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INFORMATION MEMO
SCHOOL DISTRICTS
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APPR in New York, Just Like the Weather… If You Don't Like it, Wait a Minute, it Will Change

Almost six years ago, New York State passed Education Law § 3012-c, which fundamentally altered classroom teacher and principal evaluations, requiring for the first time that student performance and assessment be a main component. Since that time, the statutes or regulations governing these evaluations have been amended every year, sometimes on multiple occasions. This school year alone brought the enactment of Education Law § 3012-d, the adoption of conflicting emergency regulations, and continuing changes to the APPR landscape. In the end, school districts are left wondering what their legal obligations are and will be.

Much of the most recent confusion stems from the enactment of emergency regulations on December 14, 2015, labeled by the Commissioner as "Transition Regulations." (These are not to be confused with the emergency regulations that were passed last June, amended in September, and made permanent on January 11, 2016.) The effect of the Transition Regulations is to prohibit the use of the State 3-8 ELA and Math assessments and State-provided growth scores based upon Regents examinations (hereinafter collectively referred to as "Prohibited Scores") from the calculation of a teacher's or principal's composite APPR score until after the 2017-2018 school year. State-approved assessments and Regents examinations can be used for Student Learning Objectives (SLOs) and "back-up" SLOs. Nevertheless, these changes are understandably concerning because they are in direct conflict with Education Law § 3012-d, which mandate that teachers and principals be evaluated using the now Prohibited Scores.

The Transition Regulations distinguish between school districts with APPR plans adopted under the new statute, § 3012-d, and plans adopted under the former statute, § 3012-c. Under both types of plans, school districts cannot calculate a subcomponent score based upon Prohibited Scores, and must use any remaining subcomponents of their plans to calculate a final composite score. Under the regulations applicable to § 3012-c, school districts are required to use back-up SLOs in place of Prohibited Scores only if such back up SLOs exist and do not rely on Prohibited Scores. If all student-assessment based subcomponents of a § 3012-c plan, including back-up SLOs, rely on Prohibited Scores, a teacher's or principal's composite score will be based upon the observation/rubric subcomponent only.

Unlike § 3012-c districts, under the Transition Regulations as written, districts with § 3012-d plans must continue to calculate composite scores using both observational and student performance categories. If all student performance subcomponents of a § 3012-d plan utilize Prohibited Scores, districts must have back-up SLOs based upon State approved assessments that are not the State 3-8 ELA or Math assessments. In guidance published on January 15, 2016 (Transition Guidance), however, the Commissioner's office stated that for the 2015-2016 school year only, § 3012-d districts could calculate a score based solely on the observational category (a/k/a "rubric") if subcomponents of the student performance category are based upon Prohibited Scores. The public comment period for the Transition Regulations closes on February 12, 2016. It is uncertain whether the final regulations will be revised to reflect the recent guidance.

The implementing regulations for § 3012-d were made permanent earlier this month. Under these regulations and, under the statute, school districts are still obligated to negotiate APPR plans that are compliant with § 3012-d. The Transition Guidance indicates that the Commissioner's office will automatically grant additional waivers to all § 3012-c districts and no further applications are required. All school districts must, however, have an approved plan no later than September 1, 2016 or risk loss of funding. According to the guidance, the Commissioner's office recommends that plans be submitted for review no later than July 1, 2016 to ensure that approval is granted by the deadline.

To add to the confusion, NYSUT recently filed lawsuit against the Board of Regents and State Education Department which, in part, challenges 8 N.Y.C.R.R. § 30-3.11. The new regulation gives the Superintendent sole authority to develop improvement plans, a subject that under the statute is, "developed locally through negotiations." Should improvement plans become a point of contention during the negotiation of a § 3012-d plan, school districts should work closely with their counsel to determine the best strategy based upon their individual circumstances.

While it is concerning that the Transition Regulations conflict with statutory mandates, it appears that school districts have little choice but to move forward as outlined in the Transition Guidance. To that end, § 3012-c districts should continue to negotiate APPR plans that are compliant with § 3012-d and Subpart 30-3 of the Commissioner's regulations, even though those regulations are, in part, trumped by the Transition Regulations. During negotiations, districts should consider whether, given the effect of the Transition Regulations, it would be better to negotiate an optional student performance subcomponent or to rely on back-up SLOs, which are within the discretion of the Superintendent. Districts should assess their capacity to create back-up SLOs in lieu of Prohibited Scores and determine whether they have State approved assessments that can be utilized for this purpose.

Still Confused about APPR? We don't blame you! Join us for a free webinar, "APPR Reboot" on February 25, 2016 at 12 p.m.

An email invitation will be sent or you can register by clicking here: APPR Reboot Webinar.