



United Federation of Teachers
A Union of Professionals

Dr. Elizabeth Berlin
Acting Commissioner
Executive Deputy Commissioner
New York State Education Department
89 Washington Avenue
Albany, New York 12234

Dr. Ken Wagner
Senior Deputy Commissioner
New York State Education Department
89 Washington Avenue
Albany, New York 12234

Dear Drs. Berlin and Wagner,

Thank you for the opportunity to share with you and your colleagues some of the United Federation of Teachers' thoughts on the regulations needed to implement the new Education Law §3012-d with respect to classroom teachers (the "Regulations").

As you draft the Regulations for review by the Board of Regents we encourage you to consider four overarching policy objectives:

1. Ensure that APPR is fundamentally about developing great teachers. To truly improve education, any evaluation system must provide teachers at all levels of experience and expertise, genuine support, meaningful feedback, and a real opportunity to continually improve their craft.
2. Utilize assessments that are diagnostic and informative at the school and classroom level, as well as authentic, valid, reliable, appropriate for students' grade level as well as their chronological age and developmental level. These assessments should also be low-stakes, and aligned to the curriculum/learning standards. Assessments which meet these criteria should be preferred over assessments that are annual high-stakes, standardized tests.
3. Maximize local control over specific elements of teacher evaluation systems through collective bargaining between districts and the labor organizations that represent teachers. Every district is different, and a top-down, one-size-fits-all system will not meet the needs of all students and schools. Districts and teachers, working together, can develop fair and rigorous evaluation systems that work best for their unique circumstances.

52 Broadway, New York, NY 10004 p: 212.777.7500 www.uft.org

Officers: Michael Mulgrew *President*, Emil Pietromonaco *Secretary*, LeRoy Barr *Assistant Secretary*, Mel Aaronson *Treasurer*, Thomas Brown *Assistant Treasurer*

Vice Presidents: Karen Alford, Carmen Alvarez, Evelyn DeJesus, Anne Goldman, Janella Hinds, Richard Mantell, Sterling Roberson

4. Retain the existing APPR rules where it is appropriate and where they are aligned with the above policy goals. A tremendous amount of time and resources went into developing and implementing the existing APPR plans, and that expertise and effort should not be wasted. Any unnecessary change will only serve to create needless disruption.

Our proposals in the attached outline are designed with these considerations in mind. Specifically, we suggest the following elements be included in the Regulations:

Observations

- There should be a minimum number of total observations (provided that there is one principal observation and one independent observation) and a minimum length of an observation (no matter the type), with the exact number of observations across all types, and their length, frequency and type determined through local collective bargaining.
- The Regulations should require a cycle of observations, feedback, and collaborative reflection, with mandatory developmental conferences, that enables classroom teachers to continually grow and develop.
- Principal observations should be worth more than the independent observations and the peer observations (if any) combined, with the exact weighting determined locally through collective bargaining.

Student Performance

- Student portfolio assessments and performance-based assessments are permitted and should be encouraged.
- The Regulations should establish a diverse committee of teachers and other State-certified educators, who are experts in assessment (the “Assessment Committee”), to develop a menu of appropriate assessments to be selected from locally through collective bargaining.
- The State growth model should be reviewed by a panel of experts (the “Metrics Workgroup”), and additional variables with respect to (among others) district wealth, student economic disadvantage, special education status and/or ELL status should be considered.

- The Metrics Workgroup should collect data and publish information on anomalies and unintended consequences in the student growth measures. Every district should be required to have a meaningful appeals process in place to correct any rating that has been negatively affected by the anomalies and unintended consequences identified by the Metrics Workgroup.
- Where a teacher has two student performance subcomponents, the Regulations should provide a range of permissible weights with the first subcomponent worth no more than 40% of the total student performance rating and the exact process for combining the two scores determined locally through collective bargaining.
- The current SLO process should largely be continued.
- Group, team, or grade measures should be phased out.

Other

- The current law with respect to teacher improvement plans, appeals and privacy does not require any change.
- A process should be included by which districts may apply for a waiver of one or more elements of the Regulations.

We look forward to continuing to work with you, the Board of Regents and other stakeholders as the Regulations are developed.

Sincerely,



Evelyn De Jesus
Vice President for Education
United Federation of Teachers

cc: Michael Mulgrew
Adam Ross, Esq.
Jackie Bennett
Julia Rafal Baer

Attachment

The United Federation of Teachers ("UFT") believes that the regulations needed to implement the new Education Law § 3012-d with respect to classroom teachers (the "Regulations") fall into three major categories: (1) regulations related to the "teacher observations category" [§3012-d(4)(b)], (2) regulations related to the "student performance category" [§3012-d(4)(a)] and (3) other regulations required to fully implement §3012-d. Each is discussed below.¹

I. Teacher Observations Category

A. Regulations Applicable to All Observation Subcomponents

Few things are as important to developing high quality instruction as a teacher receiving timely and meaningful feedback about his or her instruction which can then be reflected upon and incorporated into future lessons. Accordingly, the Regulations related to observations should ensure a cycle of observations, feedback, and collaborative reflection on what is observed that enables classroom teachers to continually grow and develop throughout the school year and their career. Each district, working together with the representatives of their teachers, is best suited to develop a system that is most appropriate for their unique situation. To this end, the UFT recommends the Regulations include the following provisions:²

1. *Number of Observations:* The Regulations should require that each teacher be observed a minimum of twice per school year (at least one principal observation and one independent observation), with districts and unions free to collectively bargain higher minimums for all teachers or certain categories of teachers (*e.g.*, probationary teachers) or to create a menu of possible observations options for teachers to choose among.
2. *Length of Observations:* In order to allow the observer to obtain a genuine understanding of the class being observed, the Regulations should require that each observation be no less than 20 minutes, with districts and unions free to collectively bargain a longer minimum length for some or all observations (*e.g.*, full period).

¹ As used herein, collective bargaining refers to negotiations pursuant to the requirements of Article 14 of the Civil Service Law. To be clear, the APPR plans would continue to be subject to approval by SED. See, e.g., § 3012-c(11).

² The Regulations should also provide for a process for highly collaborative schools within a district to obtain a waiver from these requirements to develop innovative approaches to evaluation, to the extent permitted by law.

3. *Use of Rubrics:* The current list of approved rubrics remains appropriate. The Regulations should make clear that ratings are to be based entirely on the evidence observed in the classroom as well as the post-observation (and any pre-observation) conference(s) associated with the lesson seen by the observer. Indeed, it is highly appropriate for the Regulations to make clear that pre- and post-observation conferences are part of a "classroom observation" as the decisions that a teacher makes to prepare for and as a result of a specific lesson and the recommendations offered by the supervisor prior to the classroom visit are an intimate part of the lesson observed.
4. *Observation Cycle:* In order to allow for teachers to receive feedback, reflect on that feedback and incorporate it into future lessons, the Regulations should provide that observations must be at least 30 days apart. The Regulations should likewise provide that an observation report for the most recent observation must be shared with the teacher and a post-observation conference held before another observation may be conducted.
5. *Observation conferences:* Lesson-specific, individual post-observation developmental conferences should be required for all observations. At least one observation should be required to have a pre-observation conference as well.
6. *Observation Reports:* The Regulations should provide that a supervisor's notes with specific statements about what was observed and analysis of those observations must be shared with the teacher in a formal observation report no more than 30 school days after the visit to the classroom (combined with item #4 above, this assures the teacher will have received both verbal and written feedback prior to another observation being conducted). The format of the observation report would be collectively bargained.
7. *Conduct of Observations:* In order to be genuine, observations must be as unobtrusive as possible so as not to distract the teacher or students. Accordingly, for evaluative purposes, the Regulations should provide that no more than two observers may be present during a classroom observation. Likewise, the UFT recommends provisions that would designate a lead observer who is responsible for writing the observation report and conducting the post-observation conference one-on-one with the teacher. Because videotaping and photography can be useful tools for reflection and professional learning but may also be distracting, incomplete, or disruptive, the use of videotaping or photography during an observation should be at the discretion of the teacher and only permitted if collectively bargained.

B. Impartial Independent Trained Evaluator

The statute requires that the independent evaluator may not be employed within the same “school building” as the teacher being involved. We believe this limitation could be reasonably understood as prohibiting the evaluator from being part of the same school organization (determined by the BEDS code) as the observed teacher, not the same physical structure.

Beyond this, however, the statute leaves much of the definition of “impartial” and “independent” to be defined in the Regulations. Given the diversity of districts, decisions regarding how this requirement is implemented should be made at the local level through collective bargaining.³ (For example, some districts may wish to have another principal in the district perform the observations, while others may wish to hire an outside vendor to provide these services). However, based on our experience in New York City with independent peer validators, the UFT proposes the following minimum requirements for an evaluator to be considered “independent”:

1. The evaluator must not work or have previously worked in the school where the teacher being observed works;
2. The evaluator must not work or have previously worked for or with the principal or any assistant principal of the school where the teacher being observed works;
3. The evaluator’s own performance review or any salary, rate of pay or benefit must not be based on or affected in any way by the ratings given to teachers; and
4. The evaluator may not confer with the teacher's supervisor(s) during the school year.

In addition, independent evaluators should need to meet all of the State certification and evaluation training requirements that administrators are required to meet in order to conduct observations pursuant to the “principal or other trained administrator subcomponent.”

Finally, the Regulations should provide that the independent evaluator's observation must be announced.

³ While § 3012-d(4)(b) states that the impartial independent trained evaluator is “selected by the district”, this language would not obviate the need to collectively bargain the process by which the district selects the independent observer as well as how the observations are conducted, scored or integrated into the overall rating.

C. Trained Peer Teacher

Whether to use peer observers, and, if so, the selection process, number of observations, length of observations and other aspects of peer observations are inherently local decisions that should be left to collective bargaining.

D. Scoring of Observations

The law allows the Regulations to provide a range of “weighting options” to be selected through collective bargaining. See § 3012-d(4)(b). Accordingly, the UFT recommends that the Regulations provide that (1) the supervisor observations must be worth more than the independent observations and the peer observations combined and (2) the independent observations must account for at least 1% and no more than one quarter of the rating a teacher receives in the teacher observation category.⁴ This ensures that the school administrators who know the teacher and the instructional context best are primarily responsible for determining a teacher’s observation rating. To keep the focus on in-classroom performance, the Regulations should also require that a majority of the observation rating be based on a teacher’s classroom pedagogy, while the remainder may be based on a teacher’s planning, preparation or professional responsibilities as observed in the pre-observation and post-observation conferences.⁵ Within this range of options, the Regulations should provide that a weighted average of the ratings that a teacher received on the supervisor observation(s), independent observation(s), and, if any, peer observation(s)⁶ be calculated using a formula that has been collectively bargained.

This weighted average would result in a rating of highly effective, effective, developing or ineffective in the teacher observation category as follows:

⁴ The ability to limit the weight of the independent and peer observations is especially important in the initial years of implementation as districts and unions work out the logistics and develop the capacity to do this work in a meaningful and fair manner.

⁵ While the statute prohibits the use of “evidence of student development and performance derived from lesson plans”, see § 3012-d(6)(a), the statute does not prohibit an assessment of a teacher’s planning as part of a classroom observation where planning is one of the criteria in the approved rubric. Planning may, subject to collective bargaining, be evaluated through observation of a lesson being taught, through discussions that take place between teacher and supervisor at the pre- or post-observation conferences, and through discussion about the plan used to teach an observed lesson at the pre- or post-observation conference(s).

⁶ Each criteria in the rubric would be rated 1 to 4 (with 1 equal to ineffective, 2 equal to developing 3 equal to effective, and 4 equal to highly effective) and then averaged together to create an observation rating. Districts would be free to collectively bargain different weightings for different criteria, subject to the limitation that a teacher’s planning, preparation or professional responsibilities be worth less than his/her in-classroom work.

<u>Weighted Average:</u>	<u>Teacher Observation Category Rating</u>
1-1.49	Ineffective
>1.49-2.49	Developing
>2.49-3.49	Effective
>3.5-4.00	Highly Effective

While there are other cut scores in use throughout the State, these cut scores are recommended because they are simple, intuitive and, as a result, more credible than the alternatives.

II. Student Performance Category

A. Assessments

1. First Subcomponent

a) A “teacher whose course ends in a state-created or administered test”

Here, the law appears to provide that a teacher whose “course” ends in a “state-created or administered test” for which there is a state-provided growth model shall receive a growth score based on student performance on such assessment. See § 3012-d(4)(a)(1). Likewise, a teacher whose “course” ends in a “state-created or administered assessment” for which there is no state-provided growth model must use that assessment in an SLO (see II.C.2 below). Id. However, as you know, many teachers teach multiple courses, only some of which may end in state assessment. In implementing §3012-c, SED created rules for which teachers would have state-provided growth scores and which teachers would have SLOs as “comparable measures of growth”. It likewise created rules for when teachers of multiple courses - only some of which end in state assessments - must use those courses/assessments in their SLOs. At this time, we believe these rules can and should be applied to the First Subcomponent.

b) A “teacher whose course does not end in a state-created or administered test or assessment”

Here, the statute leaves SED and Board of Regents a significant amount of discretion with respect to which assessments are used.

Notably, the assessments used with SLOs need not be “tests” in the traditional sense. While § 3012-d(4)(a)(1)(A) requires the use of a “state-created or state administered test” or a “state-created or administered assessment” where one exists, pursuant to § 3012-d(4)(a)(1)(B), where one does not exist, the law requires only that the teacher “have a student learning objective (SLO) consistent with a goal-setting process”. Accordingly, the

regulations can and should provide districts and unions with the ability to collectively bargain the use of authentic performance based assessments that require students to create an original answer, performance or product, rather than answer multiple choice or fill-in-the-blank items. Of course, nothing in § 3012-d limits the State to creating "tests" that are standardized examinations.

Similarly, the assessments used in this category can be portfolio assessments. To be clear, portfolio assessments *are* allowed. § 3012-d(6)(a) prohibits the use of "evidence of student development and performance derived from ... student portfolios, *except for student portfolios* measured by a state-approved rubric where permitted by the department." (emphasis added). The clear import of this language is that when measured by a state-approved rubric, the Regulations can provide for portfolio assessments. The approval of the Assessment Committee would constitute state approval. These portfolio assessments would allow teachers to be evaluated based on a collection of each student's work as part of a given subject/grade (*e.g.*, in-class work) gathered periodically over the duration of the student's time in a subject/grade rather than a high-stakes test at the end of the year.

Moreover, the portfolios assessments and performance based assessments used in the First Subcomponent need not be a "State-designed supplemental assessment" as defined in § 3012-d(2)(d). As already noted, § 3012-d(4)(a)(1), which sets out the requirements for the First Subcomponent, mandates the use of "state-created or state administered test" or an "assessment"; the term "State-designed supplemental assessment" does not appear anywhere in § 3012-d(4)(a)(1).

The only limitation is that, pursuant to § 3012-d(6)(d), a district or regionally developed assessment must be approved by the SED, in accordance with the Regulations, in order to be utilized for this purpose.

Therefore, it is our recommendation that the Regulations establish a diverse committee of State-certified educators, including teachers, who are experts in assessment to develop a menu of assessments that can then be selected from locally through collective bargaining (the "Assessment Committee"). The Assessment Committee would solicit and review assessments it thought appropriate as well as any submitted by a local district or union.

That said, the Regents should provide the Assessment Committee with certain parameters for what may be approved. Parents need to know that the assessments will be developmentally appropriate and will be used to improve learning, rather than simply to make high-stakes decisions about teachers that put extreme pressure on students to perform and teachers to "teach to the test". Accordingly, we recommend that the Regulations provide that the Assessment Committee may not approve an assessment unless it meets the following requirements:

1. The test or assessment is aligned to the curriculum and State learning standards;
2. The test or assessment provides useful information to teachers and parents about the student's strengths and weaknesses that can be used to improve student learning;
3. The test or assessment is valid and reliable for use in teacher evaluation;
4. There is a protocol for the administration of the test or assessment that assures that it will be administered in a manner that is appropriate for use in teacher evaluation; and
5. The test or assessment is developmentally appropriate.

2. Optional Second Subcomponent

Section 3012-d(4)(a)(2) provides for two different types of measures that can be collectively bargained as the Second Subcomponent: (1) A "second state provided growth score on a state-created or administered test" or (2) A "growth score based on state-designed supplemental assessment".

With respect to the first type of measure, the Metrics Workgroup (described in more detail below) should be tasked with reviewing what additional growth scores can be provided.

With respect to the second type of measure, it should be noted that the definition of "state-designed supplemental assessment" specifically includes "tests *or assessments* that have been previously designed or acquired by local districts" so long as SED either "significantly modifies growth targets or scoring bands for them" or "*otherwise adapts* the test or assessment to [SED's] requirements."⁷

As with the first subcomponent, it is our recommendation that the Assessment Committee develop a menu of approved assessments that can be selected locally through collective bargaining and that would review and "adapt" the assessments. The Regulations can and should define "adapt" to mean that the Assessment Committee must ensure that the test or assessment is valid, reliable, aligned to the State's learning standards for the subject, and meets the requirements for assessments (set forth in section II.A.1.b) above.

⁷ While we focus here on the locally designed or acquired assessments, § 3012-d(2)(d) provides that a state-designed supplemental assessment may include tests or assessments that SED acquires from another state, an institution of higher education or a commercial or not-for profit entity, provided that such entity "must be objective and many not have a conflict of interest or an appearance of a conflict of interest." The Regulations would need to define what constitutes "objective" and "conflict of interest".

Here too, so long as the assessments used in the optional second subcomponent meet the additional requirements for a “State-designed supplemental assessment”, portfolio assessments or performance based assessments are acceptable. Indeed, § 3012-d(4)(a)(2) makes clear that the second subcomponent must provide “options for multiple assessment measures that are aligned to existing classroom and school best practices” as well as take into account the recommendations of the testing reduction report. The use of portfolios and performance based assessments only serves to further this aim.

3. NYSESLAT and NYSAA

As part of its work, the Regulations should task the Assessment Committee with reviewing the use of the NYSESLAT and NYSAA in evaluation.⁸

B. Target Population

1. Group Measures

Teachers are highly focused on their students’ learning, but believe that use of measures of student learning for accountability purposes has to be done in a logical way. Nobody would hold an emergency room doctor accountable for the performance of a pediatrician in the same hospital or a lawyer accountable for the arguments made by a different attorney who later used the same courtroom. Yet, many teachers are held accountable for the performance of students in their school that they do not teach at all. Only slightly better, many teachers are held accountable for their students’ performance in a different subject. Often, these “group measures” are used because there are not appropriate assessments for every subject, making adopting regulations like those outlined above all the more important. However, once there has been sufficient time to develop appropriate assessments, this practice should be prohibited. Accordingly, the UFT suggests that the Regulations prohibit grade, team or group measures starting in the 2017-2018 school year. Starting in 2017-2018, the Regulations should provide that a teacher may be evaluated based only on his/her own students' growth, only for the duration of time which they are taught by the teacher, and only in the subject/grade the teacher taught the students.

2. Students to be included in SLOs

In this option, the UFT suggests that SLO rules remain largely unchanged. It is important to emphasize however that only those students who meet the enrollment and linkage

⁸ Notably, while the NYSESLAT and NYSAA are state assessments, courses do not end in them and therefore § 3012-d(4)(a)(1) does not mandate their use.

requirements that the State requires for its State-provided growth scores should be permitted to be included in the SLOs.

C. Growth Measurement

1. State Provided Growth Models

Wherever the statute requires the use of a state-provided or approved growth model, the following Regulations should apply. The use of a locally designed growth model as a form of an SLO is addressed in section 2.b) below.

a) Additional Variables

One of the hardest aspects of §3012-d, as with §3012-c, is the development of a valid, reliable growth model in which teachers and the public have confidence. It is highly technical work, but it is critical that it take into account as many of the student, district, classroom, and/or school characteristics as possible that may be relevant to student performance.

Accordingly, we recommend that the Regulations reconstitute the “Metrics Workgroup” of the Regents Task Force on Teacher and Principal Effectiveness (the “Metrics Workgroup”), which has the technical expertise necessary to further improve the State’s growth model.

Specifically, the UFT proposes that the Metrics Workgroup be tasked with considering additional variables that might be appropriate to include in the growth model, including but not limited to the following, and making a report and recommendation to the Board of Regents:

1. The NYSED District Need/Resource Capacity Category;
2. The NYSED Combined Wealth Ratio (CWR);
3. Separate variables for whether each student receives free lunch, whether each student resides in temporary housing, and how many of the indicia of student economic disadvantage apply to the student;
4. Separate variables for whether each student has an individualized education plan (IEP), whether such student has an IEP that mandates he/she receive services for at least 60% of the school day outside the general education setting, whether such student has an IEP that mandates the student receive occupational therapy, physical therapy and/or speech therapy only, and any other gradations of student disability determined by the to be appropriate; and

5. Student English Language Learner status, including separate variables for whether the student has received no formal education, whether the student's formal education had been interrupted, the student's NYSESLAT score, and any other variable(s) related to English Language Learner status the Metrics Workgroup determines to be appropriate.

b) Alternatives

While questions have been raised as to whether the State should switch from the current model to a criterion-referenced growth model, with all of the changes that will soon occur to the evaluation process, the last thing schools need are additional changes to the fundamental nature of the growth model as well. We therefore recommend that the issue of whether a criterion-referenced growth model would be preferable be referred to the Metrics Workgroup to make a report and recommendation to the Board of Regents.

c) Scoring

The UFT proposes that the current process for converting a teacher's MGP to a HEDI rating be unchanged. The determination of which MPGs (and their associated confidence intervals) are to each HEDI category should also remain unchanged.

d) State Approved Growth Model

Alternatively, 3012-d provides, in certain instances, for the use of State-"approved" growth models. We recommend that the Regulations delegate to the Metrics Workgroup the task of reviewing the validity of any growth models that may be submitted for approval.

2. SLOs

SLOs can be created and measured through either a growth model or through a target setting process. Both should be an option that can be selected locally through collective bargaining by a district and a union.

a) SLOs Through Target Setting

Section 3012-d(4)(a)(2) requires that the Regulations set "parameters for appropriate targets for student growth". Within those parameters, however, the amount of growth that it is appropriate to expect of an individual student cannot be determined at the state (or, likely, even the district) level. What is important, therefore, is for the Regulations to allow the district and union to collectively bargain a process that works locally for the setting of rigorous, reasonable targets within certain parameters.

Specifically, we suggest that the Regulations provide that the collectively bargained APPR plan must contain a process for ensuring that the targets are such that a teacher is rated highly effective if (and only if) the growth of his/her students is well above reasonable expectations for growth of similar students; a teacher is rated effective if (and only if) the growth of his/her students is similar to reasonable expectations for the growth of similar students; a teacher is rated developing on student performance if (and only if) the growth or achievement of his/her students is below reasonable expectations for the growth or achievement of similar students; and a teacher is rated as ineffective if (and only if) the growth of his/her students is well below reasonable expectations for the growth of similar students.

b) SLOs Through a Growth Model

In this option, we recommend that the Regulations provide that, if collectively bargained, SLOs can be created and measured through the use of a growth model, provided that the Metrics Workgroup has determined that the growth model is valid.

c) Scoring of SLOs Done Through Target Setting

The UFT proposes the following scoring ranges for SLOs done through target setting:

<u>Percentage of Students Meeting Target</u>	<u>Rating</u>
0-29%	Ineffective
>29%-54%	Developing
>54-84%	Effective
>84%-100%	Highly Effective

3. Anomalies

The system for measuring student growth will likely not be perfect; there may be anomalies where the result is the product of a flaw in the system rather than a flaw in the teacher. This is especially true of (but not limited to) the growth model's ability to measure the growth of the highest and lowest performing students, situations where there were documented flaws in the administration of the test or assessment; and instances where there is crucial missing data about students with included SGP's (*e.g.*, missing prior assessment results/imputed scores). To address this possibility, two steps should be taken: First, the Regulations should direct the Metrics Workgroup to collect data and publish information on anomalies and unintended consequences in the student growth measures that can be used in the appeals process. Second, every district should be required to have a meaningful appeals process in place to correct any rating that has been negatively affected by the anomalies and unintended consequences identified by the Metrics Workgroup.

D. Weightings Where Two Subcomponents Are Used

Where a teacher has two student performance subcomponents, the Regulations should provide that the first subcomponent shall be worth no more than 40% of the student performance rating, with the exact weighting and process for combining the two scores determined locally through collective bargaining.⁹

III. Other

A. 3012-c

Assuming for these purposes that §3012-d(15) authorizes the Commissioner and the Board of Regents to determine whether certain provisions in §3012-c continue to apply, the UFT urges that the TIP, appeals, and privacy provisions continue.¹⁰ As discussed above, one goal of the Regulations should be to minimize any further disruption to the local districts.

Specifically, the provisions of § 3012-c(4) (TIP) are imperative and should remain in place. As noted earlier in this letter, a primary focus of the Regulations - indeed, any evaluation system - should be to help teachers grow as professionals throughout their career. Teacher improvement plans, if done properly, provide necessary support for teachers rated developing or ineffective so that they can become more successful.

The provisions of §§ 3012-c(5) and (5-a) (appeals) should also continue to apply and should be extended to the extent necessary to allow for possible anomalies in the student performance measures to be addressed (see II.C.3 above).¹¹ Indeed, while due process is always a critical element to ensuring that any teacher evaluation system is fair and reliable, as the State's evaluation rules change yet again (this will, potentially, be New York City's third system in three years), an appeals process is even more important. Errors are inevitable, and a meaningful appeals process reduces the risk that high-stakes decisions will be made about teachers based on those mistakes.

⁹ Section 3012-d(4)(a)(2) requires the commissioner, subject to approval of the Board of Regents, to set the "weights" for the subcomponents of student performance category that result in a combined student performance category rating. This does not mandate that the Regulations include a single weight; the Regulations can provide for a range of possible weights or a process for determining the weight.

¹⁰ The provisions of § 3012-c(2)(d) (training of principals), (k) (Commissioner approval), (k-1) (expedited approval for elimination of assessments), (k-2) (reduction of field testing) and (l) (continuation of existing plans) should also continue to apply.

¹¹ Pursuant to § 3020, the New York City disciplinary process remains unchanged until a new collective bargaining agreement is negotiated. Moreover, § 3012-c(5-a) allows the UFT and Board of Education of the City School District of the City of New York ("DOE") to collectively bargain any changes to the process that are necessary.

The provisions of 3012-c(10) (privacy) should also continue to apply. There is simply no reason to disturb this carefully crafted balance of a parent's right to know and an individual's privacy.

B. The Definition of a “Classroom Teacher”

Again, in the interest of causing as little disruption as possible, the Regulations should continue the current definition of a classroom teacher. They should also clarify that a teacher must be teaching the same class for 60% of the school year (or course, in the case of courses that are not annualized) in order to be considered a classroom teacher.¹²

Additionally, the Regulations should exclude from the definition of a classroom teacher individuals who are teachers of programs for suspended or incarcerated students. Due to the unique nature of this student population, including its transient nature, it is nearly impossible to reliably measure student growth.

C. Prohibition on students having two consecutive teachers who have received an ineffective rating

In many districts and/or subjects, a school has only one teacher of a particular subject (e.g., elementary school cluster teachers). In such circumstances, the Regulations should provide that a district that seeks a waiver from this requirement shall automatically receive it, provided that the district provides assurance that it has created and is faithfully implementing a teacher improvement plan in accordance with § 3012-c(4).

Additionally, the Regulations should provide that this is a prohibition on having two consecutive ineffective teachers in the *same subject*.

D. Waivers and Future Modifications

Finally, as districts and unions implement this new evaluation system, they will likely develop innovative approaches or find aspects of the system that can and should be changed. Accordingly, we believe it is advisable the Regulations contain a process by which districts may apply for a waiver of one or more provisions of the Regulations and for a regular review and amendment, if necessary, of the Regulations subject to approval of the Board of Regents.

¹² The term "classroom teacher" when used in §§ 2509 and 2573 should mean a teacher who meets the definition of a classroom teacher each year of his or her probationary period.