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## Comments on Adopted Emergency Regulations of the New York State Education Department Relating to Teacher and Principal Evaluations

August 24, 2015

The New York State Council of School Superintendents (hereinafter “THE COUNCIL”) submits these comments in accordance with Section 202 of the New York State Administrative Procedure Act (“SAPA”) and the corresponding rules of the New York State Education Department (hereinafter “the Department”).

As an initial statement, unaffected by but related to the regulations adopted by the Department on June 15, 2015 pursuant to Education law section 3012-d, THE COUNCIL believes the underlying statute to be irretrievably flawed. While concurrently adopted provisions of law covering teacher tenure, termination of probationary teachers and discipline of tenured teachers will be beneficial to staff management in school districts, it is the opinion of THE COUNCIL that the statutory provision adopted as education law section 3012-d is arbitrary, uninformed and will cause damage to teaching and learning within schools.

The purpose of evaluations is not to utilize complicated algorithms and attach numbers to teachers and principals as an ends and then to sort them into categories for improvement or remediation ; but to improve teaching and school leadership. Evaluations promote that goal by giving districts information to make sound personnel decisions and giving educators feedback to improve their day-to-day performance.

In order to raise the academic success of every student, the purpose of evaluation is first to distinguish successful, struggling teachers, and poor teachers and then to provide continuous improvement, targeted assistance, and expedited termination of each, respectively.

NEW YORK STATE COUNCIL OF SCHOOL SUPERINTENDENTS

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Rather than focus upon good teaching and school leadership in evaluating teachers and principals, the law creates a complex formula which appears designed to categorize and remove a higher percentage of educators, regardless of performance. Further, it puts into place the third “new” teacher evaluation system in five years, forcing school districts to expend ever-more-precious time and resources on implementing a doomed initiative. Finally, this action hurts students most of all through the diversion of resources, increased focus on testing and negative public rhetoric. This law will damage our schools.

There is good research and policy history regarding educator evaluation and the factors that lead to positive student outcomes. We know unequivocally that the rigor of a student’s coursework is the single most important factor in achieving high academic standards. We also know that standardized testing is important to gathering data and improving outcomes, but only when tests are developmentally appropriate, are actually designed to measure display of knowledge and are used for the purpose for which they are designed. Section 3012-d does not utilize these factors in its design.

The overarching opinion of THE COUNCIL is that the regulations adopted by the Department are inevitably flawed in operation due to the flawed structure of the underlying law. While we offer comments herein to improve upon the regulations adopted by the Department pursuant to section 3012-d, THE COUNCIL in no way endorses the current law. In order to create a valid evaluation system for teachers and principals, section 3012-d should be repealed and replaced by a law which allows school districts the tools to fairly and effectively evaluate their employees and make employment decisions based upon legitimate measures of educator effectiveness.

### **Changes to Commissioner’s Regulations Subpart 30-2, Addition of new Subpart 30-3**

Adopted as emergency regulations on June 15, 2015 and noticed for public comment on July 8, 2015, the proposed changes to the commissioner’s regulations regarding teacher and principal evaluations adopt and clarify the statutory provisions adopted by the Legislature and the Governor in education law section 3012-d.

THE COUNCIL offers the following observations and comments for consideration by the Department in making changes to the regulations as adopted:

### Student Performance Measures

One half of the statutory matrix is devoted to scoring teachers and principals based upon student performance, however this weight is excessive and reduces the value of classroom observations, which superintendents believe to have greater value in determining teacher effectiveness. It is the recommendation of THE COUNCIL that the Department utilize its statutory authority in establishing weights for student performance measures to adjust the scoring ranges so as to lessen the value placed on student performance in relation to measures of observable professional practice.

### Observation Measures

The second half of the statutory matrix relies on observable measures of professional practice. Superintendents believe this should be the primary measure of teacher effectiveness. In the previous iteration of APPR, superintendents found the most value in what was referred to as “the other 60%” measures, with more than half of that category derived from principal-led classroom observations. Superintendents say that the state’s requirements sparked productive discussions within schools that led to teachers and administrators “getting on the same page” about how to recognize good instruction. They add that their schools are also conducting classroom observations with more care and gaining more value from them as a result.

By prohibiting the use of some elements now in the “other 60 percent” measures and by mandating use of independent observers, the new law is likely to damage the one part of APPR that seems to have been working, while creating a complicated and unfunded new mandate for schools to satisfy. With the addition of a scaled score for each observation, the currently beneficial conversations around improving instruction may be diminished to conversations surrounding allocation of points.

Much of THE COUNCIL’s concern within the observation category is related to the use of independent evaluators in conducting observations. As one of our members wrote, “The relationship between the teacher and the principal is the one that fosters change and growth. The relationship is vital to the success of all learners.” That relationship is not present with an independent evaluator.

While the use of an independent evaluator is statutorily mandated, the Department has the authority to establish weights to such observations. Within the regulations, the Department has chosen to establish a weight of no less than 10% of the overall observation score and no more than 20% (with principal-led evaluation and peer evaluations to make up the remaining percentage, subject to local negotiation). It is the opinion of THE COUNCIL that the weight

given to observations by an independent evaluator be minimized to the maximum extent possible.

Further, THE COUNCIL has expressed that the use of independent evaluators should not be required for every teacher every year. Rather, as is already the case in some jurisdictions, the use of an independent evaluator should be utilized to differentiate a “fork in the road” where added scrutiny is given to those educators who have shown below-average scoring in another measure or on a previous evaluation. This would maximize efficiency of the system and eliminate unnecessary actions.

It is the recommendation of THE COUNCIL to require district plans to assure a capacity to complete independent observations, but avoid mandating them for every teacher every year (maintaining a “fork in the road,” as previously discussed). Independent observations could be required for teachers rated “Ineffective” more than once or teachers with an Improvement Plan, or mandated for all teachers once every three years, or done on a sample basis as a tool for reviewing a district’s observation practices, or required for districts whose observation ratings appear excessively favorable.

If independent observations are to be required for all teachers, THE COUNCIL recommends ample district flexibility. For example, it should be permissible for curriculum coordinators, special education directors, other administrators, and teacher peers to contribute observations that would be considered by the principal in determining an observation score.

With respect to weights and scoring of observations, the establishment of statewide scoring bands is supported by THE COUNCIL. We have long called for such an action as the simplest way to address claims of skewed local outcomes. While the establishment of statewide scoring is welcome, the ranges to be locally negotiated are not ideal. THE COUNCIL recommends adoption of scoring ranges that are universal, minimizing the need for local collective bargaining and minimizing potential for future claims of skewed local outcomes. The fear is that the permissible flexible scoring ranges adopted by the Department could lead to additional lack of public faith in the evaluations, and unrelated, unnecessary conflict at the local level.

### Use of Artifacts

Artifacts, lesson plans, and student portfolios are an extremely valuable part of teacher observation and evaluation. Outside of an individual classroom observation, these elements are used to inform and grade a teacher’s overall annual evaluation. Without these components, many of the teacher observation rubrics used in school districts cannot be used in whole. They are vital elements of these rubrics.

While the prohibition from using such elements within the evaluation is a component of the law itself, the statutory language can be read as narrowly drawn to exclude these elements only as “evidence of student development and performance...” The law contains no prohibition from using them elsewhere, such as evidence of classroom preparation or good teacher practices.

The regulations adopted by the department appear to be more restrictive than the law. While there is flexibility provided in the regulations by allowing for measuring these elements within an observation, and in the pre and post observation for items not observable during classroom instruction, it would seem this is more restrictive than the statute. The Council recommends the regulations be amended to expressly allow for use of lesson plans, other artifacts of teacher practice, and student portfolios for *any* purpose other than evidence of student development and performance.

### Administrators

While many of the arguments made with respect to teachers will apply by extension to administrators, there are key differences that should be addressed by the Department in changes to the adopted emergency regulations.

The demands on school administrators through the present APPR system are immense and unrealistic. The newly adopted APPR law and regulations will only increase these demands and add responsibilities to already overburdened administrators. Flexibility from certain provisions of the law is essential to ensuring that they can continue to meet their obligations.

The most problematic function of applying the teacher evaluation system to administrators lies with the use of independent evaluators. In some cases, there are no other qualified administrators within a school district to evaluate the principal, in others the district may already share a superintendent or have a joint superintendent/principal, making these observations impracticable. It is the opinion of THE COUNCIL that a waiver process should be formulated to address these issues.

Further, the law should not be interpreted to require independent observations for every principal every year. Independent observations could be required for principals based on tenure status or past results. If independent evaluations continue to be universally required, school districts with limited administrative capacity should be able to apply for a waiver from the requirement.

### Flexibility/Waivers

Every one of the State's 700 school districts is unique in its resources and capabilities. Factors such as community temperament and wealth, labor relations, staff capacity, course offerings, and ability to recruit qualified educators provide challenges or benefits to each superintendent in their quest to operate their school districts, balance their budgets and employ the highest-quality teachers and principals. The State's school districts need a State Education Department that honors this diversity through its application of flexible regulatory parameters and use of waivers from regulatory requirements where practical.

Within the adopted emergency regulations, THE COUNCIL has identified key areas where provisions for local flexibility and waivers should be created:

- Waivers from the independent evaluation requirement for administrators should be created where a school district employs a joint superintendent-principal or where two school districts share a superintendent.
- Waivers from the independent evaluation requirement for teachers should be created where a school district has a single principal.
- Flexibility should be provided to school districts to limit or use independent evaluations for both teachers and principals on a periodic or priority basis.

### Plan Adoption/Local Negotiation

While there are elements within these regulations where THE COUNCIL applauds the Department for providing flexibility – such as flexibility of observations, including options for unannounced, videotaped and partial observations – we recommend the Department limit the use of collective bargaining in determining scoring ranges and observational metrics.

### Hardship Waivers

The November 15, 2015 deadline for plan adoption set in the statute is unrealistic and arbitrary to be sure. While not found in the express regulatory language, the Department's decision to issue four-month waivers (up to September 1, 2016) to school districts unable to meet the November 15 deadline is a welcome decision and something we requested prior to the adoption of regulations.

THE COUNCIL would prefer to have this policy placed directly within the regulations, along with specific guiding criteria to ensure that school districts are able to determine eligibility and likelihood of waiver approval.

The use of waivers will mean that some school districts are able to complete their plans, others will apply for a waiver to give them enough time and still others will apply for multiple waivers, pushing them past the March 1 deadline for use of 3012-d during the current school year. Some may be denied a waiver and lose state aid for the year. The uncertainty of this situation has many school leaders uneasy. Express regulatory parameters of waiver eligibility would go a long way to quelling this uncertainty.

Finally, THE COUNCIL supports the use of a waiver process for those districts who need it – especially with state aid on the line – and applauds the Department for recognizing the problematic nature of the deadline. We do recommend that the Department promulgate one or more model plans whose adoption by a district would assure expeditious approval.

### **Conclusion**

THE COUNCIL feels that the Department has done a respectable job in mitigating the effects of a damaging law. We also appreciate the efforts of Department staff to streamline the submission and review process, as we recommended. Many elements of the current regulations are supported by superintendents and are the result of earlier comments by THE COUNCIL and experienced school leaders. We have chosen not to highlight them herein, but rather to focus upon the remaining regulatory changes superintendents see as necessary.

The comments contained herein are to be considered as improvements upon the current regulations that THE COUNCIL believes will make the law more workable within school districts and will assist school leaders in accomplishing what should be the true goal of a teacher evaluation system: improving instruction for the benefit of student learning.