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

6859

2011-2012 Regular Sessions

I N A S S E M B L Y

April 5, 2011

Introduced by M. of A. GABRYSZAK, MURRAY, SAYWARD, STEVENSON, PEOPLES-STOKES, BURLING, CALHOUN, GIGLIO -- Multi-Sponsored by -- M. of A. CROUCH, P. RIVERA, THIELE -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to establishing a state selection process for designation of hearings officers and a review panel to hear section 3020-a appeals; authorizing dismissal of tenured teachers in certain circumstances; capping suspension with pay benefits, and requiring cooperation and reciprocal disclosure in investigations

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

Section 1. Paragraphs (b) and (c) of subdivision 2 of section 3020-a of the education law, paragraph (b) as separately amended by chapters 296 and 325 of the laws of 2008 and paragraph (c) as amended by chapter 103 of the laws of 2010, are amended to read as follows:

(b) The employee may be suspended pending a hearing on the charges and the final determination thereof. The suspension shall be with pay FOR UP TO SIXTY DAYS, except the employee may be suspended without pay if the employee has entered a guilty plea to or has been convicted of a felony crime concerning the criminal sale or possession of a controlled substance, a precursor of a controlled substance, or drug paraphernalia as defined in article two hundred twenty or two hundred twenty-one of the penal law; or a felony crime involving the physical abuse of a minor or student. The employee shall be terminated without a hearing, as provided for in this section, upon conviction of A FELONY CRIME, a sex offense, as defined in subparagraph two of paragraph b of subdivision seven-a of section three hundred five of this chapter, OR OFFENSES RELATING TO A CHILD, SEXUAL PERFORMANCE OF A CHILD OR INVOLVING CHILD ABUSE, OR HAS HAD HIS OR HER TEACHING CERTIFICATION REVOKED OR HAS FAILED TO OBTAIN PERMANENT CERTIFICATION WITHIN THE REQUISITE STATUTORY

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

LBD10346-01-1

TIME FRAME. To the extent this section applies to an employee acting as a school administrator or supervisor, as defined in subparagraph three of paragraph b of subdivision seven-b of section three hundred five of this chapter, such employee shall be terminated without a hearing, as provided for in this section, upon conviction of a felony offense defined in subparagraph two of paragraph b of subdivision seven-b of section three hundred five of this chapter.

(c) Within ten days of receipt of the statement of charges, the employee shall [notify] PROVIDE the clerk or secretary of the employing board [in writing] A WRITTEN RESPONSE TO SUCH STATEMENT OF CHARGES, INCLUDING ANY EVIDENCE OR INFORMATION THAT MAY AID IN THE DISCOVER PROCESS, AND SHALL NOTIFY THE CLERK OR SECRETARY 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 2. Paragraphs a and b of subdivision 3 of section 3020-a of the education law, paragraph a as amended by chapter 103 of the laws of 2010 and paragraph b as amended by chapter 691 of the laws of 1994, are amended and a new paragraph d is added 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 shall forthwith notify the [American Arbitration Association (hereinafter "association")] DEPARTMENT OF EDUCATION of the need for a hearing and shall request the [association] DEPARTMENT to provide to the commissioner forthwith [a list of names of persons] THE NAME OF A PERSON chosen by the [association] DEPARTMENT from the [association's] DEPARTMENT'S panel of labor arbitrators to [potentially] serve as A hearing [officers] OFFICER together with relevant biographical information on [each] SUCH arbitrator. Upon receipt of [said list] SUCH NAME and biographical information, the commissioner 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.]

b. (i) Hearing officers. All hearings pursuant to this section shall be conducted before and by a single hearing officer selected as provided for in this section. A hearing officer shall not be eligible to serve as such if he or she is a resident of the school district, other than the city of New York, under the jurisdiction of the employing board, an employee, agent or representative of the employing board or of any labor organization representing employees of such employing board, has served as such agent or representative within two years of the date of the scheduled hearing, or if he or she is then serving as a mediator or fact finder in the same school district. Notwithstanding any other provision of law, the hearing officer shall be compensated by the department with the customary fee paid for service as an arbitrator [under the auspices of the association] for each day of actual service plus necessary travel and other reasonable expenses incurred in the performance of his or her duties. All other expenses of the disciplinary proceedings shall be paid in accordance with rules promulgated by the commissioner of education.

(ii) [Not later than ten days after the date the commissioner mails to the employing board and the employee the list of potential hearing officers and biographies provided to the commissioner by the association, the employing board and the employee, individually or through their agents or representatives, shall by mutual agreement select a hearing officer from said list to conduct the hearing and shall notify the commissioner of their selection.

(iii) If the employing board and the employee fail to agree on an arbitrator to serve as a hearing officer from said list and so notify the commissioner within ten days after receiving the list from the commissioner, the commissioner shall request the association to appoint a hearing officer from said list.

(iv)] In those cases in which the employee elects to have the charges heard by a hearing panel, the hearing panel shall consist of the hearing officer[, selected in accordance with this subdivision,] and two additional persons[, one selected by the employee and one] selected by the [employing board] DEPARTMENT, from a list maintained for such purpose by the commissioner of education. [The] SUCH list shall be composed of professional personnel with administrative or supervisory responsibility, professional personnel without administrative or supervisory responsibility, chief school administrators, members of employing boards and others selected from lists of nominees submitted to the commissioner by statewide organizations representing teachers, school administrators and supervisors and the employing boards. Hearing panel members other than the hearing officer shall be compensated by the department of education at the rate of one hundred dollars for each day of actual service plus necessary travel and subsistence expenses. The hearing officer shall be compensated as set forth in this subdivision. The hearing officer shall be the chairman of the hearing panel.

D. APPELLATE REVIEW PANEL. THERE IS HEREBY CREATED A HEARING REVIEW PANEL WHICH SHALL RECEIVE, CONSIDER AND DETERMINE APPEALS FROM DETERMINATIONS OF HEARING OFFICERS OF HEARING PROCEEDINGS DESCRIBED IN THIS SUBDIVISION. APPELLATE REVIEW PANEL DECISIONS SHALL BE REVIEWABLE FOR ERROR, ILLEGALITY OR UNCONSTITUTIONALITY OR ANY OTHER REASON WHATSOEVER BY A PROCEEDING UNDER ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES IF APPLICATION THEREFOR IS MADE TO THE SUPREME COURT.

S 3. Subparagraph (i) of paragraph c 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:

(i) The commissioner of education shall have the power to establish necessary rules and procedures for the conduct of hearings under this section. Such rules shall not require compliance with technical rules of evidence. Hearings shall be conducted by the hearing officer selected pursuant to paragraph b of this subdivision with full and fair disclosure of the nature of the case and evidence against the employee by the employing board and shall be public or private at the discretion of the employee. The employee shall have a reasonable opportunity to defend himself or herself and an opportunity to testify in his or her own behalf. The employee shall not be required to testify, HOWEVER, THE EMPLOYEE SHALL BE REQUIRED TO COOPERATE WITH A SCHOOL DISTRICT'S INVESTIGATION INTO THE ALLEGED MISCONDUCT PRIOR TO HIS OR HER HEARING. Each party shall have the right to be represented by counsel, to subpoena witnesses, and to cross-examine witnesses. All testimony taken shall be under oath which the hearing officer is hereby authorized to administer. A competent stenographer, designated by the commissioner of education and compensated by the state education department, shall keep and tran-

scribe a record of the proceedings at each such hearing. A copy of the transcript of the hearings shall, upon request, be furnished without charge to the employee and the board of education involved.

S 4. This act shall take effect immediately.