May 6, 2015

The Honorable Merryl Tisch, Chancellor
NYS Board of Regents
State Education Building
89 Washington Avenue
Albany, NY 12234

Dear Chancellor Tisch:

Chapter 56 of the Laws of 2015 enacted, in part, a new section 3012-d of the Education Law that sets out new requirements for the evaluation of teachers and building principals. The undersigned hereby wish to share some of their views regarding implementation of the new requirements.

The New York State School Boards Association, Inc. (NYSSBA) is a not-for-profit membership organization representing approximately six hundred and seventy (670) or ninety-one percent (91%) of all public school districts and boards of cooperative educational services (BOCES) in New York State. Pursuant to section 1618 of New York's Education Law, it is responsible for devising practical ways and means for obtaining greater economy and efficiency in the administration of the affairs and projects of New York's public school districts. In that capacity, NYSSBA regularly works with state and federal governmental authorities on issues affecting public education.

The New York State Association of School Attorneys (NYSASA) is a not-for-profit organization whose membership consists of attorneys who represent school districts and BOCES throughout New York, including in matters related to the evaluation of classroom teachers and school principals, and in disciplinary proceedings conducted pursuant to section 3020-a, and in the future section 3020-b, of New York's Education Law. NYSASA's mission includes assisting its member attorneys in providing the best possible counsel to their school district clients so that working together they can advance public education in New York. Its mission also includes being a resource for school boards, school administrators, State government officials and the general public in matters related to public education.

The views expressed herein are founded on collective experiences and lessons learned during the past five years, related to the implementation of the new law's predecessor – section 3012-c of the Education Law. Representatives from both organizations are available to answer any questions you might have, and to discuss in more detail any specific issues you might wish to address further.

Inevitably, some recommendations regarding the nature and scope of regulatory action needed to successfully implement section 3012-d will vary among the proponents of such recommendations. Still, few would disagree that consideration of all such recommendations should be guided by certain basic principles.

1. To be meaningful, a teacher and principal evaluation system must serve the ultimate goal of improving student performance.

2. A teacher and principal evaluation system must help to improve the practice of teaching for the benefit of both students and educators.

Few would disagree, as well, that the new regulations must be simple and in plain language to ensure that all stakeholders, including parents and the public, clearly understand not only their meaning and purpose, but also how they serve to promote and advance student career and college readiness. Furthermore, clear and timely guidance and technical assistance must be made available to facilitate understanding and full implementation of the new teacher and principal evaluation requirements.

With the above principles in mind, the following comments and recommendations are submitted for your consideration as you proceed to develop and adopt section 3012-d regulations. The undersigned will submit additional comments and recommendations they deem relevant throughout the regulatory process.

Comments and recommendations related to their joint concerns over the implementation of changes to the tenure and teacher discipline laws, and the Receivership Law will be submitted under separate cover.

IMPLEMENTATION DELAY

At the outset, the undersigned wish to express their support for a delay in the implementation of section 3012-d and related regulations, provided there is proper authority to institute such a delay without the loss of state aid for school districts.

1. The statute purportedly aims to establish a more meaningful evaluation process. True fulfillment of that purpose requires thoughtful deliberation, preparation and reasonably adequate time to undertake such efforts.

2. Experiences during the past five years under the prior evaluation system demonstrate that a rush to implement the new statutory rules only increases the risk of a repeat of the shortcomings that led to the revamping of that system. It also enhances the risk of additional confusion and anxiety among stakeholders, including parents whose children are the ultimate intended beneficiaries of an effective evaluation system.

3. At the state level, an extension of time would allow the New York Board of Regents, the commissioner of education and their staffs to thoughtfully consider available options and research essential to the various determinations that the statute requires them to make.

   For example, determinations regarding parameters for appropriate targets of student growth applicable to teachers under the student performance category, and the weights and scoring ranges for both the mandatory and optional subcomponents of that category are not inconsequential. Rather they are key to the meaningful evaluation of teachers under that category. Therefore, it is a mistake to rush the educational judgments that must be made in support of those determinations.

4. At the local level, an extension of time would allow school districts to engage in required negotiations that are not only properly informed by state action, but also uncompromised by circumstances beyond their control.

   For example, the unavailability of union representatives to engage in negotiations over the summer is common place. But even if it that were not the case, it would be beyond the realm of possibility for negotiations over section 3012-d to settle before the start of the 2015-2016 school year because unions would not be able to hold ratification votes on a Memorandum of Agreement until staff is back at school and, even then, not prior to ratification meeting(s) and discussion held in accordance with local union notice and timing requirements. Furthermore, if history repeats itself, collective bargaining demands unrelated to the evaluation system, and union refusals to sign the required plan certification, will again force school districts to make concessions they otherwise would not, in order to avoid the loss of state aid.

   It was precisely because of the undue pressures placed on school districts as a result of the restrictions imposed by the collective bargaining process that the undersigned formally recommended in a letter to Governor Cuomo earlier this year that any revisions to the annual professional performance review system codified at section 3012-c eliminate the collective bargaining requirements embedded within that law (see attached Addendum). It is for similar reasons, and others expressed in the above-reference letter to Governor Cuomo, that the undersigned would oppose the adoption of regulations that impose collective bargaining responsibilities beyond those expressly required by statute.

   Nonetheless, section 3012-d continues to condition the payment of state aid increases to school districts on the submission, and approval by the commissioner of education, of evaluation plans that are dependent upon the completion of required negotiations. An extension of time beyond the current deadline would enable school districts to avoid some of the shortcomings that resulted from compromises made to avoid the loss of state aid under the prior law, shortcomings that ultimate led to the revamping of section 3012-c.

5. Also at the local level, an extension would allow school districts to train evaluators and otherwise prepare staff and allocate resources necessary for the implementation of the new evaluation system. If the evaluation system is to be educationally sound, evaluators will have to be trained before conducting evaluations, and time for the development and implementation of meaningful training is required.

6. Use of a "hardship" standard that limits the number of school districts that might qualify for an extension of time will subject school districts to the same undue pressures they experienced under the prior evaluation system, and produce results similar to those that led to the enactment of section 3012-d. Such an outcome, however, can be avoided with reasonably adequate time to prepare for the full implementation of the new rules.

   Absent a statewide delay, however, the criteria for any hardship standard needs to incorporate, at a minimum, factors beyond a school district's control that impede the ability to complete required negotiations, or otherwise submit an evaluation plan for approval by the commissioner of education. In addition to those referred to above, such factors need to also include delays caused by impasse proceedings under the jurisdiction of the Public Employment Relations Board to resolve

outstanding negotiation issues preventing the completion of section 3012-d negotiation. They also should include impediments that would prevent a school district from "uploading" an evaluation plan that otherwise would be complete except for a union's refusal to provide the required plan certification signature.

7. Furthermore, the operative timelines established by section 3012-d make it a virtual impossibility for school districts to ensure compliance, for the 2015-16 school year, with the statute's own additional requirement that weights and scoring ranges be transparent and available to those being rated prior to the beginning of the school year. The hardship path would provide relief only to some. Therefore, in the absence of a statewide delay, the regulations need to make clear that evaluations conducted during the 2015-16 school year will not be deemed invalid merely because the school district's evaluation plans were not finalized until September/November.

APPROPRIATE LENGTH OF DELAY

The undersigned acknowledge that an overly extended delay in the implementation of section 3012-d inures to the detriment of both students and educators. Nonetheless, they urge that any delay period, and/or mechanism for delaying implementation, be on a schedule that corresponds with the start of a school year, rather than pushing the deadline farther into the middle of the school year.

A delay that corresponds to the start of a school year safeguards the interests of students and staff. At a minimum, and consistent with statutory requirements, such a schedule enables educators to know how they will be evaluated before the start of the school year.

Furthermore, the undersigned submit that it can be possible to accommodate a delay under the above principles in one of several ways. For example,

1. The State Education Department should develop a default evaluation system that allows school districts unable to complete required negotiations and submit for approval a section 3012-d evaluation plan by September 1, 2015, to upload into the Department's website a default plan.

    - The default plan would include the mandatory component of the student performance category and teacher observation requirements set by the Department exclusively for situations where there are outstanding issues the school district and the union are required to negotiate but have been unable to resolve.

      Plan components related to appeals, teacher and principal improvement plans would roll over from the last annual professional performance review plan approved by the Department under section 3012-c.

    - The default system would apply during the 2015-2016 school year, and remain in place until the parties are able to finally resolve their outstanding negotiations issues either on their own or as a result of impasse proceedings initiated and completed under the Taylor Law.

    - The default system would permit school districts to submit the default plan without the required certification that the plan complies with statutory standards.

- To be eligible to submit a default section 3012-d evaluation plan, school districts would have to submit evidence of good faith efforts to engage in and conclude negotiations regarding the outstanding issues required to be collectively bargained.

2. Or, it could be required that all section 3012-d evaluation plans be **approved** by July 1, 2016. This would allow for **full** implementation of the new evaluation system with the start of the 2016-17 school year, with the required notice to all affected.

   Failure to comply with the July 1, 2016 deadline for plan approvals would trigger the default system outlined immediately above.

WEIGHTS AND SCORING RANGES

In general – The assignment of weights and scoring ranges for the two categories of evaluation should be set:

1. Based on educational judgments that are supported by valid and relevant research.

2. In a manner that does not predetermine the overall outcome of a teacher or principal's evaluation.

Student performance category –

1. The weights, scoring ranges and parameters for appropriate targets for student growth for both subcomponents of this evaluation category should be set according to sound educational judgments that consider the rigor of tests approved for use under this category.

2. To avoid public misconceptions, it is important that the State Education Department make available information that, from the outset, provides transparency regarding the validity of such tests. In addition, to maintain stability and avoid unnecessary delays, it also is important that the Department allow the continued use of assessments that are currently approved and in use for the development of student learning objectives.

Teacher observations category –

1. The regulations should set specific percentages for the scores assigned to the subcomponents of this category.

2. The scoring percentage assigned to observations conducted by a building principal or other administrator should be weighted more heavily than the scoring percentage assigned to the independent evaluator or to the peer teacher evaluator if the district and the union agree to the use of a peer teacher evaluator.

3. The weights and scores assigned to the subcomponents of this category need to account for observations that might be conducted beyond the minimum number of required observations at the sole discretion of a school district, as discussed below.

TEACHER OBSERVATIONS

Definitions:

The regulations should define "other administrators" authorized to conduct observations under the first subcomponent of the teacher observation category to include districtwide administrators such as department directors in addition to building administrators other than the school principal. Such a definition is necessary to provide school districts flexibility in the allocation of resources required to comply with the provisions of this subcomponent.

Discretionary authority:

1. The regulations should indicate that school districts will, in their non-negotiable sole discretion, identify administrators and independent evaluators who are qualified to conduct teacher observations under the teacher observations category, and assign them as necessary to conduct such observations.

2. The regulations also should provide that school districts have non-negotiable sole discretionary authority to conduct, as they deem necessary, observations in excess of the minimum number required by regulation. This discretionary authority is essential to the early identification of areas in need of improvement and the ability of school districts to make appropriate determinations regarding a teacher's competence. Any such additional observations should be conducted, and weighted and scored, along with those performed as part of the minimum number of required observations set out in regulations.

3. The regulations should state, as well, that school districts have non-negotiable sole discretionary authority to conduct an undetermined number of unannounced informal observations. The same as above, this authority is essential to ensure school districts can promptly address any shortcomings in a teacher's performance. Unannounced informal observations should not be weighted and scored for purposes of calculating a rating for this category,

Minimum number of required observations:

1. There should be differentiation between the minimum number of required observations for probationary teachers and tenured teachers.

2. The minimum number of observations required to be conducted by an independent evaluator, or a peer teacher evaluator if a school district and the union agree to the use of a teacher evaluator, should not exceed the number of observations required to be conducted by a principal or other trained administrator.

3. The minimum number of required observations should not affect the number of additional observations to be conducted in the case of teachers with an improvement plan as set forth in such plan consistent with the plan's improvement objectives also set forth in the plan.

4. The regulations need to clarify that the scope of each required observation includes any additional evaluation session needed to be conducted in connection therewith to ensure that all the elements

of the rubric used to conduct the required observation are indeed observed. This clarification, and the flexibility confirmed by it, is necessary to avoid otherwise "incomplete" observations that would negatively affect the calculation of a teacher's annual observation and overall rating.

Frequency of observations:

1. The minimum required observations should be conducted no closer than four weeks apart.

2. Additional observations conducted at the sole discretion of the school district will be conducted as deemed necessary by the school district.

3. Additional observations in the case of teachers with an improvement plan will be conducted as set forth in such plan.

Duration of observations:

1. The duration of the minimum required observations should be dependent on the rubric used to conduct such observations (see discussion above regarding the scope of required observations).

2. The duration of additional observations conducted at the non-negotiable sole discretion of the school district should be dependent on the reasons underlying the district's determination that such an observation was necessary including, for example, to monitor the progress of a teacher not yet in need of a teacher improvement plan toward addressing previously identified deficiencies.

3. The duration of additional observations conducted pursuant to a teacher improvement plan should be consistent with the improvement objectives set out in the plan.

OBSERVATION RUBRICS

The State Education Department should continue its approval of the various observation rubrics currently in use by school districts.

1. Disapproval of any such rubric would cause delays in the implementation of section 3012-d to the extent that, at a minimum, a sufficient number of evaluators would have to be trained in the use of a new rubric before they are able to actually conduct teacher observations.

2. To prevent otherwise avoidable delays, the section 3012-d regulations should set parameters that permit the continued use of such rubrics, notwithstanding their incorporation of certain elements that are no longer permitted for the evaluation of teachers under the new evaluation system. For example, although section 3012-d prohibits the use of evidence of student development and performance derived from lesson plans, lesson plans can still provide valid evidence of a teacher's skills and practice.

3. Any changes regarding the continued use of currently approved rubrics should be undertaken only pursuant to the availability of updated versions of such rubrics approved by the State Education Department, or pursuant to the availability of a rubric developed by the State Education

Department for statewide use, in consultation with stakeholders and at no cost to school districts and BOCES including costs associated with evaluator training on the use of such a rubric.

ADMINISTRATORS

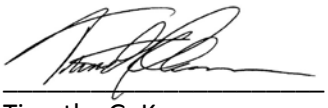
Regarding the principal evaluation system, generally, the status quo should be maintained, except as otherwise expressly directed by section 3012-d.

Nonetheless, as in the case of teacher observations, the regulations should provide that school districts have non-negotiable sole discretionary authority to conduct, as they deem necessary, school visits in excess of the minimum number of visits required by regulation.

In addition, the regulations should differentiate between the minimum number of required school visits from probationary principals and tenured principals.

As mentioned above, both organizations are available to answer any questions you might have, and to discuss in more specific terms their recommendations and any other issues you might want to address further.

Respectfully Submitted,



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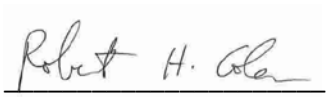

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Members of the New York State Board of Regents
The Honorable Andrew Cuomo, Governor
Elizabeth Berlin, Acting Commissioner of Education
Ken Wagner, Senior Deputy Commissioner of Education
Jim Malatras, Director of State Operations
Senate Majority Leader Dean Skelos
Senator John Flanagan, Senate Education Chair
Senator Jeff Klein, IDC Leader
Senate Democratic Leader, Andrea Stewart-Cousins
Senator George Latimer, Ranking Democratic Member Education Committee
Assembly Speaker Carl Heastie
Assemblymember Catherine Nolan, Chair Assembly Education Committee
Assembly Republican Leader, Brian Kolb
Assemblymember Ed Ra, Ranking Republican Member Assembly Education Committee

ADDENDUM

January 9, 2015

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Dear Governor Cuomo:

You have made known your readiness to address issues critical to ensuring that all New York public school students are served by effective educators. Following your lead, the undersigned hereby wish to share some views on possible reforms that would improve and strengthen both the evaluation of public school educators and the process for removing those who perform poorly. Unless otherwise specified, the term educator as used throughout this document refers to both teachers and school building principals subject to evaluation under the State's current annual professional performance review (APPR) system.

The New York State School Boards Association, Inc. (NYSSBA) is a not-for-profit membership organization representing approximately six hundred and seventy (670) or ninety-one percent (91%) of all public school districts and boards of cooperative educational services (BOCES) in New York State. Pursuant to Section 1618 of New York's Education Law, it is responsible for devising practical ways and means for obtaining greater economy and efficiency in the administration of the affairs and projects of New York's public school districts. In that capacity, NYSSBA regularly works with state and federal governmental authorities on issues affecting public education.

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The views expressed herein reflect collective experiences related to the implementation of the APPR system and Section 3020-a codified within New York's Education Law. Representatives from both organizations are available to answer any questions you might have, and to discuss in more detail any specific issues you might wish to address further.

Recommendations for change will often present varying perspectives that are informed by a myriad of situational experiences and circumstances. Nonetheless, there are certain principles that few would disagree should guide the effectuation of any reform proposals in the present context.

1. The approach to reform must be holistic. Its focal point must be the improvement of student achievement – supported by (a) an educator evaluation system that effectively helps to improve the practice of teaching for the benefit of both students and educators, (b) a process that facilitates the removal of educators who perform poorly notwithstanding remediation efforts, and (c) the reinforcement of state and local human and financial resources essential to the successful implementation of any adopted reforms.

2. Statutory language codifying APPR and Section 3020-a reforms, and regulatory provisions implementing such reforms, must be simple and in plain language to ensure that all stakeholders, including parents and the public, clearly understand the nature of the reforms, their purpose, and how they serve to promote and advance student career and college readiness.

3. Guidance and technical assistance must be made available in a clear and timely manner to facilitate understanding and full implementation of the reforms.

Following are comments and reform proposals submitted for your consideration as you proceed in your efforts to strengthen the APPR and Section 3020-a process for the benefit of both students and teachers.

ANNUAL PROFESSIONAL PERFORMANCE REVIEWS

1. Eliminate the Collective Bargaining Requirements Embedded within Education Law Section 3012-c (the APPR Law)

Throughout its short five year history, implementation of the current APPR educator evaluation system has been the subject of litigation and contentious debate. A substantial segment of the frictional issues involved relate to the express collective bargaining requirements embedded within the law.

At the outset, those requirements might have been intended to promote a collaborative approach to the implementation of the evaluation system at the local level. However, the resulting experiences, well documented in various venues, underscore the need for uniformity and consistency throughout the state to ensure that the system's objectives are fulfilled with meaningful outcomes that inure to the benefit of both students and educators.

The Issues:

- The collective bargaining requirements embedded within the APPR law expressly affect the 80% of the evaluation system that relates to local measures of student achievement and other measures of educator effectiveness. The bargaining requirements effectuated at the expense of management rights and prerogatives impact the selection of local measures for analyzing student achievement and growth and rubrics used for assessing other measures of an educator's

effectiveness. It affects as well the scoring of such measures and the levels of differentiation among the various categories of effectiveness. Thus, the impact of the collective bargaining requirements is not insignificant. This is particularly so given that inherent in the collective bargaining process are "give and takes" which often have to yield to expediencies that depend on the practical and financial realities at play during the bargaining process. Entrusting such issues to the collective bargaining process has instead yielded a system that makes it impossible to get an accurate picture of educator levels of effectiveness on a statewide basis.

- Not only the selection of local measures and educator effectiveness rubrics, but also the scoring bands, with ranges that define the levels of differentiation used for rating an educator's performance under those two sets of measures, are subject to negotiations. Given the proportion of the scales, the collective bargaining requirements ultimately affect the overall composite score of an educator's effectiveness, as well. As a result, it can be challenging to gain a complete and accurate picture of an educator's effectiveness.

- The APPR law sets up an educator evaluation system that was intended to ensure **all** public school students have access to effective educators able to convey the most basic knowledge and skills students need to succeed in their academic and professional endeavors. However, implementation of the law's collective bargaining requirements has produced, instead, a system that cannot guarantee an educator deemed effective in one school district will be deemed at least the same in another.

- The APPR law requires that school districts and BOCES establish an appeals procedure that allows educators to appeal various aspects of their evaluation including, but not limited to, their rating scores. However, those procedures, which are also required to provide for the timely and expeditious resolution of such appeals, are subject to collective bargaining. As a result, some of those procedures might be more cumbersome and time-consuming in some school districts and BOCES than in others, which in turn can affect a school board's ability to make timely decisions within statutorily prescribed time frames. For example, the APPR law requires that an educator's APPR be a significant factor in decisions affecting his or her employment, and prevents the termination of probationary educators for reasons related to performance that is the subject of an appeal. Thus, the question arises as to whether an educator could obtain tenure by estoppel (i.e. tenure that results as a matter of law when a teacher is permitted to work beyond the expiration of a probationary period) during the pendency of such an appeal. If that were to be the case, the educator would be entitled to the full protections available to tenured educators under Section 3020-a even if their appeal ultimately is deemed unfounded, thereby foreclosing the educator's termination for performance related reasons except pursuant to the Section 3020-a process.

Reform Proposals:

- Eliminate the collective bargaining requirements currently embedded within the APPR law.

- Standardize criteria and benchmarks that constitute minimum evaluation and differentiated rating requirements for each of the APPR performance categories of highly effective, effective, developing and ineffective.

- Allow school districts and BOCES to exceed minimum standardized evaluation criteria and benchmarks, and differentiated rating requirements in accordance with the expectations of their respective communities.

- To the extent that some aspects of the APPR process might be deemed to remain subject to collective bargaining, establish procedures to expedite final resolution of outstanding issues that otherwise impede agreement and the prompt full implementation of the APPR evaluation system.

  Such procedures should entail the timely imposition of a final resolution of any such issues by the commissioner of education.

- Establish uniform procedures for the expedited resolution of APPR appeals that also:

  - Preclude the acquisition of tenure by estoppel during the pendency of such an appeal by, for example, automatically extending an educator's probationary term for the duration of the appeals process if pendency of the appeal is the only reason preventing a final tenure determination.

  - Establish a uniform statewide alternative for the calculation of a rubric score when there is evidence that a rubric component was missed during the evaluation process, rather than permitting the disallowance of a score for the entire rubric which, in turn, would prevent the calculation of an educator's overall composite score with respect to the APPR affected by the error.

- Codify language that expressly provides:

  - An educator's APPR is a significant, but not the sole or determinative factor in employment decisions including those affecting termination or the denial of tenure.

  - School districts and BOCES may terminate probationary educators during their first year of probation for documented performance-related reasons prior to the completion of their APPR for that year.

2. Modify the Architectural Structure of the APPR Evaluation System

The current APPR system assesses the effectiveness of educators based on: (a) student growth on state assessments (or other comparable measures); (b) local measures of student achievement or growth; and (c) other measures of effectiveness.

It is understood that review of the APPR system for reform purposes must be undertaken with reference to applicable federal requirements, to avoid jeopardizing the continued flow to school districts throughout the state of federal funding available under the Elementary and Secondary Education Act including, but not limited to, Title I, Title II and Title III moneys.

However, any review of the APPR system also must acknowledge the continued and ongoing academic and public debate regarding the reliability of using student performance on standardized testing in both student growth analysis and value-added models. Related concerns include, for example, the impact of factors beyond an educator's control on student learning and, thus, on an educator's evaluation; the accompanying possibility of a diminishing willingness on the part of educators to serve special student populations; and the impact of undue emphasis on tested subjects and test based skills at the expense of both the instruction of other subjects and the development of student critical thinking and creativity.

Similarly, a review of the structure of the current APPR system also must examine the impact on students of increased testing and time devoted to test preparation that can be affected by a linkage between student performance and the assessment of an educator's effectiveness, notwithstanding recent provisions related to these issues that were enacted into law by Part AA of Chapter 56 of the Laws of 2014.

In the event that, notwithstanding its consideration of the above issues, the State nonetheless retains a linkage between student performance and the assessment of an educator's level of effectiveness, the undersigned submit the following proposals:

- Eliminate the use of a value-added model for purposes of determining student growth on state assessments.

- Substitute the current requirement for locally selected and negotiated measures of student achievement or growth with non-negotiable measures that:

    - Are based on mid-term and final exams administered on a grade-wide basis, linked to the state common core learning standards or other applicable state learning standards, and reviewed for rigor and approved by the building principal in accordance with standards established by the commissioner of education. No other assessments may be administered at the local level for the sole purpose of evaluating educator effectiveness, except upon approval of a waiver by the commissioner of education.

    - Evaluate teacher participation in high quality professional development that includes graduate and in-service course work directly related to the educator's areas of instruction and the differentiated educational needs of students.

    - Evaluate the quality and currency of teacher lesson plans through an ongoing system of administrative review and interaction between a teacher and the school building principal.

    - Evaluate an educator's use of data to inform instruction and deliver differentiated instruction.

- Require statewide use of a rubric to be developed by the State Education Department by a fixed date, in consultation with stakeholders and at no cost to school districts and BOCES, except that school districts and BOCES shall not be required to use the state-developed rubric unless their

evaluators are trained and certified by the State Education Department on its use, at no cost to the school district and BOCES.

- Authorize school districts and BOCES, to gather observational evidence on an ongoing basis rather than at a set number of times throughout the school year, and to conduct all APPR related observations without advance notice to teachers. This authority shall not be subject to collective bargaining.

  This proposal addresses two key objectives. First, it permits a more accurate scoring of the rubric based on a more comprehensive set of data. Second, it facilitates the early identification and resolution of possible problem areas in need of attention, rather than having to wait until after a teacher receives an overall score of developing or ineffective for the development and implementation of an improvement plan.

  - Activities undertaken to remediate any identified problem areas shall not be subject to collective bargaining either, but shall be specifically targeted to the areas in need of attention based on administrative review of the observational evidence and interactive consultation between the school building principal and the teacher.

  - For similar reasons, the same concept and process should apply to the evaluation of school building principals. They should apply, as well, to the development and implementation of teacher and principal improvement plans which currently are subject to collective bargaining.

- Standardize the bands and the process used for scoring the various subcomponents of the APPR evaluation system and the overall composite rating, in a manner consistent with the objectives reflected in the various recommendations set out in this letter.

- Link the evaluation of school building principals to the quality of teacher evaluations with respect to the second and third subcomponents of the system, and the use of other comparable measures of student growth where no state assessments are available, in order to foster fidelity and reliability regarding the implementation of the APPR system.

- Make available the human and financial resources necessary for the State Education Department to provide uniform training on conducting evaluations under the APPR system to all school district and BOCES staff charged with that responsibility. The training should be provided on a regional basis to facilitate participation and minimize disruption to school operations.

THE APPR – SECTION 3020-a CONNECTION

It is without question that there need to be meaningful consequences for educators who receive multiple ineffective ratings. In recognition of this basic premise, the APPR law and Section 3020-a authorize expedited Section 3020-a proceedings against tenured administrators with a pattern of ineffective teaching or performance.

The Issues:

- The APPR law limits the definition of what constitutes a pattern of ineffective teaching or performance to two **consecutive** ineffective ratings pursuant to APPRs conducted under the APPR educator evaluation system. As a result, an tenured educator who, for example, receives two ineffective ratings in a three year period, but not in a consecutive sequence, would not be subject to an expedited Section 3020-a proceeding.

- A pattern of ineffective teaching or performance, as defined under the APPR law, constitutes only "very significant evidence of ineffective teaching or performance". However, school districts must establish pedagogical incompetence at 3020-a proceedings by a preponderance of the evidence.

- The impact of an overall composite score other than ineffective because of an effective rating on the other measures APPR subcomponent.

Reform Proposals:

- Revise the definition of pattern of ineffective teaching or performance to include multiple years of ineffective ratings that are not consecutive in sequence.

- Make multiple ineffective ratings constitute a legal presumption of pedagogical incompetence rather than merely "very significant evidence".

- Re-institute the appellate authority of the commissioner of education to review and adjudicate Section 3020-a case, and make available the human and financial resources necessary to effectuate that purpose, in order to ensure a uniform statewide body of law critical to the successful implementation of the APPR educator evaluation system throughout the state.

It is important to note that there are other Section 3020-a issues which are not directly related to the APPR educator evaluation system but nonetheless require attention and need to be examined for possible reform. Those additional issues evince the need for statutory revisions that, for example:

- Authorize the automatic dismissal of tenured educators who (a) have been convicted of criminal offenses beyond those already set out in the statute, (b) have had their certification revoked by the State Education Department in a Part 83 proceeding, or have (c) failed to obtain permanent certification within requisite statutory time-frames.

- Lift undue constraints that preclude school officials from requiring a tenured educator cooperate with a school district's investigation into the educator's own alleged misconduct.

- Eliminate paid suspensions while Section 3020-a proceedings are pending, or establish a cap for those facing charges not covered by the current rule allowing suspension without pay in the limited circumstances set out in the statute.

- Require tenured educators who are the subject of a Section 3020-a to provide "reciprocal discovery" to their employing school district.

- Establish a state panel of hearing officers to hear and decide Section 3020-a cases.

As mentioned above, both organizations are available to answer any questions you might have, and for a more in-depth discussion of any issues you might want to discuss further.

Thank you for your consideration.

Respectfully Submitted,

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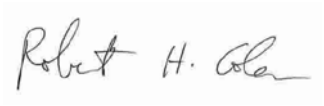

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