

S T A T E   O F   N E W   Y O R K

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April 12, 2012

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Introduced by M. of A. JAFFEE, NOLAN, ENGLEBRIGHT, MAYER, ABINANTI, ARROYO, REILLY, MILLMAN, ESPINAL, SCHIMEL, P. RIVERA, RUSSELL, JACOBS, MENG, LUPARDO -- Multi-Sponsored by -- M. of A. BRENNAN, BROOK-KRASNY, FINCH, McDONOUGH, SWEENEY, WEINSTEIN -- read once and referred to the Committee on Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil rights law, in relation to personnel records of public school teachers and public school principals

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

1     Section 1. The civil rights law is amended by adding a new section  
2     50-f to read as follows:  
3     S 50-F. PERSONNEL RECORDS OF PUBLIC SCHOOL TEACHERS AND PUBLIC SCHOOL  
4     PRINCIPALS. 1. (A) AS USED IN THIS SECTION "PUBLIC SCHOOL TEACHER"  
5     MEANS ANY PROFESSIONAL EDUCATOR CURRENTLY OR FORMERLY EMPLOYED IN A  
6     PUBLIC SCHOOL DISTRICT OR A BOARD OF COOPERATIVE EDUCATIONAL SERVICES  
7     HOLDING A TEACHING CERTIFICATE, LICENSE OR CERTIFICATE OF QUALIFICATION,  
8     AS A CLASSROOM TEACHER, TEACHING ASSISTANT, OR PUPIL PERSONNEL SERVICES  
9     PROFESSIONAL.  
10    (B) AS USED IN THIS SECTION "PUBLIC SCHOOL PRINCIPAL" MEANS ANY SCHOOL  
11    ADMINISTRATOR CURRENTLY OR FORMERLY EMPLOYED IN THE PUBLIC SERVICE IN A  
12    PUBLIC SCHOOL DISTRICT OR A BOARD OF COOPERATIVE EDUCATIONAL SERVICES IN  
13    A BUILDING LEVEL LEADERSHIP POSITION HOLDING NO LESS THAN A SCHOOL  
14    BUILDING LEADER CERTIFICATE. FOR PURPOSES OF THIS SECTION, THE ADMINIS-  
15    TRATOR IN CHARGE OF AN INSTRUCTIONAL PROGRAM OF A BOARD OF COOPERATIVE  
16    EDUCATIONAL SERVICES SHALL BE DEEMED TO BE A BUILDING PRINCIPAL.  
17    2. PUBLIC SCHOOL TEACHERS' AND PUBLIC SCHOOL PRINCIPALS' PERSONNEL  
18    RECORDS OF ANY TYPE OR FORM, INCLUDING BUT NOT LIMITED TO THOSE MAIN-  
19    TAINED OR PREPARED BY THE STATE EDUCATION DEPARTMENT, SCHOOL DISTRICTS  
20    OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES CONCERNING THE PERFORMANCE  
21    OR EVALUATION OF PUBLIC SCHOOL TEACHERS AND PUBLIC SCHOOL PRINCIPALS,  
22    ANNUAL PROFESSIONAL PERFORMANCE REVIEWS, COMPOSITE EFFECTIVENESS SCORES

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

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1 AND ALL INDIVIDUAL SUBCOMPONENTS THEREOF, AND ANNUAL QUALITY RATINGS, AS  
2 WELL AS THE MATERIALS UPON WHICH SUCH REVIEWS, SCORES AND RATINGS ARE  
3 BASED, SHALL BE DEEMED CONFIDENTIAL AND NOT SUBJECT TO PUBLIC DISCLO-  
4 SURE, INSPECTION OR REVIEW, EXCEPT AS PROVIDED IN SUBDIVISIONS THREE,  
5 FOUR, FIVE AND SIX OF THIS SECTION OR AS IS MANDATED BY LAWFUL COURT  
6 ORDER IN ACCORDANCE WITH SUBDIVISION SEVEN OF THIS SECTION.

7 3. NOTHING IN THIS SECTION SHALL PROHIBIT DISCLOSURE OF ANY SUCH  
8 PERSONNEL RECORDS, TO THE EXTENT NECESSARY AND RELEVANT, IN DISCIPLINARY  
9 PROCEEDINGS PURSUANT TO SECTION THREE THOUSAND TWENTY-A OF THE EDUCATION  
10 LAW, OR IN DISCIPLINARY PROCEEDINGS CONDUCTED IN ACCORDANCE WITH ALTER-  
11 NATE DISCIPLINARY PROCEDURES CONTAINED IN A COLLECTIVE BARGAINING AGREE-  
12 MENT AS PROVIDED IN SECTION THREE THOUSAND TWENTY OF THE EDUCATION LAW.

13 4. NOTHING IN THIS SECTION SHALL PROHIBIT THE REVIEW OF PERSONNEL  
14 RECORDS BY LEGALLY APPROPRIATE AND RESPONSIBLE SCHOOL ADMINISTRATORS OR  
15 SCHOOL OFFICIALS, OR THE MEMBERS OF A BOARD OF EDUCATION OR BOARD OF  
16 COOPERATIVE EDUCATIONAL SERVICES, FOR THE PURPOSE OF FULFILLING THEIR  
17 LEGAL RESPONSIBILITIES EITHER IN MAKING RECOMMENDATIONS CONCERNING, OR  
18 IN MAKING DECISIONS WITH RESPECT TO EMPLOYEE PERSONNEL MATTERS, SUCH AS  
19 HIRING, APPOINTMENTS, ASSIGNMENTS, LEAVES, PROMOTIONS, DEMOTIONS, REMUN-  
20 ERATION, DISCIPLINE OR DISMISSAL, OR TO AID IN THE DEVELOPMENT AND  
21 IMPLEMENTATION OF PERSONNEL POLICIES, OR SUCH OTHER USES AS ARE NECES-  
22 SARY TO CARRY OUT THEIR LEGAL RESPONSIBILITIES.

23 (A) THE EXAMINATION OF PUBLIC SCHOOL TEACHERS' AND PUBLIC SCHOOL PRIN-  
24 CIPALS' PERSONNEL RECORDS BY SUCH LEGALLY APPROPRIATE AND RESPONSIBLE  
25 SCHOOL ADMINISTRATORS OR SCHOOL OFFICIALS AS AUTHORIZED BY THIS PARA-  
26 GRAPH SHALL, AT ALL TIMES, BE PRIVATELY CONDUCTED IN SUCH A MANNER AS TO  
27 FULLY PRESERVE THE CONFIDENTIALITY OF ALL SUCH PERSONNEL RECORDS.

28 (B) THE EXAMINATION OF PUBLIC SCHOOL TEACHERS' AND PUBLIC SCHOOL PRIN-  
29 CIPALS' PERSONNEL RECORDS BY THE BOARD OF EDUCATION OR BOARD OF COOPER-  
30 ATIVE EDUCATIONAL SERVICES AS AUTHORIZED BY THIS PARAGRAPH SHALL BE  
31 CONDUCTED ONLY AT EXECUTIVE SESSIONS OF THE BOARD. ANY BOARD MEMBER MAY  
32 REQUEST THE CHIEF SCHOOL OFFICER TO BRING THE PERSONNEL RECORDS OF A  
33 DESIGNATED EMPLOYEE OR EMPLOYEES TO AN OPEN MEETING OF THE BOARD. THE  
34 BOARD SHALL THEN DETERMINE WHETHER TO CONDUCT AN EXECUTIVE SESSION FOR  
35 THE PURPOSE OF EXAMINING SUCH RECORDS. IF THE BOARD DETERMINES TO GO  
36 INTO EXECUTIVE SESSION, THE CHIEF SCHOOL OFFICER SHALL PRESENT SUCH  
37 RECORDS TO THE BOARD AT THE EXECUTIVE SESSION. SUCH RECORDS SHALL, IN  
38 THEIR ENTIRETY, BE RETURNED TO THE CUSTODY OF THE CHIEF SCHOOL OFFICER  
39 AT THE CONCLUSION OF THE EXECUTIVE SESSION OF THE BOARD. THE CONTENTS OF  
40 THE PERSONNEL RECORDS REVIEWED IN EXECUTIVE SESSION SHALL NOT BE  
41 DISCUSSED OR DIVULGED TO ANYONE OUTSIDE OF SUCH EXECUTIVE SESSION,  
42 EXCEPT TO THE EXTENT REQUIRED TO IMPLEMENT A PERSONNEL DECISION, IN THE  
43 MANNER REQUIRED BY LAW, OR TO CARRY OUT LEGAL RESPONSIBILITIES.

44 5. (A) NOTHING IN THIS SECTION SHALL PROHIBIT A PARENT OR LEGAL GUARD-  
45 IAN, IN THE INTEREST OF HIS OR HER CHILD'S ACADEMIC DEVELOPMENT, FOLLOW-  
46 ING THE OPENING OF A NEW SCHOOL YEAR, FROM REVIEWING IN A SCHEDULED,  
47 PRIVATE CONFERENCE WITH THE BUILDING PRINCIPAL OR HIS OR HER DESIGNEE,  
48 WHO MUST POSSESS EITHER A PERMANENT SCHOOL ADMINISTRATOR'S CERTIFICATE  
49 OR A PERMANENT SCHOOL BUILDING LEADER CERTIFICATE AT THE APPROPRIATE  
50 SCHOOL DISTRICT OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES OFFICE, THE  
51 QUALITY RATING CATEGORY ISSUED FOR THE PREVIOUS ACADEMIC YEAR, TO THEIR  
52 CHILD'S ASSIGNED TEACHER, PROVIDED THAT THE RATING IS FINAL AND NOT THE  
53 SUBJECT OF A PENDING APPEAL UNDER SUBDIVISION FIVE OF SECTION THREE  
54 THOUSAND TWELVE-C OF THE EDUCATION LAW, AND PROVIDED FURTHER THAT THE  
55 PARENT OR LEGAL GUARDIAN SUBMITS A REQUEST FOR REVIEW FOLLOWING THE  
56 PROCEDURES OF ARTICLE SIX OF THE PUBLIC OFFICERS LAW. NOTWITHSTANDING

ARTICLE SIX OF THE PUBLIC OFFICERS LAW, OR ANY OTHER LAW, THE SCHOOL DISTRICT OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES SHALL NOT PROVIDE A COPY OF THE QUALITY RATING CATEGORY, OR ANY WRITTEN OR ELECTRONIC COMMUNICATION CONTAINING THE QUALITY RATING CATEGORY.

(B) NOTHING IN THIS SECTION SHALL PROHIBIT A PARENT OR LEGAL GUARDIAN, IN THE INTEREST OF HIS OR HER CHILD'S ACADEMIC DEVELOPMENT, FOLLOWING THE OPENING OF A NEW SCHOOL YEAR, FROM REVIEWING IN A SCHEDULED, PRIVATE CONFERENCE WITH THE SCHOOL SUPERINTENDENT OF THE APPROPRIATE SCHOOL DISTRICT OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES OFFICE, THE QUALITY RATING CATEGORY ISSUED FOR THE PREVIOUS ACADEMIC YEAR OF OR TO THE PRINCIPAL OF THE SCHOOL BUILDING WHERE THEIR CHILD IS BEING TAUGHT, PROVIDED THAT THE RATING IS FINAL AND NOT THE SUBJECT OF A PENDING APPEAL UNDER SUBDIVISION FIVE OF SECTION THREE THOUSAND TWELVE-C OF THE EDUCATION LAW, AND PROVIDED FURTHER THAT THE PARENT OR LEGAL GUARDIAN SUBMITS A REQUEST FOR REVIEW FOLLOWING THE PROCEDURES OF ARTICLE SIX OF THE PUBLIC OFFICERS LAW. NOTWITHSTANDING ARTICLE SIX OF THE PUBLIC OFFICERS LAW, OR ANY OTHER LAW, THE SCHOOL DISTRICT OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES SHALL NOT PROVIDE A COPY OF THE QUALITY RATING CATEGORY, OR ANY WRITTEN OR ELECTRONIC COMMUNICATION CONTAINING THE QUALITY RATING CATEGORY.

(C) AT SUCH PRIVATE CONFERENCE THE BUILDING PRINCIPAL OR HIS OR HER DESIGNEE, WHO MUST POSSESS EITHER A PERMANENT SCHOOL ADMINISTRATOR'S CERTIFICATE OR A PERMANENT SCHOOL BUILDING LEADER CERTIFICATE, OR THE SUPERINTENDENT, WHICHEVER MAY BE APPLICABLE, SHALL PROVIDE THE PARENT OR LEGAL GUARDIAN WITH A WRITTEN NOTICE ADVISING THEM THAT THE QUALITY RATING CATEGORY INFORMATION IS CONFIDENTIAL INFORMATION UNDER THIS CHAPTER AND THE PARENT OR LEGAL GUARDIAN SHALL SIGN A NOTIFICATION ACKNOWLEDGING THAT SUCH INFORMATION IS CONFIDENTIAL.

(D) PRIOR TO A PARENT'S OR LEGAL GUARDIAN'S REVIEW OF A TEACHER'S OR BUILDING PRINCIPAL'S QUALITY RATING CATEGORY UNDER THIS SUBDIVISION, THE CHIEF SCHOOL OFFICER OF THE SCHOOL DISTRICT OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES SHALL CERTIFY TO THE BUILDING PRINCIPAL THAT, TO THE BEST OF HIS OR HER KNOWLEDGE, THE QUALITY RATING CATEGORY IS ACCURATE. ADDITIONALLY, PRIOR TO A PARENT'S OR LEGAL GUARDIAN'S REVIEW OF A TEACHER'S OR BUILDING PRINCIPAL'S QUALITY RATING CATEGORY UNDER THIS SUBDIVISION, THE COMMISSIONER OF EDUCATION SHALL CERTIFY TO THE CHIEF SCHOOL OFFICER OF THE SCHOOL DISTRICT OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES THAT THE STATE ASSESSMENTS UPON WHICH THE STUDENT GROWTH DATA COMPONENT WAS DERIVED IN THE FORMULATION OF THE COMPOSITE EFFECTIVENESS SCORE, AS SPECIFIED IN SECTION THREE THOUSAND TWELVE-C OF THE EDUCATION LAW, WERE ACCURATELY TABULATED AND STATISTICALLY RELIABLE.

6. NOTHING IN THIS SECTION SHALL PREVENT A SCHOOL DISTRICT OR A BOARD OF COOPERATIVE EDUCATIONAL SERVICES FROM MAKING PUBLICLY AVAILABLE THE FOLLOWING INFORMATION CONCERNING THE ANNUAL PROFESSIONAL REVIEWS OF ITS TEACHERS AND PRINCIPALS, SO LONG AS PERSONALLY IDENTIFYING INFORMATION, INCLUDING BUT NOT LIMITED TO THE TEACHER OR PRINCIPAL'S NAME, ADDRESS, TELEPHONE NUMBER, EMPLOYEE FILE NUMBER, SCHOOL NAME, JOB TITLE, AND/OR SOCIAL SECURITY NUMBER ARE ALL REDACTED BEFORE MAKING SUCH RECORDS PUBLICLY AVAILABLE: PERCENTAGE OR NUMBER OF TEACHERS AND PRINCIPALS IN EACH RATING CATEGORY, BY POVERTY-STATUS OF EACH SCHOOL; PERCENTAGE OR NUMBER OF TEACHERS AND PRINCIPALS IN EACH RATING CATEGORY, BY HIGH OR LOW MINORITY-STATUS OF EACH SCHOOL; PERCENTAGE OR NUMBER OF TEACHERS AND PRINCIPALS MOVING TO A LOWER RATING CATEGORY THAN THE PREVIOUS YEAR; PERCENTAGE OR NUMBER OF TEACHERS AND PRINCIPALS RETAINED IN EACH RATING CATEGORY, AND DATA ON TENURE GRANTING AND DENIAL BASED ON THE CATEGORIES.

1 7. PRIOR TO ISSUING A COURT ORDER ALLOWING THE RELEASE OF ANY SUCH  
2 PERSONNEL RECORD OF A PUBLIC SCHOOL TEACHER OR PUBLIC SCHOOL BUILDING  
3 PRINCIPAL, IN ACCORDANCE WITH SUBDIVISION TWO OF THIS SECTION, THE JUDGE  
4 MUST REVIEW ALL SUCH REQUESTS AND GIVE INTERESTED PARTIES THE OPPORTU-  
5 NITY TO BE HEARD AT A HEARING UPON WRITTEN NOTICE. A COURT ORDER RELEAS-  
6 ING PERSONNEL RECORDS SHALL ONLY BE ALLOWED IN CONNECTION WITH A PENDING  
7 CRIMINAL INVESTIGATION, A PENDING CRIMINAL PROCEEDING, A PENDING CIVIL  
8 ACTION, OR A PENDING ADMINISTRATIVE PROCEEDING. NO SUCH ORDER SHALL  
9 ISSUE WITHOUT A CLEAR SHOWING OF FACTS SUFFICIENT TO WARRANT THE JUDGE  
10 TO REQUEST RECORDS FOR REVIEW. IF, AFTER SUCH HEARING, THE JUDGE  
11 CONCLUDES THERE IS A SUFFICIENT BASIS HE SHALL SIGN AN ORDER REQUIRING  
12 THAT THE PERSONNEL RECORDS IN QUESTION BE SEALED AND SENT DIRECTLY TO  
13 HIM. HE SHALL THEN REVIEW THE FILE AND MAKE A DETERMINATION AS TO WHETH-  
14 ER THE RECORDS ARE RELEVANT AND MATERIAL IN THE ACTION BEFORE HIM. UPON  
15 SUCH A FINDING, THE COURT SHALL MAKE THOSE PARTS OF THE RECORD FOUND TO  
16 BE RELEVANT AND MATERIAL AVAILABLE TO THE PERSONS SO REQUESTING, WITH  
17 ANY REDACTIONS MADE TO THE RECORD AS THE COURT MAY DETERMINE NECESSARY  
18 OR APPROPRIATE.

19 8. ANY SCHOOL EMPLOYEE, SCHOOL OFFICIAL, MEMBER OF A BOARD OF EDUCA-  
20 TION OR MEMBER OF A BOARD OF COOPERATIVE EDUCATIONAL SERVICES WHO KNOW-  
21 INGLY OR INTENTIONALLY RELEASES OR DISCLOSES, IN ANY MANNER OR FORM, ANY  
22 PERSONNEL RECORD DESCRIBED IN SUBDIVISION TWO OF THIS SECTION, OR THE  
23 CONTENTS THEREOF, EXCEPT AS PROVIDED IN SUBDIVISIONS THREE, FOUR, FIVE  
24 AND SIX, OR SEVEN OF THIS SECTION, SHALL BE SUBJECT TO DAMAGES IN A  
25 PRIVATE RIGHT OF ACTION FOR A VIOLATION OF A RIGHT OF PRIVACY BY THE  
26 TEACHER OR BUILDING PRINCIPAL WHOSE RECORDS WERE RELEASED OR DISCLOSED.  
27 IN SUCH ACTION THE COURT MAY AWARD REASONABLE ATTORNEY'S FEES TO THE  
28 TEACHER OR BUILDING PRINCIPAL. ANY SUCH KNOWING OR INTENTIONAL RELEASE  
29 OR DISCLOSURE OF ANY PERSONNEL RECORD BY A SCHOOL EMPLOYEE SHALL FURTHER  
30 CONSTITUTE GROUNDS FOR DISCIPLINARY ACTION AGAINST THE SCHOOL EMPLOYEE,  
31 UP TO AND INCLUDING DISMISSAL, BY THE EMPLOYING SCHOOL DISTRICT OR BOARD  
32 OF COOPERATIVE EDUCATIONAL SERVICES. ANY SUCH KNOWING OR INTENTIONAL  
33 RELEASE OR DISCLOSURE OF ANY PERSONNEL RECORD BY A SCHOOL OFFICIAL, A  
34 MEMBER OF A BOARD OF EDUCATION OR A MEMBER OF A BOARD OF COOPERATIVE  
35 EDUCATIONAL SERVICES SHALL FURTHER CONSTITUTE GROUNDS FOR REMOVAL FROM  
36 OFFICE PURSUANT TO SECTION THREE HUNDRED SIX OF THE EDUCATION LAW.

37 9. SEVERABILITY. SHOULD ANY PART OR PORTION OF THIS SECTION BE  
38 RENDERED OR DECLARED INVALID BY A COURT OF COMPETENT JURISDICTION, THE  
39 INVALIDATION OF SUCH PART OR PORTION SHALL NOT INVALIDATE THE REMAINING  
40 PORTIONS THEREOF, WHICH SHALL REMAIN VALID AND ENFORCEABLE.

41 S 2. This act shall take effect immediately.