

# PROGRAM BILL # 28

S. \_\_\_\_\_  
Senate  
\_\_\_\_\_

IN SENATE--Introduced by Sen

--read twice and ordered printed,  
and when printed to be committed  
to the Committee on

----- A.  
Assembly  
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IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the  
Committee on

\*EDUCLA\*  
(Relates to annual professional  
performance review of classroom  
teachers and building principals)

Ed L. teacher review

## AN ACT

to amend the education law, in  
relation to annual professional  
performance review of classroom  
teachers and building principals and  
the teacher evaluation appeal proc-  
ess in the city of New York

The People of the State of New  
York, represented in Senate and  
Assembly, do enact as follows:

## IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship  
of this proposal

s20 Adams	s44 Farley	s58 Kennedy	s54 Nozzolio	s28 Serrano
s15 Addabbo	s02 Flanagan	s34 Klein	s53 O'Mara	s51 Seward
s55 Alesi	s08 Fuschillo	s26 Krueger	s37 Oppenheimer	s09 Skelos
s11 Avella	s59 Gallivan	s24 Lanza	s21 Parker	s14 Smith
s40 Ball	s12 Gianaris	s39 Larkin	s13 Peralta	s25 Squadron
s42 Bonacic	s22 Golden	s01 LaValle	s30 Perkins	s16 Stavisky
s46 Breslin	s47 Griffo	s52 Libous	s61 Ranzenhofer	s35 Stewart-
s38 Carlucci	s60 Grisanti	s45 Little	s48 Ritchie	Cousins
s50 DeFrancisco	s06 Hannon	s05 Marcellino	s33 Rivera	s49 Valesky
s32 Diaz	s36 Hassell-	s07 Martins	s56 Robach	s57 Young
s17 Dilan	Thompson	s62 Maziarz	s41 Saland	s03 Zeldin
s29 Duane	s10 Huntley	s43 McDonald	s19 Sampson	s27
s31 Espaillat	s04 Johnson	s18 Montgomery	s23 Savino	

## IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the  
multi-sponsorship of this proposal:

a049 Abbate	a107 Crouch	a095 Jaffee	a052 Millman	a012 Saladino
a092 Abinanti	a014 Curran	a057 Jeffries	a015 Montesano	a113 Sayward
a105 Amedore	a063 Cusick	a135 Johns	a132 Morelle	a029 Scarborough
a084 Arroyo	a045 Cymbrowitz	a112 Jordan	a039 Moya	a016 Schimel
a035 Aubry	a034 DenDekker	a099 Katz	a003 Murray	a140 Schimminger
a124 Barclay	a081 Dinowitz	a074 Kavanagh	a037 Nolan	a064 Silver
a040 Barron	a114 Duprey	a065 Kellner	a128 Oaks	a027 Simanowitz
a082 Benedetto	a004 Englebright	a129 Kolb	a069 O'Donnell	a036 Simotas
a122 Blankenbush	a054 Espinal	a025 Lancman	a051 Ortiz	a146 Smardz
a055 Boyland	a071 Farrell	a091 Latimer	a136 Palmesano	a079 Stevenson
a008 Boyle	a123 Pinch	a013 Lavine	a088 Paulin	a011 Sweeney
a026 Braunstein	a007 Fitzpatrick	a050 Lentol	a141 Peoples-	a110 Tedisco
a044 Brennan	a137 Friend	a125 Lifton	Stokes	a115 Tenny
a116 Brindisi	a143 Gabryszak	a072 Linares	a058 Ferry	a002 Thiele
a131 Bronson	a090 Galef	a127 Lopez, P.	a087 Pretlow	a061 Titone
a046 Brook-Krasny	a133 Gantt	a053 Lopez, V.	a073 Quart	a031 Titus
a147 Burling	a077 Gibson	a001 Losquadro	a021 Ra	a062 Tobacco
a117 Butler	a149 Giglio	a126 Lupardo	a097 Rabbitt	a148 Walter
a101 Cahill	a066 Glick	a111 Magee	a009 Raia	a041 Weinstein
a096 Calhoun	a023 Goldfeder	a120 Magnarelli	a006 Ramos	a020 Weisenberg
a043 Camara	a150 Goodell	a059 Maisel	a134 Reilich	a024 Weprin
a106 Canestrari	a075 Gottfried	a060 Malliotakis	a109 Reilly	a070 Wright
a089 Castelll	a005 Graf	a030 Markey	a178 Rivera, J.	a094 Zebrowski
a086 Castro	a098 Gunther	a019 McDonough	a080 Rivera, N.	a093
a138 Ceretto	a130 Hanna	a104 McEneny	a076 Rivera, P.	a100
a033 Clark	a139 Hawley	a017 McKeivitt	a119 Roberts	a103
a047 Colton	a083 Heastie	a108 McLaughlin	a056 Robinson	a145
a010 Conte	a028 Hevesi	a022 Meng	a068 Rodriguez	
a032 Cook	a048 Hikind	a121 Miller, D.	a067 Rosenthal	
a142 Corwin	a018 Hooper	a102 Miller, J.	a118 Russell	
a085 Crespo	a042 Jacobs	a038 Miller, M.	a144 Ryan	

1) Single House Bill (introduced and printed separately in either or both  
houses). Uni-Bill (introduced simultaneously in both houses and printed as one  
bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2 signed  
copies of bill and 4 copies of memorandum in support (single house); or 4 signed  
copies of bill and 8 copies of memorandum in support (uni-bill).

1 Section 1. Subdivision 1 of section 3012-c of the education law as  
2 added by chapter 103 of the laws of 2010, is amended to read as follows:

3 1. Notwithstanding any other provision of law, rule or regulation to  
4 the contrary, the annual professional performance reviews of all class-  
5 room teachers and building principals employed by school districts or  
6 boards of cooperative educational services shall be conducted in accord-  
7 ance with the provisions of this section. Such performance reviews which  
8 are conducted on or after July first, two thousand eleven, or on or  
9 after the date specified in paragraph c of subdivision two of this  
10 section where applicable, shall include measures of student achievement  
11 and be conducted in accordance with this section. Such annual profes-  
12 sional performance reviews shall be a significant factor for employment  
13 decisions including but not limited to, promotion, retention, tenure  
14 determination, termination, and supplemental compensation, which deci-  
15 sions are to be made in accordance with locally developed procedures  
16 negotiated pursuant to the requirements of article fourteen of the civil  
17 service law where applicable. Provided, however, that nothing in this  
18 section shall be construed to affect the statutory right of a school  
19 district or board of cooperative educational services to terminate a  
20 probationary teacher or principal for statutorily and constitutionally  
21 permissible reasons other than the performance of the teacher or princi-  
22 pal in the classroom or school, including but not limited to misconduct.  
23 Such performance reviews shall also be a significant factor in teacher  
24 and principal development, including but not limited to, coaching,  
25 induction support and differentiated professional development, which are  
26 to be locally established in accordance with procedures negotiated  
27 pursuant to the requirements of article fourteen of the civil service  
28 law.

1 § 2. Paragraph a of subdivision 2 of section 3012-c of the education  
2 law, as added by chapter 103 of the laws of 2010, is amended to read as  
3 follows:

4 a. (1) The annual professional performance reviews conducted pursuant  
5 to this section for classroom teachers and building principals shall  
6 differentiate teacher and principal effectiveness using the following  
7 quality rating categories: highly effective, effective, developing and  
8 ineffective, with explicit minimum and maximum scoring ranges for each  
9 category, for the state assessments and other comparable measures  
10 subcomponent of the evaluation and for the locally selected measures of  
11 student achievement subcomponent of the evaluation, as prescribed in the  
12 regulations of the commissioner. There shall be: (i) a state assessments  
13 and other comparable measures subcomponent which shall comprise twenty  
14 or twenty-five percent of the evaluation; (ii) a locally selected meas-  
15 ures of student achievement subcomponent which shall comprise twenty or  
16 fifteen percent of the evaluation; and (iii) an other measures of teach-  
17 er or principal effectiveness subcomponent which shall comprise the  
18 remaining sixty percent of the evaluation, which in sum shall constitute  
19 the composite teacher or principal effectiveness score. Such annual  
20 professional performance reviews shall result in a single composite  
21 teacher or principal effectiveness score, which incorporates multiple  
22 measures of effectiveness related to the criteria included in the regu-  
23 lations of the commissioner.

24 (2) For annual professional performance reviews conducted in accord-  
25 ance with paragraph b of this subdivision for the two thousand eleven--  
26 two thousand twelve school year and for annual professional performance  
27 reviews conducted in accordance with paragraphs f and g of this subdivi-  
28 sion for the two thousand twelve--two thousand thirteen school year, the

1 overall composite scoring ranges shall be in accordance with this  
2 subparagraph. A classroom teacher and building principal shall be deemed  
3 to be:

4 (A) Highly Effective if they achieve a composite effectiveness score  
5 of 91-100.

6 (B) Effective if they achieve a composite effectiveness score of  
7 75-90.

8 (C) Developing if they achieve a composite effectiveness score of  
9 65-74.

10 (D) Ineffective if they achieve a composite effectiveness score of  
11 0-64.

12 (3) For annual professional performance reviews conducted in accord-  
13 ance with paragraph b of this subdivision for the two thousand eleven--  
14 two thousand twelve school year and for annual professional performance  
15 reviews conducted in accordance with paragraph f of this subdivision for  
16 the two thousand twelve--two thousand thirteen school year for classroom  
17 teachers in subjects and grades for which the board of regents has not  
18 approved a value-added model and for building principals employed in  
19 schools or programs for which there is no approved principal value-added  
20 model, the scoring ranges for the student growth on state assessments or  
21 other comparable measures subcomponent shall be in accordance with this  
22 subparagraph. A classroom teacher and building principal shall receive:

23 (A) a highly effective rating in this subcomponent if the teacher's or  
24 principal's results are well-above the state average for similar  
25 students and they achieve a subcomponent score of 18-20;

26 (B) an effective rating in this subcomponent if the teacher's or prin-  
27 icipal's results meet the state average for similar students and they  
28 achieve a subcomponent score of 9-17; or

1 (C) a developing rating in this subcomponent if the teacher's or prin-  
2 icipal's results are below the state average for similar students and  
3 they achieve a subcomponent score of 3-8; or

4 (D) an ineffective rating in this subcomponent, if the teacher's or  
5 principal's results are well-below the state average for similar  
6 students and they achieve a subcomponent score of 0-2.

7 (4) For annual professional performance reviews conducted in accord-  
8 ance with paragraph g of this subdivision for the two thousand twelve--  
9 two thousand thirteen school year for classroom teachers in subjects and  
10 grades for which the board of regents has approved a value-added model  
11 and for building principals employed in schools or programs for which  
12 there is an approved principal value-added model, the scoring ranges for  
13 the student growth on state assessments or other comparable measures  
14 subcomponent shall be in accordance with this subparagraph. A classroom  
15 teacher and building principal shall receive:

16 (A) a highly effective rating in this subcomponent if the teacher's or  
17 principal's results are well-above the state average for similar  
18 students and they achieve a subcomponent score of 22-25;

19 (B) an effective rating in this subcomponent if the teacher's or prin-  
20 icipal's results meet the state average for similar students and they  
21 achieve a subcomponent score of 10-21; or

22 (C) a developing rating in this subcomponent if the teacher's or prin-  
23 icipal's results are below the state average for similar students and  
24 they achieve a subcomponent score of 3-9; or

25 (D) an ineffective rating in this subcomponent, if the teacher's or  
26 principal's results are well-below the state average for similar  
27 students and they achieve a subcomponent score of 0-2.

1 (5) For annual professional performance reviews conducted in accord-  
2 ance with paragraph b of this subdivision for the two thousand eleven--  
3 two thousand twelve school year and for annual professional performance  
4 reviews conducted in accordance with paragraph f of this subdivision for  
5 the two thousand twelve--two thousand thirteen school year for classroom  
6 teachers in subjects and grades for which the board of regents has not  
7 approved a value-added model and for building principals employed in  
8 schools or programs for which there is no approved principal value-added  
9 model, the scoring ranges for the locally selected measures of student  
10 achievement subcomponent shall be in accordance with this subparagraph.

11 A classroom teacher and building principal shall receive:

12 (A) a highly effective rating in this subcomponent if the results are  
13 well-above district-adopted expectations for student growth or achieve-  
14 ment and they achieve a subcomponent score of 18-20; or

15 (B) an effective rating in this subcomponent if the results meet  
16 district-adopted expectations for growth or achievement and they achieve  
17 a subcomponent score of 9-17; or

18 (C) a developing rating in this subcomponent if the results are below  
19 district-adopted expectations for growth or achievement and they achieve  
20 a subcomponent score of 3-8; or

21 (D) an ineffective rating in this subcomponent if the results are  
22 well-below district-adopted expectations for growth or achievement and  
23 they achieve a subcomponent score of 0-2.

24 (6) For annual professional performance reviews conducted in accord-  
25 ance with paragraph b of this subdivision for the two thousand eleven--  
26 two thousand twelve school year and for annual professional performance  
27 reviews conducted in accordance with paragraph g of this subdivision for  
28 the two thousand twelve--two thousand thirteen school year for classroom

1 teachers in subjects and grades for which the board of regents has  
2 approved a value-added model and for building principals employed in  
3 schools or programs for which there is an approved principal value-added  
4 model, the scoring ranges for the locally selected measures of student  
5 achievement subcomponent shall be in accordance with this subparagraph.

6 A classroom teacher and building principal shall receive:

7 (A) a highly effective rating in this subcomponent if the results are  
8 well-above district-adopted expectations for student growth or achieve-  
9 ment and they achieve a subcomponent score of 14-15; or

10 (B) an effective rating in this subcomponent if the results meet  
11 district-adopted expectations for growth or achievement and they achieve  
12 a subcomponent score of 8-13; or

13 (C) a developing rating in this subcomponent if the results are below  
14 district-adopted expectations for growth or achievement and they achieve  
15 a subcomponent score of 3-7; or

16 (D) an ineffective rating in this subcomponent if the results are  
17 well-below district-adopted expectations for growth or achievement and  
18 they achieve a subcomponent score of 0-2.

19 (7) For the two thousand thirteen--two thousand fourteen school year  
20 and thereafter, the commissioner shall review the specific scoring rang-  
21 es for each of the rating categories annually before the start of each  
22 school year and shall recommend any changes to the board of regents for  
23 consideration.

24 (8) Except for the student growth measures on the state assessments or  
25 other comparable measures of student growth prescribed in paragraphs e,  
26 f and g of this subdivision, the elements comprising the composite  
27 effectiveness score and the process by which points are assigned to  
28 subcomponents shall be locally developed, consistent with the standards

1 prescribed in the regulations of the commissioner and the requirements  
2 of this section, through negotiations conducted, pursuant to the  
3 requirements of article fourteen of the civil service law.

4 § 3. Paragraphs b and c of subdivision 2 of section 3012-c of the  
5 education law, as added by chapter 103 of the laws of 2010, are amended  
6 to read as follows:

7 b. (1) Annual professional performance reviews conducted by school  
8 districts [on or after July first, two thousand eleven] or boards of  
9 cooperative educational services for the two thousand eleven--two thou-  
10 sand twelve school year of classroom teachers of common branch subjects  
11 or English language arts or mathematics in grades four to eight and all  
12 building principals of schools in which such teachers are employed shall  
13 be conducted pursuant to this subdivision and shall use two thousand  
14 ten--two thousand eleven school year student data as the baseline for  
15 the initial computation of the composite teacher or principal effective-  
16 ness score for such classroom teachers and principals.

17 (2) Subject to paragraph k of this subdivision the entire annual  
18 professional performance review shall be completed and provided to the  
19 teacher or principal as soon as practicable but in no case later than  
20 September first, two thousand twelve. The provisions of subparagraphs  
21 two and three of paragraph c of this subdivision shall apply to such  
22 reviews.

23 c. (1) Annual professional performance reviews conducted by school  
24 districts or boards of cooperative educational services [on or after  
25 July first, two thousand twelve] for the two thousand twelve--two thou-  
26 sand thirteen school year and thereafter of all classroom teachers and  
27 all building principals shall be conducted pursuant to this subdivision  
28 and shall use two thousand eleven--two thousand twelve school year

1 student data as the baseline for the initial computation of the compos-  
2 ite teacher or principal effectiveness score for such classroom teachers  
3 and principals. For purposes of this section, an administrator in charge  
4 of an instructional program of a board of cooperative educational  
5 services shall be deemed to be a building principal.

6 (2) Subject to paragraph k of this subdivision the entire annual  
7 professional performance review shall be completed and provided to the  
8 teacher or principal as soon as practicable but in no case later than  
9 September first of the school year next following the school year for  
10 which the classroom teacher or building principal's performance is being  
11 measured. The teacher's and principal's score and rating on the locally  
12 selected measures subcomponent, if available, and on the other measures  
13 of teacher and principal effectiveness subcomponent for a teacher's or  
14 principal's annual professional performance review shall be computed and  
15 provided to the teacher or principal, in writing, by no later than the  
16 last day of the school year for which the teacher or principal is being  
17 measured. Nothing in this subdivision shall be construed to authorize a  
18 teacher or principal to trigger the appeal process prior to receipt of  
19 his or her composite effectiveness score and rating.

20 (3) Each such annual professional performance review shall be based on  
21 the state assessments or other comparable measures subcomponent, the  
22 locally selected measures of student achievement subcomponent and the  
23 other measures of teacher and principal effectiveness subcomponent,  
24 determined in accordance with the applicable provisions of this section  
25 and the regulations of the commissioner, for the school year for which  
26 the teacher's or principal's performance is measured.

1 § 4. Paragraphs e, f and g of subdivision 2 of section 3012-c of the  
2 education law, as added by chapter 103 of the laws of 2010, are amended  
3 to read as follows:

4 e. (1) For annual professional performance reviews conducted in  
5 accordance with paragraph b of this subdivision [in] for the two thou-  
6 sand eleven--two thousand twelve school year, forty percent of the  
7 composite score of effectiveness shall be based on student achievement  
8 measures as follows: (i) twenty percent of the evaluation shall be  
9 based upon student growth data on state assessments as prescribed by the  
10 commissioner or a comparable measure of student growth if such growth  
11 data is not available; and (ii) twenty percent shall be based on other  
12 locally selected measures of student achievement that are determined to  
13 be rigorous and comparable across classrooms in accordance with the  
14 regulations of the commissioner and as are developed locally in a manner  
15 consistent with procedures negotiated pursuant to the requirements of  
16 article fourteen of the civil service law.

17 (2) Such locally selected measures may include measures of student  
18 achievement or growth on state assessments, regents examinations and/or  
19 department approved equivalent, provided that such measures are differ-  
20 ent from those prescribed by the commissioner pursuant to clause (i) of  
21 subparagraph one of this paragraph. The regulations of the commissioner  
22 shall describe the types of measures of student growth or achievement  
23 that may be locally selected. The selection of the local measure(s) as  
24 described in this paragraph to be used by the school district or board  
25 of cooperative educational services shall be determined through collec-  
26 tive bargaining.

27 f. (1) For annual professional performance reviews conducted in  
28 accordance with paragraph c of this subdivision [in any school year

1 prior to the first school year for which the board of regents has  
2 approved use of a value-added growth model, but not earlier than] for  
3 the two thousand twelve--two thousand thirteen school year and thereaft-  
4 er for classroom teachers in subjects and grades for which the board of  
5 regents has not approved a value-added model and for building principals  
6 employed in schools or programs for which there is no approved principal  
7 value-added model, forty percent of the composite score of effectiveness  
8 shall be based on student achievement measures as follows: (i) twenty  
9 percent of the evaluation shall be based upon student growth data on  
10 state assessments as prescribed by the commissioner or a comparable  
11 measure of student growth if such growth data is not available; and (ii)  
12 twenty percent shall be based on other locally selected measures of  
13 student achievement that are determined to be rigorous and comparable  
14 across classrooms in accordance with the regulations of the commissioner  
15 and as are developed locally in a manner consistent with procedures  
16 negotiated pursuant to the requirements of article fourteen of the civil  
17 service law.

18 (2) One or more of the following types of locally selected measures of  
19 student achievement or growth may be used for the evaluation of class-  
20 room teachers:

21 (i) student achievement or growth on state assessments, regents exam-  
22 inations and/or department approved alternative examinations as  
23 described in the regulations of the commissioner including, but not  
24 limited to, advanced placement examinations, international baccalaureate  
25 examinations, and SAT II, using a measure that is different from the  
26 growth score prescribed by the department for student growth on such  
27 assessments or examinations for purposes of the state assessment or  
28 other comparable measures subcomponent that is either:

1 (A) the change in percentage of a teacher's students who achieve a  
2 specific level of performance as determined locally, on such  
3 assessments/examinations compared to those students' level of perform-  
4 ance on such assessments/examinations in the previous school year such  
5 as a three percentage point increase in students earning the proficient  
6 level (three) or better performance level on the seventh grade math  
7 state assessment compared to those same students' performance levels on  
8 the sixth grade math state assessment, or an increase in the percentage  
9 of a teacher's students earning the advanced performance level (four) on  
10 the fourth grade English language arts or math state assessments  
11 compared to those students' performance levels on the third grade  
12 English language arts or math state assessments; or

13 (B) a teacher specific growth score computed by the department based  
14 on the percent of the teacher's students earning a department determined  
15 level of growth. The methodology to translate such growth into the  
16 state-established subcomponent scoring ranges shall be determined local-  
17 ly; or

18 (C) a teacher-specific achievement or growth score computed in a  
19 manner determined locally based on a measure of student performance on  
20 the state assessments, regents examinations and/or department approved  
21 alternative examinations other than the measure described in item (A) or  
22 (B) of this subparagraph;

23 (ii) student growth or achievement computed in a manner determined  
24 locally based on a student assessment approved by the department pursu-  
25 ant to a request for qualification process established in the regu-  
26 lations of the commissioner;

1 (iii) student growth or achievement computed in a manner determined  
2 locally based on a district, regional or BOCES-developed assessment that  
3 is rigorous and comparable across classrooms;

4 (iv) a school-wide measure of either student growth or achievement  
5 based on either:

6 (A) a state-provided student growth score covering all students in the  
7 school that took the state assessment in English language arts or math-  
8 ematics in grades four through eight;

9 (B) a school-wide measure of student growth or achievement computed in  
10 a manner determined locally based on a district, regional or board of  
11 cooperative educational services developed assessment that is rigorous  
12 and comparable across classrooms or a department approved student  
13 assessment or based on a state assessment; or

14 (v) where applicable, for teachers in any grade or subject where there  
15 is no growth or value-added growth model approved by the board of  
16 regents at that grade level or in that subject, a structured district-  
17 wide student growth goal-setting process to be used with any state  
18 assessment or an approved student assessment or a district, regional or  
19 BOCES-developed assessment that is rigorous and comparable across class-  
20 rooms.

21 (3) One or more of the following types of locally selected measures of  
22 student achievement or growth may be used for the evaluation of princi-  
23 pals, provided that each measure is rigorous and comparable across  
24 classrooms and that any such measure shall be different from that used  
25 for the state assessment or other comparable measures subcomponent:

26 (i) student achievement levels on state assessments in English  
27 language arts and/or mathematics in grades four to eight such as  
28 percentage of students in the school whose performance levels on state

1 assessments are proficient or advanced, as defined in the regulations of  
2 the commissioner;

3 (ii) student growth or achievement on state or other assessments in  
4 English language arts and/or mathematics in grades four to eight for  
5 students in each of the performance levels described in the regulations  
6 of the commissioner;

7 (iii) student growth or achievement on state assessments in English  
8 language arts and/or mathematics in grades four to eight for students  
9 with disabilities and English language learners in grades four to eight;

10 (iv) student performance on any or all of the district-wide locally  
11 selected measures approved for use in teacher evaluations;

12 (v) for principals employed in a school with high school grades, four,  
13 five and/or six-year high school graduation and/or dropout rates;

14 (vi) percentage of students who earn a regents diploma with advanced  
15 designation and/or honors as defined in the regulations of the commis-  
16 sioner, for principals employed in a school with high school grades;

17 (vii) percentage of a cohort of students that achieve specified scores  
18 on regents examinations and/or department approved alternative examina-  
19 tions including, but not limited to, advanced placement examinations,  
20 international baccalaureate examinations and SAT II, for principals  
21 employed in a school with high school grades such as the percentage of  
22 students in the two thousand nine cohort that scored at least a three on  
23 an advanced placement examination since entry into the ninth grade;  
24 and/or

25 (viii) students' progress toward graduation in the school using strong  
26 predictive indicators, including but not limited to ninth and/or tenth  
27 grade credit accumulation and/or the percentage of students that pass  
28 ninth and/or tenth grade subjects most commonly associated with gradu-

1 ation and/or students' progress in passing the number of required  
2 regents examinations for graduation, for principals employed in a school  
3 with high school grades.

4 (ix) For school districts or boards of cooperative educational  
5 services that choose to use more than one set of locally selected meas-  
6 ures described in this paragraph for principals in the same or similar  
7 grade configuration or program such as one set of locally selected meas-  
8 ures is used to evaluate principals in some K-5 schools and another set  
9 of locally selected measures is used to evaluate principals in the other  
10 K-5 schools in the district, the superintendent or district superinten-  
11 dent shall, in their professional performance review plan, certify that  
12 the sets of measures are comparable, in accordance with the testing  
13 standards as defined in regulations of the commissioner.

14 (x) For building principals employed in schools or programs for which  
15 there is no approved principal value-added model, the types of locally  
16 selected measures of student achievement or growth specified in subpara-  
17 graph three of paragraph g of this subdivision may be used. In addition,  
18 a structured district-wide student growth goal-setting process to be  
19 used with any state assessment or an approved student assessment or a  
20 district, regional or BOCES-developed assessment that is rigorous and  
21 comparable across classrooms may be a locally selected measure.

22 (4) The selection of the local measure or measures as described in  
23 subparagraphs two and three of this paragraph to be used by the school  
24 district or board of cooperative educational services shall be deter-  
25 mined through collective bargaining.

26 g. (1) For annual professional performance reviews conducted in  
27 accordance with paragraph c of this subdivision [in] for the [first  
28 school year for which the board of regents has approved use of a value-

1 added growth model] two thousand twelve--two thousand thirteen school  
2 year and thereafter for classroom teachers in subjects and grades in  
3 which there is a value-added growth model approved by the board of  
4 regents and for building principals employed in schools or programs for  
5 which there is an approved principal value-added model, forty percent of  
6 the composite score of effectiveness shall be based on student achieve-  
7 ment measures as follows: (i) twenty-five percent of the evaluation  
8 shall be based upon student growth data on state assessments as  
9 prescribed by the commissioner or a comparable measure of student growth  
10 if such growth data is not available; and (ii) fifteen percent shall be  
11 based on other locally selected measures of student achievement that are  
12 determined to be rigorous and comparable across classrooms in accordance  
13 with the regulations of the commissioner and as are locally developed in  
14 a manner consistent with procedures negotiated pursuant to the require-  
15 ments of article fourteen of the civil service law. The department shall  
16 develop the value-added growth model and shall consult with the advisory  
17 committee established pursuant to subdivision seven of this section  
18 prior to recommending that the board of regents approve its use in eval-  
19 uations.

20 (2) One or more of the following types of locally selected measures of  
21 student achievement or growth may be used for the evaluation of class-  
22 room teachers:

23 (i) student achievement or growth on state assessments, regents exam-  
24 inations and/or department approved alternative examinations as  
25 described in the regulations of the commissioner including, but not  
26 limited to, advanced placement examinations, international baccalaureate  
27 examinations and SAT II, using a measure that is different from the  
28 growth score prescribed by the department for student growth on such

1 assessments or examinations for purposes of the state assessment or  
2 other comparable measures subcomponent that is either:

3 (A) the change in percentage of a teacher's students who achieve a  
4 specific level of performance as determined locally, on such  
5 assessments/examinations compared to those students' level of perform-  
6 ance on such assessments/examinations in the previous school year such  
7 as a three percentage point increase in students earning the proficient  
8 level (three) or better performance level on the seventh grade math  
9 state assessment compared to those same students' performance levels on  
10 the sixth grade math state assessment, or an increase in the percentage  
11 of a teacher's students earning the advanced performance level (four) on  
12 the fourth grade English language arts or math state assessments  
13 compared to those students' performance levels on the third grade  
14 English language arts or math state assessments; or

15 (B) a teacher specific growth score computed by the state based on the  
16 percent of the teacher's students earning a state determined level of  
17 growth. The methodology to translate such growth into the state-establ-  
18 ished subcomponent scoring ranges shall be determined locally; or

19 (C) a teacher-specific achievement or growth score computed in a  
20 manner determined locally based on a measure of student performance on  
21 the state assessments, regents examinations and/or department approved  
22 alternative examinations other than the measure described in item (A) or  
23 (B) of this subparagraph;

24 (ii) student growth or achievement computed in a manner determined  
25 locally based on a student assessment approved by the department pursu-  
26 ant to a request for qualification process established in the regu-  
27 lations of the commissioner;

1 (iii) student growth or achievement computed in a manner determined  
2 locally based on a district, regional or BOCES-developed assessment that  
3 is rigorous and comparable across classrooms;

4 (iv) a school-wide measure of either student growth or achievement  
5 based on either:

6 (A) a state-provided student growth score covering all students in the  
7 school that took the state assessment in English language arts or math-  
8 ematics in grades four through eight; or

9 (B) a school-wide measure of student growth or achievement computed in  
10 a manner determined locally based on a district, regional or board of  
11 cooperative educational services developed assessment that is rigorous  
12 and comparable across classrooms or a department approved student  
13 assessment or based on a state assessment.

14 (3) One or more of the following types of locally selected measures of  
15 student achievement or growth may be used for the evaluation of princi-  
16 pals, provided that each measure is rigorous and comparable across  
17 classrooms and that any such measure shall be different from that used  
18 for the state assessment or other comparable measures subcomponent:

19 (i) student achievement levels on state assessments in English  
20 language arts and/or mathematics in grades four to eight such as  
21 percentage of students in the school whose performance levels on state  
22 assessments are proficient or advanced, as defined in the regulations of  
23 the commissioner;

24 (ii) student growth or achievement on state or other assessments in  
25 English language arts and/or mathematics in grades four to eight for  
26 students in each of the performance levels described in the regulations  
27 of the commissioner;

- 1 (iii) student growth or achievement on state assessments in English  
2 language arts and/or mathematics in grades four to eight for students  
3 with disabilities and English language learners in grades four to eight;  
4 (iv) student performance on any or all of the district-wide locally  
5 selected measures approved for use in teacher evaluations;  
6 (v) for principals employed in a school with high school grades, four,  
7 five and/or six-year high school graduation and/or dropout rates;  
8 (vi) percentage of students who earn a regents diploma with advanced  
9 designation and/or honors as defined in the regulations of the commis-  
10 sioner, for principals employed in a school with high school grades;  
11 (vii) percentage of a cohort of students that achieve specified scores  
12 on regents examinations and/or department approved alternative examina-  
13 tions including, but not limited to, advanced placement examinations,  
14 international baccalaureate examinations and SAT II, for principals  
15 employed in a school with high school grades such as the percentage of  
16 students in the two thousand nine cohort that scored at least a three on  
17 an advanced placement examination since entry into the ninth grade;  
18 and/or  
19 (viii) students' progress toward graduation in the school using strong  
20 predictive indicators, including but not limited to ninth and/or tenth  
21 grade credit accumulation and/or the percentage of students that pass  
22 ninth and/or tenth grade subjects most commonly associated with gradu-  
23 ation and/or students' progress in passing the number of required  
24 regents examinations for graduation, for principals employed in a school  
25 with high school grades.  
26 (ix) For school districts or boards of cooperative educational  
27 services that choose to use more than one set of locally selected meas-  
28 ures described in this paragraph for principals in the same or similar

1 grade configuration or program, the superintendent or district super-  
2 intendent shall, in their professional performance review plan, certify  
3 that the sets of measures are comparable, in accordance with the testing  
4 standards as defined in regulations of the commissioner.

5 (4) The selection of the local measure or measures as described in  
6 subparagraphs two and three of this paragraph to be used by the school  
7 district or board of cooperative educational services shall be deter-  
8 mined through collective bargaining.

9 (5) The department shall develop the value-added growth model and  
10 shall consult with the advisory committee established pursuant to subdi-  
11 vision seven of this section prior to recommending that the board of  
12 regents approve its use in evaluations.

13 § 5. Paragraph h of subdivision 2 of section 3012-c of the education  
14 law, as added by chapter 103 of the laws of 2010, is amended to read as  
15 follows:

16 h. The remaining sixty percent of the evaluations, ratings and effec-  
17 tiveness scores shall be locally developed, consistent with the stand-  
18 ards prescribed in the regulations of the commissioner, through negoti-  
19 ations conducted pursuant to article fourteen of the civil service law.

20 (1) A majority of the sixty points for classroom teachers shall be  
21 based on multiple classroom observations conducted by a principal or  
22 other trained administrator, which may be performed in-person or by  
23 video. For evaluations for the two thousand twelve--two thousand thir-  
24 teen school year and thereafter, at least one such observation shall be  
25 an unannounced visit.

26 (2) For the remaining portion of these sixty points for evaluations  
27 for the two thousand eleven--two thousand twelve school year, the

1 commissioner's regulation shall prescribe the other forms of evidence of  
2 teacher and principal effectiveness that may be used.

3 (3) For evaluations of classroom teachers for the two thousand twelve-  
4 -two thousand thirteen school year and thereafter, the remaining portion  
5 of these sixty points shall be based on one or more of the following:

6 (i) one or more classroom observations by independent trained evalu-  
7 ators selected by the school district or board of cooperative educa-  
8 tional services who are teachers or former teachers with a demonstrated  
9 record of effectiveness and have no prior affiliation with the school in  
10 which they are conducting the evaluation and no other relationship with  
11 the teachers being evaluated that would affect their impartiality;

12 (ii) classroom observations by trained in-school peer teachers; and/or

13 (iii) use of a state-approved instrument for parent or student feed-  
14 back; and/or

15 (iv) evidence of student development and performance through lesson  
16 plans, student portfolios and other artifacts of teacher practices  
17 through a structured review process.

18 (4) A majority of these sixty points for building principals shall be  
19 based on a broad assessment of the principal's leadership and management  
20 actions based on the principal practice rubric by the building princi-  
21 pal's supervisor, a trained administrator or a trained independent eval-  
22 uator, with one or more visits conducted by the supervisor, and, for  
23 evaluations for the two thousand twelve--two thousand thirteen school  
24 year and thereafter, that such assessment must incorporate multiple  
25 school visits by a supervisor, a trained administrator or other trained  
26 evaluator, with at least one visit conducted by the supervisor and at  
27 least one unannounced visit. For the remaining portion of these sixty  
28 points for evaluations for the two thousand eleven--two thousand twelve

1 school year, such regulations shall also prescribe the other forms of  
2 evidence of principal effectiveness that may be used consistent with the  
3 standards prescribed by the commissioner.

4 (5) For evaluations of building principals for the two thousand  
5 twelve--two thousand thirteen school year and thereafter, the remaining  
6 portion of these sixty points shall include, in addition to the require-  
7 ments of subparagraph three of this paragraph, at least two other sourc-  
8 es of evidence from the following options: feedback from teachers,  
9 students, and/or families using state-approved instruments; school  
10 visits by other trained evaluators; and/or review of school documents,  
11 records, and/or state accountability processes. Any such remaining  
12 points shall be assigned based on the results of one or more ambitious  
13 and measurable goals set collaboratively with principals and their  
14 superintendents or district superintendents as follows:

15 (i) at least one goal must address the principal's contribution to  
16 improving teacher effectiveness, which shall include one or more of the  
17 following: improved retention of high performing teachers, the corre-  
18 lation between student growth scores of teachers granted tenure as  
19 opposed to those denied tenure; or improvements in the proficiency  
20 rating of the principal on specific teacher effectiveness standards in  
21 the principal practice rubric.

22 (ii) any other goals shall address quantifiable and verifiable  
23 improvements in academic results or the school's learning environmental  
24 such as student or teacher attendance.

25 (6) The district or board of cooperative educational services shall  
26 establish specific minimum and maximum scoring ranges for each perform-  
27 ance level within this subcomponent before the start of each school year  
28 and shall assign points to a teacher or principal for this subcomponent

1 based on the standards prescribed in the regulations of the commission-  
2 er, all in accordance with, and subject to, the requirements of para-  
3 graph j of this subdivision.

4 § 6. Subdivision 2 of section 3012-c of the education law is amended  
5 by adding a new paragraph j to read as follows:

6 j. (1) The process by which points are assigned in subcomponents and  
7 the scoring ranges for the subcomponents must be transparent and avail-  
8 able to those being rated before the beginning of each school year. The  
9 process by which points are assigned in the respective subcomponents are  
10 to be determined as follows:

11 (i) For the state assessment or other comparable measures subcompo-  
12 nent, that process shall be formulated by the commissioner with the  
13 approval of the board of regents.

14 (ii) For the locally selected measures of the student achievement  
15 subcomponent, that process shall be established locally through negoti-  
16 ations conducted under article fourteen of the civil service law.

17 (iii) For the other measures of teacher and principal effectiveness  
18 subcomponent, that process shall be established locally through negoti-  
19 ations conducted under article fourteen of the civil services law.

20 (2) Such process must ensure that it is possible for a teacher or  
21 principal to obtain each point in the applicable scoring ranges, includ-  
22 ing zero, for the state assessment or other comparable measures subcom-  
23 ponent, the locally selected measures of student achievement subcompo-  
24 nent and the overall rating categories. The process must also ensure  
25 that it is possible for a teacher or principal to obtain each point in  
26 the scoring ranges prescribed by the district or board of cooperative  
27 educational services for the other measures of teacher and principal  
28 effectiveness subcomponent.

1     (3) The superintendent, district superintendent or chancellor and the  
2 president of the collective bargaining representative (where one exists)  
3 shall certify in its plan that the process will use the narrative  
4 descriptions of the standards for the scoring ranges provided in the  
5 regulations of the commissioner to effectively differentiate a teacher  
6 or principal's performance in each of the subcomponents and in their  
7 overall ratings to improve student learning and instruction.

8     (4) The scoring ranges for the other measures of teacher and principal  
9 effectiveness subcomponent shall be established locally through negoti-  
10 ations conducted under article fourteen of the civil service law.

11     § 7. Subdivision 2 of section 3012-c of the education law is amended  
12 by adding a new paragraph k to read as follows:

13     k. Notwithstanding any other provision of law, rule or regulation to  
14 the contrary, by July first, two thousand twelve, the governing body of  
15 each school district and board of cooperative educational services shall  
16 adopt a plan, on a form prescribed by the commissioner, for the annual  
17 professional performance review of all of its classroom teachers and  
18 building principals in accordance with the requirements of this section  
19 and the regulations of the commissioner, and shall submit such plan to  
20 the commissioner for approval. The plan may be an annual or multi-year  
21 plan, for the annual professional performance review of all of its  
22 classroom teachers and building principals. The commissioner shall  
23 approve or reject the plan by September first, two thousand twelve, or  
24 as soon as practicable thereafter. The commissioner may reject a plan  
25 that does not rigorously adhere to the provisions of this section and  
26 the regulations of the commissioner. Should any plan be rejected, the  
27 commissioner shall describe each deficiency in the submitted plan and  
28 direct that each such deficiency be resolved through collective bargain-

1 ing to the extent required under article fourteen of the civil service  
2 law. If any material changes are made to the plan, the school district  
3 or board of cooperative educational services must submit the material  
4 changes, on a form prescribed by the commissioner, to the commissioner  
5 for approval. To the extent that by July first, two thousand twelve, or  
6 by July first of any subsequent year, if all the terms of the plan have  
7 not been finalized as a result of unresolved collective bargaining nego-  
8 tiations, the entire plan shall be submitted to the commissioner upon  
9 resolution of all of its terms, consistent with article fourteen of the  
10 civil service law.

11 § 8. Subdivision 4 of section 3012-c of the education law, as added by  
12 chapter 103 of the laws of 2010, is amended to read as follows:

13 4. Notwithstanding any other law, rule or regulation to the contrary,  
14 upon rating a teacher or a principal as developing or ineffective  
15 through an annual professional performance review conducted pursuant to  
16 subdivision two of this section, the school district or board of cooper-  
17 ative educational services shall formulate and commence implementation  
18 of a teacher or principal improvement plan for such teacher or principal  
19 as soon as practicable but in no case later than ten school days after  
20 [the date on which teachers are required to report prior to] the opening  
21 of classes for the school year. Such improvement plan shall be consist-  
22 ent with the regulations of the commissioner and developed locally  
23 through negotiations conducted pursuant to article fourteen of the civil  
24 service law. Such improvement plan shall include, but need not be limit-  
25 ed to, identification of needed areas of improvement, a timeline for  
26 achieving improvement, the manner in which improvement will be assessed,  
27 and, where appropriate, differentiated activities to support a teacher's  
28 or principal's improvement in those areas.

1 § 9. Subdivision 5 of section 3012-c of the education law, as added by  
2 chapter 103 of the laws of 2010, is amended to read as follows:

3 5. a. An appeals procedure shall be locally established in each school  
4 district and in each board of cooperative educational services by which  
5 the evaluated teacher or principal may only challenge the substance of  
6 the annual professional performance review, the school district's or  
7 board of cooperative educational services' adherence to the standards  
8 and methodologies required for such reviews, pursuant to this section,  
9 the adherence to the regulations of the commissioner and compliance with  
10 any applicable locally negotiated procedures, as well as the school  
11 district's or board of cooperative educational services' issuance and/or  
12 implementation of the terms of the teacher or principal improvement  
13 plan, as required under this section. Appeal procedures shall provide  
14 for the timely and expeditious resolution of any appeal under this  
15 subdivision. The specifics of the appeal procedure shall be locally  
16 established through negotiations conducted pursuant to article fourteen  
17 of the civil service law. An evaluation which is the subject of an  
18 appeal shall not be sought to be offered in evidence or placed in  
19 evidence in any proceeding conducted pursuant to either section three  
20 thousand twenty-a of this article or any locally negotiated alternate  
21 disciplinary procedure, until the appeal process is concluded.

22 b. Nothing in this section shall be construed to alter or diminish  
23 the authority of the governing body of a school district or board of  
24 cooperative educational services to grant or deny tenure to or terminate  
25 probationary teachers or probationary building principals during the  
26 pendency of an appeal pursuant to this section for statutorily and  
27 constitutionally permissible reasons other than the teacher's or princi-  
28 pal's performance that is the subject of the appeal.

1 c. Nothing in this section shall be construed to authorize a teacher  
2 or principal to trigger the appeal process prior to receipt of their  
3 composite effectiveness score and rating from the district or board of  
4 cooperative educational services.

5 § 10. Section 3012-c of the education law is amended by adding a new  
6 subdivision 9 to read as follows:

7 9. a. The department shall annually monitor and analyze trends and  
8 patterns in teacher and principal evaluation results and data to identi-  
9 fy school districts, boards of cooperative educational services and/or  
10 schools where evidence suggests that a more rigorous evaluation system  
11 is needed to improve educator effectiveness and student learning  
12 outcomes. The criteria for identifying school districts, boards of coop-  
13 erative educational services and/or schools shall be prescribed in the  
14 regulations of the commissioner.

15 b. A school, school district or board of cooperative educational  
16 services identified by the department in one of the categories enumer-  
17 ated in paragraph a of this subdivision may be highlighted in public  
18 reports and/or the commissioner may order a corrective action plan,  
19 which may include, but not be limited to, requirements that the district  
20 or board of cooperative educational services arrange for additional  
21 professional development, provide additional in-service training and/or  
22 utilize independent trained evaluators to review the efficacy of the  
23 evaluation system, provided that the plan shall be consistent with law  
24 and not in conflict with any applicable collective bargaining agreement.

25 § 11 Section 3012-c of the education law is amended by adding a new  
26 subdivision 5-a to read as follows:

1 5-a. In the city school district of the city of New York, notwith-  
2 standing any provision of law to the contrary, the following shall apply  
3 to classroom teachers:

4 a. A teacher who did not receive an ineffective rating in the annual  
5 professional performance review for the prior school year is in "year  
6 one status".

7 b. A teacher who received an ineffective rating in the previous school  
8 year is in "year two status", until and unless that rating is either  
9 changed by the principal or reversed on appeal in accordance with the  
10 provisions of this subdivision, or until and unless the teacher reverts  
11 to year one status in accordance with the provisions of this subdivi-  
12 sion.

13 c. A teacher who is rated ineffective for a school year in which the  
14 teacher has year one status shall have a right to appeal that rating to  
15 the chancellor of the city school district, who shall make a final  
16 determination, unless an appeal is initiated to a three-member panel  
17 subject to the following requirements. The united federation of teachers  
18 (UFT) may appeal to a three-member panel the ineffective ratings of up  
19 to thirteen percent of teachers who received such ineffective ratings  
20 for a school year. Any such appeal may only be made on the ground that  
21 the ineffective rating was given due to harassment or reasons not  
22 related to job performance. These appeals shall be known as a "panel  
23 appeals". The three-member panel shall consist of a person selected by  
24 the UFT, a person selected by the chancellor of the city school district  
25 and an independent person, not affiliated with the UFT or the district  
26 and selected by the state education department, who shall be the chair  
27 of the panel and conduct the appeal hearing. If the panel sustains the  
28 appeal, the principal must submit to the panel a different rating, which

1 must be approved by the panel. Any ineffective rating that is appealed  
2 to the panel may not be appealed to the chancellor of the city school  
3 district.

4 d. The chancellor of the city school district shall notify the UFT of  
5 all ineffective ratings. Each school year, if the UFT is notified of an  
6 ineffective rating prior to October first, a panel appeal of that rating  
7 must be initiated by the UFT by November first, provided that more than  
8 thirteen percent of these ratings may be appealed to the panel. The UFT  
9 and the board of education shall negotiate, pursuant to article fourteen  
10 of the civil service law, a procedure for ensuring that each school  
11 year, not more than thirteen percent of the ratings received by the UFT  
12 after October first are appealed to the panel. The board of education  
13 shall make all reasonable efforts to issue ratings and notify the UFT of  
14 ineffective ratings by October first. Any rating not appealed to the  
15 panel may be appealed by the individual teacher to the chancellor of the  
16 city school district. Appeals made to the chancellor of the city school  
17 district must be filed within ten school days after the UFT would other-  
18 wise be required to notify the board of education of a panel appeal.

19 e. For all teachers in year two status, unless and until the ineffec-  
20 tive rating they received in the prior year is changed by a principal or  
21 otherwise changed in accordance with the provisions of this subdivision,  
22 an independent validator shall be appointed to evaluate the teacher on  
23 each component of the annual professional performance review in which  
24 the scoring of the component is at the discretion of the principal.  
25 These components shall not necessarily be limited to teacher perform-  
26 ance, but shall not include any components in which the scoring of the  
27 component is outside the discretion of the principal, even if the prin-  
28 cipal has discretion in a related goal-setting process prior to scoring.

1 The independent validator shall perform three observations during the  
2 course of the school year. The terms and conditions of the observations  
3 shall be negotiated pursuant to the requirements of article fourteen of  
4 the civil service law.

5 f. The UFT and the board of education shall jointly select an organ-  
6 ization or organizations that employ certified educators, including  
7 teachers, to perform the work as independent validators. Independent  
8 validators shall not be employed simultaneously by the board of educa-  
9 tion or simultaneously have an individual contract with the board of  
10 education. Should either the board of education or the UFT notify the  
11 department that after a good faith effort the board of education and the  
12 UFT are unable to jointly select organizations, the commissioner shall  
13 name organizations subject to the following requirements. The board of  
14 education shall set forth a required number of validators, and the  
15 commissioner shall name organizations that can provide at least this  
16 number of validators whom the commissioner deems qualified. The commis-  
17 sioner shall name organizations based on the criteria set forth in this  
18 subdivision that apply to the mutual selection process for the board of  
19 education and the UFT and shall also consider potential conflicts of  
20 interest.

21 g. In an instance in which the independent validator does not complete  
22 the review process due to circumstances beyond the control of the board  
23 of education, the teacher shall remain in year two status the following  
24 school year. Should the independent validator not complete the review  
25 process for a second consecutive school year and for any reason in the  
26 second year for other than a leave of absence or chronic absence on the  
27 part of the teacher, the teacher shall return to year one status the  
28 following school year.

1 h. An independent validator shall be deemed to have agreed with the  
2 principal when an independent validator's scoring, in conjunction with  
3 the scoring of components not reviewed by the independent validator in  
4 accordance with this subdivision, would result in a rating in the same  
5 category on the annual professional performance review than would result  
6 from the principal's rating.

7 i. For purposes of this subdivision, an independent validator shall be  
8 deemed to have disagreed with the principal when an independent  
9 validator's scoring, in conjunction with the scoring of components not  
10 reviewed by the independent validator in accordance with this subdivi-  
11 sion, would result in a rating in a different category on the annual  
12 professional performance review than would result from the principal's  
13 rating.

14 j. If a teacher receives an ineffective rating for a school year in  
15 which the teacher is in year two status and the independent validator  
16 agrees, the district may bring a proceeding pursuant to sections three  
17 thousand twenty and three thousand twenty-a of this article based on a  
18 pattern of ineffective teaching or performance. In such proceeding, the  
19 charges shall allege that the employing board has developed and substan-  
20 tially implemented a teacher improvement plan in accordance with subdi-  
21 vision four of this section for the employee following the evaluation  
22 made for the year in which the employee was in year one status and was  
23 rated ineffective. The pattern of ineffective teaching or performance  
24 shall give rise to a rebuttable presumption of incompetence and if the  
25 presumption is not successfully rebutted, the finding, absent extraor-  
26 dinary circumstances, shall be just cause for removal. In these hear-  
27 ings, the teacher shall have up to three days to present his or her case  
28 for every one day used by the district to present its case. The hearing

1 officer shall render a written decision within ten days of the last day  
2 of the hearing.

3 k. If the teacher receives an ineffective rating by the principal in a  
4 school year in which they are in year two status and the independent  
5 validator disagrees, the ineffective rating remains but the district may  
6 not bring proceeding based on a pattern of ineffective teaching or  
7 performance, as defined in this section, provided however that nothing  
8 in this section shall prevent the board of education from charging a  
9 teacher based on incompetence and entering the principal's evaluations  
10 into evidence.

11 l. If upon the completion of a hearing pursuant to sections three  
12 thousand twenty and three thousand twenty-a of this article, based  
13 either on a pattern of ineffective teaching or performance or charges of  
14 incompetence in which year one or year two evaluations were entered into  
15 evidence, and a hearing officer finds the teacher incompetent, but  
16 decides not to terminate, the teacher remains in year two status for the  
17 school year in progress or the following school year if the finding is  
18 made in between school years. If upon the completion of the hearing, the  
19 hearing officer exonerates the teacher of charges of incompetence the  
20 teacher shall revert to year one status if in the middle of the school  
21 year or at the beginning of the following school year if the finding is  
22 made in between school years.

23 m. If the teacher receives an ineffective rating in year two by the  
24 principal and the validator agrees, and the district does not bring an  
25 expedited proceeding pursuant to sections three thousand twenty and  
26 three thousand twenty-a of this article, the teacher may appeal the year  
27 two ineffective rating to the chancellor of the city school district,  
28 who shall make a final determination. If the rating is upheld, the

1 teacher shall remain in year two status for the subsequent school year,  
2 but if following that year the teacher is not charged, the teacher  
3 reverts to year one status for the next school year.

4 n. A process shall be established to evaluate the effectiveness of the  
5 specific procedures established in this subdivision after two years from  
6 the effective date of this subdivision, provided however that a failure  
7 or delay in establishing that process shall not invalidate any  
8 provisions of this subdivision.

9 o. Notwithstanding any other provision of law to the contrary, the  
10 board of education and the UFT may alter any provisions of this subdivi-  
11 sion through collective bargaining.

12 § 12. This act shall take effect immediately; provided that: (a) The  
13 appeals process will go into effect on January 16, 2013, unless the city  
14 school district of the city of New York enters into a collectively  
15 bargained teacher evaluation and appeals plan in conformity with section  
16 3012-c of the education law and with the approval of the commissioner of  
17 education.

18 (b) The chancellor of the District shall notify the legislative bill  
19 drafting commission upon the occurrence of the events provided for in  
20 subdivision (a) of this section in order that the commission may main-  
21 tain an accurate and timely effective data base of the official text of  
22 the laws of the state of New York in furtherance of effectuating the  
23 provisions of section 44 of the legislative law and section 70-b of the  
24 public officers law.

