

6225

2011-2012 Regular Sessions

I N A S S E M B L Y

March 9, 2011

Introduced by M. of A. NOLAN -- (at request of the State Education Department) -- read once and referred 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:

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

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

22 2. [(a)] Disposition of charges. A. Upon receipt of the charges, the
23 clerk or secretary of the school district or employing board shall imme-
24 diately notify said board thereof. Within five days after receipt of
25 charges, the employing board, in executive session, shall determine, by

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

A

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

14 [(b)] B. The employee may be suspended pending a hearing on the charg-
15 es and the final determination thereof. The suspension shall be with
16 pay, except the employee may be suspended without pay if the employee
17 has entered a guilty plea to or has been convicted of a felony crime
18 concerning the criminal sale or possession of a controlled substance, a
19 precursor of a controlled substance, or drug paraphernalia as defined in
20 article two hundred twenty or two hundred twenty-one of the penal law;
21 or a felony crime involving the physical abuse of a minor or student.
22 The employee shall be terminated without a hearing, as provided for in
23 this section, upon conviction of a sex offense, as defined in subpara-
24 graph two of paragraph b of subdivision seven-a of section three hundred
25 five of this chapter, OR UPON A DETERMINATION BY THE COMMISSIONER THAT
26 THE EMPLOYEE LACKS APPROPRIATE CERTIFICATION FOR THE POSITION TO WHICH
27 THE EMPLOYEE IS LAWFULLY ASSIGNED. To the extent this section applies to
28 an employee acting as a school administrator or supervisor, as defined
29 in subparagraph three of paragraph b of subdivision seven-b of section
30 three hundred five of this chapter, such employee shall be terminated
31 without a hearing, as provided for in this section, upon conviction of a
32 felony offense defined in subparagraph two of paragraph b of subdivision
33 seven-b of section three hundred five of this chapter, OR UPON A DETER-
34 MINATION BY THE COMMISSIONER THAT THE EMPLOYEE LACKS APPROPRIATE CERTIF-
35 ICATION FOR THE POSITION TO WHICH THE EMPLOYEE IS LAWFULLY ASSIGNED. THE
36 COMMISSIONER SHALL ADOPT REGULATIONS ESTABLISHING PROCEDURES FOR DETER-
37 MINING WHETHER AN EMPLOYEE LACKS THE APPROPRIATE CERTIFICATION, WHICH
38 SHALL PROVIDE THE EMPLOYEE WITH NOTICE AND AN OPPORTUNITY TO RESPOND IN
39 WRITING.

40 [(c)] C. Within ten days of receipt of the statement of charges, the
41 employee shall notify the clerk or secretary of the employing board in
42 writing whether he or she desires a hearing on the charges and when the
43 charges concern pedagogical incompetence or issues involving pedagogical
44 judgment, his or her choice of either a single hearing officer or a
45 three member panel, provided that a three member panel shall not be
46 available where the charges concern pedagogical incompetence based sole-
47 ly upon a teacher's or principal's pattern of ineffective teaching or
48 performance as defined in section three thousand twelve-c of this arti-
49 cle. All other charges shall be heard by a single hearing officer.

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

1 employee waives his or her right to a hearing the employing board shall
2 proceed, within fifteen days, by a vote of a majority of all members of
3 such board, to determine the case and fix the penalty, if any, to be
4 imposed in accordance with subdivision four of this section.

5 3. Hearings. a. Notice of hearing. Upon receipt of a request for a
6 hearing in accordance with subdivision two of this section, the commis-
7 sioner shall forthwith notify the American Arbitration Association
8 (hereinafter "association") of the need for a hearing and shall request
9 the association to provide to the commissioner forthwith a list of names
10 of persons chosen by the association from the association's panel of
11 labor arbitrators to potentially serve as hearing officers together with
12 relevant biographical information on each arbitrator. Upon receipt of
13 said list and biographical information, the commissioner shall forthwith
14 send a copy of both simultaneously to the employing board and the
15 employee. The commissioner shall also simultaneously notify both the
16 employing board and the employee of each potential hearing officer's
17 record in the last five cases of commencing and completing hearings
18 within the time periods prescribed in this section.

19 b. (i) Hearing officers. All hearings pursuant to this section shall
20 be conducted before and by a single hearing officer selected as provided
21 for in this section. A hearing officer shall not be eligible to serve
22 [as such] IN SUCH POSITION if he or she is a resident of the school
23 district, other than the city of New York, under the jurisdiction of the
24 employing board, an employee, agent or representative of the employing
25 board or of any labor organization representing employees of such
26 employing board, has served as such agent or representative within two
27 years of the date of the scheduled hearing, or if he or she is then
28 serving as a mediator or fact finder in the same school district.

29 (A) Notwithstanding any other provision of law, FOR HEARINGS COMMENCED
30 BY THE FILING OF CHARGES ON OR BEFORE JUNE THIRTIETH, TWO THOUSAND ELEV-
31 EN, the hearing officer shall be compensated by the department with the
32 customary fee paid for service as an arbitrator under the auspices of
33 the association for each day of actual service plus necessary travel and
34 other reasonable expenses incurred in the performance of his or her
35 duties. All other expenses of the disciplinary proceedings COMMENCED BY
36 THE FILING OF CHARGES ON OR BEFORE JUNE THIRTIETH, TWO THOUSAND ELEVEN
37 shall be paid in accordance with rules promulgated by the commissioner
38 [of education]. CLAIMS FOR SUCH COMPENSATION FOR DAYS OF ACTUAL SERVICE
39 AND REIMBURSEMENT FOR NECESSARY TRAVEL AND OTHER EXPENSES FOR HEARINGS
40 COMMENCED BY THE FILING OF CHARGES ON OR BEFORE JUNE THIRTIETH, TWO
41 THOUSAND ELEVEN SHALL BE PAID FROM AN APPROPRIATION FOR SUCH PURPOSE IN
42 THE ORDER IN WHICH THEY HAVE BEEN APPROVED BY THE COMMISSIONER FOR
43 PAYMENT, PROVIDED PAYMENT SHALL FIRST BE MADE FOR ANY OTHER HEARING
44 COSTS PAYABLE BY THE COMMISSIONER, INCLUDING THE COSTS OF TRANSCRIBING
45 THE RECORD, AND PROVIDED FURTHER THAT NO SUCH CLAIM SHALL BE SET ASIDE
46 FOR INSUFFICIENCY OF FUNDS TO MAKE A COMPLETE PAYMENT, BUT SHALL BE
47 ELIGIBLE FOR A PARTIAL PAYMENT IN ONE YEAR AND SHALL RETAIN ITS PRIORITY
48 DATE STATUS FOR APPROPRIATIONS DESIGNATED FOR SUCH PURPOSE IN FUTURE
49 YEARS.

50 (B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION TO
51 THE CONTRARY, FOR HEARINGS COMMENCED BY THE FILING OF CHARGES ON OR
52 AFTER JULY FIRST, TWO THOUSAND ELEVEN, THE HEARING OFFICER SHALL BE
53 COMPENSATED FOR HIS OR HER ACTUAL HOURS OF SERVICE RENDERED IN THE
54 PERFORMANCE OF HIS OR HER DUTIES AS A HEARING OFFICER, PLUS ANY NECES-
55 SARY TRAVEL OR OTHER EXPENSES INCURRED IN THE PERFORMANCE OF SUCH DUTIES
56 IN ACCORDANCE WITH THE PROVISIONS OF THIS CLAUSE AND CLAUSE (C) OF THIS

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

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

39 (ii) Not later than ten days after the date the commissioner mails to
40 the employing board and the employee the list of potential hearing offi-
41 cers and biographies provided to the commissioner by the association,
42 the employing board and the employee, individually or through their
43 agents or representatives, shall by mutual agreement select a hearing
44 officer from said list to conduct the hearing and shall notify the
45 commissioner of their selection.

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

51 (iv) In those cases in which the employee elects to have the charges
52 heard by a hearing panel, the hearing panel shall consist of the hearing
53 officer, selected in accordance with this subdivision, and two addi-
54 tional persons, one selected by the employee and one selected by the
55 employing board, from a list maintained for such purpose by the commis-
56 sioner [of education]. The list shall be composed of professional

1 personnel with administrative or supervisory responsibility, profes-
2 sional personnel without administrative or supervisory responsibility,
3 chief school administrators, members of employing boards and others
4 selected from lists of nominees submitted to the commissioner by state-
5 wide organizations representing teachers, school administrators and
6 supervisors and the employing boards. Hearing panel members other than
7 the hearing officer shall be compensated by the department [of educa-
8 tion] at the rate of one hundred dollars for each day of actual service
9 [plus] AND SHALL BE REIMBURSED IN EQUAL SHARES BY THE EMPLOYING BOARD
10 AND EMPLOYEE OR EMPLOYEE'S BARGAINING AGENT FOR necessary travel and
11 subsistence expenses. The hearing officer shall be compensated as set
12 forth in this subdivision. The hearing officer shall be the [chairman]
13 CHAIRPERSON of the hearing panel.

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

20 (B) THE DEPARTMENT SHALL BE AUTHORIZED TO MONITOR AND INVESTIGATE A
21 HEARING OFFICER'S COMPLIANCE WITH SUCH TIMELINES, AS SET FORTH IN THE
22 REGULATIONS OF THE COMMISSIONER. THE COMMISSIONER SHALL ANNUALLY INFORM
23 ALL HEARING OFFICERS WHO HAVE HEARD CASES PURSUANT TO THIS SECTION
24 DURING THE PRECEDING YEAR THAT THE TIME PERIODS PRESCRIBED IN THE REGU-
25 LATIONS OF THE COMMISSIONER FOR CONDUCTING SUCH HEARINGS ARE TO BE
26 STRICTLY FOLLOWED. A RECORD OF CONTINUED FAILURE TO COMMENCE AND
27 COMPLETE HEARINGS WITHIN THE TIME PERIODS PRESCRIBED IN THE REGULATIONS
28 AUTHORIZED BY THIS SUBPARAGRAPH SHALL BE CONSIDERED GROUNDS FOR THE
29 COMMISSIONER TO EXCLUDE SUCH INDIVIDUAL FROM THE LIST OF POTENTIAL HEAR-
30 ING OFFICERS SENT TO THE EMPLOYING BOARD AND THE EMPLOYEE FOR SUCH HEAR-
31 INGS.

32 (C) Such rules shall not require compliance with technical rules of
33 evidence. Hearings shall be conducted by the hearing officer selected
34 pursuant to paragraph b of this subdivision with full and fair disclo-
35 sure of [the nature of the case and evidence against the employee by the
36 employing board and] WITNESSES AND EVIDENCE BY BOTH PARTIES IN THE
37 MANNER PRESCRIBED IN ARTICLES THREE AND FOUR OF THE STATE ADMINISTRATIVE
38 PROCEDURE ACT. THE HEARING shall be public or private at the discretion
39 of the employee. The employee shall have a reasonable opportunity to
40 defend himself or herself and an opportunity to testify in his or her
41 own behalf. The employee shall not be required to testify. Each party
42 shall have the right to be represented by counsel, to subpoena
43 witnesses, and to cross-examine witnesses. All testimony taken shall be
44 under oath which the hearing officer is hereby authorized to administer.

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

54 (i-a)(A) Where charges of incompetence are brought based solely upon a
55 pattern of ineffective teaching or performance of a classroom teacher or
56 principal, as defined in section three thousand twelve-c of this arti-

1 cle, the hearing shall be conducted before and by a single hearing offi-
2 cer in an expedited hearing, which shall commence within seven days
3 after the pre-hearing conference and shall be completed within sixty
4 days after the pre-hearing conference. The hearing officer shall estab-
5 lish a hearing schedule at the pre-hearing conference to ensure that the
6 expedited hearing is completed within the required timeframes and to
7 ensure an equitable distribution of days between the employing board and
8 the charged employee. Notwithstanding any other law, rule or regulation
9 to the contrary, no adjournments may be granted that would extend the
10 hearing beyond such sixty days, except as authorized in this subpara-
11 graph. A hearing officer, upon request, may grant a limited and time
12 specific adjournment that would extend the hearing beyond such sixty
13 days if the hearing officer determines that the delay is attributable to
14 a circumstance or occurrence substantially beyond the control of the
15 requesting party and an injustice would result if the adjournment were
16 not granted.

17 (B) Such charges shall allege that the employing board has developed
18 and substantially implemented a teacher or principal improvement plan in
19 accordance with subdivision four of section three thousand twelve-c of
20 this article for the employee following the first evaluation in which
21 the employee was rated ineffective, and the immediately preceding evalu-
22 ation if the employee was rated developing. Notwithstanding any other
23 provision of law to the contrary, a pattern of ineffective teaching or
24 performance as defined in section three thousand twelve-c of this arti-
25 cle shall constitute very significant evidence of incompetence for
26 purposes of this section. Nothing in this subparagraph shall be
27 construed to limit the defenses which the employee may place before the
28 hearing officer in challenging the allegation of a pattern of ineffec-
29 tive teaching or performance.

30 (C) The commissioner shall annually inform all hearing officers who
31 have heard cases pursuant to this section during the preceding year that
32 the time periods prescribed in this subparagraph for conducting expe-
33 dited hearings are to be strictly followed. A record of continued fail-
34 ure to commence and complete expedited hearings within the time periods
35 prescribed in this subparagraph shall be considered grounds for the
36 commissioner to exclude such individual from the list of potential hear-
37 ing officers sent to the employing board and the employee for such expe-
38 dited hearings.

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

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

48 (A) issue subpoenas;

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

51 (C) hear and decide all applications FROM EITHER PARTY for bills of
52 particular or requests for production of materials or information,
53 including, but not limited to, any witness statement (or statements),
54 investigatory statement (or statements) or note (notes), exculpatory
55 evidence or any other evidence, including district or student records,
56 relevant and material to the [employee's defense] PROCEEDING.

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

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

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

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

47 4. Post hearing procedures. [(a)] A. The hearing officer shall render
48 a written decision within thirty days of the last day of the final hear-
49 ing, or in the case of an expedited hearing within ten days of such
50 expedited hearing, and shall [forthwith] forward a copy thereof to the
51 commissioner [of education] who shall immediately forward copies of the
52 decision to the employee and to the clerk or secretary of the employing
53 board. The written decision shall include the hearing officer's findings
54 of fact on each charge, his or her conclusions with regard to each
55 charge based on said findings and shall state what penalty or other
56 action, if any, shall be taken by the employing board. At the request of

1 the employee, in determining what, if any, penalty or other action shall
2 be imposed, the hearing officer shall consider the extent to which the
3 employing board made efforts towards correcting the behavior of the
4 employee which resulted in charges being brought under this section
5 through means including but not limited to: remediation, peer inter-
6 vention or an employee assistance plan. In those cases where a penalty
7 is imposed, such penalty may be a written reprimand, a fine, suspension
8 for a fixed time without pay, or dismissal. In addition to or in lieu of
9 the aforementioned penalties, the hearing officer, where he or she deems
10 appropriate, may impose upon the employee remedial action including but
11 not limited to leaves of absence with or without pay, continuing educa-
12 tion and/or study, a requirement that the employee seek counseling or
13 medical treatment or that the employee engage in any other remedial or
14 combination of remedial actions.

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

25 [(c)] C. The hearing officer shall indicate in the decision whether
26 any of the charges brought by the employing board were frivolous as
27 defined in section [eight thousand three] EIGHTY-THREE hundred three-a
28 of the civil practice law and rules. If the hearing [officers] OFFICER
29 finds that all of the charges brought against the employee were frivo-
30 lous, the hearing officer shall order the employing board to reimburse
31 the [state education] department the reasonable costs said department
32 incurred as a result of the proceeding and to reimburse the employee the
33 reasonable costs, including but not limited to reasonable attorneys'
34 fees, the employee incurred in defending the charges. If the hearing
35 officer finds that some but not all of the charges brought against the
36 employee were frivolous, the hearing officer shall order the employing
37 board to reimburse the [state education] department a portion, in the
38 discretion of the hearing officer, of the reasonable costs said depart-
39 ment incurred as a result of the proceeding and to reimburse the employ-
40 ee a portion, in the discretion of the hearing officer, of the reason-
41 able costs, including but not limited to reasonable attorneys' fees, the
42 employee incurred in defending the charges.

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

52 B. FOR HEARINGS COMMENCED BY THE FILING OF CHARGES ON AND AFTER JULY
53 FIRST, TWO THOUSAND ELEVEN, THE EMPLOYEE OR THE EMPLOYING BOARD MAY SEEK
54 REVIEW OF THE HEARING OFFICER'S DECISION IN A SPECIAL PROCEEDING PURSU-
55 ANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES. THE

1 HEARING OFFICER'S DECISION SHALL BE DEEMED TO BE FINAL FOR THE PURPOSE
2 OF SUCH PROCEEDING.

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

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