

# Building Trust at the Table:

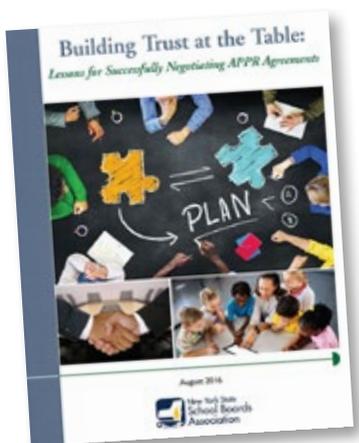
## *Lessons for Successfully Negotiating APPR Agreements*



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# I. Introduction

*Changing expectations. Collective bargaining trade-offs. Initiative fatigue.*

These are some of the challenges school districts and BOCES have faced in crafting new teacher evaluations to satisfy a 2015 state law.

The stakes are immense: school districts that do not have plans approved by the end of 2016 risk losing the state aid increases they received in the past two enacted state budgets.

This report highlights five key lessons learned as school districts and BOCES negotiate new teacher evaluation plans. It highlights the experiences they have had in implementing these changes, and draws conclusions about key lessons learned to serve as a guide to others around the state. Information is based on a NYSSBA analysis of 100 approved teacher evaluation plans selected at random and interviews with individuals who have been involved in the process of negotiating these agreements.



## II. Teacher Evaluations: A Moving Target

The Annual Professional Performance Review (APPR) is the process by which school districts and BOCES in New York evaluate teachers and principals. The local boards that govern districts and BOCES are required to have plans in place for evaluating all educators within their districts.<sup>1</sup>

In March 2012, state lawmakers enacted legislation that added a new section to the state's Education Law. Section 3012-c required school districts and BOCES to negotiate APPR plans with teachers and principals. These plans were required to base 20 percent of the evaluation on student performance on state exams (including the grades 3-8 English language arts and math exams and state-provided growth scores on the high school Regents exams); 20 percent on local exams selected by the district or BOCES; and 60

percent on classroom observations. For teachers in subjects that do not have state assessments, "student learning objectives" (SLOs) – specific and measurable academic goals set for an educator's students – had to be used instead.

Just three years after Section 3012-c was adopted, state lawmakers in April 2015 enacted another new section of the state's Education Law to replace Section 3012-c. This new Section 3012-d created a matrix by which educators would be evaluated based on student test scores and direct observations. It also required all school districts to gain approval of their new APPR plans from the State Education Department (SED) by November 15, 2015 or risk losing state aid increases of more than \$2 billion that they received for both 2015-16 and 2016-17.

<sup>1</sup> Wikipedia. Annual Professional Performance Review. Retrieved from [https://en.wikipedia.org/wiki/Annual\\_professional\\_performance\\_review](https://en.wikipedia.org/wiki/Annual_professional_performance_review).

Realizing that this timetable was unrealistic, SED granted waivers that extended the November 15th deadline to September 1, 2016.<sup>2</sup> As part of the waiver, districts and BOCES were allowed to implement APPR plans for the 2015-16 school year pursuant to either the provisions of the old Section 3012-c or the new Section 3012-d of the Education Law. However, all districts were required to have new plans under 3012-d in place for the 2016-17 school year.

In December 2015, an additional development arose that affected the implementation of the new APPR plans: the state Board of Regents voted to implement a four-year moratorium on using grades 3-8 ELA and math exams and growth scores on the state Regents exams in determining teacher and principal effective-

ness.<sup>3</sup> That means for the 2015-16 through 2018-19 school years, APPR ratings will be based only on the remaining subcomponents of the APPR plan, such as local assessments and direct classroom observations.<sup>4</sup>

Despite the moratorium, however, school districts and BOCES were still required to negotiate APPR plans that were compliant with the new Section 3012-d requirements by September 1, 2016. Failure to do so would result in losing any state aid increases allocated for both 2015-16 and 2016-17. However, in June 2016, state lawmakers granted school districts and BOCES a reprieve by extending the deadline for having approved plans in place for the 2016-17 school year to December 31, 2016.

### III. Lessons Learned: Experiences of school districts negotiating APPR

There are 728 school districts and BOCES in New York State that must negotiate, submit and have approved new plans for evaluating teachers and principals. As of the publication date of this report, about 40 percent of school districts and BOCES have the new 3012-d plans in place.<sup>5</sup> Below are five lessons that may help guide other school districts and BOCES as they negotiate APPR plans.



“I have received many questions from districts, but for the most part, school districts and unions seem to have their act together in working on these plans,” Goldsmith said. “I think school districts have gained excellent working knowledge and experiences from developing their previous APPR plans with their respective unions and feel more comfortable in moving forward with these new plans without the direct need for legal counsel and other formalities.”<sup>7</sup>

Goldsmith noted that he is seeing more good faith discussions directly between administrators and teachers in developing the provisions for their respective plans. He said districts and unions are now better able to focus on mutual goals and objectives, and have shared visions for many of the APPR provisions in their plans to make them a “win-win” for both sides.

#### LESSON 1. Do not reinvent the wheel

In general, districts are up to the challenge of negotiating the new APPR plans because of their experience going through the 3012-c process. Karl Kristoff, a school attorney with the Hodgson Russ law firm in Buffalo, who works with dozens of school districts, found that to be the case in the western part of the state.

“It seems that as district administrators in Western New York have become more familiar with the concepts underlying APPR, they have become more comfortable in negotiating the new 3012-d plans,” he said. Kristoff credited much of that familiarity to training provided by area BOCES, NYSSBA and his own law office.<sup>6</sup>

School attorney Howard Goldsmith of the Harris Beach law firm, who also works with dozens of school districts across the state, agreed with that assessment.

<sup>2</sup> New York State Education Department. Retrieved from <http://usny.nysed.gov/rttt/teachers-leaders/plans/home.html>.  
<sup>3, 4</sup> 2016, January. New York State United Teachers. Annual Professional Performance Review (APPR) Fact Sheet.  
<sup>5</sup> New York State Education Department. Retrieved from <http://usny.nysed.gov/rttt/teachers-leaders/plans/home.html>. Education Group, 2015.  
<sup>6</sup> K. Kristoff. (personal communication, June 17, 2016).  
<sup>7</sup> H. Goldsmith. (personal communication, June 15, 2016).

“The experiences from developing 3012-c plans are allowing many district administrators to feel more comfortable in developing these new 3012-d plans,” said Goldsmith. “There seems to be more trust and less animosity between the parties in working together to meet the statutory and regulatory requirements.”

That familiarity helped the Parishville-Hopkinton school district get its plan approved in October of 2015, one of the first in the state to do so. “We familiarized ourselves with the new law and requirements,” said Darin Saiff, superintendent of the district in St. Lawrence County. “Both teachers and administrators had plenty of guidance [and] support information from our professional organizations. We took a look at the options available to us and did our best to choose those that were in alignment with our current plan and expectations.”<sup>8</sup>

## LESSON 2. Separate APPR and collective bargaining negotiations

Since APPR plans need to be negotiated by administrators and the bargaining units that represent teachers and principals, some districts and BOCES may encounter efforts to tie APPR plan approval to trade-offs in collective bargaining agreements.

According to school attorney Greg Guercio, almost without exception there have been no real problems with APPR negotiations themselves. However, a big problem exists in many districts that are also negotiating contracts. “Teachers and administrators are holding hostage APPR resolution, insisting on favorable settlements or even re-openers where more money would be delivered,” he said. “In short, a game of chicken is being played where the unions are hoping the boards will blink.”<sup>9</sup>



Goldsmith is a little more sanguine about efforts to tie APPR negotiations to collective bargaining trade-offs. While he has heard from other school attorneys that there have been attempts by teachers and principals to connect 3012-d discussions with collective bargaining negotiations, he has seen only two such cases – one on Long Island and the other in western New York. That is because school officials have made a concerted effort to de-link the two.

“I have not had many districts (teachers or principals) try to connect APPR with open collective bargaining agreement negotiations to leverage their positions,” said Goldsmith. “I have had only two such cases, and in both, once we made it clear that the two are not connected and we are just focusing on APPR for the purpose of meeting the July 1, 2016 submission deadline, the unions backed down and focused on APPR. It was sort of like a ‘been there-done that’ moment in which the district said to the union, ‘You tried that in 3012-c discussions and we already went through that debate so let’s not re-do the same discussion.’”

Kristoff said that for the most part, school districts in western New York that are also in the midst of negotiating collective bargaining agreements have kept separate any demands for trade-offs in the area of salary and/or benefits in exchange for their agreement on the APPR plans. “The unions seem to ultimately understand that putting at risk the amount of state aid associated with not submitting an APPR plan on time is not worth the likely resulting inability of districts to agree to any increases in economic benefits,” he said. “In many districts, the amount of state aid that would be lost would cause them to contemplate layoffs, as opposed to increasing the value of their union contracts.”

Kristoff said that there have been trade-offs, however, pertaining to matters of local procedure, such as granting district observers the necessary discretion to perform and count “walk-through” observations in exchange for advance notice of “announced” observations. Other trade-offs include pre- and post-observation conferences; use of school-wide, team or linked student performance results; deadlines for observation reports and completion of observation scores for insertion in the HEDI matrix; the value accorded to scores awarded by building administrators or other trained evaluators, as opposed to those of “independent” evaluators.

<sup>8</sup> D. Saiff. (personal communication, June 3, 2016).

<sup>9</sup> G. Guercio. (personal communication, June 14, 2016).



### LESSON 3. Embrace a school-wide focus

Evaluating teachers on how all students within a building are performing, rather than just how an individual teacher's students perform, is a model that is being embraced by a majority of school districts in at least one grade or subject. The NYSSBA analysis of 100 approved APPR plans found that all of them used some sort of school-wide measure to evaluate teachers and principals.

Parishville-Hopkinton made the conversion to a school-wide plan and focus early in the 3012-c era of APPR. According to Superintendent Saiff, its 3012-c plan, which was developed in collaboration with another small rural district and the St. Lawrence-Lewis BOCES, was used as a model plan by the state when exemplars were being suggested by NYSED. The plan incorporated all state assessments in the calculation of a school-wide score based on two aspects of student performance on the state assessments: average level of achievement and percent of students meeting growth targets.

The district moved to a school-wide model for several reasons: 1) to get students to graduation with a high academic focus that values all levels of education in a building; 2) to switch time dedicated to SLO writing, testing, and compiling data back to classroom instruction and teacher development; 3) to avoid having principals approving SLOs in areas where they had no direct background or training; 4) to address a weak correlation between what they already knew about their teachers' skills and the scores that they received through the SLO process; and 5) to reduce the amount of testing.

The Niskayuna school district in Schenectady County adopted a school-wide focus, too. "Our theory is that all teachers are working toward the goal of success for all of our students," said Superintendent Cosimo

Tangorra. "Following that logic, elementary and middle school teachers are also accountable for high school student results."<sup>10</sup>

In Niskayuna's plan, which was approved in October 2015 and was in effect for the 2015-16 school year, the grades 3-8 Common Core science exam are used to evaluate principals in grades 6-8 buildings; 51 percent of high school teachers' evaluations are tied to student scores on the five core Regents exams (ELA, math, science, and two social studies); and all other educators are evaluated using an average of the combination of the five core Regents exams.

"We were able to negotiate terms rather quickly," Tangorra said. "It took only about a half-hour."

Negotiators included Tangorra, his assistant superintendent, the president of the teachers union, the chief negotiator for the teachers union, and the two union presidents of the principals union. Negotiations with both teachers and principals took place at the same time. "We discussed what we didn't like about the 3012-c plan and how we could streamline it for the 3012-d plan," said Tangorra. "The main concern was how we could reduce the amount of testing taking place."

In the Stillwater school district in Saratoga County, getting K-8 teachers to use a building-wide score using the five gateway Regents exams for their growth scores was a heavier lift. But according to Superintendent Stanley Maziejka, that stumbling block was overcome when teachers saw historical data that demonstrated they would routinely be rated in the upper level of effective to the lower level of highly effective.

"Fortunately, both sides saw 3012-d as an improvement over 3012-c, and we sealed the deal in relatively quick fashion," said Maziejka.<sup>11</sup>

<sup>10</sup> C. Tangorra. (personal communication, June 9, 2016).

<sup>11</sup> D. Saiff. (personal communication, June 3, 2016).

## LESSON 4. Determine the right mix of classroom observation methods

Under regulations adopted by the State Education Department (SED) for implementing 3012-d of the APPR plan, at least 80 percent of the teacher observation aspect of the evaluation has to be done by principals or other trained administrators, while at least 10 percent but no more than 20 percent of the observation has to be done by an impartial, independent trained evaluator. The regulations also provide as an option that up to 10 percent of an individual teacher's evaluation score may be based on observation by trained peer teachers. According to NYSSBA's analysis of the 100 approved APPR plans, no districts incorporated peer observations into their evaluations. SED officials, however, said some districts are using peer observers as part of their approved 3012-d plans.

"I have not seen one plan that agreed to peer evaluations," said Goldsmith. "That concept seemed to be a waste of time. For the most part, I have been advising districts to copy over as much as possible from their 3012-c plans, i.e., the same rubric, selection of measurable components, etc., to keep it simple. If there were problems or issues in need of improvement that they learned through the 3012-c plans, this is their opportunity to address some of those problems. Most plans minimized the input of the independent evaluator to just 10 percent, making that additional step practically useless."

Karl Kristoff also found that parties on both sides of the table tended to avoid using peer evaluators. He noted how peer evaluators would perform was too much of an unknown for many districts. By contrast, he said, direct observation by administrators tended to be a better measure of teacher effectiveness. Kristoff said that in his experience, video observation is thought to

be inferior to personal observation, although it was agreed in some instances to use video as a backup to personal observation.

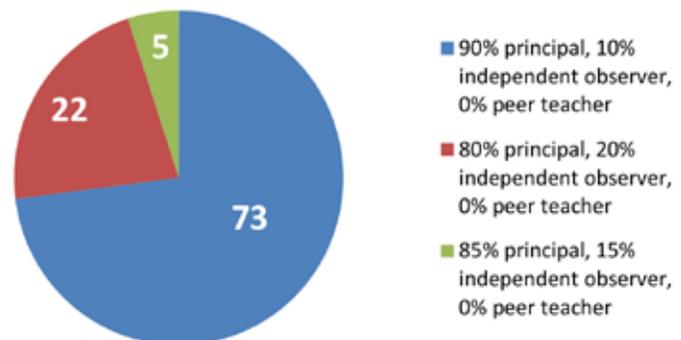
"The observation has been the most useful part of the assessment process as it lends itself to professional discussion between the teacher and administrator about actual classroom pedagogy," Darin Saiff, the Parishville-Hopkinton superintendent said. "We have always found that part of the process to be extremely useful in assisting our teachers to be the best that they can be in the classroom. We continue to value our pre- and post-conference time with our teachers and have the opportunity each year to see the great things that they accomplish with their students."

According to NYSSBA's analysis, the vast majority (73 out of 100) of approved APPR plans attributed 90 percent of the teacher observation part of the evaluation to principals or other trained administrators, and only 10 percent to an independent observer (see Figure 1). Twenty-two of the plans set the percentages at 80 percent of teacher evaluations performed by principals or other trained administrators and 20 percent to independent observers. Only five plans set the percentages at 85 percent principals/trained administrators and 15 percent independent observers.

[Note: At its June 2016 meeting, the state Board of Regents approved a waiver option for school districts and BOCES facing hardships because of the requirement that all teachers and principals undergo observations by independent evaluators. With a waiver in place, any teacher or principal who did not receive a rating of "ineffective" in the previous year can receive a second required observation or school visit from the building principal, supervisor or from another individual selected and trained by the school district or BOCES, rather than an outside or "independent" evaluator.<sup>12</sup>]

### Teacher Observation Component

The observation component of the teacher evaluation has three possible parts – two required and one optional. The two required parts are observations by a principal or other trained administrator and observations by an impartial, independent trained evaluator. The optional subcomponent is observations by a trained peer teacher. The pie chart below shows how the 100 plans that NYSSBA analyzed have broken down the different subcomponents of the teacher observation, and highlights the number of plans that fall into each.



<sup>12</sup> Woodruff, C. 2016, July 4. Regents create APPR waiver on independent evaluators. *On Board*.

## Lesson 5. Do not succumb to initiative fatigue

“The Law of Initiative Fatigue” states that when the number of initiatives increases while time, resources, and emotional energy are constant, then each new initiative – no matter how well conceived or well intentioned – will receive fewer minutes, dollars, and ounces of emotional energy than its predecessors.<sup>13</sup> This is perhaps the biggest challenge to school boards.

Previous iterations of APPR that districts complied with, plus other education initiatives implemented at the same time – such as Common Core Learning Standards and the tests that went with them – left many school districts with a sense of initiative fatigue. Just ask Darin Saiff, the superintendent in the Parishville-Hopkinton school district.

“This (3012-d) was the fourth plan in three years that we had dealt with,” said Saiff. “The first was our traditional narrative evaluation that had served us very well for many years. The second was our first version of 3012-c with [student learning objectives] for most of our teachers. The third was a 3012-c version with [student learning objectives] for teachers with classes ending in state assessments. All of these changes, combined with the other aspects of the Regents Reform agenda, had left my staff and me with ‘initiative fatigue.’”

Saiff said the ever-changing expectations of the teacher and principal review process, the over-reliance on assessments that were not designed to do what districts



were trying to do with them, and the over-complication of the process were significant stumbling blocks to negotiating a new APPR plan.

Goldsmith, the school attorney, has witnessed the same phenomenon with the districts he has worked with. “Many districts are so burned out from this

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ongoing work on APPR and negotiating and then re-negotiating their plans with ongoing amendments and changes to the laws and regulations, they just seem to want to get this done and get through the process,” he said. “Unfortunately, the ongoing changes and lack of clear vision on

APPR has resulted in a feeling that much of this work is an exercise in futility. Just get it done and move on. We have seen that no matter what we do, it is not going to mean that much and we are just going to have to adjust it once again after the next set of policy and direction changes from the state.”

Goldsmith also said this might not be the last of the changes to the teacher and principal evaluation process. “Everyone is well aware that given the initiatives over the next few years to develop revised standards, new tests, and a new APPR proposal, additional legislation and regulations are very likely,” said Goldsmith. “Once again, much of the current work and APPR plans will need to be changed and adjusted over time. APPR has and continues to be a moving target. While districts understand that they need to finalize their plans by certain timelines, they seem to be using this effort as a way to continue to work with their teachers to secure more effective plans.”

<sup>13</sup> Reeves, D.B. (2010, April). Transforming Professional Development into Student Results. ASCD. Retrieved from <http://www.ascd.org/publications/books/109050.aspx>.

## IV. Conclusion

Comprehensive, rigorous yearly teacher and principal evaluations are a necessary component for insuring that students have the best possible instructors in the classroom. The process for evaluating teachers and principals has undergone radical changes in New York over just a short period of time.

NYSSBA has been a vocal advocate both for de-linking state aid increases from compliance with the new APPR and, in the absence of an agreement to completely delink aid increases from APPR, that school districts be allowed to, at local option, agree to evaluate teachers and principals under either education law sections 3012-c or 3012-d. Both of these actions would ensure that school districts would not lose significant funds if they failed to negotiate new evaluation plans. While state lawmakers ended the 2016 legislative session

without making these changes, they did push back the date of complying with the new APPR plan until the end of December, rather than September 1st.

Prior to enactment of Section 3012-c of state Education Law, teacher and principal evaluation criteria had traditionally been under the purview of management. However, with the enactment of 3012-c, and later 3012-d, teacher and principal evaluations became a subject of bargaining between management and educators.

It is a fair debate to argue whether this is necessary to ensure students have the best instructors possible or whether it represents an overreach on the part of state lawmakers into what traditionally has been a managerial prerogative. Nonetheless, it is the new reality that school districts and BOCES face.

