

John C. White, Deputy Chancellor

MEMORANDUM

FROM: John White, Deputy Chancellor, New York City Department of Education

DATE: March 2, 2011

SUBJECT: Governor's proposed amendment to section 3012-c of New York State law

New York State education law 3012-c establishes a framework for local school districts and teachers unions to negotiate local systems of teacher evaluation, on a district-by-district basis, and in accordance with guidelines promulgated by the Regents. The law mandates that such collective bargaining agreements use the results of such evaluations as factors in decisions regarding compensation, retention, and the individual dismissal of principals and teachers. This is separate and apart from section 2588 of New York State education law, which mandates that layoffs—as distinct from individual terminations—be made based on reverse seniority, without regard to teacher effectiveness.

There is no connection in the law between section 3012 and section 2588. Senator Flanagan's legislation, S.3501B, would create one. Governor Cuomo's program bill would not, and instead, leaves section 2588 untouched and "last in, first out" (LIFO) as New York State's law governing layoffs. This means that even a district that fully implements a new teacher evaluation system in accordance with 3012-c, when faced with a budget-driven headcount reduction, must make any such reduction based solely on reverse seniority. Governor Cuomo's bill would do the following:

1. Acceleration of the timeline by which school districts are supposed to implement an evaluation system for all teachers. Previously, districts were supposed to implement a new evaluation process no later than July 1, 2012. That date is moved up to July 1, 2011, and the bill now expands the new evaluation processes to cover teachers in all grades, instead of just grades 4-8. That having been said, there is nothing in the bill to force districts and unions to reach agreements by the new dates set forth in the bill; In New York City, it is likely that the teacher evaluation system will not be updated until a new contract is reached. Again, even then, LIFO would govern layoffs. (It is also worth noting that the prescribed evaluation process, once implemented, would require two years of process to exit employees from the system.)
2. Adds statutory language describing that regulations that the Regents must promulgate regarding teacher and principal evaluation and development.

Statements issued by the Governor's office by way of press release yesterday would indicate that these changes would have an impact on the teacher layoff process: "It is time to move beyond the so-called 'last in, first out' system of relying exclusively on seniority,' Governor Cuomo said. 'However, we need a legitimate evaluation system to rely upon. This will help make a statewide evaluation system ready and allow us to replace 'last in, first out.'"

The press release, however, seems to be out of synch with the Governor's bill itself:

1. The bill does not modify the layoff statute in any way and thus does nothing to end "last in, first out." There is no legal connection between teacher evaluation and teacher layoffs. Any change in how layoffs are effectuated in NY State requires an amendment to Education Law 2588.
2. The bill does nothing to force districts and unions to agree to a new teacher evaluation process prior to the new timelines. Specifically, districts that have not successfully negotiated a new evaluation process are authorized to use their existing evaluation process pending the negotiation of a successor agreement that contains a new evaluation process in accordance with 3012-c. The acceleration of the timelines in the bill is artificial, as districts and unions are not compelled to change their current evaluation process until they've successfully negotiated new collective bargaining agreements.

In short, the Governor's proposal does not end LIFO, and consequently will not allow New York City to make merit based layoffs.