



AN APPROACH TO APPR NEGOTIATIONS FOR PRINCIPALS

I. Preliminary Issues

Who does the new law apply to in 2011-12?

For the 2011-12 school year, the law applies only to building principals¹ of schools in which teachers in the common branch subjects, ELA or math in grades 4 through 8 are employed. If a building includes any of those grades and employs teachers in the common branch subjects, ELA or math, the principal of that building would be subject to the law.

Although the regulations permit districts to apply the new APPR rules to all building principals during the 2010-11 school year, there is no requirement to do so.

Who does the new law apply to in 2012-13 and thereafter?

Beginning with the 2012-13 school year, the law applies to all building principals. The law as currently written does not apply to any other administrators.

Does the law apply to a bargaining unit that is currently under a collective bargaining agreement?

It depends.

If a collective bargaining agreement that has been in place since prior to June 30, 2010 contains evaluation provisions that are inconsistent with the APPR law, the terms of the collective bargaining agreement remain in place and are not affected by the new law. In that case, APPR negotiations would be required for the successor agreement.

If, however, the current collective bargaining agreement has no evaluation language or has language that is not inconsistent with the new legislation, then the new law applies.

¹ This summary refers to principals only, although the same analysis would apply to the treatment of teachers. The definition of principal under the law also includes any administrator in charge of an instructional program of a school district or BOCES.

Does my unit have to enter into negotiations regarding APPR?

All units that are entering into new negotiations or are currently under a collective bargaining agreement with no inconsistent evaluation language are required to negotiate certain terms of the APPR process.

Which aspects of APPR must be negotiated?

The law requires negotiations in the following areas (addressed in more detail below):

- i *Employment Decisions* □ the procedure by which APPR□s will be the basis of district employment decisions;
- i *Development* -- the procedure by which APPR□s will be used for □coaching, induction support and differentiated professional development□;
- i *Locally Developed Student Achievement Component of Composite Score* □ the □20% component□;
- i *Non Student Achievement Component of Composite Score* □ the □60% component□;
- i *Principal Improvement Plans*; and
- i *Appeals Procedures*.

What is the deadline for finalization of APPR negotiations?

Each district must adopt an APPR plan for grade 4-8 principals by September 1, 2011 and a plan for all remaining building principals by September 1, 2012.

What happens if the deadline for finalization of APPR negotiations passes without an agreement?

Section 30-2.3 of the Regulations states that □to the extent that any of the items required to be included in the annual professional performance review plan are not finalized by September 1, 2011² as a result of pending collective bargaining negotiations, the plan shall identify those specific parts of the plan and the school district shall file an amended plan upon completion of such negotiations.□

We believe that this indicates a clear intent that school districts may not use the □*Wappingers* doctrine□ to unilaterally impose any terms on a bargaining unit in the six areas identified above.

Therefore, our position is that the areas of negotiation under APPR are mandatory subjects of bargaining and that no terms regarding those areas may be imposed by the district, regardless of the

² A similar provision is included for subsequent school years with respect to building principals other than grades 4-8.

duration of negotiations, as long as those negotiations continue in good faith.

II. Points of Negotiation

Employment Decisions

The law states that the new annual professional performance reviews "shall be a significant factor for employment decisions including but not limited to, promotion, retention, tenure determination, termination, and supplemental compensation." Although the law requires that these employment decisions must be made based upon the annual review, the procedure by which these decisions are made must be collectively bargained.³

Points:

- i the statute requires negotiation of *the extent to which and manner in which* APPR evaluations will impact "promotion, retention, tenure determination, termination, and supplemental compensation" and other employment decisions;
- i it would be advisable to negotiate a strong dichotomy between the implications of the evaluations upon tenured and non-tenured employees. Even under current law, probationary employees are subject to termination on an at-will basis. So negotiations should focus on protections that would help ensure that the evaluations will be only part of the district's consideration in tenure recommendations. As for tenured principals, the statute already has a provision for disciplinary action based on two consecutive Ineffective ratings. Bargaining units should not allow any expansion of the statute in this area. Retention and termination decisions based on APPR evaluations for tenured employees should be limited to only those situations where a principal has received two consecutive Ineffective ratings;
- i individual units should give consideration before entering negotiations as to whether they wish to agree to any supplemental compensation based on APPR evaluations. That issue may be divisive and the district should not be permitted to create a rift within the unit by proposing such supplemental compensation. Determining the unit's inclination in this area in advance will help prevent any such rift.

Development

The law also states that the performance reviews "shall also be a significant factor in teacher and principal development, including but not limited to, coaching, induction support and differentiated professional development." These development methods must also be collectively bargained.

³The wording of the statute is very interesting. It says that the new evaluations must be a significant factor in employment decisions, "which decisions are to be made in accordance with locally [negotiated] procedures." A technical reading of that provision would mean that all employment decisions are subject to negotiations. Although that argument would be relegated to prolonged litigation, it is worth noting.

Points:

- i many districts are attempting to limit the availability of appeals to Ineffective and Developing ratings. In that case, development methods may be used for principals who are rated Effective and wish to enhance that rating;
- i the methods of □coaching, induction support and differentiated professional development□ are not mutually exclusive with PIPs and may be used in conjunction with improvement plans;
- i if any development is made mandatory by the contract, a provision regarding maximum time commitments and compensation in the form of additional leave time should be considered;
- i it would be advisable to include specific limitations as to time commitments and the amount of development required by the agreement. A provision may be added allowing additional development upon the mutual agreement of the district and the employee.

Locally Developed Student Achievement Component of Composite Score

Twenty percent of the effectiveness composite score consists of collectively negotiated measures of student achievement □that are determined to be rigorous and comparable across classrooms in accordance with the regulations of the commissioner.□

Points:

- i the final regulations permit the 20% locally-negotiated student performance component to be the same as the 20% mandated student growth component. This change was strongly opposed by teacher and administrator associations. However, it is important to keep in mind that combining the two measures is not mandatory. It is permissive only;
- i be sure the negotiated measures are designed to meet the □rigorous and comparable across classrooms□ standard, defined in 30-2.4(c)(2);
- i it is advised that these "comparable" tests be agreed upon annually by the parties. This will protect against the situation where the District unilaterally changes the content of the assessments after the unit has agreed to allow them to constitute 20% of their overall scores;
- i an agreement may employ more than one set of locally selected measures for principals □in the same or similar grade configuration or program.□ Therefore, one set of measures may be used □to evaluate principals in some K-5 schools and another set of locally selected measures [may be] used to evaluate principals in the other K-5 schools□ within the same district. This is optional. In some instances (e.g. where the schools within a district vary greatly in student achievement), this option can be implemented to tailor the local measures to the various schools in the district;
- i for principals, this component can be based on State assessments; local assessments (which must be approved); 4, 5 and/or 6-year high school graduation and/or dropout rates (HS only); percentage of students who earn a Regents diploma with advanced designation and/or honors (HS only); percentage of a cohort of students that achieve specified scores on Regents examinations and/or Department approved alternative examinations (HS only); and students' progress toward graduation using □strong

predictive indicators (HS only). Thought should be given in advance of negotiations as to which measures are best suited for your school/district.

Non-Student Achievement Component of Composite Score

The remaining 60% component of the effectiveness score must be developed through collective bargaining consistent with the standards prescribed in the regulations of the commissioner.

Points:

- i Please refer to Council of Administrators and Supervisors APPR presentation materials for an explanation of the relevant standards (ISLLC) and model rubrics;
- i in addition, the parties should define "well below," "below," "average" and "above average" for each of the (ISLLC) categories based upon the presence of objective artifacts, measurements, documents, etc. For example, the presence of four agreed upon artifacts would equal "above average," etc. This will help the principal to adequately prepare for the 60% component of his/her evaluation.

Principal Improvement Plans

If a principal receives a rating of Developing or Ineffective, there must be implemented for that individual a principal improvement plan. The improvement plan must be collectively bargained. As guidance, the law states that improvement plans must include, but need not be limited to, identification of needed areas of improvement, a timeline for achieving improvement, the manner in which improvement will be assessed, and, where appropriate, differentiated activities to support a teacher's or principal's improvement in those areas.

Points:

- i strict deadlines, a well-defined mentoring schedule, written updates and mid-year and end-year evaluations are key provisions to keep in mind when negotiating improvement plans;
- i units should also consider negotiating for an outside mentor for any principal given an Ineffective rating with the cost divided between the unit and the district and an inside mentor for a Developing rating.

Appeals Procedures

Finally, the law mandates that each school district or BOCES must establish an appeals procedure by which the evaluated teacher or principal may only challenge the substance of the annual professional performance review, the school district's [or BOCES] adherence to the standards and methodologies required for such reviews, pursuant to [the new law], the adherence to the regulations of the commissioner and compliance with any applicable locally negotiated procedures, as well as the school district [or BOCES] issuance and/or implementation of the terms of the teacher or principal improvement plan, as required under [the new law]. This appeals

process must also be established by collective negotiations.

Points:

- i this is the area currently being negotiated most aggressively, with many districts pushing for a provision ending the appeals process with the superintendent. For obvious reasons, it is dangerous to allow the superintendent to have the final say on evaluation appeals and this should not be agreed to unless special circumstances exist. NYSED's model appeals process⁴ provides for appeals ending with the Superintendent, "except that an appeal may not be decided by the same individual who was responsible for making the final rating decision";
- i the preference is to employ an outside arbitrator or other third party in the appeal process, but many districts simply will not agree to this. The next fallback could be having appeals end with the Superintendent if the principal received a certain score range (e.g. 55 out of 60 points on his non-achievement portion of his/her evaluation) and ending with a third party if the principal received an Ineffective after receiving 54 or less on his/her observation by the Superintendent;
- i at a minimum, units should seek an appeal beyond the Superintendent on any second consecutive Ineffective evaluation (for reasons stated below);
- i many districts also have requested that appeals be limited to APPRs which result in a score of Ineffective or Developing. This is consistent with the model appeals procedure guidelines promulgated by NYSED and would disallow appeals for ratings of Effective. Units should discuss this concept in advance of negotiations. The ability to appeal ratings of Effective becomes much more important if the contract provides for additional compensation based on ratings of Highly Effective;
- i the law makes the substance of the APPR review, adherence to APPR standards and methodologies and adherence to commissioner regulations subject to appeal. If the unit wants any other aspects (such as bias of the evaluator) to be grounds for appeal, those items must be specified in the CBA;
- i appeals based upon failure to implement PIP plan should be subject to grievance procedure and an outside arbitrator;
- i units should not feel compelled to settle for an appeals process that they are not comfortable with, especially in light of the fact that unilateral imposition of the appeals process is not an option for the district.

III. Other Key Points

- i The biggest "teeth" of the new legislation lie in its revision of 3020-a procedures. Under the new law, two consecutive ratings of Ineffective automatically constitute "very significant evidence of incompetence" which forms the basis of removal under a 3020-a proceeding. In addition, 3020-a proceedings commenced under this new provision will be expedited and will have only one hearing

⁴ See NYSED's *Guidance on New York State's Annual Professional Performance Review Law and Regulations* <http://usny.nysed.gov/rttt/teachers-leaders/fieldguidance.pdf> at p. 45.

officer. No three-member panels will be allowed. It should be noted that, while an evaluation is under appeal it may not be used as the basis of a 3020-a action.

ii. Section 30-2.6 of the regulations creates a weighting system for the effectiveness ratings. Principals will be given ratings of Highly Effective, Effective, Developing or Ineffective in each category,⁵ and these ratings will coincide with a numerical score. The total of these scores result in the principal's overall effectiveness rating. The Ineffective range in each category is worth 0-2 points out of 20. A total score of at least 65 is required to avoid an overall Ineffective rating. This means that the even a perfect score on the subjective component (60 points) cannot avoid an overall Ineffective rating if the principal is in the ineffective range on the two student achievement measures. NYSED states this policy as "not allowing a positive rating based on subjective measures alone."

iii. We strongly recommend that you do not sign any MOA or other APPR-related document without first consulting your union counsel.

iv. To read the regulations adopted on May 16, 2011, visit <http://www.regents.nysed.gov/meetings/2011Meetings/May2011/511bra4.pdf>.

⁵ The 20% mandated student achievement category, the 20% locally-negotiated student achievement category and the 60% locally negotiated other effectiveness measures. See NYSED's *Guidance on New York State's Annual Professional Performance Review Law and Regulations* <http://usny.nysed.gov/rttt/teachers-leaders/fieldguidance.pdf> at p. 26 for a chart of this system.