

SUPPLEMENTAL MEMORANDUM OF AGREEMENT

BY AND BETWEEN THE SUPERINTENDENT OF SCHOOLS AND BOARD OF EDUCATION OF THE NEWBURGH ENLARGED CITY SCHOOL DISTRICT, hereinafter referred to as “The District” and **THE NEWBURGH TEACHERS’ ASSOCIATION,** hereinafter referred to as “the Association” or “the NTA”;

Student Performance Category:

The parties agree that there shall be no second negotiated Student Performance Category measure utilized in the District’s Section 3012-d APPR Plan.

Teacher Observation Category:

The Danielson Framework for Teaching (2011 Revised Edition) shall be used to inform the Observation Category of their Section 3012-d APPR Plan. The parties agree not to appraise component 2(e) or 4(d) within the rubric and have deemed them as not observable for the purposes of APPR.

Weighting of Observation Category:

The parties agree that 90% of the Observation Category score shall be attributable to observation(s) conducted by the lead evaluator/other trained administrator from the teacher’s assigned building or the teacher’s department (henceforth “lead evaluator/ trained administrator”) and 10% of the Observation Category score shall be attributable to the observation conducted by an independent trained evaluator from the District (henceforth “independent evaluator”).

Each observed component of the teacher practice rubric during the unannounced observation conducted by the independent trained evaluator will receive a 1-4 score and all observed components will be weighted equally and averaged to arrive at the 10% subcomponent of the Observation Category (where 1 = “ineffective”, 2 = “developing”, 3 = “effective” and 4 = “highly effective”).

A 1-4 score shall also be provided for the 90% subcomponent of the Observation Category based upon the observation(s) conducted and evidence collected throughout the school year. When a component of the rubric has been observed on more than one occasion by the lead evaluator/other trained administrator, the scores shall be averaged together. At the end of the year, all component ratings shall be weighted equally and averaged to arrive at the 1-4 score for the 90% subcomponent of the Observation Category.

The member’s overall 1-4 score and corresponding HEDI rating for the Observation Category shall be based upon a weighted average of the observation(s) conducted by the lead evaluator/other trained administrator, which shall comprise 90% of the Observation Category



score, and the observation conducted by the independent trained evaluator, which shall comprise 10% of the Observation Category score.

The parties agree that neither peer observation nor video recordings shall be utilized in the Observation Category of their APPR.

The following minimum/maximum ranges shall be used to determine the overall Observation Category score and rating for teachers evaluated under Education Law Section 3012-d:

	Overall Observation Category Score and Rating	
	<i>Minimum</i>	<i>Maximum</i>
H	3.71	4.0
E	2.5	3.7
D	1.75	2.49
I	0 ¹	1.74

Observation Procedures and timelines:

All classroom teachers shall be subject to observation in the following sequence – first a formal period long observation preceded by a pre-observation conference and followed by a post-observation conference. Then, there will be an unannounced observation of between 15 and 20 minutes in duration, that will occur within a two week period of time as communicated via email by the independent trained evaluator to the teacher. An additional announced observation of between 15 and 20 minute duration may be performed by the lead evaluator/other trained administrator solely for the purpose of obtaining evidence to complete the components of the evaluator rubric.

For probationary classroom teachers, the lead evaluator may conduct an additional unannounced observation. In the event that this additional observation is conducted it shall take place between February 15th and Memorial Day weekend. If the lead evaluator conducts an additional unannounced observation for a probationary teacher, then the 90% subcomponent of the Observation Category shall be based upon the averaging of the observed components during the multiple observations conducted by the lead evaluator/other trained administrator throughout the school year.

¹ In the event that a teacher earns a score of 1 on all rated components of the practice rubric across all observations, a score of 0 will be assigned.



- a. The first observation must be conducted by February 15th, the second by the close of business by the Friday before Memorial Day and the third (where applicable) by June 5th.
- b. Where an additional unannounced observation is performed by the lead evaluator/other trained administrator for a probationary teacher, it shall take place between February 15th and Memorial Day weekend.
- c. The first observation cycle shall begin no earlier than following the 15th day when students are in session during the fall semester.
- d. The pre-observation conferences will be held at mutually agreeable times not more than 10 school days before the formal announced observation. Teachers will bring their lesson plans to the pre-observation conference.
- e. The post-observation conferences will be held at mutually agreeable times not more than 15 school days after the formal announced observation. Further, the post observation conference shall not be held sooner than two days after the announced observation takes place. The teacher's prepared reflection must be provided to the lead evaluator/ other trained administrator at the post-observation conference.
 - i. At least two days prior to a post-observation conference, the teacher shall be provided with draft 1-4 ratings for each component observed within Domains 1, 2, and 3 during the announced observation, along with the evidence basis for the ratings. Constructive written feedback shall be provided in areas in need of improvement.
 - ii. In the event that a component is not observed, it will not be rated during an observation (i.e. there shall be no score entered for that component in StaffTrack or its equivalent).
- f. For the formal announced observation, teachers shall receive a formal observation write-up containing the finalized 1-4 ratings for each observed component within 15 school days after the post-observation conference.
- g. The District will endeavor not to cancel a scheduled observation. However, when cancellations occur, the rescheduled observation will be at a mutually agreed upon time. In the event that the teacher unreasonably withholds consent to the rescheduling of such make-up observation, the District shall have the right to reasonably schedule the same.
- h. The teacher will receive the observation form from the unannounced observation conducted by the independent evaluator no later than 10 school days after the unannounced observation. The unannounced observation by the independent evaluator shall be limited to the observed components within Domains 2 and 3 of the rubric.

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- i. The independent evaluator shall neither review nor have access to the announced observation conducted by the lead evaluator/ other trained administrator prior to conducting his/her unannounced observation.
- i. The signature line of an observation write up will indicate that the signature denotes only receipt of the document and not agreement. It shall further provide that a teacher may respond in writing within ten (10) school days after receiving the document and that the response will be attached to the document.
- j. Domain 4 of the rubric will be appraised by the lead evaluator/ other trained administrator. Such appraisal will be conducted by the lead evaluator/ other trained administrator who conducted the formal observation of the teacher being appraised. The appraisal will be conducted by using the Domain 4 Checklist.
 - i. Each teacher shall fill out and provide his/her completed Domain 4 Checklist to his/her lead evaluator/ other trained administrator between February 15 and April 1.
 - ii. By May 1, the lead evaluator/other trained administrator will review the submitted checklist and shall identify any necessary evidence, clarification and/or information needed for assessment against the rubric. This may include “*No additional information needed,*” which shall indicate assent to the teacher’s proposed Domain 4 rating.
 - iii. The teacher shall provide the lead evaluator/other trained administrator with any additional evidence, clarification and/or information needed by May 15. If needed, a conference may be scheduled at the request of either the lead evaluator/other trained administrator or the teacher.
 - iv. If the lead evaluator/ other trained administrator does not accept or agree with the self-assessment submitted by the teacher he/she shall indicate the areas of disagreement on the completed Domain 4 checklist, after which a meeting shall be scheduled to discuss the same.
 - v. By June 1, the teacher will be provided with the Domain 4 rating and the teacher shall have 10 school days to sign it and return it to the lead evaluator/ other trained administrator. If deemed necessary, an additional meeting may be scheduled for further conversation at the request of the teacher.
- k. The teacher shall receive his or her Observation Category score and rating by the last day of the teachers’ work year.
- l. The District’s website shall provide the most current forms of the APPR and Guidelines.

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Appeals Process:

- A. Any teacher who receives an ineffective overall APPR rating or a tenured teacher who receives a developing overall APPR rating² shall be entitled to appeal his/her overall APPR rating, based upon a paper submission to the Superintendent of Schools or the Superintendent's administrative designee from the Human Resources Department, who shall be trained in accordance with the requirements of the statute and regulations and also possesses either an SDA or SDL Certification; provided, however, in the event that the Superintendent or the Superintendent's administrative designee served as an evaluator or lead evaluator he or she shall not hear the appeal.
- B. The appeal must be brought in writing, specifying the area(s) of concern, but limited to those matters that may be appealed as prescribed in Section 3012-d of the Education Law. Further, a teacher who is placed on a Teacher Improvement Plan ("TIP") shall have a corresponding right to appeal concerns regarding the TIP in accordance with the requirements set forth in Section 3012-d of the Education Law.
- C. An appeal of an overall APPR rating or a TIP must be commenced within fifteen (15) school days of the presentation of the final document to the teacher or else the right to appeal shall be deemed waived in all regards; provided, however, that in the case of a TIP appeal, there shall be a second fifteen (15) school day period for a TIP appeal following the end date of the TIP.
- D. The Superintendent or the Superintendent's administrative designee shall respond to the appeal with a written answer granting the appeal and directing further administrative action, or denying the appeal. The Superintendent or the Superintendent's administrative designee shall review the evidence underlying the observations of the teacher along with all other evidence submitted by the teacher prior to rendering a decision. Such decision shall be made within fifteen (15) school days of the receipt of the appeal. If the Superintendent or designee upholds the evaluation, then the teacher shall be entitled to a meeting with the Superintendent and Union representative. Every effort will be made to conduct the meeting in a timely and expeditious manner, in accordance with Education Law Section 3012-d. So long as the decision is made within the timeframe set forth in this paragraph the decision of the Superintendent or the Superintendent's administrative

² There shall be no right for a teacher to appeal an advisory score/rating issued during the transition period. Only ratings that count for employment purposes shall be subject to this Appeals process.

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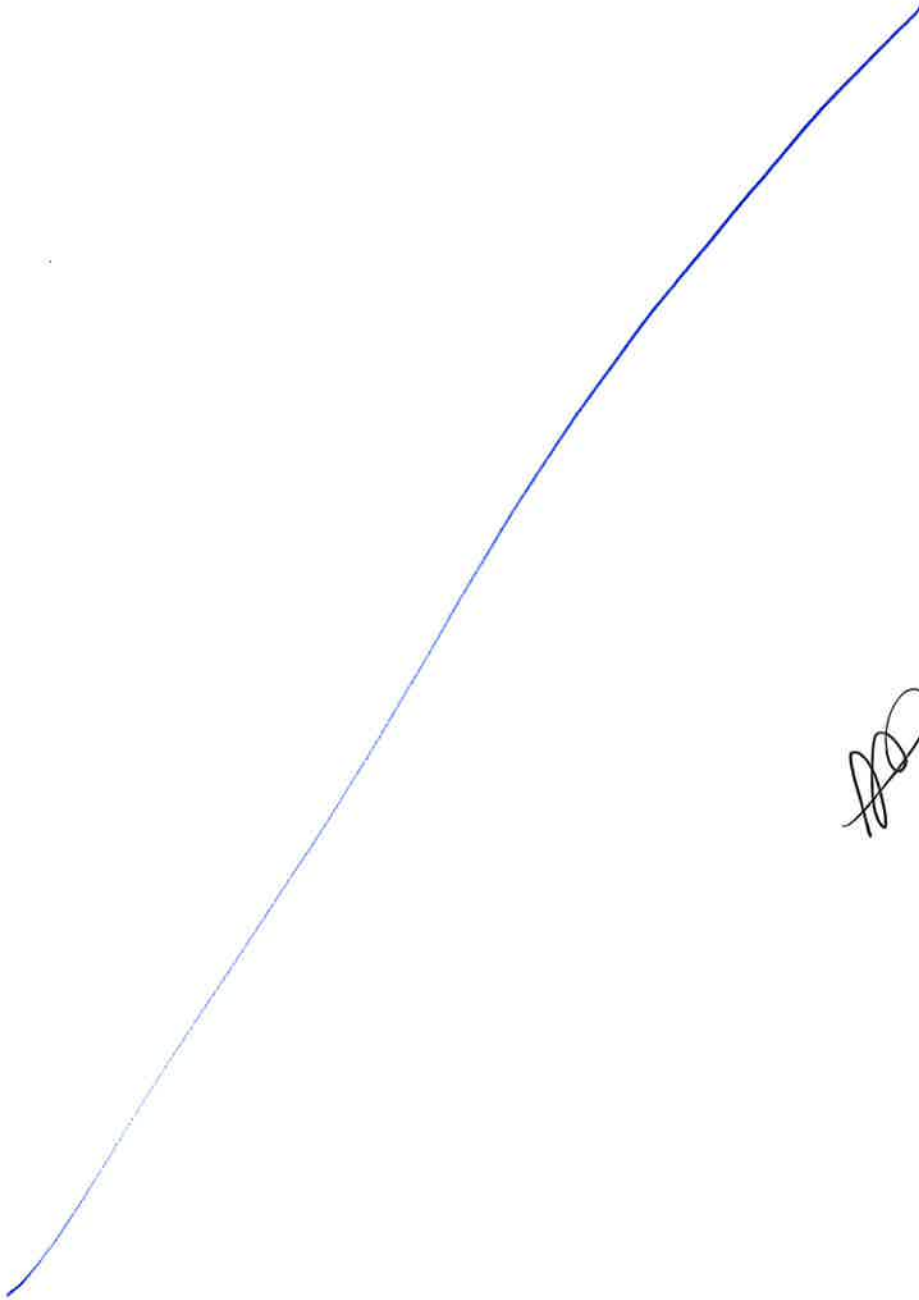
designee, and the alleged violation is not of standards “a” through “l” of the negotiated observation procedures, referenced herein, the decision shall be final and binding in all regards and shall not be subject to review at arbitration, before any administrative agency or in any court of law. In the event that the decision of the Superintendent or the Superintendent's administrative designee is not made within the timeframe set forth in this paragraph, the appeal shall be sustained.

In the event that the Superintendent fails to sustain an appeal containing alleged violations of the standards set forth in sub-paragraphs “a” through “l” of the negotiated observation procedures referenced herein,³ within fifteen (15) school days of the receipt of the decision of the Superintendent or designee, the Association may submit such procedural violation(s), that they were raised by the teacher in writing, at a time proximate to the alleged violation and not timely corrected by Administration, to expedited final and binding arbitration before an agreed upon arbitrator.⁴ The failure of a teacher to notify the District of deadlines for the performance of observation(s) and delivery of observation report(s) shall not constitute a defense to an alleged procedural violation of the District. The arbitrator shall issue a decision at the hearing, which shall be held in a timely and expeditious fashion, on a form to be provided by the parties, without opinion other than noting which procedure(s) was violated, if any. If a violation(s) is found by the arbitrator, he or she will order that the teacher's overall APPR rating be invalidated by the District. It is expected that if there are several such cases to be adjudicated that they shall be resolved in the same day by the arbitrator. The cost of arbitration shall be borne equally by the District and the Association. It is acknowledged that the sustaining of an appeal shall not form the basis for a challenge in the case of a probationary teacher who is subject to mid-term termination or a tenure denial.

³ The NTA may also bring other alleged procedural violations of this Supplemental Memorandum of Agreement and those provisions of pages 4-12 of the District's current Section 3012-c Guidance Document (excluding those clauses that are inconsistent with Section 3012-d or the express provisions of this Supplemental Memorandum of Agreement) that have been caused by the District or its agents to arbitration in accordance with the procedures set forth above should the Superintendent or designee fail to sustain an appeal containing an alleged procedural violation thereof. When the District modifies its Section 3012-c Guidance Document to reflect those changes derived from Education Law 3012-d and the SMOA herein, it is the parties' understanding that the Guidance Document shall only be modified to reflect such changes as required by 3012-d and the SMOA herein and all other guidelines in the Guidance Document will remain the same. [Note: This footnote shall be placed within the Appendix to the District's APPR Plan document entitled “Teacher Appeals”.]

⁴ The parties agree to use David Stein, or Melinda Gordon in the event of David Stein's unavailability. In the event that both of the above-named arbitrators are unavailable within a reasonable timeframe or are no longer practicing, the parties shall mutually agree upon an alternate arbitrator(s) to serve in their steads.





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Appendix – Teacher Appeals

Optional Appeals Process for a tenured teacher who receives two or three overall APPR ratings
(continued from Section 6.4 of the Review Room)

Ineffective
Sn


E.1. Notwithstanding the language set forth in Sections A through D of Section 6.4 in the Review Room, in the event that a tenured teacher has received two or three consecutive ineffective overall APPR ratings, a further appeal may be made within fifteen (15) school days of the receipt of the decision of the Superintendent or Superintendent's designee, to an arbitrator selected on a rotating basis from the following list, based on order and reasonable timeframe of availability: Bonnie Siber-Weinstock, Ira Lobel, Jeffrey Selchick, Margaret Leibowitz. [see Note 1 below], who shall make a final and binding decision upon the appeal of the APPR evaluation and the TIP. The arbitrator's decision will be made in a timely and expeditious manner. The documentation to be furnished to the arbitrator on behalf of the tenured teacher and by the District shall be exchanged between the tenured teacher and the administration on an immediate basis at the time of submission to the arbitrator. In the event that either party has a question regarding the authenticity of such documentation, the same shall be presented in writing immediately to the arbitrator and copied to the other party for the arbitrator's review and consideration. The Arbitrator shall review the evidence underlying the observations of the teacher along with all other evidence submitted by the teacher prior to rendering a decision. The cost associated with the arbitration for a tenured teacher's appeal of the evaluation and the TIP shall be split between the District and the Association.

If the arbitrator upholds the evaluation and the TIP then he/she shall be appointed to be the Section 3020-b hearing officer in the matter, so long as he/she is willing to accept service. Notwithstanding the aforementioned language, nothing herein shall be construed as limiting the right of the employee to challenge said evaluation in any proceeding brought pursuant to Education Law section 3020-b, so long as the identical issue wasn't resolved in the appeal before the arbitrator or clearly should have been presented in the appeal but was not. It is expected that the cost of said hearing shall be paid for in accordance with the provision of the Education Law. In the event that the State Education Department will not appoint the arbitrator as the described above, then the matter will be determined as a contractual "for cause" disciplinary arbitration by said arbitrator with the District bearing the cost for the "for cause" disciplinary arbitration. Everything in the aforementioned paragraph will be in compliance with Education Law 3012-d.

E.2. In order to take advantage of the procedure outlined in Section E.1. above, the tenured teacher must consent, following consultation with an Association representative, to the use of a single arbitrator (hearing officer) from the arbitration panel set forth above, when notified of the District's intent to have a probable cause determination under Section 3020-b of the Education Law. If the tenured teacher is unwilling to do so, the appeal shall be heard by the Superintendent or the Superintendent's administrative designee.

[Note 1]: In the event that any of the above-named arbitrators are unavailable, the parties shall mutually agree upon an alternate arbitrators to serve in their steads.



The provisions set forth in Section 6.4 of the Review Room (Paragraphs A through D above) shall neither be construed to alter or affect the rights of probationary teachers pursuant to Section 3031 of the New York State Education Law, nor shall the provisions set forth above limit the right of probationary teachers to file contractual grievances under Article X, Sections A through I of the NTA Collectively Negotiated Agreement. Similarly, nothing set forth above shall be construed to limit the unfettered right of the District to terminate probationary teachers subject to applicable laws and regulations, including during the pendency of an appeal for the performance that is the subject of the appeal.

Note:

The NTA may also bring other alleged procedural violations of this Supplemental Memorandum of Agreement and those provisions of pages 4-12 of the District's current Section 3012-c Guidance Document (excluding those clauses that are inconsistent with Section 3012-d or the express provisions of this Supplemental Memorandum of Agreement) that have been caused by the District or its agents to arbitration in accordance with the procedures set forth above should the Superintendent or designee fail to sustain an appeal containing an alleged procedural violation thereof. When the District modifies its Section 3012-c Guidance Document to reflect those changes derived from Education Law 3012-d and the SMOA herein, it is the parties' understanding that the Guidance Document shall only be modified to reflect such changes as required by 3012-d and the SMOA herein and all other guidelines in the Guidance Document will remain the same.

Teacher Improvement Plans (TIPs):

The following procedures shall govern TIPs provided pursuant to Education Law Section 3012-d:

1. Upon receipt of an overall APPR rating of "developing" or "ineffective", a teacher shall be provided with a Teacher Improvement Plan ("TIP"). The TIP shall be provided by October 1st or as soon as practicable thereafter in the school year following the school year for which a "developing" or "ineffective" overall APPR rating was received. The teacher shall be entitled to the presence of a Union representative when working collaboratively with the lead evaluator/ other trained administrator (who shall be responsible for facilitating support) on the development of a TIP. It is expected that the lead evaluator/ other trained administrator working collaboratively on the development of the TIP shall be the same lead evaluator/ other trained administrator who conducted the formal observation of the teacher during the year in which he/she was rated less than effective. It is also expected that the lead evaluator/ other trained administrator will consult with other administrative staff to ensure the provision of necessary supports to implement the TIP. If agreement cannot be reached the District shall set the terms of the TIP.
2. The parties understand and agree that the sole and exclusive purpose of a TIP is the improvement of teaching practice and that the issuance of a TIP is not a disciplinary action. The TIP shall be developed in consultation with the teacher. The Association



President shall be informed of the District's intent to provide a TIP to a teacher within ten (10) school days of the teacher's receipt of a "developing" or "ineffective" overall APPR rating. Whenever a teacher is placed on a TIP and with the agreement of the teacher, the Association President shall be provided with a copy of the TIP.


3. A TIP shall clearly specify the timeline for achieving improvement (e.g. duration of the TIP) as well as the following: (i) the area(s) in need of improvement; (ii) the performance goals, expectations, benchmarks, standards and timelines the teacher must meet in order to achieve an effective rating; (iii) how improvement will be measured and monitored, and provide for periodic reviews of progress and goal achievement; (iv) the anticipated frequency and duration of meetings of the teacher, administrator, and mentor (if one is assigned); and (v) the appropriate differentiated professional development opportunities, materials, resources and supports the District will make available to assist the teacher, including, where appropriate, the assignment of a mentor teacher.
4. In the event that a tenured teacher receives two or three consecutive ineffective overall APPR ratings, he or she shall be entitled to a mentor in the event that the District continues the teacher in active employment in the classroom immediately thereafter.
5. The length of a TIP for a probationary teacher shall be three (3) to five (5) months in duration, as determined by the District. The length of a TIP shall be not less than five (5) months in duration for a tenured faculty member, as determined by the District.
6. In the event that the administrator recommends coursework, any tuition costs or registration fees shall be borne by the District in their entirety. No disciplinary action predicated upon ineffective performance shall be taken by the District against a teacher until a TIP has been fully implemented. However, nothing herein shall prevent the District from introducing into evidence an evaluation or a TIP in a subsequent disciplinary action.
7. A TIP shall be in form annexed hereto as Appendix "A".

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Reopener Clause: The terms contained in this Supplemental Memorandum of Agreement shall continue in full force and effect until such time as the parties have reached a successor agreement that has been submitted to and approved by the State Education Department. Either party may request to reopen the terms of this Agreement should there be modifications to Education Law Section 3012-d or the Part 30 Regents' Rules, or if requested by either party, on or after March 1, 2017.

SO AGREED, this 30th day of August, 2016, subject to ratification by the respective constituencies.

THE DISTRICT

By: 

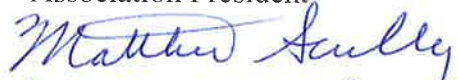
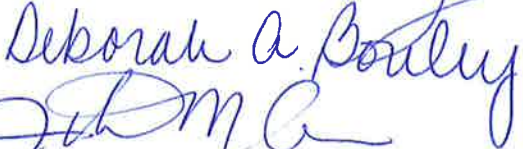



Dr. Roberto Padilla
Superintendent of Schools



THE ASSOCIATION

By: 

Stacy Moran
Association President



Appendix "A"

TEACHER IMPROVEMENT PLAN FOR TEACHERS SUBJECT TO SECTION 3012-d OF THE EDUCATION LAW
AND PART 30-3 OF THE REGENTS' RULES

Teacher Name: _____ Building: _____ School Year: _____

Timeline for achieving improvement (e.g. duration): _____

1. Area(s) in need of improvement	2. Performance goals, expectations, benchmarks, & standards the teacher must meet to achieve an effective rating	3. How improvement will be measured and monitored and periodic review of progress & goal achievement.	4. Anticipated frequency and duration of meetings of the teacher, administrator & mentor (if one is assigned)	5. Appropriate differentiated professional development opportunities, materials, resources and supports the District will make available to assist the teacher, (including, where appropriate, the assignment of a mentor teacher)

Teacher's Signature _____ Date _____

Union Representative's Signature _____ Date _____
(if applicable)

Lead Evaluator's Signature _____ Date _____

Building Principal's Signature _____ Date _____
(if different person than Lead Evaluator)

Date of Completion (if applicable): _____ Completed
 Not Completed

Teacher initials below:

___ Yes: Please send a copy of this TIP to the NTA President; or
___ No: I do not want a copy of this TIP sent to the NTA President