November 14, 2018

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Dear Governor Cuomo:

I write to you as the Advocacy Director for the New York State Association of School Attorneys (NYSASA) to share several concerns we have regarding Assembly Bill 6090-A which proposes to amend Education Law Section 3012. If approved, the bill would require school districts to reduce the probationary periods for school administrators from four years to three years if tenure was acquired in a previous position.

The bill is modeled after similar language in Education Law Section 3012 which requires a shortened probationary period for teachers who have acquired tenure in a previous position. While we take no position with regard to the concept, we must alert you to several ambiguities that should be addressed if school districts are to implement this new legislation appropriately. Respectfully, we set forth those concerns below.

1. **Effective Date.** There is no effective date set forth in the proposed legislation. There are many school administrators who are currently serving probationary periods of four years as required by Section 3012. We strongly suggest the legislation be amended so that it would only apply to probationary appointments made after the date of its implementation. If the bill is signed by you without specific language that makes it applicable after the date of its adoption, there will be school administrators currently serving their fourth year of probationary service who will immediately have tenure upon its adoption. Furthermore, without an effective date, probationary administrators who have not yet reached the fourth year of probation will immediately be entitled to a shortened probationary term. If adopted in its current form, school districts will be effectively deprived of the opportunity to evaluate probationary administrators for the period that was the subject of their appointments.
contemplated when those administrators were first appointed. By simply adding language explaining that this statute would only be applicable to probationary appointments made effective after the date of its adoption, this problem will be rectified.

2. **Additional Statutory References.** There are three additional statutes that mirror the statute proposed for amendment that should be considered if this change is going to be implemented. Education Law Section 3014 (applicable to BOCES), Education Law Section 2509(1)(b)(ii) (applicable to small city school districts), and Education Law Section 2573(1)(b)(ii) (applicable to large city school districts) all have language which establishes the probationary period for administrators. If it is the intent to have this reduced probation opportunity apply to all school administrators in schools and BOCES, each of the three additional statutes will need to be amended as well.

3. **Corresponding Tenure Area.** Consideration should be given to limiting the reduced probationary period to a position that is the same as the one in which administrative tenure had previously been granted. Teacher tenure areas are defined by the Commissioner’s Regulations and there is sufficient commonality between teaching positions to warrant reduced probation when moving from one tenured teaching position to another. In contrast, tenure areas for administrators are locally determined and there is great disparity between administrative positions. Therefore, it is recommended that the reduced probationary period only apply if the candidate received tenure in the same position in another district. In that way, a principal would serve a reduced probationary period if he/she was previously tenured as a principal, but a principal would not receive a reduced probation if he/she was tenured as an assistant principal, department director, chairperson, teacher, etc.

4. **Correlation to APPR.** The statutory language pursuant to which probationary teachers enjoy a reduced probationary period of three years recognizes that “classroom teachers” are subject to the provisions of the Annual Professional Performance Review (“APPR”) by only reducing the probationary period if, in the last year of prior employment, that teacher received an APPR score. While not all administrators are subject to APPR,
building principals must receive APPR rating. If it is the intention of this statute to mirror the shortened probationary terms that apply to classroom teachers, the proposed legislation should be modified to require an APPR score for building principals in their last year of the tenured position.

We respectfully request that you take into consideration the issues we have raised relative to Assembly Bill 6090-A. The modifications we have recommended will allow for effective implementation by school districts around the State while preserving the opportunity to evaluate administrative candidates for tenure. Please contact me if there is any additional assistance we might provide.

Very truly yours,

Thomas M. Volz

TMV:ms
Enclosure
c: Ms. Jamie Frank
Terry Pratt, Esq.