

## THE NEW YORK STATE BUDGET FOR 2015–2016 April 1, 2015

Although “a budget deal” was announced the evening of March 29, budget runs were not released until the afternoon of March 31 and the complete spending plan was not completed until early in the morning of April 1. A summary of salient aspects of the budget affecting education, prekindergarten to grade 12, follows:

**I. School Aid:** The state budget for 2015–16 includes an increase of approximately \$1.6 billion for education. This amount markedly exceeds the \$1.1 billion upper limit originally proposed by the governor in his executive budget, but is less than the \$1.9 billion increase included in the Senate One–House Budget Bill and the \$1.8 billion increase included in the Assembly One–House Budget Bill. State Aid Budget runs were provided to you during the afternoon of March 31 and are available at [SAANYS.org](http://SAANYS.org).

Items receiving no funding or no additional funding in the state budget include:

- Education Investment Tax Credit would have provided fiscal support to sectarian or nonsectarian schools and charter schools
- Dream Act would have provided college aid to children of immigrants who illegally entered this country
- Universal Prekindergarten – For children four years of age
- No portion of the \$5 billion windfall surplus from tax settlements was allocated to education.
- No action was taken to increase the charter school cap.

**II. Annual Professional Performance Reviews:** Rather than implement the full suite of education reforms proposed in the executive budget, the job of revising or developing a new APPR system was assigned to the State Education Department. SED will be required to codify the new APPR regulations by June 30, within the many prescribed constructs described below. (It should be noted that SED is authorized to promulgate and revise regulations, but any statutory changes will require legislative action.) In turn, school districts will be required to complete necessary negotiations of collective bargaining agreements and submit APPR plans in time for SED approval by November 15. Pursuant to the new §3012–d.11, no school shall be eligible for an apportionment of general support for public schools for funds appropriated for the 2015–16 school year, in excess of the base year allocation, absent documentation of full implementation of APPR requirements by November 15, 2015. However, any apportionment withheld shall not occur prior to April 1 of the current year and shall not have any effect upon the base year calculation for the subsequent school year.

APPR requirements are specified in a new §3012–d. The State Education Department is required to complete its assignment regarding APPR revision with the following provisos:

1. The rating system will be based on student performance (a.k.a., testing) and observations. The “HEDI” continuum of rating categories will remain in place. SED will determine the weights and scoring ranges of the required and optional tests and of teacher observations in each component in a transparent manner.

2. The overall rating determination for teachers and principals in the new evaluation system would be based on a matrix model for determining overall APPR ratings, not on percentages.
3. Student Performance -- Districts will be required to use the current "state-created or administered tests" and SLOs - referred to as the first subcomponent. For an "optional second subcomponent," a district may locally select a second measure, state-designed supplemental assessment," (i.e., a selection of state tests or assessment developed or designed by the SED or that is purchased or acquired by SED from another state, an institution of higher education, or from a commercial or not-for-profit entity.) If collectively bargained, the optional second subcomponent must be applied across the district and produce another growth score.
4. Teacher Observations - Observations shall be based on a state-approved rubric and shall include up to three subcomponents: 1. Classroom observations carried out by a principal or administrator and 2. A second observation by an "impartial independent trained evaluator" (who may be employed within the same school district, but not the same school building as the teacher being evaluated) or by evaluators selected by the district. 3. A subcomponent "may" be included for classroom observations conducted by a trained peer teacher rated effective or highly effective from the same school or from another school within the district. The use of a college professor or retired educator to conduct such observations is not included in the legislation. Representatives of the governor maintain that the independent evaluator requirement is not an unfunded mandate since schools or districts may "swap" evaluators. SAANYS strongly disagrees with such an assertion - acting as an evaluator is NOT an ordinary aspect of teachers' duties. Such a new responsibility, entailing time, travel, and report development IS expected to be addressed in teachers' collective bargaining agreements and IS expected to cost money. In fact, school districts are expected to incur additional expenses in connection with the added APPR responsibilities of school administrators who may be directed to swap services school-to-school and especially district-to-district.
5. The overall rating for a teacher or principal shall be determined according to the following rules:
  - If rated Ineffective in Student Performance based on two subcomponents (required and optional), shall be rated Ineffective overall;
  - If rated Ineffective in Student Performance based on the required subcomponent only, the highest possible overall evaluation shall be Developing; and
  - If rated Ineffective in the Teacher Observations category, the highest possible overall evaluation shall be Developing.

In addition to the above rating requirements, the following evaluation rules shall apply for teachers. A teacher that:

- Receives H in Teacher Observations and H in Student Performance, shall receive an overall rating of H;
- Receives H in Teacher Observations and E in Student Performance, shall receive an overall rating of H;
- Receives H in Teacher Observations and D in Student Performance, shall receive an overall rating of E;

- Receives H in Teacher Observations and I in Student Performance, shall receive an overall rating of D;
- Receives E in Teacher Observations and H in student Performance, shall receive an overall rating of H;
- Receives E in Teacher Observations and E in Student Performance, shall receive an overall rating of E;
- Receives E in Teacher Observations and D in Student Performance, shall receive an overall rating of E;
- Receives E in Teacher Observations and I in Student Performance, shall receive an overall rating of D;
- Receives D in Teacher Observations and H in Student Performance, shall receive an overall rating of E;
- Receives D in Teacher Observations and E in Student Performance, shall receive an overall rating of E;
- Receives D in Teacher Observations and D in Student Performance, shall receive an overall rating of D;
- Receives D in Teacher Observations and I in Student Performance, shall receive an overall rating of I;
- Receives I in Teacher Observations and H in Student Performance, shall receive an overall rating of D;
- Receives I in Teacher Observations and E in Student Performance, shall receive an overall rating of D;
- Receives I in Teacher Observations and D in Student Performance, shall receive an overall rating of I; and
- Receives I in Teacher Observations and I in Student Performance, shall receive an overall rating of I.

6. Pursuant to new §3012-d.14, the commissioner shall adopt regulations to align the principal evaluation system with the new teacher evaluation system.
7. The following elements will be prohibited from consideration in APPR evaluations: evidence of student development/performance derived from lesson plans, artifacts of teacher practice, student portfolios (except for portfolios measured by a state-approved rubric), use of an instrument for parent or student feedback, use of professional goal setting as evidence of principal or teacher effectiveness, and any district or regionally-developed assessment that is not approved by SED.
8. Teachers who receive a rating of Highly Effective in 2015–16 may be eligible for a bonus up to \$20,000. An allocation of \$20 million is included in the state budget for this purpose. A similar bonus provision is not in place for school administrators.
9. A student may not be instructed for two consecutive years by any two teachers in the same district, each of whom received an APPR rating of ineffective. A district may apply for a waiver from this requirement if compliance is deemed “impractical.”
10. Local collective bargaining will address:
  - Whether to use a second measure of student performance and, if so, specification of the measure;
  - How to implement teacher observations; and
  - All collective bargaining agreements entered into after April 1, 2015 must be consistent with the new requirements.

11. Any alternate disciplinary procedures contained in a collective bargaining agreement that becomes effective on or after July 1, 2015 shall provide that hearings conducted pursuant to §3020-a or \*§3020-b shall be conducted before a single hearing officer. Two Ineffective APPR ratings shall constitute prima facie evidence of incompetence that can only be overcome by clear and convincing evidence that the employee is not incompetent in light of all surrounding circumstances; and if not successfully overcome, absent extraordinary circumstances, shall be just cause for dismissal. In addition, three consecutive Ineffective APPR ratings shall constitute prima facie evidence of incompetence that can only be overcome by clear and convincing evidence that the calculation of one or more of the principal's underlying components on the APPR was fraudulent (including mistaken identity); and if not successfully overcome, absent extraordinary circumstances, shall be just cause for removal. (Note: New procedures are also now in place for hearings conducted in connection with allegations of misconduct constituting physical or sexual abuse of a student.)

- \*New §3020-b Streamlined removal procedures for teachers rated ineffective. This section is applicable to teachers and principals who rated Ineffective in two or more consecutive APPR evaluations. A school district or employing board "may" bring charges of incompetence upon two consecutive Ineffective ratings, and "shall" bring such charges upon three consecutive Ineffective ratings. However, no charges may be brought more than three years after the occurrence of the alleged incompetence. The employee may be suspended, with pay, pending the hearing. Charges based upon two consecutive Ineffective ratings shall allege that the board developed and "substantially implemented" a teacher or principal improvement plan. In the case of an employee who receives three consecutive Ineffective ratings, the commissioner shall directly appoint a hearing officer; in the case of two consecutive Ineffective evaluations, the commissioner will provide a list of possible hearing officers, with biographical information and records of their five most recent cases, to the parties. The commissioner has the power to establish rules and timelines for such hearings; however, the removal proceeding must be completed within 90 days for employees with two consecutive Ineffective ratings, and within 30 days for employees with three Ineffective ratings. The hearing officer shall render a decision within 10 days of the last day of the hearing, and the decision shall be implemented within 15 days of receipt. Such decisions may be appealed to the New York State Supreme Court.

**III. Probation and Tenure:** Effective July 1, 2015, the probationary period before a teacher is granted tenure will be increased from three years to four years. (Probationary appointments may be reduced to two years for those who served two years with satisfactory APPR ratings as regular substitutes, to two years for those who rendered satisfactory service as a seasonally licensed per session teacher of swimming in day schools, and to 3 years for teachers entering a new district after receiving tenure in the previous district.) Administrators, directors, supervisors, principals and all other members of the supervising staff will have a four year probationary period.

(No extenuating circumstances are listed whereby the probationary period may be reduced for these titles.) **In order to be granted tenure, teachers and principals, must receive effective or highly effective composite ratings for at least three of the four years.** Also, barring a successful appeal, tenure may not be granted if a teacher or principal receives an ineffective rating in year four – though the probationary period may be extended to a fifth year.

**IV. Takeover and Restructuring Failing Schools:** The commissioner shall designate as “Failing” each of the schools identified under the state accountability system to be among the lowest performing five percent of schools (Priority Schools), for at least three consecutive years; and schools that have under-performed in this manner for 10 consecutive years shall be designated “Persistently Failing Schools.”

- Failing Schools will continue to be operated by the local district for two additional school years under a department-approved intervention model or comprehensive education plan. The superintendent shall be vested with all the powers of a Receiver, but may not over-ride the board of education in regard to his/her employment status. After the two years, SED will conduct a performance review and will determine: 1. Whether the Failing School designation should be removed, 2. Whether to continue school district operation with the superintendent vested with the powers of a Receiver, 3. Whether the school district should be placed in Receivership.
- Persistently Failing Schools will continue to be operated by the local school district for one additional school year under a department-approved intervention model or comprehensive education plan. The superintendent shall be vested with all the powers of a Receiver, but may not over-ride the board of education in regard to his/her employment status. At the end of the school year SED will conduct a performance review and will determine: 1. Whether the Persistently Failing designation should be removed, 2. Whether to continue school district operation with the superintendent vested with the powers of a Receiver, or 3. Whether the school district should be placed in Receivership.
- For Failing Schools and Persistently Failing Schools, notice must be provided to parents/guardians regarding the possibility of the district being placed into Receivership, and a community engagement team must be established to develop recommendations for improvement. The team will periodically present recommendations to the school leadership or Receiver.
- Upon the commissioner’s determination to appoint a Receiver, the school district shall appoint an independent Receiver, subject to approval by the commissioner. If the district fails to appoint a Receiver within 60 days, the appointment will be made by the commissioner.
- The Receiver may be a non-profit entity, another school district, or an individual. The Receiver will be vested with the power to supersede any decision, policy or regulation of the superintendent and board of education; but may not supersede decisions that are not directly linked to the school intervention plan, including co-location decisions and student transportation services. The Receiver’s scope of authority also extends to review and modification of school district budgets prior to approval by the board of education to conform to the school intervention plan – all modifications must be limited in scope and effect to the Failing or Persistently Failing Schools, and may not unduly impact other schools in the district. The commissioner shall contract

with the Receiver, and the compensation and other costs of the Receiver shall be paid from a state appropriation, or by the school district as determined by the commissioner, but only if there is an open administrative staffing line available for the Receiver and the Receiver will be assuming the responsibilities of such open line. The Receiver will provide written quarterly reports to the board of education, commissioner and board of regents on the implementation of the school intervention plan.

- The Receiver is also authorized to:
  - Require that the collective bargaining unit(s) representing teachers and administrators and the Receiver negotiate a Receivership Agreement that modifies current CBAs in regard to schools in Receivership. The Receivership Agreement may address length of school day / school year, professional development for teachers and administrators, class size, changes of programs, assignments, and teaching conditions in the school in Receivership. The agreement may not provide for any reduction in compensation unless there is a proportionate reduction in hours.
    - The bargaining shall be conducted between the Receiver and the collective bargaining unit within 30 days from the point of the Receiver's request. The agreement shall be subject to ratification within 10 business days. If the parties are unable to reach agreement within 30 days or if the agreement is not ratified within 10 business days, the parties shall submit any unresolved issues to the commissioner, who shall resolve such issues within five days.
  - Abolish the positions of all teachers and pedagogical support staff, administrators and pupil personnel providers assigned to the school in receivership, and require such staff members to reapply for new positions. For administrators and pupil personnel service providers, the Receiver shall have full discretion over all such re-hiring decisions. For teachers and pedagogical support staff, the Receiver shall convene a staffing committee to determine whether former school staffs reapplying for positions are qualified for the new positions. Relatedly, a classroom teacher or principal who has received two or more APPR composite ratings of Ineffective shall be deemed not to have rendered faithful and competent service.
- The Receiver will develop a school intervention plan by: 1. Considering the recommendations of the community engagement team, 2. Including provisions to maximize rapid academic achievement, 3. Addressing school leadership and capacity, school leadership practices and decisions, curriculum development, teacher practices and decisions, student social and emotional developmental health, and family and community engagement. A final school intervention plan must be submitted to the commissioner for approval within six months of the Receiver's appointment. Each intervention plan shall be authorized for a period not to exceed three years
- The commissioner will evaluate each school with an appointed Receiver at least annually in order to determine progress toward meeting the goals specified in the school intervention plan. If it is determined that performance goals have been met, the implementation of the intervention plan shall continue; if one or more goals have not been met, modification of the plan will be required. Upon

the expiration of the school intervention plan, the commissioner will conduct an evaluation of the school with three possible outcomes:

- Renew the plan with the Receiver for an additional period of not more than three years;
- If the school remains failing / persistently failing and the terms of the plan have not been substantially met, terminate the contract with the Receiver and appoint a new Receiver; or
- Determine that the school has improved sufficiently for the designation of failing or persistently failing to be removed

**V. Professional Development:** The State Education Department will issue rigorous standards for courses, programs, and activities that will qualify as continuing teacher and leader education. Principals and teachers who perform observations in connection with annual professional performance reviews may count such hours toward meeting their continuing education requirement. Educators must complete the state-approved professional development in order to maintain their certification. Administrators and teachers with lifetime certification must register with the state every five years.

