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SENATE BILL \_\_\_\_\_

ASSEMBLY BILL 11171

**STATE OF NEW YORK**

11171

**IN ASSEMBLY**

May 21, 2010

Introduced by M. of A. NOLAN -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to the evaluation of teachers and principals; and to amend the education law, in relation to authorizing school districts to contract with educational partnership organizations to turn around certain low-performing schools

*S 7991 Oppenheimer*

DATE RECEIVED BY GOVERNOR:

**MAY 28 2010**

ACTION MUST BE TAKEN BY:

**JUN 09 2010**

DATE GOVERNOR'S ACTION TAKEN:

**MAY 28 2010**

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SENATE VOTE 59 Y 0 N

HOME RULE MESSAGE     Y     N

DATE 5/28/10

ASSEMBLY VOTE 143 Y 0 N

DATE 5/25/10

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STATE OF NEW YORK  
EXECUTIVE CHAMBER  
ALBANY 12224

TO THE SENATE:

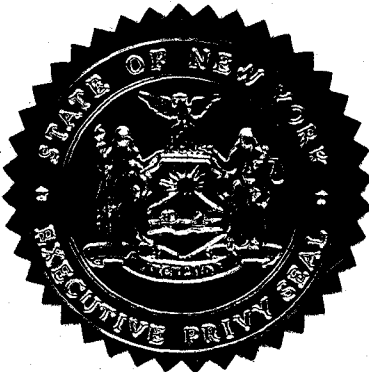
Pursuant to the provisions of Section 14 of Article III of the Constitution and by virtue of the authority conferred upon me, I do hereby certify to the necessity of the immediate vote on Senate Bill Number 7991 entitled:

"AN ACT to amend the education law, in relation to the evaluation of teachers and principals; and to amend the education law, in relation to authorizing school districts to contract with educational partnership organizations to turn around certain low-performing schools"

The facts necessitating an immediate vote on the bill are as follows:

This bill is necessary to make New York more competitive for additional federal funding available through Race to the Top grants by; (1) requiring annual professional performance reviews of classroom teachers and building principals; (2) establishing procedures for such reviews and hearing processes for appeals; and (3) authorizing school districts to contract with educational partnership organizations to turn around certain low-performing schools.

Because the bill has not been on your desks in final form for three calendar legislative days, the Senate has requested this message to permit the immediate consideration of this bill.



G I V E N under my hand and the Privy Seal of the State at the Capitol in the City of Albany this twenty-eighth day of May in the year two thousand ten.

BY THE GOVERNOR

*David A. Paterson*  
*Ernst J. Korman*

Counsel to the Governor

A11171 Nolan Same as S 7991 OPPENHEIMER

<u>05/28/10</u>	A11171	Senate Vote	Aye: 59	Nay: 0
<u>05/25/10</u>	A11171	Assembly Vote	Yes: 143	No : 0

[Go to Top of Page](#)**Floor Votes:**

05/28/10 A11171 Senate Vote Aye: 59 Nay: 0

Aye Adams	Aye Addabbo	Aye Alesi	Aye Aubertine
Aye Bonacic	Aye Breslin	Aye DeFrancisco	Aye Diaz
Aye Dilan	Aye Duane	Aye Espada	Aye Farley
Aye Flanagan	Aye Foley	Aye Fuschillo	Aye Golden
Aye Griffo	Aye Hannon	Aye Hassell-Thompson	Aye Huntley
Aye Johnson C	Aye Johnson O	Aye Klein	Aye Krueger
Aye Kruger	Aye Lanza	Aye Larkin	Aye LaValle
Aye Leibell	Aye Libous	Aye Little	Aye Marcellino
Aye Maziarz	Aye McDonald	Aye Montgomery	Exc Morahan
Aye Nozzolio	Aye Onorato	Aye Oppenheimer	Aye Padavan
Aye Parker	Aye Peralta	Aye Perkins	Aye Ranzenhofer
Aye Robach	Aye Saland	Aye Sampson	Aye Savino
Aye Schneiderman	Aye Serrano	Exc Seward	Aye Skelos
Aye Smith	Aye Squadron	Aye Stachowski	Aye Stavisky
Aye Stewart-Cousins	Aye Thompson	Aye Valesky	Aye Volker
Exc Winner	Aye Young		

[Go to Top of Page](#)**Floor Votes:**

05/25/10 A11171 Assembly Vote Yes: 143 No : 0

Yes Abbate	Yes Alessi	Yes Alfano	Yes Amedore
Yes Arroyo	Yes Aubry	Yes Bacalles	Yes Ball
Yes Barclay	ER Barra	Yes Barron	Yes Benedetto
Yes Benjamin	Yes Bing	Yes Boyland	Yes Boyle
Yes Brennan	ER Brodsky	Yes Brook-Krasny	Yes Burling
Yes Butler	Yes Cahill	Yes Calhoun	Yes Camara
Yes Canestrari	ER Carrozza	Yes Castelli	Yes Castro
Yes Christensen	Yes Clark	Yes Colton	Yes Conte
ER Cook	Yes Corwin	Yes Crespo	Yes Crouch
Yes Cusick	Yes Cymbrowitz	Yes DelMonte	Yes DenDekker
Yes Destito	Yes Dinowitz	Yes Duprey	Yes Englebright
Yes Errigo	Yes Espaillat	Yes Farrell	Yes Fields

Yes Finch	Yes Fitzpatrick	Yes Gabryszak	Yes Galef
Yes Gantt	Yes Gianaris	Yes Gibson	Yes Giglio
Yes Glick	Yes Gordon	Yes Gottfried	Yes Gunther A
Yes Hawley	Yes Hayes	Yes Heastie	Yes Hevesi
Yes Hikind	Yes Hooper	Yes Hoyt	Yes Hyer-Spencer
Yes Jacobs	Yes Jaffee	Yes Jeffries	Yes John
Yes Jordan	Yes Kavanagh	Yes Kellner	Yes Kolb
Yes Koon	Yes Lancman	Yes Latimer	Yes Lavine
Yes Lentol	Yes Lifton	Yes Lopez P	ER Lopez V
Yes Lupardo	Yes Magee	Yes Magnarelli	Yes Maisel
Yes Markey	Yes Mayersohn	Yes McDonough	Yes McEneny
Yes McKevitt	Yes Meng	Yes Miller J	Yes Miller M
Yes Millman	Yes Molinaro	Yes Montesano	Yes Morelle
Yes Murray	Yes Nolan	Yes Oaks	Yes O'Donnell
Yes O'Mara	Yes Ortiz	Yes Parment	Yes Paulin
Yes Peoples-Stokes	Yes Perry	Yes Pheffer	Yes Powell
Yes Pretlow	Yes Quinn	Yes Rabbitt	Yes Raia
Yes Ramos	Yes Reilich	Yes Reilly	Yes Rivera J
Yes Rivera N	Yes Rivera P	Yes Robinson	Yes Rosenthal
Yes Russell	Yes Saladino	Yes Sayward	Yes Scarborough
Yes Schimel	Yes Schimminger	Yes Schroeder	Yes Scozzafava
Yes Skartados	Yes Spano	Yes Stirpe	Yes Sweeney
Yes Tedisco	Yes Thiele	Yes Titone	Yes Titus
Yes Tobacco	Yes Towns	Yes Townsend	Yes Weinstein
ER Weisenberg	Yes Weprin	Yes Wright	Yes Zebrowski K
Yes Mr. Speaker			

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STATE OF NEW YORK  
EXECUTIVE CHAMBER  
ALBANY 12224

TO THE SENATE:

Pursuant to the provisions of Section 14 of Article III of the Constitution and by virtue of the authority conferred upon me, I do hereby certify to the necessity of the immediate vote on Senate Bill Number 7991 entitled:

"AN ACT to amend the education law, in relation to the evaluation of teachers and principals; and to amend the education law, in relation to authorizing school districts to contract with educational partnership organizations to turn around certain low-performing schools"

The facts necessitating an immediate vote on the bill are as follows:

This bill is necessary to make New York more competitive for additional federal funding available through Race to the Top grants by; (1) requiring annual professional performance reviews of classroom teachers and building principals; (2) establishing procedures for such reviews and hearing processes for appeals; and (3) authorizing school districts to contract with educational partnership organizations to turn around certain low-performing schools.

Because the bill has not been on your desks in final form for three calendar legislative days, the Senate has requested this message to permit the immediate consideration of this bill.



G I V E N under my hand and the Privy Seal of the State at the Capitol in the City of Albany this twenty-eighth day of May in the year two thousand ten.

BY THE GOVERNOR

*David A. Paterson*  
*Paul A. Keenan*

Counsel to the Governor

**NEW YORK STATE ASSEMBLY  
MEMORANDUM IN SUPPORT OF LEGISLATION  
submitted in accordance with Assembly Rule III, Sec 1(f)**

**BILL NUMBER:** A11171

**SPONSOR:** Nolan

**TITLE OF BILL:** An act to amend the education law, in relation to the evaluation of teachers and principals; and to amend the education law, in relation to authorizing school districts to contract with educational partnership organizations to turn around certain low-performing schools

**PURPOSE OR GENERAL IDEA OF THE BILL:** The purpose of this bill is to the purpose of this bill is to improve teaching and learning by implementing a statewide comprehensive evaluation system for school districts and BOCES which is designed to measure teacher and principal effectiveness based on performance, including measures of student achievement. In addition, the purpose of this bill is add to the turn around strategies available to school districts to intervene in schools identified as persistently lowest-achieving schools or schools under registration review (SUER), by authorizing contracts with an educational partnership organization to help manage the school.

**SUMMARY OF SPECIFIC PROVISIONS:** Section one of the bill would add a new §3012-c of the Education law, establishing the requirements for new, more rigorous annual professional performance reviews (APPRs) of classroom teachers and building Principals.

The new §3012-c would provide for a phase-in of the new comprehensive evaluation system, beginning for certain teachers and principals in grades 4-8 in the 2011-2012 school year. The evaluations would generate a single composite effectiveness score based on multiple measures of effectiveness and would have to be made a significant factor in employment decisions, including but not limited to, promotion, retention, tenure determination, termination, and supplemental compensation, as well as teacher and principal professional development (including coaching, induction support and differentiated professional development).

The phase-in would provide for an orderly process under which the new evaluation process will first apply to teachers in common branch subjects or English language arts (ELA) or mathematics, for whom the grades 3-8 state assessments are available for use in measuring student growth and their principals, and then be expanded out to all teachers and principals. As the requirements are phased in, evaluations of teachers and principals will be required to base 40a of the composite effectiveness score on student achievement measures. In addition, the percentage of the 401 that must be based on student growth will increase when the state implements a value-added growth model. An advisory committee would be established so that input is received from practitioners in the field as standards are developed for teachers of subjects for which there are no state assessments in multiple years (and their principals). Specifically, the phase-in would be as follows:

\* In 2011-2012, only teachers in grades 4-B common branch subjects and

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ELA and math and the principals of their schools will be subject to the new evaluation standards. These are the grades and subjects in which state assessments have been in place. Forty percent of their evaluation must be based on student achievement measures, including 20% based on student growth on the state assessments or other measures of student growth prescribed by the state, and 20% based on other rigorous and comparable measures of student achievement that are locally established consistent with standards prescribed in commissioner's regulations, with student performance in the 2010-2011 school year used as the baseline. The remaining 60% of the score must be based on other locally selected measures, developed through Collective bargaining, consistent with standards prescribed in commissioner's regulations.

\* In 2012-2013, the new evaluation standards become applicable to all classroom teachers and building principals. If the Regents have not adopted a value-added growth model for the 2012-2013 school year, all teachers become subject to the requirement that applied to common branch and ELA and math teachers in grades 4-8 in 2011-2012: 40% of their evaluation must be based on student achievement measures, including 20% based on student growth on the state assessments or other measures of student growth prescribed by the state, and 20% based on other rigorous and comparable measures of student achievement that are locally established consistent with commissioner's regulations, with student performance in the 2011-2012 school year used as the baseline. The remaining 60% of the score must be based on other locally selected measures, developed through collective bargaining, consistent with the standards prescribed in commissioner's regulations.

\* Commencing in the first school year for which the Regents have adopted a value-added growth model, which can be as early as 2012-2013, the percentage of the evaluation that must be based on state assessment measures of student growth increases from 20% to 25%.

In addition, the new §3012-c would;

\* Require that appropriate training be provided to each individual responsible for conducting an evaluation of a teacher or building principal pursuant to the revised APPR.

\* Establish in statute requirements for teacher or principal improvement plans that must be developed for any teacher or principal who receives a rating of "developing" or "ineffective," including: identification of needed areas of improvement; timeline for achieving improvement; the manner in which improvement will be assessed; and, where appropriate, differentiated activities to support improvement in those areas.

\* Require a locally established appeals procedure in each school district or BOCES under which the employee may only challenge the substance of the APPR, the district's or BOCES' adherence to the standards and methodologies for such reviews, adherence to the Commissioner's regulations and locally negotiated procedures, and the issuance or implementation of a teacher or principal improvement plan.

\* Require the Department to consult with an advisory committee (consisting of representatives of teachers, principals, superintendents, school boards, school district and BOCES officials, and other interested parties):

\* Prior to recommending that the Board of Regents approve use of a value-added growth model in evaluations; and

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\* In developing regulations for the APPR.

\* For purposes of disciplinary proceedings under §3020 and §3020-a, define a "pattern of ineffective teaching or performance" as two consecutive annual ratings of "ineffective."

\* Require that all collective bargaining agreements for teachers and building principals entered into after July 1, 2010, be consistent with these new provisions. Provides that any conflicting provisions of collective bargaining agreements in effect on July 1, 2010, are not abrogated and remain in effect until there is a successor agreement. Preserves the right of local collective bargaining representatives to negotiate evaluation procedures with a school district or BOCES per the Civil Service Law.

Section 2 of the bill would amend Education Law §3020, on contractual alternatives to tenured teacher hearing procedures under §3020-a, to require that collective bargaining agreements with contractual alternatives that become effective after July 1, 2010, provide for an expedited hearing process before a single hearing officer on charges of incompetence based upon a pattern of ineffective teaching and provided that a pattern of ineffective teaching shall constitute very significant evidence of incompetence which may form the basis for just cause removal.

Section 3 of the bill would amend Education Law §3020-a(2)(c) to remove the employee's option for either a three-member panel or a single hearing officer, and require a single hearing officer where the charges of incompetence are based solely upon a pattern of ineffective teaching.

Section 4 of the bill would amend Education Law §3020-a(3)(a) to require the commissioner to notify the employing board and the employee of the hearing officer's record in his or her last five cases commencing and completing hearings in a timely manner.

Section 5 of the bill would add a new subparagraph (1-a) to §3020-a(3)(c) to provide for an expedited hearing under §3020-a where charges of incompetence are brought based upon a pattern of ineffective teaching or performance. As with the contractual alternatives, the bill provides that a pattern of ineffective teaching or performance constitutes very significant evidence of incompetence, which may form the basis for just cause removal of a teacher or building principal. The charges in such an expedited hearing would be required to allege that the employing board developed and implemented a teacher or principal improvement plan for the employee following the first rating of "ineffective" and in the preceding evaluation if the teacher was rated "developing" in that year.

Under the expedited hearing process:

\* The hearing must be completed within 60 days after the pre-hearing conference, with limitations on adjournments. o The hearing would be held before a single hearing officer.

\* The hearing would have to be commenced 7 days after the pre-hearing conference.

\* The hearing officer would be required to establish a schedule for the hearing at the pre-hearing conference to ensure compliance with the

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60-day timeline and to ensure equitable distribution of days between the employing board and the employee.

\* Hearing officers would be authorized to grant an adjournment that would extend the hearing 60 days only if it is limited to circumstances beyond the control of the requesting party and an injustice would result if no adjournment is granted.

\* The commissioner would be authorized to enforce the time limitations for such expedited hearings by removing hearing officers who demonstrate a continued failure to commence and complete expedited hearings in a timely manner from the list of hearing officers available for appointment to serve in such expedited hearings.

Section 6 of this bill would add a new §211-e to the Education Law to authorize the board of education of a school district, or the Chancellor of the New York City School District, to contract with an educational partnership organization, with the approval of the Commissioner, for a term of up to 5 years to manage a school identified as a persistently lowest-achieving school, or a BURR, for the purpose of intervention to turn around such school. An "educational partnership organization" (or "EPO") would be defined to include a board of cooperative educational services, a public or independent higher education institution, a cultural institution, or a private non-profit organization with a proven record of success in intervening in low-performing schools, provided that the term would not include a charter school. The contract would be required to include district expectations and/or benchmarks for school operations and academic outcomes, and provide that failure to meet such expectations or benchmarks may be ground for termination of the contract. The contract would also be required to address the manner in which students will be assigned to the school, the process for employees to transfer to the school, the services the district will provide to the school and the manner in which the school shall apply for and receive allocational and competitive grants.

Under the bill, the EPO would assume the duties of the superintendent of schools with respect to the school, including but not limited to making recommendations to the board of education to implement the educational program, including decisions on budgetary decisions, staffing population decisions, student discipline, decisions on curriculum and determining the daily schedule and the school calendar, consistent with collective bargaining agreements. The board of education would retain ultimate decision-making authority over employment decisions, including hiring, evaluating, termination, granting of tenure, assignment of employees and staff development and over other terms and conditions of employees. However, the EPO would be authorized to exercise all the powers of a superintendent of schools over employment decisions, including but not limited to making recommendations to the board of education on staff assignments, hiring, tenure, evaluation and discipline and termination of employees. The employees assigned to the school would continue to be solely employed by the school district for all purposes, and would retain all their tenure rights and other employment rights conferred by law,

The board of education, and not the EPO, would be the employer for purposes of the Taylor Law (Article 14 of the Civil Service Law). The employees assigned to the school would remain members of the applicable negotiating unit containing like titles or positions for the school district would be covered by the collective bargaining agreement covering that school district's negotiating unit. However, the duly recog-

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nized or certified collective bargaining representative for that negotiating, unit would be authorized to modify or supplement, in writing, the collective bargaining agreement in consultation with the employees of the negotiating unit working in the school. All such modifications of, or supplements to the collective bargaining agreement would be subject to ratification by the employees employed within the school and by the board of education of the school district.

The bill further provides that where the EPO makes a recommendation to the board of education on implementing the educational program or on employment decisions and the recommendation is denied, the board is required to state its reasons for the denial, which shall include an explanation of how the denial will improve student achievement in the school and how such action is consistent with the accountability plans approved by the Commissioner for the school and the district. The board of education would not be prevented, however, from denying a recommendation that is in violation of law or violates a collective bargaining agreement. The bill further provides that if the board of education rejects a recommendation to terminate the probationary appointment of an employee assigned to the school or a recommendation to deny tenure to such an employee, the board of education would be required to transfer the employee to another position in the school district within that employee's tenure area or to create such a position.

The bill also supplies definitions of "board of education," "school district" and "superintendent of schools" for purposes of new §211-e of the Education Law.

**JUSTIFICATION:** This bill would enact a comprehensive statewide system of teacher and principal evaluation that measures teacher and principal effectiveness in a sophisticated way that makes student performance a major factor in the evaluation. The bill would require that the evaluation be based on multiple measures of effectiveness, but that objective data on student growth and other measures of student achievement constitute 40% of the composite effectiveness score of the teacher or principal. The remaining 60% would be locally developed measures that would include classroom observations and other measures of teacher performance. Rather than provide for an automatic rating of ineffectiveness based on student assessment data, this allows for an evaluation that takes into account all factors bearing on teacher or Principal performance.

In addition, this bill would enhance the ability of New York school districts to intervene effectively in persistently lowest achieving schools and Schools Under Registration Review by engaging the services of an educational partnership organization with expertise in turning around low-performing schools to manage the operations of the school, subject to the authority of the board of education. Enactment of the bill would provide an additional tool to New York school districts, consistent with Federal requirements, that they do not have under current law to implement a "restart model." It does so in a way that recognizes the ultimate authority of the board of education in overseeing the school, while preserving the rights of the public employees assigned to the school.

**PRIOR LEGISLATIVE HISTORY:** New legislation.

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**FISCAL IMPLICATIONS:** This bill would make New York more competitive for additional federal funding available in the Race to the Top grant pursuant to the American Recovery and Reinvestment Act of 2009.

**EFFECTIVE DATE:** Immediate, provided that sections 1 through 5 take effect July 1, 2010.

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DIVISION OF THE BUDGET BILL MEMORANDUM

Session Year 2010

SENATE:  
No.

ASSEMBLY:  
No. A.11171

Primary Sponsor: Assemblywoman Nolan

Law: Education

Sections: 3012-c, 3020, 3020-a and 211-e

Division of the Budget recommendation on the above bill

APPROVE:  X  VETO:  \_\_\_  NO OBJECTION:  \_\_\_

1. Subject and Purpose:

This bill would amend the Education Law to implement a statewide comprehensive evaluation system for teachers and principals, would revise the rules governing teacher and principal discipline issues, and would allow for educational partnership organizations to manage persistently lowest-achieving schools.

2. Summary of Provisions:

This bill is effective immediately, with the provisions related to teacher evaluation and discipline taking effect July 1, 2010. Section 1 adds a section 3012-c to the Education Law, which would implement a new statewide teacher evaluation system. Annual performance reviews of teachers and building principals shall differentiate effectiveness into the categories of highly effective, effective, developing, and ineffective. Forty percent of the composite score of effectiveness shall be based on student achievement measures, including both state and local standards. Such reviews shall be a significant factor for employment decisions, including tenure and promotion. Teachers and principals evaluated to be ineffective shall be given an improvement plan and an opportunity to appeal. All local input would be subject to locally negotiated agreements.

Section 2 amends section 3020 of the Education Law to require that new collective bargaining agreements include an expedited hearing process for teacher discipline issues.

Section 3 amends section 3020-a of the Education Law to remove the employee's option for a three-member panel and requires a single hearing officer when the charge of incompetence is based solely on a pattern of ineffective teaching.

Section 4 expands the notice of hearing requirement so that the employing board and the employee would receive each potential hearing officer's record in the last five cases.

Section 5 adds a new subparagraph to section 3020-a of the Education Law to provide for an expedited hearing process where charges of incompetence are brought based upon a pattern

of ineffective teaching or performance. Under this bill, a pattern of ineffective performance may form the basis for just cause removal.

Section 6 adds a new section 211-e to the Education Law to authorize school districts to contract with an educational partnership organization (EPO) to manage a school identified as persistently lowest-achieving. Such an organization could be a board of cooperative education services (BOCES), a higher education or cultural institution, or a nonprofit organization except for charter schools. The EPO would have discretion related to budget, staffing and daily schedules, consistent with collective bargaining agreements. The bill also outlines procedures for modifying collective bargaining agreements.

3. Legislative History:

None.

4. Arguments in Support:

This bill would enhance the system of teacher and principal evaluation statewide and add student performance as an element of evaluation. This would allow for more honest employee evaluations, a greater chance for improving teacher and principal effectiveness and the removal of ineffective employees. The bill would improve and expedite the teacher discipline process. The bill would also support turnaround of lowest-achieving schools by authorizing outside organizations as managers.

5. Arguments in Opposition:

The teachers' union had previously resisted linking student performance with teacher evaluation, although this bill reflects an agreement which the teachers' union was party to.

6. Other State Agencies Interested:

The State Education Department strongly supports this legislation.

7. Other Interested Groups:

This bill is consistent with federal direction from the United States Department of Education to enhance teacher and principal evaluation, and New York's pending Race to the Top application assumes this bill becomes law.

8. Budget Implications:

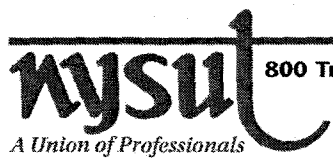
This legislation has no State fiscal implication, although it may help strengthen New York's Race to the Top application, increasing the chance of receiving federal funding.

9. Recommendation:

This bill would enrich teacher and principal evaluations, improve the teacher discipline process and would allow for new expertise in turning around failing schools. The bill has no State fiscal

impact and may help secure federal funding through a competitive grant. Accordingly, the Division of Budget recommends approval.

A11171  
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800 Troy-Schenectady Road, Latham, NY 12110-2455 ■ (518) 213-6000 ■ www.nysut.org

**Richard C. Iannuzzi**, *President*  
**Andrew Pallotta**, *Executive Vice President*  
**Maria Neira**, *Vice President*  
**Kathleen M. Donahue**, *Vice President*  
**Lee Cutler**, *Secretary-Treasurer*

June 2, 2010

Memorandum to the Governor regarding Senate Bill Number 7991 by Senator Oppenheimer and Assembly Bill Number 11171 by Assemblywoman Nolan entitled "AN ACT to amend the education law, in relation to the evaluation of teachers and principals; and to amend the education law, in relation to authorizing school districts to contract with educational partnership organizations to turn around certain low-performing schools"

NYSUT supports this legislation because it lays the groundwork for a meaningful, transparent and more objective process in a teachers and principals evaluation. It is designed to foster professional growth in a way that is fair to teachers and good for the students they serve. This legislation can help advance effective teaching by requiring evaluations to focus on professional growth for all teachers, and require support and professional development for those who need to improve.

NYSUT's position has always been that student's test scores should never be the sole factor in evaluating a teacher's and principal's effectiveness in the classroom. This bill allows for multiple measures by:

Allowing them to receive one of four ratings: highly effective, effective, developing or ineffective;

Student standardized test scores would be limited to twenty percent of the evaluation;

- Other local measures of student growth that are rigorous and comparable across classrooms count for an additional twenty percent of their rating;
- The remaining sixty percent of the evaluation includes other measures to be collectively bargained, such as classroom observations by trained evaluators and the conditions for teaching.
- In subjects where there are no state test given, such as art and music, locally developed assessments of student progress would be used.

Under the proposed system, those rated "developing" or "ineffective" would receive additional support through a customized Teacher Improvement Plan (TIP). Before a teacher could be charged with incompetence, employers would be required to document that they had provided TIP and the necessary supports and professional development.

Teachers and principals who receive two consecutive "ineffective" ratings could be charged with incompetence and considered for termination through an expedited hearing which would have to be completed within sixty days.

This legislation maintains teachers and principal's due process rights while maintaining the essential roles of collective bargaining in shaping their evaluations.

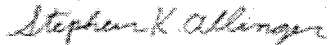
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Additionally, this legislation creates a process for the board of education of a school district, and the chancellor of the city school district of the city of New York, to contract, for a term of up to five years, with a non-profit educational partnership organization to intervene in a school designated by the commissioner as a persistently lowest-achieving school, consistent with federal requirements, or a school under registration review.

While the board of education shall retain the ultimate decision-making authority over the hiring, evaluating, termination, disciplining, granting of tenure, assignment of employees serving in the school as well as with respect to staff development for those employees, these partnerships will allow school districts to enlist the support of organizations dedicated to turning around low performing schools.

**NYSUT URGES ENACTMENT OF THIS IMPORTANT LEGISLATION.**

Sincerely,



Stephen K. Allinger  
Director of Legislation  
31041

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## STATE OF NEW YORK

11171

## IN ASSEMBLY

May 21, 2010

Introduced by M. of A. NOLAN -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to the evaluation of teachers and principals; and to amend the education law, in relation to authorizing school districts to contract with educational partnership organizations to turn around certain low-performing schools

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

1. Section 1. The education law is amended by adding a new section 3012-c to read as follows:
  - 3 § 3012-c. Annual professional performance review of classroom teachers and building principals. 1. Notwithstanding any other provision of law, rule or regulation to the contrary, the annual professional performance reviews of all classroom teachers and building principals employed by school districts or boards of cooperative educational services shall be conducted in accordance with the provisions of this section. Such performance reviews which are conducted on or after July first, two thousand eleven, or on or after the date specified in paragraph c of subdivision two of this section where applicable, shall include measures of student achievement and be conducted in accordance with this section. Such annual professional performance reviews shall be a significant factor for employment decisions including but not limited to, promotion, retention, tenure determination, termination, and supplemental compensation, which decisions are to be made in accordance with locally developed procedures negotiated pursuant to the requirements of article fourteen of the civil service law. Such performance reviews shall also be a significant factor in teacher and principal development, including but not limited to, coaching, induction support and differentiated professional development, which are to be locally established in accordance with procedures negotiated pursuant to the requirements of article fourteen of the civil service law.
  2. a. The annual professional performance reviews conducted pursuant to this section for classroom teachers and building principals shall differentiate teacher and principal effectiveness using the following

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD17483-01-0

A. 11171

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1 quality rating categories: highly effective, effective, developing and  
2 ineffective, with explicit minimum and maximum scoring ranges for each  
3 category, as prescribed in the regulations of the commissioner. Such  
4 annual professional performance reviews shall result in a single compos-  
5 ite teacher or principal effectiveness score, which incorporates multi-  
6 ple measures of effectiveness related to the criteria included in the  
7 regulations of the commissioner. Except for the student growth measures  
8 prescribed in paragraphs e, f and g of this subdivision, the elements  
9 comprising the composite effectiveness score shall be locally developed,  
10 consistent with the standards prescribed in the regulations of the  
11 commissioner, through negotiations conducted, pursuant to the require-  
12 ments of article fourteen of the civil service law.

13 b. Annual professional performance reviews conducted by school  
14 districts on or after July first, two thousand eleven of classroom  
15 teachers of common branch subjects or English language arts or mathemat-  
16 ics in grades four to eight and all building principals of schools in  
17 which such teachers are employed shall be conducted pursuant to this  
18 subdivision and shall use two thousand ten--two thousand eleven school  
19 year student data as the baseline for the initial computation of the  
20 composite teacher or principal effectiveness score for such classroom  
21 teachers and principals.

22 c. Annual professional performance reviews conducted by school  
23 districts or boards of cooperative educational services on or after July  
24 first, two thousand twelve of all classroom teachers and all building  
25 principals shall be conducted pursuant to this subdivision and shall use  
26 two thousand eleven--two thousand twelve school year student data as the  
27 baseline for the initial computation of the composite teacher or princi-  
28 pal effectiveness score for such classroom teachers and principals. For  
29 purposes of this section, an administrator in charge of an instructional  
30 program of a board of cooperative educational services shall be deemed  
31 to be a building principal.

32 d. Prior to any evaluation being conducted in accordance with this  
33 section, each individual who is responsible for conducting an evaluation  
34 of a teacher or building principal shall receive appropriate training in  
35 accordance with the regulations of the commissioner of education.

36 e. For annual professional performance reviews conducted in accordance  
37 with paragraph b of this subdivision in the two thousand eleven--two  
38 thousand twelve school year, forty percent of the composite score of  
39 effectiveness shall be based on student achievement measures as follows:  
40 (i) twenty percent of the evaluation shall be based upon student growth  
41 data on state assessments as prescribed by the commissioner or a compa-  
42 rable measure of student growth if such growth data is not available;  
43 and (ii) twenty percent shall be based on other locally selected meas-  
44 ures of student achievement that are determined to be rigorous and  
45 comparable across classrooms in accordance with the regulations of the  
46 commissioner and as are developed locally in a manner consistent with  
47 procedures negotiated pursuant to the requirements of article fourteen  
48 of the civil service law.

49 f. For annual professional performance reviews conducted in accordance  
50 with paragraph c of this subdivision in any school year prior to the  
51 first school year for which the board of regents has approved use of a  
52 value-added growth model, but not earlier than the two thousand twelve-  
53 -two thousand thirteen school year, forty percent of the composite score  
54 of effectiveness shall be based on student achievement measures as  
55 follows: (i) twenty percent of the evaluation shall be based upon  
56 student growth data on state assessments as prescribed by the commis-

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1 sioner or a comparable measure of student growth if such growth data is  
2 not available; and (ii) twenty percent shall be based on other locally  
3 selected measures of student achievement that are determined to be  
4 rigorous and comparable across classrooms in accordance with the regu-  
5 lations of the commissioner and as are developed locally in a manner  
6 consistent with procedures negotiated pursuant to the requirements of  
7 article fourteen of the civil service law.

8 g. For annual professional performance reviews conducted in accordance  
9 with paragraph c of this subdivision in the first school year for which  
10 the board of regents has approved use of a value-added growth model and  
11 thereafter, forty percent of the composite score of effectiveness shall  
12 be based on student achievement measures as follows: (i) twenty-five  
13 percent of the evaluation shall be based upon student growth data on  
14 state assessments as prescribed by the commissioner or a comparable  
15 measure of student growth if such growth data is not available; and (ii)  
16 fifteen percent shall be based on other locally selected measures of  
17 student achievement that are determined to be rigorous and comparable  
18 across classrooms in accordance with the regulations of the commissioner  
19 and as are locally developed in a manner consistent with procedures  
20 negotiated pursuant to the requirements of article fourteen of the civil  
21 service law. The department shall develop the value-added growth model  
22 and shall consult with the advisory committee established pursuant to  
23 subdivision seven of this section prior to recommending that the board  
24 of regents approve its use in evaluations.

25 h. The remaining percent of the evaluations, ratings and effectiveness  
26 scores shall be locally developed, consistent with the standards  
27 prescribed in the regulations of the commissioner, through negotiations  
28 conducted pursuant to article fourteen of the civil service law.

29 i. For purposes of this section, student growth means the change in  
30 student achievement for an individual student between two or more points  
31 in time.

32 3. Nothing in this section shall be construed to excuse school  
33 districts or boards of cooperative educational services from complying  
34 with the standards set forth in the regulations of the commissioner for  
35 conducting annual professional performance reviews of classroom teachers  
36 or principals, including but not limited to required quality rating  
37 categories, in conducting evaluations prior to July first, two thousand  
38 eleven, or, for classroom teachers or principals subject to paragraph c  
39 of subdivision two of this section, prior to July first, two thousand  
40 twelve.

41 4. Notwithstanding any other law, rule or regulation to the contrary,  
42 upon rating a teacher or a principal as developing or ineffective  
43 through an annual professional performance review conducted pursuant to  
44 subdivision two of this section, the school district or board of cooper-  
45 ative educational services shall formulate and commence implementation  
46 of a teacher or principal improvement plan for such teacher or principal  
47 as soon as practicable but in no case later than ten days after the date  
48 on which teachers are required to report prior to the opening of classes  
49 for the school year. Such improvement plan shall be consistent with the  
50 regulations of the commissioner and developed locally through negoti-  
51 ations conducted pursuant to article fourteen of the civil service law.  
52 Such improvement plan shall include, but need not be limited to, iden-  
53 tification of needed areas of improvement, a timeline for achieving  
54 improvement, the manner in which improvement will be assessed, and,  
55 where appropriate, differentiated activities to support a teacher's or  
56 principal's improvement in those areas.

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

19     6. For purposes of disciplinary proceedings pursuant to sections three  
20 thousand twenty and three thousand twenty-a of this article, a pattern  
21 of ineffective teaching or performance shall be defined to mean two  
22 consecutive annual ineffective ratings received by a classroom teacher  
23 or building principal pursuant to annual professional performance  
24 reviews conducted in accordance with the provisions of this section.

25     7. The regulations adopted pursuant to this section shall be developed  
26 in consultation with an advisory committee consisting of representatives  
27 of teachers, principals, superintendents of schools, school boards,  
28 school district and board of cooperative educational services officials  
29 and other interested parties. The regulations shall also take into  
30 account any (i) professional teaching standards; (ii) standards for  
31 professional contexts; and (iii) standards for a continuum of system  
32 support for teachers and principals developed in consultation with the  
33 advisory committee. Regulations promulgated pursuant to this section  
34 shall be effective no later than July first, two thousand eleven, for  
35 implementation in the two thousand eleven--two thousand twelve school  
36 year.

37     8. Notwithstanding any other provision of law, rule or regulation to  
38 the contrary, all collective bargaining agreements applicable to class-  
39 room teachers or building principals entered into after July first, two  
40 thousand ten shall be consistent with requirements of this section.  
41 Nothing in this section shall be construed to abrogate any conflicting  
42 provisions of any collective bargaining agreement in effect on July  
43 first, two thousand ten during the term of such agreement and until the  
44 entry into a successor collective bargaining agreement, provided that  
45 notwithstanding any other provision of law to the contrary, upon expira-  
46 tion of such term and the entry into a successor collective bargaining  
47 agreement the provisions of this section shall apply. Furthermore, noth-  
48 ing in this section or in any rule or regulation promulgated hereunder  
49 shall in any way, alter, impair or diminish the rights of a local  
50 collective bargaining representative to negotiate evaluation procedures  
51 in accordance with article fourteen of the civil service law with the  
52 school district or board of cooperative educational services.

53     § 2. Subdivisions 1 and 3 and paragraph a of subdivision 4 of section  
54 3020 of the education law, subdivision 1 as added by chapter 691 of the  
55 laws of 1994, subdivision 3 as added by chapter 3 of the laws of 2000

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1 and paragraph a of subdivision 4 as added by section 1 of part J of  
2 chapter 93 of the laws of 2002, are amended to read as follows:

3 1. No person enjoying the benefits of tenure shall be disciplined or  
4 removed during a term of employment except for just cause and in accord-  
5 ance with the procedures specified in section three thousand twenty-a of  
6 this article or in accordance with alternate disciplinary procedures  
7 contained in a collective bargaining agreement covering his or her terms  
8 and conditions of employment that was effective on or before September  
9 first, nineteen hundred ninety-four and has been unaltered by renegoti-  
10 ation, or in accordance with alternative disciplinary procedures  
11 contained in a collective bargaining agreement covering his or her terms  
12 and conditions of employment that becomes effective on or after Septem-  
13 ber first, nineteen hundred ninety-four; provided, however, that any  
14 such alternate disciplinary procedures contained in a collective  
15 bargaining agreement that becomes effective on or after September first,  
16 nineteen hundred ninety-four, must provide for the written election by  
17 the employee of either the procedures specified in such section three  
18 thousand twenty-a or the alternative disciplinary procedures contained  
19 in the collective bargaining agreement and must result in a disposition  
20 of the disciplinary charge within the amount of time allowed therefor  
21 under such section three thousand twenty-a; and provided further that  
22 any alternate disciplinary procedures contained in a collective bargain-  
23 ing agreement that becomes effective on or after July first, two thou-  
24 sand ten shall provide for an expedited hearing process before a single  
25 hearing officer in accordance with subparagraph (i-a) of paragraph c of  
26 subdivision three of section three thousand twenty-a of this article in  
27 cases in which charges of incompetence are brought based solely upon an  
28 allegation of a pattern of ineffective teaching or performance as  
29 defined in section three thousand twelve-c of this article and shall  
30 provide that such a pattern of ineffective teaching or performance shall  
31 constitute very significant evidence of incompetence which may form the  
32 basis for just cause removal.

33 3. Notwithstanding any inconsistent provision of law, the procedures  
34 set forth in section three thousand twenty-a of this article and subdivi-  
35 sion seven of section twenty-five hundred ninety-j of this chapter may  
36 be modified or replaced by agreements negotiated between the city school  
37 district of the city of New York and any employee organization repres-  
38 enting employees or titles that are or were covered by any memorandum of  
39 agreement executed by such city school district and the council of  
40 supervisors and administrators of the city of New York on or after  
41 December first, nineteen hundred ninety-nine. Where such procedures are  
42 so modified or replaced: (i) compliance with such modification or  
43 replacement procedures shall satisfy any provision in this chapter that  
44 requires compliance with section three thousand twenty-a, (ii) any  
45 employee against whom charges have been preferred prior to the effective  
46 date of such modification or replacement shall continue to be subject to  
47 the provisions of such section as in effect on the date such charges  
48 were preferred, (iii) the provisions of subdivisions one and two of this  
49 section shall not apply to agreements negotiated pursuant to this subdivi-  
50 sion, and (iv) in accordance with paragraph (e) of subdivision one of  
51 section two hundred nine-a of the civil service law, such modification  
52 or replacement procedures contained in an agreement negotiated pursuant  
53 to this subdivision shall continue as terms of such agreement after its  
54 expiration until a new agreement is negotiated; provided that any alter-  
55 ate disciplinary procedures contained in a collective bargaining agree-  
56 ment that becomes effective on or after July first, two thousand ten

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1 shall provide for an expedited hearing process before a single hearing  
2 officer in accordance with subparagraph (i-a) of paragraph c of subdivi-  
3 sion three of section three thousand twenty-a of this article in cases  
4 in which charges of incompetence are brought against a building princi-  
5 pal based solely upon an allegation of a pattern of ineffective teaching  
6 or performance as defined in section three thousand twelve-c of this  
7 article and shall provide that such a pattern of ineffective teaching or  
8 performance shall constitute very significant evidence of incompetence  
9 which may form the basis for just cause removal of the building princi-  
10 pal. Notwithstanding any inconsistent provision of law, the commission-  
11 er [of education] shall review any appeals authorized by such modifica-  
12 tion or replacement procedures within fifteen days from receipt by such  
13 commissioner of the record of prior proceedings in the matter subject to  
14 appeal. Such review shall have preference over all other appeals or  
15 proceedings pending before such commissioner.

16 a. Notwithstanding any inconsistent provision of law, the procedures  
17 set forth in section three thousand twenty-a of this article and subdivi-  
18 sion seven of section twenty-five hundred ninety-j of this chapter may  
19 be modified by agreements negotiated between the city school district of  
20 the city of New York and any employee organization representing employ-  
21 ees or titles that are or were covered by any memorandum of agreement  
22 executed by such city school district and the united federation of  
23 teachers on or after June tenth, two thousand two. Where such proced-  
24 ures are so modified: (i) compliance with such modified procedures  
25 shall satisfy any provision of this chapter that requires compliance  
26 with section three thousand twenty-a of this article; (ii) any employee  
27 against whom charges have been preferred prior to the effective date of  
28 such modification shall continue to be subject to the provisions of such  
29 section as in effect on the date such charges were preferred; (iii) the  
30 provisions of subdivisions one and two of this section shall not apply  
31 to agreements negotiated pursuant to this subdivision, except that no  
32 person enjoying the benefits of tenure shall be disciplined or removed  
33 during a term of employment except for just cause; and (iv) in accord-  
34 ance with paragraph (e) of subdivision one of section two hundred nine-a  
35 of the civil service law, such modified procedures contained in an  
36 agreement negotiated pursuant to this subdivision shall continue as  
37 terms of such agreement after its expiration until a new agreement is  
38 negotiated; and provided further that any alternate disciplinary proce-  
39 dures contained in a collective bargaining agreement that becomes effec-  
40 tive on or after July first, two thousand ten shall provide for an expe-  
41 dited hearing process before a single hearing officer in accordance with  
42 subparagraph (i-a) of paragraph c of subdivision three of section three  
43 thousand twenty-a of this article in cases in which charges of incompe-  
44 tence are brought based solely upon an allegation of a pattern of inef-  
45 fective teaching or performance as defined in section three thousand  
46 twelve-c of this article and shall provide that such a pattern of inef-  
47 fective teaching or performance shall constitute very significant  
48 evidence of incompetence which may form the basis for just cause  
49 removal.

50 § 3. Paragraph (c) of subdivision 2 of section 3020-a of the education  
51 law, as amended by chapter 691 of the laws of 1994, is amended to read  
52 as follows:

53 (c) Within ten days of receipt of the statement of charges, the  
54 employee shall notify the clerk or secretary of the employing board in  
55 writing whether he or she desires a hearing on the charges and when the  
56 charges concern pedagogical incompetence or issues involving pedagogical

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1 judgment, his or her choice of either a single hearing officer or a  
2 three member panel, provided that a three member panel shall not be  
3 available where the charges concern pedagogical incompetence based sole-  
4 ly upon a teacher's or principal's pattern of ineffective teaching or  
5 performance as defined in section three thousand twelve-c of this arti-  
6 cle. All other charges shall be heard by a single hearing officer.

7 § 4. Paragraph a of subdivision 3 of section 3020-a of the education  
8 law, as amended by chapter 691 of the laws of 1994, is amended to read  
9 as follows:

10 a. Notice of hearing. Upon receipt of a request for a hearing in  
11 accordance with subdivision two of this section, the commissioner [~~of~~  
12 ~~education~~] shall forthwith notify the American Arbitration Association  
13 (hereinafter "association") of the need for a hearing and shall request  
14 the association to provide to the commissioner forthwith a list of names  
15 of persons chosen by the association from the association's panel of  
16 labor arbitrators to potentially serve as hearing officers together with  
17 relevant biographical information on each arbitrator. Upon receipt of  
18 said list and biographical information, the commissioner [~~of education~~]  
19 shall forthwith send a copy of both simultaneously to the employing  
20 board and the employee. The commissioner shall also simultaneously  
21 notify both the employing board and the employee of each potential hear-  
22 ing officer's record in the last five cases of commencing and completing  
23 hearings within the time periods prescribed in this section.

24 § 5. Paragraph c of subdivision 3 of section 3020-a of the education  
25 law is amended by adding a new subparagraph (i-a) to read as follows:

26 (i-a) (A) Where charges of incompetence are brought based solely upon a  
27 pattern of ineffective teaching or performance of a classroom teacher or  
28 principal, as defined in section three thousand twelve-c of this arti-  
29 cle, the hearing shall be conducted before and by a single hearing offi-  
30 cer in an expedited hearing, which shall commence within seven days  
31 after the pre-hearing conference and shall be completed within sixty  
32 days after the pre-hearing conference. The hearing officer shall estab-  
33 lish a hearing schedule at the pre-hearing conference to ensure that the  
34 expedited hearing is completed within the required timeframes and to  
35 ensure an equitable distribution of days between the employing board and  
36 the charged employee. Notwithstanding any other law, rule or regulation  
37 to the contrary, no adjournments may be granted that would extend the  
38 hearing beyond such sixty days, except as authorized in this subpara-  
39 graph. A hearing officer, upon request, may grant a limited and time  
40 specific adjournment that would extend the hearing beyond such sixty  
41 days if the hearing officer determines that the delay is attributable to  
42 a circumstance or occurrence substantially beyond the control of the  
43 requesting party and an injustice would result if the adjournment were  
44 not granted.

45 (B) Such charges shall allege that the employing board has developed  
46 and substantially implemented a teacher or principal improvement plan in  
47 accordance with subdivision four of section three thousand twelve-c of  
48 this article for the employee following the first evaluation in which  
49 the employee was rated ineffective, and the immediately preceding evalu-  
50 ation if the employee was rated developing. Notwithstanding any other  
51 provision of law to the contrary, a pattern of ineffective teaching or  
52 performance as defined in section three thousand twelve-c of this arti-  
53 cle shall constitute very significant evidence of incompetence for  
54 purposes of this section. Nothing in this subparagraph shall be  
55 construed to limit the defenses which the employee may place before the

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1 hearing officer in challenging the allegation of a pattern of ineffec-  
2 tive teaching or performance.

3 (C) The commissioner shall annually inform all hearing officers who  
4 have heard cases pursuant to this section during the preceding year that  
5 the time periods prescribed in this subparagraph for conducting exped-  
6 ited hearings are to be strictly followed. A record of continued fail-  
7 ure to commence and complete expedited hearings within the time periods  
8 prescribed in this subparagraph shall be considered grounds for the  
9 commissioner to exclude such individual from the list of potential hear-  
10 ing officers sent to the employing board and the employee for such exped-  
11 ited hearings.

12 § 6. The education law is amended by adding a new section 211-e to  
13 read as follows:

14 § 211-e. Educational partnership organizations. 1. The board of educa-  
15 tion of a school district, and the chancellor of the city school  
16 district of the city of New York, subject to the approval of the commis-  
17 sioner, shall be authorized to contract, for a term of up to five years,  
18 with an educational partnership organization pursuant to this section to  
19 intervene in a school designated by the commissioner as a persistently  
20 lowest-achieving school, consistent with federal requirements, or a  
21 school under registration review.

22 2. Notwithstanding any other provision of law, rule or regulation to  
23 the contrary, and except as otherwise provided in this section, such  
24 contract shall contain provisions authorizing the educational partner-  
25 ship organization to assume the powers and duties of the superintendent  
26 of schools for purposes of implementing the educational program of the  
27 school, including but not limited to, making recommendations to the  
28 board of education on budgetary decisions, staffing population deci-  
29 sions, student discipline decisions, decisions on curriculum and deter-  
30 mining the daily schedule and school calendar, all of which recommenda-  
31 tions shall be consistent with applicable collective bargaining  
32 agreements. Such contract shall include district performance expecta-  
33 tions and/or benchmarks for school operations and academic outcomes, and  
34 failure to meet such expectations or benchmarks may be grounds for  
35 termination of the contract prior to the expiration of its term. Such  
36 contract shall also address the manner in which students will be  
37 assigned to the school, the process for employees to transfer into the  
38 school, the services that the district will provide to the school, and  
39 the manner in which the school shall apply for and receive allocational  
40 and competitive grants.

41 3. The board of education shall retain the ultimate decision-making  
42 authority over the hiring, evaluating, termination, disciplining, grant-  
43 ing of tenure, assignment of employees serving in the school as well as  
44 with respect to staff development for those employees, together with  
45 authority concerning all other terms and conditions of employment, all  
46 of which decisions shall be made in a manner consistent with applicable  
47 collective bargaining agreements. However, notwithstanding any law, rule  
48 or regulation to the contrary, upon the effective date of the contract,  
49 the educational partnership organization shall be authorized to exercise  
50 all powers of a superintendent of schools with respect to such employ-  
51 ment decisions, including but not limited to making recommendations, as  
52 applicable, to the board of education in connection with and prior to  
53 the board of education making decisions regarding staff assignments, the  
54 hiring, the granting of tenure, the evaluating, the disciplining and  
55 termination of employees, as well as concerning staff development. The  
56 employees assigned to the school shall solely be in the employ of the

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1 school district and shall retain their tenure rights and all other  
2 employment rights conferred by law, and service in the school shall  
3 constitute service to the school district for all purposes, including  
4 but not limited to, the requirements for criminal history record checks  
5 and participation in public retirement systems. Notwithstanding any  
6 other provision of law to the contrary, for purposes of article fourteen  
7 of the civil service law, employees in the school shall be public  
8 employees of the school district as defined in subdivision seven of  
9 section two hundred one of the civil service law and shall not be deemed  
10 employees of the educational partnership organization by reason of the  
11 powers granted to the educational partnership organization by this  
12 section. All such employees shall be members of the applicable negotiat-  
13 ing unit containing like titles or positions for the public school  
14 district in which such school is located, and shall be covered by the  
15 collective bargaining agreement covering that public school district's  
16 negotiating unit, except that the duly recognized or certified collec-  
17 tive bargaining representative for that negotiating unit may modify or  
18 supplement, in writing, the collective bargaining agreement in consulta-  
19 tion with the employees of the negotiating unit working in the school.  
20 All such modifications of, or supplements to the collective bargaining  
21 agreement are subject to ratification by the employees employed within  
22 the school and by the board of education of the public school district,  
23 consistent with article fourteen of the civil service law. Upon the  
24 effective date of the school district's contract with the educational  
25 partnership organization, the educational partnership organization shall  
26 be empowered to make recommendations to the board of education with  
27 respect to the scope of, and process for making modifications and addi-  
28 tions to the collective bargaining agreement.

29 4. Where a recommendation is made by the educational partnership  
30 organization to the board of education pursuant to subdivision two or  
31 three of this section, and such recommendation is denied, the board of  
32 education shall state its reasons for the denial, which shall include an  
33 explanation of how such denial will promote improvement of student  
34 achievement in the school and how such action is consistent with all  
35 accountability plans approved by the commissioner for the school and the  
36 school district. Nothing in this subdivision shall be construed to  
37 prevent a board of education from denying a recommendation of the educa-  
38 tional partnership organization based upon the board of education's  
39 determination that carrying out such recommendation would result in a  
40 violation of law or violation of the terms of an applicable collective  
41 bargaining agreement. If the board of education rejects a recommendation  
42 of the educational partnership organization to terminate a probationary  
43 employee assigned to the school or to deny tenure to an employee  
44 assigned to the school, it shall be the duty of the board of education  
45 to transfer such employee to another position in the school district  
46 within such employee's tenure area for which the employee is qualified,  
47 or to create such a position.

48 5. For purposes of this section the following terms shall have the  
49 following meanings:

50 (i) "educational partnership organization" means a board of cooper-  
51 ative educational services, a public or independent, non-profit institu-  
52 tion of higher education, a cultural institution, or a private, non-pro-  
53 fit organization with a proven record of success in intervening in  
54 low-performing schools, as determined by the commissioner, provided that  
55 such term shall not include a charter school;

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1     (ii) "board of education" means the trustees or board of education of  
2 a school district, or, in the case of a city school district of a city  
3 having a population of one million or more, the chancellor of such city  
4 district;

5     (iii) "school district" means a common, union free, central, central  
6 high school or city school district, other than a special act school  
7 district as defined in section four thousand one of this chapter.

8     (iv) "superintendent of schools" means the superintendent of schools  
9 of a school district, and, in the case of a city school district of a  
10 city having a population of one million or more, a community superinten-  
11 dent and the chancellor of such city district when acting in the role of  
12 a superintendent of schools.

13     § 7. This act shall take effect immediately; provided however that the  
14 provisions of sections one, two, three, four and five of this act shall  
15 take effect July 1, 2010, provided, further, if this act shall become a  
16 law after such date it shall take effect immediately and shall be deemed  
17 to have been in full force and effect on and after July 1, 2010.

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