S T A T E O F N E W Y O R K

7991

I N S E N A T E

May 28, 2010

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

AN ACT to amend the education law, in relation to the evaluation of teachers and principals; and to amend the education law, in relation to authorizing school districts to contract with educational partnership organizations to turn around certain low-performing schools

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

Section 1. The education law is amended by adding a new section 3012-c to read as follows:

S 3012-C. ANNUAL PROFESSIONAL PERFORMANCE REVIEW OF CLASSROOM TEACHERS AND BUILDING PRINCIPALS. 1. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION TO THE CONTRARY, THE ANNUAL PROFESSIONAL PERFORMANCE REVIEWS OF ALL CLASSROOM TEACHERS AND BUILDING PRINCIPALS EMPLOYED BY SCHOOL DISTRICTS OR BOARDS OF COOPERATIVE EDUCATIONAL SERVICES SHALL BE CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION. SUCH PERFORMANCE REVIEWS WHICH ARE CONDUCTED ON OR AFTER JULY FIRST, TWO THOUSAND ELEVEN, OR ON OR AFTER THE DATE SPECIFIED IN PARAGRAPH C OF SUBDIVISION TWO OF THIS SECTION WHERE APPLICABLE, SHALL INCLUDE MEASURES OF STUDENT ACHIEVEMENT AND BE CONDUCTED IN ACCORDANCE WITH THIS SECTION. SUCH ANNUAL PROFESSIONAL PERFORMANCE REVIEWS SHALL BE A SIGNIFICANT FACTOR FOR EMPLOYMENT DECISIONS INCLUDING BUT NOT LIMITED TO, PROMOTION, RETENTION, TENURE DETERMINATION, TERMINATION, AND SUPPLEMENTAL COMPENSATION, WHICH DECISIONS ARE TO BE MADE IN ACCORDANCE WITH LOCALLY DEVELOPED PROCEDURES NEGOTIATED PURSUANT TO THE REQUIREMENTS OF ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW. SUCH PERFORMANCE REVIEWS SHALL ALSO BE A SIGNIFICANT FACTOR IN TEACHER AND PRINCIPAL DEVELOPMENT, INCLUDING BUT NOT LIMITED TO, COACHING, INDUCTION SUPPORT AND DIFFERENTIATED PROFESSIONAL DEVELOPMENT, WHICH ARE TO BE LOCALLY ESTABLISHED IN ACCORDANCE WITH PROCEDURES NEGOTIATED PURSUANT TO THE REQUIREMENTS OF ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW.

2. A. THE ANNUAL PROFESSIONAL PERFORMANCE REVIEWS CONDUCTED PURSUANT TO THIS SECTION FOR CLASSROOM TEACHERS AND BUILDING PRINCIPALS SHALL DIFFERENTIATE TEACHER AND PRINCIPAL EFFECTIVENESS USING THE FOLLOWING

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

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QUALITY RATING CATEGORIES: HIGHLY EFFECTIVE, EFFECTIVE, DEVELOPING AND INEFFECTIVE, WITH EXPLICIT MINIMUM AND MAXIMUM SCORING RANGES FOR EACH CATEGORY, AS PRESCRIBED IN THE REGULATIONS OF THE COMMISSIONER. SUCH ANNUAL PROFESSIONAL PERFORMANCE REVIEWS SHALL RESULT IN A SINGLE COMPOSITE TEACHER OR PRINCIPAL EFFECTIVENESS SCORE, WHICH INCORPORATES MULTIPLE MEASURES OF EFFECTIVENESS RELATED TO THE CRITERIA INCLUDED IN THE REGULATIONS OF THE COMMISSIONER. EXCEPT FOR THE STUDENT GROWTH MEASURES PRESCRIBED IN PARAGRAPHS E, F AND G OF THIS SUBDIVISION, THE ELEMENTS COMPRISING THE COMPOSITE EFFECTIVENESS SCORE SHALL BE LOCALLY DEVELOPED, CONSISTENT WITH THE STANDARDS PRESCRIBED IN THE REGULATIONS OF THE COMMISSIONER, THROUGH NEGOTIATIONS CONDUCTED, PURSUANT TO THE REQUIREMENTS OF ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW.

B. ANNUAL PROFESSIONAL PERFORMANCE REVIEWS CONDUCTED BY SCHOOL DISTRICTS ON OR AFTER JULY FIRST, TWO THOUSAND ELEVEN OF CLASSROOM TEACHERS OF COMMON BRANCH SUBJECTS OR ENGLISH LANGUAGE ARTS OR MATHEMATICS IN GRADES FOUR TO EIGHT AND ALL BUILDING PRINCIPALS OF SCHOOLS IN WHICH SUCH TEACHERS ARE EMPLOYED SHALL BE CONDUCTED PURSUANT TO THIS SUBDIVISION AND SHALL USE TWO THOUSAND TEN--TWO THOUSAND ELEVEN SCHOOL YEAR STUDENT DATA AS THE BASELINE FOR THE INITIAL COMPUTATION OF THE COMPOSITE TEACHER OR PRINCIPAL EFFECTIVENESS SCORE FOR SUCH CLASSROOM TEACHERS AND PRINCIPALS.

C. ANNUAL PROFESSIONAL PERFORMANCE REVIEWS CONDUCTED BY SCHOOL DISTRICTS OR BOARDS OF COOPERATIVE EDUCATIONAL SERVICES ON OR AFTER JULY FIRST, TWO THOUSAND TWELVE OF ALL CLASSROOM TEACHERS AND ALL BUILDING PRINCIPALS SHALL BE CONDUCTED PURSUANT TO THIS SUBDIVISION AND SHALL USE TWO THOUSAND ELEVEN--TWO THOUSAND TWELVE SCHOOL YEAR STUDENT DATA AS THE BASELINE FOR THE INITIAL COMPUTATION OF THE COMPOSITE TEACHER OR PRINCIPAL EFFECTIVENESS SCORE FOR SUCH CLASSROOM TEACHERS AND PRINCIPALS. FOR PURPOSES OF THIS SECTION, AN ADMINISTRATOR IN CHARGE OF AN INSTRUCTIONAL PROGRAM OF A BOARD OF COOPERATIVE EDUCATIONAL SERVICES SHALL BE DEEMED TO BE A BUILDING PRINCIPAL.

D. PRIOR TO ANY EVALUATION BEING CONDUCTED IN ACCORDANCE WITH THIS SECTION, EACH INDIVIDUAL WHO IS RESPONSIBLE FOR CONDUCTING AN EVALUATION OF A TEACHER OR BUILDING PRINCIPAL SHALL RECEIVE APPROPRIATE TRAINING IN ACCORDANCE WITH THE REGULATIONS OF THE COMMISSIONER OF EDUCATION.

E. FOR ANNUAL PROFESSIONAL PERFORMANCE REVIEWS CONDUCTED IN ACCORDANCE WITH PARAGRAPH B OF THIS SUBDIVISION IN THE TWO THOUSAND ELEVEN--TWO THOUSAND TWELVE SCHOOL YEAR, FORTY PERCENT OF THE COMPOSITE SCORE OF EFFECTIVENESS SHALL BE BASED ON STUDENT ACHIEVEMENT MEASURES AS FOLLOWS: (I) TWENTY PERCENT OF THE EVALUATION SHALL BE BASED UPON STUDENT GROWTH DATA ON STATE ASSESSMENTS AS PRESCRIBED BY THE COMMISSIONER OR A COMPARABLE MEASURE OF STUDENT GROWTH IF SUCH GROWTH DATA IS NOT AVAILABLE; AND (II) TWENTY PERCENT SHALL BE BASED ON OTHER LOCALLY SELECTED MEASURES OF STUDENT ACHIEVEMENT THAT ARE DETERMINED TO BE RIGOROUS AND COMPARABLE ACROSS CLASSROOMS IN ACCORDANCE WITH THE REGULATIONS OF THE COMMISSIONER AND AS ARE DEVELOPED LOCALLY IN A MANNER CONSISTENT WITH PROCEDURES NEGOTIATED PURSUANT TO THE REQUIREMENTS OF ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW.

F. FOR ANNUAL PROFESSIONAL PERFORMANCE REVIEWS CONDUCTED IN ACCORDANCE WITH PARAGRAPH C OF THIS SUBDIVISION IN ANY SCHOOL YEAR PRIOR TO THE FIRST SCHOOL YEAR FOR WHICH THE BOARD OF REGENTS HAS APPROVED USE OF A VALUE-ADDED GROWTH MODEL, BUT NOT EARLIER THAN THE TWO THOUSAND TWELVE--TWO THOUSAND THIRTEEN SCHOOL YEAR, FORTY PERCENT OF THE COMPOSITE SCORE OF EFFECTIVENESS SHALL BE BASED ON STUDENT ACHIEVEMENT MEASURES AS FOLLOWS: (I) TWENTY PERCENT OF THE EVALUATION SHALL BE BASED UPON STUDENT GROWTH DATA ON STATE ASSESSMENTS AS PRESCRIBED BY THE COMMIS-

SIONER OR A COMPARABLE MEASURE OF STUDENT GROWTH IF SUCH GROWTH DATA IS NOT AVAILABLE; AND (II) TWENTY PERCENT SHALL BE BASED ON OTHER LOCALLY SELECTED MEASURES OF STUDENT ACHIEVEMENT THAT ARE DETERMINED TO BE RIGOROUS AND COMPARABLE ACROSS CLASSROOMS IN ACCORDANCE WITH THE REGULATIONS OF THE COMMISSIONER AND AS ARE DEVELOPED LOCALLY IN A MANNER CONSISTENT WITH PROCEDURES NEGOTIATED PURSUANT TO THE REQUIREMENTS OF ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW.

G. FOR ANNUAL PROFESSIONAL PERFORMANCE REVIEWS CONDUCTED IN ACCORDANCE WITH PARAGRAPH C OF THIS SUBDIVISION IN THE FIRST SCHOOL YEAR FOR WHICH THE BOARD OF REGENTS HAS APPROVED USE OF A VALUE-ADDED GROWTH MODEL AND THEREAFTER, FORTY PERCENT OF THE COMPOSITE SCORE OF EFFECTIVENESS SHALL BE BASED ON STUDENT ACHIEVEMENT MEASURES AS FOLLOWS: (I) TWENTY-FIVE PERCENT OF THE EVALUATION SHALL BE BASED UPON STUDENT GROWTH DATA ON STATE ASSESSMENTS AS PRESCRIBED BY THE COMMISSIONER OR A COMPARABLE MEASURE OF STUDENT GROWTH IF SUCH GROWTH DATA IS NOT AVAILABLE; AND (II) FIFTEEN PERCENT SHALL BE BASED ON OTHER LOCALLY SELECTED MEASURES OF STUDENT ACHIEVEMENT THAT ARE DETERMINED TO BE RIGOROUS AND COMPARABLE ACROSS CLASSROOMS IN ACCORDANCE WITH THE REGULATIONS OF THE COMMISSIONER AND AS ARE LOCALLY DEVELOPED IN A MANNER CONSISTENT WITH PROCEDURES NEGOTIATED PURSUANT TO THE REQUIREMENTS OF ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW. THE DEPARTMENT SHALL DEVELOP THE VALUE-ADDED GROWTH MODEL AND SHALL CONSULT WITH THE ADVISORY COMMITTEE ESTABLISHED PURSUANT TO SUBDIVISION SEVEN OF THIS SECTION PRIOR TO RECOMMENDING THAT THE BOARD OF REGENTS APPROVE ITS USE IN EVALUATIONS.

H. THE REMAINING PERCENT OF THE EVALUATIONS, RATINGS AND EFFECTIVENESS SCORES SHALL BE LOCALLY DEVELOPED, CONSISTENT WITH THE STANDARDS PRESCRIBED IN THE REGULATIONS OF THE COMMISSIONER, THROUGH NEGOTIATIONS CONDUCTED PURSUANT TO ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW.

I. FOR PURPOSES OF THIS SECTION, STUDENT GROWTH MEANS THE CHANGE IN STUDENT ACHIEVEMENT FOR AN INDIVIDUAL STUDENT BETWEEN TWO OR MORE POINTS IN TIME.

3. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO EXCUSE SCHOOL DISTRICTS OR BOARDS OF COOPERATIVE EDUCATIONAL SERVICES FROM COMPLYING WITH THE STANDARDS SET FORTH IN THE REGULATIONS OF THE COMMISSIONER FOR CONDUCTING ANNUAL PROFESSIONAL PERFORMANCE REVIEWS OF CLASSROOM TEACHERS OR PRINCIPALS, INCLUDING BUT NOT LIMITED TO REQUIRED QUALITY RATING CATEGORIES, IN CONDUCTING EVALUATIONS PRIOR TO JULY FIRST, TWO THOUSAND ELEVEN, OR, FOR CLASSROOM TEACHERS OR PRINCIPALS SUBJECT TO PARAGRAPH C OF SUBDIVISION TWO OF THIS SECTION, PRIOR TO JULY FIRST, TWO THOUSAND TWELVE.

4. NOTWITHSTANDING ANY OTHER LAW, RULE OR REGULATION TO THE CONTRARY, UPON RATING A TEACHER OR A PRINCIPAL AS DEVELOPING OR INEFFECTIVE THROUGH AN ANNUAL PROFESSIONAL PERFORMANCE REVIEW CONDUCTED PURSUANT TO SUBDIVISION TWO OF THIS SECTION, THE SCHOOL DISTRICT OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES SHALL FORMULATE AND COMMENCE IMPLEMENTATION OF A TEACHER OR PRINCIPAL IMPROVEMENT PLAN FOR SUCH TEACHER OR PRINCIPAL AS SOON AS PRACTICABLE BUT IN NO CASE LATER THAN TEN DAYS AFTER THE DATE ON WHICH TEACHERS ARE REQUIRED TO REPORT PRIOR TO THE OPENING OF CLASSES FOR THE SCHOOL YEAR. SUCH IMPROVEMENT PLAN SHALL BE CONSISTENT WITH THE REGULATIONS OF THE COMMISSIONER AND DEVELOPED LOCALLY THROUGH NEGOTIATIONS CONDUCTED PURSUANT TO ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW. SUCH IMPROVEMENT PLAN SHALL INCLUDE, BUT NEED NOT BE LIMITED TO, IDENTIFICATION OF NEEDED AREAS OF IMPROVEMENT, A TIMELINE FOR ACHIEVING IMPROVEMENT, THE MANNER IN WHICH IMPROVEMENT WILL BE ASSESSED, AND, WHERE APPROPRIATE, DIFFERENTIATED ACTIVITIES TO SUPPORT A TEACHER'S OR PRINCIPAL'S IMPROVEMENT IN THOSE AREAS.

5. AN APPEALS PROCEDURE SHALL BE LOCALLY ESTABLISHED IN EACH SCHOOL DISTRICT AND IN EACH BOARD OF COOPERATIVE EDUCATIONAL SERVICES BY WHICH THE EVALUATED TEACHER OR PRINCIPAL MAY ONLY CHALLENGE THE SUBSTANCE OF THE ANNUAL PROFESSIONAL PERFORMANCE REVIEW, THE SCHOOL DISTRICT'S OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES' ADHERENCE TO THE STANDARDS AND METHODOLOGIES REQUIRED FOR SUCH REVIEWS, PURSUANT TO THIS SECTION, THE ADHERENCE TO THE REGULATIONS OF THE COMMISSIONER AND COMPLIANCE WITH ANY APPLICABLE LOCALLY NEGOTIATED PROCEDURES, AS WELL AS THE SCHOOL DISTRICT'S OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES' ISSUANCE AND/OR IMPLEMENTATION OF THE TERMS OF THE TEACHER OR PRINCIPAL IMPROVEMENT PLAN, AS REQUIRED UNDER THIS SECTION. THE SPECIFICS OF THE APPEAL PROCEDURE SHALL BE LOCALLY ESTABLISHED THROUGH NEGOTIATIONS CONDUCTED PURSUANT TO ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW. AN EVALUATION WHICH IS THE SUBJECT OF AN APPEAL SHALL NOT BE SOUGHT TO BE OFFERED IN EVIDENCE OR PLACED IN EVIDENCE IN ANY PROCEEDING CONDUCTED PURSUANT TO EITHER SECTION THREE THOUSAND TWENTY-A OF THIS ARTICLE OR ANY LOCALLY NEGOTIATED ALTERNATE DISCIPLINARY PROCEDURE, UNTIL THE APPEAL PROCESS IS CONCLUDED.

6. FOR PURPOSES OF DISCIPLINARY PROCEEDINGS PURSUANT TO SECTIONS THREE THOUSAND TWENTY AND THREE THOUSAND TWENTY-A OF THIS ARTICLE, A PATTERN OF INEFFECTIVE TEACHING OR PERFORMANCE SHALL BE DEFINED TO MEAN TWO CONSECUTIVE ANNUAL INEFFECTIVE RATINGS RECEIVED BY A CLASSROOM TEACHER OR BUILDING PRINCIPAL PURSUANT TO ANNUAL PROFESSIONAL PERFORMANCE REVIEWS CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.

7. THE REGULATIONS ADOPTED PURSUANT TO THIS SECTION SHALL BE DEVELOPED IN CONSULTATION WITH AN ADVISORY COMMITTEE CONSISTING OF REPRESENTATIVES OF TEACHERS, PRINCIPALS, SUPERINTENDENTS OF SCHOOLS, SCHOOL BOARDS, SCHOOL DISTRICT AND BOARD OF COOPERATIVE EDUCATIONAL SERVICES OFFICIALS AND OTHER INTERESTED PARTIES. THE REGULATIONS SHALL ALSO TAKE INTO ACCOUNT ANY (I) PROFESSIONAL TEACHING STANDARDS; (II) STANDARDS FOR PROFESSIONAL CONTEXTS; AND (III) STANDARDS FOR A CONTINUUM OF SYSTEM SUPPORT FOR TEACHERS AND PRINCIPALS DEVELOPED IN CONSULTATION WITH THE ADVISORY COMMITTEE. REGULATIONS PROMULGATED PURSUANT TO THIS SECTION SHALL BE EFFECTIVE NO LATER THAN JULY FIRST, TWO THOUSAND ELEVEN, FOR IMPLEMENTATION IN THE TWO THOUSAND ELEVEN--TWO THOUSAND TWELVE SCHOOL YEAR.

8. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION TO THE CONTRARY, ALL COLLECTIVE BARGAINING AGREEMENTS APPLICABLE TO CLASSROOM TEACHERS OR BUILDING PRINCIPALS ENTERED INTO AFTER JULY FIRST, TWO THOUSAND TEN SHALL BE CONSISTENT WITH REQUIREMENTS OF THIS SECTION. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO ABROGATE ANY CONFLICTING PROVISIONS OF ANY COLLECTIVE BARGAINING AGREEMENT IN EFFECT ON JULY FIRST, TWO THOUSAND TEN DURING THE TERM OF SUCH AGREEMENT AND UNTIL THE ENTRY INTO A SUCCESSOR COLLECTIVE BARGAINING AGREEMENT, PROVIDED THAT NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, UPON EXPIRATION OF SUCH TERM AND THE ENTRY INTO A SUCCESSOR COLLECTIVE BARGAINING AGREEMENT THE PROVISIONS OF THIS SECTION SHALL APPLY. FURTHERMORE, NOTHING IN THIS SECTION OR IN ANY RULE OR REGULATION PROMULGATED HEREUNDER SHALL IN ANY WAY, ALTER, IMPAIR OR DIMINISH THE RIGHTS OF A LOCAL COLLECTIVE BARGAINING REPRESENTATIVE TO NEGOTIATE EVALUATION PROCEDURES IN ACCORDANCE WITH ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW WITH THE SCHOOL DISTRICT OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES.

S 2. Subdivisions 1 and 3 and paragraph a of subdivision 4 of section 3020 of the education law, subdivision 1 as added by chapter 691 of the laws of 1994, subdivision 3 as added by chapter 3 of the laws of 2000

and paragraph a of subdivision 4 as added by section 1 of part J of chapter 93 of the laws of 2002, are amended to read as follows:

1. No person enjoying the benefits of tenure shall be disciplined or removed during a term of employment except for just cause and in accordance with the procedures specified in section three thousand twenty-a of this article or in accordance with alternate disciplinary procedures contained in a collective bargaining agreement covering his or her terms and conditions of employment that was effective on or before September first, nineteen hundred ninety-four and has been unaltered by renegotiation, or in accordance with alternative disciplinary procedures contained in a collective bargaining agreement covering his or her terms and conditions of employment that becomes effective on or after September first, nineteen hundred ninety-four; provided, however, that any such alternate disciplinary procedures contained in a collective bargaining agreement that becomes effective on or after September first, nineteen hundred ninety-four, must provide for the written election by the employee of either the procedures specified in such section three thousand twenty-a or the alternative disciplinary procedures contained in the collective bargaining agreement and must result in a disposition of the disciplinary charge within the amount of time allowed therefor under such section three thousand twenty-a; AND PROVIDED FURTHER THAT ANY ALTERNATE DISCIPLINARY PROCEDURES CONTAINED IN A COLLECTIVE BARGAINING AGREEMENT THAT BECOMES EFFECTIVE ON OR AFTER JULY FIRST, TWO THOUSAND TEN SHALL PROVIDE FOR AN EXPEDITED HEARING PROCESS BEFORE A SINGLE HEARING OFFICER IN ACCORDANCE WITH SUBPARAGRAPH (I-A) OF PARAGRAPH C OF SUBDIVISION THREE OF SECTION THREE THOUSAND TWENTY-A OF THIS ARTICLE IN CASES IN WHICH CHARGES OF INCOMPETENCE ARE BROUGHT BASED SOLELY UPON AN ALLEGATION OF A PATTERN OF INEFFECTIVE TEACHING OR PERFORMANCE AS DEFINED IN SECTION THREE THOUSAND TWELVE-C OF THIS ARTICLE AND SHALL PROVIDE THAT SUCH A PATTERN OF INEFFECTIVE TEACHING OR PERFORMANCE SHALL CONSTITUTE VERY SIGNIFICANT EVIDENCE OF INCOMPETENCE WHICH MAY FORM THE BASIS FOR JUST CAUSE REMOVAL.

3. Notwithstanding any inconsistent provision of law, the procedures set forth in section three thousand twenty-a of this article and subdivision seven of section twenty-five hundred ninety-j of this chapter may be modified or replaced by agreements negotiated between the city school district of the city of New York and any employee organization representing employees or titles that are or were covered by any memorandum of agreement executed by such city school district and the council of supervisors and administrators of the city of New York on or after December first, nineteen hundred ninety-nine. Where such procedures are so modified or replaced: (i) compliance with such modification or replacement procedures shall satisfy any provision in this chapter that requires compliance with section three thousand twenty-a, (ii) any employee against whom charges have been preferred prior to the effective date of such modification or replacement shall continue to be subject to the provisions of such section as in effect on the date such charges were preferred, (iii) the provisions of subdivisions one and two of this section shall not apply to agreements negotiated pursuant to this subdivision, and (iv) in accordance with paragraph (e) of subdivision one of section two hundred nine-a of the civil service law, such modification or replacement procedures contained in an agreement negotiated pursuant to this subdivision shall continue as terms of such agreement after its expiration until a new agreement is negotiated; PROVIDED THAT ANY ALTERNATE DISCIPLINARY PROCEDURES CONTAINED IN A COLLECTIVE BARGAINING AGREEMENT THAT BECOMES EFFECTIVE ON OR AFTER JULY FIRST, TWO THOUSAND TEN

SHALL PROVIDE FOR AN EXPEDITED HEARING PROCESS BEFORE A SINGLE HEARING OFFICER IN ACCORDANCE WITH SUBPARAGRAPH (I-A) OF PARAGRAPH C OF SUBDIVISION THREE OF SECTION THREE THOUSAND TWENTY-A OF THIS ARTICLE IN CASES IN WHICH CHARGES OF INCOMPETENCE ARE BROUGHT AGAINST A BUILDING PRINCIPAL BASED SOLELY UPON AN ALLEGATION OF A PATTERN OF INEFFECTIVE TEACHING OR PERFORMANCE AS DEFINED IN SECTION THREE THOUSAND TWELVE-C OF THIS ARTICLE AND SHALL PROVIDE THAT SUCH A PATTERN OF INEFFECTIVE TEACHING OR PERFORMANCE SHALL CONSTITUTE VERY SIGNIFICANT EVIDENCE OF INCOMPETENCE WHICH MAY FORM THE BASIS FOR JUST CAUSE REMOVAL OF THE BUILDING PRINCIPAL. Notwithstanding any inconsistent provision of law, the commissioner [of education] shall review any appeals authorized by such modification or replacement procedures within fifteen days from receipt by such commissioner of the record of prior proceedings in the matter subject to appeal. Such review shall have preference over all other appeals or proceedings pending before such commissioner.

a. Notwithstanding any inconsistent provision of law, the procedures set forth in section three thousand twenty-a of this article and subdivision seven of section twenty-five hundred ninety-j of this chapter may be modified by agreements negotiated between the city school district of the city of New York and any employee organization representing employees or titles that are or were covered by any memorandum of agreement executed by such city school district and the united federation of teachers on or after June tenth, two thousand two. Where such procedures are so modified: (i) compliance with such modified procedures shall satisfy any provision of this chapter that requires compliance with section three thousand twenty-a of this article; (ii) any employee against whom charges have been preferred prior to the effective date of such modification shall continue to be subject to the provisions of such section as in effect on the date such charges were preferred; (iii) the provisions of subdivisions one and two of this section shall not apply to agreements negotiated pursuant to this subdivision, except that no person enjoying the benefits of tenure shall be disciplined or removed during a term of employment except for just cause; and (iv) in accordance with paragraph (e) of subdivision one of section two hundred nine-a of the civil service law, such modified procedures contained in an agreement negotiated pursuant to this subdivision shall continue as terms of such agreement after its expiration until a new agreement is negotiated; AND PROVIDED FURTHER THAT ANY ALTERNATE DISCIPLINARY PROCEDURES CONTAINED IN A COLLECTIVE BARGAINING AGREEMENT THAT BECOMES EFFECTIVE ON OR AFTER JULY FIRST, TWO THOUSAND TEN SHALL PROVIDE FOR AN EXPEDITED HEARING PROCESS BEFORE A SINGLE HEARING OFFICER IN ACCORDANCE WITH SUBPARAGRAPH (I-A) OF PARAGRAPH C OF SUBDIVISION THREE OF SECTION THREE THOUSAND TWENTY-A OF THIS ARTICLE IN CASES IN WHICH CHARGES OF INCOMPETENCE ARE BROUGHT BASED SOLELY UPON AN ALLEGATION OF A PATTERN OF INEFFECTIVE TEACHING OR PERFORMANCE AS DEFINED IN SECTION THREE THOUSAND TWELVE-C OF THIS ARTICLE AND SHALL PROVIDE THAT SUCH A PATTERN OF INEFFECTIVE TEACHING OR PERFORMANCE SHALL CONSTITUTE VERY SIGNIFICANT EVIDENCE OF INCOMPETENCE WHICH MAY FORM THE BASIS FOR JUST CAUSE REMOVAL.

S 3. Paragraph (c) of subdivision 2 of section 3020-a of the education law, as amended by chapter 691 of the laws of 1994, is amended to read as follows:

(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, PROVIDED THAT A THREE MEMBER PANEL SHALL NOT BE AVAILABLE WHERE THE CHARGES CONCERN PEDAGOGICAL INCOMPETENCE BASED SOLELY UPON A TEACHER'S OR PRINCIPAL'S PATTERN OF INEFFECTIVE TEACHING OR PERFORMANCE AS DEFINED IN SECTION THREE THOUSAND TWELVE-C OF THIS ARTICLE. All other charges shall be heard by a single hearing officer.

S 4. Paragraph a of subdivision 3 of section 3020-a of the education law, as amended by chapter 691 of the laws of 1994, is amended to read as follows:

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. THE COMMISSIONER SHALL ALSO SIMULTANEOUSLY NOTIFY BOTH THE EMPLOYING BOARD AND THE EMPLOYEE OF EACH POTENTIAL HEARING OFFICER'S RECORD IN THE LAST FIVE CASES OF COMMENCING AND COMPLETING HEARINGS WITHIN THE TIME PERIODS PRESCRIBED IN THIS SECTION.

S 5. Paragraph c of subdivision 3 of section 3020-a of the education law is amended by adding a new subparagraph (i-a) to read as follows:

(I-A)(A) WHERE CHARGES OF INCOMPETENCE ARE BROUGHT BASED SOLELY UPON A PATTERN OF INEFFECTIVE TEACHING OR PERFORMANCE OF A CLASSROOM TEACHER OR PRINCIPAL, AS DEFINED IN SECTION THREE THOUSAND TWELVE-C OF THIS ARTICLE, THE HEARING SHALL BE CONDUCTED BEFORE AND BY A SINGLE HEARING OFFICER IN AN EXPEDITED HEARING, WHICH SHALL COMMENCE WITHIN SEVEN DAYS AFTER THE PRE-HEARING CONFERENCE AND SHALL BE COMPLETED WITHIN SIXTY DAYS AFTER THE PRE-HEARING CONFERENCE. THE HEARING OFFICER SHALL ESTABLISH A HEARING SCHEDULE AT THE PRE-HEARING CONFERENCE TO ENSURE THAT THE EXPEDITED HEARING IS COMPLETED WITHIN THE REQUIRED TIMEFRAMES AND TO ENSURE AN EQUITABLE DISTRIBUTION OF DAYS BETWEEN THE EMPLOYING BOARD AND THE CHARGED EMPLOYEE. NOTWITHSTANDING ANY OTHER LAW, RULE OR REGULATION TO THE CONTRARY, NO ADJOURNMENTS MAY BE GRANTED THAT WOULD EXTEND THE HEARING BEYOND SUCH SIXTY DAYS, EXCEPT AS AUTHORIZED IN THIS SUBPARAGRAPH. A HEARING OFFICER, UPON REQUEST, MAY GRANT A LIMITED AND TIME SPECIFIC ADJOURNMENT THAT WOULD EXTEND THE HEARING BEYOND SUCH SIXTY DAYS IF THE HEARING OFFICER DETERMINES THAT THE DELAY IS ATTRIBUTABLE TO A CIRCUMSTANCE OR OCCURRENCE SUBSTANTIALLY BEYOND THE CONTROL OF THE REQUESTING PARTY AND AN INJUSTICE WOULD RESULT IF THE ADJOURNMENT WERE NOT GRANTED.

(B) SUCH CHARGES SHALL ALLEGE THAT THE EMPLOYING BOARD HAS DEVELOPED AND SUBSTANTIALLY IMPLEMENTED A TEACHER OR PRINCIPAL IMPROVEMENT PLAN IN ACCORDANCE WITH SUBDIVISION FOUR OF SECTION THREE THOUSAND TWELVE-C OF THIS ARTICLE FOR THE EMPLOYEE FOLLOWING THE FIRST EVALUATION IN WHICH THE EMPLOYEE WAS RATED INEFFECTIVE, AND THE IMMEDIATELY PRECEDING EVALUATION IF THE EMPLOYEE WAS RATED DEVELOPING. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, A PATTERN OF INEFFECTIVE TEACHING OR PERFORMANCE AS DEFINED IN SECTION THREE THOUSAND TWELVE-C OF THIS ARTICLE SHALL CONSTITUTE VERY SIGNIFICANT EVIDENCE OF INCOMPETENCE FOR PURPOSES OF THIS SECTION. NOTHING IN THIS SUBPARAGRAPH SHALL BE CONSTRUED TO LIMIT THE DEFENSES WHICH THE EMPLOYEE MAY PLACE BEFORE THE

HEARING OFFICER IN CHALLENGING THE ALLEGATION OF A PATTERN OF INEFFECTIVE TEACHING OR PERFORMANCE.

(C) THE COMMISSIONER SHALL ANNUALLY INFORM ALL HEARING OFFICERS WHO HAVE HEARD CASES PURSUANT TO THIS SECTION DURING THE PRECEDING YEAR THAT THE TIME PERIODS PRESCRIBED IN THIS SUBPARAGRAPH FOR CONDUCTING EXPEDITED HEARINGS ARE TO BE STRICTLY FOLLOWED. A RECORD OF CONTINUED FAILURE TO COMMENCE AND COMPLETE EXPEDITED HEARINGS WITHIN THE TIME PERIODS PRESCRIBED IN THIS SUBPARAGRAPH SHALL BE CONSIDERED GROUNDS FOR THE COMMISSIONER TO EXCLUDE SUCH INDIVIDUAL FROM THE LIST OF POTENTIAL HEARING OFFICERS SENT TO THE EMPLOYING BOARD AND THE EMPLOYEE FOR SUCH EXPEDITED HEARINGS.

S 6. The education law is amended by adding a new section 211-e to read as follows:

S 211-E. EDUCATIONAL PARTNERSHIP ORGANIZATIONS. 1. THE BOARD OF EDUCATION OF A SCHOOL DISTRICT, AND THE CHANCELLOR OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, SUBJECT TO THE APPROVAL OF THE COMMISSIONER, SHALL BE AUTHORIZED TO CONTRACT, FOR A TERM OF UP TO FIVE YEARS, WITH AN EDUCATIONAL PARTNERSHIP ORGANIZATION PURSUANT TO THIS SECTION TO INTERVENE IN A SCHOOL DESIGNATED BY THE COMMISSIONER AS A PERSISTENTLY LOWEST-ACHIEVING SCHOOL, CONSISTENT WITH FEDERAL REQUIREMENTS, OR A SCHOOL UNDER REGISTRATION REVIEW.

2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION TO THE CONTRARY, AND EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, SUCH CONTRACT SHALL CONTAIN PROVISIONS AUTHORIZING THE EDUCATIONAL PARTNERSHIP ORGANIZATION TO ASSUME THE POWERS AND DUTIES OF THE SUPERINTENDENT OF SCHOOLS FOR PURPOSES OF IMPLEMENTING THE EDUCATIONAL PROGRAM OF THE SCHOOL, INCLUDING BUT NOT LIMITED TO, MAKING RECOMMENDATIONS TO THE BOARD OF EDUCATION ON BUDGETARY DECISIONS, STAFFING POPULATION DECISIONS, STUDENT DISCIPLINE DECISIONS, DECISIONS ON CURRICULUM AND DETERMINING THE DAILY SCHEDULE AND SCHOOL CALENDAR, ALL OF WHICH RECOMMENDATIONS SHALL BE CONSISTENT WITH APPLICABLE COLLECTIVE BARGAINING AGREEMENTS. SUCH CONTRACT SHALL INCLUDE DISTRICT PERFORMANCE EXPECTATIONS AND/OR BENCHMARKS FOR SCHOOL OPERATIONS AND ACADEMIC OUTCOMES, AND FAILURE TO MEET SUCH EXPECTATIONS OR BENCHMARKS MAY BE GROUNDS FOR TERMINATION OF THE CONTRACT PRIOR TO THE EXPIRATION OF ITS TERM. SUCH CONTRACT SHALL ALSO ADDRESS THE MANNER IN WHICH STUDENTS WILL BE ASSIGNED TO THE SCHOOL, THE PROCESS FOR EMPLOYEES TO TRANSFER INTO THE SCHOOL, THE SERVICES THAT THE DISTRICT WILL PROVIDE TO THE SCHOOL, AND THE MANNER IN WHICH THE SCHOOL SHALL APPLY FOR AND RECEIVE ALLOCATIONAL AND COMPETITIVE GRANTS.

3. THE BOARD OF EDUCATION SHALL RETAIN THE ULTIMATE DECISION-MAKING AUTHORITY OVER THE HIRING, EVALUATING, TERMINATION, DISCIPLINING, GRANTING OF TENURE, ASSIGNMENT OF EMPLOYEES SERVING IN THE SCHOOL AS WELL AS WITH RESPECT TO STAFF DEVELOPMENT FOR THOSE EMPLOYEES, TOGETHER WITH AUTHORITY CONCERNING ALL OTHER TERMS AND CONDITIONS OF EMPLOYMENT, ALL OF WHICH DECISIONS SHALL BE MADE IN A MANNER CONSISTENT WITH APPLICABLE COLLECTIVE BARGAINING AGREEMENTS. HOWEVER, NOTWITHSTANDING ANY LAW, RULE OR REGULATION TO THE CONTRARY, UPON THE EFFECTIVE DATE OF THE CONTRACT, THE EDUCATIONAL PARTNERSHIP ORGANIZATION SHALL BE AUTHORIZED TO EXERCISE ALL POWERS OF A SUPERINTENDENT OF SCHOOLS WITH RESPECT TO SUCH EMPLOYMENT DECISIONS, INCLUDING BUT NOT LIMITED TO MAKING RECOMMENDATIONS, AS APPLICABLE, TO THE BOARD OF EDUCATION IN CONNECTION WITH AND PRIOR TO THE BOARD OF EDUCATION MAKING DECISIONS REGARDING STAFF ASSIGNMENTS, THE HIRING, THE GRANTING OF TENURE, THE EVALUATING, THE DISCIPLINING AND TERMINATION OF EMPLOYEES, AS WELL AS CONCERNING STAFF DEVELOPMENT. THE EMPLOYEES ASSIGNED TO THE SCHOOL SHALL SOLELY BE IN THE EMPLOY OF THE

SCHOOL DISTRICT AND SHALL RETAIN THEIR TENURE RIGHTS AND ALL OTHER EMPLOYMENT RIGHTS CONFERRED BY LAW, AND SERVICE IN THE SCHOOL SHALL CONSTITUTE SERVICE TO THE SCHOOL DISTRICT FOR ALL PURPOSES, INCLUDING BUT NOT LIMITED TO, THE REQUIREMENTS FOR CRIMINAL HISTORY RECORD CHECKS AND PARTICIPATION IN PUBLIC RETIREMENT SYSTEMS. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, FOR PURPOSES OF ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW, EMPLOYEES IN THE SCHOOL SHALL BE PUBLIC EMPLOYEES OF THE SCHOOL DISTRICT AS DEFINED IN SUBDIVISION SEVEN OF SECTION TWO HUNDRED ONE OF THE CIVIL SERVICE LAW AND SHALL NOT BE DEEMED EMPLOYEES OF THE EDUCATIONAL PARTNERSHIP ORGANIZATION BY REASON OF THE POWERS GRANTED TO THE EDUCATIONAL PARTNERSHIP ORGANIZATION BY THIS SECTION. ALL SUCH EMPLOYEES SHALL BE MEMBERS OF THE APPLICABLE NEGOTIATING UNIT CONTAINING LIKE TITLES OR POSITIONS FOR THE PUBLIC SCHOOL DISTRICT IN WHICH SUCH SCHOOL IS LOCATED, AND SHALL BE COVERED BY THE COLLECTIVE BARGAINING AGREEMENT COVERING THAT PUBLIC SCHOOL DISTRICT'S NEGOTIATING UNIT, EXCEPT THAT THE DULY RECOGNIZED OR CERTIFIED COLLECTIVE BARGAINING REPRESENTATIVE FOR THAT NEGOTIATING UNIT MAY MODIFY OR SUPPLEMENT, IN WRITING, THE COLLECTIVE BARGAINING AGREEMENT IN CONSULTATION WITH THE EMPLOYEES OF THE NEGOTIATING UNIT WORKING IN THE SCHOOL. ALL SUCH MODIFICATIONS OF, OR SUPPLEMENTS TO THE COLLECTIVE BARGAINING AGREEMENT ARE SUBJECT TO RATIFICATION BY THE EMPLOYEES EMPLOYED WITHIN THE SCHOOL AND BY THE BOARD OF EDUCATION OF THE PUBLIC SCHOOL DISTRICT, CONSISTENT WITH ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW. UPON THE EFFECTIVE DATE OF THE SCHOOL DISTRICT'S CONTRACT WITH THE EDUCATIONAL PARTNERSHIP ORGANIZATION, THE EDUCATIONAL PARTNERSHIP ORGANIZATION SHALL BE EMPOWERED TO MAKE RECOMMENDATIONS TO THE BOARD OF EDUCATION WITH RESPECT TO THE SCOPE OF, AND PROCESS FOR MAKING MODIFICATIONS AND ADDITIONS TO THE COLLECTIVE BARGAINING AGREEMENT.

4. WHERE A RECOMMENDATION IS MADE BY THE EDUCATIONAL PARTNERSHIP ORGANIZATION TO THE BOARD OF EDUCATION PURSUANT TO SUBDIVISION TWO OR THREE OF THIS SECTION, AND SUCH RECOMMENDATION IS DENIED, THE BOARD OF EDUCATION SHALL STATE ITS REASONS FOR THE DENIAL, WHICH SHALL INCLUDE AN EXPLANATION OF HOW SUCH DENIAL WILL PROMOTE IMPROVEMENT OF STUDENT ACHIEVEMENT IN THE SCHOOL AND HOW SUCH ACTION IS CONSISTENT WITH ALL ACCOUNTABILITY PLANS APPROVED BY THE COMMISSIONER FOR THE SCHOOL AND THE SCHOOL DISTRICT. NOTHING IN THIS SUBDIVISION SHALL BE CONSTRUED TO PREVENT A BOARD OF EDUCATION FROM DENYING A RECOMMENDATION OF THE EDUCATIONAL PARTNERSHIP ORGANIZATION BASED UPON THE BOARD OF EDUCATION'S DETERMINATION THAT CARRYING OUT SUCH RECOMMENDATION WOULD RESULT IN A VIOLATION OF LAW OR VIOLATION OF THE TERMS OF AN APPLICABLE COLLECTIVE BARGAINING AGREEMENT. IF THE BOARD OF EDUCATION REJECTS A RECOMMENDATION OF THE EDUCATIONAL PARTNERSHIP ORGANIZATION TO TERMINATE A PROBATIONARY EMPLOYEE ASSIGNED TO THE SCHOOL OR TO DENY TENURE TO AN EMPLOYEE ASSIGNED TO THE SCHOOL, IT SHALL BE THE DUTY OF THE BOARD OF EDUCATION TO TRANSFER SUCH EMPLOYEE TO ANOTHER POSITION IN THE SCHOOL DISTRICT WITHIN SUCH EMPLOYEE'S TENURE AREA FOR WHICH THE EMPLOYEE IS QUALIFIED, OR TO CREATE SUCH A POSITION.

5. FOR PURPOSES OF THIS SECTION THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(I) "EDUCATIONAL PARTNERSHIP ORGANIZATION" MEANS A BOARD OF COOPERATIVE EDUCATIONAL SERVICES, A PUBLIC OR INDEPENDENT, NON-PROFIT INSTITUTION OF HIGHER EDUCATION, A CULTURAL INSTITUTION, OR A PRIVATE, NON-PROFIT ORGANIZATION WITH A PROVEN RECORD OF SUCCESS IN INTERVENING IN LOW-PERFORMING SCHOOLS, AS DETERMINED BY THE COMMISSIONER, PROVIDED THAT SUCH TERM SHALL NOT INCLUDE A CHARTER SCHOOL;

(II) "BOARD OF EDUCATION" MEANS THE TRUSTEES OR BOARD OF EDUCATION OF A SCHOOL DISTRICT, OR, IN THE CASE OF A CITY SCHOOL DISTRICT OF A CITY HAVING A POPULATION OF ONE MILLION OR MORE, THE CHANCELLOR OF SUCH CITY DISTRICT;

(III) "SCHOOL DISTRICT" MEANS A COMMON, UNION FREE, CENTRAL, CENTRAL HIGH SCHOOL OR CITY SCHOOL DISTRICT, OTHER THAN A SPECIAL ACT SCHOOL DISTRICT AS DEFINED IN SECTION FOUR THOUSAND ONE OF THIS CHAPTER.

(IV) "SUPERINTENDENT OF SCHOOLS" MEANS THE SUPERINTENDENT OF SCHOOLS OF A SCHOOL DISTRICT, AND, IN THE CASE OF A CITY SCHOOL DISTRICT OF A CITY HAVING A POPULATION OF ONE MILLION OR MORE, A COMMUNITY SUPERINTENDENT AND THE CHANCELLOR OF SUCH CITY DISTRICT WHEN ACTING IN THE ROLE OF A SUPERINTENDENT OF SCHOOLS.

S 7. This act shall take effect immediately; provided however that the provisions of sections one, two, three, four and five of this act shall take effect July 1, 2010, provided, further, if this act shall become a law after such date it shall take effect immediately and shall be deemed to have been in full force and effect on and after July 1, 2010.