Abstract

Opening the Black Box: Government Teacher Workforce Policy in New York City

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As recently highlighted by the federal Race to the Top program, teacher policy is a growing focus of education policymakers and reform advocates, with much debate over how to train, motivate, and evaluate teachers, and increasing concern about teacher accountability. Yet while teacher workforce policy is increasingly recognized as an important dimension of public education policy, the complexity and contradictions that characterize teacher policy remain poorly understood by the public, policymakers, and scholars alike. This dissertation illuminates a problematic gap between the aspirations of new policy initiatives and the web of state and district laws and regulations that actually governs public school teachers and holds them accountable.

Using New York City as a case study, the dissertation investigates the broad range of state and district policies that operate together to manage the teacher workforce of an urban school district. The dissertation builds a comprehensive typology of both supply- and demand-side teacher policies, employing an original analytical framework that integrates concepts drawn from strategic human resource management, legal studies, and the education literature on accountability. In particular, the study examines what teachers are held accountable for, and how minimum teaching competence is defined and enforced across the district workforce.

The study shows that the district teacher policy system is composed of a disparate set of multiple, interacting state and district policy subsystems, and reveals the state’s dominant role in
teacher accountability. The state-controlled due process proceedings mandated by New York Education Law § 3020-a are found to be the cornerstone of teacher accountability in New York City. These precedent-driven proceedings define and enforce minimum teaching standards, and play a critical, under-recognized role in the district policy system. The state-sanctioned role of the district teachers union is also found to be central to the design and function of teacher workforce policies. Operating as a systemic whole, teacher policies hold New York City teachers strictly accountable for credentials, longevity, and ongoing training, while policies holding teachers accountable for their work are very weak, and operative mechanisms to ensure system-wide teaching competence do not exist.

The study also identifies a significant degree of incoherence between accountability policies for teachers and those for other school stakeholders. Using new institutional theory as an analytical lens, the study explores ideological paradigms and alignments evident in these discrepant policies, focusing especially on growing tension between government and professional authority. New York education policy now appears to incorporate two contrary ideological paradigms: one aligned with an emerging government emphasis on efficiency, and the other with the professionalization model long promoted by the education profession.

Study findings reveal the intricate nature of teacher workforce policy in New York City, and shed light on limitations of both federal and state influence in a highly fragmented education system. The dissertation concludes that locally-implemented policy systems for managing the teacher workforce merit closer attention as a crucial domain of education policy and school improvement.
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Chapter 1:
Study Introduction and Overview

On August 28, 2008, Barack Obama accepted the Democratic nomination for President of the United States. His historic address, viewed by 38 million people across the country, included conventional Democratic emphasis on the importance of the public schools: “Michelle and I are only here tonight because we were given a chance at education,” he said. He stressed established Democratic priorities of hiring more teachers and raising teacher salaries: “I’ll recruit an army of new teachers, and pay them higher salaries, and give them more support” (“Barack Obama’s acceptance speech,” August 28, 2008). But in a marked departure from the party line he called at the same time for “more accountability,” anticipating teacher accountability as an unexpected centerpiece of his first presidential administration. “Obama wants teacher ‘accountability,’” the Washington Times wrote shortly after his inauguration (Dinan, March 10, 2009). In July, ABC News reported: “Simply put the White House wants more accountability for teachers” (Bruce, July 29, 2010). Ushered onto the national stage by the Obama administration and reinforced by the $4.35 billion Race to the Top contest announced in July 2009, teacher accountability has now become a highly controversial focus of public school reform.

The widespread assumption that teachers are held accountable for virtually nothing is a notable aspect of the national debate about teacher accountability. In New York, for example, the New York Post recently editorialized that “[t]eacher accountability in New York is nonexistent” (McManus, January 15, 2012). Yet in fact teacher accountability has long been firmly
established in New York State law. Teachers are held accountable for their preparation: only teachers who have earned a Master’s degree can be hired to teach. Teachers are held accountable for their ongoing professional development: any teacher who does not complete 175 hours of state-approved professional development every five years is fired. Teachers are awarded merit pay for teaching experience and continuing study, receiving financial rewards for increased years of teaching and additional credits earned. The question, then, is not if teachers should be held accountable but for what.

Driving an intensifying public call for teacher accountability is the growing perception that teachers are not held accountable for what’s actually most important: the quality of their teaching. Recent legislation passed in New York State directly addressed this concern, introducing a new evaluation system aimed to evaluate teachers’ work. While acclaimed as a “sweeping overhaul” of teacher evaluation and accountability (Wall Street Journal, May 11, 2010), however, the highly-visible new evaluation system is just one strand of a broad web of policy and legal mechanisms governing teacher accountability. In fact, just as New York State is implementing the conspicuous new evaluation system, it maintains more obscure, longstanding laws that virtually preclude teacher accountability for teaching quality. A significant gap has emerged between the aspirations of new policy initiatives and the intricate system of state and district laws and regulations that governs public school teachers and holds them accountable. Despite much recent attention directed to teacher evaluation and accountability, the complexity and contradictions that characterize government teacher policy remain little understood by the public, policymakers, and scholars alike.

Using New York City as a case study, this dissertation investigates the range of state and district policies that operate together to manage the teacher workforce of an urban school district.
In particular, the study examines what teachers are held accountable for, and how minimum teaching competence is defined and enforced across the district workforce. The study shows that the district teacher policy system is composed of an amalgamated set of multiple, interacting state and district policy subsystems, and reveals the state’s crucial role in teacher accountability. The state-controlled due process proceedings mandated by New York Education Law § 3020-a are in fact the cornerstone of teacher accountability in New York City. These precedent-driven proceedings define and enforce minimum teaching standards, and play a critical, under-recognized role in the district policy system. The state-sanctioned role of the district teachers union is also central to the design and function of teacher evaluation and accountability policies. Operating as a systemic whole, current teacher policies hold New York City teachers strictly accountable for credentials, longevity, and ongoing training. At the same time, policy mechanisms holding teachers accountable for their work are very weak, and mechanisms to ensure system-wide teaching competence do not exist.

1.1 Accountability and School Reform

Accountability has played a growing role in U.S. policy efforts to improve schools since the 1960’s. Until recently, accountability in K-12 education focused largely on education inputs and processes rather than outcomes (Adams & Kirst, 1998; Carnoy & Loeb, 2004; Grubb, Goe, & Huerta, 2004; Levin, 1974; Mintrop, 2004). As Levin (1974) wrote almost forty years ago, “schools now are held accountable not for explicit educational outcomes, but for explicit educational processes and inputs” (p. 383), observing that “one can find little direct mention of outcomes among any of the political discussions surrounding the schools” (p. 379). Since the 1980s, however, the aim of education accountability has shifted increasingly to holding
educators accountable for schooling outcomes defined as measurable student learning (Adams & Kirst, 1998; Carnoy & Loeb, 2002; Fuhrman, 1999; Fuhrman & Elmore, 2004; Linn, 2000, 2005; O'Day, 2002; Porter, 1994). The now-prominent outcomes-based accountability model emphasizes student achievement as the central goal of schooling, and its policy objective is to ensure adequate outcomes—rather than adequate or equalized inputs—for all students, regardless of income or race.

In 2001, No Child Left Behind (NCLB) codified outcomes-based accountability into federal law in an unprecedented expansion of the federal government’s role in education (Shelly, 2012). Since then, many states have implemented outcomes-based accountability policy initiatives and mayors in several large cities have assumed management control of their local school districts in response to growing public demands for improved school effectiveness and greater accountability for student outcomes (Henig & Rich, 2004; Shen, 2011; Usdan, 2006; Wong, 2006). The outcomes-based accountability approach is now the primary policy strategy utilized for systemic school improvement (e.g. Abelmann & Elmore, 1999; Adams & Kirst, 1998; Au, 2009; Carnoy & Loeb, 2002; Cuban, 2004; DeBray-Pelot & McGuinn, 2009; Elmore, 2004; Elmore, Abelmann, & Fuhrman, 1996; Fuhrman, 1999, 2004; Linn, 2000, 2005; Mintrop & Sunderman, 2009; Newmann, King, & Rigdon, 1997; O'Day, 2002; Stringfield & Yakimowksi-Srebnick, 2005). While many scholars criticize this approach to school reform, they widely identify the outcomes-based accountability model as a powerful influence in public education, with “enormous repercussions throughout the system, affecting students, teachers, administrators, basic funding decisions at the school, city, county, and state levels, and more” (Siegel, 2004, p. 51).
Particularly since the passage of No Child Left Behind, education scholars have directed much attention to outcomes-based accountability, often termed the “new accountability” in the education literature.¹ Scholars describe new accountability as characterized by: (1) Clear, stated standards for student outcomes; (2) Standardized measurement of student achievement of those standards, used to evaluate educator, school, and system performance; and (3) Significant consequences allocated to individuals based on individual performance (Abelmann & Elmore, 1999; Adams & Kirst, 1998; Cross, Rebarber, & Torres, 2004; Elmore et al., 1996; Fuhrman, 1999; Hess, 2003; Newmann et al., 1997). The new accountability model described in the education literature is shown in Figure 1.1.

![Figure 1.1. The “new accountability” model in K-12 education](image)

Allocation of consequences for individual performance—also referred to as incentives, or rewards and sanctions—is the distinctive mechanism of the new accountability policy model. New accountability’s theory of action is widely described in the scholarly literature as the idea that holding people accountable through “clear and powerful incentives” based on evaluation of their performance will motivate them to exert greater effort, and will result in improved student outcomes (Baker & Linn, 2004, p. 48; Linn, 2005). The aim of new accountability policy systems is to “hold students, teachers, principals, superintendents, school boards, and mayors

¹ This approach to accountability is also sometimes referred to as standards-based accountability, or SBA: see, for example, (McDonnell, 2009).
individually responsible for overall performance” (Cuban, 2004, p. 79). In addition to its emphasis on individual accountability for student outcomes, new accountability is explicitly intended to be a systemic policy reform strategy, within which all components of government education policy are aligned around producing and being held accountable for student achievement (Adams & Kirst, 1998; Baker & Linn, 2004; Chatterji, 2002; Fuhrman, 1993a).

The influential new accountability movement has emerged from the government rather than the education profession, and has been perceived as an escalating threat to the established field of education (Henward & Lorio, 2011; Marks & Nance, 2007; J. Scott, Lubienski, & DeBray-Pelot, 2009; Sunderman & Orfield, 2006; Wilson, Rozelle, & Mikeska, 2011). Educators largely view recent government-driven accountability initiatives as incompatible with professionalism, implemented by a government which is “hostile to the education establishment” (Sunderman & Orfield, 2006, p. 528), and a direct challenge to the profession’s longstanding control over public schooling (Au, 2007; Craig, 2009; Darling-Hammond, 2010; Futrell, 2010; Honig & Hatch, 2004; Ladson-Billings, 2008; Mirra & Morrell, 2011; Watkins, 2011; Wilson et al., 2011). Over the last decade, the national debate over improving teaching in the public schools has become increasingly contentious and ideologically-charged, largely polarizing between government-driven accountability, on the one hand, and what is often referred to as professionalization, on the other (Au, 2007; Cochran-Smith et al., 2012; McDonnell, 2009; Spillane, 2012): “the competing logics of professional autonomy and government control are readily evident in virtually every policy debate and interwoven in policy or reform initiatives” (Little & Bartlett, 2010, p. 302).
1.2 Teacher Accountability vs. Teacher Quality: Two Competing Paradigms

The competing logics of professionalization and outcomes-based accountability are especially reflected in the scholarly education literature on teachers. The growing influence of accountability is widely acknowledged in the literature as driven by the government. At the same time, the dominant focus in the education literature with respect to teachers has remained on teacher quality, as a concept core to the professionalization paradigm. Education scholars largely dismiss the state-driven, outcomes-based accountability model as an ineffective strategy for improving schools, arguing instead that raising teacher quality through enhancing teachers’ professional knowledge and capacity is the most effective means to improve schools (e.g. Cochran-Smith, 2003; Corcoran & Goertz, 1995; Chrismer, Hodge, & Saintil, 2006; Darling-Hammond, 2004b, 2010; Evertson, 1986; Feiman-Nemser, 2012; Futrell, 2010; Hamre & Pianta, 2005; Lasley, Bainbridge, & Berry, 2002; Lee & Reeves, 2012; Mirra & Morrell, 2011; O'Day, 2002; Oakes, Blasi, & Rogers, 2004; Richardson & Roosevelt, 2004). The education literature on the role of teachers in school reform focuses primarily on enhancing teacher quality through training and support of individual teachers, largely excluding discussion of teacher accountability. At the same time, a separate body of literature that examines the role and function of accountability in school reform has included little on teachers. These two frameworks—“teacher quality” and “accountability”—are usually presented as competing and contradictory paradigms.

While No Child Left Behind (NCLB) is sometimes described as holding teachers accountable for outcomes (e.g. Konstantopoulos, 2011; Oakes et al., 2004), the legislation is in fact explicitly directed at students and schools, and stipulates requirements only for teachers’
input credentials, such as certification. More recently however, growing awareness of the crucial role of the classroom teacher as the frontline player in schooling and persistent concerns regarding both school and teacher quality led to the federal Race to the Top (RTTT) initiative announced in 2009, which focuses directly on the outcomes of teaching. RTTT introduces unprecedented government policy emphasis on accountability for both teachers and teacher education (Marsh, 2012; Wiseman, 2012). This recent federal initiative can in fact be seen as setting up newly-direct opposition between the government and the education profession: “Educational reforms enacted through federal policies are directly impacting the voice of children, teachers, and teacher educators”; moreover, these new government initiatives increasingly have: “the potential of greatly infringing on academic freedom for faculty members in schools of education and cross-disciplinary social science areas such as psychology, sociology, history and anthropology” (Henward & Lorio, 2011).

1.3 Overview of the Literature on No Child Left Behind and Race to the Top

The two major federal education initiatives of the past decade—No Child Left Behind and now Race to the Top—have received a great deal of critical attention in the education literature. The literal content of the federal legislation has been closely examined. Significant attention has also been directed to the context and causes of the legislation, and “on-the-ground” observed effects on students, teachers, schools, and principals. The following briefly summarizes the main areas of scholarly focus over the last several years.

One emphasis has been on examination and theoretical critique of the design, underlying principles, and assumptions of NCLB, standards-based accountability, and now RTTT (e.g. Au, 2009; Darling-Hammond, 2009, 2010; Fuhrman & Elmore, 2004; Howe & Meens, 2012; Hursh,
focused on analysis of the politics of the national education policy arena: the national policy
debate, the evolving policy agenda, shifting politics, and the growing role of political advocacy
at the national level. These scholars have examined policy history and precedent, and issues of
power, authority, and decisionmaking as they have contributed to the emergence of an
unprecedented federal role in education policy and the shaping of recent federal legislative
initiatives (e.g. DeBray-Pelot & McGuinn, 2009; McGuinn, 2010, 2012; Nicholson-Crotty &
Staley, 2012; J. Scott et al., 2009; Shelly, 2012; Shipps & Kafka, 2009; Sunderman, 2010;
Vergari, 2012).

Perhaps the strongest focus in the education literature over the last decade has been on
examining the implementation and effects of NCLB. For example, scholars have done qualitative
investigations of NCLB’s impact on individual principals (e.g. Finnigan, 2012; Rutledge, Harris,
& Ingle, 2010; Saltrick, 2010; Spillane et al., 2002), and on the culture and behavior of schools
(e.g. Holme & Rangel, 2011; Marsh, 2012; Spillane, Parise, & Sherer, 2011). Another strand of
literature has examined the legislation’s impact on student achievement (e.g. Brown & Clift,
2010; Heilig & Darling-Hammond, 2008; Konstantopoulos & Hedges, 2008; Lauen & Gaddis,
2012; Nichols, Glass, & Berliner, 2006, 2012). A great deal of qualitative work has focused on
the effects of the legislation on individual teachers and their instruction (e.g. Anagnostopoulos &
Rutledge, 2007; Au, 2007; Brown & Clift, 2010; Craig, 2004; Childress, Higgins, Ishimaru, &
Takahashi, 2011; Darling-Hammond, 2009; Diamond, 2012; Graue & Johnson, 2010; D. M.
Harris, 2012; Louis, Febey, & Schroeder, 2005; Mintrop & Sunderman, 2009; Olsen & Kirtman,
2002; Palmer & Rangel, 2011; Valli & Buese, 2007). This literature has largely been critical of
NCLB, and now RTTT; a growing strand has focused on how teachers are resisting compliance with mandates not consistent with their personal values and goals (e.g. Achinstein & Ogawa, 2006; Anderson, 2010; Behrent, 2009; Craig, 2009; Gunzenhauser, 2008; Olsen & Sexton, 2009; Picower, 2011; Ritchie, 2012; Sleeter, 2008; Spalding, Klecka, Lin, Odell, & Wang, 2010; Wills & Sandholtz, 2009).

Finally, an increasingly prominent strand in the literature has addressed the question of how teachers should be evaluated. Much of this literature has focused on the use of value-added measurement (VAM) in particular, in an ever-more-heated debate regarding whether VAM is an appropriate technology for teacher evaluation.\(^2\) NCLB has required for years that students’ achievement test scores be used to evaluate students and schools, and the question has been raised regarding whether teachers, too, should be evaluated by these same measures. However, significant concerns have been raised about the validity and reliability of current measurement technology for using student test scores to measure teacher performance, as well as the overall advisability of this approach (e.g. Amrein-Beardsley, 2008; Baker et al., 2010; Begley & Stefkovich, 2004; Darling-Hammond, Amrein-Beardsley, Haertel, & Rothstein, 2012; Heilig & Darling-Hammond, 2008; Kupermintz, 2003; Levin, 2011; Papay, 2011).\(^3\)

\(^2\) VAM has also been increasingly used to investigate other questions related to teachers: for example, whether teacher education adds value (e.g. Konold et al., 2008; Neild, Farley-Ripple, & Byrnes, 2009); the efficacy of various kinds of teacher preparation (e.g. Boyd, Grossman, Lankford, Loeb, & Wyckoff, 2009; Phillips, 2010); “returns to teacher experience (e.g. Henry, Bastian, & Fortner, 2011); and differential teacher effects on minority and disadvantaged children (e.g. Konstantopoulos, 2009).

\(^3\) Levin (2011, May), for example, provides a recent discussion of the vital role of non-cognitive student skills, which are excluded from standardized achievement tests. He argues that a narrow focus on cognitive test scores can significantly detract from other essential purposes of schooling, and points out that this currently-dominant focus can result in teacher policies that “ignore the importance of non-cognitive skills and fail to value roles of teachers and schools in the non-cognitive domain” (p. 77).
Many scholars reject the use of standardized test scores as any part of high-stakes teacher evaluation, arguing that teachers should be evaluated by their training and credentials and/or instructional practice. A number of scholars argue that VAM has a place in evaluating teachers, although should be used only as one component of evaluation (e.g. Rockoff & Speroni, 2010; Scherrer, 2011; Stronge, Ward, & Grant, 2011). Apart from its merits and liabilities, VAM has assumed a prominent place in the evaluation and accountability landscape, and the recent passage of Race to the Top has continued to intensify debates over its usefulness (Stronge et al., 2011). Indeed, VAM and high-stakes testing are now widely—if mistakenly—viewed as synonymous with the very concepts of evaluation and accountability (Graue & Johnson, 2010; Koyama, 2011), and often dominate debate on teacher accountability. The issue of how to measure teachers in a fair and accurate way is a crucial one, and serious limitations in current measurement technology constitute an important part of this picture. Yet at the same time, the specific question of whether VAM is appropriate for evaluating teachers is simply one part of the much larger problem of how to hold teachers accountable and for what. The contentious debate over this particular measurement technology often draws attention away from other important considerations, narrowing scholarly focus, and precluding debate and analysis around broader questions related to teacher evaluation and accountability.

In summary, thus, the scholarly literature on No Child Left Behind, Race to the Top, and outcomes-based accountability more generally has emphasized several areas in particular: critiques of these initiatives; their politics and history; their on-the-ground effects on students, schools, principals, and teachers; and debates over how teachers should be evaluated, with strong disputes over VAM technology in particular. A key piece is missing from this scholarship:
 empirical research on the specific design and content of state and district accountability policy systems—including teacher policies—as they are implemented in schools.

1.4 A Missing Piece: Design and Content of Accountability Policies

The passage of the No Child Left Behind Act represented an unprecedented expansion of the federal role in education (Shelly, 2012). A decade later, the $4.35 billion federal Race to the Top program has further expanded the federal role, constituting the largest competitive federal grant in the history of U.S. education (Grissom & Herrington, 2012; Nicholson-Crotty & Staley, 2012). These federal programs have brought a dramatic shift in the national discourse around education, foregrounding accountability for student achievement as the central public schooling issue, and drawing much-increased attention to teacher effectiveness and accountability (Chrismer et al., 2006; Koppich & Esch, 2012; Marsh, 2012; McGuinn, 2012; Superfine, Gottlieb, & Smylie, 2012). The national policy agenda, too, is being reshaped in notable ways as previously dominant interest groups, such as the national teachers unions, now contend with influential new players from business, think tanks, and advocacy groups (DeBray-Pelot & McGuinn, 2009; Koppich & Esch, 2012; J. Scott et al., 2009; Sunderman, 2010). These shifts at the national level are clearly important, and seem likely to anticipate shifts in the state and district policies implemented in schools. At the same time, however, a shift in the national discourse or policy agenda does not itself constitute a shift in the design and content of policies. While the rapidly-evolving national discourse and re-configuring of the national policy arena are critical pieces of the current education policy picture, actual influence on state and district education policies can only be determined by direct examination of state and district policies themselves. At the same time, however, most empirical policy analysis to date has concentrated
on the broad directives of federal education legislation rather than the state and district education policies that the legislation is attempting to influence. Thus, while the federal accountability legislation of the last decade is a salient new presence on the education landscape, its concrete impact on actual education policies remains little studied or understood. The large body of work on the on-the-ground effects of accountability policies is generally based on the assumption that state and district education policy operating in schools closely reflects these much-analyzed federal education initiatives. Yet the content and intent—or “basic design features” (McDonnell & Elmore, 1987)—of the state- and district-level policies implemented has remained almost entirely unexamined.

Theoretical models used to investigate the impact of accountability policies have largely not made critical distinctions between types of policy instruments under analysis, considered whether instruments are likely to produce their intended results, or accounted for the differential effects that various instruments may be expected to cause. The policies which are causing the effects studied are described in very vague terms. Typical instances of scholarly descriptions of policies include: “rather explicit means of control,” “official documents and administrative oversight,” “external regulations,” “the regulatory environment,” “rewards and sanctions embedded in government policies,” “external policy demands,” “state-based accountability policies,” the “education policy climate,” “larger policy climates and pressures,” and “the policy environment [that] penetrates the classroom” (Craig, 2009; Diamond, 2012; Gunzenhauser, 2008; Holme & Rangel, 2011; Jordan, 2010; Lauen & Gaddis, 2012; Nichols et al., 2006; Olsen & Sexton, 2009; Spillane et al., 2011).

In one specific example, a study recently published in *Educational Evaluation and Policy Analysis* investigates the impact of “accountability pressure from NCLB” on poor and minority
student achievement, vaguely defining the causal variable as “the pressure educators may feel because of the explicit consequences embedded in state and federal accountability policy;” (Lauen & Gaddis, 2012, p. 3). The specific meaning of “pressure” and “consequences” is not addressed, and how these influence levers are operationalized in policy instruments is not explained. District policy is not mentioned. Similarly, Luke, Green, & Kelly (2010) introduce a special issue of Review of Research in Education examining the underlying assumptions and effects of “normative, prescriptive moves of legislation.” No detail or evidence is provided regarding the nature of that legislation in the first place; the authors appear to assume that the policies implemented in schools are so closely reflective of the federal policy agenda that no investigation of actual policies is necessary. Thus they present “evidence that has been neglected in current educational debates—including legal, sociodemographic, political economic, sociological, linguistic, anthropological, and social geographic research,” but none regarding the substance and structure of the policies themselves.

In sum, both theoretical critiques of accountability policy and empirical work on policy effects have largely been based on a vaguely-specified concept of “accountability” as it is actually operationalized in policies. Further, accountability is often equated with standardized testing, leading to reductionist examinations of accountability that are often narrowed simply to the pros and cons of a particular measurement technology. Analysis has also concentrated on the shifting national discourse, national politics, federal activism, and highly-visible federal initiatives. Yet state and district policies have remained surprisingly understudied. Much current work is grounded in the assumption that the content of state policies and, ultimately, the district-level policies that are implemented in schools is substantively equivalent to that of federal policies, simply executing the highly-visible accountability agenda on the ascendance in the
national policy discourse. The specific nature and characteristics of state and district policy are thus assumed rather than analyzed; the effects of policies are studied without adequate knowledge of the policies that are producing those effects; and the actual impact of highly-visible federal initiatives on the policies eventually implemented remains little understood.

Gaps in study of accountability policy may partially reflect the longstanding belief that “external” government policies do not penetrate or impact schools and classrooms significantly (see, for example, Abelmann & Elmore, 1999; Diamond, 2012; Gross & Goertz, 2005; McLaughlin, 1987; McLaughlin & Talbert, 1993; Newmann et al., 1997; O'Day, 2002); this belief can lead to the a priori view that careful study of state and district accountability policies is not of great importance. Gaps may also reflect the relatively short time horizon of the NCLB and RITT initiatives. As Henig (2009) suggests, “in the earlier stages of a policy initiative, conceptual understanding of the phenomenon is limited, and as a result, critical distinctions among varieties tend to be ignored” (p. 149). Examples of this problem in accountability policy research are both conceptual and empirical, including inadequate distinction between the policy debate and actual policies; conflation of federal policy programs with state and district policies, and weak understanding of the extent to which federal programs actually influence state and district policy systems; conflation of the school (an inanimate entity) with the teachers (individual human actors) who work there; conflation of evaluation (whether VAM or other methods) with accountability; and significant gaps in knowledge regarding the varied policy instruments implemented at the state and district levels that operationalize federal, state, and district policies.

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4 Under the definition of accountability now widely used in the education literature (shown in Figure 1.1), evaluation is one of three components of accountability.
The importance of state and district policies under federalism. Federal activism in education policy has been the subject of considerable academic and media focus over the past decade. NCLB “greatly expanded the federal role in a policy area in which states had previously enjoyed relatively unchallenged autonomy” (Shelly, 2012, p. 119), and the unprecedented reach of federal involvement in public education has been much highlighted. Recently, however, a handful of scholars have begun to focus more nuanced analytical attention on the growing federal role in education policy, suggesting that federal influence on state and district education policy may be more limited than has often been assumed in education scholarship. “In important respects,” Sunderman (2010) writes, the U.S. has not one education system, but rather “50 independent state educational systems with 15,700 local variations in districts that are loosely regulated by the states” (p. 227). Policy scholars are therefore becoming increasingly interested in studying education policy at state and district levels, “from the bottom up, rather than the top down” (Furgol & Helms, 2011, p. 4).

Under federalism, states and districts—not the federal government—control the public schools. While the federal government can attempt to impact state and district education policy, U.S. law prohibits the federal education department from exercising “any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school or school system” (Pub. L. 96-98, § 103 as cited in Vergari, 2012, p. 19). In the highly fragmented and decentralized U.S. education system, federal power to shape education policy is thus significantly constrained (Furgol & Helms, 2011; Grissom & Herrington, 2012; Kolbe & Rice, 2012; McGuinn, 2012; Shelly, 2012; Sunderman, 2010; Venters, Hauptli, & Cohen-Vogel, 2012; Vergari, 2012). In fact, notwithstanding the highly-visible role of the federal government in education policy, some scholars suggest that “in reality,
state and local officials continue to exercise primary authority over the nation’s schools” (Kolbe & Rice, 2012, p. 206). Some recent empirical work, for example, has suggested that NCLB was considerably less influential in state policies than realized, as states have resisted and reshaped federal programs, “clearly and dramatically alter[ing] NCLB” as it was translated into state education policy (Shelly, 2012, p. 131; Vergari, 2012). As Vergari (2012) write: “States can secure their perceived interests by influencing the prelegislative, legislative, and postlegislative stages of the federal policy process…Once a federal policy is adopted, states enjoy significant power to shape policy implementation” (p. 17).

Just as the state shapes implementation of federal policies, the district, in turn, shapes implementation of state policies. The intergovernmental education landscape has undergone important shifts as both federal and state activity in education policy have increased to unprecedented levels, and districts face new pressures and constraints in this reconfigured environment. Yet, in important respects, district power has not necessarily diminished, and the school district remains significant in education policy (Firestone, 2009; Henig, 2009; Vergari, 2012); districts “have given up little formal authority” (Grissom & Herrington, 2012, p. 7). Sunderman (2010) writes:

[While] reform has expanded the federal and state role in education, transformed the organization of interests, and created a national political culture where educational policy priorities increasingly are established nationally…their impact varies widely depending on local conditions and implementation, allowing local districts to retain considerable power within an increasingly bureaucratic system. (p. 226)

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5 Along similar lines, The New York Times reported in July 2012 that over half the schools in the country had been “freed…from central provisions of the No Child Left Behind education law, raising the question of whether the decade-old federal program has been essentially nullified” (Rich, 2012, July 19).
A crucial aspect of intergovernmental dynamics of education policymaking and central to the key role of the district is the rulemaking process. While under-recognized and little studied in education, rulemaking plays an essential role in education policy formulation at each of level of government: “Policy is continually molded and reworked with rulemaking being a key technology that shapes implementation, adds complexity, and adapts statutory mandates to the demands of practice and policy delivery” (Furgol & Helms, 2011, p. 2). Legislation creates only a bare-bones policy framework; much substantive, operational detail of policy must then be fleshed out by rulemaking, “unfold[ing] in thousands of institutional settings at three levels—federal, state, and local” (p. 4). A great deal of education policy thus results not from legislation, but from the protracted, complex, and much less visible rulemaking process.

Through rulemaking, a federal mandate is modified and incorporated into state policy; in turn, state policy is further adapted, and incorporated into district policy. Moreover, “[e]very statute generates hundreds if not thousands of rounds of rulemaking,” giving “stakeholders at all levels…continuing opportunities to shape and reshape federal and state policies” over an extended period of time (Furgol & Helms, 2011, p. 28). District policy is thus influenced by multiple stakeholders at multiple points in the policymaking process, and policy as it is ultimately implemented in schools may bear only partial resemblance to the federal and state policy it originated from (Henig, 2009). For example, in New York City it is often assumed that the high-profile federal and state policy initiatives associated with Race to the Top have strongly influenced district teacher policies, resulting in new district policies that closely correspond with the content and intent of federal and state policy legislation. Yet significant aspects of the new teacher evaluation system are negotiated and formulated at the district level, and this assumption
can only be tested by direct analysis of the policies as they are eventually implemented in the district. As Henig and Stone (2008) explain:

Congress passes laws that are designed to exert leverage in a particular direction but leaves the specifics to be worked out within the rule-making process and then, subsequently, at the state and local level, where the flesh of specifics must be added to the national policy skeleton...State legislatures, and even more so local school boards, have to get down to the nitty-gritty details. (pp. 203-204)

A simplified theoretical model of the district role in this intergovernmental relationship is shown in Figure 1.2:

Thus education accountability policy cannot be understood simply by analyzing federal education programs or state legislation in isolation. Close analysis of state and district laws, rules, and regulations—studied as a coherent whole, as they are actually operationalized in school districts—is required.

1.5 The Role of the District in Teacher Policy

The importance of the district role in education policy holds especially true for policies governing teachers, for several reasons: the local negotiation of teacher contracts; the influential role of the local teachers union; and the existence of multiple teacher policy subsystems operating at the district level which have crucial interactive effects. Each of these factors is discussed below. Taken together, they suggest that the district should be the unit of analysis for investigation of many questions regarding teacher policy.
Local negotiation of teacher contracts. First, teacher contracts are negotiated locally, and much policy detail is determined at the district level. Rulemaking processes are carried out in districts to flesh out state mandates regarding teachers, adapting them to unique, local conditions and “the realities of implementation unanticipated (or avoided) during the legislative phase of policy making” (Furgol & Helms, 2011, p. 11). Key policy terms are defined, and operational detail is explicitly determined. The specific content of policies may therefore vary considerably from district to district, even within a single state. Thus while analysis of federal and state teacher policies is important, it cannot tell the whole teacher policy story.

The role of the teachers union. The second reason that teacher policy must be analyzed at the district level is that local teachers unions play a powerful role at this level, wielding significant influence over the specific form of teacher policies that are ultimately implemented (Jacoby, 2011; Jacoby & Nitta, 2012; Johnson, Donaldson, Munger, Papay, & Qazilbash, 2009; Koski, 2012; Paige, 2006; Peterson, 2011; Strunk & Grissom, 2010). Some scholars have questioned the strength of teacher union power in the current education landscape because teachers unions appear to have declined in power at the national level (e.g. DeBray-Pelot & McGuinn, 2009; J. Scott et al., 2009; Sunderman, 2010) evidenced most recently by the passage of Race to the Top, which the national teachers unions opposed (Nicholson-Crotty & Staley, 2012). Yet the power of teachers unions is chiefly exerted at the state and district, not federal, levels (Hartney & Flavin, 2011; Johnson et al., 2009; Koski, 2012; Moe, 2011). A small number of scholars have begun to argue that education policy scholarship has in fact seriously overlooked the teachers unions as dominant players in the U.S. education policy arena (Hannaway & Rotherman, 2006; Johnson et al., 2009):
Teachers unions are among the most powerful, yet least studied, actors in public education today. Although public attention focuses on the influence of the national unions, the policies that most affect teachers and schooling are bargained by local unions and school boards...However, policymakers rarely...acknowledge their importance, whereas researchers largely ignore them. (Johnson et al., 2009, pp. 374-375)

Scant work has been done on the role of the teachers unions in state and district education policy, but existing research suggests that the teachers unions are indeed a crucial piece of the policy picture. In one study of teacher union influence on state education reform policy, for example, Hartney and Flavin (2011) concluded that teachers unions “exert a sizable influence on public policy outcomes in the U.S. states” through political activism at the state level (p. 252): in 2008, for example, the teachers unions (AFT and NEA combined) invested over $67 million in federal and state election campaigns, spending over 90% of this total at the state level (Moe, 2011). The role of the teachers unions at the district level is also crucial. Forty-five states permit teachers organizations to organize locally and bargain directly with the local school board, and Johnson et al. (2009) argue that it is largely the actions of local union leaders which “determine the impact of unions on schools and efforts to improve them” (p. 375). Former U.S. Secretary of Education, Rod Paige, has described teacher collective bargaining agreements as “one of the greatest issues affecting the education of children,” noting that NCLB “is silent” regarding these agreements, and arguing that “the authority of officials at the local level reigns supreme” (Paige, 2006, p. 468). Strunk and Grissom (2010), too, maintain that locally-negotiated collective bargaining agreements (CBAs) are “one of the most important sets—if not the most important set—of regulations that govern school district policy.” As the authors explain:

These CBAs, or contracts, can run hundreds of pages, explicitly determining many district policies and providing the framework for many more, including teacher compensation,
hiring practices, transfer processes, evaluation mechanisms, and grievance procedures… Because deviation from the terms of the agreement is difficult or even illegal, the provisions contained in the bargaining agreement offer a set of institutional rules that govern the behavior of district administrators and teachers. (p. 389)

Thus while loss of power at the federal level may anticipate an overall decline in teacher union power it does not in and of itself constitute a decline in teachers union power writ large. Teachers unions still wield considerable influence over the formulation of teacher policy at both the state and district levels.

**Multiple teacher policy subsystems.** An under-recognized but fundamental problem confronts the implementation of new teacher policies. Once negotiated and formulated those policies must be incorporated into a district teacher policy system which includes other, pre-existing policies, some considerably more visible than others. In New York, for example, certain aspects of teacher policy have been prominently highlighted by the media: most notably, New York State’s controversial new teacher evaluation system, spurred by the federal Race to the Top competition (e.g. Dillon, August 31, 2010; Medina, May 10, 2010; Otterman, May 13, 2011; Santos & Hu, February 16, 2012; The New York Times, February 16, 2012, May 11, 2010). Yet the teacher policy system comprises an amalgamated set of multiple policy subsystems, only one of which is associated with the new teacher evaluation initiatives. That is, these recent, conspicuous initiatives are only one element of the amalgamation of policies governing the city’s teachers, and not necessarily even the paramount component in practice. While a great deal of attention has been paid to the new teacher evaluation system now being implemented in the New York City schools, much of New York City teacher policy has remained well outside of scholarly and media focus.
Furgol and Helms (2011) use the metaphor of a policy “tree” to characterize this phenomenon, pointing out that existing policy branches are usually not cut off, but rather additional branches are simply added. Moreover, policies do not operate in isolation, and important interactive effects between new and pre-existing policies can strongly determine how new (and pre-existing) policies operate in practice. A set of multiple, interacting policy subsystems—some the focus of much attention and others essentially ignored—together cause policy effects observed; those effects are often then studied as caused by one discrete subsystem. “Unexpected” effects may be less unexpected when a multidimensional policy system is analyzed as a whole.

Another metaphor that can be used to describe the policy subsystems making up the district teacher policy system is that of separate streams flowing into and mixing within a single pond. The pond represents the aggregate teacher policy system, functioning as the formal policy system governing teachers. Specific policy subsystems are streams running into the pond, where they combine to constitute the pond water. A new policy stream may be added, but previously-existing streams are not necessarily dammed off. Streams may vary in size and mineral content; it is both their absolute and their relative characteristics that determine the ultimate composition of the pond water. Further, the interactive effects between the separate streams mixed together in the pond are a crucial, often unanticipated determinant of the nature of the pond water taken as a whole. Thus a particular “stream” such as New York’s new teacher evaluation system cannot be analyzed in isolation because its operationalized function may depend greatly on the nature and characteristics of other policy “streams” it mixes with. The design elements of all relevant policy

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6 The metaphor of “streams” is used here simply to represent distinct policies merging into a functional whole, not in the problem-policy-political sense of John Kingdon’s “multiple streams model” of policy analysis.
subsystems and how they fit together in a systemic whole must therefore be analyzed to understand how those various elements function in aggregate to govern teachers in a particular district.

1.6 Why Does Formal Teacher Policy Matter?

The set of public policies governing teachers in a particular district together constitute the operative teacher policy system, or what can be seen as the formal teacher employment contract. This contract sets out the terms of the relationship between the district and the teacher workforce, specifying responsibilities, obligations, incentives, and rights. Yet scant scholarly attention has been focused on district teacher policy systems. This is surprising because the employment contract governing teachers is crucial to the functioning of schools and school systems, and clearly an essential part of education policy overall, as follows.

First, teachers matter. Teachers and teacher quality are now widely recognized by the general public, policymakers, and scholars alike as critical to public schooling. The single universal conclusion of the ever-growing number of studies investigating teacher impact is that the quality of the classroom teacher is the most important school-based driver of student learning. Teaching is “the proximal cause of student learning in schools,” as Raudenbush (2009) puts it; and while “various educational policy initiatives may offer the promise of improving education, nothing is more fundamentally important to improving our schools than improving the teaching that occurs every day in every classroom” (Stronge et al., 2011, p. 351). Reflecting this emphasis, scholars are increasingly calling for policy focus on the classroom as the primary unit of education delivery (e.g. Good, 2011; Ladd, 2011; Welner, 2010): starting with the classroom as the finest grain of analysis, “and then backing up and considering other levels of the
educational hierarchy can aid in constructing a coherent, systemic, multilevel analysis” (Welner, 2010, p. 89). A policy focus on teachers is a crucial aspect of a policy focus on the classroom.

Second, government policies matter. Public policies are fundamental to the operation of public school systems, establishing the framework within which all on-the-ground activities of individual principals, teachers, and students take place. Public policy functions as a critical instrument of democracy: maintaining citizens’ democratic authority (Adams & Kirst, 1998), and providing the means by which states, localities, and the public constituencies they represent “attempt to ensure that schools and school systems meet their goals” (Newmann et al., 1997, p. 43). Public policy plays an essential role in implementing and sustaining widespread school improvement (Fuhrman, 1993a); provides an important means for allocation of resources to improve educational equity (Grubb et al., 2004); and is key to ensuring teacher quality and student learning (Darling-Hammond, 2000, 2009; Darling-Hammond & Sykes, 2003; Goldhaber & Theobald, 2011; S. Ryan & Ackerman, 2005; Superfine et al., 2012). As Welner (2010) emphasizes, while “many key sources of inequality are not directly attributable to schools…policies can either amplify or minimize the inequalities that arise outside of school” (p. 85).

The district teacher policy system constitutes the formal system for managing the district’s teacher workforce, and the teacher workforce, in turn, functions as the primary channel through which education is delivered to students. Teacher policy is thus essential to the management of public schools systems, and critical to successful school reform (Rotherham, Mikuta, & Freeland, 2008, p. 242). Following from this, the design of district teacher policies is of great importance to the school enterprise: teacher policies are a key driver of collective teacher workforce quality, and can powerfully facilitate or constrain the effective delivery of
public education. Highlighting the significance of policies that govern hiring and dismissal of teacher, for example, multiple studies have suggested that “the primary channel through which principals influence student performance is affecting the composition of the teachers in their building” (Jacob, 2011, p. 406).

In one specific illustration of the impact of teacher policies, an investigation of teacher absence policy found that changes in policies directly affected teacher absences, and that teacher absences affected student achievement; the authors concluded that, “[a] variety of evidence indicates that teacher absences can be influenced by school and district policies” (Miller, Murnane, & Willett, 2008, p. 182). Another recent study examined the effects of a new policy in the Chicago public schools that allows principals to easily fire probationary teachers (Jacob, 2010). The study found that the reduction of probationary teacher job security led to a 10 percent reduction in annual teacher absences overall and a 20 percent reduction in the number of chronically absent teachers, with the strongest effects among teachers in elementary schools and low-achieving, predominantly African-American high schools. These unusual studies provide straightforward examples of how the design of policies for managing teachers can influence teacher behavior and, in turn, impact student learning.

The role of teacher policies in the district school system is theorized as shown in the following simplified diagram (Figure 1.3):
Formal teacher policies affect multiple dimensions of public school operation: who the district may hire and fire; who principals may hire and fire; who kids have as their teachers (and who they do not); how teachers are managed day-to-day in classrooms. That is, teacher policies play a crucial role in determining who teaches in the public schools and, to some extent, how.

Formal policy is only one piece of the overall teacher policy picture. Informal, site-based mechanisms, while “less direct and obvious,” have a powerful impact on teachers’ work and school function (Ingersoll, 2004). The day-to-day, on-the-ground implementation of policies at the school and classroom level plays a crucial role in outcomes as “the consequences of even the best planned, best supported, and most promising policy initiatives depend finally on what happens as individuals throughout the policy system interpret and act on them” (McLaughlin, 1987, p. 172). Informal policy processes interact with formal policy in important ways, modifying, elaborating, or circumventing formal policies, and thus adapting them to practical street-level realities and the needs and values of citizens. In focusing on formal policy, this
dissertation misses key layers of policy formulation and implementation. At the same time, however, while only one aspect of a complex policy landscape, public policies remain an important focus of study. As Schneider (1998) writes:

Policy design…must become a central component of policy analysis. The elements of design (target populations, goals, assumptions, rationales, implementation structure, rules, and tools) reflect the values, beliefs, and social constructions that produced the policy and it is through these elements and their dimensions that policy has real consequences. (p. 9)

The focus of this study is on public policy as a “legally enforceable promise” (R. E. Scott & Triantis, 2005), which formally states the roles and obligations of the district teacher workforce, governing how, and for what, they are held accountable. Whether clear or ambiguous, effective or counterproductive, the structure and substance of formal policies constitute an influential framework for day-to-day activity in schools, through both their intended and unintended effects.

1.7 The Teacher Workforce and Education Policy

The education profession has conventionally viewed teachers in individual rather than collective terms, and most research and policy discourse “still focus[es] principally on the individual teacher as the unit of analysis and the focus of research interest” (Little & Bartlett, 2010, p. 314). Over the last few years, however, the concept of a collective teacher workforce has received growing attention. This approach defines the teacher workforce rather than the individual teacher as the unit of analysis; emphasizes teacher quality as a collective rather than individual characteristic; and calls for analysis of the entire range of policies—both supply- and demand-side—relevant to systemic management of the teacher workforce (e.g. Goldhaber & Theobald, 2011; Grissom & Herrington, 2012; Odden, 2011; Smylie, Miretzky, & Konkol, 2004;
Superfine et al., 2012). NCLB called unprecedented national attention to issues of teacher quality, requiring that all teachers be “highly qualified” (Koppich & Esch, 2012), and Race to the Top further expands the federal role in teacher policy. Teacher workforce policy is increasingly seen as essential to teacher quality and “a policy domain that deserves more attention” (Superfine et al., 2012, p. 58).

Education research and policy has long focused almost exclusively on supply-side teacher policy, emphasizing policies governing teacher recruitment, retention, preparation, certification, and ongoing professional development (e.g. Darling-Hammond & Sykes, 2003; Finnigan, Bitter, & O’Day, 2009; Goertz, Loeb, & Wyckoff, 2011; Little & Bartlett, 2010; Loeb & Miller, 2006; Odden, 2011; Rice, Roellke, Sparks, & Kolbe, 2009; S. Ryan & Ackerman, 2005): “The vast majority of research and policy related to teacher quality focuses on the supply of teachers” (D. N. Harris, Rutledge, Ingle, & Thompson, 2010, p. 228). The NCLB requirements for teacher qualification are closely aligned with this conventional supply-side emphasis. Recently, however, a handful of scholars have called for a more complete view of teacher policy encompassing demand-side as well as supply-side policies, arguing that such an expanded research and policy scope holds significant potential to advance public school reform (Cohen-Vogel, 2011; D. N. Harris et al., 2010; Jacob, 2011; Rutledge et al., 2010):

[T]here has been remarkably little research on the demand side of the teacher labor market…This is unfortunate because policies focusing on teacher hiring, promotion, and dismissal may be important levers for improving the quality of the public schools. (Jacob, 2011, p. 403)

RTTT breaks new ground by explicitly addressing such demand-side teacher policy: the legislation stresses summative evaluation—in contrast to the education profession’s focus on formative evaluation aimed to guide professional development (Hazi & Rucinski, 2009)— to be
used in a range of demand-side personnel decisions such as tenure, performance-based compensation, promotion, and dismissal. RTTT has created considerable controversy by spotlighting aspects of teacher workforce policy that have fallen well outside the supply-side policy scope largely emphasized to date.

**Research on teacher workforce policy and Race to the Top.** NCLB, and especially now RTTT, have led to increased scholarly focus on teacher policy. A small body of recent work reflects this growing interest, and particular emphasis on policies for management of the teacher workforce. Little and Bartlett (2010), for example, take a teacher workforce perspective in an examination of policy initiatives that target teacher qualification, preparation, recruitment, distribution, compensation, and ongoing capacity-building. Rice et al. (2009) carried out a study of teacher staffing policies in six different school districts, using data gathered through interviews and focus groups. The authors argue that the range of teacher policies in a particular policy area must be analyzed as policy “packages,” and develop a typology “to organize and analyze the array of teacher policies across education systems.” Similarly, Goertz et al. (2011) emphasize the teacher workforce, examining the range of policy initiatives for teacher recruitment, retention, and professional development implemented by New York City’s Klein administration. All of these studies relied on secondary sources, however, rather than analyzing policies directly, and very little empirical research on the specific content of teacher policy exists. Loeb and Miller (2006) recently wrote, for example, that “little is known about the variation in the specifics of the policies across States” (p. i). To begin filling this gap, the authors analyzed policy content in an investigation of “the web of policies” states have designed and implemented to meet NCLB requirements for staffing schools with “highly-qualified” teachers. Their lengthy report on staffing policies in all 50 states integrates findings on state statutes and
regulations addressing the preparation, recruitment, development, and retention of highly-qualified teachers. Similarly, Hazi and Rucinski (2009) analyzed the content of state teacher evaluation statutes and regulations in place in 2008.

Race to the Top, announced in July 2009, is already the subject of a small body of scholarly work on teacher policy. Koppich and Esch (2012), for example, examine shifts in control of the teacher policy agenda at the national level, culminating in the passage of RTTT, to provide “an initial toe-in-the-water appraisal of this important, and still developing, policy arena” (p. 80). McGuinn (2012) provides an early assessment of RTTT’s impact on state politics and policies, suggesting that the legislation appears to be impacting teacher evaluation policy but also noting that “[e]stimates of state policy changes made in the name of RTTT vary widely” (p. 143). Further, he writes: “Although teacher-evaluation is a major success story for RTTT,” the impact on actual policies ultimately implemented in schools remains to be seen: “Many of the policies related to teacher accountability remain embedded in local collective-bargaining contracts—which have proved notoriously hard to change in practice, even in the face of political pressure and changes in state statutes” (p. 147).

Superfine et al. (2012) examine RTTT’s specific policy prescriptions regarding teachers, using a strategic human resource management (SHRM) framework to assess RTTT’s potential effectiveness to improve the teacher workforce at the state and district levels. The authors argue that the SHRM framework is especially useful for analyzing a full range of teacher workforce policies, as a “broader system that includes a wide range of functions, such as recruitment, compensation, evaluation, retention, removal, and so on,” utilizing a systemic perspective that “draws attention to the interactive relationships among different functions and to their collective impact” (p. 69). The authors conclude that RTTT’s narrow focus on particular functions, such as
teacher evaluation, excludes important aspects of teacher workforce development, although
describe RTTT as “a positive development in that it draws the attention of policy makers to
teacher workforce development” (p. 72).

Finally, two studies have analyzed states’ RTTT applications to provide baseline data for
future research on the degree to which RTTT ultimately shapes state and local education policy.
Nicholson-Crotty and Staley (2012) analyze the RTTT application process to identify political
factors influencing why states chose to apply for RTTT funds and the varying strengths of state
applications; at the same time, they also point out that “with funds just being distributed, any
meaningful empirical assessment of the program’s effectiveness is still years in the future” (p. 161).
Kolbe and Rice (2012) take a first step in assessing RTTT’s impact by examining how
states and districts intend to spend RTTT funds. They point out, however, that planned
expenditures are not the same thing as actual expenditures, and that neither indicates the degree
to which RTTT will be successful in influencing policies:

Looking forward, policymakers and researchers will be interested in evaluating whether
[RTTT]…catalyzed changes in education policy and practice aligned with federal policy
priorities… [RTTT’s] success is still highly dependent on the extent to which states and
LEAs implement the reform plans with fidelity. (Kolbe & Rice, 2012)

This recent work indicates clear, growing interest in teacher workforce policy. Yet, it is
still in early stages, and limitations and gaps remain. Knowledge of state-level policy provides an
important piece of the teacher policy picture, but investigations of policies at the state level do
not tell us how these policies are incorporated into complex teacher policy systems actually
implemented in schools. Much research continues to focus on supply side policies, rather than
analyzing the full range of teacher policies that govern the teacher workforce. A reliance on
secondary sources, rather than direct analysis of the policies themselves, is another limitation; in
such studies; conclusions can be drawn only about what stakeholders say about policies rather than the nature of the policies themselves. To date, no direct analysis of a comprehensive district teacher policy system has been done.

As scholars have pointed out, RTTT’s effectiveness in influencing teacher policy will not be known for years. Yet some broad claims of RTTT impact on state and local policies are already being made. Koppich and Esch (2012), for example, have suggested that “it is clear that [RTTT’s] impact on state and local teaching policy is already significant” (p. 79), but present no empirical evidence to support this observation. As McGuinn (2012) warns: “Although shifts in state-level education rhetoric and politics—and promises of future reform—can be important, they should be distinguished from actual changes in state policy” (p. 142). Similarly, such shifts in state policy must be distinguished from changes in district policy, which is the level that many policies are fleshed out and put into practice. Ultimately, neither shifts in rhetoric and politics, nor RTTT applications and budgets can answer the critical question: if, and to what extent, RTTT shapes teacher policies that are implemented in the public schools. The bottom-line issue is how RTTT-defined priorities end up formulated in new district teacher policies, and how those new policies interact with existing policies within an integrated district teacher policy system. Evidence of RTTT’s influence on teacher policies can only be found in the structure and substance of the teacher policies themselves.

1.8 The Study: Investigation of Teacher Workforce Policy in New York City

The national debate regarding teacher evaluation and accountability has shifted dramatically over the past decade, and it is sometimes assumed that teacher policies have shifted accordingly. The belief that recent federal education initiatives—first NCLB and now RTTT—
have significantly altered teacher policy systems has been fairly widespread in scholarly work, journalistic reports, and general public discourse. But surprisingly little is known about the specific content of teacher workforce policies, and this assumption has never been empirically tested. So far as an extensive literature search has been able to determine, no comprehensive analysis has yet been done on the district policy systems governing teachers in any of the nation’s 15,000 public school districts. Given Race to the Top’s much-increased emphasis on teachers and the policies that govern them, study of teacher workforce policy is now even more worthy of attention. As McGuinn (2012) writes, “Perhaps no issue better represents RTTT’s potential to drive change in discourse, politics, and policy—as well as its limitations—than teacher accountability” (p. 145). Study of RTTT’s politics will continue, and the effects of RTTT will be examined for years down the line. At the same time, an imperative focus for scholarship is the actual policies that are produced by politics and cause the effects eventually observed.

**Overview of Study.** This study is an exploratory analysis in a little-studied area, investigating the teacher policy system that governs the New York City teacher workforce. The study sheds new light on the nature of the limitations of federal (and, in some respects, state) influence on teacher policy in a highly-fragmented education system. It illustrates how the formal teacher employment contract is shaped by multiple, co-existing policy subsystems, highlighting the local, complex nature of teacher workforce policy. The study extends understanding of the degree to which district policies implemented may vary significantly from highly-visible federal mandates, and provides the specific analysis of teacher policy necessary for evaluation and reform in this crucial domain of public education policy. Finally, it explores ideological paradigms and alignments evident in policies, focusing in particular on the *state* and the *professions* as representing current conflicting ideologies around teachers and teaching.
The rapidly-shifting nature of teacher policy and lack of prior empirical work in this area require that this study be understood as exploratory; ongoing research will be crucial as developments in this large, complex policy arena continue to unfold. This study does not specifically test theory predictions, although it applies analytical frameworks derived from theory, delimiting the study’s focus and beginning the process of theory testing (Yin, 1994). The case study method was utilized as an appropriate empirical approach for exploratory research: investigating “a contemporary phenomenon within its real-life context” (p. 13), informing understanding of a little-studied phenomenon, and laying the foundation for future work. An important limitation of this method is that it does not allow generalization to the population of U.S. school districts, although findings are potentially “generalizable to theoretical propositions” (p. 10).

The unit of analysis for this exploration was the school district. New York City was chosen as the study site for several reasons. First, New York has long been considered at the nation’s forefront in standards and accountability (Quality Counts, 1997, 2000, 2006). Focus on accountability in New York City intensified under the Bloomberg/Klein administration, positioning the New York City public schools as a leading district in school reform: “New York City seems to have drawn together many of the threads of what is emerging as a national education agenda, and is doing so on a massive scale” (O'Day, Bitter, & Gomez, 2011, p. 1). New York State recently won one of the nation’s largest RTTT grants, submitting an application which had a strong emphasis on teacher evaluation (Kolbe & Rice, 2012), and received the second-highest score in the country, representing the high degree to which the state’s application
was aligned with the RTTT reform agenda (Nicholson-Crotty & Staley, 2012). New York’s high visibility in the school reform landscape has drawn recent scholarly attention, including focus on teacher policy in particular. The editors of Education Reform in New York City (O'Day et al., 2011), for example, describe “human capital management policies” as a major emphasis of New York City’s reform activity, and include several chapters on teacher policy. Superfine et al. (2012) use New York as one of two highlighted states in a discussion of RTTT, writing that RTTT “has proven effective at leveraging reforms in New York in line with the priorities set forth by the Obama administration, especially in the area of teacher workforce governance.” New York City thus provides a good site for study of the current leading edge in teacher evaluation and accountability policy.

The need for ongoing research on New York teacher policy is also evident in this very new work. Study of New York City teacher policies under Joel Klein’s school reform initiative has focused exclusively on supply side policies (e.g. Childress et al., 2011; Goertz et al., 2011), while the demand side teacher policies which Klein (2011) himself emphasizes as the crucial obstacle to school reform have been disregarded. Superfine et al. (2012) describe New York State as “the entity primarily responsible for making key decisions about the evaluation and career trajectories of individual teachers” in the new teacher evaluation system; the authors further maintain that the state “will use its evaluation system to inform a range of personnel decisions, including those governing tenure, dismissal, and compensation” (pp. 66-67). How the state’s new evaluation system will actually play out as policy implementation unfolds in districts,

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7 In the first two rounds of the RTTT competition in 2010, a total of 46 states and Washington D.C. applied for RTTT funds. Eleven states and DC received grants, including New York. New York’s final RTTT application received a score of 464.8 out of 500 points: the second highest score in the country, exceeded only by Massachusetts which received a score of 471 points (Nicholson-Crotty & Staley, 2012).
however, remains unknown. Overall, this recent work underscores the growing importance of research on New York’s teacher evaluation and accountability policies.

This study was guided by the following questions:

1. What is the content and nature of the policy system—i.e. laws, regulations, collective bargaining agreements—governing the work of public school teachers in New York City, as the set of “mechanisms that translate substantive policy goals into concrete actions” (McDonnell & Elmore, 1987, p. 133)? What does this policy system hold teachers accountable for and how? A chief aim of the study was to understand the mechanisms defining and ensuring minimum teacher competence on a systemic workforce level, and protecting students from teachers who fall below a defined floor of minimally acceptable teaching practice.

2. What is the degree of alignment between New York City teacher policies and: (a) the outcomes-based accountability framework represented by NCLB and RTTT, and (b) district policies governing other school stakeholders?

3. How do the state teacher evaluation mandates associated with RTTT appear to be translating into formal district policies? How do the new teacher evaluation policies fit into the overall district teacher policy system?

4. Consistent with newer work in new institutional theory, McDonnell (2009) recently wrote: “I would predict that the tensions between political and professional authority will continue to be reflected in future [accountability] policy and its implementation” (p. 423). Is this kind of state-profession tension evident in district policies? How are those tensions expressed and what different ideas do they manifest? What “logics of action” characterize policies?
The study explored two primary hypotheses. The first hypothesis was that actual policy design at the district level would be more complex and less congruent with recent federal mandates than has sometimes been assumed, in part because pre-existing teacher policy subsystems significantly moderate implementation and ongoing function of new policies. The second hypothesis was that current teacher policies would continue to evidence primary alignment with the professionalization paradigm core to education scholarship on teachers and teaching, even in the face of more than a decade of government pressure towards outcomes-based accountability. Research findings provided support for both hypotheses. The study shows that the relationship between a federal or state mandate and district polices is often uncertain for two reasons. First, policies can be altered in substantial ways through both state- and district-level rulemaking and negotiation processes. Second, pre-existing policies can play a very important role in the way new mandates are translated into district policies, moderating their effects significantly. One result of this in New York City is that, notwithstanding new federal and state legislation and a great deal of media focus on teacher evaluation, policy mechanisms holding teachers accountable for their work remain very weak. Finally, the study shows that state pressure for outcomes-based accountability has significantly influenced policies for all school stakeholders except for teachers. At the same time, teacher policies remain strongly congruent with the professionalization paradigm emphasized in the academic discipline of education. This appears to contribute to a problematic degree of incoherence, or misalignment, currently evident between teacher policies and policies for other public school stakeholders.

The investigation was guided by a conceptual model that theorizes district teacher policy as shaped by *multiple policy subsystems* and by the interactive relationships between these subsystems, as discussed in Section 1.5. Both the specific design of policies and their interactive
effects are crucial, and analysis must therefore capture and integrate the full range of relevant policy subsystems. Examination of individual policy subsystems in isolation provides an incomplete and inaccurate picture of the policy system as a whole. The commonly-observed phenomenon of “unexpected consequences” results in part from analysis that focuses on narrow subsets of teacher policies, failing to take all teacher policies into account. At the same time, all relevant policies are not immediately evident. The academic literature includes occasional passing reference to the significance of less-visible teacher policies. For example, Warren, Ellen and Marla (2006) mention the powerful role of “an invisible infrastructure of central office policies and practices that are often hidden from public view” (p. 193). Grissom and Herrington (2012) observe that an critical factor in how government-driven reform efforts are actually carried out in schools is the fact that teachers “have considerable autonomy in practice, particularly regarding the areas of teaching and learning…and an array of civil service protections often unique to teachers” (p. 7). Policies relevant to the teacher autonomy and civil service protections that the authors refer to are critical components of the overall teacher policy system. Klein (2011) highlighted a key domain of New York City teacher policy when he recently maintained that “notwithstanding union rhetoric that ‘tenure is merely due process,’ firing a [New York City] public-school teacher for non-performance is virtually impossible.” Klein’s ongoing combat with the teachers union was well known, and his claim cannot be accepted at face value. At the same time, this aspect of teacher policy, too, is crucial and merits careful analysis. Important policies may thus be obscure or overlooked, even if not actually “invisible.” The identification of the full range of state and city teacher policies, and their analysis as a systemic whole, was critical to this investigation.
The state, in particular, plays a crucial role in New York City teacher policy in policy areas that may often exist beyond public or journalistic view. Loeb and Miller (2006) stress that “[s]tates’ role in teacher labor markets is neither small nor simple. States have passed bundles of laws that reach into every aspect of the teacher workforce” (p. ii). Koski (2012), too, emphasizes the state role in teacher policy. He explains that “the teacher-district employment relationship is directly governed by statutory rules and structured by statute”: state policies authorize the scope of collective bargaining and “provide procedures that govern local unionization, bargaining, and dispute resolution,” as well as govern some teacher employment terms directly. In other words, the state’s role in New York City teacher workforce governance is not limited to highly-visible teacher evaluation policies: additional, entirely separate state policies also play a crucial role in governing teachers.

Together, then, a range of state laws and regulations, city laws and regulations, and the collective bargaining agreement make up the district teacher policy system, functioning as the formal employment contract for New York City teachers. The study shows that this policy system includes a range of policies that govern teacher accountability for their credentials, longevity, and ongoing training. It also reveals that teachers’ accountability for their work (i.e., teaching) is governed by three distinct policy subsystems and their interrelationships: 1) Policies governing the new teacher evaluation system; 2) Teacher due process procedures as stipulated in NY State Law § 3020-a; and 3) Legally-sanctioned union influence exercised both in negotiation of significant policy detail, and in ongoing day-to-day union activity in schools. The following diagram (Figure 1.4) illustrates these three policy subsystems in New York City that together govern teacher accountability for teaching:
The study utilized an original analytical framework that integrates concepts drawn from strategic human resource management theory, legal scholarship, and the new accountability model to analyze the New York City teacher workforce policy system as a comprehensive whole, and build a typology that captures the full range of teacher policies. Policies analyzed included New York State Education Law: Title I (Articles 3, 5, 7), Title 2 (Articles 52, 52-A), Title 4 (Article 61, 63); New York Codes, Rules, and Regulations, Title 8: Chapter I (Rules of the Board of Regents) and Chapter II (Regulations of the Commissioner); New York City Department of Education Bylaws; New York City Chancellor’s Regulations; and the United Federation of Teachers Collective Bargaining Agreement (see Appendices for a complete list of sections and subsections examined). In addition, ten years of decisions issued at the conclusion of § 3020-a due process decisions were obtained with a Freedom of Information Law request, to
enable closer analysis of this crucial policy subsystem. Policies governing other public school stakeholders in New York City, such as students, principals, and schools were also analyzed, and the scholarly education literature on teachers and teaching was examined.

**Contributions of the Study.** This study breaks new ground in largely uncharted research territory, and makes several contributions to education scholarship:

1. First, the study develops and tests an original and replicable analytical model as one approach to systematic study of a teacher workforce policy system.

2. Second, it establishes new knowledge on New York City’s teacher policies, utilizing the SHRM framework to illuminate key features of the teacher policy system, and enabling further analysis and evaluation of policies.

3. Third, it illustrates a core thesis explored in the study: that multiple, separate policy subsystems can interact in crucial ways in a particular policy area. The study highlights the importance of studying multiple policy subsystems as parts of a comprehensive whole rather than in isolation.

4. Fourth, it makes an early contribution to the just-developing research program on RTTT, providing district-based analysis of potential constraints on RTTT’s impact on teaching policy. It provides a case study showing, as scholars have just begun to suggest, that the congruence of district teacher policies with federal and state reform agendas may not be as close as has often been assumed.

5. Fifth, it highlights the critical distinction between teacher *evaluation* and teacher *accountability*, showing that while evaluation is implemented locally, accountability is almost entirely controlled at the state level.
Finally, the study explores several propositions central to new institutional theory. The study provides evidence that “institutionalized schooling” has responded to external, government-driven demands for technical efficiency, as NIT scholars have increasingly argued, along with some degree of deinstitutionalization and reconfiguration of the organization field of public schooling as NIT suggests would occur. Much-increased state influence over school organization and function may well be a harbinger of even greater changes to come. At the same time, however, the findings of this study indicate that buffering of the “technical core” (i.e. teachers and classrooms) still persists to a significant degree in New York City public schooling. Current public school policies in NYC now manifest two separate, concurrently-existing logics: professionalization on the one hand, and the state-driven press for efficiency on the other.

**Scope and Limitations of Study.** The unit of analysis for this study was the school district, and the case study method was used to investigate a district teacher policy system. As noted, generalizability of study findings is uncertain, although they provide a starting point for ongoing work in this area, and help point the way to future research directions. In addition, the study was explicitly focused on the design and content of formal, written policies. Stakeholder perceptions of policies and how they are actually implemented “on the ground” was not addressed; while beyond the scope of this study, how written policies play out in practice is clearly an essential part of the teacher policy picture as discussed in Section 1.6 above.

Another limitation of the study arises from the kind of investigation itself, requiring the researcher to closely read and parse thousands of pages of policy documents. Analysis of such a large body of material is time-consuming and complex. Due to the sheer density and quantity of the material investigated, the scope of a single study is necessarily limited, and choices of focus must be made. Further, work in this area is still in very early stages, and the knowledge base
available to draw on is notably weak. Each step of this study required original work. Some important aspects of the topic of teacher policy could thus not be addressed, such as the history of currently-occurring changes, the politics driving those changes, and, as noted, the on-the-ground impact of policies. In addition, there are clearly many ways of approaching this topic that a single study cannot encompass. Theoretical perspectives drawn from several disciplines, including management studies, law, and organizational sociology, were employed in the study. However, additional interpretations and explanations of findings surely exist—from political science, economics, history, and policy studies, among others—that would contribute greatly to understanding of teacher policies.

Finally, teacher policies are in a great state of flux. Yet empirical investigation can only be carried out on what exists, not what is coming down the line. While a study such as this one can provide important baseline data in a little-studied area, it cannot predict what will happen or examine changes still to come. Much of this story is in early stages, and by its very nature the complex topic of teacher work policies—design and content; similarities and differences across states and districts; effects on teachers, students, principals, and schools; possible improvements; history, politics, and evolution over time—lends itself neither to quick work nor easy answers.
Chapter 2: Theoretical Frameworks for Analysis

This chapter presents the theoretical perspectives underpinning the analytical framework developed to analyze and classify policies, and interpret policy findings. The “new accountability” model as explicated in the education literature was the starting point for analysis. The study also drew from theoretical perspectives in fields outside of education: strategic human resource management (SHRM); legal models that distinguish between what may be described as “determinate” and “indeterminate” laws; and new institutional theory.

2.1 New Accountability

The education literature describes the “new accountability” in education as a government policy framework which aims to hold every individual accountable for producing student outcomes, through unambiguous and clearly-defined standards, measurements, and consequences. The central concepts within the new accountability framework emphasized in analysis were:

1. The three essential components of the new accountability model: clear and specific policy mechanisms for standards, measurements, and consequences;

2. Accountability applied specifically to individuals;

3. Individual accountability for producing outcomes.

This model of accountability implicitly incorporates elements from two additional conceptual frameworks outside the field of education. The first is strategic human resource
management which highlights the distinction between inputs and processes and outcomes of work that is central to the new accountability model. The second is legal scholarship that emphasizes a critical difference between determinate and indeterminate laws and regulations. Both are described below.

**2.2 Strategic Human Resource Management**

“Planning for and managing human resources is emerging as an increasingly important determinant of organizational effectiveness,” in the words of a leading organization development scholar (Schein, 1977, p. 1), and it is hard to imagine a field in which the strategic management of an organization’s employees would be more crucial to organizational effectiveness than in K-12 public education. Teachers play an extraordinarily important role in education systems: the very success of the public education enterprise depends to a great degree on its enormous teacher workforce. Yet the concept of a “teacher workforce” has not been widely employed in academic examinations of K-12 education, nor are theories from human resource management commonly applied to the management of public school teachers as a collective workforce. In general, teachers are conceptualized and discussed as individual learners, and a systemic perspective—viewing a productive teacher workforce as a critically important system resource—has not been central to K-12 policy or academic work on teachers. In fact, however, it is through government teacher work policies (laws, rules and regulations) that the collective public school teacher workforce is systemically managed—whether strategically planned or not. Perspectives from human resource management are thus directly useful in consideration of policy design and effectiveness.
Strategic human resource management (SHRM) provides a comprehensive conceptual framework for analyzing and evaluating government teacher policy (Smylie et al., 2004; Superfine et al., 2012). The SHRM approach focuses on the quality of the collective teacher workforce, rather than the quality of individual teachers, and views teacher workforce management as critical organizational function which must be carefully aligned with a school system’s overall strategy and objectives. The key insight of the SHRM perspective as applied to K-12 education is the conceptualization of teacher quality as a characteristic of a collective workforce, rather than a characteristic of individuals. As Smylie et al. (2004) note, conventional approaches to improving and ensuring teacher quality largely emphasize development of individual teachers, on the one hand, and the development of the education profession, on the other. Yet these approaches are limited as strategies for improving the systemic teacher workforce: the former is too specific, while the latter is too abstract. Emphasis on the quality of the workforce as a whole calls attention to a broad set of workforce management and development strategies focused on both the individual and organizational levels, and aimed to enhance collective effectiveness and organizational performance.

Raising the quality of individual teachers through improved support and development is recognized as essential to raising the quality of the collective workforce. But under the SHRM approach it is not the only important strategy: a range of teacher workforce management strategies are utilized, including recruitment, preparation, retention, ongoing training, motivation through incentives, evaluation, and removal (Smylie et al., 2004; Superfine et al., 2012). This range of strategies are encompassed in two major dimensions of workforce management, both of

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8 Also see Odden (2011) for additional discussion of this approach in the context of K-12 education.
which must be closely linked to the goals and strategies of the overall school system: (1) Managing individual teachers, through preparation, staffing, ongoing development, evaluation, and so forth; and 2) Managing the collective composition of the workforce, through hiring and dismissal. Workforce management occurs at multiple system levels, as schools, districts, and states “each have varying needs, interests and authority to develop and manage workforces at their particular levels” and operate “within a particular range of influence” (Smylie et al., 2004, p. 37). School-level practices are important, but the capacity of a school to manage its teaching staff is bounded by states and districts which provide “either supporting or impeding contexts for teacher development and management at the school level” (p. 38).

A wide range of teacher workforce management policy tools and strategies to develop, manage, and deploy the teacher workforce are carried out at school, district, and state levels. These can be placed in several broad categories: 1) new teacher pipeline development; 2) teacher preparation; 3) recruitment; 4) selection and hiring; 5) job placement; 6) induction; 7) ongoing professional development; 8) motivation; 9) supervision and evaluation; and 10) termination. Together, these tools comprise a comprehensive approach to the management of the teacher

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The specific tools they identify include: teacher credentialing and licensure; accreditation of teacher education programs and implementation of alternative certification paths; provision of grants for district and school level professional development activity; establishing standards and assessments for teachers; specifying provisions for recertification and licensure; legislation and regulation of collective bargaining rights and processes; public promotion of teacher job vacancies; provision of hiring incentives; establishment of hiring criteria and procedures; allocation of teachers to schools and monitoring compliance with external mandates regarding teacher assignment; provision of district-level mentoring and support; implementation of district professional development programs and policies, and ensuring quality of professional development providers; setting of compensation; provision of recognition and reward programs; implementation of work redesign initiatives; management of facilities and establishment of standard operating procedures; establishment of policies and procedures for supervision and evaluation; establishment of professional practice standards and assessments; provision of professional development to enhance capacity of supervisors and evaluators; establishment of criteria and procedures for termination; and finally, management of collective bargaining for the district’s teacher contract, which prescribes district policies in areas such as teacher compensation and work rules.
workforce. Each is designed to maximize the effectiveness of the workforce, and aligned with the strategies and objectives of the education system. The aim of this approach is to ensure teacher quality on a systemic basis, through designing and managing a broad, integrated set of policy tools aimed to build and maintain the quality of the collective teacher workforce.

The set of state and district teacher workforce practices listed above corresponds closely with the strategies described in the human resource management literature. Schein (1977), for example, emphasizes that to be effective an organization “must be able to plan for, recruit, manage, develop, measure, dispose of, and replace human resources as warranted by the tasks to be done” (p. 5). Wright and Snell (2001), too, describe similar dimensions of workforce management in what they call an “open system model” of human resources. They identify three broad domains of workforce management, called inputs, throughputs, and outputs, each of which must be targeted by specific management strategies.

- **Inputs** are defined as competencies of employees (both acquired and relatively fixed), such as knowledge, skills, abilities, aptitude, personality, and motives. Competencies constitute the capacity (Levin, 1980) that employees bring to their work.

- **Throughputs** (equivalent to work processes) are defined as the on-the-job behaviors of employees, including both what they do and the effort they invest in doing it.

- **Outputs** are defined as performance outcomes: both the tangible products of an employee’s work, and affective outcomes which are employees’ feelings about their work, such as group cohesiveness and job satisfaction.

Each workforce management tool aims to address a critical aspect of each of these three domains, and all tools are strategically aligned to maximize the productive output of the organization.
The SHRM model provides a valuable theoretical perspective for considering approaches for managing a school system’s teacher workforce. It also provides a conceptually coherent framework for: 1) Identification and classification of the disparate policies governing a collective teacher workforce, using the key variables of work inputs, processes, and outcomes; and 2) Analysis of those policies within the broader education policy context. Chapter 3 presents a detailed explanation of how this framework was utilized in the study.

2.3 Determinate Rules vs. Indeterminate Principles in Administrative Law

Administrative law serves as the vehicle for policymakers to accomplish “the reconciliation and elaboration of lofty values into operational guidelines for the daily conduct of society’s business,” and the ultimate aim of administrative law is simply to control the day-to-day behavior of individuals in keeping with those goals and operational guidelines (Diver, 1981, p. 393; Kaplow, 1995). Laws can be written in a number of different forms to most efficiently and effectively accomplish their objectives in public governance. As Diver (1981) argues: “Administrative law is, in essence, a search for a theory of how public policy should be made” (p. 393).

Legal scholars identify an important distinction between two kinds of laws and regulations: those written as rules, on the one hand, and those written as principles, on the other. “Rules” are laws and regulations that are formulated to minimize discretion in application, and have a bright-line, determinate character. “Principles”—in contrast to rules—are formulated to intentionally allow discretion in application, and are indeterminate to a much greater degree than are rules (Diver, 1983; Dworkin, 1967; Kaplow, 1992; R. E. Scott & Triantis, 2005). Although not identified directly, this distinction between rules and principles is central to the new
accountability model described in the education literature. The new accountability framework is consistent with the nature of rules: a standard, an operative measurement of that standard, and a consequence, all clearly defined and stipulated ex ante in written policy. These accountability rules are determinate, and are not intended to be applied in a discretionary manner; in fact, as the literature emphasizes, their purpose is to eliminate discretion and ambiguity. The following provides a brief overview of the critical differences in the nature of rules and principles, and how the distinction between them was utilized in the study.

A rule is a clearly-defined law or regulation which is written specifically to minimize the possibility of varying interpretation or discretion in application. A rule can also be described as “bright-line,” defined by the Merriam-Webster dictionary as “providing an unambiguous criterion or guideline especially in law.” As Dworkin (1967) writes: “Rules are applicable in an all-or-nothing fashion. If the facts the rule stipulates are given, then either the rule is valid, in which case the answer it supplies must be accepted, or it is not” (p. 25).\footnote{To illustrate the nature of a rule, Dworkin provides the example of the “three-strikes-and-you’re-out” rule in baseball. If it is established that the batter has had three strikes, the umpire must call him out: the umpire does not have the discretion to consider the particular circumstances and thus perhaps decide to give the batter a fourth chance. If the catcher drops the third strike, it does not count as a “strike”—but, as Dworkin points out, this is not a discretionary principle, but rather additional detail provided for a determinate rule.} A principle, on the other hand, is written much less explicitly than a rule in order to allow discretion in its application. In contrast to the black-and-white nature of rules, a principle is “grey”: it may stipulate a particular obligation without “purport[ing] to define the specific duties such an…obligation entails” (Dworkin, 1967, p. 27). A principle “does not necessitate a particular decision” given a particular set of facts (p. 26): that is, it does “\textit{not set out legal consequences that follow automatically}” when the conditions provided are met” (p. 25, italics added). A
principle does not even necessarily stipulate “conditions that make its application necessary” in the first place (p. 26).\(^\text{11}\)

Another way of viewing the distinction between rules and principles is the degree to which the specific nature of an obligation is defined before or after an individual acts: “Rules purport to specify the content of an obligation ex ante, while [principles] leave a greater portion of the substantive provisions to be determined after the regulated behavior has occurred” (R. E. Scott & Triantis, 2005, p. 11). That is, the key distinction is whether the law is given content ex ante or ex post: “One can think of the choice between rules and [principles] as involving the extent to which a given aspect of a legal command should be resolved in advance or left to an enforcement authority to consider” (Kaplow, 1992, pp. 561-562). For example, setting a speed limit at 55 mph and prohibiting that it be exceeded is a rule. In this case, the law is given content ex ante: determining the speed limit and providing the unambiguous command that it not may be exceeded. In contrast, a similar law formulated as a principle might simply prohibit reckless driving—leaving the specific definition of “reckless” to enforcement officials.

The study’s analysis and classification of government policies utilized the critical distinction between these two different kinds of laws and regulations. Policies were classified as determinate (or bright-line) if they have the characteristics of rules: that is if they are written in an unambiguous, black-and-white way, intending to exclude discretion in their application. Policies were classified as indeterminate if they are intentionally written to allow for discretionary application. As shown, the distinction between determinate and indeterminate

\(^\text{11}\) To extend Dworkin’s baseball example, if a principle instead of a rule were used with respect to baseball strikes, the umpire might have the discretion to call one player out after two strikes while giving another a fourth chance, depending on the particular circumstances of the individual cases.
policies is fundamental to analysis of government policies, and turns out to be highly significant in the overall configuration of the school policy system.

Section 3.4.3 in Chapter 3 explains how in more detail how this distinction was used in analysis. Chapter 9 provides a discussion of tradeoffs between determinate and indeterminate policies, the range of factors that can be considered in assessing the optimal formulation of policies, and potential explanations for suboptimal policy design.

2.4 New Institutional Theory

New institutional theory was used to shed light on potential ideological influences on government policies, providing a framework for exploring social and cultural alignments that may contribute to shaping those policies. New institutional theory, or new institutionalism (NI), explicitly acknowledges the role of ideology in the organization and activity of “real world” institutions, focusing on the roles of the state and the professions in particular, and was therefore an appropriate theoretical perspective for this part of the analysis. Rowan (2006), for example, argues that NI analysts must direct attention “to the many different ways control systems can be organized.” He suggests that recent developments in education policy show that “government regulation can have real consequences for education activities.” At the same time, he cites growing evidence that “the effects of academic disciplines…seen as deeply institutionalized epistemologies” also maintain a significant influence on schooling. Educational policy is shaped not just by government, but can also be “powerfully organized by other forms of institutionalized control—especially deeply cognitive schemata” (pp. 25-26).

Over the last several years, NI education analysts have increasingly focused on the use of new institutional theory to explain change rather than stability in what has long been seen as
“institutionalized schooling.” H. D. Meyer and Rowan (2006) argue that NI has been underutilized in examinations of the now-shifting landscape of U.S. public schooling: “despite its promise, applications of the new institutionalism to the study of education have been scattered and diffuse” (p. 1). The authors maintain that NI “has a unique contribution to make in analyzing complex and contradictory patterns of institutional change” in the context of new developments in public education, including strong new government pressures for accountability and efficiency in schooling (p. 11). In the aftermath of No Child Left Behind, and the widespread implementation of the new accountability framework in public school systems across the country, recently-emerged government influence on schooling policy is evident. However, NI theory directly suggests the possibility that the academic discipline of education may continue to wield significant influence on policies governing the public schools. Following the NI perspective, the study examined the scholarly literature produced in the discipline of education to investigate such a potential influence.

**Overview of New Institutional Theory.** New institutional theory, based in organizational sociology, emerged in the mid-1970s as an innovative approach to studying organizations that views them as social and cultural systems embedded in wider social and political environments. The NI perspective, first proposed in a seminal paper by Meyer and Rowan (1977), understands formal organizational structures and practices as largely reflecting rules and beliefs that are “institutionalized” in the wider environment, rather than simply responding to the demands of technical production or exchange (W. R. Scott, 2001). Organizations are not viewed as straightforward “systems of coordinated and controlled activities.” Rather they are seen as shaped by “myths of formal structure”—or shared, taken-for-
granted rules and beliefs—forming what are described as “rationalized institutions” (J. W. Meyer & Rowan, 1977, p. 340).

In 1976, Weick suggested that elements in organizations can either be tightly or loosely coupled to formal organizational structure, emphasizing that public schools, in particular, were “loosely coupled” with respect to their “technical core” of teaching and learning. He argued, in other words, that schools had loose control over the core work of teaching, which is “intrinsically uninspected and unevaluated” (p. 11). Building on this idea, Meyer and Rowan (1977) argued that loose coupling in school systems—or a “studied organizational inattention…to actual educational work and learning,” as Meyer described it (1980, p. 50)—occurred as “institutionalized” school organizations incorporated structural elements institutionalized in their environment, while “protect[ing] their formal structures from evaluation on the basis of technical performance.”

Public schools thus avoided inspection and evaluation of their technical core by decoupling it from formal organizational structures while maintaining a “logic of confidence” with both internal participants and external constituents. This enabled them “to appear useful in spite of the lack of technical validation” of their actual performance (J. W. Meyer & Rowan, 1977, pp. 357-358). Meyer and Rowan argued that the stability and survival of schools and districts depended not on their technical performance of educating students, but rather on their “structural conformity to prevailing institutional rules.” Therefore, they observed, organization controls over the technical activity and outcomes of instruction were weak, or very “loose.” At the same time, however, schools’ organizational and administrative structures—reflecting the legitimizing, “institutionalized rules of the wider state and society”—were seen to be tightly coupled (J. W. Meyer & Rowan, 1978, p. 260).
**New Institutional Theory and Organizational Change.** While new institutional theory was developed to explain the stability of institutionalized organizations, NI scholars have more recently argued that new institutionalism provides a powerful framework for understanding how previously-stable, homogenous organizational fields and institutions can evolve and change (Dacin, Goodstein, & Scott, 2002; Friedland & Alford, 1991; Hoffman, 1999; Oliver, 1992; Suddaby & Greenwood, 2005). New pressures exerted by the institutional environment, or changes in the institutionalized environment that provides organizational legitimacy, can result in profound institutional change (DiMaggio & Powell, 1983; Greenwood, Suddaby, & Hinings, 2002; J. W. Meyer & Rowan, 1977; Zucker, 1987). NI scholars now argue that “[s]tate and societal pressures for isomorphic change and conformity are powerful forces not only for institutionalization but also for the deinstitutionalization of prior organizational‖ structures and practices (Oliver, 1992, p. 577).

The processes of what NI describes as “isomorphism”—through which institutions align with their wider environment and thus gain legitimacy—are also now viewed as potentially functioning to transform previously-stable institutions, as they respond to shifting pressures from the institutional environment. DiMaggio and Powell (1983) identify three processes of isomorphism, through which organizations can be “structurated” into organizational fields. Coercive isomorphism arises from political, legal, and regulatory pressures; normative isomorphism results from the powerful role of professionalization; and mimetic isomorphism occurs as organizations cope with uncertainty by modeling themselves on other organizations that appear more legitimate or successful. Along similar lines, Scott (2001) describes regulative, normative, and cultural/cognitive institutional elements as three “pillars” that support organizational legitimacy, and function as the mechanisms of isomorphism:
1. “The regulatory emphasis is on conformity to rules: Legitimate organizations are those established by and operating in accordance with relevant legal or quasi-legal requirements”; 

2. “A normative conception stresses a deeper, moral base for assessing legitimacy. Normative controls are much more likely to be internalized than are regulative controls”; 

3. “A cultural-cognitive view stresses the legitimacy that comes from adopting a common frame of reference or definition of the situation…[and] rests on preconscious, taken-for-granted understandings” (pp. 60-61).

These three pillars of legitimacy—regulatory, normative, and cultural/cognitive—are related, but separate. Further, the pressures they exert can change over time, and differential responses of organizational elements to these pressures can result in conflict within an organizational structure.

**Implications for Institutionalized Schooling.** The recent widespread implementation of new accountability, manifested most visibly in No Child Left Behind (NCLB) and Race to the Top, in fact represents a major shift in the demands of the institutionalized environment of public schooling, as strong new pressures from the state (i.e. the government) have emerged. Over the last several years, many states have enacted new accountability policies and stringent new federal requirements have been implemented for states and school districts that receive federal funding under Title I of the Elementary and Secondary Education Act. This new legislation at both federal and state levels represents unprecedented government focus on the technical core, or “technical instructional effectiveness” of schooling (DeBray, McDermott, & Wohlstetter, 2005; Liebman & Sabel, 2003; J. W. Meyer, 1980, p. 52). Such government pressures present a powerful challenge to the historically-observed, loosely coupled organizational structure of what
has long been described as institutionalized schooling: introducing new “institutional logics”—as the “belief systems that provide guidelines for practical action” (Rao, Monin, & Durand, 2003, p. 795)—into a previously-stable and homogeneous institution.

The substantial regulatory changes associated with new accountability legislation constitute a significant shift in the institutionalized environment of schooling. This new government pressure introduces the kind of “jolt,” or “discontinuous industry-level change” (A. D. Meyer, Brooks, & Goes, 1990), that can destabilize established practices and “disturb the socially constructed field-level consensus” (Greenwood et al., 2002, p. 60). Hoffman (1999) argues specifically that such “disruptive events” precipitated by legal and regulatory changes “are central in explanations of change processes on various organizational levels,” and can ultimately result in the reconfiguration of organizational fields (p. 353). Oliver (1992) maintains that “external assessments of organizational performance based on technical criteria,” in particular, “often intrude on institutional definitions of success” (p. 573). He argues that “when changing societal values become represented by the state, or when rising efficiency standards are imposed by government mandate, the potential for deinstitutionalization of historically entrenched practices and standards will be extremely high” (p. 584).

While the coercive pressure of the state exerts a strong force on institutions, the professions are also identified as a powerful institutional influence and source of normative isomorphic pressure (DiMaggio & Powell, 1983). Schooling and teaching have historically been isomorphic with the long-established, institutionalized education environment, and thus isomorphic with each other. But significant shifts in that environment, such as those currently occurring, could theoretically result in the emergence of conflicting institutional logics: the logic of institutionalized schooling on the one hand, and “the ideology of educational professionalism”
(J. W. Meyer, 1980) as the logic of institutionalized teaching on the other. New institutionalism provides a valuable framework for examining and understanding the relationship between schooling and teaching, and for considering the potential impact of a new accountability “jolt” on the alignment between them.

New institutionalism considers institutional logics to be directly reflected both in scholarly and professional literature and in government policy documents (Edelman, Uggen, & Erlanger, 1999; Hoffman, 1999; Ventresca & Mohr, 2002). Scholarly literature is viewed as expressing the cultural-cognitive frameworks of the professions. The laws, rules, and regulations comprising the “distinctive governance structure” of an organizational field are viewed not only as regulatory systems, but also as “cultural-cognitive frameworks that define the nature of actors, their interests, and their rights” (Dacin et al., 2002, p. 51). Analysis of the values and beliefs underpinning government policies, as well as those policies’ literal content, is seen as a key means for “understand[ing] the intentions and outlooks of those with authority” (Raab, 1994, p. 9). Drawing from this theoretical perspective, the policy documents governing teachers’ work and the scholarly education literature were analyzed as texts describing the belief systems regarding the “practical action” as well as the symbolic logics (Suddaby & Greenwood, 2005) with respect to teachers and teaching, specifically. This served as data for analysis of the beliefs and values underpinning current teacher policies, their degree of alignment with the “new accountability” framework, and the potential emergence of a distinct institution of teaching within public schooling.
Chapter 3:
Research Design, Methodology
& Procedures

This chapter presents the research design, methodology, and procedures used for investigation of New York City government teacher policies, in the contexts of other government school policies, and the literature on teachers and accountability from the academic discipline of education. The primary emphasis of the study was investigation and analysis of the structure and substance of the public policy system governing public school teachers in New York City. Teacher policy findings were subsequently examined to determine their degree of alignment on both a literal and a symbolic, or ideological, level with: (1) The new accountability framework; (2) Public policies governing other New York City school stakeholders, such as students, principals, and schools; and (3) The dominant discourse, or predominant theories, assumptions, beliefs and values, regarding teachers and teaching as expressed in the scholarly literature published in education.

The chapter begins by reviewing the study’s research questions. The rationale is explained for choosing a qualitative single-case study as an appropriate research methodology, and for selection of New York City for that case study. Description is provided of data sources and methodological approach employed; the analytical model used to guide the research; and specific methods for collecting, organizing, and analyzing data. The chapter closes with a discussion of potential bias and validity issues in data collection and analysis.
3.1 Research Questions and Hypotheses

Research was guided by several questions regarding the literal content, as well as the symbolic “logics of action” (Bacharach & Mundell, 1993; Suddaby & Greenwood, 2005), of policies governing public school teachers in New York City. The study also sought to analyze two dimensions of the context these policies exist in: 1) Government policies for other public school stakeholders in New York City; and 2) The ideological paradigms that characterize the scholarly education literature regarding teachers, teacher quality, and accountability. The study’s first questions focused on the literal content of government teacher policies and the degree of alignment between those policies and both the new accountability framework, and public policies governing other school stakeholders:

- What is the literal content of formal public policies—i.e. laws, regulations, collective bargaining agreements—governing the work of public school teachers in New York City? What are individual teachers held accountable for in written policies, and how? What policy mechanisms are used?

- What is the degree of consistency between the content of government teacher policies, and the new accountability policy model: that is, holding individual teachers accountable for student outcomes through “clear and powerful incentives” (Baker & Linn, 2004, p. 48)?

- What is the degree of consistency between the content of government teacher policies, and the content of government policies for other individual and organizational units of the schools system—i.e. students, principals, schools, and districts? Are teacher policies coherent (Fuhrman, 1993b; May, Sapotichne, & Workman, 2006), or aligned, with policies governing the rest of New York City public schooling?
Additional questions were informed by new institutional theory, which was used as a lens to view the institution of schooling and perhaps now also of teaching. Seen through a new institutionalism lens, the growing governmental influence on public school policy potentially represents a new and forceful “coercive” pressure on the organizational field of schooling. Does this new government pressure appear to have impacted the previously isomorphic, loosely coupled institution of schooling? What appears to be the current relationship between the recently-strengthened influence of the state, on the one hand, and the education profession, on the other? Specific questions in this respect were:

- Considering policy documents as symbolic statements, what conceptualizations of teacher quality and accountability are implicitly expressed by what formal policies do and do not hold teachers accountable for? What values, beliefs, and assumptions regarding teachers and teaching appear to underpin teacher policies?

- What is the degree of consistency between conceptualizations of teacher quality and accountability that appear to underpin formal policies, and the ideological paradigms regarding teacher quality and accountability dominant in the scholarly education literature?

- Several working hypotheses were developed and explored, using new institutionalism as a theoretical lens. As explained, the new institutionalism perspective recognizes both the state and the professions as potential influences on government policies for public schooling. From this perspective, it was hypothesized that:

  1. Government policies for New York City public school teachers, specifically, would not be well-aligned with the tight-coupling emphasis of the new accountability framework, which has focused most explicitly on schools and districts;
2. Government policies for public school teachers in New York would remain fairly with the longstanding loose coupling of institutionalized schooling as described by new institutional theorists (e.g. DiMaggio & Powell, 1983; J. W. Meyer, 1980; J. W. Meyer & Rowan, 1977, 1978);

3. New York government teacher policies would maintain considerable congruence with the dominant beliefs and values—the “ritualized categories and myths”—regarding teachers and accountability as expressed in the scholarly education literature.

Study findings provided support for these three hypotheses. Strong misalignment, or incoherence, was evident between government teacher policies and government policies for other public school stakeholders. State pressure for outcomes-based new accountability appears to have significantly influenced government policies for all school stakeholders, except for teachers. At the same time, notable alignment was identified between teacher policies, specifically, and the scholarly literature in education.

3.2 Overview of Study

3.2.1 Design

The system of formal public policies governing the district teacher workforce of an urban school district was investigated, and placed within the context of: (1) Government policies for other school district stakeholders, and (2) The academic/professional literature from the discipline of education. A qualitative single-case research design was selected because the research purpose was to carry out an in-depth, exploratory and descriptive study of a single school district teacher policy system, and the academic/professional context that policy system is situated in (Maxwell, 1996; Yin, 1994). As a method of empirical inquiry, a case study approach
is useful in investigation of both a “specific, unique bounded system” (Creswell, 1998; Stake, 2000, p. 436), and “a contemporary phenomenon within its real-life context” (Yin, 1994, p. 13).

A single case study can include more than one unit of analysis (Merriam, 1998); this investigation focused on three:

2. Government policies for other school stakeholders in the district.
3. Literature published in academic journals in education, on themes of teachers, teaching, and accountability.

Archival data was analyzed—state and city laws and regulations governing the New York City public schools, and education literature—using the methodology of textual analysis, based in semiotic theory, as a means to examine both the literal and the symbolic meanings of these texts (McKee, 2006). The aim was first to systematically analyze and classify the literal content of policies; and second, to describe the “dominant discourses,” or “ways of making sense of the world” (Farmer, 1997, p. 101), expressed in policies and the disciplinary literature.

An integrated combination of two research approaches was used to collect and analyze data. A directed approach was used to collect and analyze data from policy texts, coding and classifying data based on existing categories drawn from theory, as described below. With respect to the scholarly literature, a grounded theory approach was primarily used to collect and analyze data. Grounded theory is a systematic, qualitative research methodology that aims to generate theory from data, rather than using data to test a pre-existing theory, (Strauss & Corbin, 1998). This approach was useful for investigation of the literature, because the purpose of that part of the study was to develop an understanding of the “structure of knowledge” with respect to core themes as expressed in the scholarly education literature. A second analysis of policies was
subsequently carried out examining policy documents as symbolic texts; this analysis utilized a directed approach, guided by findings from the grounded theory analysis of the education literature.

This research design enabled a close, thorough analysis of a single policy system, producing a comprehensive policy typology. The study also provided a valuable case to explore the predictions of new institutional theory with respect to the apparent, or potential, influences on policy arising from the state, on the one hand, and the professions, on the other. Details of research scope, design and procedures are provided in the sections that follow.

3.2.2 Focus of Study

This study is an investigation of policy design: the structure and substance of formal government policies. The study is not a “policy research” study as the term is often understood: that is, it is not an examination of a social problem, aiming to propose new policy solutions, nor is it a study of the politics of policymaking. It is best understood as basic research on the structure and substance of policies: elements of design and how those elements work together as a policy system, as well as the beliefs and values policies appear to represent. Investigation aimed to analyze, classify and describe:

1. The literal content of the system of formal public policies governing the New York City teaching workforce;
2. The alignment or lack of alignment between teacher policies, policies governing other school stakeholders, and the new accountability framework;
3. The beliefs and values that teacher policies appear to incorporate or reflect; and
4. Potential ideological influences that may shape teacher policies: in particular, the
government-driven new accountability framework, on the one hand, and the dominant
ideological paradigms expressed in the education literature, on the other.

3.2.3 Boundaries of Study

The school district. The school district was used the unit of analysis for study of
policies, and a large, urban school district was selected in particular. While individual schools
may create and implement unique site-based policies, the study’s focus was explicitly on
systemic polices that apply across a school district. This focus was chosen for several reasons.
First, while the role of districts in school improvement has largely been neglected (Iatarola &
Fruchter, 2004), a growing number of scholars argue that the district is an important unit of
analysis for research, and a crucial level for the implementation of school improvement polices,
as discussed in Chapter 1 (Corcoran & Goertz, 1995; Darling-Hammond et al., 2003; Grissom &
Herrington, 2012; M. B. King, 2004; Snipes, Doolittle, & Herlihy, 2002; Spillane, 1996;
Sunderman, 2010; Wong, 2006)\textsuperscript{12}:

While there has been much research on what makes an effective school, there is relatively
little on what makes an effective district. In fact, many see large urban school districts as
a source of problems rather than solutions. But for school improvement to be widespread
and sustained, and for our nation to reduce racial differences in academic achievement,
large urban districts must play a key role. (Snipes et al., 2002, p. 1)

Many education policies formulated on the federal and state level are implemented by districts,
and the nature and function of those policies directly impact schools at the district level.

\textsuperscript{12} This growing focus on the role of the school district is reflected in the recently-announced new federal Race
to the Top competition aimed explicitly at school districts; see \url{http://www.ed.gov/blog/2012/05/announcing-the-race-to-the-top-district-competition/}. 
Investigation was thus focused specifically on this level of analysis: all government policy relevant to the management of teachers that is operating at the district level.

A focus on a large, urban district was chosen because the aim was to build knowledge regarding the function of teacher workforce management strategies within large urban systems in particular. Forty percent of all public school teachers teach in school districts larger than 15,000 students (Snyder, Tan, & Hoffman, 2006), and effective strategies for teacher workforce management in larger school systems are crucial to the function of U.S. public schools. In addition, major urban school districts are widely viewed as performing poorly, and are a primary target of current federal accountability legislation.

Finally, new institutionalism views the “district organizational structure…as internal reflections of institutionalized rules of the wider state and society,” manifesting those “structural matters on which agreement is so high as to be taken for granted”: the “district system reflects these rules and applies the taken-for-granted structure” to school organizations (J. W. Meyer, Scott, Cole, & Intili, 1978, p. 260-261). Since the “formal structure of an organization incorporates (and in some respects is) an environmental ideology or theory of the organization’s activity” (J. W. Meyer & Rowan, 1978, p. 108), government teacher policies in effect at the district level can be considered to be a valuable lens into a particular theory of teachers and teaching that is institutionalized in the wider environment.

**New York City.** New York City was chosen for the case study for several reasons:

- New York has long been considered to be at the nation’s forefront in standards and accountability (Quality Counts, 1997, 1999, 2006). Education Week’s 2012 *Quality Counts* report gives New York State a grade of “A” in the category of “Accountability for
quality,” and ranks the state third in the nation for overall “policy and performance” (Education Week, January 12, 2012).

- The New York City school system is one of several major urban districts that in recent years have been taken over by the city’s mayor to improve school performance and accountability, and to address eroding public confidence in the public schools (Kirst & Edelstein, 2006; Usdan, 2006; Wong, 2006).

- The 2002 reauthorization of the Elementary and Secondary School Act as No Child Left Behind attached unprecedented accountability requirements to Title I funding. The New York City Department of Education is the single largest recipient of Title I funds and is thus an appropriate example of a large school system affected by this legislation.

- New York won one of the nation’s largest RTTT grants, submitting an application which had a strong emphasis on teacher evaluation (Kolbe & Rice, 2012), and received the second-highest score in the country, representing the high degree to which New York’s application was aligned with the RTTT reform agenda (Nicholson-Crotty & Staley, 2012).

The New York City public schools can thus be viewed as operating in a strong “new accountability” government policy environment, with growing focus on teacher evaluation and accountability policy specifically. This provides a good case for understanding government policies at the leading edge of education accountability.

3.4.2 Overview of Data Sources

The study used archival data, from several sources. As Berg (2006) has noted, while study of public archival documents is underutilized as a qualitative research method, this
approach provides “a particularly interesting and innovative strategy for collecting and assessing data” (p. 189). Three primary sources of archival data were used: 1) Public policy documents governing New York City public school teachers (i.e. laws, rules, and regulations); 2) Public policy documents governing other school stakeholders, and 3) Scholarly literature published in academic journals in the discipline of education on the themes of teachers, teacher quality, and accountability in education. The following is brief overview of these three data sources and the rationale for choosing them. Each source is described in considerably greater detail in the specific discussion of data collection methods that follows.

**Public policy documents governing tenured NYC public school teachers.** The study’s primary source of data was laws and regulations governing the public school teacher workforce in New York City. Policies governing tenured teachers who make up 75% of New York City’s teacher workforce were a particular focus. Standards for receiving tenure appear to recently have been raised. However, tenure standards govern entry into New York City’s permanent teacher workforce. Understanding how members of the permanent workforce are held accountable for their professional performance over years (even decades) of their professional careers as teachers is particularly important. As an additional source of data regarding government policy for teacher accountability, a Freedom of Information Law (FOIL) request was filed to obtain ten years of “§ 3020-a” reports, or “decisions” for New York City teachers. The § 3020-a decisions are official government documents filed by with the New York State Education Department at the conclusion of the state-run hearings required by New York Education Law § 3020-a to dismiss

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13 Until recently, 99% of New York City public school teachers received tenure after three years. According to *The New York Times*, however, due to reforms in the tenure system, in 2010-2011 58% of eligible teachers received tenure, tenure decisions were “deferred” for 39%, and 3% were denied tenure.

14 Tenure is not transferrable to other New York school districts: New York City’s tenured teachers are tenured only in New York City.
or “discipline” a tenured teacher for inadequate performance. In Chapter 6, these decisions and their significance in the teacher policy landscape is described in detail.

**Public policy documents governing other NYC school stakeholders.** The second source of data for the study was the school policy context for teacher policies—that is, government policy documents governing other public school stakeholders in New York City, such as students, principals, and schools. Prior to beginning the investigation the importance of analyzing government policies for other school stakeholders had not been anticipated, and this additional investigation was not included in the dissertation proposal. In the course of researching teacher policies, however, it became clear that understanding the school policy context for those policies was crucial. Conclusions reached regarding government teacher policies “in a vacuum” are of limited use: the degree of alignment of teacher policies with other school policies is essential to meaningful analysis of the overall policy system governing the public schools. Therefore, although initial questions focused only on teacher policies, the investigation was extended to include the school district policy context that those teacher policies operate within. At the same time, analysis of policies for all school stakeholders was not the purpose of the investigation, and research on these additional, large bodies of policy was thus not exhaustive. The presentation of findings on these policies is limited to key policy elements and general observations, aiming simply to provide relevant context for findings on teacher policies.

**Disciplinary education literature on teachers and accountability.** The third source of data for the study was academic literature on teachers and accountability produced by scholars in the discipline of education. Within this body of literature, analysis focused on work addressing education policy in the United States with respect to accountability and teacher quality published
over the last twenty years in leading peer-reviewed education journals, and books by widely-cited education scholars.\[^{15}\] Particular attention was paid to prescriptive statements, both direct and indirect: that is, what is right or wrong with current policy, and how policies should be designed. This data was supplemented with mission and policy statements from leading professional organizations that focus on teachers, such as the National Board for Professional Teaching Standards, the National Commission on Teaching and America’s Future, and the National Council for Accreditation of Teacher Education.

### 3.2.5 Rationale for Data Sources Used

This archival data was appropriate for research purposes because it enabled investigation both of literal policy content and of the cultural-cognitive frameworks represented both in policies and in the scholarly education literature.

**Literal policy content.** The study’s core questions regarded the literal content of policy documents, and therefore clearly required analysis of those documents specifically. The § 3020-a decisions, while difficult to access and very few in number, turn out to provide essential data regarding government teacher policy, revealing teacher accountability policy as it is actually formulated and implemented ex post.

While Schneider and Ingram (1990) have noted that, “[t]he empirical referents of policy, such as laws, regulations, and programs are relatively unstudied” (p. 510), this investigation of formal government policies shares elements of focus and approach with some previous, although

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limited, empirical work. Mitchell, Marshall & Wirt (1985), for example, carried out an investment of the content of state education policies, focusing on the “basic control mechanisms” of policy. The authors examined state statutes, regulations, and other formal policy documents, seeking to “identify, describe, and analyze the essential building blocks of state education policy,” (p. 8), and develop a comprehensive taxonomy “that systematically classifies all major policies and appropriately distinguishes among them” as an essential “foundation for increasingly sophisticated analyses of… policy systems” (p. 10). Shober, Manna & Witte (2006) analyzed state charter school laws to determine how those laws incorporate and balance the key values of flexibility and accountability. Koski & Weis (2004) performed a textual analysis of statutory and policy frameworks for California’s standard-based accountability initiative, through what they describe as a “straightforward analysis of…California’s own texts and what those texts imply in terms of educational conditions and resources” (p. 1910).

**Cultural-cognitive frameworks.** This type of archival data—both government policy documents and the academic literature—is also valuable for analysis of meaning structures. Analysis of such data enables the researcher “to assess relevant features of shared understandings, professional ideologies, cognitive frames or sets of collective meanings that condition how organizational actors interpret and respond to the world around them, to measure essential properties of these ideational systems, and to use them to explain the strategies and actions of individuals and organizations” (Ventresca & Mohr, 2002). Policy documents lay out the laws, rules, and regulations comprising the distinctive governance structure associated with an organizational field; these are “not simply regulatory systems but are also cultural-cognitive frameworks that define the nature of actors, their interests, and their rights” (Dacin et al., 2002, p. 51). Governance structures reflect institutional logics, which “encode the criteria of legitimacy
by which role identities [and] strategic behaviors… are constructed and sustained… [and] enable actors to make sense of their ambiguous world by prescribing and proscribing actions” (Suddaby & Greenwood, 2005, p. 38). Analysis of policy documents on a symbolic as well as literal level enabled examination of the ideological alignment of teacher policies with other school policies, on the one hand, and the education scholarly literature.

Analysis of the scholarly education literature aimed to identify the ideas, beliefs, and values regarding teachers, teaching, and accountability that dominate literature published in education. This analysis was grounded in the view that “rhetoric is an essential element of the deliberate manipulation of cognitive legitimacy” (McCloskey, 1994; Suddaby & Greenwood, 2005, p. 40). Investigation of the education literature focused on identifying and analyzing “institutional vocabularies” used in that literature, meaning the “structures of words, expressions, and meanings used to articulate a particular logic or means of interpreting reality” (Suddaby & Greenwood, 2005, p. 43). This approach was used in Hoffman’s analysis of a chemical industry trade journal to investigate the situated perspective of the institutionalized chemical industry (1999), for example, and Kelly & Dobbin’s examination of professional journals to understand the role of professional networks in “constructing meaning for organizational practices” (1998, p. 962).

As explained above, new institutionalism views the state and the professions as the primary influences on institutions, and considers institutional logics to be reflected in both formal government policy, and in scholarly and professional literature (Edelman et al., 1999; Hoffman, 1999; Ventresca & Mohr, 2002). Findings from investigation of government teacher policies and the education literature thus provided a valuable lens into the hypothesized emergence of unique institutional logics of teaching, separate and distinct from that of schooling.
3.3 Methodological Approach

3.3.1 Overview

The study utilized textual analysis, based in semiotic theory. A combination of a directed and a grounded theory research approach were used to collect and analyze data from government policies (as state archival data) and the scholarly education literature (as professional archival data). Both syntagmatic and paradigmatic textual analysis was employed, as formal methodologies for the analysis of text. Syntagmatic analysis aims to understand and characterize the “surface structure,” or literal content, of texts, concentrating on denotative meaning. Paradigmatic analysis focuses on the symbolic, underlying meanings that are signified by the literal words used (Chandler, 2007).

Semiotic theory describes texts as made up of “signs.” A sign is composed of a signifier, which is the literal word used, and a signified, which is the concept represented by the literal word: “A sign is a recognizable combination of a signifier with a particular signified” (Chandler, 2007, p. 16). Semiotic theory organizes signs into “codes,” as meaningful systems or the frameworks that signs make sense within (Chandler, 2007; Lakoff & Johnson, 1980). This approach “is invaluable [for]…looking beyond the manifest content of texts…beneath the surface of the observed in order to discover underlying organizational relations” (p. 215).

Both sets of texts analyzed (government policies and the scholarly education literature) are viewed as “high-modality” documents: that is, texts that are accorded a relatively high level of status and authority and are “perceived to be strongly related to reality” (Farmer, 1997, p. 97; Lakoff & Johnson, 1980). As Chandler (1980) notes, when “signifiers are experienced as highly realistic…it is particularly easy to slip into regarding them as identical with their signifieds.” At the same time, however, “[t]he difference between signifier and signified is fundamental” (p. 77,
A central goal of the study was the identification and analysis of important signifiers in both policies and the scholarly literature—that is, what specific words are used, and precisely what they are used to mean in particular contexts. The *denotative* (literal content) and the *connotative* (symbolic) meanings of key words and concepts in policy and academic texts were systematically examined. This analysis was almost exclusively qualitative, supplemented with limited quantitative content analysis of the explicit content of selected policies, using specific terms and categories identified through analysis, as described in more detail below.

### 3.3.2 Policies

As noted, both a directed approach and grounded theory were employed as appropriate for different aspects of the investigation. A directed approach was used to carry out analysis of laws and regulations, meaning that coding categories were based on key concepts or variables derived from existing theory, rather than developed out of the data itself. The coding frame utilized in syntagmatic analysis incorporated core dimensions of both the new accountability and strategic human resources management frameworks, as well as legal models that distinguish between determinate and indeterminate kinds of laws and regulations, as discussed above. Paradigmatic analysis of policies focused on the “meaning structures” evident in policy texts, incorporating findings from analysis of the scholarly literature into the coding frame. Particular attention was paid to understanding conceptualizations of *teacher quality* and *accountability* and how texts relate these two central concepts.

Finally, the Education Law § 3020-a decisions obtained were analyzed, largely using a grounded theory approach; this analysis is described in detail below. A grounded theory approach was appropriate as a research methodology for analyzing these lengthy, opaque reports,
each of which can essentially be seen as a single case study in teacher accountability, revealing implicit standards for teacher performance.

### 3.3.3 Scholarly Literature

A grounded theory approach was employed for analysis of scholarly education literature on teachers and accountability. While perhaps more commonly associated with field research, grounded theory methodology can also be utilized for analysis of documentary data: the “cache of archival material…is the equivalent of a collection of interviews or field notes” (Strauss & Corbin, 1998, p. 212). This approach—which generates theory from data rather than using data to test a pre-existing theory (Strauss & Corbin, 1998)—was appropriate for investigation of the education literature, which aimed to map out the structure of knowledge with respect to core themes. That is, the study sought to identify and critically analyze the dominant ideological paradigms that characterize the education literature, and explain how they are used to construct arguments and are operationalized for empirical work. Semiotic textual analysis was utilized as an appropriate methodology for the study of meaning structures in academic literature.

“[A]nalysis of professional discourse…in academic literatures” enables the researcher to:

…assess relevant features of shared understandings, professional ideologies, cognitive frames or sets of collective meanings that condition how organization actors interpret and respond to the world around them, to measure essential properties of these ideational systems and to use them to explain the strategies and actions of individuals and organizations. (Ventresca & Mohr, 2002, p. 819)

A wide search of the education literature was first conducted to identify relevant literature and key articles. Scholarly texts were then analyzed using textual analysis methodology to identify and code key terms, themes and theoretical constructs relevant to the study. Scholarly texts were approached as systems which relate words and ideas; the goal of analysis was to identify and
examine the main theories, concepts, arguments, and assumptions evident in the education literature on the topics of teachers, teacher quality, and education accountability.

### 3.4 Definitions and Analytical Framework

This section defines key terms and concepts, and describes the analytical framework used to guide collection and analysis of policy data.

#### 3.4.1 Key Definitions

**Accountability.** The term “accountability” has multiple definitions and meanings. For the purposes of this study, accountability is viewed in “its narrowest and most direct sense” as “the functional ability of an organization to deliver its stated goals” (Spar & Dail, 2002, p. 178), and as a “technical process” (Levin, 1974). The concept of accountability was operationalized for the study in the new accountability sense: that is, written, determinate rules that stipulate a clearly-defined standard, a measurement against that standard, and a subsequent consequence allocated accordingly.

**Outcomes.** “Outcomes” refers to the “proximate outcomes” (Levin, 1974) of student achievement in the basic skills of mathematics and literacy, as measured by standardized achievement tests. This definition of educational outcomes is emphasized in the education literature as central to new accountability policy systems, and is the definition now commonly used in public policy.

**Inputs/Process/Outcomes.** The educational literature describes three major domains within which accountability mechanisms can be used for controlling teachers’ work: inputs, processes, and outcomes. A bureaucratic approach, which long dominated schooling management, relies on accountability for education inputs (teacher credentialing, ongoing
training, and years of employment) and processes (the day-to-day activities of teachers’ work).

The recent implementation of outcomes-based accountability policy initiatives, exemplified by No Child Left Behind, is widely described by education scholars as a major shift from the longstanding bureaucratic administration of schools, emphasizing control of inputs and processes, to a management approach that focuses on controlling educational outcomes (as defined above). The study’s framework for policy analysis utilizes the three major types of work controls in the domains of inputs, processes, and outcomes.

The new accountability framework is explicitly focused on accountability for outcomes. More generally, however, accountability—that is, a specific measurement and consequence associated with a particular standard—can exist for work inputs, processes, or outcomes. Figure 3.1, below, explains how these terms might be used in a familiar, “real world” context. How standards for inputs, processes, and outcomes can be applied to teachers specifically is then explained.

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Figure 3.1: Clarification of input/process/outcome accountability framework

The term “accountability” is used to mean: (1) A standard is defined and stated; (2) It is then evaluated whether or not the person has met the standard, which is the measurement against the standard; and finally, (3) A consequence happens to that person based on how they did or did not meet the standard. This common model of accountability is represented in this diagram:

Accountability can operate for an input standard, a process standard, or an outcome standard, as follows:
Input accountability. Smith & Jones LLP is a law firm. They state: "We have a standard of only hiring associates with law degrees from Columbia University." In other words, applicants are accountable for having a law degree from Columbia. The consequence for not having a law degree from Columbia is that you are not employed by Smith & Jones, because you did not meet the input standard.

Process accountability. Smith & Jones also states: "Our associates are expected to come to work when summoned and to leave only when dismissed. This often means 12 hours per day, seven days per week. If you, the employee, do not meet this standard, you will be fired." In this case, if you refuse to come to work on Sunday the consequence is, again, that you are not employed by Smith & Jones even though you still have your law degree from Columbia University—i.e. you met the input standard. But, you did not meet the process standard, and the consequence for that is losing your job. You are then not employed by Smith & Jones because you did not meet the process standard.

Outcome accountability. Smith & Jones further states: "We have an ‘up-or-out’ policy for our associates. If you, the employee, do not produce work that meets our stated goals (getting new clients, client satisfaction, winning cases, billable hours) you will be fired." In this case, if you do not produce adequately, as defined by Smith & Jones, the consequence is that you are not employed by Smith & Jones even though you still have your law degree from Columbia University (you met the input standard) and even if you came to work every Sunday (you met the process standard). But, you did not meet the outcome standard, and the consequence for that is losing your job. You are then not employed by Smith & Jones, because you did not meet the outcome standard.

As shown in this example, accountability can function with respect to input standards, process standards, or outcome standards. A “standard” for teachers is defined as a statement in written policy of required or desired characteristics, behavior, or work output. A standard may be an input standard (such as a requirement for a particular license), a process standard (such as work attendance, lesson planning, or instructional strategies), or an outcome standard (such as the test outcomes of a teacher’s students, or assessments of parental satisfaction). These three types of standards can be described as pertaining to who teachers are, what they do, and what
Further, a standard can be specific (such as carrying out a defined teaching process), or general (such as “engaging students”). Figure 3.2, below, specifies the description of each type of standard, and examples of standards that could appear in government policies for teachers:

<table>
<thead>
<tr>
<th>Type of standard</th>
<th>Description</th>
<th>Example of possible standard</th>
</tr>
</thead>
</table>
| INPUT            | *Who teachers are*—the training, knowledge, and skills they bring to teaching; their personal attributes such as motivation and beliefs | - Entry standards such as credentials, licenses, and tests  
- Ongoing professional development and training  
- Years of employment as a teacher  
- Stated and evident attitudes towards students |
| PROCESS          | *What teachers do*—their on-the-job behavior and activities | - Work hours  
- Lesson planning  
- Instructional strategies  
- Student assessment methods  
- Classroom management requirements, such as maintaining bulletin boards, desk arrangements  
- Way of treating or interacting with students |
| OUTCOME          | *What teachers produce*—the tangible products of their work | - Student achievement test scores  
- Other assessments of student(such as attendance rates, portfolios, affective outcomes, etc.)  
- Parent and/or student satisfaction |

Figure 3.2: Categories of standards for teachers

### 3.4.2 Simplified Policy Analysis Framework

The new accountability model widely presented in the education literature specifies three determinate elements of an accountability mechanism—a defined standard, measurement, and

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16 The human resource management literature also uses these three general categories to describe work. See, for example, Schein (1977) and Wright & Snell (2001).
consequence. This simple determinate model can be diagrammed as follows, in Figure 3.3:

![Diagram of simple accountability model](image)

Figure 3.3: Simple accountability model

An initial analysis matrix (Miles & Huberman, 1994) was constructed from two major concepts defined in the educational literature, discussed above: (1) The three policy components of new accountability (see Figure 3.3); and (2) The three domains of mechanisms to control teachers’ work. That matrix included these six variables, as shown here in Figure 3.4:

![Accountability mechanism components table](image)

Figure 3.4: Simplified teacher accountability policy framework

The vertical dimension of the matrix specifies the variables of the three domains of work controls: *inputs*, *process*, and *outcomes*, as described in both the education and strategic human resource management literature. The horizontal dimension of the matrix specifies the three
components of an accountability mechanism defined as key to the operation of new accountability: a *standard*, a *measurement*, and a *consequence*.

Research was initiated using the matrix shown in Figure 3.4, based on the linear, “three-box” standard/measurement/consequence model as it is described in the education literature. In the course of coding policies, however, it became clear that this model fails to capture the total universe of government policies. While many policies can be classified using this simple matrix, preliminary analysis of policies revealed that the commonly-described model of accountability excludes multiple policies, and particularly those addressing teacher evaluation and accountability.

### 3.4.3 Determinate vs. Indeterminate Policies

The key to understanding the limitation of the simple standard-measurement-consequence accountability model described in the education literature is the fundamental distinction between two very different categories of government policies: determinate rules, on the one hand, and indeterminate principles on the other, as discussed in Section 2.3 above. As explained in that section, *rules* are bright-line laws and regulations that are written to minimize ambiguity and exclude discretion in application. *Principles*, in direct contrast with rules, are purposefully written to allow “varying interpretations in individual cases” (Diver, 1983, p. 70). While the education literature does not draw the distinction between these two categories of laws and regulations, it is critical to correct analysis and classification of policies.

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17 The term “principles” and “standards” are both used to describe the same category of law (in a distinction drawn against “rules). The term “principle” is used here to avoid confusion with the term “standard” as it appears in the “standard-measurement-consequence” accountability model.
In this study, the term *determinate* was used to refer to policies that have the characteristics of rules: that is, unambiguous, bright-line policies that are given specific content ex ante, including clearly-defined obligations, and measurements and consequences associated with those obligations. The term *indeterminate* was used to refer to policies that are intentionally written to allow for discretion in application. An indeterminate policy may stipulate an obligation without defining that obligation specifically, and further may not stipulate consequences for fulfilling or not fulfilling that (possibly undefined) obligation (Dworkin, 1967, p. 27). Indeterminate policies are given much of their content ex post: that is, they “leave a greater portion of the substantive provisions to be determined after the regulated behavior has occurred,” deferring those determinations to the “enforcement” stage (R. E. Scott & Triantis, 2005, p. 11). Unlike bright-line determinate policies, indeterminate policies often state obligations vaguely ex ante, and permit various factors and interests to be taken into consideration in policy enforcement depending on unspecified, unpredictable circumstances. Thus, only some policies can be categorized into the determinate “three-box” model shown above in Figure 3.3. The following diagram (Figure 3.5) better represents the nature of accountability policies described here as indeterminate, consistent with the definition of principles:

![Figure 3.5: Indeterminate accountability policy model](image)

The distinction between the “grey boxes” and the “white boxes,” above, is often not obvious, or can even obscured in policy texts. However, that distinction turns out to be crucial to
how policies are constructed. Distinguishing between a policy provision that describes a measurement result and one that describes a procedure for measuring is critical to understanding an overall policy framework. But the crucial difference between a measurement result and a measurement procedure is often not noted or clarified: both are referred to interchangeably as “measurements.” Similarly, distinguishing between policies that stipulate a consequence and policies that stipulate a procedure for allocating a consequence is equally important. These procedures, shown in the “grey boxes” in Figure 3.5 provide the means to exercise case-by-case discretion in the actual application of policies. The following illustration (see Figure 3.6) is a “real life” example to further illustrate how such procedures, explicitly allowing for discretion in application, can function in indeterminate laws and regulations:

Figure 3.6. “Weighing Joe”: Indeterminate policy function

Joe is weighed and it is determined that his weight is 160 pounds. The measurement of his weight can thus be said to be 160 pounds: that is, “Joe weighs 160 pounds.” But if the details of the weighing process are not specified, questions might be asked about this number: Did Joe have his shoes on? Was he wearing a heavy coat? Was the scale correctly balanced on a flat surface? In this case, what may be referred to simply as a “measurement” is in fact yielded by a measurement procedure, which is distinct from the ultimate measurement result of 160 pounds.

The word “measurement” can thus refer either to a “procedure of measuring” or to a specific “measurement result.” A procedure and a result are clearly very different things—but both can be referred to as a “measurement.” Furthermore, the requirements of the procedure itself may be open to interpretation and discretionary application, as shown in the following scenario.

Let’s say that Joe receives a reward/penalty of $10 per pound that he loses/gains since his last weighing a week ago. That consequence appears to be a determinate, bright-line rule. However, let’s say that the measurement procedure is not clearly specified ex ante but rather is
implemented ex post, on a case-by-case basis, by the weigher, Mr. Miller. If Joe sees that he has gained five pounds (he “weighed” 155 pounds last week and 160 pounds this week), he might ask to be weighed again—this time without his coat and shoes on. If the weighing procedure has not been specifically stipulated perhaps Mr. Miller will allow that.

Or instead Joe could argue that it was the holidays and that gaining only five pounds should be viewed as a “non-gain,” given the circumstances. Perhaps Mr. Miller will agree that this factor should be taken into account, and he therefore determines that Joe’s weight gain, in this one instance of this one particular case, only counts as two pounds rather than five. Joe’s “effective weight” is now 157 pounds, resulting from a measurement procedure carried out on a case-by-case basis with discretion by Mr. Miller. Joe is therefore fined $20 for his “two pound weight gain.”

To extend the example, let’s say that the reward/penalty is not precisely stipulated ex ante: it simply must be within a range of $5 to $10 per pound. In this case, Mr. Miller will first carry out the procedure that yields the official measurement of Joe’s weight, and subsequently determine how much money Joe is penalized for each pound gained. Joe might request a $5 per pound penalty, explaining that his overeating was due to the exceptional circumstances of a stressful week-long visit from his in-laws. After some discussion, Mr. Miller decides, finally, to assess a penalty of $7 per pound for his ultimate decision of a “two-pound weight gain.” Joe thus pays a total penalty of $14.

These interactions (between Joe, the weighed, and Mr. Miller, the weigher) can be described as the measurement and consequence-allocation procedures, which eventually yield the in-fact reward/penalty consequence allocated to Joe. In contrast, if this scenario occurred under determinate rules, it might be stipulated ex ante that: 1) A particular scale is positioned in a particular location; 2) That Joe and everyone else are always weighed first thing in the morning with no clothes on; 3) That the weight shown on the scale is the final, non-negotiable weight result; and 4) That a penalty/reward of exactly $10 is assessed for every pound gained/lost as
determined by the defined weighing procedure. Under this scenario, Mr. Miller’s role is eliminated as the decisionmaker in the weighing system, and for a weight gain shown on the scale as five pounds Joe would have paid a total penalty of $50.

### 3.4.4 Final Policy Analysis Framework

The simple analytical framework was revised to include this important dimension of policies, as shown below in Figure 3.7:

![Figure 3.7: Comprehensive accountability policy analysis framework](image)

The two vertical columns specifying “procedures” shown in Figure 3.7 are characteristic of indeterminate laws and regulations. Analysis identified multiple policy provisions that stipulate such procedures, while stating standards, measurements, and consequences in vague or ambiguous way. In these cases, the procedures themselves assume a crucial role in policy design and implementation. As discussed in detail below, the role of the “grey boxes”—the

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18 In the “Weighing Joe” example, it would perhaps be decided that a “determinate rule” policy would be more efficient and sufficiently accurate. However, depending on a range of factors, some policies may be better designed as indeterminate, rather than determinate. The range of factors that can be relevant in making this decision, and the tradeoffs between those factors, are discussed in Chapter 9.
measurement and consequence-allocation procedures—is critical to the nature and function of
teacher policies, although their significance can initially be obscure. In contrast to rules, which
“specify the content of an obligation ex ante,” it is through these ex post procedures that “a
greater portion of the substantive provisions [of such obligations are] determined” (R. E. Scott &
Triantis, 2005, p. 11).

Policies were classified using the analytical framework shown in Figure 3.7,
distinguishing between determinate and indeterminate accountability policies that govern
teachers as well as other school stakeholders. Analysis aimed to identify explicit policy
mechanisms that hold teachers accountable to a particular standard or for fulfilling a particular
obligation. A policy accountability mechanism was operationalized as a set of provisions that
includes all three components written as determinate, bright-line rules: a clearly-specified and
measurable standard; a clearly-defined measurement of achievement of that standard; and a
clearly-defined action, or consequence, stipulated to occur (“no matter what”) as a result of the
achievement of, or failure to achieve, the stipulated standard. Those mechanisms were then
categorized as pertaining to an input, a process, or an outcome as defined above to determine
policy alignment with the model of new accountability described in the education literature.

19 Policy mechanisms were defined as “tools or vehicles used by policymakers to achieve their policy
objectives.” While the broad domain of “policy mechanisms” encompasses a wide range of specific types, the
focus of the study was on what can be described as “regulatory and control measures” in laws and regulations
(Majchrzak, 1984).
3.5 Research Methods: Techniques and Procedures for Gathering and Analyzing Data

3.5.1 Overview

Research began with a conventional review of the literature, which found that little has been published on teacher accountability policies: a search of leading scholarly education journals with the term “teacher accountability” yields virtually no theoretical or empirical work on accountability policies for teachers. This surprising gap suggested initial study questions, both regarding the nature of teacher policies in New York City, and the degree of alignment between those government policies and the academic education literature. Both policy and scholarly texts were subsequently analyzed, using an iterative process for coding and analysis:

- The analytical framework, shown above in Figure 3.7, was utilized to code and classify policies based on their literal content. A typology of teacher accountability policies was developed, classifying policies by who is held accountable for what—whether inputs, process, or outcomes—and further, whether policies are written as determinate or indeterminate. This typology enabled assessment of policies’ degree of literal alignment with the determinate, outcomes-focused new accountability model.

- This analysis was repeated on key policies for other school stakeholders: again, examining who is held accountable, and for what, and whether through determinate or indeterminate policies.

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20 The term “professional accountability” appears with some frequency in the education literature (also referred to as “professionalism” or “professionalization”). However, despite semantic alignment, the “professional accountability” framework in fact emphasizes teacher inputs and processes, and does not meet the definition of accountability utilized in this study. This is discussed in more detail in Chapter 8.
• Teacher policies were subsequently analyzed as symbolic documents, guided by findings from the grounded theory investigation of scholarly texts, aiming to understand the theoretical assumptions, beliefs, and values that underpin them. In this stage of the investigation, qualitative textual analysis was supplemented with quantitative content analysis of key words in multiple policies.

• Education Law § 3020-a decisions were analyzed using a grounded theory approach to analyze these decisions as individual cases of the ex ante application of indeterminate government policy for teacher accountability.

• Scholarly texts were analyzed using a grounded theory approach, aiming to identify dominant theories, values, beliefs, and assumptions with respect to the inter-related themes of teachers, teacher quality, and accountability. The analytical framework used in the policy analysis matrix was also applied to the scholarly literature to classify evident conceptions of what teachers should be held accountable for.

• Finally findings from analyses of policies and the education literature were compared, on both literal and symbolic levels.

As emphasized, the investigative approach was necessarily iterative, but the methods used to collect, code, and analyze data covered the following five general steps: (1) Identify archival documents (government policies and scholarly literature); (2) Code and analyze the literal content of policies; (3) Analyze policies as symbolic documents; (4) Analyze Education Law § 3020-a decisions; (5) Code and analyze views on teacher quality and accountability expressed in the educational literature; and (6) Compare findings on the policies with findings from the educational literature. Each of these steps is described in more detail below.
3.5.2 Sources of archival data

Three primary sources of archival data were used for the study:

1. Public policies governing the work of teachers employed by the New York City Department of Education, such as state and district laws, regulations, rules, and the collective bargaining agreement, as well as the § 3020-a decisions on the ex ante application of policies for teacher accountability;

2. Public policies (government laws, rules, and regulations) governing other public school stakeholders; and

3. Scholarly education literature addressing the topics of teachers and teacher quality, supplemented by mission and policy statements from professional teacher organizations such as the National Board for Professional Teaching Standards, the National Commission on Teaching and America’s Future, and the National Council for Accreditation of Teacher Education.

Policy Documents. Six sources of policy documents containing policies governing teachers and other stakeholders in the New York City public school stakeholders were used to collect policy data (see Appendices A-F for detailed list of policies analyzed):

1. The Constitution of the State of New York

2. Consolidated Laws of New York State

3. New York Codes, Rules and Regulations


5. Regulations of the Chancellor of the New York City public schools
United Federation of Teachers Collective Bargaining Agreement

The following is a brief explanation of how these bodies of policy fit into New York’s public education governance structure and where they derive their public and legal authority.

New York State education governance structure. The mandate for the very existence of public schools in New York State is stipulated in the Constitution of the State of New York: “The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.”²¹ As required by the New York State Constitution, the New York State Legislature is charged with establishing and maintaining public schools available to all children throughout the state. As summarized by the New York State Education Department: “The legal framework for education in New York is established by the state Constitution and by statutes passed by the Legislature” (New York State Education Department, 2008).

The New York State Legislature established the New York Board of Regents in 1784 as the state body responsible for setting educational policy for New York State and supervising the New York State Education Department. The Board of Regents—currently composed of 17 members, elected by the State Legislature to serve five-year terms—is authorized by the Legislature to oversee all education in New York State:

Subject and in conformity to the constitution and laws of the state…the regents shall exercise legislative functions concerning the educational system of the state, determine its educational policies, and…establish rules for carrying into effect the laws and policies of the state.²²

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²¹ N.Y. Const. art. XI, § 1
²² N.Y. Educ. Law § 207
The Board of Regents (often referred to as “the Regents”), in turn, appoint a New York Commission of Education, who is “the chief administrative officer” of the State Education Department. The Commissioner is charged with general supervision of all schools in New York State (New York State Education Department, 2010b), and is granted specific “powers and duties” by New York State law:

The commissioner of education…is the chief executive officer of the state system of education and of the board of regents. He shall enforce all general and special laws relating to the educational system of the state and execute all educational policies determined upon by the board of regents…He shall have general supervision over all schools and institutions which are subject to the provisions of this chapter, or of any statute relating to education, and shall cause the same to be examined and inspected, and shall advise and guide the school officers of all districts and cities of the state in relation to their duties and the general management of the schools under their control…

At the same time, state law explicitly stipulates the Regents’ preeminent authority over the Commissioner of Education:

Rules or regulations, or amendments or repeals thereof, adopted or prescribed by the commissioner of education as provided by law shall not be effective unless and until approved by the regents, except where authority is conferred by the regents upon the commissioner of education to adopt, prescribe, amend or repeal such rules or regulations.

In summary, New York State Education Law promulgated by the State Legislature governs all public schooling in New York State. State law further grants the Regents’ legal authority to make state education policy:

23 N.Y. Const. art. V, § 4; N.Y. Educ. Law § 101
24 N.Y. Const. art. V, § 4; N.Y. Const. art. XI, § 2; N.Y. Educ. Law §§ 101, 201, 202
25 N.Y. Educ. Law § 305
26 N.Y. Educ. Law § 207
27 The Consolidated Laws of New York are organized into over 90 Chapters. All State Law pertaining to education is covered in Chapter EDN – Education. EDN is organized into nine Titles. Each Title contains...
The State Legislature is responsible for enacting the general laws in New York. In doing so, the Legislature often delegates “rule making powers” to the state’s administrative departments and agencies. These agencies are then empowered to develop and enforce the rules and regulations they find necessary to implement the broad policies adopted by the Legislature. (New York State Department of State, 2011)

The Regents subsequently grant legal authority to the Commissioner of Education to create and enforce the rules and regulations necessary to implement state law mandates. As the New York State Education Department website explains, “[g]enerally, the Regents set policy while the Commissioner has responsibility for carrying out policy” (New York State Education Department, 2008). The rules and regulations relevant to the governance of state public schools are stipulated in Title 8, Education Department, of New York Codes, Rules and Regulations (NYCRR), in Chapter I Rules of the Board of Regents and Chapter II Regulations of the Commissioner.28 (See Appendix C for an index to the chapters, parts, and sections of Title 8 analyzed). NYCRR rules and regulations derive legal authority from state law and cite the legal statutes granting their authority.29

New York State Law thus establishes a broad policy framework that encompasses all the state’s public schools. The New York State Education Department—described in state law as “the University of the State of New York”—is “charged with the general management and supervisions of all public schools and all of the educational work of the state.”30

Authority for
the administration of local public school systems, including New York City, is granted and controlled by the State. Two major bodies of state laws, rules, and regulations govern policy for all New York State public schools: (1) New York State Education Law; and (2) New York Codes, Rules and Regulations, Title 8: Chapter I, Rules of the Board of Regents, and Chapter II, Regulations of the New York State Commissioner of Education. These two bodies of laws and regulations are the primary policies governing the New York City public schools.

All education-related policies, rules, or regulations, at both the state and local levels, must fall within, and be entirely consistent with, the education policy framework established by state law. New York City has some policies specific to the New York City schools, as described below, but these must be specifically authorized by the State Education Department, or, for some matters, the State Legislature: At the same time, New York State is also obligated to comply with the federal public education law associated with Title I funding, which is incorporated into state education law. Thus, each governmental level must, as a minimum, comply fully with applicable laws, rules and regulations of the superior governmental entity; a lower governmental entity may add laws, rules or regulations, but only insofar as those are in no way inconsistent with, or in violation of, higher-level government policy. The body of laws, rules, and regulations governing New York State public schools is thus tightly organized, with a clearly delineated hierarchy of legal authority and control. New York State in fact claims to be exemplary in this

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31 As the NY State Education Department website explains, the University of the State of New York “consists of all elementary, secondary, and postsecondary educational institutions, libraries, museums, public broadcasting, records and archives, professions, Vocational and Educational Services for Individuals with Disabilities, and such other institutions, organizations, and agencies as may be admitted to The University. The concept of The University of the State of New York is a broad term encompassing all the institutions, both public and private, offering education in the State” (New York State Education Department, 2010).

32 In general, the federal government is not “superior” to New York State in education law; however, as a condition of accepting federal funds for education (such as Title I and Race to the Top, the state is bound to comply with federal regulations associated with receiving those funds.
respect, describing New York as “the nation’s most comprehensive and unified educational system,” and the “oldest, continuous state education entity in America” (New York State Education Department, 2010b).\(^3\)

**New York City.** As described above, authority for the administration of the New York City public schools is wholly granted and controlled by the State.\(^4\) The local governing authority, referred to as the New York City Department of Education, consists of the New York City Board of Education (now known as the “Panel for Educational Policy,” but authorized by state law as the Board of Education), and the New York City Schools Chancellor. New York Education Law § 2590-b grants governance authority to the New York City Board of Education: as stated in the Preamble to the Panel for Educational Policy Bylaws, “The Board of the City School District of the City of New York is created by the Legislature of the State of New York and derives its powers from State law” (Department of Education of the City School District of the City of New York). Education Law § 2590-h authorizes the “office of chancellor of the city district,” and specifies the “powers and duties” of the chancellor of the New York City public schools, “as the superintendent of schools and chief executive officer for the city district.”\(^5\) Section § 2554 further authorizes the New York City Board of Education to “prescribe such regulations and by-laws authorizing the chancellor to exercise such of its administrative and ministerial powers…for the general management, operation, control, maintenance and discipline

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\(^4\) The legal authority of the New York State Commissioner of Education over local education officials is explicit: “The Commissioner of Education has the extraordinary power, not often employed, to issue an order withholding state aid or removing a school district officer or board, when there has been a willful neglect of duty or violation of the law. The Commissioner regularly acts in a judicial capacity when he hears and decides appeals arising from official acts or decisions of school district meetings, boards, or officers...” New York State Education Department. (2008, December 8).

\(^5\) N.Y. Educ. Law § 2590-h
of the schools.”36 Section § 2590-d, “By-laws; regulations and decisions,” grants the city board and chancellor the legal authority to “prescribe such by-laws and regulations as may be necessary to make effectual the provisions of this chapter.”37

Three bodies of New York City public school policy are important. Two prescribe the bylaws and regulations authorized by New York Education Law § 2554 and § 2590-d: the Bylaws of the Panel for Educational Policy, and the Regulations of the Chancellor. The third is the United Federation of Teachers Collective Bargaining Agreement, or “UFT contract.” The UFT contract, too, derives its legal authority directly from the New York State Constitution. In the Constitution’s “Bill of Rights,” Article I, Section 17 (entitled “Labor of human beings is not a commodity nor an article of commerce and shall never be so considered or construed”) states: “Employees shall have the right to organize and to bargain collectively through representatives of their own choosing…”38 All New York City school teachers are members of the United Federation of Teachers and represented by the UFT. As the UFT contract states: “The Board recognizes the Union as the exclusive bargaining representative of all those assigned as teachers in the regular day school instructional program” (United Federation of Teachers Contract). The labor contract negotiated by the UFT and the New York City Department of Education constitutes a highly influential source of educational policy in New York City.

In summary, policy data was collected from six bodies of policy documents, which together govern the operation and management of the New York City public schools: the New York State Constitution; Consolidated Laws of New York State (especially EDN, Titles 1, 2, and

36 N.Y. Educ. Law § 2554(13)(b)
37 N.Y. Educ. Law § 2590-d(1)
38 N.Y. Const. art. I, § 17
4); New York Codes, Rules and Regulations (Title 8, Chapters I and II); Bylaws of the Panel for Educational Policy of the Department of Education of the City School District of the City of New York; Regulations of the Chancellor of New York City public schools; and the United Federation of Teachers Collective Bargaining Agreement. (See Appendices A-F for detailed list of policies analyzed.)

**Education Law § 3020-a decisions.** Finally, an additional source of policy data was used, which—though extremely scanty—turns out to reveal the heart of teacher accountability in New York. As discussed in detail below, the only legal means for dismissing or “disciplining” a tenured teacher in New York is through the legally-mandated, court-like due process procedures specified in Education Law § 3020-a “Disciplinary procedures and penalties.” The decisions filed at the conclusion of those hearings are official policy documents, required by New York State law. To obtain these written decisions, a New York Freedom of Information Law (FOIL) request was submitted to the New York State Education Department; this request was for:

All written decisions rendered by the hearing officer at the conclusion of disciplinary hearings conducted under Section 3020-a of the Education Law between January 1, 1997 and January 1, 2007 regarding charges brought against teachers employed by The Board of Education of the City School District of New York.

The FOIL request was partially successful. The lawyer assisting with obtaining the decisions was told by the New York State Education Department Records Access Officer that a total of 270 decisions were filed over the 10-year period from 1997 to 2007: 263 included a judgment of “guilt” of at least one charge, and in seven cases the teacher was exonerated of all charges brought. The State Education Department refuses to release copies of decisions in which the

39 This represents an average of approximately 27 cases per year, constituting 0.035% of New York City’s 78,000 teachers.
teacher was “found innocent” of all charges, so the granting of the FOIL request did not include release of those seven decisions.\footnote{We appealed the refusal to provide the innocent decisions, requesting the decisions with all identifying information redacted. The appeal was denied. This is unfortunate because how and why teachers are found innocent is important to a full understanding of the § 3020-a framework.} Since the number of “innocent” decisions was stated to be so small, access was thus apparently granted to almost all of the decisions filed. To date, a total of 208 decisions have been received and used in the study. These 208 decisions were sent in three separate mailings, over the course of well over a year, requiring repeated phone calls and written reminders. The New York State Education Department now claims that these 208 decisions sent represent the total required by the FOIL request, but has refused to confirm that in writing.\footnote{A FOIL request for “the total number of decisions” issued each year was subsequently filed. This request was denied; the Records Access Officer wrote: “Please be advised that SED [the State Education Department] does not possess a ‘record’ of the total number of decisions.”}

Over the 10-year period, less than one tenth of 1% of New York City public school teachers entered into § 3020-a proceedings annually. Because this is such an extremely tiny fraction of the New York City teacher workforce, decisions cannot be used to draw general conclusions.\footnote{Further, it is unclear if or to what extent the new teacher evaluation policies will impact New York Education Law § 3020-a disciplinary proceedings. These prior decisions provide important baseline data for further study of the impact of the new policies.} However, the study revealed that virtually all ex ante government policy regarding work obligations of New York public school teachers (both process and outcome) is indeterminate; it is through the ex post § 3020-a proceedings that teachers’ work obligations are actually defined and enforced. While extensive analysis of these documents was beyond the scope of this study, several examples are provided from the decisions to illustrate how the content of indeterminate ex ante laws and regulations regarding teachers’ work obligations has appeared to be “filled in by the court at the enforcement stage” (R. E. Scott & Triantis, 2005, p. 10).
Scholarly Literature. Relevant literature was identified using ERIC (Educational Resources Information Center), searching for material dating back to 1996. (See Appendix G for search terms used.) Education Fulltext and ProQuest were subsequently searched with a narrowed set of keywords. As Hertzberg and Rudner (1999) note, some studies have concluded that ERIC searches do not yield successful results; the authors suggest that “lack of end-user search skills is the major impediment to locating the best and most relevant resources. Poorly formed searches and poor search strategies cannot possibly find the best citations.” The authors provide useful guidelines for carrying out thorough literature searches in ERIC, emphasizing, in particular, the importance of using the ERIC Thesaurus, an extensive range of relevant descriptors and Boolean operators, and conducting multiple searches.

These guidelines were followed with ERIC, as well as Education Fulltext and ProQuest. The search began with a broad range of search terms to capture as much literature as possible that was potentially relevant to the study’s focus. This broad search yielded a set of key terms (e.g. “accountability,” “external accountability,” “no child left behind,” “school improvement,” “professional accountability,” “professional development,” “professionalization,” “teacher quality,” “high-quality teachers,” etc.), which were then used to narrow the search to the most relevant literature. Leading scholarly education journals were subsequently identified: that is, journals viewed as influential in the academic discipline of education, and which include focus

\[\text{footnote text}\]

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\[\text{footnote text}\]
on education policy in the United States, and issues of teacher quality and accountability. Journal Citation Reports (JCR) Social Science Edition in the category “Education & Educational Research” (ISI Web of Knowledge, 2009) was used to identify leading journals. JCR is self-described as follows:

Journal Citation Reports® offers a systematic, objective means to critically evaluate the world's leading journals, with quantifiable, statistical information based on citation data. By compiling articles' cited references, JCR Web helps to measure research influence and impact at the journal and category levels, and shows the relationship between citing and cited journals.

As Poole and Regoli (1981) show in their study of criminology literature, “citation rates appear to be meaningful indicators of journal eminence or impact upon the field”; in other words, “if a work is cited by others it has been perceived as both important and useful” (pp. 476, 473).\(^\text{46}\) Hart (1998) also suggests that “[c]itation frequencies…provide a useful picture of current knowledge in the field,” showing the publications that “embody and disseminate the core ideas of the literature” (p. 39). While relevant articles from a wide range of journals were reviewed in order to obtain a broad understanding of the main ideas and arguments in the field of education, particular attention was paid to articles from the journals that JCR rates as most influential based on several factors (“Impact,” “5-year Impact,” “Article Influence,” and “EiganfactorScore”).\(^\text{47}\)

(See Appendix H for a list of the journals emphasized in analysis.) Searches of individual journals were also carried out, especially for those ranked by JCR in the top ten for “5-year Impact Factor” to identify literature that has been consistently influential over time. Particular attention was directed to articles that are widely cited. The aim was not to critically evaluate this

\(^{46}\) As the authors also noted, the citation frequency of an individual journal may be “a function of how many articles that journal publishes each year” (p. 476). However, JCR ratings now account for that variable.

\(^{47}\) See JCR at http://admin-apps.isiknowledge.com.ezproxy.cul.columbia.edu/JCR/help/h_index.htm for more information on these factors.
body of work, but rather to identify and examine dominant ideas with respect to the study’s themes.

### 3.5.3 Code and Analyze Public Policies

Policies were coded and analyzed in two phases. First, analysis aimed to determine what New York City public school teachers—and other school stakeholders—“are held accountable for” in literal government policy content. This data was subsequently used to assess policies’ literal alignment or lack of alignment with the new accountability model. Second, government policies were analyzed as symbolic documents, to identify underpinning values, beliefs, and assumptions.

**Literal Policy Content.** Coding of policies was carried out with the *a priori* construct of the determinate new accountability policy model, as described in the scholarly education literature. As discussed in detail above, scholars emphasize that an accountability policy mechanism requires three components, all explicitly stated in policy: a *standard*, a *measurement* of whether the standard has been met, and a *consequence* for meeting or not meeting the standard. This definition of a policy accountability mechanism was utilized in the study, operationalized as a set of determinate, bright line, policy provisions, with respect to a particular issue, that includes all three of these components in written policy: (1) A clearly-stipulated and measurable standard; (2) A clearly-defined mechanism for measuring achievement of the standard; and (3) A clearly-defined action stipulated to occur as a result of achievement of, or failure to achieve, the stipulated standard.

The first step of the coding process was to identify all policy provisions that specify a *standard* for teachers: that is, statements in policy documents of desired characteristics, behavior, or work outcome of teachers, whether an input, process, or outcome standard. It was
subsequently determined whether or not policies stipulate a measurement (i.e. an operational definition of the standard) and/or a consequence associated specifically with that standard: in other words, if determinate policy mechanisms exist to ensure that it would be known if you had or had not met the standard, and what policies specify will happen on the basis of that information. A policy provision was coded as a *measurement* if it stipulates, in writing, an unambiguously defined means for measuring whether a particular standard has been met. A policy provision was coded as a *consequence* if it clearly stipulates a determinate, bright-line inducement (a reward or a sanction) or enforcement mechanism specifically tied to meeting or not meeting the standard. This coding process yielded a data set of all *accountability mechanisms* for teachers contained in formal teacher policies: that is, “what teachers are held accountable for” through unambiguous, determinate, standard/measurement/consequence accountability mechanisms. This process was repeated to analyze policies governing other school stakeholders, using the same definition of an accountability mechanism: those provisions which include explicit, determinate provisions for the three elements of an accountability mechanism.

The analytical framework shown in Figure 3.7 was then used to map findings regarding the literal content of the universe of government policies analyzed, creating a typology of teacher policies, and policies for other school stakeholders, defined by the key analytical variables represented in the framework. This typology was used to answer the first three empirical research questions: (1) What teachers are held accountable for in a determinate new accountability sense; (2) Whether government teacher policies are consistent with the accountability-for-outcomes focus of the new accountability framework; and (3) The degree of alignment between government policies for teachers and for other school stakeholders.
**Indeterminate Teacher Policies.** A number of teacher policies clearly stipulate determinate mechanisms that unequivocally hold teachers accountable under the bright-line definition above. On the other hand, numerous indeterminate teacher polices were identified that specify only one or two of the three elements of an accountability mechanism. Often these policies initially appear to stipulate determinate mechanisms for holding teachers accountable for their work. However, close analysis reveals that while such policies may suggest or imply determinate teacher accountability with respect to their work, they do not include all three components of a determinate bright-line accountability mechanism. Some of these indeterminate policies lack specific, unambiguous “operationalizing” procedures for arriving at a measurement, or for allocating a consequence based on that measurement. In some cases, policy requirements for measurement and consequence-allocation procedures are so extensive that the accountability elements of measurement and consequence, even if stated, are effectively indeterminate in implementation.

The “Weighing Joe” example, presented in Figure 3.6 above, provides a means to explain the coding method used. Assume that the weighing policies specifically state that Joe will be fined ten dollars for every pound that he gains. That appears to be a determinate, bright-line consequence, based on a determinate, bright-line measurement, explicitly stipulated in policy. However, if the *procedure* for weighing Joe, and the subsequent *procedure* for allocating consequences to Joe is not also clearly stipulated in the weighing policies, Joe’s “accountability for his weight gain” would be coded as an indeterminate, not a bright-line, accountability policy (even though one of the three elements of accountability—“10 dollars per pound”—appears to be determinate). Similarly, if the weighing policy specifically grants the weigher, Mr. Miller, case-by-case discretion in determining the weighing and consequence-allocation procedures—
thus allowing significant procedural variation, including one-on-one negotiation with Mr. Miller—Joe’s “accountability for his weight gain” would be coded as an indeterminate policy.

While not clearly constituting accountability by the new accountability definition utilized in this study, these indeterminate policies were examined carefully. Indeterminate policies in fact dominate New York policy pertaining to teachers’ work obligations, and are highly significant as shown in Chapters 5 and 6. In several important instances, the procedures themselves are the strongly dominant policy emphasis, and in some cases these procedures appear to be sufficiently cumbersome that functional accountability seems likely to be precluded.

**Policies As Symbolic Documents**

Taking a new institutionalism point of view, the second phase of policy analysis aimed to identify underpinning beliefs and values regarding teachers and accountability. Several approaches were utilized for analysis of policy documents as symbolic statements of institutional logics, viewed as the “guidelines for practical action” and the rules “prescribing and proscribing actions” (Suddaby & Greenwood, 2005, p. 38).

First, analysis focused on conceptualizations of teachers and teaching that are implicitly expressed by what teachers are and are not held accountable for by determinate government policies. As explained above, policy standards for teachers were identified as statements, in written policy, of desired characteristics, behavior, or work outcome of teachers: in other words, what teachers must be, do, and produce. These standards represent what is required (or preferred) to ensure that teachers are of high, or sufficient, quality. The relative level of value that policies define for each of these standards was subsequently assessed. A standard was viewed as most highly valued in policy if it appears as a part of a determinate, bright-line...
accountability mechanism: that is, if a clearly-specified measurement and consequence is stipulated in policy, directly associated with that standard. More specifically:

- If policies state that teachers should be, do, or produce X, and are written such that you cannot be a teacher without X, Standard X was classified as most highly valued—or viewed as essential—to the quality of a teacher.\(^\text{48}\)

- If policies state that teachers should be, do, or produce Y, and stipulate an inducement for Y—that is, “on paper” Y is preferable, but even without Y you can still be a teacher—Standard Y was classified as important but not viewed as essential to the quality of a teacher.

- Finally, if policies state that teachers should be, do, or produce Z, but do not stipulate a clear, bright-line measurement and/or consequence associated with Z (that is, policies do not hold teachers accountable for Z under a determinate definition) Standard Z was classified as considered non-essential to teacher quality, and thus less valued.

Second, analysis aimed to determine if the concepts and theories identified as fundamental to the dominant ideological paradigms evident in the scholarly education literature were also evident in policies at a symbolic level.

Third, specific words used in policies were examined to determine their degree of alignment with language commonly used in scholarly education texts, especially with respect to key concepts regarding teachers and accountability that were identified in analysis of the

\(^48\) The negative of this also applies. Some determinate policies state that teachers cannot do X, and are written such that you cannot be a teacher if you have done X. These, too, were classified as expressing what is viewed as essential to “being a teacher.”
education literature. As discussed in Chapter 8, in many instances the study uncovered almost word-for-word alignment between scholarly education texts and language used in policies. Quantitative content analysis was performed on selected policies to test these observations. For example, the frequency with which relevant words (like teacher, teaching, quality, accountability, outcomes, etc.) appear in the context of various policies was examined.

3.5.4 Analyze Education Law § 3020-a Decisions

Education Law § 3020-a decisions were examined using a grounded theory approach to analyze these decisions as individual case studies in the ex ante application of indeterminate government policy for teacher accountability. The method used for analysis of these decisions is described in detail in Chapter 6.

3.5.5 Code and Analyze Scholarly Education Literature

Analysis of the scholarly education literature aimed to understand the overall structure of knowledge with respect to the broad themes of teachers and accountability, identifying common views that “are taken as knowledge, and are used as standard forms of solutions to problems, of explaining events, and of undertaking research” (Hart, 1998, p. 126). Core ideas, concepts, and arguments relevant to the study’s central topics were identified and analyzed. How theories, literature, and logical assertions are employed as support for dominant hypotheses and theoretical views, and “operationalized for empirical work” (Hart, 1998, p. 142; Shoemaker, Tankard, & Lasorsa, 2004) was examined. Analysis also sought to “unpack” the assumptions underlying the dominant ideas in these academic texts, “and the kind of sense-making about the world that they reveal” (McKee, 2006, p. 17).
The term “teacher accountability” is used infrequently in the education literature; as explained in Chapter 2, scant literature was identified on teacher accountability described as such. With respect to teachers, scholarly emphasis tends to be on teacher professionalization (discussed in Chapter 8), and most particularly on the concept of teacher quality. The actual term “teacher accountability” is almost never used. The literature search thus aimed to identify work produced by education scholars that addresses related topics such as the role of teachers in the educational process; how to measure and improve teacher quality; K-12 education accountability generally; and the relationship between teacher quality and teacher accountability. An initial review of the literature enabled the identification of additional terms relevant to the study’s core themes which are frequently used in the education literature, such as “external accountability,” “top-down accountability,” “new accountability,” “school accountability,” “professional accountability,” “professionalization,” “professional development,” “teacher evaluation,” “teacher learning,” and “high-quality teachers,” among others (see Appendix G). These related terms were then used in an expanded literature search. In total, several hundreds of articles and a number of key books were reviewed (see References for details).

Analysis approached scholarly texts as systems which relate words and ideas, aiming to understand dominant theories regarding teachers on the one hand, and accountability on the other, and to determine concepts such as teacher quality have been defined and operationalized in both theoretical and empirical work. How are fundamental concepts (as “building blocks of theory”) defined theoretically and operationally? What is the dominant methodology—as the

\[49\] The term “school accountability,” on the other hand, is used frequently in the education literature, as discussed below.
“way of thinking about and studying social reality” (Strauss & Corbin, 1998, p. 3)—evident in the education literature? How does this methodology guide and direct empirical work in the field? That is, what are the intellectual traditions and methodological assumptions that characterize the field, and how do these traditions and assumptions appear to shape how education scholars generally “frame their views of the world and how they go about investigating the world” (Hart, 1998, p. 50)? Furthermore, as Hart (1998) suggests, “[m]any arguments depend implicitly or explicitly on relationships that are believed to exist, causing the presence of some phenomenon” (p. 146, italics added). The structure of arguments that authors have employed was analyzed, to identify the taken-for-granted ideas and assumptions underlying dominant theories and scholarly work relevant to the study’s central topics. How are key concepts and linkages among concepts assembled into theories? What beliefs, assumptions, and presuppositions underpin these theoretical frameworks, and guide empirical work regarding teachers?

Analysis of the scholarly literature was carried out using grounded theory methodology, as a systematic, qualitative research methodology that aims to generate theory from data, rather than using data to test a pre-existing theory. A grounded theory study begins with utilization of the analytic tools of coding and microanalysis. Strauss & Corbin (1998) describe coding as “the analytic process through which data are fractured, conceptualized, and integrated to form theory” (Strauss & Corbin, 1998, p. 3). The general phases of coding in a grounded theory study are: open coding, which is “concerned with generating categories and their properties”; axial coding, which is a systematic process to further develop those categories and link them with subcategories; and finally selective coding, in which categories and subcategories are refined and integrated into a larger theoretical scheme. The coding process in a grounded theory study is not performed as series of distinct, sequential steps, but carried out iteratively: the researcher moves
back and forth between coding approaches, as data is gathered and analyzed (Strauss & Corbin, 1998).

Investigation of the education literature began with close textual analysis, or what Strauss and Corbin describe as “microanalysis”: the detailed line-by-line coding necessary in the first phase of a study in order to identify “general initial categories (with their properties and dimensions) and to suggest relationships among categories” (Strauss & Corbin, 1998, p. 57). The technique of microanalysis was used in both open and axial coding, examining specific words, phrases, and sentences to analyze the precise meaning as used in its specific context. As Strauss and Corbin explain: “Doing analysis of a word, phrase, or sentence consists of scanning the document…and then returning to focus on a word or phrase that strikes the analyst as being significant and analytically interesting” (1998, p. 93). The goal in the initial phase of analysis is to develop preliminary categories and subcategories.

In this phase of research, index cards were created to document findings: each specific claim, assumption, definition, statement, or conclusion identified in a particular text was recorded, generating hundreds of cards. Initial codes were developed and applied to these cards; codes were revised and refined as data was accumulated to develop categories and subcategories of key concepts. Subsequently these cards were analyzed, sorted, and re-sorted in order to develop an organizational schema representing the major theories, concepts, and the linkages between them. This map was continually refined as additional data was gathered from the literature. For example, the general concept of “teacher quality” was identified. Analysis subsequently sought to understand precisely how this concept is defined in the education literature. Conceptual subcategories linked to the concept of teacher quality were identified, to examine what the fundamental properties of “teacher quality” are claimed to be. How are those
properties defined and connected to one another? What assumptions underlie these definitions? How do these concepts, definitions, and assumptions fit together to form a particular theory regarding what “teacher quality” is—and thus how to obtain or ensure it? How are other potentially-related concepts, such as “accountability,” “performance,” and “effectiveness” themselves defined and related to the broader concept of “teacher quality”?

As a further means to understand the underlying meaning of these texts, the technique of comparison was employed, focusing on “how often [a] concept emerges and what it looks like (i.e. its properties) under varying conditions” (Strauss & Corbin, 1998, p. 95). For example, what is meant by the words “performance” and “effective” as used in the context of scholarly discussion of teachers compared to their meaning in discussion of schools or students? This technique enabled determination of often-unstated definition of terms and concepts as used throughout the literature on teachers, teacher quality, and accountability. Analysis also sought to identify and analyze what Chandler (2007) calls the “relations of paradigmatic opposition” or the “identification of binary or polar semantic oppositions” (pp. 91-92). This method enables the analyst to understand what is meant through analyzing how it is defined in opposition to what is not meant: that is, how an idea is expressed by explaining how it is directly incompatible with another idea. As it turns out, paradigmatic oppositions are prominent in the education literature, and their identification was a useful analytic tool.

In the final phase of investigation, “selective coding” was used to integrate and refine categories. A concept map was developed, as a “graphical tool for organizing and representing knowledge” (Novak & Cañas, 2008, p. 1), showing the key conceptual elements and the theoretical links between those elements that were identified as fundamental to dominant ideas in
the education literature.\textsuperscript{50} At this stage, \textit{theoretical sampling} was employed, gathering additional data using “concepts derived from the evolving theory” with the aim of “densify[ing] categories in terms of their properties and dimensions” (Strauss & Corbin, 1998, p. 201): that is, clarifying major concepts evident in the education literature, how they are defined, and how they are linked to one another in a broader theoretical framework. The goal of theoretical sampling is to reach a point of theoretical “saturation” when new data fit into the organizational scheme developed without gaps or variation: “until (a) no new or relevant data seem to emerge regarding a category, (b) the category is well developed in terms of its properties and dimensions demonstrating variation, and (c) the relationships among categories are well established and validated” (Strauss & Corbin, 1998, p. 212). At this point in analysis, theoretical sampling was carried out by reviewing a broader range of articles to determine if the categories developed repeatedly and predictably appeared.

3.5.6 Compare Findings from Teacher Policies and the Education Literature

Finally, findings on views and beliefs regarding teachers and accountability evident in formal government policies, both implicit and explicit, were compared with those identified in the scholarly education literature. The goal was to determine if there appeared to be common theory across the education literature and written policies, using the term “theory” to mean a “set of well-developed concepts related through statements of relationship, which together constitute an integrated framework that can be used to explain or predict phenomena” (Strauss & Corbin, 1998, p. 15) or, more simply, “one’s understanding of how something works” (Shoemaker et al., 2004, p. 6; R. A. Swanson & Holton, 2001). In this way, the third research question regarding the

\textsuperscript{50} For more information on concept maps, see http://cmap.ihmc.us/Publications/ResearchPapers/TheoryCmaps/TheoryUnderlyingConceptMaps.htm.
degree of ideological congruence between written teacher policies and the scholarly education literature could be answered.

### 3.6 Bias and Validity Issues

Two major potential sources of bias and validity issues are identified in this study. The first is clearly the reliability of coding, both of policies and the education literature. As explained above, it became clear in the first phase of policy coding that the analytical framework initially developed (shown above in Figure 3.3) was not exhaustive: many policies could not be classified using that framework. After revising the framework (shown in Figure 3.5), however, multiple policies were re-coded, and the revised framework appeared to be unambiguous and reliable. All policies could be classified using this second framework that incorporates the crucial distinction between determinate and indeterminate policies; it appeared to be both mutually exclusive and exhaustive. Further, after obtaining results regarding teacher policies, it was decided that investigation of other school policies was necessary to determine if all education policies across the board were aligned with respect to key variables. The opposite is what was actually found. Thus, additional evidence that the policy coding framework was reliable is that classification of policies applying to various school stakeholders yielded clearly varying results.

A second major concern is that conclusions were reached by “cherry-picking” from policies and scholarly literature—or, in other words, “forcing” the data (Kelle, 2005)—aiming to show a pre-drawn conclusion. With respect to the policies analyzed, the study aimed to avoid this by examining all policies relevant to teachers and accountability, rather than selecting particular policies to review. Conclusions were drawn from a comprehensive investigation of hundreds of pages of policy documents (see Appendices A-F for policies analyzed).
Furthermore, the consistency found among policies was striking; no exceptions were found to the patterns presented in the data. This level of consistency would in fact be expected, given the tightly-organized policy structure of New York State, as described in detail in Section 3.5.2.

With respect to the education literature, the same potential problem exists. The conclusion that teacher policies are strongly aligned with the education literature could clearly have been reached through presenting selective, rather than broadly representative, data from that literature. The study attempted to address this problem by performing a broad and thorough analysis of the literature regarding teachers and accountability (see discussion in Section 3.5.2, above, and also References). Across the literature, notwithstanding rare exceptions (almost always work by scholars outside of the academic field of education), strongly dominant themes were clearly apparent. A supplementary source of prescriptive statements from major professional teacher organizations was also used; these statements were entirely consistent with the dominant discourse of the education literature. These organizations are often led by education scholars, and cite education scholarship as evidence for their policy recommendations.

Ultimately, however, this is a qualitative, not quantitative study. In such a study, regardless of specific methods and techniques used and how they are described, the validity and reliability of conclusions reached depend a great deal on how the particular study was actually executed. A reader can only decide the study’s success in carrying out a thorough, unbiased analysis by assessing the results presented below: evaluating the adequacy of sources, and the degree to which evidence presented from those sources is convincing. Extensive citations from policies and the literature are therefore presented in the following five chapters to facilitate evaluation of study conclusions.
Chapter 4: 
Determinate Teacher Policies

As shown in this chapter, New York State and New York City government policies stipulate determinate, bright-line teacher accountability exclusively for specific teacher inputs. The following two chapters, Chapters 5 and 6, show that all policies governing the processes and outcomes of teachers’ work are indeterminate. At the same time, as discussed in Chapter 7, policies for the rest of the school system (i.e. students, principals, schools) stipulate a tightly-structured “new accountability” framework holding key stakeholders accountable for producing defined and measured student achievement outcomes through largely determinate policies. In fact, the teacher and the classroom appear to be the only elements of the school system—individual and organizational—which are not incorporated into a clear bright-line, new accountability policy framework. That is, under a determinate, bright-line definition of accountability, meaning operationally explicit and unambiguous accountability mechanisms clearly stipulated ex ante in written policy, teachers are the single individual stakeholders in the New York City public school system not held accountable for student outcomes, and classrooms are the single organizational unit into which students are not grouped for outcomes-based accountability purposes.

A strong contrast is evident between how accountability policies are written for other education stakeholders and how accountability policies are written for teachers. Government

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51 The sole exception to this is criminal conviction for a sex offense, as explained below.
teacher policies hold teachers accountable exclusively for inputs under the determinate, bright-line definition. However, in the same bodies of state and city policy documents: (1) The central objectives of the public schools are narrowly and unambiguously defined in terms of measured student achievement outcomes; and (2) Policies stipulate—indeed emphasize—clear, determinate bright-line mechanisms to hold students, principals, and schools accountable for those narrowly-defined outcomes. At the same time, even literal mention of teachers is notably omitted in the outcomes-focused accountability policies that govern the rest of the school system. The words “teacher” and “teaching” themselves are almost entirely absent from state and city government policies addressing education outcomes and accountability.

4.1 Chapter 103: A New Era of Teacher Accountability in New York?

After research for this study was well underway, New York State enacted Chapter 103, amending New York Education Law § 3020 and § 3020-a and adding § 3012-c (“Annual professional performance review of classroom teachers and building principals”). This new law—which went into effect in July 2011—requires that “measures of student achievement” be included as a “significant factor” in teachers’ annual performance review. Chapter 103 has been widely reported as introducing unprecedented outcomes-based accountability into New York City teacher policy, with an associated implication that the new policies are of a fairly determinate nature. However, the following three chapters argue that such an assessment is inaccurate: notwithstanding the new law, determinate, bright-line accountability for teachers still exists solely for particular teacher inputs. In fact, the passage of Chapter 103 underscores the determinate/indeterminate distinction highlighted in this study, and provides additional support for a finding of stark contrast between policies for teachers and policies for all other school
stakeholders. As shown in Chapters 5 and 6, the introduction of the new teacher evaluation policies does not bring teacher accountability policy into alignment with accountability policies for other school stakeholders. These recent legal changes—which appear to be an attempt on the part of New York State to institute more determinate, outcomes-based teacher accountability—do not fundamentally alter the distinct accountability paradigm applied to teachers, and do not resolve the lack of policy coherence (Fuhrman, 1993a; May et al., 2006) in New York City K-12 education accountability policy.

Further, the study uncovered a range of additional, determinate policies directly relevant to teacher evaluation and accountability, which place significant restrictions on the degree to which teachers can be held accountable for their work. These policies, governing various teacher and teacher union rights and due process procedures, seem highly likely to influence the way the new § 3012-c teacher evaluation plan functions in practice, and may preclude any fundamental change in the way teachers are held accountable under the new policies. The “devil is in the details” regarding the effect of the new teacher evaluation law, as explained in Chapter 5.

Further, as discussed in Chapter 6, all teacher accountability for inadequate performance remains entirely separate from teacher evaluation, and will continue to be carried out on a case-by-case basis through the highly indeterminate § 3020-a proceedings. The nature and operation of those proceedings remains largely untouched by the new laws, and it is thus unclear what impact, if any, the new laws will actually have on teacher accountability for inadequate performance.

Finally, Chapter 8 shows that Education Law § 3012-c and its associated regulations are congruent with the dominant paradigms of the education literature to a considerable degree. The very language of the new law, along with union publications interpreting and commenting on it,
lends support to the proposition that institutionalized teaching, comprised of teachers, teachers unions, and education scholars, may now be identifiable as a distinct organizational field.

4.2 Clarification of Key Terms, Phrases, and Classifications

The definition of important terms, phrases, and classifications used in this study are clarified as follows:

1. As discussed at length above, the study’s analysis utilizes a critical distinction between determinate rules versus indeterminate principles. This distinction, refers to “the extent to which efforts to give content to the law are undertaken before or after individuals act” (Kaplow, 1992, p. 560), or the degree to which the content of a particular obligation is specified ex ante in written policy.

- A **determinate rule** is a clearly-defined law or regulation, written with the intention of minimizing ambiguity, variation in interpretation, and discretion in application. It can also be described as “bright-line,” defined by the Merriam-Webster dictionary as “providing an unambiguous criterion or guideline especially in law.”

- An **indeterminate principle**, on the other hand, is intentionally left vague, allowing for discretion in application in response to unknowable or unpredictable circumstances or contingencies. In contrast to a determinate obligation, the specific content of an indeterminate obligation is often *not* stated ex ante but is rather “filled in” ex post, at the enforcement stage (R. E. Scott & Triantis, 2005).
2. For the purposes of this study, the term “accountability mechanism” is used exclusively in the determinate sense, referring to mechanisms explicitly stipulated in written government policy: including a clear standard (obligation), a specific operational definition of its measurement, and a precise, unambiguous consequence mandated to occur based on a particular measurement result. The statement that an entity is “held accountable” refers to the existence of unambiguous, determinate accountability mechanisms stipulated ex ante in government policy, written with the evident intent of excluding discretion or the possibility of multiple interpretations. If the content of an obligation (a standard), how it will be measured, and an associated consequence are not stipulated ex ante, this was not categorized as constituting a bright-line accountability policy mechanism. This terminology is used only in reference to written government policies, as one discrete piece of a larger picture; the phrase “held accountable” is not meant to describe on-the-ground policy implementation or practices.

3. Bright-line accountability can exist for inputs, process, and outcomes, as explained at length above. However, the term “new accountability” is used in this study to mean bright-line accountability for outcomes: that is, specific consequences based on the measured achievement of an outcome standard, all unambiguously stipulated, ex ante, in written policy.

Government policies (laws, rules, regulations) and academic literature are the stuff of words. Conclusions drawn in this study are based entirely on detailed analysis of those texts, and text constitutes the evidence which supports study conclusions. In this kind of study, the correct balance between presenting too much evidence (boring and laborious to read) and too little
(insufficient to support claims made) is difficult to assess. I have attempted to strike the right balance, but thought it preferable to err on the side of too much, rather than too little. Much of this chapter and the following three chapters are therefore devoted to presentation and explanation of the findings yielded by analysis of thousands of pages of policies and academic literature.

4.3 Overview of Chapters 4–7

The five major sources of legally-binding, public policy documents governing teachers in New York City all contain multiple policies regarding the obligations and work of New York City public school teachers. However, these policies stipulate determinate, bright-line accountability for teachers in only four areas: entry qualifications; accumulation of additional credits; ongoing professional development; and years of experience. Clear, specific accountability mechanisms exist to hold teachers accountable (through either positive or negative consequences) for these four areas of teacher inputs. Determinate teacher accountability for either the teaching process or teaching outcomes is excluded from written policy.

All evaluation of teachers’ work as teachers, and all consequences allocated to teachers for inadequate work performance occur exclusively within two policy frameworks, both specified under New York State law: the new teacher evaluation framework called the Annual Professional Performance Review (APPR), and state-controlled § 3020-a proceedings. These two frameworks are discussed in Chapters 5 and 6. As shown, absent from these policies is explicit, unambiguous stipulation of clear standards, measurements, and consequences that is characteristic of determinate, bright-line accountability. In some cases, policies state a standard

52 New York State Education Law; New York State Codes, Rules, and Regulations (NYCRR); the UFT Contract; New York City Board of Education By-Laws; and New York City Chancellors Regulations.
in terms too vague to be measurable, such as “improve student learning.” In other cases, even given a standard that is clearly stated, policies specify requirements for what turn out to be complex procedures for measuring against a particular standard, rather than a defined bright-line measurement, and requirements for procedures for determining consequences (based on the results of the measurement procedures), rather than a specific consequence stipulated ex ante. Both APPR and § 3020-a policies are therefore classified as indeterminate.

Using the definitions explained above, accountability for fulfilling minimum obligations to be a teacher from the point of view of meeting particular input requirements is clearly stipulated (and spelled out in exhaustive detail). However, accountability for fulfilling minimum obligations to be a teacher from the point of view of performing the job of teaching is absent from written government policy. That is, New York does not have written policies that stipulate teachers’ minimal professional obligations, or some minimum level of demonstrated competence which is required for membership in the New York City teaching workforce.

Findings from analysis of determinate teacher policies are presented in this chapter. In the following two chapters, findings are presented from analysis of the two indeterminate teacher policy subsystems: the Annual Professional Performance Review (APPR); and the § 3020-a proceedings. In addition, findings are presented from analysis of a third set of policies which sanction significant ongoing school-level teacher union activity. The role of New York City’s teachers union seems likely to be influential in shaping important details of the new APPR framework as it will be implemented in New York City, and in the way the APPR ultimately functions in practice. Finally, in Chapter 7, results of analysis of policies for other school stakeholders are presented.
In the remainder of this chapter, determinate accountability policies for teachers are described. Fairly extensive direct citations from laws and regulations are presented to demonstrate the high degree of detail, specificity and clarity that characterize teacher input policies.

4.4 Determinate Teacher Policies: Findings

As shown below, determinate, bright-line accountability mechanisms—i.e. those with unambiguous, black-and-white standards, measurements, and consequences clearly defined and stated in written government policies—exclusively hold teachers accountable for inputs. Figure 4.1 represents both the model of accountability described in the scholarly literature, and the operational nature of policy accountability mechanisms with respect to particular teacher inputs:

Figure 4.1: Determinate accountability policy model

Determinate accountability for teachers falls into two general categories. The first, here termed “exclusionary,” defines what a teacher must do or not do to be a member of the New York City public school teaching force, and specifies mechanisms for enforcement. These are policy mechanisms designed to ensure that a teacher has met particular minimum standards in order to be a teacher—either to be hired initially, or to remain in the teaching force. The second category, termed “value-enhanced,” includes mechanisms that define measurements and consequences associated with teachers’ achievement of standards beyond the minimum required for employment in the New York City public schools. Within these two general categories—
exclusionary and value-enhanced—determinate accountability mechanisms are stipulated as follows.

- **Exclusionary** accountability is specified with respect to three areas: (1) Entry requirements (standards that must be met to be hired as a teacher in the first place); (2) Mandatory, ongoing professional development; and (3) Prohibition of criminal sex offenses.
- **Value-enhanced** accountability is specified with respect to two areas: (1) years of employment as a teacher; and (2) the accumulation of additional credits through education and training beyond the minimum required for entry under exclusionary provisions.

By far the strongest policy emphasis is on the areas of teacher certification (i.e. entry requirements), and years of employment: literally tens of thousands of words appear in policies stipulating unequivocal, determinate accountability mechanisms in these two areas, with a high level of specificity and clarity. In the following discussion, the detail presented on these two areas of policy reflects the strong emphasis of the policy documents. Furthermore, the clarity and explicitness with which these bright-line accountability mechanisms are stipulated is in striking contrast to other areas of teacher policy, as shown in the following chapters on indeterminate policies.

### 4.4.1 Exclusionary Accountability Mechanisms

Exclusionary accountability mechanisms can be categorized into two groups. The first enforce particular standards for obtaining the required license to become a teacher: that is, minimum standards that must be met to obtain a position as a public school teacher in the first
place. The second are those that enforce minimum standards that must be met to remain employed as a teacher. Simply put, if you don’t meet the minimum standards for obtaining the required teaching license you will not be permitted to become a teacher, and if you don’t meet the minimum standards for maintaining that teaching license you will lose your job.

**Accountability mechanisms that control who may be hired as a teacher**

**Entry/certification requirements.** The most extensive and precise policy provisions regarding teachers stipulate accountability mechanisms that are designed to ensure that all teachers employed by the public schools have met the clearly-defined entry standards encompassed in what is referred to as “teacher certification.” New York Education Law, New York Codes, Rules, and Regulations (NYCRR), and three separate Chancellor’s Regulations contain tens of thousands of words in dozens of provisions stipulating teacher certification requirements and the standards, measurements, and consequences that hold prospective teachers accountable to these requirements. For example, New York Education Law § 3004(1) states that “The commissioner shall prescribe…regulations governing the examination and certification of teachers employed in all public schools of the state.” Subchapter C, Chapter II of New York Codes, Rules and Regulations, entitled “Teachers,” contains 47,000 words covering all state regulations governing teachers, 81% of which are devoted just to requirements for teacher certification.

In order to be certified to teach in New York, a prospective teacher must meet unambiguous standards, and prove to the state through clearly-defined procedures that those
standards have been met as stipulated in lengthy regulations issued by the Commissioner. Subsequently, a prospective teacher receives the New York State-issued “teaching certificate” necessary to be hired as a public school teacher anywhere in New York State: “state certification in accordance with the regulations of the commissioner” is “a prerequisite to appointment to any teaching [position]” and no person “[n]ot in possession of a teacher’s certificate” may be “employed or authorized to teach in the public schools of the state.” Official records of every individual who has met certification requirements and received a New York State teaching certificate is kept at the New York State Department of Education; state law stipulates that the Commissioner “shall cause to be prepared and keep in his office records of all persons who have received, or shall receive certificates of qualification to teach.”

Subparts 80-1 and 80-3 in Chapter II, Subchapter C of New York Codes, Rules and Regulations describe teacher certification requirements in detail, providing 46 highly-specific definitions in “Application of this Subpart and definitions” for terms such as “Teacher,”

53 New York has a growing number of “alternative” teacher certification programs, which place teachers-in-training in the classroom while they complete state-mandated teacher certification requirements (for example, see Relay GSE at http://www.relay.edu/mat-program/; NYC Teaching Fellows at https://www.nycteachingfellows.com/Default.aspx; and others at http://schools.nyc.gov/TeachNYC/certification/alternatives.htm). However, these programs are “alternative” solely in the sense that teaching candidates begin teaching (with a “Transitional B” or “Transitional C” Certificate) after passing the teacher certification examinations but prior to completing full New York State certification requirements. To earn permanent or “Professional” state certification, alternative program participants are subject to the same requirements discussed in this section: including earning a Masters degree, and completing a specified number of academic credits in education at a local education college. (See www.highered.nysed.gov/ocue/ /spr/FrequentlyaskedQuestions.htm.) Candidates from other states with “comparable certificates” (listed at www.highered.nysed.gov/tcert/certificate/levelcert.html) may receive a New York “Conditional Initial Certification,” after completing fingerprint clearance. That certification is valid for two years, during which the candidate must satisfy New York State teacher certification examination requirements. (See www.highered.nysed.gov/tcert/certificate/teachrecother.htm.)

54 The Chancellor of the New York City school system is also permitted by law to “promulgate minimum education and experience requirements for all [teaching positions] which shall not be less than minimum state requirements for certification” (italics added). (N.Y. Educ. Law § 2590-j(2))

55 N.Y. Educ. Law § 2569(a)
56 N.Y. Educ. § 3001(2)
57 N.Y. Educ. Law § 305.8
“School,” and “Classroom Teaching Service.” These certification provisions stipulate detailed requirements for the “initial certificate,” which qualifies new teachers to teach in the public schools. After receiving that initial certificate and completing additional requirements, the teacher then receives the “professional certificate,” which is also known as receiving tenure.

State requirements for the “initial certificate” include:

1. U.S. citizenship or permanent residence status;
2. Completion of two hours of coursework or training regarding the identification and reporting of suspected child abuse or maltreatment;
3. Completion of two hours of coursework or training in school violence prevention and intervention;
4. Completion of a “criminal history record check”;  
5. Possession of “a baccalaureate degree from a regionally accredited institution of higher education or a higher education institution that the commissioner deems substantially equivalent or from an institution authorized by the Regents to confer degrees and whose programs are registered by the department, and shall satisfactorily complete a program registered pursuant to section 52.21 of this Title”; or through “Interstate agreement on qualifications of educational personnel”; and
6. Successful completion of several examinations: “The candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination liberal arts and sciences test [LAST], written assessment of teaching skills [ATS-W], and content specialty test(s) [CST] in the area of the certificate.”

State requirements for the “professional certificate” include:

1. Successful completion of the requirements for initial certification;
2. A master’s or higher degree program: either in the content core of the initial certificate or in a related content area; or in any field, provided that the candidate has completed at least 12 semester hours in the content core of the initial certificate in a related content area;

58 Government policy regarding a candidate’s criminal history is indeterminate: a prior criminal conviction does not necessarily mean a candidate will not receive certification. The law lists several factors to be considered in “reviewing whether the record of criminal convictions should be grounds for denial” of a teaching certificate (Chancellor’s Regulation, C-105, p. 5).
59 8 NYCRR 80-1, 80-3
3. Participation in a one-year mentoring program; and
4. Completion of three years of satisfactory teaching experience\textsuperscript{60}

Finally, in addition to State requirements, New York City requires:

1. A medical examination;
2. Six semester hours of collegiate study on the teaching of special education children;
3. Two semester hours of collegiate study or in-service work in human relations; and
4. Demonstration of “effective practice” in “impact on student learning, instructional practice, and professional contribution” as assessed by the building principal.\textsuperscript{61, 62}

These state and city policies dedicate thousands of words to requirements for certification and to precise procedures for determining that those requirements have or have not been met. Several thousand words, in multiple provisions in both New York State Law and New York Codes, Rules and Regulations, simply describe the required process for submission and clearance of applicants’ fingerprints. The following quote introduces the 6,500-word Part 87 in the New York Codes, Rules and Regulations entitled “\textit{Criminal history record check for prospective school employees and applicants for certification}”:

The purpose of this Part is to set forth requirements and procedures for the fingerprinting and the State Education Department's criminal history record check of prospective school employees for service in covered schools, as defined in section 87.2 of this Part, and applicants for certification for service in the public schools of New York State in order to determine whether such individuals shall be granted a clearance for employment and/or certification by the State Education Department.

An entire section of state law, entitled “\textit{Duties of commissioner; submission of fingerprints},” is devoted to this entry requirement alone. The following quote introducing the

\textsuperscript{60} 8 NYCRR 80-1, 80-3
\textsuperscript{61} Chancellor’s Regulations C-205 and C-240
\textsuperscript{62} http://schools.nyc.gov/Teachers/Resources/teachertenure.htm
1,200-word section further illustrates the high degree of specificity and precision that characterizes these exclusionary policy provisions:

The commissioner shall submit to the division of criminal justice services two sets of fingerprints of prospective employees...The division of criminal justice services and the federal bureau of investigation shall forward such criminal history record to the commissioner in a timely manner. For the purposes of this section, the term “criminal history record” shall mean a record of all convictions of crimes and any pending criminal charges maintained on an individual by the division of criminal justice services and the federal bureau of investigation...

The consequence for not meeting these defined standards is both determinate and “high-stakes”: exclusion from employment as a public school teacher. The term “teacher” is itself defined under New York State Law as “the holder of a valid teacher’s certificate issued by the Commissioner of Education,”63 and in New York City Chancellor’s Regulations as a “[person] employed to provide teaching and related services directly to students...required by law to hold an appropriate state certificate or city license.”64 The public schools are legally prohibited from hiring a person without a state-issued teaching certificate, as New York State Law stipulates: “[n]o...teacher shall be appointed to the teaching force of a city who does not possess qualifications required under this chapter and under the regulations prescribed by the commissioner of education....”65 A key duty of the chancellor is to “[e]nsure compliance with qualifications established for all personnel employed in the city district.”66 Furthermore, “[n]o trustee or board of education shall contract with a teacher not legally qualified,”67 and “[n]o

63 8 NYCRR 80-1.1
64 Chancellor’s Regulation C-200, p. 13
65 N.Y. Educ. Law § 2573
66 N.Y. Educ. Law § 2590-h(20)
67 8 NYCRR 7.3
person [without certification] shall have any claim for salary.”68 Policies thus stipulate explicit, unequivocal accountability mechanisms—including precisely-stated standards, measurements, and consequences—governing the entry of teachers into the New York public school teaching force.

**Accountability mechanisms that control who may remain employed as a teacher**

Policies contain determinate, bright-line accountability mechanisms in only two areas stipulating what a permanently certified teacher must do to remain employed: (1) Mandatory ongoing professional development; and (2) Prohibition against committing a criminal sex offense. Policy provisions addressing these two areas stipulate unambiguous standards that must be met for continuing employment as a teacher, specific measurement mechanisms and, in both cases, the high-stakes, non-negotiable consequence of job loss if the standards are not met.

**Ongoing professional development requirement.** Every tenured teacher must complete 175 hours of state-approved professional development every five years in order to remain employed by the public schools: “The professional certification holder shall be required to meet such professional development requirement [prescribed in section 80-3.6 of this Subpart] to maintain the continued validity of the professional certificate.”69 A 3,700-word section of the New York Codes, Rules and Regulations (NYCRR), entitled “Professional development requirement,” stipulates the requirement for ongoing completion of professional development in detail. All teachers must “successfully complete 175 clock hours of acceptable professional development” during the “professional development period” defined as “the five-year period commencing on July 1st… and each subsequent five-year period thereafter”; however this

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68 N.Y. Educ. Law § 2573(10)(a)
69 8 NYCRR Section 80-3.4
requirement “shall be reduced by 10 percent for each professional development year the certificate holder is not regularly employed by an applicable school in New York.” “Professional development year” is defined as “each year of the five-year professional development period, beginning on July 1st and ending the following June 30th.” “Regularly employed” is defined as “employed 90 days or more in a professional development year by a single applicable school in New York in a position requiring certification pursuant to this Part”; “a day of employment” is “a day actually worked in whole or in part, or a day not actually worked but a day paid”; an “applicable school” is defined as “the City School District of the City of New York and any of its components.” “Acceptable professional development” is “professional development approved by [the] applicable school in New York, pursuant to its professional development plan, as prescribed in 8 NYCRR 100.2(dd),” and applies to “individuals regularly employed by an applicable school in New York in a professional development year.” The section continues with meticulous specification of how compliance with this requirement is ensured, including: “Measurement of professional development study,” “Recordkeeping requirements,” and “Reporting requirements.” The following provision illustrates the level of detail specified for measurement against this standard:

In addition to the recordkeeping requirement for an applicable school in New York, as prescribed in section 100.2(dd) of this Title, the certificate holder shall maintain a record of completed professional development, which includes: the title of the program, the number of hours completed, the sponsor’s name and any identifying number, attendance verification, and the date and location of the program. Such records shall be retained for at least seven years from the date of completion of the program and shall be available for review by the department in administering the requirements of this section…”

70 8 NYCRR Section 80-3.6 (d)(1)
71 8 NYCRR Section 80-3.6
Prohibition of criminal sex offense conviction. The only additional exclusionary policy prohibits the continued employment of a teacher who has been criminally convicted of a sex offense. In a subsection of over 1,000 words, New York State Law defines a criminal sex offense as “an offense set forth in subdivision two or three of section one hundred sixty-eight-a of the correction law, including an offense committed in any jurisdiction for which the offender is required to register as a sex offender in New York.” Measurement against this standard is stipulated as the Commissioner’s “receipt of a certified copy of a criminal history record showing that a teacher has been convicted of a sex offense or sex offenses.” Finally, the consequence for failing to meet the standard of not being convicted of a sex offense is stated unambiguously: “the commissioner shall automatically revoke and annul the teaching certificate of such teacher without the right to a hearing” (italics added).72

Thus, New York teacher policy includes exclusionary determinate accountability mechanisms for these three domains alone: (1) Entry requirements; (2) Ongoing professional development requirements; and (3) Prohibition of a criminal sex offense conviction.

4.4.2 Value-Enhanced Accountability Mechanisms

In addition to exclusionary mechanisms that define and enforce who may or may not be employed as a teacher, policies specify determinate accountability mechanisms in two additional areas, termed here “value-enhanced.” These exist in two domains: (1) Number of years of employment, and (2) Additional credits accumulated through voluntary education and training, beyond minimum entry and ongoing professional development requirements. The primary consequence for achievement of standards defined in both of these value-enhanced areas is the

72 N.Y. Educ. Law § 305(7-a)
amount of a teacher’s salary: a positive consequence of more money, rather than the negative consequence of exclusion from employment, discussed above. A teacher’s salary depends exclusively on these two input factors, and the standards and measurements associated with determining salary level constitute the most comprehensive and specific accountability mechanisms related to teachers’ ongoing employment as teachers. A detailed salary schedule links annual pay to the achievement of standards defined for years employed and accumulated credits. Ancillary consequences for number of years employed are significant work benefits, discussed below.

Years employed as a teacher—often referred to as “years of service” or “seniority”—is defined in policy as “the number of years which a teacher has served in the school district in which he is employed.”

“One year” is specifically defined under law as:

1. A minimum of 180 days of full-time, continuous school experience in the subject or area of certification completed within a 12-month period;

   2. A minimum of 180 days of full-time continuous school experience in the subject or area of certification completed in periods of no less than 90 days each within a 12-month period; or

   3. A minimum of 360 days of part-time continuous school experience consisting of an average of 2.5 days per week in the subject or area of certification and completed in periods of no less than 90 days each within a 12-year period.

Accumulation of additional credits is defined as “academic credit, coursework or degrees earned,” from state-accredited institutions, beyond the minimum required for employment.

**Years employed.** Measurement of a teacher’s number of years employed and accumulation of credits is also clearly detailed in policy documents. Procedures are stipulated at the state level, but are carried out at the district level. In New York City, the number of years of a

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73 N.Y. Educ. Law § 3101(2)

74 8 NYCRR 80-1.1(d)(45)
teacher’s employment is monitored by the Office of Pedagogical Payroll in the New York City
(NYC) Department of Education, and salary increases are awarded automatically. Accumulated
credits are measured on the basis of an application, including documentation of additional credits
earned, submitted by the teacher to the Office of Salary Services in the NYC Department of
Education, which subsequently verifies the credits and implements a corresponding salary
increase. Teachers receive automatic salary increases based on years of employment, as shown in
Figure 4.2:

![Figure 4.2. Salary increases by Years Employed (with Masters degree) (2012)](image)

**Additional credits.** Increases in salary based on accumulation of additional credits,
called “salary differentials,” are awarded on seven levels, beginning with the accumulation of 30
credits beyond the bachelor’s degree; the final level requires a Master’s degree plus 30 credits, or
certification by the National Board for Professional Teaching Standards (a national professional development organization), as shown in Figure 4.3:

As the UFT website explains to teachers: “You’ll earn more money the longer you stay in the system,” and each salary differential “can add thousands of dollars to your annual earnings—permanently—and cumulative differentials can make a big difference in your earning power.” Together, as shown in Figure 4.4 below, these two sole factors—years employed and additional credits—determine teacher salary levels:

Figure 4.3. Salary increases by Additional Credits with 3 years of employment (2012)

As the UFT website explains to teachers: “You’ll earn more money the longer you stay in the system,” and each salary differential “can add thousands of dollars to your annual earnings—permanently—and cumulative differentials can make a big difference in your earning power.”

Together, as shown in Figure 4.4 below, these two sole factors—years employed and additional credits—determine teacher salary levels:

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75 A 450-word section of State Law (§ 3004-a) authorizes a state-funded grant program providing individual teachers with up to $2,500 to obtain National Board for Professional Teaching Standards certification. Repayment of the grant is required if the teacher does not complete the process, but is not required if the teacher completes it unsuccessfully and fails to achieve certification.
Beyond salary level, additional important consequences for years employed are the rights and benefits that accrue to teachers based on accumulation of additional years of employment, often referred to as “seniority,” and negotiated locally between the school district and the local teachers union. The first, most significant consequence of seniority status in New York City is the rights associated with assignment to and maintenance of teaching positions. The second is the rights associated with selecting paid “per session” work. The third is the periodic eligibility for sabbatical leave.

A teacher’s seniority status is calculated simply: the more years of employment, the greater the teacher’s seniority. Records on the seniority status of all the teachers in the NYC

Figure 4.4. Salary increases by Years Employed at three levels of Credits (2012)
teaching force are carefully maintained. New York State Law mandates that the Chancellor “promulgate a list of the seniority rankings of all members of the teaching…staff,” which is “revised at least annually.”\footnote{N.Y. Educ. Law § 2588(3)} The UFT contract requires that “any lists which may be established by the community school district or by the central board showing seniority of the teachers for purposes of implementing provisions of this Agreement shall be made available to the Union” (UFT Contract, 2003).

The first consequence of seniority provides job security in a particular teaching position. If a teaching position is eliminated, “the teacher having the least seniority within the tenure of the position abolished shall be discontinued” (UFT Contract, 2003, p. 100).\footnote{N.Y. Educ. Law §§ 2588(3)(a), 3013(2)} Under certain circumstances, state law permits the transfer of teachers “without their consent,” but the law mandates that “such transfers shall be made in inverse order of seniority in the school from which made.”\footnote{N.Y. Educ. Law § 2590-j(8)} Some very minor changes have been implemented in New York City with respect to the relationship between seniority and job assignments; in general, however, the greater the level of your seniority, the greater chance you have of keeping the position you have, and the less chance you face of being transferred involuntarily into a different position.

A second consequence for years employed is an advantage in obtaining what is called “per session” work in extracurricular activities such as coaching after school sports; supervising the school magazine, newspaper, or senior yearbook; directing school plays; leading the orchestra or band; and so forth. Earnings associated with per session work are not insignificant: in 2012, teachers earned $41.98 per hour of per session work up to a maximum of 500 hours per

\footnote{N.Y. Educ. Law § 2588(3)} \footnote{N.Y. Educ. Law §§ 2588(3)(a), 3013(2)} \footnote{N.Y. Educ. Law § 2590-j(8)}
year, meaning over $20,000 in additional annual income for teachers who work the full 500 hours permitted. Chancellor’s Regulation C-175 (“Per Session Employment”) includes detailed stipulations governing per session work, including “Posting Requirements,” “Application Process,” “Retention Rights,” and “Restrictions.” Article Fifteen of the UFT Contract (“Rates of pay and working conditions of per session teachers”) is a seven-page section stipulating the job selection process, pay rates, and working conditions. This emphasis in both the Chancellor’s Regulation and the UFT contract reflects the significance of per session work as an important positive consequence for number of years employed.

Finally, a third positive consequence of years employed is periodic eligibility for a sabbatical leave of absence, as described in Chancellor’s Regulation C-650, “Sabbatical Leave of Absence,” a 20-page regulation describing the terms of teacher sabbaticals. Every seven years a teacher is eligible to apply for a six month sabbatical, and every fourteen years for a twelve-month sabbatical. A teacher on a “study” sabbatical receives 70% of his or her regular salary; a teacher on a “restoration of health” sabbatical receives 60% of regular salary.

4.5 Summary

This chapter has laid out the determinate, bright-line teacher accountability mechanisms that exist in five areas of government policy: (1) Entry requirements; (2) Ongoing professional development requirements; (3) Years employed; (4) Additional credits accumulated; and 5) Prohibition of criminal sex offense conviction. Accountability mechanisms in all five of these areas meet the study’s criteria for determinate, bright-line accountability: that is, a clearly-stated,

In addition to hourly earnings, teachers accrue both sick leave and pension benefits for their hours worked in per session activities: “As a result of a hard-fought court battle... won by the UFT in 2002, all per-session income is pensionable” (http://www.uft.org/news/teacher/rights/per-session/).
measurable standard; a clearly-defined measurement; and a clearly-prescribed consequence, all stipulated unambiguously and in specific detail in written government policy. Thus, excluding criminal conviction of a sex offense, teachers in New York are held accountable solely for the inputs of education, ongoing training, and years employed.
Chapter 5:
Indeterminate Teacher Policies—Part I:
The “Annual Professional Performance Review”

All policies governing teacher evaluation and accountability for their work fall within two separate policy frameworks, both stipulated under New York State Law. The first is the longstanding Education Law § 3020-a “Disciplinary procedures and penalties” enacted in 1970, and the second is the new “Annual professional performance review of classroom teachers and building principals” (APPR) enacted in 2010 by Chapter 103. While government policies clearly hold New York City teachers accountable for inputs, as shown in the preceding chapter, these two chapters show that policies do not hold teachers accountable in a determinate sense for their work as teachers.

Both the APPR and § 3020-a are indeterminate policy frameworks. In these policies, standards are often absent or stated very vaguely; in some cases, standards that initially appear to have operational definition in policy in fact lack measurability. Measurement against standards is rarely specified. Finally, prescribed consequences for meeting or failing to meet standards are not stipulated, even in cases where clear standards are stated. Both frameworks instead emphasize detailed requirements for procedures for determining measurements against particular standards, and additional requirements for procedures for determining consequences based on the ultimate results of the measurement procedures. The majority of the stipulated procedures for both measurement and consequence-allocation (and even many of the standards themselves) are

80 N.Y. Educ. Law § 3020-a
81 N.Y. Educ. Law § 3012-c and 8 NYCRR § 30-2
overtly negotiable—both in their initial formulation and in their ongoing implementation. Thus, in direct contrast to the unambiguous, detailed, determinate accountability mechanisms stipulated for the input standards discussed in Chapter 4, New York policy does not include determinate mechanisms that hold teachers accountable for their work as teachers—whether process or outcomes, and however measured.

The below diagram (Figure 5.1) represents the shift in emphasis evident in these indeterminate policies in which the three elements of a determinate accountability mechanism (a bright-line standard, measurement, and consequence, all defined in written policy) are often “greyed out”—that is, vaguely-stated, ambiguous, obscure, or non-existent—while stipulation of measurement procedures and consequence-allocation procedures is stressed, specified explicitly and in great detail.

The emphasis on procedures is significant, as shown in greater detail below, because how those procedures are defined and managed (which is negotiable), along with ongoing influence of teachers union activity on their implementation, seems likely to have a considerable impact on how they function in practice. While the flexibility and discretion which characterize indeterminate mechanisms is a clear advantage in some contexts, indeterminate policy mechanisms are significantly more susceptible to various influences (or even manipulation).
Essential to analysis of these two policy frameworks is the distinction between *evaluation*, on the one hand, and *accountability*, on the other. Evaluation and accountability, while sometimes conflated, are crucially different concepts. An “evaluation” produces an “evaluation result.” However, such an evaluation result is not accountability; it is only one component of accountability. Accountability requires that a consequence be associated with that evaluation result. The following analysis therefore focuses on how policies do or do not stipulate consequences associated with evaluation of teachers’ performance. Particular attention is paid to individual teacher accountability for inadequate performance: that is, the definition of minimum standards for teachers’ work (whether process or outcome), and how those standards are enforced.

This chapter examines the new “annual professional performance review” (APPR) policy framework. As shown in this chapter, the APPR is school-based and exclusively addresses teacher evaluation; its sole purpose is to produce an evaluation result. As discussed in the Chapter 6, the § 3020-a “disciplinary procedures,” controlled by the state, implement all teacher accountability for inadequate performance. Those procedures utilize the measurement produced locally by the APPR, but in a highly discretionary manner: APPR ratings are reevaluated in the course of state-run § 3020-a proceedings, and are only one of several factors considered in evaluating a teacher’s performance and allocating consequences accordingly.

### 5.1 The Annual Professional Performance Review (APPR)

New York State’s new teacher evaluation system, the Annual Professional Performance Review (APPR), was enacted into law in May 2010 by Chapter 103 of the 2010 Laws of New York, stipulated in Education Law § 3012-c. Regulations implementing the new law were added
to Title 8 of New York Codes, Rules & Regulations (NYCRR) in May 2011, amending the preexisting § 100.2(o) (also entitled “Annual professional performance review”) and adding a new Subpart 30-2, entitled “Annual professional performance reviews of classroom teachers and building principals,” to 8 NYCRR Part 30. The new APPR has been widely covered in the press, reported as “a rigorous teacher evaluation system” (The New York Times, May 11, 2010), and a “sweeping overhaul of the way teachers are evaluated in New York…that set[s] in place consequences for teachers rated ineffective for two years in a row” (Wall Street Journal, May 11, 2010).

In fact, the APPR does initially appear to be a clear, determinate system for teacher accountability: the new framework requires schools to directly evaluate teachers’ work, or “professional performance,” grant one of four “effectiveness” ratings based on a standardized scoring rubric, and use the results of this rating as “a significant factor” in teacher employment decisions: “including but not limited to, promotion, retention, tenure determination, termination, and supplemental compensation.” While sometimes presented as a determinate teacher accountability system, however, the “annual professional performance review”—although including the words “performance” and “review,” which might suggest accountability for outcomes—is set of fairly complex, resource-intensive evaluation procedures that emphasize teacher inputs and the teaching process and do not implement accountability for inadequate performance.

82 N.Y. Educ. Law § 3012-c
83 The word “performance” is used with two different meanings in New York policy. Throughout government policies, “performance” when applied to teachers almost always means the “performing” of the teaching process. On the other hand, “performance” when applied to other school stakeholders means the student outcomes produced by the teaching process. This is discussed in Chapter 8.
The following sections examine the APPR teacher evaluation framework. The design of the APPR and its relationship to the § 3020-a accountability framework is explained. The *New York State Teaching Standards, Elements, and Performance Indicators*, which serve as the basis for 60% of teachers’ annual APPR ratings are analyzed. Implications of the strong role of the local teachers union—the United Federation of Teachers (UFT)—for both design and ongoing function of the APPR evaluation system are then discussed. As shown, the legally-sanctioned role and activities of the UFT, while not part of the APPR “on paper,” appear likely to be inextricably linked to its in-practice implementation. The following key points are addressed:

1. The APPR is an evaluation system, not an accountability system. Consequences for a teacher’s performance are not stipulated in the APPR. Local allocation of positive consequences is legally permissible within the APPR framework, as negotiated between the school district and the teachers union. However, New York State Law prohibits schools and districts from allocating negative consequences to teachers for inadequate performance.

2. Beyond broad mandates stipulated in state laws and regulations, most of the APPR framework is negotiated locally with the teachers union, increasing local control and, at the same time, decreasing state control of important implementation details.

3. Most of the APPR is input- and process-focused (rather than outcome-focused), and evaluation standards lack clear operational definition.

4. The APPR framework, as formulated in state law, places significant new demands on schools and districts, and appears likely to be vulnerable to multiple encumbrances and constraints arising from ongoing school-based union activity.
5.1.1 The APPR and teacher accountability

Some descriptions of the new “annual professional performance review” include the direct implication that the APPR framework implements consequences for teacher performance. The executive director of the New York State School Boards Association stated, for example, that “the new APPR law provides a mechanism for rewarding high achievers and weeding out poor performers” (Kremer, May 23, 2011, italics added). This statement is partially true: the new teacher evaluation laws explicitly introduce the possibility of allocating positive consequences to individual teachers, locally-controlled and managed entirely at the school site. No such policy mechanisms currently exist in New York City but this “upside” accountability is now legally permitted under Chapter 103, as negotiated with the local teachers union. However, the new law unambiguously prohibits both schools and districts from allocating negative consequences to tenured teachers, regardless of the outcome of school-site evaluations. The sole determinate consequence stipulated for a negative year-end APPR rating is that the school must provide that teacher with extensive assistance and remedial training in the following year. Consequences for inadequate teacher performance (including fines, suspension, and termination) are entirely

84 The draft requirement that district APPR plans include description of how the APPR will be used as a significant factor in teacher employment decisions was eliminated in the final regulations because the Department was concerned that “their inclusion in the regulation may make them the subject of an appeal” by the teachers unions (King, May 12, 2011, p. 8). However, the UFT has acknowledged the possibility of negotiating “upside” consequences for teachers: “a career ladder to positions such as lead teacher, mentor or coach that could lead to supplemental compensation, [and] promotion into administrative positions,” also emphasizing that “how the evaluations will figure into those decisions must be determined locally through collective bargaining.” However, A “negative” consequence potentially associated with the APPR is its possible use as a factor in denying the award of tenure; this is permitted under state law as negotiated with the local teachers union. The UFT has emphasized that the APPR “did not change the tenure law,” and “[a]ny linkage between [the APPR] and tenure determination must be decided through collective bargaining” (see http://www.uft.org/q-issues/qa-teacher-evaluation-and-improvement-plan).
decided and allocated through the independent, state-controlled procedures governed by Education Law § 3020-a “Disciplinary procedures and penalties.”

In other words, under the new teacher evaluation system, exactly as previously, § 3020-a proceedings are the sole means for holding a tenured teacher accountable for inadequate performance. The Hearing Officer presiding over those proceedings remains, legally, the sole arbiter both of whether or not a teacher’s performance is “in fact” inadequate, and of any consequences to be allocated accordingly. Furthermore, also by state law, the district can only initiate § 3020-a disciplinary proceedings after: (1) A teacher has received the lowest of the four possible ratings (an “Ineffective”) for two consecutive years; and (2) The district has carried out at least one year of a “sufficient” Teacher Improvement Plan for that teacher.86 As the UFT assures teachers, the new APPR teacher evaluation plan “safeguards the due process rights [of teachers],” and does not make it easier for schools to “fire teachers deemed ineffective.” Rather, the APPR institutes stringent new requirements “that the school system provides support to struggling teachers tailored to their needs” (United Federation of Teachers, May 12, 2010).

5.1.2 Overview of APPR design

The APPR mandates that schools give every classroom teacher one of four ratings annually— “Highly effective,” “Effective,” “Developing,” or “Ineffective”—intended to indicate a teacher’s “total effectiveness.”87 This annual effectiveness rating is based on a composite score of up to 100 points, comprised of a teacher’s sub-scores for three major evaluation components, as follows:

86 The definition of “sufficient” is nowhere stipulated in law, but rather must be defined through the collective bargaining process; this is discussed in Section 5.2.3 below.
87 N.Y. Educ. Law § 3012-c(2)(a)
• 20% on “student growth” on state assessments tests (increasing to 25% if and when the Regents approve use of a value-added growth model);

• 20% on “other locally-selected measures of student achievement,” defined locally through the collective bargaining process (decreasing to 15% if and when a value-added growth model is approved).\textsuperscript{88}

• 60% on “other measures of teacher effectiveness”: specific criteria for this component are also defined locally through the collective bargaining process, but must be aligned with the newly-issued New York State \textit{Teaching Standards} (discussed in detail below).\textsuperscript{89}

New York State prescribes “explicit minimum and maximum scoring ranges” for the two “student measures” components—the state “student growth” and “local measures of student achievement”—and for the overall “effectiveness” rating. The range for the “other 60 points” is established locally through negotiations between the school district and the local teachers union.\textsuperscript{90} New York City’s scoring ranges for this component were still under negotiation at the time of this writing, and current ranges for New York City are as follows (see Figure 5.2):

\textsuperscript{88} N.Y. Educ. Law § 3012-c(2)(f) and (g)
\textsuperscript{89} N.Y. Educ. Law § 3012-c(h), 8 NYCRR 30-2.4(d)(1)(i)\textsuperscript{8}, NYCRR 30-2.5(c)
\textsuperscript{90} 8 NYCRR 30-2.3(b)(4)
The APPR scoring methodology used to allot points for each of the three APPR components does not stipulate how teachers will be measured in each component, or how that measurement will subsequently be translated into a particular number of points received by a teacher. These crucial details must be determined by rulemaking and negotiation at both state and local levels, as follows.

- For the “student growth” component, state law does not stipulate how the performance of a teacher’s students relates to the teacher’s score for this component. The New York State Education Department (NYSED) defines how many points teachers will receive given a particular level of student scores. If a teacher gets a “student growth score” in the “thirteenth percentile,” for example, NYSED must

<table>
<thead>
<tr>
<th>Level of “Effectiveness”</th>
<th>Composite Effectiveness Score (out of 100 points)</th>
<th>State measure: “student growth” (up to 20 points)</th>
<th>“Local measures of achievement” (up to 20 points)</th>
<th>“Other measures of effectiveness” (up to 60 points)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highly effective</td>
<td>91-100</td>
<td>18-20</td>
<td>18-20</td>
<td>Under negotiation</td>
</tr>
<tr>
<td>Effective</td>
<td>75-90</td>
<td>12-17</td>
<td>12-17</td>
<td></td>
</tr>
<tr>
<td>Developing</td>
<td>65-74</td>
<td>3-11</td>
<td>3-11</td>
<td></td>
</tr>
<tr>
<td>Ineffective</td>
<td>0-64</td>
<td>0-2</td>
<td>0-2</td>
<td></td>
</tr>
</tbody>
</table>

Figure 5.2: Annual Professional Performance Review scoring rubric
determine if such a teacher receives a score for that component of a “2” or a “5” or some other number.\textsuperscript{91}

- For the “local measures of student achievement” component, state regulations only prescribe a numerical range that must correspond with each of the four performance levels. A teacher who gets an “11” in “local measures of student achievement,” for example, must be rated as “developing” for that component. However, what “11” itself actually means (what kind of student achievement is measured, and how—or, in other words, the “standards” and “measuring procedures” for this component) is negotiated at the local level between the school district and the teachers union.

- For the “other measures of teacher effectiveness” component, the standards, measuring procedures, and scoring range are all determined at the local level through negotiations between the school district and the teachers union.\textsuperscript{92} As Education Law § 3012-c stipulates: “The remaining [sixty] percent of the evaluation, ratings and effectiveness scores shall be locally developed” through the collective bargaining process.\textsuperscript{93} State regulations require only that rubrics for evaluating teachers “must broadly cover the [New York State] Teaching Standards and their related elements.”\textsuperscript{94}

The new APPR teacher evaluation system is a notable departure from the prior teacher evaluation system in several immediately obvious ways. First, the new system incorporates

\textsuperscript{91} How the “thirteenth percentile” is defined in the first place is a separate question, but also clearly crucial.
\textsuperscript{92} The regulations issued in May 2011 initially required that 40 of the 60 points for this component be based on “multiple classroom observations.” This requirement has since been overturned by Albany County Supreme Court, as inconsistent with the legal requirement that all measures making up the 60 points be collectively bargained (NYSUT et. al. v. NYS Board of Regents et. al, No. 4320-11 (Sup. Ct. Albany County, August 24, 2011).
\textsuperscript{93} N.Y. Educ. Law § 3012-c(2)(h)
\textsuperscript{94} 8 NYCRR 30-2.7(b)(2)
student outcomes as a component of teacher evaluation. Evaluation of the teaching process was required by the law previously in place. However, the new evaluation law introduces the unprecedented “student growth” component, explicitly requiring for the first time that the evaluation of teachers be partially based on the outcomes of their teaching. Second, the new system institutes four rating categories (up from the previous two), and connects the word “effectiveness” to teacher ratings: a word which clearly connotes some kind of effect or result caused. (The previous system had two vague rating categories of “Satisfactory” and “Unsatisfactory,” carrying no direct implication of any “effects” from teaching—or even direct implication of anything at all.) Third, the system includes a 20% “objective” measure, as well as subjective measures, while the previous system included no objective measures whatsoever. Fourth, the new system stipulates the relative weight of three distinct rating components, and requires numerical ranges for each component and for the composite score. Thus, a teacher’s “performance” on each component translates directly into a specific number, and those numbers added together indicate exactly what his or her annual “effectiveness” rating will be.

While clearly representing increasing attention to the evaluation of teachers’ work, however, the new APPR is a highly indeterminate policy system. Of the three evaluation components, the 20% “state test” component is partially determinate (that is, it incorporates bright-line standards and measurements), although critical questions regarding the scoring methodology are pending. Policies stipulate no standards, much less measurements, for the 20% “local student measures”: within very broad parameters—which include the use of collective

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95 Prior to the 2010 APPR legislation, New York Education Law included no requirement that the outcomes of teaching be incorporated into either teacher evaluation or accountability. In fact, student outcomes were mentioned in connection with teachers only in § 3012-b which prohibited using “student performance data” in making decisions to grant teacher tenure. That section has recently been repealed.
rather than individual measures—this component is entirely negotiable at the local level. Finally, the 60% “other measures” component is based on indeterminate, negotiable standards and measurements. The only state requirement for this component’s scoring range is that a teacher will receive a rating of:

- “Highly effective” if overall performance and results exceed standards;
- “Effective” if overall performance and results meet standards;
- “Developing” if a teacher needs improvement to meet standards;
- “Ineffective” if a teacher does not meet standards.\(^{96}\)

Clearly, assessment of to what degree “standards” are met will depend entirely on how the standards are defined in the first place.\(^{97}\) Beyond this crucial question, the definition of point ranges is also critical to the impact of this component on teachers’ annual ratings. The terms “exceed,” “meet,” “needs improvement to meet,” and “does not meet” are not defined in law: what they actually mean is negotiated locally through the collective bargaining process. Further, no regulatory restrictions are placed on the boundaries of point ranges for these four rating categories.\(^{98}\) In theory, for example, the range for “Highly effective” could be defined as 45 to 60 points, “Effective” as 10 to 44 points, “Developing” from 4 to 9 points, and “Ineffective” as 0 to 3 points, presumably meaning that most teachers would receive ratings of “Highly effective” or “Effective” for this component.

\(^{96}\) 8 NYCRR 30-2.6(d)(1)

\(^{97}\) As the state teachers union, NYSUT, points out: “While there is no consensus as to what constitutes rigor…the process of increasing rigor is connected to how rigor is defined” (NYSUT, August 2010).

\(^{98}\) N.Y. Educ. Law § 3012-c(2)(h)
5.1.3 New York State Teaching Standards, Elements and Performance Indicators

The dominant component of the APPR teacher “total effectiveness” rating is the 60% “other measures” of teacher effectiveness. For this component, state policy mandates solely that measures must be: (1) “Locally developed” by the district and the local teachers union, through the collective bargaining process; and (2) Aligned with the newly-issued New York State Teaching Standards, Elements and Performance Indicators.99

The Teaching Standards framework was adopted by the Regents in January 2011 and is now referenced in 8 NYCRR § 30-2 as the required state-wide framework for evaluating teachers’ practice. The Teaching Standards includes seven main Standards that “reflect the knowledge and skills needed to effectively teach to all students,” and each Standard “represents a broad area of knowledge and skills that research and best practices in the classroom have shown to be essential and to positively contribute to student learning and achievement” (New York State Education Department, 2011a, pp. 7, 3). The Teaching Standards framework has been presented as incorporating a major emphasis on student outcomes. However, close analysis shows that it is largely focused on teacher inputs and processes, and in no way aligns teacher evaluation with the high-stakes, outcomes-based evaluation applied to their students.

The seven Teaching Standards specified in the new framework are closely similar to the eight standards used to evaluate teacher’s professional performance under prior law. However, unlike the teacher evaluation requirements previously in place, the new framework is specifically intended to provide measurable criteria for teacher evaluation. To accomplish this, each of the seven broad Standards has its own set of “Elements” describing “the desired knowledge, skills,

99 N.Y. Educ. Law § 3012-c(2)(h) and 8 NYCRR 30-2.4(d)(1)(i)
actions, and behaviors for that Standard.” Each Element, in turn, includes a set of “Performance Indicators,” presented as operational definitions which specify “‘how’ teachers accomplish the actions or behaviors” of that Element. In total, the new evaluation framework includes 36 Elements providing additional detail on each of the seven broad Standards, further broken down into 136 Performance Indicators as the “observable and measurable aspects of teaching practice,” as shown in Figure 5.3, below:

<table>
<thead>
<tr>
<th>STANDARD</th>
<th># of Elements</th>
<th># of Performance Indicators</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. Knowledge of Students and Student Learning</td>
<td>6</td>
<td>15</td>
</tr>
<tr>
<td>II. Knowledge of Content and Instructional Planning</td>
<td>6</td>
<td>25</td>
</tr>
<tr>
<td>III. Instructional Practice</td>
<td>6</td>
<td>22</td>
</tr>
<tr>
<td>IV. Learning Environment</td>
<td>4</td>
<td>19</td>
</tr>
<tr>
<td>V. Assessment for Student Learning</td>
<td>5</td>
<td>21</td>
</tr>
<tr>
<td>VI. Professional Responsibilities and Collaboration</td>
<td>5</td>
<td>23</td>
</tr>
<tr>
<td>VII. Professional Growth</td>
<td>4</td>
<td>11</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>36</strong></td>
<td><strong>136</strong></td>
</tr>
</tbody>
</table>

Figure 5.3: New York State Teaching Standards, Elements and Performance Indicators

New York State’s *Teaching Standards, Elements and Performance Indicators* was designed with the stated aim of implementing a rigorous system for measuring teacher’s effectiveness in the classroom, requiring multiple observations of every teacher annually by
trained and certified “lead evaluators,” and stipulating dozens of concrete measurable Performance Indicators associated with the seven broad Teaching Standards. The apparent specificity of this framework conveys the impression of a determinate evaluation system. Notwithstanding its quantity of detail, however, this 60% component of teachers’ annual review is indeterminate to a significant degree. All seven Teaching Standards are vaguely stated: teachers “demonstrate knowledge,” “implement instruction,” “work with all students,” “demonstrate professional responsibility,” and so forth. The 136 Performance Indicators are intended to provide the measurable “actions and behaviors” that operationalize these broad Standards. Yet many of the Performance Indicators themselves are vague, subjective, and/or with unclear meaning and appear likely to be difficult to measure conclusively.

In addition, while the Teaching Standards framework is generally described as focused on student outcomes, the majority of Performance Indicators aim to evaluate the knowledge, behavior, and learning of teachers. The New York State Department of Education in fact states directly that the purpose of the Teaching Standards is to measure the “knowledge, skills, actions, and behaviors of teachers” (2011a, p. 3), not of their students. Consistent with this stated purpose, the Performance Indicators specified are largely defined in terms of teacher inputs and the teaching process, rather than student outcomes that teachers produce. While several of the seven Standards contain references to teachers’ potential impact on student achievement—such as “promote achievement for all students,” “ensure growth and achievement for all students,” and “engage and challenge all students to meet or exceed the learning standards”—most of the Performance Indicators describe teacher behavior exclusive of a clear relationship to student outcomes or impact on students.
Some Performance Indicators evaluate professional learning and growth without any direct connection to classroom teaching whatsoever. Multiple Performance Indicators describe activities of the classroom teaching process as end goals in and of themselves, with little obvious connection to student learning; that is, it is not clear that successful performance of the Performance Indicator would indicate anything about student learning one way or the other. Of the total of 136 Performance Indicators, 19 (about 14%) directly address teacher effect on students (see Appendix I for a listing of these 19 Indicators). Most of these describe student behavior in fairly vague terms without specifying connection to measurable student learning: these Indicators are stated, for example, as students “are actively engaged in learning,” and show “curiosity and enthusiasm.” While these may be valuable outcomes from an educational perspective, measurement of these behaviors in large groups of students is difficult. Further, such “student outcomes” as defined for the evaluation of teachers remain unaligned with the “student outcomes” that students and schools are actually held accountable for producing. The distribution of the Performance Indicators for the seven New York State Teaching Standards is shown in Figure 5.4:
All of the Performance Indicators under Standards I, II, VI, and VII (over half of the 136 Performance Indicators), assess the knowledge, growth, and learning of teachers, as follows:

- Forty Performance Indicators—almost a third of the overall framework—address teacher knowledge: knowledge of students, pedagogy, lesson content, and instructional planning (e.g. teachers “design learning experiences”; “create opportunities;” “incorporate key concepts,” and so forth).

- Thirty-four Performance Indicators—another quarter of the framework—address professional responsibilities, collaboration, and growth. While perhaps leading to a teacher’s effectiveness, these Indicators have no direct relationship to classroom teaching: e.g. teachers “collaborate with others”; “demonstrate an understanding of the
school as an organization within a historical, cultural, political, and social context”; “use acquired information to identify personal strengths”; “engage in opportunities for professional growth and development”; and “complete training.”

- Forty-three Indicators—about a third of the framework—address the teaching process: e.g. teachers “align instruction to standards”; “implement instruction proven to be effective in prior research”; “use a variety of questioning techniques”; “recognize and reinforce positive interactions among students”; and “design assessments that are aligned with curricular and instructional goals.”

No Performance Indicators address a teacher’s impact on measured student learning, but 19—about a seventh of the Standards framework—address student behavior in some way, as follows.

- Standard III, “Instructional Practice,” is described as: “Teachers implement instruction that engages and challenges all students to meet or exceed the learning standards.” No Performance Indicators under this Standard refer to the learning standards that students are mentioned as meeting or exceeding, but nine do directly address students in some way:
  - Six Indicators describe student behavior that seems relevant to meeting the learning standards: Students “are actively and cognitively engaged”; “Understand directions and procedures”; “Understand lesson content”; “Synthesize and express ideas”; “Make decisions, solve problems, and take actions as appropriate”; and “Solve problems and/or acquire new knowledge.”
  - Three Indicators address student behavior not as clearly related to mastery of learning standards: Students “have a clear understanding of measures of success”;
“Work effectively with each other”; and “Utilize technologies and resources to solve real world problems.”

- **Standard IV, “Learning Environment,”** is described as: “Teachers work with all students to create a dynamic learning environment that supports achievement and growth.” Six Performance Indicators under this Standard have a direct relationship to students:
  - Four Indicators address what might be called learning outcomes: that is, students “are actively engaged in learning,” “openly express their ideas,” “show pride in their work and accomplishments,” and “exhibit respectful classroom interactions.”
  - Two Indicators imply some impact on student behavior: “Teachers motivate students to initiate their own learning and strive to achieve challenging learning goals” and “Teachers promote students’ curiosity and enthusiasm for learning.”

- **Under Standard V, “Assessment for Student Learning,”** four Performance Indicators have a direct relationship to students: “Students practice various formats of assessments using authentic curriculum”; and teachers “prepare all students for the demands of particular assessment formats,” “equip students with assessment skills and strategies,” and “engage students in self-assessment.”

In sum, thus, over 80% of the Performance Indicators are teacher-centered and weakly connected to impact on students. In addition, although the Performance Indicators are described as the measurable elements of the Teaching Standards framework, many of the Performance Indicators in fact seem fairly subjective and difficult to measure: that is, how they could be operationalized is unclear. For example, what precisely constitutes evidence of a teacher’s students sufficiently showing pride, being actively and cognitively engaged, synthesizing and expressing ideas, making decisions, or understanding lesson content? Do seventy percent of a
teacher’s students have to demonstrate these behaviors? Eighty percent? Five students in the class? Must all students “make decisions,” be “actively and cognitively engaged,” and “show pride,” or is one of these behaviors per student sufficient? Will all Performance Indicators be measured in every classroom observation? Or would one, or two, or three Performance Indicators evidenced in several students per observation be adequate evidence of “effectiveness”?

At the same time, the design of the Teaching Standards framework is actually consistent with the language used by the New York State Department of Education to describe it: the Teaching Standards framework is not described as a system for measuring teaching, but rather of the “knowledge and skills needed” to teach. In this sense, while outcome-focused phrases such as “achievement for all students” and “all students meet or exceed the learning standards” appear in the framework, the Performance Indicators in fact reflect the intention of the Teaching Standards in the first place. Additionally, teacher knowledge and skills are literally described as that needed to “teach to” all students, not to teach all students (New York State Education Department, 2011a). This is a subtle linguistic distinction, but notable nonetheless: the act of “teaching students” could perhaps be understood as having the direct implication of resulting in “students who are taught.” The act of “teaching to” students, however, has connotations of a process which can at least potentially be carried out regardless of effect or impact on its recipient. That is, I can speak to you—and I may be “speaking well,” from some legitimate point of view—but whether the end result is communication (that is whether you can hear me, are listening, or even understand the language I am talking in) is an entirely separate issue. The quality of my speaking can be evaluated according to one set of criteria. A very different set of criteria must be used, however, to evaluate the success of my communication with you.
5.2 Potential Constraints on the Functioning of the APPR

Beyond the substantive design of the APPR, several important parts of the APPR legislation place potentially significant constraints on how it may function in practice:

1. The role of collective bargaining in negotiating key elements of the APPR framework as implemented locally;
2. State-mandated procedures for APPR rating appeals; and
3. State-mandated year-long Teacher Improvement Plans for all teachers who receive an APPR rating of “Developing” or “Ineffective.”

These three factors taken together seem likely to generate high transaction costs for schools and districts, and limit the capacity of the APPR to improve system-wide teacher effectiveness. Each is discussed below.

5.2.1. The Role of Collective Bargaining in APPR Design

State law requires that crucial aspects of the APPR framework be defined and formulated (and, in some cases, annually reviewed) through the local collective bargaining process. The preeminent role of collective bargaining is clearly emphasized in Education Law § 3012-c which states: “…nothing in this section or in any rule or regulation promulgated hereunder shall in any way, alter, impair or diminish the rights of a local collective bargaining representative to negotiate evaluation procedures” with a school district. Stipulations mandating the role of

100 In addition, ongoing school-based activity of the United Federation of Teachers may also increase costs and limit the capacity of the APPR system, as discussed in Section 5.3.
101 N.Y. Educ. Law § 3012-c(8)
collective bargaining in designing locally-implemented teacher evaluation systems appear nine separate times in § 3012-c. 102

As discussed above, the law requires district-union negotiation of much of the substance of the APPR framework, including the standards, measurement procedures, and scoring methodology for both the “locally developed student achievement measure” and the “other measures of effectiveness.” Thus for 80% of teachers’ annual rating, the standards themselves, the method of evaluation against those standards, and the scoring methodology for translating the outcomes of an evaluation into a rating must be negotiated with the New York City teachers union; as the union website states: “80 percent of a teacher’s evaluation must be determined through collective bargaining” (United Federation of Teachers, 2013). The following are a few of the dozens of evaluation details that must be negotiated for the “other measures of teacher effectiveness,” for example: Which Performance Indicators are used? How many will be required? Are teachers evaluated on all 36 Elements? Will teachers be permitted to choose particular Elements to be evaluated on? How many Performance Indicators will they be rated on for each Element? Two of six? Three of six? Every Performance Indicator per Element? Will they be permitted to choose which Performance Indicators? What observed teacher behavior counts as “effective”? Or “developing”? Or “ineffective”? How do those ratings translate into the number of points a teacher receives?

102 That is: “locally developed procedures negotiated pursuant to the requirements of article fourteen of the civil service law”; “locally established in accordance with procedures negotiated pursuant to requirements of article fourteen of the civil service law”; “locally developed...through negotiations conducted, pursuant to the requirements of article fourteen of the civil service law”; “developed locally” and “locally developed” “in a manner consistent with procedures negotiated pursuant to the requirements of article fourteen of the civil service law”; “locally developed,” “developed locally,” and “locally established” “through negotiations conducted, pursuant to article fourteen of the civil service law.” (Educ. Law § 3012-c)
The law does not directly stipulate that the “student growth” component is negotiable. However, significant elements of this component also lack clear definition under law, as evident in the state teachers union’s explanation: “Student growth is defined as the change in student achievement between two or more points in time as determined by the school district,” taking into account “the unique abilities and/or disabilities of each student.” How “change” will be defined and measured, and how the “unique abilities and/or disabilities of each student” will be taken into account is of central importance to impact of this component on teacher ratings. Further, the union points out that those questions are negotiable, stating that “[p]rocedures for the use of student growth are to be determined through collective bargaining” (NYSUT, August 2010, p. 2).

Negotiation is also required for a range of other critical APPR components, as follows:

- The appeals procedure through which a teacher may challenge the APPR rating he or she receives on multiple substantial and procedural grounds;\(^{103}\)
- The requirements for and design of “teacher improvement plans” for all teachers who receive a “Developing” or “Ineffective” rating;\(^{104}\)
- How the APPR will be used to inform ongoing professional development for teachers;
- How APPR ratings will be used as “a significant factor for employment decisions” (although limited by law to “upside” decisions for tenured teachers).\(^{105}\)

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\(^{103}\) N.Y. Educ. Law § 3012-c(5)

\(^{104}\) N.Y. Educ. Law § 3012-c(4)

\(^{105}\) N.Y. Educ. Law § 3012-c(1))
The New York State School Boards Association (NYSSBA) has emphasized the central role that collective bargaining plays in the design and implementation of the new teacher evaluation plan. While acclaiming the new law as “revolutionary” in its “inclusion of empirical data on student academic progress and achievement as evidence of [teacher] competence” and providing an “essential” link to student learning outcomes, the executive director of NYSSBA also noted: “Major questions remain regarding the implications of collective bargaining on getting the system up and running” (Kremer, May 23, 2011). NYSSBA’s general council echoed this: “We have concerns about the collectively bargained portion of this system” (New York State School Boards Association, April 25, 2011). In an online article, entitled “Some aspects of APPR subject to negotiation,” the New York State School Boards Association explains that APPR legislation requires school districts “to accomplish several goals involving subjects that appear to be mandatory subjects of collective bargaining,” listing six parts of the new teacher evaluation system:

- Develop the ‘procedures’ related to the 20 percent student performance component to be based upon locally developed criteria consistent with the commissioner’s regulations.

- Define the remaining percent (60 percent) of the evaluations, ratings and effectiveness scores as they relate to teacher performance.

- Develop procedures used to make employment decisions.

- Develop procedures used to create professional development plans as informed by teachers’ APPR ratings.

- Develop teacher improvement plans for any teacher who receives a rating of “developing” or “ineffective,” including: identification of needed areas of improvement; timeline for achieving improvement; the manner in which improvement will be assessed; and, where appropriate, differentiated activities to support improvement in those areas.

- Develop a locally established appeals procedure in each school district under which the teacher may challenge the substance of their annual professional performance review (APPR), the district’s adherence to the standards and methodologies for such reviews, adherence to the
commissioner’s regulations and locally negotiated procedures, and the issuance or implementation of a teacher improvement plan.  
(New York State School Boards Association, February 21, 2011)

The crucial role of collective bargaining is also underscored by the New York State and New York City teachers unions, both of which emphasize the multiple APPR elements that must be negotiated: “design, criteria, implementation and uses” of the “local student measures” component; procedures for evaluation of the “60% other measures”; requirements for Teacher Improvement Plans; how the effectiveness of implemented plans will be measured; procedures for appealing APPR ratings; and the way evaluations will be used in “employment decisions” (NYSUT, August 2010, August 2010a, May 20, 2010; United Federation of Teachers, May 12, 2010). The New York State teachers union, NYSUT, emphasizes further that “LRSs [Labor Relation Specialists] will assist locals with these issues in developing concepts and language for bargaining” (NYSUT, August 2010). As NYSUT summarizes the role of teachers unions in the new evaluation system: “Collective bargaining is the essential tool for defining professional evaluations. In fact, local collective bargaining is embedded throughout [this new system]…ensured and in some cases expanded” (NYSUT, June 2, 2010).

5.2.2 Mandated Rating Appeal Procedures

The new teacher evaluation law mandates that an appeals procedure be “locally established” by collective bargaining, through which any teacher may challenge his or her annual APPR rating. This challenge can be based on several broad grounds:

1. The substance of the annual professional performance review;

2. The school’s adherence to the standards and methodologies required for such reviews;
3. The school’s adherence to the regulations of the Commissioner and “compliance with any applicable locally negotiated procedures”;

4. The school’s “issuance and/or implementation” of the teacher improvement plan.¹⁰⁶

As of January 2013, the appeals procedure was still under protracted negotiation in New York City, and what it will eventually entail is unknown. However, under the prior teacher evaluation law—which did not include the new law’s mandate for rating appeal procedures—the United Federation of Teachers (UFT) urged all teachers who received an “Unsatisfactory” to challenge that rating. The UFT website emphasizes that a teacher receiving a year-end “Unsatisfactory” (or “U-rating”) should “immediately contact [the] UFT borough office for assistance” where “[s]pecialists…will help you file an appeal of your adverse rating and explain the various options available” (United Federation of Teachers, 2010). This appeal results in a scheduled hearing during the next school year: teachers currently have the “right to such a U-rating hearing,” and to representation in that hearing by a “union-trained advocate” (United Federation of Teachers, 2009). The U-rating appeal procedure is a fairly burdensome process, requiring the principal to invest considerable time and energy defending the U-rating granted. It seems not unlikely that the UFT will advocate a similar procedure for the APPR system: the UFT website cites “key provisions in the appeals process” which “should have a chilling effect on administrators who might otherwise choose to go after teachers” (United Federation of Teachers, 2013).

Further, the new law prohibits an APPR rating under appeal from being “offered in evidence or placed in evidence” in a § 3020-a disciplinary proceeding. This is clearly significant

¹⁰⁶ N.Y. Educ. Law § 3012-c(5)
to teacher accountability, since the process required to “hold a teacher accountable” for inadequate performance cannot even be initiated until a teacher has received an unsuccessfully-challenged “Ineffective” rating for two years in a row.

5.2.3 Teacher Improvement Plans

Only one legally-permissible “consequence” is stipulated for a teacher who receives an APPR rating of “Ineffective” or “Developing”: in the year following the rating, the school must implement a mutually agreed upon, year-long “Teacher Improvement Plan” (TIP) for the teacher, which “shall include but need not be limited to, identification of needed areas of improvement, a timeline for achieving improvement, the manner in which improvement will be assessed, and, where appropriate, differentiated activities to support a teacher’s…improvement in those areas.” 107 The most important purpose of the Teacher Improvement Plans required by this provision is clearly to help teachers improve their teaching. At the same time, the TIP requirement has four significant implications with respect to holding teachers accountable for their work:

1. First, the planning and implementation of Teacher Improvement Plans will require considerable time and resources for schools and districts. Limitations on such resources may limit the number of “Ineffective” and “Developing” ratings that a school can feasibly give, regardless of the actual effectiveness of the school’s teachers. It seems likely that the teachers union will attempt to negotiate a more extensive—and thus resource-intensive—plan.

107 N.Y. Educ. Law § 3012-c(4)
2. Second, insufficient implementation of the TIP is stipulated as one of the four grounds for appealing and overturning an APPR rating. The burden of proof that the TIP has been sufficiently implemented rests entirely with the school district. As NYSUT explains:

   The district will be required to document that a TIP based on two ineffective ratings was developed and implemented and multiple opportunities for improvement and supports have been afforded to the teacher that have not resulted in improvement in performance, student achievement, or both, before any disciplinary action based on a pattern of ineffective teaching can be taken against a teacher. (NYSUT, August 2010, p. 5)\(^{108}\)

   The UFT similarly emphasizes: “The DOE will be required to document that such a [teacher improvement] plan was implemented before any disciplinary action against a teacher can be taken,” and adds: “This is an unprecedented requirement in an evaluation system” (United Federation of Teachers, May 12, 2010). The higher the standard set for these individually-designed TIP plans, the greater the school’s burden will be to prove that sufficient TIP initiatives have been implemented: a more extensive plan is by definition more difficult to execute thoroughly, and its insufficient implementation is potentially easier to demonstrate.\(^{109}\)

3. Third, sufficient implementation of the TIP is a precondition for the initiation of a charge of incompetence based on an allegation of a “pattern of ineffective teaching.” Education Law § 3020-a stipulates that a charge initiated must also “allege that the employing board

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\(^{108}\) This statement defines teacher performance as something that can be improved without improvement in student achievement, highlighting the distinction frequently drawn between “teacher performance,” on the one hand, and “student achievement,” on the other.

\(^{109}\) It seems likely that the union will argue that at least two years of a TIP is the minimum necessary to give a teacher “multiple opportunities” to improve. That is, it may not be worthwhile for the district to initiate charges of incompetence having implemented a single year of a TIP. Evidence from prior § 3020-a decisions in fact suggest that in many cases at least two years of a TIP will be necessary for a charge of incompetence to “stick,” as shown in Chapter 6.
has developed and substantially implemented” a Teacher Improvement Plan, “following the first evaluation in which the employee was rated ineffective.” Thus, to even initiate charges of incompetence, the school district must implement at least one year of a TIP plan that will stand up to potential challenge from the teacher and the union: i.e. the district must be able to “prove” that the TIP carried out was sufficiently implemented, and thus that the district has adequate legal grounds to charge the teacher with incompetence in the first place.

4. Fourth, if a charge of incompetence is successfully initiated against a teacher, including the district’s allegation of a “substantially implemented” TIP over at least one year, the extent and nature of the plan that was implemented is crucial to the outcome of the § 3020-a hearings. The law requires that the TIP’s adequacy be proven to uphold any charge of incompetence, and the sufficiency of the plan may be disputed by the UFT lawyer defending the teacher. If additional TIPs have been carried out in previous years following prior ratings of “Ineffective” or “Developing,” the sufficiency of those TIPs will also be evaluated by the Hearing Officer.

Further, the Hearing Officer’s decision regarding allocation of consequences to the teacher will be based to some degree on the nature of the TIP carried out: “At the request of the employee, in determining what, if any, penalty or other action shall be imposed, the Hearing Officer shall consider the extent to which the employing board made efforts towards correcting the behavior of the employee which resulted in charges being brought” under § 3020-a. New York State Law does not define what constitutes a sufficient TIP; the specific criteria to be used for determining the sufficiency of a Teacher Improvement Plan is established.

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110 If additional TIPs have been carried out in previous years following prior ratings of “Ineffective” or “Developing,” the sufficiency of those TIPs will also be evaluated by the Hearing Officer.

111 N.Y. Educ. Law § 3020-a(4)(a)
locally through collective bargaining. The teachers union seems likely to argue that the evidence of TIP sufficiency is, simply, that the teacher’s performance has improved. Taking this perspective, the fact that a teacher has not improved could be interpreted not as evidence that the teacher is incapable of improving (much less incompetent), but rather that the mandatory Teacher Improvement Plan was, by definition, insufficient. In this view, inadequate teacher improvement is not the teacher’s fault, but the school’s fault for implementing an inadequate effort to help the teacher improve. The UFT has, perhaps not surprisingly, indicated that this is the definition of TIP sufficiency they intend to advocate, emphasizing that the “bottom line” of the new APPR teacher evaluation system is, “that the DOE will be held accountable for supporting struggling teachers” (United Federation of Teachers, May 12, 2010, italics added).

Moreover, as discussed in Chapter 6, precedent established in past § 3020-a decisions may tend toward defining “a sufficient Teacher Improvement Plan” as that which results in an improved teacher.

5.2.4 APPR Transaction Costs for Schools and Districts

Multiple aspects of the APPR framework are complex and resource-intensive, as explained above, and may be even more so after multiple details are determined through the collective bargaining process. Overall the APPR framework places significant new burdens on the New York City school system in several respects. Under the new state legislation, the Department of Education and individual schools must:

- Negotiate significant parts of the APPR framework which, by law, may be reviewed and perhaps revised annually;
- Identify, train, and certify a large number (at least hundreds) of evaluators;
• Carry out multiple classroom observations of tens of thousands of teachers every year, some if not all of which will require both pre- and post-observation meetings;

• Systematically collect additional agreed-on evaluation material (for “other measures of teacher effectiveness” and for “local student measures”) in accordance with negotiated collection procedures;

• Document and maintain careful records of all observations and other evaluation materials, for each teacher, in accordance with negotiated procedures;

• Defend appealed APPR ratings; and

• Plan, implement, and carry out a year-long Teacher Improvement Plan for every teacher who has received a first or second rating of “Ineffective,” or a rating of “Developing.” Further, since a TIP is required for a “Developing” rating regardless of how many previous “Developing” ratings that teacher has received, a TIP could potentially be required year after year for some teachers.

The specific requirements for each of these substantial school and district responsibilities will be determined through negotiation with the local teachers union. Some of the specifics to be negotiated include: qualifications of evaluators and lead evaluators; the nature and scope of evaluator training; definition of what constitutes a “classroom observation” and what number counts as “multiple” observations; procedures for observations (criteria, scope, procedural rules such as mandatory pre- and post-observation meetings with teachers, requirements for written observation reports, etc.); criteria and procedural rules for collection of other evaluation materials that may be used in a year-end APPR rating; the appeals procedure through which teachers can challenge their ratings; the scope and nature of Teacher Improvement Plans; and how to determine whether the implemented Teacher Improvement Plans have met a minimum
standard of sufficiency. Furthermore, if any of these areas of school and district responsibility are not executed with close adherence to the “letter of the law,” they may be challenged by the teachers union through a number of means (detailed below)—which may, in turn, invalidate part or all of an individual teacher’s APPR rating, or potentially even the APPR ratings of a group of teachers.

5.3 The Ongoing Role of the United Federation of Teachers (UFT)

The significant role of the New York City teachers union in shaping the APPR goes beyond initial negotiation of many critical elements of the policy framework. The United Federation of Teachers (UFT) has a pervasive school-level presence, explained below, and emphasizes several fairly significant “tools” and “remedies” that both individual teachers and the union itself can use to challenge (or, from another point of view, obstruct) many aspects of APPR implementation on an ongoing basis. Legally-sanctioned, day-to-day, school-based activity of the teachers union is likely to impact how the APPR is implemented in practice, and increase the APPR’s indeterminate nature to a still greater degree.

In this section, an overview of the UFT’s strong school- and district-level presence is provided. Particularly important is the UFT’s role in the teacher’s “official file”; and the “professional conciliation,” “grievance,” and “special complaints” procedures. These are all stipulated in the current UFT contract (which has expired but is still in force until a new contract is agreed upon), and whether these contractual provisions are maintained under a new contract remains to be seen. However, the new teacher evaluation law does not require that they be reviewed or changed—indeed, the new law does not address these factors at all. If these “tools” and “remedies,” as they are termed by the teachers union, are included in the new contract, the
complex nature of the new evaluation procedures may even increase their use. Further, the law’s new requirements for APPR rating appeal procedures and for year-long Teacher Improvement Plans for less-than-effective teachers introduce significant additional complexity that may also constitute increased vulnerability to union challenge.\textsuperscript{112} The following are the primary factors providing the means for such challenge, each discussed below:

- Considerable regulatory restrictions on what can be placed in a teacher’s “official file.” This is significant because a teacher’s rating on the two local components—“local measures of student achievement” and the “other 60% measures of teacher effectiveness”—may be given exclusively based on contents of this file, and only material in this file is will be admissible as justification for that rating in § 3020-a hearings.

- Cumbersome “professional conciliation” and “grievance” procedures utilized by teachers and the teachers’ union, through which every negative addition to a teacher’s file may be challenged.

- The “special complaints” procedure through which the union itself can file a complaint on behalf of a group of alleged victims of “supervisory harassment” (United Federation of Teachers, 2011);

- The appeal process through which a teacher may challenge the APPR rating he or she received.

\textsuperscript{112} Negotiation of appeal procedures and TIP requirements has proved difficult, and new contract negotiations are currently stalled in New York City.
5.3.1 The Citywide and school-based presence of the UFT

The UFT has a substantial, well-organized presence in New York City. Each of the five boroughs has its own UFT Borough Office; Borough Offices are “conveniently located,” “offer a variety of services and programs,” and are “staffed with specially trained consultants,” including a borough representative, a high school representative, and several special representatives, and a district representative for every community school district (United Federation of Teachers, 2011). Citywide, the UFT has a 3,400-member Delegate Assembly composed of elected representatives from every school in New York City, and an 89-member Executive Board which sets policy on various education and labor issues. The UFT Administrative Committee, composed of eleven UFT officers, borough representatives and selected union employees, oversees day-to-day union operations.

A prominent role for school-based UFT representatives is mandated by law, stipulated in Article Nineteen—Union Activities, Privileges and Responsibilities of the UFT contract. The law requires: (1) Union representation permitted and supported in every school in the city; (2) Reduced teaching obligations for union representatives to provide them with significant time—in school, during the school day—to dedicate exclusively to union-related matters; (3) Mandatory participation of the school principal, the district office, and the Chancellor’s office in separate monthly meetings with union representatives to address “matters of educational policy and development and…other matters of mutual concern” (United Federation of Teachers, 2011); and (4) Ongoing provision to union personnel of extensive information regarding virtually every aspect of school management.

Every school has a UFT “chapter leader” based at the school site, with considerable time provided to dedicate to union activities as specified in “Time for Union Representatives” in the
UFT Contract: “Chapter leaders shall be allowed time per week...for investigation of grievances and for other appropriate activities relating to the administration of the Agreement and to the duties of their office” (italics added). In elementary schools, UFT Chapter Leaders are allotted four extra free periods per week. In junior high schools and high schools, Chapter Leaders are exempted from the professional activity periods required of other teachers. In junior high schools they also carry the reduced schedule of homeroom teachers, and large high schools may have multiple Chapter Leaders, each “relieved of one teaching period per day to perform the duties and responsibilities of their chapter leader positions.”

The UFT contract further requires that the principal at every school provide “appropriate space and facilities (including but not limited to a desk, file and chairs) for the use of the schools chapter leaders in carrying out the functions of the office” and that at least one bulletin board “shall be reserved at an accessible place in each school for the exclusive use of the Union.” Principals are obligated to meet with Chapter Leaders once a month to “consult on matters of school policy and on questions relating to the implementation of this Agreement,” and must provide UFT representatives with a wide range of school data:

[Information regarding] the rotation of assignments…and seniority in the school will be made available, copies of current teaching and non-teaching assignments will be posted and given to the chapter leader, annual financial statements and audits of school monies must be posted on school bulletin boards and provided to chapter leaders, and…the chapter leader will have access to school information such as teacher programs, room assignments, and allocation of non-teaching time.

Teacher seniority lists, copies of all official Board circulars and directives, class size and teacher assignment reports, and other such information must also be sent to the central UFT headquarters (UFT Contract, 2003, pp. 107-108).
The UFT provides regular training for new Chapter Leaders regarding the various “contractual resources” available to defend the rights of teachers (or obstruct the evaluation process, depending on your perspective). Teachers are urged to maintain close contact with the Chapter Leaders in their school, reporting and requesting assistance with any instance that may even potentially infringe on a lengthy list of UFT-defined teacher rights, and notifying their Chapter Leader if anything occurs that could negatively affect their teaching record. In the following sections these “contractual resources” and their potential implications for the APPR evaluation system are analyzed. The significance of the teacher’s “official file” in granting the annual APPR rating is explained. The “professional conciliation,” “grievance,” and “special complaints” procedures are described, and implications are discussed of these contractually-protected procedures for teacher evaluation.

5.3.2 The “Official File”

A teacher’s ratings for the two “locally developed” evaluation components (locally-selected measures of student achievement and “other measures of teacher effectiveness”) constitute 80% of a teacher’s overall year-end rating, and must be based exclusively on material contained in that teacher’s “official file.” Obviously, thus, that file is of critical importance in the teacher evaluation process. However, contractual constraints restrict what is admissible to a teacher’s official file in the first place, and multiple procedures exist for removing material, on procedural as well as substantive grounds.

A clause entitled “Teacher Files,” in Article Twenty-One—Due Process and Review Procedures of the United Federation of Teachers Contract, specifies restrictions on what can be placed in a teacher’s file (UFT Contract, 2003, p. 21). As the UFT website explains:
Every UFT member has an official file at school that contains the administration’s observation reports, annual evaluation sheets, licensing and salary documents and other materials. There is only one official file maintained in your school; if a supervisor keeps private notes or reports about you in his or her possession, they may not be used as official records against you…No derogatory material can be placed in your file unless you have seen it and signed the original copy…You always can examine and make a copy of your official file; we recommend that you ask your chapter leader or a colleague to go with you when you review the file (United Federation of Teachers, 2010).

The UFT website also particularly stresses procedural—not substantive—constraints on placing negative material in a teacher’s file, explaining to teachers: “If you can show that a contractual article or a chancellor’s regulation was violated, as a remedy that letter should be removed from your file.” The website assures teachers that “UFT members have many different tools at their disposal when an administrator puts a negative letter in their personnel file,” listing six “strategies” and seven “tools,” which teachers can use to attempt to remove negative material from their file (United Federation of Teachers, 2010).

Restrictions on placing negative material in a teacher’s file is also emphasized to school principals in “Rating Pedagogical Staff Members,” a manual provided to principals by the NYC Department of Education. The manual describes “Properly maintained files” in detail, explaining items that may be included such as attendance records, reports of positive or negative activities, “[c]ommunications from parents, teachers or others dealing with incidents or matters relating to the employee’s service,” and “[d]escriptions of untoward incidents, including statements from witnesses” (New York City Board of Education, 2010, pp. 9-10). At the same time, the manual warns principals to be “fully aware of the regulatory parameters” of teacher evaluation files,  

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113 The UFT contract also specifies a three-year “statute of limitations” on negative material in a teacher’s file: teachers have the right to permanently remove any negative material from their file if that material has not been used in a disciplinary proceeding within three years (United Federation of Teachers, 2010a).
referring to the considerable legal constraints on those files: “The admissibility of documents and written criticisms has been defined by contractual language, grievance/arbitration decisions and rulings adjudicated by both the legal system and the State Commissioner of Education” (New York City Board of Education, 2010, Foreword).

The following case involving a teacher’s excessive absences both illustrates the obstacles a principal may face in attempting to place “negative” material in a teacher’s file, and underscores the indeterminate nature of teacher policies. This example is presented to show the constraints on evaluating teachers, even with respect to what could seem to be a fairly clear-cut standard of coming to work—much less a subjective assessment of a teacher’s classroom teaching based on a single-period observation. The following case in fact set a precedent for a new “right,” which now appears on the UFT website as one of the seven “tools” a teacher can use to remove material from their official file.

**The Todd Friedman Arbitration Award: “Excessive absences.”** Multiple policies clearly state what appear to be straightforward requirements for teachers’ basic work attendance. Article Sixteen of the UFT contract stipulates that teachers are allowed no more than ten days of absence per year “without a statement from a physician” (UFT Contract, 2003, pp. 92-93). Several Chancellor’s Regulations reiterate the teacher attendance requirements, and mandate detailed procedures for monitoring teachers’ compliance with this attendance standard. Regulation C-601, “Attendance and Service of School Staff,” emphasizes that “an essential element of employment in the pedagogical service is regular attendance and service,” and specifies that “the failure of any member of the [teaching staff] to be present and to perform any portion of assigned duties constitutes unauthorized absence,” which is “grounds for disciplinary action” (pp. 2-3). Chancellor’s Regulation C-604, entitled “Timekeeping,” describes the mandatory procedures for
documenting teachers’ attendance including the stipulation that an “official timekeeper” be designated in each school. When a teacher is absent “the absence and its cause shall be entered in red” on the school’s official time records that must be maintained daily by the timekeeper. A 2008 UFT website page further underscored the teacher attendance requirement, stating: “If your supervisor believes that your absences are ‘so numerous as to limit the effectiveness of service’ (Chancellor’s Regulation C-601), you may receive a letter for your official school file.” The page continued, however: “If you believe that the letter improperly accuses you of violating a specific contract clause or Chancellor’s Regulation, you should speak to your chapter leader, who can help you file a grievance” (United Federation of Teachers, 2008).114

A subsequent incident exemplifying exactly this procedure was posted on the UFT website in June 2008.115 As the posted article reported, a principal had placed a “letter of reprimand” in a teacher’s official file, documenting a violation of the clearly-stipulated ten-day limit on unexcused absences. The teacher and the UFT subsequently filed a grievance, won the case, and the principal was obligated to remove the letter from teacher’s file, thus “erasing” the incident from the teacher’s record. The UFT article, entitled “Precedent-setting attendance and letter-in-file arbitration victory celebrated,” explained:

Todd Friedman, an English teacher at Midwood HS, was livid after his principal put a letter in his file for excessive absences after he missed 11 days of class in the 2006-7 school year…Friedman was ensnared by the principal’s policy to put a letter in the file of any teacher who accumulated 10 or more absences in a school year. What Friedman started when he challenged his principal’s reprimand ended in a major arbitration victory for every UFT member…Friedman and the union claimed the 10-day cutoff was arbitrary. Arbitrator Martin Scheinman, in a June 11 consent decree, agreed [and the

114 The page is now out of date and has been removed.
115 This page has since been removed.
letter of reprimand was subsequently removed from Friedman’s file]. (United Federation of Teachers, 2008, italics added)

Following the June 2008 legal decision, the UFT webpage, “Excessive absences/Lateness,” was updated to confirm the newly-clarified indeterminate nature of teacher attendance policy, stating: “There is no specific number of absences that is automatically considered excessive” (United Federation of Teachers, 2010, italics added). The UFT Grievance Department Director Howard Solomon further emphasized the broader implications of the June 2008 “Todd Friedman arbitration award,” telling delegates at a UFT Delegates Assembly in June 2008:

“What we got codified is that any time a teacher gets a letter in their file that has an underlying issue that deals with a specific clause in our contract, the teacher can file a grievance based on the underlying contract clause and ask as a remedy that the letter be removed. We’ve always thought we had this right, but now it’s in black and white…It’s huge.” (United Federation of Teachers, 2008)

5.3.3 “Contractual Resources” and Teachers’ Rights

As explained, a teacher’s “official file” is crucial to the APPR evaluation framework, serving as the sole basis for most of a teacher’s year-end “effectiveness” rating. Yet at the same time, multiple UFT “tools” and “strategies” are utilized to help teachers keep negative material out of their file for reasons that may have nothing to do with the actual effectiveness of their teaching. The “Todd Friedman arbitration award” is posted on a UFT webpage entitled “Letter in the file: More and different tools” as one of the seven tools that are “at the disposal of [teachers] when an administrator puts a negative letter in their personnel file” (United Federation of Teachers, 2010). This page also lists “six strategies” for teachers to utilize their “new and continuing rights,” and urges teachers to obtain the UFT’s assistance in determining if any contractual article or chancellor’s regulation was violated. If so demonstrated, the letter must be permanently removed from the teacher’s file on the grounds of procedural violations, regardless
of its substantive content. The UFT explicitly urges a teacher who has “had a pattern of negative observations” to speak to his or her Chapter Leader before receiving a final year-end evaluation in order to preclude a negative rating: the Chapter Leader “knows what your rights are and will know what to do if you’re really in danger of getting [an Unsatisfactory rating]” (United Federation of Teachers, 2009).

In fact, blocking negative evaluations of teachers by keeping material out of their files, on both procedural and substantive grounds, is a central aim of the UFT. An article posted on the UFT website in 2006, for example, described a training session for new UFT Chapter Leaders, who “learned about letters in the file, the grievance process, due process and review procedures, special complaints, [and] professional conciliation and COPE,” among the many “contractual resources” available to teachers (United Federation of Teachers, 2006). These various procedures are used to defend dozens of UFT-defined “teacher rights” which are listed alphabetically (“explicated in an easy-to-read style”) on the UFT website page “Know your rights” (United Federation of Teachers, 2010). As the UFT explains, the “totality of these rights has been negotiated…over half a century,” and are now guaranteed by the UFT contract, “the many arbitrations that have interpreted [the contract]” and “some hard-fought [state] laws, such as on tenure.” Together, the “totality of these rights” seems likely to have a significant impact on the implementation of the APPR evaluation system. The primary contractual resources utilized are the “professional conciliation,” “special complaint,” and “grievance” procedures, as follows.

Professional Conciliation. Article Twenty-Four (“Professional Conciliation”) of the UFT Contract stipulates the potentially cumbersome “professional conciliation” procedure that teachers and the union can initiate to resolve what is contractually defined as “differences in professional judgment”; these procedures often require multiple meetings over weeks or even
months depending on the nature of the case (UFT Contract, 2003, pp. 136-137). In the current contract, and under legal precedent to date, a broad range of teaching-related practices fall under “differences of professional judgment.” As the “professional conciliation” page on the UFT website specifies:

If you have a difference of professional judgment with your supervisor, the contract provides you with a mechanism for resolving it that is similar to nonbinding mediation…Call your UFT borough office to request that an impartial third party be assigned to help you resolve conflicts over issues including curriculum, textbook selection, student testing, program offerings and scheduling, and pedagogical and instructional strategy, techniques and methodology. (United Federation of Teachers, 2010, italics added)

The UFT website further emphasizes to teachers:

Exercising your personal judgment in determining how best to teach your students is a basic professional right that the UFT has always had to fight for. The school system may set standards and guidelines for content and even recommend teaching techniques, but the day-to-day methods you use to individualize your instruction should be largely left to you (United Federation of Teachers, 2010).

In other words, at least under the current teachers contract, if an evaluator negatively assesses virtually any aspect of a teacher’s teaching, the potentially-protracted “professional conciliation” procedure may be initiated by the UFT on the basis that the evaluation infringes on a teacher’s right to “professional judgment.” Furthermore, the UFT itself is permitted to initiate “professional conciliation” procedures against an administrator on behalf of a group of teachers: “Often an entire staff or department uses this procedure to settle differences about educational practices” (United Federation of Teachers, 2010). Apart from the outcome of a professional conciliation procedure (that is, even if the “difference” is not resolved in favor of the teacher), these procedures themselves may function to encumber the evaluation process. Further, if the outcome of “professional conciliation” is not satisfactory to the teacher or the union, a grievance
may be filed through a separate, additionally cumbersome set of procedures. It seems not unlikely, in fact, that some administrators may be motivated to resolve “differences in professional judgment” through professional conciliation simply to avoid the grievance procedures described next.

**Grievances.** The “grievance procedure” is another contractual resource utilized by the UFT, through which an individual teacher, or the union, can file a formal complaint against a school administrator at the school or district level for a wide range of potential violations of a teacher’s contractual rights. Article Twenty-Two—Grievance Procedure –is a thirteen-page section of the UFT contract describing the process through which a grievance can be presented as a claim “that there has been a violation, misinterpretation or inequitable application of any of the provisions” of the teachers union contract, or that a teacher “has been treated unfairly or inequitably by reason of any act or condition which is contrary to established policy or practice governing or affecting employees” (UFT Contract, 2003, p. 122). As the UFT explains the use of grievances:

Grievances are the way that union-represented staffers enforce their contract and protect their rights...If you believe that a supervisor has violated your contractual rights and you and your chapter leader have been unable to resolve your complaint [through means such as “professional conciliation”], you should file a grievance against the DOE. Your chapter leader and your district representative will help you prepare the grievance, citing the violated contract clause, and represent you at the hearing...If necessary, the union will consider taking the grievance to the final appeal, arbitration, in front of an independent neutral arbitrator, selected jointly and paid for equally by the DOE and the UFT. (United Federation of Teachers, 2010a)

In addition, Article Ten of the UFT contract stipulates that the UFT itself has the right to initiate or appeal a grievance at the district level on behalf of any teacher, with or without that teacher’s participation.
As explained, the filing of a grievance is often used to attempt to remove negative material from a teacher’s file on procedural grounds, as in the “Todd Friedman” case described above. Thus, a negative classroom observation may be “grieved” and potentially removed from the file not because the teacher claims that he or she was teaching adequately, but rather because it is shown that even the most minor of procedural rules had been violated. As the UFT explains to teachers: “You can file a grievance in order to remedy a violation of the UFT/DOE contract or DOE regulation, circular or established practice. Your chapter leader can help you identify the appropriate article or rule that has been violated.”

The grievance procedure can be lengthy and burdensome for school administrators. At the school level, the grievance procedure requires conferences between the grieving teacher, his or her union representative, and the school principal. If unresolved at the school level, the grievance is then taken to the city level, requiring conferences with representatives from the Chancellor’s office. There is no limit on the number of grievances that a teacher may file, “but no record of these grievances filed may be placed in a teacher’s official file” (United Federation of Teachers, 2010a).

Special Complaints. Finally, a third, procedure, “Special complaints,” also provides a potentially constraining factor with respect to APPR evaluation procedures, through which the UFT itself, rather than an individual teacher, may file an official complaint. The “special complaint” procedure is described in Article Twenty-Three of the UFT Contract as intended for resolution of complaints regarding teacher claims of “harassment or intimidation” which are “not covered by the grievance procedure” (UFT Contract, 2003, p. 134). The UFT website emphasizes the role of the special complaint procedure in protecting teachers from supervisors, further reminding teachers that harassment and intimidation “may take many forms.” If you
“believe that you are the victim of supervisory harassment,” the UFT website instructs teachers, “tell your chapter leader immediately” and to notify the UFT District Representative. Upon receiving such a report from a teacher, the UFT files a complaint with the Chancellor on behalf of the alleged victim or group of victims. A joint investigating committee is subsequently established for the purpose of reaching “a prompt resolution of disputes without having to resort to formal procedures.” This committee has “no authority to discipline the alleged harasser”; the goal is simply to “resolve the problem going forward” (United Federation of Teachers, 2011)—albeit in a potentially onerous process from the point of view of school administrators.

The number of classroom observations a supervisor makes and/or the nature of those observations could, in theory, constitute one of the “many forms” of harassment cited by the UFT as grounds for filing a special complaint. Thus, as with both “professional conciliation” and “grievance” procedures, the special complaint procedure may be used to challenge aspects of the APPR evaluation procedures. Perhaps even more importantly, the very existence of (or, put another way, the threat of) these multiple, time-consuming and burdensome procedures seem likely to affect the way the APPR is actually carried out in practice. Yet this issue is nowhere addressed in in the evaluation law. How these multiple “procedures” for defending “teachers’ rights” will co-exist with the new APPR evaluation “procedures” will therefore have to be determined through collective bargaining, arbitration, and ultimately, perhaps, the courts.

In summary, APPR ratings for the two local evaluation components (“local student measures” and “other measures of teacher effectiveness”), currently constituting 80% of a teacher’s annual “effectiveness” rating, are based exclusively on material that has been placed—and successfully retained—in that teacher’s “official file.” At the same time, however, every negative addition to the file is open to union challenge—with or without legitimate basis, and on
either substantive or procedural grounds, as explained above. The teacher’s “official file” is thus not simply a carefully-documented representation of the teacher’s actual teaching performance over the course of the year, but rather a collection of material previously negotiated, through an ongoing bargaining process between school administrators, trained evaluators, the teacher, and, perhaps most importantly, UFT representatives, through the multiple procedures described above.

Because of the ongoing negotiability of what is placed and retained in teachers’ official files, and the strong school-level union role in overseeing those files, it seems fairly unlikely that a teacher’s file will contain inaccurately negative material; if anything, it seems more likely that the “official file” would underrepresent inadequacies in a teacher’s performance—whether poor attendance, or ineffective teaching practice, or anything else. Additionally, negative material in a teacher’s file is of no consequence in and of itself: such material carries significance solely when accumulated and defended sufficiently to justify a less-than-effective (“Developing” or “Ineffective”) APPR rating at the end of the year. Moreover, if a principal has successfully placed and retained sufficient material in a teacher’s file to give a less-than-effective rating, that rating leads to the potentially cumbersome outcomes outlined below. Finally, the consequences allocated to a teacher through any subsequent § 3020-a procedures may ultimately be minor to none.

**Scenario I: A teacher receives an APPR rating of “Developing”**

1. If the principal rates a teacher “Developing,” the teacher and the union are likely to appeal the rating—which the principal must then defend through the legally-mandated ratings appeal procedure (yet to be determined through collective bargaining).
2. If the “Developing” rating is overturned in appeal then nothing happens:
   the teacher returns to the classroom the following year, and the evaluation/“official file” procedures begin all over again.

3. If the “Developing” rating is successfully defended, the sole consequence is that the principal must oversee the planning and implementation of a year-long Teacher Improvement Plan (TIP) for that teacher to take place over the course of the following school year.

4. In this case, too, the evaluation/“official file” procedures must begin all over again, this time while the school is carrying out the TIP plan. Additional rules and restrictions on teacher evaluations may apply specifically to teachers who are participating in TIPs, depending on what terms for TIPs are negotiated with the teachers union in the first place.

This process can continue year after year with no resolution because a “Developing” rating does not constitute grounds for any “disciplinary action” against a teacher.

**Scenario II: A teacher receives an APPR rating of “Ineffective”**

1. If the principal rates a teacher “Ineffective,” the teacher and the union are likely to appeal the rating—which, again, the principal must defend (through the to-be-determined ratings appeal procedure).

2. If the “Ineffective” rating is successfully defended, the sole consequence is that the principal must oversee the planning and implementation of a year-long Teacher Improvement Plan for that teacher, to take place over the course of the following school year.
3. In this case, too, the evaluation/“official file” process begins all over again (in the context of an ongoing TIP), with two possible outcomes:

a) If the teacher does not receive a rating of “Ineffective” the following year also, the previous year’s “Ineffective” rating will be rendered essentially irrelevant. This is because a “pattern of ineffective teaching”—providing grounds for an allegation of incompetence—is legally defined as two, consecutive “Ineffective” ratings.

b) If in the course of that following year the teacher’s performance continues to be inadequate and the principal is successful in accumulating sufficient “negative” material in the teacher’s file to justify and defend a second “Ineffective” rating—in the context of the teacher’s participation in an implemented and demonstrably-sufficient Teacher Improvement Plan—the school system is then legally permitted to “allege a pattern of ineffective teaching,” and initiate § 3020-a charges of incompetence accordingly. The case then enters an entirely separate, protracted set of procedures, discussed in detail in the next chapter.

5.3.4 Summary

As shown, the new APPR is not an accountability system, but rather a negotiated and negotiable evaluation system. That is, the APPR is designed as an extensive set of measurement procedures, ultimately resulting in an annual “measurement”—the teacher’s APPR rating—with no consequences stipulated for inadequate performance, and substantial new requirements for teacher remediation. It is neither bright-line nor outcomes-focused. The greater part of the framework does not evaluate teachers on student outcomes, using either the definition of “student outcomes” applied to the rest of the school system or some other definition. The
dominant APPR component—the 60% “other measures”—is indeterminate, has minor focus on student learning, and nothing to do with student achievement as measured for students. Apart from the quality of the measure itself, the “state test” component is the only part of APPR framework that mandates alignment between measurement of students’ academic performance, on the one hand, and the “effectiveness” of their teachers, on the other. Teachers may be charged with alleged incompetence under the state-run § 3020-a procedures based on APPR ratings received, but teacher accountability for inadequate performance is prohibited within the APPR policy framework itself.

The following are the minimum steps and conditions within the APPR that are necessary simply to initiate the process of holding tenured teachers accountable under § 3020-a:

1. **First Year**
   a) A teacher is rated “Ineffective,” based on the year’s official file.
   b) The rating is not overturned in appeal.

2. **Second Year**
   a) The teacher returns to the classroom, and participates in a year-long Teacher Improvement Plan, designed and carried out by the school.
   b) At the end of the year, the teacher is again rated “Ineffective,” based on the year’s official file.
   c) The rating is not overturned in appeal.

3. **Third Year**
   The school system is then legally permitted to initiate a charge of incompetence on the basis of:
• The teacher’s two consecutive “Ineffective” ratings; and

• Convincing evidence that the Teacher Improvement Plan was adequately extensive, carried out sufficiently, and that its failure to improve the teacher’s performance was because any improvement was impossible.

If charges are ultimately initiated, the first step of the § 3020-a procedures is a pre-hearing conference in which the Hearing Officer will dismiss those charges if all mandatory conditions have not been met. If the Department of Education successfully demonstrates that the basis for the charge is valid and that all mandatory conditions have been met, the teacher “exits” the APPR system. The case then enters an entirely separate, protracted set of state-controlled procedures required by New York Education Law § 3020-a. Once in § 3020-a proceedings, additional resource-intensive evaluation procedures are carried out: all the evidence contained in the “official file” which led to the two “Ineffective” ratings must be presented, re-examined, re-challenged, and re-defended in multiple days of § 3020-a hearings. In addition, the sufficiency of the Teacher Improvement Plan will be closely examined.

Ultimately, a conclusion is reached and a measurement result is obtained: i.e. that the basis for allegation of “a pattern of ineffective teaching” was or was not valid, and—as an entirely separate matter—that the charge of incompetence was or was not proven. Finally, based on that determination, a consequence is ultimately allocated by the presiding Hearing Officer, thus concluding the multi-year APPR/§ 3020-a process. Specific consequences are nowhere stipulated in written policy, but rather are determined by the § 3020-a Hearing Officer on a case-by-case basis. Proven teaching incompetence does not necessarily result in teacher dismissal. The § 3020-a procedures are examined in more detail in the following chapter.
Chapter 6:
Indeterminate Teacher Policies—Part II:
§ 3020-a “Disciplinary procedures & penalties”

Under New York State Law, individual teacher accountability for inadequate teaching performance is implemented exclusively through the “Disciplinary procedures and penalties” stipulated in New York Education Law § 3020-a.\footnote{Accountability mechanisms for positive performance of individual teachers, such as merit pay, could theoretically (and legally) be implemented at the school site, although such mechanisms currently do not exist in policy.} The § 3020-a framework provides the sole legal means to hold a tenured teacher accountable for inadequate performance: that is, measure an individual teacher against a defined standard, with subsequent allocation of consequences if he or she has failed to meet that standard. New York Education Law § 3020(1) stipulates unambiguously that no tenured teacher “shall be disciplined or removed during a term of employment except...in accordance with the procedures specified in section three thousand twenty-a of this article” (italics added).\footnote{The single exception to this is conviction of a sex offense. (A teacher convicted of any other felony offense is still entitled to a hearing.)} Education Law § 2573(6) states that tenured teachers “shall not be removable except for cause after a hearing as provided by [§ 3020-a] of this chapter,” and § 2590-j(7)(a) states that no tenured teacher “shall be found guilty of any charges except after a hearing as provided by [§ 3020-a] of this chapter” (italics added). New York City Chancellor’s Regulation C-770 reiterates: “Procedures for the imposition of disciplinary action against tenured pedagogical personnel are contained in...[§ 3020-a] of the State Education Law” (p. 1). The UFT website explains, “State education law (section §3020-a) provides for the
disciplining or termination of a tenured teacher for specific charges, such as incompetence, insubordination, corporal punishment, sexual misconduct, etc.” (United Federation of Teachers, 2011a), and the UFT Contract stipulates that tenured teachers “facing disciplinary charges filed…will be subject to Section § 3020-a of the Education Law…” (p. 113)

The state-controlled § 3020-a procedures are thus crucial to teacher accountability in New York City as the sole means through which teachers are held individually accountable for their actual work as teachers. In fact, policy regarding minimum requirements for maintaining membership in the teaching workforce is, in practice, formulated and implemented within the § 3020-a framework. Teachers are evaluated on school sites through the APPR framework. However, it is through the legalistic § 3020-a framework that operative definition and enforcement of minimum standards for teachers’ work is carried out.

The distinction between “rules” and “principles,” explained in Section 2.3, applies precisely to how teacher accountability policy is carried out in New York. As Scott & Triantis (2005) explain this distinction, obligations of parties can be specified “ex ante” at the front-end stage, in written rules—in this case, the bright-line laws and regulations governing teachers’ work. Alternatively, such obligations may remain vaguely-stated or unstated in written rules, and are instead “filled in by the court at the enforcement stage” (p. 10). As the authors summarize: “Rules purport to specify the content of an obligation ex ante, while standards [principles] leave a greater portion of the substantive provisions to be determined after the regulated behavior has occurred” (p. 11, italics added). That is, the distinction between rules and principles is “the

118 “Discipline” and “penalty” are the terms used in state law to refer to sanctions for teachers.
119 As noted above, legal scholars use both the terms “principles” and “standards” to refer to indeterminate laws and regulations, in contrast to bright-line, determinate “rules.” The term “principle” is used here to avoid
extent to which efforts to give content to the law are undertaken before or after individuals act” (Kaplow, 1992, p. 560). By using principles instead of rules, parties “defer” specification of obligations “to the litigation stage.” Furthermore—and essential to § 3020-a proceedings, as discussed below—those principles may be guided by precedent: i.e. “supplement[ed]…with examples that further guide the court” (R. E. Scott & Triantis, 2005, p. 11). As § 3020-a decisions show, this is exactly how teachers’ actual professional obligations are both defined and enforced: through the “litigation” that occurs within the § 3020-a framework, governed by clear principles and strong case precedent. Teacher evaluation occurs in schools and districts, controlled to a great extent at the local level, but teacher accountability for minimum performance is wholly implemented through state-controlled § 3020-a procedures. Understanding the function and guiding tenets of the § 3020-a framework is therefore essential to understanding how teacher accountability functions in New York.

This chapter describes the § 3020-a framework as it exists under the new 2010 Chapter 103 laws, and explains how it operates in New York City. Examples from specific § 3020-a cases as reported in the written decisions issued by Hearing Officers at the conclusion of § 3020-a disciplinary hearings are discussed.¹²⁰

6.1 Overview of New York Education Law § 3020-a Disciplinary Procedures

New York Education Law § 3020-a procedures are a formal, legalistic process, relying heavily on the “doctrine of precedent” (Dworkin, 1967), and constrained by multiple procedural

¹²⁰ This study’s focus is on the § 3020-a process as it directly relates to teachers’ professional teaching work with children, not on cases that involve charges external to the classroom such as criminal activity, “insubordination,” or violations of administrative rules.
rules. Education Law § 3020-a is highly indeterminate: it stipulates no defined standards, measurements, or consequences. The steps and requirements of § 3020-a “disciplinary procedures,” on the other hand, are stipulated in great detail in the 3,200-word law. Overall, the § 3020-a process can be described as an set of extensive measurement and consequence-allocation procedures, with a wide range of consequences allocated on case-by-case basis.

Section 3020-a proceedings operate very much like court proceedings, overseen by a state-appointed Hearing Officer (or IHO) who functions as the judge in § 3020-a proceedings. Through § 3020-a, “charges” are “preferred” against a teacher by the employing school district: in the case of New York City, by the Department of Education. A pre-hearing conference is then held in which the Hearing Officer “hear[s] and decide[s] all motions, including but not limited to motions to dismiss the charges.” In the pre-hearing conference, the Hearing Officer may issue subpoenas, as well as “hear and decide all applications for bills of particular or requests for production of materials or information, including, but not limited to, any witness statement (or statements), investigatory statement (or statements) or note (notes), exculpatory evidence or any other evidence, including district or student records, relevant and material to the [teacher’s] defense.”

If the charges are not dismissed in the pre-hearing stage, a series of legally-mandated hearings are held by the appointed Hearing Officer to determine both the validity of those

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121 Kaplow (1992) argues that when established precedent strongly influences court decisions, “principles” are in practice transformed into “rules”—albeit rules not stated ex ante in written policy. The implications of this in relation to § 3020-a proceedings are discussed in Chapter 9.

122 The official title of the Hearing Officer is “Impartial Hearing Officer,” abbreviated in decisions as IHO.

123 The Hearing Officer is selected by consensus between the teachers union and the school district, from a list provided by the New York State Commissioner of Education.

124 N.Y. Educ. Law § 3020-a(3)(c)(iii)

125 N.Y. Educ. Law § 3020-a(3)(c)(iii)
charges and, as a separate issue, any consequence to be allocated accordingly. He hears testimony from both parties, including witnesses called (school and district administrators, students, parents, and other teachers) who also testify and are cross-examined. Section 3020-a hearings require the school district to present “full and fair disclosure of the nature of the case and evidence against the [teacher],” and the new Chapter 103 § 3020-a amendments specifically state that the legislation in no way “limit[s] the defenses which the [teacher] may place before the Hearing Officer.” ¹²⁶ The teacher is granted “a reasonable opportunity to defend himself or herself and an opportunity to testify in his or her own behalf,” and “[e]ach party…[has] the right to be represented by counsel, to subpoena witnesses, and to cross-examine witnesses.” All hearings are transcribed in full by a stenographer, producing an official record often running into thousands of pages. At the conclusion of each case’s hearings, the Hearing Officer issues a detailed, legally-binding decision that states: (1) The teacher’s “guilt” of the charges preferred—that is, his assessment of whether the teacher’s performance was inadequate, and to what degree—and (2) The consequence he has decided to allocate, based on three factors: his findings of guilt, his consideration of what are termed “mitigating factors,” and § 3020-a precedent. This decision “include[s] the Hearing Officer's findings of fact on each charge, his or her conclusions with regard to each charge based on said findings and…what penalty or other action, if any, shall be taken by the employing board.” ¹²⁷ ¹²⁸

New York State Law stipulates six bases upon which charges may be preferred against a tenured teacher:

¹²⁶ N.Y. Educ. Law § 3020-a(3)(c)(i-a)(B)
¹²⁷ These decisions, filed with the New York State Education Department, do not have a standard title: they are variously titled “Findings and Penalty,” “Findings and Award,” “Opinion and Award,” “Opinion and Decision,” “Hearing Officer’s Decision,” or “Hearing Officer’s Report and Recommendations.”
¹²⁸ N.Y. Educ. Law § 3020-a(4)(a)
• Unauthorized absence from duty or excessive lateness;
• Neglect of duty;
• Conduct unbecoming his position, or conduct prejudicial to the good order, efficiency or discipline of the service;
• Incompetent or inefficient service;
• A violation of the by-laws, rules or regulations of the city board, chancellor, or the community board; or
• Any substantial cause that renders the employee unfit to perform his obligations properly to the service.\textsuperscript{129}

Under state law, these six “offenses” are the exclusive legal bases for initiating charges against a tenured teacher. A tenured teacher cannot be disciplined or terminated (i.e. receive a consequence of any kind for inadequate performance) unless he or she is found guilty of at least one of these six charges, through the legally-required procedures stipulated in New York Education Law § 3020-a.

A charge is an allegation that a teacher has not met one or more particular performance standards. Yet standards are only vaguely implicit in the six permissible charges listed above. A charge that a teacher has provided “incompetent or inefficient” service, for example, implies standard of “competent and efficient” service, as shown in Figure 6.1:

\textsuperscript{129} N.Y. Educ. Law § 2590-j(7)(b); Section 4.2.1 of the Bylaws of the Department of Education
<table>
<thead>
<tr>
<th>Implicit Standard for Teachers</th>
<th>Legal Basis for Initiating &quot;Charges&quot;</th>
</tr>
</thead>
<tbody>
<tr>
<td>A teacher may not be excessively late or absent without authorization</td>
<td>&quot;Unauthorized absence from duty or excessive lateness&quot;</td>
</tr>
<tr>
<td>A teacher has a &quot;duty&quot; which he may not neglect.</td>
<td>&quot;Neglect of duty&quot;</td>
</tr>
<tr>
<td>A teacher's conduct must be appropriate to his position, and must uphold the &quot;good order, efficiency [and] discipline&quot; of the teaching profession.</td>
<td>&quot;Conduct unbecoming his position, or conduct prejudicial to the good order, efficiency or discipline of the service&quot;</td>
</tr>
<tr>
<td>A teacher must be competent and efficient.</td>
<td>&quot;Incompetent or inefficient service&quot;</td>
</tr>
<tr>
<td>A teacher must abide by the by-laws, rules and regulations of the city board and the chancellor.</td>
<td>&quot;A violation of the by-laws, rules or regulations of the city board [or] chancellor&quot;</td>
</tr>
<tr>
<td>A teacher must perform his teaching obligations properly.</td>
<td>&quot;Any substantial cause that renders the employee unfit to perform his obligations properly to the service&quot;</td>
</tr>
</tbody>
</table>

Figure 6.1: Teacher performance standards implicit in legally-permissible § 3020-a charges

Definition of these implicit performance standards is not stated in written policy, however. “Competent” is not defined; “efficient” is not defined. A teacher may be charged with “neglect of duty,” but nowhere is it defined in written policy what a teacher’s duty actually is. Standards for teachers’ work obligations are thus not stipulated ex ante in written policy, but are instead defined ex post in § 3020-a hearings.: § 3020-a hearings determine whether a teacher has or has not failed to meet an undefined standard implicit in the charge made against that teacher, guided by strong precedent.
In addition, the law prescribes no specific consequences for ultimately being “found guilty” of one of the six legally-specified “charges.” Rather, a range of legally-permissible consequences (referred to as “penalties”) is stipulated, including written reprimands, remedial training, fines, unpaid suspensions, and termination:

In those cases where a penalty is imposed, such penalty may be a written reprimand, a fine, suspension for a fixed time without pay, or dismissal. In addition to or in lieu of the aforementioned penalties, the hearing officer, where he or she deems appropriate, may impose upon the employee remedial action including but not limited to leaves of absence with or without pay, continuing education and/or study, a requirement that the employee seek counseling or medical treatment or that the employee engage in any other remedial or combination of remedial actions.\(^{130}\)

The consequences allocated to an individual teacher who is found guilty as charged can be anything from this list, decided on a case-by-case basis by the § 3020-a Hearing Officer.

### 6.2 The Impact of “Chapter 103” on § 3020-a Procedures

The 2010 Chapter 103 amendments to the New York State Education Law added a new section, Education Law § 3012-c, and two notable provisions to the substance of Education Law § 3020 and § 3020-a. None of these changes significantly increase the determinacy, or ex ante specificity, of the § 3020-a procedures as a teacher performance accountability system.\(^{131}\) As explained in Chapter 5, the new legal provisions instituted through Chapter 103 simply link a

\(^{130}\) N.Y. Educ. Law § 3020-a(4)(a)

\(^{131}\) Chapter 103 also added three provisions relevant to the technical—not substantive—proceedings of § 3020-a in cases concerning charges of “pedagogical incompetence based solely upon a…pattern of ineffective teaching.” The first stipulates that all such cases must be presided over by a single hearing officer, prohibiting teachers from choosing a “three member panel,” which was previously an option. The second requires that such cases be subject to “expedited hearings”: limiting the time period over which hearings take place to 60 days (although not limiting the number of hearings that may take place within that period), limiting permissible adjournments, and requiring that the hearing officer issue a decision within ten days. (Current law also requires that hearings take place within a time period of 60 days, but permits “limited extensions,” and grants 30 days for the hearing officer to issue a decision [New York City Department of Education, April 15, 2010].) The third new provision requires that records of hearing officers’ “on time” case completion be provided during the hearing officer selection process.
teacher’s annual APPR rating with a possible charge of “incompetence”: the law defines two, consecutive year-end “Ineffective” ratings as “a pattern of ineffective teaching,” and defines “a pattern of ineffective teaching” as “very significant evidence of incompetence.”\footnote{N.Y. Educ. Law § 3012-c(6)} The new law also stipulates that initiation of an incompetence charge requires the Department of Education’s “allegation” that a year-long Teacher Improvement Plan had been “developed and substantially implemented” for that teacher.\footnote{N.Y. Educ. Law § 3020-a(3)(c)(i-a)(B)} In New York City (as in all school districts across the state), the new law thus gives the Department of Education the right to initiate a charge of incompetence against a teacher based on an allegation of a “pattern of ineffective teaching” as evidenced by two consecutive “Ineffective” APPR ratings. This right is granted to the Department along with significant remedial responsibilities to less-than-effective teachers specified in the new Teacher Improvement Plan requirement. With respect to the § 3020-a “disciplinary procedures,” the 2010 legislative amendments and additions can be summarized as shown in Figure 6.2:

Figure 6.2: 2010 Chapter 103 legislation with respect to § 3020-a “disciplinary procedures”

The new legislation further stipulates that an ultimate finding of incompetence may “form the basis for just cause removal” (i.e. termination); termination is only one of the penalties for

\begin{align*}
\text{Two, consecutive annual } & \Rightarrow \text{“A pattern of ineffective teaching” } \Rightarrow \\
\text{“ineffective” ratings} & \text{“Very significant” evidence of incompetence } \Rightarrow \\
& \text{2) Grounds for bringing a § 3020-a charge} \\
& \text{of incompetence, based on an allegation} \\
& \text{of “a pattern of ineffective teaching”}
\end{align*}
incompetence that the Hearing Officer may decide to impose on a teacher, based on a range of considerations explained in Section 6.4.4 below.

After the DOE brings charges of incompetence against a teacher, a series of § 3020-a hearings are conducted regarding the case. Through the course of those hearings, the Hearing Officer judges whether or not the teacher has a “pattern of ineffective teaching,” as alleged by the Department of Education and further, as a separate matter, whether the teacher is “guilty of incompetence.” A teacher’s APPR Ineffective ratings are not accepted as conclusive measurements of performance; the Hearing Officer re-examines the ratings, using standards unique to the “disciplinary hearing” process, in an exhaustive review of all evidence that ratings were based on along with other evidence and arguments presented by the teacher (who is almost always represented by a teachers union lawyer). The Hearing Officer also thoroughly evaluates the sufficiency of the DOE’s efforts to provide remedial training to the teacher prior to bringing § 3020-a charges, reviewing evidence and testimony presented both by the DOE and the teacher’s defense. If the Hearing Officer finds that a teacher’s two, consecutive Ineffective ratings were legitimate, the Department of Education’s allegation of “a pattern of ineffective teaching” is proven.

At the conclusion of the hearings, the Hearing Officer decides what penalty should be assessed against the teacher, given his particular findings of guilt, any mitigating factors that he has decided are relevant, and established § 3020-a precedent. The level of “ineffective teaching” justifying dismissal is not defined ex ante in written law; a Hearing Officer may decide that a teacher has performed incompetently for two consecutive years, but may also decide against termination. To terminate a teacher under Chapter 103, the Department of Education (DOE) must prove that:
The teacher is in fact guilty of “a pattern of ineffective teaching”; the teacher’s ineffective teaching has reached a level sufficient to establish that the teacher is “guilty of incompetence”; and the DOE has made a significant effort to help the teacher improve, and the teacher is demonstrably irremediable.

The ultimate determination of both “guilt” and “penalty” is made alone by the state-appointed Hearing Officer at the conclusion of § 3020-a proceedings. His sole decision, finally, is the culmination of the extensive, multi-year APPR/§ 3020-a teacher accountability system.

6.3 § 3020-a as a Teacher Accountability System

The § 3020-a policies do not use the words of the indeterminate accountability policy model presented in this dissertation: standard—measurement procedures—measurement result—consequence-allocation procedures—consequence. However, the meaning of the words used in the policies corresponds precisely with those terms, as follows:

- **Standard:** A “charge preferred” is an allegation that a teacher has not met a particular standard.

- **Measurement procedures:** The §3020-a hearings are the formal measurement procedures that are legally required to determine whether or not a teacher has in fact failed to meet a particular standard.

- **Measurement result:** “Found guilty” means a determination that one or more standards—given specific definition in the course of the hearings—has in fact not been met. A finding of “guilty” is thus simply the measurement result yielded by the extended § 3020-a “measurement procedures.”
- **Consequence-allocation procedures**: A finding of “guilt” states conclusively that some minimum standard (defined in the course of the hearings) has not been met, and provides “just cause” for the implementation of a consequence. However, determinate consequences are not stipulated by law: after arriving at the measurement result, a subsequent consequence-allocation procedure occurs during which the Hearing Officer considers his findings, along with both “mitigating factors” and § 3020-a case precedent, to decide on the penalty that is appropriate in that single, unique case.

- **Consequence**: Finally the Hearing Officer allocates a specific “penalty”—i.e. consequence—to the teacher.

In sum, then, New York State Law states that “charges may be initiated” (meaning an assertion made that a teacher has not met some implicit standard), but:

- Provides no definition of the standards that teachers must meet;
- Specifies no measurement criteria; and
- Does not specify what consequences will be allocated if it is determined that a particular undefined standard has not been met.

What *is* stipulated ex ante in written law is specification of *procedures* for measuring and *procedures* for determining consequences, both with respect to standards which themselves are given definition ex post in the § 3020-a proceedings. Figure 6.3 shows the § 3020-a “disciplinary proceedings” as an accountability process:
Clearly, the most serious consequence specified in these policies is loss of employment as a teacher: “The commissioner may annul upon cause shown to his or her satisfaction any certificate of qualification granted to a teacher” (italics added), but teachers “shall hold their respective positions during good behavior and satisfactory teaching service, and shall not be removable except for cause after a hearing as provided by section three thousand twenty-a [§3020-a] of this chapter” (italics added). As discussed, however, the law provides no ex ante definition of “good behavior” or “satisfactory teaching service” minimally sufficient to remain employed as a teacher. Nor does the law provide ex ante definition of “cause” that provides adequate basis for removing a teacher from his or her position. In other words, New York law clearly implies some minimum standard for being employed as a public school teacher that one could theoretically fall below, but does specify it ex ante in written policy. Rather, teacher standard for minimum teacher competence is entirely defined (and enforced) ex ante through New York § 3020-a proceedings, using the principles described in Section 6.4.4 below.
6.4 Education Law § 3020-a Decisions

Thus, minimum requirements for maintaining membership in the teaching workforce, and the standards, measurements, and consequences applied to teachers with respect to their job performance (i.e. teaching), are defined and enforced through § 3020-a proceedings. Yet while not defined ex ante in written policy, these crucial elements of teacher accountability are clearly laid out in the decisions issued by Hearing Officers at the conclusion of § 3020-a hearings. The remainder of this chapter presents analysis of those decisions: explaining the tenets guiding the proceedings, and discussing the in-practice “rules” utilized in § 3020-hearings established through precedent. Finally, examples are presented showing how these in-practice rules have been applied to teachers in actual cases.

6.4.1 Obtaining § 3020-a Decisions

A New York Freedom of Information Law (FOIL) request was submitted requesting § 3020-a decisions for New York City teachers filed for a ten-year period from 1997 to 2007. The request was specifically for:

All written decisions rendered by the Hearing Officer at the conclusion of disciplinary hearings conducted under Section 3020-a of the Education Law between January 1, 1997 and January 1, 2007 regarding charges brought against teachers employed by The Board of Education of the City School District of New York.

This request was partially successful. First, the State Education Department prohibits release of § 3020-a decisions in which the teacher was found “innocent” of all charges preferred, and access to those decisions was therefore denied. \(^{134}\) However, the lawyer assisting with the FOIL request

\(^{134}\) We appealed the refusal to provide the innocent decisions, requesting those decisions with all identifying information redacted. The appeal was denied. This is unfortunate because information on bases for findings of innocence is essential to a full understanding of the § 3020-a framework.
was told by phone (by the head Records Access Officer in the New York State Education Department) that a total of 270 decisions had been filed over the ten-year period: of these, 263 included a judgment of guilt of at least one charge while seven were exonerated of all charges. Since the number of “innocent” decisions was so small, access was apparently granted to almost all of the decisions submitted. A total of 208 decisions were subsequently received—sent in three separate mailings, over the course of over a year, requiring repeated phone calls and written reminders. The New York State Education Department now claims that these 208 decisions represent the total required by the FOIL request, but has refused to confirm this in writing.

The 208 decisions were reviewed to determine which related directly to teachers’ professional performance in classroom teaching. A total of 53 decisions regarded charges unrelated to teaching performance (such as insubordination or criminal activity) and were therefore not relevant to the study. All decisions related to teachers’ professional performance were analyzed: a total of 155 decisions. The decisions are lengthy documents, averaging approximately 40 pages in length; many decisions run up to 100 pages or more.

6.4.2 § 3020-a Decisions Provide an Essential Source of Data

From one point of view, it could be argued that the content of § 3020-a decisions is an inconsequential part of the teacher accountability picture in New York City. Assuming that 270 decisions were filed over the decade, as first stated by the State Education Department, this represents an average of 27 per year, constituting a third of one percent of the total New York

135 This total represents an average of approximately 27 cases per year, constituting 0.035% of New York City’s 78,000 teachers.
136 A FOIL request for “the total number of decisions” issued each year for the period was subsequently filed. This request was denied; the Records Access Officer wrote: “Please be advised that SED [State Education Department] does not possess a ‘record’ of the total number of decisions.”
City teacher workforce. However, although the number of decisions represents a tiny fraction of New York City’s teachers—and the number of decisions that relate to teachers’ professional performance an even tinier fraction—their narrative content provides an essential source of data since it is only through § 3020-a proceedings that teacher accountability for inadequate teaching is implemented.

The decisions issued at the conclusion of state-mandated hearings on “charges preferred” against a teacher are legally-binding documents which reveal operational definitions of standards, measurements, and consequences that are ambiguously stated or left unspecified in teacher policies described above as indeterminate: standards for lateness and absence, verbal abuse, corporal punishment. These decisions underscore the fact that while stipulated vaguely ex ante in government policies, the professional obligations (and prohibited behavior) of teachers are actually given specific definition ex post in § 3020-a proceedings. Perhaps most importantly, however, the § 3020-a decisions provide critical evidence regarding operational definitions of the minimally acceptable level of teacher competence. Decisions reveal the standards used to define and determine unacceptable incompetence—and, at the same time, adequate competence to remain employed as a public school teacher. In other words, minimum standards for being a teacher are defined and enforced within the § 3020-a framework, and explicated in the § 3020-a decisions.

Further, the decisions show the specific metrics used to arrive at these determinations. As it turns out, several key “mitigating factors” (as they are termed) are considered, including the

137 The cumbersome nature of § 3020-a proceedings along with their high cost seems likely to deter the school district from attempting to dismiss teachers except in the very most extreme cases. According to the New York State School Boards Association, § 3020-a proceedings addressing pedagogical incompetence extend over an average of 830 days over three years at an average cost of $313,000. (See http://www.nyssba.org/index.php?src=gendocs&ref=3020-a%20Teacher%20Discipline%20Reform&category=advocacy_legislation)
assessed degree of incompetence, a teacher’s years of employment, the extent of the school’s efforts to remediate the teacher and, ultimately, whether the Hearing Officer believes that the teacher may be remediable. As shown below, a very strong emphasis on teacher remediation (or “rehabilitation” as it is often called) is evident in these decisions. In fact, excepting extremely egregious cases, the established standard for removing a teacher from the teacher workforce is not the adequacy of his or her demonstrated teaching competence, but rather whether or not he or she is judged to have a potential capacity to be competent. The decision to terminate a teacher requires extensive proof that a teacher has not performed competently over a significant period of time and, further, persuasive evidence that the teacher is in fact “incorrigible,” with no possibility that additional remediation would lead to improvement.

6.4.3 § 3020-a Proceedings and Guidelines

As explained, a state-appointed Hearing Officer functions as the “judge” in § 3020-a proceedings, with legal authority granted by New York State Law Article 75. The legally-binding decision issued at the conclusion of hearings detail his findings; the grounds for those findings; the “penalty” he determines to be appropriate; and the specific reasoning that supports all of these conclusions, including relevant precedent and “mitigating factors” considered. A typical § 3020-a decision begins:

The parties were afforded full opportunity to offer evidence and to examine and cross-examine witnesses. The evidence adduced, the legal authorities presented, and the positions and arguments set forth by the parties have been fully considered in the preparation and issuance of these findings and Award. These findings follow. (p. 2)\textsuperscript{138}

\footnotesize{\textsuperscript{138} Case no. 5058 (2005)}
The role of precedent is paramount in § 3020-a proceedings, as also stipulated in Article 75. Hearing Officers have a legal duty to uphold precedent established by previous § 3020-a cases, and Hearing Officers often reference § 3020-a precedent in their decisions. In one case on corporal punishment, for example, the Department proved that a first grade teacher had ordered several students to beat up another student, pulling down the window shades and closing the classroom door while they did so. The penalty allocated to the teacher was a fine of 90 days of salary. In his discussion of his penalty decision, the Hearing Officer wrote:

In addressing the issue of penalty, the Hearing Officer pays particular attention to the number of corporal punishment cases which were submitted by the [teacher]. The array of penalties imposed by other Hearing Officers for similar instances of corporal punishment ranged from the leveling of a monetary fine through to the imposition of a short term suspension. In contrast...no cases were submitted by the Department addressing the issue of penalty in corporal punishment cases. Absent any further guidance on this issue, the Hearing Officer is compelled to impose a penalty which is commensurate with that imposed by others. (p. 19, italics added)

A high degree of consistency is thus evident across cases; the principles and guidelines fundamental to these proceedings appear to be well-settled and stable.

As noted, a strong emphasis on teacher remediation is evident in the § 3020-a decisions, with especially relevant implications for the new teacher evaluation system. The prevailing, explicitly-stated standard for dismissing a teacher for incompetence requires the Department of Education to prove: (1) that the teacher has performed in an incompetent manner, and further, (2) that the teacher is irremediable: i.e. not even a remote possibility exists that the teacher could be “rehabilitated.” In order to prove that a teacher is irremediable, however, it is obviously

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139 As noted above, the term “penalty” is exclusively used in § 3020-a decisions to refer to what this study calls “consequences.”
140 Case no. 5288 (2006)
141 The teacher is referred to as “Respondent” in § 3020-a decisions—that is, the party “responding” to the Department’s charges. (In civil court, the equivalent would be the term “defendant.”)
necessary to prove that significant remediation efforts have been made, and also that those
efforts subsequently failed because the teacher is irremediable, rather than because the remedial
efforts were inadequate. It seems likely that the standard for schools’ obligation to “remediate”
teachers under the requirement for “Teacher Improvement Plans” now mandated by New York
State Law will be at least as high as that evident in the cases presented below, which appears to
be a fairly high standard. (Chapter 9 considers the implications of this resource-intensive teacher
remediation emphasis for teacher accountability, for school system function and, most
importantly, for the quality of children’s education.)

In the following, the guiding principles used in § 3020-a proceedings are explicated. Case
examples are presented showing that indeterminate policies regarding teacher absences and
prohibition of verbal abuse and corporal punishment are given specific definition within the §
3020-a policy framework. Finally, operative standards for minimum teacher competence are
examined; these too are defined and enforced, ex post, within the § 3020-a framework. Several
examples of teachers who were not terminated for incompetence are compared with several
examples of teachers who were, in order to show the apparent standards and metrics used to
make those determinations.

6.4.4 Key § 3020-a Principles

As explained, Hearing Officers are required to file an official decision with the State
Education Department at the conclusion of each § 3020-a case they preside over, in which they
explain and justify their findings and conclusions. These decisions often reference the specific
principles and guidelines that decisions are required to adhere to. As one Hearing Officer writes:

Section 3020-a of the Education law of the State of New York requires a Hearing Officer:
1) to base the findings on each charge; 2) to base the determination concerning
disciplinary action solely on the record in the proceedings; and 3) to set forth the reasons and the factual basis for the determination. (p. 11)\textsuperscript{142}

Another states:

[T]he parties do not engage an arbitrator to impose his own version of “industrial jurisprudence.” Instead, they delegate the arbitrator with the responsibility of determining if the actions charged were proven and, if so, was the proposed penalty rational and rooted in the terms and conditions of employment. (p. 20)\textsuperscript{143}

Analysis of § 3020-a decisions reveals several fundamental principles utilized by Hearing Officers in § 3020-a proceedings, both in assessing a teacher’s guilt and in subsequent decision-making regarding the appropriate penalty to allocated. These principles are supported by strong precedent, referred to repeatedly in the decisions, which results in a high level of consistency evident across decisions. Specific principles identified are as follows:

1. A teacher is assumed innocent until proven guilty, and is given full “benefit of the doubt.” The burden of proof of misconduct lies entirely with the Department of Education.

2. The number of years that a teacher has been employed is a strong mitigating factor in deciding the penalty allocated.

3. A teacher’s apparent remorse, acceptance of responsibility for proven misconduct, and expressed willingness to attempt to improve are strongly considered in penalty decisions. Additionally, the Hearing Officer’s personal assessment of a teacher’s affective characteristics such as caring and good will is frequently emphasized in assessing penalties.

\textsuperscript{142} Case no. 5353 (2006)
\textsuperscript{143} Case no. 4818 (2004),
4. A preeminent emphasis on teacher “rehabilitation”—rather than teacher competence—is evident in § 3020-a decisions. The standard for teachers established in § 3020-a proceedings is not a teacher’s demonstrated level of competence, but rather the teacher’s potential for rehabilitation. The rehabilitation of teachers is clearly defined as the school system’s responsibility.

5. The requirement for what is called “progressive discipline” is paramount in all but the most egregious cases.

6. Termination is viewed as an extreme penalty, and is usually considered only after extensive school efforts to rehabilitate the teacher and application of “progressive discipline,” over the course of multiple years.

Hearing Officers are obligated by law to adhere to the “just cause standard,” which guides § 3020-a proceedings and underpins several of these principles.\textsuperscript{144} For example, the just cause standard specifies factors dictating the consequences that may be allocated to teachers, as well as the imperative of case precedent. As one Hearing Officer writes:

\textit{The level of discipline permitted by the just cause principle} will depend on many factors, including the nature and consequences of the employee’s offense, the clarity or absence of rules, the length and quality of the employee’s work record, and the practices of the parties in similar cases (italics added).\textsuperscript{145}

The just cause standard also strongly emphasizes the concept of teacher rehabilitation in the allocation of discipline, as discussed in more detail below.

In the following, each of these six key principles is explained in more detail, and specific cases are presented which illustrate their application.

\textsuperscript{144} N.Y. Education Law § 3020-a was amended in 1994 to include the “just cause standard.”

\textsuperscript{145} Case no. 5124 (2005)
1) The teacher is assumed innocent until proven guilty, and the burden of proof lies entirely with the Department of Education

The Department of Education bears the full burden of proof in § 3020-a proceedings: “the risk of nonpersuasion is imposed upon the Complainant [the Department of Education] and not the teacher.”\textsuperscript{146} Thus, “where the evidence is equally balanced, a ruling against the Complainant [the Department] and in favor of the Respondent [the teacher] is in order. (p. 10).\textsuperscript{147}

The evidentiary standard used in § 3020-a is the “preponderance of the evidence”: the Department must prove that it is more likely than not that the teacher engaged in the misconduct charged. One Hearing Officer explains, for example:

It is apparent under §3020-a that the Department carries the burden of proof and must substantiate its allegations by a preponderance of the evidence. In other words, the Department has to demonstrate that it is more likely than not that the events occurred as described. (p. 14)\textsuperscript{148}

“Substantial evidence” is not sufficient proof of misconduct under § 3020-a: “the proper standard of proof in teacher disciplinary cases brought under N.Y. Educ. Law 3020-a is the preponderance of the evidence and not substantial evidence.”\textsuperscript{149,150}

2) Progressive Discipline

“Progressive discipline” means that “penalties” allocated to teachers must be imposed with gradually increasing severity over years of repeated § 3020-a charges and proceedings, to give teachers adequate opportunity to rectify their behavior. This is fundamental to § 3020-a

\textsuperscript{146} The employing school district is referred to as the “Complainant” and the teacher is referred to as the “Respondent” in § 3020-a proceedings.
\textsuperscript{147} Case no. 4435 (2003)
\textsuperscript{148} Case no. 5260 (2006)
\textsuperscript{149} Case no. 4435 (2003)
proceedings: “the concept of ‘progressive discipline’ is part of the just cause concept which we apply under §3020 to the §3020-a disciplinary cases” as one Hearing Officer writes. He continues:

…disciplinary for all but the most serious offenses must be imposed in gradually increasing levels. The primary object of discipline is to correct rather than to punish. Thus, for most offenses, employers should use one or more warnings before suspensions, and suspensions before discharge. (p. 36-37)\textsuperscript{151}

Another Hearing Officer explains: “A teacher, who, on numerous occasions, undertook sexually harassing acts toward students reasonably may be terminated after he was counseled and failed to reform” (italics added).\textsuperscript{152} Inherent in the concept of progressive discipline is both:

1. The protection of teachers’ rights; and
2. A strong emphasis on teachers’ individual learning and growth, as examined more closely below.

3) \textit{Years of Employment}

The length of a teacher’s employment is heavily weighted in deciding penalties. This appears to reflect two key ideas. First, Hearing Officers stress the importance of recognizing the duration of a teacher’s “service.” Second, more years of employment are assumed, by definition, to indicate a teacher who is essentially competent, despite evidence presented to the contrary.

In one case, for example, the Hearing Officer wrote that “the totality of the misconduct for which Respondent has been found guilty could warrant termination if Respondent did not have thirty years of satisfactory service,”\textsuperscript{153} instead ordering a one-year suspension.\textsuperscript{154} In another case, the Department presented convincing proof, including testimony from five elementary

\begin{footnotesize}
\begin{enumerate}
\item[151] Case no. 5124 (2005)
\item[152] Case no. 4170 (2003)
\item[153] Case no. 4252 (2002)
\item[154] All suspensions under § 3020-a are unpaid.
\end{enumerate}
\end{footnotesize}
school students, that a third grade teacher had verbally abused children on numerous occasions (and had, in fact, also been the subject of previous § 3020-a proceedings one year prior for charges of corporal punishment). The Hearing Officer concluded that the Department had proven that she had engaged in conduct that clearly “constitute[d] verbal abuse of the children” (italics added).\textsuperscript{155} At the same time, however, he emphasized that she had been a teacher for 30 years and, based on her record of annual “Satisfactory” ratings, almost entirely as “a good one.”\textsuperscript{156} He argued that she was a “veteran teacher, a professional” who “surely in her heart of hearts” knew that she had engaged in misconduct. Thus, despite his conclusive finding that she had committed verbal abuse and her repeated denials of any wrongdoing, he returned her immediately to the classroom—citing her years of employment and his presumption of her (unexpressed) remorse, and stating that there was “[n]o reason to believe that [she] cannot be rehabilitated and continue to work as a good teacher.”

4) Teachers’ Affective Characteristics

As shown in the previous case, teachers’ affective characteristics are often emphasized in § 3020-a proceedings. Hearing Officers frequently cite teachers’ apparent or presumed remorse and acceptance of responsibility for the misconduct proven as critical factors in their penalty decisions. As one Hearing Officer specified, “the assumption of responsibility” and “remorse for one’s conduct” are “significant issues to be considered before imposing a penalty” (p. 126).\textsuperscript{157} A teacher’s demonstrated—or simply claimed—willingness to learn and improve is considered to be a critical factor, as clear in several cases presented below. Furthermore, the Hearing Officer’s

\textsuperscript{155} Case no. 5210 (2005)
\textsuperscript{156} For years, over 98% of New York City teachers received annual ratings of “Satisfactory.
\textsuperscript{157} Case no. 4984 (2006)
presumption of a teacher’s positive, inner characteristics such as caring and good will (even when those characteristics are not in evidence) is often emphasized in assessing penalties.

5) Rehabilitation: Teacher Learning and Growth

Perhaps the most powerful principle operating in § 3020-a proceedings is the paramount goal of teacher rehabilitation, which strongly dominates § 3020-a penalty decisions. As one Hearing Officer explains: “The statute (§ 3020(a)) provides for and encourages remediation in cases where one’s career might be redeemed” (p. 20). Another writes:

Implicit in the just cause standard—where proof of misconduct has been found—is the issue of rehabilitation and/or remediation. The theory being that an employee who has engaged in misconduct should be examined to see if through the judicious application of discipline, they might be restored to service as an acceptable, properly functioning employee (italics added).

Teacher rehabilitation is viewed as a fundamental responsibility of schools, and a worthy goal in and of itself. Hearing Officers also appear to assume that the rehabilitation of poorly performing teachers is usually possible to accomplish given sufficient school efforts towards that end. Within the § 3020-a framework, in fact, accomplishing the end of “rehabilitating” teachers appears to override almost all other considerations, including years of inadequate teaching performance. Core to the concept of rehabilitation is an emphasis on teacher reflection and learning: the goal of rehabilitation is that teachers reflect on their past errors, and learn how to teach more competently. “Penalties are sometimes used as corrective instruments,” as one Hearing Officer wrote, “by giving a [teacher] suspension without pay or other similar devises

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158 Case no. 4818 (2004)
159 Case no. 3965 (2002)
[sic] to permit [him] to contemplate his actions and to attempt to modify his behavior” (pp. 8-9).\textsuperscript{160}

Furthermore, the rehabilitation of teachers is defined as the responsibility of the school system. Schools are required to continue extensive efforts to rehabilitate a teacher until it has been established that any possibility of rehabilitation is nonexistent. As one Hearing Officer stated: “The §3020-a statue requires employing boards to provide the remediation and training necessary for a teacher to perform in a satisfactory manner” (p. 45, italics added).\textsuperscript{161} Another Hearing Officer emphasized administrators’ primary responsibility for rehabilitating teachers: “responsibility lies with administrators regarding the supervision of teachers, [and] particularly so with a teacher possessing documented pedagogical deficits.” The responsibility of a teacher for his or her own rehabilitation, on the other hand, is defined in fairly passive terms. In the above case, for example, after stressing that school administrators carry the major responsibility for a teacher’s rehabilitation, the Hearing Officer explained the teacher’s role in this process:

[I]t is incumbent upon that teacher to take the initiative to at least give those administrators notice of concern he has regarding his educational program. This is an essential aspect of professionalism and is essential for a program to rehabilitate a teacher. (p. 63)\textsuperscript{162}

Another Hearing Officer explained the teacher’s responsibility simply as “avail[ing] himself of assistance” that is provided to him (p. 21).\textsuperscript{163}

\textsuperscript{160} Case no. 4019 (2002)
\textsuperscript{161} Case no. 3414 (2000)
\textsuperscript{162} Case no. 5234 (2006)
\textsuperscript{163} Case no. 4818 (2004)
6) Standard for Termination

Within the range of penalties that Hearing Officers are authorized to impose, termination is viewed as extraordinarily severe: to be ordered only as a last-resort penalty after years of “progressive discipline” have demonstrably failed to address a teacher’s performance deficiencies. (See Figure 6.4 below for a summary of penalties allocated.) As one Hearing Officer explains, termination is considered “the ‘capital punishment’ of labor disputes” (p. 14).\textsuperscript{164} A tenured teacher has what is defined as a “property interest” in his or her teaching employment, which appears to be one of the strong factors ruling against teacher termination, and dismissal is ordered only in cases of extreme misconduct along with convincing proof that no possibility of “rehabilitation” exists. One Hearing Officer, for example, cited a Commissioner of Education’s statement that “a teacher should not be terminated unless a district has shown that ‘a teacher is so incompetent that he is unable to further the educational development of students assigned to his classroom...[and] there is no likelihood that his competence will improve’” (p. 22, italics added).\textsuperscript{165 166} He further reiterated this statement, writing:

[T]ermination is a drastic penalty when measured in terms of the personal life of the affected teacher [and] should be reserved for those situations [where] the record clearly establishes that there is no reasonable expectation that the teacher would be able to render competent service in the future…” (p. 23)

A teacher’s proven teaching incompetence, in and of itself, is thus not necessarily a “terminable” offense. For example, one Hearing Officer described the nature of the “most

\textsuperscript{164} Case no. 4972 (2005)
\textsuperscript{165} Case no. 3536 (2000)
serious offenses” which may potentially warrant immediate termination—not one of which relates to a teacher’s professional competence, as follows:

“Some offenses are sufficiently serious to justify serious discipline for a first offense. These include theft, physical attacks, willful and serious safety breaches, gross insubordination, and significant violations of law on the employer’s time or premises.” (p. 36-37, italics added)\textsuperscript{167}

Similarly, another wrote: “there are some types of misconduct which are so egregious that discharge may be the only option. One such type of misconduct is the continued exposure of students to physical and emotional injury” (italics added).\textsuperscript{168} In a case involving a teacher who was proven to have engaged in both verbal abuse and corporal punishment of her students, for example, the Hearing Officer accepted the Department’s argument that the teacher’s “offenses” had met “a degree of severity as to warrant her immediate discharge,” and that there was “no basis to apply progressive discipline.” As he explained his decision to terminate the teacher:

…such severe discipline [termination] applies only when the offense is particularly egregious or, although [offenses have been] cumulative in nature, there is no hope that the offender can be rehabilitated.” (italics added)\textsuperscript{169}

In another case, however, a Hearing Officer rejected discharge as a “draconian penalty” for a teacher who was found to have hit a student with an electrical cord and punched him in the face.\textsuperscript{170}

\textit{The Role of “Rehabilitation” in Teacher Termination}. Proof that there is not even a remote possibility of rehabilitating a teacher is emphasized in § 3020-a decisions as a necessary condition for terminating that teacher. In one example, a Hearing Officer found a teacher to be

\begin{footnotes}
\item[167] Case no. 5124 (2005)
\item[168] Case no. 3656 (2000)
\item[169] Case no. 5051 (2005)
\item[170] Case no. 5062 (2005)
\end{footnotes}
incompetent based on three years of extensive evidence presented in 22 days of hearings, writing: “The Department has clearly demonstrated by a preponderance of the evidence that Respondent is guilty of incompetence more often than not.” However, he refused to terminate the teacher, explaining: “Respondent has produced evidence that she is capable of providing competent instruction…and still retains the potential to produce a satisfactory educational product. I believe that with appropriate remediation, [she] may be rehabilitated to the point of competence.”

In another case, the Department brought charges of incompetence against a teacher who had received three consecutive annual ratings of “Unsatisfactory,” presenting exhaustive proof of the teacher’s dismal teaching performance over a three-year period; the Hearing Officer thus upheld the three “Unsatisfactory” ratings that the school had given. Based on a proven record of three years of extensive remedial efforts, the Department’s lawyer also argued that “no amount of rehabilitation could help the [teacher’s] pedagogical problems” (p. 19). The Hearing Officer wrote, finally, that he was persuaded that “termination is the only appropriate penalty.” The reason he provided to support this decision, however, was not the abundant evidence presented of three years of abysmal performance. Rather, he explained, he decided to terminate the teacher because despite the district’s extraordinary efforts over the course of several years the teacher had shown “little or no effort on his part to improve” (p. 25). In a third case, the Hearing Officer justified his decision to terminate a teacher, stating:

While reluctant to deprive anyone of their employment…[s]urely employees whose misconduct represents a threat to the physical and psychological welfare of students and

\footnote{Case no. 5158 (2006)}
who hold forth no promise that they can be rehabilitated cannot be returned to work. (p. 18, italics added)\(^{172}\)

This typical example is significant for several reasons. First, the standard for termination described in the decision was not based on a teacher’s inadequate teaching performance, but on the unambiguously proven fact that the teacher represented an actual “threat” to the welfare of students. Second, the threat cited does not refer to students’ learning or academic experience whatsoever—only their physical and psychological wellbeing. Finally, central to the argument presented by this Hearing Officer is that a teacher’s demonstrated threat to the minimal wellbeing of students, in and of itself, does not necessarily indicate that termination is the appropriate penalty. His assessment that there was no possibility that the teacher could be “rehabilitated” was essential to his decision. This strong emphasis on teacher rehabilitation runs throughout the § 3020-a decisions presented below.

### 6.5 § 3020-a Case Examples

The following describes 22 examples of the four kinds of cases relevant to teachers’ professional obligations and performance: (1) Teacher absences; (2) Verbal abuse; (3) Corporal punishment; and (4) Incompetence. As discussed above, the role of precedent is central to § 3020-a proceedings. Strong consistency is thus evident across § 3020-a decisions, and the 22 cases presented here are representative of the 155 decisions analyzed.

The Department of Education only brings cases to § 3020-a proceedings that are believed warrant termination. However, in the majority of cases termination is not ordered (see Figure 6.4, below, and Appendix J for additional details on convictions and penalties). As Figure 6.4 shows,

\(^{172}\) Case no. 5051 (2005)
a Hearing Officer’s determination of a teacher’s “guilt” as charged by the Department (that is, a teacher has in fact been excessively absent, been consistently incompetent, verbally abused children, etc.) does not necessarily lead to termination. The Hearing Officer’s decision regarding what penalty to allocate (and whether or not to permit a teacher to continue as a classroom teacher) is based on a range of factors in addition to his substantive “findings of guilt,” as explained in Section 6.4.4 above and evidenced in the cases presented below.

Figure 6.4: Penalties allocated through New York City § 3020-a proceedings (1997-2007)
6.5.1 Teacher Absences

As discussed in Section 5.5 above, government policies clearly stipulate standards for teachers’ attendance and detailed requirements for measuring their attendance. However, no consequences for failing to meet the attendance standard are stipulated ex ante in written policy, and, as explained above, policies regarding teacher absences are therefore categorized as indeterminate. The § 3020-a cases regarding teacher absences show that policies do not, in fact, “hold teachers accountable” for meeting a particular attendance standard defined ex ante: the standard that teachers are actually held accountable to is defined (and subsequently enforced) ex post, in § 3020-a proceedings. One Hearing Officer explicitly emphasized the indeterminate nature of attendance policies, writing: “An employee can technically exceed what may appear to be a ‘policy,’ yet not be considered excessively absent or late once all the circumstances…have been examined.”¹⁷³ Four typical examples are presented here to illustrate this.

Teacher Absence—Case no. 4932¹⁷⁴ In a first example, the Department proved that a middle school Spanish teacher was absent 38 times in 2000-01, 25 times in 2001-02, and 50 times in 2002-03. She had been evaluated as “Unsatisfactory” for all three years. The teacher’s lawyer argued that “her 113 absences over a three-year time span had no impact on her students.”¹⁷⁵ The Hearing Officer wrote, however, that he did not find that argument persuasive, further noting:

It is a well-established principle of employee relations that individuals may be terminated for excessive absenteeism…. Although there is no unanimity as to the meaning of the term “excessive” the employer must be able to regulate their workforce to insure mission

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¹⁷³ Case no. 4303 (2003)
¹⁷⁴ Case no. 4932 (2005)
¹⁷⁵ Teachers in § 3020-a proceedings are provided with one—or sometimes two—lawyers by the United Federation of Teachers.
performance...If absences are excessive to the extent that they adversely impact on teaching performance and productivity, or the learning process, then discipline may be imposed (p. 13).

He additionally provided a negative assessment of the teacher’s testimony during the hearings:

…[she] was evasive and vague…and at times [she] appeared to be out of contact with her surroundings. She repeatedly failed to understand the questions put before her…she rationalized her absences and related behavior and was often unable to put forth a straightforward response (p. 11).

At the same time, however, the Hearing Officer observed that the teacher’s “attendance during the year that she has been on suspension has been excellent.” He concluded that “the charges and findings [regarding her absences] per se do not render her unfit to continue in her present position” (p. 13, italics added), stating that it was “unclear” what the teacher’s future performance would be: that is, whether she would “successfully return to the classroom or if she [would] continue to earn ‘U’ evaluations and be subject to additional charges” (p. 6). Based on his determination that there was a possibility (even, as he acknowledged, somewhat remote) that the teacher might improve her attendance when returned to the classroom, he did not terminate her but instead imposed a fine of $10,000 as “‘constructive notice’ and the imposition of constructive discipline” (p. 14). The Hearing Officer’s assessment that a possibility for improvement existed thus overrode the teacher’s actual attendance over several previous years.

Teacher Absence—Case no. 4310 In a second example, the Department proved that an elementary school special education teacher was “excessively absent” for three consecutive years: 16 days in the first year, 30 days in the second, and 21 days in the third, usually before and after weekends and holidays. He had received three annual “Unsatisfactory” ratings as a result.

176 Case no. 4310 (2005)
In his discussion of the case, the Hearing Officer noted that “Department regulations and policies state that absences of ten or more days in a school year can lead to an Unsatisfactory rating” for that year. He therefore upheld the evaluations of “Unsatisfactory” that the teacher had received for each of those three years. The Hearing Officer further found that the Department had “prov[en] the negative impact on the continuity of education in the highly structured program for the [special education] children taught by Respondent,” and he accepted the Department’s claim that “the cost of obtaining substitute teachers was significant” (p. 14).

Regarding his personal assessment of the teacher, the Hearing Officer noted the teacher’s “ongoing failure to recognize and accept the responsibility that he had to observe his hours of employment as determined by the District”; his failure to “acknowledge any responsibility or acknowledge the harm that was been done to his students and the regular classroom teachers by his absences”; and that he “did not take seriously the counseling and directives” regarding his excessive absences. The Hearing Officer found that the “tenor and content of Respondent’s testimony indicated that he had not and still did not take the absences as seriously as warranted.” The Hearing Officer further noted that the teacher had been the subject of prior § 3020-a charges for excessive absences, stating:

…clearly this [prior] action put Respondent on notice regarding how seriously the Board took excessive absences…Respondent was clearly aware from a number of sources of Board and District policy of the District’s application of its policy relative to excessive absences.

In discussing his decision regarding the penalty to be allocated, the Hearing Officer wrote that a “strong” penalty was appropriate, and explained the factors which he “considered in…determination of penalty in this case.” The most significant factor, he wrote, “was the harm done to students, parents, teachers and the school” by Respondent’s excessive absences over the
three year period, particularly given “the key role that Respondent played in teaching children with special needs...[and] the negative impact on the continuity of education in the highly structured program for the children taught by the Respondent.” He also described the teacher’s “callous disregard of the impact on his special needs students of his absences” (p. 16), and wrote: “I note that the Department, and more particularly students and parents, deserve teachers who are willing and able to perform their teaching duties on a regular [basis].” The Hearing Officer also referred to evidence that the teacher had lied during the proceedings.

Notwithstanding these factors, however (and while stating that “Respondent is placed on notice that future excessive absences will not [be] acceptable”), the Hearing Officer allocated a penalty of an 18-month suspension, citing “mitigating circumstances”: 21 years of apparently satisfactory teaching, and “no evidence of other significant problems or discipline” apart from the “ongoing absence problems.” (While the teacher had admitted to being a heroin addict, he claimed that he had not been using heroin since being arrested three years prior.) As typical in these decisions, the Hearing Officer strongly emphasized the possibility of teacher “rehabilitation,” writing:

I find that rehabilitation of Respondent is possible and that, after a lengthy suspension, [he] should be given the opportunity to return to service and prove that he can provide satisfactory teaching on a consistent basis. (p. 17).

**Teacher Absence—Case no. 4825**\(^{177}\) In a third example, the Department proved that a middle school physical education teacher had been absent 16 times per year for two years in a row. The Hearing Officer acknowledged written policy: noting that the school’s “Faculty Handbook” states that teachers will be rated unsatisfactory for the year if they are absent more

\(^{177}\) Case no. 4825 (2004)
than 12 times without a doctor's note or extenuating circumstances." He added that he found it “somewhat troubling that the Respondent testified that he did not believe that he was excessively absent.” As the Hearing Officer reported: “When asked what he thought constituted excessive absenteeism, the Respondent stated that he believed that 24 days was excessive” (p. 25). The Hearing Officer further reported that this teacher had been removed from his previous position following prior § 3020-a charges regarding excessive absenteeism for a prior three-year period. In summary, the Hearing Officer wrote:

The fact that the Respondent was absent for 16 days in each of the two years he taught at Marine Intermediate school is unacceptable, particularly as the Respondent had been sent numerous letters warning that his conduct was inappropriate...Furthermore, the Respondent had notice that such behavior would not be tolerated as evidenced by prior Section 3020-a proceedings for the same offence. (p. 25, italics added)

He continued, explaining his decision regarding the penalty to be allocated:

…the bottom line remains that the Respondent was absent more than permitted 12 days for two consecutive years. The Res[pondent] clearly has not learned from his previous Section 3020-a proceeding that he cannot continue to behave in this manner if he wishes to carry on in his career. This is a lesson that he simply must learn.

Therefore, “based on the above, and the record as a whole,” the Hearing Officer imposed a penalty of a one-year suspension. He also ordered that the teacher “be given a 'last chance letter' by the Department, which would provide that any similar misconduct will result in immediate discipline, up to and including termination” (indicating that even further “excessive absences” would not necessarily result in termination). The Hearing Officer’s decision against terminating the teacher thus strongly prioritized giving the teacher yet another opportunity to learn the “lesson that he simply must learn.”
**Teacher Absence—Case no. 5039** In a fourth example, a teacher was proven to be late 61 times in one year, 34 times the next year, and absent 19 times the year after (usually before or after a weekend or holiday). The Department had submitted a case regarding absenteeism that did result in termination, which the Hearing Officer ruled was not relevant because it “concerned a Teacher who was absent one hundred and forty-six (146) times during a two (2) year period and who the Hearing Officer found had little hope for improved attendance” (p. 26, italics added). The Hearing Officer thus rejected “the discharge penalty being sought by the Department” as “not the appropriate penalty,” instead ordering the “strong penalty” of a one-year suspension. In explaining this penalty, he cited: (1) The “seriousness of the Respondent’s misconduct”; and (2) The fact that she had “previously been found guilty of Section 3020-a charges and been given a lengthy suspension” (“even though those prior 3020-a charges were unrelated to the excessive tardiness and excessive absenteeism at issue in this dispute”). He further wrote that the teacher:

…must understand that like any employer, the Department has the right to expect its employees to report to work when scheduled and on time…[and she] must understand that this [decision] serves as a final warning…Any further excessive lateness or excessive absenteeism by the Respondent may result in her discharge from employment.” (p. 26-27, italics added)

### 6.5.2 Verbal Abuse

Government policies prohibit verbal abuse of students. However, as with the standard for teachers’ attendance, no consequences for verbally abusing students are stipulated ex ante in policy, and § 3020-a cases regarding verbal abuse show that verbal abuse policies are also indeterminate. Despite written “prohibition” of verbal abuse, the level of verbal abuse that

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178 Case no. 5039 (2005)
teachers are in fact permitted to engage in is defined, ex post, within the § 3020-a framework. Four typical examples are presented here to illustrate this.

Verbal Abuse—Case no. 5102\textsuperscript{179} In a first example, the Department charged a fourth grade teacher with verbal abuse, proving, among other things, that the teacher had stated to his fourth grade class that he was trained to kill, that he wanted to “smash [their] heads into the table,” and that he was going to fail them because they were not paying attention. The record showed that the teacher’s comments caused six or seven of his fourth grade students to cry. Several additional charges were presented and dismissed for technical reasons.\textsuperscript{180} Overall, however, after 16 days of hearings, the Hearing Officer finally concluded:

It appears that…Respondent’s classroom management techniques were sadly lacking…the Respondent simply [did] not have the ability to deal with or control [his students]…[he] often overreacted to his student’s misbehavior and, on several occasions, exploded emotionally. Consequently, [he] made inappropriate verbal threats to his students and used physical force on several occasions. (p. 36-37)

(This last reference to “physical force” appeared to be in relation to several charges that had been dismissed for technical reasons and were therefore redacted from the case.)

At the same time, the Hearing Officer noted that the teacher had attempted to enroll in the Peer Intervention Program (PIP), which “clearly indicates that Respondent recognized his deficiencies and wished to address them.” Furthermore, the Hearing Officer stated his belief that “many of the difficulties experienced by the Respondent were the direct result” of being a cluster

\textsuperscript{179} Case no. 5102 (2006)
\textsuperscript{180} In the course of § 3020-a proceedings, the Hearing Officer not infrequently dismisses “charges” for technical reasons; all parts of the decisions related to these charges are redacted from copies released to the public. Several cases were received, however, in which small parts related to dismissed charges had mistakenly not been redacted—and it appeared, based on these examples, that charges can be dismissed on a technical basis, regardless of their level of seriousness. In and of itself this issue seems to be of considerable significance.
teacher, and thus would be addressed by reassigning him to a teaching position that he would better be able to handle. He concluded, therefore, that “there is clearly an inadequate basis to discharge the Respondent.” He instead imposed a fine of two months’ salary, and ordered the Department both to enroll the teacher in the UFT Peer Intervention Program and to transfer him to a different teaching assignment.

**Verbal Abuse—Case no. 3088**\(^{181}\) In a second example, a high school physical education teacher called a student a “fat bastard,” told him he stunk and to “get the fuck out of here,” and walked around the school carrying an iron bar, making “threatening remarks and gestures.” He told another student that he was going to “kick his fucking ass,” and “bash his head against the wall,” and referred to students as “savage niggers.” He was also proved to have spoken similarly to his peers. The teacher admitted his guilt, although “[b]y way of mitigation…explained that he was experiencing personal problems at the time,” as the Hearing Officer noted in his decision. The teacher also reported that he had been in counseling and had taken remedial college courses in order to improve his teaching. The Hearing Officer wrote:

> Needless to say, Respondent’s acknowledgement of guilt leads to the finding that the Board has established the charge against him. Thus, the only open question is one of penalty. Respondent’s misconduct reflects an intolerable course of action in his dealings with students and peers. It cannot be condoned simply because Respondent has earnestly sought to rehabilitate himself.

However, he continued, the Respondent did seek to “deal with his problems by way of counseling and by taking courses to better equip him in dealing with the stress and behavioral issues that today seem to be part and parcel of any teaching position.” The Hearing Officer thus

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\(^{181}\) Case no. 3088 (1997)
fined the teacher $5,000, and ordered that he be assigned to a different school “to enhance his efforts in getting a fresh start in his teaching position” (p. 5-6).

**Verbal Abuse—Case no. 5396** In a third example, the Department proved that a 6th grade science teacher routinely called his students “idiots,” “you fucking kids,” and “retarded.” Several students testified in the § 3020-a proceedings: one stated that the teacher “would say you’re a fucking idiot, stupid ass. That’s pretty much all the cursing he ever said to me, but he’ll use it on and on.” Another student testified that the teacher cursed at his students “almost every single day.” In addition, on another occasion proven by the Department, the teacher grabbed a student from behind, pulling his shirt with enough force to rip the shirt and leave marks on the student’s neck. The principal testified that the student ran into his office after the incident: “He was panting. He was crying. His shirt was torn. And he had a red mark around his neck...he was a bit hysterical...he just kept saying...a teacher—a teacher...” (p. 23.)

The Hearing Officer wrote in his decision that he could “conceive of no circumstance in which a teacher knowingly may ridicule a child. Respondent’s comments were completely unacceptable” (p. 20-21). He therefore concluded: “I find Respondent engaged in serious misconduct. I find a substantial penalty is warranted.” “However,” he continued, “given the fact these are the first and only serious proven incidents on Respondent’s record in his more than ten (10) years of service to the Department, I conclude that dismissal is unjustified. Respondent’s longevity weighs in favor of a suspension.” He thus imposed a five-month suspension, writing:

> Respondent must also understand he must accept full responsibility for his actions...He should know he cannot engage in such misconduct and not be held accountable. Any repetition of the type of proven misconduct, herein, especially some of the more serious incidents, undoubtedly shall result in his termination. (p. 26-27).

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182 Case no. 5396 (2006)
Verbal Abuse—Case no 5353

In a final example of proven verbal abuse, the teacher was terminated. This case also involved significant physical abuse, which, particularly in comparison with the cases cited above, appears likely to have contributed to the Hearing Officer’s ultimate decision to terminate the teacher. The Hearing Officer also emphasized the fact that the teacher had a relatively brief tenure of employment as an important factor in his termination decision. This case is particularly significant because it shows the extreme nature of teacher behavior discussed as though it only potentially warrants termination—with the corresponding implication that under some circumstances such a teacher (one who had been employed for more years, for example) might be returned to the classroom.

The Department proved that a fourth/fifth grade art and special education teacher assaulted one of her fourth grade “special education” students, while calling her a “nigger,” repeatedly shouting “fuck you” at her, telling her that her grandmother was an “ass,” and that her parents were “bitches.” The teacher also threw the fourth grader against a table, pulling her hair, hitting her, and choking her. Four special education fourth and fifth graders testified (and were cross-examined by the UFT lawyer) in the § 3020-a hearings. One described the assault incident as follows: “[the teacher] slammed her on the table. Then [she] started pulling her hair…[and] started punching her in the face.” Another student testified that the teacher “started fighting [the student] like [she] was a grownup,” and a third reported, “I saw [the teacher] pulling [the student’s hair] and she was throwing her around.” The victim submitted a written statement describing the incident: “[she was] punching me like a punching bag…she threw me on the table

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183 Case no. 5353 (2006)
by the door…and started to punch me on both my arms…” Finally, another teacher “came and picked me up off the floor, because [the teacher] was choking me” (p. 13).

The Hearing Officer decided to terminate the teacher, citing three key factors. First, the teacher had “actively engaged in wonton [sic] and aggressive acts, conduct clearly unbecoming a tenured teacher thereby neglecting her duty to the profession” (p. 20). Second, the principal had “distributed both A-420 (Corporal Punishment) and A-421 (Verbal Abuse) Regulations of the Chancellor” to all teachers at the beginning of the year, and the teacher therefore had clear and sufficient notice that such behavior was unacceptable. Finally, he wrote, “in response to the Respondent’s argument for mitigation, the Respondent is a short-term, tenured teacher of only five (5) years.” He cited the precedent of previous a § 3020-a case which established “the appropriateness of the penalty of termination for a short-term employee where aggressive, violent acts were committed by a tenured teacher” (p. 19, italics added). Therefore, in this particular case, also of a “short-term” employee, he wrote that termination was appropriate.

Based on the outcomes of other verbal abuse cases, it seems possible, however, that the verbal abuse alone (calling a fourth grader a “nigger” and shouting “fuck you” at her) would not, in and of itself, have resulted in termination. Further, the extent to which the Hearing Officer felt compelled to justify the penalty of termination, with the clear implication that termination would not necessarily have occurred if the teacher were not “short-term” is striking, given the apparently atrocious behavior of this teacher. The next case, below, in fact suggests that a “long-term” employee found guilty of similar actions against students would perhaps not have been terminated.
6.5.3 Corporal Punishment

Written policies also prohibit corporal punishment of students. However, as with standards for teachers’ attendance and verbal abuse, corporal punishment while “prohibited,” is not clearly defined ex ante in government policy, nor are specific consequences for committing corporal punishment stipulated. The § 3020-a cases regarding corporal punishment show that corporal punishment policies, too, are highly indeterminate. Actual standards for the level of permitted corporal punishment are defined, ex post, within the § 3020-a policy framework. Two typical examples are presented here as illustration.

_Corporal Punishment—Case no 4169_184 In a first example, the Department proved that a second/third grade teacher and “Reading Improvement Specialist” made a third grader tie his chair to himself with a jump rope, and paraded him into several classrooms (carrying the chair, still tied to him) making him state repeatedly to the other children, “I must learn to stay in my seat.” She also put masking tape over the mouth of a fourth grader, to show him “what a closed mouth looks and feels like” (p. 11), then put masking tape over the mouths of two other students, and walked the three of them through the school hallways with their mouths taped shut (p. 42).

In her defense, the teacher’s lawyer argued that the Department’s charge against her should be dismissed because while it alleged “that a 'school desk' was tied to the student,” in fact “the evidence show[ed] that the student was 'loosely connected to a chair’” (p. 26); the Hearing Officer rejected this defense. The lawyer also argued, however, that "the problem [was] that 'no supervisor…ever told [the teacher] that the judgment she deployed in using the jump rope…and masking tape…constituted corporal punishment" (p. 37). The Hearing Officer accepted this

184 Case no. 4169 (2002)
second defense as a “mitigating factor” in assessing the penalty. Regarding the chair incident, the Hearing Officer concluded: “Under any reasonable view…[this] is a type of punishment which would ‘tend to cause’ a third grader excessive mental distress” (p. 42). Regarding the taping incident, he wrote: “Like parading a student through a school with a chair tied to his waist, this type of dramatic, public shaming of a young child…is precisely the type of punishment the Board has attempted to prevent by prohibiting ‘punishments of any kind tending to cause excessive…mental distress’ (Chancellor’s Regulation A-420)” (p. 44).

In discussing the penalty to be imposed, the Hearing Officer wrote: “These are serious offenses which in most circumstances would warrant the discharge of the teacher involved. Here, however, several factors mitigate against discharging the Respondent” (italics added). He emphasized three “mitigating factors” in particular. First, he cited the teacher’s years of employment, writing that the “record shows that the Respondent has thirty-two years of discipline-free service to the Board.” Second, as a striking example of the standard of evidence required in § 3020-a proceedings, he noted that the Board had “failed to present any evidence showing that any of the students who were the victims of the Respondent’s misconduct were physically or emotionally harmed” (p. 50, italics added). Third, he acknowledged the defense presented by the teacher’s lawyer, noting that the school’s supervisors had “taken no action” against the teacher—thus abdicating their supervisory responsibility and consequently entitling the teacher to a lesser penalty for her actions. He concluded, finally:

These mitigating factors…do not excuse the Respondent’s repeated misconduct…In addition, and even more importantly, the Respondent did not show any remorse or demonstrate any understanding as to why her discipline techniques were inappropriate…[T]he penalty imposed must be severe enough to impress upon the Respondent the seriousness of her wrongdoing and insure that the Respondent will not engage in similar misconduct when she is returned to the classroom (p. 42).
Thus, he assessed what he described as a severe penalty of a one-year suspension. He additionally ordered the teacher, who had been teaching for 32 years, to “take and successfully complete a course, at her own expense, on appropriate behavior management techniques in schools” (p. 54), in order to learn how to conduct herself in the classroom without engaging in corporal punishment and potentially causing “excessive mental distress” in her students.

**Corporal Punishment—Case no 4031**

In a second example, the Department proved that a middle school social studies teacher said, “Your mother” (as an insult) to a 13-year-old “special education” student. When the student became angry, she said, “Hit me, hit me!” The student “subsequently swung at her [and] she hit [him] on the head with a computer keyboard.” The student then grabbed her to keep her from hitting him again with the keyboard, and the teacher bit him on the shoulder leaving visible bite marks. In their investigation of the event, the Department of Education’s Office of Special Investigation (OSI) reported that the teacher had “provoked and instigated” the student “into a violent confrontation.” The student was described by another teacher as “very shy” with a “very bad speech impediment,” and no record of violent behavior.

The Hearing Officer noted in his decision that several warning letters had been placed in the teacher’s file. However, because they had been successfully grieved and removed from the record, they were not permitted to be considered in the proceedings. He additionally noted that she had been the subject of two previous OSI investigations: one investigation regarding an allegation that she had “used derogatory and belittling language” with students, calling students “coward,” “rooster head,” “dumb and stupid,” and telling one that “she could not read”; and

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185 Case no. 4031 (2002)
another investigation regarding sustained allegations of verbal abuse and corporal punishment (pp. 6, 20). Multiple parents had “lodged complaints of corporal punishment against her,” which she claimed not to recall. In this case, however, the Hearing Officer decided that the teacher had “preserved the privilege of self defense,” given his finding that she “had a reasonable belief that [the student] was about to attack her, largely because her fighting words, ‘Your Mother,’ had enraged him” (p. 41). “Ordinarily,” he wrote, “a teacher biting a student would not be sanctioned as a reasonable means of self-defense. However, despite the fact that [the teacher] had provoked Student A verbally and physically, she had the right to defend herself if she thought Student A’s physical response would cause her harm” (p. 44).

He allocated a penalty of a five month suspension. The key factors he cited in his penalty decision were both the teacher’s “nearly 18 years of employment with the Board of Education,” and his conclusion that “despite her serious misconduct and lack of remorse,” the teacher “is nevertheless a salvageable employee who deserves one last chance to comport her conduct with the expectations of her employer” (pp. 58-59, italics added). Thus, central to his decision was the teacher’s number of years of employment, and his personal assessment that she was potentially remediable.

6.5.4 Incompetence

The above cases illustrate the highly indeterminate nature of multiple written policies governing what might be seen as basic aspects of teachers’ professional work: attendance, and refraining from verbally and physically abusing students. However, § 3020-a cases regarding charges of pedagogical incompetence implicitly reveal that which is not addressed in written policy whatsoever: that is, the definition of the minimal level of teacher competence that is required to remain employed as a New York City public school teacher. Section 3020-a cases
regarding charges of incompetence are highly significant, revealing the operative policy metrics—defined and enforced ex post—which determine the actual level of teaching competence required simply to be a teacher in the first place. At the same time, thus, these decisions reveal the established “floor” of competence of the city’s teacher workforce. Most classroom teachers are presumably performing considerably above this level but, at the same time, how many teachers in New York City’s 78,000-member teacher workforce are performing at or close to the competence floor defined in these decisions remains entirely unknown.

Key ex post principles are clearly revealed in the seven cases discussed below—and, as these examples show, a teacher’s past demonstration of teaching competence is not the established standard for his or her continued employment as a teacher. The following principles were described in section 6.4.4 above as general standards guiding § 3020-a proceedings, and are summarized again here because they are especially evident in these incompetence cases. With respect to allocating penalties, case decisions clearly explicate several “mitigating factors,” which appear to consistently outweigh actual teaching competence in penalty decisions:

1. Years of employment;

2. The teacher’s stated “remorse,” and apparent (or assumed) motivation to make an ongoing effort to learn and improve;

3. A frequent assumption of inherent teacher good will;

4. The requirement for “progressive discipline”; 

5. The obligation of the school system to “rehabilitate” teachers; and

6. The presumption that such teacher rehabilitation is highly desirable and usually possible.

Finally, as discussed above, termination (that is removing a teacher from the public school teaching workforce) is considered a very extreme “penalty”—and is rare, almost regardless of
the level of a teacher’s performance. As one Hearing Officer explains, in “incompetence” cases, “a neutral is generally biased towards a penalty lesser than dismissal when there is a probability or even a hope of rehabilitation of the relevant employee” (p. 14, italics added).\textsuperscript{186}

“Pedagogical incompetence” has no \textit{ex ante} definition in laws or regulations. The term “pedagogical” itself in fact is not defined. The New York State Education Department provides a vague explanation, as follows:

While the term ‘pedagogical’ is not defined in either the statute or the Commissioner’s Regulations, charges that fall into that category include inability to control a class, failure to prepare required lesson plans, failure to maintain certification, and other matters \textit{that directly pertain to teaching techniques and issues of this nature} (italics added).\textsuperscript{187}

Nor is “incompetence” defined. Clear evidence of years of unsatisfactory teaching often does not lead to a § 3020-a conclusion of “teacher incompetence.” In other words, teaching incompetence is not viewed as definitive evidence of teacher incompetence: the actual performance of teaching is essentially detached from the person doing the teaching. As one Hearing Officer explained:

An unsatisfactory observation, or a number of them, don’t necessarily justify a conclusion of teacher incompetence. Section 3020-a contemplates “efforts towards correcting the behavior” such as “remediation” and “peer intervention.” Unsatisfactory observations may however, result in an annual evaluation of “unsatisfactory.” Similarly, an unsatisfactory annual evaluation alone, does not automatically compel a conclusion of incompetence.

…Is there a magic number of consecutive annual “unsat” evaluations which mandate a conclusion of incompetence? I doubt it. But…a teacher is required to \textit{understand and make a good faith effort} to apply the “appropriate teaching methods and techniques”…that are then in vogue. (p. 24-25, italics added)\textsuperscript{188}

\textsuperscript{186} Case no. 3878 (2002)
\textsuperscript{187} http://www.highered.nysed.gov/tcert/faq3020a.html
\textsuperscript{188} Case no. 5430 (2006)
This quote highlights the distinction drawn between the performance of teaching, on the one hand, and the teacher, on the other. It also highlights the established disconnection between school-site evaluations of teachers’ performance and what teachers are actually held accountable for: school-based teacher evaluations are not irrelevant, but are far from being considered as definitive assessments of a teacher’s fitness for continued membership in the teacher workforce.

In a subsequent discussion regarding what level of teacher performance actually warrants termination, the Hearing Officer cited prior case precedent to show what had been “held to be adequate grounds for terminating a teacher for incompetence.” As a first example, cited a 1981 decision regarding a science teacher with ten years of employment who was terminated after it had been established that:

…[he] was unable to present classroom material in a comprehensible manner; his teaching methods discouraged student interest, his method of testing was confusing; he used words that his students did not understand; he dwelled over long on the same point and often wandered from the topic; his responses to student questions were unintelligible and confusing; and his grading system was incomprehensible to students, parents, the Principal, and the Department Chairman” (p. 33).

The Hearing Officer then compared this case to a second case, to demonstrate the “fuzzy line which justifies a termination for incompetence.” In a 1980 decision, a teacher was found to have serious deficiencies in her teaching and classroom management, but was not terminated. Several reasons were cited for a penalty of a six month suspension instead of termination, which the Hearing Officer quoted from a subsequent Commissioner’s decision upholding the suspension penalty. In the 1980 case what had been established was “inefficiency”—not “incompetence,”

189 Either the district or the teachers union can file an appeal of a § case decision with the State Commissioner of Education. The Commissioner’s decisions on those appeals are available online at http://www.counsel.nysed.gov/Decisions/. Analysis of this additional extensive material was beyond the scope

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which “connotes incorrigibility.” In the 1981 case, therefore the “possibility of remediation” existed. Furthermore, this teacher had “taught in the district for a long time” and had therefore “developed certain equities in her job.”

In his discussion, an “incompetent teacher” is defined as an *incorrigible* teacher, for whom no hope of rehabilitation exists, and incorrigibility thus provides adequate grounds for termination. The factor emphasized in deciding whether to return a teacher to the classroom is thus not that teacher’s demonstrated level of competence, but rather the duration of the teacher’s employment and the potential (however slight) for improvement. In another case, for example, the Hearing Officer cited his agreement with a 1989 Commissioner decision that:

…while respondent is not a “good” teacher; is boring; does not consistently follow district policy; and maintains a narrow structured point of view in conducting his classroom; his performance did not fall below the minimal level expected of a “reasonable teacher.”

However, he added:

…when a teacher, despite such assistance and the friendly aid of staff trainers, has repeated consecutive years of “unsatisfactory” annual evaluations, then one moves a large step closer to a conclusion of incompetence, unless it is shown that the teacher is being unfairly treated or discriminated against. (p. 25, italics added)\(^{190}\)

He described the conditions that *may* warrant termination—which, notably, strongly emphasize a teacher’s willingness and capacity to learn, and the possibility of teacher “remediation,” while literally excluding teaching competence as a central factor:

When, for whatever reason, the teacher resists change, lacks insight into the need for change, resents constructive criticism, and stubbornly persists in a style of performance

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\(^{190}\) Case no. 5430 (2006)
that substantially ignores competent and credible advisors and evaluators, there would appear to be little hope of improvement despite attempts at remediation. (p. 24-25)\textsuperscript{191}

A teacher’s impact on students is not even mentioned in these considerations of the definition of teacher incompetence.

In the following, seven examples are presented of teachers who were not deemed to have fallen below the minimum standards required to maintain membership in the teaching workforce. These teachers were “disciplined,” by unpaid suspension, fine, and/or requirement for further training, and were subsequently returned to the classroom. Five examples are then presented of teachers who were deemed to have fallen below the minimum standards required to “be” a New York City public school teacher. These 12 cases clearly show the application of the preeminent principles discussed above, and a strong de-emphasis on demonstrated teaching competence as necessary condition of employment as a teacher. The decisions very rarely include even mention of a teacher’s impact on children.

**Teachers Returned to Classroom Teaching**

*Incompetence—Case no. 5430\textsuperscript{192} In one example, the Department sought termination of an elementary school teacher who had been evaluated as “Unsatisfactory” for three consecutive years. In an attempt to address the teacher’s poor performance as a sixth grade teacher (and perhaps to remove her from a grade level that takes state and city achievement tests), the principal had subsequently given her lower-grade classes with small numbers of students: a third grade class with 14 students for one year, a first grade class with 17 students the next year, and

\textsuperscript{191} Case no. 5416 (2006)  
\textsuperscript{192} Case no. 5430 (2006)
finally a first grade class with 13 students in the third year. She was evaluated as “Unsatisfactory” for all three of these years, for both incompetent teaching and poor classroom management, including the inability to prevent frequent physical fights among students in her class.

In addition to giving the teacher presumably “easier” classes to teach, the school had provided her with extensive remedial assistance. The Department of Education proved that over the course of the three years prior to the initiation of § 3020-a charges the teacher had received assistance from the school principal, assistant principal, school psychologist, guidance counselor, coaches, staff developers, other teachers, and volunteers. This assistance included pre- and post-observation conferences with the principal for multiple classroom observations; materials, training, and professional development for the literacy curriculum; fifteen visits from a literacy coach (a total of 31 hours); frequent visits from the school psychologist to assist with her classroom management; help from a special education teacher who “worked with her extensively” on classroom management; twice-weekly visits for two months from an “early grade intervention specialist”; several months of regular assistance from the school math coach; assistance from several “staff developers,” including one from Teachers College; a volunteer from America Reads who worked 12-15 hours per week in her classroom; multiple co-teaching experiences; and release from teaching duties for “intervisitations” to observe other teachers’ classrooms. The Hearing Officer acknowledged the school’s years of extensive efforts to improve the teacher’s performance. He concluded that the problem was “indisputably” the teacher’s “inability to implement mandated curriculum and properly manage her classroom,” writing: “There is no question but that the [teacher’s] deficiencies…were well-documented and persistent and for that reason the penalty must be substantial” (p. 52).
He decided upon a penalty of a one year suspension. In his decision, he “urge[d] the Department to provide an appropriate remediation program for [the teacher] to address those areas in which she is deficient,” upon her return to the school after the year’s suspension. He added that the teacher “is now on notice of the need for drastic improvement in her performance and effectiveness in the classroom in the future” (p. 55). In explaining this penalty decision, the Hearing Officer wrote that while the teacher’s “conduct constitutes just cause for disciplinary action” he was “not persuaded that it constitutes just cause for termination as urged by the Department,” and was “not convinced” that the teacher could not “once again meet the Department’s legitimate expectations in the classroom.”

While acknowledging that the record clearly proved the teacher’s “well-documented and persistent” deficiencies as a teacher, the Hearing Officer cited three primary factors justifying his decision to return her to classroom teaching: (1) The duration of the her employment; (2) Her positive attitude towards learning how to improve her teaching; and (3) Lack of student achievement data demonstrating her impact on her students. She had “over 30 years of experience,” he explained, and there was “[n]o indication” that she had “been resistant to the requirement that she implement mandated curricula…[or had] manifested any deliberate intention to avoid teaching” adequately. He could “find nothing in the record…which would indicate recalcitrance, antagonism or an uncooperative attitude on her part, so as to preclude the likelihood that she could succeed in this regard in the future” (p. 52-53). He also noted that no student achievement data had been presented by the Department, and thus there was an “absence of any evidence in the record showing a lack of achievement” of the teacher’s students (although since early grade students do not take city or state tests, such evidence would be unlikely to exist in the first place).
Incompetence—Case no. 4958 In a second example, an elementary school teacher was evaluated as “Unsatisfactory” for 2000-01, and removed from the classroom in June 2001. She appealed the “Unsatisfactory” rating and was subsequently returned to the classroom in October 2002, sixteen months later. She was then removed from the classroom again at the end of that month, after proven allegations that she had demonstrated extremely incompetent teaching, and called a student “a piece of shit” and “an asshole.” She was returned to the classroom in December 2003 (fourteen months later), and again removed from the school in January 2004, for incompetent teaching and allegations of verbal and corporal punishment. She was evaluated as “Unsatisfactory” for 2001-02, 2002-03, and 2003-04. Section 3020-a charges were preferred against her in June 2004.

After reviewing three years of extensive evidence against the teacher, over the course of eleven days of hearings, the Hearing Officer concluded that the teacher had “unacceptably poor classroom management…[and] she may not have yet begun to recognize that reality” (p. 24-25). He noted that her understanding of appropriate teaching was so deficient that she seemed to define an “ideal” class as simply one with “the absence of chaos” (p. 25). He further wrote, however, that the school had not provided evidence of sufficient efforts to “address Respondent’s weaknesses,” emphasizing that “[i]t is well settled that school administrators have a responsibility to train staff and to make appropriate efforts to help teachers improve the quality of their performance” (p. 21). He further explained:

The school’s administrators knew of Respondent’s deficiencies when she returned [to the school] in October 2002 and again in December of 2003. One would think that plans would have been made to provide immediate assistance in an effort to provide Respondent with the training needed in order for her to succeed. The lack of attention to

193 Case no. 4958 (2004)
this matter is duplicative of the lack of effort in this area when Respondent was first assigned to the school (p. 23).

Thus, “balanc[ing] the nature of the charges sustained against the remedial efforts made by the school” (p. 23), he allocated a penalty of a three-month suspension, writing that the teacher “must assume responsibility for her shortcomings and take additional training in the area of classroom management.” When she returns to teaching after her three month suspension, he added, “[s]he must recognize that a failure to demonstrate effective classroom management at that time may well lead to much more serious consequences” (p. 25).

Incompetence—Case no. 3151194 A third incompetence case regarding a high school English teacher, required 12 days of hearings yielding a 998-page transcript. In his decision, the Hearing Officer wrote that the Department had “proved that significant shortcomings existed with respect to the competence and efficiency of the Respondent.” He continued:

These shortcomings involve certain significant functions of the requirements of a classroom teacher. The record contains repeated and credible testimony from experienced administrators, who had substantial backgrounds in the teaching profession, that the Respondent has demonstrated certain deficiencies in providing competent service as a classroom teacher (p. 56).

Moreover, he continued “[d]espite [extensive] efforts to inform the Respondent of his shortcomings and to provide reasonable opportunities for the Respondent to improve his performance, the Respondent continued to conduct unsatisfactory classes”; further, the Superintendent provided credible testimony “that the Respondent ‘was unaccepting of suggestion and guidance’.”

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194 Case no. 3151 (1998)
In his discussion of the case, the Hearing Officer wrote that, “the Board need not tolerate incompetent teachers when actual incompetence exists.” In this case, he wrote however, “actual incompetence” did not exist. He explained that this decision was based on his belief that the teacher “possess[ed] the skills, the experience, the concern, and the potential to be a competent and productive teacher”—even if “[f]or whatever reasons [he had] failed to implement his talents in the classroom on an ongoing and consistent basis” (pp. 58-59, italics added). He added that the teacher “needs to understand the serious and critical obligation that exists for him to teach his students in a competent, efficient, and careful way…The time for excuses about classroom deficiencies must end.” The Hearing Officer thus allocated what he described as a significant penalty of a one-semester suspension in order “to impress upon” the teacher his obligation to teach competently. After this suspension, he added, the teacher would presumably “recognize the importance, necessity, and urgency of the situation,” and should be returned to the classroom in order to “receive a new opportunity” to “demonstrate his skill, efficiency, and competency” (p. 59-60). In this decision, the Hearing Officer thus provided a clear operative definition of “actual incompetence”: based not on a teacher’s demonstrated teaching performance, but rather on an assessment that not even the slightest potential for improvement exists.

**Incompetence—Case no. 4818** In a fourth example, the Department charged a high school math teacher with incompetence, and in the course of the § 3020-a hearings proved both that his classroom management was extremely poor, and that over half of his students were failing. The teacher’s lawyer argued, however, that “the lack of any remediation stands as

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195 Case no. 4818 (2004)
196 He was also charged with verbal abuse: the Department proved, among other things, that the teacher had called one student “stupid,” and said to another student, “Shut up, Faggot; You must know all the faggots; You should know – you hang out with the faggots.”
grounds why even if [he] is found guilty, termination is not warranted.” In discussing the case, the Hearing Officer acknowledged this argument as a significant factor in the case. He noted that while “the record documents that DOE made a significant effort to assist [the teacher] in his teaching duties,” those efforts had fallen short of that necessary to successfully remediate the teacher. He continued:

In addition to the remediation issue the record supports the contention that mitigation is to be found in the fact that the offenses committed do not warrant summary discharge inasmuch as the misconduct…may reflect poor judgment they are not termination transgressions…[Respondent] must now learn to avail himself of assistance that is available in this area” (pp. 20-21).

The Hearing Officer thus ordered a two-month suspension and “instruction in the area of classroom management…provided at no cost to him by the DOE and/or his Union.”

**Incompetence—Case no. 5053**

In a fifth example, a third grade teacher with 21 years of employment was charged with incompetence, including frequently screaming at and insulting both students and their parents. In his decision, the Hearing Officer noted that the teacher was “indeed fortunate that the parents and students involved in the many accusations against her did not come forward to testify” in the 10 days of hearings. “As it is,” he added,” the conduct for which Respondent has been found guilty…suggests a pattern that she is not in control of her emotions” and had difficulty handling “problem” students and their parents (p. 15). He concluded that “[t]he overall picture that Respondent begins to present is that she is ‘burned out’ and in need of a long vacation or a different field of employment.” He gave her the strong benefit of the doubt, however, suggesting that she:

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197 Case no. 5053 (2005)  
198 Testimony must be in person; written testimony is defined as “hearsay” and is not considered as evidence in the case.
…has to take a deep breath and decide whether she can and should continue as a teacher. If she seriously intends to keep teaching, she needs to get rid of the anger and restore the warmth and charm she is capable of. She must restore the courtesy and tact and caring that every elementary school teacher must bring to the classroom (pp. 15-16).

Thus, based on his stated presumption of her inner capability for warmth, charm and caring, he decided that she deserved the further opportunity to improve her performance, ordering that she be suspended for two months, and that she complete a “recognized anger management course over the summer (including a UFT course if available).”

**Incompetence—Case no. 5158** In a sixth case, § 3020-a charges of incompetence were brought against a high school English teacher. Over the course of 23 hearings (resulting in a transcript of almost 3,000 pages), multiple administrators—including four Assistant Principals, the Principal, two Superintendent’s Representatives, and the Regional Instructional Specialist—testified regarding their observations of the teacher’s extremely incompetent teaching over the three year period prior to the § 3020-a charges. The Hearing Officer found significant evidence that the school administration had provided extensive assistance to the teacher, including approximately 50 documented meetings with various administrators. He also found that she was “guilty of most of the charges against her”—although dismissed allegations such as grammatical and spelling errors on the board as “minor points and…thus inconsequential criticisms” (p. 43). He concluded that the “Department has clearly demonstrated by a preponderance of the evidence that Respondent is guilty of incompetence more often than not” (italics added).

In the teacher’s defense, her lawyer maintained that “even if some of her lessons were deficient, that, in itself, does not prove she is incompetent.” The lawyer cited a prior § 3020-a decision with exactly such a precedent: that prior decision had found that a teacher charged with

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199 Case no. 5158 (2006)
incompetence “was incompetent ‘more often than not,’” but had concluded that “there was
evidence that she was capable of providing competent instruction under certain circumstances”
(italics added). In that case, the Department’s charges of “incompetence” were thus not upheld.
The Hearing Officer accepted this defense, concluding that “Respondent has produced evidence
that she is capable of providing competent instruction.” He cited two “Satisfactory” classroom
observations from the three years of evidence provided by the Department. He also cited “some
positive comments” in her 13 “Unsatisfactory” observations as evidence of her “competent
instruction,” such as “a written lesson plan,” “a homework assignment related to the day’s
lesson,” and “evidence of prior planning for the lesson” (p. 49-50). Therefore, he concluded:

…while the evidence demonstrates Respondent has serious instructional problems
which, if not remedied, may well lead to the conclusion that she is not capable of meeting
the instructional requirement of the Department of Education, I find she has not yet
reached that point. In short, Respondent appears to be a caring teacher who, although in
serious need of improvement, still retains the potential to produce a satisfactory
educational product. I believe that with appropriate remediation, [she] may be
rehabilitated to the point of competence. (p. 50-51, italics added)

He decided that “the appropriate penalty for [the teacher’s] culpability” was a one year
suspension, during which the teacher would be required to “enroll in courses and/or workshops
in classroom management techniques as well as other pedagogical course work as determined by
the Department”—further adding that the “cost of such training shall be borne by the
Department” (p. 51).

Incompetence—Case no. 5234200 A seventh case provides another particularly explicit
example of the emphasis placed upon teacher rehabilitation and what might be described as an
extraordinarily high standard for schools’ responsibility to rehabilitate teachers. In this case, a

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200 Case no. 5234 (2006)
high school special education social studies teacher who had taught for 17 years was charged with incompetence. He had been evaluated as “Unsatisfactory” for several consecutive years, and in the course of 33 days of hearings (with a transcript of over 4,800 pages), the Principal, four Assistant Principals, and the Superintendent’s Representative testified to his incompetent teaching.

The teacher had previously been brought up on § 3020-a charges for incompetence, and had taken additional college courses and participated for a year in the Peer Intervention Program as ordered by the prior § 3020-a decision. He had also been offered extensive remedial assistance subsequently, including multiple pre- and post-observation conferences, intervisitations, and months of daily mentoring by another teacher. The Hearing Officer wrote that his observations of the teacher’s “demeanor” during the proceedings, “raise questions about [his] ability to function as a classroom teacher…[the teacher’s] resistance to the IHO’s [Hearing Officer] repeated directives of him to answer questions in a straightforward manner raised doubts about his ability and willingness to improve his teaching through his own education and remediation" (pp. 65-66).

He still concluded, however, that “[t]here is reason to believe that [Respondent’s] teaching deficits can be remediated”—although his apparent resistance to improving his teaching meant that “he obviously needs strong incentive to address and correct those deficits” (p. 70). The Hearing Officer therefore ordered a penalty of a seven-month suspension. He additionally ordered the Respondent to enroll, at his own expense, in university classes of at least six credit hours; complete a period of student teaching under the guidance of experienced teachers (“with the assistance of the Department” if the teacher so requested); and again enroll in the year-long Peer Intervention Program upon his return to teaching the following year.
Teachers Terminated

Incompetence—Case no. 3965

In a first example of termination for incompetence, the Department’s lawyer presented extensive evidence for a three year period during which an English high school teacher had been evaluated as “Unsatisfactory” for every year. In his testimony, the Superintendent of Bronx High Schools (who had observed the teacher and met with her on multiple occasions) stated:

I can’t stress strongly enough how hostile and angry and contentious and difficult and extremely challenging to the students [she is]…In my over thirty years with the Board, I have never seen anything like it (p. 10).

The Hearing Officer found that the teacher “delivered poor teaching to her students, consistently failed to take advantage of opportunities to improve her pedagogical skills, was hostile to both students and adults in her work environment and was almost universally uncooperative” (p. 13). He wrote:

[She] has rejected the criticisms of those charged with evaluating her work performance. She has refused to participate in programs of assistance such as peer intervention programs, meetings with administrators to review her work or contacts with experienced teachers who have been made available to her. [Her] relationships with her students is abominable. The record provides numerous accounts of students struggling to obtain transfers out of her classes…The record paints a picture of [her] classes as places of high student absenteeism, where students who do attend are belittled and humiliated and where little planning has taken place, all of which produces a high failure rate.

Unfortunately, the record is devoid of any evidence that this status will change if [she] is returned to the classroom. (p. 14, italics added)

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201 Case no. 3965 (2002)
“Sadly,” he concluded, “the record of this case gives no evidence that [she] possesses potential” to be rehabilitated. Consequently, he decided on the penalty of termination. This decision was based not on her years of abysmal teaching performance, but rather—as he emphasized in presenting his decision—because he had been entirely convinced that there was not even the slightest possibility of the teacher’s rehabilitation.

*Incompetence—Case no. 5153* 

In a second example, an elementary school reading teacher was charged with incompetent teaching and inability to manage her classes, resulting in virtually constant classroom chaos, as well as physical injury to students. The teacher’s lawyer claimed that she had received inadequate support and assistance, and called an “expert in supervision” to testify in support of this defense. The testifying expert supported the teacher’s criticism of the lack of supervision she had received, stating that “teachers have to be observed early in the school year so that a baseline may be developed from which they may improve.” He further testified:

…the acronym COWBIRDS should be utilized to improve teaching performance… teachers should be afforded the opportunity to attend Conferences; offered Observations; given Workshops; assigned Buddies; granted Inter/Intra visitations with other classrooms; provided with Readings; given assistance at Department meetings; and made aware of professional Societies.

The teacher’s lawyer argued that “[v]ery few, if any COWBIRDS’ mechanisms were utilized” with her (p. 14-15). In the course of the eleven days of hearings, however, the Hearing Officer found that the Department had proven “that COWBIRDS was utilized in substantial part, in an effort to remediate” her performance, and cited the extensive list of COWBIRDS activities that the teacher had been provided with.

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202 Case no. 5153 (2005)
The Hearing Officer concluded, finally, that the Department had proven abysmal classroom management and extreme teaching incompetence. He also noted that “it is significant that Respondent was previously the subject of 3020-a charges” for incompetence, was fined, and had agreed to take a course in classroom management. Thus, he concluded, “she was progressively disciplined,” yet despite the prior action, and significant “remediation efforts afforded her” she had not improved whatsoever. He decided that the “appropriate penalty for [the teacher’s] culpability is the termination of her services”—emphasizing that while his decision “should not be construed as a reflection on [the teacher’s] integrity or conscientiousness,” her discharge was warranted by the combination of previous § 3020-a charges, years of the District’s remediation efforts and ultimately, thus, incontestable proof of extreme incompetence. Again, central to his decision was his conclusion that the teacher was irremediable.

Incompetence—Case no. 5430

In a third example, the Department charged a high school biology and general science teacher with incompetence; the Hearing Officer recorded in his decision that she had received nine Unsatisfactory observations from five different observers over the past three years, and had received a year-end “Unsatisfactory” rating for the previous two. She had also received extensive remedial assistance from multiple administrators and coaches, including months of weekly meetings with the principal and with the literacy coach.

In the course of the proceedings, the Department’s lawyer attempted to show the basis for a particular unsatisfactory observation of a science class, which reported that the teacher “didn’t take the time to adequately answer a student’s question of why, based on a chart they were studying, the menstrual cycle was 28 days and not 32 days” (p. 29). The Department lawyer

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203 Case no. 5430 (2006)
insisted that the teacher explain the answer to the Hearing Officer, which was quoted in the
Hearing Officer’s decision as follows:

Because during that cycle—during menstruation, meiosis is going on. And so those days
are continuous—while the menstruation is going on. That is the deep reason; it’s not the
surface reason. The surface reason is looking at the chart and the—but when the deep
reason—the underlying reason is because during menstruation, meiosis is going on inside
a woman. And so when the menstruation finishes, then the cycle continues. So it’s just a
twenty-eight, so that during the first four days or five days of menstruation, those days
are also counted in because meiosis takes off from then. Yes, that’s why it [sic] twenty-
eight and not—and not thirty two—because of the flow, what they call the flow period,
that period of menstrual cycle something else is also going inside the woman. (p. 30)

When asked to give an example of a “critical thinking question,” the teacher reported asking the
class if they “had allergies for any food.”

In addition to acknowledging evidence of teaching incompetence, the Hearing Officer
noted that she was “stubbornly evasive in her answers, and one could not elicit the simplest
factual details without repeated questions…she did not seem able to conform to the typical
hearing procedures, such as answering ‘yes’ or ‘no’ to proper cross-examination questions,
despite repeated explanations and instructions by the Hearing Officer” and “appeared to
stubbornly cling to her personal practices and reject constructive criticism” (p. 32). He concluded
that he did not believe that the teacher was capable of “teach[ing] effectively in the public
schools, even with additional remediation efforts (p. 32). “In the present case,” he wrote, “giving
Respondent a second chance would not solve the problem. She is not a long term employee, but
her reported deficiencies were long term” (p. 34, italics added). He found that the teacher “has
been provided ample remediation and peer intervention. Active remediation has not helped to a
significant extent. I find that Respondent’s ability to change or improve with additional
remediation is unlikely, and that she must be deemed incorrigible in this regard” (italics added).
He therefore concluded that the Department had established “just cause for termination” (p. 35): based on the short duration of her employment as a teacher and his assessment that there was no possibility of her remediation.

_Incompetence—Case no. 4125_\(^{204}\) A fourth example of termination regarded a third/fourth grade ESL teacher charged with incompetence. She had undergone multiple classroom observations over the course of two years, every one of which was rated Unsatisfactory. The Department proved that she had inadequate or nonexistent lesson plans, failed to bring materials to class, improperly used materials that she did have, failed to learn the names of her students and confused their grades at the end of the semester, and did not advance her students’ learning of English. The Hearing Officer noted that the teacher “was regularly provided with what might be called a nearly exhaustive amount of remedial help,” but that she had made absolutely no effort to improve her teaching. He concluded, finally, that he found her to “be an inadequate teacher, incompetent to fulfill the duties of her position.” Further, based on her total lack of effort to improve her performance, there was “no basis for any expectation of improvement” (p. 16). He thus ordered termination.

_Incompetence—Case no. 4920/4940_\(^{205}\) A fifth example of termination regarded a high school science teacher charged with both incompetence and verbal abuse. He had been brought up on § 3020-a charges four previous times, and “had been subject of four prior removals from the classroom under Section 3020-a of the Education Law” (p. 123). After 15 days of § 3020-a hearings, the Hearing Officer wrote in his decision that the teacher had:

\(^{204}\) Case no. 4125 (2002)

\(^{205}\) Case no. 4920 & 4940 (2004)
…demonstrated beyond question that his conduct in the classroom has the effect of criticizing and humiliating student and preventing them from learning. Despite prior disciplinary proceedings which have placed Respondent on notice that certain conduct is prohibited, he has engaged in additional acts of racial and ethnic bias in the classroom, insubordination towards the administration…and humiliating students…[he] has shown by the repetition of racially and ethnically insensitive remarks that he is unfit to serve in the multi-cultural environment of the classrooms of the New York City Department of Education (pp. 134-135).

Thus, after this fifth § 3020-a proceeding, the Hearing Officer concluded finally that the teacher was irremediable, and ordered his termination.
Chapter 7:  
Context for Teacher Policies—
The School System Policy Framework

Chapter 4 showed that New York City public school teachers are explicitly held accountable in determinate government policies for inputs of initial certification, accumulation of additional degrees and credits, required ongoing professional development, and years employed by the New York City public schools. Determinate government policies clearly stipulate ex ante standards, measurements, and consequences for these teacher inputs. Chapters 5 and 6 showed that policies governing evaluation and accountability for teachers’ work—the APPR and § 3020-a frameworks—are indeterminate. Government policies do not include determinate ex ante stipulation of teachers’ accountability for their work as teachers. Rather, teachers’ obligations are specified ex post through the APPR and, ultimately, through § 3020-a proceedings, in which minimum standards for teachers’ work performance are in fact defined and enforced.

One conclusion that could be drawn from these findings on teacher policies is that the absence of determinate accountability policies for teachers’ work reflects the nature of school policies in general: in other words, that teacher policies do not stipulate determinate accountability for student outcomes simply because education policies overall do not stipulate accountability for outcomes. This chapter shows, however, that clearly-defined accountability for measurable student outcomes is explicitly stipulated in New York State and City policy for all school stakeholders except teachers. Policies stipulate a tightly-structured “new accountability” policy framework that holds key stakeholders—both individual and organizational—accountable
for producing defined and measured student achievement outcomes. In fact, teachers and classrooms are the only parts of the school system that are excluded from this new accountability outcomes-based policy framework.

A strong misalignment with respect to accountability is evident in government policies, between teacher policies on the one hand, and policies for students, principals, schools, and districts—as well as the clearly-stated purpose of the public schools—on the other. In the following pages, numerous citations are provided from these additional policies to illustrate the contrast in both content and tone between teacher policies and policies for all other school stakeholders. The following are the key points addressed in this chapter:

1. The fundamental purpose of the public school enterprise is unequivocally stated as the production and improvement of measured student achievement outcomes.
2. The expenditure of public funds on the public schools is explicitly linked to producing student outcomes as the schools’ essential purpose.
3. Highly-specific, defined, and measurable student outcome standards are stipulated ex ante in New York State law.
4. Accountability for producing those student outcomes is clearly stipulated ex ante in government policies for all key stakeholders except teachers and classrooms.
5. The classroom is the only school system unit into which students are not grouped for accountability purposes.
7.1 The fundamental purpose of the public school enterprise is clearly stated as the production—and improvement—of measured student achievement outcomes

The purpose of the New York public school enterprise is unambiguously stated in government policy as the production and improvement of measured student achievement outcomes. New York Education Law § 2590-h, for example, describes the “powers and duties” of the New York City school system chancellor as intended to “increase student achievement and school performance.” This includes a stipulated duty to “[p]romulgate minimum clear educational standards, curriculum requirements and frameworks, and mandatory educational objectives applicable to all schools…[and to] examine and evaluate periodically all such schools…with respect to…compliance with such educational standards” and “the educational effectiveness of such schools and programs.” Education Law § 211-a, entitled “Enhanced state accountability system,” defines improvement of schools and school districts as “[s]tudent performance on state assessments, graduation rates, and other indicators of progress.” Section § 305(36) requires the Commissioner to “ensure that…a progress report…is prepared for all students” to provide parents with information on their child’s performance, defined as the child’s scores on “state assessments over multiple years of testing.” Further, under Education Law § 211-d, entitled “Contract for excellence,” any New York school district with even a single school identified as producing inadequate student achievement outcomes for two consecutive years must submit a school improvement plan (“Contract for Excellence”), in application for additional state funds specifically targeted to improve inadequate student achievement. This plan is “subject to approval by the commissioner and his or her certification” that it meets the requirements of state law to provide “programs and activities demonstrated to improve student achievement” (italics added).
Acknowledgement of the central purpose of the public schools as increasing student achievement is particularly explicit in 8 NYCRR 100.13, a 7,000-word section entitled “Elementary and Secondary Education School Program.” Title 8 NYCRR 100.13 explicates the “Contract for Excellence” goals and requirements, stipulated in Education Law § 211-d, and clearly specifies the improvement of student achievement outcomes as the goal of Contract expenditures. As 8 NYCRR 100.13 states, “approval shall be given to contracts demonstrating to the satisfaction of the commissioner” that the proposed programs and activities predominantly benefit: (1) “students with the greatest educational needs,” defined as students with “low academic achievement,” students with “disabilities,” students in poverty, students with limited English proficiency, and English language learners; and (2) students in low-performing schools, defined as “for a given school within the school district, the percentage, as measured with respect to the school’s total student enrollment, of students with low academic achievement enrolled in such a school” (italics added).

The law specifically stipulates that Contract “programs and activities” must “facilitate student attainment of New York State learning standards,” using “practices supported by research or other comparable evidence” as effective in increasing student achievement as measured by state tests. Moreover, the section explicitly links the Contract’s goals to a public interest in improved student achievement produced by the schools, mandating that the Contract must be “developed…through a public process,” including a public comment period on the contract’s goals of specific “student achievement performance targets,” and the “affected student groupings” that the Contract is required to particularly benefit.
The “Contract for Excellence” (“C4E”) school improvement plans that districts are required to submit must address several specific questions, all focused exclusively on measured student achievement. These questions include:

- “Describe the overall student achievement need presenting the greatest challenge in your school district with the Contract for Excellence addresses”;
- “Describe the overall strategy your district will implement...to address the above needs”;
- Describe “specific programmatic efforts” that will be used to assess the “needs of special populations (LEP, students with disabilities, poverty and students with low achievement)”;
- “Provide evidence that funds are targeted to students with the greatest educational needs”;
- Complete “a detailed Performance Matrix...that will capture the specific gap reduction you expect in each school with C4E funds for specific accountability areas and subgroups of students...[and] describe the overall achievement outcomes that you anticipate will result from the C4E programs.”

The C4E report submitted by the New York City Department of Education for 2008-09 reflects the explicit emphasis on the improvement of measured student achievement outcomes as the Contract’s primary purpose. New York City’s 2008-09 plan provides detailed responses to the State’s questions, all focused on improving student outcomes: defined as increases in the percentage of students who have met or exceeded standards, as measured by State tests in mathematics and English language arts, and graduation rates. The New York City document continues, however: “Despite [our] considerable progress, New York City faces great challenges,” identifying those challenges as the number of students who do not meet or exceed
standards on state tests; the number who do not graduate within four years; the ongoing achievement gap between white students and their Black and Hispanic peers “who score, on average, several grade levels below” white students; and the fact that that over 400 (approximately 30%) of New York City schools have failed to meet New York State annual student achievement targets, and are classified as “in need of improvement” status under the No Child Left Behind (NCLB) Act. The report clearly identifies measured student achievement as the New York City schools’ central goal, stating:

Continued progress in these areas is the driving force behind the NYC Department of Education’s ongoing Children First reforms…The Department is committed to continuing to remove the barriers that have traditionally stood in the way of struggling students…It is our goal…to deploy funding in support of school-and district-level initiatives that have a direct impact on [student] achievement…

Raising achievement for all students is the primary goal of New York City’s Children First reforms (italics added).

Similarly, the NYC Department of Education (DOE) website states: “Helping students learn is the end goal of New York City public schools” (New York City Department of Education, 2011a), and describes the federal No Child Left Behind act (NCLB) as “similar to our Children First reforms…designed to raise academic standards, close achievement gaps, [and] encourage more school accountability…” (New York City Department of Education, 2011b). Chancellor’s Regulation A-501 emphasizes that “[t]he resources of the school system will be strategically developed and deployed to enable regions and schools to provide the necessary supports and interventions to ensure that all students achieve the standards in a timely manner.”

A “Mayor’s Management Report” submitted by the DOE states the school system’s first goal as “improv[ing] academic performance,” explicitly defined in terms of student outcomes: the report presents the past seven years of student outcome data in two pages of detailed statistics on
student state test scores, attendance, Regents examination performance, and graduation rates.
The DOE Office of Accountability states its mission as “improv[ing] academic outcomes for all New York City public school students.” The DOE’s “Children First” school management and reform document describes the “moral urgency” of improving student achievement, defined in terms of measurable student outcomes: student graduations rates, student performance on state tests in mathematics and English language arts, and improving the lagging performance of African-American, Latino, and low-income students on these measures.

7.2 The expenditure of public funds is explicitly linked to student outcomes as the public schools’ essential purpose

Beyond such generally stated aims, multiple policy provisions mandate accountability to the public for expenditures on the public schools, linked explicitly to the public schools’ purpose of producing measured student achievement outcomes. The 1987 Chapter 655 amendment to New York State Education Law states, for example: “The legislature hereby finds that the state annually devotes extensive resources to education and that it is important to insure that such resources are spent effectively and efficiently.” The Board of Regents is therefore required to submit “an annual report setting forth the educational status of the state’s schools,” which will “assist the governor and legislature in assessing the efficacy of the many educational programs supported by the state.” Education Law § 2554.24 mandates that the board of education for every school district prepare a report “pursuant to regulations of the chancellor, and...[made] publicly available,” which must “include measures of the academic performance of the school district, on a school by school basis and measures of the fiscal performance of the district, as prescribed by the commissioner,” together with information “regarding pupil performance and expenditure per pupil.” Section 2590-h specifically requires the chancellor to publicly report information on the
performance of New York City schools, providing “community district education councils and the city board periodically with the results of [his] examinations and evaluations [of school effectiveness] and to make the same public.”206 Title 8 NYCRR 100.13 requires that a district “publicly report… its school-based expenditures” of “Contract for Excellence” school improvement funds for each of the “programs and activities” proposed and carried out in the plan, along with resulting student achievement outcomes.

Title 8 NYCRR 100.2(m), entitled “Public reporting requirements,” stipulates that data both on student outcomes and on the school budget must “be made publicly available as required by law,” and that all districts receiving Federal Title 1 funding must publicly distribute student outcome data by school, student subgroup, and district—both directly to parents and “made widely available through public means such as posting on the Internet, distribution through the media, and distribution through public agencies.” 8 NYCRR 100.2(bb), entitled “Data reporting requirements,” is a detailed 1,700-word subdivision that further stipulates specific requirements for the extensive data on every individual student enrolled at any time during the school year that must be collected and submitted annually—including demographic data, performance on state assessments, credentials awarded, and documentation of transfers and dropouts for high school students. Further, the subdivision mandates that this extensive student achievement data be reported annually along with detailed reports on school financial expenditures.

206 N.Y. Educ. Law § 2590-h(9)
7.3 Highly specific student outcome standards and clearly-defined measurement against those standards are stipulated in New York State Law

In addition to clear stipulation of student outcome goals and explicit linkage between public expenditures and the achievement of those goals, public policies also stipulate both highly-specific standards for student achievement, and unambiguous procedures for measuring student performance against those standards. Title 8 NYCRR 100.1, for example, provides dozens of precise definitions related to student outcome standards: “unit of credit” is defined as “the master of the learning outcomes set forth in a…syllabus for a given high school subject”; “syllabus” is “a document stating the expected learning outcomes, including the goals, objectives, concepts, skills, and understandings in a given subject”; “pupil evaluation program tests” are “state tests in reading, writing or mathematics and administered in grade six or below”; “Regents preliminary competency tests” are “state tests of achievement in reading or writing administered in grade eight or nine”; and “Regents competency tests” are “state tests of achievement in reading, writing, mathematics, American history and government, global studies and science administered in grades 9 through 12.”

The section continues to define “State learning standards” in seven general curriculum areas—English language arts; mathematics, science and technology; social studies; languages other than English; the arts; health, physical education and family and consumer sciences; and career development and occupational studies—stipulating detailed requirements for student outcomes in each area: “State learning standards in each of the seven general curriculum areas, and the State assessments that measure achievement of the State learning standards, are organized into four levels” that reflect the “knowledge, skills, and understandings all students are expected to know and be able to do by the end of grade four…by the end of grade eight…”[and]
upon receiving a high school diploma…” The standard for student achievement in English language arts is presented here, as a typical example of the level of detail stipulated in state policies on standards for student outcomes:

(a) Students will listen, speak, read and write for information and understanding. As listeners and readers, students will collect data, facts, and ideas; discover relationships, concepts, and generalizations; and use knowledge generated from oral, written and electronically produced texts. As speakers and writers, they will use oral and written language that follows the accepted conventions of the English language to acquire, interpret, apply and transmit information.

(b) Students will read and listen to oral, written and electronically produced texts and performances from American and world literature; relate texts and performances to their own lives; and develop an understanding of the diverse social, historical and cultural dimensions the texts and performances represent. As speakers and writers, students will use oral and written language that follows the accepted conventions of the English language for self-expression and artistic creation.

(c) Students will listen, speak, read and write for critical analysis and evaluation. As listeners and readers, students will analyze experiences, ideas, information and issues presented by others using a variety of established criteria. As speakers and writers, they will use oral and written language that follows the accepted conventions of the English language to present, from a variety of perspectives, their opinions and judgments on experiences, ideas, information and issues.

(d) Students will listen, speak, read and write for social interaction. Students will use oral and written language that follows the accepted conventions of the English language for effective social communication with a wide variety of people. As readers and listeners, they will use the social communications of others to enrich their understanding of people and their views.207

207 8 NYCRR 100.1
Title 8 NYCRR 100.2(p) provides clear definitions of four student performance levels as measured by state achievement tests—level one (basic), level two (basic proficient), level three (proficient), and level four (advanced)—based exclusively on specified numeric cut-off scores on state assessments in English language arts, mathematics and science, for elementary and middle school grades, and on Regents comprehensive examinations and competency tests in English, reading, writing, and mathematics for high school grades. The subdivision further stipulates the system used to calculate the aggregated “performance index” for specific groups of students: each student scoring at level 1 is credited with 0 points, each student scoring at level 2 with 100 points, and each student scoring at level 3 or 4 with 200 points, and the “performance index for each accountability group will be calculated by summing the points and dividing by the number of students in the group.”

Title 8 NYCRR 102.1 (“Examination schedule”), 102.2 (“Required use”), and 102.3 (“Responsibility for examinations”) stipulate the requirements for regular student testing, through “such examinations as are designated by the commissioner as necessary for proper supervision or evaluation of educational programs.” As the 2006 New York State Chapter 655 report states:

In New York State, the primary measures of student and school performance in the elementary and middle grades…were the New York State Testing Program (NYSTP) in English language arts and mathematics, the grades 4 and 8 science tests, and the grades 5 and 8 social studies tests. The Regents examinations and the Regents competency tests (RCTs) are the primary measures in the secondary grades. (p. 6)²⁰⁸

In New York City, Chancellor’s Regulation A-501 stipulates:

2⁰⁸ 2006 was the last year that the “Chapter 655 report” included a published narrative, in addition to data reports. Chapter 655 report data for all subsequent years is available at http://www.p12.nysed.gov/irs/chapter655/.
All students in Pre-kindergarten through grade 12 will meet or exceed rigorous academic standards in a performance-based core curriculum...[and a] comprehensive student assessment system, aligned with established State and City performance standards, will be used on an ongoing basis to measure student progress toward meeting these standards.

7.4 Accountability for key stakeholders (i.e. students, principals, schools, and school districts) is clearly stipulated in written public policies

As described above, student outcomes are stipulated as the purpose of the public schools, and policies specify both required student outcomes and mechanisms for measuring achievement of those outcomes. Finally, government policies stipulate clear mechanisms to hold students and principals (as individuals) and schools, school districts, and “educational service providers” (as organizational units) accountable for these defined and measured student achievement outcomes. Thus accountability for student outcomes is stipulated ex ante in written government policies for all individual and organizational school stakeholders apart from teachers and classrooms.

7.4.1 Students

The operating mechanism holding students accountable for their achievement outcomes is straightforward, stipulated in Chancellor’s Regulation A-501 entitled “Promotion standards”: as the Regulation explains, “[i]n grades 3 through 12, all students will meet or exceed the promotion standards established in this Regulation in order to be promoted to the next grade.” The 25-page Regulation describes New York City’s “system-wide promotion policy with clearly defined standards for promotion for each grade from grades three to twelve,” and details “the process and procedures for the implementation of the promotion policy in all New York City public schools.” Multiple promotion criteria are specified, including student work, teacher observation and assessment, achievement of proficiency levels on citywide and state tests, and a minimum of 90% attendance.
In key grades, however, a single minimum standard is utilized for promotion: students must score at least at Level 2 on the standardized State tests in Language Arts and Mathematics in order to be promoted to the next grade. Third-grade, fifth-grade, and seventh-grade students who score at Level 1 are not promoted and must repeat their grade. As the Regulation specifies: “The decision to promote or retain may not be based on consideration of a sole criterion, except that a student must attain a score of at least Performance Level 2… in order to be promoted from Grade 3 to Grade 4, from Grade 5 to Grade 6, and from Grade 7 to Grade 8” (p. 7, italics added). In grades 9-12, students must earn a minimum number of credits in order to be promoted to the next grade. To graduate from high school, students are required to accumulate a minimum number of credits, attain 90% attendance, and achieve State-mandated passing scores on five New York State Regents examinations in English, Mathematics, Global History, U.S. History and Government, and Science.

7.4.2 Principals

New York policy holds students and “schools” (discussed below) most rigorously accountable for student achievement outcomes. Principals, too, however, are held accountable for student outcomes to a degree significantly higher than the classroom teachers they supervise. Chapter 103 introduced a new principal evaluation system which in some ways appears fairly similar to that of teachers, and its implications for principal accountability remain to be seen. However, several stipulations in § 3012-c regarding principals are notably more determinate than those for teachers. Furthermore, separate, previously-existing legal provisions also have direct implications for principal accountability.
The new § 3012-c “annual professional performance review” applies to principals as well as teachers, but with some important differences in metrics used. For both teachers and principals, twenty percent of an annual rating is based on student state test scores (rising to twenty-five percent if and when a “value-added growth model” is approved). For teachers, an additional twenty percent of their rating is based on “locally-selected measures” of student achievement, including a range of relatively subjective and negotiable options. For principals, however, the options for this twenty percent are defined such that essentially 40% of a principal’s rating must be based on objective measurement of student outcomes. The NYCRR regulations provide the following options for a principal’s locally-selected measure: student achievement levels on state assessments; student performance on any district-wide measures; high school graduation and/or dropout rates; percentages of student who earn a Regents diploma; student scores on Regents examinations; and students’ progress toward graduation, “using strong predictive indicators” specified. Furthermore, for the “60% other measures” component for principals, forty percent must be based on “one or more visits by a supervisor,” along with at least two sources of relatively outcome-based evidence including survey feedback from teachers, students, and/or families; school visits by trained evaluators; and review of “school documents, records, and state accountability processes.” The remaining twenty points of “other measures” must be based on the results of “ambitions and measurable goals,” set by the principal and the superintendent. One of these goals “must address the principal’s contribution to improving

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209 The NYCRR regulations specify that a value-added model used for principals may be different than that for teachers, “based on empirical evidence and policy determinations.” (8 NYCRR 30-2.2(v))
210 8 NYCRR 30-2.4(c)(4)
211 8 NYCRR 30-2.4(d)(2)(iii)
teacher effectiveness,” and any other goals must “address quantifiable and verifiable improvements in academic results.”

Education Law §§ 2590-h and 2590-i both state that the New York City schools chancellor “may cause the transfer or removal of principals for persistent educational failure.” Such educational failure, furthermore, is clearly defined in terms of student outcomes:

Persistent educational failure of the school shall be defined in regulations of the chancellor to include a pattern of poor or declining achievement; a pattern of poor or declining attendance; disruption or violence; and continuing failure to meet the chancellor’s performance standards or other standards.

Chancellor’s Regulation C-33 (entitled “Removal and transfer of principals for persistent educational failure”) reiterates that “persistent educational failure” is grounds for the removal or transfer of principals, and describes “multiple performance indicators” of persistent educational failure, based on:

…[student] performance that is among the lowest for all schools of similar grade levels (i.e., elementary, middle or high schools) in New York City; substantial declines from high or moderate levels of performance; and failure to increase substantially from relatively low levels.

The Regulation re-states the “indicators that evidence persistent educational failure” cited in § 2590-i—again defined entirely in terms of measured student achievement outcomes. The Regulation further emphasizes that the “performance of the principal…is crucial to ensuring that all students meet high standards of achievement,” and that New York State Education Law “requires superintendents to evaluate the performance of principals with respect to educational

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212 8 NYCRR 30-2.4(d)(2)(iv)
213 N.Y. Educ. Law §§ 2590-h(25) and 2590-i(2)(a)
214 N.Y. Educ. Law §2590-i(2)(a)
effectiveness and school performance.” For principals, “educational effectiveness” is defined entirely in terms of measurable student outcomes: “a comprehensive set of performance indicators related to academic performance, school discipline and other indicators such as attendance.”

In addition to potential transfer or dismissal for poor performance, principals receive individual financial bonuses of up to $25,000 per year for good performance, also based on student outcomes. As the Department of Education website explains:

The City’s contract with the Council of School Supervisors and Administrators (CSA) allows school leaders to earn bonuses based on the success of their students as reflected in school Progress Reports. Principals of schools whose Progress Report scores are in the top 20 percent citywide receive bonuses of up to $25,000. School bonuses will be awarded to principals of high schools, secondary schools, and K-12 as follows: principals receive $25,000 if their schools scored in the top 1 percent (four principals); $17,000 if their schools scored in the top 2-5 percent (12 principals); $12,000 if their schools scored in the top 6-10 percent (16 principals); and $7,000 if their schools scored in the top 11-20 percent (31 principals); an additional 17 principals who did not qualify for the CSA bonus but whose schools will receive bonuses as part of the school-wide performance bonus program will get a bonus of $7,000 if their schools met their targets (14 principals) and $3,500 if their schools met 75 percent of their targets (three principals).

The website has a link to Excel spreadsheets showing the most recent bonuses awarded, including both the individual principal’s name and the amount of bonus earned (New York City Department of Education, 2009).

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215 This existing system is part of the current CSA contract and is not addressed in the new law; whether it will be altered is therefore not clear.
7.4.3 Schools and Districts

Holding individual “schools”—and districts as groups of schools—accountable for student achievement outcomes is strongly emphasized in policies at both the state and city levels. New York’s accountability system is, in fact, primarily based on holding “schools” (rather than the people who work in them) accountable for measured student achievement outcomes. The Chapter 655 report, discussed above, provides an overview of the “New York State Accountability System,” explaining: “New York State has established a unified system of accountability, consistent with the requirements of the federal No Child Left Behind] (NCLB) Act, that applies to all public school districts… public schools…[and] students educated in these institutions,” using defined student outcome measures “to determine if districts and schools have made Adequate Yearly Progress” in improving student achievement (p. 13). The report focuses exclusively on schools and districts as the accountable stakeholders in improving student achievement outcomes: e.g. addressing inadequate student achievement by “raising academic standards, increasing the capacity of schools to achieve excellence, and measuring results to make schools accountable,” while requiring “failing schools to reform, reorganize, or close” (p. vii, italics added).

New York Education Law § 2590-j mandates that the Chancellor annually rank all New York City schools “in order of the percentage of pupils reading at or above grade level” based on a “comprehensive reading examination…administered to all pupils in all schools.” Education Law § 2590-h stipulates that the chancellor must “intervene in any district or school which is persistently failing to achieve educational results and standards,” and that he may require the school principal, or district superintendent “to prepare a corrective action plan, with a timetable for implementation of steps acceptable to the chancellor to reach improvement goals.” Education
Law § 211-b, entitled “Consequences for consistent lack of improvement in academic performance,” specifies the “actions [that] shall be taken to increase school and district accountability for academic performance”: all schools that fail to meet student outcome targets must be identified, and must eventually be reorganized or restructured. Further, those schools that fail to “demonstrate progress on established performance measures…may be targeted for closure” (italics added).

Title 8 NYCRR 100.2, entitled “General school requirements,” is a 35,000-word section that addresses all areas of elementary and secondary public school operation. More than one third of 100.2 is devoted to a 12,300-word subdivision, 100.2(p), entitled “Registration of schools and school/district accountability.” This subdivision stipulates in detail: (1) Minimum student outcomes a school is required to produce; (2) The process for evaluating school performance based on those student outcomes; (3) Procedures for identifying “schools requiring academic progress” based on inadequate student achievement outcomes produced; and (4) Interventions mandated if a school fails to make “adequate yearly process” in improving its student achievement results. As paragraph four of the subdivision, “System of accountability for student success,” states: “Each year…the commissioner shall review the performance of all public schools, charter schools, and school districts in the State. For each accountability performance criterion…and each performance indicator specified…the commissioner…shall determine whether [the school] has achieved adequate yearly progress” in improving student achievement outcomes. Further, the Commissioner “shall place under registration review those schools that are determined to be farthest from meeting the benchmarks established by the commissioner…and most in need of improvement…[giving] primary consideration to the percentages of students meeting performance benchmarks.” If three years after being placed
under registration review the school “has not demonstrated progress as delineated by the commissioner…[he] shall recommend to the Board of Regents that the [school’s] registration be revoked.” In other words, producing specified levels of student achievement outcomes is actually a minimum requirement to “be” a school—in stark contrast to what is required to “be” a teacher—and the high-stakes consequence for a school that fails over several years to produce adequate student achievement outcomes is its elimination from the system.

The Department of Education website also describes how New York City schools are held accountable for student achievement results. Under “Performance & Accountability,” a page entitled “Progress Reports” focuses exclusively on school performance and accountability, describing the procedures for grading each school with an A, B, C, D, or F “based on student performance, progress, and school environment,” in order to “help parents, teachers, principals, and school communities understand schools’ strengths and weaknesses” (New York City Department of Education). The page further explains how “[d]ecisions about the consequences a school will face” will be made, concluding that, “[u]ltimately, schools are accountable for making progress and receiving an overall grade of A, B, or C,” and, finally, that “school organizations receiving an overall grade of F are likely to be closed” (italics added) (New York City Department of Education, 2011). A separate Department of Education page summarizes holding schools accountable: “Schools that are not providing their students with the educations [sic] they need and deserve will face consequences, while schools that are meeting and exceeding standards will receive rewards” (New York City Department of Education, 2011). A page on the No Child Left Behind Act (NCLB) explains: “Like our Children First reforms,” the goal of NCLB “is to raise academic standards, close achievement gaps, encourage more school accountability, and offer more choices to families and students,” including a link to a State
Department of Education webpage which explains that NCLB “is a federal law to improve education for all children” which “holds schools responsible for results”—defined, again, as measured student achievement.

7.4.4 “Providers” of Academic Remediation Services: “Supplemental Educational Services” and “Academic Intervention Services”

One of the most striking emphases on the explicit goal of—and accountability for—student achievement outcomes is evident in policy requirements for the provision of “supplemental educational services” (mandated by federal law and by 8 NYCRR Part 120 “No Child Left Behind Act of 2001”) and “academic intervention services” (required by New York State and stipulated in 8 NYCRR §100.2(ee) “Academic intervention services”). Both of these “services” teach students outside of the regular public school classroom as required by law when either aggregate school or individual student achievement outcomes are determined to be inadequate. Yet in contrast to classroom teaching, the educational services (that is, additional teaching) provided to “supplement” or “intervene” in regular classroom teaching are described as explicitly aiming to increase measured student achievement outcomes. Furthermore, these extra-classroom services are subject to a clear new accountability framework: that is, specific standards, measurements, and consequences are stipulated ex ante in law, focused exclusively on producing defined and measured student achievement outcomes.

**Supplemental Educational Services.** The requirement to provide “supplemental educational services,” as stipulated in 8 NYCRR Part 120, is based on inadequate overall performance of a school, defined by that school’s aggregate student achievement outcomes. Title 8 NYCRR 120.4 specifies the federal No Child Left Behind Act mandate that an LEA receiving Title 1 funds “shall make supplemental educational services [SES] available to eligible students
who attend a school that is in school improvement status, a school in corrective action status or a school in restructuring status.” In other words, if the aggregate student achievement outcomes produced within a particular school fall below a minimum benchmark, the school system is required to provide “educational services” to the students attending that school that are “supplemental” to those provided by teachers in the school’s classrooms. By law, supplemental educational services are entirely separate from and external to regular classroom teaching, and must “be provided outside the regular school day.”

Written policy stipulations governing the SES teachers who are teaching students from an “inadequately-performing school” are notably inconsistent with those governing the regular classroom teachers who failed to produce adequate results in the first place. The approval process for “providers” requires the submission of a written application to the Commissioner that: (1) Documents the potential provider’s “demonstrated record of effectiveness in increasing student academic achievement in English language arts (including reading) and/or mathematics” (italics added); (2) Clearly states that “the instruction to be provided and content to be used are aligned with State learning standards”; and (3) Demonstrates how the supplemental educational services to be provided are “specifically designed to increase [students’] academic achievement…on the required State assessments in the areas of English language arts (including reading) and mathematics,” enabling students to “attain proficiency in meeting State learning standards in those areas.” Furthermore, supplemental educational services providers are required to enter into a contractual agreement that includes “a statement of specific achievement goals” for each student, “a description of how each such student’s progress will be measured,” and a specific “timetable for improving achievement.” These “providers” (organizations of externally-employed teachers who are teaching outside of the regular classroom) are obligated to provide a
minimum of quarterly reports on students’ progress, and a formal, written end-of-year report to the LEA summarizing their students’ progress over the preceding academic year.

Finally, unlike regular classroom teachers, policies stipulate specific mechanisms to hold these “supplemental” teachers explicitly accountable for improved student achievement. Providers are required to include “a provision for termination” of their services if they are “unable to meet the goals and timetables” specified in the contractual agreement, and if a provider “has failed for two consecutive years to contribute to increasing the academic proficiency” of the students taught, the Commissioner may terminate provider approval. Thus, in marked contrast to regular classroom teachers, policies stipulate that teachers external to the classroom who fail to produce adequate student achievement outcomes within a two-year time period may simply be fired.

**Academic Intervention Services.** New York State law also includes a separate, additional requirement for “academic intervention services,” stipulated in 8 NYCRR 100.1 and 100.2(ee) as “additional instruction which supplements the instruction provided in the general curriculum” or provision of additional student support services, for the purpose of “support[ing] improved academic performance” and “assist[ing] students who are at risk of not achieving the State learning standards in English language arts, mathematics, social studies and/or science, or who are at risk of not gaining the knowledge and skills needed to meet or exceed designated performance levels on State assessments.”

While the requirement for supplemental educational services is applied to an entire school, determined by inadequate aggregate student achievement produced within that school,

216 8 NYCRR 100.1(g)
provision of academic intervention services is mandated for individual students, based on inadequate individual student achievement. Schools are required to provide academic intervention services to individual students based on their failure, or apparent risk of failure, to achieve defined New York State performance standards, as measured by standardized tests. Academic intervention services occur either during or after the regular school day, while supplemental educational services must be provided outside the regular school day. However, both are strictly defined as *external* to regular classroom teaching. As with supplemental educational services, the law also defines outcomes-based measures for academic interventions services: academic intervention service plans must be reviewed and revised every two years, “based on student performance results.” A school is legally obligated to continue provision of extra-classroom academic intervention services until a student’s performance either meets or exceeds (or is shown to be likely to meet or exceed) “the State designated performance level on the next State assessment.”

Thus, both supplemental and intervention services are required in policy as remediation when student learning produced by the regular educational services provided by classrooms teachers inadequate. While the words “teacher” and “teaching” do not appear in written policies describing supplemental and intervention services, clearly what is stipulated *is* teaching—simply occurring outside of the classroom teaching that has, by legal definition, produced insufficient student achievement in the first place. And while these policies explicitly stipulate clear accountability for student outcomes, they are exclusively directed at teachers and teaching external to the regular school classroom.
7.5 The classroom is the single organizational unit within the New York City school system into which students are not grouped for accountability purposes

As shown, the core purpose of the New York City public school system is clearly stated as the production and improvement of measured student achievement outcomes, and written policies explicitly stipulate standards, measurements, and consequences with respect to producing these student achievement outcomes for all school stakeholders except for classroom teachers. Student performance data used to hold stakeholders accountable for those outcomes is disaggregated, and publicly reported, by grade, by school, by district, and for multiple student sub-groups.\(^{217}\) For purposes of accountability, in fact, student achievement outcomes are measured and reported for every school system unit \emph{except} the classroom, and disaggregated by a wide range of student characteristics, excluding the specific classroom they attend.

As explained above, policies hold schools and principals accountable for producing student achievement outcomes aggregated by individual school,\(^{218}\) and district leaders and the Chancellor for student outcomes aggregated by school district.\(^{219}\) State law additionally requires that student performance data be collected and reported for multiple student subgroups: by grade (school-wide, district-wide, and city-wide); by subject; by gender; by racial/ethnic group; and by English proficiency status, migrant status, disability status, and economic status.\(^{220}\) Title 8 NYCRR 100.2(p) stipulates:

\(^{217}\) As discussed above, data used are student achievement scores on standardized tests in English language arts (ELA) and mathematics at all grade levels, and in science at the elementary and middle levels; and Regents exam scores and graduation rates at the secondary level.
\(^{218}\) See for example: N.Y. Educ. Law §§2590-h, 2590-i, 2590-j 5(a), 211-a; 8 NYCRR 100.13, 100.2(p); Chancellor’s Regulation C-33.
\(^{219}\) See for example: N.Y. Educ. Law §§ 2590-h, 211-a; 8 NYCRR 100.13, 100.2(p).
\(^{220}\) See for example: 8 NYCRR 100.2(bb); 2006 Chapter 655 report.
Accountability groups shall mean, for each public school [and] school district…those groups of students for each grade level or annual high school cohort, as described in paragraph (16) of this subdivision comprised of:

- All students;
- Students from major racial and ethnic groups;
- Students with disabilities;
- Students with limited English proficiency; and
- Economically disadvantaged students.

A particular school or district is only determined to have made “adequate yearly progress” (AYP) on the performance criterion stipulated by state law “if each accountability group within such school or district achieved adequate yearly progress on that criterion.”

The Chapter 655 Report further emphasizes that under New York State’s “unified system of accountability” for the public schools, the state requires that districts and schools make AYP by student grade, by subject, and by multiple accountability groups identified by law—excluding only classrooms (pp.13-14). In addition, an annual “School Report Card” for every public school in New York State, is published on the New York State Education Department website (New York State Education Department, 2011); these School Report Cards include “student performance data aggregated by gender, racial/ethnic group, English proficiency status, migrant status, and income levels for examinations in English language arts and mathematics…” (Chapter 655 Report, 2006, p. 238).

The results of the state English language arts and mathematics test outcomes for grades three through eight in the New York City public schools are published on the New York City

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221 8 NYCRR § 100.2(p)
Department of Education (DOE) website, reported by school system sub-units of grade, school, district, borough, and citywide, and “disaggregated by student populations (disability status, English Language Learner status, race/ethnicity and gender)” for each of these sub-units (New York City Department of Education, 2011), along with graduation and dropout data, reported by school, borough, and citywide (New York City Department of Education, 2011). The DOE website also publishes highly-detailed “Progress Reports” for every public school in the city that “grade each school with an A, B, C, D, or F,” based largely on students’ achievement outcomes, as well as the results of a DOE-conducted qualitative school review.

The “Contract for Excellence” (C4E), discussed above, requires that schools with low performance (defined as low student achievement aggregated at the school level) set “performance targets” for improved school-wide student achievement, and for multiple student subgroups within the school.222 The NYC 2009-10 C4E report describes the “overall school and student improvement targets” that New York City requires schools to establish: for all students in the school, and for specific student subgroups including racial/ethnic subgroups, students with previously poor achievement, students with disabilities, students with limited English proficiency, and students in poverty. Schools, further, are required to develop “action plans” that delineate the “instructional strategies that the school will implement…to raise achievement among targeted groups”; these strategies must “take into account all supplemental resources available to principals.” Again, the individual classroom is the single student subgroup excluded from analysis of student achievement levels, and the role of teachers in raising student achievement is not mentioned even once.

222 8 NYCRR 100.13(3)(i)(a)
Thus, the only school system units that are excluded from determinate government policies stipulating accountability for student outcomes are the classroom teacher (the single individual stakeholder not subject to these policies) and the classroom (the single organizational unit into which students are not grouped for accountability purposes). Stated objectives of the public schools and government policies for all individual and organizational stakeholders in the NYC public school system *except* for teachers and classrooms are consistent with the new accountability framework. At the same time, teachers are notably omitted within the context of the outcomes-focused accountability policies applied to the rest of the school system. The *teacher* and the *classroom* are the sole parts of the school system that are not incorporated into a new accountability policy framework.
Chapter 8:
Context for Teacher Policies—
The Scholarly Education Literature

As shown in the preceding chapters, a new accountability policy framework—that is, defined and measured outcomes, and clearly-defined consequences to be allocated based on those outcomes, stipulated ex ante—now dominates much of New York education policy, explicitly holding key individual and organizational stakeholders accountable for measured student achievement results. Only teachers (and classrooms) are excluded from this new accountability framework. The way teacher policies are written is markedly different than the way policies are written for the rest of the school system, holding teachers accountable solely for teacher inputs of training and years employed.

This contrast between emphasis on inputs for teachers and outcomes for the rest of the school system is evident throughout education policies. The multiple state and city policies directly addressing accountability for production of student achievement outcomes do not stipulate a role for teachers and classrooms in producing those outcomes; omission of the actual words “teacher” and “classroom” from these policies is striking. At the same time, when teachers are occasionally incorporated into policies focused on improvement of student outcomes the way they are presented underscores the contrast between input and outcome focus: provisions regarding teachers in outcomes-focused accountability policies almost exclusively stipulate increased teacher inputs. While teachers are almost entirely excluded from policies that address
improvement of and accountability for student outcomes, student outcomes are largely excluded from policies governing teachers.

8.1 Influence of the Professions on Government Policy

New institutionalism argues that the professions, as well as the government, exert a powerful influence on the development and nature of institutions. The new institutionalism perspective thus suggests that while New York teacher policies are inconsistent in emphasis with much of current policy governing New York public schooling, they may instead be ideologically aligned—or isomorphic—with other institutions that are in the “teacher business.” Foremost among such institutions are the college and university education departments and teacher preparation programs, which both produce educational scholarship on teachers and teaching and prepare classroom teachers, along with teachers unions and professional teacher organizations.

Analysis of the scholarly education literature in fact shows that while teacher policy remains notably unaligned with other public schooling policies and relatively unaffected by strong government focus on accountability for producing measured student achievement outcomes, much of teacher policy is congruent with the core ideology of the education profession as expressed in the scholarly literature on teachers and teaching. The way teachers appear—and do not appear—in policies reflects fundamental views, concepts, beliefs, and assumptions evident in education scholarship regarding both teachers and accountability. The alignment between teacher policies and the education literature is evident even at the level of the literal words and phrases used in both the literature and policies.

Two Paradigms: Professionalization and Effectiveness Two distinct, competing paradigms are now evident with respect to public schooling in general, and teachers and teaching
in particular. The first is what can be termed the *professionalization* paradigm, which defines teacher quality primarily in terms of teacher inputs of certification, ongoing training, and years employed.\textsuperscript{223} Within this ideological framework, teachers are conceptualized on the individual level primarily as learners, and are viewed as responsible first and foremost for their own learning—both initial preparation, and ongoing training—to continually strengthen what is often referred to as teacher “knowledge and skills.” The role of teachers in contributing to student learning is acknowledged, but teachers are not viewed as causing or “producing” student outcomes; in fact, measured student achievement outcomes are largely rejected as a legitimate or appropriate goal of teaching in the first place. On the systemic level, on the other hand, the professionalization paradigm defines the school, in particular, as the accountable producer of student achievement. In the systemic context, teachers are positioned as an essential resource which the education system and schools are responsible (even accountable) for maintaining and developing, in order to enable *schools* to carry out their responsibility for producing student outcomes.

The second paradigm is what can be termed the *effectiveness* paradigm. The effectiveness paradigm is aligned with the new accountability model, and emphasizes the production of student outcomes as the central goal and responsibility of all school stakeholders. Within the effectiveness paradigm, teachers are viewed primarily as individual producers (rather than learners), and teacher quality is defined in terms of teachers’ effectiveness in producing student learning. The effectiveness paradigm—focusing on accountability for producing measured student outcomes—now dominates much of education policy, as shown above. Teacher policy,

\textsuperscript{223} This term was drawn from the education literature: “professionalization” is identified as the prevailing concept of teacher quality in that literature (Cochran-Smith & Fries, 2001; Mayer, 2005; Podgursky, 2005).
however, remains largely aligned with the professionalization framework advocated in the scholarly education literature on teachers and teaching, as well as in publications from professional teaching organizations (such as the National Board for Teaching Standards) and the teachers unions. The effectiveness paradigm is explicitly identified—and attacked—as directly contrary to and fundamentally incompatible with the professionalization paradigm promoted in much of the scholarly literature in education.

**Teacher Policies and Professionalization.** This chapter explores the ideological alignment between formal teacher policies and the dominant views in the scholarly education literature, showing how theories, beliefs, assumptions, and definitions fundamental to the professionalization paradigm dominate teacher policy in New York. The central point of this chapter is that the set of ideas encompassed in the professionalization framework, longstanding in the field of education, still remains highly relevant in public education notwithstanding the rise of the “new accountability” ideology increasingly promoted by government at all levels, and now dominant in much of education policy. The ideas core to professionalization appear to maintain considerable, although now not exclusive, influence in the domain of education policy.

The specific aims of the chapter are to:

1. Explicate the individual components of the professionalization ideology: its central theories, definitions, beliefs, values, and assumptions;

2. Explain how these components fit together in a logical way within a coherent ideological framework;

3. Show how this integrated set of ideas is incorporated into New York policies regarding teachers, including the newly-written teacher policies introduced through Chapter 103 of the 2010 Laws of New York; and
4. Show the ideological conflict that exists between the professionalization paradigm, which characterizes much of teacher policy, and the effectiveness paradigm, which dominates other policies governing schooling.

8.2 Paradigmatic Definition of Teacher Quality

In education scholarship, a well-established, operational definition of teacher quality is “a teacher who is qualified”: that is, a teacher who has met entry-level teaching requirements by completing a teacher preparation program and receiving a state teaching credential (e.g. Akiba, LeTendre, & Scribner, 2007; Benveniste, 1985; Cochran-Smith & Fries, 2001; Oakes et al., 2004). The term “qualified” (also referred to as "well-qualified" or “highly qualified”) is frequently used in the education literature as a synonym for "teacher quality," and, additionally, as a synonym for other presumed features of quality such as "well-prepared," “caring,” "competent," and "effective" (e.g. Darling-Hammond, 2000; Darling-Hammond, 2000; Esch et al., 2005; Gallegher & Bailey, 2000; Rebell & Hunter, 2004). This definition of “teacher quality” as "a teacher who is qualified" leads directly to the predominant way of assessing teacher quality: its presence or absence is largely determined by the presence or absence of teacher qualification, or “full preparation or credentialing” (Oakes et al., 2004, p. 85).

224 The synonymous use of “effective” and “qualified” is especially evident in authors’ citation of William Sanders’ research on teacher effectiveness in arguments for the importance of teacher qualification (e.g. Holland, 2001; Rebell & Hunter, 2004; Wasley, 2004; Wise, 2002; Yinger & Hendricks-Lee, 2000). In one example, Wasley (2004) writes: “Sanders and Rivers (1996) provide evidence suggesting that a qualified teacher every year is essential to student accomplishment. Their data show the negative effects of having a poorly prepared teacher year after year; cumulative loss in achievement gains for children is devastating” (p. 139). Reference to one of Sanders’ articles appears on the National Council for Accreditation of Teacher Education (NCATE) website under “Research Supporting the Effectiveness of Teacher Preparation,” listed as research that is “supportive of the need for high quality teacher preparation” (2011, italics added). Sanders himself, on the other hand, in fact argues that teacher preparation and qualification is not strongly related to effectiveness as he defines it.
Beyond teacher qualification as the fundamental characteristic of teacher quality, education scholars define two additional inputs as both determinants and indicators of teacher quality. The first of these is *years employed*: more years of teaching is equated with a higher level of teachers’ professional knowledge and skill. The second is *additional training* through professional development, teacher education coursework, and “advanced certification” such as that provided by the National Board for Professional Teaching Standards (NBPTS). These inputs of “experience and credentials” are “broadly used proxies of teacher quality” (Malen & Rice, 2004): an operative definition of teacher quality in terms of these input measures is widely accepted in the education literature (e.g. Benveniste, 1985; Cochran-Smith, 2001; Choi, 2010; Darden & Cavendish, 2012; Darling-Hammond, 1989, 1996, 2004a; Darling-Hammond & Rustique-Forrester, 2005; Ferguson, 2004; Goldhaber, 2003; Mayer, 2005; Podgursky, 2005; Richardson & Roosevelt, 2004; C. B. Swanson, 2006).

The definition of teacher quality as established in the education literature is clearly incorporated into both federal and state law. Policies define and measure teacher quality by teachers’ certification, ongoing training, and years of employment as a teacher. “Improving teacher quality” means increasing the number of teachers who are certified, receiving professional development, and have more years employed. The “teacher quality indicator” that the federal No Child Left Behind Act (NCLB) requires New York to report annually is the “percent of classes in core academic subjects not taught by highly qualified teachers” (New York State Education Department, 2006, p. 22). The State Education Department “Report on Progress for Meeting Federal Teacher Quality Goals” describes New York State’s progress towards achieving teacher quality by showing “increases in the percent of classes in core academic subjects taught by teachers who met the federal definition of a ‘highly qualified’ teacher”
(Duncan-Poitier, 2007).\textsuperscript{225} The 2006 Chapter 655 Report includes 346 pages presenting sixteen tables of highly-detailed data for every school district in New York State as mandated by state law. Of these sixteen, a single table reports data on teachers: teacher inputs of teacher certification status, median years of experience, percentage of teachers with a Master’s degree plus “30 hours or a doctorate,” median teacher salary, annual teacher turnover rate, percentage of minority teachers, and average class size. The report, too, underscores that in addition to ensuring that teachers are certified, “[s]chool districts must offer professional development to enable teachers to become highly qualified and effective teachers” (Chapter 655 Report, 2006, p. 231). As described in Chapter 4, policies hold teachers accountable for these inputs alone.

A fundamental assumption underlies this policy definition of teacher quality: that increased teacher \textit{inputs} result in improved student \textit{outcomes}. This assumption is incorporated into policies as a simple \textit{modes ponens} argument: If teachers are certified, receiving ongoing training, and have more years of employment, then student achievement will improve. Reflecting this, policies addressing the improvement of student outcomes incorporate teachers only in terms of increasing teacher inputs. A defined role or responsibility of teachers in producing student outcomes is excluded from these policies and the few references to teachers’ professional work of teaching that do occur are notably vague and indirect.

Policy emphasis on teacher inputs as a solution to the problem of inadequate student outcomes is particularly evident in Education Law § 211-d “Contract for excellence.” While § 211-d emphasizes the accountability of schools for improving student achievement, references to teachers appear only in terms of teacher inputs. The first reference to teachers appears under

\textsuperscript{225} A qualified teacher is referred to under federal law as “highly qualified.”
“allowable programs and activities intended to improve student achievement” in a detailed requirement for class size reduction—in other words, increasing the number of certified teachers. The second occurs in a provision describing teacher professional development as another of the six allowable programs and activities, again increasing teacher inputs. The third occurs in a requirement for the implementation of incentives to encourage teachers who are certified and have more years of employment to work in low-performing schools. An active role—much less accountability—of classroom teachers in improving student outcomes is nowhere mentioned.

NYCRR 100.13 also stresses the improvement of student outcomes through “allowable programs and activities” that exclude any role of teachers in improving those outcomes. Almost one half of the regulation explicates in detail the allowable programs and activities to improve student achievement stipulated in § 211-d. In “general requirements” for improvement plans, references to teachers appear twice: 1) Plans must include “high quality, sustained professional development”; and 2) “Additional instruction” must be “provided by appropriately certified teachers.” “Specific program requirements” describes the six allowable programs and activities in detail, primarily emphasizing class-size reduction. The secondary emphasis is on professional development for teachers. Together, almost one half of “Specific program requirements” is devoted to describing these two programs and activities that increase teacher inputs. Teachers appear in descriptions of the other four allowable programs and activities only in occasional references to certification status, professional development, recruitment, and retention. For example, “school restructuring” (a small section of 225 words) includes the specification that

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226 NYCRR 100.13 reiterates the definition of “students with low academic achievement” as students who “are not performing at least at a level 3 score” on the “accountability measures” of state tests in elementary/middle level English language arts and mathematics, elementary/middle level math, or did not graduate within four years of first entry into the ninth grade.
teachers in restructuring schools receive “focused, yet comprehensive, professional development.”

The emphasis in NYCRR 100.13 on teacher inputs as the primary solution to the problem of inadequate student achievement outcomes is reflected in the 2008-09 expenditures of New York City’s $388 million “Contract for excellence” school improvement funds. New York City’s 2008-09 “Needs and Strategies Report” explains how funds were “deploy[ed]…in support of school- and district-level initiatives that have a direct impact on achievement.” As reported, over 30% of funds were spent on class-size reduction. An additional 22% were spent on professional development. Thus over half of the funds intended to have a direct impact on student achievement were spent on teacher inputs of professional development and the addition of more certified teachers. A third (34%) was spent on remediation initiatives aimed to address pre-existing failures to produce adequate student achievement outcomes. The remaining 14% was spent on new initiatives such as pre-K and ELL programs.

The emphasis on teacher inputs is also evident in how the relationship between teachers and educational equity is constructed in both the education literature and policies. Based on the proposition that teacher qualification results in improved student outcomes, students’ equal access to qualified teachers is defined as fundamental to educational equity: “Lack of access to qualified teachers…constitutes a major threat to equal educational opportunity” (Darling-Hammond, 2004a, p. 1937). Scholars argue, therefore, that reducing educational inequity requires increasing teacher inputs (e.g. Akiba et al., 2007; Betts, Rueben, & Danenberg, 2000; Darling-Hammond, 2010; Grubb et al., 2004; Rebell & Hunter, 2004); until “dramatic

227 NYCRR 100.13(c)
inequalities in students’ access to qualified teachers” is addressed other efforts to improve student achievement will not succeed (Darling-Hammond, 2004b, p. 1079).

The assumption that increasing teacher inputs will increase educational equity—defined as improved student outcomes—is incorporated into policies. For example, Part V of the 2006 Chapter 655 Report, “Minority Issues,” specifically addresses the problem of educational inequity between minority students and their white peers, stressing that the “contrasts found in classroom teacher characteristics with varying minority composition portend the disparities found in performance among these groups” (p. 162, italics added). As described in New York’s “Revised Plan to Enhance Teacher Quality,” the federal government requires the state to provide an “equity plan” to ensure that “poor or minority children are not taught by inexperienced, unqualified, or out-of-field teachers at higher rates than are other children” (p. 5). To reduce educational inequity, New York’s plan requires the implementation of “equitable teacher assignments” in order to ensure that “low income and minority children have the same access as all other children to appropriately certified, highly qualified and experienced teachers” (p. i, italics added). The “Report on Progress for Meeting Federal Teacher Quality Goals” emphasizes that “teacher quality gaps” will be addressed simply by increasing percentage of teachers who are certified. In policy, as in the education literature, educational inequity is thus measured in terms of student outcomes, and with respect to teachers is addressed by increasing teacher inputs.

8.3 The Relationship between Teaching and Student Learning

The definition of teacher quality in terms of teacher inputs of training and years employed de-emphasizes teachers’ daily activity—i.e. teaching—as central to the quality of teachers. The implicit premise that teacher inputs, not the activity of teaching, are the critical
factor in producing student outcomes is evident throughout New York education policy. This, too, is closely aligned with a view explicitly expressed in the education literature: that a direct connection between teaching and student learning does not exist. In the following, it is shown how the presumed disconnection between teaching and student learning is explained in the education literature. Several examples are then presented demonstrating how this view is incorporated into policy. In policies that directly address the improvement of student outcomes, reference to teachers’ work is virtually excluded, and a relationship between the daily teaching activity of classroom teachers and student learning is barely acknowledged.

The view that teaching and learning are not directly connected is longstanding and predominant in the education literature. For four decades, the Coleman report (1966) has been cited in education scholarship as showing that teachers’ impact on student achievement is minimal compared to influences of family and community. Twenty-five years ago, Ericson and Ellett (1987) argued that teachers are not “solely or even mainly responsible for dismal educational results” (p. 278). The authors rejected what they called “causal theory of teaching,” which “directly implies that teachers should be held strictly accountable for their students’ learning or failure to learn” (p. 278). More recently, this view was echoed by Fenstermacher and Richardson (2005) who maintain that the conception of “a straightforwardly causal connection” between teaching and learning “is wrong.” The current “considerable policy focus on quality teaching” is largely based on the “presumption that the improvement of teaching is a key element in improving student learning,” which they argue is seriously misguided (p. 191, italics added). In a commonly-made argument, the authors contend that good teaching may or may not result in student learning: “a teacher of children from highly impoverished settings may continue
to be thought of as engaged in teaching even though few students exhibit significant learning achievements” (p. 209, italics added).

Many education scholars thus present a concept of teaching that de-emphasizes, or even excludes, a teacher’s effect or impact on students. While some discuss the role of teaching as a key factor in student learning, it is frequently argued that good teaching can occur with little or no demonstrable impact on students (e.g. Baines & Stanley, 2004; Berliner, 2006, 2008; Borko, Whitcomb, & Liston, 2008; Clift, 2008; Corcoran & Goertz, 1995; Cuban, 2004; Elmore, 2002; Ornstein, 1986; Smith & Fey, 2000). This belief—that “the results of teachers’ knowledge, skills, and effort are shaped by conditions over which they have little control,” because “many of the most important conditions [for student learning] are beyond the control of the school” (Oakes et al., 2004, p. 89)—is reiterated throughout the education literature. While the definition of selling, for example, incorporates the occurrence of buying—“selling” literally cannot occur without “buying”—many scholars utilize a definition of high-quality teaching that does not incorporate student learning. Noguera (2004) in fact observes that this view is commonly held by teachers themselves: “Too often, teachers see teaching and learning as disconnected activities…see[ing] their work as only remotely related to student learning outcomes” (p. 77).

The presumption of a disconnection between teaching and learning also appears implicitly throughout education policies. In policies addressing accountability and the improvement of student outcomes the words teacher, teaching, and classroom almost never appear. Any active role of classroom teachers is excluded: stipulations regarding teachers focus only on inputs of certification, professional development, and years employed. The few passing references to teachers’ actual job of teaching are notably vague and indirect.
For example, Education Law § 211-a prescribes an “accountability system for schools and districts,” and Education Law § 211-b addresses “consequences for consistent lack of improvement in academic performance,” mandating “actions [that] shall be taken to increase school and district accountability for academic performance.” Neither section contains even a single reference to the role of teachers or teaching in raising student achievement. Reflecting their titles, § 211-a and § 211-b (together totaling 1,200 words) clearly stipulate accountability for improvement of student outcomes. A word analysis of these two sections shows that the words performance and achievement combined appear six times. Improvement and progress combined appear 20 times. Words referring to measurement, assessment, and evaluation appear a total of 13 times. As the entities to be held accountable for improving student achievement, district appears 17 times and school appears 38 times. The word “teacher,” however, does not appear in § 211-a. It appears a single time in § 211-b, in a clause mandating that teachers have “input” into the school improvement plan required when student outcomes produced by the school are determined to be inadequate.

Section § 211-a also mandates that the Regents evaluate “the specific effects of programs, and other relevant factors on students’ academic progress” (italics added). The categorical omission of the words “teacher” and “classroom” is especially notable in this context, since the classrooms that students are in all day could reasonably be considered an important component of a “program” affecting student academic progress, and the teacher could well be considered at least one—if not the most significant—of the “relevant factors” to be evaluated with respect to students’ academic progress. In other words, these two key accountability laws stipulate that accountability for student outcomes be defined and enforced for “schools” and “districts,” and explicitly acknowledge that “programs” and “other relevant factors” have a direct
effect on student learning. Yet neither refer even once to the activity of teaching, describe any role for teachers with respect to student outcomes, or even mention teachers as one of the relevant factors that might impact students.

NYCRR 100.2, entitled “General school requirements,” is an important section of NYCRR that addresses all management of public elementary and secondary schools in New York. Subdivision 100.2(p), entitled “Registration of schools and school/district accountability,” is a 12,000-word subsection, constituting almost one third of NYCRR 100.2, which focuses entirely on accountability for improvement of student achievement outcomes. The word student, as the aim of education reform, appears 135 times in 100.2(p). The words results, performance, and achievement combined occur 84 times. Improve(ment) and progress together occur 132 times. Words such as test, measure, assess, and evaluate occur 84 times. Accountability and accountable occur 36 times. District appears 143 times and school appears 412 times, as the entities exclusively held accountable for improving student achievement outcomes. The word “teacher” appears only five times in the entire 12,000-word regulation, and solely in terms of teacher input factors: three times with respect to teacher turnover and certification as factors to be used in evaluating school performance, once in a requirement that teachers be “provided an opportunity to participate in the development of [a school’s] redesign plan” required when student outcomes produced by the school are inadequate, and once in a requirement for professional development. Finally, the subdivision stipulates that when the Commissioner identifies a school as low-performing, an audit of the school must be carried out that includes recommendations for improving the “qualifications and professional development” of teachers.

The exclusion of the teacher’s role in producing improved student achievement outcomes (and corresponding emphasis on the role of schools as the accountable “actors”) is particularly
evident in Chancellor’s Regulation A-501, entitled “Promotion Standards,” which “implements a system-wide promotion policy for [student] promotion for each grade from grades three to twelve” (p. 1). The Regulation’s overview states several goals that the Regulation is intended to accomplish, all focused on producing adequate student outcomes. These goals include that all students “will meet or exceed rigorous academic standards in a performance-based core curriculum”; that the “resources of the school system will be strategically developed and deployed,” so that “regions and schools” are able to “ensure that all students achieve the standards in a timely manner”; and that the “entire school community will be engaged continuously in creating and supporting effective strategies for improved student achievement” (p. 1). The word “teacher” does not appear a single time in the Regulation’s overview. The first section of the Regulation describes the obligations of both individual and organizational stakeholders who are responsible for improving student achievement. This section is entitled “Responsibilities of the Chancellor, Regions, Schools, Parents, and Students in implementing the Promotion Policy.” The word “teacher” is literally absent from the title listing those responsible for producing the minimum student achievement necessary for students’ progression in school.

Policies focused on the improvement of student outcomes thus exclude direct mention of teaching altogether. In several, the few references made to the role of teachers are notably vague and indirect, de-emphasizing teachers’ day-to-day classroom work. A characteristic reference to teachers’ professional work of teaching appears in “Overarching Strategies to Close the Gaps” in the Chapter 655 report. The strategies directly addressing teachers pertain to teachers’ certification status, years of employment, and professional development. The report makes three oblique references to the role of teachers with respect to student learning, stating that all students must be provided “with access to the instructional support needed”; that teachers should be
“prepared to assist all students”; and that “parents, other community members, and teachers must be actively involved in children’s education”—presenting teachers as third in a list of stakeholders who are simply “involved” in schooling (Chapter 655 Report, 2006, pp. 233, 236). The actual term “teaching” does not appear once in “Overarching Strategies to Close the Gaps.”

A similar example appears in Chancellor’s Regulation A-501 on student promotion, discussed above. The Regulation refers to an active role of teachers only once in a brief clause of 100 words describing the responsibility of teachers when students are “at risk of not meeting the promotion standards” as “ensur[ing] that instructional and support interventions are provided” to those students. This is the single reference to teaching—albeit indirect—in the 8,000-word Regulation addressing the goal that all students meet academic standards. In fact, Regulation A-501 assigns responsibility for student learning to principals and, to an even greater extent, the students themselves. The Regulation states that principals must “directly supervise teachers to ensure that effective instruction is provided to all students” (p. 3). The role of students is virtually presented as though they carry full responsibility for their own learning: “Students will be expected to work toward accomplishing the learning goals set for them and will, when necessary, on the basis of informed feedback from their teachers and through their own efforts and use of available resources, bring their work up to standard” (p. 4, italics added). The responsibility of the classroom teacher in student learning is thus described as providing students with “informed feedback” on their progress towards achieving minimum standards, and ensuring “interventions” if students’ progress is inadequate. No direct reference is made to the role of teachers in affecting student achievement through daily classroom teaching. On the other hand, if students do not manage to carry out their responsibility to “bring their work up to standard,” they
face the high-stakes consequence of being retained in grade—thus bearing sole accountability for their own failure to learn.

The definition of “teacher quality” in terms of teacher input characteristics that is utilized in both the education literature and policies thus fundamentally disconnects the quality of teachers, on the one hand, from their activity of teaching—and the outcomes of that activity—on the other. Throughout policy documents addressing the production of student achievement, even passing mention of teachers’ active role or responsibility is excluded. The kinds of phrases cited above appear over and over: “instructional strategies that the school will implement”; “instructional and support interventions”; “supplemental resources available to principals” to be used by the “school” to raise student achievement; the need for teachers (listed after parents and “other community members”) to be “actively involved” in the education of students, and to be prepared to “assist all students.” While each statement, in and of itself, is perhaps appropriate within its particular context, the repeated use of such phrases—combined with a total absence of the word “teaching”—is striking in an overall reading of these policies.

8.4 The Relationship between Teachers and Schools

The definition of teacher quality in terms of teacher input characteristics and a corresponding de-emphasis on teachers’ activity of teaching leads to another fundamental conceptualization of teachers that underpins education policy design: teachers are positioned not as active producers of student achievement (as schools and districts are), but rather as a critical resource, along with funding, provided to producers. This definition of teachers as an essential resource utilized by the education system—rather than producers within it—is central to policy design.
The positioning of teachers as a resource, rather than “accountable producers,” is also prominent in the scholarly literature. Throughout the literature, teachers are described as an essential education resource that the larger system—the “federal government, states, and local school districts” (Wasley, 2004, p. 146)—is accountable for providing (e.g. Darden & Cavendish, 2012; Darling-Hammond, 2004a, 2004b; Darling-Hammond & Rustique-Forrester, 2005; Elmore, 2004; Linn, 2005; Noguera, 2004; Oakes et al., 2004; Sirotnik, 2004a). Authors argue further that the school system has the obligation to ensure the quality of this resource by making sure that teachers are qualified and receiving ongoing training. “Accountability,” in this view, means the system’s accountability for fulfilling a “guarantee” that “well-qualified and developed teachers are…available to all students including those who attend the most poor and neglected schools” (Cochran-Smith & Fries, 2001, p. 9-10).

Teacher policies reflect this scholarly perspective. In policies addressing school improvement and accountability, teachers are largely defined as a resource utilized for production of student achievement, rather than producers themselves. The system is responsible for providing this teacher resource to the system’s producers, defined as students, schools, principals, and districts. Finally, producers are responsible for utilizing the teacher resource which is provided to them so they can carry out their stipulated obligation to produce student outcomes. The overall quality of the “teacher resource” is defined exclusively in terms of teacher inputs of certification, ongoing training, and years employed, and policies emphasize the provision of teachers with these input characteristics as crucial to the capacity of schools to improve student achievement outcomes.

The framing of teachers as an essential resource is particularly evident in policies focused on improving educational equity. Part IV of the 2006 Chapter 655 Report, for example, entitled
“Student Needs and School Resources,” explains the “need/resource capacity index” used to measure “a district’s ability to meet the needs of its students with local resources” (p. 100). This index measures just three resources as “indicators of the instructional program districts are able to provide”: teacher characteristics; financial expenditures; and availability of microcomputers and library books (p. 106). Expenditures, microcomputers, and library books are measured simply by quantity per student. Teacher characteristics are measured by teacher input factors of student-teacher ratio, median teacher salary, teacher turnover, certification status, percent of teachers “with Master’s plus 30 hours or doctorate,” and median years of experience. The report notes that this index “indicates where in the State system some children are failing because they have not been provided the resources necessary to succeed,” emphasizing that “[t]hose schools with the greatest need frequently have the fewest fiscal resources and teachers with the weakest credentials” (pp. 98, 230, italics added). The “Policy Questions” regarding teachers presented at the conclusion of “Student Needs and School Resources” are: “What can the State do to encourage individuals to obtain certification in subject areas that are underrepresented?” “What can the State do to attract certified highly qualified teachers to localities where there are shortages?” “How can better qualified teachers…be attracted to low-performing schools?” (p. 146).

In Part V of the report, “Minority Issues,” teachers again appear only in the section entitled “Resources.” The introduction to this section states that the “most important resource in any school is its personnel,” followed by several pages emphasizing contrasts in teacher input characteristics between low-minority and high-minority schools. The report argues that inadequate resources are a central cause of persistent educational inequity, and “those children
who are most at risk of school failure receive fewer resources than their more advantaged peers” (p. 3).

In sum, inadequate student outcomes are viewed as evidence of insufficient resources. Funding and qualified teachers with greater longevity are defined as the two essential resources that schools need to improve student outcomes. Therefore, the key strategy for increasing educational equity is to provide more resources: funding and teachers with the input characteristics defined as necessary to achieve educational equity.

Provision and equitable distribution of the resources of funding and teachers is the first of the two policy strategies prescribed to achieve educational equity. The second is increasing accountability: that is, holding “producers” accountable for utilizing these resources to produce student achievement. While teachers are defined in policies as a resource, schools and districts are explicitly defined as the accountable producers of student outcomes. As the New York State Education Department explains, New York State’s “overarching strategy” to improve student achievement is “to provide State and regional resources to support local improvement and hold local districts and schools accountable for results” (New York State Education Department, 2006, p. 24). Schools, in particular, are emphasized as the primary “producers” of student outcomes, as evident in the multiple policies discussed above. While a direct relationship between the daily activity of classroom teachers and student achievement is barely acknowledged in policy, a direct relationship between the “behavior” of schools and student achievement is assumed and incorporated into policy frameworks.

The definition of the school as the entity primarily accountable for producing student achievement is another point of close alignment between the education literature and New York education policies; scholars widely describe the school as the accountable producer of student
achievement (Abelmann & Elmore, 1999; e.g. Adams & Kirst, 1998; Holme & Rangel, 2011; Ladd, 2007; Ogawa & Collom, 2000; Russell, Higgins, & Raczek, 2004; Timar, 2003). Twenty-five years ago, Benveniste (1985) argued that the “[b]asic performance unit of the education system is the individual school” (p. 271). More recently, Abelmann and Elmore (1999) wrote: “[T]he school is the basic unit for the delivery of education…and evaluation of school performance is typically accompanied by a system of rewards, penalties, and intervention strategies targeted at rewarding successful schools and remediating or closing low-performing schools” (p. 1). New accountability systems are described in the education literature as holding schools accountable for student achievement, and scholars identify as a key assumption of the accountability strategy that accountability systems will be able “to influence the behavior of schools” (Gross & Goertz, 2005, p. 1), and describe accountability’s leverage as maximized through “the application of rewards and sanctions…designed to motivate schools” (Porter, Chester, & Schlesinger, 2004, p. 1372).

This definition of schools—and districts as collections of schools—as the sole actors accountable for producing student achievement is evident throughout the New York accountability policies (Education Law § 211-a, 211-b, 211-d; NYCRR 100.2(p); the Chapter 655 report; Chancellor’s Regulation A-501; the New York City 2008-09 Contract for Excellence) discussed above. The definition of schools as accountable for producing student achievement outcomes, in both policies and the education literature, virtually personifies schools as though they were human agents of performance, while essentially excluding teacher responsibility for the outcomes of their teaching.
8.5 Teachers as Learners

The teacher inputs emphasized in policy all describe kinds of *teacher learning*: acquisition of knowledge and skill through teacher preparation, ongoing training, and additional years of teaching. A fundamental conception of “teachers as learners” continues to underpin much of education policy with respect to teachers and is prevalent in education scholarship. In fact, a view of teachers as learners, first and foremost, lies at the heart of the professionalization paradigm: “Those who advocate the professionalization agenda…focus on relationships between student learning and teacher learning” (Cochran-Smith & Fries, 2001, p. 9).

The professionalization framework is consistent with what is termed the “learning paradigm” by human resource development scholars. This paradigm focuses on “individual learning as an outcome and the individual learner as the target of interventions,” rather than on the collective performance of the organization (R. A. Swanson & Holton, 2001, p. 128). Within this paradigm, individual learning is defined as the goal: the emphasis is on helping individuals develop to their fullest potential as a valuable end in and of itself. This point of view assumes that individual motivation and innate ability are adequate, and that insufficient performance is therefore caused by insufficient learning. As shown below, professionalization ideas regarding teachers, teacher quality, school improvement, and accountability derive from a paradigmatic view of teachers as well-intentioned, motivated learners.228

Education scholars largely view the most significant school-based cause of inadequate school performance as insufficient teacher knowledge and skill (e.g. Baker & Linn, 2004; Darling-Hammond, 1994, 2003; Elmore, 2003, 2004; Goertz & Duffy, 2003; Herman, 2004;

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228 Teachers are also *students*—past or current—of teacher education programs, which may partially account for this strong focus on teacher learning.
The most important strategy for school improvement is therefore defined as *increasing* teacher knowledge and skill through teacher learning (e.g. Baker & Linn, 2004; Corcoran & Goertz, 1995; Cuban, 2004; Darling-Hammond et al., 2003; Darling-Hammond & Rustique-Forrester, 2005; Elmore, 1997, 2002; Feiman-Nemser, 2012; Gallucci, Van Lare, Yoon, & Boatright, 2010; M. B. King, 2004; Lieberman & Mace, 2008; Newmann et al., 1997; O'Day, 2002; Oakes et al., 2004; Pajak & Arrington, 2004; Richardson & Roosevelt, 2004; Sirotnik, 2004; Urbanski, 1998; Wasley, 2004). As Darling-Hammond (2004b) argues, “a clearer focus on teacher learning” is the most important strategy for improving schools (p. 1079): successful school reform “make[s] professional development the…core strategy for school improvement,” based on the “strong belief…that student learning will increase as the knowledge of educators grows” (p. 1068). As Earl and Torrance (2000) summarize this widely-held perspective: “Within the context of educational reform…the obvious strategy for [improving schools] is to increase the knowledge and the skill of the teachers and administrators who work in it” (p. 139). In fact school reform “is often synonymous with teachers’ professional development” (Desimone, 2009, p. 181).

A fundamental assumption about the nature and motivation of teachers underpins this emphasis on teacher learning. A view of teachers as dedicated to children and teaching, committed to doing whatever necessary to improve student learning, and working as hard as possible is prevalent and rarely questioned in the education literature (e.g. Baker & Linn, 2004; Cohen, Higgins, & Ambrose, 1999; Cuban, 2004; Elmore, 2004; Guisbond & Neill, 2004; Lashway, 2001; McDonnell, 2005; Mehrens, 1998; Mintrop & Sunderman, 2009; O'Day, 2004; Oakes et al., 2004). As Elmore (2004) writes, for example: “Low-performing schools, and the people who work in them, don’t know what to do. If they did, they would be doing it already” (p.
Following from this assumption—that virtually all teachers are already fully motivated, expending the maximum possible effort, and capable of teaching well—any inadequacy in school performance is therefore explained as entirely due to insufficient training and support:

The idea that teachers…would actually refrain from doing something they know would contribute to student learning because they are insufficiently motivated or rewarded seems highly implausible. The more likely possibility…is that educators literally do not know what to do…they don’t possess the knowledge and skill necessary. (Elmore, 2004, pp. 280-281)

Within the professionalization paradigm, the importance of teacher motivation and ability are not dismissed. It is simply assumed that they are already sufficient, and therefore do not need to be addressed. Inadequate learning—rather than inadequate effort or ability—is presumed to underlie inadequacy in teaching: the fundamental problem is not “a lack of effort and focus on the part of educators” but a lack of teacher knowledge and skill (Darling-Hammond, 1994; 2004b, p. 1048). Following from this assumption, “teacher accountability” in the sense of holding individual teachers accountable through consequences for student outcomes is viewed as ineffective and misguided since it does not address what is defined as the problem in the first place: insufficient teacher knowledge and skill. The correct use of student outcome data is therefore as “a learning tool for schools and teachers,” rather than “a sledgehammer for sorting and sanctioning” (Darling-Hammond, 1994, p. 20).

The professionalization emphasis on teacher learning is clearly incorporated into New York education policy. All the input characteristics that the policies discussed in Chapter 4 hold teachers accountable for—certification, ongoing training, years employed—represent acquisition of knowledge and skill. A significant requirement for teacher learning, through the Teacher Improvement Plans, is central to the new “annual professional performance review” system. A
teacher’s presumed capacity to learn in order to improve is fundamental to § 3020-a proceedings, as discussed in Chapter 6. The responsibility of education leaders for teacher learning is also stressed in policies. The two obligations of the Commissioner with respect to classroom teachers are that he “assist...teachers in understanding” state standards and assessments,” and “support educators in the use of performance data” (italics added).  

The two obligations of the Chancellor are to “[d]evelop and furnish pre-service and in-service training programs,” and “allocate sufficient funds for teacher training” (italics added). Similarly, only two obligations of principals are stipulated with respect to teachers: principals must “carry out [their] duties in consultation with...teachers,” and must “enhance teacher...development” (italics added). This focus on teacher learning is echoed by the New York City teachers union: “Teachers never stop learning and they never should” because teacher learning “is at the heart of good teaching” (United Federation of Teachers, 2010).

Similarly, in the comprehensive school management policies stipulated in NYCRR 100.2, provisions governing teachers focus almost exclusively on teacher learning in contrast to the clear emphasis on student learning that dominates other policies. As discussed above, over one third of the 35,000-word regulation is devoted to stipulating how schools and districts are held accountable for producing specifically-defined student outcomes. Only two of the 33 subsections in NYCRR 100.2 address teachers directly. The first describes the “Annual professional performance review,” discussed in detail above. The second is a 3,800-word

229 N.Y. Educ. Law § 305(37) and (38)  
230 N.Y. Educ. Law § 2590-h(8), (31) and (14)  
231 N.Y. Educ. Law § 2590-i(1)  
232 8 NYCRR 100.2(p)  
233 100.2(o)
subsection entitled “Professional development.” This subsection describes the obligation of all school districts to implement annual professional development plans for teachers, including detailed requirements for plan content, recordkeeping, and reporting. The words that appear in the subsection are notable, particularly in comparison to those in policies addressing improvement of student outcomes. The word teacher appears 43 times, professional appears 74 times, and development appears 76 times. However, the words effective, performance, results, outcomes, accountable, or accountability do not appear once. Nor does reference to the activity of teaching appear a single time. This subsection incorporates into policy the emphasis on teacher learning fundamental to professionalization, while excluding any reference to teaching, much less describing teachers as accountable producers of student outcomes.

8.6 Teachers and Accountability

The professionalization focus on teacher learning underpins how the relationship between teachers and accountability is constructed, in both the education literature and policies. Teacher knowledge and skill is defined as the heart of teacher quality and the key to good schools. Teacher inputs of certification, ongoing training, and years of experience are the means by which teachers acquire that knowledge and skill. Therefore, both teachers and the school system are held accountable for these teacher inputs, which are defined as both the determinants and the measure of teacher quality. Teacher accountability on an individual level means making teachers accountable for their own learning: completion of teacher education programs, participation in

234 100.2(dd)
235 Ironically, the NYCRR 100.2 subsection directly following “Professional development”—focusing exclusively on teacher learning—is 100.2(ee), “Academic intervention services,” which focuses exclusively on student learning: that is remedial instruction for students whose regular classroom instruction has not enabled them to achieve minimal required levels on state tests.
ongoing professional development, and accumulation of additional credits and years of experience. Accountability from a systemic point of view means holding the system accountable for ensuring a sufficient supply of teachers who are certified, receiving professional development, and have more years employed.

In much of the education literature, accountability with respect to individual teachers is defined essentially as teacher learning (e.g. Darling-Hammond, 1989; Darling-Hammond, 1997, 2004b; Darling-Hammond & Ascher, 1991; Darling-Hammond et al., 2003; Kerchner, Koppich, & Weeres, 1997; Mayer, 2005; O'Day, 2002; Pajak & Arrington, 2004; Urbanski, 1998). This is referred to as “professional accountability,” which defines teacher accountability as “professionals’ specialized knowledge and training” (Adams & Kirst, 1998, p. 470), and emphasizes “developing professional knowledge through focused assistance on instruction, professional norms,” and professional collaboration (O'Day, 2002, p. 320). This is the conception of teacher accountability that is incorporated into policy. The determinate teacher accountability stipulated in policy is for teachers’ own learning, not the learning of their students, as the logical emphasis for teacher accountability within the professionalization paradigm. Teacher learning is a cornerstone of the new APPR teacher evaluation: much of the Teaching Standards framework assesses teacher knowledge and skills, and the APPR’s central strategy for addressing inadequate teacher performance is to provide teachers with opportunities to learn to teach better. Emphasis on teacher learning is also fundamental to § 3020-a accountability proceedings. A Hearing Officer’s decision is largely based on his assessment of a teacher’s capacity to learn to teach better; a poorly-performing teacher is rarely dismissed if it is concluded that some potential to improve remains.
On a systemic level, teachers fit into accountability as a key education resource that the system is accountable for providing and maintaining: “accountability systems must be able to ensure [the] provision” of “quality teachers,” through high certification standards, ongoing professional development, and the recruitment, retention, and distribution of qualified teachers (Oakes et al., 2004, p. 97). In the professionalization framework, “genuine accountability” means systemic “investments in teacher knowledge and skill” (Darling-Hammond, 2004b, p. 1047), and “responsible accountability systems must be as focused on the continued learning of educators as they are on that for students” (Sirotnik, 2004a, p. 13). New York policy reflects this perspective, too, emphasizing system accountability for provision of certified, longer-tenured teachers, as discussed at length above. State law also holds schools and principals accountable for this teacher resource: the “school progress” and “school leadership” reports that New York State uses for school and principal accountability include indicators for teacher characteristics of certification status, ongoing training, and years employed.236 Finally, system responsibility for teacher learning is built into the core of the new teacher evaluation law, through the requirement for year-long Teacher Improvement Plans.

**Key Definitions: “Performance” and “Outcomes.”** The definition of “performance” and “outcomes” as applied to teachers also follow from the professionalization definition of teacher quality in terms of teacher knowledge and skill. Throughout both the education literature and policies, the term “outcomes” as applied to students, schools, and districts is used to refer to student outcomes. Similarly, the term “performance” is used to mean the production of those student outcomes. However, as applied to teachers the terms “outcomes” and “performance” are

236 N.Y. Educ. Law § 305(39)
largely used to describe teachers’ acquisition and demonstration of knowledge and skill. These definitions of teacher “outcomes” and “performance” are central to the professionalization framework.

As explained above, a view commonly expressed in the education literature is that teaching and learning are not directly connected and that even the very best teaching may not impact student learning. In the professionalization paradigm, teaching is defined as an independent process that is carried out apart from a teacher’s impact on his or her students, and many scholars argue that a definition of teaching “as instructional practice that leads to demonstrable student learning gains” is misguided (Cochran-Smith, 2001, p. 540). The definition of teaching as a process separate from learning leads logically to the belief that teaching can be evaluated without consideration of whether or not learning has occurred. Within the professionalization paradigm, high-quality teacher “performance” is therefore defined as mastery of a professional knowledge base and demonstration of a teaching process that meets established standards for appropriate practice (e.g. Adams & Kirst, 1998; Benveniste, 1985; Cochran-Smith & Fries, 2001; Conley, Muncy, & Gould, 2002; Corcoran & Goertz, 1995; Darling-Hammond, 2000, 2004; Darling-Hammond, Berry, & Thoreson, 2001; Davey, 1991; Ellett & Teddlie, 2003; Mayer, 2005; Murnane, 1991; Yinger & Hendricks-Lee, 2000; Youngs, Odden, & Porter, 2003). In this view, teacher performance is defined as what teachers know and how they teach or, in the commonly-used phrase, “what teachers should know and be able to do” (Council of Chief State School Officers, 2011, April). Both education scholars and New York policies use this definition of “performance” as applied to teachers, meaning teachers' professional knowledge and skill, not student learning produced.
The definition of “outcomes” as applied to teachers is directly related to this definition of performance. As with “performance,” the term “outcomes” is also defined differently for teachers than for other school stakeholders, in both the education literature and policy. With respect to teachers, many education scholars define outcomes as the teaching process: “from the perspective of professionalization, outcomes are defined primarily in terms of teachers’ professional performance.” Thus, “spokespersons for the professionalization approach to educational reform do emphasize outcomes [but] their notion of outcomes…stands in stark opposition” to those who define outcomes as measured student learning (Cochran-Smith & Fries, 2001, p. 9). In professionalization, outcomes are defined as a teacher’s “performance” which, in turn, is defined as acquisition and demonstration of knowledge and skills. Professionalization thus promotes an “outcomes-based performance system”—simply one in which both “performance” and “outcomes” are defined in terms of teachers’ knowledge and teaching process, exclusive of student learning.

8.7 The “Annual Professional Performance Review” and § 3020-a Procedures

New York policies governing teacher evaluation and accountability for their work are largely congruent with the professionalization framework. Apart from the 20% “state measures of student achievement” component, much of New York’s new teacher evaluation system is well-aligned with professionalization; in some ways, the new system has actually reinforced this set of ideas in New York teacher policy. The recently-developed Teaching Standards, Elements and Performance Indicators, a cornerstone of the system, incorporate the values, beliefs, and definitions fundamental to professionalization. The new requirement for year-long Teacher Improvement Plans, providing training and support for all teachers who are rated less than
“effective,” establishes teacher learning as central to teacher evaluation and accountability. Both the standards and measurements for the “local measures of student achievement” are negotiated with professional educators and this component, too, may align with professionalization values, rather than focusing on the student outcomes that accountability for other stakeholders is based on. Finally, the long-established principles guiding the § 3020-a teacher accountability procedures are consistent with the professionalization framework.

**Professionalization and the Annual Professional Performance Review.** The New York *Teaching Standards, Elements and Performance Indicators* issued by the State Education Department in January 2011 reflect the professionalization emphasis on teacher learning; are built on the professionalization definition of “performance”; and largely exclude student outcomes as indicators of teacher “effectiveness.” Consistent with the professionalization paradigm, four of the seven Standards—“Knowledge of Students and Student Learning,” “Knowledge of Content and Instructional Planning,” “Professional Growth,” and Professional Responsibilities and Collaboration”—assess teachers’ knowledge, learning, and professional activity. The remaining Standards largely assess teacher skill as demonstrated in the teaching process. Student outcomes are de-emphasized: as explained above, less than a fifth of the *Teaching Standards* framework addresses some kind of teacher impact on students. The language the State Education Department uses to describe the *Teaching Standards*, too, mirrors the education literature. The stated aim of the *Teaching Standards* framework is to assess teachers’ effectiveness through assessing their “knowledge and skills,” each of the seven Standards “represents a broad area of knowledge and skill,” and together the Standards specify
the “knowledge and skills needed to effectively teach to all students” (New York State Education Department, 2011a, pp. 3, 7).\textsuperscript{237}

The New York State \textit{Teaching Standards} were explicitly developed as the guiding framework for all dimensions of the teaching profession in New York State: the \textit{Standards} are intended to “begin with the teacher’s preparation” by “inform[ing] teacher preparation programs about the skills and knowledge teachers should have,” and subsequently “to be used across the continuum of a teacher’s career” (p. 5). The authority of the \textit{Teaching Standards} is thus written into state law as the now-official criteria for teachers’ “preparation, induction, mentoring, evaluation, professional development and movement through a career ladder” (p. 5), institutionalizing fundamental elements of the professionalization ideology throughout New York State teaching-related organizations and practices.\textsuperscript{238} The new requirement that extensive “Teacher Improvement Plans” be carried out for all teachers who receive less-than-effective APPR ratings formally establishes teacher learning as a linchpin of teacher performance accountability. Schools now bear a significantly-increased responsibility to provide ineffective teachers with extensive “professional development and support…to develop and improve their instructional practices” (New York State Education Department, 2011, May 16), as urged by professionalization advocates.

The centrality of teacher learning in the new evaluation system is emphasized by the New York State teachers union: “Most importantly, [the APPR] can help advance effective teaching by requiring evaluations to focus on professional growth for all teachers, and require support and

\textsuperscript{237} Alignment of the New York State \textit{Teaching Standards} with the dominant ideology of the education profession is not surprising since the framework was developed by a group of 33 education professionals (New York State Education Department, 2011, pp. 1-2).

\textsuperscript{238} NYCRR 30-2.4(d)(1)(i)(a-g)
professional development for those who need to improve” (NYSUT, May 20, 2010). Further, the
union stresses, Teacher Improvement Plans are now required by law to “provide teachers with
appropriate resources and support leading to meaningful professional growth.” Following the
prescription of many education scholars, the new evaluation system will “emphasize professional
growth...and change the focus of evaluations from discipline to improving teaching practice and
student learning” (NYSUT, August 2010).

Professionalization and § 3020-a Teacher Accountability Proceedings. The principles
used in § 3020-a proceedings as a basis for deciding who is and who is not fit to be a classroom
teacher are also largely consonant with the values and beliefs core to the professionalization
paradigm. Section 3020-a determinations regarding whether a teacher is allowed to continue
teaching are not primarily based on a teacher’s competence and impact on children as
demonstrated in the classroom. Rather, the factors most strongly emphasized are the Hearing
Officer’s assessment of the sufficiency of the school’s efforts to train and assist an inadequately
performing teacher; his assessment of the teacher’s potential and desire to learn and improve;
and the number of years a teacher has been employed, used as a proxy for teaching expertise.
The § 3020-a emphasis on teachers’ capacity to learn to teach adequately, and the responsibility
of the school to help teachers learn to teach adequately—along with the implicit assumption that
essentially all teachers can and will teach adequately if given proper assistance—directly reflects
the professionalization view that the correct response to underperforming teachers is to provide
“assistance and sustained professional development so that they can better do the job that they
almost all would like to do—more effectively facilitating the learning of every student” (Linn,
2005, p. 96). The standard for dismissal as stated in the § 3020-a decisions frequently requires
proof that all possible efforts to provide such assistance and sustained professional development have been exhausted, and that the teacher simply has no potential to be rehabilitated.

8.8 The Professionalization vs. the Effectiveness Paradigms

New institutional theory predicts that teacher policies may be aligned more closely with the dominant ideology of education scholarship on teachers, than with the competing ideological framework now emerging from the government in the form of “new accountability.” New institutionalism further proposes the idea that a previously isomorphic, ideologically aligned institution such as “schooling” can undergo deinstitutionalization as a result of external pressures, including new governmental demands and regulation. This kind of deinstitutionalization can result in new ideological configurations: competing ideological paradigms can develop and coexist within a previously-aligned institution. The findings of this study suggest that this kind of deinstitutionalization is to some extent occurring in public schooling.

Two conflicting paradigms are now in evidence in New York education policy. The professionalization paradigm defines teacher quality primarily in terms of teacher inputs, emphasizes teacher learning, and de-emphasizes teacher production of student outcomes. The professionalization paradigm dominates teacher policies, including those very recently written. The effectiveness paradigm, on the other hand, is aligned with the new accountability framework, emphasizing the production of student outcomes as the central goal and responsibility of all school stakeholders. The effectiveness paradigm—focusing on accountability for producing measured student outcomes—now dominates much of schooling policy, apart from teacher policy, as shown above. The professionalization paradigm has long-dominated education
scholarship, but has recently been challenged by a small number of scholars, largely from other fields, and often characterized in the education literature as misguided and ill-intentioned intruders in the profession of education. The critiques of the effectiveness paradigm, and of those promoting it, both highlight the core beliefs of professionalization advocates, and suggest the emergence of “institutionalized teaching” as a distinct and defended institution.

Within the effectiveness paradigm a “high quality” teacher is defined simply as one who is effective at improving student achievement (e.g. Aaronson, Barrow, & Sander, 2003; Ballou, Sanders, & Wright, 2004; Guthrie, 2005; E. Hanushek, Kain, O’Brien, & Rivkin, 2005; E. A. Hanushek, 1997; Kane, Rockoff, & Staiger, 2007; Mendro, 1998; Rockoff, 2004). In this view, the outcomes of teaching—student learning—are the single focus; teachers’ knowledge and way of teaching are considered to be important insofar as they contribute to improved student outcomes, but extraneous to the definition of teacher quality. Four major arguments underpin the effectiveness definition of quality, aligned with the new accountability framework, and reflecting values and beliefs that stand in considerable opposition to those predominant in the education literature.

1. The first is that teachers have a significant impact on student learning, and are even the most important school system factor influencing student achievement.

2. The second is that the minimum, and essential, outcome of public schooling is student proficiency in basic literacy and mathematics, and that a specified level of proficiency can and should be achieved by all students.

3. The third is that standardized tests are a useful measure of student learning, and that student test results are one important measure of teacher quality.
4. The fourth is that the input measures of teacher quality emphasized in professionalization—certification, ongoing training, and years employed—are not the most important drivers of teacher effectiveness in improving student achievement, and that the “belief that teacher licensing plays an important role in determining teacher quality and performance” is flawed (e.g. Aaronson et al., 2003; Goldhaber, 2003; E. Hanushek & Rivkin, 2004; Podgursky, 2005, p. 16).

The conclusion of this view is that the purpose of being a teacher is to have a positive impact on student learning, and that the appropriate definition of teacher quality is teachers’ effectiveness in improving student achievement.

As with the professionalization framework, this way of defining quality leads directly to a particular approach to assessing quality, and a belief regarding what teachers should be held accountable for. In the effectiveness framework, teacher quality is defined as improving student outcomes and, consequently, the way to assess quality is to measure student outcomes. In this framework, the presence or absence of teacher quality is determined by the outcomes of teaching. While the professionalization approach to assessing teacher quality primarily emphasizes assessment of the teacher’s knowledge and skills, the effectiveness approach argues for direct assessment of the knowledge and skills of that teacher’s students. In this framework, student learning is the standard used to measure teacher quality and, it is argued, should serve as the “outcomes” for which consequences are allocated to teachers (e.g. Hess, 2003; Podgursky, 2005; West & Peterson, 2003). The major elements of the two paradigms are shown in Figure 8.1:
A largely categorical rejection of the effectiveness paradigm, along with reiteration of the dominant beliefs and values of the professionalization paradigm, is now prevalent in the education literature on teachers, teaching, and school reform. The effectiveness framework is widely perceived as representing an ideology antithetical to professionalization—and, in fact, to
the very profession of education. Authors characterize the effectiveness framework as a neoliberal ideology promoted by illegitimate outsiders and an assault on public education, social justice, and democracy: an “inhumane and businesslike” approach (Au, 2009, p. 310), which intends to “undermine the view that public education is an enterprise for the public good in a democratic society” (Cochran-Smith, 2001, p. 543), and even seeks to destroy public education itself (Au, 2009; Behrent, 2009; Darling-Hammond, 2010; e.g. Earley, 2000; Futrell, 2010; Picower, 2011; Rifion-Meisels, 2011; e.g. Shaker & Heilman, 2004; Watkins, 2011).

Underlying the strong critique of the effectiveness paradigm is an increasingly vehement defense of the value, legitimacy, and power of the education profession itself. The effectiveness paradigm is viewed as a direct threat to the profession, challenging the autonomy, authority, and control long-held by education professors, professional teacher organizations, and public school teachers (e.g. Behrent, 2009; Darling-Hammond, 2010; Futrell, 2010; Henward & Lorio, 2011; Honig & Hatch, 2004; Ladson-Billings, 2008; Mirra & Morrell, 2011; Spalding et al., 2010). The effectiveness framework and its advocates are described as “hostile to the education establishment” (Sunderman & Orfield, 2006, p. 528), aiming to “constrain teacher autonomy and professionalism” (Mirra & Morrell, 2011, p. 408), and “seek[ing] to limit (rather than enhance) the power of the educational community to control the profession” (Cochran-Smith, 2001, p. 533, italics added). As new accountability schooling policies aligned with the effectiveness framework have been promoted and implemented by government at all levels, the clash between professionalization and effectiveness has intensified. Rhetoric used to describe the perceived challenge to the education profession has grown heated in the face of partially-eroding professional legitimacy and power. Authors now describe “attacks” on teachers, teacher preparation, and education schools (Darling-Hammond, 2010; Ladson-Billings, 2008; Mirra &
Morrell, 2011); warn of a “lethal threat to U.S. teacher education” (Weiner, 2007, p. 274); portray “the fight to defend public education” as a “national battle in which teachers and their unions are the frontlines” (Behrent, 2009, p. 245); and call for teachers “to act as warriors using education as a weapon for freedom and equity” in the “battlelike conditions in the landscape of schooling” (Picower, 2011, p. 1108).

A direct, escalating conflict has thus emerged between the professionalization and effectiveness/new accountability ideologies, manifested in two contradictory paradigms that now coexist in a kind of “two-state solution” within public school governance. While new institutional theory has long viewed institutionalized schooling as a stable and monolithic organizational field, recent government pressure on schools and districts for technical efficiency appears to be resulting in the deinstitutionalization of K-12 public education, and the rise of institutionalized teaching as distinct institution. The government now largely shapes policy governing schooling. At the same time, in the face of unprecedented government demands for accountability, the education profession remains defined and legitimized by a separate, longstanding set of norms, values, and beliefs, and continues to wield a powerful influence in the policy domain of teachers and teaching.
Chapter 9: Summary & Conclusions

This chapter begins with a brief overview of the purpose of the study, sources of data, and methods used to analyze that data. Major research findings are then summarized. Study findings are considered from two theoretical perspectives, each highlighting different aspects and significance of the findings. Implications for the effective functioning of the public schools are briefly explored. Finally, limitations of the study are discussed, and possibilities for future research suggested.

9.1 Overview of Study Purpose

Strengthening accountability is now widely emphasized as a policy strategy to improve the public schools: or, in other words, increase schools’ effectiveness in accomplishing their mission of producing student learning. At the same time, teachers are increasingly a focus of both policy and public attention, and are clearly recognized as key to student learning—even, some argue, the most important school-based factor (e.g. Darling-Hammond, 2004b; Ellett & Teddlie, 2003; Ferguson, 2004; Goldhaber, 2003). Policies governing the teacher workforce, while by no means the only important aspect of public school management, are an essential dimension of effective management of public school systems.

The focus of this study emerged from on-the-ground observations gathered in eight years of work with new teachers in low-performing public schools, and was furthered by several graduate school studies of teachers’ perspectives on and experiences in those schools, particularly in the context of increasing government attention to accountability. The study began with a core question: What do government policies hold New York public school teachers
accountable for, and how? In particular, how is a minimum level of teacher competence defined and ensured across the district teacher workforce? A review of the scholarly education literature revealed that little knowledge exists on the content of government teacher policies, either in New York or elsewhere; government policies for teachers have rarely been the focus of close study. Yet understanding the specific content of public policies governing teachers’ work is arguably essential for evaluating and improving new accountability policy systems, improving schools and, most importantly, improving student learning—especially for disadvantaged children in low-performing school systems such as New York City. A lack of knowledge regarding teacher policies precludes progress in a crucial dimension of school management and improvement: that is, the formulation of teacher policies which optimize the effectiveness of the collective teacher workforce in facilitating learning for all students. More recently, understanding district teacher policies has also become centrally important to analysis of the recent federal government Race to the Top initiative, and associated new state policies.

The aim of the study was to carry out a close examination of the structure and substance of a district teacher policy system, contributing a small piece of the knowledge base necessary for: 1) Analysis and evaluation of new federal and state policy initiatives aimed to improve schools through increasing accountability; and 2) Ongoing analysis and improvement of systemic management strategies for developing and maintaining an effective teacher workforce. Further, while this study focused exclusively on New York as a case study for research, a general framework for analysis of teacher policies was developed, applicable to other district teacher policy systems. Finally, the study attempted to explore ideological influences on the way existing policies are written, as an important part of understanding the broader teacher policy picture.
Policies for teacher evaluation and accountability are currently in flux, with variation among the 50 states across the country. This study contributes to understanding of currently-unfolding events in the area of teacher policy, but the rapidly-shifting nature of this arena precludes coming to definitive conclusions regarding the nature of teacher evaluation and accountability. The study provides valuable baseline data for ongoing study, and provides insight into the complex nature of district teacher policy and its relationship to state and federal policy. It does not explain or examine the history of recent changes or the politics of this field; nor does it predict future developments. A great deal of continuing research will be needed as this fast-changing, multi-faceted arena continues to evolve.

The investigation focused on four core questions:

- What is the content and nature of the policy system—i.e. laws, regulations, collective bargaining agreements—governing the work of public school teachers in New York City? What does this policy system hold teachers accountable for and how? Specifically, how is a minimum level of teacher competence defined and enforced?
- What is the degree of alignment between New York City teacher policies and: (a) the outcomes-based accountability framework represented by NCLB and RTTT; and (b) district policies governing other school stakeholders? Is New York City education policy coherent with respect to accountability?
- How do the recent state teacher evaluation mandates associated with RTTT appear to be translating into district policies? How do the new teacher evaluation policies fit into the overall district teacher policy system?
- What “world view,” or values and beliefs, appear to underpin current policies? What ideological influences shape the way those policies are written?
9.2 Summary of Data Sources and Methods of Analysis

Four sources of data were used for the study: 1) New York state and city public policies governing teachers; 2) New York state and city public policies governing other school stakeholders; 3) Decisions issued at the conclusion of state-run § 3020-a teacher due process accountability proceedings; and 4) Academic literature from the scholarly field of education. A comprehensive investigation of this material was conducted: all relevant state and city policies were examined, including close analysis of 155 § 3020-a cases; and a broad review of the education literature regarding teachers, teaching, and accountability was performed.

Data were analyzed with qualitative research methodology, using both a directed and a grounded study approach. For the directed part of the study, an original analytical framework was developed for analysis and categorization of government policies, built from concepts drawn from the education literature on accountability, strategic human resource management theory, and concepts from legal scholarship. The framework classifies government policies based on two major variables.

1. The first is whether a particular government policy addresses a standard (or, in other words, a particular obligation) for work inputs, work process, or work outcomes.

2. The second is whether for a particular work obligation policies clearly stipulate an accountability mechanism. “Accountability mechanism” is operationalized as an

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239 Policies analyzed included New York State Education Law: Title I (Articles 3, 5, 7), Title 2 (Articles 52, 52-A), Title 4 (Article 61, 63); New York Codes, Rules, and Regulations, Title 8: Chapter I (Rules of the Board of Regents) and Chapter II (Regulations of the Commissioner); New York City Department of Education Bylaws; New York City Chancellor’s Regulations; and the United Federation of Teachers Collective Bargaining Agreement. (See Appendices for a full list of specific sections and subsections examined.) In addition, ten years of decisions issued at the conclusion of § 3020-a due process decisions were obtained with a Freedom of Information Law request, to enable closer examination of this critical policy subsystem.
explicitly-written, unambiguous standard, measurement, and consequence intended to
reward, sanction, or enforce fulfillment of the obligation defined in the standard.

The first phase of analysis uncovered an essential distinction between what can be
described as determinate and indeterminate policies regarding teachers’ accountability for their
work. This variable was then incorporated into the analytical framework, and policies were
further classified into these two distinct categories. Determinate policies stipulate details of an
accountability mechanism associated with a particular work obligation: “spelling out” specific
standards, measurements, and consequences ex ante, prior to the actions of individuals.
Indeterminate policies, on the other hand, do not stipulate all three components of an
accountability mechanism ex ante, but rather allow discretionary application ex post—deferring
specific definition of an obligation, and the measurements and consequences associated with that
obligation, to a post-action enforcement stage.

9.3 Summary of Major Findings

The study’s purpose was to understand the nature of government teacher policies, the
degree of coherence of those policies with other school policies, and to explore possible
influences on the way teacher policies are written. Key findings were as follows:

1. The distinction between whether policies are written in a determinate or indeterminate
   way is highly significant, carrying critical implications for the way policies function.
2. Determinate government policies for teachers exist solely for teacher inputs. These
determinate policies clearly define and enforce minimum standards for teacher inputs
   (such as entry qualifications and ongoing professional development), and stipulate
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rewards for teachers who reach standards beyond the minimum (such as accruing more years of employment and additional academic credits).

3. Government policies that address the processes and outcomes of teachers’ work are *indeterminate* and occur entirely within two separate and distinct policy frameworks, both stipulated in New York State law: the “Annual Professional Performance Review” (APPR), and the state-controlled § 3020-a hearing procedures.

   In direct contrast to determinate policies, the indeterminate nature of these policies means that teacher obligations (and what is required to fulfill them) are not specifically stipulated ex ante. Such policies do not define, ex ante, what constitutes adequate, inadequate, or outstanding performance, nor specify consequences (rewards or sanctions) associated with a particular level of performance. Indeterminate policies define these elements ex post—after, not before, teachers have acted—and thus can only be inferred from ex post application in past cases.

4. Teacher policies are written such that it can initially be difficult to correctly differentiate between policies for *evaluation* and policies for *accountability*. Analysis of policies requires especially careful distinction between evaluation and accountability, identifying the specific nature of the policy link between teacher evaluation, on the one hand, and consequences for the results of that evaluation, on the other.\(^{240}\)

5. All evaluation of teachers’ work is stipulated in the Annual Professional Performance Review (APPR) recently enacted by the State Legislature, and now being implemented in

\(^{240}\) That is, teacher *evaluation* is not equivalent to teacher *accountability* because evaluation alone does not incorporate consequences. Consequences (or incentives) are by definition one of three components of accountability. A policy that stipulates evaluation but does not stipulate consequences is an evaluation policy, not an accountability policy.
school districts. This framework is noted for the unprecedented requirement that the evaluation of teachers be partially based on the outcomes of their teaching. At the same time, the APPR is an indeterminate and negotiable evaluation system which appears to carry quite high transaction costs for schools and districts.

6. The APPR policy framework exclusively addresses teacher evaluation, not teacher accountability. Apart from its merits or shortcomings for teacher evaluation, the APPR is not, nor is designed to be, a teacher accountability system. By New York State Law, teachers cannot be sanctioned for inadequate performance within the APPR framework.

7. Under the new laws and regulations governing teachers introduced by Chapter 103, all teacher accountability for inadequate performance still occurs solely through the state-controlled § 3020-a proceedings. No determinate link between teachers’ APPR evaluations and the decisions reached through § 3020-a proceedings is stipulated in policy.

8. The policy definition of minimally adequate teacher performance is established exclusively through § 3020-a teacher accountability proceedings, which utilize a unique, well-established set of principles applied ex-post, and are guided by strong § 3020-a case precedent. The specific principles used in § 3020-a proceeding are not written down as statuary law, promulgated ex ante. They appear ex post in the § 3020-a adjudicative decisions, only some of which are available to the public, and those only through a Freedom of Information Law request. While these principles are thus neither transparent
nor accessible,\textsuperscript{241} they are highly significant as the operative rules governing teacher performance accountability.

9. Examination of the small number of available § 3020-a case decisions addressing teacher performance (averaging approximately 15 per year) reveal that demonstration of teaching competence is not defined as a requirement for remaining a member of the teaching workforce. The § 3020-a Hearing Officer’s determination that a teacher \textit{may have the potential} to teach competently, given additional training and assistance, appears to be a highly significant factor in the operative definition of the minimum standard for maintaining employment as a classroom teacher. Two (or more) years of incompetent teaching, alone, does not necessarily constitute adequate grounds for dismissing a teacher. Additional proof that a teacher is entirely beyond remediation—or, in other words, has clearly been shown to be “incorrigible”—is often key to justifying a teacher’s dismissal.

10. Determinate government policies emphasizing accountability for production of student outcomes dominate policies for all other school stakeholders. These determinate policies stipulate minimum standards, clearly defined in terms of measurable student outcomes, and stipulate both rewards and sanctions associated with achievement of or failure to produce defined levels of student outcomes. The ex ante clarity and specificity characterizing these outcomes-focused policies reflect that of the determinate policies addressing teacher \textit{inputs}.

\textsuperscript{241} See Diver (1983) for a detailed discussion of “transparency” and “accessibility” as key characteristics of rules, also discussed below.
11. Policies for teachers and policies for other school stakeholders are highly incoherent with respect to accountability:

- Policies for all individual and organizational school stakeholders except for teachers and classrooms are consistent with the outcomes-based new accountability framework.
- Teachers and classrooms are subject to a very different policy emphasis, largely consistent with the professionalization framework that dominates the scholarly education literature. This includes the newly-written evaluation policies, which remain congruent in some important respects with the professionalization model promoted in the scholarly education literature.

12. Five points of current alignment between the overall teacher policy system and the scholarly education literature are especially important:

- Definition of teacher quality in terms of teacher inputs and the teaching process.
- De-emphasis of measurable student outcomes as relevant to assessment of a teacher’s quality.
- Strong emphasis on teachers as ongoing learners, combined with an implicit (or sometimes explicit) assumption that all teachers are sufficiently motivated and capable of teaching adequately, given sufficient training and support.
- Emphasis on the school’s responsibility for the learning and growth of teachers.
- Definition of the school as the key “accountable actor” in producing student outcomes, and characterization of teachers as a resource utilized by schools to produce student outcomes.
13. The district teacher policy system is composed of multiple, separate policy subsystems, originating at both the district and state levels, and interactions between these systems are crucial to policy function. The new teacher evaluation system is a part of a considerably larger teacher policy picture, and can only be meaningfully examined in context of all teacher policy as a comprehensive whole. In particular, the study revealed that New York State § 3020-a procedures play a critically important role New York City’s teacher policy system.

14. New York K-12 education policy currently incorporates two essentially incompatible ideological paradigms: the professionalization framework, aligned with the dominant views of the education profession; and the effectiveness framework, aligned with the now-dominant government emphasis on efficiency.

15. The loose coupling that has historically characterized institutionalized schooling appears to have been significantly tightened as a result of recently increased government intervention and control, which until recently has focused most explicitly on schools and districts. At the same time, loose coupling appears to persist within the classroom to a notably greater degree.

9.4 Theoretical Perspectives on Findings

Two theoretical frameworks offer useful perspectives on study results, highlighting different aspects and implications of the findings. The first is new institutional theory, which provides an approach to understanding how and why particular institutions take particular forms and, most importantly, the ways in which previously-stable institutions can shift and transform. As Meyer and Rowan (2006) have recently written, “the new institutionalism has a unique
contribution to make in analyzing complex and contradictory patterns of institutional change” occurring in what they describe as the currently “volatile” context of U.S. public schooling” (p. 11).

The second perspective, drawn from legal scholarship specifically addresses the design of rules and regulations. Models presented address the optimal formulation of legal commands; explain conditions under which laws and regulations may not be formulated in an optimal or rational manner; provide insight into the significance of the indeterminate principles utilized in § 3020-a proceedings; and offer useful ways of thinking about the relative advantages and disadvantages of utilizing an “incrementalism” or a “comprehensive rationality” approach to policymaking (Diver, 1981).

9.4.1 Perspectives from New Institutional Theory

The fundamental aim of new institutional theory is to “chart the actors making up a societal sector, to analyze how these actors come to be organized into networks of governance and exchange, and to build theories about how sectoral configurations affect the structure and functioning of organizations composing the sector” (Rowan, 2006, p. 17). New institutionalism (NI) views the legitimacy of an “institution” as derived not from its technical performance or effectiveness, but rather its “consonance with relevant rules and laws, normative support, or alignment with cultural-cognitive frameworks” in what is described as the wider institutionalized environment (W. R. Scott, 2001, p. 59). Both legal/political and cultural aspects of the public schooling environment are now clearly in a state of flux, which raises questions regarding how the nature of institutionalized schooling may be evolving or shifting in response to these important changes. Two themes highlighted in current work in new institutionalism (NI) seem especially significant to an interpretation of study findings: a stronger focus on processes of
institutional change; and the role of power and conflict in the formation and maintenance of institutions. Each of these themes as they relate to study findings are briefly discussed.

While early new institutional theory stressed the stable, consensual nature of institutions, recent work in NI focuses in particular on understanding processes of institutional change (Huerta & Zuckerman, 2009; Rowan & Miskel, 1999; W. R. Scott, 2005; W. R. Scott & Meyer, 1991). Scholars have increasingly turned attention to how existing institutional equilibriums may be disrupted both by “exogenous” shocks and by emerging contradictions in internal institutional logics. The study’s findings indicate that this kind of disruption may now be occurring in K-12 public education, resulting in what can be seen as two separate, incompatible paradigms identifiable in the institutional logics of what has long been described as “institutionalized schooling.” Study findings suggest that the recent exogenous shocks of government pressure on schools and districts for technical efficiency may have resulted in the development of newly contradictory logics within public schooling and, subsequently, a process of deinstitutionalization. That is, the organizational field of K-12 public education, long described as institutionalized schooling, appears to undergone significant reconfiguration. Within this shifting context, a new distinct institution may be forming: that of institutionalized teaching, defined and legitimized by a distinct set of “norms, values, beliefs, and definitions” (Suchman, 1995, p. 574).

Historically, new institutional theory explained how institutionalized schooling functioned to protect the “technical core” from external influence or inspection. This is observed to be no longer true for schools, due to much-increased government pressure for technical efficiency. At the same time, the “technical core” of schooling is in fact defined as “teaching and learning in classrooms” within schools (H. D. Meyer & Rowan, 2006, p. 5). Thus, from a NI
point of view, examination of recent government effects on schools indicates nothing about government effects on the “technical core” itself, which may remain protected from the demands of production and efficiency to some greater degree. It seems possible that the technical core may, at least to some extent, still “maintain legitimacy by conforming to institutionalized norms, values, and technical lore” (p. 5), even in the face of new pressures that have impacted “schools” in unprecedented ways.

Important questions are thus raised: What is the current “institutionalized environment” of teachers and teaching? Is it possible that the institutionalized environment of teachers and teaching is no longer isomorphic with that of schools and schooling? If the “institution” identified is teaching—rather than schooling—some central observations of historical institutional analysis may still hold true. That is, fairly strong isomorphism of key norms, beliefs and values appears evident across teacher policies, teacher education, scholarship on teachers and teaching, teachers unions, and professional teacher organizations. Further, the technical core—teaching and learning in classrooms—appears still to maintain a considerable degree of protection from external inspection and demands for technical performance, especially in contrast to new demands on schools.

If teaching has to some extent become institutionalized as a distinct field, this may carry implications for understanding potential barriers to change in teacher policies. Institutions exist despite—not because of—evidence regarding their effectiveness; this is, in fact, the very definition of an institution in the first place. In other words, the impact of growing evidence demonstrating the classroom teacher’s critical importance in student learning, and a corresponding need for policy reform, may be limited in the context of an institutionalized framework. Understanding the potential role of institutionalized teaching within a reconfigured
and shifting organizational field of schooling may provide a useful perspective on the nature, and evolution, of teacher policies.

Meyer (2006) argues specifically that “large-scale loss of legitimacy” of institutions is rare and occurs very slowly. He points out that “insulating an institution’s legitimacy from its technical efficiency is precisely the effect of institutionalization…the support of institutionalized organizations is guaranteed almost independent of their performance and despite the availability of demonstrably superior models” (pp. 218-219, italics added). This, he emphasizes, is the key distinction between the logics of institutions, on the one hand, and of organizations, on the other:

While organizations answer to metrics of effectiveness and efficiency, the standard for the effectiveness of institutions is not their technical performance but their ability to maintain order and stability and to be viewed as legitimate…Legitimacy and efficiency are thus incompatible standards. When we assert our beliefs and values we do so regardless of efficiency concerns. This means that institutions are not easily shaken by arguments about “suboptimality” or “inefficiency” because their first and foremost mission is to represent and enact our beliefs and values. (p. 220)

Meyer suggests that it is precisely this distinction helps explain the “oft-posed puzzle of institutional inertia.” That is, institutions, by definition, are “not judged by how well they facilitate the attainment of specific goals,” in direct contrast to non-institutionalized organizations which are “judged by their effectiveness and efficiency” (p. 218). As he explains:

Thus, the question, “Why are less-than-optimal arrangements sustained, even in the face of opposition?”… is largely beside the point when it comes to institutions. Those who ask it operate on the mistaken assumption that institutions are like organizations, operating in the service of specific goals. In that view, the more evidence there is for the “poor performance” of an institution the sooner it may break its inertia. This, however, is demonstrably not the case. (p. 219)

The appearance of two different paradigms now represented in New York public education policies, and the considerable alignment evident between teacher policies and the
scholarly education literature on teachers and teaching seem consistent with core tenets of new institutional theory. Strongly-established ideas with respect to teachers and teaching have persisted to date in the face of fairly radical new pressures for efficiency and accountability. A key development in this picture is clearly the recent federal Race to the Top program and the associated new teacher evaluation system now being implemented in New York, which introduce, for the first time, demands for technical efficiency and accountability directed specifically at teachers. This new development raises a number of important questions: To what extent will this new government pressure succeed in changing longstanding school policies protecting the “technical core”? How long will changes take, and will they be sustained over time? To what extent will shifts occur in longstanding beliefs and values core to the education profession as a result of this changing environment? If the government continues to press for efficiency in the technical core and the profession continues to resist that pressure, which influence will prove to be most powerful?

A final dimension of this landscape highlighted in new institutionalism is the role of political power. Meyer and Rowan (2006) point out, “institutional arrangements garnering the support of the most powerful coalitions [do not] necessarily produce the most efficient institutional arrangements.” In fact, they argue, “dominant coalitions may precisely act to delay or prevent institutional change toward more optimal solutions.” The authors therefore suggest that “institutional change will often require political change—a redistribution of power that issues in greater societal emphasis on heretofore neglected or suppressed ideas and the groups that hold them” (p. 9). The authors’ emphasis on the need for politically-driven change seems to warrant careful note in the context of New York public education policy. The following discussion of factors that can influence the efficient—or inefficient—formulation of rules and
regulations also suggests that the role of politics is likely to be of considerable importance in the New York City teacher policy arena in the coming years.

9.4.2 Optimal Policy Formulation: Considerations from Administrative Law

Administrative legal theory provides a framework for evaluating the design of current teacher policy, and offers a valuable perspective for analysis of several aspects of study findings. Administrative law highlights the importance of considering the total costs incurred in both formulation and implementation of policies, and identifies factors key to determining the optimal level of policy precision. It also sheds light on implications of the strong role of precedent in § 3020-a hearings, and the function of teacher tenure in the teacher-district contract. Each of these is discussed below.

**Total transaction costs.** Assessment of costs, and of the trade-offs between those costs, is essential to optimal formulation of a policy as a “legal command.” The total costs incurred by a law comprises four factors: formulation of the law, enforcement of the law, private costs to regulated individuals, and cost of harm caused by inadequately regulated individuals. Transaction costs are incurred with both determinate rules and indeterminate principles. Writing rules requires that all future contingencies be anticipated and a contract written that specifies an outcome for each contingency. Rules thus incur *front-end costs* in the policy formulation stage, as parties identify all possible future states of the world and determine the efficient obligations associated with each state: Promulgating laws as determinate rules incurs greater costs than promulgating them as indeterminate principles because rules require substantial “advance determination of the law’s content” (Kaplow, 1992, p. 563).

Principles, on the other hand, incur *back-end costs*, in the enforcement stage. The cost of enforcement, particularly in the context of an “adversarial litigation process,” is a critical factor...
in formulating efficient laws (Kaplow, 1992; Polinsky & Shavell, 1992; R. E. Scott & Triantis, 2005, p. 14). As Scott & Triantis explain: “At the back-end stage, parties incur ex-post enforcement costs, including the costs of observing and proving the existence (or non-existence) of any relevant fact after uncertainty has been resolved” (p. 4). Parties must “initiate, defend and present evidence at trial,” using strategies which are “regulated by an elaborate regime of evidentiary and procedural rules.” While noting that litigation costs are often treated as exogenous to contract design, the authors argue that these costs should be considered as endogenous, particularly in the context of an adversarial system. Thus, they argue that the impact of an adversarial system must be an essential consideration in contract design (R. E. Scott & Triantis, 2005). Both teacher evaluation (through the APPR) and teacher accountability (through § 3020-a) function to a great extent as adversarial systems, and this factor is thus important in analysis of those policies.

Two additional kinds of costs are identified as important to determining optimal formulation of administrative law. The first is the private cost to regulated individuals of acquiring advice regarding the content of the law. The second is the cost of harm caused by the acts of private individuals who are regulated by the laws in question. Thus, total costs are the sum of promulgation costs, enforcement costs, costs of private legal advice, and costs of harm caused by insufficiently-regulated behavior.

The objective of this approach is choosing the formulation of a legal command which minimizes its total cost. Discrete costs (such as promulgation costs or enforcement costs) are not

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242 Scott & Triantis (2005) argue that the factor of enforcement costs is often overlooked in contract theory. 243 Kaplow (1992) notes that “if the benefits of learning the laws’ content are substantial and the cost…is not too great” the behavior of individuals will tend to conform equally well to laws promulgated as rules or as principles (p. 564).
considered in isolation, but rather as tradeoffs within an overall cost equation. The following is an example of how such a calculation might be made:

(a) The promulgation of a rule is costly;
(b) The enforcement cost of a principle is low because the law applies to few individuals and/or rarely requires enforcement;
(c) The cost of acquiring individual legal advice is equivalent under either a rule or a principle;
(d) The cost of harm potentially caused by insufficiently-regulated individuals is low.

In this scenario, the clearly optimal approach would be to formulate the law as a principle, deferring specification of its content to the enforcement stage.

In many cases, however, decisions regarding formulation of laws will be more complicated, and calculation of costs may be difficult or uncertain. (Political factors also constitute an additional influence on how laws are formulated, discussed briefly below).

Applying cost analysis to teacher work policies, specifically, the following may be a more realistic representation of costs:

(a) The promulgation of ex ante rules governing teachers’ work would be costly;
(b) Enforcement costs of ex post principles are high. These currently consist of ongoing, mandatory school-based evaluation of teachers (including costs associated with professional conciliation, grievance, and rating appeals processes); implementation of annual Teacher Improvement Plans; and § 3020-a proceedings—all occurring within an essentially adversarial system. Further, laws apply to a great number of individuals, over a long period of time.
(c) The cost of acquiring individual legal advice is close to zero under either a rule or a principle. (This assumes that the teachers union continues to provide essentially free legal advice and assistance to teachers as discussed in detail in Chapter 5.)

(d) Cost of harm potentially caused by insufficiently-regulated individuals may be high. Policies governing teachers’ work are currently formulated as indeterminate principles. However, this cost-tradeoff model suggests that formulating some teacher work policies as ex ante rules may be a more efficient approach, even if costly at the front-end stage.

The optimal level of legal precision. Another critical consideration in the formulation of legal commands is the optimal level of precision for a particular law: avoiding insufficient precision, on the one hand, and “excessive regulatory rigidity” on the other (Diver, 1983, p. 67).

The level of precision of legal commands can be defined as “the number and difficulty of distinctions the rules make” (Kaplow, 1995, p. 150): a greater degree of complexity provides a higher level of precision. The degree of complexity is also relevant to costs: a complex rule is more costly to promulgate than is a simple rule or a principle. The socially optimal level of legal precision must balance the two goals of minimizing costs and maximizing individual conformity with the law’s objectives.

Diver (1983) identifies three important characteristics of rule precision: 1) Transparency: that is, “words with well-defined and universally accepted meanings”; 2) Accessibility: meaning “applicable to concrete situations without excessive difficulty or effort; and 3) Congruency “with

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244 Multiple studies have attempted to estimate various down-the-line costs associated with K-12 educational failures such as illiteracy, innumeracy, high school dropout, and so forth. (See, for example: Chetty, Friedman, & Rockoff, December 2011; Levin, 2009.) Furthermore, the more immediate costs of remedial education (through extra-classroom intervention services, special education programs, etc.) are considerable. While teachers’ acts are clearly not the sole cause of these costs, inadequate teaching presumably contributes to some portion.
the underlying policy objective” (p. 67). Tradeoffs along the lines of these three characteristics may be necessary, he argues, but not all tradeoffs result in an equally optimal level of precision. More transparency is often more costly: higher levels of precision incur higher costs in both “the cost of obtaining and analyzing information about the rule’s probable impact, and the cost of securing agreement among participants in the rulemaking process” (Diver, 1983, p. 73). At the same time, however, “greater initial precision can also reduce the need for future rulemaking by leaving fewer policy questions open for later…case-by-case elaboration” (pp. 70, 73). More transparent and accessible rules are thus more costly to promulgate, but can be less costly to apply.

Frequency of application is an important consideration in determining the optimal complexity of a law. Rules cost more to promulgate, but those costs are incurred a single time regardless of how frequently the law is applied. Principles cost more to enforce but enforcement costs may be incurred often, occasionally, or never. Therefore, if a law governs many individuals and is applied frequently in similar situations, a rule is likely to be less costly: if there will be many cases and thus many enforcement actions, the additional cost of writing a precise rule at the promulgation stage “will be outweighed by the benefit of having avoided additional costs repeatedly incurred in giving content [to the law]” on a case-by-case basis (Kaplow, 1992, p. 563). However, a law that will be applied infrequently or in complex, varying scenarios will be most efficiently formulated as a principle, deferring costs to the back-end enforcement stage. In these cases, “[d]esigning a rule that accounts for every relevant contingency would be wasteful as most would never arise.” For example, rules regulating the handling and disposal of widely-used hazardous chemicals, such as drycleaning and automotive fluids, are likely to be spelled out ex ante with considerable precision. On the other hand, promulgating precise ex ante rules to
regulate the specific handling and disposal of rarely-used hazardous chemicals would be unnecessarily costly; a regulation might instead might be formulated as a much less precise principle, such as “using due care.” While enforcement costs in individual cases would be much higher, the number of such cases would be very small.

Kaplow (1995) notes that rule complexity is frequently considered “an evil to be minimized” (p. 161), but complex rules can be preferable in some cases, for several reasons. Complex rules are not necessarily more costly: under certain circumstances they may be more efficient than principles. For instance, the U.S. Internal Revenue Tax Code is frequently cited as an example of an overly-complex rule. On the other hand, were the tax code formulated as a principle instead of as a rule, it might state simply that “every citizen must pay his or her fair share of taxes,” leaving it to enforcement agencies to determine what “fair share”—and “citizen”—means, on a case-by-case basis. In this instance, an even overly-complex rule is both preferable and ultimately less costly than a simple principle.

It is also often assumed that indeterminate principles are preferable because their discretionary nature will “result in more precise application of underlying norms...to the particular facts of a case” (Kaplow, 1992, p. 161). In some contexts, however, complex rules can better govern particular behavior, with a greater degree of conformity with the law’s core objectives. Greater rule complexity can yield the benefit of “rules that are more precisely tailored to particular behavior” and thus a higher level of individual conformity with the law’s underlying norms and objectives. In some situations, it can thus be “worth investing substantial effort to fine-tune a rule system” (1992, pp. 621-622). Finally, under some circumstances rules will be preferred to principles to “in order to limit discretion and thereby minimize abuses of power.” That is, in cases where “it may be feared that courts, agencies, or other political actors will
provide content to [principles] in improper ways,” rules will preferable because “there would be less potential for such abuse” (Kaplow, 1992, p. 609).

Significance of § 3020-a ex post “principles.” The principles evidently applied ex post in § 3020-a teacher accountability proceedings are not formulated as determinate ex ante rules in statutory law—they are stated only in the § 3020-a administrative adjudication decisions issued at the conclusion of § 3020-a hearings, as discussed in Chapter 6. Additionally, these principles are utilized relatively infrequently in a small number of § 3020-a cases, producing written decisions which are not easily available. Only those finding a teacher “guilty” are obtainable, and only through a formal Freedom of Information Law request—and are difficult to obtain even through that means.245 Yet legal theory suggests that the principles utilized in § 3020-a may be viewed as constituting formal public policy governing the definition and enforcement of minimum work standards for teachers: functioning very much like “rules” for teacher performance accountability, although far from explicitly formulated as such in government policy.

The key issue here is that of precedent, which is strongly emphasized in § 3020-a proceedings as discussed in detail in Chapter 6. As Alexander (1989) writes: “The notion that

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245 Generally, materials relevant to decisional law are publicly accessible. Yet obtaining the § 3020-a decisions was difficult and expensive, even for an academic researcher with considerable assistance from an experienced New York lawyer. In response to the Freedom of Information Law (FOIL) request submitted to obtain decisions filed from 1997-2007, the Records Access Officer for the New York State Education Department initially wrote that “staff identified 270 decisions that are responsive to your request,” each running between 25-130 pages, at a charge of $.25 per page. Obtaining a single decision thus costs between $6.25 and $32.50. Over the course of the following year, the State Education Department sent 208 decisions, in three separate mailings, requiring repeated reminders. The assisting lawyer requested the 62 additional decisions not received, but was told that all had been sent; the Records Access Officer wrote: “The numbers I provided to you previously…were estimates provided orally [by office personnel]…I do not have any written records…which contain that information nor can I confirm the numbers.” A FOIL request for “the total number of decisions” issued each year for the period was subsequently filed. This request was denied; the Records Access Officer wrote: “Please be advised that SED [the State Education Department] does not possess a ‘record’ of the total number of decisions.”
courts ordinarily should follow precedent in deciding cases is one of the core structural features
of adjudication in common-law legal systems” (p. 3). While “usually discussed in the context of
judicial decisionmaking,” the role of precedent functions similarly in adjudication by
administrative agencies (Kaplow, 1992, p. 612). When precedent assumes a significant role in ex
post application of law, what appears to be an indeterminate principle can actually function in
practice as a rule. That is, a principle can “be converted into a rule through the creation of a
precedent” (Kaplow, 1992, p. 564), and such rules are utilized ex post as though they were
explicitly stipulated ex ante (Alexander, 1989; Dworkin, 1967; Kaplow, 1992; R. E. Scott &
Triantis, 2005). As Landes & Posner (1976) explain:

The distinctive attributes of decisional rules are captured in the term the legal system uses
to describe such rules: “precedents.” In ordinary language, a precedent is something done
in the past that is appealed to as a reason for doing the same thing again. It is much the
same in law. The earlier decision provides a reason for deciding a subsequent similar case
the same way, and a series of related precedents may crystallize a rule having almost the
same force as a statutory rule. (p. 250, italics added)

As shown, determinate rules specifying the definition and enforcement of minimum
standards for teachers’ work are nowhere stipulated in statutory law. However, the implication of
the concept presented above is that in practice those rules actually do exist. Dworkin (1967), for
example, explains:

Many of our most ancient legal rules were never explicitly created by a legislature or a
court. When they made their first appearance in legal opinions and texts, they were
treated as already being part of the law because they represented the customary practice
of the community or some specialized part of it, like the business community. (p.43)

Similarly, he argues, legal principles can originate “in a sense of appropriateness developed in
the profession and the public over time” (p. 41). Following this argument, the distinct principles,
utilized in § 3020-a teacher accountability proceedings can be viewed as both originating and
continuing to operate within the “customary practice” and “sense of appropriateness” developed within the unique context of K-12 public education—largely independent of the public, legislatively-controlled policymaking process, yet carrying the full force of explicit statutory commands.

That is, the ex post principles operating in § 3020-a proceedings appear to be converted into rules, through precedent. Kaplow also argues that when principles are converted into rules, "individuals' common knowledge will allow confident prediction in some contexts, even when precise official pronouncements are not consulted or do not exist” (p. 615). Teachers may thus be able to predict with some confidence the minimum standards that they actually must meet to maintain their employment—although those standards are formulated outside of the formal policymaking process and guided by the distinctive norms and practices of § 3020-a proceedings, rather than stipulated explicitly in statutory law.

**Burden of proof and teacher tenure.** In their application of contract theory to the optimal formulation of laws, Scott & Triantis (2005) emphasize the cost of enforcement through litigation as a crucial factor, as discussed above. Their discussion of assignment of the burden of proof in an adversarial system provides an interesting lens for examining the role of teacher tenure in the way current teacher policy is written. As the authors explain, in litigation cases the plaintiff conventionally “carries the burden of proving an enforceable promise, the [defendant’s] failure to perform as promised and the amount of damages.” The defendant, on the other hand, simply presents “affirmative defenses.” The authors point out, however, that either party can be assigned the burden of proof: parties “can reallocate burdens by choosing which party will be the plaintiff in the event of the dispute and who thereby will carry the burden of establishing whether the promisor has performed” (p. 14). Further, they suggest that a key technique for shifting the
burden from one party to another is the use of a deposit: “If a buyer makes a deposit, [the buyer] must sue the seller to recover the deposit in the event of a dispute.” On the other hand, “[i]f there is no deposit, the seller must sue to recover the price” (p. 14).

Under current New York Law, the § 3020-a proceedings that address teachers’ alleged failures to fulfill their professional obligations clearly define the state (or school district) as the plaintiff, carrying the full burden of proof of both “an enforceable promise” and a teacher’s “failure to perform as promised.” At the same time, the teacher is clearly defined as the defendant in these proceedings: the recent Education Law § 3020-a amendments in fact specifically stipulate that the new legislation in no way “limit[s] the defenses which the [teacher] may [present]…in challenging the allegation of a pattern of ineffective teaching.” Further, teacher tenure functions in practice as a deposit which the state must sue to recover. That is, the state is legally in the role of the buyer who, in order to terminate a teacher, must sue that teacher to recover the deposit of tenure held by that teacher. Under a scenario with no deposit (i.e. no tenure), the burden of proof would shift from the state to the teacher, resulting in a very different configuration of rights and obligations. Scott & Triantis (2005) suggest that termination rights, in particular, serve the purpose of altering the allocations of burdens in a way which may optimize a contract from the point of view of the “buyer”—which in this case is the government and, at least in theory, the public citizenry it represents.

**Are New York City’s teacher policies formulated optimally?** New York’s recently-promulgated laws governing teacher evaluation apply to tens of thousands of teachers, year after year, in cases that do arise frequently and have highly common characteristics. Yet they are

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246 N.Y. Educ. Law § 3020-a(3)(c)(i-a)(B)
neither transparent nor accessible, using Diver’s definitions. Further, a large number of enforcement officials are involved—the thousands of principals, assistant principals and other evaluators responsible for school-site evaluations—incurring high, ongoing enforcement costs. The lack of transparency and accessibility of the new APPR may make it vulnerable to exactly the potential abuses of power that Kaplow identifies. In summary, thus, it might be expected that teacher evaluation policies would be at least somewhat more complex—that is, more transparent and accessible—than those that have recently been written.

This applies perhaps even more strongly to policies associated with the § 3020-a procedures. Diver’s model, using the three characteristics of administrative laws discussed above, can also be used to evaluate the seemingly rule-like “principles” guiding § 3020-a decisions. To Diver’s three characteristics, I would add a fourth: the level of laws’ public availability. Materials relevant to decisional law, such as judicial decisions, are generally available to the public: that is, easily obtainable at low cost. Both school districts and the teachers unions have full access to the § 3020-a decisions: all decisions are provided to both the plaintiff and the defendant, in addition to being filed with the State Education Department. However, these decisions are not easily available to other directly involved parties, such as children and their parents. Nor are they easily available to academic researchers, or the general public. Some decisions (those in which the teacher was judged “not guilty” of all charges) are not available whatsoever, even with all identifying information redacted. Thus, § 3020-a decisions clearly have a low level of public availability. They have a low level of transparency: they are not promulgated explicitly as written statutory rules, using “words with well-defined and universally accepted meanings.” They also have a low level of accessibility: that is, they are not applied in a straightforward manner “to concrete situations without excessive difficulty or
effort,” but are instead applied through the cumbersome and virtually secret § 3020-a hearing procedures.

The final characteristic that Diver identifies is *congruency* with the underlying policy objective. Section 3020-a decisions clearly identify the protection of teachers as the central goal of § 3020-a proceedings: the procedures are explicitly structured “in favor of the employee,” with the goal of safeguarding the “constitutionally protected interests” of teachers. It seems, thus, that while the in-practice rules used in § 3020-a proceedings have a low level of public availability, transparency, and accessibility they in fact have a *high* level of congruency with the underlying policy objective of protecting teachers.

**Why might laws not be formulated optimally?** Teacher evaluation policies do not have the level of precision that the models presented above suggest would be optimal. Furthermore, the § 3020-a teacher accountability “rules” may be optimal from the point of view of the protection of teachers’ rights, but appear not to be designed optimally either to minimize costs or achieve other—if potentially conflicting—policy objectives, such as protecting New York children’s constitutionally-guaranteed right to “the opportunity for a sound basic education” (Campaign for Fiscal Equity, 2012). Authors suggest two reasons in particular that laws may not be formulated in the most optimal fashion. The first is the role of powerful interest groups in shaping laws. The second is the potential that self-interested politicians will *not* shape laws in a socially optimal way: that is, “rules made by self-serving rulemakers” may “deviate from the optimally precise form” (Diver, 1983, p. 106).

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247 Case no. 4818 (2004), J. Douglas
The role of teachers as an organized interest group. While children (along with their parents and the general public) do not constitute an organized interest group, teachers—represented by the teachers unions—clearly do. It would thus not be surprising that rules and regulations governing teachers would be formulated to favor teachers’ interests, rather than those of children or the general public. That is, “small and well-organized interest groups are able to influence public policy toward their own benefit, at the expense of large and diffuse groups” (Spiller & Ferejohn, 1992, p. 3). Similarly, Diver (1983) argues, because “[w]idely dispersed costs or benefits are less effectively represented in policymaking than concentrated costs or benefits,” the formulation of administrative rules is likely to “favor interests championed by…regulated firms” while at the same time, “under-valu[ing] interests of unorganized beneficiaries of government programs” (p. 99). In addition, he suggests that “those with the most to lose (gain) from the promulgation of a particular rule will invest the most in efforts to defeat (enact) it” (p. 98). This suggests, in fact, that the least competent teachers—who are the most likely to lose their jobs under higher standards for teachers and more rigorous accountability policies—may be most active in shaping teacher work policies.

Thus, if public school teachers are viewed as an organized interest group, the teachers union as a regulated firm, and children, their parents, and the public as unorganized beneficiaries of the government-run public schools, it would be expected that policies would be formulated to favor the interests of teachers. Even further, it seems possible that, at least to some extent,

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248 This is consistent with this study’s findings: a critical set of policies are those governing teacher union membership and activity, which appear to be highly favorable to the union. By law, all public school teachers are required to be UFT members. The government deducts membership fees from all New York City teachers’ paychecks: approximately $1,200/year per teacher, for a total of $96 million per year paid to the UFT. An additional set of policies ensure the UFT’s powerful role in influencing teacher policy at the district level, and permit a scope of school- and district-level union activity which has significant, ongoing impact on the design and function of teacher policies.
policies may be formulated to favor the interests of the least competent teachers in the teaching workforce. From this perspective, it is also not surprising that policies place particular emphasis on accountability for children and “schools”—neither of which are represented as an organized interest. Further, the § 3020-a teacher accountability proceedings are operated by the state government, the local school district, and the teachers union as an essentially closed system—from which “unorganized beneficiaries” of the public schools (children, parents, and the taxing public) are almost entirely excluded.249

**The role of policymakers.** While top government officials (such as New York’s governor, education commissioner, and Regents chancellor, and New York City’s major) have become fairly visible in recent debates over teacher work policies, state laws and regulations are in fact formulated by a large group of policymakers, in both the New York Legislature and the State Department of Education. Promulgating determinate ex ante teacher policies that further raise standards for teachers and increase teacher accountability for meeting those standards carries costs (in both effort and political costs) that policymakers may not be willing to pay. The promulgation of such policies would clearly require a considerable investment of time and energy: as Kaplow (1992) notes, “giving appropriate content to the law [ex ante] often requires effort, whether in analyzing a problem, resolving value conflicts, or acquiring empirical knowledge” (p. 621). Diver (1983), too, argues that higher levels of precision in laws incurs higher costs, because of the effort necessary to obtain and analyze information, and to negotiate agreement among the parties involved. Therefore, in many situations, “[t]he rulemaker captures the benefits of….low initial rulemaking investment,” while “exporting…high enforcement costs”

249 Exploring the issue of regulatory capture within the § 3020-a framework was beyond the scope of this study but seems worthwhile.
to other parties who are responsible for enforcement (p. 103). This observation seems applicable to the recently-promulgated teacher evaluation and accountability policies: the policies are written in a highly indeterminate fashion, and at the same time appear likely to carry quite significant enforcement costs, “exported” to schools and districts.

Diver also highlights the tension between private and public costs in the policymaking process. A policy which minimizes the private costs borne by policymakers may be very costly from a public point of view. He argues that as competing values, conflict, and uncertainty increase in a particular policy area, the transparency of policies promulgated is likely to decrease correspondingly:

[As] intensity of conflict in the political arena [increases]…the more confused and unintelligible will be the signals received by the administrative policymaker. Estimation of the political consequences of alternative strategies will become more difficult, and the perceived political costs of selecting the wrong alternatives will rise. Faced with this dilemma, the risk-averse policy maker will tend to favor [a less transparent] formulation. (Diver, 1983, p. 106)

In the face of difficult policy choices policymakers will tend to favor indeterminate, ex post principles as carrying the lowest private costs, even if the resulting policy carries high public costs. Further, when competing values are central to a policy debate, policies with low transparency are especially likely to be attractive to policymakers because low-transparency policies obscure value choices. The policy arena of teacher evaluation and accountability is characterized by an extraordinarily high level of conflict and uncertainty, and strongly competing values have emerged in debates regarding the role of teachers and teaching in public education. From this perspective, too, it seems predictable that the new teacher policies were written in an indeterminate—rather than determinate—fashion; indeed, it would be surprising if the opposite were true.
The future of teacher policymaking. Diver (1981) presents two models of the policymaking process: one which he describes as “incrementalism” and the other as “comprehensive rationality.” Each model has advantages and disadvantages, and may be more or less appropriate for particular policy circumstances. The incrementalism model does not aim for permanent solutions, but rather functions by implementing ongoing incremental adaptations to shifting circumstances: an incrementalist approach does not aim to restructure entire policy, but rather uses “a continuous series of small adjustments...made by adapting to exogenous changes” (p. 400). In incrementalist policymaking, the policymaker considers a relatively narrow range of alternatives, “which differ only slightly from each other and from the status quo” (p. 399). This approach enables the gradual development of appropriate policy, incorporating new perspectives, information, and technical tools. Incrementalism is also characterized by decentralized decisionmaking, in which multiple actors within government and the public at large participate in policy formulation. Diver thus argues that incrementalism is usually preferable in unstable and uncertain policy environments: its “singular advantage...is its ability to accommodate uncertainty and diversity,” often enabling “the serial reconciliation” of conflicting values, and in many cases “may actually distribute costs and benefits more efficiently than comprehensive rationality.” (p. 430).

Comprehensive rationality, on the other hand, is a considerably more radical and difficult approach to policymaking. It is characterized by clearly specifying goals, identifying a range of policy methods for achieving those goals, considering the consequences of each policy option, evaluating which will be most effective and, finally, “select[ing] the alternative that will make

250 Also see Lindblom (1959, 1979) for discussion of these two approaches to policymaking.
the greatest progress towards the desired outcome” (p. 396). This model requires that “conflicting goals must be reconciled by specifying the tradeoffs among them” and, perhaps most notably, that values must be clearly defined. That is, precise, unambiguous policy aims must be explicitly identified, because choosing the best policy tools “requires knowing just what job is to be done” (p. 398).

Current teacher policymaking appears to conform with the incrementalism model as would be expected given the highly unstable, uncertain, and shifting policy environment of teacher evaluation and accountability. Given that context, it is possible that incrementalism is the best policymaking approach. However, Diver suggests that the comprehensive rationality approach may actually be preferable—or even essential—for resolving particular policy problems, “even when uncertainty and conflict prevail” (p. 430). The conditions he presents as warranting a comprehensive rationality approach seem worthy of consideration with respect to teacher work policies.

In particular, Diver argues that a comprehensive rationality approach is necessary under two circumstances: first, when “small errors in policy can cause irreversible or even catastrophic harm,” and second, “in those policy regimes involving egregious—and irremediable—misallocation of political power among persons most intimately affected” (pp. 431-432). In sum, he argues, incrementalism is “a sensible response to technical uncertainty and political ferment.” Yet comprehensive rationality, while politically challenging, ought to be pursued in contexts “when irreparable harm may result from mistaken incremental decisions or when certain voices would likely be ignored in incremental proceedings” (p. 393). That is, the “remedial character of incrementalism is nullified if the interests harmed at one stage lack the resources to seek later relief or can do so only after relief has become impossible” (p. 431).
In the current teacher policy context, it seems that an argument could be made for either an incrementalism or a comprehensive rationality approach to policymaking, as follows:

1. The uncertainty and conflict currently characterizing the teacher work policy environment is very strong, and an incrementalism approach is usually preferable in such policy contexts.

2. The potential risk of “irreversible or even catastrophic harm” can be seen in several lights. First, an argument could be made that this is an irrelevant consideration because there is no risk of such harm in the context of public education policy (as opposed, for example, to aviation policy). Or, an argument could be made that there is a risk of significant harm—either to teachers or to children, depending on your point of view.

   Which group runs the risk (or the higher risk) of irreversible or even catastrophic harm is essentially a value judgment. Some might argue that 20 third graders spending a single year in the classroom of an incompetent teacher constitutes a serious risk of catastrophic harm. Others might argue that one competent teacher losing her job constitutes catastrophic harm. If they are both “catastrophic harms,” which is worse is also a value question. Further, a policy system will inevitably be imperfect, and errors will result. The current policy system appears structured to favor what could be described as “Type I errors”: continuing to employ incompetent teachers who should have been fired. On the other hand, the policy system could, in theory, be changed to reduce Type I errors (that is, reducing the number of incompetent teachers) while increasing Type II errors: firing teachers who were, in fact, competent.

   Yet, maintaining the current level of protection for teachers, on the one hand, and ensuring competent teachers for children in every classroom, on the other, appear to be
irreconcilable policy goals. A critical policy decision is thus *which* type of error is preferable—or, put another way, which is more likely to cause severe harm: whether dozens of children suffering a bad teacher, on the one hand, or a decent teacher losing their job on the other. Assessment of the potential level of harm done to children by an incompetent teacher is clearly essential to how this determination is made.

At the same time, it seems quite likely that the organized political power of the teachers unions outweighs that of New York City’s largely minority and low-income public school children, and their families. Whether this rises to the level of a “policy regime involving egregious—and irremediable—misallocation of political power” is open to interpretation. With respect to designing teacher work policies, however, it seems that a case could be made that the “political and economic impotence” of children as a directly affected interest is significant enough to warrant considerable attention. If the interests of New York City’s public schoolchildren and their parents in fact constitute those “of a disenfranchised constituency cry[ing] out for attention,” an incrementalism policy approach is unlikely to remedy the power imbalance (Diver, 1981, p. 434).

Diver also suggests that “incremental processes will usually make sense in the first years after a new policy initiative” (p. 393). From one point of view, teacher evaluation and accountability could be described as a “new policy initiative.” From another, however, the public schools and the tens of thousands of teachers who staff them is a very old “policy initiative,” and seen from this point of view, an incremental approach may not be optimal. An additional concern could be raised regarding the “voices” of children, their parents, and the general citizenry in the public discourse around schooling—which if not entirely ignored, may well be drowned out by
the more powerful voices of well-organized, long-established coalitions of teachers unions and education professionals.

Finally, an argument could be made that irreparable harm is in fact resulting from current incremental decisionmaking with respect to enforcing a minimal level of teacher competence: as generation after generation of disadvantaged children are taught by inadequately competent teachers. It also seems likely that established § 3020-a precedents will continue to drive teacher accountability proceedings unless changed by law—and such change may well require going beyond an incrementalist approach.

As Diver (1981) points out: “Where comprehensive rationality tortures fundamental value conflicts into an uncomfortable and often illusory truce,” incrementalism provides a means for those conflicts to be resolved over time: it is this “modesty of incremental undertakings” that “enables them more readily to adapt to novel circumstances” (p. 430). Further “objective regulatory line-drawing” inevitably “sharpens the focus of value conflicts” (Diver, 1983, p. 73). Incrementalism is thus by far the easier approach to the complicated and evolving arena of teacher accountability. Yet by its very nature, incrementalism “deals only with the present, leaving tomorrow to tomorrow” (p. 430), and Diver emphasizes the need to consider “the potentially devastating consequences of narrowminded incremental decisions” (p. 434). Thus arises the critical question in teacher policy: If tomorrow is left to tomorrow, what are the consequences for children today?
9.5 Practical Considerations in Designing Teacher Policy

9.5.1 Teacher Workforce Management

Human resource development (HRD) provides a useful normative framework for assessing the overall design, strengths, and weaknesses of the teacher policy system as the formal employment contract governing teachers.

The HRD approach aims to design and integrate a strategically-aligned, comprehensive set of human resource management tactics, focused on both the individual and the organizational levels, and aligned with the organization’s mission, goals and objectives. HRD emphasizes two complementary aspects of workforce management: training and development, which focuses on the systemic development of individual skill and expertise; and organizational development, which focuses on the systematic alignment of workforce management practices for overall organizational effectiveness and performance (R. A. Swanson & Holton, 2001; Yorks, 2005).

HRD scholars identify an important distinction between two paradigms within HRD. The first is the learning paradigm, which “focuses primarily on individual learning as an outcome and the individual learner as the target of interventions” (R. A. Swanson & Holton, 2001, p. 128). In this paradigm, the chief focus is on helping individuals develop to their fullest potential, and individual learning is viewed as the key outcome. The performance paradigm, on the other hand primarily emphasizes “the organization and its need to perform” (p. 19), defining performance as “the valued productive output of a system in the form of goods or services” (p. 89). From this perspective, the growth and development of individuals is a focus as a means to accomplish to goals of the organization, not as an end in and of itself. This approach requires that the organization’s purpose is clearly defined and that its structure—including its human resource management processes—is well-aligned with its strategy (Yorks, 2005). In the public schooling
context, the learning paradigm appears to be the appropriate approach to “managing” students: individual student learning is the very purpose of the public schools in the first place. However, the performance paradigm seems the more appropriate approach for managing teachers, since student learning—not teacher learning—is the core organizational goal of the public school enterprise. That is, viewed from the perspective of ensuring organizational effectiveness, policies for managing the teacher workforce ought to be designed with the single aim of maximizing the public school system’s capacity to accomplish its fundamental purpose of producing student learning.

Teacher performance lies at the very heart of the performance of the public school enterprise. The performance of a school system is the aggregate of the performance of the multiple schools within that system. Similarly, the performance of a school is largely the aggregate of the performance of the multiple classrooms led by multiple teachers within that school. Maximizing the school system’s effectiveness thus requires maximizing the performance capacity of individual teachers. The individual performance of teachers, in turn, is driven by several factors. Swanson & Holton (2001) identify key performance drivers as capabilities, motivation, competence, and expertise. Similarly, Yorks (2005) presents a comprehensive model of individual performance as a function of four drivers: context (the system and other employees); ability (knowledge, skills, and aptitude); motivation (either intrinsic satisfaction from work and/or expected outcomes as rewards or sanctions); and personality (as manifested in behavior) (pp. 234-235). Yorks argues that every one of these is essential to individual performance, and must be addressed separately. Along these lines, he identifies five problems underlying poor performance, each requiring “a different kind of intervention or solution” (p. 233). Poor individual performance can result from:
1. A lack of individual knowledge and expertise;
2. A lack of motivation, resulting in inadequate effort exerted;
3. Insufficient talent or innate ability;
4. A misfit of personality (such as cognitive style, habits, beliefs, and attitudes) with the job and organization; and
5. Inadequate performance of other individuals, which is especially relevant in sequential work processes.

New York’s teacher policies focus almost exclusively on one driver of teacher performance: individual knowledge and expertise. But insufficient knowledge and expertise is not the only potential problem underlying poor performance. A teacher may have a great deal of knowledge and expertise, but lack motivation, talent, and personality fit with the job of teaching—none of which can be adequately addressed by increasing teachers’ knowledge and expertise. For example, increasing expertise may, but does not necessarily, increase motivation. Similarly, weak innate ability or fixed negative beliefs about children may preclude competence even with the best of training and support. Current policies barely address four of the five possible causes of inadequate individual performance identified.

The problem that Yorks describes as inadequate performance of other individuals seems especially important in the school context. Teaching is highly sequential work: the performance of a second grade teacher depends greatly on the performance of the first grade teacher; the performance of the third grade teacher depends greatly on the performance of both the first and second grade teachers, and so on. The implication of this for school performance is crucial. The very nature of school organization means that the impact of inadequate performance of even a
single teacher is greatly amplified through the down-the-line effects on subsequent teachers. In this context, ensuring adequate performance of every teacher—through addressing all performance drivers—becomes even more important.

HRD also highlights significant problems with the absence of consequences for student learning in current teacher policies. On the individual level, consequences function as positive and negative incentives which can affect teachers’ performance through affecting their motivation and the effort they put forth to accomplish the purpose of their job. On a collective workforce level, consequences are also essential, but for a very different reason. On that level, dismissal of inadequately performing teachers functions not as a sanction aimed to shape individual behavior, but as a crucially important management process for the overall school system: building and maintaining the capacity of a collective workforce requires eliminating individual members of that workforce who are not performing adequately. Dismissal thus has two distinct purposes. On the individual level it functions as a behavior-shaping incentive. On a systemic level, perhaps even more importantly, it functions to improve the quality of the collective teaching workforce by eliminating inadequate performers. The aim in this case is not to “punish” an individual, but to problem-solve for the overall school organization. That is, from a systemic point of view, getting competent teachers into every classroom requires getting incompetent teachers out of classrooms. Policy mechanisms for identifying and removing those who are not teaching adequately are crucial to organization success in producing student learning.

In sum, effective schools require an effective teacher workforce, and development of that workforce has several critical dimensions:

1. Adequate teacher training and preparation;
2. Teacher recruitment, to ensure an adequate pool of teacher candidates;
3. Correct selection and placement of those candidates;
4. Ongoing support and professional development, including formative evaluation;
5. Incentives for performance, based on summative evaluation;

All six of these dimensions of workforce management are crucial to collective teacher quality and effectiveness and must be systematically addressed by the teacher policy system.

The role of § 3020-a proceedings in teacher workforce management. The current § 3020-a teacher accountability system seems seriously inadequate from the point of view of teacher workforce management. As clearly evident in the § 3020-a case decisions, the § 3020-a policy framework is not designed from a systemic perspective aiming to optimize the quality of the teaching force and the capacity of the public schools to adequately educate children. Rather, the principles that undergird the § 3020-a framework are firmly grounded in the explicitly-stated purpose of protecting the rights of, and assisting, individual teachers. The impact of those teachers on their students, colleagues, schools, and the overall capacity of the school system is occasionally referred to in passing, but is not a fundamental concern in § 3020-a proceedings.

The strong § 3020-a emphasis on teacher “rehabilitation” reflects the strong institutionalized prioritization of the personal welfare and development of individual teachers over the systemic mission of educating children. Evident in the § 3020-a decisions is what might be considered an extraordinarily high standard for schools’ obligation to rehabilitate teachers: in one case presented in Chapter 6, termination resulted only after the teacher had been provided with literally years of “a nearly exhaustive amount of remedial help,” in the words of the presiding Hearing Officer, while the teacher herself made no effort whatsoever to improve her
teaching. The implications of this for schoolchildren is clearly enormous: as hundreds, or even thousands, of students are provided with an inadequate education during the years and years when their teachers do not come to work, engage in verbal and physical abuse, and teach incompetently—all while the school system carries out its ongoing, resource-intensive obligation for teacher rehabilitation. The § 3020-a framework fall far short of providing the vehicle needed to remove incompetent teachers from the teacher workforce, and in fact enforces an in-practice school accountability for teacher learning which in some respects takes precedent over “on-paper” school accountability for student learning.

**Teacher accountability vs. teacher evaluation.** Teacher evaluation and teacher accountability are not equivalent, and both are essential components of a policy system for managing a teaching workforce. Yet while the concept of teacher evaluation is well-established in education, individual *accountability* has not been widely understood. In his 2003 Presidential Address at the annual meeting of the American Educational Research Association, for example, Robert Linn reported that when a group of educators were asked “what words or concepts they thought should be associated with accountability” they responded most frequently with “responsibility” and second most frequently with “shared.” As he writes: “Shared responsibility was broadly conceived to include students, teachers, school administrators, parents, and policymakers…viewed more broadly…than it seems to be in most laws that have mandated accountability systems in recent years” (Linn, 2003, p. 3). Yet while some accountability may be shared, individual accountability is, by definition, *not* shared—it is specifically borne by a single person. Further, the distinction between “responsibility” and “accountability” is a crucial one. As

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251 Case no. 4125 (2002), Ellis
Dworkin (1967) writes: “If one is bound by a rule he is obligated, not merely obliged, to do what it provides” (p. 20, italics added). While responsibility is essentially equivalent to being obliged, and carries some connotation of personal discretion in compliance, accountability clearly implies an obligation and, in turn, an associated consequence for not meeting that obligation.

The question of teacher accountability also seems plagued by a distracting false dichotomy, posed between a rigid, test-based accountability regime, on the one hand, and no teacher accountability, on the other. The unreliability of current testing technology for summative evaluation of individual teachers is widely recognized. However, students’ standardized test scores are not the only way to evaluate teachers’ effectiveness and hold them fairly accountable accordingly. For example, Rockoff and Speroni (2010) have recently documented the value of supervisors’ subjective assessments of teachers’ performance. Evaluations by students and by parents could be used as components of teacher assessment. Peer review, too, could play a particularly useful role if carried out by subsequent-grade teachers: that is, third grade teachers evaluating second grade teachers, fourth grade teachers evaluating third grade teachers, and so on. In this kind of peer evaluation, a tendency for a teachers’ interpersonal feelings to influence evaluations of their peers could well be outweighed by the powerful impact that “feeder” teachers have on the work of teachers receiving children from those prior classrooms. That is, I may like you or dislike you, but if I’m a fourth grade teacher, your performance as a third grade teacher will probably be of greater importance to me than my personal feelings for you. In fact, the competence of a third grade teacher probably matters more to the fourth grade teacher than to anyone except the third grade teacher’s students.
9.5.2 The Importance of Teacher Policy to Educational Equity

Ensuring a competent teacher in every classroom is also critical from an educational equity point of view. Scholars have widely observed the great variation in teacher effectiveness within a single school (Chatterji, 2002; Darling-Hammond et al., 2003; Ellett & Teddlie, 2003; Hamre & Pianta, 2005; McLaughlin & Talbert, 1993; Newmann, Byrk, & Nagaoka, 2001; Podgursky, 2005; Rockoff, 2004; Roderick, Engel, & Nagaoka, 2003; Sirotnik, 2004a). It was observation of variation among schools within a single district that led to current definition of the school as the unit of improvement and the focus of efforts to reduce inequity (Elmore & Fuhrman, 2001). The same principle now suggests a more targeted focus on the classroom.

Many scholars emphasize the moral imperative of ensuring equal “access to the resources that enable students’ learning” (Darling-Hammond, 2004b, p. 1080): that is “provid[ing] a meaningful, adequate educational opportunity for all students” (Rebell & Hunter, 2004, p. 6). As Grubb, Goe, & Huerta (2004) write: “efforts over the 20th century to enhance educational equity have tended to concentrate on...correcting inequalities in resources.” At the same time, however, the authors observe that these “efforts to equalize resources have been insufficient, and inequities persist.” They pose a crucial question: “Given that prior efforts...have not worked to produce equity, what are the next steps to take?” (p. 2082). While it has not been the conventional focus in educational equity concerns, a reasonable next step is increased focus at the classroom level. No education resource is more important to a student’s learning than the competence of his or her classroom teacher—yet currently, the quality of a child’s education depends on whether he is on this side of the classroom wall, with a competent teacher, or that side of the wall with an incompetent one. Bransford, Darling-Hammond, and LePage (2005) argue that “teachers need to serve adequately the very first students they teach” because “these students, like all others, are
entitled to sound instruction and cannot afford to lose a year of schooling to a teacher who is ineffective or learning by trial and error on the job” (p. 3). It could similarly be argued that teachers need to serve adequately the very last students they teach as well. While perhaps a more challenging policy goal—both politically and practically—it is not less essential.

**9.5.3 Concluding Observations on Teacher Policy Design**

- The definition of the school as the basic unit of accountability may function to obscure the essential role of the classroom in the delivery of education and the importance of policies governing the classroom teacher. Improving the performance of a “school” largely means improving the performance of the individual classrooms that the school is comprised of—it is in individual classrooms, run by individual teachers, that teaching and student learning occur. In other words, the importance of individual performance accountability to system capacity—that is, the essential relationship between schools and the individuals who work in them—requires greater attention in the design of policy systems.

- The current disconnect between teacher evaluation and teacher accountability in New York teacher policy is significant and problematic. Without mechanisms that link evaluation outcomes with consequences for those outcomes, the usefulness of evaluation for improving teacher quality on a systemic level is greatly constrained.

- The APPR/§ 3020-a teacher evaluation/accountability policy system appears to incur high transaction costs for schools and districts. An extraordinarily resource-intensive process for evaluating teachers combined with a perpetual requirement to remediate inadequate ones may cost much more than improving selection processes; investing in the front-end training
of new teachers (who are at least potentially good); paying higher salaries to more effective teachers; and dismissing those who do not perform adequately.

- The constriction of teacher supply due to high entry requirements may also contribute to an unnecessarily expensive system. Constricting the supply of hirable teachers clearly raises the value of that supply. At the same time, the very fact of a limited supply decreases focus on its actual quality the first place. Increasing the pool of hirable teachers by lowering entry qualifications, improving teacher selection, providing “less qualified” teachers with solid support and training in their first years of teaching, and eliminating underperforming teachers early on may be a more efficient approach to developing and maintaining a high-quality teacher workforce.

In summary, it does not appear that current teacher policies are designed optimally from the point of view of policy coherence, cost minimization, or maximizing the effectiveness of public education—defined, that is, as providing a minimally-adequate education to all children. It also appears that changing critical aspects of current teacher policy—most notably, the state-controlled § 3020-a requirements and procedures—may be fairly challenging. Yet observing that current policies are inadequate is clearly much easier than designing better ones. How teachers should be evaluated and what they should be held accountable for is far from obvious. In addition to value choices regarding the appropriate aims of education in the first place, technology for assessing the accomplishment of some aims is new, evolving, and uncertain. Further, if current teacher policies are seen as resulting, at least in part, from a deeply-institutionalized epistemology, a strongly-defended regulatory regime, or both, significant change can be expected to be quite difficult.
Even in the context of such uncertainty and complexity, though, we must still “address the question of what to do while we wait for better answers” (Mashaw, 1989, p. 151). No matter how difficult, a head-on effort to ensure minimum teacher competence for all children seems imperative. Educational equity is widely understood to be a preeminent goal for public education, but without sharp, sustained focus on equity at the classroom level it will not be possible to attain. Achieving true educational equity requires providing children with an equal opportunity to learn—which, in turn, means ensuring a competent teacher in each and every classroom.

9.6 Limitations of the Study

There are several limitations to this study. First, the study was limited to “on paper” policies, and did not address how those are actually implemented “on the ground.” Clearly, how written policies play out in practice is an essential part of the teacher policy picture, and this is thus an significant limitation of the study. Second, the study addressed only one district teacher policy system, and the generalizability of findings is uncertain. A third limitation is that study scope precluded the distribution of findings to key stakeholders (such as New York State and New York City Department of Education officials) to obtain their perception of the accuracy of study findings; this step would have strengthened results. Fourth, teacher policies are in a state of considerable flux, so this topic is very much a moving target. Changes are occurring across the country even daily, and presenting a comprehensive picture of the current state of U.S. public school teacher policies was beyond the study’s capacity. The study addresses only the current state of affairs in a single policy system, and does not address either the nature of teacher policies
nationwide or the evolution of those policies over time, both of which are clearly important topics for ongoing study.

Fifth, the examination of the § 3020-a adjudicative decisions was limited to qualitative analysis focusing on what appeared to be the elements most relevant to this study. The volume of material contained in these decisions is enormous, and the study addressed only selected aspects. In addition, no other research on this material has been identified. Therefore, this study could not build on the work of others, and findings cannot be compared to those of other researchers. While this same limitation applies to some extent to the laws, rules, and regulations that were analyzed, those documents are widely available, and the manner in which they are written makes representing their content through the presentation of evidence much more straightforward.

Sixth, the study’s aim was to uncover the current nature of the New York City teacher policy system, rather than to examine the processes by which that system has come to be the way it is. The scholarly education literature was explored as a possible influence on teacher policies, and possible explanations for current policy formulation were briefly addressed above. The examination or explanation of the complex political forces and factors currently at play in this arena, while beyond the scope of this study, is an important topic for future research. In addition, the study raises important issues left unaddressed: for example, alternatives to current methods for teacher evaluation are not examined. Understanding weaknesses in the current teacher evaluation/accountability system is an essential first step. Yet, an obviously crucial challenge is coming up with improved approaches.
Finally, a wide range of potential disciplinary and theoretical lenses are potentially valuable for interpreting and considering the implications of study findings. Approaches were chosen that seemed useful and appropriate. At the same time, analysis could not include all possible perspectives, and the study undoubtedly excluded additional approaches and bodies of work that would have enriched the analysis.

9.7 Suggestions for Further Research

The results of this study have several implications for future research. The most obvious is investigation of current teacher evaluation/accountability policy systems in other states and large urban school systems, and their evolution over time as RTTT-related policies are formulated into district policies across the country. Investigation of both the metrics and the specific mechanisms used to evaluate teachers is important. Such investigation must also focus explicitly on the policy link between teacher evaluation and teacher accountability. That is, analysis of what consequences are associated with the results of teacher evaluation, and through what policy mechanisms those consequences are allocated, is crucial. This focus is necessary to identify operative work incentives for teachers; to understand the capacity of school systems to maintain collective teacher quality by dismissing inadequately-performing teachers; and to determine the degree to which school policy systems protect children from incompetent teachers.

A second research avenue suggested by the study’s findings is closer examination of the § 3020-a proceedings, which play an essential role in teacher accountability in New York City. What is the legal history of the § 3020-a law? How was the law initially established, how has it been modified over time, and why? Who are the Hearing Officers? What is their background and how do they obtain the position of overseeing these hearings? What do they need to do to
maintain that position and how does that impact the way hearings are conducted? Exploring the issue of regulatory capture within the § 3020-a framework also seems worthy of investigation.

Additional questions remain regarding analysis of § 3020-a decisions. What is the origin of the principles guiding the § 3020-a decisions? From what legal bases are they derived? Is some shift in the nature of those decisions evident over time or have they remained constant? What decisions have been appealed, on what bases, and what were the results of those appeals? What impact have such appeals had on subsequent decisions? What impact, if any, will the 2010 Chapter 103 education legislation have on § 3020-a proceedings? Economic analysis of the § 3020-a proceedings is also important. How much does an average case cost the state and city? What is the total cost of § 3020-a proceedings per year for New York City?

Another area of research is estimating costs of school-based teacher evaluation procedures. How much time do principals and other administrators spend on evaluating teachers? How much time do they spend on professional conciliation, grievance, and appeals procedures? Similarly, cost estimates of implementing the Teacher Improvement Plans would be useful to understanding the total costs of the teacher evaluation/accountability system.

Investigation of on-the-ground implementation of these new policies is also crucial. How do these policies taken together (evaluation requirements; professional conciliation, grievance, and appeals procedures; § 3020-a procedures; and Teacher Improvement Plan requirements) impact the way principals manage their schools? How do teachers view these policies?—in terms of impact on themselves, their schools, their students, and their colleagues? Do they believe that the new policies enhance or constrain teacher and school effectiveness, and why?
Appendix A:
New York State & City policies analyzed

The Constitution of the State of New York

ARTICLE I – Bill of Rights
§ 17 Labor not a commodity; hours and wages in public work; right to organize and bargain collectively

ARTICLE V – Officers and Civil Departments
§ 4 Department heads

ARTICLE IX – Local Governments
§ 3 Existing laws to remain applicable; construction; definitions

ARTICLE XI – Education
§ 1 Common schools: The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.
§ 2 Regents of the University
Consolidated Laws of the State of New York

CVP–CIVIL PRACTICE AND RULES

Article 75 – Arbitration
§ 7506  Hearing
§ 7511  Vacating or modifying award

EXC–EXECUTIVE

Article 6 – Department of State
§ 102  Filing and publication of codes, rules and regulations
§ 105  Changes in codes, rules or regulations

LEG–LEGISLATIVE

Article 5-B – Legislative Review of Administrative Regulations
§ 86  Administrative regulations review commission.
§ 87  Powers and duties

EDN–EDUCATION

New York State Education Law includes a total of 9 Titles and 170 Articles.
The Titles, Articles, and Sections listed below are those directly relevant to the study.

TITLE 1–GENERAL PROVISIONS

Article 3 – Education Department (§ 101–§ 187)
§ 101  Education department; regents of the university

Article 5 – University of the State of New York (§ 201–§ 292)
§ 207  Legislative power
§ 211-A  Enhanced state accountability system
§ 211-B  Consequences for consistent lack of improvement in academic performance
§ 211-D  Contract for excellence

Article 7 – Commissioner of Education (§ 301–§ 318)
§ 305  General powers and duties
TITLE 2–SCHOOL DISTRICT ORGANIZATION

Article 52 – City school districts of cities with one hundred twenty-five thousand inhabitants or more (§ 2550–§ 2588)

§ 2554 Powers and duties of board of education
§ 2569 Appointment of teachers
§ 2573 Appointment of assistant, district or other superintendents, teachers and other employees; their salaries, et cetera
§ 2588 Seniority, retention and displacement rights in connection with abolition of positions in city school districts of cities having more than one million inhabitants

Article 52-A – New York City community school district system (§ 2590–§ 2590-S)

§ 2590-D By-laws; regulations and decisions
§ 2590-H Powers and duties of chancellor
§ 2590-I Powers and duties of schools; principals; provisions for the transfer of jurisdiction of high schools
§ 2590-J Appointment and removal of persons in the teaching and supervisory service.

TITLE 4–TEACHERS AND PUPILS

Article 61 – Teachers and supervisory and administrative staff (§ 3001–§ 3035)

§ 3001 Qualification of teachers
§ 3004 Regulations governing certification of teachers
§ 3004-A National board for professional teaching standards certification grant program
§ 3004-B Special procedures for certification
§ 3006 Commissioner of education to issue certificates
§ 3008 Certification of teachers by local authorities
§ 3010 Penalty for payment of unqualified teacher
§ 3012-C Annual professional performance review of classroom teachers and building principals
§ 3013 Abolition of office or position
§ 3018 Revocation of certificate by district superintendent
§ 3019 Penalty for teacher’s failure to complete contract
§ 3020 Discipline of teachers
§ 3020-A Disciplinary procedures and penalties
§ 3021 Removal of superintendents, teachers and employees for treasonable or seditious acts or utterances
§ 3022 Elimination of subversive persons from the public school system
§ 3024 Teachers responsible for record books
§ 3026 Discrimination based on sex prohibited
§ 3027  Discrimination based on age prohibited
§ 3028-B  Notification of teacher’s duty to provide information and immunity from liability
§ 3035  Duties of commissioner; submission of fingerprints

Article 63 – Salaries of teachers and supervisors (§ 3001–§ 3035)
§ 3101  Definitions
New York Codes, Rules and Regulations

TITLE 8—EDUCATION DEPARTMENT

Title 8, Education Department, includes a total of 6 Chapters. Chapters I and II are those directly relevant to the study.

CHAPTER I—RULES OF THE BOARD OF REGENTS

Part 1 Definitions

Part 3 University of the State of New York; State Education Department

3.5 President of the University
3.6 Duties of the president
3.7 Commissioner of Education
3.14 State professional standards and practices board for teaching.

Part 4 Regents Accreditation

Subpart 4-2 Regents Accreditation of Teacher Education Programs

4-2.1 Purpose
4-2.2 Applicability
4-2.3 Definitions
4-2.4 General requirements and provisions
4-2.5 Standards for Regents accreditation of teacher education programs
4-2.6 Procedures for accreditation

Part 7 Teaching Certificates for Public School Service

7.1 Issuance and classification
7.2 General regulations
7.3 License and contract
7.4 Employment of teachers

Part 8 Regents Examinations

8.1 Examinations board
8.2 Admission to examinations
8.3 Passing mark
8.4 Courses and examinations in public schools

Part 19 Education Practices

19.5 Prohibition of corporal punishment and aversive interventions

Part 20 Subversive Activities

20.1 Disqualification or removal of superintendents, teachers and other employees

Part 30 Tenure Areas and Annual Professional Performance Reviews for Classroom Teachers and Building Principals

Subpart 30-1 Tenure Areas

30-1.1 Definitions
30-1.2 Applicability
30-1.10 Cumulative tenure areas
30-1.11 Appropriate certification
30-1.12 Reorganization of grades
30-1.13 Rights incident to abolition of positions

Subpart 30-2 Annual Professional Performance Reviews of Classroom Teachers and Building Principals

30-2.1 Applicability
30-2.2 Definitions
30-2.3 Requirements for annual professional performance review plans submitted under this Subpart.
30-2.4 Standards and criteria for conducting annual professional performance reviews and for scoring the subcomponents of such reviews in the 2011-2012 school year for classroom teachers of common branch subjects or English language arts or mathematics in grades four to eight and all building principals employed in such schools.
30-2.5 Standards and criteria for conducting annual professional performance reviews and for scoring the subcomponents for such reviews in the 2012-2013 school year and each school year thereafter.
30-2.6 Scoring ranges for rating categories.
30-2.7 Approval process for approved teacher and principal practice rubrics.
30-2.8 Approval process for student assessments.
30-2.9 Training of evaluators and lead evaluators.
30-2.10 Teacher or principal improvement plans.
30-2.11 Appeal procedures.
30-2.12 Monitoring and consequences for non-compliance.

CHAPTER II—REGULATIONS OF THE COMMISSIONER

SUBCHAPTER A HIGHER AND PROFESSIONAL EDUCATION

Part 50 General
   50.1 Definitions

Part 52 Registration of Curricula
   52.1 Registration of postsecondary curricula
   52.2 Standards for the registration of undergraduate and graduate curricula
   52.3 Professional education programs

SUBCHAPTER C TEACHERS*

Part 80 Requirements for Teachers' Certificates and Teaching Practice
Part 82 Hearings of Charges Against Employees on Tenure
Part 83 Determination of Good Moral Character
Part 84 Access to School Employee Personnel Records

*The six relevant Parts of “Subchapter C Teachers” include over 75 Sections, not listed individually here
Part 86   Albert Shanker National Board for Professional Teaching Standards Certification Grant Program

Part 87   Criminal History Record Check for Prospective School Employees and Applicants for Certification

SUBCHAPTER E ELEMENTARY AND SECONDARY EDUCATION

Part 100 Elementary and Secondary Education School Program
    100.1   Definitions
    100.2   General school requirements
    100.3   Program requirements for students grades prekindergarten through four
    100.4   Program requirements for grades five through eight
    100.5   Diploma requirements
    100.13  Contract for excellence

Part 102 Elementary and Secondary School Examinations
    102.1   Examination schedule
    102.2   Required use
    102.3   Responsibility for examinations
    102.4   Fraud in examinations
    102.5   Student declaration

Part 120 No Child Left Behind Act of 2001
    120.1   Purpose
    120.2   General definitions
    120.3   Title I public school choice
    120.4   Supplemental educational services
    120.6   Qualifications of teachers and paraprofessionals
ARTICLE 4: Personnel

Section 4.1 Sabbatical Leaves of Absence

Section 4.2 Removal-Suspension-Trial of Charges

4.2.1 Charges

4.2.2 Trial of Charges-Classified Employees

4.2.3 Trial of Charges-Charges

4.2.4 Default or Waiver by Employee

4.2.5 Decision on Charges After Trial
Chancellor’s Regulations

Regulations were retrieved from
http://schools.nyc.gov/RulesPolicies/ChancellorsRegulations/default.htm,
which lists the 95 Regulations in effect in New York: “The Regulations listed on this Web site are
the only New York City Department of Education Chancellor's Regulations currently in effect.”

The 15 Regulations most relevant to the study are listed here.

Volume A
A-420 Pupil Behavior and Discipline - Corporal Punishment
A-421 Verbal Abuse
A-501 Promotion Standards

Volume C
C-33 Removal and Transfer of Principals for Persistent Educational Failures
C-105 Background Investigations of Pedagogical and Administrative Applicants and
   Procedures in Cases of the Arrest of Employees
C-175 Per Session Employment
C-200 Definition of License Terms
C-201 Evaluations & Licensing
C-205 General Licensing Provisions
C-240 Teacher License Requirements
C-601 Attendance and Service of School Staff
C-603 Absent Employees
C-604 Timekeeping
C-650 Sabbaticals
C-770 Assignment of Suspended Employees
United Federation of Teachers Collective Bargaining Agreement

The following Articles and Appendices are those most relevant to the study.

Joint Intentions
Article One—Union Recognition
Article Two—Fair Practices
Article Three—Salaries and Benefits of Day School Teachers
Article Four—Pension and Retirement Program
Article Five—Licensure, Assignment and Appointment
Article Six—Hours
Article Seven—Programs, Assignments and Teaching Conditions in Schools & Programs
Article Nine—Procedures for Handling Special Behavior Problems
Article Twelve—Chapter 683 Program
Article Fifteen—Rates of Pay and Working Conditions of Per Session Teachers
Article Sixteen—Leaves
Article Seventeen—Retention, Exceeding and Layoff
Article Eighteen—Transfers and Staffing
Article Nineteen—Union Activities, Privileges and Responsibilities
Article Twenty—Matters Not Covered
Article Twenty-One—Due Process and Review Procedures
Article Twenty-Two—Grievance Procedure
Article Twenty-Three—Special Complaints
Article Twenty-Four—Professional Conciliation
Article Twenty-Six—Conformity to Law-Saving Clause
Article Twenty-Eight—Definitions
Article Twenty-Nine—Notice-Legislative Action
Article Thirty-One—Incorporation of Determination and Award
Article Thirty-Two—Duration
Appendix “A”—Salary Schedules of Day School Teachers
Appendix “B”—Special Circular
Appendix “C”—Grievance Forms
Appendix “G”—Procedures for Probable Cause Hearings
Appendix “I”—I District 79 Reorganization
Appendix B:
Search terms used to identify scholarly literature analyzed

NOTE: I began the search with ERIC, using all search terms listed below. Searches of Education Fulltext and ProQuest were subsequently performed with a more focused group of keywords identified as central through the broader ERIC search (e.g. “accountability,” “external accountability,” “no child left behind,” “school improvement,” “professional accountability,” “professional development,” “professionalization,” “teacher quality,” “high-quality teachers,” etc.). ProQuest was also searched with Descriptor Words that appeared most relevant.

Search terms in abstract [when possible with KW NOT “foreign countries” to limit the search to articles on U.S. schools]:
- Accountability
- accountable
- professional AND accountab*
- professional* AND accountab*
- school* AND evaluation
- school* AND outcomes
- school* AND performance
- school* AND standards
- school* AND test*
- teach* AND evaluation
- teach* AND quality
- teach* AND responsibility
- teach*AND accountab*

Search terms in “anywhere” [all with KW=school* and not DE = (“foreign countries”), in order to limit the search to articles on U.S. schools]:
- “accountability for teachers”
- “accountable for performance”
- “educational improvement”
- “effective teacher”/ “effective teachers” / “effective teaching”
- “high quality teacher” / “high quality teachers” / “high quality teaching”
- “highly-qualified teacher” / “highly-qualified teachers”
- “high-quality teacher” / “high-quality teachers” / “high-quality teaching”
- “high-stakes testing”
• “holding schools accountable”
• “holding schools and educators accountability”
• “holding schools and teachers accountable”
• “holding teachers accountable”
• “improving student achievement”
• “low-performing schools”
• “no child left behind” / “NCLB”
• “performance accountability”
• “professional accountability”
• “professional competence”
• “professional development”
• “professionalization”
• “qualified teacher” / “qualified teachers”
• “quality teacher” / “quality teachers” / “quality teaching”
• school* AND accountab* 
• school* AND accountab* AND teach* 
• school* AND teach* 
• school* AND teach* 
• school* AND tenure 
• “school accountability”
• “school improvement”
• “school reform”
• “student achievement”
• “teacher accountability”
• “teacher competence” / “teacher competencies”
• “teacher development”
• “teacher effectiveness”
• “teacher effectiveness”
• “teacher evaluation” / “evaluation of teachers”
• “teacher improvement”
• “teacher learning”
• “teacher performance” / “teaching performance”
• “teacher qualification” / “teacher qualifications” / “qualifications of teachers”
• “teacher quality” / “teaching quality”
• Tenure
ProQuest Descriptor Words used:

- Accountability
- Education policy
- Education reform
- Educational evaluation
- Educators
- No Child Left Behind Act 2001
- Professional development
- Public schools
- Quality of education
- Teacher education
- Teachers
- Teaching
Appendix C:
Education journals emphasized in analysis of scholarly literature

American Educational Research Journal
American Journal of Education
Educational Evaluation and Policy Analysis
Educational Policy
Educational Researcher
Harvard Educational Review
Journal of Teacher Education
Review of Educational Research
Review of Research in Education
Teachers College Record
Appendix D:
The 19 Teaching Standards Performance Indicators
directly related to student behavior

Standard III: Instructional Practice
*Teachers implement instruction that engages and challenges all students to meet or exceed the learning standards.*
- Students are actively and cognitively engaged through teacher facilitation of student-to-student and student-to-teacher interactions.
- Students understand directions and procedures.
- Students understand lesson content through a teacher’s use of multiple modalities, such as oral, written, graphic, kinesthetic, and/or tactile methods.
- Students have a clear understanding of measures of success.
- Students synthesize and express ideas both in written and oral formats.
- Students work effectively with others, including those from diverse groups and with opposing points of view.
- Students make decisions, solve problems, and take actions as appropriate.
- Students solve problems and/or acquire new knowledge through creative and innovative approaches to learning.
- Students utilize technologies and resources to solve real world problems.

Standard IV: Learning Environment
*Teachers work with all students to create a dynamic learning environment that supports achievement and growth.*
- Teachers motivate students to initiate their own learning and strive to achieve challenging learning goals.
- Teachers promote students’ curiosity and enthusiasm for learning.
- Students are actively engaged in learning.
- Students openly express their ideas.
- Students show pride in their work and accomplishments.
- Students exhibit respectful classroom interactions.

Standard V: Assessment for Student Learning
*Teachers use multiple measures to assess and document student growth, evaluate instructional effectiveness, and modify instruction.*
- Teachers engage students in self-assessment of their learning goals, strategies, and outcomes.
- Teachers prepare all students for the demands of particular assessment formats, and appropriately modify assessments or testing conditions for students with exceptional learning needs.
- Teachers equip students with assessment skills and strategies.
- Students practice various formats of assessments using authentic curriculum
### Appendix E:
Convictions & Penalties for § 3020-a Cases (1997-2007)

#### INCOMPETENCE

<table>
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| 4364   | 2003 | 4 month suspension  
Remedial training at teacher's expense |
| 4958   | 2004 | 3 month suspension  
Remedial training at teacher's expense |
| 4814   | 2004 | 45 day suspension  
Psychological counseling |
| 4155   | 2002 | 45 day suspension  
Remedial training at teacher's expense |
| 3677   | 2001 | Fine of $1,500  
Remedial training at city expense |
| 4397   | 2002 | Fine of $500  
Remedial training at city expense |
| 3674   | 2001 | Transfer to different school  
Remedial training at city expense |

**ABSENTEEISM/LATENESS**

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| 5039   | 2005 | 12 month suspension  
Remedial training at teacher's expense |
| 3918   | 2000 | 8 month suspension  
Remedial training at teacher's expense |
| 3289   | 1997 | 5 month suspension  
Remedial training at teacher's expense |
| 4310   | 2005 | 5 month suspension  
Remedial training at teacher's expense |
| 3898   | 2001 | 5 month suspension  
Psychological counseling  
Remedial training at city expense |
| 4825   | 2004 | 3 month suspension  
Remedial training at teacher's expense |
| 4987   | 2004 | 2 month suspension  
Remedial training at teacher's expense |
| 4101   | 2001 | 45 day suspension  
Remedial training at teacher's expense |
| 4932   | 2005 | Fine of $10,000  
Remedial training at teacher's expense |
| 3940   | 2001 | Fine of $3,000  
Remedial training at teacher's expense |
| 4303   | 2003 | Fine of $2,000  
Remedial training at teacher's expense |
| 5004   | 2005 | Fine of 6 weeks' salary  
Remedial training at teacher's expense |
| 3384   | 1997 | Letter of reprimand  
Remedial training at teacher's expense |
## CORPORAL PUNISHMENT/VERBAL ABUSE

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| 4169   | 2002 | 12 month suspension  
Remedial training at teacher's expense |
| 4031   | 2002 | 5 month suspension |
| 5396   | 2006 | 5 month suspension |
| 3440   | 1998 | 3 month suspension |
| 3611   | 1999 | 3 month suspension |
| 4749   | 2003 | 3 month suspension |
| 4559   | 2003 | 2 month suspension |
| 4937   | 2004 | 2 month suspension |
| 5034   | 2005 | 30 day suspension |
| 5329   | 2006 | 30 day suspension |
| 4695   | 2003 | 21 day suspension  
Anger management course |
| 4002   | 2001 | 5 day suspension  
Remedial training at city expense |
| 5501   | 2007 | Fine of $10,000 |
| 3088   | 1997 | Fine of $5,000  
Transfer to different school |
| Miller | 1997 | Fine of $5,000  
Transfer to different school |
| 5210   | 2005 | Fine of $3,000 |
| 4466   | 2003 | Fine of $1,000 |
| 5102   | 2006 | Fine of 3 months' salary  
Peer Intervention Program |
5288  2006  Fine of 3 months’ salary  
Transfer to different school  
5062  2005  Fine of 1 month’s salary  
5260  2006  Letter of reprimand  

CONDUCT UNBECOMING THE PROFESSION  

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| 4968   | 2005 | 3 month suspension  
Counseling |
| 5053   | 2005 | 2 month suspension  
Anger management class |
| 5045   | 2005 | 45 day suspension |
| 3914   | 2000 | 30 day suspension |
| 3728   | 2000 | 30 day suspension |
| 3772   | 2002 | 30 day suspension |
| 3829   | 2002 | 30 day suspension |
| 4018   | 2001 | 30 day suspension |
| 4184   | 2001 | 5 day suspension |
| 4561   | 2003 | 5 month suspension |
| 3782   | 2000 | 6 month suspension |
| 4366   | 2003 | 8 day suspension  
Letter of reprimand |
| 5316   | 2006 | Fine of $5,000 |
| 5264   | 2006 | Fine of $2,600 |
| 4460   | 2003 | Fine of $2,500  
5 day suspension |
| 5207   | 2006 | Fine of $2,000 |
3901 2001 Fine of $1,500
7 day suspension

McMahon 1997 Fine of $1,000

5287 2006 Fine of $500
Letter of reprimand

5258 2006 Fine of 2 months’ salary

4092 2002 Letter of reprimand

SEXUAL MISCONDUCT/HARASSMENT

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| 3410   | 1998 | Fine of $10,000
Workshop in sexual harassment
Counseling for one year |
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| 3058   | 1997 | Incompetence  
Insubordination  
Absenteeism/Lateness | Termination |
| 3192   | 1997 | Insubordination  
Corporal punishment  
Incompetence | Termination |
| 3195   | 1997 | Absenteeism/Lateness  
Falsification of documents | Termination |
| 3197   | 1997 | Incompetence  
Insubordination  
Corporal punishment | Termination |
| 3314   | 1998 | Incompetence  
Insubordination  
Absenteeism/Lateness | Termination |
| 3316   | 1998 | Corporal punishment  
Conduct unbecoming the profession | Termination |
| 3318   | 1998 | Incompetence  
Insubordination | Termination |
| 3385   | 1999 | Absenteeism/Lateness  
Insubordination  
"Inattention to teaching" | Termination |
| 3536   | 2000 | Incompetence  
Absenteeism/Lateness | Termination |
| 3828   | 2000 | Sexual misconduct/harassment  
Corporal punishment | Termination |
| 4147   | 2001 | Sexual misconduct/harassment  
Verbal abuse  
Corporal punishment | Termination |
| 3965   | 2002 | Incompetence  
Insubordination | Termination |
| 4024   | 2002 | Absenteeism/Lateness  
Insubordination | Termination |
| 4432   | 2003 | Verbal abuse  
Corporal punishment  
Conduct unbecoming the profession | Termination |
| 4553   | 2003 | Incompetence  
Absenteeism/Lateness | Termination |
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<td>Insubordination</td>
<td>(Suspension determined to have already been served because teacher was not paid during 7 years of § 3020-a procedures)</td>
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Graue, E., & Johnson, E. (2010). Reclaiming assessment through accountability that is “just right”. *Teachers College Record, 113*(8), 1827-1862.


Spillane, J. P. (2012). The more things change, the more things stay the same? *Education and Urban Society, 44*(2), 123-127.


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