

Spring 6-30-2016

Making the Grade: A ground-level analysis of New York State's teacher performance review under the APPR

Sabrina R. Moldt

Follow this and additional works at: <https://digitalcommons.law.byu.edu/elj>

 Part of the [Educational Assessment, Evaluation, and Research Commons](#), and the [Education Law Commons](#)

Recommended Citation

Sabrina R. Moldt, *Making the Grade: A ground-level analysis of New York State's teacher performance review under the APPR*, 2016 BYU Educ. & L.J. 217 (2016).

Available at: <https://digitalcommons.law.byu.edu/elj/vol2016/iss2/2>

.

This Article is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Brigham Young University Education and Law Journal by an authorized editor of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

MAKING THE GRADE: A GROUND-LEVEL ANALYSIS OF NEW YORK STATE'S TEACHER PERFORMANCE REVIEW UNDER THE APPR

*Sabrina R. Moldt**

I. INTRODUCTION

My purpose is to build self-esteem. My mission is to inspire and develop curiosity and creativity. My tools are paint, clay, and construction paper. Every time a student picks up a paintbrush in my classroom, I see their imagination awakened and their creativity stirred. Some achievements you just can't demonstrate through an assessment or test. Sometimes, it's best to just let the student paint.¹

It is difficult to open a newspaper or turn on the television without reading a headline or hearing a segment on "America's Failing Schools!" "Unfit Teachers in our Public Schools!" or "Students Graduate Unprepared for College!" Even commercial advertisements are capitalizing on the growing concern over the direction of our education system. Since ExxonMobil began airing its commercial "Let's Solve This" in 2012, nearly every American has heard that our students ranked seventeenth on a science test administered to thirty-one countries around the world. Whatever the medium, the narrative is clear: American students are falling behind because their schools are failing them.

Public dismay over disappointing test scores has proliferated widespread demand for change to the public education system. Most recently, the discourse on public education reform in the United States has turned to focus on accountability. As a result, state policymakers have shifted their attention to address the issue of accountability within

* Sabrina R. Moldt is a graduate of Binghamton University and SUNY Buffalo Law School. She currently practices law in New York State.

¹ E-mail Questionnaire Response from Anonymous Upstate New York teacher to author (Mar. 2013) (on file with author).

public schools. New York State grabbed national attention when it passed a controversial new law implementing an unprecedented accountability system to evaluate the “success” and “effectiveness” of public school teachers and principals.

In an effort to secure federal Race to the Top funds, New York State established the Annual Professional Performance Review (APPR). The APPR provides a new statewide comprehensive teacher and principal evaluation system based on multiple measures of effectiveness.² The APPR requires each teacher and principal to receive an annual professional performance review that results in a composite effectiveness score and a rating of “highly effective,” “effective,” “developing,” or “ineffective.”³ Controversially, forty percent of the composite effectiveness score strictly hinges upon student performance on state assessments or other standardized measurements of student achievement growth.⁴

While the new evaluation process under the APPR has unquestionably admirable goals to ensure that each classroom has an effective teacher and each school has an effective leader,⁵ many educators feel that the law actually does little to improve accountability or instructional practices. Because the APPR plays a significant factor in employment decisions and professional development,⁶ and guides the education of our youth, it is imperative that the actual effect of the APPR is analyzed to determine whether it is meeting its intended goals.

This article does just that. In doing so, it exposes oversights of the APPR’s development and implementation and offers insight into the ground level effect of the law. Most importantly, this article provides a forum for the educators that are experiencing the law’s effect within their schools and

² The APPR was passed in 2010 as Education Law § 3012-c; see *Great Teachers and Leaders – RTTT Assurance Area D*, NYSED.GOV, <http://usny.nysed.gov/rttt/teachers-leaders> (last visited February 24, 2016); see also *Regents Adopt Rules for Evaluating Teacher and Principal Effectiveness*, NYSED.GOV, (May 23, 2011), www.p12.nysed.gov/newsnotes/archive/201105.html [hereinafter *Regents Adopt Rules*].

³ N.Y. EDUC. LAW § 3012-c(2)(a)(1) (McKinney).

⁴ *Id.*

⁵ See *533 District Evaluation Plans Approved to Date Only Nine Districts Have Not Submitted Plans*, NYSED.GOV, <http://www.nysed.gov/news/2015/533-district-evaluation-plans-approved-date-only-nine-districts-have-not-submitted-plans> (last visited February 29, 2016) [hereinafter *533 District Evaluation Plans*].

⁶ N.Y. EDUC. LAW § 3012-c(1) (McKinney).

classrooms to voice how the law is changing education and causing new challenges.

Part II of this paper provides an evolutionary look into teacher and principal accountability in federal legislation. Specifically, it provides an overview of the No Child Left Behind Act and the Race to the Top program, which ultimately encouraged New York State to pass the APPR. Part III details the APPR's background, provisions, and setbacks. It addresses the evaluation methods used by the APPR, as well as how those evaluations are scored and rated to determine teacher and principal effectiveness. Part IV uses results from an original and ground-breaking qualitative research study to analyze how the APPR is working on the ground-level. It then analyzes the ground level effect of the controversial law, offering a thorough and unprecedented discussion regarding the APPR's challenges, oversights, and potential for sustainability based on insights and experiences from teachers, principals, and superintendents tasked with its implementation. Finally, Part V offers a summation of my research conclusions.

Notably, the 2012-2013 school year marked the first year that this law applied to all classroom teachers and principals,⁷ and results of the APPR are now under national scrutiny. Educators are overwhelmingly concerned that the legal changes will neither improve the quality of schools nor the level of student learning. To the contrary, many educators actually believe that the changes under the APPR could tangibly harm students, teachers, and school districts.

One Upstate New York art teacher explained how the APPR may have negative consequences on learning.⁸ Her fear is that the focus on student testing as a measure of teacher effectiveness will ultimately change the character and dynamic of classroom learning.⁹ Many New York educators share her concerns.

With the nation eagerly awaiting the verdict on New York's controversial education reform, it is imperative that the APPR is properly interpreted and its actual effectiveness analyzed.

⁷ See 533 *District Evaluation Plans*, *supra* note 5.

⁸ E-mail Questionnaire Response from Anonymous Upstate New York teacher to author (Mar. 2013) (on file with author).

⁹ *Id.*

Policy-makers ought to work with teachers, principals, and superintendents, seeking their input and using their insight and experiences to determine the next steps toward more effective education reform.

II. EVOLUTION OF MODERN EDUCATION REFORM

A. *No Child Left Behind Act*

Just three days after taking office in 2001, President George W. Bush announced his plan for bipartisan education reform under the No Child Left Behind Act (NCLB).¹⁰ Seeking to improve the performance of America's elementary and secondary schools while ensuring that every child receives a quality education, the NCLB Act passed with wide bipartisan support.¹¹ NCLB reauthorized the Elementary and Secondary Education Act of 1965 (ESEA), incorporating new principles and reform strategies aimed to provide solutions based on increased accountability, school choice for parents and students, and flexibility in Federal education programs.¹² States that chose not to implement the new law's requirements would not receive the federal funding.¹³ Such requirements included mandated testing and improvement standards.¹⁴

1. *Key NCLB provisions*

To increase accountability, the NCLB Act required participating states to implement statewide accountability systems.¹⁵ States may develop their own tests and set their own improvement standards. However, they must ensure that the methods challenge state standards in reading and mathematics, provide annual testing for all students in grades three through eight, and provide annual statewide progress objectives to ensure that all students reach proficiency by

¹⁰ See *NCLB Executive Summary*, U.S. DEPT OF EDUCATION, <http://www2.ed.gov/nclb/overview/intro/execsumm.html> (last visited February 24, 2016) [hereinafter *NCLB Executive Summary*].

¹¹ Joseph P. Viteritti, *The Federal Role in School Reform: Obama's "Race to the Top"*, 87 NOTRE DAME L. REV. 2087, 2094–96 (2012).

¹² See *NCLB Executive Summary*, *supra* note 10.

¹³ See Viteritti, *supra* note 11 at 2095.

¹⁴ 20 U.S.C. § 6311(a)-(b).

¹⁵ *Id.* at § 6311(a).

2014.¹⁶

To help raise state standards, participating states were also required to participate in the National Assessment for Educational Progress (NAEP) testing regime administered nationally to random samples of students in reading and mathematics.¹⁷ NAEP and annual statewide test scores were first disaggregated at the school, district, and state level, and then further broken down by poverty, race, ethnicity, disability, and limited English proficiency.¹⁸

Participating states had to set annual target goals for improving student achievement and closing performance gaps between different groups of students.¹⁹ To ensure schools reach these goals, the states developed their own baselines and improvement measurements to determine annual yearly progress.²⁰

The repercussions for schools that failed to meet their goals were severe. Failure to make adequate yearly progress toward statewide proficiency goals for two consecutive years resulted in the school being identified as in need of improvement.²¹ While this label made schools eligible for state technical assistance from their states, students attending the schools were also then able to attend a different public school in the area.²² Later, the law was further reformed, giving parents of students attending public schools in the District of Columbia the choice to send their students to private schools.²³ If an identified school again failed to make adequate yearly progress, thus retaining the same designation, parents were eligible for federal funding to pay for supplemental services outside the school.²⁴ If the school remained in the category for a third year, the school must then make “major changes in its personnel.”²⁵ Major restructuring measures would result in the case where a

¹⁶ See *NCLB Executive Summary*, *supra* note 10; see also CHRISTOPHER T. CROSS, POLITICAL EDUCATION 138–39 (updated ed. 2010).

¹⁷ See CROSS, *supra* note 16, at 139–40.

¹⁸ See Viteretti, *supra* note 11, at 2096; see also *NCLB Executive Summary*, *supra* note 10.

¹⁹ Viteretti, *supra* note 11, at 2096.

²⁰ *Id.* at 2099–2100.

²¹ 20 U.S.C. § 6316(b).

²² *Id.* at § 6316(b)(4), (b)(1)(E).

²³ See Viteretti, *supra* note 11, at 2099.

²⁴ 20 U.S.C. § 6316(b)(10).

²⁵ See Viteretti, *supra* note 11, at 2097.

school found itself in a fourth consecutive year under the label.²⁶ These restructuring measures could involve closing the school, converting the public school into a charter school, having a private management company operate the school, or having a state educational agency operate the school.²⁷

Perhaps most notable for the purposes of this article, however, were the federal funds under NCLB specifically designated to address the need to improve teacher effectiveness.²⁸ These funds were available for recruiting, retaining, and training teachers and principals.²⁹ Teachers hired with federal funds were required to meet the “highly qualified” standard.³⁰ Eventually, all teachers in core courses were required to have a college degree and either pass a state test or have majored in the particular subject they teach.³¹

2. *Unexpected consequences of NCLB*

Some policy-makers and commentators argue that NCLB set the highest education expectations in American history.³² Yet, however ambitious the articulated goals of NCLB were, the net effect of the law fell short of expectations. Two consequences and failures of NCLB are of particular interest in terms of accountability within the school.

First, to appease members of Congress concerned with protecting local education decision-making rights, NCLB allowed states to determine their own proficiency standards.³³ This policy led to vastly differing bars for proficiency across the nation and ultimately compromised the goal of uniformly raising the proficiency of all students.³⁴ To give the appearance that students were improving or performing at a higher level than they actually were, some local districts set their passing criteria at a lower than acceptable standard.³⁵ The

²⁶ *Id.*

²⁷ 20 U.S.C. § 6316(b)(8)(B).

²⁸ *Id.* at § 6601.

²⁹ *Id.* at § 6623(a)(1).

³⁰ *Id.* at § 7801(23); *see also id.* at § 6623.

³¹ Viteritti, *supra* note 11, at 2097 (citing PATRICK J. MCGUINN, NO CHILD LEFT BEHIND AND THE TRANSFORMATION OF FEDERAL EDUCATION POLICY, 1965-2005 178 (2006)).

³² *Id.* at 2097–98.

³³ Viteritti, *supra* note 11, at 2098.

³⁴ *Id.*

³⁵ *Id.*

discrepancies across state standards had impact on what constitutes student proficiency in a particular state.³⁶ One study indicated that students in states with the highest proficiency standards were up to four grade levels ahead of those in states with the lowest standards.³⁷ The U.S. Department of Education compared state passing rates to the NAEP passing rates, discovering that the standards for state tests were less rigorous than those for NAEP.³⁸

Second, because it lacked substantial support and enforcement from the Bush administration and the Department of Education, the NCLB provision aimed to improve the quality of classroom teachers resulted in little marked change.³⁹ From the beginning, the absence of incentives to improve was a fatal oversight. By 2007, no state had managed to meet the “highly qualified” teacher standards.⁴⁰ Perhaps damningly, the Department of Education did not penalize the states for the failure by cutting any federal funding.⁴¹ The lack of response negated any federal level incentive to improve teacher quality under NCLB. In a 2007 nation-wide survey, twenty-two percent of states indicated that they were unlikely to ever meet NCLB’s requirements for highly qualified teachers.⁴²

While NCLB expired in 2007, sweeping policy changes to address state, school, and educator accountability continue to dominate the education agenda into the Obama administration.⁴³

B. Race to the Top Fund

“It’s time to stop talking about education reform and start actually doing it. It’s time to make education America’s national mission.”⁴⁴

³⁶ *Id.*

³⁷ *Id.*

³⁸ *See id.* (citing NAT’L CTR. FOR EDUC. STAT., MAPPING STATE PROFICIENCY STANDARDS ONTO NAEP SCALES 9 (2007), PAUL E. PETERSON & CARLOS XABEL LASTRANADON, STATE STANDARDS RISE IN READING, FALL IN MATH, EDUC. NEXT, FALL 2010 12, 15).

³⁹ *Id.* at 2099–2100.

⁴⁰ *Id.*; *see also* PAUL MANNA, COLLISION COURSE 58 (2011).

⁴¹ *See* Viteritti, *supra* note 11, at 2100; *see also* MANNA, *supra* note 40.

⁴² *See* Viteritti, *supra* note 11, at 2100; *see also* MANNA, *supra* note 40, at 101.

⁴³ *See generally* Viteritti, *supra* note 11, at 2100–02.

⁴⁴ U.S. DEPT OF EDUC., RACE TO THE TOP EXECUTIVE SUMMARY 2 (2009)

Without congressional approval to renew or rework NCLB,⁴⁵ the Obama administration used the American Recovery and Reinvestment Act (ARRA) to reshape policy for elementary and secondary schools.⁴⁶ In 2009, ARRA was signed into law.⁴⁷ The legislation was specifically aimed to stimulate the national economy and invest in “critical sectors,” including education.⁴⁸ ARRA provided more federal money to education than any other piece of legislation passed by Congress.⁴⁹ Specifically, ARRA allocated: \$5 billion to early education initiatives, including Head Start, Early Head Start, child care, and helping children with special needs; \$7.7 billion for reforms aimed to bolster the development of elementary and secondary education; and \$5 billion to encourage reform aimed to eliminate the achievement gap.⁵⁰ ARRA encouraged education reform by investing federal funds into developing innovative strategies “most likely to lead to improved results for students, long-term gains in schools and school system capacity, and increased productivity and effectiveness.”⁵¹ The principle component of the Obama Administration’s education agenda under ARRA, however, was the Race to the Top program (RTTT).

1. *RTTT objectives*

A unique facet of RTTT was the competition among states to participate in the program and, thus, receive an allocation from its \$4.35 billion in federal funding.⁵² In a speech announcing the program, President Obama explained that by allowing states and school districts to compete, RTTT can . . . incentivize excellence and spur reform and launch a race to the

(quoting President Barack Obama, Nov. 4 2009) *available at* <http://www2.ed.gov/programs/racetothetop/executive-summary.pdf> [hereinafter RTTT EXECUTIVE SUMMARY].

⁴⁵ See Viteritti, *supra* note 11, at 2100.

⁴⁶ See RTTT EXECUTIVE SUMMARY, *supra* note 44.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ See Viteritti, *supra* note 11, at 2100 (citing American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009)).

⁵⁰ See Viteritti, *supra* note 11, at 2101 (citing *Education*, THE WHITE HOUSE, <http://whitehouse.gov/issues/education> (last visited Feb. 23, 2012)).

⁵¹ See RTTT EXECUTIVE SUMMARY, *supra* note 44.

⁵² *Id.*

top in America's public schools."⁵³

The purpose of RTTT is to encourage and reward those states that are working to support and enhance innovative education reform, improve student outcomes, close achievement gaps, raise graduation rates, and guarantee that graduating students are equipped for college and careers.⁵⁴ Additionally, RTTT serves to reward states that actively implement plans to address four fundamental reforms.⁵⁵ According to the RTTT Executive Summary report, these four reform areas include: (1) setting standards that ensure students are prepared to achieve in "college and the workplace and to compete in the global economy"⁵⁶; (2) developing measures that test student growth⁵⁷ and success rates, as well as indicate how educators can improve instruction; (3) "recruiting, developing, rewarding, and retaining 'effective' teachers and principals"⁵⁸; and (4) improving the weakest schools.⁵⁹

The hope is that RTTT will adequately encourage and reward states demonstrating their commitment to and success in raising student achievement.⁶⁰ By disseminating the most effective mechanisms for education reform, RTTT allows states across the country to follow models set by the top achieving schools.⁶¹

⁵³ Barack Obama, U.S. President, Remarks by the President at the Dep't of Educ. (July 24, 2009) *available at* http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-the-Department-of-Education (last visited February 29, 2016).

⁵⁴ See RTTT EXECUTIVE SUMMARY, *supra* note 44.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ See *infra* note 60. "Student growth means the change in student achievement for an individual student between two or more points in time. A state may also include other measures that are rigorous and comparable across the classroom." RTTT EXECUTIVE SUMMARY, *supra* note 44, at 14.

⁵⁸ RTTT EXECUTIVE SUMMARY, *supra* note 44, at 2.

⁵⁹ *Id.*

⁶⁰ Student achievement means:

(a) For tested grades and subjects: (1) a student's score on the State's assessments under the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) . . . (b) For non-tested grades and subjects: alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across classrooms.

Id. at 14.

⁶¹ *Id.* at 2.

2. *RTTT program overview*

To participate and receive federal funding through RTTT, states must demonstrate that their education reform plans comprehensively address the six categories of selection criteria.⁶² Notably, the greatest number of points under the selection criteria comes from satisfying the category for “Great Teachers and Leaders.”⁶³ Under this category, states must demonstrate they are meeting five key subsection requirements, which include working to: (1) provide “high-quality pathways for aspiring teachers and principals”; (2) improve “teacher and principal effectiveness based on performance”; (3) ensure “equitable distribution of effective teachers and principals”; (4) improve the “effectiveness of teachers and principal preparation programs,” and (5) provide “effective support to teachers and principals.”⁶⁴

The emphasis on teacher and principal accountability is unabashed. Of the possible 138 points awarded for states comprehensively addressing each subcategory requirement under Great Teachers and Leaders, well over a third of the points come from a state’s ability to improve teacher and principal effectiveness based on their performance.⁶⁵ With the exception of the subcategory evaluating a state’s ability to articulate its overall education reform agenda, the number of points awarded for the Great Teachers and Leaders subcategory is more than any other.⁶⁶

To demonstrate that a state will improve teacher and principal effectiveness based on their performance, it must provide a “high-quality plan and ambitious yet achievable annual targets” to ensure that districts achieve the reform requirements set under RTTT.⁶⁷ First, districts must “establish clear approaches to measuring student growth,” not only for a class as a whole, but also each individual student’s growth.⁶⁸ Second, districts must integrate “rigorous, transparent, and

⁶² *Id.* at 3.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* at 3.

⁶⁶ *Id.*

⁶⁷ *Id.* at 9.

⁶⁸ *Id.*

fair systems to evaluate teachers and principals.”⁶⁹ To ensure collaboration, RTTT requires that districts involve educators in the design and development of the evaluation system.⁷⁰ While the evaluation mechanisms must use a variety of categories to determine effectiveness, student growth data must serve as a significant factor in evaluations.⁷¹ Third, districts must provide “timely and constructive feedback” in annual teacher and principal evaluations.⁷² Finally, districts must use the teacher and principal evaluations when making decisions regarding: teacher and principal development; compensation, promotion, and retention; tenure and certification; and removing ineffective teachers and principals.⁷³

RTTT recognizes that education is a vastly complex system comprised of many different stakeholders with a variety of interests. As a result, the program requires that states and districts consider factors within their own local context when designing and implementing comprehensive reform plans that will meet the needs of all stakeholders.⁷⁴ Given the substantial points awarded to states demonstrating that their plans fully satisfy the criteria under the Great Teachers and Leaders subcategory,⁷⁵ New York focused on developing a system to effectively address teacher and principal accountability based on performance.

III. ANNUAL PROFESSIONAL PERFORMANCE REVIEW

On May 25, 2010, the New York State Legislature, motivated by RTTT and supported by the Governor and the Board of Regents, passed legislation providing the foundation for substantial education reform in New York.⁷⁶ Perhaps the most notable reform came under § 3012-c of the Education law, also known as the Annual Professional Performance Review

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ See *Race to the Top, New York Report Year 1*, U.S. DEP’T OF EDUCATION (Jan. 10, 2012), <http://www2.ed.gov/programs/racetothetop/performance/new-york-year-1.pdf> [hereinafter *NY Report Year 1*].

⁷⁵ See RTTT EXECUTIVE SUMMARY, *supra* note 44, at 3.

⁷⁶ See *NY Report Year 1*, *supra* note 74, at 13.

(APPR).⁷⁷ In an effort to collaboratively develop the APPR regulations, New York convened an advisory task force including teachers, principals, superintendents, school board officials, BOCES officials, and other stakeholders.⁷⁸ The task force met regularly from September 2010 until it ultimately provided the Commissioner of Education and the Board of Regents recommendations on how best to develop and implement the APPR in April 2011.⁷⁹ In May 2011, the Board of Regents adopted regulations to provide guidance for implementing § 3012-c.⁸⁰ The regulations set forth a teacher and principal evaluation system that included “multiple measures of educator effectiveness.”⁸¹ As former New York State Education Commissioner King explained:

The goal is and always has been to help students – to give them every opportunity to succeed in college and careers. To make that happen, we need to improve teaching and learning. We owe it to our students to make sure every classroom is led by an effective teacher and every school is led by an effective principal.⁸²

By establishing a comprehensive teacher and principal evaluation system for districts statewide, the APPR aims to improve teaching and learning in New York.⁸³ Foremost, the APPR seeks to encourage the continuous professional growth of teachers and principals through three primary objectives: (1) Statewide student growth measures that will be compared to similarly situated students; (2) Locally selected measures of student achievement reflecting local needs; and (3) Measures, including teacher observations and school visits, to provide educators with specific, formative feedback on their performance.⁸⁴ Collectively, these primary objectives serve to improve educators’ professional development, instructional

⁷⁷ N.Y. Educ. Law § 3012-c.

⁷⁸ See *NY Report Year 1*, *supra* note 74, at 13–14.

⁷⁹ *Id.*

⁸⁰ *Id.* at 13.

⁸¹ *Id.*; see also N.Y. Educ. Law § 3012-c(2)(a)(1).

⁸² See *Governor Cuomo Announces Agreement on Evaluation Guidelines That Will Make New York a National Leader on Teacher Accountability* (Feb. 16, 2012), <http://www.governor.ny.gov/press/02162012teacherevaluations> [hereinafter *Cuomo Agreement*].

⁸³ *Id.*

⁸⁴ See *Regents Adopt Rules*, *supra* note 2.

practices, and support systems.⁸⁵ As a result, the new teacher and principal evaluation system strives to ensure that each classroom has an effective teacher and each school has an effective leader.⁸⁶ The 2013 school year marked the first year that all participating districts in New York State must have approved APPR plans in action at their schools.⁸⁷

A. *Evaluation Methods*

Under § 3012-c, the districts must submit APPR plans that utilize three methods of teacher and principal evaluation.⁸⁸ First, twenty or twenty-five percent of the evaluation is based on State assessments, and other comparable measures, that track student growth.⁸⁹ Second, locally selected measures of student achievement will account for an additional fifteen to twenty percent.⁹⁰ Third, other measures, including multiple classroom observations, will comprise the final sixty percent of the evaluation.⁹¹ The sum of these measures produces a composite teacher or principal effectiveness score from which districts differentiate teacher and principal effectiveness.⁹²

1. *State assessments*

The APPR requires that districts use three evaluation standards when determining teacher and principal effectiveness.⁹³ Forty percent of the evaluation is comprised of student achievement.⁹⁴ The forty percent is then broken down into two subcomponents: twenty percent based on student growth on state assessments and twenty percent based on other locally selected measures.⁹⁵

First, the statute requires that state assessments or other comparable measures account for twenty percent of a teacher's

⁸⁵ *Id.*

⁸⁶ *Id.*, see also *Cuomo Agreement*, *supra* note 82.

⁸⁷ See *Regents Adopt Rules*, *supra* note 2.

⁸⁸ N.Y. Educ. Law § 3012-c(2)(a)(1).

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ N.Y. Educ. Law § 3012-c(2)(e)(1), (f)(1).

⁹⁴ *Id.*

⁹⁵ *Id.*

or principal's evaluation.⁹⁶ For tested subjects, the state growth component is based on annual student growth on state assessments in English language arts (ELA) and math in grades 4-8 compared to similar students.⁹⁷ It is important to note that, here, New York is measuring student growth as compared to similarly situated students, not student achievement.⁹⁸ Similar students are determined as students with similar prior test scores, as well as particular student characteristics, including economic disadvantage, disability, and English language learner status.⁹⁹ Based on these key points, the State has indicated that educators have a fair opportunity to demonstrate their effectiveness regardless of their class or school composition.¹⁰⁰

In the upcoming years, if teachers or principals have a Board of Regents approved value-added model,¹⁰¹ their evaluation will be twenty-five percent based on student growth on state assessments, and fifteen percent on other locally selected measures.¹⁰² Alternatively, for all teachers and principals of non-tested subjects who do not have a state-provided growth or value-added models, Student Learning Objectives (SLOs) will test student growth.¹⁰³

SLOs are academic goals established for students at the beginning of a course.¹⁰⁴ The goals must be specific and measurable, representing the most important aspects of the

⁹⁶ N.Y. Educ. Law § 3012-c(2)(f)(1)-(2)(i).

⁹⁷ N.Y. Educ. Law § 3012-c(2)(f)(2)(i)(A); see also *New York State Education Dep't External Briefing Presentation on 2011-12 New York State Growth Scores* (Aug. 2012), https://www.engageny.org/file/8811/download/external-briefing-2011-12-growth_scores.pdf?token=6xuC3Vn2FBdVlrLiyo4T6TgZjurZ84FAautjWRBb0Jk [hereinafter *External Briefing*].

⁹⁸ See *External Briefing*, *supra* note 97.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ According the RTTT yearly report, Value-added Models (VAMs) "are a specific type of growth model in the sense that they are based on changes in test scores over time." Value-added Models "generally attempt to take into account student or school background characteristics in order to isolate the amount of learning attributable to a specific teacher or school. Teachers or schools that produce more than typical or expected growth are said to 'add value.'" See *NY Report Year 1*, *supra* note 74, at 20.

¹⁰² See *Guidance on the New York State District-wide Growth Goal-Setting Process: Student Learning Objectives*, NEW YORK STATE EDUCATION DEP'T, at 5 (rev. Nov. 2013), <http://www.engageny.org/sites/default/files/resource/attachments/slo-guidance.pdf> [hereinafter *Guidance*].

¹⁰³ *Id.* at 5.

¹⁰⁴ *Id.* at 6.

course to learn.¹⁰⁵ Teachers are scored based on how well the articulated goals are met.¹⁰⁶ While a district may consider some adjustments for SLOs as used in state growth measures, adjustments are not allowed for students with disabilities or special education students.¹⁰⁷ The State reasons that target levels are already differentiated for students in any SLO based on the student's respective starting point of learning and the student's past academic data.¹⁰⁸ Thus, differentiation is not based on classification as special education because all students will have different baselines to grow from.¹⁰⁹

2. *Locally selected measures*

Second, the APPR requires that locally selected measures account for an additional twenty percent of an educator's evaluation.¹¹⁰ The twenty percent is comprised of the district's selection from four possible options that measure student achievement and growth.¹¹¹ For teachers, districts may opt to use: (1) state assessments and Regents examinations or Regent-equivalent assessments; (2) state-approved third party assessments; (3) comparable district or regionally-developed assessments; or (4) evaluations of school-wide growth or achievement results through "state-provided school-wide growth scores" for students taking the ELA or math assessment, or verified comparable local measures.¹¹² For schools to ensure that all assessments are comparable, the selected measures should be uniform across all classrooms in the same grade and subject.¹¹³ The requisite rigor ensures that

¹⁰⁵ Additionally, SLO goals must be "based on available prior student learning data, and aligned to Common Core, State, or national standards, as well as the school and district priorities." *Id.*

¹⁰⁶ *Id.* at 6.

¹⁰⁷ See *State Growth: Teachers and Principals*, ENGAGENY, 20–21, http://www.engageny.org/file/356/download/state_growth_measure_teachers_and_principals.pdf (last visited Mar. 9, 2016) [hereinafter *State Growth*].

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ N.Y. Educ. Law § 3012-c(2)(f)(1).

¹¹¹ N.Y. Educ. Law § 3012-c(2)(f)(2)(i)-(iv).

¹¹² See *Guidance*, *supra* note 102, at 9; see also N.Y. Educ. Law § 3012-c(2)(f)(2)(i)-(iv).

¹¹³ See *APPR Conference April 30 - May 1, 2012 Presentation*, ENGAGENY, <http://www.engageny.org/resource/appr-conference-april-30-may-1-2012-presentation/> (last visited Mar. 9, 2016) [hereinafter *APPR Conference*].

the measures are aligned to New York State learning standards.¹¹⁴

The effectiveness criteria for principals under locally selected measures depend on whether the evaluation is for an elementary, middle, or high school principal.¹¹⁵ For elementary and middle school principals, measures may include student achievement levels on ELA and math state assessments, growth or achievement of students with disabilities or English language learners on state assessments, growth or achievement of students in ELA and math using a set performance level to gauge improvements, student performance results on a locally selected assessment that was also approved for teacher evaluations, or SLOs, when no growth or value-added model has been approved.¹¹⁶

For high school principals, measures may include the percentage of students achieving a benchmark score on Regents exams, Advanced Placement, or other Regents-equivalent test; graduation rates or dropout rates; the percentage of graduates with a Regents Diploma or higher; credit accumulation as an indicator of student progress toward graduation; student performance on locally selected assessments that have been approved for teacher evaluations; or SLOs, for those principals without a state-approved growth or value-added measure.¹¹⁷

3. *Other measures of effectiveness*

The third subcomponent of an educator's evaluation—other measures of effectiveness—carries the greatest point distribution.¹¹⁸ Under the APPR, this subcomponent accounts for sixty percent of teacher and principal evaluations.¹¹⁹ The statute requires that local level negotiations be used to determine the other measures of testing that account for this final subcomponent.¹²⁰ For teachers, the majority of the points must be based on “multiple classroom observations conducted

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ N.Y. Educ. Law § 3012-c(2)(h).

¹¹⁹ *Id.*

¹²⁰ *Id.*

by a principal or other trained administrator.”¹²¹ While these observations may be conducted in-person or using video, at least one observation must be unannounced.¹²² If any points remain after classroom observations, teachers may be assessed based on any of the following: (1) observations by trained independent evaluators; (2) “observations by trained in-school peer teachers”; (3) feedback provided by students or parents through a state-approved survey; or (4) review of “lesson plans, student portfolios, and other artifacts of teacher practices.”¹²³

For principals, the majority of points will come from a “broad assessment of principal leadership and management actions.”¹²⁴ A supervisor conducts the assessment based on the practice rubric.¹²⁵ The assessment must include multiple visits by the supervisor, trained administrator, or other trained evaluator, with at least one visit from the supervisor, and one visit being unannounced.¹²⁶ In addition, evidence of improvements must come from at least two other sources: feedback from teachers, students, or parents; visits by trained evaluators; “and/or a review of school document, records, and/or state accountability processes.”¹²⁷ Any remaining portion of the sixty points may be assigned based on the principal’s contribution to improving teacher effectiveness by: (1) demonstrating “improved retention of high performing teachers”; (2) showing “correlations between student growth scores” and teachers tenure status; or (3) demonstrating an improved “proficiency rating of the principal on specific teacher effectiveness standards in the principal rubric.”¹²⁸ Likewise, remaining points may be assigned based on other goals that show improved academic outcomes or the general school environment.¹²⁹

B. Scores and Ratings

As described above, teacher effectiveness scores are

¹²¹ N.Y. Educ. Law § 3012-c(2)(h)(1).

¹²² *Id.*

¹²³ N.Y. Educ. Law § 3012-c(2)(h)(3)(1)(iv).

¹²⁴ N.Y. Educ. Law § 3012-c(2)(h)(4).

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ N.Y. Educ. Law § 3012-c(2)(h)(5).

¹²⁸ N.Y. Educ. Law § 3012-c(2)(h)(5)(i).

¹²⁹ N.Y. Educ. Law § 3012-c(2)(h)(5)(ii).

calculated based on individual scores received under the three evaluation measures: (1) state assessment of growth, or other comparable measures, (2) locally selected measures of growth or achievement, and (3) other measures of effectiveness.¹³⁰ The sum of the three evaluation methods will cumulate in a composite effectiveness score.¹³¹ From this score, every teacher and principal will receive an overall rating of Highly Effective, Effective, Developing, or Ineffective.¹³² As Table 1 illustrates, each evaluation standard provides a specific narrative description that districts must follow for each effectiveness rating.

Table 1. Evaluation Rating Categories¹³³

Standards for Rating Categories	Growth or Comparable Measures	Locally Selected Measures of Growth or Achievement	Other Measures of Effectiveness
Highly Effective	<i>Results are well-above State average for similar students (or district goals if no State test).</i>	<i>Results are well-above District or BOCES-adopted expectations for growth or achievement of students learning standards for grade / subject.</i>	<i>Overall performance and results exceed standards</i>
Effective	<i>Results meet State average for similar students (or district goals if no state test).</i>	<i>Results meet District or BOCES-adopted expectations for growth or achievement of student learning standards for grade / subject.</i>	<i>Overall performance and results meet standards.</i>
Developing	<i>Results are below State average for similar students (or district goals if no State test).</i>	<i>Results are below District or BOCES-adopted expectations for growth or achievement of student learning standards for grade / subject.</i>	<i>Overall performance and results need improvement in order to meet standards.</i>
Ineffective	<i>Results are well-below State</i>	<i>Results are well-below District or</i>	<i>Overall performance and</i>

¹³⁰ N.Y. Educ. Law § 3012-c(2)(a)(1).

¹³¹ *Id.*

¹³² N.Y. Educ. Law § 3012-c(2)(a)(1)-(6).

¹³³ *See State Growth, supra* note 107, at 25–26.

	<i>average for similar students (or district goals if no State test).</i>	<i>BOCES-adopted expectations for growth or achievement of student learning standards for grade / subject.</i>	<i>results do not meet standards.</i>
--	---	--	---------------------------------------

Once the annual review is completed, the APPR requires that the entire professional performance review be provided to the teacher or principal no later than September of the next school year.¹³⁴ However, by the last day of the school year of which the evaluation takes place, districts must at least provide teachers and principals their score and rating based on the locally selected measures subcomponent.¹³⁵ If available, districts must also provide scores and ratings based on the other measures of the effectiveness subcomponent.¹³⁶

To ensure that teachers and principals are able to develop their skills as educators, if a teacher or principal is rated as developing or ineffective, the district must formulate and implement an improvement plan for that teacher or principal no later than ten school days after the first day of the following school year.¹³⁷ At a minimum, the improvement plans must include “identification of the areas needing improvement, a timeline for achieving improvement, the manner in which improvement will be assessed,” and any additional activities that will support the educator’s improvement.¹³⁸

Once scores and ratings are completed, the APPR stipulates that the Education Department will continue to “monitor and analyze trends or patterns” in the annual teacher and principal evaluations.¹³⁹ The Education Department will then use this information to identify districts and schools that may require more rigorous evaluation standards to improve educator effectiveness and SLOs.¹⁴⁰

The Education Department and school districts will also disclose teacher and principal effectiveness ratings to the

¹³⁴ N.Y. Educ. Law § 3012-c(2)(c)(2).

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ N.Y. Educ. Law § 3012-c(4).

¹³⁸ *Id.*

¹³⁹ N.Y. Educ. Law § 3012-c(9)(a).

¹⁴⁰ N.Y. Educ. Law § 3012-c(9)(a)-(b).

public.¹⁴¹ With personally identifiable information removed, the public will have access to the overall quality ratings and composite evaluation scores from the annual professional performance review.¹⁴² Importantly, the evaluations for individual teachers and principals are not subject to disclosure under the APPR.¹⁴³

C. Addressing Initial Implementation Problems

Implementing the APPR has not been without direct challenges and complications for New York policy-makers. From the APPR's design and development stage and through the more recent struggle to implement its requirements, New York has continued to face challenges in "coordinating and communicating" with the vast number of districts and various stakeholders.¹⁴⁴ In its first yearly report to the RTTT program, New York recognized that outreach was a key factor to successfully achieving education reform in schools, and thus the state must improve lapses in communication between policy-makers and educators.¹⁴⁵

To bolster communication efforts specifically related to the new teacher and principal evaluation system under the APPR, state officials developed EngageNY, a website that serves as an all-inclusive resource for educators and districts as they work to implement the APPR provisions.¹⁴⁶ Through EngageNY, educators can access information regarding new legislation requirements, view approved APPR plans, and access a variety of resources relating to current education reform in New York State.¹⁴⁷ In 2012, approximately one year after the launch of the website, almost 250,000 unique visitors had accessed EngageNY.¹⁴⁸ The website continues to expand, currently including a video library, curriculum modules, social media e-communities, and filters that allow visitors to access

¹⁴¹ N.Y. Educ. Law § 3012-c(10)(a)-(b).

¹⁴² N.Y. Educ. Law § 3012-c(10)(a)-(c).

¹⁴³ N.Y. Educ. Law § 3012-c(10)(c).

¹⁴⁴ See *NY Report Year 1*, *supra* note 74, at 4.

¹⁴⁵ *Id.* at 4, 14.

¹⁴⁶ See generally *ENGAGENY*, www.engageny.org (last visited March 8, 2016).

¹⁴⁷ *Id.*

¹⁴⁸ See *Race to the Top, New York Report Year 2* at 7, U.S. DEP'T OF EDUCATION (Feb. 1, 2013), <http://www2.ed.gov/programs/racetothetop/performance/new-york-year-2.pdf> [hereinafter *NY Report Year 2*].

information by grade level, subject area, and specific topic.¹⁴⁹

An additional challenge for the APPR's implementation stemmed from the "shot clock" featured in Governor Cuomo's budget proposal.¹⁵⁰ The shot clock linked the APPR implementation to state aid.¹⁵¹ As a result, any district that did not receive approval for its evaluation plan by January 2013 could lose its portion of state aid increases.¹⁵² State Education Commissioner King argued that linking the implementation deadline to financial consequences would encourage districts to promptly and effectively implement the APPR within their schools.¹⁵³

In February 2013, however, a Supreme Court in Manhattan issued a preliminary injunction barring Commissioner King from deducting financial aid as a penalty for New York City's failure to receive approval on an APPR plan by the January 2013 deadline.¹⁵⁴ The judge held that the financial cuts could hurt innocent children, particularly those from the most disadvantaged groups.¹⁵⁵ Because children have a constitutional right to a comprehensive education and financial penalties could put their education at risk, the court indicated that the state must look for other ways to encourage prompt and effective APPR plan implementation.¹⁵⁶ While some view the decision as a "substantial victory," it remains to be seen whether the decision will affect districts located outside New York City that may still face similar financial penalties for failing to create an approved APPR plan.¹⁵⁷

As the recent state supreme court decision indicates, lawmakers, eager to lead the nation with innovative legislation,

¹⁴⁹ *Id.*; See generally ENGAGENY, www.engageny.org (last visited March 8, 2016).

¹⁵⁰ See *Chancellor Tisch and Commissioner King Praise Evaluation Agreement*, NEW YORK STATE EDUCATION DEPT (Feb. 16, 2012) <http://www.nysed.gov/news/2015/chancellor-tisch-and-commissioner-king-praise-evaluation-agreement>.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Al Baker, *Judge Says State Cannot Withhold Aid to City Schools Over Teacher Evaluation Impasse*, N.Y. TIMES, (Feb. 21, 2013) http://www.nytimes.com/2013/02/22/nyregion/ny-state-cannot-withhold-aid-to-city-schools-judge-says.html?_r=0.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

can often overlook the challenges and actual effects of the law when it is implemented. Though the state is currently taking measures to address communication lapses and the issues resulting from withholding school aid, many other challenges, flaws, and failures under the APPR's implementation are already beginning to surface.

IV. ANALYSIS OF THE APPR IN PRACTICE

Though the APPR's ambitious goals are admirable, its approach to the issue of accountability is not without unique challenges and potentially destructive consequences to New York State's public school system. Educators are concerned that the legal changes embodied under the APPR will neither improve the quality of schools nor improve the level of student learning; rather, the recent changes could tangibly harm students, teachers, and school districts.¹⁵⁸

Lawmakers can often overlook the actual effects a new law has on the ground-level. My research examined these effects to determine (1) the current benefits or conflicts, or potential consequences that could stem from the changes under the law; and (2) whether the APPR system is likely to sustainably achieve its intended purpose. To ensure that the research reflected how the law is truly working at the ground-level, I contacted over 150 teachers, principals, and superintendents. Educators were selected at random and represent a broad-sweep of regions, districts, schools, grade levels, and subjects. Each educator was presented with a questionnaire that sought an honest assessment of what each stakeholder was experiencing as a result of the new APPR evaluation system.¹⁵⁹

The study responses almost universally indicate a negative sentiment toward the new evaluation system as well as toward the likelihood that the APPR can achieve its intended goals as currently structured. A general positive correlation exists between years of experience in the New York education system and intensity of discontentment with the APPR. The two most senior responding tenured teachers both indicated that

¹⁵⁸ See *An Open Letter of Concern Regarding New York State's APPR Legislation for the Evaluation of Teachers and Principals*, NEW YORK PRINCIPALS (Mar. 14, 2013) available at <http://www.newyorkprincipals.org/appr-paper> [hereinafter *Open Letter*].

¹⁵⁹ See Appendix for sample Teacher Questionnaire. Principals and superintendents received substantially similar questionnaires.

although they had initially planned to work past their retirement eligibility, they are now considering retirement instead of “attempting to teach around a seriously misguided law.”¹⁶⁰

The respondents pointed out a wide-variety of flaws and possible negative effects of the APPR. Despite the diversity of the comments, five critical points were consistently voiced regardless of role as teacher, principal, or superintendent. First, the evaluation system structured by the APPR neglects to treat teachers as professionals and instead infantilizes them by limiting their discretion and ability to direct their students’ learning. Second, using student test scores in teacher evaluations is an inappropriate measurement of effectiveness. Third, the evaluation system under APPR fails to consider other critical contributors to student academic success and instead places the burden wholly on teachers. Fourth, the APPR is quick to label teachers or principals as “developing” or “ineffective,” yet neglects to emphasize support for their professional growth. Fifth, the new evaluation requirements drain time and resources, making the APPR unsustainable in the long-run.

A. *Teachers as Professionals*

Teachers, administrators, parents, and the community all have important and interlinked roles in educating children. Each group’s decisions cumulatively direct the path for student growth and achievement. Thus, while each group has a unique role, one role should not out-weigh another. The study responses, however, indicate that educators feel the APPR minimizes the teachers’ capacity as autonomous decision-makers, ultimately detracting from student learning.

Because societal ideals are often the catalyst for reform, society must be clear on its stance for the role of a teacher. By recognizing that teachers are autonomous professionals, society will allow teachers the discretion that they need to cater the classroom to their students, thus allowing the students to fully benefit from their education.¹⁶¹ Yet, within society’s vision of

¹⁶⁰ E-mail Questionnaire Response from Anonymous Upstate New York teacher to author (Mar. 2013) (on file with author).

¹⁶¹ See Gregory A. Clarick, *Public School Teachers and the First Amendment: Protecting the Right to Teach*, 65 N.Y.U. L. REV. 693, 731 (1990).

the teacher's role, a dichotomy exists.¹⁶² Two competing views emerge: (1) teachers as autonomous professionals, and (2) teachers as instruments of the state.¹⁶³

At one end of the spectrum, society views a teacher's role not only as a traditional educator of a prescribed subject, but also as a guide for children to develop into ethical and productive members of society.¹⁶⁴ Under this view, teachers are in the best position to truly understand how their students learn broad concepts and underlying themes, especially given the sheer number of hours spent with their students.¹⁶⁵ Thus, as autonomous professionals, teachers should have the necessary discretionary power to direct the presentation of classroom material.¹⁶⁶

At the other end of the spectrum, segments of society carry the view that teachers are merely instruments of the state.¹⁶⁷ Under this paradigm, policy-makers are in a position to best determine students' needs and the direction of the education system, and teachers are merely the classroom components to carry out their will.¹⁶⁸ To prevent deviations amongst the quality of teachers and their methods of teaching, state and school administrators can and must reach into the classroom to provide broad oversight. As a result, teachers have little to no decision-making powers within their classroom and lack the authority to independently make adjustments. Arguably, it is the view at this end of the spectrum that perpetuates the joke that "those who can't do, teach."

Given the extent that the APPR and other recent legislative measures have reached into the classroom, it would seem that the New York State Education Department agrees with the latter end of the spectrum. Under the APPR, instead of allowing teachers to engage with their classroom based on the students' unique learning styles, levels of creativity, and interests, the teacher must instead ensure that they follow a

¹⁶² See generally *id.* at 697, 733–34.

¹⁶³ *Id.* at 697.

¹⁶⁴ See *id.* at 731, 733–34.

¹⁶⁵ See generally *id.* See also Karen C. Daly, *Balancing Act: Teachers' Classroom Speech and the First Amendment*, 30 J.L. & EDUC. 1, 26 (2001).

¹⁶⁶ See Clarick, *supra* note 161, at 731; see also Daly, *supra* note 165, at 26.

¹⁶⁷ See generally Clarick, *supra* note 161, at 697.

¹⁶⁸ See Daly, *supra* note 165, at 19 (citing Lawrence Hardy, *Why Teachers Leave*, THE AMERICAN SCHOOL BOARD JOURNAL, June 1999, at 16).

state accepted curricular formula. The teachers and principals are then “arbitrarily assessed”¹⁶⁹ through periodic observations to ensure that they are conducting their classroom acceptably. As an elementary school teacher explained, “[w]hile one administrator might note something as highly effective, another might not; so two teachers doing the exact same thing could get rated differently.”¹⁷⁰ Because teachers and principals have become too concerned with the outcome of the new evaluation methods, they feel that they can no longer focus on the quality of the means to the end. Consequently, teachers and principals feel that they are denied the same respect given to other professionals. Explaining the issue, one principal from a Downstate New York high school stated:

The idea of a profession is that the work cannot necessarily be measured by the outcome. The lawyer who loses a case; the doctor whose patient succumbs; the teacher whose student fails: should we judge any of these as ineffective? [The APPR] does not honor the status of a teacher as a professional.¹⁷¹

The existing dichotomy and the direction that the New York State legislature has taken with the APPR are causes for concern. As an Upstate high school teacher explained, “[o]ur current APPR assessment does not match our theories of how we teach children to learn.”¹⁷² If the public school system is to develop students into tenacious, thoughtful, and independent citizens, the courts must allow teachers the discretion to engage with students on a level that meets the needs of their unique classroom.¹⁷³ The teacher’s ability to direct the presentation of curriculum, facilitate discussion, and respond to student questions is imperative in developing the critical thinking skills necessary for students to become independent and thoughtful citizens.¹⁷⁴ Thus teachers, not observers or state assessments, know the most effective teaching methods to enhance student learning.

¹⁶⁹ E-mail Questionnaire Response from Anonymous Downstate New York teacher to author (Mar. 2013) (on file with author).

¹⁷⁰ *Id.*

¹⁷¹ E-mail Questionnaire Response from Anonymous Downstate New York principal to author (Mar. 2013) (on file with author).

¹⁷² E-mail Questionnaire Response from Anonymous Upstate New York teacher to author (Mar. 2013) (on file with author).

¹⁷³ See Clarick, *supra* note 161, at 723–25.

¹⁷⁴ *Id.*

B. State Assessments and Testing

Test-based accountability systems “are based on the belief that attaching incentives . . . to standardized achievement tests will improve student performance.”¹⁷⁵ In both state and federal education policy, the trend is to incorporate test-based accountability systems into policy as a means to improve public education.¹⁷⁶ The APPR utilizes test-based accountability by requiring that twenty to forty percent of teacher and principal evaluations derive from student performance on standardized tests.¹⁷⁷

While proponents of test-based accountability believe that using test scores is a reasonable and accurate approach to accountability, the study response demonstrates an overwhelming concern amongst educators that, as designed, the test-based accountability system under the APPR will carry negative consequences for students, teachers, and schools. Study respondents argue that the use of test scores to evaluate teachers and principals is not a valid application of those tests.¹⁷⁸ While some tests, such as the Regents exams, can be used to evaluate student proficiency, the tests are not designed to accurately indicate teacher effectiveness or student learning growth.¹⁷⁹ In an open letter expressing concern over the APPR’s evaluation of teachers and principals, a group of New York State principals said that using these tests to measure teacher effectiveness or student learning growth “is akin to using a meter stick to weigh a person: you might be able to develop a formula that links height and weight, but there will be plenty of error in your calculations.”¹⁸⁰ Thus, as a result of the APPR’s current use of test-based accountability systems, teachers and principals feel that their evaluations are inherently inaccurate

¹⁷⁵ Jonathan Supovitz, *Can High Stakes Testing Leverage Educational Improvement? Prospects from the Last Decade of Testing and Accountability Reform*, 10 J. EDUC. CHANGE 211, 213 (2009) (citing Laura S. Hamilton et al., *Making Sense of Test-Based Accountability in Education*, RAND (2002)).

¹⁷⁶ *Id.*

¹⁷⁷ N.Y. Educ. Law § 3012-c(2)(a)(1).

¹⁷⁸ E-mail Questionnaire Response from Anonymous Downstate New York superintendent to author (Mar. 2013) (on file with author).

¹⁷⁹ See *Open Letter*, *supra* note 158 (citing New York State Educ. Dep’t, *Guide to the 2011 Grades 3-8 Testing Program in English Language Arts and Mathematics*, NEW YORK STATE TESTING PROGRAM (2011), <http://www.p12.nysed.gov/assessment/ei/archive/ela-math-guide-11.pdf>).

¹⁸⁰ See *Open Letter*, *supra* note 158.

portraits of their effectiveness as educators.

To understand why the APPR would incorporate student performance on tests as a determinate for educator effectiveness, two theories are worth discussing: (1) motivational theory, and (2) informational theory.¹⁸¹ It is difficult to discuss test-based accountability without discussing motivational theory.¹⁸² Under this theory the extrinsic rewards and punitive measures linked to the standardized tests are used to motivate educators to improve their performance.¹⁸³ By associating the “carrot and stick” philosophy with student test performance, educators are more motivated to succeed, even if only for their own professional benefit.¹⁸⁴ Some policy-makers maintain that extrinsic motivations are necessary in order to efficiently and effectively change behavior.¹⁸⁵ Under this framework, motivational theory assumes that educators lack motivation to improve their performance and that to achieve positive results, educators must be provided incentives to do so.¹⁸⁶ Arguably, this assumption implies that when incentivized, educators will know how and where to seek the support necessary to improve their performance.¹⁸⁷

A second potential theory underlying the APPR’s use of test-based accountability is the informational theory.¹⁸⁸ Under this theory, the information and statistics produced by student test results will serve as a platform to target issues and improve classroom and policy decision-making.¹⁸⁹ With quality testing data, teachers, administrators, and policy-makers will be better equipped to solve problems and make decisions regarding students, programs, and policy.¹⁹⁰

Given the APPR’s fundamental purpose to ensure that

¹⁸¹ See Supovitz, *supra* note 175, at 213–15.

¹⁸² *Id.* at 214.

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* (citing Lorraine M. McDonnell, *Assessment and Accountability from the Policymaker’s Perspective*, Y.B. OF THE NAT’L SOC’Y FOR THE STUDY OF EDUC. Vol. 104, Issue 2, 35–54 (2005)).

¹⁸⁶ See Supovitz, *supra* note 175, at 214.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* at 214–15.

¹⁸⁹ See *id.* at 215.

¹⁹⁰ *Id.* (citing KATHRYN PARKER BOUDET ET AL., *DATA WISE* (Harvard Education Press 5th ed. 2005); EDIE L. HOLCOMB, *GETTING EXCITED ABOUT DATA: HOW TO COMBINE PEOPLE, PASSION, AND PROOF* (Corwin Press 2d ed. 1999)).

there is an effective teacher in each classroom and an effective leader in each school,¹⁹¹ it is highly probable that the motivational and informational theories encouraged policy-makers' use of test-based accountability measures under the APPR. The study respondents point out that these theories and the APPR overlook the serious negative incentives associated with test-based accountability systems.

1. *Teaching to the test*

“There is less focus on teaching the child and more focus on teaching the subject. In doing so, no matter what their resulting score, we have failed the child.”¹⁹²

From NCLB to RTTT to the APPR, it is clear that the high visibility and apparent influence over classrooms make test-based accountability an appealing political strategy.¹⁹³ Because politicians are able to develop, implement, and publically announce testing results within a relatively short period of time, test-based accountability can be particularly attractive to politicians with short electoral cycles.¹⁹⁴

Despite the political incentive to use test-based accountability, the change in public support demonstrates a shift in the perceived effectiveness of test-based accountability systems.¹⁹⁵ While eighty percent of Americans supported test-based accountability during the “NCLB era,”¹⁹⁶ a 2006 poll showed that the majority of respondents believed that there was too much testing in public schools.¹⁹⁷ The same poll determined that the vast majority of respondents felt that this form of testing encouraged teaching to the test, and that

¹⁹¹ See *Cuomo Agreement*, *supra* note 82; see also *Regents Adopt Rules*, *supra* note 2.

¹⁹² E-mail Questionnaire Response from Anonymous Upstate New York teacher to author (Mar. 2013) (on file with author).

¹⁹³ See Supovitz, *supra* note 175, at 222.

¹⁹⁴ *Id.* (citing Lorraine M. McDonnell, *Assessment and Accountability from the Policymaker's Perspective*, Y.B. OF THE NAT'L SOC'Y FOR THE STUDY OF EDUC. Vol. 104, Issue 2, 35–54 (2005)).

¹⁹⁵ See Supovitz, *supra* note 175, at 219.

¹⁹⁶ *Id.* (citing Peter D. Hart & Robert M. Teeter, *Equity and Adequacy: Americans speak on public school funding*, ETS.ORG (2004), https://www.ets.org/Media/Education_Topics/pdf/2004report.pdf).

¹⁹⁷ See Supovitz, *supra* note 175, at 219 (citing Lowell C. Rose & Alec M. Gallup, *The 38th annual Phi Delta Kappa/Gallup Poll of the Public's Attitudes Toward the Public Schools*, PHI DELTA KAPPAN, 88(1), 41–50 (2006)).

teaching to the test would not lead to positive results for students.¹⁹⁸

While test-based accountability may serve to motivate teachers and principals, it is not clear whether students are actually gaining any benefit or having a richer learning experience as a result of such systems. With high visibility and even higher stakes attached to test results, it is difficult to argue that the decision-making and practices of teachers and principals are not influenced by state testing.¹⁹⁹ Some researchers contend that NCLB has “narrowed the definition of good teaching to mean conveying content at the expense of richer teaching experience, development of the whole child, and the fostering of social skills.”²⁰⁰

A four-year study conducted by the Center for Education Policy found that under NCLB, the curriculum had narrowed to allow more instructional time for reading and mathematics and less time for de-emphasized subjects.²⁰¹ Directly countering the goals articulated under RTTT and the APPR, using standardized tests as a means to evaluate teacher and principal effectiveness has resulted in classrooms focused on test-preparation rather than on educating students with the complexity of skills necessary for engaged members of the global economy.²⁰² Teachers are recognizing that teaching to the test is changing their students’ excitement to learn.²⁰³ One teacher noted that because teachers are teaching to the test more than ever, students are reluctant to progress, saying “[m]y 2nd graders are already stating that they don’t want to go to 3rd grade because of all the testing.”²⁰⁴

Although some teachers are actively accommodating their lesson plans for teaching to the test, they know that their APPR evaluations may not reflect their pointed efforts. Several study respondents point out that linking student performance

¹⁹⁸ *Id.*

¹⁹⁹ Supovitz, *supra* note 175, at 221.

²⁰⁰ *Id.* at 218 (citing B. Berry et al., *The search for highly qualified teachers*, PHI DELTA KAPPAN, 85(9), 684–89 (2004)).

²⁰¹ See Supovitz, *supra* note 175, at 218 (citing D. S. Rentner et al., *From the Capital to the Classroom: Year 4 of the no child left behind act*. WASHINGTON, DC: CENTER ON EDUCATION POLICY (2006)).

²⁰² See Supovitz, *supra* note 175, at 221.

²⁰³ E-mail Questionnaire Response from Anonymous Upstate New York teacher to author (Mar. 2013) (on file with author).

²⁰⁴ *Id.*

on tests to teacher quality lacks validity given “the preponderance of research indicat[ing] that teachers cannot legitimately be rated on the basis of their students’ test performance, as the APPR process attempts to do.”²⁰⁵ Echoing this sentiment, an Upstate New York teacher explained that she has had many jobs in the past and is “very used to being evaluated based on performance. However, in business, my performance is mine alone. In teaching, my performance is tied to how my students perform on a particular day at a particular time. I’m not convinced this is the right way to evaluate teachers.”²⁰⁶

Tying student performance on state assessments to a teacher’s employment decisions will inevitably shift the focus of daily classroom activities to test preparation. As teachers focus on testing, “the curriculum will likely narrow in a concentrated effort to raise student scores.”²⁰⁷ Educators fear that because the subjects are not tested, enriching activities in the arts, music, and civics are likely to be minimized as a result of the “teach to the test” attitude encouraged by the APPR.²⁰⁸ At risk is “the loss of a comprehensive education that encompasses the development” of skill sets that extend beyond those required in tested subjects.²⁰⁹

2. “Gaming the system”

With national and state policy-makers providing increased incentives for districts to link student performance on tests to teacher and principal employment and tenure decisions, many educators are concerned that there will be attempts to “game the system.”²¹⁰ A Downstate superintendent explained that, while it is conceivable that some form of accountability is better than none, test-based accountability is “fundamentally flawed,”

²⁰⁵ E-mail Questionnaire Response from Anonymous Downstate New York superintendent to author (Mar. 2013) (on file with author).

²⁰⁶ E-mail Questionnaire Response from Anonymous Upstate New York teacher to author (Mar. 2013) (on file with author).

²⁰⁷ Sabrina R. Moldt, *N.Y.’s testing mania hurts teachers, students*, PRESS & SUN BULLETIN, (Feb. 28, 2015) <http://www.pressconnects.com/story/opinion/readers/2015/02/28/nys-testing-mania-hurts-teachers-students/24172767/>; see *Open Letter*, *supra* note 158.

²⁰⁸ Moldt, *supra* note 207.

²⁰⁹ *Id.*; see *Open Letter*, *supra* note 158.

²¹⁰ E-mail Questionnaire Response from Anonymous Downstate New York superintendent to author (Mar. 2013) (on file with author).

and cannot improve teaching or learning substantially.²¹¹ In contrast to the APPR's goals, he believes that the approach "will generate frustration and cynicism" which will eventually lead "to more efforts to game the process."²¹² He notes that rising test scores "will not be the same as causing learning to improve."²¹³

Under the APPR, "gaming the system" has the potential to take several forms, and could have severe consequences for all stakeholders involved.²¹⁴ For example, schools may now have sufficient incentive to keep struggling students in lower-level classes that do not require standardized assessments.²¹⁵ Even for those students who are not struggling, the APPR's link between student performance and teacher effectiveness may encourage schools to refrain from placing students in challenging Advanced Regents, Advanced Placement, or International Baccalaureate classes because any poor test results could have a detrimental effect on the teacher and principal evaluations.²¹⁶

An additional concern is that teachers will attempt to "game the system" by acting on incentives to avoid students with health or emotional issues, or disabilities that could challenge their learning or growth, which would negatively impact the teacher's effectiveness rating.²¹⁷ The concern is tangible. An Upstate New York teacher noted that prior to the passage of the APPR she had worked with her school to take on low performing and emotionally disturbed students.²¹⁸ While her students are progressing, they are not progressing at the level of other students in the same grade.²¹⁹ Although the teacher expressed her passion for working with these struggling students, she explained the dichotomy now faced under the APPR's new evaluation standards: "My scores may not reflect the growth that teachers who do not teach the

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

²¹⁴ See generally *Open Letter*, *supra* note 158.

²¹⁵ See *Open Letter*, *supra* note 158.

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ E-mail Questionnaire Response from Anonymous Upstate New York teacher to author (Apr. 2013) (on file with author).

²¹⁹ *Id.*

lowest children have. Why would I (or anyone) want to have a classroom with low students in it?”²²⁰ If teachers begin to actively avoid students who are already struggling, the negative consequences are tangible. Students with health issues or disabilities, students suffering from emotional issues, and English Language Learners are at risk of falling through the system’s gaps.

Most concerning, however, is the recent surge of investigations and lawsuits against teachers, principals, and superintendents across the nation for tampering with or illegally boosting student test scores.²²¹ When education policy increasingly measures educator success through standardized tests, and these test results are linked to performance reviews and employment decisions, the result is a concerning phenomenon. The number recent scandals are indicative of the widespread nature of this issue: at a school in Springfield, Massachusetts, a principal told teachers to point wrong answers out to students as they took state tests; in Norfolk, Virginia, a principal pressured teachers to show students the answers for a state reading assessment after finding a leaked copy of the test; in Georgia, 191 schools were investigated after a state assessment analysis indicated that educators tampered with student test answers; in Galena Park, Texas, educators distributed test-specific study guides to students after illegally reviewing that year’s state science test.²²² While no data is collected on nationwide educator cheating, experts estimated that “1 percent to 3 percent of teachers—thousands annually—cross the line.”²²³ In the study responses, principals and superintendents both indicated that this is a growing concern in New York State public schools as the APPR encourages linkage between teacher evaluations with their employment decisions.

However, not everyone believes that high-stakes testing and test-based accountability systems will inevitably lead to more cheating amongst educators. In a New York Times article, Dr. Beverly Hall, who won national recognition for

²²⁰ *Id.*

²²¹ Trip Gabriel, *Under Pressure, Teachers Tamper with Tests*, N.Y. TIMES, June 10, 2010 http://www.nytimes.com/2010/06/11/education/11cheat.html?_r=0.

²²² *Id.*

²²³ *Id.*

raising student test scores as a superintendent of the Atlanta Public Schools, noted that “[t]eachers over all are principled people in terms of wanting to be sure what they teach is what students are learning.”²²⁴ As a result, she explains, dishonesty is not as prevalent in the education field.²²⁵ On a side note, it is worth mentioning that just three years after Dr. Hall’s interview with the *New York Times*, a grand jury indicted her for substantial involvement in one of the most widespread public school cheating scandals in U.S. history.²²⁶

When student achievement and growth on standardized tests are directly tied to a teacher’s livelihood and a school’s eligibility for funding, it is not surprising that some will search for loopholes in the testing process to “game the system.” The issue with uncovering these scandals is not that they are particularly difficult to find; it is that school officials and the state have little incentive to look.²²⁷ The APPR and RTTT offer no incentive to uncover such gaming or cheating. As long as teachers and schools appear to be accomplishing the goal to raise student achievement and increase student growth, there is little reason to delve deeper if it could lead to negative repercussions. As one study respondent points out, an increase in test scores is not necessarily the same thing as causing improved learning.²²⁸

C. *Missing Contributors to Student Success*

One of the driving forces behind the APPR reforms is the desire to provide a level playing field for all New York students irrespective of which school they attend or which classroom they sit in.²²⁹ Through the new evaluation system, the APPR seeks to hold teachers and principals accountable for their students’ achievement and growth.²³⁰ Yet, as the overwhelming majority of respondents noted, the APPR does not account for

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ Michael Winerip, *Ex-Schools Chief in Atlanta is Indicted in Testing Scandal*, *N.Y. TIMES*, Mar. 29, 2013, http://www.nytimes.com/2013/03/30/us/former-school-chief-in-atlanta-indicted-in-cheating-scandal.html?pagewanted=all&_r=0.

²²⁷ See Gabriel, *supra* note 221.

²²⁸ E-mail Questionnaire Response from Anonymous Downstate New York superintendent to author (Mar. 2013) (on file with author).

²²⁹ See *Cuomo Agreement*, *supra* note 82.

²³⁰ See *Regents Adopt Rules*, *supra* note 2.

the vast number of factors outside their control that also influence a students' ability to develop, learn, and grow.

The development and implementation of the APPR, as one Downstate superintendent describes it, neglects to address the variety of influences that can contribute to a student's success.²³¹ He explains, "[t]he district APPR team was required to develop the [APPR] plan by filling in a computer template that did little to allow for local considerations, questions, or problems. We do not see how the process or the result will add value to teaching or learning."²³²

The APPR, and the general trend of education reform across the nation seems to place total culpability and responsibility for low student performance on teachers and principals. Holding educators entirely responsible for student improvement, however, is misguided. As an Upstate elementary school teacher explained, a successful education experience starts outside the classroom:

I don't have a problem with teachers being evaluated. I do have a problem with teachers being blamed for the lack of progress and low test scores [of] our students. Students today come to school with so many outside stressors. No matter how engaging the teaching may be, a student under duress is not going to thrive at school. Teachers are expected to be parents, counselors, role models, referees, and nurs[es], as well as perform their teaching jobs. The expectation that teachers will get all students to achieve at the same rate and at the same time is unrealistic. . . . We can't effectively change results for our students until problems and stressors in the home and community are adequately addressed so that students come to school ready to learn.²³³

Not only do educators note external factors that influence a student's growth, but they note that other professionals within the school carry some responsibility. Of the APPR's many missing contributors to a student's growth, the two that study respondents mentioned most often were parents and school psychologists or counselors. While both parents and school psychologists can greatly influence a student's success in the

²³¹ E-mail Questionnaire Response from Anonymous Downstate New York superintendent to author (Mar. 2013) (on file with author).

²³² *Id.*

²³³ E-mail Questionnaire Response from Anonymous Upstate New York teacher to author (Apr. 2013) (on file with author).

classroom, the APPR does not give consideration to either role, and instead places the entire burden on educators who are but one factor in a child's academic success.

1. *Parent involvement*

The majority of respondents mentioned that the APPR neglects to recognize the link between parent involvement and student academic success. Because teachers and principals have little control over the extent that a child receives parental support, educators feel that the APPR penalizes them when parents, who are also a significant factor in student success, are not held accountable for the student's performance. Some educators stress that, by holding teachers solely accountable for a student's performance, the APPR mistakes the root of the problem. One teacher explains, "[t]he problems with test scores and learning are not in the school. They are in the home. The lack of parent support is astounding."²³⁴

Parent involvement in schooling is a topic that is getting considerable attention in the education field. Research supports that parent involvement in a child's education directly and indirectly correlates to the child's ability to learn in the classroom.²³⁵ These studies indicate that parent involvement and its positive effects on student learning are palpable.²³⁶ By taking an interest in their child's school work, helping with homework, setting expectations for school, and taking initiative to contact teachers, parents compose the "curriculum of the home."²³⁷ Studies have concluded that "the curriculum of the

²³⁴ E-mail Questionnaire Response from Anonymous Upstate New York teacher to author (Apr. 2013) (on file with author).

²³⁵ Herbert J. Walberg, *Families as Partners in Education Productivity*, 65 PHI DELTA KAPPAN 397, 398 (1984) (citing Herbert J. Walberg, *Scientific Literacy and Economic Productivity in International Perspective*, Spring 1983 DAEDALUS 1, 1-28; HANDBOOK OF RESEARCH ON TEACHING 214, 214-29 (Merlin C. Wittrock, ed. 1986)).

²³⁶ See Walberg, *supra* note 235, at 398.

²³⁷ *Id.* at 400. While parents' involvement in a child's education can encompass a range of activities, one researcher illustrated five particular types of parent involvement that contribute to their children's academic success. The five involvement types include: (1) providing a home environment conducive to learning; (2) communicating with school about school programs and children's progress; (3) when possible, being personally involved in school functions; (4) being involved with student learning activities at home, such as discussing homework assignments; and (5) participating in school decision-making groups, such as the Parent-Teacher Association. See Joyce L. Epstein, *How Do We Improve Programs for Parent Involvement?*, EDUCATIONAL HORIZONS 58-59 (1988).

home' predicts academic learning twice as well as the socioeconomic status of families."²³⁸

Accordingly, it can be inferred that what happens at home can greatly influence and contribute to a student's ability to learn, achieve, and grow.²³⁹ Study respondents are concerned that, because the APPR ignores external factors, such as parent involvement, the APPR's expectations for meaningful student learning improvements are simply unrealistic. Many respondents stressed that it is imperative for the APPR's evaluation system to take these external factors into account when evaluating student achievement and the effectiveness of teachers and principals.

2. *School psychologists and counselors*

Teachers note that the APPR not only neglects to recognize key influencing factors which exist outside the school, but also those within. In terms of accountability for student academic success, school psychologists are not often mentioned, yet serve an indispensable role in developing learning abilities of struggling students. Some teachers are frustrated that the new evaluation system fails to include other professionals within the school system who share in the responsibility for student growth. A special education teacher from Upstate New York voices frustration that the APPR neglects to consider key professionals who also influence the growth of children, particularly those with learning and emotional disabilities.²⁴⁰ She explains:

Often times [*sic*], the emotional students are supposed to meet with the school psychologist and/or counselor. To the best of my knowledge, those positions are not even part of the APPR. I am the one being evaluated on the growth of students who are the responsibility (in part) of professionals who are not part of the APPR process.²⁴¹

In general, school psychologists determine if there is a problem, what the specific problem is, why the problem is

²³⁸ *Id.*

²³⁹ *See generally* Epstein, *supra* note 237; *see also* Walberg, *supra* note 235.

²⁴⁰ E-mail Questionnaire Response from Anonymous Upstate New York teacher to author (Apr. 2013) (on file with author).

²⁴¹ *Id.*

happening, and how to address the problem.²⁴² School psychologists have a unique position in the school system that allows them to provide services to students and their families, as well as provide information to teachers and school administrators, particularly about how to reach those students with behavioral or emotional problems.²⁴³ Given that the collaborative relationships that school psychologists forge can ultimately increase student success in school, some respondents feel that the evaluation process should consider the effectiveness of school psychologists as well.

Parent involvement and role of school psychologists are two frequently mentioned examples of contributors to student success that are currently absent under the APPR's evaluation process. Respondents, however, referred to a host of other factors outside their control that could greatly influence student growth. Much like the saying that "it takes a community to raise a child," it too appears that it takes a community to educate a child. Although some respondents acknowledge the difficulty in evaluating certain factors that contribute to student success, they believe that the APPR must at least recognize that the student's teacher and principal are only two pieces of a much larger puzzle.

D. Professional Growth Support

After it is all said and done—the annual review is complete, teachers and principals have a score and a rating attached to their professional performance—then what? Expressing the sentiment of many study respondents, one principal argued that a major issue with the APPR process is that "[t]here is no emphasis on professional growth."²⁴⁴ Simply looking at a number and an effectiveness rating does not provide any substantive feedback or provide direction for how an educator can improve.

Yet, as Part II explained, to receive federal funds through RTTT, a state's education reform plan must include

²⁴² W. David Tilly III, *The Evolution of School Psychology to Science-Based Practice: Problem Solving and the Three-Tiered Model*, 1 *Best Practices in School Psychology*, V 17, 18 (2008).

²⁴³ See generally Tilly, *supra* note 242.

²⁴⁴ E-mail Questionnaire Response from Anonymous Downstate New York principal to author (Mar. 2013) (on file with author).

improvements to teacher quality as a crucial component.²⁴⁵ Specifically, under the “Great Teachers and Leaders” category, districts must conduct annual teacher and principal evaluations that provide “timely and constructive feedback.”²⁴⁶ Additionally, states are required to provide “effective support” to teachers and principals.²⁴⁷ This support may come in the form of “data-informed professional development, coaching, induction, and common planning and collaboration time” for teachers and principals.²⁴⁸ In response to RTTT, the APPR’s evaluation system provides a means to ensure that quality educators are teaching New York’s youngest minds.²⁴⁹ The APPR stipulates that performance reviews will serve as a significant factor in teacher and principal development, which may include coaching, support and professional development.²⁵⁰

A 2012 report submitted to Governor Cuomo by the *New NY Education Reform Commission* reiterated the need to further strengthen educator professional supports and provide ongoing training and tools for teachers and principals to continuously improve their effectiveness.²⁵¹ Teachers reported to the Commission that they are still not receiving adequate training or professional development opportunities in order to meet expectations under the Common Core’s new curriculum and testing standards.²⁵²

Study respondents indicated the same frustration. One teacher expressed that the APPR does not provide adequate support to help her identify areas for professional improvement.²⁵³ While the new evaluation system uses numerical scores and ratings to tell her whether her teaching skills need improvement, the process fails to properly address *how* she can improve:

I do not believe that simply saying you have to do x, x, and x

²⁴⁵ See RTTT EXECUTIVE SUMMARY, *supra* note 44, at 9.

²⁴⁶ *Id.*

²⁴⁷ *Id.* at 9–10.

²⁴⁸ *Id.* at 10.

²⁴⁹ See *Regents Adopt Rules*, *supra* note 2; see generally N.Y. Educ. Law § 3012-c.

²⁵⁰ N.Y. Educ. Law § 3012-c(1).

²⁵¹ See New NY Education Reform Commission, *Putting Students First: Education Action Plan*, NY.GOV, <http://www.governor.ny.gov/assets/documents/education-reform-commission-report.pdf> (last visited February 25, 2016).

²⁵² *Id.*

²⁵³ E-mail Questionnaire Response from Anonymous Upstate New York teacher to author (Apr. 2013) (on file with author).

makes someone a highly effective teacher. I think that the spirit of the APPR is good—but its implementation was poor and it lacks the appropriate supports to show teachers exactly what x, x, and x are, or how to get there.²⁵⁴

Despite the fact that RTTT and the APPR specifically require professional development as a critical portion of the teacher and principal evaluation, in practice, it seems that such support is conspicuously absent from the teacher and principal evaluation system under the APPR. One teacher noted that, after experiencing the APPR evaluation process, she feels that her school's previous evaluation system was actually more conducive to providing the appropriate supports for professional growth.²⁵⁵ While her school used a similar evaluation rubric in the past as they now use under the APPR, instead of scoring and rating each teacher based on the rubric, the principal would sit down with the teacher and have a discussion about her strengths and weaknesses, offering constructive feedback for her professional development.²⁵⁶ She explains, "I do not feel I am a better teacher after being observed and scored, nor was my summative helpful to my skill development as a teacher. Our leader did not provide any feedback other than a score."²⁵⁷

Although an important element of the APPR is to provide constructive feedback and professional support, it appears that, in practice, the evaluation process has had little emphasis on professional growth. If teachers and principals are not receiving the feedback and support necessary to improve their skills as educators, then the underlying premise that the evaluations will lead to higher quality teachers and leaders fails. If educators are falling short in a particular area, it is likely not because they are lazy or incompetent; rather, as one superintendent pointed out, the issue has more to do with the fact that many teachers do not know how to improve their practices without guidance and support.²⁵⁸ Given the nature of the issue, he explains, "[a]ccountability will do little to address

²⁵⁴ *Id.*

²⁵⁵ E-mail Questionnaire Response from Anonymous Upstate New York teacher to author (Apr. 2013) (on file with author).

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ E-mail Questionnaire Response from Anonymous Downstate New York superintendent to author (Mar. 2013) (on file with author).

these problems. Instead, they require much more comprehensive, strategic responses aimed at . . . engaging teachers . . . with opportunities to enhance their capacities.”²⁵⁹

To ensure that educators are able to develop their skills and improve their effectiveness in the classroom, it is imperative that leaders provide adequate feedback. In addition to constructive feedback, it is necessary to provide professional development opportunities that will help guide best classroom practices. Thus, the APPR must place more emphasis on professional growth if it seeks to successfully increase the quality of teachers and principals.

E. Sustainability

Whether the APPR is able to accomplish its objectives and achieve lasting reform in New York’s education system hinges on whether the regulations are sustainable. When teachers, principals, and superintendents were asked whether they believe that the APPR is achieving or will achieve its objectives based on their experience, their responses were two-fold. First, some respondents indicated a general hopefulness that the new evaluation system will result in improvements to teaching, leadership, and learning. At the same time, however, the overwhelming majority of respondents were cynical regarding the APPR’s sustainability due to its drain on time and resources.

Before the question of sustainability can be answered, there is of course the question of whether school districts can afford the rollout. According to a poll, eighty-one percent of all New York State superintendents are concerned there are inadequate funds to implement the APPR in a manner that will best benefit their students.²⁶⁰ Some argue that the insufficient funding is heightened as a result of New York’s recent Tax Cap Law, under which school budgets must now be built.²⁶¹ The tax cap “establishes a limit on the annual growth of property taxes levied by local governments and school districts.”²⁶² Under

²⁵⁹ *Id.*

²⁶⁰ See *Open Letter*, *supra* note 158; see also The Council of School Superintendents, *At the Edge: A Survey of New York State School Superintendents on Fiscal Matters*, NYSCOSS.ORG (Oct. 2011), http://www.nyscoss.org/img/news/advocacy_kdbgip09o2.pdf.

²⁶¹ See *Open Letter*, *supra* note 158.

²⁶² New York State Dep’t of Taxation and Finance & New York State Dep’t of

Chapter 97, New York State school districts, except the “Big Five Cities” (namely, New York City, Buffalo, Syracuse, Rochester, and Yonkers) may not adopt a budget that requires a tax levy that exceeds the prior year’s levy by more than two percent or the rate of inflation, whichever is less.²⁶³ In simple terms, the tax levy is the total tax dollars that a school district collects from property owners located within that district.²⁶⁴ The district then uses the tax dollars to fund its budget.²⁶⁵ While the law does not restrict any proposed tax levy increase up to 2 percent, it does require the support of at least 60 percent of voters in order to pass a budget that is above the 2 percent tax levy limit.²⁶⁶ Thus, low inflation can lower the tax cap, but adjustments can raise it.²⁶⁷

While New York State views the tax cap as a positive step toward preserving local control and increasing citizen empowerment,²⁶⁸ some survey respondents are concerned that the cap will thwart a district’s ability to meet the additional evaluation requirements under the APPR. In an APPR position paper, New York State principals expressed concern that “district funds must be funneled to staff development and outside scoring even as New York State taxpayers’ precious dollars are funneled to testing companies and other vendors. At a time of economic crisis, this leaves fewer and fewer dollars for our classrooms.”²⁶⁹ For example, the APPR requires that test scores be part of annual evaluations²⁷⁰ in order to ensure that tests are scored in a timely fashion. To guarantee exam security, tax dollars are spent on outside companies that specialize in “test development, exam security, and data analysis.”²⁷¹ As a result, districts face increased costs without corresponding financial support.

State, *The Property Tax Cap Guidelines for Implementation*, NY.GOV (Feb. 2011), www.tax.ny.gov/pdf/publications/orpts/capguidelines.pdf [hereinafter *Tax Cap*].

²⁶³ *Id.*

²⁶⁴ *See generally Tax Cap*, *supra* note 262.

²⁶⁵ *Id.*

²⁶⁶ *See* CitizenConnects, *A Citizen’s Guide to the Property Tax Cap*, NY STATE, <http://reforminggovernment.ny.gov/reforminggovernment/guide-to-the-property-tax> (last visited May 7, 2016).

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *See Open Letter*, *supra* note 158.

²⁷⁰ N.Y. Educ. Law § 3012-c(2)(a).

²⁷¹ *See Open Letter*, *supra* note 158.

Beyond the financial concerns, many responding teachers and principals also noted their concerns regarding the labor-intensive and time-consuming nature of the new evaluation system. The concern is that an incredible amount of time is being displaced from the classroom experience to instead focus on APPR preparation and administration. One teacher explained that, while the APPR process is “good on paper,” teachers are spending more time finding ways to visibly demonstrate that their students are achieving versus actually teaching the students:

There will be the APPEARANCE of teacher accountability and of student achievement, but . . . much time and effort is being put into the ‘proof/evidence’ and the ‘show’ of accountability . . . [consequently] . . . less time and effort is now available to actually work with the students to help them learn.²⁷²

Another teacher explained that “the amount of time invested in each evaluation under APPR for teachers and their administrators is unrealistic . . . [the] APPR means time away from other important duties.”²⁷³

Instead of spending valuable time and money on an “inherently flawed” evaluation system, respondents argue that the resources are best directly spent to enhance classroom and extracurricular experiences.²⁷⁴ Even for those educators who may agree with the overall intent and objectives of the APPR, there are lingering concerns that the APPR’s actual implementation costs, of both time and money, are not only unsustainable, but may best serve students if spent elsewhere.

V. CONCLUSION

The motivation to establish a new teacher and principal evaluation system under the APPR is to increase student achievement and growth by ensuring that each classroom has an effective teacher and every school has an effective leader.²⁷⁵

²⁷² E-mail Questionnaire Response from Anonymous Upstate New York teacher to author (Mar. 2013) (on file with author).

²⁷³ E-mail Questionnaire Response from Anonymous Upstate New York teacher to author (Mar. 2013) (on file with author).

²⁷⁴ *Id.*

²⁷⁵ *See Regents Adopt Rules*, *supra* note 2; *see also Cuomo Agreement*, *supra* note 82.

Such a goal is highly commendable, however, to determine whether that goal has been or is capable of being achieved we must investigate the actual ground-level effects that the APPR has on New York's districts, schools, and classrooms. The voices of those directly experiencing the APPR's effects tell us that it is uncertain, and perhaps even unlikely, that the APPR is the proper system by which to achieve that goal. Their insight and experience reveal that the ground-level implementation of the APPR is not without significant flaws and potentially damaging consequences to all stakeholders.

Not only are there serious concerns regarding the value of high stakes testing as any indicator of teacher effectiveness, the APPR ignores that teachers are professionals and are in the best position to understand how their students learn. Beyond this, the APPR fails to recognize that student success is predicated on the work of many professionals, and influenced by factors largely beyond the control of teachers. The APPR attempts to place the entire responsibility of student achievement and growth on educators, yet it fails to emphasize or provide the tools necessary for professional growth or development that they require. Finally, the drain on limited time and severely strained resources calls into question the sustainability of the APPR.

Contemporary education theorists advocate for teaching methods that encourage student participation and active thinking,²⁷⁶ yet educators increasingly report that they feel forced to "teach to the test." Too often it seems federal and state policies addressing education reform forget that the success of an education goes beyond filling in the right bubbles with a No. 2 pencil at a specified date and time. As the former teacher and late Senator Paul Wellstone explained, education is far more comprehensive than what can be accurately tested:

Education is, among other things, a process of shaping the moral imagination, character, skills, and intellect of our children, of inviting them into the great conversation of our moral, cultural, and intellectual life, and of giving them the resources to prepare to fully participate in the life of the

²⁷⁶ See Paul D. Wellstone, *High Stakes Tests: A Harsh Agenda for America's Children*, FAIRTEST (Mar. 31, 2000), www.fairtest.org/high-stakes-tests-harsh-agenda-americas-children; cf. Clarick, *supra* note 161, at 720.

nation and of the world.²⁷⁷

Perhaps the art teacher who invites her students to embrace their curiosity and creativity with their paintbrushes has the right idea. A test may not measure those students' curiosity or creativity, and thus under the APPR a teacher may not be rewarded for cultivating those vital skills. But if we are truly serious about providing quality education to our students, perhaps sometimes it is best to go beyond regimented test preparation, and just let the students paint.

If nothing else is learned from New York's experience with the APPR, policymakers must at least recognize the great importance of actively engaging with educators in the development and implementation of education policy. Educators are the best sources of insight into the ground-level effects of proposed education reform. While education reform and accountability systems *are* necessary to ensure our students are equipped to succeed in a quickly evolving global economy, the processes through which such policies are developed, implemented, and sustained figure heavily in their ultimate effects. Of utmost importance, policymakers must take the time necessary to develop an accountability system that will best serve the needs of our students.

When it comes to education reform, it is not an overstatement to say that the future lies in the balance. A proposal of change that will affect the education of our students must be given the most careful consideration, the most thorough scrutiny, and, critically, it must affect the education of our students in the positive. Change is only in the best interest of our students when it is change that ushers progress.

²⁷⁷ Wellstone, *supra* note 276.

APPENDIX

APPR Research - Teacher Questionnaire

Introduction

- 1.) Name:
- 2.) Do you wish to be anonymous?
- 3.) Position title:
- 4.) Name of school:
- 5.) School District:
- 6.) Number of years in your position:
- 7.) Are you tenured?
- 8.) List any prior positions you held in the education field with number of years in those positions:
- 9.) May I contact you with follow up questions? If so, please provide your preferred contact information.

Please be assured that I will only use this information to contact you if I have further questions and will not share it with any other person.

APPR Plan Development

- 1.) Did you have a role in developing your school's APPR Plan? If so, please explain.

- 2.) Who else was involved in creating the APPR Plan and how did they contribute?
 - 3.) Were there any challenges in developing the APPR Plan? Please explain.
 - 4.) When did the State approve your school's APPR Plan?
-

APPR Plan in Action

- 1.) Since your school implemented the APPR Plan, how has the evaluation process for teachers changed?
- 2.) How has disciplining teachers changed?
- 3.) Has your classroom environment changed? Please explain.
- 4.) Has the camaraderie between fellow teachers changed? Please explain.
- 5.) The intent of the APPR's new evaluation process is to ensure that each classroom has an effective teacher, and that each school has an effective leader. In general, the idea is that, by way of providing a system to hold educators accountable, student achievement will increase. Based on your experiences, do you believe APPR is achieving or will achieve these objectives? Please explain why or why not.
- 6.) If you have any further thoughts, insights, personal experiences, or concerns with APPR that were not addressed above, please share below.