

Changes in Tenure Determination

2007 - New Law

Chapter 57 of the Laws of 2007, added a new Section 3012-b to Education Law requiring the Board of Regents to develop rules establishing minimum standards and procedures for tenure determination of teachers employed in school districts and BOCES. The tenure determination process must include but need not be limited to a combination of:

- An evaluation of the extent to which the teacher successfully utilized analysis of available student performance data and other relevant information when providing instruction;
- Peer review by other teachers, as far as practicable; and
- An assessment of the teacher's performance by the teacher's building administrator.

These changes apply only to probationary classroom teachers providing instructional services. While other employees of the district and BOCES may be subject to tenure rules and annual performance evaluations, such as teaching assistants or individuals providing pupil personnel services, school districts are not required to evaluate these individuals in accordance with the requirements of Section 3012-b of Education Law.

2008 - Amendments

Section 3012-b was amended by Chapter 57 of the Laws of 2008. The amendment:

- Changes the effective date of the legislation requiring these new standards and procedures to apply to teachers whose probationary period commences on or after July 1, 2008;
- Prohibits school districts and BOCES from using student test scores to grant or deny tenure; and
- Establishes a two-year sunset on Section 3012-b, which will allow the Legislature to revisit this law in 2010.

Section 100.2(o) of the Commissioner's Regulations regarding the Annual Professional Performance Review (APPR) requires school districts and BOCES to establish a prescribed plan for the annual evaluation of teachers providing instructional services or pupil personnel services. The process for evaluating teachers is a mandatory subject of collective bargaining consistent with the requirements of article 14 of the Civil Service Law. The State Education Department will request the Board of Regents to approve amendments to the APPR regulations and Section 30.14 of the Rules of the Board of Regents, incorporating these new changes in making tenure determinations. Information on these changes and their impact on teachers, and collective bargaining agreements will be provided when they become available. (*This bulletin will be updated when new regulations are adopted by the Board of Regents.*)

☐ Teachers use of student performance data when providing instruction:

The intent of the law is not the evaluation of teachers based on student test scores, but teachers' use of student performance data and other relevant information to inform instruction. School districts must provide teachers with timely and relevant student information. Student performance data should include, but not be limited to, information that is available through the teacher's analysis of teacher developed tests and other formative assessments, observations of student learning, student work, school developed/administered assessments, and state tests. Other relevant information may include, but not be limited to, documented health and nutritional information, attendance data, other student characteristics affecting learning.

- The school district's Professional Development Plan (PDP) should include professional development for teachers on the use of data analysis in instructional planning.

❑ Peer review by other teachers, as far as practicable:

Peer review is **an optional method** to assess the performance of teachers in the current APPR regulations. Under Section 3012-b school districts and BOCES may agree to implement a peer review process, as far as practicable.

It is NYSUT’s and the State Education Department’s position that “as far as practicable” means that the peer review process would be used to evaluate teachers only if the process is collectively bargained and agreed to by the local union and the school district. Prior to agreeing to negotiate a peer review evaluation process with the school district, local leaders should consider various factors that could affect the successful implementation of this process, such as:

- Is the school district’s administration amenable to sharing responsibility for teacher evaluation by a process that would be governed by a panel consisting of both teachers and administrators?
- Does the union’s and districts current relationship foster the trust and cooperation needed to establish a peer review and a peer assistance program?
- Is the district willing to commit the financial resources necessary to support and sustain a quality peer review program? The costs to develop sound, defensible, peer review programs are substantial (release time and on-going training for peer reviewers, maintaining governing boards, administrative costs, etc.) and must include an assistance component (mentoring, coaching, and professional development) for new teachers who need support and skill enhancement.
- Does the school district, currently, have a strong commitment to providing assistance to new teachers during their three-year probationary period, beyond the required one year of district-based mentoring? What types of assistance and support are being provided in years two and three?

❑ Assessment by the Building Administration

Section 3012-b of Education Law requires an assessment of the teacher’s performance by the teacher’s building principal or other building administrator in charge of the school or program. The evaluation of classroom teachers must include, but is not limited, to the criteria described in the school districts or BOCES APPR Plan, consistent with the requirements of the Article 14 Civil Service Law. The APPR must also describe how the district or BOCES provides training for staff who perform teacher evaluations.

Advice to Local Leaders

1. Local Leaders in collaboration with their Labor Relations Specialist should assess the impact of these new changes on the district’s APPR and PDP plans and collective bargaining agreements, including how the district’s PDP and mentor program can support new teachers in meeting these requirements.
2. Since probationary teachers will be required to demonstrate analysis of student performance data in providing instruction as part of the tenure review, a district’s PDP plan should be updated to include professional development for new teachers on the uses of student data.
3. If your local is interested in exploring a peer review process with your school district’s administration, local leaders should pursue additional information about this process including:
 - a. The union’s role in the governance of the peer review process and the role school administrators play in this process.
 - b. The selection process of members who will be involved in the peer review process.
 - c. Provision of training in evaluation criteria and methods.
 - d. If/how teacher feedback is part of the employment tenure decision.
 - e. Safeguards to ensure confidentiality of peer review process.
4. Contact NYSUT’s Education Learning Trust for information on its programs, including “making data work for you.”
5. Visit NYSUT’s website at www.nysut.org for further information on peer review and assistance programs, and uses of data when providing instruction.