

**New York State Council of School Superintendents
Task Force on Teacher and Principal Effectiveness
White Paper Pursuant to Chapter 103 of the Laws of 2010**

APPEALS PROCESS

In May, 2010 New York State Education Law was amended by adding Section – 3012-c. This new section addressed annual professional performance reviews (APPR) for classroom teachers and building principals. Specifically, Section 3012-c requires student achievement to be part of teacher and principal evaluation. This law has significant implications for the negotiation process in your district. One of the key elements which is not addressed in statutory or regulatory language and should be negotiated locally is the appeals process. The Council’s Task Force on Teacher and Principal Effectiveness has devoted a great deal of thought and time (including regional meetings) to develop suggested guidelines for the field. The suggestions that follow represent the best thinking of superintendents from all regions in the state.

The Task Force recognizes that contracts with teachers and principals vary across the state. Implementing a vision to ensure a high quality education for the students of New York State cannot be left to chance during the collective bargaining process. The recommendations contained herein are meant to help boards and superintendents to develop a thoughtful, constructive appeals process that advances district goals. This document aims to serve as a basis to steer conversations with boards of education and unions in an effort to structure an evaluation appeals process that is fair and in a way that can be directly linked to student achievement.

The following points represent the Task Force suggestions related to the appeals process. As you consider these points, The Council recommends you consult with your school attorney for guidance. The Task Force’s suggested guidelines for negotiating the appeals process are as follows:

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- Evaluation appeals should be limited to tenured teachers/principals.
- Evaluation appeals should be limited to ineffective evaluation ratings.
- All appeals should commence and end with the superintendent of schools or their designee.
The superintendent should be the determiner of all appeals.
- A principal/teacher may not file more than one appeal on the same evaluation and/or teacher/principal improvement plan (TIP/PIP). This should include any and all parts of the evaluation and/or the improvement plan.
- In districts where superintendents are the evaluator of teachers and/or principals, the designation of the reviewer should be determined by the superintendent.
- The written determination from the superintendent or designee should be a final and binding decision. The appeals process should not be subject to the grievance or other dispute resolution processes included in locally negotiated collective bargaining agreements.
- Appeals should be submitted in writing to the superintendent or designee within no more than fourteen (14) calendar days of the completion of the evaluation. The written appeal should include the reason for the appeal with specific evidence and documentation.
- A written response to the appeal from the evaluator should be submitted to the superintendent or designee within 20 days of the filing of the appeal.
- The decision in an appeal shall be issued in writing within no more than sixty (60) calendar days from the filing of the written appeal.
- The burden of proof should lie with the teacher or principal initiating the appeal.
- The appeal is on the record only and a hearing with the evaluator or reviewer is not required.
- The rating of the evaluator should not be a basis for an appeal.

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- Appeals related to improvement plans should be limited to compliance with the requirements in the statute.
- The superintendent or designee should have the option to uphold a rating, modify a rating, order a re-evaluation or determine another option as a response to the appeal.
- Prior to the implementation of an appeals process, those designated to adjudicate appeals of evaluations, Teacher Improvement Plans (TIPs) and/or Principal Improvement Plans (PIPs) pursuant to the statute, must be trained in a similar manner to those conducting evaluations.
- The written appeal and the determination in the appeal including all related information should be included in the respective teacher's or principal's personnel file.
- Dismissed appeals (confirmed "ineffective" evaluations) should be considered very significant evidence when establishing the case for expedited 3020-a disciplinary hearings.

The aforementioned Task Force's suggestions are intended to provide the field with guidance on recommended elements related to the appeals process. They do not represent a legal opinion.

Although we believe these components should be incorporated into negotiated contracts, it is important to restate that you should consult with your school attorney on all matters related to negotiating the appeals process.

It is our belief that negotiating these guidelines into your collective bargaining agreement will:

- Provide consistency across the state that is essential for high quality education and a high quality professional personnel system, including recruiting, developing, retaining and rewarding effective teachers and principals.
- Provide for a practical implementation of the required appeals process.
- Limit the length of the appeals process and the possibility of substantial litigation.

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- Provides a focus on ineffective teachers/principals which will limit the number of ineffective teacher and principal practitioners.
- Limit the probability of escalating costs to implement the appeals process and related disciplinary proceedings.
- Limit the time required for administrative staffs in school districts statewide who, in many cases, are already reaching capacity limits.
- Provides for a practical application of only a section of an overall sound evaluation system for teachers and principals.

A fair, expedited appeals process will increase the probability that the implementation of the teacher and principal evaluation process included in Chapter 103 of the Laws of 2010 will improve student learning in a professional learning community environment. We hope that this white paper will assist all superintendents in achieving this goal.

The Council Task Force on Teacher and Principal Effectiveness:

Howard Smith, Williamsville, Chair

Jere Hochman, Bedford CSD (SED Blue Ribbon Panel Member)

Jon Hunter, Fairport CSD (SED Blue Ribbon Panel Member)

Christopher Clouet, White Plains

Harriet Copel, Shoreham-Wading River

Jeanne Dangle, Baldwinsville

Kathleen Davis, Holland Patent

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Maureen Donahue, Friendship

Michael Ford, Phelps-Clifton Springs

Chad Groff, Jasper Troupsburg

Meg Keller-Cogan, Clarkstown

Lorna Lewis, East Williston

Maria Rice, New Paltz

Joseph Stoner, Maine Endwell

Colleen Taggerty, Olean

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