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# APPR Teacher Appeals Process Report

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# APPR Teacher Appeals Process Report

## **Abstract**

[Excerpt] The Annual Professional Performance Review (APPR) is the new teacher evaluation system adopted by New York State in 2012. Through APPR, each New York State teacher's performance is evaluated annually. If a teacher is rated Ineffective, he or she must take part in a Teacher Improvement Plan (TIP). If a teacher is rated Ineffective for two consecutive years, the teacher may be dismissed even if that teacher has tenure. Given these potential consequences, the ability to appeal APPR ratings and how those ratings are conducted has been a major issue for teachers and their unions. Under New York Education Law 3012-c, which establishes APPR, each school district negotiates its own APPR procedure with its local teachers union, including any procedures for appealing the performance review. This report examines the APPR appeals procedures established by school districts in order to investigate the following: Which aspects of the APPR process can teachers appeal? Who has the final say in that appeals process? How much time do appeals processes take? Can teachers appeal APPR issues through the regular contractual grievance-arbitration procedure? This report addresses these questions by analyzing APPR appeal procedures for all New York State school districts. The data analyzed was gathered by coding the provisions of the APPR appeal procedures, which are publicly available on the New York State Department of Education website (1).

## **Keywords**

Annual Professional Performance Review, APPR, teacher evaluation, New York State

## **Disciplines**

Educational Assessment, Evaluation, and Research

## **Comments**

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# APPR Teacher Appeals Process Report

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The Annual Professional Performance Review (APPR) is the new teacher evaluation system adopted by New York State in 2012. Through APPR, each New York State teacher's performance is evaluated annually. If a teacher is rated Ineffective, he or she must take part in a Teacher Improvement Plan (TIP). If a teacher is rated Ineffective for two consecutive years, the teacher may be dismissed even if that teacher has tenure. Given these potential consequences, the ability to appeal APPR ratings and how those ratings are conducted has been a major issue for teachers and their unions. Under New York Education Law 3012-c, which establishes APPR, each school district negotiates its own APPR procedure with its local teachers union, including any procedures for appealing the performance review. This report examines the APPR appeals procedures established by school districts in order to investigate the following: Which aspects of the APPR process can teachers appeal? Who has the final say in that appeals process? How much time do appeals processes take? Can teachers appeal APPR issues through the regular contractual grievance-arbitration procedure? This report addresses these questions by analyzing APPR appeal procedures for all New York State school districts. The data analyzed was gathered by coding the provisions of the APPR appeal procedures, which are publicly available on the New York State Department of Education website (1).

Under APPR, there are four possible ratings: Highly Effective, Effective, Developing, and Ineffective. Each rating system is based out of 100 points, 40 of which must be based on measures of

student achievement. The remaining 60 points may come from classroom observations or other locally determined evaluation methods. In the student achievement section, 20 points must be composed of state-developed measures of student growth and the other 20 points are based on locally selected measures of student achievement. Based on the accumulated points, each teacher will receive his or her rating of Highly Effective, Effective, Developing, or Ineffective.

The APPR procedure plays an important role in employment decisions, particularly because two consecutive Ineffective ratings immediately subject New York State teachers to an expedited 3020-a hearing for potential dismissal. The 3020-a process provides for an expedited hearing before a mutually-selected hearing officer. Within 60 days of the initial meeting, the hearing officer must provide a final decision to the commissioner, the employee, and the employing board who then implements the decision. In New York City however, teachers with two consecutive Ineffective ratings are first assigned an independent observer to assess the teacher in the classroom before the teacher is subject to the 3020-a process.

## What are teachers not able to appeal

Under the new APPR system, each New York State school district locally negotiated its own APPR agreement, establishing the review process and providing for an appeals procedure.

**Table 1: What Are Teachers Not Able to Appeal?**

|                                    | Tenured Teachers | Non-tenured Teachers |
|------------------------------------|------------------|----------------------|
| Improvement Plan                   | 1.3%             | 29.8%                |
| Implementation of Improvement Plan | 1.1%             | 35%                  |
| Appeal depending on rating:        |                  |                      |
| Ineffective Rating                 | 0%               | 26.5%                |
| Developing Rating                  | 14.3%            | 46.7%                |
| Effective Rating                   | 96.4%            | 96.6%                |

N=688

From district to district, there are differences in what tenured and non-tenured teachers are able to appeal and what they are explicitly prohibited from appealing as described in Table 1. Although many contracts set out these rights explicitly, others do not explicitly state what aspects of the APPR may be appealed. In general, contracts are more likely to limit the types of appeals that non-tenured teachers may make, whereas tenured teachers can more often appeal all aspects of the APPR process. Few procedures restrict tenured or non-tenured teachers from appealing the substantive or the procedural aspects of the review itself. The majority of procedures also allow tenured and non-tenured teachers to appeal the provisions of an improvement plan. Appeals concerning the implementation of improvement plans are also allowed for the majority of tenured teachers. However, just less than half of procedures allow appeals concerning the implementation of an improvement plan by non-tenured teachers.

Some APPR procedures limit the teacher’s ability to appeal a rating depending on the level of rating being challenged. In addition to always allowing ratings of Ineffective to be appealed, most procedures for tenured teachers also allow a rating of Developing to be appealed. However, 46.7% of agreements bar non-tenured teachers from appealing a Developing rating. Most procedures prohibit a rating of Effective to be appealed by either tenured or non-tenured teachers.

**APPR appeal determination**

Appeals procedures vary in complexity, including between one and five steps. Although each step involves a different decision maker, the decision maker in the final step is particularly important in ultimately deciding the outcome of the appeal. Table 2, displays the range of final decision makers. Superintendents are the most common final decision maker, serving this role in 77% of the APPR agreements. The next most common type of final decision maker is a panel, jointly appointed by the district administration and the teacher or union. Overall, 15% of procedures feature this type of panel as the final decision maker for APPR appeals. Only 2% of procedures have an arbitrator who makes the final decision. In terms of who serves as the final decision

**Table 2: Final Decision Maker for APPR Appeals Process**

|                     | Tenured Teachers | Non-tenured Teachers |
|---------------------|------------------|----------------------|
| Superintendent      | 77%              | 76%                  |
| Panel               | 15%              | 14%                  |
| Arbitrator          | 2%               | 2%                   |
| School Board        | 1%               | 1%                   |
| External Evaluator  | 1%               | 1%                   |
| Original APPR Rater | <1%              | 2%                   |
|                     | N=688            | N=445                |

maker in the appeals process, there is little difference in procedures for tenured and non-tenured teachers.

APPR agreements set time limits for the various steps in the appeals process. Because each step is typically assigned a specific time limit, combining the limit for each step in the procedure gives an overall length of time to complete the full appeals process. Although the overall time limit for completing all steps of the appeals process is an average of 64 days for tenured teachers and an average for 63 days for non-tenured teachers, there is a wide range across districts for these maximum time limits, as shown in Table 3 Half of the procedures for tenured teachers have overall time limits between 44 and 80 days, and 80% of all procedures have overall time limits between 29 and 98 days.

**Table 3: Maximum Time Limits for APPR Appeals Process (in days)**

|             | Mean | Range (10th to 90th percentile) |
|-------------|------|---------------------------------|
| Tenured     | 64   | 29-98                           |
| Non-tenured | 63   | 30-101                          |

**Exclusivity clause**

How do the APPR appeals processes interact with the grievance-arbitration procedures established in collective bargaining agreements? For violations of the collective bargaining agreement, all New York State teacher contracts have a grievance procedure. Most districts chose to create an APPR appeals process that does not allow the use of the collective bargaining agreement grievance procedure. As shown in Table 4, 66% of APPR procedures include a type of exclusivity clause that prevents teachers from using the collective bargaining agreement grievance procedure to appeal APPR ratings.

By contrast, 14% of APPR appeals procedures explicitly include language that allows teachers to appeal their rating through the grievance procedure after exhausting the APPR appeals procedure. Another 5% of APPR appeals procedures allow procedural, but not substantive, issues from the APPR to be appealed through the collective bargaining agreement grievance procedure after the APPR appeals procedure is completed. In only one district, Auburn City School District, was the collective bargaining agreement grievance procedure itself used as the appeals process to resolve APPR appeals. The remaining 15% of procedures fail to explicitly state whether or not a teacher may appeal APPR issues through the collective bargaining agreement grievance procedure.

**Table 4: Relationship of APPR to Collective Bargaining Agreement (CBA) Grievance Procedure**

|  |     |
|--|-----|
| Procedural or Substantive APPR Appeals<br>Cannot Use CBA Grievance<br>Procedure (Exclusivity Clause) | 66% |
| Procedural or Substantive APPR Appeals<br>Can Use CBA Grievance<br>Procedure (Exclusivity Clause)    | 14% |
| Only Procedural APPR Appeals Can Use<br>CBA Grievance Procedure                                      | 5%  |
| No Statement Whether APPR Can Use<br>CBA Grievance Procedure   | 15% |

N=688

## Second consecutive ineffective rating

Following a second consecutive Ineffective rating, a tenured teacher may be fired after a 3020-a hearing. Meanwhile, non-tenured teachers can be fired after the second Ineffective rating without going through a 3020-a hearing. Given these potential consequences, some districts have established additional appeals procedures for a second consecutive Ineffective rating. Our research finds that nearly 10% of contracts have this type of special appeals process if the teacher has received a second rating of Ineffective. Most of these special appeals processes are specifically for tenured teachers (6.8% of all contracts), but some of these processes are open to non-tenured teachers (2.6% of all contracts). These special appeals processes occur before and are separate from the 3020-a hearing.

**Table 5: Final Decision Maker in Second Consecutive APPR Appeals Process**

|                |     |
|----------------|-----|
| Arbitrator     | 64% |
| Superintendent | 21% |
| Panel          | 9%  |
| School Board   | 3%  |

N=67

As shown in Table 5, a majority of these special appeals processes use arbitration as the final step in decision making. The second most common type of final decision maker is the superintendent, followed by a joint panel. The average maximum time limit for these special appeals processes is 55 days.

## Conclusion

The APPR evaluation system has major implications for school districts and teachers. The possibility of being terminated following a second consecutive Ineffective rating, even if tenured, makes evaluations more important to teachers. As a result, procedures for appealing APPR ratings are vital in providing due process. This report provides an overview of the major characteristics of APPR appeals procedures that school districts have established. In most school districts, teachers are able to appeal the process and substance of APPR ratings, the contents of an improvement plan, and to challenge both Ineffective and Developing ratings. Generally, tenured teachers have broader rights to appeal their APPR evaluation than non-tenured teachers. However, it should be noted that prior to the APPR procedure, non-tenured teachers generally could not appeal school administration evaluations of their performance. So, the APPR appeals procedures are often an upgrade of due process protections for non-tenured teachers.

When an APPR appeals procedure is established, the final decision maker is most often the superintendent, unlike in collective bargaining grievance procedures where the final decision maker is almost always an arbitrator. Some APPR appeals procedures use alternative final decision makers, particularly panels mutually agreed upon by the school district administration and the teacher or union. These panels may be related to existing teacher peer appraisal and development process and will be studied further in future reports.



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Note: "N" stands for the number of contracts

(1) School district APPR appeals procedures can be found at: <http://usny.nysed.gov/rtrt/teachers-leaders/plans/>.

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