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

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2011-2012 Regular Sessions

I N S E N A T E

April 14, 2011

Introduced by Sen. FLANAGAN -- (at request of the State Education Department) -- 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 tenured teacher disciplinary hearings

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

Section 1. Section 3020-a of the education law, as amended by chapter 691 of the laws of 1994, paragraph (b) of subdivision 2 as separately amended by chapters 296 and 325 of the laws of 2008, paragraph (c) of subdivision 2 and paragraph a of subdivision 3 as amended and subparagraph (i-a) of paragraph c of subdivision 3 as added by chapter 103 of the laws of 2010, is amended to read as follows:

S 3020-a. Disciplinary procedures and penalties. 1. Filing of charges. All charges against a person enjoying the benefits of tenure as provided in subdivision three of section [one thousand one] ELEVEN hundred two, and sections [two thousand five] TWENTY-FIVE hundred nine, [two thousand five] TWENTY-FIVE hundred seventy-three, twenty-five hundred ninety-j, three thousand twelve and three thousand fourteen of this chapter shall be in writing and filed with the clerk or secretary of the school district or employing board during the period between the actual opening and closing of the school year for which the employed is normally required to serve. Except as provided in subdivision eight of section [two thousand five] TWENTY-FIVE hundred seventy-three and subdivision seven of section twenty-five hundred ninety-j of this chapter, no charges under this section shall be brought more than three years after the occurrence of the alleged incompetency or misconduct, except when the charge is of misconduct constituting a crime when committed.

2. [(a)] Disposition of charges. A. Upon receipt of the charges, the clerk or secretary of the school district or employing board shall immediately notify said board thereof. Within five days after receipt of

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

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charges, the employing board, in executive session, shall determine, by a vote of a majority of all the members of such board, whether probable cause exists to bring a disciplinary proceeding against an employee pursuant to this section. If such determination is affirmative, a written statement specifying (I) the charges in detail, (II) the maximum penalty which will be imposed by the board if the employee does not request a hearing or that will be sought by the board if the employee is found guilty of the charges after a hearing, (III) THE RESPONSIBILITY OF THE EMPLOYEE OR THE EMPLOYEE'S COLLECTIVE BARGAINING UNIT, AS APPLICABLE, TO PAY A SHARE OF HEARING COSTS UNDER THE CIRCUMSTANCES SET FORTH IN PARAGRAPH B OF SUBDIVISION THREE OF THIS SECTION, and [outlining] (IV) the employee's rights under this section, shall be immediately forwarded to the accused employee by certified or registered mail, return receipt requested or by personal delivery to the employee.

[(b)] B. The employee may be suspended pending a hearing on the charges and the final determination thereof. The suspension shall be with pay, 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 sex offense, as defined in subparagraph two of paragraph b of subdivision seven-a of section three hundred five of this chapter, OR UPON A DETERMINATION BY THE COMMISSIONER THAT THE EMPLOYEE LACKS APPROPRIATE CERTIFICATION FOR THE POSITION TO WHICH THE EMPLOYEE IS LAWFULLY ASSIGNED. 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, OR UPON A DETERMINATION BY THE COMMISSIONER THAT THE EMPLOYEE LACKS APPROPRIATE CERTIFICATION FOR THE POSITION TO WHICH THE EMPLOYEE IS LAWFULLY ASSIGNED. THE COMMISSIONER SHALL ADOPT REGULATIONS ESTABLISHING PROCEDURES FOR DETERMINING WHETHER AN EMPLOYEE LACKS THE APPROPRIATE CERTIFICATION, WHICH SHALL PROVIDE THE EMPLOYEE WITH NOTICE AND AN OPPORTUNITY TO RESPOND IN WRITING.

[(c)] 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.

[(d)] D. The unexcused failure of the employee to notify the clerk or secretary of his or her desire for a hearing within ten days of the receipt of charges shall be deemed a waiver of the right to a hearing. Where an employee requests a hearing in the manner provided for by this section, the clerk or secretary of the board shall, within three working days of receipt of the employee's notice or request for a hearing, noti-

fy the commissioner [of education] of the need for a hearing. If the employee waives his or her right to a hearing the employing board shall proceed, within fifteen days, by a vote of a majority of all members of such board, to determine the case and fix the penalty, if any, to be imposed in accordance with subdivision four of this section.

3. Hearings. 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") 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 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] IN SUCH POSITION 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.

(A) Notwithstanding any other provision of law, FOR HEARINGS COMMENCED BY THE FILING OF CHARGES ON OR BEFORE JUNE THIRTIETH, TWO THOUSAND ELEVEN, 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 COMMENCED BY THE FILING OF CHARGES ON OR BEFORE JUNE THIRTIETH, TWO THOUSAND ELEVEN shall be paid in accordance with rules promulgated by the commissioner [of education]. CLAIMS FOR SUCH COMPENSATION FOR DAYS OF ACTUAL SERVICE AND REIMBURSEMENT FOR NECESSARY TRAVEL AND OTHER EXPENSES FOR HEARINGS COMMENCED BY THE FILING OF CHARGES ON OR BEFORE JUNE THIRTIETH, TWO THOUSAND ELEVEN SHALL BE PAID FROM AN APPROPRIATION FOR SUCH PURPOSE IN THE ORDER IN WHICH THEY HAVE BEEN APPROVED BY THE COMMISSIONER FOR PAYMENT, PROVIDED PAYMENT SHALL FIRST BE MADE FOR ANY OTHER HEARING COSTS PAYABLE BY THE COMMISSIONER, INCLUDING THE COSTS OF TRANSCRIBING THE RECORD, AND PROVIDED FURTHER THAT NO SUCH CLAIM SHALL BE SET ASIDE FOR INSUFFICIENCY OF FUNDS TO MAKE A COMPLETE PAYMENT, BUT SHALL BE ELIGIBLE FOR A PARTIAL PAYMENT IN ONE YEAR AND SHALL RETAIN ITS PRIORITY DATE STATUS FOR APPROPRIATIONS DESIGNATED FOR SUCH PURPOSE IN FUTURE YEARS.

(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION TO THE CONTRARY, FOR HEARINGS COMMENCED BY THE FILING OF CHARGES ON OR AFTER JULY FIRST, TWO THOUSAND ELEVEN, THE HEARING OFFICER SHALL BE COMPENSATED FOR HIS OR HER ACTUAL HOURS OF SERVICE RENDERED IN THE PERFORMANCE OF HIS OR HER DUTIES AS A HEARING OFFICER, PLUS ANY NECESSARY TRAVEL OR OTHER EXPENSES INCURRED IN THE PERFORMANCE OF SUCH DUTIES

IN ACCORDANCE WITH THE PROVISIONS OF THIS CLAUSE AND CLAUSE (C) OF THIS SUBPARAGRAPH. THE COMMISSIONER SHALL ESTABLISH MAXIMUM RATES FOR THE COMPENSATION OF HEARING OFFICERS AND LIMITATIONS ON THE NUMBER OF STUDY HOURS THAT MAY BE CLAIMED. UPON VERIFICATION AND APPROVAL BY THE EMPLOYING BOARD AND THE EMPLOYEE'S COLLECTIVE BARGAINING UNIT FOLLOWING COMPLETION OF THE HEARING, CLAIMS FOR PAYMENT FOR SUCH SERVICES SHALL BE SUBMITTED TO THE DEPARTMENT. THE COMMISSIONER SHALL BE RESPONSIBLE FOR PAYMENT OF A STATE SHARE OF SUCH CLAIMS FOR COMPENSATION WITHIN THE AMOUNT APPROPRIATED FOR SUCH PURPOSE, TO BE DETERMINED IN ACCORDANCE WITH CLAUSE (C) OF THIS SUBPARAGRAPH, AND THE BALANCE OF SUCH CLAIMS, PLUS THE COSTS OF NECESSARY TRAVEL AND OTHER EXPENSES INCURRED BY THE HEARING OFFICER AND ANY OTHER HEARING COSTS NOT PAID BY THE DEPARTMENT, SHALL BE PAID BY THE EMPLOYING BOARD AND THE EMPLOYEE OR THE EMPLOYEE'S COLLECTIVE BARGAINING AGENT IN EQUAL SHARES. THE COSTS OF RECORDING THE DISCIPLINARY PROCEEDING SHALL BE PAID BY THE DEPARTMENT IN ACCORDANCE WITH CLAUSE (C) OF THIS SUBPARAGRAPH AND REGULATIONS PROMULGATED BY THE COMMISSIONER.

(C) THE STATE SHARE OF THE COSTS OF COMPENSATING HEARING OFFICERS FOR ACTUAL HOURS OF SERVICE SHALL BE COMPUTED IN ACCORDANCE WITH THIS CLAUSE AND THE REGULATIONS OF THE COMMISSIONER. THE COMMISSIONER SHALL ANNUALLY ESTABLISH AN HOURLY STATE SHARE REIMBURSEMENT RATE AND THE RATE SO ESTABLISHED SHALL REMAIN IN EFFECT UNTIL A NEW RATE IS ESTABLISHED. FROM THE AMOUNT APPROPRIATED FOR PURPOSES OF THIS CLAUSE, THE DEPARTMENT SHALL RESERVE AN AMOUNT FOR PAYMENT OF THE COSTS OF RECORDING THE DISCIPLINARY HEARINGS AND THE DEPARTMENT'S ADMINISTRATIVE COSTS. FROM THE REMAINDER OF THE APPROPRIATION, PRIORITY SHALL BE GIVEN TO PAYMENT OF ANY UNPAID PRIOR YEAR CLAIMS ATTRIBUTABLE TO HEARINGS COMMENCED ON OR AFTER JULY FIRST, TWO THOUSAND ELEVEN IN THE ORDER IN WHICH THEY WERE APPROVED BY THE COMMISSIONER. CLAIMS FOR THE HOURLY STATE SHARE REIMBURSEMENT FOR ACTUAL HOURS OF SERVICE FOR THE HEARING OFFICER AND CLAIMS FOR COMPENSATION OF HEARING PANEL MEMBERS OTHER THAN THE HEARING OFFICER IN HEARINGS CONDUCTED AS AUTHORIZED BY SUBPARAGRAPH (IV) OF THIS PARAGRAPH SHALL BE PAID FROM THE BALANCE OF THE APPROPRIATION IN THE ORDER IN WHICH THE CLAIMS ARE APPROVED BY THE COMMISSIONER, UNTIL THE APPROPRIATION IS EXHAUSTED, PROVIDED THAT NO SUCH CLAIM SHALL BE SET ASIDE FOR INSUFFICIENCY OF FUNDS TO MAKE A COMPLETE PAYMENT, BUT SHALL BE ELIGIBLE FOR A PARTIAL PAYMENT IN ONE YEAR AND SHALL RETAIN ITS PRIORITY DATE STATUS FOR APPROPRIATIONS DESIGNATED FOR SUCH PURPOSE IN FUTURE YEARS.

(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, from a list maintained for such purpose by the commis-

sioner [of education]. The 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] AND SHALL BE REIMBURSED IN EQUAL SHARES BY THE EMPLOYING BOARD AND EMPLOYEE OR EMPLOYEE'S BARGAINING AGENT FOR necessary travel and subsistence expenses. The hearing officer shall be compensated as set forth in this subdivision. The hearing officer shall be the [chairman] CHAIRPERSON of the hearing panel.

c. Hearing procedures. (i) (A) The commissioner [of education] shall have the power to establish necessary rules and procedures for the conduct of hearings under this section WHICH, FOR HEARINGS OTHER THAN EXPEDITED HEARINGS PURSUANT TO SUBPARAGRAPH (I-A) OF THIS PARAGRAPH, MAY INCLUDE SPECIFIC TIMELINE REQUIREMENTS FOR CONDUCTING A HEARING AND FOR RENDERING A FINAL DECISION.

(B) THE DEPARTMENT SHALL BE AUTHORIZED TO MONITOR AND INVESTIGATE A HEARING OFFICER'S COMPLIANCE WITH SUCH TIMELINES, AS SET FORTH IN THE REGULATIONS OF THE COMMISSIONER. 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 THE REGULATIONS OF THE COMMISSIONER FOR CONDUCTING SUCH HEARINGS ARE TO BE STRICTLY FOLLOWED. A RECORD OF CONTINUED FAILURE TO COMMENCE AND COMPLETE HEARINGS WITHIN THE TIME PERIODS PRESCRIBED IN THE REGULATIONS AUTHORIZED BY 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 HEARINGS.

(C) 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] WITNESSES AND EVIDENCE BY BOTH PARTIES IN THE MANNER PRESCRIBED IN ARTICLES THREE AND FOUR OF THE STATE ADMINISTRATIVE PROCEDURE ACT. THE HEARING 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. 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.

(D) A competent stenographer, designated by the commissioner [of education] and compensated by the [state education] department, shall keep [and transcribe] a record of the proceedings at each such hearing. A copy of the [transcript] RECORD of the hearings shall, upon request, be furnished without charge to the employee and the board of education involved. THE DEPARTMENT SHALL BE AUTHORIZED TO UTILIZE ANY NEW TECHNOLOGY OR SUCH OTHER APPROPRIATE MEANS TO TRANSCRIBE OR RECORD SUCH HEARINGS IN AN EFFICIENT AND COST-EFFECTIVE MANNER WITHOUT ANY CHARGE TO THE EMPLOYEE OR BOARD OF EDUCATION INVOLVED.

(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.

(ii) The hearing officer selected to conduct a hearing under this section shall, within ten to fifteen days of agreeing to serve [as such] IN SUCH POSITION, hold a pre-hearing conference which shall be held in the school district or county seat of the county, or any county, wherein the employing school board is located. The pre-hearing conference shall be limited in length to one day except that the hearing officer, in his or her discretion, may allow one additional day for good cause shown.

(iii) At the pre-hearing conference the hearing officer shall have the power to:

(A) issue subpoenas;

(B) hear and decide all motions, including but not limited to motions to dismiss the charges;

(C) hear and decide all applications FROM EITHER PARTY for bills of particular or requests for production of materials or information, including, but not limited to, any witness statement (or statements), investigatory statement (or statements) or note (notes), exculpatory

evidence or any other evidence, including district or student records, relevant and material to the [employee's defense] PROCEEDING.

(iv) Any pre-hearing motion or application relative to the sufficiency of the charges, application or amendment thereof, or any preliminary matters shall be made upon written notice to the hearing officer and the adverse party no less than five days prior to the date of the pre-hearing conference. Any pre-hearing motions or applications not made as provided for herein shall be deemed waived except for good cause as determined by the hearing officer.

(v) In the event that at the pre-hearing conference the employing board presents evidence that the professional license of the employee has been revoked and all judicial and administrative remedies have been exhausted or foreclosed, the hearing officer shall schedule the date, time and place for an expedited hearing, which hearing shall commence not more than seven days after the pre-hearing conference and which shall be limited to one day. The expedited hearing shall be held in the local school district or county seat of the county or any county, wherein the said employing board is located. The expedited hearing shall not be postponed except upon the request of a party and then only for good cause as determined by the hearing officer. At such hearing, each party shall have equal time in which to present its case.

(vi) During the pre-hearing conference, the hearing officer shall determine the reasonable amount of time necessary for a final hearing on the charge or charges and shall schedule the location, time(s) and date(s) for the final hearing. The final hearing shall be held in the local school district or county seat of the county, or any county, wherein the said employing school board is located. In the event that the hearing officer determines that the nature of the case requires the final hearing to last more than one day, the days that are scheduled for the final hearing shall be consecutive. The day or days scheduled for the final hearing shall not be postponed except upon the request of a party and then only for good cause shown as determined by the hearing officer. In all cases, the final hearing shall be completed no later than sixty days after the pre-hearing conference unless the hearing officer determines that extraordinary circumstances warrant a limited extension.

D. LIMITATION ON CLAIMS. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION TO THE CONTRARY, NO PAYMENTS SHALL BE MADE BY THE DEPARTMENT PURSUANT TO THIS SUBDIVISION ON OR AFTER JULY FIRST, TWO THOUSAND ELEVEN FOR: (I) COMPENSATION OF A HEARING OFFICER OR HEARING PANEL MEMBER, (II) REIMBURSEMENT OF SUCH HEARING OFFICERS OR PANEL MEMBERS FOR NECESSARY TRAVEL OR OTHER EXPENSES INCURRED BY THEM, OR (III) FOR OTHER HEARING EXPENSES ON A CLAIM SUBMITTED LATER THAN ONE YEAR AFTER THE FINAL DISPOSITION OF THE HEARING BY ANY MEANS, INCLUDING SETTLEMENT, OR WITHIN NINETY DAYS AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH, WHICHEVER IS LATER; PROVIDED THAT NO PAYMENT SHALL BE BARRED OR REDUCED WHERE SUCH PAYMENT IS REQUIRED AS A RESULT OF A COURT ORDER OR JUDGMENT OR A FINAL AUDIT.

4. Post hearing procedures. [(a)] A. The hearing officer shall render a written decision within thirty days of the last day of the final hearing, or in the case of an expedited hearing within ten days of such expedited hearing, and shall [forthwith] forward a copy thereof to the commissioner [of education] who shall immediately forward copies of the decision to the employee and to the clerk or secretary of the employing board. The written decision shall include the hearing officer's findings of fact on each charge, his or her conclusions with regard to each

charge based on said findings and shall state what penalty or other action, if any, shall be taken by the employing board. At the request of the employee, in determining what, if any, penalty or other action shall be imposed, the hearing officer shall consider the extent to which the employing board made efforts towards correcting the behavior of the employee which resulted in charges being brought under this section through means including but not limited to: remediation, peer intervention or an employee assistance plan. In those cases where a penalty is imposed, such penalty may be a written reprimand, a fine, suspension for a fixed time without pay, or dismissal. In addition to or in lieu of the aforementioned penalties, the hearing officer, where he or she deems appropriate, may impose upon the employee remedial action including but not limited to leaves of absence with or without pay, continuing education and/or study, a requirement that the employee seek counseling or medical treatment or that the employee engage in any other remedial or combination of remedial actions.

[(b)] B. Within fifteen days of receipt of the hearing officer's decision the employing board shall implement the decision. If the employee is acquitted he or she shall be restored to his or her position with full pay for any period of suspension without pay and the charges expunged from the employment record. If an employee who was convicted of a felony crime specified in paragraph [(b)] B of subdivision two of this section, has said conviction reversed, the employee, upon application, shall be entitled to have his OR HER pay and other emoluments restored, for the period from the date of his OR HER suspension to the date of the decision.

[(c)] C. The hearing officer shall indicate in the decision whether any of the charges brought by the employing board were frivolous as defined in section [eight thousand three] EIGHTY-THREE hundred three-a of the civil practice law and rules. If the hearing [officers] OFFICER finds that all of the charges brought against the employee were frivolous, the hearing officer shall order the employing board to reimburse the [state education] department the reasonable costs said department incurred as a result of the proceeding and to reimburse the employee the reasonable costs, including but not limited to reasonable attorneys' fees, the employee incurred in defending the charges. If the hearing officer finds that some but not all of the charges brought against the employee were frivolous, the hearing officer shall order the employing board to reimburse the [state education] department a portion, in the discretion of the hearing officer, of the reasonable costs said department incurred as a result of the proceeding and to reimburse the employee a portion, in the discretion of the hearing officer, of the reasonable costs, including but not limited to reasonable attorneys' fees, the employee incurred in defending the charges.

5. Appeal. A. Not later than ten days after receipt of the hearing officer's decision IN A HEARING COMMENCED BY THE FILING OF CHARGES ON OR BEFORE JUNE THIRTIETH, TWO THOUSAND ELEVEN, the employee or the employing board may make an application to the New York state supreme court to vacate or modify the decision of the hearing officer pursuant to section [seven thousand five] SEVENTY-FIVE hundred eleven of the civil practice law and rules. The court's review shall be limited to the grounds set forth in such section. The hearing panel's determination shall be deemed to be final for the purpose of such proceeding.

B. FOR HEARINGS COMMENCED BY THE FILING OF CHARGES ON AND AFTER JULY FIRST, TWO THOUSAND ELEVEN, THE EMPLOYEE OR THE EMPLOYING BOARD MAY SEEK REVIEW OF THE HEARING OFFICER'S DECISION IN A SPECIAL PROCEEDING PURSU-

ANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES. THE HEARING OFFICER'S DECISION SHALL BE DEEMED TO BE FINAL FOR THE PURPOSE OF SUCH PROCEEDING.

C. In no case shall the filing or the pendency of an appeal delay the implementation of the decision of the hearing officer.

S 2. This act shall take effect immediately, except that if this act shall have become a law on or after April 1, 2011 this act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2011.