

NAVIGATING
THE
EDUCATION
TRANSFORMATION
ACT OF 2015



**Council of Administrators
and Supervisors**

Supporting Educational Leadership

CERTIFICATION REQUIREMENTS

EDUCATION LAW §3006



**Council of Administrators
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EDUCATION LAW §3006 – [Administrative Certification]

- Those that have a certificate that is valid for life are now required to *register* with SED every 5 years. Health, Military Service or “good cause” as found by SED may result in an extension. **SED has provided unofficial interpretation that permanent certified administrators/teachers will need to re-register every 5 years, BUT WILL NOT need to complete the 100 PD.**
- Regulations will prescribe date or dates by which applicants are to be registered
- Registration will be done through SED website.
- Untimely filing will result in late filing penalties that will be set forth by Commissioner
- Additionally, failure to maintain certification is grounds for a §3020-a proceeding to remove a tenured administrator or teacher.
- Beginning July 1, 2016, an applicant for registration must successfully complete a minimum of 100 hours of continuing leader education, as defined by Commissioner. **** A building principal acting as an independent trained evaluator pursuant to APPR [i.e., not in his/her own building], may receive credit for such time towards his leader effectiveness requirement.** The 100 hours replaces the current 175 for holders of the professional certificate. However, school districts were responsible for providing learning opportunities and ensuring completion—now onus and cost on educator
- *SED shall issue “rigorous standards for courses, programs and activities that shall qualify” for the 100 hours.*
- *Sponsors must be approved by SED.*
- *Conditional registration may be given for those who fail to meet the 100 hours the duration of conditional will be set by SED.*
- *If administrator works after receiving notice that they failed to complete 100 hours, or failed to register, and does not obtain a conditional, they will be subject to Part 83 hearing.*
- *“Willful” failure to notify SED of an address change more than 180 days after move may result in moral conduct review. Need to notify SED within 30 days of move.*

PROBATIONARY PERIOD

&

TENURE

RECOMMENDATIONS

EDUCATION LAWS

§2509 & §3012



**Council of Administrators
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PROBATIONARY PERIOD & TENURE RECOMMENDATION

- Beginning July 1, 2015 all administrative positions now require a four (4) year probationary period
- Principals are not eligible for tenure unless he/she is rated Effective or Highly Effective in three of the four years of his/her probation. Tenure also **cannot** be granted to any principal who received an Ineffective rating in his/her fourth year (however an additional probationary year may be added in this case)
- Building Principal will remain on *"probationary status until the end of the school year in which such teacher or principal has received such ratings of "E" or "HE" for at least three of the four preceding school years."*¹
- Conditional grants of tenure are allowed on the basis of final rating and/or success of appeal of "I" in final year. If appeal is successful principal would be eligible for tenure if "E" in three of four years, or conditioned upon receiving a "E" or "D" in that fourth year if that gives you three "E" or "HE". Grant of tenure will be void if rating is not met, subject to possible fifth year
- Law appears to prevent early grant of tenure for building principals, since only eligible for tenure if you have three "E" or higher ratings.
- The law has now been amended to give "**unfettered**" right of the school district to terminate an employee for any reason not prohibited by statute or constitution during the probationary period. Therefore, the district can remove a principal or teacher based on performance during the probationary period even if rated "E" or "HE" **ONLY** **EXCEPTION** the district cannot use as the reason the principal's performance if it is subject to an appeal.
- District can still terminate employment at any time during the probationary period with 60 day notice.
- 60 day notice requirement is still in place for termination and denial of tenure Failure to abide to 60 day notice results in back pay, not tenure
- Jarema Credit (3 year tenure if tenured before in another district) is still in place for teachers but not for administrators Teacher must show that they received an APPR score in final year in other district that was anything other than "I".

¹Tenure by estoppel- it is believed that this language is an attempt to address tenure by estoppel issues

**DISCIPLINARY
HEARINGS
PURSUANT TO**

EDUCATION LAW §3020-a



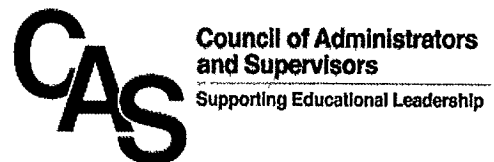
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DISCIPLINARY CHANGES PURSUANT TO EDUCATION LAW §3020-a

- Misconduct, conduct unbecoming, or incompetency for non-building principals
- Employees will be required to disclose witnesses and evidence to be presented on their behalf in a §3020-a (unlike current procedures).
- Students under 14 will be allowed to testify via a two-way closed circuit television if the Hearing Officer finds by clear and convincing evidence that such child would otherwise suffer serious emotional or mental harm which would substantially impair the child's ability to communicate if requested to testify. Hearing Officer must provide the employee with an opportunity to be heard on the issue.
- Administrator convicted (includes no contest plea) of a sex offense or violent felony against a child pursuant to penal law section §70.02, when child was intended victim of such offense, will have certification revoked without a hearing ***If the District terminates him/her through a §3020-a based upon lack of certification and/or the conviction of a sex offense, and that conviction is subsequently overturned, the district would not be required to reinstate employee or provide back pay or benefits.***
- §3020-a Charges Alleging Physical or Sexual Abuse must commence within seven days after pre-hearing conference and be completed within 60 days
- Charges of misconduct alleging physical or sexual abuse of student the district may suspend without pay pending an expedited hearing to determine probable cause which must be held within 10 days. The hearing officer can reinstate pay with interest if he/she finds no probable cause or that the allegations don't warrant the unpaid suspension. The unpaid suspension can last no longer than 120 days.
- All §3020-a hearings are to be before a single Hearing Officer.
- Board's recommended 3020-a penalty: the law would now read: "Hearing Officer shall give serious consideration to the penalty recommended by the Board, and if the Hearing Officer rejects the recommended penalty such rejection must be based ***"upon the record and expressed in a written determination."***
- Education Law §3020-a was previously amended in 2012 to require that all hearings be completed within 125 days

**“NEW” ANNUAL
PROFESSIONAL
PERFORMANCE REVIEW**

EDUCATION LAW §3012-d



EDUCATION LAW §3012-c (“APPR”)

Amended in two major ways,

- i- **“Unfettered right”** to terminate probationary period for any statutorily or constitutionally permissible reason, including performance without regard to APPR. [Hempstead Administrators Case]
- ii- Commissioner is to “implement” state wide teacher and principal **evaluation system pursuant to Education Law §3012-d**, after consulting with experts and taking into consideration 12/31/14 letter from *Chancellor Tisch & Acting Commissioner King, take public comment and consult in writing with Secretary of Education (Duncan) on weights, measures, and ranking of evaluation categories and subcomponents (sub domains) and shall release response prior to the publication of regulations * The letter suggested among other things that 40% of the evaluation be based upon test scores (copy enclosed)

Note: APPR is still limited only to “Building Principal or BOCES administrator in charge of an instructional program.

THE NEW “APPR” - EDUCATION LAW §3012-d

- Two components: (1) Student Performance and (2) Observations

1- Student performance (tests)

- For teacher where there is a state created or administered test for which there is a state provided growth model, such teacher shall have a state-provided growth score based on such model.
- SLO developed by SED for everyone else (targets set by Commissioner)
- For at teacher whose course ends in state created or administered assessment for which there is no state provided growth, such assessment must be used as the underlying assessment for the SLO.

Supplemental assessment

Optional 2nd Subcomponent for Student performance (State-designed supplemental assessment) Must be applied equally throughout the district

Two choices:

- i Second state provided growth measure
- ii. Supplemental assessment with growth model provided by SED**

** It may include tests or assessments presently used or adopted by the District **BUT ONLY** if SED significantly modifies the growth targets or scoring bands. This effectively eliminates the local exams that were negotiated.

- Commissioner shall set the parameters for appropriate targets for student growth for both subcomponents Commissioner sets all parameters for appropriate targets for student growth This means no more weighted scoring which varies from district to district
- Teacher who does not have a state created test will be given a SLO created by the Commissioner

WARNING- If you select a supplemental assessment that is NOT the second growth measure and you receive “ineffective” in that subcomponent you will be rated ineffective overall.

However, if you select a second state growth measurement and are ineffective in that second state growth measurement you cannot be rated higher than “D”

2- Observation Category [a minimum of]:

- One observation by building principal or trained administrator, and
- One observation by independent trained evaluator selected by district cannot be from same building
- OPTIONAL- additional evaluation by a trained peer evaluator (rated E or HE) – appears subject to negotiations

		Observation			
		Highly Effective (H)	Effective (E)	Developing (D)	Ineffective (I)
Student Performance	Highly Effective (H)	H	H	E	D
	Effective (E)	H	E	E	D
	Developing (D)	E	E	D	I
	Ineffective (I)	D*	D*	I	I

** If a supplemental assessment was negotiated other than an additional second state growth score and the principal receives an "I" in that subcomponent the principal will receive "I" overall.*

- Commissioner determines weight and/or weighting options and scoring ranges for each subcomponents [sub domains] that result in the combined score
- The Commissioner will determine the minimum number of required observations as well as their frequency and duration and any parameter thereof.
- Prohibited Items within Observation Category which CANNOT be used in any evaluation subcomponent
 - Evidence of student development and performance from lesson plans, other artifacts and student portfolios, except student portfolios measured by a state approved rubric permitted by SED, student or parent survey, use of goal setting as evidence of effectiveness, or any district assessment not approved by SED
- Commissioner will release weights and scoring ranges assigned to subcomponents and categories before each school year.
- Student may not be instructed for two consecutive years by any two teachers rated "I" the year prior to placement--- says nothing about the principal—District can seek a waiver.
- Commissioner shall adopt regulations to ALIGN the principal evaluation with the teacher evaluation as set forth in the statute.

**DISCIPLINARY HEARING
BROUGHT BASED UPON
APPR RATING**

EDUCATION LAW §3020-b



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EDUCATION LAW §3020-b DISCIPLINARY CHARGES BASED UPON “APPR”

- Charges shall allege that employing Board has developed and substantially implemented a PIP after the first Ineffective rating and immediately preceding evaluation, if Developing

In case of **three** consecutive Ineffective ratings (teachers and principals only)

- Charges are mandatory the Board has no discretion not to bring charges
- Commissioner appoints hearing officer
- 30-day timeline for the proceedings
- The ratings are deemed to be sufficient evidence of incompetence, the burden of proof is on the principal and the only defense is that the evaluations were fraudulent or mistaken identity
- Penalty, if not acquitted, is termination there is no discretion for HO to provide other penalty
- Issue a decision within 10 days of final hearing date

In case of **two** consecutive Ineffective ratings (teachers and principals only):

- Charges are optional
- 90-day timeline for the proceedings
- Hearing Officer mutually selected, if parties cannot agree will be selected by SED
- The ratings are deemed to be sufficient evidence of incompetence, the burden of proof is on the principal to prove that he/she is competent. The APPR ratings will be *prima facie* evidence of incompetence, rebutted only by *clear and convincing evidence*
- Issue a decision within 10 days of final hearing date
- Charges brought against employee must show that Board has developed and “substantially implemented” a PIP for the employee following the first ineffective, and the immediately preceding evaluation if rated developing
- penalty, if not acquitted, is termination, no discretion for HO to provide other penalty

SED is tasked with creating regulations to implement the new expedited disciplinary hearings. Commissioner shall establish timeframes to ensure the 30 and 90 days are honored.

**COLLECTIVE
BARGAINING
&
NEW APPR
EDUCATION LAW §3012-d**



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COLLECTIVE BARGAINING AND THE “NEW” APPR

- All contracts entered after April 1, 2015 must reflect the statutory changes, unless the agreement is only for the 2014-2015 school year. Those in effect before that date may contain inconsistent provisions until they expire; however the fact that state aid is tied into approved APPR plans forces these districts to negotiate.
- Language significantly reduces role of collective bargaining. Areas that are subject to collective bargaining include observation procedures, subject to regulations, and whether to use a second student performance measure and if so which one. Implementation of the greatly limited evaluation/observation procedures, as set forth in the regulations, will be in accordance with Article 14 of Civil Service (i.e. procedure not criteria).

Also the statute contains the following references to collective bargaining;

Such annual professional performance reviews shall be a significant factor for employment decisions including but not limited to, promotion, retention, tenure determination, *termination², and supplemental compensation which decisions are to be made in accordance with locally developed procedures negotiated pursuant to the requirement of article 14 of civil service law where applicable.

Such annual professional performance reviews shall be a significant factor in principal development, including but not limited to, coaching, induction support, and differentiated professional development, which are to be locally established in accordance with procedures negotiated pursuant to the requirements of article 14 of the civil service law.

- Law requires collective bargaining units shall certify in the District's plan that the evaluation process shall use the standards for the scoring ranges provided by the Commissioner.

EXTENT OR ROLE OF COLLECTIVE BARGAINING IN REGARDS TO APPR PLANS WILL DEPEND LARGELY ON THE REGULATIONS

² * District can terminate for performance despite rating, but cannot include principals performance that is subject to an appeal

RECEIVERSHIP OVER STRUGGLING SCHOOLS

EDUCATION LAW §211-F



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EDUCATION LAW §211-f [Receivership of Failing Schools]

Path to Receivership:

"Failing School"- "lowest achieving 5%" of schools under the state's accountability system for at least three consecutive years or identified as a "priority school" for same period

"Persistently failing school"- "lowest achieving public schools in the state" for 10 consecutive years. Have been priority schools during the period starting with the 2012-2013 school year or a school requiring academic progress year 5, 6, or 9 or a "school in restructuring" for each applicable year from the 2006-2007 to 2011-2012 school year. Special act schools are excluded.

- For schools designated as persistently failing the local district shall continue to operate the school for an additional school year provided that there is a department-approved intervention model or comprehensive education plan in place,
- For schools designated as failing, but not persistently failing, the local district shall continue to operate the school for two additional school years subject to the same educational plans as persistently failing schools. During these periods the superintendent shall be vested with the powers of a receiver, which are outlined below.
- After the aforementioned time periods expire the Commissioner can appoint a receiver to run the school. The receiver's authority is broad and shall supersede that of the Superintendent and Board of Education. The receiver may be a non-profit organization, another school district, or an individual.
- Within 6 months of the receivership appointment a final school intervention plan must be submitted to the Commissioner for approval. The plan must include measurable annual goals with respect to student attendance, student discipline, include short-term and long-term suspension, student safety, student promotion and graduation and drop-out rates, student achievement and growth on state measures, academic underperformance, achievement gaps, development of career or college readiness, family engagement, building of culture of academic success, using developmentally appropriate child assessments from pre K- to 3 and measures of student learning
- The intervention plan must also include; measures to address health and mental health needs of students and their families in order to help students arrive and remain at school ready to learn, mental health and substance abuse screening, improve access to child welfare services, greater access to tech education, workforce development services to provide students and families with meaningful employment skills, achievement gaps for ELL, SWD, and economically disadvantaged, mentoring and youth development programs, and a budget for the plan.
- Receiver shall have power to supersede any decision, policy or regulation of the Superintendent, BOE, or *Building Principal* that in his/her sole judgment conflicts with school intervention plan.

- In developing the intervention plan the receiver will consult with stakeholders including the board, the superintendent, principal, building administrators, teachers, collective bargaining representatives, parents, social service and mental health agencies, students as appropriate and others.
- Receiver shall convert schools to “community schools” to provide expanded health, mental health and other services to students. The receiver “may” expand, alter or replace the curriculum and program offerings, including (i) implementing early literacy, early interventions for struggling readers and AP or equivalent courses; (ii) **replace teachers and administrators** (iii) *increase salaries to attract and retain (iv) reallocate the use of existing budget (v) expand school day or school year or both (vi) pre-k and full day kindergarten (vii) establish professional development for administrators with an emphasis on strategies that develop leadership skills and use the principles of distributive leadership; (ix) order the conversion of the school in receivership that has been designated as “failing” or “persistently failing” pursuant to this section into a charter school.
- Upon designation of a school as “failing” or “persistently failing” **tenure and seniority rights are significantly modified** Two ineffective ratings ANYTIME within your career defeats seniority rights – lose entitlements to go on preferred eligible list The principal with the lowest APPR rating that previous year is laid off first and seniority is used only as a tie breaker.
- Receiver shall have ability to “terminate the employment of any building principal assigned to such school”
- Receiver may abolish the positions of all teachers and pedagogical support staff, administrators and pupil service providers assigned to a school designated as failing or persistently failing
- Receiver shall have full discretion regarding hiring decisions but must fill at least 50% of the newly defined teaching positions with the most senior former school staff who are determined by the staffing committee to be qualified. **NOTE:** the receiver appoints 3 of the 5 members of this committee.
- For administrators and PPS providers the receiver shall have full discretion over all such rehiring decisions. – *50% requirement **does not** apply
- Any staff member not rehired shall not be able to bump any other district employee but shall go on a preferred eligible list for reappointment to future vacancies A classroom teacher or building principal who has received two or more composite ratings of ineffective (anytime in the district) on an APPR is not eligible to go on a preferred eligible list
- When a position of classroom teacher [or building principal] is abolished in such school, the services of the teacher or administrator or supervisors within the tenure area of the

position with the lowest rating on the most recent annual professional performance review shall be discontinued. How this will be implemented for principals is unclear.

- The receiver has broad authority to request changes in collective bargaining agreements for teachers and administrators in the failing school. These areas include the length of the school day, the length of the school year, professional development for teachers and administrators; class size and changes to the programs, assignments, and teaching conditions. If the changes aren't successfully negotiated the law provides that the unresolved issues will go to the Commissioner to resolve *"in accordance with standard collective bargaining principles"*
- For "failing" but not "persistently failing" there is an option for an AAA conciliator prior to Commissioner

**EDUCATION LEADERSHIP
PROGRAMS**

EDUCATION LAW §669-F

&

**EDUCATION LAW
§210 (A) & (B)**



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EDUCATIONAL LEADERSHIP PROGRAMS

(i) Education Law §669-f: MASTER-IN-EDUCATION TEACHER INCENTIVE

Only applies to New York State Public Institutions & must sign a contract agreeing to teach for five years

Award cannot be more than two academic years' worth of full-time tuition for graduate study leading to certification as an elementary or secondary teacher

Career as a teacher in public elementary or secondary education, includes charter schools

Becomes a student loan, with rate determined by corporation, if after two years after receiving the award person is no longer teaching, has not taught, for five of the seven years after completion of the program, does not complete the program, fails to maintain certification, and fails to respond to corporations request for status within program

Corporation is authorized to promulgate rules and regulations regarding the award including criteria for the provision of the award on a competitive basis.

(ii) Education Law §210-a: ADMISSION REQUIREMENTS FOR GRADUATE LEVEL TEACHER AND EDUCATION LEADERSHIP PROGRAM

Each institution must adopt rigorous standards, including but not limited to 30 in undergraduate. School is allowed no more than 15% of new students to be exempt from the rigorous standards-- * Applies to admissions on or after July 1, 2015

(iii) Education Law §210-b: GRADUATE PROGRAMS

- SED can suspend or deregister any graduate education programs that have, for three or more years, had fewer than 50% of the students pass the required examination. Program may be reinstated upon improvement at discretion of Commissioner

UNTIL THE FINAL REGULATIONS ARE ENACTED MANY QUESTIONS WILL REMAIN AND ISSUES WILL BE UNRESOLVED. PORTIONS OF THE CHANGES WILL ALSO BE SUBJECT TO LITIGATION.



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