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Tenured Teacher Dismissal in New York:

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

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1. EXECUTIVE SUMMARY

The two recently-filed New York lawsuits claiming that teacher tenure laws violate children's constitutional right to a "sound basic education" are finally dragging the long-obscure Section 3020-a of the state's Education Law into the spotlight. This attention is badly overdue because for decades § 3020-a has impeded efforts to ensure a minimum competence level among New York's teachers.

Section 3020-a is a 3,000-word section of New York's Education Law, entitled "Disciplinary Procedures and Penalties," which mandates that tenured teachers can be dismissed only after just cause has been established through statutorily-prescribed administrative hearings. Teachers are evaluated in their schools under the Annual Professional Performance Review, the state's high-profile new evaluation system. But decisions on whether poorly-performing teachers stay or go are still made according to the decades-old § 3020-a law.

This report presents analysis of the official decisions filed at the conclusion of § 3020-a hearings for New York City teachers from July 1, 1997 through June 30, 2007. It identifies and explains the specific standards that hearing officers use to decide who is and is not fit to teach in New York's classrooms, and illustrates the on-the-ground effect the current system has on children and schools. The report aims to shed light on the role and function of § 3020-a, to further public awareness of the law's impact on New York's schools, and to promote wider debate around how to fix it.

Key findings presented in the report include:

- **The fundamental purpose of § 3020-a hearings is not to determine whether a school's charge of inadequate performance is justified, but rather to determine whether there is any possibility that an inadequately performing teacher can be rehabilitated.** This is a result of § 3020-a's specific mandate for "progressive discipline," which shifts the law's emphasis from its original purpose of providing due process to its current overwhelming focus on teacher rehabilitation.

- **Incompetent teaching in and of itself is not grounds for dismissal under § 3020-a.** As the cases presented in this report demonstrate, teachers who, through extensive due process proceedings, are determined *by the state itself* to be chronically ineffective,

excessively absent, or even abusive are routinely returned to classrooms in hopes that they may eventually improve. That is, the operative minimum standard for teachers is not demonstrated effectiveness, but any potential capability to be even marginally competent in the future.

- From 1997 to 2007, **61% percent of the New York City teachers who were convicted through due process hearings of incompetent teaching, excessive absence, verbal abuse, and/or corporal punishment were returned to the classroom**. Over that decade, a total of just 61 teachers—averaging 6 of New York City's 78,000 teachers per year, or 0.008% of the city's annual teaching force—were dismissed for poor performance. (See chart on page 24.)

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- **Proof that there is no possibility of rehabilitating a teacher is a necessary condition for dismissal**. Schools must carry out the teacher rehabilitation mandated by § 3020-a over several years, as a precondition for even attempting to remove a teacher from the classroom. This explicit aim of rehabilitating teachers means that the law now keeps chronically ineffective teachers in the classroom by design.

While teachers are legally entitled to due process to protect them from unfair dismissal and unjustifiable accusations of inadequate performance, the current system goes far beyond that, prioritizing the rehabilitation of ineffective teachers over ensuring adequate teaching for children. Fixing the broken § 3020-a system is not *the* solution to fixing our schools, but it is a problem that urgently needs to be addressed.

Note: Katharine Stevens joined AEI in September 2014. The research and writing for this paper was done for her doctoral dissertation, which she worked on from 2006 to 2013. The editing of the paper was done by AEI.

2. INTRODUCTION

The two recently-filed New York lawsuits claiming that teacher tenure laws violate children's constitutional right to a "sound basic education" are finally dragging the long-obscure Section 3020-a of the state's Education Law into the spotlight. This attention is badly overdue because for decades § 3020-a has impeded efforts to ensure a minimum level of competence among New York's teachers.

Written into New York State Law in 1970, Section [§] 3020-a is a 3,000-word part of the Education Law, entitled "Disciplinary Procedures and Penalties," which mandates that tenured teachers can be dismissed only after just cause has been established through statutorily-prescribed administrative hearing procedures. This remains unchanged even in the face of the new state teacher evaluation system. Teachers are now evaluated on school sites under the Annual Professional Performance Review (APPR) process. But decisions on whether poorly-performing teachers stay or go are still made strictly according to the decades-old § 3020-a law.

The design and function of § 3020-a proceedings is thus a crucial dimension of New York's education policy. Yet policymakers and the public alike have little understanding of how those proceedings work or the specific standards the state uses to decide who is and is not fit to teach in New York's classrooms.

In fact, while public debate has focused on the due process aspect of § 3020-a, this report—based on a thorough analysis of 155 case decisions constituting over 6,000 pages—demonstrates that the most serious problem with § 3020-a is actually its mandate for "progressive discipline," reinforced in a 1994 amendment to the law. The current § 3020-a system requires that "penalties" be allocated to teachers with gradually increasing severity over years (and often repeated § 3020-a charges), shifting the emphasis of § 3020-a from its original purpose of providing fair due process to rehabilitating teachers. As shown, **the fundamental aim of today's § 3020-a proceedings is not to determine whether a school's charge of inadequate performance is accurate, but rather to determine whether there is any possibility that an inadequately performing teacher can be rehabilitated.**

As also shown, the burden of rehabilitating a teacher falls entirely on the school and its administrators. A school is required to continue extensive efforts to rehabilitate a teacher until it is essentially indisputable that rehabilitation is impossible. As one Hearing Officer stated: "The

§3020-a statute requires employing boards *to provide the remediation and training necessary for a teacher to perform in a satisfactory manner*."[1] In a case presented below, for example, dismissal was ordered only after the teacher had been provided with years of "a nearly exhaustive amount of remedial help," in the words of the presiding Hearing Officer, while the teacher herself made no effort whatsoever to improve her teaching.[2]

This explicit aim of rehabilitating teachers means that, by design, the law keeps chronically inadequate teachers in the classroom. First, proof of extensive attempts to rehabilitate a failing teacher is a pre-condition for filing charges against that teacher. So the law compels school administrators to knowingly leave ineffective teachers in the classroom for years while trying to rehabilitate them. Second, teachers who, through extensive due process proceedings, are determined *by the state itself* to be chronically ineffective, abusive, or excessively absent are routinely returned to classrooms in hopes that they may eventually improve. In one case, for example, the Hearing Officer found that the school district had "clearly demonstrated by a preponderance of the evidence," presented over 22 full days of hearings, that for three consecutive years the teacher was "guilty of incompetence more often than not." He returned her to the classroom anyway, writing: "I believe that with appropriate remediation, [she] may be rehabilitated to the point of competence."

Incompetent teaching in and of itself is thus not grounds for dismissal under § 3020-a. Rather, dismissal necessitates proof that a teacher is both ineffective *and* "incorrigible," without "a probability or even a hope of rehabilitation," as one Hearing Officer put it. In other words, the operative state standard for returning a teacher to the classroom is not demonstrated effectiveness, but any potential capability to be even marginally competent in the future.

The effect of this system on children is devastating. As illustrated by the cases presented below, thousands of students across the state are systematically subjected to teachers who are teaching incompetently, being verbally and physically abusive, and failing to come to work for days on end, while schools carry out their resource-intensive obligation to rehabilitate those teachers or, ultimately, to prove that rehabilitation just isn't possible. The § 3020-a framework falls far short of providing the vehicle needed to remove incompetent teachers from the

[1] Case no. 3414 (2000), p. 45, italics added
[2] Case no. 4125 (2002), p. 16

classroom, and in fact enforces an in-practice obligation for schools to teach teachers that often takes precedence over schools' on-paper responsibility to teach children.

And, while less of a public focus, chronically ineffective teachers have a strongly negative impact on other *teachers* as well as students, lowering the quality of teachers' work environment and greatly impeding overall school effectiveness. Teaching is highly sequential work: the results achieved by a second grade teacher depend greatly on the performance of the first grade teacher; the results of the third grade teacher depend greatly on the performance of both the first and second grade teachers, and so on. The implication of this for school performance is crucial. The very nature of school organization means that the impact of even a single teacher's inadequate performance is greatly amplified through the down-the-line effects on subsequent teachers. While the value of job security in attracting and retaining teachers is often emphasized in debates over the tenure law, having competent colleagues is actually a more important driver of job satisfaction for most teachers. In fact, the competence of a third grade teacher probably matters more to the fourth grade teacher than to anyone except the third grade students.

Finally, ineffective teachers compromise the teaching profession itself. It should go without saying that most teachers are competent, dedicated, and hardworking. Yet even a very few persistently ineffective teachers reflect badly on their colleagues, attracting a disproportionate share of public attention and damaging the image of the profession as a whole. Randi Weingarten put it simply: "If someone can't teach, they shouldn't be in our profession."[3] Good teachers receive no benefit from policies that keep people in the classroom who clearly shouldn't be there. Rather, under systems like the one described in this report, the vast majority of teachers pay a high price both in reduced workplace quality and in diminished professional status.

I do not mean to suggest that fixing the broken § 3020-a system is *the* solution to fixing our schools. But it is a serious problem that must be addressed. Teachers are the very heart of schooling, and the single most important in-school factor affecting student learning. We say that children "go to school." But children actually go to *classrooms*. Even if only five percent of New York's teachers are ineffective, that means that 135,000 children have an ineffective teacher—and tens of thousands of teachers have an ineffective colleague—every day.

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[3] June 18, 2014, via Twitter

3. REPORT OVERVIEW

While § 3020-a is a vitally important part of the state's education law, it is neither transparent nor well-understood. This report aims to shed light on the role and function of § 3020-a, to further public awareness of the law's impact on New York's schools, and to promote wider debate around how to fix it.

The report is based on analysis of the over 6,000 pages of 155 official decisions filed with the State Education Department at the conclusion of § 3020-a proceedings for New York City teachers from July 1, 1997 through June 30, 2007.[4] The goal of the analysis was to identify and explicate the specific principles that hearing officers use to determine whether or not to return a teacher to the classroom, and to illustrate the on-the-ground effect the current system has on children and schools. All the teachers described in these cases were determined through lengthy due process proceedings to be ineffective, excessively absent, or verbally or physically abusive, and the cases provide a clear picture of the serious and chronic misconduct that is at issue. The central problem raised by these decisions is not how to conduct fair teacher evaluations, but rather the nature of the minimum performance standards that teachers are held to.

The report is divided into four parts:

- Part 1 explains the significance of § 3020-a decisions, and explains why the new teacher evaluation system is likely to have little impact on the way § 3020-a proceedings function.
- Part 2 explains the logistics of § 3020-a proceedings.
- Part 3 explains the principles that § 3020-a hearing officers use to decide whether or not to send a teacher back to the classroom.
- Part 4 provides case examples illustrating how these principles are applied in specific cases.

The cases described in Part 4 of this report demonstrate that even excessive teacher absence, verbal abuse, and corporal punishment are not grounds for dismissal under § 3020-a, despite the fact that this behavior is prohibited "on paper" in publicly-available New York

[4] See Appendix I for a description of how the decisions analyzed for the research were obtained.

policy.[5] Most importantly, the cases show the operative standards for *minimum teacher competence*. Several examples of teachers who were not dismissed for incompetence are compared with several examples of teachers who were, to explicate the principles used to make those determinations.

4. WHY § 3020-A DECISIONS MATTER

Under New York State Law, teacher accountability for inadequate teaching performance is implemented exclusively through the court-like, administrative due process procedures mandated by § 3020-a—a law that has been on the books for decades, and remains virtually untouched by the new evaluation legislation. While teachers are evaluated on school sites, it is through § 3020-a proceedings that minimum standards for teachers' work are actually established. That is, **the minimum level of competence that a teacher must demonstrate to remain employed in New York State's public schools is not set out in any laws or regulations, but rather is both defined and enforced behind closed doors in state-controlled administrative proceedings governed by § 3020-a**.

The standards used in § 3020-a to determine whether or not to return a teacher to the classroom play a critical role in the quality and management of the teaching workforce, and essentially constitute formal public policy regarding minimum performance requirements for New York's public school teachers. Section 3020-a standards were not formulated through the public policymaking process, yet are firmly established through decades of precedent and function as if they were stipulated explicitly in statutory law. Since they are not set out in any written laws or regulations, however, the standards used in § 3020-a proceedings can only be deduced through direct analysis of the lengthy, legally-binding decisions filed with the New York State Education Department at the conclusion of § 3020-a hearings. And those decisions are obtainable only through a formal Freedom of Information Law request.[6]

Very few § 3020-a decisions are filed. According to the State Education Department, a total of 208 decisions were filed for New York City from July 1, 1997 through June 30, 2007, constituting an average 0.03% annually of New York City's total teacher workforce of 78,000.[7]

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[5] See, for example, New York City Chancellor's Regulations A-420, A-421, C-601, C-603, C-604; and Article Sixteen of the UFT Contract, pp. 92-93.

[6] § 3020-a decisions average approximately 35 pages in length; many run up to 100 pages or more.

[7] The tiny number of § 3020 decisions in and of itself reflects significant problems with the § 3020-a system. Section 3020-a proceedings are highly cumbersome and expensive: a single § 3020-a case addressing pedagogical incompetence has historically taken an average of over two years at a cost of $313,000. And each case requires

At first glance, thus, the decisions might seem inconsequential because there are so few of them. Yet while the number of decisions represents only a tiny fraction of New York City's teachers, they reveal the critical role of § 3020-a in defining in-practice minimum requirements for teachers' performance.

As shown in this report, § 3020-a decisions contain often-shocking examples of teachers being returned to the classroom despite abysmal performance and egregious misconduct, vividly illustrating what's at stake for children, schools, and the profession of teaching. At the same time, the decisions reveal the established "floor" of competence of the teacher workforce: that is, the minimal level of performance necessary to remain employed as a classroom teacher in New York.

And, perhaps most importantly, the content of these decisions raises a question crucial to the governance of our public schools: Are the standards used in § 3020-a in the best interests of children and the public?

5. THE IMPACT OF THE NEW TEACHER EVALUATION SYSTEM ON § 3020-A

In 2010, the New York State Legislature passed Education Law § 3012-c, establishing a new teacher evaluation system in the state's public schools, and regulations implementing the law were added to New York Codes, Rules & Regulations in May 2011.[8] The new system—known as the Annual Professional Performance Review, or APPR—has been widely covered in the press, characterized as "a rigorous teacher evaluation system" and a "sweeping overhaul of the way teachers are evaluated in New York…that set[s] in place consequences for teachers rated ineffective for two years in a row."[9] [10] But these reports reflect a prevalent misunderstanding of the APPR. The new law sets no consequences for ineffective teachers, and § 3020-a proceedings remain the only legal means for holding a tenured teacher accountable for inadequate performance.

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dozens, if not hundreds, of hours of administrators' time. Because of this, only the very worst teachers are charged under § 3020-a, when the school district believes that dismissal is clearly warranted. Yet, as shown in the cases discussed in this report, the Hearing Officer often decides to return these teachers to the classroom. Thus, although it is possible that the reason more cases aren't filed is because virtually 100% of New York City's teachers are performing adequately, it seems more likely that schools avoid filing charges against teachers because § 3020-a is such a highly inefficient and ineffective process. The extreme nature of the cases described below provides additional support for the latter explanation.

[8] 8 NYCRR § 30-2

[9] The New York Times, May 11, 2010

[10] Wall Street Journal, May 11, 2010

As state law still stipulates, no tenured teacher "shall be disciplined or removed during a term of employment except…in accordance with the procedures specified in section three thousand twenty-a of this article." The United Federation of Teachers website further explains that, "State education law (section §3020-a) provides for the disciplining or termination of a tenured teacher for specific charges, such as incompetence, insubordination, corporal punishment, sexual misconduct, etc.," assuring teachers that the new evaluation system "safeguards the due process rights [of teachers]" and does not make it easier for schools to "fire teachers deemed ineffective."[11]

In fact, the new evaluation law does nothing more than link a teacher's annual APPR evaluation ratings with a potential charge of incompetence. As illustrated in the below diagram, the new law specifies simply that a school district *may* bring a § 3020-a charge of incompetence against a teacher who has received the lowest of the four possible ratings (an "Ineffective") for two consecutive years, as evidence of "a pattern of ineffective teaching or performance." The law further requires that the school district provide evidence of significant efforts to rehabilitate the teacher prior to bringing those charges

Two consecutive annual "ineffective" ratings	=	"A pattern of ineffective teaching"	=	1) "Very significant" evidence of incompetence 2) Grounds for bringing a § 3020-a charge of incompetence, based on an allegation of "a pattern of ineffective teaching" along with evidence of significant school efforts to rehabilitate the teacher

Relationship between the APPR and § 3020-a Disciplinary Procedures

After a charge of incompetence has been brought on these grounds, the Hearing Officer holds a series of § 3020-a hearings on the case. Through these hearings, he first judges whether or not the teacher has a pattern of ineffective teaching as alleged by the school district and closely examines the school's efforts to rehabilitate the teacher during the period of ineffective performance. Subsequently, as a separate matter, he decides whether the teacher is "guilty of incompetence." If he finds the teacher guilty, he then, as a third step, decides the consequence to be allocated. A teacher who is found guilty of incompetence may or may not be dismissed, as the

[11] http://www.uft.org/q-issues/qa-teacher-evaluation-and-improvement-plan

new legislation specifically stipulates. The Hearing Officer's assessment of the school's rehabilitation efforts is also crucial to his penalty decision, as discussed below.

The new evaluation law nowhere defines the degree of incompetence justifying dismissal.[12] In other words, a proven "pattern of ineffective teaching or performance" does not necessarily lead to a finding of incompetence, and a finding of incompetence does not necessarily lead to dismissal. A Hearing Officer may decide that a teacher has performed incompetently for two consecutive years, but may very well decide against dismissing that teacher, for reasons explained in detail below. The outcomes of the 155 decisions analyzed for this report suggest, in fact, that he is likely to return such a teacher to the classroom.

In summary, to dismiss a teacher, the school district must prove the following in the § 3020-a proceedings:

- The two consecutive "Ineffective" ratings were legitimately granted by school administrators and should be upheld;
- School administrators have made an substantial and sufficient effort to help the teacher improve, and the teacher is demonstrably irremediable;
- The teacher's ineffective teaching has reached a level sufficient to establish that the teacher is "guilty of incompetence"; and
- The level of that incompetence is sufficient to justify the teacher's dismissal.

Thus under the new evaluation system, just as previously, the § 3020-a Hearing Officer alone—not the school principal nor the school district nor expert educators—uses precedent-driven principles unique to the § 3020-a process to determine whether a teacher is fit to continue teaching in New York's public schools.

6. How § 3020-a Procedures Work

Education Law § 3020-a states no specific standards or consequences for teachers' performance, but stipulates extensive procedural requirements. Section 3020-a hearings are administrative proceedings that operate much like civil or criminal court, relying heavily on precedent and constrained by multiple procedural rules. The hearings are overseen by a state-

[12] See reference at N.Y. Educ. Law § 3020-a(1).

appointed Hearing Officer who functions as a judge, with legal authority granted by the state, directing the proceedings and issuing a final written decision.

Charges. In the first step of the procedures, "charges" are "preferred" against a teacher by the employing school district. Six bases for charges against a tenured teacher are permitted by New York State Law:

- Unauthorized absence from duty or excessive lateness;
- Neglect of duty;
- Conduct unbecoming the position, or conduct prejudicial to the good order, efficiency or discipline of the service;
- Incompetent or inefficient service;
- A violation of the by-laws, rules or regulations of the city board, chancellor, or the community board; or
- Any substantial cause that renders the employee unfit to perform his obligations properly to the service.[13]

Under New York State law, these are the exclusive legal bases for initiating charges against a tenured teacher. In other words, a tenured teacher will be "disciplined" (that is, receive a consequence of any kind for inadequate performance) only if he or she is found guilty of one or more of these six particular charges, through the procedures stipulated in § 3020-a.

A "charge" is simply an allegation that a teacher has not met one or more particular performance standards. Yet these standards are not actually defined in the six permissible charges. For example, a charge that a teacher has provided "incompetent or inefficient" service implies an unspecified standard of "competent and efficient" service, as shown here:

[13] N.Y. Educ. Law § 2590-j(7)(b)

IMPLICIT STANDARD FOR TEACHER	LEGAL BASIS FOR INITATING "CHARGES"
A teacher may not be excessively late or absent without authorization	"Unauthorized absence from duty or excessive lateness"
A teacher has a "duty" that he may not neglect.	"Neglect of duty"
A teacher's conduct must be appropriate to his position, and must uphold the "good order, efficiency [and] discipline" of the teaching profession.	"Conduct unbecoming his position, or conduct prejudicial to the good order, efficiency or discipline of the service"
A teacher must be competent and efficient.	"Incompetent or inefficient service"
A teacher must abide by the by-laws, rules and regulations of the city board and the chancellor.	"A violation of the by-laws, rules or regulations of the city board [or] chancellor"
A teacher must perform his teaching obligations properly.	"Any substantial cause that renders the employee unfit to perform his obligations properly to the service"

Teacher Performance Standards Implicit in Legally-Permissible § 3020-a Charges

The definitions of these implicit performance standards are not stated in any New York law or regulation. “Competent” is not defined; “efficient” is not defined. A teacher may be charged with “neglect of duty,” but nowhere is it defined in written policy what a teacher’s minimum duty actually is. Through § 3020-a hearings the Hearing Officer thus determines whether a teacher has or has not failed to meet an undefined standard implicit in the charge made by school administrators against that teacher. That is, **specific standards for teachers’ minimum work obligations are not stipulated in written policy, but are instead defined within the § 3020-a hearings themselves.**

Pre-Hearing Conference. After charges have been filed by the school district, the Hearing Officer holds a pre-hearing conference to “hear and decide all motions, including but not limited to motions to dismiss the charges.” In the pre-hearing conference, the Hearing Officer may issue subpoenas, as well as

> 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 [teacher's] defense.[14]

In addition, the school must also provide preliminary evidence of significant efforts to rehabilitate the teacher prior to filing charges. This is an essential requirement of the pre-hearing stage of § 3020-a. Insufficient evidence of rehabilitation efforts is grounds for dismissal of the charges.

Hearings. If the charges against the teacher are not dismissed in the pre-hearing stage, the Hearing Officer holds a series of hearings, through which he decides: (1) The validity of those charges; and, most importantly, (2) What penalty—if any—is to be allocated. In the hearings "[e]ach party…[has] the right to be represented by counsel, to subpoena witnesses, and to cross-examine witnesses." Education Law § 3020-a requires the school district to present "full and fair disclosure of the nature of the case and evidence against the [teacher]." The teacher is granted "a reasonable opportunity to defend himself or herself and an opportunity to testify in [*sic]* his or her own behalf." The new evaluation legislation specifically states that it in no way "limit[s] the defenses which the [teacher] may place before the Hearing Officer."[15]

Through the course of multiple full-day hearings—held over a period of months and often years—the Hearing Officer hears testimony from both the defense (teachers union lawyers, representing the teacher) and the prosecution (school district lawyers, representing the public schools), including witnesses such as school and district administrators, students, parents, and other teachers who testify and are cross-examined. The Hearing Officer carries out an exhaustive review of all evidence that school administrators used to determine the teacher's annual evaluation ratings, usually for the preceding two or three years, to determine whether he thinks those ratings were correct. He also thoroughly examines the school's efforts to rehabilitate the teacher prior to bringing § 3020-a charges, reviewing evidence and testimony presented both by the school district and the defense. Hearings are transcribed in full by a stenographer, producing an official record often spanning thousands of pages.

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[14] N.Y. Educ. Law § 3020-a(3)(c)(iii)
[15] N.Y. Educ. Law § 3020-a(3)(c)(i-a)(B)

Decisions. At the conclusion of each case, the Hearing Officer issues a detailed, legally binding decision, which is filed with the New York State Education Department.[16] [17] A typical § 3020-a decision begins:

> The parties were afforded full opportunity to offer evidence and to examine and cross-examine witnesses. The evidence adduced, the legal authorities presented, and the positions and arguments set forth by the parties have been fully considered in the preparation and issuance of these findings and Award. These findings follow.[18]

This final decision describes in detail: (1) The teacher's "guilt" of the charges preferred—that is, the Hearing Officer's assessment of whether the teacher's performance was inadequate, and to what degree—and (2) The consequence (called "penalty") the Hearing Officer has decided to allocate based on his findings of guilt, his consideration of what are termed "mitigating factors," and § 3020-a precedent. This decision must

> 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…what penalty or other action, if any, shall be taken by the employing board.[19]

As noted, the law prescribes no specific consequences for ultimately being "found guilty" of one of the six charges. Rather, a range of legally-permissible consequences is stipulated, including written reprimands, fines, suspensions, remedial training, and dismissal:

> 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.[20]

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[16] These decisions, filed with the New York State Education Department, do not have a standard title: they are variously titled "Findings and Penalty," "Findings and Award," "Opinion and Award," "Opinion and Decision," "Hearing Officer's Decision," "Hearing Officer's Report and Recommendations," or sometimes no title at all.
[17] See Appendix I for a description of how I obtained the decisions for my research.
[18] Case no. 5058 (2005), p. 2
[19] N.Y. Educ. Law § 3020-a(4)(a)
[20] N.Y. Educ. Law § 3020-a(4)(a)

The consequences allocated to a teacher who is found guilty as charged can be anything from this list, decided on a case-by-case basis by the § 3020-a Hearing Officer.

7. How Hearing Officers Make Decisions: The Guiding Principles of § 3020-a

In the official § 3020-a decisions filed with the State Department, Hearing Officers explain and justify their findings and conclusions, frequently referring to the specific guidelines that their decisions must adhere to. As one Hearing Officer writes:

> [T]he parties do not engage an arbitrator to impose his own version of 'industrial jurisprudence.' Instead, they delegate the arbitrator with the responsibility of determining if the actions charged were proven and, if so, was the proposed penalty rational and rooted in the terms and conditions of employment.[21]

The role of *precedent* is paramount in § 3020-a proceedings: Hearing Officers are legally obligated to uphold precedent established by previous § 3020-a cases, and often reference § 3020-a precedent in their decisions. In one case on corporal punishment, for example, the school district proved that a first grade teacher had ordered several students to beat up another student, pulling down the window shades and closing the classroom door while they did so. The teacher was fined 90 days of salary and returned to the classroom. The Hearing Officer emphasized the importance of case precedent in his penalty decision, writing:

> In addressing the issue of penalty, the Hearing Officer pays particular attention to the number of corporal punishment cases which were submitted by the Respondent [teacher]. The array of penalties imposed by other Hearing Officers for similar instances of corporal punishment ranged from the leveling of a monetary fine through to the imposition of a short term suspension. In contrast…no cases were submitted by the Department [the New York City Department of Education] addressing the issue of penalty in corporal punishment cases. Absent any further guidance on this issue, the Hearing Officer is compelled to impose a penalty which is commensurate with that imposed by others.[22] [23]

Because of this mandatory reliance on precedent, the principles applied in the proceedings are strongly consistent across § 3020-a cases.

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[21] Case no. 4818 (2004), p. 20
[22] Case no. 5288 (2006), p. 19
[23] The teacher is referred to as "Respondent" in § 3020-a proceedings. In civil court, the equivalent would be the term "Defendant."

Underpinning these principles is the "just cause standard," added to the state's Education Law in 1994. The just cause standard specifies factors that the Hearing Officer must consider in determining penalties, as well as the imperative of case precedent. As one Hearing Officer writes:

> The level of discipline permitted by the just cause principle will depend on many factors, including the nature and consequences of the employee's offense, the clarity or absence of rules, the length and quality of the employee's work record, and the practices of the parties in similar cases.[24]

The just cause standard also strongly emphasizes the concept of teacher rehabilitation in the allocation of discipline, as another Hearing Officer explained:

> Implicit in the just cause standard—where proof of misconduct has been found—is the issue of rehabilitation and/or remediation. The theory being that an employee who has engaged in misconduct should be examined to see if through the judicious application of discipline, they might be restored to service as an acceptable, properly functioning employee.[25]

This focus on teacher rehabilitation is discussed in more detail below.

Guiding § 3020-a Principles

The following are the six main principles that are central to § 3020-a decisionmaking, both to assess a teacher's guilt and to determine the penalty to be allocated:

- Assumption of teacher innocence;
- Progressive discipline;
- Years of employment;
- Teachers' affective characteristics;
- A very high bar for teacher dismissal; and
- A dominant focus on teacher rehabilitation.

[24] Case no. 5124 (2005), p. 37
[25] Case no. 3965 (2002), p. 14

Assumption of teacher innocence

A teacher is assumed innocent until proven guilty through the § 3020-a proceedings, and the school district bears the full burden of proof: "the risk of nonpersuasion is imposed upon the Complainant [the school district] and not the teacher."[26] The evidentiary standard used in § 3020-a is the "preponderance of the evidence"; substantial evidence is not sufficient proof. When evidence is "equally balanced," the Hearing Officer is obligated to rule in favor of the teacher.

A crucial aspect of § 3020-a proceedings is that *a teacher's annual performance ratings are viewed as unsubstantiated claims*, not conclusive measurements of performance. The Hearing Officer closely re-examines those ratings, using standards unique to the disciplinary hearing process, in an exhaustive review of all evidence on which the ratings were based, along with other evidence and arguments presented by the defense. In the final decision, then, the judgment of the Hearing Officer is substituted for that of the teacher's supervisors at the school site.

Progressive discipline

The requirement for what is called "progressive discipline" is paramount in all but the most egregious cases. Progressive discipline means that penalties allocated to teachers must be imposed with gradually increasing severity, over years of repeated § 3020-a charges and proceedings, to give teachers *multiple chances to improve*. As one Hearing Officer explained:

> …discipline for all but the most serious offenses must be imposed in gradually increasing levels. The primary object of discipline is to correct rather than to punish. Thus, for most offenses, employers should use one or more warnings before suspensions, and suspensions before discharge.[27]

Another wrote: "A teacher, who, on numerous occasions, undertook sexually harassing acts toward students reasonably may be terminated *after* he was counseled and failed to reform."[28] Progressive discipline, required by the just cause principle added to the law in 1994, is thus fundamental to § 3020-a proceedings.

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[26] The employing school district is referred to as the "Complainant" in § 3020-a proceedings.
[27] Case no. 5124 (2005), p. 37
[28] Case no. 4170 (2003), p. 28, italics added

Years of employment

The duration of a teacher's employment is heavily weighted in deciding penalties. This appears to reflect two key ideas. First, Hearing Officers stress the importance of recognizing the length of a teacher's "service." Second, more years of teaching are assumed, by definition, to indicate a teacher who is essentially competent, even if considerable evidence is presented to the contrary.

In one case, for example, the Hearing Officer ordered that a teacher be returned to the classroom after a one-year suspension, while writing: "the totality of the misconduct for which Respondent has been found guilty could warrant termination if Respondent did not have thirty years of satisfactory service."[29]

In another case, the school district presented convincing proof—including testimony from five elementary school students—that a third grade teacher had verbally abused children on numerous occasions. A year prior she had been the subject of previous § 3020-a proceedings for charges of corporal punishment. The Hearing Officer concluded that the school district had proven its claim that she had engaged in conduct that "constitutes verbal abuse of the children." At the same time, however, he emphasized that she had been a teacher for 30 years, arguing that she was a "veteran teacher, a professional" who, despite her repeated denials of any wrongdoing, "surely in her heart of hearts" knew that she had engaged in misconduct. Thus, despite his conclusive finding that she had committed verbal abuse and her previous charges of corporal punishment he returned her immediately to the classroom, writing that there was "[n]o reason to believe that [she] cannot be rehabilitated and continue to work as a good teacher."[30]

Teachers' affective characteristics

Teachers' affective characteristics are also emphasized in § 3020-a proceedings. Hearing Officers frequently cite teachers' apparent remorse for proven misconduct as a critical factor in their penalty decisions. As one Hearing Officer explained, "the assumption of responsibility" and "remorse for one's conduct" are "significant issues to be considered before imposing a penalty."[31] A teacher's demonstrated—or simply claimed—willingness to learn and improve is given significant weight in decisions, as is clear in several examples presented below. Hearing Officers also often cite a teacher's presumed inner characteristics such as caring and good will,

[29] Case no. 4252 (2002), p. 20
[30] Case no. 5210 (2005), p. 16
[31] Case no. 4984 (2006), p. 126

sometimes even while acknowledging that those characteristics were little in evidence during the hearings.

In one case, for example, the school district brought charges of incompetence against a teacher who had received three consecutive annual ratings of "Unsatisfactory," presenting exhaustive proof of the teacher's dismal teaching performance over a three-year period. Based on a detailed record of three years of extensive rehabilitation efforts, the school district's lawyer argued that "no amount of rehabilitation could help the [teacher's] pedagogical problems." The Hearing Officer upheld the teacher's three "Unsatisfactory" ratings, writing that he was finally persuaded that "termination is the only appropriate penalty." The reason he provided to support this decision, however, was not the teacher's three years of abysmal performance, but rather the teacher's *attitude towards improving*. As he explained, he decided to dismiss the teacher because the teacher had shown "little or no effort on his part to improve," despite the school's extraordinary efforts over several years.

High standard for teacher dismissal

Of the penalties that Hearing Officers are authorized to impose, dismissal is viewed as extraordinarily severe: it is "the 'capital punishment' of labor disputes," in the words of one Hearing Officer.[32] In a typical case, for example, the Hearing Officer rejected discharge as a "draconian penalty" for a teacher who was found to have hit a student with an electrical cord and punched him in the face.[33] Teacher dismissal is ordered only as a last-resort penalty in cases of extreme misconduct, after the application of "progressive discipline" and years of efforts to rehabilitate the teacher. (See page 24 for a summary of penalties allocated.)

A teacher's proven record of teaching incompetence, in and of itself, is not a fireable offense. One Hearing Officer described the nature of the "most serious offenses" which may potentially warrant dismissal, none of which relate to a teacher's professional competence:

> Some offenses are sufficiently serious to justify serious discipline for a first offense. These include *theft, physical attacks, willful and serious safety breaches, gross insubordination, and significant violations of law on the employer's time or premises*.[34]

[32] Case no. 4972 (2005), p. 14
[33] Case no. 5062 (2005), p. 18
[34] Case no. 5124 (2005), p. 37, italics added

Similarly, another wrote: "there are some types of misconduct which are so egregious that discharge may be the only option. One such type of misconduct is the *continued exposure of students to physical and emotional injury*."[35]

The imperative of teacher rehabilitation

A dominant emphasis on teacher "rehabilitation," rather than teacher performance or competence, is the most striking aspect of § 3020-a decisionmaking. **The standard established in § 3020-a proceedings is not a teacher's demonstrated level of competence, but rather his or her *potential for rehabilitation.*** In one case, for example, the Hearing Officer wrote:

> [T]ermination is a drastic penalty when measured in terms of the personal life of the affected teacher [and] should be reserved for those situations [where] the record clearly establishes that there is no reasonable expectation that the teacher would be able to render competent service *in the future*.[36]

Teacher rehabilitation is stressed as a worthy goal in and of itself, and Hearing Officers appear to assume that the rehabilitation of poorly performing teachers is usually possible to accomplish given sufficient school efforts towards that end. In fact, within the § 3020-a framework, accomplishing the end of rehabilitating teachers overrides almost all other considerations, including years of incompetent teaching. Furthermore, the rehabilitation of teachers is defined as the exclusive responsibility of school administrators: "the §3020-a statute *requires employing boards to provide the remediation and training necessary for a teacher to perform in a satisfactory manner*."[37]

On the other hand, Hearing Officers often define a teacher's responsibility for his or her own rehabilitation in more passive terms. In the above case, for example, after stressing school administrators' obligation to rehabilitate teachers, the Hearing Officer explained the teacher's role in this process:

> [I]t is incumbent upon that teacher to take the initiative to at least give those administrators notice of concern he has regarding his educational program. This is an essential aspect of professionalism and is essential for a program to rehabilitate a teacher.[38]

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[35] Case no. 3656 (2000), p. 14, italics added
[36] Case no. 3536 (2000), p. 22-23, italics added
[37] Case no. 3414 (2000), p. 45, italics added
[38] Case no. 5234 (2006), p. 62-63

Another Hearing Officer explained the teacher's obligation simply as "avail[ing] himself of assistance" that is provided to him.[39]

Proof that there is not even a remote possibility of rehabilitating a teacher is crucial to § 3020-a proceedings as a *necessary condition for dismissal*. One Hearing Officer cited a Commissioner of Education's appeal decision from a previous hearing, as precedent for his own case:[40] "a teacher should not be terminated unless a district has shown that 'a teacher is so incompetent that he is unable to further the educational development of students assigned to his classroom" and "there is no likelihood that his competence will improve."[41]

The school district must thus prove both that a teacher has performed incompetently over a significant period of time (usually two to three years), *and* that the teacher is "incorrigible": that is, not even a remote possibility exists that the teacher could be rehabilitated. In order to prove that a teacher is incorrigible, however, it must be proven that: 1) Significant rehabilitation efforts have been made; and 2) Those efforts failed because the teacher is incorrigible, not because the rehabilitation efforts were simply inadequate. Schools thus have an ongoing, burdensome responsibility to carry out teacher rehabilitation, usually over several years, until it is indisputable that rehabilitation is impossible—which, in turn, is a precondition for removing that teacher from the school.

In one example of this, a Hearing Officer found a teacher guilty of incompetent teaching (based on extensive evidence covering a three year period, presented over 22 full days of hearings), writing: "The Department has clearly demonstrated by a preponderance of the evidence that Respondent is guilty of incompetence more often than not." But he returned the teacher to the classroom anyway, explaining: "Respondent has produced evidence that she is capable of providing competent instruction…and still retains the potential to produce a satisfactory educational product. *I believe that with appropriate remediation, [she] may be rehabilitated to the point of competence*."[42]

In another case involving a teacher who was proven to have engaged in years of verbal abuse and corporal punishment, the Hearing Officer accepted the school district's argument that

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[39] Case no. 4818 (2004), p. 21
[40] The State Commissioner of Education decides appeals of Hearing Officers' decisions that are occasionally filed challenging a decision.
[41] The Commissioner's statement appeared in his decision on a § 3020-a appeal, Matter of Board of Education of the Dundee CSD, 21 Ed. Dep't. Rep. 731, 738 (1982).
[42] Case no. 5158 (2006), p. 51, italics added

the teacher's "offenses" had met "a degree of severity as to warrant her immediate discharge," and that there was "no basis to apply progressive discipline." His assessment that rehabilitation was impossible was key to his decision to dismiss the teacher, as he explained: "[S]uch severe discipline [dismissal] applies only when the offense is particularly egregious or, although [offenses have been] cumulative in nature, *there is no hope that the offender can be rehabilitated*."[43]

In a third case, the Hearing Officer justified his decision to dismiss a teacher, stating:

> While reluctant to deprive anyone of their employment…[s]urely employees whose misconduct represents a threat to the physical and psychological welfare of students and who hold forth *no promise that they can be rehabilitated* cannot be returned to work.[44]

This example is significant for several reasons. First, the standard for dismissal described in the decision is based not on a teacher's inadequate teaching performance, but on the proven fact that the teacher represented an actual threat to the welfare of students. Second, the threat cited only refers to students' most basic physical and psychological wellbeing—not to their learning or academic experience. Finally, this Hearing Officer's decision implicitly suggests that a teacher's demonstrated threat to the most minimal wellbeing of students, in and of itself, does not necessarily indicate that dismissal is the appropriate penalty. His assessment that there was no possibility that the teacher could be rehabilitated was, once again, essential to his decision.

8. § 3020-a Case Studies

The following 22 case studies exemplify the four kinds of cases relevant to teachers' professional obligations and performance: (1) Teacher absences; (2) Verbal abuse; (3) Corporal punishment; and (4) Incompetence. Strong consistency is evident across § 3020-a decisions, and the cases presented here are representative of the 155 decisions analyzed.

School districts only bring cases to § 3020-a proceedings that are believed to warrant dismissal. In the majority of cases, however, dismissal is not ordered *even when the teachers is convicted* of one or more of the six charges (see chart, below, and Appendix II for additional details on convictions and penalties).

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[43] Case no. 5051 (2005), p. 19, italics added
[44] Case no. 5051 (2005), p. 20, italics added

CONVICTIONS		PENALTY							
		Termination		Suspension		Fine		None*	
Type	#	#	%	#	%	#	%	#	%
Incompetence	27	12	*44%*	12	*44%*	2	*7%*	1	*4%*
Absenteeism/Lateness	14	1	*7%*	8	*57%*	4	*29%*	1	*7%*
Corporal Punishment/ Verbal Abuse	29	8	*28%*	12	*41%*	8	*28%*	1	*3%*
Conduct Unbecoming the Profession	27	-	*0%*	18	*67%*	8	*30%*	1	*4%*
Sexual Misconduct	17	14	*82%*	2	*12%*	1	*6%*	-	*0%*
Multiple Convictions (see Appendix II)	41	26	*63%*	11	*27%*	1	*2%*	3	*7%*
TOTAL	**155**	**61**	***39%***	**63**	***41%***	**24**	***15%***	**7**	***5%***

* Letter of reprimand, school transfer, or none

Penalties allocated through § 3020-a proceedings for New York City teachers from July 1, 1997—June 30, 2007

As this chart makes clear, a Hearing Officer's determination that a teacher is "guilty" (that is, a finding that a teacher has in fact been consistently incompetent, excessively absent, verbally abusive, etc.) does not necessarily lead to dismissal. From July 1, 1997 through June 30, 2007, Hearing Officers returned 61% of such teachers to the classroom. For example, 56% of teachers found guilty of incompetent teaching were returned to the classroom. Ninety-three percent of the teachers found to be excessively absent were returned to the classroom. And 72% percent of the teachers found to have engaged in corporal punishment and/or verbal abuse were returned to the classroom. The cases presented below show how a Hearing Officer's decision whether or not to send a teacher back to the classroom is based on a range of factors in addition to his substantive "findings of guilt."

CASE STUDIES

Teacher Absence

While written policies clearly state requirements for teachers' attendance, along with detailed procedures for recording that attendance,[45] no consequences are stipulated for *failing to meet* those requirements. The attendance standard that teachers are actually held accountable to is defined, and subsequently enforced, in § 3020-a proceedings alone. One Hearing Officer explicitly emphasized the weak relevance of written attendance policies: "An employee can technically exceed what may appear to be a 'policy,' yet not be considered excessively absent or late once all the circumstances…have been examined."[46] Several typical examples illustrate this.

Teacher Absence—Case No. 4932 (2003)

In a first example, the school district proved that a middle school Spanish teacher was absent 38 times in 2000-01, 25 times in 2001-02, and 50 times in 2002-03. She had been evaluated as "Unsatisfactory" for all three years. The teacher's lawyer argued that "her 113 absences over a three-year time span had no impact on her students."[47] The Hearing Officer wrote that he did not find that argument persuasive:

> It is a well-established principle of employee relations that individuals may be terminated for excessive absenteeism…Although there is no unanimity as to the meaning of the term "excessive" the employer must be able to regulate their workforce to insure mission performance…If absences are excessive to the extent that they adversely impact on teaching performance and productivity, or the learning process, then discipline may be imposed.

He also had a negative view of the teacher's testimony during the hearings:

> [She] was evasive and vague…and at times [she] appeared to be out of contact with her surroundings. She repeatedly failed to understand the questions put before her…she rationalized her absences and related behavior and was often unable to put forth a straightforward response.

At the same time, however, the Hearing Officer observed that "her attendance during the year that she has been on suspension has been excellent." He concluded that "the charges and

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[45] See, for example, Chancellor's Regulations C-601, "Attendance and Service of School Staff," and C-604, "Timekeeping"; also the United Federation of Teachers Contract, Article Sixteen.
[46] Case no. 4303, p. 4
[47] Teachers in § 3020-a proceedings are provided with one or more lawyers by New York State United Teachers, New York's teachers union.

findings [regarding her absences] per se *do not render her unfit to continue in her present position*" (italics added), stating that it was "unclear" what the teacher's future performance would be: that is, whether she would "successfully return to the classroom or if she [would] continue to earn 'U' evaluations and be subject to additional charges."

Based on his assessment that there was a possibility (even, as he acknowledged, perhaps somewhat remote) that the teacher might improve her attendance, he returned her to the classroom, imposing a fine of $10,000 (to be deducted from the teacher's paycheck at $555 per month for 18 months) as "'constructive notice' and the imposition of constructive discipline."

Teacher Absence—Case No. 4310 (2005)

In a second example, the school district proved that an elementary school special education teacher was "excessively absent" for three consecutive years: 16 days in the first year, 30 days in the second, and 21 days in the third, usually before and after weekends and holidays. He had received three annual "Unsatisfactory" ratings as a result.

In his discussion of the case after 11 days of hearings, the Hearing Officer noted that "Department regulations and policies state that absences of ten or more days in a school year can lead to an Unsatisfactory rating" for that year. He therefore upheld the ratings of "Unsatisfactory" that the teacher had received for each of those three years. Further, he found that the school district had "prov[en] the negative impact on the continuity of education in the highly structured program for the [special education] children taught by Respondent," and he accepted the school district's claim that "the cost of obtaining substitute teachers was significant."

Regarding his personal assessment of the teacher, the Hearing Officer emphasized the teacher's "ongoing failure to recognize and accept the responsibility that he had to observe his hours of employment as determined by the District"; his failure to "acknowledge any responsibility or acknowledge the harm that was been done to his students and the regular classroom teachers by his absences"; and that he "did not take seriously the counseling and directives" regarding his excessive absences. He also noted that the teacher had been the subject of prior § 3020-a charges for excessive absences, stating:

> [C]learly this [prior] action put Respondent on notice regarding how seriously the Board took excessive absences…Respondent was clearly aware from a number of sources of Board and District policy of the District's application of its policy relative to excessive absences.

In discussing his decision regarding the penalty to be allocated, the Hearing Officer wrote that a "strong" penalty was appropriate, and explained the factors which he "considered in…[the] determination of penalty in this case." The most significant factor, he wrote, "was the harm done to students, parents, teachers and the school by Respondent's excessive absences over the three year period," particularly given "the key role that Respondent played in teaching children with special needs." He described the teacher's "callous disregard of the impact on his special needs students of his absences," and wrote: "I note that the Department, and more particularly students and parents, deserve teachers who are willing and able to perform their teaching duties on a regular [basis]." The Hearing Officer also cited evidence that the teacher had lied during the proceedings and referred to the teacher's prior § 3020-a charges regarding excessive absences.

Notwithstanding these factors, however (and while stating that "Respondent is placed on notice that future excessive absences will not [be] acceptable"), the Hearing Officer allocated a penalty of an 18-month suspension, stressing mitigating circumstances: 21 years of apparently satisfactory teaching, and "no evidence of other significant problems or discipline" apart from the "ongoing absence problems." As typical in these decisions, the Hearing Officer strongly emphasized the possibility of the teacher's potential rehabilitation, writing:

> I find that rehabilitation of Respondent is possible and that, after a lengthy suspension, [he] should be given the opportunity to return to service and prove that he can provide satisfactory teaching on a consistent basis.

Teacher Absence—Case No. 4825 (2004)

In a third example, the school district proved that a middle school physical education teacher had been absent 16 times per year for two years in a row. Furthermore, the Hearing Officer reported that this teacher had been removed from his previous position following prior § 3020-a charges regarding an additional three-year period of excessive absenteeism.

In his decision, the Hearing Officer noted that the school's "'Faculty Handbook' states that teachers will be rated unsatisfactory for the year if they are absent more than 12 times without a doctor's note or extenuating circumstances." He added that he found it "somewhat troubling that the Respondent testified that he did not believe that he was excessively absent," and reported: "When asked what he thought constituted excessive absenteeism, the Respondent stated that he believed that 24 days was excessive." In summary, the Hearing Officer wrote:

> The fact that the Respondent was absent for 16 days in each of the two years he taught at Marine Intermediate School is unacceptable,

> particularly as the Respondent had been sent numerous letters warning that his conduct was inappropriate…*Furthermore, the Respondent had notice that such behavior would not be tolerated as evidenced by prior Section 3020-a proceedings for the same offence* (italics added).

Discussion his penalty decision, the Hearing Officer explained:

> …the bottom line remains that the Respondent was absent more than the permitted 12 days for two consecutive years. The Res[pondent] clearly has not learned from his previous Section 3020-a proceeding that he cannot continue to behave in this manner if he wishes to carry on in his career. This is a lesson that he simply must learn.

Therefore, "based on the above, and the record as a whole," the Hearing Officer returned the teacher to the classroom following a one-year suspension. He also ordered that the teacher "be given a 'last chance letter' by the Department, which would provide that any similar misconduct will result in immediate discipline, *up to and including* termination" (italics added)—indicating that even further "excessive absences" would not necessarily result in dismissal.

Teacher Absence—Case No. 5039 (2005)

In a fourth example, a teacher was proven to be late 61 times in one year, 34 times the next year, and absent 19 times the year after (usually before or after a weekend or holiday). Arguing for dismissal, the school district submitted an absenteeism case that did result in teacher dismissal, which the Hearing Officer ruled was not relevant because it "concerned a Teacher who was absent one hundred and forty-six (146) times during a two (2) year period and who the Hearing Officer found had little hope for improved attendance."

The Hearing Officer thus rejected "the discharge penalty being sought by the Department" as "not the appropriate penalty," instead ordering the "strong penalty" of a one-year suspension. In explaining this penalty, he cited: (1) The "seriousness of the Respondent's misconduct"; and (2) The fact that she had "previously been found guilty of Section 3020-a charges and been given a lengthy suspension." (The prior 3020-a charges were related to separate, unspecified problems). He further wrote that the teacher "must understand that like any employer, the school district has the right to expect its employees to report to work when scheduled and on time" and that she "must understand that this [decision] serves as a final warning…Any further excessive lateness or excessive absenteeism by the Respondent *may* result in her discharge from employment" (italics added).

Verbal Abuse

On paper, government policies "prohibit" verbal abuse of students. However, as with the standard for teachers' attendance, *no consequences* for verbally abusing students are stipulated in written policy. Thus, the level of verbal abuse that teachers can in fact engage in without losing their job is defined entirely within the § 3020-a framework. Several typical examples are presented here to illustrate this.

Verbal Abuse—Case No. 5102 (2006)

In a first example, the school district charged a fourth grade teacher with verbal abuse, proving, among other things, that the teacher told his fourth grade class that he was trained to kill, that he wanted to "smash [their] heads into the table," and that he was going to fail them because they were not paying attention. The record showed that the teacher's comments caused six of his fourth grade students to cry.

After 16 full days of hearings, the Hearing Officer finally concluded:

> It appears that…Respondent's classroom management techniques were sadly lacking…the Respondent simply [did] not have the ability to deal with or control [his students]…[he] often overreacted to his students' misbehavior and, on several occasions, exploded emotionally. Consequently, [he] made inappropriate verbal threats to his students and used physical force on several occasions.

(This last reference to "physical force" appeared to be in relation to charges that had been dismissed for technical reasons and were redacted from the case.[48])

At the same time, the Hearing Officer noted that the teacher had attempted to enroll in the teachers union's Peer Intervention Program, which "clearly indicates that Respondent recognized his deficiencies and wished to address them." Furthermore, the Hearing Officer stated his belief that "many of the difficulties experienced by the Respondent were the direct result" of moving from class to class as a cluster teacher, which the school could address by reassigning him to a regular classroom teacher position that he would be able to handle better.

He concluded, therefore, that "there is clearly an inadequate basis to discharge the Respondent." He instead imposed a fine of two months' salary, and ordered the school district

[48] In the course of § 3020-a proceedings, Hearing Officers not infrequently dismiss charges for technical reasons; all parts of the decisions related to these charges are redacted from copies released to the public. Several cases were received, however, in which small parts related to dismissed charges had mistakenly not been redacted. Based on these examples, it appears that charges can be dismissed on a technical basis, regardless of their severity.

both to enroll the teacher in the Peer Intervention Program and to transfer him to a different teaching assignment.

Verbal Abuse—Case No. 3088 (1997)

In a second example, a high school physical education teacher called a student a "fat bastard," told him he stunk and to "get the fuck out of here," and walked around the school carrying an iron bar and making "threatening remarks and gestures." He told another student that he was going to "kick his fucking ass" and "bash his head against the wall," and referred to students as "savage niggers." It was also proved that he had spoken similarly to his peers. The teacher admitted his guilt, although the Hearing Officer noted as mitigation that the teacher "explained that he was experiencing personal problems at the time." The teacher also reported that he had been in counseling and had taken remedial college courses to improve his teaching.

In his decision, the Hearing Officer wrote:

> Needless to say, Respondent's acknowledgement of guilt leads to the finding that the Board has established the charge against him. Thus, the only open question is one of penalty. Respondent's misconduct reflects an intolerable course of action in his dealings with students and peers. It cannot be condoned simply because Respondent has earnestly sought to rehabilitate himself.

However, he continued, the Respondent did seek to "deal with his problems by way of counseling and by taking courses to better equip him in dealing with the stress and behavioral issues that today seem to be part and parcel of any teaching position." The Hearing Officer thus fined the teacher $5,000 and ordered that he be assigned to a different school "to enhance his efforts in getting a fresh start in his teaching position."

Verbal Abuse—Case No. 5396 (2006)

In a third example, the school district proved that a 6th grade science teacher routinely called his students "idiots," "you fucking kids," and "retarded." Several children testified in the § 3020-a proceedings: one stated that the teacher "would say you're a fucking idiot, stupid ass. That's pretty much all the cursing he ever said to me, but he'll use it on and on." Another testified that the teacher cursed at his students "almost every single day."[49]

[49] In addition, on one occasion proven by the school district, the teacher grabbed a student from behind, pulling his shirt with enough force to rip the shirt and leave marks on the student's neck. The principal testified that the child ran into his office after the incident: "He was panting. He was crying. His shirt was torn. And he had a red mark around his neck…he was a bit hysterical…he just kept saying…a teacher—a teacher."

The Hearing Officer wrote in his decision that he could "conceive of no circumstance in which a teacher knowingly may ridicule a child. Respondent's comments were completely unacceptable." He therefore concluded: "I find Respondent engaged in serious misconduct. I find a substantial penalty is warranted." "However," he continued, "given the fact these are the first and only serious proven incidents on Respondent's record in his more than ten (10) years of service to the Department, I conclude that dismissal is unjustified. Respondent's longevity weighs in favor of a suspension." He imposed a five-month suspension, writing:

> Respondent must also understand he must accept full responsibility for his actions…He should know he cannot engage in such misconduct and not be held accountable. Any repetition of the type of proven misconduct, herein, especially some of the more serious incidents, undoubtedly shall result in his termination.

Verbal Abuse—Case no 5353 (2006)

In a final example of verbal abuse, the teacher was dismissed. This case also involved significant physical abuse, which, particularly in comparison with the cases cited above, appears likely to have contributed to the Hearing Officer's decision to dismiss the teacher. The Hearing Officer also emphasized the fact that the teacher had a relatively brief tenure of employment as an important factor in his decision. This case is particularly significant because it shows the extreme nature of teacher behavior discussed as though it *potentially* warrants dismissal—with the implication that under some circumstances such a teacher (one who had been employed for more years, for example) might be returned to the classroom.

The school district proved that a fourth/fifth grade art and special education teacher assaulted one of her fourth grade students while calling her a "nigger," repeatedly shouting "fuck you" at her, and telling her that her grandmother was an "ass" and that her parents were "bitches." The teacher also threw the child against a table, pulled her hair, hit her, and choked her. Four special education fourth and fifth graders testified (and were cross-examined by the teachers union lawyer) in the § 3020-a hearings. One described the assault incident as follows: "[the teacher] slammed her on the table. Then [she] started pulling her hair…[and] started punching her in the face." Another student testified that the teacher "started fighting [the student] like [she] was a grownup," and a third reported, "I saw [the teacher] pulling [the student's hair] and she was throwing her around." The fourth grader who was attacked submitted a written

statement describing the incident: "[she was] punching me like a punching bag…she threw me on the table by the door…and started to punch me on both my arms." Finally, another teacher "came and picked me up off the floor, because [the teacher] was choking me."

The Hearing Officer decided to dismiss the teacher, citing three key factors. First, the teacher had "actively engaged in wonton [sic] and aggressive acts, conduct clearly unbecoming a tenured teacher thereby neglecting her duty to the profession." Second, the principal had "distributed both A-420 (Corporal Punishment) and A-421 (Verbal Abuse) Regulations of the Chancellor" to all teachers at the beginning of the year, and the teacher therefore had clear, sufficient notice that such behavior was unacceptable. Finally, he wrote, "in response to the Respondent's argument for mitigation, the Respondent is a short-term, tenured teacher of only five (5) years." He cited the precedent of a previous a § 3020-a case which established "*the appropriateness of the penalty of termination for a short-term employee* where aggressive, violent acts were committed by a tenured teacher" (italics added). Therefore, in this particular case—that of a "short-term" employee—he wrote that dismissal was appropriate.

Based on the outcomes of other verbal abuse cases, it seems possible that the verbal abuse alone would not, in and of itself, have resulted in discharge. Further, the extent to which the Hearing Officer felt compelled to justify the penalty of dismissal, with the clear implication that the teacher would not necessarily have been dismissed if she were not "short-term" is striking, given her atrocious behavior. The next case also suggests that a "long-term" employee found guilty of similar actions against students would perhaps not have been dismissed.

Corporal Punishment

Written policies also prohibit corporal punishment of students. As with standards for teachers' attendance and verbal abuse, however, specific consequences for committing corporal punishment are not stipulated in written policy, and operative standards for the level of *permitted corporal punishment* are thus defined entirely within the § 3020-a policy framework. The following are two typical examples.

Corporal Punishment—Case No. 4169 (2002)

In a first example, the school district proved that a second/third grade teacher and "Reading Improvement Specialist," who had been teaching for 32 years, made a third grader tie his chair to himself with a jump rope, and paraded him around into several classrooms of children (carrying the chair, still tied to him), making him state repeatedly in front of the classes,

"I must learn to stay in my seat." She also put masking tape over the mouth of a fourth grader to show him "what a closed mouth looks and feels like," then put masking tape over the mouths of two other children and walked the three of them through the school hallways with their mouths taped shut.

In her defense, the teacher's lawyer argued that the school district's charge against her should be dismissed because while it alleged "that a 'school desk' was tied to the student," in fact "the evidence shows that the student was 'loosely connected to a chair.'" The lawyer also argued that "the problem [was] that 'no supervisor…ever told [the teacher] that the judgment she deployed in using the jump rope…and masking tape…constituted corporal punishment." The Hearing Officer rejected the first defense but accepted the second defense as a "mitigating factor" in deciding the penalty.

Regarding the chair incident, the Hearing Officer concluded: "Under any reasonable view…[this] is a type of punishment which would 'tend to cause' a third grader excessive mental distress." Regarding the taping incident, he wrote: "Like parading a student through a school with a chair tied to his waist, this type of dramatic, public shaming of a young child…is precisely the type of punishment the Board has attempted to prevent by prohibiting 'punishments of any kind tending to cause excessive…mental distress' (Chancellor's Regulation A-420)."

In discussing his penalty decision, the Hearing Officer wrote: "These are serious offenses which in most circumstances would warrant the discharge of the teacher involved. Here, however, *several factors mitigate against discharging* the Respondent" (italics added). First, he cited the teacher's years of employment, writing that the "record shows that the Respondent has thirty-two years of discipline-free service to the Board." Second, in a striking example of the standard of evidence required in § 3020-a proceedings, he noted that the Board had *"failed to present any evidence showing that any of the students who were the victims of the Res[pondent]'s misconduct were physically or emotionally harmed"* (italics added). Third, he acknowledged the defense presented by the teacher's lawyer, noting that the school's supervisors had "taken no action" against the teacher—thus abdicating their supervisory responsibility and consequently entitling the teacher to a lesser penalty for her actions.

He concluded, finally:

> These mitigating factors…do not excuse the Res[pondent]'s repeated misconduct…In addition, and even more importantly, *the Respondent did not show any remorse or demonstrate any understanding as to why her discipline techniques were*

> *inappropriate*…[T]he penalty imposed must be severe enough to impress upon the Res[pondent] the seriousness of her wrongdoing and insure that the Respondent will not engage in similar misconduct when she is returned to the classroom. (italics added)

He therefore assessed what he described as a "severe" penalty of a one-year suspension, after which she would return to the classroom. He additionally ordered the teacher to "take and successfully complete a course, at her own expense, on appropriate behavior management techniques in schools" to learn how to conduct herself in the classroom without engaging in corporal punishment and causing "excessive mental distress" in her students.

Corporal Punishment—Case No. 4031 (2002)

In a second example, the school district proved that a middle school social studies teacher said, "Your mother" (as an insult) to a 13-year-old special education student. When the student became angry, she said, "Hit me, hit me!" The student "subsequently swung at her," and the teacher hit him on the head with a computer keyboard. The student then grabbed her to keep her from hitting him again with the keyboard, and the teacher bit him on the shoulder, leaving visible bite marks. In its investigation of the event, the Department of Education's Office of Special Investigation (OSI) reported that the teacher had "provoked and instigated" the child "into a violent confrontation." The child was described by another teacher as "very shy" with a "very bad speech impediment" and no record of violent behavior.

The Hearing Officer noted in his decision that several warning letters had been placed in the teacher's file. However, they had been subject to grievances and removed from the record, and thus could not be considered in the proceedings. He additionally noted that the teacher had been the subject of two previous OSI cases: one investigation regarding an allegation that she had "used derogatory and belittling language" with students, calling students "coward[s]," "rooster head[s]," and "dumb and stupid," and another regarding allegations of verbal abuse and corporal punishment. Multiple parents had "lodged complaints of corporal punishment against her," which she claimed not to recall.

The Hearing Officer decided, however, that the teacher had "preserved the privilege of self defense," given his finding that she "had a reasonable belief that [the student] was about to attack her, largely because her fighting words, 'Your Mother,' had enraged him." "Ordinarily," he wrote,

> a teacher biting a student would not be sanctioned as a reasonable means of self-defense. However, despite the fact that [the teacher]

> had provoked Student A verbally and physically, she had the right to defend herself if she thought Student A's physical response would cause her harm.

He thus allocated a penalty of a five month suspension. The key factors he cited in his penalty decision were the teacher's "nearly 18 years of employment with the Board of Education," and his conclusion that "despite her serious misconduct and lack of remorse," the teacher "is nevertheless *a salvageable employee who deserves one last chance* to comport her conduct with the expectations of her employer" (italics added).

Incompetence

The above cases show the critical role of § 3020-a in defining standards for the most basic aspects of teachers' performance: coming to work and refraining from verbally and physically abusing students. But § 3020-a cases regarding charges of "pedagogical incompetence" reveal what may be even more important: the minimal level of *teaching competence* necessary to keep a job as a New York public school teacher. In other words, these decisions reveal the established "floor" of competence of the city's teacher workforce.

The term "pedagogical incompetence" has no definition in laws or regulations, and is vaguely described by the State Education Department as follows:

> While the term 'pedagogical' is not defined in either the statute or the Commissioner's Regulations, [§ 3020-a] charges that fall into that category include inability to control a class, failure to prepare required lesson plans, failure to maintain certification, and other matters that directly pertain to teaching techniques and issues of this nature.[50]

Nor is "incompetence" defined. In fact, clear evidence of years of poor teaching often does not lead to a § 3020-a conclusion of "teacher incompetence." In other words, teach***ing*** incompetence is not considered to be definitive evidence of teach***er*** incompetence: As one Hearing Officer explained:

> An unsatisfactory observation, or a number of them, don't necessarily justify a conclusion of *teacher* incompetence… Unsatisfactory observations may however, result in an annual evaluation of "unsatisfactory." Similarly, an unsatisfactory annual evaluation alone does not automatically compel a conclusion of incompetence.

[50] http://www.highered.nysed.gov/tcert/faq3020a.html

> …Is there a magic number of consecutive annual "unsat" evaluations which mandate a conclusion of incompetence? I doubt it. But…a teacher is required to understand and make a good faith effort to apply the "appropriate teaching methods and techniques"… (italics added)

This explanation highlights the distinction drawn under § 3020-a between the quality of *teaching*, on the one hand, and the quality of the *teacher*, on the other. It also highlights the disconnect between school-site evaluations of teachers' performance and what teachers are actually held accountable for: teacher evaluations are not irrelevant, but are viewed as far from definitive assessments of a teacher's fitness to remain in the classroom.

Thus, *a teacher's past demonstration of teaching competence is not the established standard for his or her continued employment as a teacher*. As discussed above, several mitigating factors consistently outweigh actual teaching competence in § 3020-a decisions, including:

- Years of employment;
- The teacher's stated remorse, and apparent (or assumed) intention to make an ongoing effort to learn and improve;
- A frequent assumption of inherent teacher good will;
- The requirement for progressive discipline;
- The obligation of the school system to "rehabilitate" teachers; and
- The presumption that "rehabilitation" is highly desirable and usually possible.

Finally, as emphasized, dismissal is considered a very extreme "penalty," and is avoided regardless of a teacher's performance in the classroom: in incompetence cases, "a neutral is generally biased towards a penalty lesser than dismissal when there is a probability or *even a hope of rehabilitation.*"[51]

Explaining the level of teacher performance that actually warrants dismissal, one Hearing Officer cited case precedent to show what had been "held to be adequate grounds for terminating a teacher for incompetence." As a first example, he referred to a 1981 decision regarding a science teacher who had taught for ten years and who was finally dismissed when, after years of poor performance, it was established in § 3020-a proceedings that

[51] Case no. 3878 (2002), p. 14, italics added

> [he] was unable to present classroom material in a comprehensible manner; his teaching methods discouraged student interest, his method of testing was confusing; he used words that his students did not understand; he dwelled over long [*sic*] on the same point and often wandered from the topic; his responses to student questions were unintelligible and confusing; and his grading system was incomprehensible to students, parents, the Principal, and the Department Chairman.

The Hearing Officer then compared this case to a second case, to demonstrate the "fuzzy line which justifies a termination for incompetence." In that case, a teacher was found to have serious deficiencies in her teaching and classroom management, but was not dismissed. The subsequent Commissioner's appeal decision upheld the original decision, ruling that what had been established in the case was "inefficiency"—not "incompetence" which "connotes incorrigibility"—and that therefore there was still some "possibility of remediation." Furthermore, this teacher had "taught in the district for a long time" and had therefore "developed certain equities in her job."[52] [53] As typical, the factors emphasized in the Commissioner's decision were not the teacher's demonstrated level of competence, but rather the duration of the teacher's employment and the hope (however slight) that rehabilitating the teacher might be possible.

Describing the conditions that may warrant dismissal, the Hearing Officer wrote:

> When, for whatever reason, the teacher resists change, lacks insight into the need for change, resents constructive criticism, and stubbornly persists in a style of performance that substantially ignores competent and credible advisors and evaluators, there would appear to be little hope of improvement despite attempts at remediation.[54]

Notably, these conditions emphasize the possibility of teacher "remediation," while excluding teaching competence as a consideration.

In the following, I present seven examples of teachers who did not fall below the minimum standards required to keep a job as a New York City public school teacher. These

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[52] Either the district or the teachers union can file an appeal of a § 3020-a case decision with the State Commissioner of Education. The Commissioner's decisions on those appeals are available online at http://www.counsel.nysed.gov/Decisions/. Commissioner decisions on appeals are not infrequently cited in § 3020-a decisions, and appear to reinforce the strong influence of precedent in § 3020-a proceedings.

[53] Case no. 5416 (2006), p. 34

[54] Case no. 5416 (2006), p.25

teachers were "disciplined," by a fine, suspension, and/or a requirement for further training, and subsequently returned to the classroom. Five examples are then presented of teachers who did fall below minimum standards and were dismissed. These twelve representative cases show the application of the principles discussed above, and a strong de-emphasis on demonstrated teaching competence as necessary condition of employment as a teacher. The decisions rarely even mention a teacher's impact on children.

Teachers Returned to Classroom Teaching

Incompetence—Case No. 5430 (2006)

In a first example, the school district sought dismissal of an elementary school teacher who had received year-end evaluations of "Unsatisfactory" for three consecutive years while teaching sixth grade. In an attempt to address the teacher's poor performance (and perhaps to remove her from grade levels that take state and city achievement tests), the principal had subsequently given her lower grade levels and smaller numbers of students: a third grade class with 14 students for one year, a first grade class with 17 students the next year, and a first grade class with 13 students in the third year. She continued to receive annual evaluations of "Unsatisfactory," for both incompetent teaching and poor classroom management, including the inability to prevent frequent physical fights among children in her class.

In addition to giving the teacher presumably "easier" classes to teach, the school had provided her with extensive remedial assistance. The school district proved that over the course of the three years prior to the initiation of § 3020-a charges the teacher had received ongoing assistance and support from the school principal, assistant principal, psychologist, guidance counselor, and other teachers, along with coaches, staff developers, and volunteers. This assistance included multiple classroom observations and pre- and post-observation conferences with the principal; training and materials for the literacy curriculum; fifteen two-hour visits from a literacy coach; frequent visits from the school psychologist to assist with classroom management; support from a special education teacher who "worked with her extensively" on classroom management; twice-weekly visits for two months from an "early grade intervention specialist"; several months of regular assistance from the school math coach; assistance from several "staff developers," including one from Teachers College; assistance from a volunteer from America Reads who worked 12 to 15 hours per week in her classroom; multiple co-teaching experiences, in which other teachers taught alongside her in her class; and release from teaching duties for "intervisitations" to observe other teachers' classrooms.

The Hearing Officer acknowledged the school's years of extensive efforts to improve the teacher's performance, and concluded that the problem was "indisputably" the teacher's "inability to implement mandated curriculum and properly manage her classroom." He wrote: "There is no question but that the [teacher's] deficiencies…were well-documented and persistent and for that reason the penalty must be substantial."

He decided upon a penalty of a one year suspension while, remarkably, "urging the Department to provide an appropriate remediation program for [the teacher] to address those areas in which she is deficient" upon her return to the school. He added that the teacher "is now on notice of the need for drastic improvement in her performance and effectiveness in the classroom in the future." In explaining this penalty decision, the Hearing Officer wrote that, while the teacher's "conduct constitutes just cause for disciplinary action," he was "not persuaded that it constitutes just cause for termination as urged by the Department" and was "not convinced" that the teacher could not "once again meet the Department's legitimate expectations in the classroom."

While noting that the record clearly proved the teacher's "well-documented and persistent" deficiencies as a teacher, the Hearing Officer cited two primary factors justifying his decision to return her to classroom teaching: (1) The long duration of her employment; and (2) Her positive attitude towards *learning* how to improve her teaching. She had "over 30 years of experience," he explained, and there was "[n]o indication" that she had "been resistant to the requirement that she implement mandated curricula…[or had] manifested any deliberate intention to avoid teaching" adequately. He could "find nothing in the record…which would indicate recalcitrance, antagonism or an uncooperative attitude on her part, so as to preclude the likelihood that she could succeed in this regard in the future."

He also noted that no student achievement data had been presented by the school district, and thus there was an "absence of any evidence in the record showing a lack of achievement" of the teacher's students (although, since early grade students do not take city or state tests, such evidence would be unlikely to exist in the first place).

Incompetence—Case No. 4958 (2004)

In a second example, an elementary school teacher was evaluated as "Unsatisfactory" for 2000-01 and removed from the classroom in June 2001. She appealed the "Unsatisfactory" rating and was returned to the classroom 16 months later in October 2002. After a month, she was removed from the classroom again because of proven allegations that she had demonstrated

extremely poor teaching, and called a student "a piece of shit" and "an asshole." She was returned to the classroom 14 months later, in December 2003, and removed yet again in January 2004 for incompetent teaching and allegations of verbal and corporal punishment. She was evaluated as "Unsatisfactory" for 2001-02, 2002-03, and 2003-04. Section 3020-a charges were preferred against her in June 2004.[55]

After reviewing three years of extensive evidence against the teacher, in 11 days of hearings held over the course of a year, the Hearing Officer concluded that the teacher had "unacceptably poor classroom management…[and] she may not have yet begun to recognize that reality." He noted that her understanding of appropriate teaching was so deficient that she seemed to define an "*ideal*" class as simply one with "the absence of chaos." He further wrote, however, that the school had not provided evidence of sufficient efforts to "address Respondent's weaknesses," emphasizing that *"[i]t is well settled that school administrators have a responsibility to train staff* and to make appropriate efforts to help teachers improve the quality of their performance" (italics added). He further explained:

> The school's administrators knew of Respondent's deficiencies when she returned [to the school] in October 2002 and again in December of 2003. One would think that plans would have been made to provide immediate assistance in an effort to provide Respondent with the training needed in order for her to succeed. The lack of attention to this matter is duplicative of the lack of effort in this area when Respondent was first assigned to the school.

Thus, "balanc[ing] the nature of the charges sustained against the remedial efforts made by the school," he allocated a penalty of a three-month suspension, writing that the teacher "must assume responsibility for her shortcomings and take additional training in the area of classroom management."

Incompetence—Case No. 3151 (1998)

A third incompetence case regarded a high school English teacher who the school claimed had been teaching incompetently for several years, and was resistant to assistance offered. The case required 12 days of hearings, producing a 998-page transcript. The Hearing

[55] Per law, the teacher continued to receive full salary and accumulate pension benefits throughout this three year period.

Officer wrote that the school district had "proved that significant shortcomings existed with respect to the competence and efficiency of the Respondent." He continued:

> These shortcomings involve certain significant functions of the requirements of a classroom teacher. The record contains repeated and credible testimony from experienced administrators, who had substantial backgrounds in the teaching profession, that the Respondent has demonstrated certain deficiencies in providing competent service as a classroom teacher.

For example, the Superintendent provided credible testimony "that the Respondent 'was unaccepting of suggestion and guidance'." Moreover, the Hearing Officer wrote, "[d]espite [extensive] efforts to inform the Respondent of his shortcomings and to provide reasonable opportunities for the Respondent to improve his performance, the Respondent continued to conduct unsatisfactory classes."

The Hearing Officer further wrote that, "the Board need not tolerate incompetent teachers when *actual incompetence* exists." However, he wrote that in this case "actual incompetence" did not exist. He explained that this assessment was based on his belief that the teacher "possess[ed] the skills, the experience, the concern, and *the potential* to be a competent and productive teacher," even if "[f]or whatever reasons [he had] failed to implement his talents in the classroom on an ongoing and consistent basis" (italics added). He added that the teacher "needs to understand the serious and critical obligation that exists for him to teach his students in a competent, efficient, and careful way."

The Hearing Officer thus allocated what he described as a "significant" penalty of a one-semester suspension in order "to impress upon" the teacher his obligation to teach competently. After this suspension, he added, the teacher would presumably "recognize the importance, necessity, and urgency of the situation," and should return to the classroom in order to "receive a new opportunity" to "demonstrate his skill, efficiency, and competency."

The definition of "actual incompetence" revealed in this decision is not that a teacher has been teaching incompetently for years, but rather that not even the slightest potential for improvement exists.

Incompetence—Case No. 4818 (2004)

In a fourth example, the school district charged a high school math teacher with incompetence and proved in 10 days of hearings that his classroom management was extremely poor and that over half of his students were failing. (He was also charged with verbal abuse: the

school district proved, among other things, that the teacher had called one student "stupid" and said to another student, "Shut up, faggot; You must know all the faggots; You should know – you hang out with the faggots.") The teacher's lawyer argued, however, that "the lack of any remediation stands as grounds why even if [he] is found guilty, termination is not warranted."

In discussing the case, the Hearing Officer recognized the defense's argument as a significant factor in the case. He noted that while "the record documents that DOE [NYC Department of Education] made a significant effort to assist [the teacher] in his teaching duties," those efforts had *fallen short of that necessary to successfully rehabilitate the teacher*. He continued:

> In addition to the remediation issue the record supports the contention that mitigation is to be found in the fact that the offenses committed do not warrant summary discharge inasmuch as the misconduct…may reflect poor judgment they are not termination transgressions…[Respondent] must now learn to avail himself of assistance that is available in this area.

He thus ordered a two-month suspension and "instruction in the area of classroom management…provided at no cost to [the teacher] by the DOE and/or his Union."

Incompetence—Case No. 5053 (2005)

In a fifth example, a third grade teacher who had been teaching for 21 years was charged with incompetence, including frequently screaming at and insulting students and their parents. In his decision, the Hearing Officer noted that the teacher was "indeed fortunate that the parents and students involved in the many accusations against her did not come forward to testify" in the 11 days of hearings held over a 13-month period.[56] "As it is," he added," the conduct for which Respondent has been found guilty…suggests a pattern that she is not in control of her emotions" and had difficulty handling "problem" students and their parents.

He concluded that "[t]he overall picture that Respondent begins to present is that she is 'burned out' and in need of a long vacation or a different field of employment." He gave her the strong benefit of the doubt, however, suggesting that she

> has to take a deep breath and decide whether she can and should continue as a teacher. If she seriously intends to keep teaching, she needs to get rid of the anger and restore the warmth and charm she

[56] Testimony must be in person; written testimony is defined as "hearsay" and is not considered as evidence in the case.

> is capable of. She must restore the courtesy and tact and caring that every elementary school teacher must bring to the classroom.

Thus, based on his stated presumption of her inner capability for warmth, charm, and caring, he decided that she should receive a further chance to improve her performance, ordering that she be suspended for two months, and that she complete a "recognized anger management course over the summer" prior to returning to the classroom the following September.

Incompetence—Case No. 5158 (2006)

In a sixth case, § 3020-a charges of incompetence were brought against a high school English teacher. Over the course of 22 hearings held over eight months (resulting in a transcript of almost 3,000 pages), multiple administrators—including four assistant principals, the principal, two superintendent's representatives, and the regional instructional specialist—testified regarding their observations of the teacher's extremely incompetent teaching over the three year period prior to the § 3020-a charges.

The Hearing Officer accepted evidence that the school administration had provided extensive assistance to the teacher, including approximately 50 documented meetings with various supervisors and coaches. He also found that she was "guilty of most of the charges against her"—although he dismissed allegations such as grammatical and spelling errors on the board as "minor points and…thus inconsequential criticisms." He concluded that the "Department has clearly demonstrated by a preponderance of the evidence that Respondent *is guilty of incompetence more often than not*" (italics added).

In the teacher's defense, her lawyer maintained that "even if some of her lessons were deficient, that, in itself, does not prove she is incompetent." The lawyer cited a prior § 3020-a decision with exactly such a precedent: that prior decision had found that a teacher charged with incompetence "was incompetent 'more often than not,'" but had concluded that "there was evidence that *she was capable of providing competent instruction under certain circumstances*" (italics added). In that case, the school district's charges of "incompetence" were not upheld.

The Hearing Officer accepted this defense. He wrote: "Respondent has produced evidence that she is capable of providing competent instruction." He cited two "Satisfactory" classroom observations from the three years of evidence provided by the school district. He also cited "some positive comments" in her 13 "Unsatisfactory" observations as evidence of her "competent instruction": for example, in one she had "a written lesson plan," in another had

given "a homework assignment related to the day's lesson," and in a third had shown "evidence of prior planning for the lesson." Therefore, he concluded:

> [W]hile the evidence demonstrates Respondent has serious instructional problems which, if not remedied, may well lead to the conclusion that she is not capable of meeting the instructional requirement of the Department of Education, I find she has not yet reached that point. In short, Respondent appears to be a caring teacher who, although in serious need of improvement, still retains the potential to produce a satisfactory educational product. *I believe that with appropriate remediation, [she] may be rehabilitated to the point of competence*. (italics added)

He therefore decided that "the appropriate penalty for [the teacher's] culpability" was a one year suspension, during which the teacher would be required to "enroll in courses and/or workshops in classroom management techniques as well as other pedagogical course work as determined by the Department"—further adding that the "cost of such training shall be borne by the Department."

Incompetence—Case No. 5234 (2006)

A seventh case provides another particularly explicit example of the emphasis placed on teacher rehabilitation and the very high standard for schools' responsibility to rehabilitate teachers. In this case, a high school special education social studies teacher with 17 years of employment was charged with incompetence. He had been evaluated as "Unsatisfactory" for several consecutive years, and the principal, four assistant principals, and the superintendent's representative testified to his incompetent teaching in the course of 33 days of hearings (producing a transcript of over 4,800 pages).

The teacher had previously been brought up on § 3020-a charges for incompetence and, as ordered by the prior § 3020-a decision, had taken additional college courses, was sent to teach in a different school that "offered unusual opportunities for teacher rehabilitation," and participated for a year in the Peer Intervention Program. He was also subsequently provided with extensive remedial assistance, including multiple pre- and post-observation conferences, extended visits to other classrooms, and months of daily mentoring by another teacher. The Hearing Officer wrote that the teacher's "demeanor" during the proceedings "raise[s] questions about [his] ability to function as a classroom teacher…[the teacher's] resistance to the IHO's [Hearing Officer's] repeated directives of him to answer questions in a straightforward manner

raised doubts about his ability and willingness to improve his teaching through his own education and remediation."

He still concluded, however, that "[t]here is reason to believe that [Respondent's] teaching deficits can be remediated"—although his apparent resistance to improving his teaching meant that "he obviously needs strong incentive[s] to address and correct those deficits." The Hearing Officer therefore ordered a penalty of a seven-month suspension. He additionally ordered the Respondent to enroll, at his own expense, in university classes of at least six credit hours; complete a period of student teaching under the guidance of experienced teachers ("with the assistance of the Department" if the teacher so requested); and again enroll in the year-long Peer Intervention Program upon his return to teaching the following year.

Teachers Dismissed

Incompetence—Case No. 3965 (2002)

In a first example of dismissal for incompetence, an English high school teacher was charged with incompetence. The school district's lawyer presented extensive evidence for a three year period during which she had been evaluated as "Unsatisfactory" every year. In his testimony, the Superintendent of Bronx High Schools (who had observed the teacher and met with her on multiple occasions) stated:

> I can't stress strongly enough how hostile and angry and contentious and difficult and extremely challenging to the students [she is]…In my over thirty years with the Board, I have never seen anything like it.

The Hearing Officer found that the teacher "delivered poor teaching to her students, consistently failed to take advantage of opportunities to improve her pedagogical skills, was hostile to both students and adults in her work environment and was almost universally uncooperative." He wrote:

> [She] has rejected the criticisms of those charged with evaluating her work performance. She has refused to participate in programs of assistance such as peer intervention programs, meetings with administrators to review her work or contacts with experienced teachers who have been made available to her. [Her] relationships with her students are abominable. The record provides numerous accounts of students struggling to obtain transfers out of her classes…The record paints a picture of [her] classes as places of high student absenteeism, where students who do attend are belittled and humiliated and where little planning has taken place,

> all of which produces a high failure rate. *Unfortunately, the record is devoid of any evidence that this status will change if [she] is returned to the classroom*. (italics added)

"Sadly," he concluded, "the record of this case gives no evidence that [she] possesses [the] potential" to be rehabilitated. Consequently, he decided on the penalty of dismissal.

However, the Hearing Officer's decision was based not on the teacher's years of abysmal teaching performance, but rather—as he emphasized—on his belief that there was not even the slightest possibility that she could be rehabilitated.

Incompetence—Case No. 5153 (2005)

In a second example, an elementary school reading teacher was charged with incompetent teaching and classroom management, resulting in virtually constant classroom chaos as well as physical injury to students. The teacher's lawyer claimed that she had received inadequate support and assistance, and called an "expert in supervision" to testify in support of this defense. The expert supported the teacher's complaint that she had not received adequate supervision, explaining that "teachers have to be observed early in the school year so that a baseline may be developed from which they may improve." He further testified:

> …the acronym COWBIRDS should be utilized to improve teaching performance…teachers should be afforded the opportunity to attend Conferences; offered Observations; given Workshops; assigned Buddies; granted Inter/Intra visitations with other classrooms; provided with Readings; given assistance at Department meetings; and made aware of professional Societies.

The teacher's lawyer argued that "[v]ery few, if any COWBIRDS' mechanisms were utilized" with her.

In the course of the hearings, however, the Hearing Officer found that the school district had proven "that COWBIRDS <u>was</u> utilized in substantial part, in an effort to remediate" her performance, and cited the extensive list of COWBIRDS activities that the teacher had been provided with. He concluded, finally, that the school district had proven abysmal classroom management and extreme teaching incompetence. He also noted that "it is significant that Respondent was previously the subject of 3020-a charges" for incompetence, was fined, and had agreed to take a course in classroom management. Thus, he concluded, "she was progressively disciplined," yet despite the prior action and the significant "remediation efforts afforded her," she had not improved whatsoever.

He thus decided that the "appropriate penalty for [the teacher's] culpability is the termination of her services"—emphasizing that while his decision "should not be construed as a reflection on [the teacher's] integrity or conscientiousness," her discharge was warranted by the combination of previous § 3020-a charges, years of rehabilitation efforts, and, ultimately, incontestable proof of extreme and incorrigible incompetence. Again, central to his decision was his conclusion that there was absolutely no possibility that the teacher could be rehabilitated.

Incompetence—Case No. 5416 (2006)

In a third example, the school district charged a high school biology and general science teacher who had been teaching for six years with incompetence; the Hearing Officer recorded in his decision that she had received nine "Unsatisfactory" observations from five different observers in the last three years, and had received a year-end "Unsatisfactory" rating for the previous two years. She had also received extensive remedial assistance from multiple administrators and coaches, including months of weekly meetings with the principal and with the literacy coach.

In the course of the 12 days of hearings, the school district's lawyer attempted to show the basis for a particular unsatisfactory observation of a science class, which reported that the teacher provided an incoherent answer to "a student's question of why, based on a chart they were studying, the menstrual cycle was 28 days and not 32 days." The school district lawyer insisted that the teacher repeat her answer to the Hearing Officer, which was quoted in the Hearing Officer's decision as follows:

> Because during that cycle—during menstruation, meiosis is going on. And so those days are continuous—while the menstruation is going on. That is the deep reason; it's not the surface reason. The surface reason is looking at the chart and the—but when the deep reason—the underlying reason is because during menstruation, meiosis is going on inside a woman. And so when the menstruation finishes, then the cycle continues. So it's just a twenty-eight, so that during the first four days or five days of menstruation, those days are also counted in because meiosis takes off from then. Yes, that's why it [*sic*] twenty-eight and not—and not thirty two—because of the flow, what they call the flow period, that period of menstrual cycle something else is also going inside the woman.

Later in the proceedings, when asked to give an example of a "critical thinking question," the teacher reported asking the class if they "had allergies for any food."

In addition to acknowledging clear evidence of teaching incompetence, the Hearing Officer noted that she was "stubbornly evasive in her answers, and one could not elicit the simplest factual details without repeated questions…she did not seem able to conform to the typical hearing procedures, such as answering 'yes' or 'no' to proper cross-examination questions, despite repeated explanations and instructions by the Hearing Officer" and "appeared to stubbornly cling to her personal practices and reject constructive criticism." He concluded that he did not believe that the teacher was capable of "teach[ing] effectively in the public schools, even with additional remediation efforts."

"In the present case," he wrote, "giving Respondent a second chance would not solve the problem. *She is not a long term employee,* but her reported deficiencies <u>were</u> long term." He found that the teacher "has been provided ample remediation and peer intervention. Active remediation has not helped to a significant extent. *I find that Respondent's ability to change or improve with additional remediation is unlikely, and that she must be deemed incorrigible in this regard*" (italics added). He therefore concluded that the school district had established "just cause for termination": based both on the short duration of her employment as a teacher and his assessment that rehabilitation was impossible.

Incompetence—Case No. 4125 (2002)

A fourth example of dismissal involved a third/fourth grade English as a Second Language (ESL) teacher charged with incompetence. The teacher had undergone multiple classroom observations over the course of two years, every one of which was rated "Unsatisfactory." The school district proved that she had non-existent or inadequate lesson plans, failed to bring materials to class, improperly used materials that she did have, failed to learn the names of her students, confused their grades at the end of the semester, and did not advance their learning of English.

The Hearing Officer noted that the teacher "was regularly provided with what might be called a nearly exhaustive amount of remedial help," but that she had made absolutely no effort to improve her teaching. He concluded, finally, that he found her to "be an inadequate teacher, incompetent to fulfill the duties of her position." Further, based on her total lack of effort to improve her performance, there was "no basis for any expectation of improvement." He thus ordered dismissal.

Incompetence—Case No. 4920/4940 (2004)

A fifth example of dismissal regarded a high school science teacher charged with both incompetence and verbal abuse. He had been brought up on § 3020-a charges four previous times, and "*had been [the] subject of four prior removals from the classroom* under Section 3020-a of the Education Law" (italics added). After 15 days of hearings, the Hearing Officer wrote in his decision that the teacher had

> demonstrated beyond question that his conduct in the classroom has the effect of criticizing and humiliating students and preventing them from learning. Despite prior disciplinary proceedings which have placed Respondent on notice that certain conduct is prohibited, he has engaged in additional acts of racial and ethnic bias in the classroom, insubordination towards the administration…and humiliating students…[and has] shown by the repetition of racially and ethnically insensitive remarks that he is unfit to serve in the multi-cultural environment of the classrooms of the New York City Department of Education.

Since the teacher had been found guilty in § 3020-a proceedings and removed from the classroom four previous times without showing improvement, the Hearing Officer concluded that the teacher was irremediable and thus ordered his discharge.

Two last cases do not fall into the specific categories discussed above, but provide a general illustration of the level of teacher behavior that does—and does not—result in being removed from the teacher workforce. In the first example, the teacher received a three month suspension, and in the second the teacher was dismissed.

In *Case No. 4968 (2005)*, the school district proved over 10 days of hearings that a high school science teacher had "preached from her Bible and imposed her religious beliefs on students." She had also discussed her marital problems at length in class (including telling her class that she had "smelled [her] husband's underwear and it smelled like he had a wet dream" about another woman she thought he fantasized about). In discussing the appropriate penalty, the Hearing Officer emphasized the teacher's twelve years of employment as a teacher, her Master's degree plus the additional 30 credits she had earned, and the fact that she had the "appropriate licenses and certifications commensurate with her position." He concluded that "the judgment of the DOE and the District were correct in terms of the imposition of discipline but not in seeking her termination," explaining:

> A §3020-a proceeding is fashioned to assess a teacher's fitness to continue in a tenured position…If the cited misconduct is proven and falls into the category where summary discharge is mandated then a proposed termination will be upheld…However, in the instant case, while the misconduct committed is formidable, it does not…render [the teacher] de facto unsatisfactory to continue her teaching career.

He therefore decided on a "significant penalty" of a three-month suspension and "remedial assistance," ordering that the teacher "seek and obtain professional counseling or some other type of assistance… [which] shall be selected, administered and monitored by the DOE in conjunction with the UFT."

In *Case No. 5240 (2006)*, a high school biology teacher received a year-end "Unsatisfactory" rating for two consecutive years, and § 3020-a charges were subsequently initiated. The school district proved that he had said to a female student, "you suck – at least that's what it says in the boys' bathroom," and "told a male student that his penis was too small." In the sex education unit in his "Living Environment" class, while teaching female anatomy and "referring to the female vagina," he "told a male student that it would be the only time he'd see one so enjoy it." He "discussed personal sexual issues, including masturbation and ejaculation"—telling the students how many times he ejaculates—and described people having sex with dead people and with animals, commenting that "animals don't enjoy having sex and that's why they make strange noises."

Based on the extensive evidence presented, including the testimony of 15 witnesses over eight days of hearings, the Hearing Officer concluded that rehabilitation was not possible in this case:

> Given the Respondent's history of vulgar and inappropriate remarks, and the repeated warning[s] which had been issued to him, *it appears that the Respondent is incapable of remedying his behavior*. There is no indication that the Respondent would alter his teaching if reinstated. (italics added)

Thus, because he saw no hope of rehabilitation, the Hearing Officer ordered dismissal.

9. CONCLUSION

Of New York's 209,000 teachers, probably only a very small number are performing at the dismal level described in this report. But a critical question remains: Why would we permit even one such teacher to remain in our public schools?

As described in this report, the underlying problem is § 3020-a's institutionalized emphasis on teacher rehabilitation, which places the personal welfare and development of teachers above the schools' mission of educating children. Section 3020-a's explicit purpose is simply the protection and rehabilitation of individual teachers. Although sometimes referred to in passing, teachers' impact on their students, colleagues, and schools is not a fundamental concern in § 3020-a proceedings.

Section 3020-a decisions occasionally indicate that students, too, understand how this system protects teachers at children's expense. In one case, for example, a high school science teacher was finally dismissed after his fifth temporary removal from the classroom for extreme incompetence and verbal abuse, including using racial slurs and "insult[ing] and embarrass[ing] students during class time." One child testified in the hearings that the teacher had said to the class: "Don't bother reporting me to the principal because I have good lawyers to get me off." Another child recounted: "He told us that he was convicted three times of sexually harassing girls but the school had never been able to get rid of him."[57] In another case, the school district presented a letter from a middle school student:

> [My teacher] told me to suck his dick and…put white out on a pen and suck it. He told me he hope[s] I die. He called me a snotty nose child and said my mother sucked his dick. P.S. I think he needs to be "FIRED" or "SUSPENDED.[58]

Thousands of luckless children are assigned to classrooms with teachers like these. Even worse, children know that they're essentially powerless when it happens.

By itself, removing terrible teachers will not fix public schooling. We need to raise the status of teaching and treat teachers like competent professionals. We need to improve recruitment and selection of the right people for a very tough job. We need to pay teachers more in order to attract good people into the profession, and to retain the great teachers we already have. We need to improve teacher preparation so that teachers are really ready to succeed when

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[57] Case no. 4920 & 4940 (2004), p. 49-50
[58] Case no. 4238 (2002), p. 3-4

leading their own classrooms. We need to ensure that principals truly support teachers, and remove those who don't.

But while removing chronically ineffective teachers alone will not fix the public schools, that's no reason not to do it. The aim of dismissing poor performers is not to blame or punish anyone. The aim is to protect children from damaging teachers and to raise the overall quality of the teaching workforce. Policy mechanisms for removing inadequate teachers are crucial to the capacity of the public schools to carry out the mission of educating all children.

Scholars have long emphasized the moral imperative of "provid[ing] a meaningful, adequate educational opportunity for all students"[59] by ensuring equal "access to the resources that enable students' learning."[60] No education resource is more important to a student's learning than the competence of his or her classroom teacher. But the § 3020-a system violates children's right to at least minimally adequate teaching guaranteed by New York State Law, and deprives them of an equal opportunity to learn. We have a moral and legal obligation to fix § 3020-a—to protect children from ineffective and harmful teachers, and to ensure that a competent teacher is leading each and every classroom.

[59] Rebell, M. A., & Hunter, M. A. (2004). 'Highly Qualified' teachers: Pretense or legal requirement. *Phi Delta Kappan, 85*(9), p. 6.
[60] Darling-Hammond, L. (2004b). Standards, accountability, and school reform. *Teachers College Record, 106*(6), p. 1020.

APPENDIX I: OBTAINING § 3020-A DECISIONS

Although information regarding the government's minimum standards for New York's public school teachers can only be found in § 3020-a decision, those documents are not publically available and can only be obtained through a Freedom of Information Law request. In July 2007, as a graduate student at Teachers College, I submitted New York Freedom of Information Law (FOIL) request requesting all § 3020-a decisions regarding New York City teachers that were filed from July 1, 1997 through June 30, 2007.[61] This request was partially successful. The State Education Department prohibits release of § 3020-a decisions in which the teacher was "found innocent" of all charges preferred, and access to those decisions was therefore denied.[62] According to a letter from the head Records Access Officer in the New York State Education Department, a total of 270 decisions were filed over the ten-year period. Of these, 263 (97%) included a judgment of guilt of at least one charge, while seven exonerated the teacher of all charges. Since the number of "innocent" decisions was so small, the state apparently granted me access to almost all of the decisions submitted.

However, I ultimately received only 208 decisions, sent in three separate mailings over the course of over a year, after repeated phone calls and written reminders. The New York State Education Department now claims that these 208 decisions are the total for the ten-year period, but has refused to confirm this in writing. (I subsequently filed a FOIL request for the total number of decisions issued each year for the period. The state denied this request; the Records Access Officer wrote: "Please be advised that SED [State Education Department] does not possess a 'record' of the total number of decisions.")

Of the 208 decisions I received, 53 decisions regarded charges unrelated to teaching competence (such as "insubordination" or criminal activity). Thus, I received a total of 155 cases directly related to teaching competence for the ten-year period from July 1, 1997 through June 30, 2007, which were the subject of my analysis.

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[61] This investigation of § 3020-a was part of my research for my Ph.D. dissertation on New York teacher policies.
[62] I appealed the refusal to provide the innocent decisions, requesting those decisions with all identifying information redacted. The appeal was denied. This is unfortunate because how and why teachers are found innocent is also crucial to a full understanding of the performance standards used in the § 3020-a framework.

APPENDIX II: CONVICTIONS & PENALTIES FOR § 3020-A CASES (JULY 1 1997–JUNE 30, 2007)

INCOMPETENCE

CASE #	YEAR	PENALTY
3284	1997	Dismissal
Thaler	1997	Dismissal
3499	1999	Dismissal
3649	2000	Dismissal
3785	2002	Dismissal
3878	2002	Dismissal
4125	2002	Dismissal
4823	2004	Dismissal
4838	2004	Dismissal
4844	2004	Dismissal
5153	2005	Dismissal
5416	2006	Dismissal
3325	1998	12 month suspensión
5158	2006	12 month suspension Remedial training at city expense
5430	2006	12 month suspension Remedial training at city expense
3414	2000	12 month suspension Transfer to different school
4386	2003	12 month suspension Transfer to different school Peer Intervention Program
5234	2006	7 month suspension Remedial training at teacher's expense Peer Intervention Program
3151	1998	5 month suspension Transfer to different school
3518	1999	5 month suspension Remedial training at city expense
4364	2003	4 month suspension Remedial training at teacher's expense
4958	2004	3 month suspension Remedial training at teacher's expense

4814	2004	45 day suspension Psychological counseling
4155	2002	45 day suspension Remedial training at teacher's expense
3677	2001	Fine of $1,500
4397	2002	Fine of $500
3674	2001	Transfer to different school Remedial training at city expense

ABSENTEEISM/LATENESS

CASE #	YEAR	PENALTY
4442	2003	Dismissal
5039	2005	12 month suspension Remedial training at teacher's expense
3918	2000	8 month suspensión
3289	1997	5 month suspensión
4310	2005	5 month suspensión
3898	2001	5 month suspension Psychological counseling Remedial training at city expense
4825	2004	3 month suspensión
4987	2004	2 month suspensión
4101	2001	45 day suspension
4932	2005	Fine of $10,000
3940	2001	Fine of $3,000
4303	2003	Fine of $2,000
5004	2005	Fine of 6 weeks' salary
3384	1997	Letter of reprimand

CORPORAL PUNISHMENT/VERBAL ABUSE
(Teachers are often convicted of both of these charges together.)

CASE #	YEAR	PENALTY
4019	2002	Dismissal
4238	2002	Dismissal
4352	2003	Dismissal
4517	2003	Dismissal
4972	2005	Dismissal
4990	2005	Dismissal
5051	2005	Dismissal
5353	2006	Dismissal
4169	2002	12 month suspension Remedial training at teacher's expense
4031	2002	5 month suspension
5396	2006	5 month suspension
3440	1998	3 month suspension
3611	1999	3 month suspension
4749	2003	3 month suspension
4559	2003	2 month suspension
4937	2004	2 month suspension
5034	2005	30 day suspension
5329	2006	30 day suspension
4695	2003	21 day suspension Anger management course
4002	2001	5 day suspension Remedial training at city expense
5501	2007	Fine of $10,000
3088	1997	Fine of $5,000 Transfer to different school
Miller	1997	Fine of $5,000 Transfer to different school
5210	2005	Fine of $3,000
4466	2003	Fine of $1,000

5102	2006	Fine of 3 months' salary Peer Intervention Program
5288	2006	Fine of 3 months' salary Transfer to different school
5062	2005	Fine of 1 month's salary
5260	2006	Letter of reprimand

CONDUCT UNBECOMING THE PROFESSION

CASE #	YEAR	PENALTY
4252	2002	12 month suspension
4304	2002	5 month suspension
4307	2002	5 month suspension
4274	2002	3 month suspension
4524	2003	3 month suspension
4865	2004	3 month suspension
4968	2005	3 month suspension Counseling
5053	2005	2 month suspension Anger management class
5045	2005	45 day suspension
3914	2000	30 day suspension
3728	2000	30 day suspension
3772	2002	30 day suspension
3829	2002	30 day suspension
4018	2001	30 day suspension
4184	2001	5 day suspension
4561	2003	5 month suspension
3782	2000	6 month suspension
4366	2003	8 day suspension Letter of reprimand
5316	2006	Fine of $5,000
5264	2006	Fine of $2,600
4460	2003	Fine of $2,500 5 day suspension

5207	2006	Fine of $2,000
3901	2001	Fine of $1,500 7 day suspension
McMah	1997	Fine of $1,000
5287	2006	Fine of $500 Letter of reprimand
5258	2006	Fine of 2 months' salary
4092	2002	Letter of reprimand

SEXUAL MISCONDUCT/HARASSMENT

CASE #	YEAR	PENALTY
3278	1997	Dismissal
3656	2000	Dismissal
3962	2000	Dismissal
4021	2001	Dismissal
4170	2003	Dismissal
4416	2003	Dismissal
4481	2003	Dismissal
4536	2003	Dismissal
4660	2003	Dismissal
4671	2003	Dismissal
4880	2004	Dismissal
3781	2005	Dismissal
5240	2006	Dismissal
5279	2006	Dismissal
3683	2000	5 month suspension
4237	2002	5 month suspension
3410	1998	Fine of $10,000 Workshop in sexual harassment Counseling for one year

MULTIPLE CONVICTIONS

CASE #	YEAR	CONVICTION	PENALTY
3058	1997	Incompetence Insubordination Absenteeism/Lateness	Dismissal
3192	1997	Insubordination Corporal punishment Incompetence	Dismissal
3195	1997	Absenteeism/Lateness Falsification of documents	Dismissal
[Zedlar]	1997	Incompetence Insubordination Corporal punishment	Dismissal
3314	1998	Incompetence Insubordination Absenteeism/Lateness	Dismissal
3316	1998	Corporal punishment Conduct unbecoming the profession	Dismissal
3318	1998	Incompetence Insubordination	Dismissal
3385	1999	Absenteeism/Lateness Insubordination "Inattention to teaching"	Dismissal
3536	2000	Incompetence Absenteeism/Lateness	Dismissal
3828	2000	Sexual misconduct/harassment Corporal punishment	Dismissal
4147	2001	Sexual misconduct/harassment Verbal abuse Corporal punishment	Dismissal
3965	2002	Incompetence Insubordination	Dismissal
4024	2002	Absenteeism/Lateness Insubordination	Dismissal
4432	2003	Verbal abuse Corporal punishment Conduct unbecoming the profession	Dismissal

4553	2003	Incompetence Absenteeism/Lateness	Dismissal
4591	2003	Incompetence Insubordination	Dismissal
4742	2004	Corporal punishment Absenteeism/Lateness Insubordination	Dismissal
4864	2004	Incompetence Conduct unbecoming the profession	Dismissal
4930	2004	Absenteeism/Lateness Insubordination	Dismissal
4920/ 4940	2004	Verbal abuse Corporal punishment Sexual misconduct/harassment	Dismissal
4740	2005	Incompetence Insubordination Conduct unbecoming the profession	Dismissal
4993	2005	Incompetence Insubordination	Dismissal
4984	2006	Conduct unbecoming the profession Insubordination Verbal abuse	Dismissal
5215	2006	Absenteeism/Lateness Conduct unbecoming the profession	Dismissal
5334	2006	Verbal abuse Sexual misconduct/harassment	Dismissal
5200	2007	Incompetence Insubordination Conduct unbecoming the profession	Dismissal
3112	1997	Corporal punishment Absenteeism Incompetence	24 month suspension
5166	2006	Conduct unbecoming the profession Insubordination Verbal abuse	12 month suspension Transfer school
4060	2002	Absenteeism/Lateness Incompetence	12 month suspension Remediation at city expense
5058	2005	Verbal abuse Conduct unbecoming the profession	6 month suspension Evaluation by substance abuse expert

5012	2005	Incompetence Insubordination Conduct unbecoming a teacher	5 month suspension Professional counseling Anger management class Remedial training at teacher's expense
4183	2001	Absenteeism/lateness Incompetence	4 month suspension Remediation at city expense
4952	2004	Absenteeism/lateness Insubordination	4 month suspension
5022	2005	Verbal abuse Conduct unbecoming the profession	3 month suspension
5282	2006	Sexual harassment Conduct unbecoming the profession	3 month suspension
3753	2001	Sexual harassment Conduct unbecoming the profession	2 month suspension
4818	2004	Verbal abuse Conduct unbecoming the profession	2 month suspension Remedial training at teacher's expense
4947	2005	Verbal abuse Conduct unbecoming the profession	Fine of $1,500 Transfer to different school
4474	2004	Incompetence Corporal punishment	Letter of reprimand
3827	2000	Absenteeism/lateness Insubordination	Letter of reprimand
3524	2005	Incompetence Insubordination	None (Suspension was determined to have already been served because the teacher was not paid over the 7-year period of § 3020-a hearings on the case)