

3501

2011-2012 Regular Sessions

I N S E N A T E

February 23, 2011

Introduced by Sen. FLANAGAN -- read twice and ordered printed, and when printed to be committed to the Committee on Education

AN ACT to amend the education law, in relation to retaining quality teachers and teachers in shortage subject areas when teaching positions are eliminated in city school districts of cities having one million or more inhabitants; and to repeal certain provisions of such law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. This act shall be known and may be cited as the "keep
2 effective and excellent professionals in the classroom act".
3 S 2. The section heading of section 2588 of the education law, as
4 added by chapter 521 of the laws of 1976, is amended to read as follows:
5 Seniority, retention and displacement rights in connection with aboli-
6 tion of positions in city school districts of cities having [more than]
7 one million inhabitants OR MORE.
8 S 3. Subdivision 3 of section 2588 of the education law is REPEALED
9 and a new subdivision 3 is added to read as follows:
10 3. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION
11 TO THE CONTRARY, THE CITY SCHOOL DISTRICT AND ITS EMPLOYEES' COLLECTIVE
12 BARGAINING AGENTS SHALL ESTABLISH A PROCEDURE GOVERNING THE ABOLISHMENT
13 OR REDUCTION OF TEACHING OR SUPERVISORY POSITIONS CITYWIDE PURSUANT TO
14 THE REQUIREMENTS OF ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW. ANY SUCH
15 LOCALLY ESTABLISHED PROCESS SHALL NOT PERMIT AN EMPLOYEE'S LENGTH OF
16 SERVICE TO BE THE SOLE FACTOR IN ANY DECISION REGARDING WHICH POSITIONS
17 ARE TO BE ABOLISHED AND WHICH PERSONS OCCUPYING SUCH POSITIONS SHALL BE
18 LAID OFF; PROVIDED, HOWEVER, THAT ANY CONSIDERATION OF AN EMPLOYEE'S
19 LENGTH OF FAITHFUL AND COMPETENT SERVICE AS A FACTOR FOR THE ABOLISHMENT
20 OF POSITIONS OR PERSONS TO BE LAID OFF OCCUPYING SUCH POSITIONS MAY ONLY
21 BE CONSIDERED IN A MANNER BENEFICIAL TO AN EMPLOYEE AND THAT ANY SUCH
22 LOCALLY ESTABLISHED PROCESS SHALL NOT PERMIT AN EMPLOYEE'S SALARY TO BE

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

LBD09505-07-1

1 A FACTOR IN ANY DECISION REGARDING WHICH POSITIONS ARE TO BE ABOLISHED
2 AND WHICH PERSONS OCCUPYING SUCH POSITIONS SHALL BE LAID OFF; AND
3 PROVIDED FURTHER THAT ANY SUCH LOCALLY ESTABLISHED PROCESS MUST ENSURE
4 THAT HIGH QUALITY TEACHERS IN HIGH-NEED SCHOOLS ARE NOT LAID OFF AND
5 THAT HIGH-NEED SCHOOLS DO NOT BEAR A DISPROPORTIONATE SHARE OF WORKFORCE
6 REDUCTIONS PURSUANT TO A CITYWIDE LAYOFF, PROVIDED HOWEVER, NOTHING
7 SHALL PROHIBIT THE CITY SCHOOL DISTRICT FROM ABOLISHING ALL POSITIONS IN
8 A LICENSE AREA PURSUANT TO SUBPARAGRAPH (IV) OF THIS PARAGRAPH. FOR
9 PURPOSES OF THIS SECTION, A HIGH-NEED SCHOOL SHALL BE DEFINED AS A
10 SCHOOL IN WHICH AT LEAST NINETY PERCENT OF THE ENROLLED STUDENTS ARE
11 ELIGIBLE APPLICANTS FOR THE FREE AND REDUCED PRICE LUNCH PROGRAM. FOR
12 POSITIONS COVERED BY SECTION THREE THOUSAND TWELVE-C OF THIS CHAPTER,
13 ANY SUCH LOCALLY DEVELOPED PROCESS SHALL BE BASED ON THE ANNUAL PROFES-
14 SIONAL PERFORMANCE REVIEW FOR TEACHERS AND SUPERVISORS PURSUANT TO
15 SECTION THREE THOUSAND TWELVE-C OF THIS CHAPTER AND ITS IMPLEMENTING
16 REGULATIONS. UNTIL AND UNLESS SUCH A PROCESS HAS BEEN ESTABLISHED AT
17 LEAST NINETY DAYS BEFORE THE EFFECTIVE DATE OF ANY SUCH ABOLISHMENT OR
18 REDUCTION OF TEACHING OR SUPERVISORY POSITIONS CITYWIDE, THE FOLLOWING
19 SHALL APPLY:

20 (I) THE FOLLOWING TEACHERS OR SUPERVISORS SHALL BE LAID OFF PRIOR TO
21 ANY OTHER TEACHERS OR SUPERVISORS: (A) ANY TEACHER OR SUPERVISOR WHO
22 RECEIVED A RATING OF "UNSATISFACTORY" ON HIS OR HER ANNUAL PROFESSIONAL
23 PERFORMANCE REVIEW IN THE LAST FIVE SCHOOL YEARS OR "INEFFECTIVE" IN THE
24 EVENT A NEW ANNUAL PROFESSIONAL PERFORMANCE REVIEW HAS BEEN IMPLEMENTED
25 PURSUANT TO SECTION THREE THOUSAND TWELVE-C OF THIS CHAPTER; (B) ANY
26 TEACHER OR SUPERVISOR, IF THE PERSON IS A TENURED EMPLOYEE, WHO WITHIN
27 THE LAST FIVE YEARS HAS BEEN FINED OR SUSPENDED WITHOUT PAY AS A PENALTY
28 IMPOSED PURSUANT TO SECTION THREE THOUSAND TWENTY-A OF THIS CHAPTER OR
29 AS A RESULT OF A SETTLEMENT OF CHARGES BROUGHT PURSUANT TO SECTION THREE
30 THOUSAND TWENTY-A OF THIS CHAPTER; (C) ANY TEACHER OR SUPERVISOR NOT
31 CURRENTLY APPOINTED TO A REGULAR POSITION IN A SCHOOL FOR A PERIOD OF
32 SIX MONTHS OR MORE AS OF THE EFFECTIVE DATE OF ANY CITYWIDE LAYOFF
33 PURSUANT TO THIS SECTION; (D) ANY TEACHER OR SUPERVISOR CONVICTED OF
34 CRIMINAL CHARGES THE PAST FIVE YEARS; (E) ANY TEACHER OR SUPERVISOR, IF
35 THE PERSON IS A TENURED EMPLOYEE, WHO WITHIN THE LAST FIVE YEARS HAS
36 BEEN FINED AS A PENALTY IMPOSED PURSUANT TO CHARGES RELATED TO CHRONIC
37 ABSENTEEISM, CHRONIC LATENESS, OR IMPROPER USE OR RECORDING OF LEAVE
38 TIME OR AS A RESULT OF SETTLEMENT OF CHARGES BROUGHT PURSUANT TO CHARGES
39 RELATED TO CHRONIC ABSENTEEISM, CHRONIC LATENESS OR IMPROPER USE OR
40 RECORDING OF LEAVE TIME; (F) ANY TEACHER OR SUPERVISOR WHO WITHIN THE
41 LAST FIVE YEARS WAS THE SUBJECT OF AN INVESTIGATION WHERE ALLEGATIONS OF
42 MISCONDUCT WERE SUBSTANTIATED BY THE CITY SCHOOL DISTRICT'S SPECIAL
43 COMMISSIONER OF INVESTIGATION, THE CITY SCHOOL DISTRICT'S OFFICE OF
44 SPECIAL INVESTIGATIONS OR THE CITY SCHOOL DISTRICT'S OFFICE OF EQUAL
45 OPPORTUNITY; (G) ANY TEACHER OR SUPERVISOR WHO HAS FAILED TO FULFILL ALL
46 REQUIREMENTS FOR CERTIFICATION FROM THE DEPARTMENT AS OF AUGUST THIRTY-
47 FIRST OF THE YEAR IN WHICH THERE IS A CITYWIDE LAYOFF; (H) ANY TEACHER,
48 FOR TWO YEARS OR MORE, RANKED IN THE BOTTOM THIRTY PERCENT OF ALL TEACH-
49 ERS IN STUDENT TEST SCORES PROGRESS AS MEASURED BY THE CITY SCHOOL
50 DISTRICT'S VALUE-ADDED ASSESSMENT EXCEPT FOR TEACHERS WHO WORK IN
51 LICENSES RELATED TO TEACHING CHILDREN WITH DISABILITIES OR SPECIAL
52 NEEDS; AND (I) TEACHERS OR SUPERVISORS WHO ENTERED AGREEMENTS TO SERVE
53 AN ADDITIONAL YEAR AS A PROBATIONER PURSUANT TO SECTION TWENTY-FIVE
54 HUNDRED SEVENTY-THREE OF THIS ARTICLE FOR THE SCHOOL YEAR PRECEDING A
55 CITYWIDE LAYOFF.

(II) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION TO THE CONTRARY, IN THE CASE THAT THE NUMBER OF TEACHING OR SUPERVISORY POSITIONS THAT ARE ABOLISHED, OR THE NUMBER OF TEACHING OR SUPERVISORY EMPLOYEES THAT ARE LAID OFF PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH IS GREATER THAN THE NUMBER OF SUCH POSITIONS THAT MUST BE ABOLISHED OR REDUCED AS A RESULT OF A CITYWIDE LAYOFF, THEN THE DECISION CONCERNING WHICH POSITIONS ARE TO BE ABOLISHED, AND WHICH PERSONS OCCUPYING SUCH POSITIONS ARE TO BE LAID OFF, SHALL BE MADE IN ACCORDANCE WITH THIS SUBPARAGRAPH.

(1) THE FOLLOWING PROTOCOL SHALL BE USED UNTIL SUCH TIME THAT THE TOTAL NUMBER OF EMPLOYEES IDENTIFIED IS EQUAL TO THE TOTAL NUMBER OF TEACHING OR SUPERVISORY POSITIONS ABOLISHED. FOR PURPOSES OF THE PROTOCOL, THE CATEGORIES LISTED AS CLAUSES (A), (B), (C), (D), (E), (F), (G), (H) AND (I) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL BE RANKED ALPHABETICALLY (A) THROUGH (I), PROVIDED THAT (A) SHALL BE RANKED THE HIGHEST PRIORITY AND (I) SHALL BE RANKED THE LOWEST PRIORITY. THE PROTOCOL SHALL BE ESTABLISHED AS FOLLOWS:

A. TEACHERS OR SUPERVISORS WHO FALL IN ALL NINE OF THE CATEGORIES LISTED AS CLAUSES (A), (B), (C), (D), (E), (F), (G), (H) AND (I) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH;

B. TEACHERS OR SUPERVISORS WHO FALL WITHIN EIGHT OF THE CATEGORIES LISTED AS CLAUSES (A), (B), (C), (D), (E), (F), (G), (H) AND (I) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH, IN ORDER OF THE COMBINED RANK PRIORITY OF THOSE EIGHT CATEGORIES;

C. TEACHERS OR SUPERVISORS WHO FALL WITHIN SEVEN OF THE CATEGORIES LISTED AS CLAUSES (A), (B), (C), (D), (E), (F), (G), (H) AND (I) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH, IN ORDER OF THE COMBINED RANK PRIORITY OF THOSE SEVEN CATEGORIES;

D. TEACHERS OR SUPERVISORS WHO FALL WITHIN SIX OF THE CATEGORIES LISTED AS CLAUSES (A), (B), (C), (D), (E), (F), (G), (H) AND (I) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH, IN ORDER OF THE COMBINED RANK PRIORITY OF THOSE SIX CATEGORIES;

E. TEACHERS OR SUPERVISORS WHO FALL WITHIN FIVE OF THE CATEGORIES LISTED AS CLAUSES (A), (B), (C), (D), (E), (F), (G), (H) AND (I) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH, IN ORDER OF THE COMBINED RANK PRIORITY OF THOSE FIVE CATEGORIES;

F. TEACHERS OR SUPERVISORS WHO FALL WITHIN FOUR OF THE CATEGORIES LISTED AS CLAUSES (A), (B), (C), (D), (E), (F), (G), (H) AND (I) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH, IN ORDER OF THE COMBINED RANK PRIORITY OF THOSE FOUR CATEGORIES;

G. TEACHERS OR SUPERVISORS WHO FALL WITHIN THREE OF THE CATEGORIES LISTED AS CLAUSES (A), (B), (C), (D), (E), (F), (G), (H) AND (I) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH, IN ORDER OF THE COMBINED RANK PRIORITY OF THOSE THREE CATEGORIES;

H. TEACHERS OR SUPERVISORS WHO FALL WITHIN TWO OF THE CATEGORIES LISTED AS CLAUSES (A), (B), (C), (D), (E), (F), (G), (H) AND (I) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH, IN ORDER OF THE COMBINED RANK PRIORITY OF THOSE TWO CATEGORIES;

I. TEACHERS OR SUPERVISORS WHO RECEIVED A RATING OF "UNSATISFACTORY" IN ANY OF THE LAST FIVE SCHOOL YEARS ON THEIR ANNUAL PROFESSIONAL PERFORMANCE REVIEW; PROVIDED, HOWEVER THAT IF FEWER LAYOFFS ARE REQUIRED THAN THERE ARE PERSONS IN THIS CATEGORY, LAYOFFS SHALL BE DONE IN THE FOLLOWING ORDER:

I. A TEACHER OR SUPERVISOR WITH THE HIGHEST NUMBER OF UNSATISFACTORY RATINGS IN THE LAST FIVE YEARS; AND

1 II. A TEACHER OR SUPERVISOR WITH AN UNSATISFACTORY RATING RECEIVED IN
2 THE MOST RECENT YEAR OR YEARS;

3 J. ANY TEACHER OR SUPERVISOR, IF THE PERSON IS A TENURED EMPLOYEE, WHO
4 WITHIN THE LAST FIVE YEARS HAS BEEN FINED OR SUSPENDED WITHOUT PAY AS A
5 PENALTY IMPOSED PURSUANT TO SECTION THREE THOUSAND TWENTY-A OF THIS
6 CHAPTER OR AS A RESULT OF A SETTLEMENT OF CHARGES BROUGHT PURSUANT TO
7 SECTION THREE THOUSAND TWENTY-A OF THIS CHAPTER; PROVIDED, HOWEVER THAT
8 IF FEWER LAYOFFS ARE REQUIRED THAN THERE ARE PERSONS IN THIS CATEGORY
9 PERSONS SHALL BE LAID OFF IN ORDER OF THE MOST RECENT DISPOSITION;

10 K. ANY TEACHER OR SUPERVISOR WITH A CURRENT STATUS AS A TEACHER OR
11 SUPERVISOR NOT APPOINTED TO A PERMANENT POSITION IN A SCHOOL FOR A PERI-
12 OD OF SIX MONTHS OR MORE AS OF THE EFFECTIVE DATE OF ANY CITYWIDE LAYOFF
13 PURSUANT TO THIS SECTION; PROVIDED, HOWEVER THAT IF FEWER LAYOFFS ARE
14 REQUIRED THAN THERE ARE PERSONS IN THIS CATEGORY, LAYOFFS SHALL BE DONE
15 IN ORDER OF PERSONS WHO HAVE BEEN WITHOUT AN APPOINTED POSITION TO A
16 SCHOOL THE LONGEST PERIOD OF TIME;

17 L. ANY TEACHER OR SUPERVISOR CONVICTED OF CRIMINAL CHARGES IN THE LAST
18 FIVE YEARS; PROVIDED, HOWEVER THAT IF FEWER LAYOFFS ARE REQUIRED THAN
19 THERE ARE PERSONS IN THIS CATEGORY, LAYOFFS SHALL BE DONE IN ORDER OF
20 THE MOST RECENT CONVICTION;

21 M. ANY TEACHER OR SUPERVISOR WHO HAS RECEIVED A FINE AS A PENALTY OR
22 AS PART OF A STIPULATION IN SETTLEMENT OF CHARGES OF CHRONIC ABSENTEEISM
23 OR LATENESS, OR IMPROPER USE OR RECORDING OF LEAVE TIME; PROVIDED,
24 HOWEVER THAT IF FEWER LAYOFFS ARE REQUIRED THAN THERE ARE PEOPLE IN THIS
25 CATEGORY, LAYOFFS SHALL BE DONE IN ORDER OF THE MOST RECENT DISPOSITION;

26 N. ANY TEACHER OR SUPERVISOR WHO WITHIN THE LAST FIVE YEARS WAS THE
27 SUBJECT OF AN INVESTIGATION WHERE ALLEGATIONS OF MISCONDUCT WERE
28 SUBSTANTIATED BY THE CITY SCHOOL DISTRICT'S SPECIAL COMMISSIONER OF
29 INVESTIGATION, THE CITY SCHOOL DISTRICT'S OFFICE OF SPECIAL INVESTI-
30 GATIONS OR THE CITY SCHOOL DISTRICT'S OFFICE OF EQUAL OPPORTUNITY,
31 PROVIDED HOWEVER IF THERE ARE FEWER LAYOFFS THAN THERE ARE PERSONS IN
32 THIS CATEGORY, LAYOFFS SHALL BE DONE IN ORDER OF THE MOST RECENT INVE-
33 TIGATION OF SUBSTANTIATED ALLEGATIONS;

34 O. ANY TEACHER OR SUPERVISOR WHO HAS FAILED TO FULFILL ALL THE
35 REQUIREMENTS FOR STATE CERTIFICATION AS OF AUGUST THIRTY-FIRST OF THE
36 SCHOOL YEAR IN WHICH THERE IS A CITYWIDE LAYOFF, PROVIDED HOWEVER IF
37 THERE ARE FEWER LAYOFFS THAN THERE ARE PERSONS IN THIS CATEGORY, TEACH-
38 ERS WHO HAVE BEEN WITHOUT FULL CERTIFICATION FROM THE DEPARTMENT THE
39 LONGEST SHALL BE LAID OFF FIRST;

40 P. EXCEPT FOR TEACHERS WHO WORK IN LICENSES RELATED TO TEACHING CHIL-
41 DREN WITH DISABILITIES OR SPECIAL NEEDS, ANY TEACHER, WHO FOR TWO YEARS
42 OR MORE, RANKED IN THE BOTTOM THIRTY PERCENT OF ALL TEACHERS IN STUDENT
43 TEST SCORES PROGRESS AS MEASURED BY THE CITY SCHOOL DISTRICT'S VALUE-AD-
44 DED ASSESSMENT, PROVIDED HOWEVER, IF THERE ARE FEWER LAYOFFS THAN THERE
45 ARE PERSONS IN THIS CATEGORY, TEACHERS WITH THE LOWEST SCORES SHALL BE
46 LAID OFF FIRST; AND

47 Q. ANY TEACHER OR SUPERVISOR WHO ENTERED AN AGREEMENT TO SERVE AN
48 ADDITIONAL PROBATIONARY YEAR PURSUANT TO SECTION TWENTY-FIVE HUNDRED
49 SEVENTY-THREE OF THIS ARTICLE, FOR THE SCHOOL YEAR PRECEDING A CITYWIDE
50 LAYOFF, PROVIDED HOWEVER, IF THERE ARE FEWER LAYOFFS THAN THERE ARE
51 PERSONS IN THIS CATEGORY, TEACHERS OR SUPERVISORS WITH THE MOST NUMBER
52 OF ABSENCES SHALL BE LAID OFF FIRST.

53 (III) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION
54 TO THE CONTRARY, IN THE CASE THAT THE NUMBER OF TEACHING OR SUPERVISORY
55 POSITIONS THAT ARE ABOLISHED, OR THE NUMBER OF TEACHING OR SUPERVISORY
56 EMPLOYEES THAT ARE LAID OFF PURSUANT TO SUBPARAGRAPH (I) OF PARAGRAPH

1 (A) OF THIS SUBDIVISION IS FEWER THAN THE NUMBER OF SUCH POSITIONS THAT
2 MUST BE ABOLISHED OR REDUCED, THE DECISION CONCERNING WHICH ADDITIONAL
3 POSITIONS ARE TO BE ABOLISHED, AND WHICH PERSONS OCCUPYING SUCH POSI-
4 TIONS ARE TO BE LAID OFF, SHALL BE MADE IN ACCORDANCE WITH THIS SUBPARA-
5 GRAPH.

6 (1) THE BOARD OF REGENTS SHALL PROMULGATE REGULATIONS PRESCRIBING HOW
7 SUCH ADDITIONAL LAYOFFS SHALL BE EFFECTUATED. THE PROMULGATION OF ANY
8 SUCH REGULATION SHALL NOT PERMIT AN EMPLOYEE'S LENGTH OF SERVICE TO BE
9 THE SOLE FACTOR IN ANY DECISION REGARDING WHICH POSITIONS ARE TO BE
10 ABOLISHED AND WHICH PERSONS OCCUPYING SUCH POSITIONS SHALL BE LAID OFF;
11 PROVIDED, HOWEVER, THAT ANY CONSIDERATION OF AN EMPLOYEE'S LENGTH OF
12 FAITHFUL AND COMPETENT SERVICE AS A FACTOR FOR THE ABOLISHMENT OF POSI-
13 TIONS OR PERSONS TO BE LAID OFF OCCUPYING SUCH POSITIONS MAY ONLY BE
14 CONSIDERED IN A MANNER BENEFICIAL TO AN EMPLOYEE AND THAT THE PROMULGA-
15 TION OF ANY SUCH REGULATION SHALL NOT PERMIT AN EMPLOYEE'S SALARY TO BE
16 A FACTOR IN ANY DECISION REGARDING WHICH POSITIONS ARE TO BE ABOLISHED
17 AND WHICH PERSONS OCCUPYING SUCH POSITIONS SHALL BE LAID OFF; AND
18 PROVIDED FURTHER THAT ANY SUCH REGULATIONS MUST ENSURE THAT IN A
19 HIGH-NEED SCHOOL THE NUMBER OF STAFF LAID OFF SHALL NOT EXCEED THE
20 PERCENTAGE OF THE OVERALL NUMBER OF POSITIONS IN THE SCHOOL THAT REPRES-
21 ENTS HALF OF THE AVERAGE PERCENTAGE OF STAFF LAID OFF CITYWIDE; PROVIDED
22 HOWEVER, SAID PERCENTAGE MAY BE EXCEEDED WHERE THE CITY SCHOOL DISTRICT
23 CHOOSES TO ABOLISH ALL POSITIONS IN A LICENSE AREA PURSUANT TO SUBPARA-
24 GRAPH (IV) OF THIS PARAGRAPH. SAID PERCENTAGES SHALL BE CALCULATED
25 EXCLUDING ANY TEACHERS OR SUPERVISORS LAID OFF PURSUANT TO SUBPARAGRAPHS
26 (I) AND (II) OF PARAGRAPH (A) OF THIS SUBDIVISION. FOR PURPOSES OF THIS
27 SECTION, A HIGH-NEED SCHOOL SHALL BE DEFINED AS A SCHOOL IN WHICH AT
28 LEAST NINETY PERCENT OF THE ENROLLED STUDENTS ARE ELIGIBLE APPLICANTS
29 FOR THE FREE AND REDUCED PRICE LUNCH PROGRAM.

30 (2) SHOULD THE BOARD OF REGENTS FAIL TO PROMULGATE REGULATIONS NO
31 LATER THAN SEVENTY-FIVE DAYS PRIOR TO THE EFFECTIVE DATE OF A CITYWIDE
32 LAYOFF, THE BUILDING PRINCIPAL SHALL DETERMINE WHICH ADDITIONAL POSI-
33 TIONS ARE TO BE ABOLISHED, AND WHICH ADDITIONAL PERSONS OCCUPYING SUCH
34 POSITIONS ARE TO BE LAID OFF CONSISTENT WITH GUIDANCE PROMULGATED BY THE
35 CHANCELLOR. THE PRINCIPAL SHALL MAKE THE DECISION AFTER CONSIDERING THE
36 RECOMMENDATIONS OF A SCHOOL-BASED COMMITTEE COMPRISED OF TEACHERS,
37 ADMINISTRATORS AND PARENTS. THE FOLLOWING FACTORS SHALL BE CONSIDERED
38 IN DETERMINING WHICH POSITIONS SHALL BE ABOLISHED AND WHICH PERSONS
39 OCCUPYING SUCH POSITIONS ARE TO BE LAID OFF: (I) SCHOOL NEEDS FOR
40 PARTICULAR LICENSE AREAS; AND (II) WHEN MORE THAN ONE PERSON HOLDS A
41 POSITION WITHIN THE SAME LICENSE AREA, SIGNIFICANT RELEVANT CONTRIB-
42 UTIONS, ACCOMPLISHMENTS, OR PERFORMANCE OF EACH SUCH PERSON; RELEVANT
43 SUPPLEMENTAL PROFESSIONAL EXPERIENCES OF EACH SUCH PERSON AS DEMON-
44 STRATED ON THE JOB; OFFICE OR SCHOOL NEEDS, INCLUDING CURRICULUM
45 SPECIALIZED EDUCATION, DEGREES, LICENSES OR AREAS OF EXPERTISE; AND
46 LENGTH OF SATISFACTORY SERVICE BY EACH SUCH PERSON. ANY SUCH GUIDANCE
47 PROMULGATED BY THE CHANCELLOR SHALL NOT PERMIT AN EMPLOYEE'S LENGTH OF
48 SERVICE TO BE THE SOLE FACTOR IN ANY DECISION REGARDING WHICH POSITIONS
49 ARE TO BE ABOLISHED AND WHICH PERSONS OCCUPYING SUCH POSITIONS SHALL BE
50 LAID OFF; PROVIDED, HOWEVER, THAT ANY CONSIDERATION OF AN EMPLOYEE'S
51 LENGTH OF FAITHFUL AND COMPETENT SERVICE AS A FACTOR FOR THE ABOLISHMENT
52 OF POSITIONS OR PERSONS TO BE LAID OFF OCCUPYING SUCH POSITIONS MAY ONLY
53 BE CONSIDERED IN A MANNER BENEFICIAL TO AN EMPLOYEE AND THAT THE PROMUL-
54 GATION OF ANY SUCH GUIDANCE SHALL NOT PERMIT AN EMPLOYEE'S SALARY TO BE
55 A FACTOR IN ANY DECISION REGARDING WHICH POSITIONS ARE TO BE ABOLISHED
56 AND WHICH PERSONS OCCUPYING SUCH POSITIONS SHALL BE LAID OFF; AND

1 PROVIDED FURTHER THAT ANY SUCH GUIDANCE PROMULGATED BY THE CHANCELLOR
2 MUST ENSURE THAT IN A HIGH-NEED SCHOOL THE NUMBER OF STAFF LAID OFF
3 SHALL NOT EXCEED THE PERCENTAGE OF THE OVERALL NUMBER OF POSITIONS IN
4 THE SCHOOL THAT REPRESENTS HALF OF THE AVERAGE PERCENTAGE OF STAFF LAID
5 OFF CITYWIDE, PROVIDED HOWEVER, SAID PERCENTAGE MAY BE EXCEEDED WHERE
6 THE CITY SCHOOL DISTRICT CHOOSES TO ABOLISH ALL POSITIONS IN A LICENSE
7 AREA PURSUANT TO SUBPARAGRAPH (IV) OF THIS PARAGRAPH. SAID PERCENTAGES
8 SHALL BE CALCULATED EXCLUDING ANY TEACHERS OR SUPERVISORS LAID OFF
9 PURSUANT TO SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH. FOR PURPOSES
10 OF THIS SECTION, A HIGH-NEED SCHOOL SHALL BE DEFINED AS A SCHOOL IN
11 WHICH AT LEAST NINETY PERCENT OF THE ENROLLED STUDENTS ARE ELIGIBLE
12 APPLICANTS FOR THE FREE AND REDUCED PRICE LUNCH PROGRAM.

13 (IV) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION TO
14 THE CONTRARY, ANY REGULATION PROMULGATED BY THE BOARD OF REGENTS OR ANY
15 LOCALLY DEVELOPED PROCESS PURSUANT TO THE REQUIREMENTS OF ARTICLE FOUR-
16 TEEN OF THE CIVIL SERVICE LAW, THE CITY SCHOOL DISTRICT SHALL NOT BE
17 PROHIBITED FROM ABOLISHING ALL POSITIONS IN AN ENTIRE LICENSE AREA
18 PURSUANT TO GUIDANCE PROMULGATED BY THE CHANCELLOR.

19 (B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION TO
20 THE CONTRARY, THE CITY SCHOOL DISTRICT AND ITS EMPLOYEES' COLLECTIVE
21 BARGAINING AGENTS SHALL ESTABLISH A PROCEDURE GOVERNING THE ABOLISHMENT
22 OR REDUCTION OF TEACHING OR SUPERVISORY POSITIONS AT INDIVIDUAL SCHOOLS
23 IN ORDER TO MEET SCHOOL BUDGETARY NEEDS, REORGANIZE FUNCTIONS, OR FOR
24 OTHER COMPELLING REASONS OUTSIDE OF A CITYWIDE REDUCTION IN ACCORDANCE
25 WITH PARAGRAPH (A) OF THIS SUBDIVISION, PURSUANT TO THE REQUIREMENTS OF
26 ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW. ANY SUCH LOCALLY ESTABLISHED
27 PROCESS SHALL NOT PERMIT AN EMPLOYEE'S LENGTH OF SERVICE TO BE THE SOLE
28 FACTOR IN ANY DECISION REGARDING WHICH POSITIONS ARE TO BE ABOLISHED AND
29 WHICH PERSONS OCCUPYING SUCH POSITIONS SHALL BE EXCESSED; PROVIDED
30 HOWEVER THAT ANY CONSIDERATION OF AN EMPLOYEE'S LENGTH OF FAITHFUL AND
31 COMPETENT SERVICE AS A FACTOR FOR THE ABOLISHMENT OF POSITIONS OR
32 PERSONS TO BE EXCESSED OCCUPYING SUCH POSITIONS MAY ONLY BE CONSIDERED
33 IN A MANNER BENEFICIAL TO AN EMPLOYEE AND THAT THE PROMULGATION OF ANY
34 SUCH REGULATION SHALL NOT PERMIT AN EMPLOYEE'S SALARY TO BE A FACTOR IN
35 ANY DECISION REGARDING WHICH POSITIONS ARE TO BE ABOLISHED AND WHICH
36 PERSONS OCCUPYING SUCH POSITIONS SHALL BE EXCESSED. FOR POSITIONS
37 COVERED BY SECTION THREE THOUSAND TWELVE-C OF THIS CHAPTER, ANY SUCH
38 LOCALLY DEVELOPED PROCESS SHALL BE BASED ON THE ANNUAL PROFESSIONAL
39 PERFORMANCE REVIEW FOR TEACHERS AND SUPERVISORS PURSUANT TO SUCH SECTION
40 THREE THOUSAND TWELVE-C AND ITS IMPLEMENTING REGULATIONS. UNTIL AND
41 UNLESS SUCH A PROCESS HAS BEEN ESTABLISHED AT LEAST NINETY DAYS BEFORE
42 THE START OF THE SCHOOL YEAR, THE FOLLOWING SHALL APPLY:

43 (I) DECISIONS CONCERNING WHICH POSITIONS ARE TO BE ABOLISHED SHALL BE
44 MADE IN ACCORDANCE WITH THE SAME PROCESS PRESCRIBED FOR MAKING LAYOFF
45 DECISIONS SET FORTH IN SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH (A) OF
46 THIS SUBDIVISION. IN THE CASE THAT THE NUMBER OF TEACHING OR SUPERVISORY
47 EMPLOYEES EXCESSED IS FEWER THAN THE NUMBER OF SUCH POSITIONS THAT MUST
48 BE EXCESSED PURSUANT TO THIS SUBPARAGRAPH, THE BOARD OF REGENTS SHALL
49 PROMULGATE REGULATIONS ESTABLISHING THE PROCESS TO BE USED TO DETERMINE
50 WHICH POSITIONS SHALL BE ABOLISHED AND WHICH PERSONS OCCUPYING SUCH
51 POSITIONS SHALL BE EXCESSED. THE PROMULGATION OF ANY SUCH REGULATION
52 SHALL NOT PERMIT AN EMPLOYEE'S LENGTH OF SERVICE TO BE THE SOLE FACTOR
53 IN ANY DECISION REGARDING WHICH POSITIONS ARE TO BE ABOLISHED AND WHICH
54 PERSONS OCCUPYING SUCH POSITIONS SHALL BE EXCESSED; PROVIDED HOWEVER
55 THAT ANY CONSIDERATION OF AN EMPLOYEE'S LENGTH OF FAITHFUL AND COMPETENT
56 SERVICE AS A FACTOR FOR THE ABOLISHMENT OF POSITIONS OR PERSONS TO BE

1 EXCESSED OCCUPYING SUCH POSITIONS MAY ONLY BE CONSIDERED IN A MANNER
2 BENEFICIAL TO AN EMPLOYEE AND THAT THE PROMULGATION OF ANY SUCH REGU-
3 LATION SHALL NOT PERMIT AN EMPLOYEE'S SALARY TO BE A FACTOR IN ANY DECI-
4 SION REGARDING WHICH POSITIONS ARE TO BE ABOLISHED AND WHICH PERSONS
5 OCCUPYING SUCH POSITIONS SHALL BE EXCESSED. SHOULD THE BOARD OF REGENTS
6 FAIL TO PROMULGATE REGULATIONS NO LATER THAN SEVENTY-FIVE DAYS PRIOR TO
7 THE FIRST DAY OF THE SCHOOL YEAR, THE BUILDING PRINCIPAL SHALL DETERMINE
8 WHICH TEACHERS OR SUPERVISORS ARE TO BE EXCESSED, CONSISTENT WITH GUID-
9 ANCE PROMULGATED BY THE CHANCELLOR PURSUANT TO THIS SUBDIVISION. THE
10 PRINCIPAL SHALL MAKE THE DECISION AFTER CONSIDERING THE RECOMMENDATIONS
11 OF A SCHOOL-BASED COMMITTEE COMPRISED OF TEACHERS, ADMINISTRATORS AND
12 PARENTS. THE FOLLOWING FACTORS SHALL BE CONSIDERED IN DETERMINING WHICH
13 POSITIONS SHALL BE ABOLISHED AND WHICH PERSONS OCCUPYING SUCH POSITIONS
14 ARE TO BE EXCESSED: (1) SCHOOL NEEDS FOR PARTICULAR LICENSE AREAS; AND
15 (2) WHEN MORE THAN ONE PERSON HOLDS A POSITION WITHIN THE SAME LICENSE
16 AREA: SIGNIFICANT RELEVANT CONTRIBUTIONS, ACCOMPLISHMENTS, OR PERFORM-
17 ANCE OF EACH SUCH PERSON; RELEVANT SUPPLEMENTAL PROFESSIONAL EXPERIENCES
18 OF EACH SUCH PERSON AS DEMONSTRATED ON THE JOB; OFFICE OR SCHOOL NEEDS,
19 INCLUDING: CURRICULUM SPECIALIZED EDUCATION, DEGREES, LICENSES OR AREAS
20 OF EXPERTISE; AND LENGTH OF SATISFACTORY SERVICE BY EACH SUCH PERSON.
21 ANY SUCH GUIDANCE PROMULGATED BY THE CHANCELLOR SHALL NOT PERMIT AN
22 EMPLOYEE'S LENGTH OF SERVICE TO BE THE SOLE FACTOR IN ANY DECISION
23 REGARDING WHICH POSITIONS ARE TO BE ABOLISHED AND WHICH PERSONS OCCUPY-
24 ING SUCH POSITIONS SHALL BE EXCESSED; PROVIDED, HOWEVER, THAT ANY
25 CONSIDERATION OF AN EMPLOYEE'S LENGTH OF FAITHFUL AND COMPETENT SERVICE
26 AS A FACTOR FOR THE ABOLISHMENT OF POSITIONS OR PERSONS TO BE EXCESSED
27 OCCUPYING SUCH POSITIONS MAY ONLY BE CONSIDERED IN A MANNER BENEFICIAL
28 TO AN EMPLOYEE AND THAT THE PROMULGATION OF ANY SUCH GUIDANCE SHALL NOT
29 PERMIT AN EMPLOYEE'S SALARY TO BE A FACTOR IN ANY DECISION REGARDING
30 WHICH POSITIONS ARE TO BE ABOLISHED AND WHICH PERSONS OCCUPYING SUCH
31 POSITIONS SHALL BE LAID OFF. SHOULD CITYWIDE LAYOFFS IN ACCORDANCE WITH
32 PARAGRAPH (A) OF THIS SUBDIVISION BE CARRIED OUT, A DETERMINATION OF
33 WHETHER ANY TEACHER OR SUPERVISOR SHALL BE LAID OFF WHOSE POSITION HAS
34 BEEN ABOLISHED AND IS IN EXCESS FROM A REGULARLY APPOINTED POSITION IN
35 THE DISTRICT FOR LESS THAN SIX MONTHS, SHALL BE MADE PURSUANT TO SUBPAR-
36 AGRAPHS (I) AND (II) OF PARAGRAPH (A) OF THIS SUBDIVISION.

37 S 4. Subdivision 4 of section 2588 of the education law is REPEALED
38 and a new subdivision 4 is added to read as follows:

39 4. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION TO
40 THE CONTRARY, THE CITY SCHOOL DISTRICT AND ITS COLLECTIVE BARGAINING
41 AGENTS SHALL ESTABLISH A PROCEDURE PURSUANT TO THE REQUIREMENTS OF ARTI-
42 CLE FOURTEEN OF THE CIVIL SERVICE LAW GOVERNING THE RIGHTS OF EMPLOYEES
43 TO RETURN TO VACANT POSITIONS IN THE CITY SCHOOL DISTRICT. UNTIL AND
44 UNLESS A LOCALLY ESTABLISHED PROCEDURE IS ESTABLISHED PURSUANT TO THE
45 REQUIREMENTS OF ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW, THE FOLLOWING
46 SHALL APPLY CONCERNING THE RIGHTS OF EMPLOYEES TO RETURN TO VACANT POSI-
47 TIONS. WHENEVER A TEACHING OR SUPERVISORY POSITION IS ABOLISHED PURSU-
48 ANT TO CLAUSES ONE AND TWO OF SUBPARAGRAPH (III) OF PARAGRAPH (A) OF
49 SUBDIVISION THREE OF THIS SECTION, SHOULD A VACANCY OCCUR IN THE SAME
50 POSITION AT THE SAME SCHOOL OR ADMINISTRATIVE OFFICE WITHIN ONE YEAR OF
51 THE DATE WHEN THE POSITION WAS ABOLISHED, THE PRINCIPAL, OR THE CHANCEL-
52 LOR OR HIS OR HER DESIGNEE, SHALL OFFER THE POSITION TO THE PERSON WHO
53 HELD THE POSITION BEFORE IT WAS ABOLISHED. IF THE PERSON REJECTS THE
54 OFFER, OR FAILS TO RESPOND TO THE OFFER WITHIN THIRTY DAYS, THE PERSON
55 SHALL NO LONGER HAVE A RIGHT TO RETURN TO THE POSITION. IF MORE THAN ONE
56 POSITION WAS ABOLISHED IN THE SAME LICENSE AREA AT THE SAME SCHOOL OR

1 ADMINISTRATIVE OFFICE, AND THERE ARE FEWER VACANCIES IN THE SAME LICENSE
2 AREA THAN PERSONS WHOSE POSITIONS WERE ABOLISHED, THE PRINCIPAL, OR THE
3 CHANCELLOR, SHALL HAVE THE DISCRETION TO DETERMINE WHICH PERSON SHOULD
4 BE OFFERED THE POSITION FIRST. THE CHANCELLOR SHALL PROMULGATE GUIDANCE
5 TO DETERMINE THE RIGHT OF RETURN OF ANY TEACHERS OR SUPERVISORS LAID OFF
6 PURSUANT TO SUBPARAGRAPH (IV) OF PARAGRAPH (A) OF SUBDIVISION THREE OF
7 THIS SECTION. TEACHERS OR SUPERVISORS LAID OFF PURSUANT TO SUBPARAGRAPH
8 (I) OF PARAGRAPH (A) OF SUBDIVISION THREE OF THIS SECTION AND CLAUSE ONE
9 OF SUBPARAGRAPH (II) OF PARAGRAPH (A) OF SUBDIVISION THREE OF THIS
10 SECTION, SHALL HAVE NO RIGHTS TO RETURN TO A VACANT POSITION PURSUANT TO
11 THIS SECTION.

12 S 5. Subdivision 7 of section 2588 of the education law is REPEALED.

13 S 6. Severability. If any clause, sentence, paragraph, section or part
14 of this act shall be adjudged by any court of competent jurisdiction to
15 be invalid and after exhaustion of all further judicial review, the
16 judgment shall not affect, impair or invalidate the remainder thereof,
17 but shall be confined in its operation to the clause, sentence, para-
18 graph, section or part of this act directly involved in the controversy
19 in which the judgment shall have been rendered.

20 S 7. This act shall take effect immediately.