Teacher and Principal Evaluations:

Chapter 103 of the Laws of 2010

– presented to –

Long Island Association for Supervision and Curriculum Development

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- by –

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Teacher and Principal Evaluations
Historically: Pre-Chapter 103 of the Laws of 2010

In General

1. 8 NYCRR §100.2(o) established the requirement for "annual professional performance review" ("APPR"). Under it:

   a. Each school board and BOCES must "ensure" that the performance of teachers providing instructional services or pupil personnel services be reviewed annually.

   b. Each school board and BOCES must adopt an annual or multi-year professional performance review plan that meets these requirements:

      (1) Criteria for evaluation of teachers providing instruction *shall* include but not be limited to:

         (a) Content knowledge
         (b) Preparation
         (c) Instructional delivery
         (d) Classroom management
         (e) Student development
         (f) Student assessment
         (g) Collaboration
         (h) Reflective and responsive practice
         (i) Student growth (added on 4/22/10, eff. 5/1/10 for 2011-12 school year)
         (defined as a "positive change between at least 2 points in time as determined by the district)

      (2) Description of methods that districts will use to assess teachers' performance

      (3) Description of methods that will be used to address unsatisfactory performance

      (4) Description of how the district provides training in good practice for conducting evaluations

      (5) Description of how the district will provide feedback to teachers on performance (added on 4/22/10 for 2011-12 school year)

   c. Each teacher must be rated in one of four uniform qualitative categories defined in the regulation: highly effective, effective, developing, and ineffective (added on 4/22/10, eff. 5/1/10 for 2011-2012 school year)

2. Education Law §3012-b prohibited the granting or denial of *tenure* based *exclusively* on student performance data. Scheduled to (and did) sunset on July 1, 2010.

A Catalyst: New York State's "Race To The Top"

Federal Requirements

The Secretary of Education made clear to New York that, to be competitive for Race To The Top ("RTT) funding, New York needed to accomplish certain education reforms. Specifically, the Obama Administration strongly encouraged New York to:

(1) Lift the statutory cap on charter schools, and
(2) Allow student performance results to be used in the evaluation of teacher performance and tenure determinations.

Regents Reform Goals

The Board of Regents articulated reform goals in four areas: adopting internationally benchmarked learning standards, building instructional data systems that measure student success and inform teachers and principals how they can improve practice, turning around lowest achieving schools, and *recruiting, developing, retaining and rewarding effective teachers and principals.*

NYSUT and SED Reach Agreement

On or about May 12, 2010, the *New York Times* reports that NYSUT and SED have "reached an agreement" on amendments to the Education Law that will change the APPR process and bolster New York's chances to prevail in Round 2 of RTTT by improving teacher quality and strengthening accountability. The "agreement" that is reached appears to have been accomplished largely without the participation of organizations representing school administrators or school boards.

A New Paradigm: Teacher and Principal Evaluations And Discipline Under Chapter 103 of the Laws of 2010

In General

1. The new law "phases in" a new evaluation system over two years. It applies to all evaluations of:

   a. Teachers of common branch subjects or English language arts or mathematics in grades four to eight and principals employing such teachers conducted by school districts on or after July 1, 2011.

   b. All classroom teachers and principals conducted by school districts or BOCES on or after July 1, 2012 (Educ. Law § 3012-c(1),(2)(b),(c)).

2. Chapter 103 makes such evaluations a "significant factor" for:

    a. Employment decisions, including but not limited to promotion, retention, tenure determination, termination, and supplemental compensation, which decisions are to be made in accordance with locally developed and negotiated procedures.

    b. Teacher and principal development, including but not limited to coaching, induction support and differentiated professional development which are to be locally established in accordance with negotiated procedures (Educ. Law § 3012-c(1)).

Performance Ratings

1. Teacher and principal effectiveness is to be rated under one of four categories – highly effective, effective, developing and ineffective based on minimum and maximum scoring ranges for each category, as prescribed in commissioner's regulations.

2. Performance reviews must result in a single composite effectiveness score that incorporates multiple measures of effectiveness (Educ. Law §3012-c(2)(a)).

Elements of Composite Score

1. The composite score is broken down as follows:

    a. 20% based on student growth data on state assessments as prescribed by the commissioner or a comparable measure of student growth if such growth data is not available (Educ. Law § 3012-c(2)(e)(i), (f)(i)).

    b. 20% based on other locally selected measures of student achievement determined to be rigorous and comparable across classrooms "in accordance with commissioner's regulations, and as are locally developed in a manner consistent with procedures negotiated pursuant to Art. XIV of the Civil Service Law" (Educ. Law § 3012-c(2)(e)(ii),(f)(ii)).

    c. 60% of the evaluations, ratings and effectiveness scores "locally developed, consistent with standards prescribed in commissioner's regulations, through negotiations conducted pursuant to Article XIV of the Civil Service Law" (Educ. Law § 3012-c(2)(h)).

2. For evaluations conducted in the first school year for which the Regents approve use of a value-added growth model, and thereafter, the composite score percentages change as follows:

- 25% (instead of 20%) based on student growth on state assessments as prescribed by the commissioner or a comparable measure of student growth if such growth data is not available.

- 15% (instead of 20%) based on other locally selected measures of student achievement determined to be rigorous and comparable across classroom in accordance with commissioner's regulations, and as are locally developed in a manner consistent with negotiated procedures (Educ. Law § 3012-c(2)(g)).

3. Student growth means the change in student achievement for an individual student between two or more points in time (Educ. Law § 3012-c(2)(i)).

Evaluator Training

Each individual responsible for conducting teacher and principal evaluations must receive appropriate training in accordance with the regulations of the commissioner of education prior to conducting any evaluation under the new law (Educ. Law § 3012-c(2)(d)).

Improvement Plans

1. School districts rating a teacher or principal as either developing or ineffective must formulate and implement an improvement plan for such teacher or principal no later than 10 days after the date on which teachers must report prior to the opening of classes for the school year.

2. Improvement plans must be consistent with commissioner's regulations and developed locally through negotiations.

3. Improvement plans must include, without being limited to:

   a. The needed areas of improvement,

   b. A timeline for achieving improvement,

   c. The manner in which improvement will be assessed, and

   d. Differentiated activities to support improvement in those areas (Educ. Law § 3012-c(4)).

Evaluation Appeals

1. School districts and BOCES must have in place an appeals procedure for teachers and principals to challenge:

   a. The substance of the annual professional performance review.

b. Adherence to the standards and methodologies required for such reviews pursuant to law.

c. Adherence to commissioner's regulations.

d. Compliance with applicable locally negotiated procedures.

e. Issuance and/or implementation of the terms of an improvement plan.

2 The specifics of the appeal procedure must be "locally established through negotiations".

3 Evaluations that are the subject of an appeal may not be offered or placed into evidence in section 3020-a proceedings or locally negotiated alternate disciplinary procedures until the appeal process is concluded (Educ. Law § 3012-c(5)).

Teacher and Principal Section 3020-a Hearings

Chapter 103 of the Laws of 2010 requires that when giving a school district and an employee the list and biographical information of potential hearing officers, the commissioner of education also notify them of each potential hearing officer's record in the last five cases of commenting and completing hearings within prescribed time periods (Educ. Law § 3020-a(3)(a)).

It also establishes separate rules for the conduct of a Section 3020-a proceeding related to charges of pedagogical incompetence based solely upon an alleged pattern of ineffective teaching or performance by a teacher or principal. Such a pattern consists of two consecutive annual ineffective ratings received by a classroom teacher or principal following an annual professional performance review conducted in accordance with the provisions section 3012-c discussed above (Educ. Law §§ 3012-c(6); 3020(1)).

Pursuant to the new rules applicable to charges of incompetence based solely on an alleged pattern of ineffective teaching or performance:

1. A three-member panel is not available in such cases (Educ. Law §3020-a(2)(c)).

2. The charges are to be heard by a single hearing officer in an expedited hearing to commence within seven days after the pre-hearing conference and completed within 60 days thereafter.

    a. A limited and time specific adjournment beyond such 60 days is available only if the hearing officer determines the delay is:

        - Attributable to a circumstance or occurrence beyond the control of the requesting party, and

- An injustice would result if the adjournment was not granted (Educ. Law §3020-a(3)(c)(i-a)(A)).

b. A hearing officer's record of continued failure to commence and complete such an expedited hearing with the prescribed time periods will be considered grounds for the commissioner to exclude the hearing officer from the list of potential hearing officers for such expedited hearings (Educ. Law § 3020-a(3)(c)(i-a)(C)).

3. The charges must allege that the school district or BOCES developed and substantially implemented an improvement plan as required by law (Educ. Law §§ 3020-a(3)(c)(i-a)(B); 3012-c(4)).

4. Such a pattern constitutes very significant evidence of incompetence. However, nothing limits the defenses which the employee may place before the hearing officer in challenging the charge (Educ. Law §§ 3020-a(3)(c)(i-a)(B)).

Teacher and Principal Alternate Disciplinary Procedures

Chapter 103 of the Laws of 2010 requires that negotiated alternate disciplinary procedures which become effective on or after July 1, 2010 must provide:

1. For an expedited hearing process before a single hearing officer regarding charges of incompetence based solely upon an alleged pattern of ineffective teaching or performance discussed above.

2. That a pattern of ineffective teaching or performance constitutes very significant evidence of incompetence which may form the basis for just cause removal (Educ. Law § 3020(1),(3)).

Impact on Collective Bargaining Agreements

1. All collective bargaining agreements applicable to classroom teachers and principals that are entered into *after July 1, 2010* must be consistent with the requirements of the new law. These new agreements must allow for the new teacher and principal evaluations to be a significant factor in employment decisions, including, but not limited to, supplemental compensation, in accordance with the phase-in schedule.

2. The new law does not abrogate any conflicting provisions in agreements in effect as of July 1, 2010 during the term of the agreement **and** until a successor agreement is reached. Translation: if District has a CBA in effect on or before 7/1/10, the terms continue until the CBA expires **and** a new agreement is entered into, even if the terms of the existing agreement conflict with the requirements of §3012-c.

What Must Be Negotiated?

1. Appeals Process must be "locally established." The statute says: "specifics of the appeals procedure must be locally established through negotiations."

2. Improvement Plans.

3. The "Procedures" related to the 20% student performance component to be based upon locally developed criteria consistent with Commissioner's regulations.

4. The remaining percent (60%) of the evaluations, ratings and effectiveness scores as they relate to teacher performance, using measures consistent with 8 NYCRR §100.2(o).

Regents Task Force on Teacher and Principal Evaluations/Regulations

The law requires the Regents to consult with an advisory committee prior to issuing regulations. Here are the areas referenced in the law where regulations are *expressly* required:

- Minimum/maximum scoring ranges for each category of teacher/principal rating
- Requirements of evaluator training
- TIPs must be "consistent with regulations"
- 20% component of student performance measure must be "consistent with regulations"

The Board of Regents has created a task force, whose first meeting was held on September 14, 2010. It consists of 35 members including teachers, administrators, higher education officials, and other stakeholders.

There are four principal committees of the "Task Force", covering:

- 60% other measures for teachers
- 60% other measures for principals
- Non-tested subjects measures
- Locally selected assessments

The Task Force will also address value-added growth measures, professional development, and the definitions of the rating categories. The Task Force will generate recommendations and proposed guidance.

Interplay Between Ch. 103 and Existing APPR Regulations (8 NYCRR §100.2(o)

New law builds on, but does not eliminate, 8 NYCRR §100.2(o).

Districts must comply with §100.2(o) for all classroom teachers prior to 7/1/11 and thereafter as provisions of new law phase in; and where CBAs are already in place prior to 7/1/10.

Board of Regents has said it will be revisiting §100.2 to ensure consistency with new provisions of §3012-c.

Open Issues Under Chapter 103

Some of the many questions left unanswered by Chapter 103 are:

- One part of the composite score is based on state assessments or comparable measures of student growth. What constitutes a comparable measure?

- Student growth means a change in achievement between two points in time. How much change, and between which points?

- Another part of composite score is based on measures of student achievement that are "determined to be rigorous and comparable across classrooms". These must be negotiated. To ensure comparability across classrooms, there needs to be a definition of rigor and comparability. Will and/or how will these be defined?

- Are the minimum elements to be included in the 60% part of the score the elements listed in 8 NYCRR §100.2(o)?

- How do districts which are currently in negotiations settle their contracts when much of the APPR requirements need to be "consistent" with Commissioner's regulations that have not been developed yet?

- Will the Regents/SED use their regulatory authority to promulgate regulations in other areas not specifically referenced in the statute?

- What does it mean that the APPRs are to be a "significant" factor in employment decisions? How does one define "significant"?

- Will the value added growth model differentiate application at the elementary and secondary levels?

- How will districts pay for the required training?

- Won't the ability to challenge any evaluation that is less than highly effective bog down the evaluation process? Does it make sense to allow an "effective" or "developing" rating to be challenged?

- Will the discipline process be slowed and more costly to districts, given that a challenged evaluation cannot be used in a 3020-a until the appeal is concluded?

- What is the timeline for appealing an evaluation? Does the law's failure to establish a timeline for appealing an evaluation make it difficult to bring an evaluation cycle to conclusion?

- The law does not address what the standard of proof is in challenging an evaluation (substantial evidence? preponderance of the evidence?), nor does it indicate which party (teacher or district) has the burden of proof.

- The law does not address who will hear the appeal, and whether the decision is binding or is itself appealable.

- If a teacher challenges an evaluation unsuccessfully, and then a 3020-a proceeding is brought based, in whole or in part, upon that evaluation, can the teacher re-litigate the accuracy of the evaluation all over again?

- What does the law mean when it says that two consecutive ineffective ratings constitute "very significant evidence" of incompetence? Is even more evidence needed? How much more?