



THE NEW YORK CITY DEPARTMENT OF EDUCATION

JOEL I. KLEIN, *Chancellor*

OFFICE OF THE CHANCELLOR
52 CHAMBERS STREET - NEW YORK, NY 10007

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April 15, 2010

Michael Mulgrew, President
United Federation of Teachers
52 Broadway, 14th Floor
New York, New York 10004

Dear Mr. Mulgrew:

This letter will confirm the mutual understandings and agreements between the Board of Education of the City School District of the City of New York ("DOE") and the United Federation of Teachers ("UFT"). Nothing in this Agreement shall constitute a waiver or modification of any provision of any collective bargaining agreement, letter (including but not limited to the June 27, 2008 letter from the Chancellor to the President of the UFT) or other agreement between the DOE and the UFT except as specifically set forth herein. Nothing in this agreement shall be construed to convert non-mandatory subjects of bargaining into mandatory subjects of bargaining. As used herein, the term "CBA" shall refer to the collective bargaining agreement covering teachers and corresponding provisions of other UFT-DOE collective bargaining agreements.

The long delays that have arisen in the current process of investigating alleged acts of misconduct and adjudicating charges pursuant to Education Law § 3020-a benefit neither the DOE nor the employees represented by the UFT. The DOE and the UFT are committed to ensuring that the agreements reached here will be carried out so that those delays will be ended and the process outlined in the law, the contracts between the parties, and this Agreement will be adhered to.

For purposes of this Agreement, all timelines shall be measured in calendar days, but shall not include the summer break, all recess periods and holidays.

Reassignment

Misconduct Cases (i.e., any case deemed by the DOE to deal exclusively or primarily with an employee's behavior, not his or her pedagogy): Pending investigation of possible misconduct and completion of the § 3020-a hearing, the DOE may reassign an employee only to (i) a DOE administrative office to do work consistent with law (an "Administrative Office Assignment") or (ii) an administrative assignment within his or her school with a program consisting of Professional or Administrative Activities (as listed in CBA Articles 7(A)(6)(a), 7(B)(8)(a), 7(C)(4)(g)(1), or 7(K)(3)(d)) other than items #1 (small group instruction), #2 (one to one tutoring), #3 (advise student activities such as clubs, teams or publications) and #7 (conflict resolution for students), which shall be scheduled consistent with CBA Article 7(B)(2)(c) regardless of the division in which the employee works ("Administrative School Assignment").

Where the Chancellor or his designee determines that it is in the best interests of the school system that an employee accused of sexual misconduct as defined in CBA Article 21(G)(6) or serious financial misconduct involving more than \$1,000 not be allowed to work in an Administrative Office Assignment or an Administrative School Assignment pending the outcome of the investigation, the DOE may suspend the employee with pay rather than reassign him/her. The determination of the Chancellor or his designee to suspend an employee with pay shall be in writing. Prior to a suspension from all duties with pay, the Chancellor or his designee shall consult with the UFT President or his designee.

The DOE shall prefer charges pursuant to Education Law § 3020-a¹ within 60 days of an employee being reassigned or suspended, except in cases where the reassignment or suspension was caused by (i) an allegation of sexual misconduct as defined in CBA Article 21(G)(6) that is being investigated by the Special Commissioner of Investigation for the New York City School District ("SCI"), (ii) an allegation of serious financial misconduct involving more than \$1,000 that is being investigated by SCI, (iii) criminal charges pending against the employee, (iv) an allegation of serious assault that is being investigated by SCI, (v) an allegation of tampering with a witness or evidence, where the allegation of tampering is being investigated by SCI. In cases where the 60 day period does not apply, when SCI issues a report or, in the case of criminal charges, the employee notifies the DOE of the disposition of the criminal case pursuant to Chancellor's Regulation C-105, the DOE shall have 15 days to bring § 3020-a charges against the employee or return the employee to his or her prior assignment. Nothing herein shall waive any limitations period for the bringing of charges pursuant to Education Law § 3020-a. The Chancellor or his designee and the President of the UFT or his designee shall meet monthly, or less frequently if the UFT and DOE agree, to review the status of these cases. At the end of the first year of this Agreement, and in subsequent years if requested by the UFT, the DOE and the UFT will meet to review the issue of investigations and reassignments extending beyond 60 days and, if there has been a significant increase in the number of such investigations and reassignments, to negotiate ways to address this issue.

Except in those cases where the DOE is not required to prefer charges within 60 days, should the DOE not prefer § 3020-a charges within 60 days, the employee shall be returned to his/her prior assignment. If an employee is returned to his/her prior assignment, adverse action shall not be taken against the employee solely because of the reassignment. If § 3020-a charges are preferred subsequent to the expiration of the 60 day period, the employee may then again be reassigned to an Administrative Office Assignment or an Administrative School Assignment or, where the Chancellor or his designee determines that it is in the best interests of the school system that an employee accused of sexual misconduct as defined in CBA Article 21(G)(6) or serious financial misconduct involving more than \$1,000 not be allowed to work in an Administrative Office Assignment or an Administrative School Assignment pending the outcome of the investigation, suspend the employee with pay rather than reassign him/her pending determination of the § 3020-a charges. The determination of the Chancellor or his designee to suspend an employee with pay shall be in writing. Prior to a suspension from all duties with pay, the Chancellor or his designee shall consult with the UFT President or his

¹ Probationary employees will be reassigned in the same manner as tenured employees under this Agreement, *i.e.*, to an Administrative Office Assignment, Administrative School Assignment, or suspension with pay (if permitted by this Agreement). This Agreement shall not be construed to create tenure or Education Law § 3020-a rights for an employee.

designee. An employee's assignment pending investigation and/or a hearing shall not be raised at the hearing or deemed relevant in any way to the determination of the charges, any penalty issued or the adjudication of any issue in the hearing.

Incompetence Cases (i.e., any case deemed by the DOE to deal exclusively or primarily with an employee's pedagogy) – Pending the bringing of Education Law § 3020-a charges for alleged incompetence and completion of the § 3020-a hearing, the DOE may reassign an employee only to an (i) Administrative Office Assignment or (ii) an Administrative School Assignment. The DOE shall prefer charges pursuant to Education Law § 3020-a within 10 days of an employee being reassigned. Should the DOE not prefer § 3020-a charges within 10 days, the employee shall be returned to his/her prior assignment. If an employee is returned to his/her prior assignment, adverse action shall not be taken against the employee solely because of the reassignment. If § 3020-a charges are preferred subsequent to the expiration of the 10 day period, the employee may then again be reassigned to an Administrative Office Assignment or an Administrative School Assignment pending determination of the § 3020-a charges.

Tolling: If the DOE gives a reassigned employee 48 hours notice of an interview which may lead to disciplinary action and the reassigned employee either fails to appear on the scheduled day or fails to notify the DOE that s/he is invoking any right he/she may have to not answer questions, the DOE shall reschedule the interview within a reasonable period of time and the time between the originally scheduled interview and the rescheduled interview shall not count towards the applicable 60-day or 10-day limits on the length of time an employee may be reassigned or suspended with pay. Where a principal schedules an interview which may lead to disciplinary action of an employee that has been given an Administrative School Assignment and 48 hours notice is not required by the CBA, Chancellor's regulations, or law, the following shall apply: If the reassigned employee either fails to appear on the scheduled day or fails to notify the principal that s/he is invoking any right he/she may have to not answer questions, the principal shall reschedule the interview within a reasonable period of time and the time between the first scheduled interview and the rescheduled interview shall not count towards the applicable 60-day or 10-day limits on the length of time an employee may be reassigned. Nothing herein shall constitute a waiver or alteration of any right the DOE may have to compel an employee to attend an interview which may lead to disciplinary action or any right an employee may have to not answer questions.

Service of Charges

In order to make the process as efficient as possible, service of notice of the nature of the charges and the actual charges shall be consolidated and served together upon an employee along with specifications and, in incompetence cases, a bill of particulars. Nothing in this Agreement shall alter a Respondent's entitlement, if any, to a bill of particulars in misconduct cases.

Probable Cause Determinations

In addition to the enumerated acts set forth in CBA Article 21(G)(5), serious misconduct shall also include actions that would constitute a class A-I or A-II felony or any felony defined as a violent felony offense in NY Penal Law § 70.02. An indictment on a class A-I or A-II felony, an indictment on any felony defined as a violent felony offense in NY Penal Law § 70.02, or a felony indictment on any other conduct that constitutes serious misconduct pursuant to CBA Article 21(G)(5) shall create a rebuttable presumption of probable cause.

If a finding of probable cause was based on an indictment pursuant to CBA Article 21(G)(5), the employee shall remain off payroll pending the disposition of the criminal case. The DOE shall have 15 days after the employee notifies the DOE of the disposition of the criminal case pursuant to Chancellor's Regulation C-105 to bring Education Law § 3020-a charges based on the same conduct as was at issue in the criminal case. If the DOE prefers § 3020-a charges on the same conduct as was at issue in the criminal case within the 15 days, and the employee was convicted in the criminal case of any offense that constitutes serious misconduct, he/she shall remain off payroll until a decision in the § 3020-a case and such § 3020-a case shall be completed within the timeframes for hearings set forth in this Agreement. If the DOE prefers § 3020-a charges on the same conduct as was at issue in the criminal case within the 15 days, and the employee was acquitted of all offenses that constitute serious misconduct, the DOE shall reassign the employee to an Administrative Office Assignment or an Administrative School Assignment, suspend the employee with pay (if permitted pursuant to this Agreement) or request a second probable cause hearing to continue the suspension without pay until the final outcome of the § 3020-a hearing and such § 3020-a case shall be completed within the timeframes for hearings set forth in this Agreement. If the DOE does not bring Education Law § 3020-a charges within those 15 days, the employee shall be restored to the payroll effective as of the date the disposition of the criminal case and returned to his/her prior position.

If a finding of probable cause was based on criminal charges pursuant to CBA Article 21(G)(6), the DOE shall have 15 days after the employee notifies the DOE of the disposition of the criminal charge pursuant to Chancellor's Regulation C-105 to bring Education Law § 3020-a charges based on the same conduct as was at issue in the criminal charge. If the DOE brings such a § 3020-a charge, the employee shall remain off payroll until a decision in the § 3020-a case and such § 3020-a case shall be completed within the timeframes for hearings set forth in this Agreement. If the DOE does not bring § 3020-a charges based on the same conduct as was at issue in the criminal charge within 15 days of the employee notifying the DOE of the disposition of the criminal charge pursuant to Chancellor's Regulation C-105, the employee shall be restored to the payroll effective as of the date the disposition of the criminal charge.

Nothing in this Agreement shall alter the provisions of CBA Article 21(G)(5) and (6) with respect to entitlement to back pay. The DOE agrees to meet on a bimonthly basis with the UFT to assess the status of investigations extending beyond 60 days where the employee has been suspended without pay. ***Timeframe for Hearings***

Within 10 - 15 days of DOE's receipt of the request for a hearing from an employee charged under Education Law § 3020-a, a pre-hearing conference shall be held. Both Education Law

§ 3020-a and the collective bargaining agreements require hearings, including closing statements, to be completed within sixty (60) days of the pre-hearing conference and a decision to be rendered within thirty (30) days of the final hearing date. The UFT and DOE agree this timeframe must be adhered to by all parties to the hearings and strictly enforced by hearing officers. Hearing officers shall establish a trial schedule at the pre-hearing conference to ensure that hearings are completed within the required statutory and contractual timeframes and ensure an equitable distribution of days between the DOE and the charged employee.

Education Law § 3020-a permits "limited extensions" beyond the 60 days where it is determined that "extraordinary circumstances" warrant. "Extraordinary circumstances" shall be construed narrowly by hearing officers so that the granting of "limited extensions" allowing hearings to last beyond sixty (60) days is the exception and not the rule. Pursuant to CBA Article 21, a hearing officer may be removed prior to the end of his or her one-year term only for good and sufficient cause, which may include failure to comply with this Agreement, upon mutual agreement of the UFT and DOE.

If the hearing officer determines that a necessary witness is a former student who is unavailable because he/she is residing outside of New York City or a current student who is unavailable because he/she has left New York City for an extended period of time, this shall constitute an "extraordinary circumstance." In such a case, the hearing officer shall schedule the hearing to begin or continue as soon as possible given the availability of the witness as demonstrated to the hearing officer.

Arbitrators serving on the competence panel must agree to provide seven (7) consecutive hearing dates as defined in CBA Article 21(G)(2)(a) per month for the months of September through June and two (2) hearing dates for the months of July and August.

Discovery and Testimony

In order to comply with timelines for hearings, the UFT and DOE agree that hearings must be held in as efficient a manner as possible. Disputes relating to document production, witness lists and other procedural issues often consume hearing time and should be dealt with to the maximum extent possible in the pre-hearing conference. To that end, the UFT and DOE have already agreed in the June 27, 2008 letter from the Chancellor to President of the UFT to certain discovery procedures.

The hearing process itself can be conducted in a more efficient manner that allows for issues to be fully and fairly litigated. To accomplish this, the parties to the hearings shall adhere to the following guidelines:

1. It is the intent of the UFT and DOE that, to the extent practicable, hearing days shall be fully utilized, that hearing days not end before 5pm and the parties to the hearing have multiple witnesses ready to testify to avoid the loss of part of the day.
2. Where a hearing day is not fully used, the unused time will be counted towards the time allocated to the party that caused the delay.
3. Attorneys shall not meet with others between direct and cross examination for longer than 20 minutes, except in unusual circumstances.

4. Hearing Officers shall ensure that cross-examination is not used by either party as a dilatory tactic in order to reduce one of the parties' allotted time to present its case.
5. Evidence shall be limited to relevant matters.
6. Rebuttal shall be used only to deny some affirmative fact that the opposing party has tried to prove. During rebuttal, a party to the hearing may not offer proof to corroborate evidence that has already been presented by that party or proof tending merely to support that party's case after the opposing party has rested.

If relevant and requested at the pre-hearing conference, either party may introduce (i) relevant background evidence about a witness by affidavit from the witness; (ii) an affidavit from a doctor's office attesting to an employee's visit or non-visit on a particular date; (iii) an affidavit attesting to the date of an employee's arrest, the charge (if any) against the arrested employee, and the disposition of that charge. Such a witness may be cross-examined regarding any matter discussed in an affidavit.

If relevant, a (i) business record, (ii) attendance list from a faculty meeting, orientation and/or training session, or (iii) any human resource document submitted by a respondent (e.g., absence or sick note) may be admitted with an affidavit from a custodian of the record, without the need for live testimony from a witness to authenticate the document.

A party to the hearing or the hearing officer may request an unedited copy of the relevant transcript if a certified transcript is not available when needed. The unavailability of a certified transcript shall not excuse adherence to the time limitations for completion of a hearing and issuance of a decision.

Non-Termination Cases

The expedited hearing process as described in CBA Article 21(G)(3) shall be utilized as set forth therein, with the following modification: If the DOE decides not to seek a penalty of more than a suspension of 4 weeks or an equivalent fine, the case shall be heard under the expedited procedures provided in CBA Article 21(G)(3), without the need for the employee to accept an offer of expedited arbitration.

A separate track of "non-termination" cases will be established with a separate panel of additional hearing officers that exclusively hears expedited cases.

Panel of Hearing Officers

The number of hearing officers shall be as follows:

Incompetence Cases shall be heard by a panel of 14 hearing officers.

Misconduct Cases shall be heard by a panel of 25 hearing officers.

Expedited Cases shall be heard by a panel of hearing officers, the size of which will be set by the UFT and DOE as described below.

Representatives of the UFT and DOE shall meet monthly, or less frequently if the UFT and DOE agree, for the first year of this Agreement and at least twice a year thereafter (i) to agree on the number of hearing officers hearing expedited cases, (ii) to discuss the appropriateness of the number of hearing officers, including the possibility of agreeing to increase or decrease the number of hearing officers on either the incompetence or misconduct panels on either a temporary or permanent basis, and (iii) to discuss the appropriateness of the number of probable cause arbitrators, including the possibility of agreeing to increase or decrease the number of probable cause arbitrators. If the DOE believes there is a need for more hearing officers to comply with the timelines set forth in this Agreement, it shall request that the UFT agree to increase the number of hearing officers and the UFT shall not unreasonably deny an increase.

Decisions

Both Education Law § 3020-a and the collective bargaining agreements require decisions within 30 days of the completion of the hearing.

Meeting with the Panel of Hearing Officers

The Chancellor and the President of the UFT will personally, jointly meet with the panel of hearing officers annually to impress upon the hearing officers that both parties to this Agreement are serious about meeting the timelines in the law, the collective bargaining agreements, and this Agreement. The Chancellor and the President will urge the hearing officers to strictly control the hearings and require all parties to the hearing to conform to the timelines provided herein. They will assure the hearing officers that no hearing officer will be removed by either party to this Agreement for enforcing these rules.

Mediation of Education Law § 3020-a charges

This section, "Mediation of Education Law § 3020-a charges," shall apply to all employees with pending Education Law § 3020-a charges on or before September 1, 2010 or being investigated on or before September 1, 2010 and the investigation results in § 3020-a charges. The parties to the § 3020-a hearings shall begin mediating such cases upon the signing of this Agreement.

The UFT and DOE shall agree on hearing officers on the rotational panel that shall serve as mediators one day per month (in addition to their required hearing days that month). The UFT and DOE may also jointly select mediators not currently on the panel of hearing officers.

Each case subject to mediation shall be assigned, on a rotational basis, to a mediator, other than the hearing officer assigned to decide the case.

The employee (and the employee's representative, if any) and a representative of the DOE with authority to negotiate settlement agreements (subject to final supervisory approval) shall meet with the mediator. The mediator shall work informally to assist the charged employee and the DOE in reaching, if possible, a voluntary, negotiated resolution of the Education Law § 3020-a charges. The mediator shall not decide the merits of the Education Law § 3020-a charges or

impose a decision. Instead, the mediator shall help the charged employee and the DOE to, if possible, agree on a mutually acceptable resolution.

No mediator shall be compelled to or voluntarily disclose (including in any subsequent proceedings under §3020-a of the Education Law) any information learned during the mediation.

Backlog

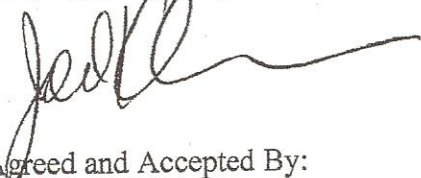
Effective the first day of the 2010-2011 school year, all employees who, prior to August 31, 2010, have been (i) removed from their positions and assigned to a temporary reassignment center or (ii) charged pursuant to Education Law § 3020-a shall be reassigned to an Administrative Office Assignment or an Administrative School Assignment or suspended with pay (if permitted by this Agreement).

For all employees charged prior to August 31, 2010, the requirement that the pre-hearing conference be scheduled within 10-15 days of the charge shall not apply, but the § 3020-a hearing and decision shall be completed by December 31, 2010.

For all employees who were assigned to a TRC prior to August 31, 2010 and were not charged prior to August 31, 2010, the 10 or 60 day period to charge an employee or return him/her to his/her prior assignment, shall run from September 1, 2010. Effective September 1, 2010, the parties will implement the new timelines set forth in this Agreement, which shall apply to all cases charged after September 1, 2010.

Sincerely,

Joel I. Klein
Chancellor
New York City Department of Education



Agreed and Accepted By:



Michael Mulgrew
President
United Federation of Teachers

EDUCATION LAW §§ 3020 AND 3020-A

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EDUCATION LAW SECTIONS 3020 AND 3020-A

Section 3020. Discipline of teachers

(1). No person enjoying the benefits of tenure shall be disciplined or removed during a term of employment except for just cause and in accordance with the procedures specified in section three thousand twenty-a of this article or in accordance with alternate disciplinary procedures contained in a collective bargaining agreement covering his or her terms and conditions of employment that was effective on or before September first, nineteen hundred ninety-four and has been unaltered by renegotiation, or in accordance with alternative disciplinary procedures contained in a collective bargaining agreement covering his or her terms and conditions of employment that becomes effective on or after September first, nineteen hundred ninety-four; provided, however, that any such alternate disciplinary procedures contained in a collective bargaining agreement that becomes effective on or after September first, nineteen hundred ninety-four, must provide for the written election by the employee of either the procedures specified in such section three thousand twenty-a or the alternative disciplinary procedures contained in the collective bargaining agreement and must result in a disposition of the disciplinary charge within the amount of time allowed therefore under such section three thousand twenty-a.

(2). No person enjoying the benefits of tenure shall be suspended for a fixed time without pay or dismissed due to a violation of article thirteen-E of the public health law.

Section 3020-a. Disciplinary procedures and penalties

(1). **Filing of charges.** All charges against a person enjoying the benefits of tenure as provided in subdivision three of section one thousand one hundred two, and sections two thousand five hundred nine, two thousand five hundred seventy-three, twenty-five hundred ninety-j, three thousand twelve and three thousand fourteen of this

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

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

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

(2)(c). Within ten days of receipt of the statement of charges, the employee shall notify the clerk or secretary of the employing board in

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writing whether he or she desires a hearing on the charges and when the charges concern pedagogical incompetence or issues involving pedagogical judgment, his or her choice of either a single hearing officer or a three member panel. All other charges shall be heard by a single hearing officer.

(2)(d). The unexcused failure of the employee to notify the clerk or secretary of his or her desire for a hearing within ten days of the receipt of charges shall be deemed a waiver of the right to a hearing. Where an employee requests a hearing in the manner provided for by this section, the clerk or secretary of the board shall, within three working days of receipt of the employee's notice or request for hearing, notify the commissioner of education of the need for a hearing. If the employee waives his or her right to a hearing the employing board shall proceed, within fifteen days, by a vote of a majority of all members of such board, to determine the case and fix the penalty, if any, to be imposed in accordance with subdivision four of this section.

(3). **Hearings.**

(3)(a). **Notice of hearing.** Upon receipt of a request for a hearing in accordance with subdivision two of this section, the commissioner of education shall forthwith notify the American Arbitration Association (hereinafter "association") of the need for a hearing and shall request the association to provide to the commissioner forthwith a list of names of persons chosen by the association from the association's panel of labor arbitrators to potentially serve as hearing officers together with relevant biographical information on each arbitrator. Upon receipt of said list and biographical information, the commissioner of education shall forthwith send a copy of both simultaneously to the employing board and the employee.

(3)(b)(i) **Hearing officers.** All hearings pursuant to this section shall be conducted before and by a single hearing officer selected as provided for in this section. A hearing officer shall not be eligible to serve as such if he or she is a resident of the school district, other than the city of New York, under the jurisdiction of the employing

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board, an employee, agent or representative of the employing board or of any labor organization representing employees of such employing board, has served as such agent or representative within two years of the date of the scheduled hearing, or if he or she is then serving as a mediator or fact finder in the same school district. Notwithstanding any other provision of law, the hearing officer shall be compensated by the department with the customary fee paid for service as an arbitrator under the auspices of the association for each day of actual service plus necessary travel and other reasonable expenses incurred in the performance of his or her duties. All other expenses of the disciplinary proceedings shall be paid in accordance with rules promulgated by the commissioner of education.

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

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

(3)(b)(iv) In those cases in which the employee elects to have the charges heard by a hearing panel, the hearing panel shall consist of the hearing officer, selected in accordance with this subdivision, and two additional persons, one selected by the employee and one selected by the employing board, from a list maintained for such purpose by the commissioner of education. The list shall be composed of professional personnel with administrative or supervisory responsibility, professional personnel without administrative or supervisory responsibility, chief school administrators, members of employing boards and others selected from lists of nominees submitted to the commissioner by statewide

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organizations representing teachers, school administrators and supervisors and the employing boards. Hearing panel members other than the hearing officer shall be compensated by the department of education at the rate of one hundred dollars for each day of actual service plus necessary travel and subsistence expenses. The hearing officer shall be compensated as set forth in this subdivision. The hearing officer shall be the chairman of the hearing panel.

(3)(c). **Hearing procedures.**

(3)(c)(i) The commissioner of education shall have the power to establish necessary rules and procedures for the conduct of hearings under this section. Such rules shall not require compliance with technical rules of evidence. Hearings shall be conducted by the hearing officer selected pursuant to paragraph b of this subdivision with full and fair disclosure of the nature of the case and evidence against the employee by the employing board and shall be public or private at the discretion of the employee. The employee shall have a reasonable opportunity to defend himself or herself and an opportunity to testify in his or her own behalf. The employee shall not be required to testify. Each party shall have the right to be represented by counsel, to subpoena witnesses, and to cross-examine witnesses. All testimony taken shall be under oath which the hearing officer is hereby authorized to administer. A competent stenographer, designated by the commissioner of education and compensated by the state education department, shall keep and transcribe a record of the proceedings at each such hearing. A copy of the transcript of the hearings shall, upon request, be furnished without charge to the employee and the board of education involved.

(3)(c)(ii) The hearing officer selected to conduct a hearing under this section shall, within ten to fifteen days of agreeing to serve as such, hold a pre-hearing conference which shall be held in the school district or county seat of the county, or any county, wherein the employing school board is located. The pre-hearing conference shall

be limited in length to one day except that the hearing officer, in his or her discretion, may allow one additional day for good cause shown.

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

(A) issue subpoenas;

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

(C) hear and decide all applications for bills of particular or requests for production of materials or information, including, but not limited to, any witness statement (or statements), investigatory statement (or statements) or note (notes), exculpatory evidence or any other evidence, including district or student records, relevant and material to the employee's defense.

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

(3)(c)(v) In the event that at the pre-hearing conference the employing board presents evidence that the professional license of the employee has been revoked and all judicial and administrative remedies have been exhausted or foreclosed, the hearing officer shall schedule the date, time and place for an expedited hearing, which hearing shall commence not more than seven days after the pre-hearing conference and which shall be limited to one day. The expedited hearing shall be held in the local school district or county seat of the county or any county, wherein the said employing board is located. The expedited hearing shall not be postponed except upon the request of a party and then only for good cause as determined by the hearing officer. At such hearing, each party shall have equal time in which to present its case.

(3)(c)(vi) During the pre-hearing conference, the hearing officer shall determine the reasonable amount of time necessary for a final

hearing on the charge or charges and shall schedule the location, time(s) and date(s) for the final hearing. The final hearing shall be

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

(4). Post hearing procedures.

(4)(a) The hearing officer shall render a written decision within thirty days of the last day of the final hearing, or in the case of an expedited hearing within ten days of such expedited hearing, and shall forthwith forward a copy thereof to the commissioner of education who shall immediately forward copies of the decision to the employee and to the clerk or secretary of the employing board. The written decision shall include the hearing officer's findings of fact on each charge, his or her conclusions with regard to each charge based on said findings and shall state what penalty or other action, if any, shall be taken by the employing board. At the request of the employee, in determining what, if any, penalty or other action shall be imposed, the hearing officer shall consider the extent to which the employing board made efforts towards correcting the behavior of the employee which resulted in charges being brought under this section through means including but not limited to: remediation, peer intervention or an employee assistance plan. In those cases where a penalty is imposed, such penalty may be a written reprimand, a fine, suspension for a fixed time without pay, or dismissal. In addition to or in lieu of the aforementioned penalties, the hearing officer, where he or she deems appropriate, may impose upon the employee remedial action including but not limited to leaves of absence with or without pay, continuing education and/or study, a requirement that the

employee seek counseling or medical treatment or that the employee engage in any other remedial or combination of remedial actions.

APPENDIX A

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

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

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

pendency of an appeal delay the implementation of the decision of the hearing officer.