

New York State Education Law Section 3020-a Disciplinary procedures and penalties.

1. Filing of charges. All charges against a person enjoying the benefits of tenure as provided in subdivision three of section one thousand one hundred two, and sections two thousand five hundred nine, two thousand five hundred seventy-three, twenty-five hundred ninety-j, three thousand twelve and three thousand fourteen of this chapter shall be in writing and filed with the clerk or secretary of the school district or employing board during the period between the actual opening and closing of the school year for which the employed is normally required to serve. Except as provided in subdivision eight of section two thousand five hundred seventy-three and subdivision seven of section twenty-five hundred ninety-j of this chapter, no charges under this section shall be brought more than three years after the occurrence of the alleged incompetency or misconduct, except when the charge is of misconduct constituting a crime when committed.

2. (a) Disposition of charges. Upon receipt of the charges, the clerk or secretary of the school district or employing board shall immediately notify said board thereof. Within five days after receipt of charges, the employing board, in executive session, shall determine, by a vote of a majority of all the members of such board, whether probable cause exists to bring a disciplinary proceeding against an employee pursuant to this section. If such determination is affirmative, a written statement specifying the charges in detail, the maximum penalty which will be imposed by the board if the employee does not request a hearing or that will be sought by the board if the employee is found guilty of the charges after a hearing and outlining the employee's rights under this section, shall be immediately forwarded to the accused employee by certified or registered mail, return receipt requested or by personal delivery to the employee.

(b) The employee may be suspended pending a hearing on the charges and the final determination thereof. The suspension shall be with pay, except the employee may be suspended without pay if the employee has entered a guilty plea to or has been convicted of a felony crime concerning the criminal sale or possession of a controlled substance, a precursor of a controlled substance, or drug paraphernalia as defined in article two hundred twenty or two hundred twenty-one of the penal law; or a felony crime involving the physical or sexual abuse of a minor or student.

(c) Within ten days of receipt of the statement of charges, the employee shall notify the clerk or secretary of the employing board in writing whether he or she desires a hearing on the charges and when the charges concern pedagogical incompetence or issues involving pedagogical judgment, his or her choice of either a single hearing officer or a three member panel. All other charges shall be heard by a single hearing officer. (d) The unexcused failure of the employee to notify the clerk or secretary of his or her desire for a hearing within ten days of the receipt of charges shall be deemed a waiver of the right to a hearing. Where an employee requests a hearing in the manner provided for by this section, the clerk or secretary of the board shall, within three working days of receipt of the employee's notice or request for a hearing, notify the commissioner of education of the need for a hearing. If the employee waives his or her right to a hearing the employing board shall proceed, within fifteen days, by a vote of a majority of all members of such board, to determine the case and fix the penalty, if any, to be imposed in accordance with subdivision four of this section.

Education Law §3020-a. Disciplinary procedures and penalties.

3. Hearings. a. Notice of hearing. Upon receipt of a request for a hearing in accordance with subdivision two of this section, the commissioner of education shall forthwith notify the American Arbitration Association (hereinafter "association") of the need for a hearing and shall request the association to

provide to the commissioner forthwith a list of names of persons chosen by the association from the association's panel of labor arbitrators to potentially serve as hearing officers together with relevant biographical information on each arbitrator. Upon receipt of said list and biographical information, the commissioner of education shall forthwith send a copy of both simultaneously to the employing board and the employee.

b. (i) Hearing officers. All hearings pursuant to this section shall be conducted before and by a single hearing officer selected as provided for in this section. A hearing officer shall not be eligible to serve as such if he or she is a resident of the school district, other than the city of New York, under the jurisdiction of the employing board, an employee, agent or representative of the employing board or of any labor organization representing employees of such employing board, has served as such agent or representative within two years of the date of the scheduled hearing, or if he or she is then serving as a mediator or fact finder in the same school district. Notwithstanding any other provision of law, the hearing officer shall be compensated by the department with the customary fee paid for service as an arbitrator under the auspices of the association for each day of actual service plus necessary travel and other reasonable expenses incurred in the performance of his or her duties. All other expenses of the disciplinary proceedings shall be paid in accordance with rules promulgated by the commissioner of education.

(ii) Not later than ten days after the date the commissioner mails to the employing board and the employee the list of potential hearing officers and biographies provided to the commissioner by the association, the employing board and the employee, individually or through their agents or representatives, shall by mutual agreement select a hearing officer from said list to conduct the hearing and shall notify the commissioner of their selection.

(iii) If the employing board and the employee fail to agree on an arbitrator to serve as a hearing officer from said list and so notify the commissioner within ten days after receiving the list from the commissioner, the commissioner shall request the association to appoint a hearing officer from said list.

(iv) In those cases in which the employee elects to have the charges heard by a hearing panel, the hearing panel shall consist of the hearing officer, selected in accordance with this subdivision, and two additional persons, one selected by the employee and one selected by the employing board, from a list maintained for such purpose by the commissioner of education. The list shall be composed of professional personnel with administrative or supervisory responsibility, professional personnel without administrative or supervisory responsibility, chief school administrators, members of employing boards and others selected from lists of nominees submitted to the commissioner by statewide organizations representing teachers, school administrators and supervisors and the employing boards. Hearing panel members other than the hearing officer shall be compensated by the department of education at the rate of one hundred dollars for each day of actual service plus necessary travel and subsistence expenses.

Education Law §3020-a. Disciplinary procedures and penalties.

The hearing officer shall be compensated as set forth in this subdivision. The hearing officer shall be the chairman of the hearing panel.

c. Hearing procedures. (i) The commissioner of education shall have the power to establish necessary rules and procedures for the conduct of hearings under this section. Such rules shall not require compliance with technical rules of evidence. Hearings shall be conducted by the hearing officer selected pursuant to paragraph b of this subdivision with full and fair disclosure of the nature of the case and evidence against the employee by the employing board and shall be public or private at the discretion of the employee. The employee shall have a reasonable opportunity to defend himself or herself and an opportunity to testify in his or her own behalf. The employee shall not be required to testify. Each party shall have the right to be represented by counsel, to subpoena witnesses, and to cross-examine witnesses. All testimony taken shall be under oath which the hearing officer is hereby authorized to administer. A

competent stenographer, designated by the commissioner of education and compensated by the state education department, shall keep and transcribe a record of the proceedings at each such hearing. A copy of the transcript of the hearings shall, upon request, be furnished without charge to the employee and the board of education involved.

(ii) The hearing officer selected to conduct a hearing under this section shall, within ten to fifteen days of agreeing to serve as such, hold a pre-hearing conference which shall be held in the school district or county seat of the county, or any county, wherein the employing school board is located. The pre-hearing conference shall be limited in length to one day except that the hearing officer, in his or her discretion, may allow one additional day for good cause shown.

(iii) At the pre-hearing conference the hearing officer shall have the power to:

(A) issue subpoenas;

(B) hear and decide all motions, including but not limited to motions to dismiss the charges;

(C) hear and decide all applications for bills of particulars 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 employee's defense.

(iv) Any pre-hearing motion or application relative to the sufficiency of the charges, application or amendment thereof, or any preliminary matters shall be made upon written notice to the hearing officer and the adverse party no less than five days prior to the date of the pre-hearing conference. Any pre-hearing motions or applications not made as provided for herein shall be deemed waived except for good cause as determined by the hearing officer.

(v) In the event that at the pre-hearing conference the employing board presents evidence that the professional license of the employee has been revoked and all judicial and administrative remedies have been exhausted or foreclosed, the hearing officer shall schedule the date, time and place for an expedited hearing, which hearing shall commence not more than seven days after the pre-hearing conference and which shall be limited to one day. The expedited hearing

Education Law §3020-a. Disciplinary procedures and penalties.

shall be held in the local school district or county seat of the county or any county, wherein the said employing board is located. The expedited hearing shall not be postponed except upon the request of a party and then only for good cause as determined by the hearing officer. At such hearing, each party shall have equal time in which to present its case.

(vi) During the pre-hearing conference, the hearing officer shall determine the reasonable amount of time necessary for a final hearing on the charge or charges and shall schedule the location, time(s) and date(s) for the final hearing. The final hearing shall be held in the local school district or county seat of the county, or any county, wherein the said employing school board is located. In the event that the hearing officer determines that the nature of the case requires the final hearing to last more than one day, the days that are scheduled for the final hearing shall be consecutive. The day or days scheduled for the final hearing shall not be postponed except upon the request of a party and then only for good cause shown as determined by the hearing officer. In all cases, the final hearing shall be completed no later than sixty days after the pre-hearing conference unless the hearing officer determines that extraordinary circumstances warrant a limited extension.

4. Post hearing procedures. (a) The hearing officer shall render a written decision within thirty days of the last day of the final hearing, or in the case of an expedited hearing within ten days of such expedited hearing, and shall forthwith forward a copy thereof to the commissioner of education who shall

immediately forward copies of the decision to the employee and to the clerk or secretary of the employing board. The written decision shall include the hearing officer's findings of fact on each charge, his or her conclusions with regard to each charge based on said findings and shall state what penalty or other action, if any, shall be taken by the employing board. 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 this section through means including but not limited to: remediation, peer intervention or an employee assistance plan. 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.

(b) Within fifteen days of receipt of the hearing officer's decision the employing board shall implement the decision. If the employee is acquitted he or she shall be restored to his or her position with full pay for any period of suspension without pay and the charges expunged from the employment record. If an employee who was convicted of a felony crime specified in paragraph (b) of subdivision two of this section, has said conviction reversed, the employee, upon application, shall be entitled to have his pay and other emoluments restored, for the period from the date of his suspension to the date of the decision.

Education Law §3020-a. Disciplinary procedures and penalties.

(c) The hearing officer shall indicate in the decision whether any of the charges brought by the employing board were frivolous as defined in section eight thousand three hundred three-a of the civil practice law and rules. If the hearing officer finds that all of the charges brought against the employee were frivolous, the hearing officer shall order the employing board to reimburse the state education department the reasonable costs said department incurred as a result of the proceeding and to reimburse the employee the reasonable costs, including but not limited to reasonable attorneys' fees, the employee incurred in defending the charges. If the hearing officer finds that some but not all of the charges brought against the employee were frivolous, the hearing officer shall order the employing board to reimburse the state education department a portion, in the discretion of the hearing officer, of the reasonable costs said department incurred as a result of the proceeding and to reimburse the employee a portion, in the discretion of the hearing officer, of the reasonable costs, including but not limited to reasonable attorneys' fees, the employee incurred in defending the charges.

5. Appeal. Not later than ten days after receipt of the hearing officer's decision, the employee or the employing board may make an application to the New York state supreme court to vacate or modify the decision of the hearing officer pursuant to section seven thousand five hundred eleven of the civil practice law and rules. The court's review shall be limited to the grounds set forth in such section. The hearing panel's determination shall be deemed to be final for the purpose of such proceeding. In no case shall the filing or the pendency of an appeal delay the implementation of the decision of the hearing officer.

**The University of the State of New York
The State Education Department
School District Employer-Employee Relations Unit
Education Building Annex, Room 980
Albany, New York 12234**

The Rights of Tenured School District Employees to a Hearing on Charges Provided by Section 3020-a Education Law

Section 3020-a of the Education Law, as amended by Chapter 691 of the Laws of 1994, provides that a tenured school district employee who has been charged with incompetence or misconduct may elect to have a hearing officer review the charges and make findings of fact and recommendations as to penalty or punishment, if warranted, which the board of education must implement within 15 days of their receipt of the recommendations. In cases which involve charges of pedagogical misconduct or issues of pedagogical judgement, the employee may elect to have a three member panel perform this function.

The board of education must first meet to consider the charges. If by a vote of the majority of the board they find probable cause for the charges, the tenured employee must be served with a written copy of the charges by certified mail. **The board must also furnish the charged employee with a copy of this document outlining the employee's rights.** The board may suspend the employee pending disposition of the charges with pay. The employee may be suspended without pay if the employee has entered a guilty plea to or has been convicted of a felony crime concerning the criminal sale or possession of a controlled substance, a precursor of a controlled substance, or drug paraphernalia as defined in article two hundred twenty or two hundred twenty-one of the penal law; or a felony crime involving the physical or sexual abuse of a minor or student. In addition, if the charges are based on failure to maintain certification, the employee must be suspended without pay.

Within ten days of receipt of charges, the employee must **notify the school district clerk or the secretary of the board of education** whether he desires a hearing on the charges. If the employee desires to waive his right to a hearing, he should file a notice of intent to waive his right to a hearing with the school district clerk or with the secretary of the board of education and the Commissioner of Education. If the employee fails to waive his right and takes no action within ten days of the receipt of charges, he shall be deemed to have waived his right to a hearing. If the employee waives or is deemed to have waived his right to a hearing, the board of education shall then meet and determine the case within 15 days of the receipt of the waiver or within 15 days of the date when the waiver shall have been deemed to have occurred.

The employee who chooses a hearing should carefully follow each step in the timetable supplied by the Education Department to assure compliance with the law.

If the employee chooses to exercise his right to a hearing, he must so notify the board within ten days of receipt of the charges. This notification should advise the board of the

employee's choice of a single hearing officer or a three member panel, if applicable.

The employee will then receive from the school district clerk or the secretary of the board of education by certified mail, a copy of the Notice of Need for a Hearing. In this notice of need, the employee will find the information regarding the site to be provided for the hearing, the name and address of the attorney who will represent the complainant at the hearing, whether the employee is suspended, with or without pay, an estimate of the number of days required to hear the case, and the name of the panel member, if required.

The Commissioner of Education will then notify the American Arbitration Association (AAA) that a hearing will be held, obtain a list of potential hearing officers, and send a copy of such list to the employing board and the employee, or their attorneys. Not later than ten days from the mailing of the list, the board and employee, or their representatives, shall select, by agreement, a hearing officer and notify the Commissioner thereof.

The Commissioner shall notify the hearing officer and confirm by appointment letter his or her

acceptance of such selection. Within ten to fifteen days of receipt of this notice from the Commissioner, the hearing officer shall contact the parties and hold a prehearing conference. If the parties fail to notify the Commissioner of an agreed upon hearing officer within ten days, the Commissioner shall request AAA to select a hearing officer.

Where a three member panel is to hear the proceeding, the employee shall, within five days after receiving the copy of the notification to the commissioner of the need for a panel hearing, in writing by certified mail, notify the board and the Commissioner of the name of his or her selection for the hearing panel. If the employee fails to notify the Commissioner and the board as required, the Commissioner shall select the employee panel member.

The hearing will be conducted by the hearing officer who will have been selected from the list supplied by the American Arbitration Association. Each party may subpoena and cross-examine witnesses. (Copies of any subpoenas served on prospective witnesses must be presented to the chairman of the panel at the start of the hearing.) The employee must have a reasonable opportunity to defend himself and an opportunity to testify on his own behalf. All testimony must be under oath administered by the chairman of the panel.

If the employee or his attorney desires a public hearing, a written demand for such a public hearing must be served upon the hearing officer at least twenty-four hours before the date set for the hearing. The prehearing conference shall be private.

Photographs and recordings may not be made at private hearings. They may be permitted by the hearing officer at public hearings. Representatives of the news media may be present at all public hearings.

At the prehearing conference, the hearing officer decides all motions and objections. He may dismiss any or all of the charges, without prejudice to the filing of more specific charges upon motion of the charged party or his representative, if he determines that the charges as filed are lacking in specificity; he may not, however, dismiss the charges for any other reason without the

consent of the complainant or his attorney. **The hearing officer shall have the power to consolidate with the pending charges amended or additional charges against an employee as to which the board has found that probable cause exists no later than five days before the hearing, provided that the employee may file a waiver of hearing concerning such amended or additional charges with the hearing officer and provided further that charges involving pedagogical incompetence or issues involving pedagogical judgement may not be consolidated with pending charges unless the employee has previously exercised his or her right to choose between a single hearing officer and a hearing panel in the request for a hearing.**

If a hearing panel member is absent and the hearing officer determines the absence will unduly delay the hearing, he must order a replacement. The party who selected the absent panel member then has two days to select a replacement, or the Commissioner will name a replacement. If the hearing officer needs to be replaced and the parties cannot agree on a substitute, the Commissioner shall request the association to select a replacement. In no event shall a panel hearing proceed except in the presence of two panel members and the hearing officer.

At a hearing, no questions may be addressed to the employee unless he has been sworn as a witness with his own consent. The employee is entitled to receive a copy of the hearing transcript upon request without charge. Memoranda of law may be submitted by the employee or the board of education at the conclusion of testimony.

The hearing officer or panel shall make findings of fact on each charge and recommendations as to disciplinary action, or punishment, if any, against the employee on such charge, which findings of fact and recommendations are then to be submitted by the hearing officer to the Commissioner, **no later than thirty**

days after the last hearing. The findings of the panel on each charge and the recommendations of the panel as to disciplinary action, if any, shall be **based solely upon the record of the proceedings before the hearing panel and shall set forth the reasons and the factual basis for the determination.** Upon forwarding the findings and recommendations to the Commissioner, the hearing officer declares the hearing concluded.

The Commissioner will immediately forward said findings of fact and the recommendations as to penalty, if any is warranted, to the employee and to the district clerk or the secretary of the employing board. **Within 15 days of the receipt of the hearing officer's decision, the employing board shall implement the recommendations of the panel.** If the employee is acquitted of the charges, he or she must be restored to his or her position with full pay for any period of suspension without pay and the charges expunged from the employment record.

If an employee who was convicted of a felony crime as specified in paragraph (b) of subdivision two of this section has said conviction reversed, the employee, upon application, shall be entitled to have his pay and other emoluments restored, for the period of time extending from the date of suspension to the date of the decision.

Either the employee or the employing board may make an application to the New York State Supreme Court to vacate or modify the hearing officer's decision under Section 7511 of the Civil Practice Laws and Rules. The filing of the pendency of an appeal shall not delay the implementation of the hearing officer's decision.

**The University of the State of New York
The State Education Department
School District Employer-Employee Relations Unit
Education Building Annex, Room 980
Albany, New York 12234**

**The Role of the School District Clerk or the Secretary
of the Board of Education Under Section 3020-a
Education Law**

Section 3020-a of the Education Law requires the school district clerk or the secretary of the board of education to perform certain procedural steps to implement its provisions. This section of the law authorizes hearings on charges brought against tenured school employees, to be held before a single hearing officer or a three member panel.

A copy of the Law and Regulations of the Commissioner of Education dealing with the hearings have been provided to each school district. Also mailed to each school district: the timetable, a list of panel members nominated by organizations representing school boards, school administrators, and school teachers and sample forms. The rest of this memorandum is intended to provide the district clerk or the secretary of the board of education with an explanation of the steps to be followed in order to comply with the provisions of Section 3020-a. Since the law mandates certain time limits for each step for the board, the district clerk or the secretary of the board as well as the employee, careful study is suggested.

First, the charges against the employee must be filed with the district clerk or the secretary of the board of education. This must be done **not more than five days** prior to the next **regularly scheduled**

meeting of the board. The board may, however, in its discretion, waive the five day time requirement. As soon as the charges have been received by the district clerk or the secretary of the board of education, he or she must **immediately** notify the board of education that they have been filed.

Within five days of receipt of charges, the board of education must meet in executive session to determine whether or not there is probable cause for the charges filed; a majority vote is required if probable cause is to be found by the board.

If the finding of the school board is that there is probable cause for the charges, the district clerk or the secretary of the board of education must **forward to the employee immediately by certified mail:**

1. A copy of the Notice of Determination of Probable Cause on Charges Brought Against Tenured School District Employees (Form 3020-a-i).
2. A copy of the Rights of Tenured School District Employees to a Hearing on Charges Provided by Section 3020-a of the Education Law.
3. A copy of the Request by Tenured School District Employee for a Hearing on Charges Brought Against the Employee (Form 3020-a-2).
4. A copy of the Notice of Waiver of Hearing by Tenured School District Employee (Form 3020-a-3).

Copies of all enclosed forms may be reproduced locally.

The district clerk or the secretary of the board of education must also forward a copy of each such charge in writing, together with the vote of each member of the board to the Commissioner of Education at once by first class mail.

Within ten days of the receipt of the statement of charges, the employee must notify the district clerk or the secretary of the board of education whether or not he or she desires a hearing on the charges. If the employee desires to waive his right to a hearing, he should file a notice of motion to waive his right to a hearing with the district clerk or the secretary of the board of education, and submit a copy to the Commissioner of Education. If the employee takes no action within ten days of receipt of charges, he shall be deemed to have waived his right to a hearing.

If the employee is deemed to have waived his right to a hearing, the district clerk or the secretary of the board of education shall immediately forward to the Commissioner a Notice of Failure to Request or Waive Hearing (Form 3020-a-4). **A copy of this form must also be immediately forwarded by certified mail to the employee.**

If the employee waives or is deemed to have waived his right to a hearing, the board shall determine the case within fifteen days of the receipt of the waiver or within fifteen days of the date when the waiver shall have been deemed to have occurred. The district clerk or the secretary of the board of education shall then forward a report of the board's determination to both the employee and the Commissioner of Education.

If the employee decides that he would prefer to have a hearing, the district clerk or the secretary of the board of education is required to:

1. Forward to the Commissioner **at once by first class mail:**

- a. An affidavit of service showing service of a copy of the charges upon the employee.
- b. A copy of the employee's request for a hearing (3020-a-2)
- c. A notice of the need for a hearing (Form 3020-a-5)
- d. The place to be provided by the board for holding the hearing, within the school district or the county seat; (Form 3020-a-5)
- e. Name, address and telephone number of the attorney, if any, who will represent the complainant at the hearing; (Form 3020-a-5)
- f. The name of the panel member selected by the school board, if applicable; (Form 3020-a6)
- g. Whether an expedited hearing is sought, and whether the employee is suspended, either with or without pay.
- h. An estimate of the number of days needed for the hearing.

2. Forward to the Employee by **certified mail, return receipt requested:**

- a. The place to be provided by the board for holding the hearing.
- b. The name and address of the attorney, if any, who will represent the complainant at the hearing.
- c. Whether an expedited hearing is sought, and whether the employee is suspended, either with or without pay.
- d. An estimate of the number of days needed for the hearing
- e. The name of the panel member selected by the board of education, if applicable.

Separate notification of the need for a hearing must be given to the Commissioner of Education with respect to each employee against whom charges have been filed. If the board has indicated that charges involve pedagogical incompetence or issues involving pedagogical judgement and the board fails to name a panel member in this notice, the Commissioner will appoint a panel member for the board. **It is essential that a representative of the district contact the board's selected panel member to ascertain that the panel member will be available for the duration of the hearing.**

Within five days after receiving the copy of the notice of the need for a hearing which includes charges of pedagogical incompetence or issues involving pedagogical judgement, the employee must notify the Commissioner of Education and the school board in writing **by certified mail**, of the name of his selection for the hearing panel. If the employee fails to notify the Commissioner, and he has not waived his right to a panel hearing, the Commissioner will appoint a panel member for the employee.

Upon notification of the need for a hearing, the Commissioner will request that the American Arbitration Association provide a list, including a brief biography, of potential hearing officers. The Commissioner will forward a copy of such list to the attorney representing the board and the employee. Not later than ten days from the mailing of the list, the parties or their representatives shall by agreement select a hearing officer and notify the Commissioner of such selection. If the parties fail to notify the Commissioner

within, ten days the Commissioner shall request that the association select a hearing officer.

The district clerk or the secretary of the board of education must maintain on file an up-to-date list of the panel members supplied by the Commissioner, from which list the school board and the employee must make their respective selections. These lists of panel members shall be available for public inspection. Panel members **may not be residents in nor employed in the territory under the jurisdiction of the employing school board.**

The Commissioner will notify the board, employee and the panel members if applicable of the date, time and place of hearing.

At the conclusion of a hearing, the Commissioner will forward a report of the hearing, including the findings of fact and recommendations of the hearing officer or panel, and the recommendations as to penalty or punishment, if one is warranted, to the employee and to the district clerk or secretary of the board of education. The district clerk or the secretary of the board of education should transmit this hearing report **immediately** upon his or her receipt of said report, to the board of education.

Within 15 days of receipt of the hearing report from the Commissioner, the board shall implement the recommendations of the panel.

This concludes the school district clerk's and the secretary of the board of education's role in the panel hearing procedure. If the district clerk or the secretary of the board of education has need of further information, he or she should immediately contact: The School District Employer-Employee Relations Unit, The State Education Department, Room 980, Education Building Annex, Albany, New York 12234.

**The University of the State of New York
The State Education Department
School District Employer-Employee Relations Unit
Education Building Annex, Room 980
Albany, New York 12234**

**Timetable--Section 3020-a, Education Law
Hearings on Charges Against Tenured School District Employees**

Section 3020-a of the Education Law provides that tenured employees of school districts who are charged with incompetence or misconduct may elect to have a hearing on the charges. If such an election is made by the tenured employee, the law mandates the following schedule for implementation of its provisions by school boards and school employees.

STEP PROCEDURE

1. Filing of written charges against the employee not more than five days before the next scheduled board meeting with the district clerk or the secretary of the board of education, who then must notify the board of the charges immediately (Ed. Law 3020-a, subdivisions 1 and 2).

2. Board of education meets in executive session to determine whether there is probable cause for the charges filed within five days of receipt of the charges (Ed. Law 3020-a, subdivision 2; Commissioner's Regulations 82-1.3 (a)).
3. If a majority of the board finds probable cause:
 - a) A written statement of the charges in detail and an outline of the employee's rights must be forwarded to him or to her by the district clerk or secretary of the board of education immediately by certified mail (Ed. Law 3020-a, subdivision 2).
 - b) In addition, the district clerk or the secretary of the board of education must forward a copy of each such charge, in writing, together with the vote of each member of the board to the Commissioner of Education by first class mail, at once (Commissioner's Regulation 82-1.3 (b)).
4. The employee must notify the district clerk or the secretary of the board of education within ten days of receipt of the charges whether he or she desires a hearing on the charges. The employee may:
 - a) Elect to have a hearing and so notify the district clerk or the secretary of the board of education; or
 - b) Waive his right to a hearing and so notify the district clerk or the secretary of the board of education; or

Take no action within ten days, in which case a waiver of the hearing right will be deemed to have occurred. (Ed. Law 3020-a, subdivision 2).

 - c)
- 5A. If the tenured employee elects to have a hearing, the district clerk or secretary of the board of education must notify the Commissioner of the need for a hearing. This must be done within three days of receipt of the request for a hearing. A copy of this Notice of the Need for a Hearing must also be forwarded to the employee by certified mail.

The notice to the Commissioner shall include a copy of the charges, an affidavit of service of a copy of the charges on the employee, a copy of the employee's request for a hearing, an estimate of the number of days that will be required to hear the case, notification as to suspension and whether the suspension is with or without pay, the place to be provided by the board for the hearing, the name and address of the attorney, if any, who will represent the complainant at the hearing, and a check in the amount of \$225.00 made payable to the American Arbitration Association. If the charges concern pedagogical incompetence or issues involving pedagogical judgment, the employee may choose to have the charges heard by a three member panel. In such circumstance, the notice to the Commissioner must also include the name of the panel member selected by the board from the list furnished to the district clerk or the secretary of the board of education by the Commissioner. It is essential that the person selected as panel member by the board be contacted to ascertain that the person selected will be able to serve for the duration of the hearing.

If the board fails to name a panel member in the Notice of the Need for a Hearing, the Commissioner will appoint a panel member for the board (Ed. Law 3020-a, subdivision 2; Commissioner's Regulations 82-1.8 (b)).

- 5B. If the employee waives the right to a hearing or is deemed to have waived his or her right to a hearing pursuant to statute, the board, by a majority vote, determines the case and fixes the penalty or punishment, if any, to be imposed, within 15 days of receipt of the waiver of the hearing from the employee or within 15 days from the date when the waiver was deemed to have occurred (Ed. Law 3020-a, subdivision 2). Copies of the board's determination should be provided to the employee and to the Commissioner of Education.

The following procedures apply when Step 5A has been followed. If Step 5B is selected, no further reference to the timetable is necessary.

- 6A. The Commissioner shall notify the American Arbitration Association (AAA) of the need for a hearing and request AAA to provide to the Commissioner a list of names of persons chosen by the AAA from the panel of labor arbitrators to potentially serve as hearing officers, together with relevant biographical information on each arbitrator. The Commissioner shall forthwith forward a copy of the list to the board and to the employee. (Ed. Law 3020-a, subdivision 3).

Within ten days of receipt of the list of potential hearing officers and biographies, the board and employee, individually or through their attorneys, shall by mutual agreement select a hearing officer and shall notify the Commissioner of their selection. (Commissioner's Regulations 82-1.6).

- 6B. If the board and the employee fail to agree on an arbitrator to serve as hearing officer, they must notify the Commissioner within ten days of receiving the list. The Commissioner shall then request AAA to appoint a hearing officer from said list. The Commissioner shall notify the hearing officer selected and confirm his or her acceptance of such selection.
7. The hearing officer shall contact the parties and, within ten to fifteen days of receipt of notice from the Commissioner confirming his or her acceptance of a selection to serve as hearing officer, hold a prehearing conference.
8. **Within five days** after receiving a copy of the Notice of the Need for a Panel Hearing, the employee must notify the Commissioner and the board in writing by Certified Mail of the name of his or her selection for the hearing panel. If the employee fails to notify the board and the Commissioner, and the employee has not waived or been deemed to have waived his or her right to a hearing, the Commissioner shall select the member of the hearing panel for the employee (Commissioner's Regulation 82.6). It is essential that the employee contact his or her selection for the hearing panel to ascertain if the panel member selected will be able to serve for the duration of the hearing. Where an employee has exercised the option to have the hearing conducted before a hearing panel and the hearing officer determines that the absence of a panel member is likely to delay unduly the prosecution of the hearing, he or she shall order the replacement of the panel member. If the party who selected such panel member fails to select the replacement within two days, the Commissioner will select the replacement. If the hearing officer needs to be replaced, and the Commissioner determines that the parties cannot agree on a replacement, the Commissioner shall request AAA to select a replacement from the list of hearing officers. In no event shall a panel hearing proceed except in the presence of two panel members and the hearing officer (Commissioner's Regulations 82-1.10d).

9. Unless the employee or his attorney shall have served a written demand for a public hearing upon the hearing officer, **at least twenty four hours before the first day of hearing**, the employee will be deemed to have waived his or her right to a public hearing and the hearing will be private. The prehearing conference will be private (Commissioner's Regulations 82-1.9).

At the prehearing conference, the hearing officer shall determine the reasonable amount of time necessary to hear the charges and shall schedule the location, time and date(s). If more than one day is required, the days scheduled shall be consecutive. The final hearing shall be completed no later than sixty days after the prehearing conference unless the hearing officer determines that extraordinary circumstances warrant a limited extension. (Ed. Law 3020-a, subdivision 3 iv).

10. At the conclusion of the testimony, the hearing officer may adjourn the hearing to a specified date, to permit preparation of the transcript, submission by the parties of memoranda of law, and deliberation. This date may not be more than sixty days after the prehearing conference unless the hearing officer determines that extraordinary circumstances warrant a later date. The hearing officer shall arrange for the preparation and delivery of one copy of the transcript of the hearing to each party. (Commissioner's Regulations 82-1.10f).
11. Within thirty days of the final hearing day, the hearing officer or panel shall render a written decision and forward a copy of such decision to the Commissioner. The decision shall include the findings of fact on each charge and its recommendation as to disciplinary action, if such action is warranted. The findings of fact shall set forward the factual basis for its determination. **The hearing officer shall, no later than thirty days** from the last hearing date, forward the findings of fact and recommendations, together with all copies of the record, to the Commissioner, and shall then declare the hearing concluded (Commissioner's Regulations 82-1.10g).
12. The Commissioner will immediately forward a copy of the decision, and the recommendations as to penalty, if one is warranted, to the employee and the board of education. (Ed. Law 3020-a, subdivision 4).
13. Within fifteen days of receipt of the hearing officer's decision, the employing board shall implement the decision. If the employee is acquitted, he or she shall be restored to his or her position with full pay for any period of suspension without pay and the charges expunged from the record (Ed. Law 3020-a, subdivision 4).
14. Within ten days after receipt of the hearing officer's decision, the employee or the employing board may make an application to the New York state supreme court to vacate or modify the decision pursuant to Section 7511 of the Civil Practice Law and Rules (Ed. Law 3020-a, subdivision 5).

