

School Law Matters

FEBRUARY 2012



A NEWSLETTER FROM THE LAW FIRM OF FERRARA, FIORENZA, LARRISON, BARRETT & REITZ, P.C.

Route to: Board Personnel Instruction PPS Business Other: _____

SPECIAL REPORT NEWSLETTER

New Annual Professional Performance Review (APPR) Standards to be Included In Governor's Budget Bill

Eric J. Wilson, Esq.

On February 16, 2012, negotiations between the State Education Department, NYSUT and the Governor's Office resulted in an agreement to settle the litigation surrounding the Commissioner's Regulations promulgated pursuant to Education Law §3012-c. The agreement will result in an amendment to Education Law §3012-c as proposed by the Governor as part of his budget bill. The proposed legislation makes some significant changes to the APPR and clarifies a number of issues contained in the original 2010 Law.

The major change involves a significant increase in the scoring bands associated with HEDI. The scoring bands will be set by statute, not Commissioner's Regulation and they are as follows:

Scoring bands with a growth measure

Regulation	Student Growth	Local Measures	Other 60	Overall Composite
Ineffective	0-2	0-2		0-64
Developing	3-8	3-8		65-74
Effective	9-17	9-17		74-90
Highly Effective	18-20	18-20		91-100

Scoring bands with value added measure

Regulation	Student Growth	Local Measures	Other 60	Overall Composite
Ineffective	0-2	0-2		0-64
Developing	3-9	3-7		65-74
Effective	10-21	8-13		74-90
Highly Effective	22-25	14-15		91-100

The law also clarifies that the selection of the 20% local assessment must be collectively bargained – not just the process for selection. The cut scores for the 20% local assessment are also a mandatory subject of negotiation. State assessments may be used as the local assessment so long as the local assessment measure is different than the growth measure used for the first 20%.

There are changes to the other measures or 60% of the APPR, as well. At least a majority of the 60 points (31 points) must be based upon multiple observations at least one of which must be unannounced. The remainder of the points not attributable to observations may include such things as portfolio review, peer observation, observations conducted by trained teachers unaffiliated with the District and hired by the Board of Education and/or parent/student surveys. Based upon conversations with the State Education Department, these items must relate back and make reference to appropriate domains of the agreed upon rubric. While 31 points of the other measures must be based upon classroom observation, the apportionment of those points and the relationship to the agreed upon rubric is a mandatory subject of negotiation. Both the composition and the apportionment of points beyond the first 31 is a mandatory subject of negotiation.

Continued on the next page

SPECIAL REPORT NEWSLETTER**New Annual Professional Performance Review (APPR) Standards to be Included In Governor's Budget Bill (cont'd)**

The amendments make it clear that the APPR must be a significant factor in tenure determination, retention and dismissal decisions. The new language still reserves the Board of Education's right to deny tenure or to terminate a probationary teacher for statutory or constitutionally permissible reasons other than classroom performance. This means that misconduct, insubordination, and/or conduct unbecoming a teacher are still valid grounds for denying tenure or terminating a probationary appointment notwithstanding the teacher's success or failure in delivering instruction to students. If, however, a district seeks to terminate a probationary appointment or deny tenure based upon performance, the APPR must be a significant factor in the determination.

Also, since conventional wisdom and past experience indicate that the 20% state growth score will not be available by the end of the school year, the amendments direct the district to provide the teacher or principal with the 60% other measure score and the 20% local assessment score (if not based upon state assessments and otherwise available) before the end of the school year. Teachers and principals will therefore have some indication of their composite score going into the summer.

Notwithstanding the fact that a District may have already posted an APPR that is compliant with the current law on its website, a revised APPR, compliant with the proposed amendments to Section 3012-c, must be submitted to the Commissioner for review and approval by July 1st, on a form to be developed by the Commissioner of Education, unless collective bargaining of those issues which are mandatory subjects of negotiations is not complete. The language of the amendments would seem to close the door to any theory of unilateral implementation of an APPR (*Wappingers Falls* case). However, failure to comply and implement an APPR by January 16, 2013 will result in the district losing any increase in State aid for the 2012-13 school year. The sooner a district submits an APPR to the Commissioner for review and approval, the more time the district will have to cure any deficiencies and meet the January 16, 2013 deadline. Both the district and the union should be clear about the consequences of losing State aid increases (reductions in program and staff) going into negotiations and both sides should share a mutual sense of urgency.

Please feel free to contact us, if you have any questions.