



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

**TO:** Higher Education Committee

**FROM:** Johanna Duncan-Poitier

**SUBJECT:** Proposed Amendment to the Rules of the Board of Regents and the Regulations of the Commissioner of Education Relating to Teacher Tenure Determinations

**DATE:** June 4, 2008

**STRATEGIC GOAL:** Goal 3

**AUTHORIZATION(S):**

### **SUMMARY**

#### **Issue for Decision**

Should the Board of Regents amend Part 30 of the Rules of the Board of Regents and Section 100.2 of the Regulations of the Commissioner of Education relating to teacher tenure determinations?

#### **Reason(s) for Consideration**

Required by State statute.

#### **Proposed Handling**

Chapter 57 of the Laws of 2008 requires the Commissioner of Education to establish minimum standards for tenure determinations for teachers whose probationary periods commence on or after July 1, 2008. Because of this timing, the proposed amendment is submitted for adoption as an emergency measure at the June 2008 Regents meeting. Confirmation of the proposed amendment as a permanent rule is scheduled for the July 2008 Regents meeting.

## Procedural History

The draft Regents Rule was brought for discussion to the May meeting of the Committee and endorsed for publication in the State Register. A Notice of Revised Rule Making was published in the State Register on June 4, 2008.

## Background Information

Section 3012-b of the Education Law, as added by Chapter 57 of the Laws of 2007 and amended by Chapter 57 of the Laws of 2008, requires the Commissioner of Education to establish minimum standards for tenure determinations for teachers whose probationary periods commence on or after July 1, 2008.

Staff had initial conversations with a number of interested parties concerning the drafting of Regents Rules to implement Chapter 57. They include:

- New York State Council of School Superintendents
- School Administrators Association of New York State
- New York State School Personnel Administrators
- Council of School Supervisors and Administrators – New York City
- Conference of Big 5 School Districts
- New York City Department of Education
- New York State United Teachers
- New York State School Boards Association
- New York State Professional Standards and Practices Board for Teaching

Following conversations with interested parties, the conceptual approach to establishing the minimum standards for teacher tenure determinations as required by law was brought to the Committee at the December 2007 Regents meeting. There were some common themes heard as we conferred with the leadership of the organizations noted. The following is a brief summary of the various perspectives shared:

- Districts should have performance evaluation procedures in place under SED regulations for the Annual Professional Performance Review (APPR).
- Any implementing rules should be streamlined to avoid complicated procedural requirements.
- Local districts need the flexibility provided by the statute to consider items beyond the three listed in the statute.
- Assessments of student performance data mentioned in the statute should be broadly defined.
- There is a professional development need for current teachers and principals in the area of the analysis of student performance data (with a similar need to insure this training occurs in teacher preparation programs).

- The building principal or administrator is central to the tenure evaluation process for teachers.
- Many concerns were expressed about the viability of peer review in the tenure determinations process (selection of reviewers, confidentiality, training, etc.).
- Changes in the terms of probation for new teachers would be better made at the beginning of the probationary period.

Chapter 57 of the Laws of 2008 requires an evaluation of all relevant factors prior to a tenure recommendation, including an evaluation of the candidate's effectiveness over the applicable probationary period, or over three years in the case of a regular substitute with a one-year probationary period, in contributing to the successful academic performance of his or her students.

In December, the Committee approved an approach to align the Regents Rules with the then existing statutory requirements and require use of the Annual Professional Performance Review, which has been a regulatory requirement for the evaluation of teacher performance since 2000.

In March 2008, the Committee reviewed a preliminary draft of the Regents Rule designed to implement the then existing statute consistent with the Regents direction from the December meeting. The Committee approved this preliminary draft to be published for public comment in advance of the Board's further action on the Rules.

In April 2008, New York State Budget negotiations modified the teacher tenure statute (§3012-b) that was created in 2007. The primary change was that a teacher shall not be granted or denied tenure based on student performance data. (Attachment A is the new statutory language.) In addition, the effective date of the statute was clarified to provide that teachers whose probationary periods commence on or after July 1, 2008 were subject to the new statute.

The preliminary draft regulation reviewed by the Committee in March was revised to incorporate the recent changes in the statute while maintaining the overall approach approved by the Regents. At the May Regents meeting, the Committee endorsed the draft rules to implement Chapter 57 of the Laws of 2008.

Consistent with the statute, the proposed Rule permits the consideration of locally developed standards. This approach does not prescribe the types of locally developed standards designed to measure a teacher's effectiveness in contributing to the successful academic performance of his or her students but does prohibit a teacher from being granted or denied tenure based on student performance data. Such locally developed standards may or may not be mandatory subjects of collective bargaining.

New York State public school districts have engaged in thoughtful, focused evaluation of the quality of instruction of their teaching staff through the Annual Professional Performance Review processes in place since 2000. This requirement emerged from the 1998 Regents report on teaching entitled *Teaching to Higher*

*Standards: New York's Commitment*, as one of several elements introduced to promote consistent teaching quality across the State. Districts were called upon to review their teacher evaluation processes, re-design where needed, and file District Professional Performance Review Plans. A district must include in its Professional Performance Review Plan:

- Criteria for evaluating teachers;
- Assessment approaches;
- Teacher improvement plans; and
- Training in performance evaluation

The element of this regulation particularly germane to the statutory intent of the new tenure section of Education Law is the criteria upon which all districts must evaluate teachers in their employ. The existing APPR regulation includes, but does not limit the factors to, the following:

- Content knowledge
- Preparation of instruction
- Instructional delivery
- Classroom management
- Knowledge of student development
- Student assessment
- Collaboration
- Reflective and responsive practice

These areas were selected after extensive review of national and state performance standards for teachers available when the annual professional performance review regulation was in development, beginning with standards for teachers adopted and disseminated by the Board of Regents in its 1998 teaching report. The New York State teacher performance evaluation standards were crafted after careful review by the Regents of teacher standards and principles from national entities concerned with teacher quality, such as the Interstate New Teacher Assessment and Support Consortium (INTASC) and the National Board for Professional Teaching Standards (NBPTS), which awards National Board Certification to teachers upon successful completion of a rigorous assessment process. In 1998-99, a cross-functional group of Department staff charged with constructing the regulatory language for this requirement began its work of identifying the evaluation criteria. They began with the above-mentioned New York State teacher standards established in policy by the Board of Regents. The workgroup also reviewed and considered the INTASC and NBPTS national standards, as well as research-based teacher effectiveness and assessment principles and frameworks, including Charlotte Danielson's 1996 work, Enhancing Professional Practice: A Framework for Teaching.

Department staff with experience in teacher assessment contributed expertise in identification and development of staff evaluation criteria and procedures. The workgroup also sought advice from experienced local practitioners of teacher supervision and staff development by a review of a sampling of local district contractual evaluation procedures. The sample selection was based on districts' successful and proactive efforts with teachers' professional development. The proposed annual

professional performance review language was filtered through the “lens” of the goal of effective teaching - student achievement. To that end, the New York State Learning Standards and the federal SCANS\* listing of skills our young people need to succeed in the working world were among documents employed in choosing essential factors/areas to be assessed by employing districts throughout the candidate’s development as a teacher.

At the December 2007 Regents meeting, the Regents endorsed the use of the APPR evaluation criteria as part of any teacher tenure decision. These criteria are linked with the outcome of successful teacher practice and student achievement.

To be consistent with the new statute, a minor adjustment in the “student assessment” factor of the Annual Professional Performance Review regulations is also contained in the attached draft to explicitly mention the teacher’s use of student performance data to inform future instruction.

One of the concerns expressed by interested parties in the course of consultation with Department staff was the current mentoring programs and the confidentiality of the mentoring process. Parties were concerned that this confidentiality be maintained and that the mentor would not be forced to become a part of the tenure decision process. Current Department Regulations [§100.2(dd)(2)(iv)(d)] make it clear that the mentoring process is not part of the tenure evaluation process unless the school district and the collective bargaining agent have negotiated a mentoring system with that as an agreed-upon purpose. Accordingly, staff believe there are already protections in current regulation so as not to disrupt the confidentiality of mentoring relationships.

### Recommendation

VOTED: That Part 30 of the Rules of the Board of Regents and Section 100.2 of the Regulations of the Commissioner of Education be amended, as submitted, effective July 1, 2008, as an emergency action upon a finding by the Board of Regents that such action is necessary to preserve the general welfare to establish necessary regulatory standards to implement on a timely basis the requirements of Chapter 57 of the Laws of 2008 concerning the minimum standards for teacher tenure determinations.

### Timetable for Implementation

The emergency adoption will take effect on July 1, 2008, which is the effective date of Chapter 57 of the Laws of 2008.

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\* Secretary’s Commission on Achieving Necessary Skills

AMENDMENT TO THE RULES OF THE BOARD OF REGENTS AND THE  
REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207 and 3012-b of the Education Law and Chapter 57 of the  
Laws of 2008.

1. The title of Part 30 is amended, effective July 1, 2008, to read as follows:

Part 30

Tenure [Areas]

2. Each respective section of Part 30 of the Rules of the Board of Regents is  
renumbered to be a respective section of a new Subpart 30-1 of the Rules of the  
Board of Regents, effective July 1, 2008.

3. The title of new Subpart 30-1 is added, effective July 1, 2008, to read as  
follows:

Subpart 30-1

Tenure Areas

4. Subdivision (h) of renumbered section 30-1.1 is amended, effective July 1,  
2008, to read as follows:

(h) Tenure area means the administrative subdivision within the organizational  
structure of a school district in which a professional educator is deemed to serve in  
accordance with the provisions of this [Part] Subpart.

5. Renumbered section 30-1.2 is amended, effective July 1, 2008, to read as  
follows:

30-1.2 Applicability.

(a) The provisions of this [Part] Subpart shall apply to all probationary  
appointments to professional education positions made by a board of education or a

board of cooperative educational services by resolution on or after August 1, 1975 and to appointments on tenure based upon such probationary appointments.

(b) Each board of education or board of cooperative educational services shall on and after the effective date of this [Part] Subpart make probationary appointments and appointments on tenure in accordance with the provisions of this [Part] Subpart.

(c) This [Part] Subpart shall not be applicable to city school districts located within cities having a population in excess of 400,000 inhabitants or to school districts employing fewer than eight teachers.

6. Subdivisions (a), (c) and (d) of renumbered section 30-1.9 are amended, effective July 1, 2008, to read as follows:

(a) A board of education or a board of cooperative educational services shall appoint and assign a professional educator in such a manner that he shall devote a substantial portion of his time throughout the probationary period in at least one designated tenure area except that a professional educator who teaches in an experimental program as defined in subdivision (i) of section [30.1] 30-1.1 of this [Part] Subpart and who does not devote 40 percent or more of his time to service in any one tenure area may be appointed to a tenure area for which he holds the proper certification.

(c) If a professional educator possesses certification appropriate to more than a single tenure area and the board of education or board of cooperative educational services proposes at the time of initial appointment to assign such individual in such a manner that he will devote a substantial portion of his time during each of the school years constituting the probationary period in more than one of the tenure areas established by this [Part] Subpart, the board shall in its resolution of appointment

designate each such tenure area and shall thereafter separately confer or deny tenure to such individual in the manner prescribed by statute in each designated tenure area.

(d) Where a board of education or board of cooperative educational services proposes to assign a professional educator having tenure or in probationary status in a tenure area created by this [Part] Subpart in such a manner that he will devote a substantial portion of his time in a tenure area to which he has not previously been appointed, the board shall prior to such assignment confer a probationary appointment in accordance with section [30.3] 30-1.3 of this [Part] Subpart, designating such additional tenure area. Thereafter, the board shall separately confer or deny tenure to such individual in the designated tenure area in the manner prescribed by statute.

7. Renumbered section 30-1.10 is amended, effective July 1, 2008, to read as follows:

Where a professional educator acquires tenure in a tenure area created by this [Part] Subpart, he shall retain such tenure while he remains continuously employed by the board of education or board of cooperative educational services as a full-time member of the professional staff of the district, notwithstanding subsequent appointments to tenure or to probation in other tenure areas.

8. Renumbered section 30-1.12 is amended, effective July 1, 2008, to read as follows:

Subject to the provisions of sections 2510 and 2585 of the Education Law, where a board of education, on or after the effective date of this [Part] Subpart, modifies the organizational structure of a school in such a manner that instruction in the core academic subjects is departmentalized in a grade or grades previously taught by professional educators deemed to serve in the middle grades tenure area, each tenured professional educator or probationer serving in such grade or grades at the time of such

departmentalization shall retain such status and shall be eligible to teach any core academic subject or special subject for which such professional educator possesses appropriate certification; provided that such tenure shall pertain only to grade levels not higher than those formerly associated with the middle grades tenure area in such school district.

9. Subdivision (c) of renumbered section 30.13 is amended, effective July 1, 2008, to read as follows:

(c) Should the individual so identified have tenure or be in a probationary status in additional tenure areas created by this [Part] Subpart, he shall be transferred to such other tenure area in which he has greatest seniority and shall be retained in such area if there is a professional educator having less seniority than he in such other tenure area.

10. A new Subpart 30-2 is added, effective July 1, 2008, to read as follows:

#### Teacher Tenure Determinations

##### §30-2.1 Definitions.

##### As used in this Subpart:

(a) Teacher means a teacher in the classroom teaching service, as that term is defined in section 80-1.1 of the Regulations of the Commissioner.

##### §30-2.2 Applicability.

(a) This Subpart shall apply only to the extent Education Law section 3012-b remains in effect.

(b) The provisions of this Subpart shall apply to tenure determinations for teachers of all school districts and boards of cooperative educational services whose probationary periods commence on or after July 1, 2008.

(c) Nothing herein shall be construed to make the requirements of this Subpart applicable to teaching assistants, administrative or supervisory staff or pupil personnel service providers.

(d) Each school district and board of cooperative educational services shall in accordance with section 3012-b of the Education Law make tenure determinations for teachers whose probationary periods commence on or after July 1, 2008 in accordance with the provisions of this Subpart.

§30-2.3 Minimum Standards for Tenure Determinations for Teachers.

(a) A superintendent of schools or district superintendent of schools, prior to recommending tenure for a teacher, shall evaluate all relevant factors, including the teacher's effectiveness over the applicable probationary period, or over three years in the case of a regular substitute with a one-year probationary period, in contributing to the successful academic performance of his or her students. When evaluating a teacher for tenure, each school district and board of cooperative educational services shall utilize a process that complies with subdivision (b) of this section.

(b) The process for evaluation of a teacher for tenure shall be consistent with article 14 of the Civil Service Law and shall include a combination of the following minimum standards:

(1) evaluation of the extent to which the teacher successfully utilized analysis of available student performance data (for example: State test results, student work, school-developed assessments, teacher-developed assessments, etc.) and other relevant information (for example: documented health or nutrition concerns, or other student characteristics affecting learning) when providing instruction but the teacher shall not be granted or denied tenure based on student performance data;

(2) peer review by other teachers, as far as practicable; and

(3) an assessment of the teacher's performance by the teacher's building principal or other building administrator in charge of the school or program, which shall consider all the annual professional performance review criteria set forth in section 100.2(o)(2)(iii)(b)(1) of the Regulations of the Commissioner.

(c) Nothing herein shall be construed to impose a mandatory collective bargaining obligation, over any locally developed standards, that is not required by article 14 of the Civil Service Law.

(d) The trustees and board of education of every school district and every board of cooperative educational services, and the chancellor of a city school district of a city with a population of one million or more shall, consistent with existing contractual provisions, make any changes in local rules, regulations and policies that are necessary to ensure that tenure determinations for teachers whose probationary periods commence on or after July 1, 2008 shall be made in compliance with section 3012-b of the Education Law and this section.

11. Item (vi) of subclause (1) of clause (b) of subparagraph (iii) of paragraph (2) of subdivision (o) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective July 1, 2008, as follows:

(vi) student assessment, the teacher shall demonstrate that he or she implements assessment techniques based on appropriate learning standards designed to measure students' progress in learning and that he or she successfully utilizes analysis of available student performance data (for example: State test results, student work, school-developed assessments, teacher-developed assessments, etc.) and other relevant information (for example: documented health or nutrition needs, or other student characteristics affecting learning) when providing instruction;

