

6953

I N S E N A T E

March 1, 2010

Introduced by Sen. DIAZ -- 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 disciplinary hearings and procedures for teachers in the city district of the city of New York

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

1 Section 1. Subdivision 1 and subparagraph (i) of paragraph b of subdi-
2 vision 3 of section 3020-a of the education law, as amended by chapter
3 691 of the laws of 1994, are amended to read as follows:
4 1. Filing of charges. All charges against a person enjoying the bene-
5 fits of tenure as provided in subdivision three of section one thousand
6 one hundred two, and sections two thousand five hundred nine, two thou-
7 sand five hundred seventy-three, [twenty-five hundred ninety-j,] three
8 thousand twelve and three thousand fourteen of this chapter shall be in
9 writing and filed with the clerk or secretary of the school district or
10 employing board during the period between the actual opening and closing
11 of the school year for which the employed is normally required to serve.
12 Except as provided in subdivision eight of section two thousand five
13 hundred seventy-three [and subdivision seven of section twenty-five
14 hundred ninety-j] of this chapter, no charges under this section shall
15 be brought more than three years after the occurrence of the alleged
16 incompetency or misconduct, except when the charge is of misconduct
17 constituting a crime when committed.
18 (i) Hearing officers. All hearings pursuant to this section shall be
19 conducted before and by a single hearing officer selected as provided
20 for in this section. A hearing officer shall not be eligible to serve as
21 such if he or she is a resident of the school district, [other than the
22 city of New York,] under the jurisdiction of the employing board, an
23 employee, agent or representative of the employing board or of any labor
24 organization representing employees of such employing board, has served
25 as such agent or representative within two years of the date of the
26 scheduled hearing, or if he or she is then serving as a mediator or fact
27 finder in the same school district. Notwithstanding any other provision

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

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1 of law, the hearing officer shall be compensated by the department with
2 the customary fee paid for service as an arbitrator under the auspices
3 of the association for each day of actual service plus necessary travel
4 and other reasonable expenses incurred in the performance of his or her
5 duties. All other expenses of the disciplinary proceedings shall be paid
6 in accordance with rules promulgated by the commissioner of education.

7 S 2. The education law is amended by adding a new section 3020-b to
8 read as follows:

9 S 3020-B. DISCIPLINARY PROCEDURES AND PENALTIES. 1. FILING OF CHARGES.
10 ALL CHARGES AGAINST A PERSON ENJOYING THE BENEFITS OF TENURE AS PROVIDED
11 IN SECTION TWENTY-FIVE HUNDRED NINETY-J OF THIS CHAPTER SHALL BE IN
12 WRITING AND FILED WITH THE CLERK OR SECRETARY OF THE SCHOOL DISTRICT OR
13 EMPLOYING BOARD DURING THE PERIOD BETWEEN THE ACTUAL OPENING AND CLOSING
14 OF THE SCHOOL YEAR FOR WHICH THE EMPLOYED IS NORMALLY REQUIRED TO SERVE.
15 EXCEPT AS PROVIDED IN SUBDIVISION SEVEN OF SECTION TWENTY-FIVE HUNDRED
16 NINETY-J OF THIS CHAPTER, NO CHARGES UNDER THIS SECTION SHALL BE BROUGHT
17 MORE THAN THREE YEARS AFTER THE OCCURRENCE OF THE ALLEGED INCOMPETENCY
18 OR MISCONDUCT, EXCEPT WHEN THE CHARGE IS OF MISCONDUCT CONSTITUTING A
19 CRIME WHEN COMMITTED.

20 2. DISPOSITION OF CHARGES. (A) UPON RECEIPT OF THE CHARGES, THE CLERK
21 OR SECRETARY OF THE CITY DISTRICT OR EMPLOYING BOARD SHALL IMMEDIATELY
22 NOTIFY SAID BOARD THEREOF. WITHIN FIVE DAYS AFTER RECEIPT OF CHARGES,
23 THE EMPLOYING BOARD, IN EXECUTIVE SESSION, SHALL DETERMINE, BY A VOTE OF
24 A MAJORITY OF ALL THE MEMBERS OF SUCH BOARD, WHETHER PROBABLE CAUSE
25 EXISTS TO BRING A DISCIPLINARY PROCEEDING AGAINST AN EMPLOYEE PURSUANT
26 TO THIS SECTION. IF SUCH DETERMINATION IS AFFIRMATIVE, A WRITTEN STATE-
27 MENT SPECIFYING THE CHARGES IN DETAIL, THE MAXIMUM PENALTY WHICH WILL BE
28 IMPOSED BY THE BOARD IF THE EMPLOYEE DOES NOT REQUEST A HEARING OR THAT
29 WILL BE SOUGHT BY THE BOARD IF THE EMPLOYEE IS FOUND GUILTY OF THE
30 CHARGES AFTER A HEARING AND OUTLINING THE EMPLOYEE'S RIGHTS UNDER THIS
31 SECTION, SHALL BE IMMEDIATELY FORWARDED TO THE ACCUSED EMPLOYEE BY
32 CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED OR BY PERSONAL
33 DELIVERY TO THE EMPLOYEE.

34 (B) THE EMPLOYEE MAY BE SUSPENDED PENDING A HEARING ON THE CHARGES AND
35 THE FINAL DETERMINATION THEREOF. THE SUSPENSION SHALL BE WITHOUT PAY.
36 THE EMPLOYEE SHALL BE TERMINATED WITHOUT A HEARING, AS PROVIDED FOR IN
37 THIS SECTION, UPON CONVICTION OF A SEX OFFENSE, AS DEFINED IN SUBPARA-
38 GRAPH TWO OF PARAGRAPH B OF SUBDIVISION SEVEN-A OF SECTION THREE HUNDRED
39 FIVE OF THIS CHAPTER. TO THE EXTENT THIS SECTION APPLIES TO AN EMPLOYEE
40 ACTING AS A SCHOOL ADMINISTRATOR OR SUPERVISOR, AS DEFINED IN SUBPARA-
41 GRAPH THREE OF PARAGRAPH B OF SUBDIVISION SEVEN-B OF SECTION THREE
42 HUNDRED FIVE OF THIS CHAPTER, SUCH EMPLOYEE SHALL BE TERMINATED WITHOUT
43 A HEARING, AS PROVIDED FOR IN THIS SECTION, UPON CONVICTION OF A FELONY
44 OFFENSE DEFINED IN SUBPARAGRAPH TWO OF PARAGRAPH B OF SUBDIVISION
45 SEVEN-B OF SECTION THREE HUNDRED FIVE OF THIS CHAPTER.

46 (C) WITHIN TEN DAYS OF RECEIPT OF THE STATEMENT OF CHARGES, THE
47 EMPLOYEE SHALL NOTIFY THE CLERK OR SECRETARY OF THE EMPLOYING BOARD IN
48 WRITING WHETHER HE OR SHE DESIRES A HEARING ON THE CHARGES. SUCH HEARING
49 SHALL BE REFERRED TO THE NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS
50 AND HEARINGS.

51 (D) THE UNEXCUSED FAILURE OF THE EMPLOYEE TO NOTIFY THE CLERK OR
52 SECRETARY OF HIS OR HER DESIRE FOR A HEARING WITHIN TEN DAYS OF THE
53 RECEIPT OF CHARGES SHALL BE DEEMED A WAIVER OF THE RIGHT TO A HEARING.
54 WHERE AN EMPLOYEE REQUESTS A HEARING IN THE MANNER PROVIDED FOR BY THIS
55 SECTION, THE CLERK OR SECRETARY OF THE BOARD SHALL, WITHIN THREE WORKING
56 DAYS OF RECEIPT OF THE EMPLOYEE'S NOTICE OR REQUEST FOR A HEARING, NOTI-

1 FY THE COMMISSIONER OF EDUCATION OF THE NEED FOR A HEARING. IF THE
2 EMPLOYEE WAIVES HIS OR HER RIGHT TO A HEARING THE EMPLOYING BOARD SHALL
3 PROCEED, WITHIN FIFTEEN DAYS, BY A VOTE OF A MAJORITY OF ALL MEMBERS OF
4 SUCH BOARD, TO DETERMINE THE CASE AND FIX THE PENALTY, IF ANY, TO BE
5 IMPOSED IN ACCORDANCE WITH SUBDIVISION FOUR OF THIS SECTION.

6 3. HEARINGS. (A) NOTICE OF HEARING. UPON RECEIPT OF A REQUEST FOR A
7 HEARING IN ACCORDANCE WITH SUBDIVISION TWO OF THIS SECTION, THE COMMIS-
8 SIONER OF EDUCATION SHALL REFER ALL SUCH HEARINGS TO THE NEW YORK CITY
9 OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS.

10 (B) NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS. ALL
11 HEARINGS PURSUANT TO THIS SECTION SHALL BE CONDUCTED BEFORE AND BY A
12 SINGLE ADMINISTRATIVE LAW JUDGE FROM THE NEW YORK CITY OFFICE OF ADMIN-
13 ISTRATIVE TRIALS AND HEARINGS.

14 (C) HEARING PROCEDURES. (I) HEARINGS SHALL BE CONDUCTED BY AN ADMINIS-
15 TRATIVE LAW JUDGE FROM THE NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS
16 AND HEARINGS PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION WITH FULL AND
17 FAIR DISCLOSURE OF THE NATURE OF THE CASE AND EVIDENCE AGAINST THE
18 EMPLOYEE BY THE EMPLOYING BOARD AND SHALL BE PUBLIC OR PRIVATE AT THE
19 DISCRETION OF THE EMPLOYEE.

20 (II) THE ADMINISTRATIVE LAW JUDGE CONDUCTING SUCH HEARING UNDER THIS
21 SECTION SHALL, WITHIN TEN TO FIFTEEN DAYS OF BEING ASSIGNED TO SUCH
22 HEARING, HOLD A PRE-HEARING CONFERENCE. THE PRE-HEARING CONFERENCE SHALL
23 BE LIMITED IN LENGTH TO ONE DAY EXCEPT THAT THE ADMINISTRATIVE LAW
24 JUDGE, IN HIS OR HER DISCRETION, MAY ALLOW ONE ADDITIONAL DAY FOR GOOD
25 CAUSE SHOWN.

26 (III) AT THE PRE-HEARING CONFERENCE THE ADMINISTRATIVE LAW JUDGE SHALL
27 HAVE THE POWER TO:

28 (A) ISSUE SUBPOENAS;

29 (B) HEAR AND DECIDE ALL MOTIONS, INCLUDING BUT NOT LIMITED TO MOTIONS
30 TO DISMISS THE CHARGES; AND

31 (C) HEAR AND DECIDE ALL APPLICATIONS FOR BILLS OF PARTICULAR OR
32 REQUESTS FOR PRODUCTION OF MATERIALS OR INFORMATION, INCLUDING, BUT NOT
33 LIMITED TO, ANY WITNESS STATEMENT (OR STATEMENTS), INVESTIGATORY STATE-
34 MENT (OR STATEMENTS) OR NOTE (NOTES), EXCULPATORY EVIDENCE OR ANY OTHER
35 EVIDENCE, INCLUDING DISTRICT OR STUDENT RECORDS, RELEVANT AND MATERIAL
36 TO THE EMPLOYEE'S DEFENSE.

37 (IV) ANY PRE-HEARING MOTION OR APPLICATION RELATIVE TO THE SUFFICIENCY
38 OF THE CHARGES, APPLICATION OR AMENDMENT THEREOF, OR ANY PRELIMINARY
39 MATTERS SHALL BE MADE UPON WRITTEN NOTICE TO THE ADMINISTRATIVE LAW
40 JUDGE AND THE ADVERSE PARTY NO LESS THAN FIVE DAYS PRIOR TO THE DATE OF
41 THE PRE-HEARING CONFERENCE. ANY PRE-HEARING MOTIONS OR APPLICATIONS NOT
42 MADE AS PROVIDED FOR HEREIN SHALL BE DEEMED WAIVED EXCEPT FOR GOOD CAUSE
43 AS DETERMINED BY THE ADMINISTRATIVE LAW JUDGE.

44 (V) IN THE EVENT THAT AT THE PRE-HEARING CONFERENCE THE EMPLOYING
45 BOARD PRESENTS EVIDENCE THAT THE PROFESSIONAL LICENSE OF THE EMPLOYEE
46 HAS BEEN REVOKED AND ALL JUDICIAL AND ADMINISTRATIVE REMEDIES HAVE BEEN
47 EXHAUSTED OR FORECLOSED, THE ADMINISTRATIVE LAW JUDGE SHALL SCHEDULE THE
48 DATE AND TIME FOR AN EXPEDITED HEARING, WHICH HEARING SHALL COMMENCE NOT
49 MORE THAN SEVEN DAYS AFTER THE PRE-HEARING CONFERENCE AND WHICH SHALL BE
50 LIMITED TO ONE DAY. THE EXPEDITED HEARING SHALL NOT BE POSTPONED EXCEPT
51 UPON THE REQUEST OF A PARTY AND THEN ONLY FOR GOOD CAUSE AS DETERMINED
52 BY THE ADMINISTRATIVE LAW JUDGE.

53 (VI) DURING THE PRE-HEARING CONFERENCE, THE ADMINISTRATIVE LAW JUDGE
54 SHALL DETERMINE THE REASONABLE AMOUNT OF TIME NECESSARY FOR A FINAL
55 HEARING ON THE CHARGE OR CHARGES AND SHALL SCHEDULE THE TIME OR TIMES
56 AND DATE OR DATES FOR THE FINAL HEARING. IN THE EVENT THAT THE ADMINIS-

1 TRATIVE LAW JUDGE DETERMINES THAT THE NATURE OF THE CASE REQUIRES THE
2 FINAL HEARING TO LAST MORE THAN ONE DAY, THE DAYS THAT ARE SCHEDULED FOR
3 THE FINAL HEARING SHALL BE CONSECUTIVE. THE DAY OR DAYS SCHEDULED FOR
4 THE FINAL HEARING SHALL NOT BE POSTPONED EXCEPT UPON THE REQUEST OF A
5 PARTY AND THEN ONLY FOR GOOD CAUSE SHOWN AS DETERMINED BY THE ADMINIS-
6 TRATIVE LAW JUDGE. IN ALL CASES, THE FINAL HEARING SHALL BE COMPLETED NO
7 LATER THAN THIRTY DAYS AFTER THE PRE-HEARING CONFERENCE UNLESS THE
8 ADMINISTRATIVE LAW JUDGE DETERMINES THAT EXTRAORDINARY CIRCUMSTANCES
9 WARRANT A LIMITED EXTENSION.

10 4. POST HEARING PROCEDURES. (A) THE ADMINISTRATIVE LAW JUDGE SHALL
11 RENDER A WRITTEN DECISION WITHIN TWENTY-FOUR HOURS OF THE LAST DAY OF
12 THE FINAL HEARING, OR IN THE CASE OF AN EXPEDITED HEARING WITHIN TWEN-
13 TY-FOUR HOURS OF SUCH EXPEDITED HEARING, AND SHALL FORTHWITH FORWARD A
14 COPY THEREOF TO THE COMMISSIONER OF EDUCATION WHO SHALL IMMEDIATELY
15 FORWARD COPIES OF THE DECISION TO THE EMPLOYEE AND TO THE CLERK OR
16 SECRETARY OF THE EMPLOYING BOARD. THE WRITTEN DECISION SHALL INCLUDE THE
17 ADMINISTRATIVE LAW JUDGE'S FINDINGS OF FACT ON EACH CHARGE, HIS OR HER
18 CONCLUSIONS WITH REGARD TO EACH CHARGE BASED ON SAID FINDINGS AND SHALL
19 STATE WHAT PENALTY OR OTHER ACTION, IF ANY, SHALL BE TAKEN BY THE
20 EMPLOYING BOARD. AT THE REQUEST OF THE EMPLOYEE, IN DETERMINING WHAT, IF
21 ANY, PENALTY OR OTHER ACTION SHALL BE IMPOSED, THE ADMINISTRATIVE LAW
22 JUDGE SHALL CONSIDER THE EXTENT TO WHICH THE EMPLOYING BOARD MADE
23 EFFORTS TOWARDS CORRECTING THE BEHAVIOR OF THE EMPLOYEE WHICH RESULTED
24 IN CHARGES BEING BROUGHT UNDER THIS SECTION THROUGH MEANS INCLUDING BUT
25 NOT LIMITED TO: REMEDIATION, PEER INTERVENTION OR AN EMPLOYEE ASSISTANCE
26 PLAN. IN THOSE CASES WHERE A PENALTY IS IMPOSED, SUCH PENALTY MAY BE A
27 WRITTEN REPRIMAND, A FINE, SUSPENSION FOR A FIXED TIME WITHOUT PAY, OR
28 DISMISSAL. IN ADDITION TO OR IN LIEU OF THE AFOREMENTIONED PENALTIES,
29 THE ADMINISTRATIVE LAW JUDGE, WHERE HE OR SHE DEEMS APPROPRIATE, MAY
30 IMPOSE UPON THE EMPLOYEE REMEDIAL ACTION INCLUDING BUT NOT LIMITED TO
31 LEAVES OF ABSENCE WITH OR WITHOUT PAY, CONTINUING EDUCATION AND/OR
32 STUDY, A REQUIREMENT THAT THE EMPLOYEE SEEK COUNSELING OR MEDICAL TREAT-
33 MENT OR THAT THE EMPLOYEE ENGAGE IN ANY OTHER REMEDIAL OR COMBINATION OF
34 REMEDIAL ACTIONS.

35 (B) WITHIN FIFTEEN DAYS OF RECEIPT OF THE ADMINISTRATIVE LAW JUDGE'S
36 DECISION THE EMPLOYING BOARD SHALL IMPLEMENT THE DECISION. IF THE
37 EMPLOYEE IS ACQUITTED HE OR SHE SHALL BE RESTORED TO HIS OR HER POSITION
38 WITH FULL PAY FOR ANY PERIOD OF SUSPENSION WITHOUT PAY AND THE CHARGES
39 EXPUNGED FROM THE EMPLOYMENT RECORD. IF AN EMPLOYEE WHO WAS CONVICTED OF
40 A FELONY CRIME SPECIFIED IN PARAGRAPH (B) OF SUBDIVISION TWO OF THIS
41 SECTION, HAS SAID CONVICTION REVERSED, THE EMPLOYEE, UPON APPLICATION,
42 SHALL BE ENTITLED TO HAVE HIS OR HER PAY AND OTHER EMOLUMENTS RESTORED,
43 FOR THE PERIOD FROM THE DATE OF HIS OR HER SUSPENSION TO THE DATE OF THE
44 DECISION.

45 (C) THE ADMINISTRATIVE LAW JUDGE SHALL INDICATE IN THE DECISION WHETH-
46 ER ANY OF THE CHARGES BROUGHT BY THE EMPLOYING BOARD WERE FRIVOLOUS AS
47 DEFINED IN SECTION EIGHT THOUSAND THREE HUNDRED THREE-A OF THE CIVIL
48 PRACTICE LAW AND RULES. IF THE ADMINISTRATIVE LAW JUDGE FINDS THAT ALL
49 OF THE CHARGES BROUGHT AGAINST THE EMPLOYEE WERE FRIVOLOUS, THE ADMINIS-
50 TRATIVE LAW JUDGE SHALL ORDER THE EMPLOYING BOARD TO REIMBURSE THE STATE
51 EDUCATION DEPARTMENT THE REASONABLE COSTS SAID DEPARTMENT INCURRED AS A
52 RESULT OF THE PROCEEDING AND TO REIMBURSE THE EMPLOYEE THE REASONABLE
53 COSTS, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES, THE
54 EMPLOYEE INCURRED IN DEFENDING THE CHARGES. IF THE ADMINISTRATIVE LAW
55 JUDGE FINDS THAT SOME BUT NOT ALL OF THE CHARGES BROUGHT AGAINST THE
56 EMPLOYEE WERE FRIVOLOUS, THE ADMINISTRATIVE LAW JUDGE SHALL ORDER THE

1 EMPLOYING BOARD TO REIMBURSE THE STATE EDUCATION DEPARTMENT A PORTION,
2 IN THE DISCRETION OF THE ADMINISTRATIVE LAW JUDGE, OF THE REASONABLE
3 COSTS SAID DEPARTMENT INCURRED AS A RESULT OF THE PROCEEDING AND TO
4 REIMBURSE THE EMPLOYEE A PORTION, IN THE DISCRETION OF THE ADMINISTRA-
5 TIVE LAW JUDGE, OF THE REASONABLE COSTS, INCLUDING BUT NOT LIMITED TO
6 REASONABLE ATTORNEYS' FEES, THE EMPLOYEE INCURRED IN DEFENDING THE
7 CHARGES.

8 5. APPEAL. NOT LATER THAN TEN DAYS AFTER RECEIPT OF THE ADMINISTRATIVE
9 LAW JUDGE'S DECISION, THE EMPLOYEE OR THE EMPLOYING BOARD MAY MAKE AN
10 APPLICATION TO THE NEW YORK STATE SUPREME COURT TO VACATE OR MODIFY THE
11 DECISION OF THE ADMINISTRATIVE LAW JUDGE PURSUANT TO SECTION SEVEN THOU-
12 SAND FIVE HUNDRED ELEVEN OF THE CIVIL PRACTICE LAW AND RULES. THE
13 COURT'S REVIEW SHALL BE LIMITED TO THE GROUNDS SET FORTH IN SUCH
14 SECTION. THE ADMINISTRATIVE LAW JUDGE'S DETERMINATION SHALL BE DEEMED TO
15 BE FINAL FOR THE PURPOSE OF SUCH PROCEEDING. IN NO CASE SHALL THE FILING
16 OR THE PENDENCY OF AN APPEAL DELAY THE IMPLEMENTATION OF THE DECISION OF
17 THE ADMINISTRATIVE LAW JUDGE.

18 S 3. Paragraph (t) of subdivision 1 of section 2590-f of the education
19 law, as amended by chapter 345 of the laws of 2009, is amended to read
20 as follows:

21 (t) notwithstanding any provisions of law to the contrary, to exercise
22 all of the duties and responsibilities of the employing board as set
23 forth in section [three thousand twenty-a] THREE THOUSAND TWENTY-B of
24 this chapter pursuant to a delegation of the chancellor under section
25 twenty-five hundred ninety-h of this article.

26 S 4. Paragraph (s) of subdivision 1 of section 2590-f of the education
27 law, as added by chapter 385 of the laws of 1998, is amended to read as
28 follows:

29 [(s)] (T) notwithstanding any provisions of law to the contrary, to
30 exercise all of the duties and responsibilities of the employing board
31 as set forth in section [three thousand twenty-a] THREE THOUSAND TWEN-
32 TY-B of this chapter pursuant to a delegation of the chancellor under
33 section twenty-five hundred ninety-h of this article.

34 S 5. Subdivision 38 of section 2590-h of the education law, as amended
35 by chapter 345 of the laws of 2009, is amended to read as follows:

36 38. To exercise all of the duties and responsibilities of the employ-
37 ing board as set forth in section [three thousand twenty-a] THREE THOU-
38 SAND TWENTY-B of this chapter with respect to any member of the teaching
39 or supervisory staff of schools under the jurisdiction of the community
40 district education councils. The chancellor shall exercise all such
41 duties and responsibilities for all community districts or may delegate
42 the exercise of all such duties and responsibilities to all of the
43 community superintendents of the city district.

44 S 6. Subdivision 38 of section 2590-h of the education law, as added
45 by chapter 385 of the laws of 1998, is amended to read as follows:

46 38. to exercise all of the duties and responsibilities of the employ-
47 ing board as set forth in section [three thousand twenty-a] THREE THOU-
48 SAND TWENTY-B of this chapter with respect to any member of the teaching
49 or supervisory staff of schools under the jurisdiction of the community
50 boards. The chancellor shall exercise all such duties and responsibil-
51 ities for all community districts or may delegate the exercise of all
52 such duties and responsibilities to all of the community superintendents
53 of the city district.

54 S 7. Subdivision 38-a of section 2590-h of the education law, as
55 amended by chapter 345 of the laws of 2009, is amended to read as
56 follows:

1 38-a. To exercise all of the duties and responsibilities of the
2 employing board as set forth in section [three thousand twenty-a] THREE
3 THOUSAND TWENTY-B of this chapter with respect to any member of the
4 teaching or supervisory staff of schools which are not covered under
5 subdivision thirty-eight of this section. Provided, however that the
6 city board shall maintain jurisdiction over any consequence resulting
7 from an employee waiver of a hearing, as provided for in paragraph (d)
8 of subdivision two of section [three thousand twenty-a] THREE THOUSAND
9 TWENTY-B of this chapter.

10 S 8. Subdivisions 7 and 8-a of section 2590-j of the education law,
11 subdivision 7 as amended by chapter 385 of the laws of 1998 and subdivi-
12 sion 8-a as amended by chapter 720 of the laws of 1996, are amended to
13 read as follows:

14 7. (a) No member of the teaching or supervisory staff of schools who
15 has served the full and appropriate probationary period prescribed by,
16 or in accordance with law, shall be found guilty of any charges except
17 after a hearing as provided by section [three thousand twenty-a] THREE
18 THOUSAND TWENTY-B of this chapter.

19 (b) Charges may be initiated by the community superintendent against
20 any such employee for any of the following offenses:

21 (1) Unauthorized absence from duty or excessive lateness;

22 (2) Neglect of duty;

23 (3) Conduct unbecoming his position, or conduct prejudicial to the
24 good order, efficiency or discipline of the service;

25 (4) Incompetent or inefficient service;

26 (5) A violation of the by-laws, rules or regulations of the city
27 board, chancellor, or the community board; or

28 (6) Any substantial cause that renders the employee unfit to perform
29 his obligations properly to the service.

30 (c) The community superintendent, in advance of the filing of charges
31 and specifications, shall inform the employee accused and the community
32 board of the nature of the complaint. No charge shall be brought outside
33 the statute of limitation period provided for in section [three thousand
34 twenty-a] THREE THOUSAND TWENTY-B of this chapter.

35 (d) Upon the service of a copy of the charges upon such employee, the
36 community superintendent may recommend to the chancellor the suspension
37 of any such employee. If the chancellor shall determine that the nature
38 of the charge requires the immediate removal of the employee from his
39 assigned duties, he may suspend such employee for a period not exceeding
40 ninety days pending hearing and determination of charges, provided
41 however, that such employee shall be entitled to receive full compen-
42 sation during the period of suspension. In case the employee is acquit-
43 ted, he shall be restored to his position.

44 8-a. Notwithstanding the provisions of subdivision eight of this
45 section, a community superintendent shall request the chancellor to
46 transfer a principal pursuant to subdivision twenty-five of section
47 twenty-five hundred ninety-h of this article, or to remove or otherwise
48 discipline the principal pursuant to section [three thousand twenty-a]
49 THREE THOUSAND TWENTY-B of this chapter, or to require the principal to
50 participate in training and staff development, or to take other actions
51 to promote student achievement and school performance, where appropri-
52 ate, consistent with the obligations of the superintendent pursuant to
53 section twenty-five hundred ninety-f and the provisions of section twen-
54 ty-five hundred ninety-i of this article.

55 S 9. The chancellor of the city district of the city of New York shall
56 refer all existing disciplinary hearings for teachers from such city

1 district to the New York City Office of Administrative Trials and Hear-
2 ings upon the effective date of this act.

3 S 10. This act shall take effect immediately, provided however the
4 amendments to paragraph (t) of subdivision 1 of section 2590-f of the
5 education law made by section three of this act shall be subject to the
6 expiration and reversion of such paragraph pursuant to section 34 of
7 chapter 91 of the laws of 2002, as amended, when upon such date the
8 provisions of section four of this act shall take effect, provided
9 further that the amendments to subdivision 38 of section 2590-h of the
10 education law made by section five of this act shall be subject to the
11 expiration and reversion of such subdivision pursuant to section 34 of
12 chapter 91 of the laws of 2002, as amended, when upon such date the
13 provisions of section six of this act shall take effect, provided
14 further, that the amendments to subdivision 38-a of section 2590-h of
15 the education law made by section seven of this act shall not affect the
16 repeal of such subdivision and shall be deemed to repeal therewith.