



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK /  
ALBANY, NY 12230

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OFFICE OF TEACHING  
Executive Coordinator

January 2, 2001

TO: District Superintendents of Schools and Supervisory District Superintendents

FROM: Charles C. Mackey, Jr., Executive Coordinator  
Office of Teaching

**SUBJECT: Administrative Fee Decrease**

Chapter 691 of the Laws of 1994, and the corresponding regulations assigned to the American Arbitration Association (AAA) the task of maintaining the panel of potential hearing officers for Section 3020-a proceedings. This association also provides a list for each individual proceeding.

The AAA is a non profit organization which relies on administrative fees to continue providing services. Commissioner's Regulations as amended by the Board of Regents in September 1994, stipulate that the fee for providing the list of potential hearing officers for Section 3020-a proceedings is to be paid by the School District preferring the charges. **Effective January 1, 2001 this fee is reduced to \$100.00. However, if the parties are unable to mutually select a hearing officer and request that the AAA make the selection, an additional fee of \$50.00 will be required.**

Under the law, a hearing is commenced when the State Education Department submits a request to AAA for a list of potential hearing officers. In order to comply with statutory timelines and expedite the hearing process, please include a check for \$100.00 payable to the American Arbitration Association, with your request for a hearing.



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK /  
ALBANY, NY 12230

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OFFICE OF TEACHING

December 1994

TO: District Superintendents of Schools and  
Supervisory District Superintendents

FROM: Maryellen Mangold, Supervisor  
School District Employer/Employee Relations Unit

**SUBJECT: Education Law, Section 3020-a Packets**

Chapter 691 of the Laws of 1994 effected substantial changes in the manner in which we administer disciplinary hearings for tenured school district employees. The new law became effective for charges filed on or after August 25, 1994.

The Board of Regents voted on December 15, 1994 to amend the Commissioner's Regulations pursuant to the new statutory requirements.

Enclosed you will find a packet of materials that will be helpful to you in understanding and carrying out the provisions of Education Law, Section 3020-a. The packet includes:

The Timetable, which outlines each step of the process and the time frames for each step.

The Role of the District Clerk or Secretary of the Board of Education

The Rights of Tenured School District Employees

Forms 3020-a-1, 1-B, 2, 3, 4, 5, 6 and 7.

All of these materials may be copied locally as needed. If you have any questions or need any additional assistance, please do not hesitate to contact me at (518) 474-3259.

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

**Notice of Determination of Probable Cause on  
Charges Brought Against Tenured School District Employee  
Section 3020-a, Education Law**

To: \_\_\_\_\_  
*(name of tenured school district employee)*

Address: \_\_\_\_\_  
*(address of the tenured school district employee)*

Please be advised that (board of education, board of cooperative educational services)

\_\_\_\_\_, \_\_\_\_\_  
*(legal title of district)* *(address)*

meeting in executive session on \_\_\_\_\_, has found that there is probable cause *(date)*

for the following charge preferred against you by \_\_\_\_\_:  
*(name of complainant)*

**(Please describe charge in detail)**

Within ten days of receipt of these charges, you must elect to request a hearing before an impartial hearing officer, or waive your right to such a hearing. If you have been advised that the charges involve pedagogical misconduct or issues of pedagogical judgement, you may elect to request a hearing before a three member panel. Should you fail to so request or to waive within the specified ten days, the district clerk or the secretary of the board of education will notify both you and the Commissioner of Education that a waiver has been deemed to have occurred and that the board of education will meet to determine the case and fix the penalty or punishment, if one is to be imposed.

\_\_\_\_\_  
*(Date of Notice)*

\_\_\_\_\_  
*(Signature of District Clerk or Secretary  
of the Board of Education)*

\_\_\_\_\_  
*(Please Type or Print Name)*

**Copy must be sent to:**

Commissioner of Education  
State Education Department  
*Maryellen Man gold, Supervisor*  
*School District Employer-Employee Relations Unit*  
*Education Building Addition, Room 980*  
*Albany, New York 12234*

Attached is a copy of the Rights of Tenured Employees under Section 3020-a of the Education Law. **A copy of this charge is being forwarded to the New York State Commissioner of Education, as required by law.**

Attach to Form 3020-a-1 charge)

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

Supplemental Notification of Board Vote  
Determination of Probable Cause  
Section 3020-a, Education Law

To: The Commissioner of Education:

This finding of probable cause as to the charge numbered \_\_\_\_\_ was affirmed by the following board members, constituting a majority:

- |                     |                     |                     |
|---------------------|---------------------|---------------------|
| 1. _____            | 4. _____            | 7. _____            |
| 2. _____            | 5. _____            | 8. _____            |
| 3. _____<br>(names) | 6. _____<br>(names) | 9. _____<br>(names) |

The following board members, constituting a minority, voted against a finding of probable cause:

- |                     |                     |
|---------------------|---------------------|
| 1. _____            | 3. _____            |
| 2. _____<br>(names) | 4. _____<br>(names) |

The following board members were absent:

- |                     |                     |
|---------------------|---------------------|
| 1. _____            | 3. _____            |
| 2. _____<br>(names) | 4. _____<br>(names) |

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of District Clerk or  
Secretary of the Board of Education)

**NOTE: There should be a separate vote as to each charge.**

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

Request by Tenured School District Employee  
for Hearing on Charges  
Brought Against the Employee  
Section 3020-a, Education Law

To: (Board of Education, Board of Cooperative Educational Services)

\_\_\_\_\_  
(legal title of district)

\_\_\_\_\_  
(address)

I, \_\_\_\_\_ hereby request a hearing on charges preferred against me, which charges were specified in your Notice of Determination of Probable Cause dated: \_\_\_\_\_.

I have selected

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(address)

\_\_\_\_\_  
(telephone)

to serve as my attorney as provided by Section 3020-a of the Education Law.

\_\_\_\_\_  
(Signature of Tenured Employee)

\_\_\_\_\_  
(address)

\_\_\_\_\_  
(telephone)

\_\_\_\_\_  
(date request for a hearing filed)

**Copy must be sent to:**

Maryellen Mangold, Supervisor  
School District Employer-Employee Relations Unit  
Education Building Addition, Room 980  
Albany, New York 12234

**NOTE: You are advised that Section 82-1.9 of the Regulations of the commissioner stipulates that the hearing shall be private unless the employee demands a public hearing. Such demand shall be made at least twenty-four hours before the first hearing day. In every case, the prehearing conference shall be private.**

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

Notice of Waiver of Hearing by  
Tenured School District Employee  
Section 3020-a, Education Law

To: (Board of Education, Board of Cooperative Educational Services)

\_\_\_\_\_  
(legal Title of District)

\_\_\_\_\_  
(address)

I, \_\_\_\_\_, hereby waive my right to a hearing on charges  
(name of tenured employee)

preferred against me, which charges were specified in your Notice of Determination of Probable Cause  
**dated:** \_\_\_\_\_. It is my understanding that the Board of Education will determine this case and furnish  
me a copy of its determination within ten days of receipt of this waiver.

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(Signature of Tenured Employee)

\_\_\_\_\_  
(address)

\_\_\_\_\_  
(telephone)

**Copy of this waiver must be sent to:**

Commissioner of Education  
State Education Department  
Maryellen Mangold, Supervisor  
School District Employer-Employee Relations Unit  
Education Building Addition, Room 980  
Albany, New York 12234

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

Notice of Failure to Request or to Waive Hearing  
Section 3020-a, Education Law

To the Commissioner of Education:

Please be advised that (Board of Education, Board of Cooperative Educational Services) of \_\_\_\_\_, \_\_\_\_\_ having met in  
*(legal title of district)* *(address)*  
executive session on \_\_\_\_\_, and having found probable cause to exist for the charges (described in  
*(date)*  
detail on the attached sheet) filed against \_\_\_\_\_, a tenured employee of the said  
*(name of employee)*  
school district, and the employee having been duly served with a notice of the said determination of probable  
cause on \_\_\_\_\_, as evidenced by the attached proof of service, and more than ten days having  
*(date)*  
elapsed since the said \_\_\_\_\_ has received the aforesaid Notice of  
*(name of employee)*  
Determination of Probable Cause without this said \_\_\_\_\_ having either requested  
*(name of employee)*  
or waived a hearing, I hereby deem that \_\_\_\_\_ has waived his/her  
*(name of employee)*  
right to a hearing, pursuant to the provisions of paragraph 2 of Section 3020-a of the Education Law.

You are further advised that the Board of Education of the \_\_\_\_\_ will meet  
*(legal title of district)*  
\_\_\_\_\_ to determine the case and fix the penalty or punishment, if any, to be imposed.  
*(date)*

\_\_\_\_\_  
*(Date)*

\_\_\_\_\_  
*(Signature of District Clerk or Secretary of the Board of Education)*

**NOTE: A copy of this notice must be forwarded immediately to the above named tenured school district employee by certified mail.**

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

Notice of Need for a Hearing on Charges Against a  
Tenured School District Employee  
Section 3020-a Education Law

To the Commissioner of Education:

Please be advised that (Board of Education, Board of Cooperative Educational Services) of:

\_\_\_\_\_, \_\_\_\_\_  
(legal title of district) (address)

having found at a meeting held in executive session on \_\_\_\_\_ that probable cause exists as  
(date)

to the charges, a copy of which is attached hereto, filed against \_\_\_\_\_  
(name of employee)

a tenured employee of this school district and the \_\_\_\_\_ having duly requested a  
(name of employee)

hearing on the said charges, that there is a need for a hearing on said charges. The board of education will provide the  
following location for the hearing: \_\_\_\_\_,  
(name of place)

\_\_\_\_\_. Attached is the affidavit of service of a copy of the charges on  
(address)

the named employee.

The complainant has appointed: \_\_\_\_\_  
(name)

\_\_\_\_\_  
(address)

\_\_\_\_\_  
(telephone)

to serve as his or her attorney as provided by Section 3020-a of the Education Law.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of District Clerk or  
Secretary of the Board of Education)

**NOTE:** A copy of this notice must be forwarded immediately to the above named tenured school district  
employee by certified mail.

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

Notification of Board Selection of Panel Member  
Hearing on Charges Against Tenured School District Employee  
Section 3020-a, Education Law

To the Commissioner of Education:

Please be advised that the (Board of Education, Board of Cooperative Education Services) of:

\_\_\_\_\_  
*(legal title of district)*

\_\_\_\_\_  
*(address)*

having preferred charges that involve pedagogical incompetence or issues involving pedagogical judgement, has selected the following individual to serve as panel member:

\_\_\_\_\_  
*(name of panelist)*

\_\_\_\_\_  
*(address)*

\_\_\_\_\_  
*(telephone)*

I hereby affirm that a representative of this district has contacted the above named panelist and that the panelist has indicated his willingness to commit himself to meet on the date initially set for the hearing and to devote whatever additional days may be necessary for such hearing. The panelist has been directed to notify the Commissioner, at the address listed above, of his commitment with regard to the scheduling of the hearing.

\_\_\_\_\_  
*(Date)*

\_\_\_\_\_  
*(Signature of District Clerk or  
Secretary of the Board of Education)*

**Copy of this form must be provided to the charged employee.**

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

Notification of Employee Selection of Panel Member  
Hearing on Charges Against Tenured School District Employees  
Section 3020-a, Education Law

To the Commissioner of Education: Please be advised that I, \_\_\_\_\_, an employee  
(name of employee)

holding tenure as \_\_\_\_\_ in the \_\_\_\_\_, understand that the  
(position) (legal title of district)

charges brought against me on \_\_\_\_\_ concern pedagogical incompetence or issues that involve  
(date)

pedagogical judgement and that, therefore, I am entitled to have these charges heard by either a single hearing officer or a three member panel. I hereby notify you and the District of my request for a three member panel, and provide you with the name and address of the individual I have selected to serve as panelist for this hearing:

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(address)

\_\_\_\_\_  
(telephone)

I hereby affirm that I have contacted the above named panel member and that this person has indicated that he/she is not currently assigned to serve on any pending 3020-a Education Law proceeding and that he/she will make the commitment to meet on the dates set for the hearing until the matter is culminated. The panel member has been directed to notify the Commissioner of Education of his/her commitment to serve on the dates scheduled. The name, address and telephone number of my attorney is:

\_\_\_\_\_ telephone: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Tenured Employee)

\_\_\_\_\_  
(address)

\_\_\_\_\_  
(telephone)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The hearing officer or panel shall make findings of fact on each charge and recommendations as to disciplinary action, or punishment, if any, against the employee on such charge, which findings of fact and recommendations are then to be submitted by the hearing officer to the Commissioner, **no later than thirty days after the last hearing.** The findings of the panel on each charge and the recommendations of the panel as to disciplinary action, if any, shall be **based solely upon the record of the proceedings before the hearing panel and shall set forth the reasons and the factual basis for the determination.** Upon forwarding the findings and recommendations to the Commissioner, the hearing officer declares the hearing concluded.

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

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

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

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

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

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

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

First, the charges against the employee must be filed with the district clerk or the secretary of the board of education. This must be done **not more than five days** prior to the next **regularly scheduled meeting** of the board. The board may, however, in its discretion, waive the five day time requirement. As soon as the charges have been received by the district clerk or the secretary of the board of education, he or she must **immediately** notify the board of education that they have been filed.

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

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

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

Copies of all enclosed forms may be reproduced locally.

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

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

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

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

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

1. Forward to the Commissioner **at once by first class mail:**
  - a. An affidavit of service showing service of a copy of the charges upon the employee.
  - b. A copy of the employee's request for a hearing (3020-a-2)
  - c. A notice of the need for a hearing (Form 3020-a-5)
  - d. The place to be provided by the board for holding the hearing, within the school district or the county seat; (Form 3020-a-5)
  - e. Name, address and telephone number of the attorney, if any, who will represent the complainant at the hearing; (Form 3020-a-5)
  - f. The name of the panel member selected by the school board, if applicable; (Form 3020-a-6)
  - g. Whether an expedited hearing is sought, and whether the employee is suspended, either with or without pay.
  - h. An estimate of the number of days needed for the hearing.
2. Forward to the Employee by **certified mail, return receipt requested:**
  - a. The place to be provided by the board for holding the hearing.
  - b. The name and address of the attorney, if any, who will represent the complainant at the hearing.
  - c. Whether an expedited hearing is sought, and whether the employee is suspended, either with or without pay.
  - d. An estimate of the number of days needed for the hearing
  - e. The name of the panel member selected by the board of education, if applicable.

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

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

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

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

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

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

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

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

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

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

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

**STEP      PROCEDURE**

1. Filing of written charges against the employee not more than five days before the next scheduled board meeting with the district clerk or the secretary of the board of education, who then must notify the board of the charges immediately (Ed. Law 3020-a, subdivisions 1 and 2).
2. Board of education meets in executive session to determine whether there is probable cause for the charges filed within five days of receipt of the charges (Ed. Law 3020-a, subdivision 2; Commissioner's Regulations 82-1.3 (a)).
3. If a majority of the board finds probable cause:
  - a) A written statement of the charges in detail and an outline of the employee's rights must be forwarded to him or to her by the district clerk or secretary of the board of education immediately by certified mail (Ed. Law 3020-a, subdivision 2).
  - b) In addition, the district clerk or the secretary of the board of education must forward a copy of each such charge, in writing, together with the vote of each member of the board to the Commissioner of Education by first class mail, at once (Commissioner's Regulation 82-1.3 (b)).
4. The employee must notify the district clerk or the secretary of the board of education within ten days of receipt of the charges whether he or she desires a hearing on the charges. The employee may:
  - a) Elect to have a hearing and so notify the district clerk or the secretary of the board of education; or

- b) Waive his right to a hearing and so notify the district clerk or the secretary of the board of education; or

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

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

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

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

5B. If the employee waives the right to a hearing or is deemed to have waived his or her right

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

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

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

Commissioner shall forthwith forward a copy of the list to the board and to the employee. (Ed. Law 3020-a, subdivision 3).

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

- 6B. If the board and the employee fail to agree on an arbitrator to serve as hearing officer, they must notify the Commissioner within ten days of receiving the list. The Commissioner shall then request AAA to appoint a hearing officer from said list. The Commissioner shall notify the hearing officer selected and confirm his or her acceptance of such selection.
7. The hearing officer shall contact the parties and, within ten to fifteen days of receipt of notice from the Commissioner confirming his or her acceptance of a selection to serve as hearing officer, hold a prehearing conference.
8. **Within five days** after receiving a copy of the Notice of the Need for a Panel Hearing, the employee must notify the Commissioner and the board in writing by Certified Mail of the name of his or her selection for the hearing panel. If the employee fails to notify the board and the Commissioner, and the employee has not waived or been deemed to have waived his or her right to a hearing, the Commissioner shall select the member of the hearing panel for the employee (Commissioner's Regulation 82.6). It is essential that the employee contact his or her selection for the hearing panel to ascertain if the panel member selected will be able to serve for the duration of the hearing. Where an employee has exercised the option to have the hearing conducted before a hearing panel and the hearing officer determines that the absence of a panel member is likely to delay unduly the prosecution of the hearing, he or she shall order the replacement of the panel member. If the party who selected such panel member fails to select the replacement within two days, the Commissioner will select the replacement. If the hearing officer needs to be replaced, and the Commissioner determines that the parties cannot agree on a replacement, the Commissioner shall request AAA to select a replacement from the list of hearing officers. In no event shall a panel hearing proceed except in the presence of two panel members and the hearing officer (Commissioner's Regulations 82-1.10d).
9. Unless the employee or his attorney shall have served a written demand for a public hearing upon the hearing officer, **at least twenty four hours before the first day of hearing**, the employee will be deemed to have waived his or her right to a public hearing and the hearing will be private. The prehearing conference will be private (Commissioner's Regulations 82-1.9).

At the prehearing conference, the hearing officer shall determine the reasonable amount of time necessary to hear the charges and shall schedule the location, time and date(s). If

more than one day is required, the days scheduled shall be consecutive. The final hearing shall be completed no later than sixty days after the prehearing conference unless the hearing officer determines that extraordinary circumstances warrant a limited extension. (Ed. Law 3020-a, subdivision 3 iv).

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

**§3020-a. Disciplinary procedures and penalties.**

1. Filing of charges. All charges against a person enjoying the benefits of tenure as provided in subdivision three of section one thousand one hundred two, and sections two thousand five hundred nine, two thousand five hundred seventy-three, twenty-five hundred ninety-j, three thousand twelve and three thousand fourteen of this chapter shall be in writing and filed with the clerk or secretary of the school district or employing board during the period between the actual opening and closing of the school year for which the employed is normally required to serve. Except as provided in subdivision eight of section two thousand five hundred seventy-three and subdivision seven of section twenty-five hundred ninety-j of this chapter, no charges under this section shall be brought more than three years after the occurrence of the alleged incompetency or misconduct, except when the charge is of misconduct constituting a crime when committed.
2. (a) Disposition of charges. Upon receipt of the charges, the clerk or secretary of the school district or employing board shall immediately notify said board thereof. Within five days after receipt of charges, the employing board, in executive session, shall determine, by a vote of a majority of all the members of such board, whether probable cause exists to bring a disciplinary proceeding against an employee pursuant to this section. If such determination is affirmative, a written statement specifying the charges in detail, the maximum penalty which will be imposed by the board if the employee does not request a hearing or that will be sought by the board if the employee is found guilty of the charges after a hearing and outlining the employee's rights under this section, shall be immediately forwarded to the accused employee by certified or registered mail, return receipt requested or by personal delivery to the employee.

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

(c) Within ten days of receipt of the statement of charges, the employee shall notify the clerk or secretary of the employing board in writing whether he or she desires a hearing on the charges and when the charges concern pedagogical incompetence or issues involving pedagogical judgment, his or her choice of either a single hearing officer or a three member panel. All other charges shall be heard by a single hearing officer. (d) The unexcused failure of the employee to notify the clerk or secretary of his or her desire for a hearing within ten days of the receipt of charges shall be deemed a waiver of the right to a hearing. Where an employee requests a hearing in the manner provided for by this section, the clerk or secretary of the board shall, within three working days of receipt of the employee's notice or request for a hearing, notify

the commissioner of education of the need for a hearing. If the employee waives his or her right to a hearing the employing board shall proceed, within fifteen days, by a vote of a majority of all members of such board, to determine the case and fix the penalty, if any, to be imposed in accordance with subdivision four of this section.

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

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

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

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

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

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

submitted to the commissioner by statewide organizations representing teachers, school administrators and supervisors and the employing boards. Hearing panel members other than the hearing officer shall be compensated by the department of education at the rate of one hundred dollars for each day of actual service plus necessary travel and subsistence expenses.

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

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

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

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

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

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

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

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

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

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

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

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

(b) Within fifteen days of receipt of the hearing officer's decision the employing board shall implement the decision. If the employee is acquitted he or she shall be restored to his or her position with full pay for any period of suspension without pay and the charges expunged from

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

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

- (c) The hearing officer shall indicate in the decision whether any of the charges brought by the employing board were frivolous as defined in section eight thousand three hundred three-a of the civil practice law and rules. If the hearing officers finds that all of the charges brought against the employee were frivolous, the hearing officer shall order the employing board to reimburse the state education department the reasonable costs said department incurred as a result of the proceeding and to reimburse the employee the reasonable costs, including but not limited to reasonable attorneys' fees, the employee incurred in defending the charges. If the hearing officer finds that some but not all of the charges brought against the employee were frivolous, the hearing officer shall order the employing board to reimburse the state education department a portion, in the discretion of the hearing officer, of the reasonable costs said department incurred as a result of the proceeding and to reimburse the employee a portion, in the discretion of the hearing officer, of the reasonable costs, including but not limited to reasonable attorneys' fees, the employee incurred in defending the charges.
5. Appeal. Not later than ten days after receipt of the hearing officer's decision, the employee or the employing board may make an application to the New York state supreme court to vacate or modify the decision of the hearing officer pursuant to section seven thousand five hundred eleven of the civil practice law and rules. The court's review shall be limited to the grounds set forth in such section. The hearing panel's determination shall be deemed to be final for the purpose of such proceeding. In no case shall the filing or the pendency of an appeal delay the implementation of the decision of the hearing officer.

## CHAPTER II COMMISSIONER'S REGULATIONS

### **SUBPART 82-1** **PROCEDURES FOR HEARINGS COMMENCED ON OR AFTER** **AUGUST 25, 1994**

Sec.

- 82-1.1 Application of Subpart
- 82-1.2 Definitions
- 82-1.3 Filing of charges
- 82-1.4 Request for a hearing
- 82-1.5 Notice of need for hearing
- 82-1.6 Appointment of hearing officer and notice of prehearing conference
- 82-1.7 Panel members
- 82-1.8 Selection of panel member by employee
- 82-1.9 Demand for public hearing
- 82-1.10 Conduct of hearings
- 82-1.11 Reimbursable hearing expenses

#### **Historical Note**

Subpart (§§ 82-1. 1 —82-1.11) filed: Sept. 27, 1994 as emergency measure; Dec. 20, 1994 as emergency measure eff. Dec. 20, 1994; Dec. 20, 1994 eff. Jan. 5, 1995.

#### **§ 82-1.1 Application of Subpart.**

This Subpart applies to hearings on charges against tenured school employees pursuant to section 3020-a of the Education Law that are commenced by the filing of charges on or after August 25, 1994.

#### **Historical Note**

Sec. filed: Sept. 27, 1994 as emergency measure; Dec. 20, 1994 as emergency measure *eff.* Dec. 20, 1994; Dec. 20, 1994 eff. Jan. 5, 1995.

#### **§ 82-1.2 Definitions.**

(a) As used in this Subpart:

(1) *Employee* means any person or persons against whom charges may be filed pursuant to section 3020-a of the Education Law, or, except where the context indicates a contrary intent, the attorney designated to represent such person or persons in a hearing pursuant to this Part.

(2) *Chief school administrator* means the district superintendent of schools of the board of cooperative educational services employing a person against whom charges are made; or the superintendent of schools, community superintendent, chancellor or the principal of the school district employing a person against whom charges are made.

(3) *Board* means the employing trustee, board of trustees, board of education, community board or board of cooperative educational services.

- (4) *Commissioner* means Commissioner of Education.
- (5) *Association* means the American Arbitration Association.
- (6) *Hearing officer* means a single hearing officer selected to conduct a hearing pursuant to section 3020-a of the Education Law, or the panel chairperson in the case of a hearing before a three member hearing panel.
- (7) *Panel member* means a member of a three member hearing panel, other than a hearing officer, who is selected by either the employee or the board.

#### **Historical Note**

Sec. filed: Sept. 27, 1994 as emergency measure; Dec. 20, 1994 as emergency measure eff. Dec. 20, 1994; Dec. 20, 1994 eff. Jan. 5, 1995.

### **§ 82-1.3 Filing of charges.**

(a) Charges may not be filed by the chief school administrator or other party authorized to file charges against an employee more than five days before the next regularly scheduled meeting of the board except with the permission of the board.

(b) A copy of a written statement specifying in detail each charge as to which the board finds probable cause exists, and a copy of the vote of the board on each charge, shall be forwarded at once to the employee by certified or registered mail, return receipt requested, or personal delivery and to the commissioner by first class mail. Such statement shall state the maximum penalty which will be imposed by the board if the employee does not request a hearing or that will be sought by the board if the employee is found guilty of the charge after a hearing and shall outline the employee's rights under section 3020-a, including the right to request a hearing and the right to choose either a single hearing officer or a three member panel when the charges involve pedagogical incompetence or issues involving pedagogical judgment.

(c) Charges against an employee must be made separately from charges against any other employee.

(d) Where charges concerning pedagogical incompetence or issues involving pedagogical judgment are filed with other charges, the employee shall have the right to choose either a single hearing officer or a three member panel to hear all charges.

#### **Historical Note**

Sec. filed: Sept. 27, 1994 as emergency measure; Dec. 20, 1994 as emergency measure *eff.* Dec. 20, 1994; Dec. 20, 1994 eff. Jan. 5, 1995.

### **§ 82-1.4 Request for a hearing.**

Where the employee desires a hearing, he or she may file a written request for a hearing with the clerk or secretary of the employing board within 10 days of receipt of the charges, and where the charges concern pedagogical incompetence or issues involving pedagogical judgment, the employee shall choose either a single hearing officer or a three member panel. In the request for a hearing, the employee may designate an attorney who will represent the employee at the hearing.

#### **Historical Note**

Sec. filed: Sept. 27, 1994 as emergency measure; Dec. 20, 1994 as emergency measure eff. Dec.20, 1994; Dec.20, 1994 eff. Jan. 5, 1995.

## **§ 82-1.5 Notice of need for hearing.**

(a) The notification to the commissioner of the need for a hearing shall contain the following information:

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- (1) an affidavit of service of the charges upon the employee;
  - (2) a copy of the employee's request for hearing;
  - (3) a place within the district or the county seat of a county in which the board is located which will be made available by the board at school district expense for the holding of the prehearing conference and hearing;
  - (4) the name and address of the attorney, if any, who will represent the board at the hearing;
  - (5) whether an expedited hearing is sought, and whether the employee is suspended either with, or without pay;
  - (6) an estimate of the number of days needed for the hearing;
  - (7) the name of the panel member selected by the board, if applicable; and
  - (8) where the board has received written notice that the employee will be represented by an attorney at the hearing, the name and address of such attorney.
- (b) If the board shall fail to notify the commissioner of its selection of a panel member and the employee has not waived his or her right to a panel hearing, the commissioner shall select the member of the hearing panel for the board.
- (c) At the same time that the notification is sent to the commissioner, the board shall, by certified mail return receipt requested, send to the employee the information provided in paragraphs (a)(3), (4), (5), (6) and (7) of this section.
- (d) Separate notification of the need for a hearing shall be given with respect to each employee against whom charges have been filed.
- (e) Whenever an employee shall be deemed to have waived his/her right to a hearing, the clerk or secretary of the board shall immediately file notice of such waiver with the commissioner.

#### **Historical Note**

Sec. filed: Sept. 27, 1994 as emergency measure; Dec. 20, 1994 as emergency measure eff. Dec. 20, 1994; Dec. 20, 1994 eff. Jan. 5, 1995.

## **§ 82-1.6 Appointment of hearing officer and notice of prehearing conference.**

- (a) Forthwith after receipt of notification of the need for a hearing, the commissioner shall notify the association, obtain a list of potential hearing officers, together with relevant biographical information, and send a copy thereof to the attorneys representing the employing board and employee, or to the employee if he or she is not so represented. Such list shall consist of individuals selected by the association who are qualified to serve as hearing officers. To be qualified to serve as a hearing officer, an individual shall:

- (1) be on the association's panel of labor arbitrators;
- (2) be a resident of New York or an adjoining state;

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- (3) be willing to serve under the conditions imposed by Education Law, section 3020-a and this Subpart; and
- (4) not be ineligible to serve in the particular hearing pursuant to Education Law, section 3020-a(3)(i).

(b) Not later than 10 days from the mailing of the list, the parties or their agents or representatives shall by agreement select a hearing officer and notify the commissioner thereof.

(c) If the parties fail to notify the commissioner of an agreed upon hearing officer within the time prescribed by subdivision (b) of this section, the commissioner shall request the association to select a hearing officer from said list.

(d) The commissioner shall notify the hearing officer selected pursuant to subdivision (b) or (c) of this section, and confirm his or her acceptance of such selection.

(e) The hearing officer shall contact the parties and, within 10 to 15 days of receipt of notice from the commissioner confirming his or her acceptance of a selection to serve as hearing officer, hold a prehearing conference.

### **Historical Note**

Sec. filed: Sept. 27, 1994 as emergency measure; Dec. 20, 1994 as emergency measure eff. Dec. 20, 1994; Dec. 20, 1994 eff. Jan. 5, 1995.

### **§ 82-1.7 Panel members.**

(a) The commissioner shall maintain a list of persons eligible to serve as panel members pursuant to Education Law, section 3020-a (3)(b)(iv), which list shall be updated at least annually.

(b) Copies of such list of panel members appointed by the commissioner shall be filed in the office of the school district clerk or secretary of the board of each district and shall be available for public inspection.

(c) No person may be selected from a list to serve as a panel member when that person is serving as a panel member in connection with charges being heard against another employee, except with the consent of the commissioner.

### **Historical Note**

Sec. filed: Sept. 27, 1994 as emergency measure; Dec. 20, 1994 as emergency measure eff. Dec. 20, 1994; Dec. 20, 1994 *eff.* Jan. 5, 1995.

### **§ 82-1.8 Selection of panel member by employee.**

Where an employee has exercised the option to have the hearing conducted before a hearing panel, within five days after receiving the copy of the notification to the commissioner of the need for a panel hearing, the employee shall, in writing by certified mail, notify the board and the commissioner of the name of his or her selection for the hearing panel. If the employee shall fail to notify the commissioner and the board as required and the employee has not waived his or her right to a hearing, the commissioner shall select the employee panel member for the employee.

### **Historical Note**

Sec. filed: Sept. 27, 1994 as emergency measure; Dec. 20, 1994 as emergency measure eff. Dec. 20, 1994; Dec. 20, 1994 eff. Jan. 5, 1995.

### **§ 82-1.9 Demand for public hearing.**

Unless the employee notifies the hearing officer at least 24 hours before the first day of the hearing that he or she demands a public hearing, the hearing shall be private. The prehearing conference shall be private.

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### **Historical Note**

Sec. filed: Sept. 27, 1994 as emergency measure; Dec. 20, 1994 as emergency measure *eff.* Dec. 20, 1994; Dec. 20, 1994 eff. Jan. 5, 1995.

### **§ 82-1.10 Conduct of hearings.**

(a) Cine photographs, still photographs, videotape recordings and audiotape recordings may not be taken at private hearings, and may be taken at public hearings only when permitted by the hearing officer.

(b) Public hearings shall be open to members of the public and to representatives of the news media, except that the hearing officer may, in his or her discretion, exclude any persons other than parties, witnesses, and their attorneys from all or any portion of the hearing where such exclusion is warranted for the protection of the privacy or reputation of any person under the age of 18 years.

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

(d) If the hearing officer determines that the absence of a hearing panel member is likely to delay unduly the prosecution of the hearing, he or she shall order the replacement of such panel member. If the party who selected such panel member fails to select a replacement within two business days, the commissioner shall select such replacement. If the hearing officer needs to be replaced and if the commissioner determines that the parties cannot agree on a replacement, the commissioner shall request the association to select a replacement from the list of hearing officers. In no event shall a panel hearing proceed except in the presence of two panel members and the hearing officer.

(e) Members of the hearing panel may question witnesses and parties, subject to the right of the hearing officer to disallow such questions if he or she deems them improper. Notwithstanding the foregoing, no questions may be addressed to the employee unless he or she has been sworn as a witness with his or her own consent.

(f) At the conclusion of the testimony, the hearing officer may adjourn the hearing to a specified date after conclusion of the testimony, to permit preparation of the transcript, submission by the parties of memoranda of law, and deliberation; provided that such specified date may not be more than 60 days after the prehearing conference unless the hearing officer determines that extraordinary circumstances warrant a later date. The hearing officer shall arrange for the preparation and delivery of one copy of the transcript of the hearing to each panel member, to the employee and the board.

(g) The hearing officer or hearing panel shall render a written decision within 30 days of the last day of the final hearing, or within 10 days of the last day of an expedited hearing and shall forthwith

forward a copy to the commissioner who shall send copies to the employee and the clerk or secretary of the employing board. Such written decision shall include the hearing officer's findings of fact on each charge, his or her conclusions with regard to each charge based on such findings and shall state the penalty or other action, if any, which shall be taken by the board, provided that such findings, conclusions and penalty determination shall be based solely upon the record in the proceedings before the hearing officer or panel, and shall set forth the reasons and the factual basis for the determination.

## **CHAPTER II COMMISSIONER'S REGULATIONS**

### **Historical Note**

Sec. filed: Sept. 27, 1994 as emergency measure; Dec. 20, 1994 as emergency measure eff. Dec. 20, 1994; Dec. 20, 1994 eff. Jan. 5, 1995.

### **§ 82-1 .11 Reimbursable hearing expenses.**

(a) The commissioner shall compensate the hearing officer with the customary fee paid for service as an arbitrator for each day of actual service rendered by the hearing officer. For this purpose, a day of actual service shall be five hours. In the event a hearing officer renders more or less than five hours of service on a given calendar day, the per diem fee shall be prorated accordingly. Any late cancellation fee charged by the hearing officer shall be paid by the party or parties responsible for the cancellation.

(b) In addition to the statutory fees payable to the hearing officer and panel members for each day of actual service, the commissioner shall reimburse hearing officers and panel members for their necessary travel and other related reasonable expenses incurred at rates not to exceed the rates applicable to state employees.

(b) The commissioner shall arrange for the preparation of a hearing transcript by a competent stenographer and shall compensate the stenographer for the cost of preparing the transcript and copies thereof for the hearing officer, each panel member, the department, the employee and the board. Upon request of one or more parties, the commissioner may arrange to have a daily copy of the transcript prepared and distributed to each party making such request and to the hearing officer, in addition to the final copies to be provided by the commissioner after conclusion of the hearing. Any incremental cost incurred for preparing a daily copy for a party and the hearing officer that is in addition to the base amount payable by the commissioner for preparation of the final transcript shall be paid by the party requesting daily copy, or shall be shared equally by the parties where both parties request daily copy.

(c) Additional hearing costs, other than facilities costs, incurred to make a reasonable accommodation to an employee or a witness based on such individual's disability, including but not limited to the retention of a qualified interpreter for the deaf or hearing impaired, shall be paid by the commissioner. Except as otherwise provided in this Subpart, any other additional hearing costs shall be paid by the board.

### **Historical Note**

Sec. filed: Sept. 27, 1994 as emergency measure; Dec. 20, 1994 as emergency measure eff. Dec. 20, 1994; Dec. 20, 1994 eff. Jan. 5, 1995.



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12230

OFFICE OF TEACHING

September 1995

To: All Participants in Tenured Hearings, Section 3020-a

From: Maryellen Mangold Supervisor

**Subject: Scheduling Hearings and Disposition of Exhibits**

Please take note that Subdivision 3-c of Section 3020-a of the Education Law requires that the Hearing Officer schedule the prehearing conference within ten to fifteen days of receipt of notice from the Commissioner confirming his or her acceptance of a selection to serve as Hearing Officer.

At the prehearing conference, the Hearing Officer will schedule all future hearings that may be necessary. It is the responsibility of each individual involved to meet the schedule. You are advised that the final hearing day must not be later than sixty days after the prehearing conference.

Exhibits marked in evidence during the course of the hearing will not be returned by the State Education Department. It is suggested that copies of original school district records be marked into evidence and supplied to each panel member so that the panel members will have the complete record to review before making their findings of fact and recommendation.



**THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12230**

OFFICE OF TEACHING

September 1995

To: All Parties Involved in Matters Pursuant to Section 3020-a of Education Law,  
Chapter 691 of the Laws of 1994.

From: Maryellen Mangold, Supervisor  
School District Employer-Employee Relations Unit

**Subject: Reference in New York State Statute to Pedagogical Issues**

Chapter 691 of the Laws of 1994 has amended Education Law, Section 3020-a to provide that disciplinary charges brought by an employing board against a tenured employee shall be heard by a single hearing officer except "when the charges concern pedagogical incompetence or issues involving pedagogical judgement". In these cases only, the employee may choose to have the charges heard by either a single hearing officer or a three-member panel.

Therefore it is the clear intent of the law that all charges filed against a teacher or administrator will not automatically be considered pedagogical. While neither the statute nor the Commissioner's Regulations actually defines "pedagogical", charges that fall in to 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.

I hope this information proves helpful to you in your understanding of the. 3020-a process. If you have any additional questions, please do not hesitate to contact this office at (518) 474-3259.

