

# Legal Alert

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## **New York State Board Of Regents Adopts Rules For Evaluating Teacher and Principal Effectiveness Pertaining to Chapter 103 of the Laws of 2010— The New Annual Professional Performance Review**

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From time to time, Keane & Beane, P.C. issues Legal Alerts pertaining to new legislation or recent cases of interest. On May 16, 2011, the New York State Board of Regents adopted regulations that pertain to Chapter 103 of the Laws of 2010. This law established evaluation systems for classroom teachers and building principals. As you are aware, the evaluations will have a significant impact upon many employment decisions made within New York State public schools. This Legal Alert is being distributed to Superintendents of Schools who may in turn disseminate this information to whomever he or she feels will benefit.

The following outline, with attachments, provides an overview of the Regulations adopted by the Board of Regents last week. There are still aspects of this process that need to be addressed by the Commissioner and there are many questions that remain regarding this process and its role in the employment relationships between Boards of Education and its staff. As things develop, Keane & Beane will update our clients to make sure current information is disseminated in a timely fashion.

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**I. OVERVIEW OF THE NEW COMMISSIONER'S REGULATIONS  
PERTAINING TO CHAPTER 103 OF THE LAWS OF 2010**

A) 2011-12 School Year

1. For the 2011-12 school year: Annual professional performance reviews (APPRs) must be conducted in accordance with the requirements of Education Law Section 3012-c (as amended by Chapter 103) and the new Commissioner's Regulations at 8 N.Y.C.R.R. §30-2 for all classroom teachers of common branch subjects or English language arts or mathematics in grades 4-8 and all building principals of schools where such teachers are employed.<sup>1</sup>
2. For all other classroom teachers (i.e., other than classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8) APPRs will continue to be conducted in accordance with Section 100.2 of the Commissioner's Regulations.
3. However, SED has recommended that all teacher and building principals be subject to the new APPR system effective September 1, 2011.

B) 2012-13 School Year

1. For the 2012-13 School year: APPRs must be conducted in accordance with the requirements of Education Law 3012-c (as amended by Chapter 103) and the new Commissioner's Regulations at 8 N.Y.C.R.R. §30-2 for all classroom teachers and all building principals.
2. For the 2012-13 school year, "teacher of record" shall be defined in a manner as yet to be determined by the Commissioner.

C) Application of New Regulations

1. All collective bargaining agreements applicable to classroom teachers or building principals entered into after July 1, 2010 must be consistent with Education Law Section 3012-c and the Commissioner's Regulations.
2. However, if on July 1, 2010, a collective bargaining agreement is in place, Section 3012-c and the Commissioner's Regulations will not act abrogate any conflicting provisions of that agreement until the expiration of the term of the agreement and the entry into a successor collective bargaining agreement. Keane & Beane will issue a separate Alert regarding the bargaining issues involved with Chapter 103 in the month of June 2011.

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<sup>1</sup> For definitions of terminology used in Chapter 103 and 8 N.Y.C.R.R. §30-2, please see Attachment "A."

3. In addition, it is specifically noted that nothing in the Regulations affects the statutory right of a school district or BOCES to terminate a probationary teacher or principal or to restrict a school district's or BOCES' discretion in making a tenure determination pursuant to the law.

## II. ANNUAL PROFESSIONAL PERFORMANCE REVIEW—COMPONENTS

Note: This section refers only to the 2011-12 school year.  
See Section V, *infra*, for APPR components for the 2012-13 School year

- A) For the **2011-12** school year, those teachers and building principals covered by Chapter 103 will have their effectiveness determined according to a “composite effectiveness score.”
  1. Composite effectiveness score is the sum of the following three subcomponent scores:
    - i. Student growth on State assessments or other comparable measures (0-20 points);
    - ii. Locally selected measures of student achievement (0-20 points); and
    - iii. Other measures of teacher and principal effectiveness (0-60 points)
  2. Based upon the composite effectiveness score, a classroom teacher or building principal shall be rated as highly effective, effective, developing or ineffective.<sup>2</sup>
- B) Subcomponents of Composite Effectiveness Scores<sup>3</sup>
  1. Student growth on state assessments
    - i. According to 8 N.Y.C.R.R. §30-2, 20 points of a teacher's or building principal's composite effectiveness score shall be based upon the teacher's or principal's student growth percentile score on State assessments in English language arts and/or mathematics in grades 4-8.
    - ii. “Student growth percentile score” is defined as “the result of a statistical model that calculates each student's change in achievement between two or more points in time on a State assessment or other comparable measure and compares each student's performance to that of similarly achieving students.”
    - iii. “Student growth” is defined as “the change in student achievement for an individual student between two or more points in time.”

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<sup>2</sup> Please see Attachment “B” for a reference chart relating to the composite effectiveness score ratings for the 2011-12 school year.

<sup>3</sup> Please see Attachments “C” and “D” for reference charts setting forth the Composite Effectiveness Scores for classroom teachers and building principals for the 2011-12 school year.

2. Locally selected measures

- i. According to 8 N.Y.C.R.R. §30-2, 20 points of a teacher’s or building principal’s composite effectiveness score shall be based upon locally selected measures of student achievement that are determined to be rigorous and comparable across classrooms
  - a. “Rigorous” means that the locally selected measure is aligned to the New York State learning standards or, in instances where there are no such standards that apply to a subject/grade level, evidence of alignment to research-based learning standards and, to the extent practicable, the locally selected measure must be valid and reliable as defined by the Testing standards [“Standards for Educational and Psychological Testing from the American Psychological Association, National Council on Measurement in Education and American Educational Research Association” 8 N.Y.C.R.R. §30-2.2(s)].
  - b. “Comparable across classrooms” means that the same locally selected measures of student achievement or growth is used across a subject and/or grade level within the school district or BOCES. For principals, the same locally selected measure must be used for all principals in the same or similar program or grade configuration in that school district or BOCES.
- ii. The new APPR Regulations enumerate the “locally selected measures of student achievement” for classroom teachers as follows:
  - a. A student assessment approved by SED pursuant to the request for qualification process;
  - b. A district or BOCES-development measurement;
  - c. A school-wide, group or team metric based on an approved student assessment, an approved student assessment or a district, regional or BOCES-developed assessment across multiple classrooms in a grade level or subject area, for example, school-wide growth on a locally selected math assessment or grade-level growth on the grade four English language arts state assessment;
  - d. Student achievement on State assessments, Regents examinations and/or SED-approved alternative examinations (including, but not limited to, Advanced Placement examinations, International Baccalaureate examinations, SAT II, etc.); or

- e. A structured district-wide student growth goal-setting process to be used with any State assessment on an approved student assessment or other assessment (teacher-created).
- iii. Should a school district or BOCES choose to use measure (b), (c), or (e), the Superintendent of Schools, District Superintendent or Chancellor shall certify, in the APPR Plan that the measure is rigorous and comparable across classrooms and explain how the locally selected measure meets these requirements.
- iv. A school district or BOCES is also permitted to use more than one of the local measures for a grade or subject. For example, using one measure for half of the fifth grade math classes and another measure for the other half of the fifth grade math classes in the district is permissible if the Superintendent of Schools, District Superintendent or Chancellor certifies in the APPR Plan that the measures are comparable and in accordance with the Testing Standards.
- v. Should a school district or BOCES choose a local measure based on State assessments (d), the district or BOCES cannot use the same measure of student growth on the State assessment for both the State assessment subcomponent and the locally selected measures subcomponent.
- vi. The new APPR Regulations enumerate the “locally selected measures of student achievement” for building principals as follows:
  - a. Student achievement levels on State assessments in English language arts and/or mathematics in grades 4-8 (for example, the percentage of students in the school whose performance levels on State assessments are proficient or advanced);
  - b. Student growth on State or other assessments in English language arts and/or mathematics in grades 4-8 for students in each of the performance levels described in 8 N.Y.C.R.R. §100.2(p)(1)(5);
  - c. Student growth or achievement on State assessments in English language arts and/or mathematics in grades 4-8 for students with disabilities and English language learners in grades 4-8;
  - d. Student performance on any or all of the district-wide locally selected measures approved for use in teacher evaluations as described above;
  - e. Four, five and or six year high school graduation and/or dropout rates for principals employed in a school with high school grades;

- f. Percentage of students who earn a Regents diploma with advanced designation and/or honors for principals employed in a school with high school grades;
  - g. Percentage of a cohort of students that achieve specified scores on Regents examinations and/or SED approved alternative examinations (including but not limited to Advanced Placement examinations, International Baccalaureate examinations, SAT II, etc.) for principals employed in a school with high school grades; and/or
  - h. Students' progress toward graduation in the school using strong predictive indicators, including but not limited to 9<sup>th</sup> and 10<sup>th</sup> grade credit accumulation and/or the percentage of students that pass 9<sup>th</sup> and/or 10<sup>th</sup> grade subjects most commonly associated with graduation and/or students' progress in passing the number of required Regents examinations for graduation, for principals employed in a school with high school grades.
- vii. A school district or BOCES is also permitted to use more than one set of the local measures for principals in the same or similar grade configuration or program (for example, one set of locally selected measures is used to evaluate principals in some K-5 schools and another set of locally selected measures is used to evaluate principals in the other K-5 schools in the district), if the Superintendent of Schools or District Superintendent certifies in the APPR Plan that the measures are comparable, in accordance with the Testing Standards.
- viii. Should a school district or BOCES choose a local measure based on State assessments, the district or BOCES cannot use the same measure of student growth on the State assessment for both the State assessment subcomponent and the locally selected measures subcomponent.
3. Other Measures of Teacher and Principal Effectiveness
- i. **Classroom Teachers**<sup>4</sup>

- a. Sixty points of a teacher's composite effectiveness score are based upon multiple measures using the following criteria and performance indicators:
  - i. The teacher acquires knowledge of each student and demonstrates knowledge of student development and learning to promote achievement for all students;

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<sup>4</sup> Please see Attachment "E" for a reference document setting forth Other Measures of Teacher Effectiveness for the 2011-12 school year.

- ii. The teacher knows the content they are responsible for teaching, and plans instruction that ensures growth and achievement for all students;
  - iii. The teacher implements instruction that engages and challenges all students to meet or exceed the learning standards;
  - iv. The teacher works with all students to create a dynamic learning environment that supports achievement and growth;
  - v. The teacher uses multiple measures to assess and document student growth, evaluate instructional effectiveness and modify instruction;
  - vi. The teacher demonstrates professional responsibility and engages relevant stakeholders to maximize student growth, development and learning; and
  - vii. The teacher uses informed goals and strives for continuous professional growth.
- b. Rubric: A teacher's performance on this subcomponent must be assessed based upon a teacher practice rubric approved by SED. The same rubric must be used for all classroom teachers in a given grade/subject area across a school district.
- i. There is a procedure in place should a school district seek to obtain a variance for a rubric that is not approved by SED.
- c. Classroom Observations: At least **40** of the 60 points allocated for other measures of teacher and principal effectiveness must be based on multiple classroom observations. These observations can be performed in-person or by video and shall include at least one observation by a principal or other trained administrator. Some of these allotted points may be based upon classroom observation from independent trained evaluators or in-school peer teachers.
- d. The remaining points of the 60 points must be based upon a combination of any of the following criteria:
- i. Evidence of student development and performance through structured reviews of student work and/or artifacts of teacher practice using portfolios or evidence binder processes;

- ii. Evidence that the teacher develops effective relationships with students, parents, caregivers and relevant stakeholders to maximize student growth, development, and learning through the use of surveys and/or feedback from students, parents/caregivers and/or their peers using structured survey tools; or
  - iii. Evidence that the teacher sets informed professional growth goals and strives for continuous professional growth as demonstrated through teacher self-reflections and teacher progress on professional growth goals, provided that no more than 5 points shall be attributed to this criterion.
- e. Any Teaching Standards that are not addressed in the classroom observations shall be assessed by the district at least once per year.

ii. **Building Principals**<sup>5</sup>

- a. Sixty points of a building principal's composite effectiveness score are based upon multiple measures using criteria prescribed in the new Commissioner's Regulations and aligned with the following Leadership Standards:
  - i. Facilitating the development, articulation, implementation and stewardship of a vision of learning that is shared and supported by the school community;
  - ii. Advocating, nurturing and sustaining a school culture and instructional program conducive to student learning and staff professional growth;
  - iii. Ensuring management of the organization, operations and resources for a safe, efficient and effective learning environment;
  - iv. Collaborating with families and community members, responding to diverse community interests and needs and mobilizing community resources;
  - v. Acting with integrity, fairness and in an ethical manner; and
  - vi. Understanding, responding to and influencing the larger political, social, economic, legal and cultural context

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<sup>5</sup> Please see Attachment "F" for a reference document setting forth Other Measures of Principal Effectiveness for the 2011-12 school year.

















