TO: P-12 Education Committee

FROM: Jhone M. Ebert

SUBJECT: Addition of Sections 30-2.14 and 30-3.17 to the Rules of the Board of Regents Relating to Transition Ratings for Teachers and Building Principals During the Transition to Higher Standards through New State Assessments Aligned to Revised Learning Standards and a Revised State-Approved Growth Model

DATE: April 11, 2016

AUTHORIZATION(S):

SUMMARY

Issue for Decision

Should the Board of Regents adopt the proposed amendments to add a new §§30-2.14 and 30-3.17 to the Rules of the Board of Regents, relating to annual professional performance reviews of classroom teachers and building principals?

Reason(s) for Consideration

Review of Policy and Implementation of the New York Common Core Task Force Report.

Proposed Handling

The proposed amendment is submitted to the P-12 Education Committee for a recommendation to the Full Board for adoption as an emergency measure at its April 2016 meeting. The proposed amendment is attached as Attachment A.

Procedural History

A Notice of Proposed Rule Making and Emergency Adoption was published on December 30, 2015. Based on feedback from the field, the proposed amendment was revised. A Notice of Revised Rule Making and Emergency Adoption was published in the State Register on March 30, 2016. A Statement of the Facts and Circumstances which necessitate emergency action is attached as Attachment B. Supporting materials are available upon request to the Secretary of the Board of Regents.

Background

In September 2015, Governor Andrew Cuomo formed the Common Core Task Force which was charged with "comprehensively reviewing and making recommendations on reforming the current Common Core system and the way we teach and test our students". Following multiple meetings, the Task Force reviewed and discussed information presented at public sessions and submitted through the website, and has made a number of recommendations regarding the implementation of the Common Core Standards.

On December 10, 2015, the Task Force released their report, affirming that New York must have rigorous, high quality education standards to improve the education of all of our students and hold our schools and districts accountable for students' success but recommended that the Common Core standards be thoroughly reviewed and revised consistent as reflected in the report and that the State assessments be amended to reflect such revisions. In addition, the Task Force recommended that until the new system is fully phased in, the results from the grades 3-8 English language arts and mathematics State assessments and the use of any State-provided growth model based on these tests or other State assessments shall not have consequence for teachers or students. Specifically, Recommendation 21 from the Task Force's Final Report ("Report") provides as follows:

"…State-administered standardized ELA and Mathematics assessments for grades three through eight aligned to the Common Core or updated standards shall not have consequences for individual students or teachers. Further, any growth model based on these Common Core tests or other state assessments shall not have consequences and shall only be used on an advisory basis for teachers. The transition phase shall last until the start of the 2019-2020 school year".

In an effort to implement the Task Force's recommendation, the Board of Regents adopted an emergency "transition" regulation, at its December 2015 meeting, that made the following changes:

- Two new sections 30-2.14 and 30-3.17 are added to provide for a four-year transition period for annual professional performance reviews (APPRs) while the State completes the transition to higher learning standards through new State assessments aligned to the higher learning standards, and a revised State-provided growth model. During the transition period, the Commissioner will determine transition scores and ratings that will replace the original scores and HEDI ratings computed under the existing provisions of Subpart 30-2 and 30-3 of the Regents Rules for evaluation of teachers and principals whose APPRs are based, in whole or in part, on State assessments in grades 3-8 ELA and mathematics assessments and State-provided growth scores on Regents examinations. The transition period will end with the 2018-19 school year.

  Section 30-2.14 relates to evaluations under Education Law §3012-c and Subpart 30-2 of the Regents Rules and applies to evaluations for the 2015-16 school year only, as school districts conduct the negotiations necessary to come into compliance with new Education Law §3012-d. Section 30-3.17 relates to evaluations under Education Law §3012-d, and applies to evaluations for the 2015-16 through the 2018-19 school year.

- During the transition period, transition scores and HEDI ratings will replace the scores and HEDI ratings for teachers and principals whose HEDI scores are based, in whole or in part, on State assessments in grades 3-8 ELA or mathematics (including where State-provided growth scores are used) or on State-provided growth scores on Regents examinations.

- In the case of evaluations conducted pursuant to Education Law §3012-c and new §30-2.14, the overall transition scores and ratings will be determined based upon the remaining subcomponents of the annual professional performance review that are not based on the grade 3-8 ELA or mathematics State assessments and/or a State-provided growth score on Regents examinations.

  In the case of evaluations pursuant to Education Law §3012-d and new §30-3.17, transition scores and ratings for the student performance category and the overall transition rating will be determined using the scores/ratings in the subcomponents of the student performance category that are not based on the grade 3-8 ELA or mathematics State assessments and/or a State-provided growth score on Regents examinations, or in instances where no scores/ratings in the subcomponents of the student performance category can be generated, a back-up SLO shall be developed by the district/BOCES consistent with guidelines prescribed by the Commissioner using assessments approved by the Department that are not State assessments.

- State provided growth scores will continue to be computed for advisory purposes only and overall HEDI ratings will continue to be provided to

teachers and principals based on such growth scores. However, during the transition period, only the transition score and rating will be used for purposes of Education Law §§3012-c and 3012-d and Subparts 30-2 and 30-3, and for purposes of employment decisions, including tenure determinations and for purposes of proceedings under Education Law §§3020-a and 3020-b, for purposes of individual employment records and for teacher and principal improvement plans.

- However, for purposes of public reporting of aggregate data and disclosure to parents pursuant to subdivision 10 of section 3012-c of the Education Law, the original composite score and rating and the transition composite score and rating must be reported with an explanation of such transition composite score and rating.

Revisions to the Proposed Amendment

In response to the public comment received after publication in the State Register on December 30, 2015 (see Attachment C for Assessment of Public Comment), and after the Department hosted a series of meetings with various superintendents with approved APPR plans under Education Law §3012-d, at its February Regents meeting, the Board of Regents revised the proposed amendment and SED guidance as follows:

First, during the first year of the transition period (the 2015-16 school year), if excluding the 3-8 ELA/math State assessments and any State-provided growth score results in no remaining student performance measures, the overall transition score and rating shall be based on the remaining portions of the evaluation (i.e., the other measures of teacher effectiveness subcomponent/observation category of the evaluation). No additional SLO will be required.

For the remainder of the transition period (2016-17 through 2018-19), for districts/BOCES with approved Education Law §3012-d plans, when no student performance measures remain for calculating the transition scores and ratings, the district/BOCES has to create an alternate Student Learning Objective (SLO) based on an assessment that is not a 3-8 ELA/math State assessment or a State-provided growth score.

If a district/BOCES is still implementing their approved §3012-c plan because they have an approved Hardship Waiver, the Department will automatically renew the waiver until August 31, 2016.

- As required by Education Law §3012-d, all districts are still required to have an approved APPR plan consistent with the new requirements by September 1, 2016 in order to maintain their eligibility for a State aid increase.

If a district/BOCES already has an approved §3012-d plan, they do not need to make any changes to their plan for the 2015-16 school year as a result of these new regulations.

- They will, however, have to submit an additional form to the Department between March 2, 2016 and March 1, 2017 that describes the alternate SLOs that will be used for affected teachers during the 2016-17 through 2018-19 school year.

Recommendation

Staff recommends that the Board of Regents take the following action:

VOTED: That sections 30-2.14 and 30-3.17 of the Rules of the Board of Regents be added, effective May 13, 2016, as an emergency measure upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare in order to timely implement the recommendations of the New York Common Core Task Force Report, by ensuring that State assessments aligned to the Common Core do not have consequences and that they only be used on an advisory basis for teachers and principals and to ensure that the emergency rule adopted at the December 2015 Regents meeting remains continuously in effect until it can be adopted as a permanent rule.

.

Timetable for Implementation

If adopted as an emergency measure at the April 2016 meeting, the proposed amendment will become effective as an emergency rule on May 13, 2016.

Attachment A

AMENDMENT TO THE RULES OF THE BOARD OF REGENTS

Pursuant to sections 101, 207, 215, 305, 3009, 3012-c and section 3012-d of the Education Law and Chapter 56 of the Laws of 2015.

1. A new section 30-2.14 of the Rules of the Board of Regents is added, effective May 13, 2016, to read as follows:

§30-2.14. Annual Professional Performance Review Scores and Ratings for the 2015-16 School Year During a Transition to Higher Learning Standards.

(a) For purposes of this section, State assessments shall mean the grades 3-8 English language arts and mathematics State assessments.

(b) Notwithstanding any other provision of this Part to the contrary, the Commissioner shall establish procedures in guidance for transition scores and ratings for teachers and principals whose annual professional performance reviews conducted pursuant to Education Law §3012-c and this Subpart for the 2015-2016 school year are based, in whole or in part, on State assessments and/or on State-provided growth scores on Regents examinations during a transition period while the State completes the transition to higher learning standards through new State assessments aligned to the higher learning standards, and a revised State-provided growth model.

(1) State-provided growth scores will continue to be calculated pursuant to this Subpart for advisory purposes only during this transition period and teachers and principals will continue to receive an overall score and rating calculated pursuant to this Subpart.

(2) For the transition period, an overall composite transition score and rating shall be generated based on the scores and ratings on the remaining subcomponents of

the annual professional performance review that are not based on State assessments and/or a State-provided growth score on Regents examinations. The overall composite transition score shall include the use of any back-up SLOs developed by the district/BOCES in lieu of the State-provided growth score on State assessments; provided that such back-up SLOs shall not be based on State assessments.

(c) Except as otherwise provided in subdivision (d) of this section, a teacher's or principal's final composite score and rating, for all purposes under section 3012-c of the Education Law or this Subpart as well as for purposes of tenure determinations and other employment decisions and proceedings pursuant to Education Law §§ 3020-a and 3020-b, shall be the transition composite score and rating. The requirement for a teacher or principal improvement plan shall be based on the teacher's or principal's transition composite score and rating.

(d) For purposes of public reporting of aggregate data and disclosure to parents pursuant to paragraph b of subdivision 10 of section 3012-c of the Education Law, the original composite score and rating pursuant to section 3012-c of the Education Law and this Subpart shall be reported with (i) the transition composite score and rating and (ii) an explanation of such transition composite score and rating.

2. A new section 30-3.17 of the Rules of the Board of Regents is added, effective May 13, 2016, to read as follows:

§30-3.17. Annual Professional Performance Review Ratings for the 2015-2016 through the 2018-2019 school years for Annual Professional Performance Reviews Conducted Pursuant to Education Law §3012-d and this Subpart, During a Transition to Higher Learning Standards.

(a) For purposes of this section, State assessments shall mean the grades 3-8 English language arts and mathematics State assessments.

(b) Notwithstanding any other provision of this Subpart to the contrary, the Commissioner shall establish procedures in guidance for determining transition scores and ratings for teachers and principals whose annual professional performance reviews conducted pursuant to Education Law §3012-d and this Subpart for the 2015-2016 through the 2018-2019 school years are based, in whole or in part, on State assessments and/or State-provided growth scores on Regents examinations, while the State completes the transition to higher learning standards through new State assessments aligned to higher learning standards, and a revised State-provided growth model.

(1) State-provided growth scores will continue to be calculated for advisory purposes only pursuant to this Part during this transition period and teachers and principals will continue to receive an overall rating calculated pursuant to this Subpart.

(2) In addition, during this transition period, the Commissioner may also authorize the use of one or more State-provided growth model(s) that take into consideration multiple years of student growth on State assessments to compute scores in the required subcomponent of the student performance category, for advisory purposes only under this section.

(3) During the transition period, a transition score and rating on the student performance category, and a transition rating that incorporates the student performance category rating shall be generated based on:

(i) the scores/ratings in the subcomponents of the student performance category that are not based on State assessments and/or a State-provided growth score on Regents assessments; and

(ii) for the 2016-2017 through 2018-2019 school years, in instances where no scores/ratings in the subcomponents of the student performance category can be generated, notwithstanding any other provision of this Subpart to the contrary, a SLO shall be developed by the district/BOCES consistent with guidelines prescribed by the Commissioner using assessments approved by the Department that are not State assessments.

(c) Except as otherwise provided in subdivision (d) of this section, a teacher's or principal's final composite rating for all purposes under section 3012-d of the Education Law or under this Subpart, as well as for purposes of tenure determinations, individual employment records, and other employment decisions and proceedings pursuant to Education Law § 3020-b, shall be the overall transition rating. The requirement for a teacher or principal improvement plan shall be based on the teacher's or principal's overall transition composite rating.

(d) For purposes of public reporting of aggregate data and disclosure to parents pursuant to paragraph b of subdivision 10 of section 3012-c of the Education Law as made applicable to this Subpart, the original composite rating pursuant to section 3012-d of the Education Law and this Subpart shall be reported with (i) the overall transition rating and (ii) an explanation of such overall transition rating.

Attachment B

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

The proposed rule is necessary to implement the recommendations of the Common Core Task Force which were released on December 10, 2015. The Task Force recommended that until the new Learning Standards and State assessments are fully phased in, the results from the State assessments (Grades 3-8 English language arts and mathematics) and the use of any State-provided growth model based on these tests or other State assessments shall not have evaluative consequence for teachers or students.

A Notice of Proposed Rule Making was published in the State Register on December 30, 2015. Based on feedback received from the field, the proposed amendment was revised and a Notice of Emergency Adoption and Revised Rule Making was published in the State Register on March 30, 2016. Since the Board of Regents meets at fixed intervals, the earliest the revised rule can be presented for regular (non-emergency) adoption, after expiration of the required 30-day public comment period provided for a revised rulemaking pursuant to the State Administrative Procedure Act (SAPA) would be the May Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the May meeting, would be June 1, 2016, the date a Notice of Adoption would be published in the State Register.

Emergency action is therefore necessary for the preservation of the general welfare to ensure that the proposed amendment is adopted by emergency action to

ensure that teachers and principals receive transition scores and ratings for the 2015-2016 school year in accordance with the proposed amendment and that the results of the State assessments (grades 3-8 English language arts and mathematics) and State-provided growth scores based on Regents examinations are not used for evaluative purposes in the 2015-2016 school year through the 2018-2019 school year and so school districts are able to complete their negotiations for annual professional performance reviews conducted under Education Law §3012-d, which for State aid purposes must be completed by September 1, 2016. Emergency action is also necessary to ensure that the proposed rule adopted at the December 2015 meeting, which has been subsequently revised at the February 2016 Regents meeting, remains continuously in effect until it can be adopted as a permanent rule.

Attachment C

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the State Register on December 31, 2015, the State Education Department (SED) received the following comments:

1. COMMENT:

We still need to address the over-testing and inefficiency in the testing of High School students in order to assess teachers. I work in a vocational high school, and the students have to submit to two pre-tests and post tests in addition to their curriculum based testing and licensure testing. The APPR system needs to be modified, streamlined- reconsidered. It is not in the best interest of students. Some students are forced to repeat identical tests in home schools and in BOCES programs for the purpose of data. It creates a chaotic and disheartening beginning and end to the school year, does not instill love of learning, does not exemplify humanism or good teaching and learning.

DEPARTMENT RESPONSE:

Neither Education Law §3012-d nor Subpart 30-3 of the Rules of the Board of Regents require districts/BOCES to use pre-assessments as baseline data when setting SLO growth targets. In fact, the Department has released a number of resources to assist districts and BOCES in minimizing assessments used in APPR, including the SLO 103 webinar, available on EngageNY at: https://www.engageny.org/resource/slo-103-for-teachers which provides guidance to districts and BOCES on using historical data and past performance trends to set growth targets. On the contrary, this guidance

suggests that districts/BOCES may use a student's prior academic history as the baseline and is not required to use pre-assessments.

Additionally, Teach More, Test Less Testing Transparency Reports were provided to all districts and BOCES in New York State in 2014 wherein the Department reviewed each district's/BOCES' APPR plans and notified them of places in their APPR plans where they could take local action to reduce assessments in their district/BOCES. These letters are available on the NYSED website at: http://usny.nysed.gov/rttt/test/teachers-leaders/teach-more-test-less/home.html.

Moreover, pursuant to Section 30-3.4(b)(1)(iii) of the Rules of the Board of Regents, districts or BOCES who want to avoid additional testing in their APPR plans may use SLOs based on school- or BOCES-wide, group, team or linked results from the grades 4 or 8 State Science exams or Regents exams for grades/subjects where no State assessment or Regents exam currently exists.

2. COMMENT:

While I am appreciative of the proposed moratorium prohibiting the use of Grades 3-8 State Assessments for evaluation purposes, I am encouraging you to rethink its use at all. We can't ignore that the opt-out movement in our State was motivated by student performance being linked to teacher/principal evaluation. There is minimal evidence to support that State Assessments being linked to evaluations improve student achievement. On the other hand, having 100% participation on an appropriately designed assessment will improve instructional practice, especially when

combined with an effective data analysis process. Decoupling student performance from evaluations will reverse the opt-out trend, thereby positively impacting student achievement.

DEPARTMENT RESPONSE: Education Law §3012-d(4)(a)(1)(a) requires that State-provided growth scores be used for evaluative purposes, where available, to provide a score and rating in the required subcomponent of the Student Performance category. Further, that same provision of the Education Law also requires that State assessments be used as the underlying evidence for Student Learning Objectives (SLOs) where they exist. A statutory amendment would be needed to permanently decouple State assessments from evaluations.

3. COMMENT:

There is a lot of discussion at the state and federal level about local control. I was disappointed that it appears that the regulations went too far and took some of that local control away. To "forbid" the use of 3-8 test results took an option away that my district negotiated and had approved. In good faith we negotiated building-wide growth scores K-6 based upon the 3-6 assessments and 7-12 building-wide growth scores based upon the 7-8 State Assessments and Regents Exams. I believe the Growth scores we received were the best number despite the flawed implementation of the reform agenda and despite tests that are certainly not perfect. Had the emergency regulations provided the option to use or not use results from the 3-8 tests, that would have been more in line with respecting local control, and I would have proposed to continue with our plan as is and other Districts could have chosen differently if desired.

DEPARTMENT RESPONSE:

The regulatory language found in sections 30-2.14 and 30-3.17 of the Rules of the Board of Regents is intended to implement Recommendation #21 of the Governor's Common Core Task Force, which was comprised of a diverse and highly qualified group of education officials, teachers, parents, the Governor and state legislative representatives. Recommendation #21 states, in part, that "State-administered standardized ELA and Mathematics assessments for grades three through eight aligned to the Common Core or updated standards shall not have consequences for individual students or teachers. Further, any growth model based on these Common Core tests or other state assessments shall not have consequences and shall only be used on an advisory basis for teachers during the period of time in which the State transitions to higher learning standards and a revised State growth model." The regulation implements the recommendation of the Governor's Task Force, which was to prohibit the use 3-8 Common Core assessments for evaluative purposes. See also Response to Comment #4.

4. COMMENT:

It seems that the regulations are in conflict with the law, if the law dictates that 3-8 tests are to be administered and used. for informational purposes only at this point, what would the ramifications be from the state level if a District chose to adhere to the law as opposed to the regulations by using the 3-8 results anyway, if I am correct that there is a conflict between the two?

DEPARTMENT RESPONSE:

The Board of Regents have authority under Education Law section 207 to establish rules to carry into effect the laws and policies of the State relating to education. In this instance, subsequent to the enactment of Chapter 56 of the Laws of 2015, which enacted new §3012-d of the Education Law to establish new requirements for annual professional performance reviews (APPRs) of teachers and principals, there was a profound change in circumstances that could not have been anticipated by the Legislature and the Governor at the time of enactment,. The Governor appointed a Common Core Task Force, comprised of a diverse and highly qualified group of education officials, teachers, parents, and state legislative representatives, to review the Common Core standards and assessments that form the underpinning of the APPRs. The Common Core Task Force recommended that the State Education Department thoroughly review both the Common Core standards and assessments and the State-provided growth model used to measure growth on those assessments, and that there be a transition period established during which the grades 3-8 assessments would not be used for high stakes decisions for teachers or students. Specifically, the Task Force's Recommendation #21 states, in part, that "State-administered standardized ELA and Mathematics assessments for grades three through eight aligned to the Common Core or updated standards shall not have consequences for individual students or teachers. Further, any growth model based on these Common Core tests or other state assessments shall not have consequences and shall only be used on an advisory basis for teachers during the period of time in which the State transitions to higher learning standards and a revised State growth model."

Newly appointed Commissioner MaryEllen Elia then recommended to the Board of Regents that the State Education Department undertake a searching review of the Common Core standards, Grades 3-8 Common Core ELA and Math assessments and the State provided growth model used to measure student growth on those assessments for APPR purposes, to be conducted over a four year period. At that point strict application of new §3012-d, which relied heavily on the State provided growth model to evaluate the performance of teachers and provided, became untenable and could have resulted in unjust results and hardship to teachers and principals that could not have been intended by the Legislature when it enacted section 3012-d. Because the APPR is a continuous process involving collective negotiations between school districts and BOCES and the employee organizations representing classroom teachers and building principals, immediate action was necessary to eliminate the potential for hardship and unjust results if the State provided growth model continued to be used for high stakes decisions involving teachers and students while it, the growth model, as well as the Common Core standards and assessments were being reviewed and potentially modified. Based on Recommendation No. 21 of the Common Core Task Force, which included representation from the Governor and the Legislature, the Board of Regents adopted the regulatory language found in sections 30-2.14 and 30-3.17 of the Rules of the Board of Regents to avoid having the State-provided growth model used for high stakes determinations for teachers and principals in circumstances that the Legislature could not have anticipated and under which the Legislature could not have intended it be used for high stakes.

Furthermore, sections 30-2.14 and 30-3.17 of the Rules of the Board of Regents do not eliminate the requirement that districts and BOCES implement their APPR plans in their entirety during the transition period. Scores and ratings pursuant to all of the measures found in the approved APPR plan, including State-provided growth scores and measures that utilize the grades 3-8 ELA and math State assessments, will continue to be calculated and provided to educators for advisory purposes and districts/BOCES will continue to report this information to the State, and the State will continue to report aggregate data to the public. The regulations merely take scores for those portions of the evaluation related to State-provided growth scores and SLOs based on State assessments out of the evaluation for employment purposes, including tenure determinations, individual employment records and teacher and principal improvement plans.

5. COMMENT:

To be forced to now potentially purchase and administer an additional assessment so close to the State Assessments is both a financial burden on the district and is counterproductive to the edict from the State to reduce student assessments.

DEPARTMENT RESPONSE:

Sections 30-2.14 and 30-3.17 as adopted by the Board of Regents during their February 2016 meeting do not require the creation of alternate SLOs in the 2015-16 school year. Based on feedback received from the field, an amendment was made to the proposed rule at the February meeting to clarify that the alternate SLO requirement is only applicable to APPRs completed during the remainder of the transition period (2016-17 through 2018-19 school years). Moreover, the regulation does not require districts/BOCES to purchase and/or create new assessments. On the contrary,

districts/BOCES should consider utilizing any other assessments that are currently being administered in classrooms when developing alternate SLOs during the transition period. In many instances, the use of formative and diagnostic assessments in combination with a summative assessment or performance task are already in use and can be authentic and meaningful measures of student performance. Further, districts/BOCES have the option to use school- or district-wide measures based on State assessments that are not the grades 3-8 ELA and math State assessments, e.g., the grades 4 and 8 State Science assessments or the Regents examinations.

6. COMMENT:

Those of us that complied and successfully negotiated 3012-d plans should be able to use or not use results from 3-8 state tests if desired, and we should not be forced to buy or create other assessments. If the Commissioner/Board of Regents is able to permit Districts the option to use Rubric scores only, great;. but please do not take away the option to use the State Provided Growth Scores and/or results from the 3-8 state tests if a District so desires to do so. Perhaps the transitional regulations could/should state that approved 3012-d plans remain in effect "as is" unless otherwise re-negotiated at the local level based on any permitted options that are identified.

DEPARTMENT RESPONSE:

See Responses to Questions 3 and 5.

7. COMMENT:

Commenters request a one-year moratorium for districts that effectively negotiated and have approved by the State Education Department §3012-d plans that

include: no additional testing for districts that have approved §3012-d plans; districts whose §3012-d plans contain group goals and/or individual teacher scores based on state assessment or growth scores should only utilize the teacher/principal observation portion of the matrix included in a teacher or principal's final rating if state assessments are not permitted; back-up or new SLO's whose targets are set after December 1, 2015 should not be allowed for the 2015-2016 school year; for the 2016-2017 school year, information on new testing or additional tests that must be purchased must be given to districts prior to budget development; there should be an acknowledgement that districts with approved §3012-d plans negotiated in good faith with teacher and administrative unions, and that given compliance with the new law the districts should be given wider discretion in implementation of our plans for at least the 2015-2016 school year; an unintended consequence of not including NYSED Science examination in the definition of state assessments is that some plans will have a total focus on 4 and 8 science as a group measure for all teachers and principals, this needs to be addressed; and there must be material changes to the regulations that address the points above in relation to §3012-d.

DEPARTMENT RESPONSE:

Sections 30-2.14 and 30-3.17 as adopted by the Board of Regents during their February 2016 meeting do not require the creation of alternate SLOs in the 2015-16 school year. Based on feedback from the field, an amendment was made to the proposed rule at the February Regents meeting to clarify that the alternate SLO requirement is only applicable to APPRs completed during the remainder of the transition period (2016-17 through 2018-19 school years). Additionally, districts and

BOCES will continue to have the ability to submit material changes to their APPR plans during the transition period. Thus, if they desire to make changes to the measures specified in the APPR plan in light of the transition regulations, they are able to do so. For districts/BOCES will APPR plans already approved pursuant to Education Law §3012-d in the 2015-16 school year, the description of the alternate SLOs that will be used during the transition period shall be submitted to the Department on a supplemental form to their currently approved §3012-d APPR plans (rather than re-opening their plan in the Review Room portal). These districts/BOCES can submit the supplemental form to the Department any time between March 2, 2016 and March 1, 2017 for implementation in the 2016-17 school year. Thus, there is a significant amount of time being provided to districts and BOCES to consider what measures they wish to use prior to implementation for the 2016-17 school year.

Regarding the commenter's concern relating to overreliance on the grades 4 and 8 State Science assessments, as indicated in the response to Comment #3, Recommendation #21 from the Governor's Common Core Task Force called for the exclusion of grades 3-8 ELA and math State assessments aligned to the Common Core, and did not include any reference to State Science assessments.

8. COMMENT:

The emergency regulations relating to 3012-d transition scores (30-3.17) require that, where no scores/ratings in the student performance category can be generated because they rely on State assessments, a new "back up" SLO must be developed

using approved assessments other than State assessments. Compliance with this new requirement poses numerous challenges:

a. The term "back up SLO" is misplaced as the new SLO is being developed based upon an assessment not used previously for this purpose. Districts have not budgeted for acquisition or development of approved assessments or necessarily provided training on the use of the assessment.

b. It is much too late in the school year to measure a full year of growth based upon a new assessment.

c. Because students must still take state assessments and Regents, adding new assessments for APPR purposes increases testing time for students.

- Whether directly or indirectly, high school teachers have been evaluated at least partially on their Regents results long before the advent of Common Core. Their SLO's and the core business of the high schools support this model. Excluding non-Common Core Regents exams mid-year without a clear and vetted alternative, or adding an additional assessment for evaluation purposes, fundamentally shifts the focus of the high school program.

There is similar confusion regarding the use of "back up SLOs" in the revisions to 3012-c regulations. New section 30-2.14 (b)(2) states that, for the transition period, the composite APPR score and rating shall be generated based upon the "remaining subcomponents of the annual professional performance review that are not based on State assessments and/or a State-provided growth score on Regents examinations" and that this score "shall include the use of any back up SLOs developed by the district/BOCES in lieu of the State-provided growth score on State assessments."

Before this revision, back up SLOs for teachers or principals whose student growth measure rested upon State assessments/Regents had to be based upon those assessments. There would be no "back up" SLO based upon another assessment. It is

unclear whether 30-2.14(b)(2) now requires acquisition of a State approved assessment and development of a new SLO, or whether these individuals' APPR composite scores would be based solely on the remaining components that do not rely on State assessments or Regents.

DEPARTMENT RESPONSE:

Regarding the term “back-up SLO,” the Department agrees. Based on feedback received from the field, section 30-3.17 of the Rules of the Board of Regents specifically uses the term “alternate SLO” instead of “back-up SLO” when describing the measures that must be selected by districts and BOCES during the 2016-17 through 2018-19 school years in the event that there are no remaining student performance measures for an educator after the results of the grades 3-8 ELA and math State assessments and any State-provided growth scores are excluded from the calculation of transition scores and ratings.

Additionally, the Department agrees with your concerns over developing alternate SLOs during the 2015-16 school year. Based on feedback from the field, the amended version of section 30-3.17 adopted by the Board of Regents at their February meeting only requires the creation of alternate SLOs during the 2016-17 through 2018-19 school years.

With respect to your concerns regarding additional testing, please see the response to Comment #5.

Regarding the use of Regents assessments as part of Student Performance measures for teachers whose courses end in those assessments, sections 30-2.14 and 30-3.17 of the Rules of the Board of Regents do not preclude the use of Regents

assessments as the underlying evidence for SLOs (see, e.g., Question 10 of the Department's APPR Transition FAQ, available on EngageNY at: https://www.engageny.org/resource/guidance-on-new-york-s-annual-professional-performance-review-law-and-regulations).

Alternate SLOs do not require additional testing. On the contrary, districts/BOCES should consider utilizing any other assessments that are currently being administered in those classrooms. In many instances, the use of formative and diagnostic assessments in combination with a summative assessment or performance task are already in use and can be authentic and meaningful measures of student performance. However, please remember that all non-State assessments must be approved through the Assessment RFQ.

Further, districts/BOCES have the option to use school- or district-wide measures based on State assessments that are not the grades 3-8 ELA and math State assessments, e.g., the grades 4 and 8 State Science assessments or the Regents examinations.

Regarding the commenter's concern of having to create both back-up SLOs and alternate SLOs during the transition period, the Department is considering this feedback and will take these comments into consideration.

9. COMMENT:

The transition period scoring regulations will result in multiple categories of APPRs for 2015/16 under 3012-c and 3012-d: Teachers/principals whose score includes observations; Student growth based upon State approved assessments; and Student achievement based upon State approved assessments (3012-c); Teachers/principals whose score includes observations; and Student achievement

based upon State approved assessments (3012-c); Teachers/principals whose score is based solely upon observations (3012-c); Teachers/principals whose score is based upon observations; and Student growth based upon State approved assessments in accordance with previously negotiated APPR (3012-d); and Teachers/principals whose score is based upon observations; and Student growth based upon newly developed SLOs using State approved assessments in order to comply with 30-3.17. We are concerned that the lack of consistency in the APPR measures for 2015/16 will raise questions of equity for our teachers and principals.

DEPARTMENT RESPONSE:

The regulatory language found in sections 30-2.14 and 30-3.17 of the Rules of the Board of Regents is intended to implement Recommendation #21 of the Governor's Common Core Task Force, which was comprised of a diverse and highly qualified group of education officials, teachers, parents, and state representatives. Recommendation #21 states, in part, that "State-administered standardized ELA and Mathematics assessments for grades three through eight aligned to the Common Core or updated standards shall not have consequences for individual students or teachers. Further, any growth model based on these Common Core tests or other state assessments shall not have consequences and shall only be used on an advisory basis for teachers during the period of time in which the State transitions to higher learning standards and a revised State growth model.

The law requires that districts' and BOCES' APPR plans require that the same measures be used for all teachers of the same grade and subject across a district for the required subcomponent of the Student Performance category. Therefore, the

calculation of transition scores and ratings must include the same components for all teachers of the same grade and subject, but not necessarily across the district.

10. COMMENT:

At the local level, school districts and BOCES have worked tirelessly to maintain working relationships with negotiating units through the iterations of APPR. This is becoming increasingly difficult, reflecting the uncertainty over the years in APPR.

DEPARTMENT RESPONSE:

The Department is committed to continuing its work with stakeholder groups as the State completes the transition to higher learning standards through new State assessments aligned to higher learning standards, and a revised State-provided growth model and hopes this transition period will provide some stability in APPR.

11. COMMENT:

For school districts issued waivers, it will now be impossible to reach consensus on 3012-d compliant APPR with local negotiating units as it is very unclear what the rules will be. We recommend that currently issued waivers be deemed effective at least through the 2015/16 school year without the need for further application.

DEPARTMENT RESPONSE:

The Department has notified each superintendent in a district with an approved hardship waiver who is implementing an APPR plan pursuant to Education Law §3012-c that such Waiver has been automatically extended through August 31, 2016. Notice of the Hardship Waiver approval status for applicable districts has also been posted on each district's APPR plan page on the Department's "Approved APPR Plans" webpage

at http://usny.nysed.gov/rttt/teachers-leaders/plans/. Thus, the Department believes this concern has been addressed.

12. COMMENT:

Substituting alternative assessments for state assessments in the development of student learning objectives (SLOs) may actually require an increase in budgets spent on assessments and/or reallocate limited fiscal resources to fund the development of new teacher-developed SLO assessments. Given the Task Force's recommendation of the review and the revision of the Common Core Learning Standards, we believe that developing any new assessments liked to standards still under review will continue to erode our communities' confidence in our system.

DEPARTMENT RESPONSE:

The regulatory language found in sections 30-2.14 and 30-3.17 of the Rules of the Board of Regents is intended to implement Recommendation #21 of the Governor's Common Core Task Force, which was comprised of a diverse and highly qualified group of education officials, teachers, parents, and state representatives. Recommendation #21 states, in part, that "State-administered standardized ELA and Mathematics assessments for grades three through eight aligned to the Common Core or updated standards shall not have consequences for individual students or teachers. Further, any growth model based on these Common Core tests or other state assessments shall not have consequences and shall only be used on an advisory basis for teachers during the period of time in which the State transitions to higher learning standards and a revised State growth model.

As for your concerns relating to additional testing and/costs to create an alternate SLO, please see the Response to No. 5.

13. COMMENT:

Declare a full moratorium on Common Core-derived NYSED assessment data for the purpose of student/teacher evaluation, including related local assessments. Such a moratorium shall remain in effect until such time as the newly designed assessments are proven valid, reliable and aligned to the new standards. No assessments should be utilized until the revised standards have been adopted.

DEPARTMENT RESPONSE:

See response to Comment #3.

14. COMMENT:

Implement a teacher and principal evaluation that will be based on the subcomponents currently defined and assessed through state-approved rubrics during the moratorium. These components will shift in weight from 50 to 100 points and require a supervisor to use a range of student assessment data as a component of teacher/principal evaluation.

DEPARTMENT RESPONSE:

The regulatory language found in sections 30-2.14 and 30-3.17 of the Rules of the Board of Regents is intended to implement Recommendation #21 of the Governor's Common Core Task Force, which was comprised of a diverse and highly qualified group of education officials, teachers, parents, and state representatives. Recommendation #21 states, in part, that "State-administered standardized ELA and Mathematics

assessments for grades three through eight aligned to the Common Core or updated standards shall not have consequences for individual students or teachers. Further, any growth model based on these Common Core tests or other state assessments shall not have consequences and shall only be used on an advisory basis for teachers during the period of time in which the State transitions to higher learning standards and a revised State growth model.

The Department is requiring districts/BOCES to use an alternate SLO for the 2016-2017 school year through the 2018-2019 school year because the Department believes that consistent with the intent of Education Law §3012-d, it is important to measure a teacher's or principal's performance based on both student performance and observations. As a result, the Department is requiring districts/BOCES to develop alternate SLOs in lieu of the State-provided growth scores. However, based on feedback from the field, alternate SLOs will not be required in the 2015-2016 school year.

15. COMMENT:

Convene a panel of nationally recognized experts in the areas of teaching and learning, curriculum development and psychometrics. The panel should also include seasoned practitioners, including teachers, principals and superintendents. The charge to the panel should be to create a meaningful teacher and principal evaluation system that links practice to measurable student outcomes.

DEPARTMENT RESPONSE:

Section 30-3.1(e) of the Rules of the Board of Regents indicates that the Board of Regents shall convene an assessment and evaluation workgroup or workgroups,

comprised of stakeholders and experts in the field to provide recommendations to the Board of Regents on assessments and evaluations that could be used for annual professional performance reviews in the future.

16. COMMENT:

On behalf of our school district clients, I would like to ask for clarification in the regulations about districts' duties to continue to create and implement back-up SLOs based on the now-prohibited State assessments. That is, since the 3-8 State assessments will still be used for advisory scores, should there not be enough students in a class taking the Math/ELA exams for the teacher to receive a SPGS, does the district then have to do the original version of a back-up SLO based on that State assessment? I would ask that the Department please consider the increased workload this will have for districts if the answer is yes, since beginning next year districts would then have to do 2 back-up SLOs for each of their grades 3-8 teachers and principals – a State assessment back up SLO and an alternate, non-State assessment back-up SLO.

DEPARTMENT RESPONSE:

Back-up SLO requirements are not specifically addressed in sections 30-2.14 or 30-3.17 of the Rules of the Board of Regents. The Department will take this feedback into consideration when making revisions to the APPR Transition Guidance document, which the Department anticipates releasing shortly.

17. COMMENT:

Please do not require that §3012-d districts use back-up SLO's for Grades 3-8 ELA and Math. §3012-d districts should be allowed to use 100% observation for 2015-

16. This would provide those of us that went ahead and did the right thing by seeking approval for §3012-d, to have equity with §3012-c districts.

DEPARTMENT RESPONSE:

Based on feedback received from the field, the regulations were amended to eliminate the requirement for alternate SLOs for the 2015-2016 school year. The amended version of section 30-3.17 adopted by the Board of Regents at their February meeting only requires the creation of alternate SLOs during the 2016-17 through 2018-19 school years. Thus, during the 2015-16 school year, if after excluding the results of the grades 3-8 ELA and math State assessments and any State-provided growth scores, there are no remaining student performance measures, then educator's evaluations will be based only on the observation/school visit category. Also, see Response to Comment #16.

18. COMMENT:

While I commend the Regents for your responsiveness, I hope that you might consider that the widely stated concerns about the use of student assessment data are not limited to Common Core tests, and are in fact prevalent with any measure of student performance that is used to evaluate teachers and principals. As such, I ask that the Board of Regents consider suspending the use of all student performance measures, including those based on any State assessment, Regents exam, or other State approved assessment, both for the current school year and throughout the transition period.

Within a given school or district, some educators will be evaluated based on student performance results and others will not. This creates an inequity and

inconsistency that will surely fuel the negativity and divisiveness related to the APPR. This inequity will seemingly be resolved next year and through the transition period, wherein the regulations require the development of an alternate SLO, using State-approved assessments other than grades 3-8 ELA or math State assessments. While the results of diagnostic formative assessments may be used for these alternate SLOs, it must be considered that most districts selected such assessments for use in screening students for academic intervention, and may have intentionally excluded them from previous APPR plans. Not only were these assessments not designed to be used as a measure of educator effectiveness; to use them for this purpose would lead to the same level of anxiety and resistance that has surfaced with grades 3---8 ELA and math assessments. As a result, the valuable and informative student learning data from these assessments may be compromised, particularly as a result of parents opting out, thereby limiting districts' ability to use this data for its intended purpose – to monitor student progress in learning.

DEPARTMENT RESPONSE:

See Responses to No. 3, 5 and 9. In addition, when creating an alternate SLO during the transition period, school districts, boards of cooperative educational services should consider this comment when selecting an assessment for the SLO.

19. COMMENT:

The regulations allow for the development of SLOs, including school or district-wide measures, using other State assessments such as the grades 4 and 8 State Science assessments or Regents examinations. While this may seem to be a viable alternative for the transition period, it must be considered that the SLO target setting

process is typically arbitrary, nonscientific, and not based on a statistically valid or reliable growth model. While superintendents must assure the Department that all SLO growth targets represent a minimum of one year of expected growth, districts must establish these targets with a narrow and limited data set, without access to comparable data for similar students, and without the ability to conduct the robust statistical analysis that is inherent in the State-provided growth scores. In fact, we find it most disconcerting that the most reliable and valid measure of student performance available – that of the State-provided growth score – must be set aside entirely, and replaced with locally-determined academic goals that do not meet any industry standard of statistical reliability or validity.

DEPARTMENT RESPONSE:

Education Law §3012-d(4)(a)(1) requires that Student Learning Objectives be used in instances where there is no State-provided growth score available. During the transition period, an educators' transition scores and ratings cannot use State-provided growth scores, SLOs must be used. The Department has developed a number of resources around developing meaningful SLOs. These resources are available on EngageNY at: https://www.engageny.org/resource/student-learning-objectives.

20. COMMENT:

Thank you for providing the field with the FAQ dated January 15, 2016. If possible, could you please further clarify the following points?

1. In the document, it states that for the 15-16 school year, grades 4-8 will have state growth scores excluded, but the score should still be reported to the teacher as an advisory score. If the school district has not finished writing back-up SLOs, should they continue this

process, since the score will be excluded and the back-up is for "emergency" purposes only? This would seem to be one of the undue burdens mentioned in the FAQ,

2. Until 2019, the document states, the teachers who receive state growth scores, should be given the score in an advisory capacity, but should create a SLO or have a group measure based on one of the alternative measures. Should the teacher not have a high enough "n" to generate the advisory growth score, does the teacher still need the back-up SLO based on the state assessment in addition to the SLO or group metric described in the guidance, in order to provide the teacher with the advisory score? Again, this seems to fall in the undue burden category, but we would like clarification to guarantee we are in compliance.

3. In all previous guidance, teachers could only be linked to tests that were given in their building. Language often said "school-wide", in the FAQ dated 1/15/16 there are references to "district-wide measures". Does this mean a district could link a k-3 building to the 4th grade science exam or all of the students to the results of the regents exams? If a district-wide measure is a possibility, is it only allowable during the transition period or will districts be allowed to link all teachers, who do not receive a growth score, to a district measure after 2019?

DEPARTMENT RESPONSE:

Regarding items 1 and 2, back-up SLO requirements are not specifically addressed in sections 30-2.14 or 30-3.17 of the Rules of the Board of Regents. The Department will take this feedback into consideration when making revisions to the APPR Transition Guidance document.

Regarding item #3, the provisions relating to district-wide measures in the Department's APPR Transition FAQ refer only to alternate SLOs used during the transition period, not traditional SLOs used for teachers whose courses do not end in a

State assessment. The Department will take the commenter's feedback into consideration when revising the APPR Guidance documents.

21. COMMENT:

As a veteran first grade teacher, I think it is terribly unfair that based on the current plan, my scores are based on a different set of evaluative criteria than others in my kindergarten through 4th grade building. I have test scores beyond my control AND an observation while colleagues have an observation alone. Shouldn't we all just be observed - especially this year?

DEPARTMENT RESPONSE:

The law requires that APPR plans use the same measures for all teachers of the same grade and subject across a district for the required subcomponent of the Student Performance category. Thus, the calculation of transition scores and ratings must include the same measures for all teachers of the same grade and subject.

Additionally, please see the response to Comment #9.

22. COMMENT:

I recognize and appreciate the right of the state education department to change the APPR procedures. However, doing so at mid-year is neither fair nor morally right. I believe that any changes made this year in the APPR process should not go into effect until next year. For this year we should go under the old APPR procedures. As teachers, we have planned and prepared for the APPR process as it has been and was until the recent changes.

DEPARTMENT RESPONSE:

Based on feedback received from the field, an amendment was made to the proposed rule at the February meeting to clarify that alternate SLOs are only applicable to APPRs completed during the 2016-17 through 2018-19 school years. Therefore, no changes will be needed to approve plans for use in the 2015-2016 school year.

However, sections 30-2.14 and 30-3.17 of the Rules of the Board of Regents still require your district/BOCES to calculate and provide to teachers the original scores and ratings calculated using all of the measures specified in the approved APPR plan for advisory purposes. Thus, the Department hopes that these original scores and ratings will continue to be used at the local level for advisory purposes.

23. COMMENT:

I do not think it is fair for some teachers to receive only an observation score. All teachers should only receive an observation score. We should not just use the regents and science for exams for a score. Aren't they student assessments, too that are illegal to use?

DEPARTMENT RESPONSE:

Please see responses to Comments 9 and 18.

24. COMMENT:

Please remove this rating system for ALL teachers until we can agree on something else.

DEPARTMENT RESPONSE:

Education Law §3012-d requires that all teachers be evaluated using a comprehensive evaluation system. A statutory change would be needed to eliminate the teacher and principal evaluation system.

25. COMMENT:

If made permanent in its current form, § 30-3.17 will prohibit districts from using student performance on State Assessments for any teacher or principal evaluative purpose. This, in and of itself, is violative of Education Law § 3012-d(1) which provides that, "for a teacher whose course ends in a state-created or administered test for which there is a state-provided growth model, such teacher shall have a state-provided growth score based upon such model…" Further, under § 3012-d(2), where a course ends in a State-created or administered test, but there is no State-provided growth score, "such assessment must be used as the underlying assessment for such SLO."

As I understand the transition regulations, the State will continue to utilize a growth model and calculate growth scores, § 30-3.17(b)(1), which may be used only for advisory purposes and not to determine the mandatory student performance subcomponent rating, § 30-3.17(b)(2). This is in direct conflict with the statute. Even if it is argued that, the "advisory" score is not based upon an approved, State-provided growth model and, therefore, it is not a true State-provided growth score, State Assessments must nevertheless be used for the SLO. The corrosive effect of agency mandated violations of § 3012-d on the future acceptance of APPR cannot be underestimated, especially where, as I understand, the "need to comply with the statute," is the stated basis for the additional testing burdens placed on districts discussed below. All evaluations under the emergency regulations will be subject to attack, as none will comply with the law.

DEPARTMENT RESPONSE:

The regulatory language found in sections 30-2.14 and 30-3.17 of the Rules of the Board of Regents is intended to implement Recommendation #21 of the Governor's

Common Core Task Force, which was comprised of a diverse and highly qualified group of education officials, teachers, parents, and state legislative representatives. Recommendation #21 states, in part, that "State-administered standardized ELA and Mathematics assessments for grades three through eight aligned to the Common Core or updated standards shall not have consequences for individual students or teachers. Further, any growth model based on these Common Core tests or other state assessments shall not have consequences and shall only be used on an advisory basis for teachers during the period of time in which the State transitions to higher learning standards and a revised State growth model. The regulations implement these recommendations.

26. COMMENT:

Under the emergency regulations, Districts must either (1) use additional State-approved assessments to create SLOs; or (2) generate SLOs based upon group goals on State-created assessments that are far removed from the teachers being evaluated. Although the State believes that most districts already use State-approved assessments for some purpose, many districts, such as my own, have taken heed of the statutory proscriptions on unnecessary additional testing and have eliminated most, if not all, non-State assessments. For many, additional assessments are confined to the primary grades, K-2, which have no State-created assessments. Thus, under the emergency regulations, many districts may be forced to use scarce resources – in a year where the tax cap is 0.12%, to cover the cost of purchasing and implementing new assessments. More importantly, the emergency regulations increase the amount of testing that is required for our students, as the State Assessments will not be eliminated during the

transition period. We note that the requirements of 8 NYCRR § 30-3.3(a)(3), limiting the amount of time that may be devoted to test preparation have not been lifted.

DEPARTMENT RESPONSE:

Please see response to Comments #5 and 9.

27. COMMENT:

We understand that the emergency regulations allow back-up SLOs based upon group goals using State-approved assessments, which may include third-party assessments and State-created assessments such as the eighth grade science assessment or Regents examinations. Again for districts that do not already use State-approved, third party assessments, this could create a new testing burden. The alternative is to evaluate teachers using assessments far removed from the teachers' actual classrooms.

While unions in many districts have warmed up to group goals using the State Assessments to help reduce testing and disruptions to instruction, these assessments are close to the teachers at the elementary level. It is easy to explain to a third grade teacher that their efforts directly influence the performance of students in the fourth or fifth grade. It is almost inconceivable that they would accept that a third grade teacher would be held accountable to a Regents examination or that the eighth grade science teachers would have the burden of accountability for the entire 3-8, or potentially K-8, population. Yes, SLOs are controlled by the Superintendent, but districts must still negotiate APPR agreements with the unions.

DEPARTMENT RESPONSE: Please see response to Comments #5 and 9 . Also, an elementary teacher could be evaluated based on the 4th and 8th grade State science assessments.

28. COMMENT:

Regardless of whether districts are able to negotiate new agreements, the integrity and validity of such agreements would be questionable at best. What are superintendents to say to unions and the community who object to additional burdensome testing or to the fundamental unfairness of evaluating a teacher on the performance of students years removed from their classroom? "We must comply with the law." If this is the case, how do we respond when we are asked why we must when the emergency regulations, themselves, do not? "We just need to get through this so we don't lose our funding." If this is case, why are we using scarce and valuable resources for the sake of compliance without educational benefit? If § 3012-d agreements are not negotiated, how will the State justify withdrawing funding for failure to comply with the law, when the emergency regulations do not?

DEPARTMENT RESPONSE:

Please see the response to Comment #5 and 9.Regarding withholding of a district's State aid, Education Law §3012-d(11) specifically links implementation of 3012-d and Subpart 30-3 to a district's State aid increase. A legislative amendment would be needed to decouple State aid from the evaluation system.

29. COMMENT:

Rather than force districts to comply, for compliance sake, with regulations that themselves do not comply with statutory requirements, we ask that the State either (1) reconsider allowing State Assessments to be used for SLOs, noting that the

Commissioner has the statutory authority to determine and develop the goal-setting process and can use this authority to develop a fair transition; or (2) revise the regulations so that districts with no alternatives to State Assessments for Student Performance in their APPR plans can revert to using the Teacher Observation or School Visit category only. It is preferable to develop a transition that is compliant with the statute, but if we are to be out of compliance with the statute, why do so in a way that places additional burdens on districts and further risks the integrity of APPR?

DEPARTMENT RESPONSE:

Please see the Responses to Comments #3, 5 and 9.

30. COMMENT:

We are concerned that certain language now appearing in 30-2.14(c) and 30-3.17(b), if adopted on a permanent basis, could have the impact of severely reducing the utility of the teacher or principal improvement plan, and will deprive educational leaders of an important tool in developing effective teachers and principals.

Specifically, our concern is that there is a strong possibility that the regulatory language identified above will be used to support an argument that from now on an improvement plan can only be prepared and implemented for a classroom teacher or principal after a transition rating is derived and that rating is either Developing or Ineffective.

DEPARTMENT RESPONSE:

Districts/BOCES must use transition scores and ratings when making determinations regarding whether an educator will be placed on an improvement plan. However, the Department believes that all educators will benefit from the development of Personal Professional Development Plans (PPDPs). We recommend that districts

work collaboratively with each of their educators to ensure the development of individualized PPDPs for every teacher and principal in order to support continuous improvements for all educators, regardless of their rating.

31. COMMENT:

Commenters expressed concern about the proposed language for regulations 30-2.14(c) and 30-3.17(b). The specific language in the Regents Rules that causes us concern is this:

§30-2.14(c) “The requirement for a teacher or principal improvement plan shall be based on the teacher’s or principal’s transition composite score and rating.”

§30-3.17(b) “The requirement for a teacher or principal improvement plan shall be based on the teacher’s or principal’s overall transition composite rating.”

Commenters do not take issue with SED’s intention of blocking use of the statutorily-determined rating under 3012-c and 3012-d, but think this language could be used by teacher associations to argue that improvement plans can only be initiated under these limited circumstances. Commenters suggest that the problem can be avoided if the Final Rules are adopted with the following language:
8 NYCRR 30-2.14(c): “During the transition period defined by this section, whether the preparation of a teacher or principal improvement plan is required by subsection 4 of section 3012-c of the Education Law shall be determined by the teacher’s or principal’s transition composite score and rating.” Or, alternately, “The requirement for a teacher or principal improvement plan shall be based on the teacher’s or principal’s transition composite score and rating for subsection 4 of section 3012-c of the Education Law .

This does not prevent a teacher or principal improvement plan from being required under other circumstances unrelated to composite scores and ratings."

8 NYCRR 30-3.17(b): “During the transition period defined by this section, whether the preparation of a teacher or principal improvement plan is required by subsection 15 of section 3012-d and subsection 4 of section 3012-c of the Education Law shall be determined by the teacher’s or principal’s overall transition composite rating.” Or, alternately, “The requirement for a teacher or principal improvement plan shall be based on the teacher’s or principal’s overall transition composite rating. This does not prevent a teacher or principal improvement plan from being required under other circumstances unrelated to composite scores and ratings.”

DEPARTMENT RESPONSE:

The Department will consider clarifying the intent of the regulation in its next iteration of the APPR transition guidance. .

32. COMMENT:

By removing the State Assigned Building Score, the largest weighted part of a teacher’s SLO is no longer included. Out of a teaching staff of about 300, only 23 teachers have SLOs solely based on students they instruct in a course ending in a RE. All others had had SLOs based in the 3-8 testing or had a Building Score coupled with RE results. I’m having difficulty not only in the idea of removing the Building Score for a large portion of my HS staff as mentioned above, but also assigning SLOs to less than 10% of my staff that do not have the Building Score in their SLO equation. There is a clear equity issue with this. An option might be to reopen and complete a material

change to Part 2 of our APPR plan. Alternately, you could just remove the Student Performance section for everyone this year.

DEPARTMENT RESPONSE:

See Response to Comments No. 9.

33. COMMENT: With more and more plans calling for building-wide measures- and in the future especially with district-wide measures, there will be a great number of questions on who can actually score assessments in the district.

RESPONSE: The Department will consider this comment as it moves forward and districts/BOCES should consider this when developing their APPR plans.