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

6150

2011-2012 Regular Sessions

I N A S S E M B L Y

March 8, 2011

Introduced by M. of A. BING, HOYT, BOYLAND, MAYERSOHN, PEOPLES-STOKES, J. MILLER, FITZPATRICK, KATZ -- read once and referred 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:

Section 1. This act shall be known and may be cited as the "keep effective and excellent professionals in the classroom act".

S 2. The section heading of section 2588 of the education law, as added by chapter 521 of the laws of 1976, is amended to read as follows:

Seniority, retention and displacement rights in connection with abolition of positions in city school districts of cities having [more than] one million inhabitants OR MORE.

S 3. Subdivision 3 of section 2588 of the education law is REPEALED and a new subdivision 3 is added to read as follows:

3. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION TO THE CONTRARY, THE CITY SCHOOL DISTRICT AND ITS EMPLOYEES' COLLECTIVE BARGAINING AGENTS SHALL ESTABLISH A PROCEDURE GOVERNING THE ABOLISHMENT OR REDUCTION OF TEACHING OR SUPERVISORY POSITIONS CITYWIDE PURSUANT TO THE REQUIREMENTS OF ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW. ANY SUCH LOCALLY ESTABLISHED PROCESS SHALL NOT PERMIT AN EMPLOYEE'S LENGTH OF SERVICE TO BE THE SOLE FACTOR IN ANY DECISION REGARDING WHICH POSITIONS ARE TO BE ABOLISHED AND WHICH PERSONS OCCUPYING SUCH POSITIONS SHALL BE LAID OFF; PROVIDED, HOWEVER, THAT ANY CONSIDERATION OF AN EMPLOYEE'S LENGTH OF FAITHFUL AND COMPETENT SERVICE AS A FACTOR FOR THE ABOLISHMENT OF POSITIONS OR PERSONS TO BE LAID OFF OCCUPYING SUCH POSITIONS MAY ONLY BE CONSIDERED IN A MANNER BENEFICIAL TO AN EMPLOYEE AND THAT ANY SUCH

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

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

(I) THE FOLLOWING TEACHERS OR SUPERVISORS SHALL BE LAID OFF PRIOR TO ANY OTHER TEACHERS OR SUPERVISORS: (A) ANY TEACHER OR SUPERVISOR WHO RECEIVED A RATING OF "UNSATISFACTORY" ON HIS OR HER ANNUAL PROFESSIONAL PERFORMANCE REVIEW IN THE LAST FIVE SCHOOL YEARS OR "INEFFECTIVE" IN THE EVENT A NEW ANNUAL PROFESSIONAL PERFORMANCE REVIEW HAS BEEN IMPLEMENTED PURSUANT TO SECTION THREE THOUSAND TWELVE-C OF THIS CHAPTER; (B) ANY TEACHER OR SUPERVISOR, IF THE PERSON IS A TENURED EMPLOYEE, WHO WITHIN THE LAST FIVE YEARS HAS BEEN FINED OR SUSPENDED WITHOUT PAY AS A PENALTY IMPOSED PURSUANT TO SECTION THREE THOUSAND TWENTY-A OF THIS CHAPTER OR AS A RESULT OF A SETTLEMENT OF CHARGES BROUGHT PURSUANT TO SECTION THREE THOUSAND TWENTY-A OF THIS CHAPTER; (C) ANY TEACHER OR SUPERVISOR NOT CURRENTLY APPOINTED TO A REGULAR POSITION IN A SCHOOL FOR A PERIOD OF SIX MONTHS OR MORE AS OF THE EFFECTIVE DATE OF ANY CITYWIDE LAYOFF PURSUANT TO THIS SECTION; (D) ANY TEACHER OR SUPERVISOR CONVICTED OF A QUALIFYING CRIMINAL OFFENSE IN THE PAST FIVE YEARS. "QUALIFYING CRIMINAL OFFENSE" SHALL MEAN: (1) ANY FELONY, ANY CLASS A MISDEMEANOR, OR ANY CLASS B MISDEMEANOR UNDER ARTICLE ONE HUNDRED TWENTY, ONE HUNDRED THIRTY, ONE HUNDRED THIRTY-FIVE, ONE HUNDRED FORTY, ONE HUNDRED FIFTY-FIVE, TWO HUNDRED TWENTY, TWO HUNDRED THIRTY, TWO HUNDRED FORTY-FIVE, TWO HUNDRED SIXTY, TWO HUNDRED SIXTY-THREE OR TWO HUNDRED SIXTY-FIVE OF THE PENAL LAW, OR A FELONY OR MISDEMEANOR UNDER SECTIONS ELEVEN HUNDRED NINETY-TWO AND ELEVEN HUNDRED NINETY-THREE OF THE VEHICLE AND TRAFFIC LAW, OR (2) ANY OFFENSE IN ANY OTHER JURISDICTION FOR WHICH A SENTENCE TO A TERM OF IMPRISONMENT OF ONE YEAR OR OF MORE THAN ONE YEAR WAS AUTHORIZED AND IS AUTHORIZED IN THIS STATE IRRESPECTIVE OF WHETHER SUCH SENTENCE WAS IMPOSED, OR (3) ANY OFFENSE IN ANY OTHER JURISDICTION THE COMMISSION OF WHICH CONSTITUTES THE SUBSTANTIAL EQUIVALENT OF ANY OFFENSE UNDER ARTICLE ONE HUNDRED TWENTY, ONE HUNDRED THIRTY, ONE HUNDRED THIRTY-FIVE, ONE HUNDRED FORTY, ONE HUNDRED FIFTY-FIVE, TWO HUNDRED TWENTY, TWO HUNDRED THIRTY, TWO HUNDRED FORTY-FIVE, TWO HUNDRED SIXTY, TWO HUNDRED SIXTY-THREE OR TWO HUNDRED SIXTY-FIVE OF THE PENAL LAW OR A FELONY OR MISDEMEANOR UNDER SECTIONS ELEVEN HUNDRED NINETY-TWO AND ELEVEN HUNDRED NINETY-THREE OF THE VEHICLE AND TRAFFIC LAW; (E) ANY TEACHER OR SUPERVISOR, IF THE PERSON IS A TENURED EMPLOYEE, WHO WITHIN THE LAST FIVE YEARS HAS BEEN FINED AS A PENALTY IMPOSED PURSUANT TO CHARGES RELATED TO CHRONIC ABSENTEEISM, CHRONIC LATENESS, OR IMPROPER

USE OR RECORDING OF LEAVE TIME OR AS A RESULT OF SETTLEMENT OF CHARGES BROUGHT PURSUANT TO CHARGES RELATED TO CHRONIC ABSENTEEISM, CHRONIC LATENESS OR IMPROPER USE OR RECORDING OF LEAVE TIME; (F) ANY TEACHER OR SUPERVISOR WHO WITHIN THE LAST FIVE YEARS WAS THE SUBJECT OF AN INVESTIGATION WHERE ALLEGATIONS OF MISCONDUCT WERE SUBSTANTIATED BY THE CITY SCHOOL DISTRICT'S SPECIAL COMMISSIONER OF INVESTIGATION, THE CITY SCHOOL DISTRICT'S OFFICE OF SPECIAL INVESTIGATIONS OR THE CITY SCHOOL DISTRICT'S OFFICE OF EQUAL OPPORTUNITY; (G) ANY TEACHER OR SUPERVISOR WHO HAS FAILED TO FULFILL ALL REQUIREMENTS FOR CERTIFICATION FROM THE DEPARTMENT AS OF AUGUST THIRTY-FIRST OF THE YEAR IN WHICH THERE IS A CITYWIDE LAYOFF; (H) ANY TEACHER, FOR TWO YEARS OR MORE, RANKED IN THE BOTTOM THIRTY PERCENT OF TEACHERS IN STUDENT TEST SCORES PROGRESS AS MEASURED BY THE CITY SCHOOL DISTRICT'S VALUE-ADDED ASSESSMENT EXCEPT FOR TEACHERS WHO WORK IN LICENSES SPECIFIC TO TEACHING CHILDREN WITH DISABILITIES OR SPECIAL NEEDS. VALUE-ADDED ASSESSMENTS SHALL CONTROL FOR FACTORS INCLUDING BUT NOT LIMITED TO THE STUDENT STATUS OR WHOLE CLASS AVERAGE IN THE FOLLOWING CATEGORIES: PREVIOUS ACADEMIC OUTCOMES, FREE AND REDUCED PRICE LUNCH STATUS, ENGLISH LANGUAGE LEARNER STATUS, SPECIAL EDUCATION STATUS, PREVIOUS SUSPENSIONS AND ABSENCES, GRADE-LEVEL RETENTION, SUMMER SCHOOL PARTICIPATION, YEARS ATTENDING THE CURRENT SCHOOL, ETHNICITY, GENDER, AND CLASS SIZE; AND (I) TEACHERS OR SUPERVISORS WHO ENTERED AGREEMENTS TO SERVE AN ADDITIONAL YEAR AS A PROBATIONER PURSUANT TO SECTION TWENTY-FIVE HUNDRED SEVENTY-THREE OF THIS ARTICLE FOR THE SCHOOL YEAR PRECEDING A 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

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

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

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

L. ANY TEACHER OR SUPERVISOR CONVICTED OF A QUALIFYING CRIMINAL OFFENSE IN THE PAST FIVE YEARS. "QUALIFYING CRIMINAL OFFENSE" SHALL MEAN: (A) ANY FELONY, ANY CLASS A MISDEMEANOR, OR ANY CLASS B MISDEMEANOR UNDER ARTICLE ONE HUNDRED TWENTY, ONE HUNDRED THIRTY, ONE HUNDRED THIRTY-FIVE, ONE HUNDRED FORTY, ONE HUNDRED FIFTY-FIVE, TWO HUNDRED TWENTY, TWO HUNDRED THIRTY, TWO HUNDRED FORTY-FIVE, TWO HUNDRED SIXTY, TWO HUNDRED SIXTY-THREE OR TWO HUNDRED SIXTY-FIVE OF THE PENAL LAW OR A FELONY OR MISDEMEANOR UNDER SECTIONS ELEVEN HUNDRED NINETY-TWO AND ELEVEN HUNDRED NINETY-THREE OF THE VEHICLE AND TRAFFIC LAW, OR (B) ANY OFFENSE IN ANY OTHER JURISDICTION FOR WHICH A SENTENCE TO A TERM OF IMPRISONMENT OF ONE YEAR OR OF MORE THAN ONE YEAR WAS AUTHORIZED AND IS AUTHORIZED IN THIS STATE IRRESPECTIVE OF WHETHER SUCH SENTENCE WAS IMPOSED, OR (C) ANY OFFENSE IN ANY OTHER JURISDICTION THE COMMISSION OF WHICH CONSTITUTES THE SUBSTANTIAL EQUIVALENT OF ANY OFFENSE UNDER ARTICLE ONE HUNDRED TWENTY, ONE HUNDRED THIRTY, ONE HUNDRED THIRTY-FIVE, ONE HUNDRED FORTY, ONE HUNDRED FIFTY-FIVE, TWO HUNDRED TWENTY, TWO HUNDRED THIRTY, TWO HUNDRED FORTY-FIVE, TWO HUNDRED SIXTY, TWO HUNDRED

SIXTY-THREE OR TWO HUNDRED SIXTY-FIVE OF THE PENAL LAW OR A FELONY OR MISDEMEANOR UNDER SECTIONS ELEVEN HUNDRED NINETY-TWO AND ELEVEN HUNDRED NINETY-THREE OF THE VEHICLE AND TRAFFIC LAW; 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 CONVICTED OF A FELONY IN THE LAST FIVE YEARS; AND

II. A TEACHER OR SUPERVISOR CONVICTED OF A CLASS A MISDEMEANOR IN THE LAST FIVE YEARS; AND

III. A TEACHER OR SUPERVISOR CONVICTED IN THE MOST RECENT YEAR OR YEARS OF A CLASS B MISDEMEANOR UNDER ARTICLE ONE HUNDRED TWENTY, ONE HUNDRED THIRTY, ONE HUNDRED THIRTY-FIVE, ONE HUNDRED FORTY, ONE HUNDRED FIFTY-FIVE, TWO HUNDRED TWENTY, TWO HUNDRED THIRTY, TWO HUNDRED FORTY-FIVE, TWO HUNDRED SIXTY, TWO HUNDRED SIXTY-THREE OR TWO HUNDRED SIXTY-FIVE OF THE PENAL LAW OR A FELONY OR MISDEMEANOR UNDER SECTIONS ELEVEN HUNDRED NINETY-TWO AND ELEVEN HUNDRED NINETY-THREE OF THE VEHICLE AND TRAFFIC LAW;

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

N. ANY TEACHER OR SUPERVISOR WHO WITHIN THE LAST FIVE YEARS WAS THE SUBJECT OF AN INVESTIGATION WHERE ALLEGATIONS OF MISCONDUCT WERE SUBSTANTIATED BY THE CITY SCHOOL DISTRICT'S SPECIAL COMMISSIONER OF INVESTIGATION, THE CITY SCHOOL DISTRICT'S OFFICE OF SPECIAL INVESTIGATIONS OR THE CITY SCHOOL DISTRICT'S OFFICE OF EQUAL OPPORTUNITY, PROVIDED HOWEVER IF THERE ARE FEWER LAYOFFS THAN THERE ARE PERSONS IN THIS CATEGORY, LAYOFFS SHALL BE DONE IN ORDER OF THE MOST RECENT INVESTIGATION OF SUBSTANTIATED ALLEGATIONS;

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

P. ANY TEACHER, FOR TWO YEARS OR MORE, RANKED IN THE BOTTOM THIRTY PERCENT OF TEACHERS IN STUDENT TEST SCORES PROGRESS AS MEASURED BY THE CITY SCHOOL DISTRICT'S VALUE-ADDED ASSESSMENT EXCEPT FOR TEACHERS WHO WORK IN LICENSES SPECIFIC TO TEACHING CHILDREN WITH DISABILITIES OR SPECIAL NEEDS. VALUE-ADDED ASSESSMENTS SHALL CONTROL FOR FACTORS INCLUDING BUT NOT LIMITED TO THE STUDENT STATUS OR WHOLE CLASS AVERAGE IN THE FOLLOWING CATEGORIES: PREVIOUS ACADEMIC OUTCOMES, FREE AND REDUCED PRICE LUNCH STATUS, ENGLISH LANGUAGE LEARNER STATUS, SPECIAL EDUCATION STATUS, PREVIOUS SUSPENSIONS AND ABSENCES, GRADE-LEVEL RETENTION, SUMMER SCHOOL PARTICIPATION, YEARS ATTENDING THE CURRENT SCHOOL, ETHNICITY, GENDER, AND CLASS SIZE, PROVIDED HOWEVER, IF THERE ARE FEWER LAYOFFS THAN THERE ARE PERSONS IN THIS CATEGORY, TEACHERS WITH THE LOWEST SCORES SHALL BE LAID OFF FIRST; AND

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

(III) 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 PARAGRAPH (A) OF THIS SUBDIVISION IS FEWER THAN THE NUMBER OF SUCH POSITIONS THAT MUST BE ABOLISHED OR REDUCED, THE DECISION CONCERNING WHICH ADDITIONAL 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 BOARD OF REGENTS SHALL PROMULGATE REGULATIONS PRESCRIBING HOW SUCH ADDITIONAL LAYOFFS SHALL BE EFFECTUATED. THE PROMULGATION OF ANY SUCH REGULATION SHALL NOT PERMIT AN EMPLOYEE'S LENGTH OF SERVICE TO BE THE SOLE FACTOR IN ANY DECISION REGARDING WHICH POSITIONS ARE TO BE ABOLISHED AND WHICH PERSONS OCCUPYING SUCH POSITIONS SHALL BE LAID OFF; PROVIDED, HOWEVER, THAT ANY CONSIDERATION OF AN EMPLOYEE'S LENGTH OF FAITHFUL AND COMPETENT SERVICE AS A FACTOR FOR THE ABOLISHMENT OF POSITIONS OR PERSONS TO BE LAID OFF OCCUPYING SUCH POSITIONS MAY ONLY BE CONSIDERED IN A MANNER BENEFICIAL TO AN EMPLOYEE AND THAT THE PROMULGATION OF ANY SUCH REGULATION SHALL NOT PERMIT AN EMPLOYEE'S SALARY TO BE A FACTOR IN ANY DECISION REGARDING WHICH POSITIONS ARE TO BE ABOLISHED AND WHICH PERSONS OCCUPYING SUCH POSITIONS SHALL BE LAID OFF; AND PROVIDED FURTHER THAT ANY SUCH REGULATIONS MUST ENSURE THAT IN A HIGH-NEED SCHOOL THE NUMBER OF STAFF LAID OFF SHALL NOT EXCEED THE PERCENTAGE OF THE OVERALL NUMBER OF POSITIONS IN THE SCHOOL THAT REPRESENTS HALF OF THE AVERAGE PERCENTAGE OF STAFF LAID OFF CITYWIDE; PROVIDED HOWEVER, SAID PERCENTAGE MAY BE EXCEEDED WHERE THE CITY SCHOOL DISTRICT CHOOSES TO ABOLISH ALL POSITIONS IN A LICENSE AREA PURSUANT TO SUBPARAGRAPH (IV) OF THIS PARAGRAPH. SAID PERCENTAGES SHALL BE CALCULATED EXCLUDING ANY TEACHERS OR SUPERVISORS LAID OFF PURSUANT TO SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH (A) OF THIS SUBDIVISION. FOR PURPOSES OF THIS SECTION, A HIGH-NEED SCHOOL SHALL BE DEFINED AS A SCHOOL IN WHICH AT LEAST NINETY PERCENT OF THE ENROLLED STUDENTS ARE ELIGIBLE APPLICANTS FOR THE FREE AND REDUCED PRICE LUNCH PROGRAM.

(2) SHOULD THE BOARD OF REGENTS FAIL TO PROMULGATE REGULATIONS NO LATER THAN SEVENTY-FIVE DAYS PRIOR TO THE EFFECTIVE DATE OF A CITYWIDE LAYOFF, THE BUILDING PRINCIPAL SHALL DETERMINE WHICH ADDITIONAL POSITIONS ARE TO BE ABOLISHED, AND WHICH ADDITIONAL PERSONS OCCUPYING SUCH POSITIONS ARE TO BE LAID OFF CONSISTENT WITH GUIDANCE PROMULGATED BY THE CHANCELLOR. 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. ANY SUCH GUIDANCE PROMULGATED BY THE CHANCELLOR SHALL NOT PERMIT AN EMPLOYEE'S LENGTH OF SERVICE TO BE THE SOLE FACTOR IN ANY DECISION REGARDING WHICH POSITIONS ARE TO BE ABOLISHED AND WHICH PERSONS OCCUPYING SUCH POSITIONS SHALL BE LAID OFF; PROVIDED, HOWEVER, THAT ANY CONSIDERATION OF AN EMPLOYEE'S LENGTH OF FAITHFUL AND COMPETENT SERVICE AS A FACTOR FOR THE ABOLISHMENT OF POSITIONS OR PERSONS TO BE LAID OFF OCCUPYING SUCH POSITIONS MAY ONLY

BE CONSIDERED IN A MANNER BENEFICIAL TO AN EMPLOYEE AND THAT THE PROMULGATION OF ANY SUCH GUIDANCE SHALL NOT PERMIT AN EMPLOYEE'S SALARY TO BE A FACTOR IN ANY DECISION REGARDING WHICH POSITIONS ARE TO BE ABOLISHED AND WHICH PERSONS OCCUPYING SUCH POSITIONS SHALL BE LAID OFF; AND PROVIDED FURTHER THAT ANY SUCH GUIDANCE PROMULGATED BY THE CHANCELLOR MUST ENSURE THAT IN A HIGH-NEED SCHOOL THE NUMBER OF STAFF LAID OFF SHALL NOT EXCEED THE PERCENTAGE OF THE OVERALL NUMBER OF POSITIONS IN THE SCHOOL THAT REPRESENTS HALF OF THE AVERAGE PERCENTAGE OF STAFF LAID OFF CITYWIDE, PROVIDED HOWEVER, SAID PERCENTAGE MAY BE EXCEEDED WHERE THE CITY SCHOOL DISTRICT CHOOSES TO ABOLISH ALL POSITIONS IN A LICENSE AREA PURSUANT TO SUBPARAGRAPH (IV) OF THIS PARAGRAPH. SAID PERCENTAGES SHALL BE CALCULATED EXCLUDING ANY TEACHERS OR SUPERVISORS LAID OFF PURSUANT TO SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH. FOR PURPOSES OF THIS SECTION, A HIGH-NEED SCHOOL SHALL BE DEFINED AS A SCHOOL IN WHICH AT LEAST NINETY PERCENT OF THE ENROLLED STUDENTS ARE ELIGIBLE APPLICANTS FOR THE FREE AND REDUCED PRICE LUNCH PROGRAM.

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

(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION TO THE CONTRARY, THE CITY SCHOOL DISTRICT AND ITS EMPLOYEES' COLLECTIVE BARGAINING AGENTS SHALL ESTABLISH A PROCEDURE GOVERNING THE ABOLISHMENT OR REDUCTION OF 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, PURSUANT TO THE REQUIREMENTS OF ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW. ANY SUCH LOCALLY ESTABLISHED PROCESS SHALL NOT PERMIT AN EMPLOYEE'S LENGTH OF SERVICE TO BE THE SOLE FACTOR IN ANY DECISION REGARDING WHICH POSITIONS ARE TO BE ABOLISHED AND WHICH PERSONS OCCUPYING SUCH POSITIONS SHALL BE EXCESSED; PROVIDED HOWEVER THAT ANY CONSIDERATION OF AN EMPLOYEE'S LENGTH OF FAITHFUL AND COMPETENT SERVICE AS A FACTOR FOR THE ABOLISHMENT OF POSITIONS OR PERSONS TO BE EXCESSED OCCUPYING SUCH POSITIONS MAY ONLY BE CONSIDERED IN A MANNER BENEFICIAL TO AN EMPLOYEE AND THAT THE PROMULGATION OF ANY SUCH REGULATION SHALL NOT PERMIT AN EMPLOYEE'S SALARY TO BE A FACTOR IN ANY DECISION REGARDING WHICH POSITIONS ARE TO BE ABOLISHED AND WHICH PERSONS OCCUPYING SUCH POSITIONS SHALL BE EXCESSED. FOR POSITIONS COVERED BY SECTION THREE THOUSAND TWELVE-C OF THIS CHAPTER, ANY SUCH LOCALLY DEVELOPED PROCESS SHALL BE BASED ON THE ANNUAL PROFESSIONAL PERFORMANCE REVIEW FOR TEACHERS AND SUPERVISORS PURSUANT TO SUCH SECTION THREE THOUSAND TWELVE-C AND ITS IMPLEMENTING REGULATIONS. UNTIL AND UNLESS SUCH A PROCESS HAS BEEN ESTABLISHED AT LEAST NINETY DAYS BEFORE THE START OF THE SCHOOL YEAR, THE FOLLOWING SHALL APPLY:

(I) DECISIONS CONCERNING WHICH POSITIONS ARE TO BE ABOLISHED SHALL BE MADE IN ACCORDANCE WITH THE SAME PROCESS PRESCRIBED FOR MAKING LAYOFF DECISIONS SET FORTH IN SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH (A) OF THIS SUBDIVISION. IN THE CASE THAT THE NUMBER OF TEACHING OR SUPERVISORY EMPLOYEES EXCESSED IS FEWER THAN THE NUMBER OF SUCH POSITIONS THAT MUST BE EXCESSED PURSUANT TO THIS SUBPARAGRAPH, THE BOARD OF REGENTS SHALL PROMULGATE REGULATIONS ESTABLISHING THE PROCESS TO BE USED TO DETERMINE WHICH POSITIONS SHALL BE ABOLISHED AND WHICH PERSONS OCCUPYING SUCH POSITIONS SHALL BE EXCESSED. THE PROMULGATION OF ANY SUCH REGULATION SHALL NOT PERMIT AN EMPLOYEE'S LENGTH OF SERVICE TO BE THE SOLE FACTOR

IN ANY DECISION REGARDING WHICH POSITIONS ARE TO BE ABOLISHED AND WHICH PERSONS OCCUPYING SUCH POSITIONS SHALL BE EXCESSED; PROVIDED HOWEVER THAT ANY CONSIDERATION OF AN EMPLOYEE'S LENGTH OF FAITHFUL AND COMPETENT SERVICE AS A FACTOR FOR THE ABOLISHMENT OF POSITIONS OR PERSONS TO BE EXCESSED OCCUPYING SUCH POSITIONS MAY ONLY BE CONSIDERED IN A MANNER BENEFICIAL TO AN EMPLOYEE AND THAT THE PROMULGATION OF ANY SUCH REGULATION SHALL NOT PERMIT AN EMPLOYEE'S SALARY TO BE A FACTOR IN ANY DECISION REGARDING WHICH POSITIONS ARE TO BE ABOLISHED AND WHICH PERSONS OCCUPYING SUCH POSITIONS SHALL BE EXCESSED. SHOULD THE BOARD OF REGENTS FAIL TO PROMULGATE REGULATIONS NO LATER THAN SEVENTY-FIVE DAYS PRIOR TO THE FIRST DAY OF THE SCHOOL YEAR, THE BUILDING PRINCIPAL SHALL DETERMINE WHICH TEACHERS OR SUPERVISORS ARE TO BE EXCESSED, CONSISTENT WITH GUIDANCE PROMULGATED BY THE CHANCELLOR PURSUANT TO THIS SUBDIVISION. 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 EXCESSED: (1) SCHOOL NEEDS FOR PARTICULAR LICENSE AREAS; AND (2) 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. ANY SUCH GUIDANCE PROMULGATED BY THE CHANCELLOR SHALL NOT PERMIT AN EMPLOYEE'S LENGTH OF SERVICE TO BE THE SOLE FACTOR IN ANY DECISION REGARDING WHICH POSITIONS ARE TO BE ABOLISHED AND WHICH PERSONS OCCUPYING SUCH POSITIONS SHALL BE EXCESSED; PROVIDED, HOWEVER, THAT ANY CONSIDERATION OF AN EMPLOYEE'S LENGTH OF FAITHFUL AND COMPETENT SERVICE AS A FACTOR FOR THE ABOLISHMENT OF POSITIONS OR PERSONS TO BE EXCESSED OCCUPYING SUCH POSITIONS MAY ONLY BE CONSIDERED IN A MANNER BENEFICIAL TO AN EMPLOYEE AND THAT THE PROMULGATION OF ANY SUCH GUIDANCE SHALL NOT PERMIT AN EMPLOYEE'S SALARY TO BE A FACTOR IN ANY DECISION REGARDING WHICH POSITIONS ARE TO BE ABOLISHED AND WHICH PERSONS OCCUPYING SUCH POSITIONS SHALL BE LAID OFF. SHOULD CITYWIDE LAYOFFS IN ACCORDANCE WITH PARAGRAPH (A) OF THIS SUBDIVISION BE CARRIED OUT, A DETERMINATION OF WHETHER ANY TEACHER OR SUPERVISOR SHALL BE LAID OFF WHOSE POSITION HAS BEEN ABOLISHED AND IS IN EXCESS FROM A REGULARLY APPOINTED POSITION IN THE DISTRICT FOR LESS THAN SIX MONTHS, SHALL BE MADE PURSUANT TO SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH (A) OF THIS SUBDIVISION.

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

4. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION TO THE CONTRARY, THE CITY SCHOOL DISTRICT AND ITS COLLECTIVE BARGAINING AGENTS SHALL ESTABLISH A PROCEDURE PURSUANT TO THE REQUIREMENTS OF ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW GOVERNING THE RIGHTS OF EMPLOYEES TO RETURN TO VACANT POSITIONS IN THE CITY SCHOOL DISTRICT. UNTIL AND UNLESS A LOCALLY ESTABLISHED PROCEDURE IS ESTABLISHED PURSUANT TO THE REQUIREMENTS OF ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW, THE FOLLOWING SHALL APPLY CONCERNING THE RIGHTS OF EMPLOYEES TO RETURN TO VACANT POSITIONS. WHENEVER A TEACHING OR SUPERVISORY POSITION IS ABOLISHED PURSUANT TO CLAUSES ONE AND TWO OF SUBPARAGRAPH (III) OF PARAGRAPH (A) OF SUBDIVISION THREE OF THIS SECTION, SHOULD A VACANCY OCCUR IN THE SAME POSITION AT THE SAME SCHOOL OR ADMINISTRATIVE OFFICE WITHIN ONE YEAR OF THE DATE WHEN THE POSITION WAS ABOLISHED, THE PRINCIPAL, OR THE CHANCELLOR OR HIS OR HER DESIGNEE, SHALL OFFER THE POSITION TO THE PERSON WHO

HELD THE POSITION BEFORE IT WAS ABOLISHED. IF THE PERSON REJECTS THE OFFER, OR FAILS TO RESPOND TO THE OFFER WITHIN THIRTY DAYS, THE PERSON SHALL NO LONGER HAVE A RIGHT TO RETURN TO THE POSITION. IF MORE THAN ONE POSITION WAS ABOLISHED IN THE SAME LICENSE AREA AT THE SAME SCHOOL OR ADMINISTRATIVE OFFICE, AND THERE ARE FEWER VACANCIES IN THE SAME LICENSE AREA THAN PERSONS WHOSE POSITIONS WERE ABOLISHED, THE PRINCIPAL, OR THE CHANCELLOR, SHALL HAVE THE DISCRETION TO DETERMINE WHICH PERSON SHOULD BE OFFERED THE POSITION FIRST. THE CHANCELLOR SHALL PROMULGATE GUIDANCE TO DETERMINE THE RIGHT OF RETURN OF ANY TEACHERS OR SUPERVISORS LAID OFF PURSUANT TO SUBPARAGRAPH (IV) OF PARAGRAPH (A) OF SUBDIVISION THREE OF THIS SECTION. TEACHERS OR SUPERVISORS LAID OFF PURSUANT TO SUBPARAGRAPH (I) OF PARAGRAPH (A) OF SUBDIVISION THREE OF THIS SECTION AND CLAUSE ONE OF SUBPARAGRAPH (II) OF PARAGRAPH (A) OF SUBDIVISION THREE OF THIS SECTION, SHALL HAVE NO RIGHTS TO RETURN TO A VACANT POSITION PURSUANT TO THIS SECTION.

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

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

S 7. This act shall take effect immediately.