



Educator Evaluation Guidance

**TO IMPLEMENT EDUCATION LAW §3012-d AS AMENDED BY THE LAWS OF 2019 AND THE
COMMISSIONER'S REGULATIONS**

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Purpose of the Guidance

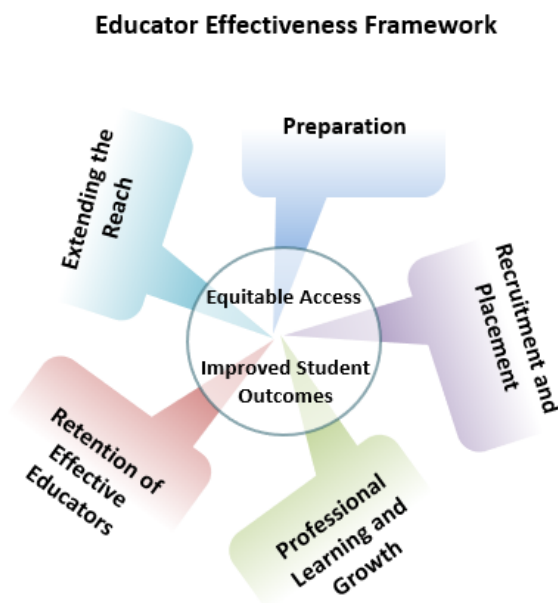
The mission of the New York State Education Department is to raise the knowledge, skill, and opportunity of all the people in New York. Our vision is to provide leadership for a system that yields the best educated people in the world.

Central to the Department's mission and vision is the belief that we must both increase student achievement for all students in the State while at the same time closing gaps between our lowest and highest performing students. Taken together, these initiatives have been designed to create a comprehensive, systemic approach to advance excellence in teaching and learning and to promote equity in educational opportunity throughout the state system in New York. This system consists of:

- Well-designed learning standards and aligned curricula that are measured by authentic and meaningful assessments;
- Core instruction (standards, curricula and assessments) delivered by well-prepared, highly effective, diverse teachers and school leaders who have access to high quality, differentiated professional learning that is informed by evidence of educator practice and data on the longitudinal academic growth of students; and
- The analysis and use of these data to inform instructional practice to support the success of all students.

Research consistently confirms that instructional practices and leadership strategies are among the most significant school-based factors impacting student outcomes. Although research suggests that out-of-school factors have a significant influence on student outcomes, effective teaching and school leadership are essential elements in ensuring that all students graduate ready for college, careers, and citizenship.

The Department believes the overall quality of teaching and learning can be raised through alignment to the Educator Effectiveness Framework.



To ensure equitable access to effective educators, LEAs should create coherent systems of development and support that place instructional practices tied to student learning at their center. This system can then be used to: improve the preparation of new educators; identify effective educators as models and peer mentors; develop differentiated supports for all educators; create opportunities for self-reflection and collaboration; inform high-quality professional learning opportunities; and make strategic staffing decisions.

The Department believes that a well-designed evaluation system should support:

- A shared vision for what high-quality instruction/leadership that supports student learning looks like;
- A school culture that values continuous improvement and the success of every student;
- Opportunities for feedback and coaching;

- Self-reflection;
- Collaboration; and
- Better professional learning opportunities.

The purpose of this guidance is to answer questions that educators, administrators, and community stakeholders may have about our evaluation system - Education Law §3012-d as amended by Chapter 59 of the Laws of 2019, and Subpart 30-3 of the Commissioner's regulations.

Revised Teacher and Principal Evaluation Law

On April 13, 2015, the Assembly and Senate passed the New York State Budget for 2015-16 and signed into law a revised annual professional performance review system for teachers and principals as Chapter 56 of the Laws of 2015, which created Education Law §3012-d. Education Law §3012-d was amended by the Legislature in Chapter 59 of the Laws of 2019 and signed by the Governor on April 12, 2019.

Section 3012-d of the Education Law can be found by visiting the [New York State Legislature website](#), selecting "Laws" then "Laws of New York" from the top menu bar, entering "3012-d" in the search box, and clicking on the second link, "Education Law §3012-d."

The [regulations](#) that implement Education Law §3012-d as amended by the laws of 2019 as well as additional information, tools and resources related to educator evaluation plans can be found on the [Office of Educator Quality and Professional Development's page](#) on the NYSED website.

A. Introduction

Background

On April 12, 2019, the Governor signed Chapter 59 of the Laws of 2019 to amend Education Law §3012-d. The amended law retains the requirement from the original §3012-d that teachers and principals to be evaluated based on two categories: the Student Performance category and the Observation/School Visit category, each of which are explained in further detail throughout this document. Under the amended law, New York State continues to differentiate teacher and principal effectiveness using four rating categories – Highly Effective, Effective, Developing, and Ineffective (HEDI). Education Law §3012-d requires educational evaluation plans to result in a single overall teacher or principal effectiveness rating that incorporates multiple measures of effectiveness. As in the past, the results of the evaluations shall be a significant factor in employment decisions, including but not limited to promotion, retention, tenure determination, termination, and supplemental compensation, as well as teacher and principal professional development (including coaching, induction support, and differentiated professional development).

As a result of the newly amended legislation, during the [May 2020 meeting](#) of the Board of Regents, Subpart 30-2 was amended, and a new Subpart 30-3 of the Rules of the Board of Regents was permanently adopted in order to implement Education Law §3012-d as amended by the Laws of 2019. The pages that follow provide a summary of the Department's regulations.

Summary of Regulations: New York State Teacher and Principal Evaluation Under Education Law §3012-d, as Amended by the Laws of 2019¹

TEACHERS: Student Performance Category	
<p>REQUIRED Growth Using Student Learning Objectives (SLOs)</p> <p><i>100% (Locally determined if an optional student performance measure is selected)</i></p>	<p>For the required subcomponent of the Student Performance category, all classroom teachers (including those of courses associated with a State assessment or Regents exam) shall have one or more SLOs based on the following options²:</p> <p>Assessments</p> <ul style="list-style-type: none"> • State or Regents assessments • State-approved assessments consisting of the following: <ul style="list-style-type: none"> ○ State-approved third-party assessments ○ State-approved district, regional, or BOCES-developed assessments <p>Measures</p> <ul style="list-style-type: none"> • <u>Teacher and course-specific</u> (i.e., scores and ratings will be based on the growth of students in the teacher’s course in the current school year). • <u>School- or program-wide linked results</u> (i.e., scores and ratings will be based on the growth of students enrolled in the teacher’s course in the current school year taking assessments in other grades/subjects). <ul style="list-style-type: none"> ○ Measure may also be <u>district/BOCES-wide</u> if including the results of assessments administered outside of the building/program in which the teacher teaches. • <u>School- or program-wide results</u> (i.e., scores and ratings will be based on the growth of all students in a school or program who take the applicable assessments in the current school year). <ul style="list-style-type: none"> ○ Measure may also be <u>district/BOCES-wide</u> if including the results of assessments administered outside of the building/program in which the teacher teaches. • <u>School- or program-wide group or team results</u> (i.e., scores and ratings for a group or team of teachers will be based on the growth of students in the group/team of teachers’ courses in the current school year). <ul style="list-style-type: none"> ○ Measure may also be <u>district-BOCES-wide</u> if including the results of assessments administered outside of the building/program in which the teacher teaches.
<p>OPTIONAL Locally Selected Measures of Student Growth or Achievement³</p> <p><i>(percentage weighting to be locally determined, where used)</i></p>	<p>For the optional subcomponent of the Student Performance category, the same locally selected measures of student growth or achievement must be used in a consistent manner across all classrooms in the same grade/subject in the LEA, to the extent practicable.</p> <p>For the optional subcomponent, a second locally selected measure shall be based on the following options:</p> <p>Assessments</p> <ul style="list-style-type: none"> • State-created or administered assessments • State-designed supplemental assessments <p>Measures⁴</p> <ul style="list-style-type: none"> • A second SLO, provided that this SLO is different than that used in the required subcomponent of the teacher’s evaluation; • A growth score based on a statistical growth model, where available, for either a State-created or -administered assessment or a State-designed supplemental assessment; • A measure of student growth, other than an SLO, based on State-created or -administered assessments or State-designed supplemental assessments; • A performance index based on State-created or administered assessments or approved student assessments; • An achievement benchmark on State-created or administered assessments or approved student assessments; or • Any other collectively bargained measure of student growth or achievement included in the LEA’s evaluation plan as approved by the commissioner.

¹ The information provided in this memorandum applies to educator evaluation plans approved on or after April 12, 2019.

² The selection and use of assessments for SLOs is subject to collective bargaining.

³ The selection and use of the optional subcomponent of the student performance category is subject to collective bargaining.

⁴ All measures in the optional subcomponent of the student performance category may use teacher- and course-specific results, school- or program-wide, group, team, or linked results, or district- or BOCES-wide, group, team, or linked results.

TEACHERS: Observation Category

Requirements and options based on practice rubric: All observations for a teacher for the school year, and across observer types, must use the same State-approved rubric; provided that districts may locally determine whether to use different rubrics for teachers who teach different grades and/or subjects during the school year. At least one observation must be unannounced.

<p>REQUIRED Observation by principal or other trained administrator</p> <p><i>At least 80%, locally determined</i></p>	<ul style="list-style-type: none"> • At least one observation by building principal or other trained administrator: <ul style="list-style-type: none"> ○ Observations may occur live or by live or recorded video, as determined locally. ○ LEAs may locally determine whether to use more than one observation by principal or other trained administrator. ○ Nothing shall be construed to limit the discretion of management to conduct observations in addition to those required by this section for non-evaluative purposes. ○ The frequency and duration of observations are locally determined. • Evaluators may select a limited number of observable rubric subcomponents for focus within a particular observation so long as all <u>observable</u> Teaching Standards/domains of the selected practice rubric (e.g., Domains 2 and 3 of the Danielson’s 2013 Framework for Teaching) are addressed across the total number of observations. <ul style="list-style-type: none"> ○ New York State Teaching Standards/domains that are part of the rubric but not observable during the classroom observation may be observed during any optional pre-observation conference or post-observation review or other natural conversations between the teacher and evaluator and incorporated into the observation score. ○ Points shall not be allocated based on any artifacts, unless such artifact constitutes evidence of an otherwise observable rubric subcomponent (e.g., a lesson plan viewed during the course of the classroom observation may constitute evidence of professional planning).
<p>REQUIRED Observation by impartial independent trained evaluator</p> <p><i>At least 10%, locally determined</i></p>	<ul style="list-style-type: none"> • At least one observation by impartial independent trained evaluator(s): <ul style="list-style-type: none"> ○ Observations may occur live or by live or recorded video, as determined locally. ○ Impartial independent trained evaluators are trained and selected by the LEA. ○ May be employed within the LEA, but may not be assigned to the same school building as the teacher being evaluated. This could include other administrators, department chairs, or peers (e.g., teacher leaders on career ladder pathways), so long as they are not from the same building (defined as same BEDS code) as the teacher being evaluated. ○ LEAs may locally determine whether to use more than one observation by impartial independent trained evaluator(s). ○ The frequency and duration of observations are locally determined. • Evaluators may select a limited number of observable rubric subcomponents for focus within a particular observation so long as all <u>observable</u> Teaching Standards/domains of the selected practice rubric (e.g., Domains 2 and 3 of the Danielson’s 2013 Framework for Teaching) are addressed across the total number of observations. <ul style="list-style-type: none"> ○ New York State Teaching Standards/domains that are part of the rubric but not observable during the classroom observation may be observed during any optional pre-observation conference or post-observation review or other natural conversations between the teacher and evaluator and incorporated into the observation score. ○ Points shall not be allocated based on any artifacts, unless such artifact constitutes evidence of an otherwise observable rubric subcomponent (e.g., a lesson plan viewed during the course of the classroom observation may constitute evidence of professional planning). • If an LEA is granted an annual Independent Evaluator Hardship Waiver by the Department, the process described in the waiver application will be used for the applicable school year to determine both the number of observations and the observer type.
<p>OPTIONAL Observation by trained peer teacher</p> <p><i>Locally determined, consistent with the requirements that at least 80% of the overall Observation category score be based on observations by the principal/other trained administrator and at least 10% of the overall Observation category score be based on observations by impartial, independent trained evaluator(s) selected by the LEA</i></p>	<ul style="list-style-type: none"> • May include at least one observation by trained peer teacher: <ul style="list-style-type: none"> ○ Trained peer teacher must have received an overall rating Effective or Highly Effective in the prior school year. ○ Observations may occur live or by live or recorded video, as determined locally. ○ Peer teachers are trained and selected by the LEA. • Evaluators may select a limited number of observable rubric subcomponents for focus within a particular observation so long as all <u>observable</u> Teaching Standards/domains of the selected practice rubric (e.g., Domains 2 and 3 of the Danielson’s 2013 Framework for Teaching) are addressed across the total number of observations. <ul style="list-style-type: none"> ○ New York State Teaching Standards/domains that are part of the rubric but not observable during the classroom observation may be observed during any optional pre-observation conference or post-observation review or other natural conversations between the teacher and evaluator and incorporated into the observation score. ○ Points shall not be allocated based on any artifacts, unless such artifact constitutes evidence of an otherwise observable rubric subcomponent (e.g., a lesson plan viewed during the course of the classroom observation may constitute evidence of professional planning).

PRINCIPALS: Student Performance Category

All Building Principals

<p>REQUIRED Growth Using either Student Learning Objectives (SLOs) or an Input Model</p> <p><i>100% (Locally determined, if an optional student performance measure is selected)</i></p>	<p>For the required subcomponent of the Student Performance category an LEA may select, or if applicable, collectively bargain one or more measures for all principals, (including those of buildings which administer State assessments or Regents exams) based on the following options:</p> <p>SLOs</p> <p>Assessments</p> <ul style="list-style-type: none"> • State or Regents assessments • State-approved assessments consisting of the following: <ul style="list-style-type: none"> ○ State-approved third-party assessments ○ State-approved district, regional, or BOCES-developed assessments <p>Measures</p> <ul style="list-style-type: none"> • <u>Principal and building/program-specific</u> (i.e., scores and ratings will be based on the growth of students in the principal’s building in the current school year). ○ Measure may also be <u>district- or BOCES-wide</u> if including the results of assessments administered outside of the building/program for which the principal is responsible. <p>Input Model</p> <p>Measures:</p> <ul style="list-style-type: none"> ○ Evidence of principal practice that promotes student growth related to the Leadership Standards.
<p>Optional Subcomponent: Locally Selected Measures of Student Growth or Achievement</p> <p><i>(percentage weighting to be locally determined, where used)</i></p>	<p>For the optional subcomponent of the Student Performance category, the same locally selected measures of student growth or achievement must be used in a consistent manner across all buildings with the same grade configuration or program in the LEA.</p> <p>For the optional subcomponent, a second locally selected measure shall be based on the following options:</p> <p>Assessments</p> <ul style="list-style-type: none"> • State-created or administered assessments • State-designed supplemental assessments <p>Measures</p> <ul style="list-style-type: none"> • A second SLO, provided that this SLO is different than that used in the required subcomponent of the principal’s evaluation; • A growth score based on a statistical growth model, where available, for either a State-created or administered assessment or a State-designed supplemental assessment; • A measure of student growth, other than an SLO, based on State-created or administered assessments or State-designed supplemental assessments; • A performance index based on State-created or administered assessments or approved student assessments; • An achievement benchmark on State-created or administered assessments or approved student assessments; • Four, five, or six-year high school graduation rates; • An input model where the principal’s rating shall be determined based on evidence of principal practice that promotes student growth or achievement related to the Leadership Standards; or • Any other collectively bargained measure of student growth or achievement as described in the district’s evaluation plan, subject to approval by the commissioner.

PRINCIPALS: School Visit Category

Principals’ professional performance shall be evaluated based on a State-approved rubric using multiple sources of evidence collected and incorporated into the school visit protocol. Where appropriate, such evidence may be aligned to building or district goals; provided, however, that professional goal-setting may not be used as evidence of teacher or principal effectiveness. Such evidence shall reflect school leadership practice aligned to the Leadership Standards and selected practice rubric.

Requirements and options based on practice rubric: All school visits for a principal for the year, and across observer types, must use the same State-approved rubric; provided that LEAs may locally determine whether to use different rubrics for a principal assigned to different grade level configurations or building types. At least one school visit must be unannounced.

<p>REQUIRED School visit by supervisor or other trained administrator</p> <p><i>At least 80%, locally determined</i></p>	<ul style="list-style-type: none"> • At least one school visit by supervisor or other trained administrator: <ul style="list-style-type: none"> ○ LEAs may locally determine whether to use more than one school visit by superintendent or other trained administrator. ○ Nothing shall be construed to limit the discretion of a board of education or superintendent of schools from conducting additional school visits for non-evaluative purposes. ○ The frequency and duration of school visits are locally determined. ○ School visits may not occur by live or recorded video. • Evaluators may select a limited number of observable rubric subcomponents for focus within a particular school visit, so long as all observable ISLLC 2008 standards⁵ are addressed across the total number of annual school visits. <ul style="list-style-type: none"> ○ Leadership Standards and their related functions that are part of the rubric but not observable during the course of the school visit may be observed through other natural conversations between the principal and the evaluator and incorporated into the school visit score. ○ Points shall not be allocated based on any artifacts, unless such artifact constitutes evidence of a rubric subcomponent observed during a school visit. ○ Professional goal-setting is a prohibited element of principal evaluations under Education Law §3012-d as amended. However, organizational goal-setting may be used to the extent that it is evidence from the school visit and related to a component of the selected practice rubric.
<p>REQUIRED School visit by impartial independent trained evaluator</p> <p><i>At least 10%, locally determined</i></p>	<ul style="list-style-type: none"> • At least one school visit by impartial independent trained evaluator(s): <ul style="list-style-type: none"> ○ Impartial independent trained evaluators are trained and selected by the LEA. ○ May be employed within the LEA but may not be assigned to the same school building as the principal being evaluated. This could include other administrators, department chairs/directors, or peers, so long as they are not from the same building (defined as same BEDS code) as the principal being evaluated. ○ LEAs may locally determine whether to use more than one school visit by impartial independent trained evaluator(s). ○ The frequency and duration of school visits are locally determined. ○ School visits may not occur by live or recorded video. • Evaluators may select a limited number of observable rubric subcomponents for focus within a particular school visit, so long as all observable ISLLC 2008 standards⁶ are addressed across the total number of annual school visits. <ul style="list-style-type: none"> ○ Leadership Standards and their related functions that are part of the rubric but not observable during the course of the school visit may be observed through other natural conversations between the principal and the evaluator and incorporated into the school visit score. ○ Points shall not be allocated based on any artifacts, unless such artifact constitutes evidence of a rubric subcomponent observed during a school visit. ○ Professional goal-setting is a prohibited element of principal evaluations under Education Law §3012-d as amended. However, organizational goal-setting may be used to the extent that it is evidence from the school visit and related to a component of the selected practice rubric. • If an LEA is granted an annual Independent Evaluator Hardship Waiver by the Department, the process described in the waiver application will be used for the applicable school year to determine both the number of school visits and the observer type.

⁵ For educator evaluations conducted commencing with the **2025-2026** school year, all rubrics must be aligned to the 2015 Professional Standards for Educational Leaders (PSELs).

⁶ For educator evaluations conducted commencing with the **2025-2026** school year, all rubrics must be aligned to the 2015 Professional Standards for Educational Leaders (PSELs).

<p>OPTIONAL School visit by trained peer principal</p> <p><i>Locally determined, consistent with the requirements that at least 80% of the overall School Visit category score be based on school visits by the superintendent/other trained administrator and at least 10% of the overall School Visit category score be based on school visits by impartial, independent trained evaluator(s) selected by the LEA</i></p>	<ul style="list-style-type: none"> • May include at least one school visit by trained peer principal: <ul style="list-style-type: none"> ○ Trained peer principals must have received an overall rating of Effective or Highly Effective in the prior school year. ○ Trained peer principals are trained and selected by the LEA ○ School visits may not occur by live or recorded video. • Evaluators may select a limited number of observable rubric subcomponents for focus within a particular school visit, so long as all observable ISLLC 2008 standards⁷ are addressed across the total number of annual school visits. <ul style="list-style-type: none"> ○ Leadership Standards and their related functions that are part of the rubric but not observable during the course of the school visit may be observed through other natural conversations between the principal and the evaluator and incorporated into the school visit score. ○ Points shall not be allocated based on any artifacts, unless such artifact constitutes evidence of a rubric subcomponent observed during a school visit. ○ Professional goal-setting is a prohibited element of principal evaluations under Education Law §3012-d. However, organizational goal-setting may be used to the extent that it is evidence from the school visit and related to a component of the selected practice rubric.
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TEACHERS AND PRINCIPALS: Category and Overall Ratings

Student Performance Category

<p>Scoring⁸ SLOs</p> <p><i>Each performance measure (Student Learning Objectives, optional student performance measures) must result in a score between 0-20.</i></p> <p><i>Multiple measures will be combined using a weighted average to produce an overall Student Performance category score between 0-20.</i></p>	Rest of State			
	Highly Effective	Effective	Developing	Ineffective
	18-20 points	15-17 points	13-14 points	0-12 points
	90-100% of students meeting or exceeding expected growth targets	75-89% of students meeting or exceeding expected growth targets	60-74% of students meeting or exceeding expected growth targets	0-59% of students meeting or exceeding expected growth targets
	New York City⁹			
	Highly Effective	Effective	Developing	Ineffective
16-20 points	11-15 points	6-10 points	0-5 points	
90-100% of students meeting or exceeding expected growth targets	75-89% of students meeting or exceeding expected growth targets	60-74% of students meeting or exceeding expected growth targets	0-59% of students meeting or exceeding expected growth targets	

<p>HEDI Ratings</p> <p><i>The overall Student Performance score will be converted into a HEDI rating based on the ranges listed.</i></p>	Rest of State		
		Minimum	Maximum
	H	18	20
	E	15	17
	D	13	14
	I	0	12
	New York City		
		Minimum	Maximum
	H	16	20
	E	11	15
D	6	10	
I	0	5	

Teacher Observation/Principal School Visit Category

Scoring Observations/School Visits	<p>Each set of observations/school visits (by supervisor/other trained administrator, independent, or peer) will be completed using a rubric with rating categories that are aligned to HEDI ratings and 1-4 levels. The 1-4 score for each set of observations/school visits will incorporate all evidence collected and observed over the course of the school year.</p> <p>Once all evaluations are complete, the different types of observations/school visits will be combined using a weighted average, producing an overall Observation/School Visit category score between 1-4.</p>
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⁷ For educator evaluations conducted commencing with the 2025-2026 school year, all rubrics must be aligned to the 2015 Professional Standards for Educational Leaders (PSELs).

⁸ All assessments used for educator evaluation purposes must be capable of generating a growth score from 0-20.

⁹ For SLOs calculated based on the percentage of students meeting a target.

HEDI Ratings <i>The overall Observation/ School Visit score will be converted into a HEDI rating based on locally determined ratings consistent with the ranges listed.</i>		Min	Max
	H	3.50 to 3.75	4.0
	E	2.50 to 2.75	3.49 to 3.74
	D	1.50 to 1.75	2.49 to 2.74
	I	0.00 ¹⁰	1.49 to 1.74

Overall Rating

The overall rating for an educator shall be determined according to a methodology as follows:

		Observations/School Visits			
		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

What Is State Determined	What Is Locally-Established through Collective Bargaining
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- Minimum growth targets for SLOs under the Required subcomponent of the Student Performance category representing at least one year of expected student growth and following State guidance.
- Scoring ranges for the Required and Optional subcomponents of the Student Performance category to determine an educator’s rating category of Highly Effective, Effective, Developing, and Ineffective (HEDI).
- The minimum and maximum scores aligned to each of the HEDI rating categories for the Teacher Observation/Principal School Visit categories.
- The weights for all subcomponents of the Student Performance and Teacher Observation/Principal School Visit categories to assign a final rating category of HEDI.
- Pursuant to section 30-3.16 of the Rules of the Board of Regents, a school district or BOCES may request a variance from one or more of the regulatory provisions described above to implement new and innovative approaches to educator evaluation so long as such approaches are consistent with the requirements of the Education Law and meet the standards set forth in the regulations.

- The selection and use of the assessment(s) used in a teacher’s or principal’s evaluation.
- Whether to use an SLO or input model for the required student performance category for principals.
- Whether to use the optional subcomponent of the student performance category, and which option will be used.
- Whether to use the optional subcomponent of the teacher observation/principal school visit category.
- How to implement the teacher observation/principal school visit categories, consistent with the corresponding Commissioner’s Regulations, including, but not limited to, the scoring ranges aligned to each HEDI category within the parameters determined by the State.

¹⁰ In the event that an educator earns a score of 1 on all rated components of the practice rubric across all observations, a score of 0 will be assigned.

Additional Notes

- The process by which weights and scoring ranges are assigned to subcomponents and categories must be transparent and available to those being rated before the beginning of each school year.
- Districts and collective bargaining units, where one exists, must certify that the process for assigning ratings will use the scoring bands and weighting processes specified in the regulations.
- Pursuant to Education Law §3012-d(6), the following elements may no longer be used in any evaluation subcomponent:
 - Evidence of student development and performance derived from lesson plans, other artifacts of teacher practice, and student portfolios, except for student portfolios measured by a state-approved rubric where permitted by the department;
 - Use of an instrument for parent or student feedback;
 - Use of professional goal-setting as evidence of teacher or principal effectiveness;
 - Any district or regionally-developed assessment that has not been approved by the department; and
 - Any growth or achievement target that does not meet the minimum standards as set forth in Commissioner's regulations.
- The entire Annual Professional Performance Review shall be completed and provided to the teacher or the principal as soon as practicable but in no case later than September 1 of the school year next following the school year for which the teacher or principal's performance is measured.
- The requirements of Education Law section 3012-d as enacted by Chapter 56 of the Laws of 2015 and Subpart 30-2 of the Rules of the Board of Regents shall continue to apply to Annual Professional Performance Reviews (APPRs) conducted prior to the 2019-2020 school year or for any annual professional performance review conducted on or after the 2019-2020 school year pursuant to a collective bargaining agreement entered into on or before April 12, 2019 that remains in effect after April 12, 2019 until a successor agreement is reached. During the implementation of such plans, the transition scores and ratings described in the approved APPR plan will replace the original student performance measures based on the grades 3-8 ELA and math State tests and/or any State-provided growth scores.
- Upon a teacher or a principal receiving an overall rating of Developing or Ineffective for a school year, an LEA shall formulate and commence implementation of a teacher or principal improvement plan for such teacher or principal by October 1 in the school year following the school year for which such teacher's or principal's performance is being measured or as soon as practicable thereafter.
- A variance from one or more of the requirements of the regulations and the LEA's approved educator evaluation plan may be granted to an LEA that seeks to develop and implement new and innovative approaches to evaluation that meets the specific needs of the applicant.
 - An LEA may only seek a variance from provisions of the regulations and their approved educator evaluation plan that have been delegated to the commissioner under Education Law §3012-d.
 - An LEA must collectively bargain the terms and conditions of the variance request where required pursuant to Article 14 of the Civil Service Law.
- Prior to or with the submission of a variance application, the LEA must submit and receive approval of an educator evaluation plan that complies with all requirements of Education Law 3012-d as amended and the regulations provided, however, that an LEA may, subject to collective bargaining, notify the Department in its variance application that it intends to carry forward its currently approved educator evaluation plan in lieu of submitting a new plan to the Department.

B. Educators Covered by Law

B1. Who must be evaluated?

The law requires that all classroom teachers and building principals employed by a school district or BOCES be evaluated annually, based on multiple measures of teacher and principal effectiveness.

B2. Which teachers and other school personnel are considered “classroom teachers” under the regulations?

The regulations require that all classroom teachers be evaluated. A classroom teacher is a teacher in the classroom teaching service who is a teacher of record. Teachers of record are defined as those teachers who are primarily and directly responsible for students’ learning activities that are aligned to the performance measures of a course.

Any teacher will receive an educator evaluation if they are deemed a teacher of record by their LEA, including:

- School librarians, library media specialists, and school media specialists who are teachers in the classroom teaching service
- Career and technical education teachers
- Substitute Teachers
- Itinerant teachers at the BOCES for students in multiple schools
- Part-time teachers, who are teachers in the classroom teaching service for 40% or more of a full-time position (4/10 position)
- A teacher performing instructional support services for more than 40% of their time
- “Push-in” and “pull-out” teachers who are not the sole teacher primarily responsible for the learning of a group of students, including Academic Intervention Services (AIS) specialists
- Speech teachers certified under §80-3.9 of the Commissioner's regulations or as a teacher of the speech and hearing handicapped or a teacher of speech and language disabilities and who provide instructional services

The following educators are **not required** to be evaluated under Education Law §3012-d:

- Pre-kindergarten Teachers
- Pupil Personnel Services (e.g., school psychologists and school social workers)
- Supplemental School Personnel (e.g., teacher aides and teaching assistants)
- Teachers of adult, community, and continuing education regardless of the age of the students taking the course (e.g., GED courses)
- A licensed speech language pathologist under Title VIII of the Education Law that is not a certified teacher under the Commissioner’s regulations and does not provide instructional services
- A certified speech and language therapist providing related services only, as defined in Education Law §4401 and section 200.1(qq) of the Commissioner's regulations

B3. Will special education teachers who co-teach receive an evaluation?

Yes. Special education teachers in team-teaching classrooms are included in the evaluation requirements. The LEA must determine locally whether both co-teachers will receive the same scores and ratings for the required Student Performance category, optional subcomponent of the Student Performance category, if applicable, and the Teacher Observation category, or if the co-teachers will receive individual scores and ratings for these components of the educator evaluation.

B4. What types of administrators are included in the definition of a “principal”?

The regulations define principal as a building principal or an administrator in charge of an instructional program of an LEA. This includes BOCES administrators that meet this definition as well as co-principals.

A co-principal means a certified administrator under Part 80 of the Commissioner’s regulations, designated by the school’s controlling authority to have executive authority, management, and instructional leadership responsibility for all or a portion of an LEA-operated program, in a situation in which more than one such administrator is so designated. The term co-principal implies equal line authority, with each administrator so designated reporting to a district-level or comparable BOCES-level supervisor.

Teachers who also perform administrative functions for less than 50% of their time are not included in the definition of a principal.

B5. Do classroom teachers or building principals who plan to retire during the school year need to be evaluated?

Yes, teachers and principals who plan on retiring during the school year need to be evaluated under Education Law §3012-d as amended. LEAs must have processes in place at the beginning of the year to ensure that, to the extent practicable, these educators develop the necessary SLOs and receive the required numbers of observations/school visits.

B6. Are Article 81 schools, Special Act districts, State-supported or State-operated schools included in Education Law §3012-d?

Special Act districts are covered under Education Law §3012-d. However, the following types of schools are not:

- An approved private school for students with disabilities that provides services under Article 81 of the Education Law
- State-supported schools for instruction of the deaf and the blind (“4201 schools”)
- State-operated schools (e.g., schools for the blind or deaf in Batavia and Rome)
- Charter schools
- Non-public schools

C. Educator Evaluation Plan Development and Approval Process

C1. Must LEAs comply with Education Law §3012-d as amended on April 12, 2019?

Yes. All public school districts and BOCES are required to comply with Education Law §3012-d as amended on April 12, 2019. Pursuant to the statute, an LEA’s currently approved educator evaluation plan will remain in place until it wishes to make a material change to that plan or until its current collective bargaining agreement expires and the LEA enters into a successor agreement. Any educator evaluation plan or material change approved after April 12, 2019 must be developed consistent with the requirements of Education Law §3012-d as amended.

C2. My LEA has an educator evaluation plan that was approved prior to April 12, 2019. Do we need to do anything in order to comply with the requirements of Education Law §3012-d as amended on April 12, 2019?

If an LEA’s educator evaluation plan was approved prior to April 12, 2019, the LEA is meeting the statutory requirements so long as they continue to implement their currently approved educator evaluation plan. Once they enter into a successor collective bargaining agreement, that CBA must be consistent with the new evaluation plan requirements. Prior to implementation of its amended plan, the LEA must submit a material change request to the Department through the [NYSSED Business Portal](#) and receive approval of that plan from the Commissioner. Any MOUs

or other agreements must be made consistent with and cannot conflict with the LEA's educator evaluation plan as approved by the Commissioner.

C3. If my LEA negotiates a new CBA after April 12, 2019 in which we agree to use all the same evaluation procedures that are in our currently approved educator evaluation plan, do we need to submit a material change request to the Department?

Yes. Upon entry into a successor CBA, LEAs are required to submit educator evaluation plans for approval on a form and in a manner prescribed by the Commissioner. Therefore, prior to implementing its new CBA, an LEA must complete the template in the [NYSED Business Portal](#) and submit it to the Department for review and approval.

C4. What if my LEA has determined that one or more changes are needed to our currently approved educator evaluation plan?

Until you receive approval of any material changes to your LEA's currently approved educator evaluation plan, you must continue to implement your educator evaluation plan as approved by the Commissioner in its entirety. For this reason, it is essential that LEAs review their plans on an annual basis and submit material change requests to the Department as soon as practicable. Preferably, material change requests should be submitted prior to the beginning of the school year in which they will take effect. The deadline to submit material changes for a school year is March 1 of that year. Any changes submitted after March 1 and/or that are not approved by the end of the school year will not take effect until the subsequent school year absent a finding by the Commissioner of extraordinary circumstances.

If you determine that changes need to be made after reviewing your currently approved educator evaluation plan, you must submit the material change request to the Commissioner for approval through the [NYSED Business Portal](#). Examples of material changes include, but are not limited to: change of rubric, change of number of observations, change of assessment options.

C5. What is the timeline of the approval process for material changes under Education Law §3012-d as amended?

All material change requests must be submitted through the [NYSED Business Portal](#). Material changes are reviewed in the order in which they are received. Please note the following conditions regarding any material change submissions:

- Material changes may only be submitted after all applicable terms have been resolved consistent with Article 14 of the Civil Service Law;
- The entire educator evaluation plan template must be complete before submission and the Department will not accept, review, or approve incomplete educator evaluation plans;
- Each material change submitted must be certified by all parties (superintendent, Board of Education president, and union presidents, where applicable) to demonstrate that it represents a complete and fully negotiated plan;
- Material changes submitted by March 1 of each school year can be implemented for that school year (e.g., March 1, 2020 for plans to be implemented in school year 2019-2020);
- Material changes submitted after March 1 of a school year must be implemented beginning in the following school year.

Additional resources to help LEAs develop and submit material changes to the Department will be posted on the [Office of Educator Quality and Professional Development's website](#).

C6. What forms must I complete for our material change request to be reviewed?

In the [NYSED Business Portal](#), you must complete each of the twelve tasks and upload the following forms:

- Signed and scanned educator evaluation LEA Certification Form (available in the portal);
- Teacher and Principal Improvement Plan forms (created by the LEA).

The twelve tasks and required uploaded documents you submit—once they are approved—will constitute the LEA’s full and complete educator evaluation plan. When submitting plans to the Department for review, LEAs and their collective bargaining representatives certify that any applicable collective bargaining agreements for teachers and principals are consistent with and/or have been amended and/or modified or otherwise resolved to the extent required by Article 14 of the Civil Service Law, as necessary, to require that all classroom teachers and building principals are evaluated annually using the plan that is approved by the Commissioner. Therefore, any information that is part of your educator evaluation plan must be included and submitted to NYSED. Any other documents that you wish to include with your plan for informational purposes must be uploaded in the “Additional Documents” section in the NYSED Business Portal. Additional documents are not considered part of the LEA’s approved educator evaluation plan.

C7. Where can we get help for content questions that arise while we are completing material change requests?

- By consulting the resources posted on the [Office of Educator Quality and Professional Development’s page](#) on the NYSED website.
- By consulting your BOCES or professional organization for technical assistance.
- By consulting your LEA’s attorney.
- By directing questions on completing the application to your designated contact person and/or educatoreval@nysed.gov.

C8. What is the process for reviewing material change requests?

The content of the educator evaluation plan and material change request requires careful review using a standardized process to ensure fair and equitable decisions. NYSED will utilize a multi-tiered review process to ensure the fidelity of its decisions regarding approval or rejection of a plan.

C9. Will NYSED post approved material changes to educator evaluation plans on its website? When is each LEA required to post its educator evaluation plan on the internet?

Yes. The most recently approved version of an LEA’s educator evaluation plan is available on [the NYSED website](#). After a material change is approved, the LEA is required to post the revised educator evaluation plan online by September 10 of each school year or within 10 days of the approval, whichever is later. Your LEA’s approved educator evaluation plan can be downloaded through the [NYSED Business Portal](#).

C10. Is it permissible to post a link to the NYSED page of our most recently approved educator evaluation plan instead of posting the entire plan on our website?

Yes. An LEA may post a link to their most recently approved educator evaluation plan on the NYSED website instead of posting the entirety of the plan on their local website so long as the posted link goes directly to your LEA’s specific educator evaluation plan (that is, the .pdf version of the plan).

C11. When we post our approved educator evaluation plan on our website, can we post copyrighted documents that are included in our plan?

You must obtain any necessary permission for copyrighted or proprietary educator evaluation-related documents prior to posting on your website. If you do not have the necessary permissions to post a document, do not upload that document with your educator evaluation plan.

C12. How will we be notified about NYSED’s decision on our material change?

LEAs will be notified by email of the Commissioner’s decision on any submitted material change. Email notices will be sent from educatoreval@nysed.gov. If the material change is not approved, the email will describe any deficiencies and provide guidance for resolving the deficiencies and resubmitting the plan.

D. Student Performance Category

D1. What is the Student Performance category? How is it determined?

Consistent with research and best practices, the Department believes that well-designed and implemented evaluations are an important tool to help support educator growth and development. With this goal in mind, the measures that are used as part of an annual evaluation should provide useful information to district administrators and the educators who are being evaluated that helps support educators and leverage their expertise.

Under Education Law §3012-d, all teachers and principals are required to receive an evaluation based on two categories: 1) the Student Performance category and 2) the Teacher Observation/Principal School Visit category.

Within the Student Performance category, there are two subcomponents – one required and one optional.

Required subcomponent

The required subcomponent of the Student Performance category for all teachers is a Student Learning Objective (SLO). SLOs are developed locally, consistent with a goal-setting process that is developed by the Commissioner. Principals will have either an SLO or an input model for the required Student Performance category. As required by the Education Law, the selection and use of the assessment as the underlying evidence for the SLO is subject to collective bargaining and must be based on the following options:

- State created or administered assessments,
- State-approved LEA, regional, or BOCES-developed assessments; or
- State-approved third-party assessments.

The Department believes that the development of SLOs should encourage educators to focus and align instruction with district, BOCES, and school priorities, goals, and academic improvement plans. Setting long-term goals allows educators to plan backwards from a vision of student success, and research indicates that setting rigorous and ambitious learning goals, combined with the purposeful use of data through both formal and informal assessments, leads to improved outcomes for students.

The SLO process developed by the Department is aligned with best practices in instructional goal setting and is intended to have significant instructional benefit by encouraging educators to be systematic and strategic in their instructional decisions. Done thoughtfully, the SLO process will lead to an increase in the quality of discussions happening in LEAs, schools, and classrooms that focus on student growth and learning, clearer indications of when and how to adjust instruction to meet students’ needs, and more targeted professional development efforts.

In an input model, effectiveness is measured by the actions educators take to improve student performance and to achieve set goals. In the case of the principal input model for the Required Student Performance category, principals are evaluated based on evidence of principal practice related to the Leadership Standards that impacts student

growth. SLOs for principals, on the other hand, tie principal evaluation results directly to student growth outcomes on assessments.

Optional subcomponent

Under the Education Law, LEAs must locally negotiate as to whether to utilize the optional subcomponent of the Student Performance category and which of the allowable options will be utilized. The law further requires that the same locally selected measure(s) be applied in a consistent manner across all classrooms in the same grade/subject in the LEA to the extent practicable.

In determining whether to use multiple student performance measures, LEA administrators and their collective bargaining representatives should consider how using additional measures can contribute to providing a more complete picture of teacher and/or principal practice and school, district, or individual goals. Teaching and school leadership are complex, multi-dimensional professions and no single measure of educator practice or student outcomes is likely to fully capture the range of knowledge, skills, and abilities employed by educators to support student success.

Student Learning Objectives (SLOs)

D2. What are Student Learning Objectives (SLOs)?

An SLO is an instructional planning tool developed at the start of an educator's course or building principal's school year that include expectations for student growth. It represents important learning that is aligned to national or state standards, as well as any other school and LEA priorities. The goals included in the SLO must be specific, measurable, and based on available prior student learning data. The SLO process asks educators to reflect on who their students are, what they already know, and what they are going to learn during the interval of instruction. In this context, rigorous yet attainable targets are set that define what success looks like for each student and considers their longer term trajectory toward college, career, and citizenship readiness. Educators' scores are then based upon the degree to which the goals were attained, as evidenced by student academic performance at the end of the course.

Consistent with this process, New York State SLOs must include the following elements:

- Student Population: Which students are being addressed? Each SLO will address all students in the teacher's course (or across multiple course sections) who take the same final assessment.
- Learning Content: What is being taught? National/State standards? Will specific standards be focused on or all standards applicable to the course?
- Interval of Instructional Time: What is the instructional period covered?
- Evidence: Which State-administered, developed, or approved assessment(s) will be used to measure this goal?
- Baseline: What is the starting level of learning for students in the class?
- Target: What is the expected outcome (target) by the end of the instructional period? (All targets must include a minimum of one year of expected academic growth.)
- State-Determined HEDI Criteria: LEAs must use the State-determined scoring ranges to determine final scores and HEDI ratings
- Rationale: Why choose this learning content, evidence and target?

There are templates available for various types of SLOs (teacher- or course-specific; collectively attributed through school-wide measures) on NYSED's [Office of Educator Quality and Professional Development website](#). Please note that an LEA is not required to use these templates when developing SLOs and may create local systems for collecting the required elements of an SLO.

D3. How do I determine the final score for SLOs in the required subcomponent of the Student Performance category?

Each measure in the Student Performance category must result in a score between 0 and 20. For all LEAs except the NYCDOE, the following table will be used to calculate scores and ratings for SLOs: For schools in the NYCDOE, the following table will be used to calculate scores and ratings for SLOs based on the percentage of students meeting a target:

SLOs	Scoring Range
Percent of Students Meeting Target	
0-4%	0
5-8%	1
9-12%	2
13-16%	3
17-20%	4
21-24%	5
25-28%	6
29-33%	7
34-38%	8
39-43%	9
44-48%	10
49-54%	11
55-59%	12
60-66%	13
67-74%	14
75-79%	15
80-84%	16
85-89%	17
90-92%	18
93-96%	19
97-100%	20

For schools in the NYCDOE, the following table will be used to calculate scores and ratings for SLOs based on the percentage of students meeting a target:

SLOs	Scoring Range
Percent of Students Meeting Target	
0-9%	0
10-19%	1
20-29%	2
30-39%	3
40-49%	4
50-59%	5

60-62%	6
63-65%	7
66-68%	8
69-71%	9
72-74%	10
75-77%	11
78-80%	12
81-83%	13
84-86%	14
87-89%	15
90-91%	16
92-93%	17
94-95%	18
96-97%	19
98-100%	20

D4. What is considered an appropriate growth target? What is meant by “an expected years’ worth of growth”?

SLOs must include a minimum growth target of one year of expected growth for each student included on the SLO. Students begin a course with varying levels of preparedness, so educators must determine what a year’s worth of expected growth will look like for students who enter with different levels of knowledge, skills, and abilities. Targets should be set that encourage accelerated gains and close achievement gaps. For additional information on setting rigorous yet attainable growth targets, see [SLO guidance](#).

D5. Are educators still required to use the 50%/30% rule when determining which classes to use for their SLO(s)?

No. For educator evaluation plans approved after April 12, 2019, there is no longer a requirement that SLOs be set beginning with the grade(s)/course(s) that have the largest number of students and continuing until at least 50% of students on a teacher’s course roster or 30% of students in the principal’s school or program are covered.

For educators who teach multiple grades and subjects, LEAs and their collective bargaining representatives should consider developing SLOs for those grades/subjects that best reflect an educator’s efforts to support student learning. So long as each educator has at least one SLO, the minimum requirements of the law have been met. As a reminder, the student population for any SLO must include all students enrolled in the course/grade level.

D6. Are there specific measures and assessments that must be used for certain types of educators?

No. There is no longer a requirement that certain types of teachers or principals (e.g. common branch, Grade 8 Science, Regents teachers, etc.) use any specific measures or assessments. Under Education Law §3012-d as amended, LEAs may now locally select the measures and assessments used as the underlying evidence for all educators’ SLOs.

D7. What are the different types of SLO measures available to evaluate a teacher or principal?

All classroom teachers must have one or more SLOs consistent with the goal-setting process determined by the Commissioner. Principals will have either an SLO or an input model for the required Student Performance category. The selection and use of the assessment(s) for the SLO are subject to collective bargaining.

The following are examples of different types of measures that LEAs may use in the development of their SLOs:

- Teacher and course-specific (i.e., scores and ratings will be based on the growth of students in the teacher’s course in the current school year).
- School- or program-wide linked results (i.e., scores and ratings will be based on the growth of students enrolled in the teacher’s course in the current school year taking assessments in other grades/subjects).
 - Measure may also be district/BOCES-wide if including the results of assessments administered outside of the building/program in which the teacher teaches.
- School- or program-wide results (i.e., scores and ratings will be based on the growth of all students in a school or program who take the applicable assessments in the current school year).
 - Measure may also be district/BOCES-wide if including the results of assessments administered outside of the building/program in which the teacher teaches.
- School- or program-wide group or team results (i.e., scores and ratings for a group or team of teachers will be based on the growth of students in the group/team of teachers’ courses in the current school year).
 - Measure may also be district-BOCES-wide if including the results of assessments administered outside of the building/program in which the teacher teaches.

D8. Do all teachers of the same grade/subject need to use the same underlying evidence in their SLO?

Yes. The same measure(s) and assessment(s) must be used as the underlying evidence for SLOs for all teachers of the same grade and subject.

D9. How should LEAs handle SLOs where there is high mobility of students and the majority of the class will change from the beginning to the end of the year?

LEAs have several options they may wish to consider for classrooms where there is high mobility of students throughout the school year:

- LEA leaders may want teachers to have shorter-term SLOs (half-year or quarter-year) with teacher-specific measures. A teacher’s score at the end of the year would then incorporate the students who are present for a pre- and a post-assessment.
- Using a teacher-specific measure, teachers may administer a pre-assessment to new students quarterly and weight those students who have both a pre- and post- assessment according to the number of days the students were enrolled (100%, 75%, 50%, 25%).
- In cases where the changeover is so significant that it is impossible to set even shorter-term SLOs, LEAs may wish to consider having all applicable teachers use district- or BOCES-wide, or school- or program-wide, group, team, or linked measure based on State/Regents assessments or other State-approved assessments.

D10. Can an LEA select a portion of an approved assessment as evidence of student learning in an SLO, or must the entire assessment be used?

No. All assessments approved for use in teacher and principal evaluations must be used in their entirety.

Input Model for Principals

D11. What is an input model? How is an input model different from an SLO?

In an input model, effectiveness is measured by the actions educators take to improve student performance and to achieve set goals. In the case of the principal input model for the Required Student Performance category, principals are evaluated based on evidence of principal practice related to the Leadership Standards that impacts student growth. SLOs for principals, on the other hand, tie principal evaluation results directly to student growth outcomes on assessments.

The Department intends the evaluation system to be a cycle of continuous improvement. The input model allows principals to play a more active role in their own professional learning, growth, and development.

D12. What areas of principal practice can be included in an input model?

In an input model, the areas of principal practice may fall into, but are not limited to, the following categories which are broadly aligned to the Leadership Standards:

- Teaching and Learning: The actions a principal takes to improve student outcomes through the continuous development, improvement, and support of effective teaching.
- Shared Vision and Goals: The actions a principal takes to create a shared vision of educational equity supported by a culture of high expectations.
- Family and Community Engagement: The actions a principal takes to collaborate with families and key stakeholders who represent a culturally-rich diversity of community interests in service of improved teaching and learning.
- Strategic Planning and Organizational Management: The actions a principal takes to manage and monitor school systems and operations for a safe, high-performing learning environment.
- Talent Management: The actions a principal takes to develop and maintain a high-quality, effective teaching staff.
- Personal Leadership and Growth: The actions a principal takes to demonstrate effective leadership through self-reflection, change management and clear communication.

D13. What does “promote student growth” mean?

Student growth is defined in statute as “the change in student achievement for an individual student between two or more points in time”. There are many elements of principal practice that serve to promote improved student achievement. We believe that principals influence a range of school conditions and that not all principals have the same roles, responsibilities, authority or autonomy in their schools, so the input model is by no means “one size fits all”. As such, LEAs have broad latitude to locally determine which elements of principal practice promote student growth, and what evidence will be used to determine the efficacy of a principal’s actions toward promoting student growth. This then enables LEAs to tailor their input models based on their contextualized needs and roles.

D14. What types of evidence can we use to demonstrate student growth and principal practice?

Both quantitative and qualitative data can be used to demonstrate evidence of principal practice that promotes student growth. The evidence that is selected should be tangible processes, structures, and/or academic outcomes that exist in a school and may fall into one of the following categories:

- Observable elements of principal practice: These observations include but are not limited to leadership team meetings, principals observing teacher practice, or principal to teacher feedback conversations.
- Indirect elements of principal practice: These include but are not limited to programs and policies the principal has created and/or implemented, an evaluator attending teacher team meetings or collaboration sessions or observing teacher practice across multiple classrooms where the principal is not present.
- Artifacts documenting principal practice: These include but are not limited to the strategic school plan, documentation of the school’s instructional framework, and communications to families and community members.
- School data: This includes but is not limited to leading indicators, direct evidence of student performance, and stakeholder feedback.

D15. Do we have to use the HEDI bands for SLOs for the input model for principals?

No, LEAs who choose to use the input model for the Required Student Performance category do not have to use the required HEDI table for SLOs. LEAs shall calculate 0-20 scores and HEDI ratings consistent with the process specified in their approved educator evaluation plan, which must include information on how the LEA will use the input model evidence to differentiate effectiveness resulting in a score from 0 to 20 and ratings of Highly Effective, Effective, Developing, or Ineffective.

D16. Are the options in the Required Student Performance category for principals subject to collective bargaining?

The options for principals in the Required Student Performance category are subject to collective bargaining where a collective bargaining unit exists.

D17. Is the input model available for teachers?

Currently, an LEA can locally determine to use an input model for teachers in the optional Student Performance category or through a variance application for the required Student Performance category (see [Section I](#)).

Optional Student Performance Measures

D18. If our LEA chooses to use the optional subcomponent of the Student Performance category, what must be decided upon?

Teachers

LEAs may collectively bargain a second measure of student performance that must be applied in a consistent manner, to the extent practicable, across the LEA based on a State-created or administered assessment, or State-designed supplemental assessment. This measure may be comprised of one or more of the following options:

- A second SLO, provided that this SLO is different than that used in the required subcomponent of the teacher's evaluation;
- a growth score based on a statistical growth model, where available, for either a State-created or -administered assessment or a State-designed supplemental assessment;
- a measure of student growth, other than an SLO, based on State-created or -administered assessments or State-designed supplemental assessments;
- a performance index based on State-created or administered assessments or approved student assessments;
- an achievement benchmark on State-created or administered assessments or approved student assessments; or
- any other collectively bargained measure of student growth or achievement included in the LEA's evaluation plan as approved by the commissioner.

Principals

LEAs may locally select, or if applicable, collectively bargain one or more measures for the optional subcomponent of the Student Performance category for principals that must be applied in a consistent manner, to the extent practicable, across the LEA based on a State-created or administered assessment or State-designed supplemental assessment. This measure may be comprised of:

- a second SLO, provided that this SLO is different than that used in the required subcomponent of the principal's evaluation;
- a growth score based on a statistical growth model, where available, for either a State-created or administered assessment or a State-designed supplemental assessment;
- a measure of student growth, other than an SLO, based on State-created or administered assessments or State-designed supplemental assessments;

- a performance index based on State-created or administered assessments or approved student assessments;
- an achievement benchmark on State-created or administered assessments or approved student assessments;
- four, five, or six-year high school graduation rates;
- An input model where the principal's rating shall be determined based on evidence of principal practice that promotes student growth or achievement related to the Leadership Standards; or
- any other collectively bargained measure of student growth or achievement as described in the LEA's evaluation plan, subject to approval by the commissioner.

The LEA shall measure student growth using the same measure(s) of student growth for all building principals within the same building configuration or program.

D19. In our small LEA, we only have one teacher per grade/subject. Are the optional locally selected measures that we collectively bargain considered “used in a consistent manner” if we only have one classroom?

Yes. The use of a measure in the optional subcomponent of the Student Performance category using an assessment from the State-approved list of assessments would be considered “used in a consistent manner across classrooms” if you only have one classroom in that grade/subject.

Scoring and Weights

D20. How are the Required and Optional Subcomponents of the Student Performance category scored?

Education Law §3012-d as amended states that the Commissioner shall determine the scoring ranges for the Required and Optional subcomponents of the Student Performance category that result in a combined category rating. Each measure in the Student Performance category must result in a score between 0 and 20.

For SLOs and input models for principals in the required subcomponent of the Student Performance category, LEAs shall calculate scores in accordance with the required HEDI table, except in the case of SLOs with small student populations and SLOs developed for teachers and principals in the NYCDOE. See [Question D3](#) for the specific scoring ranges that are required to be used for SLOs.

For all measures in the optional subcomponent of the Student Performance category, LEAs shall calculate 0-20 scores and HEDI ratings consistent with the process specified in their approved educator evaluation plan.

D21. How much weight do the required and optional subcomponents of the Student Performance category have?

The weighting of the required and optional subcomponents of the Student Performance category should be established locally within the following constraints:

- The required subcomponent of the Student Performance category will be weighted 100% if the optional subcomponent is not selected.
- If the optional subcomponent of the Student Performance category is selected, the weightings for each subcomponent should be established locally. For example, an LEA may choose to weight the required subcomponent at 60% and the optional subcomponent at 40% of the student performance category.

D22. How is the overall Student Performance category rating determined?

If only the required subcomponent is used, the 0 to 20 score should be weighted at 100% to determine the Student Performance category score. If both the required and optional subcomponents are used, they must be averaged

using the locally determined weights specified in the approved educator evaluation plan to produce a single Student Performance category score of 0 to 20. Using this score, an overall Student Performance category rating shall be derived from the required HEDI Tables below:

Rest of State

	Minimum	Maximum
H	18	20
E	15	17
D	13	14
I	0	12

New York City

	Minimum	Maximum
H	16	20
E	11	15
D	6	10
I	0	5

E. Assessments for Use in Student Performance Category

E1. What assessments can be used in the Student Performance category?

Required Student Performance category

SLOs for the required subcomponent of the Student Performance category may be based on State or Regents assessments, State-approved third-party assessments, or State-approved district-, BOCES-, or regionally-developed assessments. The current list of approved assessments is available at the [Office of Educator Quality and Professional Development’s page](#) on the NYSED website.

Optional Student Performance category

For the optional subcomponent of the Student Performance category, assessments must be either State-created or administered or State-designed supplemental assessments.

A State-designed supplemental assessment is defined in Education Law §3012-d(2)(d) as “State tests or assessments developed or designed by the State Education Department, or that the State Education Department purchased or acquired from (1) another state; (2) an institution of higher education; or (3) a commercial or not-for-profit entity, provided that such entity must be objective and may not have a conflict of interest or appearance of a conflict of interest. This may include tests or assessments that have been previously designed or acquired by local LEAs, but only if the State Education Department significantly modifies growth targets or scoring bands for such tests or assessments or otherwise adapts the test or assessment to the State Education Department’s requirements.”

State-designed supplemental assessments must be approved by the Department through the [Assessment RFQ](#) process.

E2. What is the process and timeline for the Department to approve assessments for use in teacher and principal evaluation?

The Department has issued an [Assessment RFQ](#) to be used by New York State LEAs for a portion of teachers’ and principals’ evaluations, soliciting applications for assessments that may be used as measures of student growth for the required and/or optional subcomponents of the Student Performance category. NYSED will review any submitted assessments for use with SLOs and evaluate them on the degree to which they meet criteria established in the [Assessment RFQ](#) and the Commissioner’s regulations.

Applications will be reviewed on a continuous and ongoing basis in order in which they were received. Vendors, LEAs and BOCES should assume a minimum of a two-month review window between submission and approval or denial of an application.

Submitted assessments that meet the criteria in the Commissioner's regulations and the RFQ will be added to the [State's Approved Assessment Lists](#) and the SED Monitoring Educator Evaluation portal will be updated to reflect any approved assessments. Please note that until such time that an assessment is approved by the Department, LEAs may not use the assessment for educator evaluation purposes.

Before selecting an assessment from the State-approved list, LEAs should contact assessment providers directly to determine any costs and additional requirements for the use of the assessment.

E3. Can an LEA use a locally-developed performance task with a scoring rubric?

Yes. Locally-developed performance-based or performance task assessments may be used with a scoring rubric for educator evaluation purposes if the assessment has been submitted and approved for use by the Department through the RFQ process.

E4. Can we use the assessments we developed for Data-Driven Instruction (DDI) cycles as our LEA-developed assessments for use with SLOs?

Assessments developed and used for DDI are intended to provide formative information to teachers and schools for instructional decision-making. However, assessments used in SLOs must provide summative information that will be incorporated into teacher and principal evaluations and must be approved for use by the State through an RFQ process. Consequently, any assessment used with SLOs must contain a summative assessment component.

If an LEA would like to create an alternative SLO process that utilizes interim assessments, they may do so through a [variance](#).

E5. Can LEAs submit a third-party assessment to be approved through the RFQ?

Yes. LEAs can submit an application for the [RFQ](#) on behalf of the Copyright Owner of an assessment and/or an Assessment Representative for an assessment used or planned to be used in their schools, provided that the LEA receives approval from the Copyright Owner/Assessment Representative to submit an application for the assessment for this RFQ, and the Copyright Owner/Assessment Representative is an eligible entity.

E6. Can an LEA use another LEA's State-approved district, regional, and/or BOCES' developed assessment(s) to evaluate their educators?

Yes, in some circumstances. An assessment submitted by an LEA, if approved and placed on the applicable [Approved Assessment List](#), will be available for use by any LEA, if the LEA has designated the assessment as approved for use by other LEAs.

E7. Can an LEA use an assessment that has not been approved through the Assessment RFQ process and is not a State/Regents assessment, at the time of submission of their educator evaluation plan?

Unless otherwise approved through a variance application, LEAs may only use assessments from the list of assessments approved for use in educator evaluation plans. The current list of approved assessments is available at the [Office of Educator Quality and Professional Development's page](#) on the NYSED website.

E8. Will standardized assessments for use in kindergarten through grade two be included on the list of State-approved assessments for use in educator evaluation?

Effective March 2, 2014, the Department removed [traditional standardized assessments](#) for use in kindergarten through grade two from the list of State-approved assessments for use in educator evaluation plans for the 2014-15 school year and thereafter.

E9. What if we want to change an assessment designated in our approved educator evaluation plan?

To change an assessment in an approved educator evaluation plan, the LEA must submit a material change. See questions [C4](#) through [C8](#) above for more information about making material changes to approved educator evaluation plans.

E10. How can a third-party or locally-developed assessment be added to the approved assessment list?

All student assessments used for educator evaluation purposes must be developed or approved by the Department. Unless otherwise approved through a variance application, assessments are approved through an [RFQ](#) process – this includes third-party assessments as well as district, regional, or BOCES-developed assessments. Applications are accepted on a continuous and ongoing basis.

If the desired assessment is approved by the Department, the LEA can submit a material change request to utilize the now-approved assessment. Please note that only approved assessments will be listed in the SED Monitoring Educator Evaluation portal; therefore, if you do not see the name of the assessment in the portal, it has not been approved for use in educator evaluation plans.

E11. Are LEAs still required to certify caps on instructional time for testing and test preparation?

Yes. Effective May 10, 2014, any educator evaluation plan submitted to the Commissioner for approval for use in the 2014-15 school year and thereafter must include the signed certification by the superintendent, district superintendent, or chancellor attesting that the amount of time devoted to traditional standardized assessments that are not specifically required by state or federal law for each classroom or program within a grade level does not exceed, in the aggregate, one percent of the minimum in required annual instructional hours for such grade; and that the amount of time devoted to test preparation under traditional standardized testing conditions for each classroom or program within a grade does not exceed, in the aggregate, two percent of the minimum required annual instructional hours for such grade.

F. Teacher Observations and Principal School Visits Category

F1. What is the Observation/School Visit category? How is it determined?

The primary purpose of the evaluation system is to provide useful information to administrators and educators that can support the continuous development of educators. High quality classroom observations and school visits are an essential component of this process. When implemented in a manner consistent with best practices, these measures are essential to improving teacher and principal practice. The observation/school visit process provides educators with an opportunity to receive timely and actionable feedback based on evidence aligned to research-based standards, which can both leverage expertise and support continuous improvement.

Under the Education Law, the Observation/School Visit category for teachers and principals must be based on at least two types of required observations/school visits and may also include optional peer observations/visits.

Required

The two required components must be comprised of:

- At least one observation/school visit conducted by a principal/supervisor or other trained administrator; and
- At least one additional observation/school visit conducted by one or more impartial independent trained evaluator(s) selected and trained by the LEA.
- At least one of the observations/school visits must be unannounced.

Optional

A third optional subcomponent shall be based on:

- One or more observations conducted by a trained peer teacher/principal who received an overall rating of Effective or Highly Effective in the prior school year.

If an LEA is unable to obtain independent evaluators, it may apply for a Rural/Single Building Waiver or an Undue Burden Waiver depending on their specific needs. This waiver must be reapplied for annually. For more information, please see the [Independent Evaluator Hardship Waiver resource page](#).

Rubrics

F2. What teacher and principal practice rubrics can my LEA use under Education Law §3012-d?

Rubrics approved for use in evaluations are listed on the Department's website. Additional rubrics may be approved by the Department through the [Rubric RFQ](#) process, which is available on the Department's website.

All teacher observations and principal school visits must be conducted using a practice rubric approved by the Commissioner pursuant to an RFQ process, unless the LEA has an approved variance from the Commissioner.

All observations for a teacher, across observer types, for the school year must use the same approved rubric. LEAs may locally determine whether to use different rubrics for teachers who teach different grades and/or subjects during the school year (e.g., LEAs may locally select to use one rubric for K-6 teachers, a second rubric for 7-12 teachers, and a third rubric for Library/Media Specialists who are teachers of record).

All school visits for a principal for the year must use the same approved rubric. LEAs may locally determine whether to use different rubrics for a principal assigned to different grade level configurations or building types.

F3. What is the process and timeline for the Department to approve teacher and principal practice rubrics for use in teacher and principal evaluation?

The Department has issued an [RFQ](#) for teacher and principal practice rubrics to be used by New York State LEAs for a portion of teachers' and principals' evaluations. The Department considers applications on a continuous and ongoing basis and the list is updated as new rubrics are approved.

F4. Can an LEA use a rubric that it has developed or modified from an existing rubric? If so, how does that process work?

If an LEA wishes to use a rubric that it has developed or modified from an existing rubric, it must apply for a rubric variance approval through the [RFQ](#) process prior to implementation. The circumstances under which variances will be granted are limited. If the rubric is not on the approved list or approved through the variance process for the LEA, then the rubric may not be used in evaluations. The RFQ provides information about requirements and standards for approval of a rubric variance. Further, an LEA who wishes to change the rubric specified in their currently approved educator evaluation plan to another rubric from the approved list must submit a material change request to the Department and receive approval prior to implementation.

F5. Is there a cost associated with use of the rubrics on the Approved Rubric List? Do we need to use the implementation services being offered by providers?

Some providers of practice rubrics on the Approved Rubric List have made their rubrics available at no cost. Others charge a fee to license the rubric or to purchase the associated implementation support services. If the provider's services are listed as "required," you must collaborate with that service provider to successfully implement their evaluation tool.

Please note: Before selecting a rubric, LEAs should contact rubric providers directly (before negotiating use of such product) to discuss any costs associated with the product for implementation, including potential software costs and any potential copyright issues/legal restrictions on the use of such product.

F6. Can we adopt our own procedures for implementing a rubric from the Approved Rubric List, or would a variance be required? For example, can we develop our own evaluation form to support the use of the rubrics that have been made available? Or can we choose to give greater weight to certain components of the rubric while de-emphasizing other components?

An LEA is NOT required to request a variance for procedural differences in implementation of a rubric on the Approved Rubric List. Procedural differences include but are not limited to:

- Providing additional or more detailed guidance on how to implement the rubric that is not available from the original rubric provider;
- Developing (or working with the rubric provider to develop) an evaluation form to support LEA use of the rubric; or
- Determining to use only certain components instead of the entire rubric; this includes utilizing a select group of elements or performance indicators.

Please note that, for educator evaluation purposes, LEAs can only assess observable rubric elements or performance indicators, which align with the observable standards/domains of the [New York State Teaching Standards and ISLLC 2008 Standards](#). For principal school visits conducted commencing with the 2025-2026 school year, all rubrics must be aligned to the [2015 Professional Standards for Educational Leaders \(PSELs\)](#).

F7. Must we use all subcomponents in an observation rubric, or can we select which subcomponents are observable?

LEAs must designate the subcomponents of a rubric that they deem to be observable. This may be all subcomponents in the rubric, or a limited number of observable rubric subcomponents for focus. All subcomponents designated as observable must be addressed annually.

Teaching/Leadership standards and their related functions that are part of the rubric but not observable during the course of the observation/school visit may be observed through other natural conversations between the teacher/principal and the evaluator and incorporated into the observation/school visit score. All observable teaching/leadership standards must be assessed at least once a year. This does not mean that all elements/performance indicators in each standard must be addressed or even every standard - only those standards which are observable during classroom observations/school visits must be assessed annually.

F8. How much weight does the required subcomponent of the Observation/School Visit category have? What if an LEA elects to use the optional peer observation subcomponent of the Observation/School Visit category?

The weighting of the subcomponents within the Teacher Observation or Principal School Visit category should be established locally within the following constraints:

- Observations and school visits conducted by a principal (for teachers), superintendent or other trained administrator (for principals) shall be weighted at a minimum of 80%.
- Observations and school visits conducted by independent impartial observers shall be weighted at a minimum of 10%.
- If an LEA elects to use the optional third Observation/School Visit subcomponent, then the weighting assigned to the Optional Observations/School Visits conducted by peers shall be established locally within the constraints outlined above.

F9. How is the overall Observation/School Visit category rating determined?

The overall observation or school visit score shall be converted into an overall rating, using cut scores determined locally for each rating category; provided that such cut scores shall be consistent with the permissible ranges identified below:

	Teacher Observation/Principal School Visit Category Score and Rating	
	Min	Max
H	3.5 to 3.75	4.0
E	2.5 to 2.75	3.49 to 3.74
D	1.5 to 1.75	2.49 to 2.74
I	0	1.49 to 1.74

G. Scoring and Rating of Evaluations

G1. How are the Student Performance and Observation/School Visit categories combined for an educator’s overall evaluation rating?

Once the overall weighted Student Performance and Teacher Observation/Principal School Visit category ratings are determined, the overall rating for a teacher or principal will be assigned according to the following methodology:

		Observation / School Visits			
		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

The superintendent, district superintendent, or chancellor and the representative of the collective bargaining units (where they exist) must certify in the LEA’s plan that the evaluation process will use the weights and scoring ranges prescribed by the Commissioner.

Teacher and Principal Improvements Plans

G2. When/under what circumstances must an LEA implement a teacher or principal improvement plan (TIP/PIP)?

Teachers and principals who receive an overall rating of Developing or Ineffective must have a TIP or PIP issued and implemented beginning by October 1 of the following school year or as soon as practicable. Such TIP or PIP shall be developed by the superintendent or designee in the exercise of their pedagogical judgment but shall be subject to collective bargaining to the extent required by Article 14 of the Civil Service Law.

G3. What are the required elements of a TIP/PIP?

A TIP/PIP defines specific standards-based goals that a teacher or principal must make progress toward attaining within a specific period of time, such as a 12-month period. The required elements are:

- the identification of areas that need improvement;
- a timeline for achieving improvement;
- the manner in which improvement will be assessed; and,
- where appropriate, differentiated activities to support improvement in these areas.

The template for TIP/PIP forms that an LEA uses (included in its approved educator evaluation plan) must include all of these elements.

H. Evaluators, Training, and Certification

H1. Who conducts evaluations of teachers and principals?

Evaluators:

An “evaluator” is any individual who conducts an evaluation of a teacher or principal, including any person who conducts an observation or assessment as part of a teacher or principal evaluation. For teachers, an evaluator must be a principal, other trained administrator, trained in-school peer teacher, or other trained independent evaluator. For principals, an evaluator must be the building principal’s supervisor, other trained administrator, trained peer principal, or other trained independent evaluator. Please note: an independent trained evaluator may be employed within the LEA but may not be assigned to the same school building, as defined by BEDS code, as the educator being evaluated.

Lead Evaluators:

The “lead evaluator” is the primary person responsible for conducting and completing a teacher’s or principal’s evaluation. Typically, the lead evaluator is the person who completes and signs the summative educator evaluation. To the extent possible, the principal or a trained administrator serving as their designee should be the lead evaluator of a classroom teacher. To the extent possible, the lead evaluator of a principal should be the superintendent or BOCES district superintendent or a trained supervisor serving as their designee. LEAs are responsible for lead evaluator certification.

Impartial Independent Evaluators:

Impartial independent trained evaluators are trained and selected by the LEA. These evaluators may be employed within the school LEA but may not be assigned to the same school building as the teacher or principal being evaluated. This could include other administrators, supervisors, department chairs, or peers (e.g., teacher leaders or principal leaders on career ladder pathways).

Please note that “school building” shall mean a school or program identified by its BEDS code.

H2. What are the training/certification requirements for lead evaluators? Should these requirements be included in our approved educator evaluation plan and any material changes?

All evaluators, including lead evaluators, impartial and independent observers, and peer observers, must have appropriate training before conducting a teacher or principal’s evaluation, but only lead evaluators must be certified to conduct evaluations. In addition, annual calibration sessions are required across all evaluators and LEAs are required to have a process for periodically re-certifying lead evaluators. In order to be certified as lead evaluators, administrators must be trained in the following nine elements:

- (1) the New York State Teaching Standards and their related elements and performance indicators and the Leadership standards and their related functions, as applicable;
- (2) evidence-based observation techniques that are grounded in research;
- (3) application and use of any methodology as part of an SLO and any optional second measures of student performance used by the LEA to evaluate its teachers or principals;
- (4) application and use of the State-approved teacher or principal rubric(s) selected by the LEA for use in evaluations, including training on the effective application of such rubrics to observe a teacher or principal's practice;
- (5) application and use of any assessment tools that the LEA utilizes to evaluate its classroom teachers or building principals;
- (6) application and use of any locally selected measures of student growth used in the optional subcomponent of the Student Performance category used by the LEA to evaluate its teachers or principals;
- (7) use of the statewide instructional reporting system;
- (8) the scoring methodology utilized by the department and/or the LEA to evaluate a teacher or principal under this Subpart, including the weightings of each subcomponent within a category; how overall scores/ratings are generated for each subcomponent and category and application and use of the evaluation matrix(es) prescribed by the commissioner for the four designated rating categories used for the teacher's or principal's overall rating and their category ratings; and
- (9) specific considerations in evaluating teachers and principals of English language learners and students with disabilities.

LEAs are required to include these nine elements in their approved educator evaluation plan and in any material changes made thereafter.

H3. What are the training/certification requirements for independent evaluators and peer observers?

All evaluators, including lead evaluators, impartial and independent observers, and peer observers, must have appropriate training before conducting a teacher or principal’s evaluation. In addition, annual calibration sessions are required across evaluators and LEAs are required to have a process for periodically re-certifying evaluators.

Impartial independent observers and peer observers must receive training on the following elements:

- (1) the New York State Teaching Standards and their related elements and performance indicators and the Leadership standards and their related functions, as applicable;
- (2) evidence-based observation techniques that are grounded in research; and
- (3) application and use of the State-approved teacher or principal rubric(s) selected by the LEA for use in evaluations, including training on the effective application of such rubrics to observe a teacher or principal's practice.

H4. How can I determine who is eligible to serve as an impartial independent trained evaluator if my LEA is made up of only one school building? How might this be done within a BOCES structure?

Eligible impartial independent trained evaluator(s) can be employed within the LEA but must not be assigned to the same school building as the teacher or principal; being evaluated. For educator evaluation purposes, “school building” shall mean a school or program identified by its BEDS code. The evaluator may be a LEA-wide employee reported to NYSED using the LEA BEDS code, not the school building BEDS code where the evaluation is taking place. For example, if the staff member is a Director of Special Education in a one-building of an LEA, the LEA BEDS code or the overarching BOCES could be used to identify this person as an eligible independent trained evaluator.

In addition, if the staff member is a BOCES employee and is reported to NYSED with a different virtual location code than the school or location BEDS code associated with the educator being evaluated, they too could be identified as an eligible independent trained evaluator.

For more information about the proper use of BEDS codes, LEAs are encouraged to work with their Regional Information Centers (RICs).

If an LEA is unable to obtain independent evaluators, it may apply for a Rural or Single Building Waiver or an Undue Burden Waiver, depending on their specific needs. This waiver must be reapplied for annually. For more information, please see the [Independent Evaluator Hardship Waiver resource page](#).

H5. If a principal or other administrator is not fully certified as a lead evaluator in time for the current school year, does this mean he/she is unable to conduct classroom observations?

Not necessarily. A lead evaluator who holds State certification as a school administrator or superintendent of schools may conduct classroom observations or school visits as part of an educator evaluation prior to completion of the required training provided such training is successfully completed before completion of the evaluation.

I. Variance

I1. What is a variance?

We have heard from the field that they desire greater flexibility when designing an evaluation system that is responsive to local context. At its May 2020 meeting, the Board of Regents permanently adopted sections 30-3 of the Rules of the Board of Regents to allow LEAs to apply for a variance from educator evaluation plan requirements to permit them to develop and implement new and innovative approaches to evaluation that meet the specific needs of the LEA, upon a finding by the Commissioner that the new and innovative approach demonstrates how it will ensure differentiated results over time and how the results of the evaluation will be used to provide personalized professional learning opportunities to teachers and principals, while complying with the requirements of Education Law §3012-d.

In instances where a variance is approved, the term(s) described in the approved variance will replace the related sections of the LEA’s currently approved educator evaluation plan. However, please note that all other terms as are present in the LEA’s currently approved plan will remain in effect and must be implemented without modification.

Once a variance is approved by the Department, it shall be considered part of the LEA’s educator evaluation plan during the approved term of the variance. In any instance in which there is an approved variance and such variance contains information that conflicts with the information provided in the approved Education Law §3012-d educator evaluation plan, the provisions of the approved variance will apply during the approved term of the variance.

LEAs may apply for a variance for one or more of the requirements of educator evaluation (e.g., student performance category, teacher observations/principal school visits) that meets the specific needs of the applicant, which is subject to approval by the Commissioner. The elements of the variance that LEAs apply for are subject to collective bargaining.

Variance applications must be approved by the Department by December 1 of a school year to be implemented in that school year. Absent a finding by the Commissioner of extraordinary circumstances, a variance application approved after December 1 of a school year will not be implemented until the following school year.

12. What is meant by “new and innovative”?

The Department believes that the overall purpose of the evaluation system is to provide educators with actionable information and feedback about their practice that can be used to improve outcomes for all students. Evaluation is not intended to be “one size fits all”. While there are many different permutations that can exist within the broad parameters outlined in Education Law §3012-d, and the Department wants to acknowledge and honor that LEAs may have systems of evaluation that they wish to implement which vary from what is outlined in the Commissioner’s Regulations and through the Department’s Guidance documents.

13. What are the required elements of a variance?

LEAs who seek a variance must provide the following required elements in support of their application:

- A rationale for each provision for which a variance is sought;
- A description of the standards and procedures that will be used in lieu of those described in regulations for each specific provision for which a variance is sought;
- A description of how the LEA will ensure that evaluations are rigorous and enable strong and equitable inferences about the effectiveness of the district’s educators;
- A description of how the LEA will use the information collected through the evaluation system, including the assigned effectiveness ratings, to provide personalized professional learning opportunities for teachers and principals; and
- A description of how the district will assess the effectiveness of the implementation of the variance.

More details on the required elements of a variance can be found [here](#) when available. Questions regarding the variance process can be sent to: EvalVariance@nysed.gov.

14. What are the conditions of the variance?

Variances will be granted under the following conditions:

- The provisions of the variance shall remain in compliance with all requirements of Education Law §3012-d as amended by Chapter 59 of the Laws of 2019;
- An LEA may only seek a variance from the Commissioner for the provisions of this Subpart for which Education Law §3012-d delegates responsibility to the Commissioner to establish the standards and procedures;
- Upon approval of a variance, the LEA shall implement such variance along with all other remaining provisions of the district’s approved evaluation plan consistent with the requirements of regulations;
- An LEA with an approved variance shall provide to the Department, upon its request, any documentation related to the implementation and efficacy of the approach proposed in the variance, including but not limited to: reports on the correlation in assigned ratings for different measures of the LEA’s evaluation system and differentiation among educators within each subcomponent and category of the evaluation system .

- An LEA with an approved variance may amend its variance application prior to the end of the approval period for purposes of seeking a variance from additional provisions of this Subpart and/or to end implementation of one or more previously approved variance provisions.

More details on the required elements of a variance can be found [here](#) when available. Questions regarding the variance process can be sent to: EvalVariance@nysed.gov.

15. What can an LEA request a variance for?

An LEA may only seek a variance from the Commissioner for the provisions for which Education Law §3012-d delegates responsibility to the Commissioner to establish the standards and procedures. This includes, but is not limited to:

- Certain elements of the student performance category for teachers and principals, including:
 - The measure(s) of student growth or achievement, as applicable, to be used (e.g., the SLO goal setting process; SLO components);
 - Applicable evidence of student learning (e.g., how growth will be measured through various forms of assessment, evaluation of student performance);
 - A method for converting student results to a score on a scale from 0-20; and
 - A scale for conversion of the score of 0 to 20 to a HEDI rating.
- Certain elements of the teacher observation/principal school visit category including weights and scoring ranges, including:
 - Teacher/principal practice rubric;
 - Rating and scoring of the teacher/principal practice rubric;
 - Weighting of the domains/subcomponents of the teacher/principal practice rubric;
 - HEDI scoring bands;
 - Weighting of the teacher observation/principal school visit subcomponents;
 - Required principal/supervisor observations;
 - Required independent evaluator observations; and
 - Optional peer observations.
- Certain elements of educator improvement plans, appeals procedures, and evaluator training, including:
 - The elements of a form for development of a teacher/principal improvement plan;
 - The timely and expeditious process for resolving an educator’s appeals to educator evaluation ratings; and
 - A process for training all evaluators of applicable educators.
- Category scoring ranges, including:
 - Student performance category ratings; and
 - Teacher observation/principal school visit category ratings.

J. Collective Bargaining

QUESTIONS AND ANSWERS RELATED TO COLLECTIVE BARGAINING AND THE REQUIREMENTS OF EDUCATION LAW §3012-d, AS ADDED BY CHAPTER 56 OF THE LAWS OF 2015 AND AMENDED BY CHAPTER 59 OF THE LAWS OF 2019

Disclaimer: This document constitutes the position of the Department relating to its interpretation of Education Law §3012-d as amended by Chapter 59 of the Laws of 2019, and other applicable laws. Please note that any matters relating to collective bargaining issues are within the jurisdiction of the New York State Public Employment Relations Board. Therefore, please consult with your LEA’s attorney on matters relating to interpretation of the Taylor Law.

J1. What portions of the educator evaluation plan are subject to collective bargaining under Education Law §3012-d as amended?

Education Law §3012-d(10) requires that the following shall be locally negotiated:

- whether to use a second measure for the optional second subcomponent of the student performance category, and, in the event that a second measure is used, which measure to use, pursuant to subparagraph two of paragraph a of subdivision four of section 3012-d;
- how to implement the provisions of the teacher observation category, and associated regulations as established by the commissioner, in accordance with article fourteen of the civil service law; and
- the selection and use of an assessment in a teacher or principal's evaluation pursuant to subdivision four of section 3012-d and paragraphs a and b of subdivision sixteen of section 3012-d.

LEAs and collective bargaining units, where one exists, must certify that the process for assigning ratings will use the scoring ranges and weighting processes specified in the regulations.

Relationship of The Law to Existing Agreements

J2. What is the relationship of the law as amended to educator evaluation provisions contained in existing collective bargaining agreements? What are the immediate obligations of LEAs?

Education Law §3012-d(12) requires that all collective bargaining agreements for teachers and building principals entered into after April 12, 2019 be consistent with its provisions. It further provides that any conflicting provisions of collective bargaining agreements in effect on April 12, 2019 are not abrogated and remain in effect until there is a successor agreement. In such case, upon entry into a successor agreement, the provisions of Education Law §3012-d apply and the successor agreement must be consistent with the provisions of this section.

J3. If we have entered into a new contract after April 12, 2019, must we comply with Education Law §3012-d as amended by Chapter 59 of the Laws of New York State?

Yes. Education Law §3012-d(12) as amended by Chapter 59 of the 2019 Laws of New York State states that, notwithstanding any other provision of law, rule or regulation to the contrary, all collective bargaining agreements entered into after April 12, 2019 shall be consistent with the requirements of Education Law §3012-d as amended.

Appeal Procedures

J4. What must an LEA include in its appeals process?

An educator evaluation plan shall describe the appeals procedure utilized by a LEA through which a teacher or principal may challenge their evaluation. Pursuant to Education Law §3012-d, a teacher or principal may only challenge the following in an appeal:

- (1) the substance of the educator evaluation; which shall include the following:
 - (i) in the instance of a teacher or principal receives a rating of Ineffective on the Student Performance category but receives a rating of Highly Effective on the Observation/School Visit category based on an anomaly, as determined locally;
- (2) the LEA's adherence to the standards and methodologies required for such reviews, pursuant to Education Law §3012-d and Subpart 30-3 of the Commissioner's regulations;
- (3) the adherence to the Commissioner's regulations and in compliance with any applicable locally negotiated procedures, as required under Education Law §3012-d; and
- (4) the LEA's issuance and/or implementation of the terms of the teacher or principal improvement plan under Education Law §3012-d and Subpart 30-3 of the Commissioner's regulations.

Appeal procedures shall provide for the timely and expeditious resolution of any appeal.

An evaluation that is the subject of an appeal shall not be sought to be offered in evidence or placed in evidence in any proceeding conducted pursuant to Education Law §3020-a and §3020-b or any locally negotiated alternate disciplinary procedure until the appeal process is concluded.

Nothing shall be construed to authorize a teacher or principal to commence the appeal process prior to receipt of his or her rating from the LEA.

J5. May an LEA terminate or deny tenure to a probationary teacher or principal during the pendency of an educator evaluation appeal?

Section 30-3.12(4)(d) of the Rules of the Board of Regents provides that nothing therein shall be construed to alter or diminish the authority of the governing body of an LEA to grant or deny tenure to or terminate probationary teachers or principals during the pendency of an appeal for statutorily and constitutionally permissible reasons, including the teacher's or principal's performance that is the subject of the appeal. This language allows a board of education or BOCES to make a tenure determination or termination decision during an educator evaluation appeal, even if it relies upon the performance that is being appealed (the subject of the appeal).

J6. When does the right to appeal commence?

Education Law §3012-d provides that a teacher or principal is not authorized to trigger the appeal process until he or she receives an overall rating. Teachers and principals must receive their overall ratings no later than September 1 of the school year next following the school year for which they are being evaluated. Therefore, the appeal process will be triggered on or before September 1, when the teacher or principal receives his or her overall rating.

K. Prohibited Elements

K1. What are considered “prohibited elements” under Education Law §3012-d(6)?

Education Law §3012-d(6) prohibits use of the following elements in any subcomponent of teacher or principal evaluations:

- Evidence of student development and performance derived from lesson plans, other artifacts of teacher practice, and student portfolios, except for student portfolios measured by a State-approved rubric where permitted by the Department;
- Use of an instrument for parent or student feedback;
- Use of professional goal-setting as evidence of teacher or principal effectiveness;
- Any LEA or regionally-developed assessment that has not been approved by the Department; and
- Any growth or achievement target that does not meet the minimum standards established by the Commissioner.

K2. Can a teacher or principal earn points based on the submission of artifacts? Are lesson plans considered “observable”?

Points cannot be earned based on any artifacts, unless the artifact is evidence of an otherwise observable rubric subcomponent (e.g., a lesson plan viewed during the course of a teacher observation may constitute evidence of professional planning and therefore be scored on the rubric as part of that classroom observation).

K3. How can my LEA incorporate student portfolios into teacher and principal evaluations for the Student Performance category?

LEAs that are interested in using portfolio-based assessments must submit an application through the [Assessment RFQ](#), including the corresponding scoring rubric, for approval. Please note, however, that portfolios of artifacts may not be used as evidence for the Teacher Observation/Principal School Visit category.