

DRAFT LBDC

A BUDGET BILL submitted by the Governor
in accordance with Article VII of the Constitution

AN ACT to amend the education law, in relation to teacher evaluation appeal process in the city of New York

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

1 Section 1. Section 3012-c of the education law is amended by adding a
2 new subdivision 5-a to read as follows:

3 5-a. In the city school district of the city of New York, notwith-
4 standing any provision of law to the contrary, the following shall apply
5 to classroom teachers:

6 a. A teacher who did not receive an ineffective rating in the annual
7 professional performance review for the prior school year is in "year
8 one status".

9 b. A teacher who received an ineffective rating in the previous school
10 year is in "year two status", until and unless that rating is either
11 changed by the principal or reversed on appeal in accordance with the
12 provisions of this subdivision, or until and unless the teacher reverts
13 to year one status in accordance with the provisions of this subdivi-
14 sion.

15 c. A teacher who is rated ineffective for a school year in which the
16 teacher has year one status shall have a right to appeal that rating to
17 the chancellor of the city school district, who shall make a final
18 determination, unless an appeal is initiated to a three-member panel
19 subject to the following requirements. The united federation of teachers
20 (UFT) may appeal to a three-member panel the ineffective ratings of up
21 to thirteen percent of teachers who received such ineffective ratings

1 for a school year. Any such appeal may only be made on the ground that
2 the ineffective rating was given due to harassment or reasons not
3 related to job performance. These appeals shall be known as a "panel
4 appeals". The three-member panel shall consist of a person selected by
5 the UFT, a person selected by the chancellor of the city school district
6 and an independent person, not affiliated with the UFT or the district
7 and selected by the state education department, who shall be the chair
8 of the panel and conduct the appeal hearing. If the panel sustains the
9 appeal, the principal must submit to the panel a different rating, which
10 must be approved by the panel. Any ineffective rating that is appealed
11 to the panel may not be appealed to the chancellor of the city school
12 district.

13 d. The chancellor of the city school district shall notify the UFT of
14 all ineffective ratings. Each school year, if the UFT is notified of an
15 ineffective rating prior to October first, a panel appeal of that rating
16 must be initiated by the UFT by November first, provided that more than
17 thirteen percent of these ratings may be appealed to the panel. The UFT
18 and the board of education shall negotiate, pursuant to article fourteen
19 of the civil service law, a procedure for ensuring that each school
20 year, not more than thirteen percent of the ratings received by the UFT
21 after October first are appealed to the panel. The board of education
22 shall make all reasonable efforts to issue ratings and notify the UFT of
23 ineffective ratings by October first. Any rating not appealed to the
24 panel may be appealed by the individual teacher to the chancellor of the
25 city school district. Appeals made to the chancellor of the city school
26 district must be filed within ten school days after the UFT would other-
27 wise be required to notify the board of education of a panel appeal.

1 e. For all teachers in year two status, unless and until the ineffec-
2 tive rating they received in the prior year is changed by a principal or
3 otherwise changed in accordance with the provisions of this subdivision,
4 an independent validator shall be appointed to evaluate the teacher on
5 each component of the annual professional performance review in which
6 the scoring of the component is at the discretion of the principal.
7 These components shall not necessarily be limited to teacher perform-
8 ance, but shall not include any components in which the scoring of the
9 component is outside the discretion of the principal, even if the prin-
10 cipal has discretion in a related goal-setting process prior to scoring.
11 The independent validator shall perform three observations during the
12 course of the school year. The terms and conditions of the observations
13 shall be negotiated pursuant to the requirements of article fourteen of
14 the civil service law.

15 f. The UFT and the board of education shall jointly select an organ-
16 ization or organizations that employ certified educators, including
17 teachers, to perform the work as independent validators. Independent
18 validators shall not be employed simultaneously by the board of educa-
19 tion or simultaneously have an individual contract with the board of
20 education. Should either the board of education or the UFT notify the
21 department that after a good faith effort the board of education and the
22 UFT are unable to jointly select organizations, the commissioner shall
23 name organizations subject to the following requirements. The board of
24 education shall set forth a required number of validators, and the
25 commissioner shall name organizations that can provide at least this
26 number of validators whom the commissioner deems qualified. The commis-
27 sioner shall name organizations based on the criteria set forth in this
28 subdivision that apply to the mutual selection process for the board of

1 education and the UFT and shall also consider potential conflicts of
2 interest.

3 g. In an instance in which the independent validator does not complete
4 the review process due to circumstances beyond the control of the board
5 of education, the teacher shall remain in year two status the following
6 school year. Should the independent validator not complete the review
7 process for a second consecutive school year and for any reason in the
8 second year for other than a leave of absence or chronic absence on the
9 part of the teacher, the teacher shall return to year one status the
10 following school year.

11 h. An independent validator shall be deemed to have agreed with the
12 principal when an independent validator's scoring, in conjunction with
13 the scoring of components not reviewed by the independent validator in
14 accordance with this subdivision, would result in a rating in the same
15 category on the annual professional performance review than would result
16 from the principal's rating.

17 i. For purposes of this subdivision, an independent validator shall be
18 deemed to have disagreed with the principal when an independent
19 validator's scoring, in conjunction with the scoring of components not
20 reviewed by the independent validator in accordance with this subdivi-
21 sion, would result in a rating in a different category on the annual
22 professional performance review than would result from the principal's
23 rating.

24 j. If a teacher receives an ineffective rating for a school year in
25 which the teacher is in year two status and the independent validator
26 agrees, the district may bring a proceeding pursuant to sections three
27 thousand twenty and three thousand twenty-a of this article based on a
28 pattern of ineffective teaching or performance. In such proceeding, the

1 charges shall allege that the employing board has developed and substan-
2 tially implemented a teacher improvement plan in accordance with subdi-
3 vision four of this section for the employee following the evaluation
4 made for the year in which the employee was in year one status and was
5 rated ineffective. The pattern of ineffective teaching or performance
6 shall give rise to a rebuttable presumption of incompetence and if the
7 presumption is not successfully rebutted, the finding, absent extraor-
8 dinary circumstances, shall be just cause for removal. In these hear-
9 ings, the teacher shall have up to three days to present his or her case
10 for every one day used by the district to present its case. The hearing
11 officer shall render a written decision within ten days of the last day
12 of the hearing.

13 k. If the teacher receives an ineffective rating by the principal in a
14 school year in which they are in year two status and the independent
15 validator disagrees, the ineffective rating remains but the district may
16 not bring proceeding based on a pattern of ineffective teaching or
17 performance, as defined in this section, provided however that nothing
18 in this section shall prevent the board of education from charging a
19 teacher based on incompetence and entering the principal's evaluations
20 into evidence.

21 l. If upon the completion of a hearing pursuant to sections three
22 thousand twenty and three thousand twenty-a of this article, based
23 either on a pattern of ineffective teaching or performance or charges of
24 incompetence in which year one or year two evaluations were entered into
25 evidence, and a hearing officer finds the teacher incompetent, but
26 decides not to terminate, the teacher remains in year two status for the
27 school year in progress or the following school year if the finding is
28 made in between school years. If upon the completion of the hearing, the

1 hearing officer exonerates the teacher of charges of incompetence the
2 teacher shall revert to year one status if in the middle of the school
3 year or at the beginning of the following school year if the finding is
4 made in between school years.

5 m. If the teacher receives an ineffective rating in year two by the
6 principal and the validator agrees, and the district does not bring an
7 expedited proceeding pursuant to sections three thousand twenty and
8 three thousand twenty-a of this article, the teacher may appeal the year
9 two ineffective rating to the chancellor of the city school district,
10 who shall make a final determination. If the rating is upheld, the
11 teacher shall remain in year two status for the subsequent school year,
12 but if following that year the teacher is not charged, the teacher
13 reverts to year one status for the next school year.

14 n. A process shall be established to evaluate the effectiveness of the
15 specific procedures established in this subdivision after two years from
16 the effective date of this subdivision, provided however that a failure
17 or delay in establishing that process shall not invalidate any
18 provisions of this subdivision.

19 o. Notwithstanding any other provision of law to the contrary, the
20 board of education and the UFT may alter any provisions of this subdivi-
21 sion through collective bargaining.

22 § 2. (a) The appeals process will go into effect on January 16, 2013,
23 unless the city school district of the city of New York enters into a
24 collectively bargained teacher evaluation and appeals plan in conformity
25 with section 3012-c of the education law and with the approval of the
26 commissioner of education.

27 (b) The chancellor of the District shall notify the legislative bill
28 drafting commission upon the occurrence of the events provided for in

1 subdivision (a) of this section in order that the commission may main-
2 tain an accurate and timely effective data base of the official text of
3 the laws of the state of New York in furtherance of effectuating the
4 provisions of section 44 of the legislative law and section 70-b of the
5 public officers law.