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:

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

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

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

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

c. A teacher who is rated ineffective for a school year in which the teacher has year one status shall have a right to appeal that rating to the chancellor of the city school district, who shall make a final determination, unless an appeal is initiated to a three-member panel subject to the following requirements. The United Federation of Teachers (UFT) may appeal to a three-member panel the ineffective ratings of up to thirteen percent of teachers who received such ineffective ratings.
for a school year. Any such appeal may only be made on the ground that
the ineffective rating was given due to harassment or reasons not
related to job performance. These appeals shall be known as a "panel
appeals". The three-member panel shall consist of a person selected by
the UFT, a person selected by the chancellor of the city school district
and an independent person, not affiliated with the UFT or the district
and selected by the state education department, who shall be the chair
of the panel and conduct the appeal hearing. If the panel sustains the
appeal, the principal must submit to the panel a different rating, which
must be approved by the panel. Any ineffective rating that is appealed
to the panel may not be appealed to the chancellor of the city school
district.

d. The chancellor of the city school district shall notify the UFT of
all ineffective ratings. Each school year, if the UFT is notified of an
ineffective rating prior to October first, a panel appeal of that rating
must be initiated by the UFT by November first, provided that more than
thirteen percent of these ratings may be appealed to the panel. The UFT
and the board of education shall negotiate, pursuant to article fourteen
of the civil service law, a procedure for ensuring that each school
year, not more than thirteen percent of the ratings received by the UFT
after October first are appealed to the panel. The board of education
shall make all reasonable efforts to issue ratings and notify the UFT of
ineffective ratings by October first. Any rating not appealed to the
panel may be appealed by the individual teacher to the chancellor of the
city school district. Appeals made to the chancellor of the city school
district must be filed within ten school days after the UFT would other-
wise be required to notify the board of education of a panel appeal.
e. For all teachers in year two status, unless and until the ineffective rating they received in the prior year is changed by a principal or otherwise changed in accordance with the provisions of this subdivision, an independent validator shall be appointed to evaluate the teacher on each component of the annual professional performance review in which the scoring of the component is at the discretion of the principal. These components shall not necessarily be limited to teacher performance, but shall not include any components in which the scoring of the component is outside the discretion of the principal, even if the principal has discretion in a related goal-setting process prior to scoring. The independent validator shall perform three observations during the course of the school year. The terms and conditions of the observations shall be negotiated pursuant to the requirements of article fourteen of the civil service law.

f. The UFT and the board of education shall jointly select an organization or organizations that employ certified educators, including teachers, to perform the work as independent validators. Independent validators shall not be employed simultaneously by the board of education or simultaneously have an individual contract with the board of education. Should either the board of education or the UFT notify the department that after a good faith effort the board of education and the UFT are unable to jointly select organizations, the commissioner shall name organizations subject to the following requirements. The board of education shall set forth a required number of validators, and the commissioner shall name organizations that can provide at least this number of validators whom the commissioner deems qualified. The commissioner shall name organizations based on the criteria set forth in this subdivision that apply to the mutual selection process for the board of
education and the UFT and shall also consider potential conflicts of interest.

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

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

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

j. If a teacher receives an ineffective rating for a school year in which the teacher is in year two status and the independent validator agrees, the district may bring a proceeding pursuant to sections three thousand twenty and three thousand twenty-a of this article based on a pattern of ineffective teaching or performance. In such proceeding, the
charges shall allege that the employing board has developed and substan-
tially implemented a teacher improvement plan in accordance with subdi-
vision four of this section for the employee following the evaluation
made for the year in which the employee was in year one status and was
rated ineffective. The pattern of ineffective teaching or performance
shall give rise to a rebuttable presumption of incompetence and if the
presumption is not successfully rebutted, the finding, absent extraor-
dinary circumstances, shall be just cause for removal. In these hear-
ings, the teacher shall have up to three days to present his or her case
for every one day used by the district to present its case. The hearing
officer shall render a written decision within ten days of the last day
of the hearing.

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

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

teacher shall revert to year one status if in the middle of the school
year or at the beginning of the following school year if the finding is
made in between school years.

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

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

o. Notwithstanding any other provision of law to the contrary, the
board of education and the UFT may alter any provisions of this subdi-

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

(b) The chancellor of the District shall notify the legislative bill
drafting commission upon the occurrence of the events provided for in
subdivision (a) of this section in order that the commission may main-
tain an accurate and timely effective data base of the official text of
the laws of the state of New York in furtherance of effectuating the
provisions of section 44 of the legislative law and section 70-b of the
public officers law.