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LEGAL ALERT

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An APPR Update: Next Steps and Recommendations to School Districts

The settlement reached between the New York State United Teachers (NYSUT) and the State Education Department (SED) on February 16, 2012 clarifies some of the unresolved issues regarding the application of the APPR statute (Education Law §3012-c), while leaving various other matters still open and creating additional challenges for school districts, administrators, and school boards.

Pursuant to the settlement, all school districts and BOCES will now be required to adopt an APPR plan and submit it to SED on “a form prescribed by the Commissioner” on or before July 1, 2012. Furthermore, if a plan has not been approved by SED and implemented by January 17, 2013, the district is at risk of losing its increase in school aid for fiscal year 2012-2013. The original 2010 statute, together with the amendments anticipated by the recent settlement, require that almost every part of the APPR plan be negotiated between the district and its respective teacher’s union. The only exception is the first 20 percent or 20 points which is the Growth Measure to be determined by state assessments or other objective comparable measure for non-tested areas.

In an effort to help guide districts as they develop their plans, school districts should be aware of the following six critical elements as part of APPR to be included in the governor’s budget bill numbered and bolded below in this Legal Alert:

- 1. The APPR shall be a significant factor for employment decisions, including but not limited to promotion, retention, tenure determination and supplemental compensation.**
- 2. The rights of a school district to terminate a probationary teacher or principal for statutorily and constitutionally permissible reasons shall not be affected by APPR, unless the basis for termination is for performance.**

Given that APPR will be a “significant factor” in the above determinations, including termination of probationary teachers and principals on the basis of performance, districts will need to ensure that time lines for such decisions are properly aligned with the overall APPR and appeals process.

- 3. The selection of the local measure(s) of student achievement and the process by which points are assigned to this subcomponent are to be determined through negotiations.**

The foregoing is significantly impacted by the amendment proposed in the February 16, 2012 settlement. The amendment offers several options for the locally selected measure of student achievement which constitutes 20 percent of the composite effectiveness score (15 percent once the state has adopted value added growth

model assessments). For teachers, these options, one or more of which is to be selected through collective bargaining, include both those which utilize a state assessment, and those which do not.

Those options which utilize a state assessment are as follows:

- The change in percentage of a teacher's students who achieve a specific level of performance as determined locally, compared to those students' level of performance in the previous school year.
- A teacher-specific growth score computed by the SED based on the percent of the teacher's students earning a SED determined level of growth. The methodology to translate such growth into the state-established subcomponent scoring ranges shall be determined locally.
- A teacher-specific achievement or growth score computed in a manner determined locally based on a measure of student performance on the state assessments, Regents examinations, and/or departmental approved alternative examinations.

Additional options which do not utilize a state assessment for this measure include:

- A state-approved list of third-party assessments.
- District, regional or BOCES-developed assessments, provided that the district or BOCES verifies comparability and rigor.
- School-wide growth or achievement results based on:
 - State-provided school-wide growth scores for all students in a school taking the state ELA or math assessments in grades 4-8.
 - Locally-computed measure based on state assessment or a district regional or BOCES-developed assessment for which the district or BOCES verifies comparability and rigor.
- Student Learning Objectives (SLOs) can also be used as an option for this measure if teachers do not have state-provided growth or value added measures for their growth subcomponent in certain situations as indicated below:
 - Used with any state-approved, or district, regional, or BOCES-developed assessment provided that the district or BOCES verifies comparability and rigor.
 - These measures must be different than the measures used with SLOs as a Comparable Growth measure in the Growth Subcomponent.

4. The 60 percent or 60 points for the Other Measures of teacher effectiveness have also been adjusted to provide specific options which must be agreed upon by negotiations.

As in the 2010 statute, the proposed amendment requires negotiation of the 60 percent Other Measures of teacher and principal effectiveness. However, the proposed amendment clarifies that the elements, as well as

the process, for this subcomponent must be negotiated. For teachers, a majority (at least 31 points) of the 60 points must be based on multiple classroom observations by a principal or other trained administrator at least one of which shall be unannounced. Observations may be conducted in-person or using video. For evaluations in 2012-2013 and thereafter, the remaining portion of the sixty points shall be based on one or more of the following:

- One or more classroom observations by an independent trained evaluator;
- Class observations by trained in-school peer teachers;
- Use of a state-approved survey tool or instrument for feedback from students and/or parents; and/or
- Evidence of student development and performance through lesson plans, student portfolios and/or other artifacts of teacher practice.

5. Teacher Improvement Plans.

The bill requires that the elements of Teacher Improvement Plans (TIPs) include (1) identification of the needed areas of improvement; (2) a timeline for achieving improvement; (3) the manner in which improvement will be assessed; and (4) where appropriate, differentiated activities to support a teacher's improvement in those areas. Additional areas that may be included are subject to mandatory negotiations. The statute should not be read as requiring negotiation of each individual TIP, but rather the framework and elements of the TIP. The TIP must be provided to teachers who score a Developing or Ineffective rating and must be provided to them within 10 days from the opening of classes in the school year following the performance year.

6. The Appeal Procedure.

Under the February 16 settlement, proposed amendments to the appeal procedure must still be negotiated. Notwithstanding new language which provides for a "timely and expeditious resolution," this remains what is perhaps the most problematic aspect of those provisions of the APPR statute which must be negotiated. Resolution of an APPR appeal by a third party, as has been advocated by NYSUT, will result in a serious erosion of a school district's ability to evaluate and supervise staff.

What School Districts Should Be Doing Right Now

- Evaluate what you have achieved so far under the existing APPR statute and regulations. Understand the changes in the new law and become familiar with the impact of these adjustments on your district.
- Compare and list what needs to be adjusted given the new bill which must still be approved by the legislature before becoming law.
- Check for additional Harris Beach Legal Alerts as new regulations and guidelines are issued by SED.

- Continue to negotiate with your teacher's union on those areas subject to negotiation for a completed APPR process. Keep a record of your meetings and the progress achieved at these sessions.
- Keep negotiations on the APPR process separate from CBA negotiations. This is permissible and language can be added to the CBA indicating that a completed APPR will be developed. Check with your Harris Beach school attorney for further guidance on this point.
- Keep in mind your APPR plan must be adopted by the Board of Education and submitted to the Commissioner for approval on or before July 1, 2012.
- Continue discussing and engaging the public at board meetings and other forums to gain public understanding and board input.
- Work with your BOCES and IT representatives to ensure the district has created the necessary "data link" with SED for the needed transfer of teacher-student data.
- Maintain a "to do" list with tight time lines to make sure that your district is prepared to meet the July 1, 2012 and January 17, 2013 mandated deadlines.

For more information, please contact Laura M. Purcell at (585) 419-8730 / lpurcell@harrisbeach.com, or the Harris Beach attorney with whom you usually consult.

This legal alert does not purport to be a substitute for advice of counsel on specific matters.

Harris Beach has offices throughout New York state, including Albany, Buffalo, Ithaca, New York City, Niagara Falls, Rochester, Saratoga Springs, Syracuse, Uniondale, Yonkers, and White Plains, as well as Newark, New Jersey, and New Haven, Connecticut.