

1 BEFORE THE NEW YORK STATE SENATE  
2 STANDING COMMITTEE ON EDUCATION  
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3 A NEW YORK STATE SENATE HEARING

4 DUE PROCESS TEACHER DISCIPLINE WITHOUT DELAY:

5 REFORMING SECTION 3020-A OF THE EDUCATION LAW  
6 TO MEET THE NEEDS OF THE 21st CENTURY  
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7  
8 Van Buren Hearing Room A, 2nd Floor  
9 Legislative Office Building  
10 Albany, New York

11  
12 May 23, 2011  
13 10:00 a.m.

14  
15 PRESIDING:

16 Senator John A. Flanagan  
17 Chair

18  
19 SENATE MEMBERS PRESENT:

20 Senator Suzi Oppenheimer (RM)

21 Senator Hugh T. Farley

22 Senator Martin J. Golden

23 Senator Kenneth P. LaValle

24 Senator Carl L. Marcellino

25 Senator George D. Maziarz

Senator Joseph E. Robach

Senator Stephan M. Saland

Senator James L. Seward

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13	General Counsel		
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1 SENATOR FLANAGAN: Good morning.

2 I want to thank everyone for coming.

3 We are -- I'm expecting Senator Oppenheimer  
4 momentarily. At a deference to all of the folks who  
5 are here, and particularly to those testifying, I  
6 don't want to be disrespectful to her, but I do want  
7 to get started.

8 And, I just want to make a couple of opening  
9 comments.

10 I want to thank my colleagues, Senator Farley  
11 and Senator Marcellino, for joining us.

12 And I certainly thank our witnesses who will  
13 be testifying, including our new chancellor from the  
14 city of New York, Chancellor Walcott.

15 Chancellor, good morning.

16 CHANCELLOR WALCOTT: Good morning.

17 SENATOR FLANAGAN: But, before we start, I  
18 just want to make a few brief comments.

19 And we have received, right -- as effective  
20 now, we've received testimony from everyone who will  
21 be testifying today.

22 We had gotten most of the testimony, either  
23 in the latter part of the week or over the weekend,  
24 which we greatly appreciate.

25 And, respectfully, I know I had spoken to the

1 chancellor about this.

2 I'm going to ask, and repeat to everyone,  
3 there's no reason to read testimony.

4 I don't want anyone reading testimony because  
5 we're all competent in reading. We can do that on  
6 our own. I'd much rather have a summary, people  
7 make comments, and then we can have some  
8 give-and-take on questions. I think it would be a  
9 far more efficient use of everybody's time.

10 And, a number of people are asking, why are  
11 we doing this?

12 I'm chairing education for the first time.  
13 And, I have had many people talk to me about  
14 different aspects of the educational process.

15 And I believe that education is New York  
16 State's number one obligation. The only way we can  
17 demonstrate that is by directing the most money  
18 towards education, and working on policies that  
19 ultimately have a positive effect on children.

20 And I'm going to jump ahead, just a tad, by  
21 stealing, paraphrasing, part of Chancellor Walcott's  
22 testimony.

23 And in that context, there is nothing more  
24 important than having a competent, qualified,  
25 professional teacher helping kids.

1           At the beginning of the day, and the end of  
2 the day, I think that overrides everything else that  
3 we may talk about, and I think that's how we should  
4 be approaching this.

5           But, I would also say that it's always good  
6 to review and discuss these types of issues, that,  
7 in my estimation, even though some may differ, the  
8 last substantial modification to the tenure law; or  
9 the 3020-a, I should say, more appropriately, was in  
10 1994. And while we've had many people talk about  
11 it, I really haven't met too many people who think  
12 it works swimmingly, that everything is going really  
13 well.

14           And, if nothing else, we can have a  
15 full-blown discussion and dialogue on some of the  
16 changes that are being talked about, and seeing, if  
17 we are not going to accomplish all of them, maybe we  
18 can accomplish some of them, with an eye towards  
19 doing the best thing for kids in the state of  
20 New York.

21           So, with that, I would like to welcome my  
22 colleague, Senator Maziarz.

23           And I would also, now, like to ask  
24 Chancellor Walcott to introduce his colleagues.

25           And, Chancellor, we very much appreciate you

1 being here.

2 CHANCELLOR WALCOTT: Good morning, Chair, and  
3 thank you for your leadership on this issue.

4 And to the members of the committee, thank  
5 you also for being here as well.

6 To my right is our general counsel,  
7 Michael Best.

8 And to my left is Lenny Speiller, who is the  
9 head of our intergovernmental office, and working  
10 with state legislators.

11 First, again, thank you for your leadership.

12 And for those who know me, and know me well,  
13 they know I do not read comments, either that people  
14 prepare for me, or testimony. I really like to  
15 speak from the heart, and talk about the issues of  
16 importance that really impact our students.

17 And the one thing I've talked about, I guess,  
18 in the 30 days or so that I've been chancellor, is,  
19 students, students, students; and how we --

20 SENATOR FLANAGAN: Chancellor, would you be  
21 kind enough to pull that mic closer, please.

22 CHANCELLOR WALCOTT: I'm sorry.

23 Is that better?

24 SENATOR FLANAGAN: I don't know if they can  
25 hear you in the back.



1 CHANCELLOR WALCOTT: Okay.

2 -- and how we improve our educational system  
3 for our 1.1 million students in New York City.

4 And, to me, that's our bottom-line goal.

5 So, in any type of issue, I always look at it  
6 from the perspective of the students.

7 And your leadership today is extremely  
8 important as we talk about 3020-a, and how to reform  
9 a system that has not been changed in a number of  
10 years. And, how we make it better for all of our  
11 students.

12 And, so, we will be submitting our testimony.  
13 We've submitted our testimony for the review  
14 of the committee itself.

15 I want to focus on a couple of things.

16 One: We have, roughly, 75,000 teachers in  
17 New York City.

18 And the majority of them, or a good portion  
19 of them, are fantastic teachers, who work long  
20 hours, who work under, sometimes, very difficult  
21 circumstances, who do a great job.

22 This past Saturday, I was up in Harlem at an  
23 event, a STEM event, where we were at the  
24 Harlem Armory. And there were teachers there, on a  
25 Saturday, with their students, focusing on math and

1 sciences, and all the great projects that they had  
2 undertaken in Central Harlem, to make sure that our  
3 students are learning at a high level.

4 And today is the focus on those educators  
5 who, for whatever reasons, may not be doing that  
6 great job, and for whatever reason, are being  
7 brought up on 3020-a charges.

8 And we need to do a better job in making sure  
9 that our system is better and more efficient in  
10 accomplishing those goals.

11 So, I want to be very clear, that: This is  
12 not demonizing our teachers. This is not about the  
13 overall number of teachers in the system.

14 It's about those teachers who had  
15 difficulties meeting our standard, and making sure  
16 that we have qualified teachers in front of the  
17 classroom.

18 What we must have is a fair and rational,  
19 speedy, cost-effective process that allows us to  
20 take prompt action on discipline.

21 3020-a, right now, is currently structured as  
22 long and arduous. It requires substantial  
23 resources, and often resulting in inconsistent  
24 outcomes.

25 And I want to share with you a couple of

1 those outcomes because, when we talk about the  
2 outcomes, and the way it's set up now with  
3 arbitrators, it allows the arbitrator, basically, to  
4 make his or her decision about a particular case.  
5 And sometimes those decisions are not all the same.

6 And what we've been able to do, as a result  
7 of our work with the UFT, last year in particular,  
8 was, we were able to, basically, eliminate what was  
9 called "the rubber rooms." And we've gone a long  
10 way, but there's still a lot more work to be done.

11 And over the agreement -- in an agreement  
12 that we struck with the UFT, we were able to,  
13 basically, eliminate 700 backlogged cases. And we  
14 resolved that by December 31, 2010.

15 But even with that resolution, 3020-a still  
16 remains an inefficient and cumbersome process. And  
17 it really takes up to 105 days, sometimes, to hear a  
18 case, if not even longer.

19 So, for example, let me give you a couple of  
20 examples. And if you allow me just to read these  
21 two or three cases, and I think that will paint a  
22 picture, as far as what we have in front of us.

23 Example 1: We had two cases with Teacher A  
24 and Teacher B, who were both charged with, verbal  
25 abuse, and conduct unbecoming an employee.

1 Both were found guilty by an arbitrator for  
2 using racial slurs with colleagues and students.

3 Teacher A was terminated, while Teacher B was  
4 only required to pay a \$5,000 fine. That teacher  
5 was still allowed to be in front of a classroom.

6 We have another example.

7 Teacher X and Teacher Y were both found  
8 guilty of misusing sick time to travel abroad.

9 Teacher X received a \$500 fine, while  
10 Teacher Y was terminated.

11 And, Example Number 3, is that a teacher was  
12 brought up on charges of total incompetence; U-rated  
13 four straight years.

14 An arbitrator acknowledged that the teacher  
15 had received professional development, yet continued  
16 to get unsatisfactory classroom observations.

17 And the arbitrator decided to neither fine  
18 nor suspend this particular teacher.

19 Instead, a disciplinary reprimand was  
20 recommended. And this teacher, with 21 years  
21 experience, was still allowed to be in front of the  
22 classroom.

23 Totally unacceptable.

24 And the way the law is currently structured,  
25 it allowed these inconsistencies to continue, where

1 we had teachers who were poor performing to still be  
2 in front of the classroom.

3 We have many cases like these, and it's time  
4 for that to end.

5 So, your leadership today allows us the  
6 opportunity to reform a system, and make it more  
7 rational in how we deal with employment decisions  
8 about the people that we have in front of our  
9 classrooms.

10 So, let me propose a couple of things to you,  
11 for your consideration, and then I'll allow for us  
12 to have maximum time for any type of questions that  
13 you may that have, that we can respond to.

14 What we're calling for is, really,  
15 commonsense changes.

16 We want, school-district decisions should be  
17 upheld if it is not arbitrary or capricious.

18 This benefits consistent and proper results.

19 Currently, 3020 requires a school district to  
20 show just cause.

21 "Just cause"; after all of our due diligence  
22 and our hard work, we have to show just cause.

23 "Just cause" may sound fair, but the result  
24 of setting that standard in law, it permits  
25 arbitrators to substitute their own judgment, as the

1 cases I just indicated, for the judgment of our  
2 principals, our superintendents, and eventually, the  
3 chancellor.

4 It leads to inconsistent results, the  
5 penalties for the same type of conduct.

6 In addition to that, we're calling for the  
7 law to change, to allow us in New York City to use  
8 the Office of the Administrative Trial Hearings,  
9 which we call "OATH," rather than arbitrators, to  
10 make the final determination.

11 OATH hears disciplinary cases against many  
12 city municipal employees. And, it also hears cases  
13 from the MTA and the Triborough Bridge Tunnel  
14 Authority as well.

15 OATH administrative law judges are  
16 experienced. They understand employee discipline  
17 matters, and are professional and impartial.

18 They hear cases every day -- "every day"; not  
19 like the arbitrators, where they're there only some  
20 of the time -- as opposed to a few days a month, so  
21 the cases can be resolved in a more expeditious  
22 manner.

23 Arbitrators are paid on a daily basis by the  
24 hearing day, and the days they work on a decision.

25 We estimate that each arbitrator's bill state

1 over \$150,000 a year.

2 \$150,000 a year, by arbitrator.

3 OATH judges are salaried, and preside over  
4 cases on a full-time basis.

5 So, you have consistent leadership. You have  
6 a system where they're not based on the number of  
7 hours per day, but based on the salaried people who  
8 are employed to do these types of things.

9 The state could provide a funding stream to  
10 OATH to hear these cases, and pay on a per-hearing  
11 basis, similar to what the MTA and the TBTA also  
12 does.

13 We want this modeled on disciplinary  
14 proceedings, like our Article 78, like any other  
15 government agency. This benefits a faster timeline  
16 and more effective cost efficiency.

17 When someone wants to bring a court challenge  
18 against an action by a government agency, they  
19 generally do so by, as you well know, filing an  
20 Article 78.

21 In an Article 78, the petitioner and the  
22 agency both file paperwork. The court makes a  
23 decision without the need for a trial.

24 We believe that this process for determining  
25 teacher discipline cases should be similar.

1 Consistency, again.

2 School districts would file papers. The  
3 teacher could file papers, challenging the decision.  
4 And the hearing officer could review that decision  
5 based upon the papers that are filed by both sides,  
6 rather than conducting a lengthy and time-consuming  
7 hearing.

8 This process would progress more quickly. We  
9 project 30-45 days, as opposed to the current  
10 105 days of the filing of charges.

11 Finally, these changes provide a fair and  
12 expedited process, and permits the removal of  
13 teachers who should not be in front of the  
14 classroom, but also preserves the right of accused  
15 teachers to obtain due process.

16 We need a system that's fair, cost effective,  
17 speedy, and the results are consistent.

18 The bottom line, Chair, as you indicated, is  
19 that, we do not want ineffective teachers in front  
20 of our classrooms.

21 We do not want the capriciousness of a  
22 decision by an arbitrator to determine who should be  
23 in front of that classroom.

24 We have to look at this from the eyes of our  
25 students and our parents, in making sure that we're



1 providing high-quality teachers; teachers who have  
2 consistent decisions based on the decision by an  
3 OATH judge, and not based on the arbitrary nature of  
4 an arbitrator.

5 with that, sir, I will close, and entertain  
6 any questions that you may have.

7 SENATOR FLANAGAN: Thank you very much,  
8 Chancellor.

9 I have a couple of brief initial questions;  
10 but, following up on some of the comments you made:  
11 I think it's laudable that the agreement between the  
12 city of New York and the UFT has helped reduced, if  
13 not completely eliminated, the backlog, and the,  
14 quote/unquote, rubber rooms.

15 But, I have a related question, and then a  
16 separate question.

17 In reviewing some of the testimony, preparing  
18 for this hearing, it seems to me that one of the  
19 problems that is pervasive, is the lack of mutual  
20 discovery, or this concept of mutual discovery.

21 And in looking at your agreement with the  
22 UFT, there are sections that speak to discovery and  
23 timing.

24 And I'm not sure -- maybe Mr. Best could  
25 comment on this.

1 I'm not sure if I understand those well  
2 enough.

3 But if you look at these things, people talk  
4 about other sections of the law. And you talk about  
5 Article 75, CSEA, and PEF, and how these things are  
6 done.

7 It seems that this is the only area where the  
8 burden continues to rest on the employer, and the  
9 employee can present some of the details of their  
10 case at the last minute, which, it at least appears  
11 on the surface, to exacerbate the lack of  
12 appropriate timing and inefficiencies.

13 Could you comment on that component of the  
14 agreement, and the whole -- is that your mutual  
15 discovery, or is that not close to it?

16 ATTORNEY BEST: Well, the current contract  
17 does -- the provision for discovery only require  
18 that the employee turn over witness statements, and  
19 the like, you know, the written materials, prior to  
20 their putting on their direct case; so, in the  
21 middle of the hearing, basically.

22 We agree with the tenor of your comments,  
23 Senator, that this is the kind of thing that causes  
24 delay.

25 It makes it harder for both sides to evaluate

1 the cases earlier, so that you can expeditiously  
2 resolve them, if a resolution is possible.

3 And, it also makes the trials more  
4 complicated; and, therefore, longer.

5 So, we think that a provisional law would  
6 allow for discovery up front, you know, which would  
7 be similar to, frankly, any civil litigation that  
8 happens.

9 These are not criminal cases. These are  
10 civil -- this is more akin to a civil case.

11 And in civil litigation, both sides turn over  
12 all their documents so that they can, both, review  
13 the strength of their case, and also move the cases  
14 along quickly once it gets to trial.

15 The same should be true here.

16 SENATOR FLANAGAN: If you had this  
17 opportunity to do this, do you think that would have  
18 an effect on how you settle cases, or whether or not  
19 you bring cases?

20 ATTORNEY BEST: I think it would, probably,  
21 for both sides.

22 There might be cases where, if all of this  
23 happened earlier, and both sides were exchanging  
24 documents before the hearing happened, that the  
25 employee might realize the strength of the case was

1 such, that they should resign, or take a disposition  
2 that progressively disciplines them, much earlier  
3 than they might otherwise, and not, maybe, even  
4 require a hearing.

5 On the other hand, there may be cases when  
6 the employer's attorneys are asking us to settle a  
7 case for something less than termination, where we  
8 might be persuaded, in those situations, if we saw  
9 the evidence that the employee was going to put on  
10 during the course of the hearing, we might be more  
11 willing to discuss that in some cases.

12 And, so, I think, from both sides, yes, it  
13 would have some -- it would have a good impact on  
14 our ability to discuss the cases before they ever  
15 get to hearing, and potentially resolve them.

16 I think it would also speed the hearings  
17 along more quickly.

18 SENATOR FLANAGAN: So, you feel as, that  
19 you're disadvantaged by the lack of opportunity to  
20 have this type of information earlier on in the  
21 process?

22 ATTORNEY BEST: Yes.

23 SENATOR FLANAGAN: Okay.

24 Chancellor, if I could, related to that,  
25 there's, obviously, been media attention to a number

1 of high-profile cases. And, you know, I look at  
2 this, sometimes in terms of, misconduct, then you  
3 have competence -- or, excuse me, incompetence --

4 CHANCELLOR WALCOTT: Competence.

5 SENATOR FLANAGAN: -- hopefully competence as  
6 well.

7 But, having said that, I know that we have  
8 made one change in the law; that, if someone is  
9 convicted of a sexual offense, that that could lead  
10 to an automatic termination without the need for the  
11 full-blown process being implemented.

12 Do you think there are other crimes that  
13 should be reasonable cause for immediate  
14 termination?

15 And, I -- you know, in looking at this, I  
16 just -- one thing that popped in my head, someone  
17 gets convicted, criminally, say, armed robbery, you  
18 would you still be under an obligation to go through  
19 the complete disciplinary process to remove that  
20 individual.

21 CHANCELLOR WALCOTT: Any felonies, quite  
22 frankly, Senator, should be an agreement for  
23 removal.

24 I mean, plain and simple, we do not want any  
25 teacher convicted of felony in front of our

1 classroom.

2 The rights of adults should never trump the  
3 rights of our children.

4 And if you've committed a felony, then you  
5 should not be in front of the classroom.

6 Plain and simple.

7 There was case profiled -- and Michael can  
8 elaborate on this -- a little while ago, where  
9 someone was convicted of manslaughter. And that  
10 person eventually made her way back to the  
11 classroom.

12 We should not allow that to happen.

13 Our teachers have a right to make sure that  
14 they're teaching; but, also, they follow the letter  
15 of the law. And anyone convicted of a felony should  
16 not be in front of the classroom.

17 Should not be in the system, quite frankly.

18 SENATOR FLANAGAN: Thank you.

19 And we've been joined by my colleague, our  
20 colleague, Senator Saland, and Senator Marcellino.

21 Questions?

22 SENATOR MARCELLINO: Thank you, Mr. Chairman.

23 Commissioner, we can all agree, the  
24 criminality conviction of a felony, using  
25 inappropriate language, the cases you cited, pretty

1 objective in their discovery, if you will. They  
2 either happened or didn't happen.

3 However, when you get to the relative --  
4 relevance of competency -- someone's ability to  
5 control a class, someone's ability to work within  
6 the system, and teach, now we're talking about a  
7 little bit more subjective areas.

8 CHANCELLOR WALCOTT: Uh-huh.

9 SENATOR MARCELLINO: A little bit more  
10 difficult areas, more gray.

11 You have a system that's, obviously, we would  
12 all agree, is not working for the benefit of the --  
13 in my mind, for the teacher or the benefit of the  
14 students in the city of New York.

15 Why should any teacher put faith in this new  
16 system that you want, when it's abbreviated time  
17 frames, as opposed to the current system that's  
18 there now?

19 Why should they put their faith in that? Why  
20 should they agree to this?

21 CHANCELLOR WALCOTT: Senator, let me take a  
22 stab at that, and Michael can elaborate as well.

23 I cited you an example, where you had a  
24 teacher who was U-rated four years, and was brought  
25 up on a variety of charges. And, as indicated in

1 the testimony, had had a significant amount of  
2 professional development given to that teacher.

3 And that teacher was a prime example of a  
4 teacher who should no longer be in the classroom  
5 teaching our students.

6 And as a result of that, the arbitrator felt  
7 that, he or she, I'm not sure if the arbitrator was  
8 a man or a woman, that the teacher should go back to  
9 the classroom.

10 Whereas, in presenting the cases, and both  
11 sides, as indicated in my testimony, would present  
12 paper to the cases, and the OATH judge would make a  
13 recommendation.

14 They are professional in making that  
15 determination. That is part of their job on a  
16 regular basis. And, they are able to sort through  
17 the papers submitted by both sides, to make that  
18 determination.

19 SENATOR MARCELLINO: what do you mean by  
20 "professional"?

21 CHANCELLOR WALCOTT: In that, they're  
22 appointed. They're appointed for a five-year term.  
23 Their term goes beyond the --

24 SENATOR MARCELLINO: what qualifies them to  
25 evaluate a teacher's functioning in a classroom?



1 CHANCELLOR WALCOTT: well, they're trained in  
2 that regard. They're trained, as far as municipal  
3 employees are concerned, they're trained as law  
4 judges, in making determinations based on the  
5 evidence that's presented to them.

6 So, they have that ability, and that's what  
7 they do. That's part of their professional job.  
8 That is part of the responsibility of the OATH  
9 court.

10 Michael, do you want to elaborate?

11 ATTORNEY BEST: well, I'd also make the  
12 point, Senator, that as it stands now, the way that  
13 the system works, setting up a system of independent  
14 arbitrators who are charged with making decisions  
15 about pedagogical effectiveness, actually takes  
16 the --

17 SENATOR SALAND: Excuse me, may I interrupt  
18 for a second?

19 May I ask that you -- it may well simply be  
20 my hearing -- could you move your microphone a  
21 little closer?

22 ATTORNEY BEST: Oh, certainly, Senator. I  
23 apologize.

24 SENATOR SALAND: Thank you.

25 ATTORNEY BEST: -- the way the system works

1 now, the arbitrators are not pedagogues. They're  
2 not former principals. They're mostly lawyers.

3 And they're making these decisions right now,  
4 under the current system.

5 And, actually, part of our proposal, is to --  
6 with changing the standard of review for these  
7 decisions, is to ensure that it's people who are  
8 actually in the schools and in the school system who  
9 are making these decisions about whether or not  
10 teachers are effective, with a review -- a  
11 due-process review for -- under an arbitrating and  
12 capricious standard, to ensure that there is, in  
13 fact, evidence for --

14 SENATOR MARCELLINO: So, under this system  
15 that you want to bring in, the people involved in  
16 judging would be educators?

17 ATTORNEY BEST: Well, no --

18 CHANCELLOR WALCOTT: No, that's not what he  
19 said.

20 In our testimony, we lay out the various  
21 steps that are undertaken before a case actually  
22 reaches the person who is, either the arbitrator  
23 now, or proposed to be the OATH judges.

24 So, there are a number of professional  
25 individuals who are educators, who make that

1 determination; because, we don't take this lightly,  
2 as far as, reaching the level of asking for  
3 someone's removed.

4 So, those steps are built into the review  
5 process that we currently undertake.

6 And what Michael is indicating, is that the  
7 arbitrators right now are lawyers, who are not  
8 necessarily grounded in pedagogical ideology as  
9 well.

10 Whereas, the OATH judges, while maybe not  
11 educators, are professional in reviewing hearings on  
12 a regular basis, dealing with employees; employees  
13 from the spectrum of the city agencies.

14 So, were the determination made by, the  
15 principal, by the superintendent, possibly even by  
16 the chancellor, to go before an OATH judge, you have  
17 a consistent individual who was trained in reviewing  
18 these types of cases, who makes that determination,  
19 and not a person who is only there on a part-time  
20 basis.

21 So, it's the level of professionalism of the  
22 individual reviewing the case. But, the pedagogical  
23 pieces that you're referring to, those steps are  
24 undertaken prior to those cases being recommended,  
25 currently now, to the arbitrator; or, if approved,

1 to the --

2 SENATOR MARCELLINO: So, the OATH, this judge  
3 that you have -- or, that you are proposing to put  
4 into place, would understand that that teacher  
5 involved might have had two or three different, for  
6 lack of a better term, supervisors observe them,  
7 come in with different standards, different  
8 intellectual opinions, different points of view,  
9 coming into a classroom, looking at a teacher in  
10 front of a class, one month, with a certain group of  
11 kids. Two months later, half those kids are gone,  
12 for whatever reason; might not be in the class  
13 anymore, for whatever reason -- moving out, taking a  
14 trip, families pick up and leave, kids just  
15 disappear from the system -- for whatever reason, he  
16 would know that, he would understand, or she would  
17 understand, the difference that's going in there?

18 My point is, it's a subjective system.

19 You're telling me that, someone who has never  
20 been in the system -- who has never been there, who  
21 hasn't been part of that system -- to understand the  
22 changes that a teacher might be confronted with, and  
23 who can observe and who can evaluate someone from  
24 the MTA who drives a train, or someone from the  
25 sanitation department who picks up garbage -- and I

1 don't mean to knock these two different professions.

2 SENATOR FLANAGAN: All hard-working  
3 employees.

4 SENATOR MARCELLINO: All hard-working, all  
5 honest labor, all, should be treated fairly. But,  
6 they're not the same.

7 CHANCELLOR WALCOTT: So, let me -- if I may,  
8 let me just respond, because, currently structured,  
9 the arbitrators are not educators as well.

10 SENATOR MARCELLINO: I agree; in the system,  
11 they're not.

12 CHANCELLOR WALCOTT: So, I want to be very  
13 clear: And that's why it doesn't work.

14 But the judges are professionally trained.  
15 The judges are trained to hear cases of employees of  
16 a variety of agencies.

17 And we're proposing that the department of  
18 education be added to those agencies that they  
19 review.

20 In addition to that, there are a number of  
21 steps that we undertake within the department of  
22 education, for us then to make the determination to  
23 remove these individuals, or have them go before,  
24 currently, the arbitrators or the OATH judges. And  
25 those are very elaborate steps.

1           And as indicated, both in my testimony and  
2 Michael's response, that we would then submit  
3 papers. And then the representative of that  
4 employee, the union or their lawyer, would also  
5 submit papers as well.

6           There are occasions where that individual  
7 will be called for testimony as well.

8           But, these individuals are professionally  
9 trained. This is part of their regular job.  
10 They're there on a five-day-a-week basis. They're  
11 not there on a part-time basis at all. And, it's  
12 not based on the whim of when they come in and  
13 review the cases; which, also, not just from a  
14 pedagogical point of view, but from a financial  
15 point of view, costs the state a tremendous amount  
16 of money as well.

17           So, this is a more expeditious process.

18           It's a more financially conservative process,  
19 as far as making sure we spend the state's money  
20 wisely.

21           And, then, we also have professional  
22 individuals who are trained in reviewing these types  
23 of cases to make their decisions.

24           But, again, I want to reinforce the point,  
25 that the various levels that are included in your

1 testimony, that we undertake at the department of  
2 education, is extremely professional.

3 Obviously, there will be disagreements, both  
4 on the management side and the employee side.

5 And when we have to have these cases  
6 submitted before a person, we want that individual  
7 to be an OATH judge, and not an arbitrator who comes  
8 in on a part-time basis.

9 SENATOR MARCELLINO: I can understand the  
10 savings-of-money concern.

11 I can understand the, quote/unquote,  
12 professionalism of the person evaluating the people.

13 For the life of me, you haven't convinced me  
14 yet, that there's a big difference in this system  
15 that you are proposing to the system that exists,  
16 but for an abbreviated time frame.

17 CHANCELLOR WALCOTT: well, I --

18 SENATOR MARCELLINO: I don't see that much a  
19 difference here, sir.

20 CHANCELLOR WALCOTT: with all due respect to  
21 you, Senator, and I know that we've talked, and we  
22 will continue to have a great relationship with each  
23 other, I see a tremendous difference with what we're  
24 proposing, compared to what's in place right now.

25 And it's just not around money, and it's just

1 not around the timeline, but it's around the  
2 professionalism of the individuals as well.

3 I mean, OATH judges have never been called  
4 into question, as far as their professionalism, and  
5 their ability to review cases and make  
6 determinations around employee misconduct, and other  
7 charges that are brought before these judges.

8 And, so, you have a body that's in place that  
9 is their purpose overall.

10 That's what OATH stands for.

11 And, so, I -- we just have a disagreement  
12 around this, sir. But, I think that's the purpose  
13 of OATH. And we would want to be part of this  
14 system which allows for our employees to be treated  
15 that way as well.

16 SENATOR MARCELLINO: And this is the last  
17 comment.

18 I could see your system, if the system dealt  
19 strictly with the education field.

20 I do see a difference. You know I'm a former  
21 teacher.

22 CHANCELLOR WALCOTT: I do know that well. I  
23 was --

24 SENATOR MARCELLINO: That's okay. It's what  
25 I run on every two years, somewhat successfully.



1           The issue being, I see education as something  
2 unique. I see it different and apart from other  
3 systems and other fields that the city has to deal  
4 with.

5           I don't see the evaluation of teachers the  
6 same as evaluation of an MTA engineer, or somebody  
7 else.

8           If these judges, trained, perhaps former  
9 educators, perhaps former people in the system who  
10 understand the system, learned the vagaries of the  
11 system, understand the fluctuation of population in  
12 the system, the changes that the system has  
13 undergone, the pressures that teachers and  
14 administrators are under in the system, who were  
15 part of it, and that was separate and apart, I could  
16 say that there's a difference now, and now you have  
17 set up, not only an abbreviated time frame, highly  
18 professionally trained people, but something that is  
19 unique for the system, because it is a unique  
20 system.

21           Just dumping, or putting all of this in one  
22 bag, I'm saying, these same people who are going to  
23 evaluate MTA problems, evaluate other problems --  
24 police problems, or other disciplinary situations --  
25 are the same people that are evaluating teaching

1 problems, will make it work better?

2 I don't see it.

3 Make it one, where there are educators part  
4 of that system, who are trained in the business, who  
5 understand the system, and then we can -- then I can  
6 see where you're going.

7 CHANCELLOR WALCOTT: So, if I may, just, with  
8 the Chair's permission, I mean, one final comment to  
9 that: I mean, I would imagine -- and we'd be glad  
10 to get you additional information after our  
11 testimony as well -- with OATH judges, OATH judges  
12 don't operate in a vacuum as well.

13 I mean, OATH judges are definitely steeped in  
14 the culture of the particular agencies that they're  
15 reviewing, and they know the knowledge issues  
16 connected to those agencies as well.

17 And the issue of having the pedagogical  
18 expertise, I mean, we have the pedagogical  
19 expertise, and we know what we're recommending,  
20 based on our review, and also standards that we have  
21 in place as well.

22 And, for whatever reason, these individuals  
23 have not met those standards.

24 We cannot afford to have teachers, teaching  
25 our children, who do not meet those standards.

1           And teachers know this as well.

2           And we need to have a system in place that's  
3 not based on arbitrators coming in on a part-time  
4 basis, costing us an arm and a leg.

5           We need to have professional individuals who  
6 are steeped in the ideology, steeped in the issues  
7 connected with the agencies that they review.

8           So, I think our middle ground, sir, is that,  
9 with OATH judges, OATH judges would have the ability  
10 of knowing exactly what an agency is about.

11           And that's something we'll be glad to follow  
12 up with the committee about, as far as, you know,  
13 the type of training that goes along with that.

14           But, at the same time, we believe this system  
15 of review that we're proposing is significantly  
16 better, not just for the system, but better for our  
17 children as well.

18           SENATOR FLANAGAN: Thank you,  
19 Senator Marcellino.

20           We've been joined by Senator Seward, and our  
21 ranker, Senator Oppenheimer, who is back amongst us,  
22 and doing quite well.

23           Senator Maziarz, and then Senator Saland.

24           SENATOR MAZIARZ: Thank you very much,  
25 Chancellor Walcott, for being here.

1 CHANCELLOR WALCOTT: Thank you, sir.

2 SENATOR MAZIARZ: By point of reference, I  
3 represent a district that's in the far northwest  
4 corner of New York, probably the furthest one away  
5 from New York City. But, I do represent -- I  
6 represent mostly rural and suburban districts, with  
7 one exception; I have a small portion of the city of  
8 Rochester, an urban district which faces many of the  
9 same problems that -- and issues and challenges that  
10 you face, sir.

11 So, thank you very much for taking time out  
12 of what I'm sure is a very busy schedule.

13 CHANCELLOR WALCOTT: Thank you, sir.

14 SENATOR MAZIARZ: You mentioned in your  
15 testimony, and I think Senator Flanagan followed up  
16 on it a little bit, and I'm not sure if it quite  
17 answered the question that I have for you.

18 You said that, in the agreement with the UFT,  
19 on ending the rubber rooms, that you immediately  
20 cleared up, or very quickly cleared up, 700 cases.

21 How many -- how many were left after that?  
22 And how were they -- are they still in the process  
23 of being adjudicated, or what?

24 ATTORNEY BEST: Well, if I may, Senator, we  
25 have, you know, ongoing cases all the time.

1           SENATOR MAZIARZ: Right.

2           ATTORNEY BEST: So, we'll have something,  
3 like, probably, between investigate -- you know,  
4 investigate -- we have many, many investigations  
5 going on.

6           The agreement to which you refer, only  
7 applies to those cases where, during an  
8 investigation, or during a hearing, the employee was  
9 reassigned out of the classroom; either to an  
10 administrative job within their school, or to an  
11 administrative office of the DOE.

12           Of those, I don't have the numbers offhand,  
13 but I think, probably, we would have about,  
14 something like, 100, or 120 going at any one time,  
15 including, both, cases that are still in the  
16 investigative phase, and cases where we've charged  
17 the employee.

18           We have 39 arbitrators right now, so we have,  
19 basically, 39 cases going at any one time, one per  
20 arbitrator.

21           SENATOR MAZIARZ: See, I guess my point, and  
22 maybe I'll clarify it a little bit: I mean, if you  
23 say, I don't know, there was 1,000 teachers assigned  
24 to rubber rooms because they couldn't be in the  
25 classroom. And we ended rubber rooms, we signed an

1 agreement, cleared up 700 of them. That means there  
2 are 300 left.

3 And I guess my question would be: what are  
4 you doing with those 300 now?

5 And these are hypothetical numbers.

6 ATTORNEY BEST: No, that's actually not quite  
7 how it works.

8 The 700 were cases that had been in the  
9 system for a long time.

10 SENATOR MAZIARZ: Okay.

11 ATTORNEY BEST: And, that, because of the way  
12 that the process was moving very slowly, we couldn't  
13 get them to hearing and resolve them.

14 well, when we did, they would take a very  
15 long time.

16 There was some media interest in the -- there  
17 was a story in the "New Yorker" a couple of years  
18 ago about one case; about a teacher we had charged  
19 with incompetence, which took over a year to try.

20 And while that case was going on, the  
21 arbitrator -- that arbitrator was busy for a year  
22 and couldn't hear any other cases.

23 So, all the other people in the queue for  
24 that arbitrator to hear, would just sit, waiting.

25 what we've done is, we cleared up the whole

1 backlog of cases in the second half of last year.

2 Try -- you know, either finished  
3 investigations, where they were pending; or we  
4 finished the trials that were supposed to have  
5 started already.

6 And then we've tried all the rest of the  
7 people since then, or they have reached some kind of  
8 disposition.

9 And what's going on now is, as we continue to  
10 investigate and charge people, we'll have something,  
11 like, 100-and-something number of people every day,  
12 who might be reassigned as a result of -- or, who  
13 might be reassigned as a result of new  
14 investigations, but they're not from the old case  
15 load.

16 SENATOR MAZIARZ: Okay, thank you.

17 Just another very short point of  
18 clarification.

19 You used the example, Chancellor, of,  
20 Teacher A, and B.

21 Both were found guilty of using racial slurs  
22 in their interactions with colleagues and students.  
23 One was terminated. One was required to pay a  
24 \$5,000 fine.

25 I assume that there was probably different

1 arbitrators, and the decision was just the whim of  
2 the arbitrator. Is that correct?

3 CHANCELLOR WALCOTT: That is correct.

4 And that's why I used, as an example, where,  
5 based on the whim of the arbitrator, and no telling  
6 how the arbitrator would rule.

7 And, again, it goes back to the point  
8 earlier, around the OATH judges, in that, they would  
9 review the paperwork, and then make the  
10 determination based on a consistent standard.

11 SENATOR MAZIARZ: Thank you.

12 Thank you very much.

13 CHANCELLOR WALCOTT: And, Senator, to be  
14 fair, I want to really highlight this: As a result  
15 of the cooperation of the UFT, we were able to reach  
16 the rubber-room agreement.

17 So, it wasn't just based on the city. The  
18 UFT worked very hard as well. And their president,  
19 Michael Mulgrew, worked hard to accomplish that.

20 And I just had to be fair to the UFT, in  
21 that, this was a mutual agreement that staff worked  
22 extremely hard to accomplish.

23 SENATOR MAZIARZ: Thank you.

24 SENATOR FLANAGAN: Thank you,  
25 Senator Maziarz.



1 Senator Saland?

2 SENATOR SALAND: Thank you, Mr. Chairman.

3 My apologies for being late.

4 With your permission, I would just like to  
5 preface some questions. And I caught the very  
6 tail-end of either of your testimony or questions,  
7 Chancellor, so I wasn't present for your testimony.

8 As a former chair of this committee, one of  
9 the things that was of concern to me, was a system  
10 that would ensure security for a teacher, in a  
11 fashion which did what 3020-a reports to do, which  
12 is, provide due process.

13 I fear that due process has become dilatory  
14 process. And I was always puzzled by the language  
15 in 3020-a, that basically said, that discovery was  
16 only going one way.

17 And the Chairman may have alluded to that,  
18 coming in, but it's, literally, in the statute.

19 And I know, in 1998, I believe the regents  
20 recommended that that be changed. And that never  
21 came to pass.

22 So, let me start off with a question for you.  
23 And, if not -- if it's not for you, then perhaps it  
24 would be for the ed -- representative of the  
25 ed. department when they arrive -- or, when they

1 testify.

2 Is there a basis for denying, as far as you  
3 know, for the due-process mechanism to be a two-way  
4 street? Why would anybody not want discovery that,  
5 basically, underscores everything about our civil  
6 and criminal systems of justice?

7 CHANCELLOR WALCOTT: My general counsel, I'll  
8 let him respond.

9 ATTORNEY BEST: Well, Senator, we believe  
10 that reciprocal discovery in these proceedings would  
11 be a very useful thing for both sides.

12 It would speed up the process.

13 It would also allow everybody to evaluate the  
14 cases in a way, for instance, that happens in civil  
15 cases in court, as you've alluded to.

16 And, you know, we don't think that it  
17 actually makes sense not to have that, but that's  
18 the way the current system is.

19 SENATOR SALAND: If you can, my reading is,  
20 that the proposed new system, with regard to the  
21 changes in the current hearing process --

22 ATTORNEY BEST: Uh-huh.

23 SENATOR SALAND: -- seem to be specifically  
24 targeted to the question of teacher effectiveness;  
25 whatever falls within the realm of teacher

1 effectiveness.

2 Does that not continue, the current system,  
3 with regard to any issues that may arise outside of  
4 the question of teacher effectiveness? Or does that  
5 assume, that each and every issue; for example, the  
6 issue of a felony that is not a sex-offense felony,  
7 is a question of teacher effectiveness?

8 CHANCELLOR WALCOTT: With teacher  
9 effectiveness; teacher effectiveness would still be  
10 being evaluated, as far as the effectiveness of the  
11 teacher. But there are certain cases where we have  
12 to have those cases reviewed, no matter if a teacher  
13 is effective or not.

14 And what we're proposing is, a mechanism to,  
15 both, improve the system, to make the system more  
16 cost effective, but also to have a common standard  
17 apply to a variety of different cases as well.

18 And, so, with the proposed evaluation system  
19 that we're looking at, again, that's collectively  
20 bargained, no matter what the regents have proposed,  
21 each district has a responsibility to collectively  
22 bargain with their union to put that in place.

23 Our goal is to make sure that we have a  
24 mechanism, at the end of the day, when there's a  
25 crime committed or felonies are proposed -- or, have

1 occurred, that those issues are addressed as quickly  
2 as possible.

3 Michael?

4 SENATOR SALAND: Let me rephrase my question.

5 would we be recreating a bifurcated system,  
6 whereby, certain issues; i.e., those dealing with  
7 effectiveness, will be handled under this proposed  
8 new system? And anything that is, technically, not  
9 a question of effectiveness, remains subject to the  
10 current tenure proceedings as exists under 3020-a?

11 ATTORNEY BEST: Senator, I believe they'll  
12 both still be under section 3020-a.

13 CHANCELLOR WALCOTT: 3020-a. Right.

14 ATTORNEY BEST: So, in that regard, the  
15 hearing procedures --

16 SENATOR SALAND: No, I understand 3020-a.

17 Are we creating a bifurcated system?

18 So, if somebody is charged with some type of  
19 misconduct -- criminal misconduct; some actions,  
20 within the context of the classroom that do not  
21 pertain to whether he or she has been an effective  
22 teacher -- would that person go through the hearing  
23 process that's being proposed now, under the --

24 CHANCELLOR WALCOTT: Yes.

25 SENATOR SALAND: -- amended proposal?

1 CHANCELLOR WALCOTT: There would still be one  
2 system, if I understand the question correctly,  
3 whether they're dealing with incompetence or  
4 malfeasance or some type of criminality involved,  
5 and that will still be the 3020-a.

6 what we're proposing is a different 3020-a  
7 process --

8 SENATOR SALAND: So, you -- the entire  
9 3020-a, as we know it now, would be eliminated, and  
10 replaced by a new 3020-a?

11 CHANCELLOR WALCOTT: We're proposing a new  
12 system, and to have the law changed.

13 And what we're proposing in our legis- -- our  
14 proposal, is to change that entire system.

15 SENATOR SALAND: And I'll just leave this  
16 last, and defer to the Chairman, and it's more a  
17 rhetorical question than question that you can  
18 provide an answer for.

19 The existing 3020-a provides clear timelines,  
20 provides for expedited hearings, and on the face of  
21 it, should be a system, that should, as the word  
22 "expedited" implies, move quickly, or with relative  
23 speed.

24 And we know that that is anything but the  
25 truth.

1 CHANCELLOR WALCOTT: Right.

2 SENATOR SALAND: So, the question then  
3 becomes: why would you expect -- and, again, I'll  
4 pose this rhetorically, and I would certainly --

5 CHANCELLOR WALCOTT: This one, I can give you  
6 a clear answer on.

7 SENATOR SALAND: -- but, why would you expect  
8 the response of the system to be different under  
9 this expedited-hearing system, versus the preceding  
10 expedited-hearing system?

11 CHANCELLOR WALCOTT: Because we have a system  
12 in place, or that we're proposing, with the OATH  
13 judges who have a standard that they have to meet,  
14 and they've been able to meet that standard on a  
15 regular basis.

16 And, so, within the timeline of, both, the  
17 current 3020-a law, but also the timeline of the  
18 review of what OATH actually does, it would be a  
19 more expedited system to meet the timelines built in  
20 to 3020-a.

21 So, we have a demonstrated system that does  
22 this on a regular basis. It's not based on the  
23 arbitrary nature of arbitrators coming in on a  
24 part-time basis.

25 And the way the system is structured now,

1 with arbitrators in place, it limits our ability to  
2 meet the timelines structured in the law.

3 whereas, OATH, and the OATH judges, are able  
4 to do that.

5 And, so, we're really confident in what we're  
6 proposing, as far as the ability to meet a very  
7 expedited timeline, but also maintaining the  
8 due-process rights of the employees who would be  
9 reviewed.

10 SENATOR SALAND: Thank you, Mr. Chairman.

11 SENATOR FLANAGAN: Senator Oppenheimer?

12 SENATOR OPPENHEIMER: Congratulations.

13 CHANCELLOR WALCOTT: Thank you, ma'am.

14 Thank you very much.

15 SENATOR OPPENHEIMER: Another past chair of  
16 the education committee.

17 And I enjoyed working, collaboratively, with  
18 you in the past, and I know we will in the future.

19 I feel very badly that I got here a little  
20 late also. I'm trying to read as fast as I can,  
21 your statement. But the fog was just terrible  
22 driving up from Westchester.

23 I don't know what this proposal is; and,  
24 therefore, I'm sort of at a little disadvantage, but  
25 let me just pose a couple of questions.

1           My understanding, in the past, not taking  
2           into account what your proposals are, is that, only  
3           about 25 percent of our teachers will be evaluated  
4           under the new process, where we look at  
5           accountability, and we look at how effective the  
6           teacher was in the classroom. And, of course, we're  
7           going to put in as much effort as possible, to keep  
8           the teacher that is in the process of learning, to  
9           be more effective, and to try and hold them in their  
10          position as long as they are a teacher that will  
11          improve as they go along.

12           So, right now, I only see that process, which  
13          we put in place last year, to affect -- as  
14          Senator Saland was questioning -- only about  
15          25 percent of the teachers that are being brought  
16          up, those are the ones that are specifically deemed  
17          to have been non-effective at two years in a row.

18           I think what you're trying to do, is to  
19          broaden that, so that there will be a more expedited  
20          process for all teachers who are found to be not  
21          working to the advantage of their students; that  
22          they are not engaging the students, that they have  
23          done something that is criminal, that something that  
24          is offensive, so that there will be an  
25          accountability process which will be, certainly, a



1 whole lot faster than what was existing before the  
2 rubber room -- after the rubber room.

3 But what I've been recommending for a number  
4 of years, and it might be in your proposals, is,  
5 instead of bringing the arbitrators, which is  
6 costing us a bloody fortune, and taking forever,  
7 that we devise some kind of a panel.

8 The panel could be retired teachers, the  
9 panel could be retired lawyers, who act as non-paid  
10 arbitrators.

11 I see no reason why we have to deal with the  
12 situation as it has been for years.

13 And, the panel could either be paid or not  
14 paid, but I think it would enormously expedite the  
15 process.

16 We would probably pick people from our  
17 immediate area, who are not flying off to  
18 California.

19 It's just something. I don't know if that's  
20 in your hopper already, but it's something that I  
21 feel strongly about. I think a panel could just  
22 expedite this process amazingly faster than has been  
23 done.

24 CHANCELLOR WALCOTT: So, Senator, if I may  
25 respond: I think what we're proposing, while not

1 the type of panel that you're suggesting, is a body  
2 that are paid professionals already, who do this on  
3 a full-time basis. And, that those individuals are  
4 the "OATH judges" that I referred to in my  
5 testimony.

6 The OATH office does this for their business.  
7 They review cases; they review cases like  
8 these, and they make determinations within a  
9 30-day period of time.

10 As indicated in the testimony, and I think I  
11 touched on it a little bit in just my verbal  
12 testimony, that both sides would submit papers to  
13 the judges for their review, on those occasions  
14 where the individual needs to come for a personal  
15 testimony. That can happen as well.

16 But these are individuals who are already in  
17 place. And, so, you're not, even with the  
18 volunteers that you're talking about, the volunteers  
19 are based on their schedules. And you don't know  
20 when a volunteer's schedule may be there, or may not  
21 be there; may be available, may not be available,  
22 and, to make the final determination.

23 So, this proposal somewhat touches on what  
24 you're proposing, but it deals with professional  
25 individuals, who are full-time employees, who do

1 this as part of their business, and they're  
2 administrative law judges that operate out of the  
3 office of administrative trials.

4 I mean, and that is part of the proposal that  
5 we are suggesting to you.

6 SENATOR OPPENHEIMER: Well, I welcome that  
7 too, because anything that expedites this process  
8 would be wonderful.

9 Thanks.

10 SENATOR FLANAGAN: Thank you,  
11 Senator Oppenheimer.

12 We've been joined by Senator Golden.

13 Senator Farley?

14 SENATOR FARLEY: Thank you very much,  
15 Mr. Chairman.

16 Let me apologize for my running out, but I'm  
17 a local senator, and I have had two school groups  
18 that are meeting, grilling me about questions.

19 Incidentally, I've been a teacher longer than  
20 I've been a senator. And I've been a senator for  
21 35 years.

22 CHANCELLOR WALCOTT: I think I've been a  
23 teacher longer than I've been a chancellor, and I've  
24 only been a chancellor for 30 days.

25 [Laughter.]

1 CHANCELLOR WALCOTT: So, I can empathize with  
2 that.

3 SENATOR FARLEY: Well, you're doing very  
4 well.

5 And I have read your testimony. And we're  
6 discussing something that is very, very significant,  
7 not only to the voters of this state, but to all the  
8 parents, and so forth, that have children in  
9 schools.

10 And I think that we can be very proud of the  
11 teachers that we have. But, I think it is  
12 absolutely agreed, that the process needs a little  
13 bit of looking at, and reformation.

14 And, certainly, I was interested in your  
15 comments on the rubber rooms, and so forth, because  
16 that got a lot of play around the state, to say the  
17 least.

18 I certainly wish you well in what you're  
19 trying to do.

20 CHANCELLOR WALCOTT: Thank you, Senator.

21 SENATOR FARLEY: And I think that we're very  
22 blessed to have a great chairman in  
23 Senator Flanagan, who has really taken on a lot of  
24 the hard issues. And this committee is going to  
25 look at all of these issues very firmly, and see if

1 we can't resolve something.

2 But, we appreciate your testimony.

3 CHANCELLOR WALCOTT: Thank you, sir.

4 And thank you for having us up here.

5 SENATOR FLANAGAN: Chancellor, thank you very  
6 much.

7 Senator, I appreciate you being here.

8 CHANCELLOR WALCOTT: Thank you for your  
9 leadership. And we truly appreciate this  
10 opportunity to present, and look forward to any  
11 future questions that you may have.

12 And to all the members of the committee,  
13 thank you for your leadership as well.

14 Thank you, sir.

15 SENATOR FLANAGAN: Thank you.

16 Next, we will hear from the state education  
17 department.

18 SENATOR FLANAGAN: Good morning.

19 MS. GREY: Good morning.

20 SENATOR FLANAGAN: Thank you for coming,  
21 Ms. Grey.

22 Would you, kindly, just introduce everybody  
23 who is with you today.

24 MS. GREY: Sure.

25 Thank you, Senator Flanagan.

1           We are happy to be here today, to talk about  
2 this very important issue.

3           I want to introduce members of the SED team  
4 that are with me.

5           On my right is Richard Trautwein, general  
6 counsel.

7           On my left, we have Deb Marriott, who  
8 oversees the tenure-teacher hearings, 3028 process.

9           And, Ken Slenz is also to my left, and he is  
10 in charge of district services.

11           So, I don't want -- we have testimony before  
12 you that includes a number of charts with some data,  
13 that I may need to refer to as we talk this morning.

14           But, I want to echo a couple of things that  
15 Chancellor Walcott mentioned in his testimony.

16           And, first, and foremost, is that, in  
17 New York State, I think we have about 200,000  
18 teachers.

19           In 3020-a, we have, probably, about 400 new  
20 cases each year.

21           So, I would just emphasize, that the majority  
22 of our teachers are to be commended for the job that  
23 they do every day in the classroom.

24           That being said, though, the teachers that  
25 are currently subject to the 3020-a process, for

1 either misconduct or incompetence, this system is  
2 definitely broken. And, I mean that, literally, and  
3 figuratively.

4 The current process takes far too long.

5 I want to throw out just a couple of  
6 statistics because I think they tell a story.

7 New York City mentioned the improvement that  
8 they were able to achieve through their agreement  
9 with UFT. And the statistics that we have in our  
10 testimony bears that out.

11 But, if you take a look at the rest of the  
12 state, the numbers are quite startling.

13 We've got about, a delay, that the process  
14 for the rest of the state, for a "guilty" decision,  
15 oftentimes takes two years.

16 For a "not guilty" decision, it can take  
17 about a year and half.

18 And, settlements, typically take  
19 approximately a year.

20 This, to us, seems far too long.

21 And I think that we have some ideas about how  
22 we can speed the process.

23 On page 5, there's also a timeline that  
24 demonstrates what the statute contemplates, in terms  
25 of how long these cases should take to resolve.

1           And it's -- I apologize, it's a little bit  
2 busy, but it does give you a sense of where the  
3 different breakdowns occur.

4           And you'll see that -- you know, that the  
5 statute contemplates selecting an arbitrator in  
6 about 45 days; when, if you look at the statewide  
7 average, the reality, it's about two months longer  
8 than that.

9           And if you go through each step of the  
10 process:

11           Prehearing conference takes three months  
12 longer than the law contemplates.

13           Final hearing days, six months.

14           Et cetera, et cetera.

15           On average, these proceedings are taking more  
16 than a year longer than the timelines provided in  
17 the statute.

18           The system also costs a lot of money.

19           It's -- the state, for the 3020-a process,  
20 pays 100 percent of the hearing costs. That  
21 includes the arbitrators, as well as the court  
22 recorders.

23           And this program has been chronically  
24 underfunded for a number of years.

25           Right now, our estimate for the current



1 fiscal year, is that the accumulated deficit is  
2 going to be in the neighborhood of \$10 million.

3 That's the result of funding, around,  
4 4 million a year, when the program has consistently  
5 grown to be costing us about 7 to 8 million dollars  
6 a year.

7 And, so, what that has also meant, is that,  
8 we are way behind in paying the bills.

9 We use every dollar that's appropriated; but,  
10 right now, we're about 15 months behind in paying  
11 the arbitrator bills.

12 It also costs a lot of money, in terms of the  
13 district. As these proceedings take longer than  
14 they should, the district is also paying for  
15 substitute teachers, as well as, many times, the  
16 teacher that's suspended with pay.

17 There's also extensive legal costs that go  
18 along with this.

19 I would argue that those are higher than they  
20 need to be because there is no reciprocal discovery.

21 And, so, there are just -- there are a number  
22 of things that are coming together, we believe, at  
23 this point in time, that if we don't do anything,  
24 the system has a chance of collapse.

25 We're already having arbitrators refusing to

1       serve. And while we are also looking for additional  
2       statutory authority to enforce these timelines, it's  
3       sometimes, of course, challenging when you're not  
4       paying the person for their services in a timely  
5       fashion.

6                So, that being said, I think that the time to  
7       reform is now.

8                And I salute you for taking all of this time  
9       to really explore this issue thoroughly.

10               There are a lot of ideas on the table.

11               SED has a departmental that we believe would  
12       make a dramatic improvement in the program.

13               Basically, we believe that we could speed up  
14       the process in a number of ways.

15               3020-a is one of the few areas I'm aware of,  
16       where, the employee, or the employees' bargaining  
17       unit, does not pay any share of the hearing costs.

18               When you take a look at the contracts that  
19       the state has with the major state employee unions,  
20       like CSC and PEF, those costs are split 50/50.

21               And when you look at the list of all the  
22       other unions, for the most part, that's consistent.

23               I think there's a couple of unions that the  
24       state has contracts with, where the loser pays.

25               But, for the most part, it's a 50/50 split,

1 so that the incentives are shared in terms of trying  
2 to get to a speedy resolution.

3 I think that it helps us speed that process,  
4 but it also would help in terms of dealing with the  
5 fiscal crisis that the program currently has.

6 So, the way that we would envision this  
7 working, is that, whatever the legislature decides  
8 to appropriate, we would use to pay the hearing  
9 costs.

10 Anything above and beyond that would be split  
11 50/50 between, the school district, and the employee  
12 or the employees' bargaining unit.

13 We think that that would go a long way in  
14 terms of fixing your process, as well as the fiscal  
15 side of things.

16 We would also speed up the process by  
17 proposing to include reciprocal discovery. That's  
18 something that was discussed just a few minutes ago.

19 We think that it's one of the few areas where  
20 that doesn't exist.

21 And even in criminal proceedings, there's no  
22 trial by surprises.

23 And all of the SAPA-related administrative  
24 proceedings do require a mutual discovery.

25 We would also -- we would also be looking for

1 specific statutory authority for the commissioner to  
2 step in and disqualify arbitrators when the  
3 timelines that are in the current statute are not  
4 followed.

5 Right now, our ability to enforce is limited.  
6 And we're looking for specific authority which was  
7 included, for purposes of the 3020-a expedited  
8 process, which relates to the new teacher eval.

9 We're looking to have that same authority  
10 come in for the overall system.

11 We would also propose, to reduce costs -- I  
12 mean, all of those things speed the process, so that  
13 saves money.

14 We also would -- we would also be seeking  
15 authority to set maximum arbitrator rates.

16 Right now, the rates range, from, between  
17 \$900 to \$1,800. And it depends on what region of  
18 the state you are in.

19 The current law requires that we pay  
20 customary -- usual and customary fees. We don't  
21 necessarily have the ability to cap at a reasonable  
22 rate.

23 And, again, we would be looking to set this  
24 at a reasonable rate, after consultation with  
25 experts and stakeholders. But, it does seem that we

1           need to do more to control the costs.

2                       We would also set some additional controls on  
3 the study days that are permitted right now. The  
4 arbitrators are paid for their hearing days, as well  
5 as preparation days, to study for the hearing, and  
6 to write their decisions.

7                       So, we think that you could -- we could  
8 reduce costs there as well.

9                       And, so, I think that those are the basic  
10 provisions in the bill that, Senator Flanagan,  
11 you've introduced on our behalf. And I appreciate  
12 that.

13                      Our goal is to have a speedy process, that  
14 continues to have the teachers that should be in the  
15 classroom, in the classroom.

16                      Those that should not, out of the classroom,  
17 in a very swift and speedy basis.

18                      Again, we believe in due process, but we  
19 think that these changes do not affect due process,  
20 and would serve the state well.

21                      And, with that, I'm happy to answer any  
22 questions.

23

24

25

1           SENATOR FLANAGAN: Thank you very much.

2           Let me just, Senator Seward has to get to  
3 another appointment, so he's going ask some  
4 questions.

5           But, I want to start: I can't speak to  
6 Mr. Slentz, as I haven't the opportunity to interact  
7 with him, but I would like to compliment the  
8 department, and Miss Marriott and Mr. Trautwein in  
9 particular, for, no pun intended, helping educate  
10 me, not only on this process, but on the new teacher  
11 evaluation process.

12           So, Senator Seward.

13           SENATOR SEWARD: Thank you.

14           Well, Senator Flanagan, I can vouch for  
15 Mr. Slentz, because he's a former school  
16 superintendent in my senate district. So, I will  
17 vouch for him.

18           MR. SLENTZ: Good morning, Senator.

19           SENATOR SEWARD: well, good morning.

20           And I just had couple of questions.

21           The visuals in your testimony were very  
22 helpful, and very telling.

23           I wanted to get behind the numbers a bit, in  
24 terms of the reasons for missing the deadlines in  
25 that protracted timeline, in your view.

1            Obviously, in your departmental bill, you  
2 zero in on the reciprocal-of-discovery issue, as  
3 well as the arbitrators' role here.

4            I mean, are they the reasons for the delays,  
5 or in missing deadlines, or something systemic that  
6 needs to be corrected here?

7            Could you just, before we look at the  
8 solutions to a perceived problem, what are the  
9 reasons for the problem?

10           MS. GREY: Sure, I'll take a stab at this,  
11 and ask Deb to fill in some of the details.

12           But, some of the breakdowns, for example,  
13 selecting an arbitrator, which is contemplated to  
14 take, maybe a month and a half, and takes two months  
15 longer than that, is oftentimes the result of  
16 difficulty in finding arbitrators that are willing  
17 to serve, that meets the needs of both parties.

18           That's become even more problematic in the  
19 last year or so, as the bills have been piling up.

20           I would say that, in terms of the prehearing  
21 and the final hearing dates, reciprocal discovery  
22 should go a long way toward reducing those  
23 timelines.

24           But, frankly, I would say that a lot of this  
25 is just not being able to enforce the timelines that

1 are in the legislation now.

2 I think, if you look at UFT and New York  
3 City's agreement, they -- their agreement started,  
4 and began to take effect, at September 1st. And  
5 closed out cases by the end of December.

6 So, that's about four months.

7 The current law contemplates about  
8 five months.

9 So, this can be done. It just needs to  
10 have -- it just needs to be strengthened, in terms  
11 of making sure that the folks have the authority to  
12 say: This is it, and we're not going to -- you  
13 know, we're not going to tolerate any delays.

14 So, I think it can be done.

15 Deb, do you have anything to add in terms of  
16 the problems that contribute to this?

17 SENATOR FLANAGAN: I think, as we -- I think,  
18 as Val had started her testimony, she indicated that  
19 the incentives were misaligned.

20 And part of that is, is that, the parties  
21 that are at the hearing, present at the hearing,  
22 have no stake in the process, in ensuring that the  
23 hearings get quickly resolved.

24 So, the hearing officers are not prioritizing  
25 the work, partly because SED is not paying the



1 bills, so that they are putting other private-sector  
2 work, or other work, in front of conducting these  
3 hearings.

4 And, in terms of delays in selecting the  
5 arbitrators, Val is correct; we are experiencing, at  
6 least in the rest of the state, not New York City --  
7 New York City, we know they have preselected panel  
8 of arbitrators -- for the rest of the state, the  
9 parties sit down and choose from a list.

10 And we are having a number of -- a  
11 significant number of declinations.

12 So, once the parties have agreed upon the  
13 arbitrator, it's our office's role to contact them,  
14 to see if they're ready, willing, and able to accept  
15 the case.

16 And, many times, they're declining.

17 And, again, a lot of it has to do with the  
18 fact that we're not paying our bills.

19 In the rest of the state, the arbitrators are  
20 traveling distances to attend the hearings, and they  
21 lay the travel money out at their own pockets. And,  
22 now, they're waiting.

23 In addition to not paying the bills for the  
24 issuance of the decision, they're also waiting to  
25 get their travel expenses that they've laid out of

1 their own pocket, upwards of 15 months to get  
2 reimbursed.

3 SENATOR SEWARD: Thank you.

4 Just one follow-up question. Perhaps it  
5 would be -- may be more difficult to answer.

6 You've outlined the -- what happens to cases  
7 once they are commenced through the 3020-a process.

8 And I would have to say, you know, with the  
9 200,000 teachers in New York State, the number of  
10 cases that we're talking about, I mean, is very,  
11 very small. Minuscule.

12 And the point has to be made, that  
13 99.9 percent of the teachers are excellent, and  
14 we're very, very proud of the job that they do.

15 However, my question is: Anecdotally, from  
16 some of my school districts, when they talk to me  
17 about the 3020-a process, they do cite the delays  
18 and the costs, which we're talking about here today.

19 But they wanted to say, that, in some  
20 cases -- and this is all anecdotal -- that,  
21 unfortunately, some of them don't even commence the  
22 cases because of the delays and the costs.

23 And I would say that that's a sad commentary  
24 on the system.

25 Is there any way to quantify just how

1 widespread that problem is, in terms of cases that  
2 are not even commenced, perhaps handled in a  
3 different way, or not handled at all, because of the  
4 breakdown in the system currently?

5 MS. GREY: Yeah, you're right, that's a much  
6 more difficult question, which I don't think that we  
7 can answer, in terms of any sort of data about what  
8 cases are not brought because of the challenges in  
9 the current system.

10 But, I, too, have heard from a number of  
11 school districts, that they're saying, they're just  
12 not even pursuing 3020-a cases because of the costs  
13 and length of time.

14 I think the school board's association, and I  
15 know they're going to be speaking with you later,  
16 did a survey several years ago. And they estimate  
17 that each 3020-a case, at average, costs schools  
18 \$217,000. So...

19 SENATOR SEWARD: Thank you.

20 Thank you, Chair.

21 SENATOR FLANAGAN: Thank you, Senator Seward.  
22 Senator Saland?

23 SENATOR SALAND: In terms of, just on that  
24 last question, and response by Senator Seward, what  
25 prevents SED from becoming a repository of

1 information each time a charge is made?

2 In other words: As we all know, most of  
3 these cases settle.

4 So, when you say your universe consists of  
5 three to four hundred, many of them settle, as  
6 indicated by Senator Seward, because of the expense  
7 and delay associated with the proceeding.

8 And I have to assume that what comes through  
9 the funnel is, comparatively, a small, or minor,  
10 portion of the number of charges.

11 Would it not be important to have a database,  
12 even if charges were maintained as confidential, as  
13 distinguished from the formal initiation of a  
14 proceeding, so, you, and the rest of the world,  
15 would know how many of these charges are out there?

16 And if a charge turned out to be unfounded,  
17 or dismissed, or settled, that your records be noted  
18 accordingly.

19 MS. GREY: Yeah, I think that I would have to  
20 check with counsel, whether we would need statutory  
21 authority to collect that information.

22 But, regardless, just conceptually, I guess  
23 the department could certainly collect it.

24 We would, of course, want to make sure that  
25 we had a database, and the staff and the resources,

1 to actually do something with it, and monitor, so  
2 that it became meaningful.

3 But, it's certainly something we could talk  
4 about.

5 SENATOR SALAND: Just a follow-up, and I  
6 would welcome counsel advising what difficulties, if  
7 any, that might present, inasmuch as you are  
8 maintaining records with regard to those cases that  
9 are actually initiated.

10 And I'll allow myself the indulgence of an  
11 assumption -- which one is always at great risk when  
12 you do -- which would be, given the fact that we  
13 live in a highly technological world right now, I  
14 have to assume that entering this type of data is  
15 not that difficult or expensive.

16 But, I would welcome counsel's comment, if he  
17 would like to, you know, ponder it for a while  
18 before commenting, as to why SED could or could not  
19 start to accumulate that --

20 MS. GREY: Sure.

21 And, actually, before Richard speaks to that,  
22 I'm just going to have Deb Marriott -- there are  
23 some charges that we do get, and some charges that  
24 we may not get. And, so, I'm just going to have her  
25 clarify. She's in the field, in the trenches.

1 MS. MARRIOTT: Once the board votes on  
2 charges, and they're proceeding down a formal 3020-a  
3 path, they file those charges with the department.

4 That -- so, we get all of the formal charges.

5 I think what Senator Seward and  
6 Senator Saland are alluding to are, perhaps, cases  
7 that get resolved at the investigation stage, prior  
8 to the formal charges.

9 We do not get that information.

10 I can tell you that, anecdotally, it breaks  
11 down on, probationary teachers versus tenured  
12 teachers.

13 If they're a probationary teacher, if you're  
14 having the whispers of issues, they're going to be  
15 terminated as part of the probationary appointment.

16 Tenured teachers, unless there's serious  
17 misconduct, they're typically not moving towards the  
18 formal charges. They may be looking for other  
19 informal ways.

20 And the statistics that you were looking for,  
21 Senator Seward, in terms of finding out how many  
22 cases are not brought, because it's too expensive  
23 and too lengthy, are going to be much harder to nail  
24 down because you are kind of asking school districts  
25 to shoot themselves in the foot, to let you know how

1 many incompetent or bad teachers they are retaining  
2 because the process is too difficult and expensive  
3 and lengthy.

4 SENATOR FLANAGAN: Val, I'm looking at you,  
5 but I have the feeling I'm going to get answers from  
6 Rich and Deb.

7 Two questions, in particular.

8 There is discussion, and some of my  
9 colleagues have raised this, the concept of 3020-a;  
10 and, now, 3012-c.

11 MS. GREY: Uh-huh.

12 SENATOR FLANAGAN: So, the new teacher  
13 evaluation process, how does that relate to 3020-a?

14 In my own simple mind, I kind of look at it,  
15 the 3012-c is separate and distinct. It's a new  
16 process, it includes an appeal. And, that has to be  
17 exhausted before this other statute would  
18 appropriately kick in.

19 If you could, perhaps, comment on that.

20 And, then, in particular the role that SED  
21 plays with, I guess loosely described as, Part 83.

22 Can you just enlighten us; where are there  
23 situations where, in essence, state ed. doesn't have  
24 to wait for anybody. They can come in, you know,  
25 throw down the hammers of hell, and this is what's

1 going to happen, and action gets taken quickly.

2 And how does affect some of the things that  
3 we're talking about?

4 MS. GREY: Uh-huh.

5 On 3012-c, on teacher eval, I'm going to have  
6 Rich give you the details.

7 But, basically, the new teacher eval system  
8 that was included in the statute last year, includes  
9 a new expedited 3020-a process.

10 And, so, the fundamental problems and issues  
11 with 3020-a, I think is -- still needs to be  
12 addressed in order to have a fully functioning  
13 teacher eval system.

14 But, I'm going to let Rich talk about the  
15 details.

16 MR. TRAUTWEIN: Sure.

17 First of all, the 3020-a is much broader than  
18 just the, you know, incompetency cases; or, the  
19 newer system that was established by Chapter 103,  
20 provides for an expedited hearing when a teacher  
21 gets two consecutive ratings of "ineffective."

22 That is subset of 3020-a. It's just a  
23 tighter timeline. There's a specific provision that  
24 allows the commissioner to remove the arbitrator  
25 from the list for those expedited hearings if they



1 don't comply with timelines.

2 Our proposal -- or, bill; that proposal would  
3 expand that authority enough to cover all 3020-a's,  
4 whether the charge is incompetence; conduct  
5 unbecoming; insubordination; conviction, which can  
6 involve things like conviction of a crime; or any of  
7 the variety of things that can be a form of  
8 misconduct, giving rise to discipline.

9 So, if there is a need; if there are two  
10 consecutive -- you know, the inability to expedite  
11 the hearing, the -- for one thing, it doesn't have,  
12 even in the expedited hearings, there's no provision  
13 for the reciprocal discovery at this point.

14 So, parts of this bill will impact even those  
15 hearings.

16 SENATOR FLANAGAN: I'm sorry, could you  
17 repeat that?

18 MR. TRAUTWEIN: There's no provision for  
19 reciprocal discovery in the new expedited.

20 SENATOR FLANAGAN: Is, or is not?

21 MR. TRAUTWEIN: "Is not." They're 3020-a  
22 hearings. And there wasn't specific language on  
23 that.

24 There was a little, you know, tighter time  
25 frame with which the hearing would be completed, but

1 not the reciprocal discovery.

2 The other portions of our bill that deal, I  
3 think, with the very practical issues, I mean, our  
4 viewpoint is, this is a system in crisis right now,  
5 and that tries to deal with some of the final  
6 issues, the fact that there's no incentive to end  
7 these hearings in a reasonable time.

8 All of that comes into play, no matter what.  
9 You know, no matter which type of hearing you are  
10 contemplating, the state still, under the current  
11 law, pays, and pays at the higher rate.

12 So, the -- you know, our opinion is, you  
13 know, both are needed: Our proposal here, which  
14 will, to a certain extent, cover the expedited  
15 hearings. And, we certainly need it for the full  
16 range of charges beyond incompetence.

17 MS. GREY: In terms of Part 83, which is the  
18 process that we have for moral-character hearings, I  
19 just want to, sort of -- 3020-a -- I'll try to  
20 distinguish between the two:

21 3020-a deals with the teacher's employment  
22 status at a particular school.

23 Part 83 can deal with, whether or not that  
24 teacher's certification is revoked or suspended if  
25 there are issues of moral character.

1 But, do you want to, Deb, give a --

2 MS. MARRIOTT: The Part 83 proceeding would  
3 deal with, as Val indicated, a person's  
4 certification.

5 There are -- as we refer to it, there are  
6 many different proceedings that could be pro- --  
7 happening simultaneously, that deal with different  
8 issues, and the outcomes are different.

9 In a 3020-a proceeding, the most significant  
10 penalty that could happen is the termination of that  
11 tenured teacher's rights to that position. But,  
12 they still retain their certification, and they can  
13 move to another school district.

14 The Part 83 proceeding that you're referring  
15 to, is held pursuant to the commissioner's  
16 regulations. It's also grounded in the education  
17 law, the commissioner's authority to regulate the  
18 practice of teaching.

19 The final result of that particular  
20 proceeding, the most significant penalty could be  
21 revocation of their teacher certification, which  
22 means, they could not teach in any position, for  
23 which certification is required, throughout the  
24 state.

25 Now, that can only happen for questions that

1 raise a substantial question of moral character.

2 So, 3020-a is broader, in terms of the  
3 employer's right to seek to terminate an employee,  
4 as Rich had indicated, for insubordination,  
5 incompetence, but also misconduct.

6 Part 83 applies primarily to the misconduct,  
7 or the substantial question of moral character.

8 Our office is under a lot of pressure because  
9 of the high expense and the duration of the 3020-a  
10 proceedings, from the school-district perspective,  
11 to simply go ahead and pursue the moral-character  
12 proceeding at the statewide level, to impact the  
13 certification, so they can avoid the lengthy and  
14 expensive 3020-a process.

15 MR. TRAUTWEIN: And I just would add that, as  
16 a general proposition, Part 83 is -- applies when  
17 the offense reaches -- is of statewide concern.

18 You know, 3020-a is the employer-employee  
19 relationship, and it applies to wide range of  
20 offenses.

21 I think as, you know, Senator Saland knows,  
22 we -- legislation was adopted a couple of years ago,  
23 dealing with the most serious sex offenses, that  
24 provides a process; whereby, an expedited process  
25 under Part 83, where there's automatic revocation,

1 and then a hearing at post revocation.

2 One thing we did in this bill, which I don't  
3 know if you understood the relationship, but we're  
4 proposing that there be no hearing under the 3020-a  
5 when a teacher's certification is revoked, or is no  
6 longer in effect.

7 So, that's a counterpart to what we proposed  
8 a couple of years ago regarding those most serious  
9 offenses. And this would allow districts to  
10 dispense with the hearing, against that, when  
11 automatic revocation occurred.

12 You know, as a general proposition, I also  
13 see the Part 83s, you can think about them, when  
14 we get case -- we get, a lot of the cases involve  
15 various sorts of criminal conduct. More serious  
16 offenses do come us to. And, we to deal with them.

17 MS. GREY: Uh-huh.

18 MR. TRAUTWEIN: But, you know, the 3020-a is  
19 a broader employee-employer situation, where --  
20 of -- you know, a much broader range of charges are  
21 considered.

22 SENATOR FLANAGAN: Just a couple of  
23 follow-ups on that.

24 Just give me a sense of the volume of cases;  
25 has it -- is it large now, is it growing?

1           But, in that context, going back to something  
2           that Chancellor Walcott said, there was a case  
3           highlighted, about a teacher who was convicted of  
4           manslaughter. And I believe there was a fine  
5           imposed.

6           I don't remember the exact punishment.

7           But, is that an example of a case where the  
8           state education department could step in and,  
9           potentially, take some action?

10          And, then, two-part question:

11          There is -- there are due-process protections  
12          within Part 83 as well. Am I correct?

13          Okay.

14          If you can just speak to those two points in  
15          particular.

16          MS. MARRIOTT: Yes, that is correct. There  
17          are due-process protections within Part 83.

18          We are -- there have been times when  
19          proceedings have gone through a 3020-a process, and  
20          the penalty determined by the arbitrator is less  
21          than termination; which we would agree, is the most  
22          significant penalty that can come out of the 3020-a  
23          process.

24          where we have, believe the underlying conduct  
25          is a substantial question of moral character, and we

1 will still proceed with a Part 83 proceeding.

2 So, the employee in that 3020-a proceeding  
3 may have received a suspension or a fine, or  
4 something less than termination. But we believe,  
5 from the statewide perspective, that the behavior  
6 was a substantial question of moral character, and  
7 we may still proceed with our own proceeding, to  
8 take action against the certification.

9 And in that event, if we did that, and at the  
10 end of our process, if the certification was  
11 revoked, the school district would then be unable to  
12 employ that teacher in a certified capacity, and  
13 would have to then proceed with another 3020-a  
14 proceeding based on lack of certification.

15 So, in the case you're talking about, where a  
16 person got a fine for a manslaughter conviction, if  
17 we believe that was a substantial question of moral  
18 character -- and I have to speak hypothetically,  
19 because I can't speak about any particular case --

20 SENATOR FLANAGAN: Uh-huh.

21 MS. MARRIOTT: -- we would not be precluded  
22 from bringing an action under Part 83, which would  
23 also involve due process for the teacher, the right  
24 to be represented by counsel, the right to have a  
25 hearing, the right to confront and cross-examine

1 witnesses and the evidence against you.

2 SENATOR FLANAGAN: Senator Marcellino?

3 SENATOR MARCELLINO: Thank you, Mr. Chairman.  
4 And, good morning.

5 MS. GREY: Good morning.

6 SENATOR MARCELLINO: Are you familiar with  
7 the testimony that Mr. Walcott -- Chancellor Walcott  
8 gave --

9 MS. GREY: Yes, I am.

10 SENATOR MARCELLINO: -- and their plan for  
11 their kind of -- the city's 3020-a proceedings?

12 MS. GREY: I heard about it the same time you  
13 did.

14 But, I think I would just -- just some  
15 initial reactions. I can't speak to the details of  
16 their proposal.

17 But, when we were talking with the board of  
18 regents about the tenured-teacher hearing issues, we  
19 did discuss a couple of alternatives, in terms of  
20 the proposal that we sent to the legislature.

21 One of those was, establishing administrative  
22 law judges within SED, to hear these cases. It's a  
23 model that's used in other state agencies, like DEC.  
24 I think there's a tax tribunal.

25 So, I think, conceptually, it was something



1 that we were interested in.

2 I think that we decided to go this route, by  
3 building on the existing system. And we thought it  
4 would be fairly challenging to get the resources and  
5 approval to expand the SED work force at this point  
6 in time.

7 SENATOR MARCELLINO: I'm assuming the panel  
8 that the chancellor was talking about would be a  
9 permanent panel that would be employed full-time,  
10 because they would be doing this, and nothing but  
11 this, and only this.

12 My concern was -- and I don't know if you  
13 heard my questioning, but, my concern with them was,  
14 that the -- and it's the same thing that I had with  
15 the arbitrators: they're not educators.

16 If someone commits a felony, they steal  
17 something, they're convicted, that's pretty  
18 clear-and-cut: they're gone. Or should be.

19 But when you get into the realm of  
20 effectiveness or competency, in my mind, I think you  
21 need someone to understand the problems, and  
22 understand the system, and understand what the  
23 individuals within the system have to go through.

24 Teachers, principals, they all have certain  
25 concerns.

1 I don't see this.

2 And I'm beginning to wonder if we're just  
3 substituting one set of lawyers for another set of  
4 lawyers here, and we're working around the outsides  
5 of the system, and we're not really getting to the  
6 true heart of it.

7 Everybody seems to want to save money.  
8 That's good. I certainly am for that.

9 I really want to expedite the process without  
10 hurting anybody's rights. That's good. I'm for  
11 that. I don't think anybody would be against that.

12 But I don't see how your system does that, by  
13 simply saying -- I mean, as Senator Saland pointed  
14 out, the law says: It's got to be quick. It's got  
15 to be as fast as possible.

16 The minute you bring in adversarial lawyers,  
17 who are going to come in there, that, "I object";  
18 "I need a delay"; "I need a postponement"; "I need  
19 this" -- how does that change? How do you change  
20 that process?

21 MS. GREY: Well, I think that we better align  
22 the incentives. We change the process by having  
23 some teeth, in terms of enforcing the process.

24 And by better aligning these incentives, will  
25 there still be a legal back-and-forth? Yes.

1           But I think the city has demonstrated that,  
2 when you have an agreement -- or, in our case,  
3 statutory change is necessary to make it happen --  
4 it can be done.

5           And, so, I believe that our bill dramatically  
6 improves the system.

7           You're right; it builds on our existing  
8 system.

9           And, there are other alternatives out there,  
10 and we're happy to talk to folks about other  
11 alternatives.

12           Our goal really is, just to try and see the  
13 system fixed.

14           SENATOR MARCELLINO: I will say the same  
15 thing I said before, and I'm going to have to leave  
16 myself because I have another thing to go to.

17           MS. GREY: Sure.

18           SENATOR MARCELLINO: Chancellor Walcott's  
19 predecessor failed, in my mind, because she did not  
20 understand the system that she was coming to  
21 administer.

22           She was a great executive. She knew how to  
23 handle corporate entities, and so forth and so on.  
24 I give her great credit for what her background was.

25           But, she didn't understand the educational

1 system.

2 I don't see how an arbitrator can function  
3 within that system, I don't see how the city's law  
4 judges can function within the system, without  
5 having a basic understanding of the system.

6 I'm not talking about just the reading of the  
7 law. I'm talking about truly understanding what the  
8 people involved in the process, delivering the  
9 services, go through.

10 If you don't know what they're doing; if you  
11 don't understand what they're doing, and why they're  
12 doing it, there's no way you can fairly evaluate  
13 them, in my mind.

14 So, I think, one of the things I haven't  
15 heard in either one of your testimonies, is that,  
16 we're going to bring in people who are trained, who  
17 know the system.

18 Just calling someone an "arbitrator" doesn't  
19 train them. And just because they're a lawyer --  
20 with all due respect to my two colleagues on either  
21 side, who will hit me -- he just did.

22 [Laughter.]

23 SENATOR MARCELLINO: That's okay. I've been  
24 hit before.

25 [Laughter.]

1           SENATOR FLANAGAN: A lot harder too.

2           SENATOR MARCELLINO: A lot harder too. My  
3 wife does that.

4           -- you're not going to change the system, by  
5 wishing it. You need some people who really  
6 understand it, to do this.

7           And I'm more than willing to work with the  
8 chairman for that, and with you too.

9           I appreciate the goal. We all have the same  
10 goal, and I believe the union has the same goal.

11           Competent teachers in front of the classroom,  
12 delivering the right service, the maximum service,  
13 to our children; that's our goal. We all -- with  
14 the best possible price.

15           We all understand that. That's our goal.

16           I just don't think you're getting there,  
17 really, at this point in time. And I think you need  
18 to work this program a lot more before you get  
19 there.

20           It's like shooting a Sherman tank with a bow  
21 and arrow. It's not going to work, not in my mind.

22           MS. GREY: Well, we look forward to working  
23 with you.

24           SENATOR FLANAGAN: Before I go to  
25 Senator Oppenheimer, I just wanted to clarify,

1 following up on what Senator Marcellino is saying:  
2 Is it a relatively fair description to say, that the  
3 arbitrators are chosen through a process, by which,  
4 they're evaluated by state ed., and then  
5 independently evaluated by the school districts, and  
6 the union?

7 And, in my own limited experience involving  
8 arbitration, you can, literally, pick out people who  
9 have a wealth of experience in, labor, or  
10 transportation, or environment?

11 So, can you cover some of those concerns in  
12 that respect? Or...

13 MS. GREY: All of the arbitrators that are  
14 used in the 3020-a process are on the  
15 American Arbitration Association list.

16 And they have demonstrated certain  
17 qualifications in the area of, education, or  
18 employer-employee relations' hearings, to get in the  
19 pool that is selected from for these proceedings.

20 In other words: You wouldn't necessarily get  
21 somebody who's -- specializes in environmental  
22 arbitrations, that are in the pool of arbitrators.

23 But, I do hear Senator Marcellino's comments  
24 with respect to their qualifications.

25 We do understand that the individuals have a

1 choice. They get 15 arbitrators that they can  
2 choose from.

3 The panel of arbitrators that are used in  
4 New York City by the DOE and the UFT, are a group of  
5 39 individuals that are all AAA arbitrators, that  
6 the two organizations have agreed are best suited to  
7 handle their types of cases.

8 So -- but, we certainly take your comments to  
9 heart, and are happy to -- and entertain other  
10 ideas.

11 SENATOR MARCELLINO: Thank you.

12 SENATOR FLANAGAN: Thank you.

13 Senator Oppenheimer?

14 SENATOR OPPENHEIMER: I'm not questioning the  
15 competency of the arbitrators, only the delay of the  
16 arbitrators.

17 And my suggestion, which I made earlier,  
18 could be tailored.

19 I first suggested that there be a panel,  
20 maybe chosen by the governor, or whoever, that were  
21 just retired teachers that were willing to do this,  
22 either for-pay or not-for-pay. And they certainly  
23 would have had the background.

24 The other choice would be, to have a panel  
25 that is just comprised of, maybe, retired attorneys.

1 I hate to stick up for the attorneys, but I  
2 will say that they learn very quickly, their new  
3 fields.

4 My husband, ever since he retired, has been a  
5 federal arbitrator.

6 And I must say, the cases come quickly, and  
7 are diverse, but that is their background. They  
8 have a background in learning what the issue is,  
9 quickly.

10 So, I think panels of either group would --  
11 or maybe a combination -- but, I think they're here.  
12 They're not going away. And they would be, you  
13 know, able to resolve this in a fraction of the  
14 time.

15 So, it's just another one of the choices,  
16 adding to the others that we've heard.

17 But, thank you.

18 SENATOR FLANAGAN: Senator Saland?

19 SENATOR SALAND: There has been numerous  
20 references to the fact that there's a lack of a  
21 reciprocal discovery.

22 You alluded to it, Ms. Grey, as one of the  
23 reasons why these proceedings are as costly as they  
24 are.

25 And, yet, when Mr. Trautwein made reference



1 to the new proposed legislation, you said there's  
2 still no reciprocal discovery.

3 And, quite candidly, I would just ask the  
4 question, why not?

5 How is it justified, if everybody  
6 acknowledges that it's such a critical component of  
7 due process, and it's going to save time and money,  
8 why is it not part of the proposal?

9 MS. GREY: Oh, I -- go ahead.

10 MR. TRAUTWEIN: The language that was enacted  
11 in Chapter 103 was negotiated. And we did advocate  
12 for reciprocal discovery.

13 It was not included in the final bill.

14 SENATOR SALAND: Negotiated by, whom?

15 MR. TRAUTWEIN: By -- well, we approached  
16 the -- we negotiated by -- our proposal originally  
17 was for reciprocal discovery.

18 And the legislation ultimately enacted, just  
19 didn't include it.

20 SENATOR SALAND: well, how the hell can you  
21 have due process if you don't have discovery?

22 MR. TRAUTWEIN: We advocated for it.

23 We agree. And that's why our proposal  
24 included --

25 SENATOR SALAND: And who refused --

1 MR. TRAUTWEIN: I really can't speak to that,  
2 Senator. That's privileged.

3 SENATOR SALAND: That is outrageous.  
4 Absolutely outrageous.

5 You're talking about fixing the system.

6 MR. TRAUTWEIN: Uh-huh.

7 SENATOR SALAND: And I'm sorry to vent at  
8 your expense. I apologize. I've known you for  
9 years, and I know how capable you are, and how  
10 dedicated you are.

11 But, it is truly outrageous to propose this  
12 as a major reform, when, what is lacking, is  
13 reciprocal discovery.

14 This isn't leveling the playing field. You  
15 know, it's critically important that a teacher have  
16 due process.

17 MR. TRAUTWEIN: Uh-huh.

18 SENATOR SALAND: But the playing field should  
19 be level, not like this, sloped.

20 I mean, this is a gross deficiency in any  
21 proposal to try and fix the problem.

22 MR. TRAUTWEIN: Understood.

23 And I think, and one other thing to comment  
24 on, the expedited hearing, one of the major changes  
25 that we made, was to move to a single hearing

1 officer.

2 You know, generally, as a panel, it would  
3 require other things related to the time frames.

4 So, it is still an expedited process.

5 We would like to see reciprocal discovery be  
6 a part of the rule for all 3020-a cases, including  
7 the expedited hearings.

8 SENATOR SALAND: Let me, if I might, I want  
9 to go back to the question of the felony, and it's  
10 not a moral-turpitude felony and a Part 83.

11 MR. TRAUTWEIN: Uh-huh.

12 SENATOR SALAND: What happens under your 3012  
13 construct? How is it treated vis-a-vis its current  
14 treatment under 3020-a?

15 MR. TRAUTWEIN: Uh-huh.

16 SENATOR SALAND: It just falls under the --

17 MR. TRAUTWEIN: 3012-c relates to a pattern  
18 of ineffective teaching, which is solely relating  
19 to, what a lawyer would call, "incompetency."

20 Any other charge is outside of that process  
21 entirely.

22 SENATOR SALAND: So, then, if you were here  
23 earlier, when I asked the chancellor, "Are we  
24 talking about a bifurcated system?" then it will be  
25 a bifurcated system?

1           That felony, if it doesn't rise to the level  
2 of a moral-turpitude felony, is going to be treated  
3 under the existing 3020-a?

4           MR. TRAUTWEIN: Yes.

5           There is an -- there was an expedited appeals  
6 process established in the legislation, for a very  
7 specific purpose, dealing with, you know, the  
8 teacher performance -- academic; the performance of  
9 the teacher teaching students on the evaluation.

10          And it did not deal with misconduct, which is  
11 independent of the teacher performance.

12          SENATOR SALAND: Ms. Grey, you had said  
13 something to the effect, that you're looking for the  
14 authority to impose adherence to timelines.

15          What is it that you're looking for? Do you  
16 have anything idea, that would enable you to  
17 effectively enforce those timelines?

18          MS. GREY: Yeah, I think that our proposal  
19 has specific language. It's modeled after the  
20 authority that was provided for the -- related to  
21 the teacher eval system.

22          And, so, we would want to have the ability to  
23 remove an arbitrator if they're not following the  
24 timelines. And I think that we contemplate a number  
25 of other activities that could give us the teeth,

1 and make some changes.

2 I think what we -- what we would do, is  
3 similar to what New York City did, in terms of  
4 getting tough with payments, timelines, et cetera.

5 I would add, though, that it is important,  
6 and I don't want to sound like a fiscal geek, to  
7 keep coming back to this, but, the system, if it  
8 relies on arbitrators, you know, these changes will  
9 make dramatic improvements, in our opinion.

10 But, unless there's some funding that's also  
11 allocated at some point in the future, we're going  
12 to continue to lag behind in paying bills. And it  
13 will be hard to tell arbitrators they've got to  
14 stick to these timelines, if you're not paying them  
15 for a couple of years.

16 And, so, I just throw that out there.

17 I know that the budget has been adopted.  
18 But, the way that we had structured the  
19 departmental, we envisioned two separate  
20 appropriations; one would deal with cases that had  
21 already started, and the other would deal with the  
22 go-forward cases, which this bill would start to  
23 apply to cases, I believe, starting in September.

24 SENATOR SALAND: The Chairman has been very  
25 patient with me, so let me just ask one more

1 question, and that will be it. I could ask several  
2 more.

3 Assume for the moment, there were no funding  
4 issues.

5 MS. GREY: Uh-huh.

6 SENATOR SALAND: Let's assume we're starting  
7 off with a clean slate; everybody's fine.

8 with regard to the selection of an  
9 arbitrator, which you say takes as much as a couple  
10 of months longer than the existing timeline provides  
11 for, why not make SED the default, so that, if, in  
12 fact, the decision is not made within that  
13 six-week period, both parties know, up front, that  
14 you are going to pick the arbitrator?

15 would that not light a fire under their  
16 collective derrieres, to make sure they moved on  
17 selection of an arbitrator?

18 MS. GREY: I think that's an idea worth  
19 considering. I will go back, and --

20 I know every -- I'm not delirious, and I  
21 don't think that anyone is going to pass the bill,  
22 as is. And, of course, there will be -- there would  
23 changes with any reform proposal.

24 So, we could take a look at that.

25 SENATOR SALAND: Thank you.

1 I apologize, Mr. Chair.

2 SENATOR FLANAGAN: And that is good. I would  
3 just to follow up on that.

4 I think we had briefly talked about this  
5 before: Take the concept of, like the city and the  
6 UFT, you have 39 members. Let's assume there are a  
7 pool of, say, 100 arbitrators that could be used  
8 across the state.

9 what do you think of the option of,  
10 basically, just -- and these are agreed upon,  
11 essentially, by the stakeholders -- just a random  
12 pick.

13 You're picking a number out of a hat, and  
14 it's got to be on a rotating basis.

15 There -- then, I would think that's probably  
16 as objective as possible.

17 You know, you certainly don't want to have  
18 someone getting, five, six, seven cases in a row;  
19 but, what do you think of the general concept of  
20 saying: Here's the pool. Number 22 is going to be  
21 the hearing officer for this case?

22 MS. GREY: Yeah, I think that's something  
23 that we can go back and think about it.

24 It's -- you know, just an initial reaction,  
25 is that that seems like an interesting alternative

1 that could be workable.

2 MR. TRAUTWEIN: And, just, the special ed.  
3 hearing process, due-process hearings, has a random  
4 selection process now.

5 So, that's something that we definitely could  
6 consider.

7 MS. GREY: Uh-huh.

8 SENATOR FLANAGAN: Okay. Thank you very  
9 much.

10 MS. GREY: Thank you.

11 SENATOR FLANAGAN: Next is NYSUT and UFT.  
12 Good morning.

13 At this juncture, we have two immediate-past  
14 chairs and one present chair; so, you're stuck with  
15 us for the time being.

16 But, Mr. Pallotta, welcome.

17 And Ms. Gerstel and Mr. Allinger, we  
18 appreciate you being here.

19 ATTORNEY GERSTEL: Thank you.

20 MR. PALLOTTA: Thank you.

21 Good morning.

22 Good morning, Senator.

23 SENATOR FLANAGAN: Could you pull that  
24 microphone in closer so people can hear you, please.

25 Thank you.



1 MR. PALLOTTA: Good morning,  
2 Senator Flanagan, other members of the state  
3 education committee. It's our privilege to be here  
4 today.

5 My name is Andy Pallotta. I represent NYSUT  
6 as the executive vice president.

7 And you know Carol Gerstel and  
8 Steve Allinger.

9 Michael Mulgrew apologizes for being not able  
10 to be here today.

11 You have requested that we not read  
12 testimony, so we will not read testimony today.

13 I do have some points which I will be  
14 reading --

15 SENATOR FLANAGAN: Sure.

16 MR. PALLOTTA: -- because of the fiscal  
17 importance of those.

18 In order to properly address this issue, we  
19 just want to quickly look back almost 100 years ago,  
20 at why we have tenure in the state.

21 Prior to the adaptation --

22 SENATOR SALAND: Pardon me. May I interrupt  
23 you?

24 Could you move the mic a little closer to  
25 you?

1 SENATOR OPPENHEIMER: Or in the center.

2 SENATOR SALAND: Into the center.

3 It's off to the side.

4 Thank you.

5 MR. PALLOTTA: Okay.

6 So, prior to the adaptation of the adoption  
7 of the state's tenure statute in 1917, teachers were  
8 subject to dismissal based on the whims of  
9 administration. This is something that we,  
10 obviously, do not want to return to.

11 There were numerous examples in our testimony  
12 of teachers who, without the protection of tenure,  
13 would have been improperly discharged from their  
14 employment for the most outrageous reasons.

15 The due-process protections set forth in  
16 3020-a are designed to ensure that educators, once  
17 having passed probation and appointed tenure, cannot  
18 be disciplined or discharged from their employment  
19 without just cause, after a truly fair and  
20 due-process hearing.

21 NYSUT does not, and has never, opposed  
22 ensuring that the procedures in 3020-a are  
23 efficient.

24 NYSUT does oppose, however, any changes to  
25 3020-a that would weaken the fairness of the process

1 in the name of efficiency.

2 Some of the statistics that I will speak on  
3 today:

4 The claim that it is difficult or impossible  
5 to fire a tenured teacher, is simply not true.

6 We have studied the results of 351 cases  
7 handled by NYSUT attorneys brought outside of the  
8 city of New York, which began and ended in the last  
9 5 1/2 years.

10 In about 35 percent of the cases, the teacher  
11 resigned soon after charges were filed.

12 In 40 percent of the cases that went to a  
13 decision, the teacher was terminated by the hearing  
14 officer.

15 Many of the other decisions or settlements  
16 resulted in substantial penalties or other  
17 resolutions designed to remediate any deficiencies  
18 in the teacher's performance.

19 The claims by some about how long it takes to  
20 prosecute a 3020-a proceeding are also greatly  
21 exaggerated, and based on flawed or incomplete  
22 fiscal analysis.

23 In our written testimony, we have provided  
24 you with numerous examples of these delays.

25 There are over 120,000 tenured teachers in

1 New York State, not including those working in  
2 New York City.

3 NYSUT's legal department handles the vast  
4 majority of the 3020-a cases.

5 During the 2005-2006 through 2009-2010 school  
6 years, our office handled an average of 104 new  
7 cases annually, outside of New York City.

8 In other words: Fewer than one 3020-a case  
9 is filed for every seven school districts, per year,  
10 outside of New York City.

11 Further, 84 percent of the cases commenced  
12 and completed in these five years was settled prior  
13 to a hearing, or prior to final decision by the  
14 hearing officer.

15 Additionally, in many cases, teachers, when  
16 confronted with the threat of 3020-a charges,  
17 immediately resign, or otherwise resolve the matter,  
18 without the necessity of charges ever being filed.

19 Any suggestion that the current process  
20 somehow forces school districts to keep large  
21 numbers of unsuitable or incompetent teachers in the  
22 classroom is not supported by these numbers.

23 As for the New York City School District, an  
24 agreement made in April of last year between UFT and  
25 then-Chancellor Klein has improved the process

1 immeasurably.

2 The agreement was made because more than  
3 500 teachers were sitting in the so-called rubber  
4 rooms for years sometimes. At least half were there  
5 for investigations and, many, never charged.

6 That system did not work for the DOE, or the  
7 teachers.

8 At the time of the agreement, there was a  
9 backlog of 350 cases. One year later, all but  
10 18 cases have been completed or otherwise resolved.  
11 The 18 cases are all awaiting decision.

12 With respect to the charges filed after  
13 September 1, 2010, the statutory timelines are being  
14 met and there is no backlog.

15 There have been 128 cases filed and  
16 completed.

17 31 cases have gone to hearing and decision.  
18 These cases have averaged 93 days.

19 The remaining 97 cases have been settled, and  
20 have averaged 33 days from charge to settlement.

21 Over the 2009-2010 and 2010-2011 school  
22 years, a period which covers both the backlogged and  
23 newly filed cases, 561 have been completed;  
24 176 decisions, and 382 settlements.

25 Of those, 34 percent, or 191, were either

1 terminated by decision, or resigned, or retired, in  
2 a settlement.

3 Bottom line here is, that there are no more  
4 rubber rooms.

5 Before we make any charges or changes, it is  
6 important to remember that section 3020-a was  
7 amended only last year, to provide expedited  
8 hearings for charges of teacher incompetence.

9 The new law also tightened the standards for  
10 adjournments, and it authorized the commissioner to  
11 exclude hearing officers who failed to adhere to  
12 statutory timelines.

13 We believe that it would be wise to allow the  
14 amended law to take full effect before making any  
15 substantial changes to the current statute.

16 In closing, I would like to express my  
17 sincere hope that the members of this committee  
18 understand that we are all working toward the same  
19 goal.

20 Ensuring the process of removing individuals  
21 that do not belong in the teaching profession is one  
22 that is fair, timely, and consistent with this  
23 nation's concept of due process, and one that is  
24 based not on political expedience.

25 I appreciate this opportunity to address you,

1 and I welcome any questions.

2 SENATOR FLANAGAN: Mr. Pallotta, thank you.

3 I have a -- I do have a couple questions. I  
4 certainly want to allow my colleagues the  
5 opportunity to ask some question.

6 Specifically, in your written testimony, you  
7 have language in here:

8 "Additionally, in many more cases, which are  
9 not captured by statistics being floated by the  
10 New York State School Board's Association, and  
11 others, teachers confronted with the threat of  
12 3020-a charges immediately resign, or otherwise  
13 resolve the matter, without the necessity of charges  
14 ever being filed."

15 Let me use it as a backdrop to reiterate what  
16 you just said, the chancellor said, what Ms. Grey  
17 said from the state education department.

18 I think, overwhelmingly, that we would agree  
19 that there are, you know, tens of thousands of  
20 teachers in the state of New York, the overwhelming  
21 majority of them are doing a very good job.

22 So --

23 MR. PALLOTTA: Correct.

24 SENATOR FLANAGAN: -- what we're looking at  
25 is a very isolated group, and an isolated set of

1 circumstances.

2 But, do you have any data?

3 Because, part of what we have an obligation  
4 to do, is to synthesize all of these numbers and  
5 look at them, and say: what's working, and what's  
6 not? who's got the accurate statistics?

7 Are there -- is that anecdotal? Or, do you  
8 have, there were 50 cases that were resolved this  
9 way? Or, 150?

10 MR. ALLINGER: Senator, I think that  
11 particular point was anecdotal, but it's underscored  
12 by the fact that, in those cases that settled,  
13 35 percent resulted in resignation. And that  
14 percent isn't that different from the 39 percent  
15 that led to the dismissal when they went to full  
16 decision by the arbitrator.

17 ATTORNEY GERSTEL: If I could add, Senator,  
18 part of the reason why it's very hard to know beyond  
19 anecdotal evidence in those cases, is that, I know,  
20 in the city, there will be teachers who we never  
21 even know, as the union, that this was -- until,  
22 maybe, you know, we hear about it from somebody --  
23 that, there were discussions with the principal;  
24 that he was -- thinking he or she was going to bring  
25 the teacher up on charges, and a teacher decides:



1 Nah, I've had it, and I'm not even going to go  
2 through this, and go.

3 So, we can't -- it's very, very hard to  
4 quantify that.

5 MR. PALLOTTA: Right.

6 And, as an educator for 24 years in  
7 New York City, I was able to see that; where, you  
8 would just -- maybe just resign, rather than deal  
9 with the issue.

10 SENATOR FLANAGAN: Right, but one of the  
11 challenges that we have, and this is somewhat  
12 rhetorical, you have that type of problem.

13 We have a commensurate problem, dealing with  
14 the school boards and listening to them about that  
15 notion that there are cases that just don't get  
16 brought for time inefficiencies and consuming cost  
17 delays.

18 But -- and I appreciate you not reading all  
19 the testimony, but I want to paraphrase, because  
20 there are those who will testify after you who might  
21 want to respond.

22 It seems to me that, on the whole, in the  
23 latter part of your testimony, you think that the  
24 present system works fairly well, and that we should  
25 allow for the full implementation of some of the

1 recent changes.

2 And that, in my reading of this, and I can  
3 get exact language, there are delays. It's a  
4 general failure to adhere to statutory guidelines,  
5 which you lay at the door of SED. And,  
6 correspondingly, that it's the, quote/unquote,  
7 school attorneys who are causing the delays.

8 Is that a fair characterization?

9 MR. PALLOTTA: It would be fair to say that  
10 it is not the teacher brought up on charges that is  
11 causing the delay.

12 So, we have a situation where they go on and  
13 on and on. The teacher is not the person that would  
14 say, let's drag this out forever.

15 My experience with teachers brought up on  
16 charges, is that they do want a fair and just  
17 hearing.

18 So, having it delayed forever really doesn't  
19 help them in the long-run.

20 SENATOR FLANAGAN: So, you would disagree  
21 with the statistics brought forward by the school  
22 boards, about the length of time and the costs  
23 associated with these types of hearings?

24 MR. PALLOTTA: Yes. And base it on the  
25 statistics that we have in our testimony, which

1 shows dramatic improvements. And, just by not being  
2 able to say to a teacher, "You're going to  
3 rubber room," it's incredible.

4 That is an incredible --

5 SENATOR FLANAGAN: Yeah. I mean, I would  
6 not, certainly, take any issue whatsoever with  
7 what's been accomplished with the UFT and the city.

8 But in that context, listening to the people  
9 before you, and I have read the testimony of the  
10 people that will be coming after, I wanted to speak  
11 directly to this concept of mutual discovery.

12 And I want to preface it by, Carol,  
13 referencing conversations that I had with  
14 Mr. Mulgrew, and in particular, looking at the  
15 documents that you had sent me, the letter of  
16 April 15th, the --

17 ATTORNEY GERSTEL: The agreement.

18 SENATOR FLANAGAN: -- I think the agreement  
19 that goes with that. And, at least superficially,  
20 it looks like there is some step forward to mutual  
21 discovery.

22 But, how do you respond to the idea that you  
23 are, essentially, the only group that doesn't have  
24 to provide reciprocal discovery?

25 It would seem to me that, in a basic fairness

1 level, that if the school district is coming  
2 forward, and one of the complaints, is that they  
3 come forward with legions of things to say. And  
4 part of the reason they say they have to do that is  
5 because they're waiting to hear from the union and  
6 the employee.

7 How is it not fair to have reciprocal  
8 discovery?

9 ATTORNEY GERSTEL: well, you're right, that,  
10 in the city, we've tried to streamline that process,  
11 but we have not agreed to complete mutual discovery.  
12 We don't find, frankly, in the city, that this holds  
13 things up very long.

14 As long as we're all holding to statutory  
15 timelines, the fact that the teacher does not have  
16 to produce a list of witnesses until after the  
17 department of education finishes their case, has not  
18 really held things up.

19 The other thing, which I think -- there are  
20 two issues.

21 One: If we're trying to settle a case -- and  
22 this was raised before -- if there are settlement  
23 discussions, while the teacher may not be required  
24 to give full discovery, if the teacher is interested  
25 in settling the case, they're certainly going to

1 share, their attorney is going to share, whatever  
2 documents they have that will help to get us to that  
3 settlement.

4 The other thing is, that -- and I think Steve  
5 will probably back me up on this -- which is, that  
6 while these aren't criminal cases, obviously, there  
7 are some similarities, in the sense that, the school  
8 district has been preparing the case for a number of  
9 years before the teacher even knows that they're  
10 being charged.

11 So, it's not exactly equal footing when you  
12 walk in. And our -- the attorneys who represent our  
13 teachers have a very short time frame on --  
14 especially under our agreement, to pull their case  
15 together, and they often don't have everything by  
16 the time that -- you know, that the city has to give  
17 discovery, or the department of education.

18 So -- but we don't find it, at least in the  
19 city, as any delay -- major delay problem.

20 SENATOR FLANAGAN: I would just respectfully  
21 suggest to you, that everything I've listened to  
22 verbally, and everything I've read in writing, you  
23 will be unique in your assessment of that; that,  
24 there is just the concept of --

25 ATTORNEY GERSTEL: And the city does not

1 agree with us. I acknowledge that.

2 They would like --

3 SENATOR FLANAGAN: No, because, looking at  
4 the agreement, it speaks to compiling witness lists,  
5 and certain things, affidavits for identification of  
6 certain records. But, it also leaves intact, the  
7 notion that all of this can be done, arguably, at  
8 the last minute.

9 So, I'm just trying to think, from the  
10 fairness standpoint, if we're going to make  
11 judgments about how to make this better, those who  
12 are -- you know, the school boards, the school  
13 superintendents, all of them very strongly believe  
14 that having this information would make it more  
15 efficient, because, as you talked about, the  
16 strength of the employer's case has a direct  
17 relation to the evidence that will be forthcoming  
18 from the employee.

19 ATTORNEY GERSTEL: Right, we did. And you  
20 see it in the agreement.

21 We did go through, and we had a lot of  
22 discussions about it in the negotiations. And we  
23 did try and accommodate as many things as we felt,  
24 or as our attorneys who do these cases, felt, it was  
25 fine, that they could give, at the time, mutually.

1           But, we did not go the full way because there  
2 was -- there is a distinct feeling that they were  
3 not able to at that point. They did not know  
4 exactly what they were going to do.

5           And that was developed while the city was --  
6 the board was putting its case on.

7           But, we went pretty far, in trying to  
8 identify documents that could be shared at the time  
9 of the pre-hearing conference.

10          SENATOR FLANAGAN: Steven, you look anxious.

11          MR. ALLINGER: Well, I'd say there's many  
12 instances where a teacher may not even have access  
13 to the school. The district has, most likely, a big  
14 monopoly on all the documents.

15          And I don't think that it would be -- in many  
16 instances, it would be -- it would hinder an  
17 adequate defense, and do a full-blown discovery,  
18 when you're at such a disadvantage in terms of  
19 access of records, and such a short timeline to  
20 respond, given the lengthy time the administration  
21 has to prepare.

22          And I believe that -- I would ask that you  
23 look at other judicial process, and criminal being  
24 one of them, rather than just civil, in looking at  
25 this issue.

1           The other thing that I want to add, that --

2           SENATOR FLANAGAN: But if you look at the  
3 criminal, you would be obligated to disclose  
4 everything a heck of a lot sooner.

5           I mean, if the complaint is about lack of  
6 access to information, and you're not on equal  
7 footing, if we -- it would seem to me, it would be  
8 relatively easy to come up with language that would  
9 be suitable, to address your concern about access to  
10 information, as long as it's contained as part of  
11 the whole idea of, everybody kind of puts their  
12 cards on the table.

13           MR. ALLINGER: All we're saying is, that,  
14 right now, in many cases, it would be -- the teacher  
15 would be at a distinct disadvantage. And we would  
16 like the opportunity to discuss it further with you.

17           SENATOR FLANAGAN: Okay.

18           MR. ALLINGER: The other thing is, that we  
19 have found that there's a 46-day delay at the  
20 commencement of 3020-a charges that have nothing to  
21 do with teachers or their unions.

22           SENATOR FLANAGAN: Could you pull that mic in  
23 closer?

24           MR. ALLINGER: Yes.

25           We found in our data that there's an average



1 of a 46-day delay at the commencement of 3020-a  
2 cases; problems with getting the lists from the  
3 state education department. And, so, that then  
4 builds in a significant delay that has nothing to do  
5 with a mutual discovery.

6 SENATOR FLANAGAN: And I would absolutely  
7 agree with you. I would not ignore the concept of  
8 mutual discovery.

9 But, as Ms. Grey and her staff testified,  
10 they're under the gun, for some reasons that have to  
11 do with some of us sitting up here, but that's  
12 another subject for another day.

13 Senator Saland?

14 SENATOR SALAND: Just a question: Are any of  
15 the three of you a lawyer?

16 ATTORNEY GERSTEL: I am.

17 SENATOR SALAND: Then you appreciate the fact  
18 that, in every other area of endeavor, civil or  
19 criminal, disclosure, transparency, avoidance of  
20 surprises, is what the system is based upon.

21 ATTORNEY GERSTEL: Right.

22 SENATOR SALAND: And the criminal case, the  
23 failure to disclose is fatal for the prosecution.

24 ATTORNEY GERSTEL: Right.

25 Also in criminal cases, however, the

1 defendant does -- is able to not list their  
2 witnesses until the beginning of their case, which  
3 is [inaudible].

4 But, yes, otherwise I would agree.

5 SENATOR SALAND: Okay.

6 Let me premise my remarks by saying -- and I,  
7 probably, in my prior life as chair of this  
8 committee, have made it perfectly clear -- that, I  
9 cannot tolerate a situation in which a teacher, who  
10 is at the mercy of a school board, the whim of a  
11 school superintendent, and find themselves, because,  
12 for example, somebody had a relative, a friend, or  
13 an axe to grind with the teacher, that person was in  
14 jeopardy.

15 I firmly believe in due process.

16 You heard my earlier remarks, I'm sure. And  
17 I wouldn't care at what stage the school board has  
18 to disclose in one these hearings. The sooner, the  
19 better.

20 Any additional information that comes to  
21 light, should immediately be turned over to whomever  
22 it is that's representing a teacher in one of these  
23 cases. But, the converse should be true as well.

24 And, I'm truly astounded.

25 I mean, I chair the codes committee now. And

1 if this bill were in the codes committee, I would  
2 flag the bill because of the lack of discovery.

3 Now, you can put whatever spin you want on  
4 it, but the reality is, is that, if you want to get  
5 these things done, and despite the reference to the  
6 school board's numbers, this is what SED gave us.  
7 These are their numbers.

8 And for whatever the reasons, be they fiscal  
9 or otherwise, and I believe the process itself --  
10 the selection of the arbitrators, the ability to  
11 delay the selection, the ability for arbitrators to  
12 adjourn willy-nilly, and a host of other things --  
13 account for the delays. But, this is SED's number.

14 What's supposed to happen, is, you're  
15 supposed to have a pre-hearing conference within  
16 65 days. And, assumingly, by that time, you've had  
17 discovery.

18 What happens, in reality, 279 days before the  
19 pre-hearing conference, and 529 days before the  
20 final hearing. This is SED, not school boards.

21 There's something dramatically wrong with  
22 that kind of system.

23 MR. ALLINGER: Senator, our testimony  
24 contains numbers based on a very large sample, that  
25 shows --

1           SENATOR SALAND: May I just ask that you pull  
2 your mic a little closer.

3           MR. ALLINGER: Our testimony contains  
4 numbers, that are significantly different, based on,  
5 I think, a 160-size sample, which is very  
6 significant, about the length of time.

7           And if you throw out, say, 5 percent of the  
8 egregious outliers, it's, you know, off the top of  
9 my head, maybe, 227, 230 days.

10          And a lot of that delay, again, is the delay  
11 in producing the list.

12          And, by the way, the correct -- to correct  
13 the record, the commissioner has the authority, and  
14 is supposed to select the chair in case the parties  
15 are not able to select that chair, I think, within  
16 ten days.

17          ATTORNEY GERSTEL: Well, that's for the  
18 three --

19          MR. ALLINGER: For the three-party.

20          ATTORNEY GERSTEL: The three-party, yeah.

21          SENATOR FLANAGAN: That's just for the  
22 three-member panel?

23          MR. ALLINGER: Yes.

24          SENATOR FLANAGAN: Okay.

25          SENATOR SALAND: Let me not belabor this; so,

1 I'll just conclude by saying: Going back to my  
2 opening comments, I would not be part of, nor would  
3 I recommend, that anything be done to compromise the  
4 protection of someone who's subject to one of these  
5 hearings. But, by the same token, I think the field  
6 is badly tilted, and should be leveled.

7 If it's about justice, then justice should be  
8 done as expeditiously as possible.

9 And, we've had discussions in other issue  
10 areas, when I chaired this committee, when I  
11 praised, justifiably, as Chairman Flanagan has, the  
12 fact that the vast, overwhelming number of people in  
13 classrooms do their best to deliver the best product  
14 that they can deliver, in terms of their services.

15 And because of the small percentage, in  
16 whatever context the issue may arise, whether it --  
17 and I won't rehash any old history -- but, in this  
18 particular case, it's the same thing: everybody  
19 agrees it's a small number.

20 Everybody agrees it's a small number. And  
21 there is no reason why these cases can't be  
22 expedited in a swift fashion, and justice provided,  
23 with due process assured, and the matters moved far  
24 more quickly than they're being moved now.

25 MR. ALLINGER: Senator, I appreciate the

1 fairness you've shown in past years when we've  
2 worked together.

3 I just want to point out, that, in the -- was  
4 it, Chapter 103, that was signed last year, there is  
5 an expedited process for the incompetence cases.

6 And those cases, by the way, are the ones  
7 that take more time, are more complex. And -- and I  
8 believe that --

9 SENATOR SALAND: There's always been an  
10 expedited process, that's never been expedited.

11 MR. ALLINGER: There's specific language that  
12 we hope will improve the situation.

13 SENATOR SALAND: Thank you.

14 SENATOR FLANAGAN: Senator Marcellino?

15 SENATOR MARCELLINO: I would be curious as to  
16 what that specific language is; because, you heard  
17 what I said earlier?

18 I apologize for having to leave, and missing  
19 the first part of your testimony. I had something  
20 else to do, and I had to come back. I'll be leaving  
21 shortly again.

22 But, the -- as Senator Saland has said, the  
23 process is supposed to be expedited.

24 What will -- in your mind, will change, by  
25 either the city's proposal, or the bill that is

1 before the committee -- or, that proposal which is  
2 the state ed.'s proposal?

3 what will make it go quicker?

4 ATTORNEY GERSTEL: Talking about the  
5 situation in the city, I think we've already made it  
6 go -- well, we've reached a point where we are  
7 conforming to the statutory guidelines. In fact,  
8 we're beating them, where, cases going to decision  
9 now take an average of 93 days, and cases that are  
10 settled are taking an average of 33 days.

11 So, in that sense, we think that we have  
12 really taken care of most of those delay points.

13 The city is a little different, obviously,  
14 because it's one big school district and not  
15 numerous ones.

16 The department of education's proposal, as I  
17 think you raised in many questions, we've heard this  
18 proposal before, and we don't agree with it. We  
19 don't think that hearing officers, who are employees  
20 of the city of New York, are ones that are our  
21 members would feel comfortable that they were  
22 getting an impartial decision.

23 We think that a fair and expeditious process  
24 can be had using, impartial arbitrators, hearing  
25 officers, as we are doing in the city right now.

1           We've created a panel. It's a rotating  
2 panel. It's mutually chosen.

3           And, as I said, we actually have, after  
4 getting rid of our backlog, and now moving cases at  
5 this time, we have arbitrators who are, basically,  
6 sitting and waiting for cases because the DOE, you  
7 know, hasn't filed that many cases.

8           So, we're really right on top of this at this  
9 point. And we think that leaves us with a very fair  
10 system, which is also expeditious; fair to  
11 everybody.

12           SENATOR MARCELLINO: So, the system that  
13 Chancellor Walcott described is not something that  
14 you feel will work?

15           ATTORNEY GERSTEL: Right. We don't think  
16 that that -- well, he not only described using OATH  
17 officers, but he also described changing the  
18 standard that the hearing officer applies, from just  
19 cause, which is really a preponderance of the  
20 evidence, to arbitrary and capricious.

21           And as far as we're concerned, that's no  
22 standard, or that's not due process in this kind of  
23 a case.

24           And, that, what he would get, which he is  
25 looking for, is he would get consistent decisions,



1 because everybody would get terminated; because, the  
2 people who are bringing the charges will be upheld,  
3 unless they're arbitrary or capricious, a very  
4 difficult standard to reach.

5 So --

6 MR. PALLOTTA: The law --  
7 I'm sorry, Carol.

8 ATTORNEY GERSTEL: Go ahead.

9 MR. PALLOTTA: Just reading from the law  
10 itself:

11 "The hearing shall be conducted before a  
12 single hearing officer in an expedited hearing which  
13 shall commence within 7 days after the pre-hearing  
14 conference, and shall be completed within 60 days  
15 after the pre-hearing conference."

16 SENATOR MARCELLINO: And what if it doesn't?

17 MR. PALLOTTA: "No adjournments may be  
18 granted that would extend the hearing beyond such  
19 60 days, except that the hearing officer may, for  
20 exten- -- "substantially beyond this, due to some  
21 very extenuating circumstance."

22 So, it's -- it's in the law.

23 MR. ALLINGER: Meaning, the expedited hearing  
24 also tightens up adjournments, in Chapter 103 laws  
25 of 2010.

1           And we believe it should be -- we should  
2 allow it to unfold, because it is a significantly  
3 tighter standard for those cases which tend to be  
4 much more complex, and have historically taken a  
5 greater amount of time, which are the competency  
6 cases.

7           ATTORNEY GERSTEL: You know, I think that --  
8 and, again, we're a little bit different, but I  
9 think there's a parallel.

10           In our agreement, if arbitrators are not  
11 holding to the timelines, they will be removed from  
12 our panel.

13           And, every year, the chancellor and the  
14 president of the union meet with the arbitrators and  
15 make that clear. Because we have chosen them on the  
16 panel, so we have that ability to just knock them  
17 off.

18           I think that SED also has that ability, if  
19 arbitrators are not -- you know, if they're not  
20 holding to the timelines that are in the statute,  
21 that they could be removed from the list of  
22 arbitrators that SED proposes to the -- to both  
23 sides in the hearings outside the city.

24           SENATOR MARCELLINO: Thank you.

25           SENATOR FLANAGAN: One other question, and

1 just following up back on that whole concept: I  
2 think the expedited time frames almost exacerbates;  
3 so, the situation that we were talking about,  
4 relative to the discovery, because, in speaking with  
5 counsel to the city, I think this would be  
6 applicable to school attorneys, I think we would  
7 probably concur with this: That, as you tighten the  
8 time frame, and you look for an adjournment, the  
9 adjournment is held against you, in terms of delay.

10 And, I don't think that makes the situation  
11 better.

12 But, let me ask, specifically, and in  
13 fairness, I have every intention of asking the  
14 school boards and the other parties, the  
15 departmental bill loosely say, they have issues  
16 relating to funding; its sources of funding and  
17 streams of revenue that are legitimate, real.

18 We need to deal with those, perhaps in this  
19 context, but certainly in the context of the budget.  
20 But, I'm giving you my own, sort of, unvarnished  
21 opinion.

22 I think the concept of people having "skin in  
23 the game," is laudable. And, if you look at how  
24 these other procedures are done, and I looked at  
25 contractual references and the statutes for CSEA and

1 PEF, they share the cost.

2 And, to me, it's like a co-pay on a health  
3 plan. If, you know, you're getting a little bit of  
4 a pinch, you're going to understand the  
5 ramifications of it more.

6 And, there's a whole concept of, you know,  
7 school districts have to hire substitutes or the  
8 extensive time delays, and things of that nature.

9 I would like to hear you comment on the idea  
10 that the sides should be sharing the costs.

11 MR. PALLOTTA: well, we're opposed to sharing  
12 the costs.

13 SENATOR FLANAGAN: And I'm shocked that  
14 you're telling me that.

15 [Laughter.]

16 SENATOR FLANAGAN: Do you have a second  
17 opinion?

18 ATTORNEY GERSTEL: I actually would like to  
19 raise a different point, which is, it is a very  
20 expensive system, but it's unnecessarily as  
21 expensive as it is.

22 And one of the things is, that -- and SED  
23 kind of mentions it, but not much, which is this  
24 idea of arbitrators being paid study days.

25 And it's something which kind of makes us all

1 shake our heads, because, in many cases, the  
2 arbitrator will charge, not only for a hearing day,  
3 but for one or more study days for every hearing  
4 day.

5 SED, right now, has the authority, the  
6 regulatory authority, to not pay that. To say to  
7 arbitrators, there will be, you know, one study day  
8 for every, three hearing days, or five hearing days,  
9 or whatever. I mean, I'm not making a specific  
10 proposal. But, they could cut the costs  
11 substantially. I would say, in half, probably, if  
12 they just exercised that authority.

13 Our -- the arbitrators we have on our panel  
14 will not be happy with me saying that, I'm sure.  
15 But, that's the reality. And I think that that  
16 should be looked into before we start, you know,  
17 kind of --

18 MR. PALLOTTA: Senator, when you referenced  
19 those to other union agreements, those are  
20 collectively bargained procedures that were traded  
21 off for other considerations, in a long  
22 collective-bargaining relationship with the state.

23 There's no precedent for imposing  
24 disciplinary costs on a defendant like that. By the  
25 legislature, no precedent at all.

1           And we would be very much opposed to shifting  
2           that kind of burden. And it would also just shift a  
3           cross-burden at a time when districts and their  
4           employees are undergoing austerity.

5           SENATOR SALAND: Steve, I'm sorry, you tailed  
6           off.

7           MR. ALLINGER: I'm sorry.

8           SENATOR SALAND: You lost me at the --

9           MR. ALLINGER: Did you get the first part?

10          SENATOR SALAND: I got the first part, and  
11          then you tailed off and I couldn't get you.

12          MR. ALLINGER: I'm just saying, SED's  
13          proposal would also just shift the cost burden. It  
14          doesn't get at the underlying -- we need to get at  
15          some of the underlying issues on the delays.

16          And, again, there is no precedent at all for  
17          imposing that.

18          SENATOR SALAND: I got to "no precedent," and  
19          then I lost you.

20          MR. ALLINGER: Right.

21          The cost sharing is resulted from  
22          collectively bargained processes that were unique to  
23          those collective-bargaining units.

24          It doesn't apply here.

25          SENATOR FLANAGAN: Steve, on a positive

1 note --

2 MR. ALLINGER: Yes?

3 SENATOR FLANAGAN: -- I'm very happy to tell  
4 you that the school boards would absolutely agree  
5 with you.

6 [Laughter.]

7 SENATOR FLANAGAN: Take it however you can  
8 get it. All right?

9 On that note, thank you very much. We  
10 appreciate the time.

11 And we have been joined by Senator Robach.

12 And our next group will be the New York State  
13 School Boards.

14 All right, thank you, sir.

15 At this point, I can say, good afternoon,  
16 Mr. Little. Nice to see you here.

17 MR. LITTLE: Thanks, Senator.

18 Thanks, Mr. Chairman, Senators, and members  
19 of senior staff. We appreciate the opportunity, and  
20 particularly your leadership on this issue.

21 I think it's safe to say that we can kind of  
22 cut to the crux of this thing, as soon as I  
23 introduce my colleagues here.

24 On your right, is Quinn Morris, who put  
25 together the drafts that are included in this, what

1 is an essential fiscal reform playbook. One of the  
2 bills in there is the 3020-a reform legislation.

3 And to your left, and my right, is Pat Gould,  
4 a counsel on our staff, who created and maintains  
5 the 3020-a database for school districts across the  
6 state.

7 So, if you have questions for either one of  
8 them, I would be happy to defer.

9 Initially, I would simply say, that the  
10 system, which has been referred to as "being  
11 broken," is an abysmal system right now.

12 Not only do we have astronomical costs and  
13 delays, which is justice denied, it creates a  
14 tremendous disincentive for school districts,  
15 contrary to what my colleagues from NYSUT would  
16 postulate.

17 All across the state, I hear this from one  
18 end to the other: we're in a fiscal circumstance  
19 right now that requires us, knowing that it costs  
20 520 days and over \$200,000 to bring a disciplinary  
21 proceeding. That's the equivalent of three to  
22 four teachers. And we have people that are laying  
23 off teachers all across this state.

24 And, so, you've got to make a determination  
25 as to whether or not a teacher in your classroom is



1 bad enough, to take the financial responsibility of  
2 removing three other teachers from the classroom in  
3 order to accomplish that goal.

4 That's an abysmal system.

5 When you add to that, the fact that the state  
6 of New York is not paying the arbitrators, hasn't  
7 paid the arbitrators for over a year, and then you  
8 add on top of that, the fact that this is the only  
9 place with an American jurisprudence where you get  
10 to judge-shop, and figure out which judge is  
11 mutually acceptable to both parties, you have an end  
12 result that is absolutely unworkable.

13 And that's why we have come together to  
14 address many of the issues that you have been  
15 talking about this morning. And I'll just briefly  
16 run through them for you, and then we'll just open  
17 this up to questions.

18 The first one is, is just the establishment  
19 of a new procedure for the hearing officer.

20 Now, my own personal preference, quite  
21 honestly, irrespective of what's here, is, I believe  
22 that the state of New York should simply have, just  
23 like they do at encon, labor, taxation, state of  
24 New York ought to have hearing officers. And, you  
25 simply get the next one on the list. This ought to

1 be an immediate determination.

2 I wish Senator Marcellino were still in the  
3 room, because I have been waiting to respond to his  
4 question about whether or not anyone else is  
5 qualified to hear these hearings.

6 And the fact of the matter is, that nowhere  
7 else in American jurisprudence do you require the  
8 judge to be an expert on every matter that comes  
9 before them.

10 The fact of the matter is, these people have  
11 to prove their case to a judge. And the judge is  
12 the presiding officer that hears the evidence, and  
13 is educated based on the evidence within the case,  
14 and makes a determination based on what they hear in  
15 that case.

16 So, I believe that having a hearing officer  
17 an impartial hearing officer from the state, would  
18 be appropriate.

19 Secondly to that, and what's listed here,  
20 is the fact that we would continue to maintain a  
21 list, but the education commissioner would just say,  
22 You're next.

23 This business of having to have both the  
24 defendant in the 3020-a case and the school district  
25 agree on one person, who is mutually acceptable

1 based upon their history, that, quite honestly,  
2 leads them to "split the baby" in the past, rather  
3 than to what's the just determination in any prior  
4 decision, just so that that they can continue to be  
5 employed as a hearing officer in these cases is not  
6 equitable. It's not just.

7 And, so, you ought to have a hearing officer  
8 that's simply placed on the list, the next one up.

9 The delays that we've been talking about all  
10 morning long, and how long it takes, and how much  
11 money that is, the delays all result from the fact  
12 that you're waiting on a couple of people that  
13 everyone in the state, on both sides, know, and  
14 agree, are the appropriate people to hear these  
15 things.

16 It takes an inordinate amount of time to get  
17 to them, off the list.

18 And if you'll look at the statistics that Pat  
19 has put together over the years, you'll find that  
20 about 85 percent of school-district costs of this  
21 \$217,000, on average, about 85 percent of that is  
22 the cost of substitutes and paying the teacher who  
23 is already in place.

24 Only about \$30,000 of that is legal fees.  
25 okay?

1           And, you're absolutely right; we're not  
2 particularly interested in having additional skin in  
3 the game beyond \$217,000 in the middle of a fiscal  
4 crisis.

5           So, accurate assessment on your part.

6           This process, the establishment of a hearing  
7 officer, would expedite this process beyond, I  
8 believe, any other thing that we're talking about.

9           The fact that you have so much time, that  
10 happens before you ever get to hear this thing, is  
11 the key reform that I think should be addressed in  
12 all of this.

13           And secondarily to that, I think your issue  
14 about -- and that drops down here, to Number 3 on  
15 ours -- the mutual discovery, and the participating  
16 in the investigation, I believe is absolutely  
17 appropriate.

18           I agree with Senator Saland, that it is  
19 outrageous. And, quite honestly, it leads to  
20 further delay. Not only do you wait an inordinate  
21 amount of time to have an agreement upon, who is  
22 going to hear this case, but when they finally do  
23 get into the hearing, the very first thing that  
24 happens is, the school district has to ask for an  
25 adjournment, because they're learning for the first

1 time what the defense is in this case.

2 It's delay upon delay. And, simply, not  
3 workable.

4 I want to drop back just to Number 2, just  
5 for a second, and that is, that we firmly believe  
6 that there is no convicted felon who is an  
7 appropriate role model to be in front of a classroom  
8 for students in the state of New York. Okay?

9 I've heard from other legislators, when we  
10 have discussed this, that there may be instances  
11 where somebody is accused of some white-collar crime  
12 that has nothing to do with their performance in the  
13 classroom; that that should exempt them from that  
14 kind of a determination.

15 And, quite honestly, we aren't talking about  
16 kids with a lack of perception. Right?

17 They know who people are. And they know what  
18 people's reputation is.

19 And we shouldn't have convicted felons  
20 teaching in the state of New York.

21 Capping the length of time of suspension with  
22 pay, that leads us to this issue of a disincentive.

23 And, quite honestly, we have been talking  
24 about disincentives to being expeditious all morning  
25 long.

1           And, quite honestly, at least in my  
2           estimation, we need to focus less on incentives or  
3           disincentives, and just make some legal timelines  
4           here. We need to make some determinations of things  
5           that will very clearly lead us to a determined  
6           amount of time that is, both, fair, just, and  
7           expeditious in all of this.

8           And then, finally, requiring the nature of  
9           the defense at the time, is a standard part of  
10          jurisprudence; allows the school district to spend  
11          less time to bring the matter quickly, to determine  
12          whether they even have a case.

13          I can't imagine a school district who wants  
14          to take this type of time, money, and administrative  
15          focus away from other things within the school  
16          district, to try and focus in on something that  
17          should never have been brought in the first place.

18          So, there needs to be a level of cooperation.

19          And it's probably true, that a good number of  
20          teachers who are informed that they may have charges  
21          brought against them, they may, in fact, resign.

22          I would assume that to be the case, because  
23          there's, obviously, a stigma attached to having  
24          charges been brought against you. And if you want  
25          to work someplace else, that would make perfect

1 sense.

2 On the other hand, our statistics are based  
3 on what remains on those that continue to have a  
4 disincentive, and to be tremendously costly.

5 The part I'd like to focus on, is that, this  
6 isn't just a cost issue for school districts in the  
7 midst of a fiscal crisis. The cost issue relates to  
8 the larger issue, which is, that school districts  
9 aren't bringing the charges, because they don't have  
10 the money to take away from elsewhere within their  
11 school system to be able to allocate these kind of  
12 resources.

13 That's a real Hobson's choice. And you're  
14 talking about kids' futures either way.

15 So, that's why we proposed these reforms.

16 SENATOR FLANAGAN: Dave, thank you very much.

17 I do have questions on, specifically, you  
18 reference on the dismisser of tenured personnel  
19 without section 3020-a proceedings. It says here:

20 "since school districts should no longer  
21 employ such individuals, their dismissal should not  
22 require an elaborate termination proceeding."

23 Are you saying that there should be some  
24 nominal proceeding? Or, just, black-and-white,  
25 you're in, you're out?

1 MR. LITTLE: No, I think there can be, as you  
2 referred to it, a "nominal proceeding."

3 The classic example that we've always heard,  
4 is that, the Dave Little that's brought up on 3020-a  
5 charges may not be the Dave Little that sits here  
6 before you today, at that hearing.

7 And, so, if it truly is mistaken identity,  
8 that shouldn't take a full-blown hearing.

9 There are other instances, where, if someone  
10 has lost their certification, either from a Part 83,  
11 or for some other reason, if they have not obtained  
12 their certification within the requisite number of  
13 years, per the statute, by the law, and therefore,  
14 not eligible to teach, that there shouldn't be the  
15 requirement of having this attenuated process for  
16 something that's a fairly ministerial decision.

17 SENATOR FLANAGAN: Okay. I'm going to ask a  
18 couple of different things now.

19 State ed. had provided some data. And I  
20 think they had many some numbers that were averages  
21 from 2009.

22 If you -- we don't need it at this moment,  
23 but if you could forward us, how you conducted your  
24 survey, to come to the 502 days, and the  
25 200,000-plus?



1           Because, obviously, we have you saying one  
2 thing. We have SED, probably a lot closer to what  
3 you're saying. And then we have NYSUT/UFT on the  
4 other side saying that, you're all wrong.

5           So, I would like to know the methodology of  
6 each of the parties.

7           MR. LITTLE: Pat can tell you that, very  
8 briefly; or, we can give that to.

9           Your choice.

10          SENATOR FLANAGAN: Both would be good.

11          ATTORNEY GOULD: Okay.

12          Thank you, Senator.

13          I do feel compelled to respond to the  
14 characterization of our information as "skewed"  
15 because we don't include the length of time it takes  
16 to settle a case.

17          But, I would respectfully point out that  
18 we're not all here today, because of how long it  
19 takes to settle one of these cases.

20          We're here, because it takes too long to get  
21 to the point where you have a hearing-officer  
22 decision for those cases that can't be settled.

23          And our data is arrived at two different  
24 ways:

25          We survey our members periodically. We did

1 it in '94, right after the changes were adopted.

2 We did it in '97. We did it again in 2004,  
3 and 2008.

4 We ask our members to fill in the date that  
5 charges were preferred, the date the hearing officer  
6 took the case, the date a hearing officer issues a  
7 decision.

8 And we do the math, how long it takes, to get  
9 from the date charges are preferred, to the date the  
10 decision is issued.

11 Our members responded to that questionnaire.  
12 We arrived at an average of about 502 days, from the  
13 date charges are brought, to the date a hearing  
14 officer issues a decision.

15 That does not include New York City data.  
16 New York City is a world unto itself. They have had  
17 some success in expediting these cases.

18 In addition, we also gather from our members,  
19 and from SED, copies of hearing-officer decisions.

20 Many times, but not always, the hearing  
21 officer will list in his or her decision, the date  
22 charges were preferred, and they date, by their  
23 signature, their decision.

24 We do the math.

25 After our last survey in 2008, we looked at

1 the -- about 70 cases for 2008. The average, at  
2 that time, was 560 days, from the time charges were  
3 brought, to the time a decision was issued.

4 For the 2009 cases in our database, the  
5 average was about 630 days, charges filed, to  
6 hearing-officer decision.

7 It's consistent with what SED is reporting to  
8 you. And, that's how we arrived at those numbers.

9 SENATOR FLANAGAN: How familiar are with the  
10 city and the UFTA agreement?

11 ATTORNEY GOULD: I'm somewhat familiar with  
12 it. I wouldn't say --

13 SENATOR FLANAGAN: Well, in there, they  
14 have -- they obviously have expedited time frames,  
15 and they've achieved some success.

16 ATTORNEY GOULD: Yes.

17 SENATOR FLANAGAN: Actually, significant  
18 success, in eliminating that backlog.

19 ATTORNEY GOULD: Yes.

20 SENATOR FLANAGAN: But, they have portions in  
21 there, where there are periods of suspension without  
22 pay.

23 ATTORNEY GOULD: Yes, they have a probable  
24 cause hearing, as to whether or not it's the kind of  
25 offense, or allegation, that would warrant an unpaid

1 suspension.

2 I believe it caps out at 90-days unpaid  
3 suspension.

4 We are asking that all paid suspensions cap  
5 out at 120 days.

6 If the statutory time frames were adhered  
7 to -- and, I'm sorry, David, if you'd, please,  
8 feel -- and Quinn, join in.

9 If the statutory time frames were adhered to,  
10 it should take, ballpark, about 120 day, start to  
11 finish, for one of these hearings.

12 That's why we arrived at the 120 days cap-out  
13 for a paid suspension. That's where we got that  
14 number.

15 New York City, I think, is 90 days.

16 SENATOR FLANAGAN: So, your thrust is not  
17 suspension without pay immediately; but, rather,  
18 cap?

19 ATTORNEY GOULD: Yeah.

20 Yes, we -- our recommendation is, that, if  
21 that matter has not been resolved at the end of  
22 120 days, that the unpaid suspension end -- excuse  
23 me, I'm saying "unpaid." I mean, "paid."

24 Paid suspension would end at 120 days.

25 SENATOR FLANAGAN: And, Dave, go back to

1 something that you referenced before, on the  
2 selection of the arbitrators.

3 I think you heard me ask about, sort of the  
4 random pick. Just to go to the next person in line,  
5 or pick a name out of a hat.

6 Is that very similar to what you're  
7 advocating?

8 MR. LITTLE: It is.

9 Either, if there were a state panel of  
10 hearing officers, or, if you continued to use the  
11 AAA list, random selection of the next available  
12 hearing officer just ameliorates the delay problem  
13 substantially.

14 SENATOR FLANAGAN: Okay. And one last  
15 question before my colleagues.

16 Just, the school attorneys; there's reference  
17 in the testimony, that, you know, a lot of the  
18 problem stem from the fact that SED is not meeting  
19 statutory guidelines, and the, quote/unquote, school  
20 attorneys, who are, ostensibly, your agents, are the  
21 agents of delay.

22 Can you respond to that?

23 MR. LITTLE: I'll plead guilty, to the  
24 extent, that when the incidents that I mentioned,  
25 when they first get there, the first thing they have

1 to do is adjust to simply learning about what the  
2 defense is going to be when they get there.

3 That's not the standard cause of delay  
4 throughout the hearing, is that the school district  
5 is exacerbating the problem.

6 SENATOR FLANAGAN: Okay.

7 SENATOR OPPENHEIMER: I have a question.

8 SENATOR FLANAGAN: Senator Oppenheimer.

9 SENATOR OPPENHEIMER: David, what we heard  
10 from the chancellor about using the OATH, the  
11 administrative law judges, using an Article 78  
12 proceedings, is that something that you would  
13 support?

14 MR. LITTLE: I think it works for the city,  
15 and to extent that the state education department  
16 would mimic that process.

17 I've heard Val Grey's comment, that the  
18 reason that they didn't pursue that was, quite  
19 honestly, they didn't believe that they had the  
20 ability to secure the funding necessary to initiate  
21 that type of a program.

22 If we're going to pay these people, then I  
23 think that it's incumbent on us to do it in the most  
24 effective way possible. And, quite honestly, that's  
25 the most effective way possible.

1 I understand the concern of NYSUT and UFT,  
2 that city employees making a determination when the  
3 city is one of the parties, you shouldn't have  
4 people that are affiliated, on one side or the  
5 other, with the judge.

6 But, quite honestly, the state of New York is  
7 the entity that's responsible for public education,  
8 and the state of New York could hire the hearing  
9 officers, and be impartial.

10 SENATOR OPPENHEIMER: Just to follow up on  
11 that: would not the MTA employees or unions, and  
12 the Triborough Bridge unions, have certainly made  
13 their displeasure known with the system, if the  
14 system was not working?

15 In other words, that has been the system  
16 that's been used, the OATH --

17 MR. LITTLE: Right.

18 SENATOR OPPENHEIMER: -- system has been used  
19 for those employees.

20 It just would seem, that if it was so  
21 unsatisfactory to the unions, in each case, that  
22 they would have, I think, at some point, expressed  
23 their displeasure with the system.

24 MR. LITTLE: I can't imagine that there's a  
25 school district out there that has any interest in

1 bringing a disciplinary action against a teacher,  
2 that -- just gratuitously.

3 I understand what the history was, and the  
4 politics, and why we were brought to tenure, and why  
5 we established the procedure. But given the  
6 procedure and the history that we have now, quite  
7 honestly, there's such a financial consequence,  
8 there's such a programmatic consequence, and  
9 disruption to the educational program, that I don't  
10 believe that school districts would do this  
11 gratuitously.

12 The problem we have, is that, the process  
13 that we have chosen, in virtually every aspect of  
14 it, is no longer workable, either from a financial  
15 or, again, a programmatic standpoint.

16 And, so, these reforms that we've suggested,  
17 we believe, maintain due process, foster due  
18 process, and at the same time, lead to a much more  
19 workable system, which, quite honestly, will allow  
20 the vast majority of school districts to participate  
21 in that system.

22 SENATOR OPPENHEIMER: Thanks.

23 SENATOR FLANAGAN: Thank you,  
24 Senator Oppenheimer.

25 Senator Robach?



1           SENATOR ROBACH: Yeah, thank you.

2           David, let me ask you: You know, everybody  
3 knows there has to be a process.

4           I guess I was interested in what you said  
5 before, in terms of money.

6           You had given something; you said, this is  
7 the equivalent of 3 1/2 teachers, or something along  
8 that, for the process.

9           How do school districts budget for the  
10 current process? And, is there a tax cost,  
11 statewide, of what they think -- you know, I saw for  
12 New York City, they said, \$30 million, for this  
13 group of teachers.

14           Is there a statewide figure?

15           MR. LITTLE: No, there's really not. And  
16 that's because it's such a -- a random occurrence,  
17 you know. And some of the statistics that have been  
18 brought before, luckily, thankfully, 3020-a cases  
19 are rare, the fact that school districts are  
20 dissuaded from bringing them as a problem. But,  
21 even if they brought everyone that they had, it  
22 would still be a relatively rare occurrence,  
23 thankfully.

24           The difficult problem is, that it's never  
25 within your budget, until you learn about it, until

1 you know whether or not you may be proceeding with  
2 one. And, then, in the next budget, initially, you  
3 would use reserves, if you have them.

4 And, secondarily, you would budget for it in  
5 the next year, knowing that you were moving forward.

6 But, it really is an individual district  
7 response.

8 SENATOR ROBACH: So, they're not prevalent  
9 enough, where there's a line item to cover that type  
10 of activity, then?

11 MR. LITTLE: I think in the fiscally  
12 conservative environment that school districts are  
13 in, they would be hard-pressed to put a couple  
14 hundred thousand dollars aside in a line item just  
15 in case they got a 3020-a.

16 SENATOR ROBACH: Thank you.

17 SENATOR FLANAGAN: Thank you, Senator.

18 Any other questions?

19 Dave, just one last quick question.

20 You reference the idea that school districts  
21 are not bringing cases, for reasons that are, in  
22 large part, understandable.

23 I know it's like a crystal ball-type  
24 question, but can you sort of ballpark what that is?

25 Are there, you know, 25 percent of cases that

1 you wish were brought or...

2 Am I making any sense?

3 MR. LITTLE: You're making perfect sense.

4 And it's absolutely unknowable with any  
5 degree of certainty.

6 You would have to talk to every district and  
7 find out, you know, what their circumstances were,  
8 and how strong the case was; and, yet, were you  
9 still dissuaded from doing that?

10 All I can tell you is, that I do an awful lot  
11 of traveling in the work that I do. I talk to local  
12 school-boards' associations, and individual  
13 school-board members and superintendents.

14 And I'm hard-pressed to go to an event, that  
15 I don't have people coming up to me, either before  
16 or afterwards, to talk about this as an issue; to  
17 talk about the fact that they would, in fact, be  
18 going forward if this weren't such a marais.

19 SENATOR FLANAGAN: Okay. Thank you very  
20 much.

21 Next is the school superintendents.

22 MS. MCCAULEY BELOKOPITSKY: Senator Flanagan,  
23 and honorable members of the senate education  
24 committee, thank you for having us here today.

25 I'm Kyle McCauley --

1 Kyle McCauley Belokopitsky. I'm the assistant  
2 director of government relations for the school  
3 superintendents.

4 With me is Dr. Sally Sharkey,  
5 superintendent of the Cairo-Durham School District.

6 And, Mr. James Dexter. And I'm going to  
7 read the BOCES that he represents, because it's  
8 very, very long.

9 It is: The BOCES of Washington, Saratoga,  
10 Warren, Hamilton, and Essex Counties.

11 I will briefly share ten ideas that we have  
12 about how to reform this system. You have our  
13 extensive testimony, which we will not read from.  
14 And, then, I'll turn the thing over to my two  
15 superintendents for further discussion.

16 And, first of all, I'm really privileged to  
17 represent superintendents here in Albany. And,  
18 equally, they're privileged to work with an amazing  
19 set of educators and teachers in their districts.

20 What we're here to talk about today is only a  
21 very small, small percentage of teachers. And --  
22 however, the current 3020-a process makes it very  
23 difficult to remove educators that aren't living up  
24 to their colleagues' goals and commitments.

25 The 3020-a process is inordinately expensive

1 and timely. And I offer these ten ways that we see  
2 you can improve the system.

3 I'll also comment, briefly, on SED's  
4 proposal.

5 First, the parties really should be able to  
6 mutually agree on the hearing officer or arbitrator  
7 that they would like to pick.

8 The current process is, that they have to  
9 pick off a list generate by SED.

10 What we see, sometimes, is that list itself  
11 may be flawed. That list sometimes will include  
12 arbitrators from areas of the state nowhere near the  
13 school district.

14 I've had superintendents tell me that they  
15 are in the western half, or the Buffalo area, of our  
16 state. And arbitrators on their list are from  
17 New York City. So, that can create, again,  
18 unnecessary delays.

19 We also think that parties, once they agree  
20 on a hearing officer or an arbitrator, the  
21 arbitrator is contacted, and they often decline the  
22 case.

23 This, again, starts the process over again,  
24 where the parties then have to re-agree on another  
25 arbitrator, again delaying the arbitrator selection

1 process.

2 Again, the SED list sometimes can include  
3 arbitrators who are no longer actually performing  
4 the work or are retired.

5 I heard from a few superintendents that their  
6 recent list, when they contacted the hearing  
7 officer, they informed them that they were retired  
8 and no longer taking cases.

9 Again, prolonging the time period.

10 The initial time lag between, when the 3020-a  
11 charge is brought, and, really, when we have a list  
12 from SED, or a re-list if there's problems, is  
13 really, really too long.

14 So, that's something that we really need to  
15 talk about.

16 We also think that hearing officers and  
17 arbitrators, in general, should have some sort of  
18 common guidelines or standards in adjudicating these  
19 cases.

20 Whether they be standards on a fixed time  
21 frame, standards on a minimum punishment, this is,  
22 really, one of the only court-like processes that  
23 has no rules of evidence. And, really, no  
24 guidelines on arbitrators or hearing officers.

25 So, we often see, as Chancellor Walcott

1 discussed earlier this morning, very different  
2 outcomes in very similar sets of circumstances and  
3 cases.

4 And I think that uniformity should be  
5 important in this process.

6 We also agree with almost everyone, that we  
7 should have full and open discovery among the  
8 parties. We think that's one big weakness of our  
9 current system.

10 And, again, we should have some sort of rule  
11 of evidence that would apply to these hearings.

12 We also think that it's important, that, you  
13 know, unlike the, quote/unquote, rubber rooms that  
14 UFT and Chancellor Walcott discussed, we still think  
15 it's important that districts have the ability to  
16 use the, you know, non-tenured-area talents of the  
17 subject of a 3020-a hearing, in different tasks;  
18 whether it be, administrative functions.

19 You know, districts are paying, you know,  
20 teachers full salaries and benefits while these  
21 hearings are proceeding.

22 So, we think that, maybe, they can use their,  
23 you know, administrative talents, or other things,  
24 in other areas of the school, maybe that's not in  
25 contact with children.

1           So, I think that's something that should be  
2 explored as well.

3           With respect to the department bill, we are  
4 fully supportive of almost every provision of the  
5 bill; however, we do have concerns with the  
6 cost-sharing and cost-shifting portion of the bill.

7           I think, at a time when SED is looking for  
8 funds, and they don't have enough funds, you know,  
9 this is the, almost, largest state-aid cut that  
10 school districts have faced.

11           And, you know, I have some superintendents  
12 that would say: well, if the SED regulation and new  
13 bills would create a much, you know, less-costly  
14 process, then maybe cost sharing wouldn't be the  
15 worst thing.

16           But I -- we don't really know what, you know,  
17 in actuality, the SED regulation and bill is going  
18 to happen.

19           So, we, as a council, cannot recommend that  
20 we would support something that would put more --  
21 you know, more financial burden on our schools  
22 districts.

23           So, that's our initial comments.

24           And I'm going to let Dr. Sharkey speak, and  
25 then Mr. Dexter.



1 DR. SHARKEY, Ed.D: Senators, and staff,  
2 thank you.

3 The examples from my district aren't  
4 different from all the districts experienced;  
5 however, I think we offer a unique perspective.

6 I was a teacher for 18 years; school board  
7 president for 10 years; and currently a  
8 superintendent, for the last 6.

9 My focus remains child-center in each role  
10 that I've played.

11 Teachers who aren't skilled waste valuable  
12 time, hold back our youth and the progress they  
13 could have made. This isn't anything that no one  
14 else understands. These students get farther behind  
15 from where they could be. And, often, never catch  
16 up.

17 Teachers who are not skillful, and are  
18 abusive and neglectful, cause damage that our  
19 students are going to know for a lifetime.

20 They waste time, stunt growth and creativity,  
21 and take valuable resources away from where they  
22 should be.

23 The amount of time spent during the process  
24 is one of most egregious examples of waste that  
25 New York has, in my opinion.

1           Time is dragged out by the deadlines. We've  
2 heard that throughout the morning. And deadlines --  
3 lack of deadlines, there is no incentives for ending  
4 this process.

5           I believe districts do their jobs by removing  
6 these teachers, and sending them home, or to places  
7 where they do less damage. Sometimes they're called  
8 "rubber rooms." We often make up tasks for them to  
9 do, to keep them busy.

10           The damage continues, however, to the school  
11 system, as these people are paid.

12           I'll offer a few personal examples to see how  
13 it hits a small rural district.

14           We had an elementary-class teacher who,  
15 besides not instructing, would tell a student  
16 inappropriate things. I'll leave those details out.

17           Frequently leave the class unsupervised for  
18 long periods of time. Consistently violated  
19 individual education plans for students.

20           Held personal fund raisers during the class,  
21 from which she personally benefited. And, often  
22 slept during class.

23           Forget about the fact that no instruction, no  
24 increase in reading ability or math ability, was  
25 ever witnessed in this classroom, the teacher, as we

1 were going through the proceedings, was paid for  
2 two years while she stayed home.

3 Cost the district, in salaries, of a person  
4 we had to replace 130,000 over 2 years, plus  
5 attorneys fees and wasted district-personnel time.

6 Money is better spent. I think we all  
7 recognize that.

8 My second example is a high school core  
9 teacher, whose students were frustrated, and  
10 complained they would just read to themselves in  
11 class. No lessons. Silent reading occasionally.  
12 "Write something in your journal" was never checked.

13 After a year, no assessments, no class  
14 instruction, no dialogue.

15 This was a class that was preparing to take a  
16 regents.

17 It took a year, two months; another double  
18 salary. And, the teacher ended up resigning.

19 Again, add attorneys' fees and a waste of  
20 district-office time.

21 Over the last two years, my district's cut  
22 11 positions, which I know is not as bad as other  
23 districts. But, to me, those -- every single one of  
24 those positions hurt.

25 Another, third example I'll provide, is an

1 incompetent special ed. teacher who didn't follow  
2 the IEPs over the course of two years, during the  
3 transition of two PPS directors.

4 Teacher placed on leave, was paid for a year,  
5 and a couple of months. Was paid \$48,000, to go.

6 And the reason that happened is because, when  
7 we did a cost analysis, it was much cheaper to do  
8 that than it would be to go through the entire  
9 process.

10 Unfortunate, very frustrating, but a choice  
11 we had to make, to save some more resources.

12 What's even more disappointing, is that,  
13 these are teachers who have serious infractions.

14 One of my personal concerns, is that we're  
15 not doing anything about mediocre teaching.

16 Teacher's are allowed to be mediocre, or even  
17 a little bit less. And I think, at a time when we  
18 really need teachers to be creativity and support  
19 our students, and get them through tough times, and  
20 help them create skills -- skill sets for jobs that  
21 we don't even know exist yet, we have no -- no  
22 more -- no tools against mediocre teachers. We're  
23 just going for the really bad ones. And even those  
24 are hard.

25 So, I don't think we can accept mediocrity.

1 We don't do it in any other business.

2 So, I'm asking you to consider some of the  
3 changes that Kyle brought to you, and I'll defer to  
4 Dr. Dexter.

5 SUPERINTENDENT DEXTER: Thank you,  
6 Dr. Sharkey.

7 I'll keep my comments short.

8 But, I do believe that most teachers are  
9 truly excellent, and that's the way I approach every  
10 day. I believe most come to the job, wanting --  
11 come to school, or come to work, wanting to do their  
12 job well.

13 One of the things that I've always thought  
14 of: One should only pursue 3020-a charges when  
15 absolutely necessary; when all other things have  
16 been exhausted.

17 So, as you had mentioned: Are there  
18 situations where school superintendents and school  
19 boards choose not to pursue charges? There are.

20 But I do also think that part of that is, you  
21 exhaust everything you can before you go down that  
22 road, not only because of the expense, but, also, it  
23 is difficult on the person, it's difficult on the  
24 people who has a lot of time involved, there's a lot  
25 of money involved, and it's not something you want

1 to do without, pretty much, knowing that you are  
2 going to be successful.

3 I will say, from a person who has done these  
4 proceedings, been involved in these proceedings  
5 before, that time limit is a great issue.

6 I think one of the things I've heard  
7 throughout the testimony today, is that, the process  
8 we have in place right now does not lead to timely  
9 resolutions of 3020-a.

10 So, I think, whatever occurs out of these  
11 hearings, that we try to define what we think of as  
12 "success."

13 And one of the things I haven't yet today,  
14 is: Do we consider "success," meeting the  
15 timelines? beating the timelines? or --

16 I'm still not sure how we classify "success."

17 So, I think that's one of the things that we  
18 may want to do, and try to determine what we  
19 consider to be "successful," and then measure  
20 ourselves against those, to see what -- how we're  
21 doing.

22 And the other thing that I clearly have  
23 gleaned from today's conversations, is, we don't  
24 have really great data. And that might be  
25 something, as a state, we might want to look at.

1 I know that's not the purpose of these  
2 hearings, but just something that I've noticed.

3 And I also think that mutual discovery makes  
4 sense.

5 I have found that, in these proceedings in  
6 the past, that there are some attorneys that are  
7 very reasonable in this process.

8 I have been on the side where somebody  
9 decided to buried the district in discovery. It was  
10 not a group that testified at this point today.

11 But, I do think that mutual discovery just  
12 makes common sense, to me.

13 And, that's all my comments at this time.

14 MS. MCCAULEY BELOKOPITSKY: We would be happy  
15 to take any questions that you might have, Senator.

16 SENATOR FLANAGAN: I would make a comment,  
17 and, Mr. Dexter, you just made the point, you know:  
18 If we accomplish the goal of it here, in the  
19 statutory guidelines, but we have a lousy result,  
20 maybe we're really not doing anything as well as we  
21 should.

22 So, I think your points are extremely well  
23 taken.

24 And the consistency of the comments is, I  
25 think, very helpful.

1           And it's, you know, in a situation like this,  
2           it's not going to be any one thing in isolation that  
3           fixes this.

4           If we -- for example, if the arbitrators, who  
5           are even not getting paid now, if their rates are  
6           reduced to the point where you're not going to  
7           attract them anyway, then, what's the point?

8           If we adhere to a guideline, but nobody's  
9           happy with the procedural parts or the substantive  
10          parts of the process, then, what are we doing?

11          And I think, corny though it may sound, I'm  
12          going to repeat it, because, obviously, all of you  
13          believe this, that, ultimately what effect does this  
14          have on children?

15          When I hear the term "mediocrity," I  
16          certainly concur. And I don't like mediocrity in  
17          any aspect of life; certainly, in an educational  
18          component.

19          But, a teacher, a school-board member, and  
20          superintendent, you just can't get away from this  
21          stuff, can you?

22          What did you teach?

23          DR. SHARKEY, Ed.D: I taught, music, and  
24          computer science. You know, a band teacher.

25          MS. MCCAULEY BELOKOPITSKY: Now I'm going to



1       embarrass Dr. Sharkey.

2               She was my elementary school teacher.

3               SENATOR FLANAGAN: I didn't know they  
4 certified teachers at age nine.

5               [Laughter.]

6               SENATOR FLANAGAN: One last question: I  
7 assume, the cost sharing, is something that you  
8 just --

9               MS. MCCAULEY BELOKOPITSKY: It can be  
10 discussed.

11              I think the problem that the council has with  
12 it, is that, you know, our schools don't have money  
13 for most of anything right now.

14              And to put more and more burden, and as many  
15 superintendents commented on, this was another  
16 unfunded mandate that they didn't have the money to  
17 come up with.

18              So, I think we really have to talk with SED.  
19 And we've talked with SED on this -- on their bill,  
20 in particular, and about our concerns with of that  
21 provision.

22              And they were going to get, you know, the  
23 stakeholders, also the school board, some  
24 information on how this might -- the other  
25 provisions of the bill might reduce costs in the

1 long-term.

2 But I think, right now, it's problematic for  
3 us because our schools cannot absorb another cost.

4 SENATOR FLANAGAN: Yeah, one of the things --  
5 you may not have had the opportunity to see this --  
6 but, literally, at the end of SED's presentation,  
7 they put in there that they want to work in earnest  
8 in a real negotiation with people.

9 And I think, whether you have a hearing like  
10 this, or you advance the departmental bill, because  
11 I put my name on it, that engenders discussion.

12 So, we are contemplating putting that on an  
13 agenda, which I know will -- to quote my children,  
14 will freak some people out. But, if we do, it's for  
15 trying to find out ways that we can make something  
16 that's on the table, workable for everybody.

17 But, thank you very much. I appreciate you  
18 coming.

19 MS. MCCAULEY BELOKOPITSKY: Thank you,  
20 Senator.

21 SUPERINTENDENT DEXTER: Thank you, Senator.

22 DR. SHARKEY, Ed.D: Thank you.

23

24

25

1           SENATOR FLANAGAN: Okay, next is the Big 5.  
2           I should be a little bit more professional.

3           Excuse me.

4           The Conference of Big 5 School Districts.

5           MS. ASCIUTTO: Good afternoon.

6           SENATOR FLANAGAN: Good afternoon.

7           MS. ASCIUTTO: Thank you, Chairman Flanagan,  
8           for the opportunity today, and for bringing the  
9           attention to this critical issue.

10           I am Georgia Ascitutto. I'm the executive  
11           director of the Conference of Big 5 School  
12           Districts.

13           I am joined today by  
14           Superintendent Daniel Lowengard from the Syracuse  
15           City School District.

16           We have resubmitted our testimony to you. It  
17           has been revised. And it includes very specific  
18           comments that came in late, but they're there for  
19           you, from the Rochester City School District.

20           At the point of sounding, or echoing, the  
21           others in the room, the majority of the presenters  
22           today, we have a very common focus about this issue,  
23           and we need to address it.

24           And given the state's fiscal crisis and the  
25           cuts that our school districts have already

1 absorbed, it is critical that we look at all of our  
2 operating expenses, with an eye towards preserving  
3 the instruction and the integrity of our school  
4 systems.

5 With that said, and with the backdrop of our  
6 new 3012-c teacher-principal violation system, it's  
7 a critical time for our schools.

8 And, so, we appreciate your leadership on  
9 this issue.

10 We have -- I have four points I want to make,  
11 and then Dan will speak to the specifics about the  
12 Syracuse City School District.

13 One: In concert with many of those who spoke  
14 before you, we need to shorten the process.

15 Our school districts tell us that the process  
16 is anywhere from 1 1/2 to 2 years to resolve the  
17 cases -- to fully resolve the cases.

18 And whether an expedited process that would  
19 include mutual discovery, or disclosures, we have  
20 written, is one way of doing that, or adhering to  
21 the timelines in the law.

22 We need to do a better job of moving these  
23 cases through the system.

24 Your idea about using the process similar to  
25 the independent hearing officers in

1 special education, where they're taken off of an  
2 approved prior list, is something I think we should  
3 seriously explore. It seems to be working well in  
4 that system.

5           Secondly: If we do shorten the process, we  
6 reduce our costs.

7           On average, we agree with the school boards  
8 association, the costs are running at about \$200,000  
9 per case.

10           Superintendent Lowengard has very specific  
11 information to share with you.

12           And, so, we would be in agreement with the  
13 numbers that the state education department and  
14 school boards association have issued.

15           And, our core mission is -- the previous  
16 superintendent spoke about it -- is about  
17 maintaining the structural integrity of our systems.

18           We need to minimize the impact that the  
19 lengthy procedures have on classroom instruction.

20           These teachers are on assignment. They're  
21 out of the classroom, substitutes are in.

22           We need to do everything within our power to  
23 minimize instruction, particularly in our districts.

24           We have another item, which is unique to the  
25 Big 4, and that is, that we have a different statute

1 of limitations, and when we can bring a 3020-a  
2 proceeding, regarding criminal cases.

3 The current law for all school districts  
4 outside of the Big 4 allows a 3020-a proceeding  
5 after the statute of limitations has expired, after  
6 the three years, when there is a criminal charge  
7 against an individual.

8 But, in the Big 4 districts, you have to have  
9 a criminal conviction, which exceeds the time,  
10 obviously; expands the time even longer, in order to  
11 bring 3020-a proceeding.

12 So, we'd ask you to look at that as you move  
13 forward in the process in legislation, and bring our  
14 Big 4 districts in line with all other districts in  
15 the state.

16 SENATOR FLANAGAN: Can I ask you two quick  
17 questions?

18 MS. ASCIUTTO: Sure.

19 SENATOR FLANAGAN: You referenced  
20 "mutual discovery."

21 MS. ASCIUTTO: Uh-huh.

22 SENATOR FLANAGAN: Reciprocal discovery;  
23 however we want to describe it.

24 MS. ASCIUTTO: Yes.

25 SENATOR FLANAGAN: Are you in support of

1 that?

2 MS. ASCIUTTO: Yes.

3 SENATOR FLANAGAN: Okay.

4 And, then, the last point: This is a good  
5 indication. These are the things that legislators  
6 don't like to admit, but, in reading your testimony  
7 yesterday, in advance, I did not realize the anomaly  
8 with the Big 4 relative to the statute of  
9 limitations.

10 And I don't think I'm oversimplifying it: If  
11 this is about putting the best teacher in front of  
12 kids in the classroom, it strikes me as ridiculous  
13 that we don't have a uniform standard, particularly,  
14 when it relates to something like that.

15 So, I appreciate the education on that issue  
16 in particular.

17 MS. ASCIUTTO: Thank you.

18 SUPERINTENDENT LOWENGARD: Thank you for  
19 doing this. I know you've outlasted your  
20 colleagues, but you did a great job with the  
21 discussion, too. Hopefully, this will go further;  
22 that, this is a critical issue.

23 Four quick points:

24 I think SED should appoint the hearing  
25 officers. There's definitely judge-shopping going

1 on.

2 If I'm a judge, and I find for the  
3 administrators, the odds are, I'm not going to get  
4 picked again.

5 It's a ridiculous waste of time. Let SED  
6 appoint the arbitrators.

7 Second: I'm all right with sharing the  
8 costs.

9 The costs are about --

10 SENATOR FLANAGAN: I'm sorry, could you  
11 repeat that?

12 SUPERINTENDENT LOWENGARD: I will.

13 [Laughter.]

14 SUPERINTENDENT LOWENGARD: Because I'm going  
15 to save on the \$200,000 end.

16 We are spending -- it's funny, but it almost  
17 came out exactly as the other reporter, when, our  
18 five cases that we've done recently, all have been,  
19 a year and a half, and \$200,000.

20 So, I would share the cost, a third, a third,  
21 and third, up to the \$21,000 that is what the  
22 average cost of these hearings are costing, and so  
23 everybody's got a little bit of skin in the game.

24 Third: The discovery has to be.

25 It's ridiculous, what happens. At the last



1 moment, people ask for a lot of things. Let's get  
2 the cards out on the table.

3 And, I love the earlier idea: If 120 days is  
4 the limit, then stop paying after 120 days.

5 I have, like all superintendants' cases,  
6 they're very small, in relation.

7 I think this is a tenth of a percent of the  
8 people, but it shocks the conscience of school-board  
9 members, the public, when you hear of a teacher with  
10 three convictions.

11 We finally went to this; year and half, paid  
12 \$200,000.

13 The arbitrator said, "well, it didn't happen  
14 in the school, so it's a 15-day suspension."

15 We had another one that was, having a gun;  
16 brandishing a gun. All of this.

17 Same kind of decision: 30 days; after we  
18 spent \$200,000, and a year and a half.

19 It's just ridiculous.

20 And, like the former speaker said, we haven't  
21 started to concentrate on the mediocre yet. And  
22 it's because the bottom is so small, but it pervades  
23 the culture.

24 And people do say: If I can't get canned for  
25 this, then even concentrating on the mediocre.

1           You also alluded to the fact that the new  
2 teacher evaluation will dovetail into this.

3           If we don't streamline this system now, then  
4 we can't expect the new teacher evaluation system;  
5 which I think is going to have trouble, because you  
6 try 100-point system. It is subjective. It's going  
7 to be very difficult.

8           And in the final piece: In Syracuse, we're  
9 laying off 350 people. They are the last hired.

10          I would not say to you, that, if you let me  
11 pick 350, that I have 350 incompetent teachers.

12          I don't.

13          But I can tell you, that those last 20 or  
14 30 teachers that I'm letting go, should be taking  
15 the places of people that should not be in front of  
16 kids.

17          And we have to have a system that will say,  
18 to the whole community, we're taking care.

19          Because I really believe, all of this  
20 discussion on teacher evaluation is because, we, as  
21 a system, haven't taken care of our very lowest  
22 performers.

23          SENATOR FLANAGAN: Can I ask you a question  
24 on, you referenced a case with an individual  
25 brandishing a gun?

1 SUPERINTENDENT LOWENGARD: Yeah -- not in  
2 school.

3 It was outside of school. It was a dispute  
4 with his wife, or ex-wife, or something like that.  
5 And it got messy, and what actually happened; but,  
6 we took it.

7 And they said: well, it didn't happen in  
8 school.

9 So, that was a 30-day suspension, after  
10 a year-and-half out.

11 SENATOR FLANAGAN: Was there any criminal  
12 charge or criminal conviction in this case?

13 SUPERINTENDENT LOWENGARD: well, what people  
14 haven't said is, there's a lot of horse trading  
15 going on while this whole thing is going on.

16 So, while the person is saying, well, I might  
17 resign, I might do this, I want lower charges, and  
18 all that, so, really what you have to do, is, you  
19 have to be in touch with the DA, and try to have  
20 them take some steps, to say, just get the license  
21 for us, and all that.

22 I mean, you don't want to know all of this.

23 But, basically, what happens, in some of  
24 these awful cases that happen outside of school, we  
25 would have conversations and, say, get the license

1 for us, and then you, plea bargain whatever you  
2 want.

3 And, so, to us, like people have said, is,  
4 the whole felony-conviction thing can take, a year  
5 and a half, two years. So, you can't wait for the  
6 felony conviction, to decide what to do with your  
7 teacher.

8 SENATOR FLANAGAN: In looking at some of the  
9 agreements, or the statistics, relative to the city,  
10 it appears that, in large part, when there are  
11 criminal matters involved, that the DOE defers to  
12 law enforcement, through, I guess, the pendency of  
13 the case.

14 So, you sort of do a hybrid. You watch, and  
15 you listen --

16 SUPERINTENDENT LOWENGARD: Exactly.

17 SENATOR FLANAGAN: -- but, you can't always  
18 wait.

19 SUPERINTENDENT LOWENGARD: Exactly.

20 And because we're so small; where they'll  
21 have a couple hundred, we'll have one or two or  
22 three a year. But, we do watch.

23 We cannot wait until the convictions come on.  
24 You know, there are delays in the criminal justice.

25 So, if we think it has risen to that level,

1 we suspend them. And, so, we eat the cost, for as  
2 long as it takes, if we wait until that trial to  
3 end, and then we start ours.

4 Or, if it's serious enough, you know, we'll  
5 try to weigh in, and see if we can get the license  
6 before the -- and, sometimes, the DAs will say:  
7 well, if we get the license, that's punishment  
8 enough.

9 And, then, they'll plea bargain other things  
10 down.

11 I mean, we've have thefts, we've had things.  
12 But if it happens outside the schools, people tend  
13 to say: well, that's outside the school. There  
14 still may be a good teacher.

15 SENATOR FLANAGAN: Okay. Thank you very  
16 much.

17 SUPERINTENDENT LOWENGARD: Thank you.

18 SENATOR FLANAGAN: Appreciate your patience.

19 MS. ASCIUTTO: Thank you.

20 SENATOR FLANAGAN: Next is the Council of  
21 Supervisors & Administrators.

22 MS. RODRIGUEZ-ROLON: Good afternoon,  
23 Chairman Flanagan.

24 SENATOR FLANAGAN: Pull that mic in nice and  
25 tight, please.

1 MS. RODRIGUEZ-ROLON: Okay.

2 Good afternoon, Chairman Flanagan.

3 My name is Alithia Rodriguez-Rolon. I'm the  
4 assistant director for governmental affairs with the  
5 Council of School Supervisors & Administrators.

6 Joining me here today is Bruce Bryant,  
7 general counsel for CSA.

8 Thank you for the opportunity to present  
9 testimony.

10 I'm actually going to turn it over to Bruce,  
11 who is our expert, and has been part of the 3020-a  
12 process.

13 SENATOR FLANAGAN: You know you're in trouble  
14 when you're identified as expert. A lot of  
15 pressure.

16 ATTORNEY BRYANT: Good afternoon,  
17 Senator Flanagan.

18 SENATOR FLANAGAN: At this point in the  
19 afternoon, there's not much new to be said, but I do  
20 want to hit on some of the points that have been  
21 covered, responding, and hit on what I believe are  
22 the critical factors that need to be looked at in  
23 considering any modifications.

24 I have been counsel to the CSA for many  
25 years. During the course of that service, I have

1        tried many, many 3020-a cases, and I have settled  
2        many, many more.

3                It is a system that we all understand is  
4        flawed, and would like to -- and we would all like  
5        to improve it, move the process more quickly. But,  
6        there are -- and there are some things that need to  
7        be addressed.

8                I believe every speaker and every senator  
9        this afternoon -- today, has emphasized the  
10       importance for maintaining due process.

11               There are two critical elements to  
12       due process that I would ask the senate to, and your  
13       committee to, remember.

14               Two critical, and absolutely necessary,  
15       elements of that of that are:

16               The maintenance of an impartial, independent  
17       hearing officer.

18               The arbitrators from AAA that are selected  
19       are experienced specialists in labor-relations and  
20       employment law. This is their job. They -- some of  
21       them -- and many of them, and many of the ones that  
22       do 3020-a's have a great deal of experience hearing  
23       labor-relations matters and education. They  
24       understand the school systems very well.

25               Chancellor -- the chancellor's comments --

1 Chancellor walcott's comments regarding the  
2 substitution of an OATH -- a city-appointed OATH  
3 hearing officer for an independent impartial  
4 arbitrator is completely unacceptable to our  
5 organization.

6 The problem is, they are not impartial. They  
7 are city-appointed. I believe Chancellor walcott  
8 indicated they are subject to reappointment every  
9 five years. And only the most naive among us could  
10 believe that their record in ruling in favor of the  
11 city or in favor of employees against the city would  
12 not be a criteria in their reappointment.

13 The other element that is absolutely  
14 necessary to continue is the just-cause standard.

15 Just cause is fundamental fairness.

16 Just cause is -- means that there is a  
17 legitimate, valid reason for a person's  
18 discontinuance or removal.

19 That standard must be maintained.

20 Putting an arbitrary and capricious standard  
21 in its place simply will not work.

22 I would like to -- I know the time  
23 restrictions in -- or, the time that it takes to do  
24 a 3020-a is critical.

25 I would like to stress again, in the



1 agreement reached between the UFT and the New York  
2 City Department of Education, I think is something  
3 that should be looked at very seriously.

4 When the parties want the system to work it  
5 has it working.

6 It's phenomenal what that agreement has  
7 accomplished.

8 Hundreds of cases were cleared up in just a  
9 few months. And they've gone from a horrendous,  
10 awful backload into being caught up. As I believe  
11 Ms. Gerstel said, they now have arbitrators waiting  
12 for cases.

13 They have -- and when both sides, the  
14 department of ed. and the union work together to  
15 expedite that, it worked.

16 And that was a modified negotiated system as  
17 permitted by 3020 in the law, and it has worked very  
18 well.

19 Similarly, several years ago, CSA entered  
20 into a modified agreement for 3020-a cases, in which  
21 we put a five-month limitation on the completion of  
22 the cases. That has worked very well.

23 In looking around the rest of the state,  
24 looking at our -- looking at CSA's experience, where  
25 we have a far smaller number of cases proceeding, we

1 may be more indicative of what some of the smaller  
2 districts around the state could do.

3 We work from -- we choose arbitrators, that  
4 are selected from mutually agreed upon, within a day  
5 or two of the charges being brought. We get on the  
6 phone and find an arbitrator.

7 And the first question we ask an arbitrator  
8 that we're mutually and concerned in using, is: Do  
9 you have the time to do this? Can you get it done  
10 in the allotted time?

11 If he or she says, no, we go to the next  
12 arbitrator.

13 If he or she says yes, we work in that  
14 commitment, and we've been able to stay within that  
15 time limit very successfully.

16 The issue of, mutual, or reciprocal,  
17 discovery has been brought up over and over again.

18 I would submit that's a red herring.

19 And I think whether that was granted or not  
20 would have little impact on the efficiency of the  
21 system.

22 The school district, in preparing its case,  
23 knows most of what is out there and looks at it.

24 If there is some secret document that the  
25 employee or his lawyer is holding, at least, in my

1 case, if I've got a secret document that is going to  
2 make my case, the employer is going to know about it  
3 very quickly because I'm going to use that as  
4 leverage to get the case resolved and settled  
5 without a hearing.

6 I don't think there's a lot of secret  
7 documents. And I don't think the failure to have  
8 reciprocal discovery is delaying the process at all.

9 If, on the other hand, whatever discovery  
10 proceedings, as long as there was some reasonable  
11 time frame for the parties to -- and reasonable  
12 flexibility for the arbitrator to work with the  
13 parties and make sure that everything is done  
14 expeditiously, I think it's the arbitrator's  
15 authority to move that issue.

16 Lastly, I would like to talk a little bit  
17 about 3012-c and the teacher effectiveness and  
18 administrative effectiveness law that has just been  
19 passed.

20 Trying incompetence cases in a 3020-a process  
21 is very different from trying misconduct cases.

22 I know there has been a lot of discussion  
23 today about whether the hearing officer should be an  
24 educator or not.

25 I would submit the example that, most judges,

1 most juries, are not experts in whatever the subject  
2 of a case; however, they are learned and educated by  
3 the witnesses that each side presents.

4 I think each side needs to be able to go  
5 forward with educational experts, to educate the  
6 arbitrator, and let the arbitrator know what the  
7 considerations are from both sides.

8 And I think in that factor, the misconduct  
9 case -- or, excuse me, the incompetence cases,  
10 which, as several people have said, are the most  
11 difficult and time-consuming to try, can be moved  
12 more quickly and more efficiently.

13 I'll answer any questions that I may.

14 SENATOR FLANAGAN: Yeah, if I could; so, you  
15 are not adverse to, reciprocal, or mutual, discovery  
16 as long as some type of flexibility in it? Is  
17 that --

18 ATTORNEY BRYANT: I think the problem, from a  
19 practitioner in this area, I think it -- and it's  
20 something that falls on both sides -- quite often,  
21 particularly when we're in an expedited process to  
22 move the case as quickly as possible, there's  
23 information that the lawyers on either side may not  
24 be aware of at the outset of the case, that they  
25 learn throughout, so long as the arbitrator has the

1 authority to let that in, so that there's a full and  
2 fair hearing.

3 I think reasonable discovery procedures are  
4 appropriate.

5 SENATOR FLANAGAN: Okay.

6 Cost sharing?

7 I don't know that --

8 ATTORNEY BRYANT: With the exception --

9 SENATOR FLANAGAN: -- I see your testimony,  
10 but...

11 ATTORNEY BRYANT: With the exception of  
12 Syracuse, that's one issue that all of the districts  
13 and all of the unions can agree on.

14 I can't support it for our organization, no.

15 SENATOR FLANAGAN: Okay.

16 I was looking at your testimony last evening,  
17 and you made comments in here, which I focused on  
18 pretty clearly, because, really, you're the only  
19 ones that talk about this:

20 "Critical component of the amendments of  
21 3020-a enacted in '94 were provisions that  
22 specifically authorize school districts and labor  
23 unions to bargain for alternative disciplinary  
24 procedures."

25 I'm assuming that's something you warmly

1 embrace?

2 ATTORNEY BRYANT: Yes.

3 Yes. And I think that's the way that the  
4 New York City teachers' union and city school  
5 district were able to address a horrendous problem,  
6 and do a miraculous job of cleaning it up.

7 It's the way in which CSA and New York City  
8 School System came up with a system that works very  
9 well, and very quickly for us.

10 I think, giving districts and the local  
11 unions ability to come up with modifications that  
12 are appropriate for their districts are -- is the  
13 best way to approach this.

14 What's legislated, essentially, may work  
15 pretty well in some places, and may not work so well  
16 in other places.

17 I think the best solutions can be worked out  
18 locally.

19 SENATOR FLANAGAN: Yeah, I would agree with  
20 you, but I would just close on this point: I think  
21 we have obligation to have some general framework,  
22 general structure, that there is some due-process  
23 protections, irrespective of what a  
24 collective-bargaining agreement may entail.

25 So, maybe I'll go back to the term "hybrid"

1 that achieves some appropriate resolution.

2 But I know, CSA, having met with your  
3 representatives before, really had taken more bolder  
4 steps -- or bolder steps, in terms of what they were  
5 willing to agree to.

6 I think, because I was educated that  
7 Mr. Lowengard feels very strongly, that, someone  
8 who's not worthy of employment, they don't want to  
9 prolong that process either.

10 ATTORNEY BRYANT: We don't want to protect  
11 the incompetent.

12 We want to make sure everyone gets a fair  
13 day, a fair hearing.

14 SENATOR FLANAGAN: Okay.

15 ATTORNEY BRYANT: And that's why our two main  
16 points -- maintaining an independent, impartial  
17 arbitrator, and maintaining a just-cause standard --  
18 are the most critical elements to us.

19 SENATOR FLANAGAN: Thank you very much.  
20 Appreciate you coming in.

21 We have been joined by my pal, and colleague,  
22 Senator LaValle.

23

24

25

1           SENATOR FLANAGAN: And we have our last group  
2 to testify, certainly not least, the New York State  
3 School Attorneys Association.

4           Good afternoon.

5           MS. GRANELLI: Good afternoon.

6           Thank you so much for having us here today.

7           And thank you very much for holding these  
8 hearings to talk about what we feel is an extremely  
9 critical topic.

10           My name is Laura Granelli. I'm the president  
11 of the New York State Association of School  
12 Attorneys, also known as "NYSASA."

13           Our members are school lawyers. We have over  
14 130 members. And we represent, virtually, every  
15 school district in BOCES, outside of New York City,  
16 that's in the state.

17           We truly appreciate being here, in large  
18 part, because we feel we bring a very important  
19 perspective to this discourse.

20           Our members are the ones that are tasked with  
21 providing daily advice and counsel to the school  
22 districts and BOCES on this issue. Collectively,  
23 they have decades of experience.

24           And, I differ with my colleagues from NYSUT,  
25 perhaps, not surprisingly; that we've witnessed,



1 firsthand, the inordinate amount of time and expense  
2 that districts are forced to expend in order to  
3 address an unfit teacher.

4 As David Little so aptly stated, districts  
5 are frequently put in the position of having a  
6 Hobson's choice, between addressing a teacher or  
7 administrators' misconduct and the incredible costs  
8 that comes with that.

9 And that's money that could be applied toward  
10 programming. And, that's invaluable time of  
11 districts' staff that our students are owed.

12 With 3012-c, we've heard a lot of discourse  
13 lately about striving to have highly effective  
14 teachers in our schools.

15 I suggest to you, that that discourse is  
16 extremely incomplete without a comprehensive  
17 examination of the disciplinary process.

18 Districts have to be able to swiftly and  
19 economically discipline a tenured teacher or  
20 administrator in order to promote the effectiveness  
21 of the school environment.

22 Again, not surprisingly, I take issue with  
23 the fact that NYSUT is stating that the delays of  
24 the hearing on the fault of myself and my  
25 colleagues.

1           And I know that my colleagues here today will  
2           have something to say about that as well.

3           The fact is, that there's every incentive for  
4           teachers to delay the process, because they are  
5           almost always paid during the course of the hearing  
6           time, and pending the completion of the hearing.

7           In contrast, school districts have every  
8           incentive to get this hearing done.

9           As an advocate for school districts, we have  
10          every incentive to make sure that the hearing  
11          proceeds in an expedited manner.

12          You'll see from our testimony that the things  
13          that we offer up as proposals are all geared with an  
14          eye towards streamlining the tenure process and  
15          reducing costs.

16          My colleagues, Greg Guercio, to my right, and  
17          Tom Volz, to my left, practice extensively in this  
18          area.

19          We feel that there are a lot of areas of  
20          3020-a that are right for reform, but we're going to  
21          focus on four key areas, in the interest of time.

22          First, we're going to talk a little bit about  
23          the use of state-employee judicial hearing officers,  
24          that we're calling "JHOs," instead of using  
25          outside arbitrators.

1           We're going to talk about having final  
2 determination of ineffective on two consecutive  
3 evaluations to serve as prima facie proof of  
4 incompetence in a hearing.

5           Third, as we've heard lot about today, we're  
6 going to advocate for the use of reciprocal  
7 discovery.

8           And, fourth, we're going to advocate for the  
9 permission to terminate hearings -- excuse me,  
10 terminate teachers and administrators if they have  
11 any felony conviction; or, at very least, have a  
12 felony conviction that affect the safe and efficient  
13 operation of the school.

14           Similarly, we advocate for termination  
15 without a hearing if a teacher has inadequate  
16 certification, which would include, lacking  
17 appropriate certification, not obtaining  
18 certification in a timely manner, or allowing  
19 certification to expire, or having certification  
20 revoked.

21           And we will begin with Mr. Guercio.

22           MR. GUERCIO: Thank you very much.

23           Good afternoon, Senators.

24           First, I'd like to offer my personal thanks  
25 to the Chair for inviting our organization to be

1 present, and participate in this proceeding.

2 I've been practicing law in this area for  
3 over 38 years. And this is the first time, I think,  
4 that our organization has appeared before this  
5 committee.

6 I know that, to a very large extent, that's  
7 our fault. And we are making an effort to make our  
8 profile higher, so that, those of us who actually do  
9 this work every day are heard before decisions that  
10 affect our clients are made.

11 You've heard several witnesses talk about  
12 judicial hearing officers as opposed to arbitrators,  
13 but I want to make the case to you today, from a  
14 practical lawyering standpoint.

15 I read the testimony given by the NYSUT  
16 representatives, and I noticed, with appreciation,  
17 that it wasn't mentioned in the presentation that  
18 was made here today by them, but that you asked a  
19 question based upon the transcript, where, to a very  
20 large degree, the delay was -- the finger was  
21 pointed at school lawyers.

22 I want to point out that all the management  
23 people that have appeared before you today have  
24 taken the position, that we should take the steps to  
25 make the process move more quickly. And the people

1 who appear on behalf of the labor unions are all  
2 saying, it's moving quickly enough as is.

3 And I think therein lies the truth as to who  
4 wants to move these cases along.

5 Now, a couple of things haven't been  
6 mentioned about judicial hearing officers.

7 First, meeting regionally, and hearing cases  
8 on consecutive days.

9 If you practice law outside of our world, and  
10 you have to go to a courthouse, you don't meet once  
11 a month.

12 And, that's what happens in these cases, you  
13 get one hearing a month.

14 why?

15 well, it's because, there are -- there's a  
16 small cadre of arbitrators who are mutually trusted  
17 by both sides. You can count them on your hands in  
18 each region.

19 And those six or eight people in each region  
20 are the only ones who both sides believe are, both,  
21 competent and fair.

22 You can get an arbitrator who will meet every  
23 day, but that's because that arbitrator is not busy.  
24 And he or she is not busy, is because nobody wants  
25 them.

1           So, to get the advocates on both sides of the  
2 ledger to agree that this arbitrator will give both  
3 sides of a fair -- a fair shake, that's based upon  
4 the experience you've had with them.

5           well, guess what? Those people are as busy  
6 as busy can be. They only give you one day a month.

7           Putting the pressure on them, like 3012-c,  
8 and the arbitration -- the expedited arbitration  
9 procedure that's set forth in the new 3020-a  
10 amendments, will not make those six or eight or  
11 ten people work faster. It will make them drop out  
12 of the process.

13           All you have to do is ask them.

14           You already owe them hundreds of thousands of  
15 dollars, each, because the state is out of money.  
16 And they're already turning cases down because of  
17 that problem.

18           Tell them they have to hear a case in,  
19 60 days, or 90 days, where, they're hearing  
20 private-sector cases, they're doing mediation,  
21 they're doing fact-finding, they're doing grievance  
22 arbitration. Sometimes many hearings a day at their  
23 daily rate.

24           No one who anybody wants will take those  
25 cases.

1           The city of New York's situation is no  
2 answer. In fact, it contributes to the problem,  
3 because the city of New York has arranged -- has  
4 reached an agreement with that cadre of arbitrators,  
5 where they guarantee them a certain number of days  
6 per month.

7           They're required to attend, and they get  
8 paid.

9           And, so, they drain off -- the city drains  
10 off those same people who, we on Long Island and in  
11 Westchester, and so on, deal with, making the time  
12 that they have available for us even less.

13           So, to say that what we're going to do, is,  
14 keep the arbitration process, and simultaneously  
15 make it harder for the arbitrators who anybody wants  
16 to do the work, is no answer at all. The problem  
17 will only be worse.

18           And the decisions that you hear about,  
19 anecdotally, that you heard about from the first  
20 people who testified here this morning, will  
21 multiply exponentially, because, both, NYSUT, the  
22 UFT, and school boards have been avoiding those  
23 people who you will foist on us, for 30 years.

24           They're still around, they're still looking  
25 for work, and now they'll be the only ones who take

1 it.

2 A judicial hearing officer, somebody  
3 testified that, with regard to the city of New York,  
4 there's a built-in bias because they work for the  
5 city.

6 well, that's not what we're looking for.

7 On a statewide basis, we are looking for  
8 people who are employed by the state, either the  
9 education department or PERB.

10 PERB, by the way, has this system in place  
11 already, and it works well.

12 Use the same kind of people, require that  
13 they work every day, and that you work every day,  
14 and cases will settle in droves.

15 The reason -- the principal reason why cases  
16 don't settle today, gentlemen, is, teachers are home  
17 with full pay, for months, and even years.

18 The minute the pay dries up, that's when the  
19 settlement starts to talk.

20 If you look around, if you want to see  
21 anecdotal evidence of that, there are school  
22 districts around, who, 20 years ago, were able to  
23 negotiate limitations on suspension with pay.

24 I represent four of those districts.

25 In 20 years, in those four districts, I've



1 never gone to trial, because, as soon as we get  
2 within reasonable striking distance of that  
3 deadline, the settlement offer, the real settlement  
4 offer, from labor comes out, and the case gets  
5 settled.

6 without that, that 505 days that the  
7 school board association is talking about, that  
8 includes all those cases that settle.

9 when you talk about cases that go through to  
10 their completion, you're talking about three and  
11 four years, and more, during all of which time,  
12 two salaries, two health insurances, two benefit  
13 packages.

14 It's even cheaper for the state to hire those  
15 people, because you're paying \$1,800 a day  
16 downstate, plus expenses to those arbitrators.

17 There are a half a dozen of them who have  
18 outstanding invoices to you for over a year, right  
19 now, of, in the two hundred and fifty to  
20 three hundred thousand dollar zone.

21 So, we save money, you save money.

22 The process moves along the way it does  
23 anyplace else: You start your trial on day one, and  
24 you finish -- you keep going until you finish.

25 Under that circumstance, everybody should be

1 happy, except those who want to delay the system.

2 I only want to speak very briefly on  
3 prima facie proof.

4 3012-c requires that we negotiate an appeals  
5 process before a finding of inefficiency is in your  
6 personnel file.

7 Two: Before you can go to a 3020-a case,  
8 two consecutive years, and both of those final  
9 evaluations, subject to the appeals process, left to  
10 be negotiated between the parties.

11 It's our position that, if that process is in  
12 effect, once it's been negotiated -- and there is  
13 even talk coming out of the commissioner's office  
14 that a model appeals process is going to be issued  
15 as part of their updated regulations -- that, once  
16 that process is complete, and you've exhausted your  
17 appeals, and your finding has been two consecutive  
18 years of incompetence, that should be prima facie  
19 proof of incompetence.

20 What do I mean by that?

21 You to go the hearing, you put the  
22 evaluations into evidence, and you rest.

23 And at that point, the burden shifts to the  
24 respondent.

25 If the respondent does not put on a case, or

1 the respondent does not prove his case, you need not  
2 have called all of the witnesses, that take months  
3 and months and months, because you've been through  
4 that process already.

5 Eliminate the two bites of the apple, bring  
6 in JHOs who will hear this case -- these cases, from  
7 day one, and through completion, and you'll never  
8 have to worry about the 3020-a process costing way  
9 too much money or taking too much time, again.

10 Thank you.

11 MR. VOLZ: Good afternoon, Senators.

12 Thank you for having us here.

13 I want to -- before I comment on the  
14 reciprocal discovery, much about has been said  
15 already, I just want to dovetail off of a remark  
16 that Mr. Guercio made in regard to the New York City  
17 resolution to this problem, and the resulting effect  
18 it's had on other portions of the state.

19 In addition to the hearing officers who are  
20 committed, pursuant to that agreement, to dedicate  
21 certain days to New York City cases, so, too, are  
22 the lawyers that the New York State United Teachers  
23 employ to handle these cases.

24 So, the lawyer that's trying the  
25 New York City case with me, out on Long Island, is

1 also trying the cases in New York City.

2 And when you attempt to schedule cases, you  
3 are blocked from -- there are blackouts in their  
4 calendars that they are obligated to devote to  
5 New York City cases, which make it  
6 next-to-impossible to get consecutive days.

7 And that has become a problem for us in the  
8 field. And I think that needs to be recognized, in  
9 terms of the delay that has been attributed to the  
10 parties in connection with that.

11 The other comment that I'd make is along the  
12 practical lines of something that I experienced last  
13 week, and is very common place.

14 Charges are brought. And the union lawyer  
15 reviews the case, and calls me, and says: we're  
16 willing to settle this case. we'll resign.

17 I say, "wonderful. what next?"

18 "Pay us for three years.

19 "Pay you for three?"

20 "well, it's going to take us that long to get  
21 to the hearing. And my client knows that he can  
22 remain out on suspension with pay, and resign at any  
23 time, up to that point, and, essentially, trump the  
24 process."

25 That's the practical reality. That's the

1 discussion that occurs with us and our clients in  
2 closed session, when we're assessing the case for  
3 them, and telling them whether they should bring it,  
4 and what the conversation is going to be like once  
5 they do.

6 with regard to the reciprocal-discovery  
7 issue, there has been a lot of discussion about  
8 that.

9 And I would say to you, that, the  
10 1994 amendments were supposed to achieve efficiency  
11 and maintain fairness.

12 In my judgment, they have accomplished  
13 neither, with regard to the reciprocal discovery.

14 Any civil proceeding that we handle under the  
15 New York State law has discovery. Even criminal  
16 procedural law, section 230.40, provides a degree of  
17 discoveries.

18 Certainly, I do not believe the legislature  
19 had intended to extend in this civil proceeding,  
20 albeit disciplinary, that there would be greater  
21 rights to the respondent than would be to a  
22 defendant in a criminal case.

23 The byproduct of creating reciprocal  
24 discovery would be:

25 Number one: To eliminate the unnecessary

1 motion practice that occurs throughout the process,  
2 by the lawyers on the school side attempting to get  
3 it, and the lawyers on the other side attempting to  
4 block it.

5 Secondly: when the discovery is not granted,  
6 the resulting adjournments that occur due to the  
7 surprises that arise during the course of the  
8 hearing.

9 And, so, you will -- I experience this often;  
10 where, I am in a trial. The respondent offers  
11 documentation that could have been offered  
12 beforehand. And the witness, my client, who I might  
13 need to authenticate those documents, or speak to me  
14 about those witnesses, are not present.

15 I request, at times, an adjournment to deal  
16 with that, so as to avoid a lengthy rebuttal case.  
17 And, you're dealing with, weeks, if not months, of  
18 gaps, in terms of getting that hearing back on  
19 track.

20 It will also shorten the rebuttal; and, thus,  
21 create greater efficiency in the process.

22 What do the opponents to reciprocal discovery  
23 say?

24 Number one: It's not in the statute.

25 Well, I submit to you, you can solve that

1 one. That's easy.

2 Second: They say, it forces the employee to  
3 testify.

4 That is not true.

5 The statute is clear, that the employee does  
6 not have to testify. And reasonable parameters for  
7 discovery don't change that.

8 What protects the employee in that instance?  
9 The burden of proof.

10 We understand we own that, and we'll continue  
11 to have that burden throughout the process.

12 The burden of proof protects the employee  
13 from the perils, or what are articulated to be  
14 perils, of reciprocal discovery.

15 We need to balance efficiency with just and  
16 fair. And reciprocal discovery would do that.

17 This morning, I forwarded cases to your  
18 office. Those are unreported. These cases, many of  
19 them, never make it to the court.

20 So, you don't have a body of case law to turn  
21 to, but those cases are collected by New York State  
22 School Boards Association, and we draw upon those to  
23 get guidance.

24 Those are the cases that were at the  
25 forefront of the discovery dispute. And I think

1 those arbitrators who handled them, did so in way  
2 that recognized actually what the legislature was  
3 intending to do, but didn't accomplish.

4 Thank you.

5 SENATOR FLANAGAN: Can I ask you a question  
6 specifically on the motions?

7 I mean, obviously, we've heard a lot of  
8 comments about the discovery process.

9 But, relative to the motions, and I think I  
10 understand it correctly: You go before the  
11 arbitrator, and you make a motion to get certain  
12 evidence or certain data available to you.

13 Generally, what's your success rate?

14 Is it like, shooting fish in a barrel? Or is  
15 it like, 1 out of 100?

16 Do you --

17 MR. VOLZ: I'll tell you, that, you generally  
18 know, because the small groups of -- that small  
19 group of arbitrators who handle these cases, you  
20 know who they're going to be.

21 So, I know, if I have a certain hearing  
22 officer, he's not going to do it.

23 And I know, if I have another hearing -- in  
24 which case, I'm planning to deal with the requests  
25 for extra time if I don't get it in advance.



1           There are others who will say, at the close  
2 of the district's case: I'll require a certain  
3 amount of discovery at the close of the case.

4           So, that, in essence, the employee is not  
5 revealing the case and making the district case  
6 easier to prove.

7           SENATOR FLANAGAN: Okay.

8           MR. GUERCIO: If I might add, there are  
9 actually arbitrators of sufficient stature to be  
10 hearing these cases all the time, the group I've  
11 been talking about, who say: I don't care what the  
12 law says. There's going to be mutual discovery.

13           And when the union attorney complains, he  
14 says, or she says: Then I won't take the case.

15           And we get mutual discovery in those cases.

16           MR. VOLZ: And there are some who will say  
17 that, the statute, if the legislature had intended  
18 to provide for it, the -- they would have put it in  
19 there.

20           The problem is, sometimes, as this list  
21 shrinks -- this list of hearing officers who are  
22 acceptable to both sides shrink, you make a  
23 calculated decision to select someone who might not  
24 provide reciprocal discovery to you, because you get  
25 further and further away from the cream of the crop.

1 And you're more concerned about the outcome of your  
2 case than the motion practice that precedes it.

3 SENATOR FLANAGAN: Do you have a question?

4 SENATOR LAVALLE: No.

5 SENATOR FLANAGAN: Listen, I really do  
6 appreciate you coming in.

7 Mr. Guercio and I joked a little bit before  
8 the hearing.

9 I got a chance to read the testimony  
10 yesterday. And it seems to me, that you actually  
11 gave him some latitude, in, perhaps, writing some of  
12 this.

13 But, the expertise is extremely helpful.

14 And I'm glad, that, if this is your first  
15 opportunity in a while to be at a hearing, let it  
16 certainly not be the last.

17 And, with that, that concludes the formal  
18 portion of what we're doing today.

19 I want to -- there are a couple of other  
20 groups that will be submitting written testimony.  
21 We will put together a packet that details  
22 everything that's been obviously spoken, as well as  
23 written, for everyone's review.

24 I have met with the arbitrators last week. I  
25 think they're going to be submitting written

1 testimony.

2 The school administrators will be submitting  
3 written testimony as well.

4 And I met a gentleman this morning, who is  
5 accomplished attorney, Mr. Mazzarello (ph.), if I'm  
6 saying it correctly, will be -- it's actually  
7 practiced on both sides.

8 So, he's, perhaps, more confused than all of  
9 us.

10 [Laughter.]

11 SENATOR FLANAGAN: But, he's very good at  
12 what he does. He will also be submitting written  
13 testimony.

14 And, I very much appreciate everyone's  
15 patience.

16 And, enjoy the rest of your day.

17 Thank you very much.

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19 (Whereupon, at 1:49 p.m., the Senate Standing  
20 Committee on Local Education hearing concluded.)

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