

7346

I N S E N A T E

March 31, 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 the 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 the education 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 Subdivision 3 of section 2588 of the education law is REPEALED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 TO THE CONTRARY,
11 WHENEVER THE CITY SCHOOL DISTRICT ABOLISHES TEACHING OR SUPERVISORY
12 POSITIONS CITYWIDE AS A RESULT OF A CITYWIDE BUDGET REDUCTION IN ACCORD-
13 ANCE WITH PARAGRAPH B OF SUBDIVISION FIVE-A OF SECTION TWENTY-FIVE
14 HUNDRED SEVENTY-SIX OF THIS ARTICLE AND THE MAINTENANCE OF EFFORT
15 REQUIREMENTS APPLICABLE TO THE CITY OF NEW YORK.
16 (I) DECISIONS CONCERNING WHICH POSITIONS WITHIN INDIVIDUAL SCHOOLS ARE
17 TO BE ABOLISHED, AND WHICH PERSONS OCCUPYING SUCH POSITIONS ARE TO BE
18 ABOLISHED, AND WHICH PERSONS OCCUPYING SUCH POSITIONS ARE TO BE LAID
19 OFF, SHALL BE MADE BY THE PRINCIPAL, CONSISTENT WITH GUIDANCE PROMULGAT-
20 ED BY THE CHANCELLOR PURSUANT TO THIS SECTION. THE PRINCIPAL SHALL MAKE
21 THE DECISION AFTER CONSIDERING THE RECOMMENDATIONS OF A SCHOOL-BASED
22 COMMITTEE COMPRISED OF TEACHERS, ADMINISTRATORS AND PARENTS. THE FOLLOW-
23 ING FACTORS SHALL BE CONSIDERED IN DETERMINING WHICH POSITIONS SHALL BE
24 ABOLISHED AND WHICH PERSONS OCCUPYING SUCH POSITIONS ARE TO BE LAID OFF:
25 (A) SCHOOL NEEDS FOR PARTICULAR LICENSE AREAS; AND (B) WHEN MORE THAN

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

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ONE PERSON HOLDS A POSITION WITHIN THE SAME LICENSE AREA: SIGNIFICANT RELEVANT CONTRIBUTIONS, ACCOMPLISHMENTS, OR PERFORMANCE OF EACH SUCH PERSON; RELEVANT SUPPLEMENTAL PROFESSIONAL EXPERIENCES OF EACH SUCH PERSON AS DEMONSTRATED ON THE JOB; OFFICE OR SCHOOL NEEDS, INCLUDING: CURRICULUM SPECIALIZED EDUCATION, DEGREES, LICENSES OR AREAS OF EXPERTISE; AND LENGTH OF SATISFACTORY SERVICE BY EACH SUCH PERSON.

(II) IN THE CASE OF TEACHERS OR SUPERVISORS WHO ARE ASSIGNED TO POSITIONS THAT ARE NOT WITHIN INDIVIDUAL SCHOOLS, OR WHO HAVE BEEN DISCIPLINED PURSUANT TO SECTION THREE THOUSAND TWENTY-A OF THIS CHAPTER AND ARE NOT ASSIGNED TO A FULL-TIME POSITION, THE CHANCELLOR SHALL DETERMINE WHETHER THE PERSON WILL BE LAID OFF PURSUANT TO GUIDANCE PROMULGATED BY THE CHANCELLOR.

(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, WHENEVER THE CITY SCHOOL DISTRICT ABOLISHES TEACHING OR SUPERVISORY POSITIONS AT INDIVIDUAL SCHOOLS IN ORDER TO MEET SCHOOL BUDGETARY NEEDS, REORGANIZE FUNCTIONS, OR FOR OTHER COMPELLING REASONS, OUTSIDE OF A CITYWIDE REDUCTION IN ACCORDANCE WITH PARAGRAPH (A) OF THIS SUBDIVISION, DECISIONS CONCERNING WHICH POSITIONS ARE TO BE ABOLISHED SHALL BE MADE BY THE PRINCIPAL, CONSISTENT WITH GUIDANCE PROMULGATED BY THE CHANCELLOR PURSUANT TO THIS SECTION. THE PRINCIPAL SHALL MAKE THE DECISION AFTER CONSIDERING THE RECOMMENDATIONS OF A SCHOOL-BASED COMMITTEE COMPRISED OF TEACHERS, ADMINISTRATORS AND PARENTS. THE FOLLOWING FACTORS SHALL BE CONSIDERED IN DETERMINING WHICH POSITIONS SHALL BE ABOLISHED AND WHICH PERSONS OCCUPYING SUCH POSITIONS ARE TO BE LAID OFF: (I) SCHOOL NEEDS FOR PARTICULAR LICENSE AREAS; AND (II) WHEN MORE THAN ONE PERSON HOLDS A POSITION WITHIN THE SAME LICENSE AREA: SIGNIFICANT RELEVANT CONTRIBUTIONS, ACCOMPLISHMENTS, OR PERFORMANCE OF EACH SUCH PERSON; RELEVANT SUPPLEMENTAL PROFESSIONAL EXPERIENCES OF EACH SUCH PERSON AS DEMONSTRATED ON THE JOB; OFFICE OR SCHOOL NEEDS, INCLUDING: CURRICULUM SPECIALIZED EDUCATION, DEGREES, LICENSES OR AREAS OF EXPERTISE; AND LENGTH OF SATISFACTORY SERVICE BY EACH SUCH PERSON. A TEACHER OR SUPERVISOR WHOSE POSITION IS ABOLISHED PURSUANT TO THIS SUBPARAGRAPH SHALL BE ELIGIBLE TO REMAIN EMPLOYED BY THE DISTRICT WITH NO DIMINUTION IN SALARY OR BENEFITS FOR ONE YEAR FROM THE DATE UPON WHICH THE PERSON'S POSITION WAS ABOLISHED, PROVIDED THAT (A) IF THE PERSON IS A NON-TENURED EMPLOYEE, THE PERSON'S PERFORMANCE HAS BEEN SATISFACTORY; (B) IF THE PERSON IS A TENURED EMPLOYEE, THE PERSON HAS NOT BEEN SUSPENDED WITHOUT PAY OR RECEIVED A PENALTY OF TERMINATION IN PROCEEDINGS PURSUANT TO SECTION THREE THOUSAND TWENTY-A OF THIS CHAPTER; AND (C) SHOULD CITYWIDE LAYOFFS IN ACCORDANCE WITH PARAGRAPH (A) OF THIS SUBDIVISION BE CARRIED OUT DURING THIS ONE-YEAR PERIOD, THE CHANCELLOR SHALL DETERMINE WHETHER THE PERSON WILL BE LAID OFF PURSUANT TO GUIDANCE PROMULGATED BY THE CHANCELLOR. NOTWITHSTANDING ANY OTHER LAWS TO THE CONTRARY, INCLUDING BUT NOT LIMITED TO SECTION THREE THOUSAND TWENTY AND THREE THOUSAND TWENTY-A OF THIS CHAPTER, AFTER THE EXPIRATION OF ONE YEAR, A TEACHER OR SUPERVISOR WHO REMAINS EMPLOYED BY THE DISTRICT PURSUANT TO THIS SUBPARAGRAPH SHALL BE TERMINATED AUTOMATICALLY UNLESS THE TEACHER OR SUPERVISOR HAS BEEN REGULARLY APPOINTED TO A NON-SUBSTITUTE POSITION IN THE DISTRICT.

(C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, WHENEVER THE CITY SCHOOL DISTRICT ABOLISHES TEACHING POSITIONS DUE TO THE CLOSURE OR PHASE-OUT OF A SCHOOL, A TEACHER OR SUPERVISOR WHOSE POSITION IS ABOLISHED PURSUANT TO THIS PARAGRAPH SHALL BE ELIGIBLE TO REMAIN EMPLOYED BY THE DISTRICT WITH NO DIMINUTION IN SALARY OR BENEFITS FOR ONE YEAR FROM THE DATE UPON WHICH THE TEACHER'S POSITION WAS ABOLISHED, PROVIDED THAT (I) IF THE PERSON IS A NON-TENURED EMPLOYEE, THE PERSON'S PERFORMANCE HAS BEEN SATISFACTORY; (II) IF THE PERSON IS A TENURED

1 EMPLOYEE, THE PERSON HAS NOT BEEN SUSPENDED WITHOUT PAY OR RECEIVED A
2 PENALTY OF TERMINATION IN PROCEEDINGS PURSUANT TO SECTION THREE THOUSAND
3 TWENTY-A OF THIS CHAPTER; AND (III) SHOULD CITYWIDE LAYOFFS IN ACCORD-
4 ANCE WITH PARAGRAPH (A) OF THIS SUBDIVISION BE CARRIED OUT DURING THIS
5 ONE-YEAR PERIOD, THE CHANCELLOR SHALL DETERMINE WHETHER THE PERSON WILL
6 BE LAID OFF PURSUANT TO GUIDANCE PROMULGATED BY THE CHANCELLOR. NOTWITH-
7 STANDING ANY OTHER LAWS TO THE CONTRARY, INCLUDING BUT NOT LIMITED TO
8 SECTION THREE THOUSAND TWENTY AND THREE THOUSAND TWENTY-A OF THIS CHAP-
9 TER, AFTER THE EXPIRATION OF ONE YEAR, A TEACHER OR SUPERVISOR WHO
10 REMAINS EMPLOYED BY THE DISTRICT PURSUANT TO THIS PARAGRAPH SHALL BE
11 TERMINATED AUTOMATICALLY UNLESS THE TEACHER OR SUPERVISOR HAS BEEN REGU-
12 LARLY APPOINTED TO A NON-SUBSTITUTE POSITION IN THE DISTRICT.

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

15 4. WHENEVER A TEACHING POSITION IS ABOLISHED PURSUANT TO SUBDIVISION
16 THREE OF THIS SECTION, SHOULD A VACANCY OCCUR IN THE SAME POSITION AT
17 THE SAME SCHOOL OR ADMINISTRATIVE OFFICE WITHIN ONE YEAR OF THE DATE
18 WHEN THE POSITION WAS ABOLISHED, THE PRINCIPAL, OR THE CHANCELLOR OR
19 DESIGNEE, SHALL OFFER THE POSITION TO THE PERSON WHO HELD THE POSITION
20 BEFORE IT WAS ABOLISHED. IF THE PERSON REJECTS THE OFFER, OR FAILS TO
21 RESPOND TO THE OFFER WITHIN THIRTY DAYS, THE PERSON SHALL NO LONGER HAVE
22 A RIGHT TO RETURN TO THE POSITION. IF MORE THAN ONE POSITION WAS ABOL-
23 IShed IN THE SAME LICENSE AREA AT THE SAME SCHOOL OR ADMINISTRATIVE
24 OFFICE, AND THERE ARE FEWER VACANCIES IN THE SAME LICENSE AREA THAN
25 PERSONS WHOSE POSITIONS WERE ABOLISHED, THE PRINCIPAL, THE CHANCELLOR OR
26 DESIGNEE, SHALL HAVE DISCRETION TO DETERMINE WHICH PERSON SHOULD BE
27 OFFERED THE POSITION FIRST.

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

29 S 6. Section 3013 of the education law, as added by chapter 737 of the
30 laws of 1992, is amended to read as follows:

31 S 3013. Abolition of office or position. 1. [If] EXCEPT IN THE CASE OF
32 TEACHING OR SUPERVISORY POSITIONS IN CITY SCHOOL DISTRICTS IN CITIES
33 WITH ONE MILLION INHABITANTS OR MORE, IF a trustee, board of trustees,
34 board of education or board of cooperative educational services abol-
35 ishes an office or position and creates another office or position for
36 the performance of duties similar to those performed in the office or
37 position abolished, the person filling such office or position at the
38 time of its abolishment shall be appointed to the office or position
39 thus created without reduction in salary or increment, provided the
40 record of such person has been one of faithful, competent service in the
41 office or position he or she has filled.

42 2. [Whenever] EXCEPT IN THE CASE OF TEACHING OR SUPERVISORY POSITIONS
43 IN CITY SCHOOL DISTRICTS IN CITIES WITH ONE MILLION INHABITANTS OR MORE,
44 WHENEVER a trustee, board of [trustee] TRUSTEES, board of education or
45 board of cooperative educational services abolishes a position under
46 this chapter, the services of the teacher having the least seniority in
47 the system within the tenure of the position abolished shall be discon-
48 tinued.

49 3. (a) [If] EXCEPT IN THE CASE OF TEACHING OR SUPERVISORY POSITIONS IN
50 CITY SCHOOL DISTRICTS IN CITIES WITH ONE MILLION INHABITANTS OR MORE, IF
51 an office or position is abolished or if it is consolidated with another
52 position without creating a new position, the person filling such posi-
53 tion at the time of its abolishment or consolidation shall be placed
54 upon a preferred eligible list of candidates for appointment to a vacan-
55 cy that then exists or that may thereafter occur in an office or posi-
56 tion similar to the one which such person filled without reduction in

1 salary or increment, provided the record of such person has been one of
2 faithful, competent service in the office or position he or she has
3 filled. The persons on such preferred list shall be reinstated or
4 appointed to such vacancies in such corresponding or similar positions
5 in the order of their length of service in the system at any time within
6 seven years from the date of abolition or consolidation of such office
7 or position.

8 (b) The persons on such preferred list shall be reinstated, in accord-
9 ance with the terms of paragraph (a) of this subdivision, to such
10 substitute positions of five months or more in duration, as may from
11 time to time occur without losing their preferred status on such list.
12 Declination of such reinstatement shall not adversely affect the
13 persons' preferred eligibility status.

14 4. IN CITY SCHOOL DISTRICTS OF CITIES WITH ONE MILLION INHABITANTS OR
15 MORE, ABOLITION OF TEACHING OR SUPERVISORY OFFICES OR POSITIONS SHALL BE
16 CONDUCTED IN ACCORDANCE WITH SECTION TWO THOUSAND FIVE HUNDRED
17 EIGHTY-EIGHT OF THIS CHAPTER.

18 S 7. This act shall take effect immediately.