a hastily agreed upon system of evaluations.

Now the state is threatened with the loss of $1 billion in federal aid, including Race to the Top funds, chiefly due to delays in implementing the new evaluation practices. You are right: New York cannot afford to lose all this federal aid. Furthermore, whatever the direct benefit of Race to the Top funds might be for any single district, every school will ultimately benefit from stronger assessments, curricula, data systems and other statewide improvements that Race to the Top is helping to fund.

We believe there would be unintended consequences to your proposal to link eligibility for state aid increases with timely adoption of new evaluation procedures. The prospect of losing aid would amplify the pressure on superintendents and boards – *much more than on unions* – to make hasty concessions that could weaken the new evaluation systems to the detriment of what would be best for students.

Accordingly, if aid withholding is to remain in the evaluation structure, there must be other changes to the statute to ensure that districts can resolve all issues by the deadline in conformity with the objectives of the state's reform agenda. There is no benefit to students if their schools lose aid; students will benefit if their districts are empowered to adopt sound evaluation procedures on a timely basis.

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As you continue your discussions on teacher and principal evaluations, we submit the attached priority items for your consideration. These ideas have emerged from discussions with board members and superintendents from across the state. We have also attached bill language to implement our recommendations.

One idea which has been suggested is to create a "backstop" or default option which would take effect in any district where a district and a union have been unable to reach local agreement on new evaluation procedures. We see three approaches for constructing such a backstop:

- One approach would be to create state defined default provisions for all evaluation elements required to be negotiated.
- A second would be to authorize district leadership to unilaterally determine some or all evaluation components if negotiations are not completed by a specified date. Given the greater significance of aid withholding for district officials, we see this construct as appropriate to creating greater balance between the sides in negotiations.
- A third approach would be to blend the above methods, establishing statewide default options for some elements, while authorizing school district management to unilaterally determine other components.

To be clear, however, we believe that adoption of the specific statutory changes we recommend would enable districts to finalize new evaluation procedures on a timely basis, and reduce the need to construct a backstop alternative.

Beyond the recommendations included herein, our members believe there are related issues which need to be addressed, such as the cost of training and implementation, changes to teacher discipline procedures, assuring that "growth" or "value-added" models are sound and effective, and ensuring that state testing requirements avoid or minimize impact on instructional time with students.

While we may not always agree on every detail, we do agree with you on the big picture – we must find ways to produce more learning for students with the resources our taxpayers can provide. Accordingly, every procedure established by law must be anchored in the goal of continuous improvement of teaching linked directly to increased student learning.

We look forward to working with you to ensure that school districts employ effective teachers and that our students receive the education that enables them to succeed in college or a career and ultimately thrive in the emerging global economy.

Sincerely,

Robert Reidy, Jr., Ph.D.
Executive Director

Sincerely,

Timothy G. Kremer
Executive Director

cc: Lawrence Schwartz, Secretary to the Governor
David Wakelyn, Ph.D., Deputy Secretary for Education

Specific Recommendations

1. Bargaining, in general

    a. Any references to collective bargaining or negotiations need to make clear that such references do not impose any greater requirements than those mandated by the Taylor Law. Any required negotiations must be limited to items traditionally negotiated under that law[1];

    b. Agreements over APPR (Annual Professional Performance Reviews) should be reached through meet and confer sessions, conducted apart from negotiations over salaries, benefits and working conditions and other mandatory subjects required by the Taylor Law (see footnote 1);

    c. Linking state aid to implementation of APPR would increase the pressure on districts to compromise to the detriment of student interests. However, if there is to be a linkage, superintendents and school boards must have the authority to unilaterally adopt required elements as of a date consistent with deadlines applied to state aid determinations.

2. Probationary teachers

    a. Superintendents and boards must retain the right to dismiss probationary teachers and principals during their probationary period for any reason which is not in bad faith or in violation of statute or law;

    b. If necessary data are not available from the State before tenure decision must be made, superintendents and school boards must have the discretion to postpone the decision. tenure by estoppel should not be granted because a state delay has precluded a district from fully meeting a statutory time line if the district cannot meet the statutory timeline because of a State delay;

    c. If the tenure denial or termination is for a reason or reasons other than performance related to classroom instruction, APPR should not be a factor at all.

3. Rubric

[1] Mandatory subjects are found in section 201 (4) of the Taylor Law and generally include salaries, wages, hours, benefits, leave provisions, workload and disciplinary procedures (N.Y. Civ. Serv. § 201 (4)). Importantly, if non-mandatory subjects are incorporated into a collective bargaining agreement, those subjects become mandatory subjects for future agreements (see *City of Cohoes,* 31 PERB 3020 (1998), et. al; *Greenburgh No. 11 UFSD*, 32 PERB 3078 (1999); School Law, ed. 33 § 15:52, 15:53 (2010)).

a. The choice of rubric to be used in the observation portion of the evaluation process should not be subject to negotiations. If the union and district cannot mutually agree, then the district must have the authority to choose among the rubrics approved by the Education Department.

4. Locally Selected Measures

   a. It should be made clear that districts are required to negotiate only the procedures for selecting locally selected measures, not which measure can be used;

   b. The superintendent and board must have the discretion to choose which locally selected measure is used, from the approved list of locally selected measures;

   c. Again, if linkage between state aid and APPR implementation is maintained, superintendents and school boards must have the unilateral authority to determine elements if negotiations are not resolved as of a date consistent with timelines for state aid determinations;

   d. Consider development of a statewide definition of "rigor" for the 20% local assessments so all districts' assessments are comparable.

5. Appeals

   a. Either the law and subsequent regulations should address a minimum set of standards for the appeal process and offer examples or guidelines on a timely and judicious appeals process, or the Commissioner of Education should have the authority to set minimum appeal standards;

   b. Appeals should be limited to only evaluations where an employee is rated ineffective;

   c. All appeals must remain under the authority of the superintendent and the superintendent should have the final decision;

   d. Superintendents and boards must retain absolute authority to dismiss probationary teachers. Tenure by estoppel should not be granted if the district cannot meet the statutory timeline because of a pending appeal;

   Note: The true sentiment of school district officials is that there should be ***no*** statutory requirement for appeals procedures. Disagreements over appeals procedures have proven to be a commonly cited obstacle to resolving APPR negotiations overall. School districts may be forced to make significant concessions on other issues in order to gain a tolerably workable appeals process. Appeals could be cost prohibitive and time consuming, especially should ratings other than ineffective be subject to appeal.

6. Implementation

a. Fully implement grades 4-8 Math and ELA and all state tested areas in the 2012-2013 school year and implement all non-tested subjects in the 2013-14 school year (Note: As defined by the State Education Department, Student Learning Objectives (SLO) will be challenging and expensive to implement, making a 2012-13 deadline for implementing evaluations in non-tested subjects problematic);

b. It should be absolutely clear that districts are not required to negotiate the development and implementation of assessments for the state's 20 percent of growth for non-tested subjects (Student Learning Objectives). These are intended as the equivalent of the growth measure for educators in areas where there are state tests, and that component is not subject to negotiation.

7. Consider development of a statewide "fall back" plan if agreement and implementation cannot be achieved; or for those districts that may lack either the technical expertise or resources for development of their own plan.

8. The Council and NYSSBA stand ready to assist and support in the development of a formal mechanism to evaluate the law and regulations after a certain number of years post implementation.