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

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I N A S S E M B L Y

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Introduced by M. of A. BING, HOYT, BOYLAND, PEOPLES-STOKES, J. MILLER, FITZPATRICK, KATZ -- Multi-Sponsored by -- M. of A. CALHOUN -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to annual professional performance reviews of classroom teachers and building principals and 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. Subdivisions 2, 3, 7 and 8 of section 3012-c of the education law, as added by chapter 103 of the laws of 2010, are amended to read as follows:

2. a. The annual professional performance reviews conducted pursuant to this section for classroom teachers and building principals shall differentiate teacher and principal effectiveness using the following quality rating categories: highly effective, effective, developing and ineffective, with explicit minimum and maximum scoring ranges for each category, as prescribed in the regulations of the commissioner. Such annual professional performance reviews shall result in a single composite teacher or principal effectiveness score, which incorporates multiple measures of effectiveness related to the criteria included in the regulations of the commissioner. Except for the student growth measures prescribed in paragraphs e, f and g of this subdivision, the elements comprising the composite effectiveness score shall be locally developed, consistent with the standards prescribed in the regulations of the commissioner, through negotiations conducted, pursuant to the requirements of article fourteen of the civil service law.

b. Annual professional performance reviews conducted by school districts on or after July first, two thousand eleven of classroom

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

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teachers of common branch subjects or English language arts or mathematics in grades four to eight and all building principals of schools in which such teachers are employed shall be conducted pursuant to this subdivision and shall use two thousand ten--two thousand eleven school year student data as the baseline for the initial computation of the composite teacher or principal effectiveness score for such classroom teachers and principals.

c. Annual professional performance reviews conducted by school districts or boards of cooperative educational services on or after July first, two thousand [twelve] ELEVEN of all classroom teachers and all building principals shall be conducted pursuant to this subdivision and shall use two thousand [eleven] TEN--two thousand [twelve] ELEVEN school year student data as the baseline for the initial computation of the composite teacher or principal effectiveness score for such classroom teachers and principals. For purposes of this section, an administrator in charge of an instructional program of a board of cooperative educational services shall be deemed to be a building principal.

d. Prior to any evaluation being conducted in accordance with this section, each individual who is responsible for conducting an evaluation of a teacher or building principal shall receive appropriate training in accordance with the regulations of the commissioner of education.

e. For annual professional performance reviews conducted in accordance with paragraph b of this subdivision in the two thousand eleven--two thousand twelve school year, forty percent of the composite score of effectiveness shall be based on student achievement measures as follows: (i) twenty percent of the evaluation shall be based upon student growth data on state assessments as prescribed by the commissioner or a comparable measure of student growth if such growth data is not available; and (ii) twenty percent shall be based on other locally selected measures of student achievement that are determined to be rigorous and comparable across classrooms in accordance with the regulations of the commissioner and as are developed locally in a manner consistent with procedures negotiated pursuant to the requirements of article fourteen of the civil service law.

f. For annual professional performance reviews conducted in accordance with paragraph c of this subdivision in any school year prior to the first school year for which the board of regents has approved use of a value-added growth model, but not earlier than the two thousand [twelve] ELEVEN--two thousand [thirteen] TWELVE school year, forty percent of the composite score of effectiveness shall be based on student achievement measures as follows: (i) twenty percent of the evaluation shall be based upon student growth data on state assessments as prescribed by the commissioner or a comparable measure of student growth if such growth data is not available; and (ii) twenty percent shall be based on other locally selected measures of student achievement that are determined to be rigorous and comparable across classrooms in accordance with the regulations of the commissioner and as are developed locally in a manner consistent with procedures negotiated pursuant to the requirements of article fourteen of the civil service law.

g. For annual professional performance reviews conducted in accordance with paragraph c of this subdivision in the first school year for which the board of regents has approved use of a value-added growth model and thereafter, forty percent of the composite score of effectiveness shall be based on student achievement measures as follows: (i) twenty-five percent of the evaluation shall be based upon student growth data on state assessments as prescribed by the commissioner or a comparable

measure of student growth if such growth data is not available; and (ii) fifteen percent shall be based on other locally selected measures of student achievement that are determined to be rigorous and comparable across classrooms in accordance with the regulations of the commissioner and as are locally developed in a manner consistent with procedures negotiated pursuant to the requirements of article fourteen of the civil service law. The department shall develop the value-added growth model and shall consult with the advisory committee established pursuant to subdivision seven of this section prior to recommending that the board of regents approve its use in evaluations.

h. The remaining percent of the evaluations, ratings and effectiveness scores shall be locally developed, consistent with the standards prescribed in the regulations of the commissioner, through negotiations conducted pursuant to article fourteen of the civil service law.

i. For purposes of this section, student growth means the change in student achievement for an individual student between two or more points in time.

3. Nothing in this section shall be construed to excuse school districts or boards of cooperative educational services from complying with the standards set forth in the regulations of the commissioner for conducting annual professional performance reviews of classroom teachers or principals, including but not limited to required quality rating categories, in conducting evaluations prior to July first, two thousand eleven, [or] AND, for classroom teachers or principals subject to paragraph c of subdivision two of this section, prior to July first, two thousand [twelve] ELEVEN.

7. The regulations adopted pursuant to this section shall be developed in consultation with an advisory committee consisting of representatives of teachers, principals, superintendents of schools, school boards, school district and board of cooperative educational services officials and other interested parties. The regulations shall also take into account any (i) professional teaching standards; (ii) standards for professional contexts; and (iii) standards for a continuum of system support for teachers and principals developed in consultation with the advisory committee. Regulations promulgated pursuant to this section shall be effective no later than [July] JUNE first, two thousand eleven, for implementation in the two thousand eleven--two thousand twelve school year.

8. Notwithstanding any other provision of law, rule or regulation to the contrary, all collective bargaining agreements applicable to classroom teachers or building principals entered into after July first, two thousand ten shall be consistent with requirements of this section. Nothing in this section shall be construed to abrogate any conflicting provisions of any collective bargaining agreement in effect on July first, two thousand ten during the term of such agreement and until the entry into a successor collective bargaining agreement, provided that notwithstanding any other provision of law to the contrary, upon expiration of such term and the entry into a successor collective bargaining agreement the provisions of this section shall apply. Furthermore, nothing in this section or in any rule or regulation promulgated hereunder shall in any way, alter, impair or diminish the rights of a local collective bargaining representative to negotiate evaluation procedures in accordance with article fourteen of the civil service law with the school district or board of cooperative educational services; PROVIDED HOWEVER SHOULD A SCHOOL DISTRICT OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES AND A LOCAL COLLECTIVE BARGAINING REPRESENTATIVE FAIL TO AGREE

TO NEW EVALUATION PROCEDURES NO LATER THAN ONE HUNDRED EIGHTY DAYS PRIOR TO THE START OF THE TWO THOUSAND ELEVEN--TWO THOUSAND TWELVE SCHOOL YEAR AND SUBSEQUENT SCHOOL YEARS, THE MATTER SHALL BE REFERRED TO THE PUBLIC EMPLOYMENT RELATIONS BOARD FOR ARBITRATION. WITHIN TWO DAYS OF RECEIPT OF NOTIFICATION FROM THE SCHOOL DISTRICT OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES OR THE LOCAL COLLECTIVE BARGAINING REPRESENTATIVE, THE BOARD SHALL SUBMIT TO THE PARTIES A LIST OF QUALIFIED, DISINTERESTED PERSONS FOR THE SELECTION OF A SINGLE ARBITRATOR. EACH PARTY SHALL ALTERNATELY STRIKE FROM THE LIST ONE OF THE NAMES WITH THE ORDER OF STRIKING DETERMINED BY LOT, UNTIL THE REMAINING ONE PERSON SHALL BE DESIGNATED TO HEAR THE MATTER. THIS PROCESS SHALL BE COMPLETED WITHIN ONE DAY OF RECEIPT OF THIS LIST. THE PARTIES SHALL NOTIFY THE BOARD OF THE DESIGNATED ARBITRATOR. THE ARBITRATION SHALL BE COMMENCED NO LATER THAN SEVEN DAYS AND COMPLETED NO LATER THAN THIRTY DAYS FROM THE DATE OF THE NOTIFICATION OF THE BOARD PROVIDED THAT NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION TO THE CONTRARY, NO ADJOURNMENTS MAY BE GRANTED THAT WOULD EXTEND THE ARBITRATION BEYOND SUCH THIRTY DAYS. THE ARBITRATOR SHALL ISSUE A DECISION TO THE PARTIES WITHIN TEN DAYS UPON COMPLETION OF THE HEARING. SAID DECISION SHALL BE FINAL AND BINDING ON THE RESPECTIVE PARTIES FOR THE TWO THOUSAND ELEVEN--TWO THOUSAND TWELVE SCHOOL YEAR AND SUBSEQUENT SCHOOL YEARS AND NOT SUBJECT TO JUDICIAL REVIEW PURSUANT TO ARTICLE SEVENTY-FIVE OF THE CIVIL PRACTICE LAW AND RULES OR ANY OTHER LAW, RULE OR REGULATION. THE RESPECTIVE PARTIES SHALL EQUALLY SHARE THE COST OF THE ARBITRATOR. SHOULD THE SCHOOL DISTRICT OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES AND A LOCAL COLLECTIVE BARGAINING REPRESENTATIVE FAIL TO AGREE TO NEW EVALUATION PROCEDURES PURSUANT TO ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW NO LATER THAN ONE HUNDRED EIGHTY DAYS PRIOR TO THE START OF EACH SUCCESSIVE SCHOOL YEAR, THE PUBLIC ARBITRATION PROCESS SET FORTH IN THIS SECTION SHALL APPLY FOR EACH SUCCESSIVE SCHOOL YEAR FOR WHICH THERE IS NO AGREED TO EVALUATION PROCESS.

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 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 SIGNIFICANTLY 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 FOR THE TWO THOUSAND ELEVEN--TWO THOUSAND TWELVE SCHOOL YEAR, 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 TWO RATINGS OF "UNSATISFACTORY" ON HIS OR HER ANNUAL PROFESSIONAL PERFORMANCE REVIEW IN THE LAST FIVE SCHOOL YEARS;

(B) ANY TEACHER OR SUPERVISOR WHO RECEIVED ONE RATING OF "UNSATISFACTORY" ON HIS OR HER ANNUAL PROFESSIONAL PERFORMANCE REVIEW IN THE TWO THOUSAND NINE--TWO THOUSAND TEN OR TWO THOUSAND TEN--TWO THOUSAND ELEVEN SCHOOL YEAR;

(C) 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;

(D) 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;

(E) ANY TEACHER OR SUPERVISOR CONVICTED OF A QUALIFYING CRIMINAL OFFENSE IN THE PAST FIVE YEARS AND SINCE BEING APPOINTED AS A TEACHER OR SUPERVISOR. "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;

(F) 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;

(G) 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; AND

(H) 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;

(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.

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), AND (H) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL BE RANKED ALPHABETICALLY (A) THROUGH (H), PROVIDED THAT (A) SHALL BE RANKED THE HIGHEST PRIORITY AND (H) SHALL BE RANKED THE LOWEST PRIORITY. THE PROTOCOL SHALL BE ESTABLISHED AS FOLLOWS:

(A) TEACHERS OR SUPERVISORS WHO FALL WITHIN ALL EIGHT OF THE CATEGORIES LISTED AS CLAUSES (A), (B), (C), (D), (E), (F), (G) AND (H) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH, IN ORDER OF THE COMBINED RANK PRIORITY OF THOSE EIGHT CATEGORIES;

(B) TEACHERS OR SUPERVISORS WHO FALL WITHIN SEVEN OF THE CATEGORIES LISTED AS CLAUSES (A), (B), (C), (D), (E), (F), (G) AND (H) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH, IN ORDER OF THE COMBINED RANK PRIORITY OF THOSE SEVEN CATEGORIES;

(C) TEACHERS OR SUPERVISORS WHO FALL WITHIN SIX OF THE CATEGORIES LISTED AS CLAUSES (A), (B), (C), (D), (E), (F), (G) AND (H) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH, IN ORDER OF THE COMBINED RANK PRIORITY OF THOSE SIX CATEGORIES;

(D) TEACHERS OR SUPERVISORS WHO FALL WITHIN FIVE OF THE CATEGORIES LISTED AS CLAUSES (A), (B), (C), (D), (E), (F), (G) AND (H) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH, IN ORDER OF THE COMBINED RANK PRIORITY OF THOSE FIVE CATEGORIES;

(E) TEACHERS OR SUPERVISORS WHO FALL WITHIN FOUR OF THE CATEGORIES LISTED AS CLAUSES (A), (B), (C), (D), (E), (F), (G) AND (H) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH, IN ORDER OF THE COMBINED RANK PRIORITY OF THOSE FOUR CATEGORIES;

(F) TEACHERS OR SUPERVISORS WHO FALL WITHIN THREE OF THE CATEGORIES LISTED AS CLAUSES (A), (B), (C), (D), (E), (F), (G) AND (H) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH, IN ORDER OF THE COMBINED RANK PRIORITY OF THOSE THREE CATEGORIES;

(G) TEACHERS OR SUPERVISORS WHO FALL WITHIN TWO OF THE CATEGORIES LISTED AS CLAUSES (A), (B), (C), (D), (E), (F), (G) AND (H) OF SUBPARA-

GRAPH (I) OF THIS PARAGRAPH, IN ORDER OF THE COMBINED RANK PRIORITY OF THOSE TWO CATEGORIES;

(H) TEACHERS OR SUPERVISORS WHO RECEIVED TWO RATINGS 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:

(1) A TEACHER OR SUPERVISOR WITH THE HIGHEST NUMBER OF UNSATISFACTORY RATINGS IN THE LAST FIVE YEARS; AND

(2) A TEACHER OR SUPERVISOR WITH AN UNSATISFACTORY RATING RECEIVED IN THE MOST RECENT YEAR OR YEARS;

(I) A TEACHER OR SUPERVISOR WHO RECEIVED AN UNSATISFACTORY RATING IN EITHER THE TWO THOUSAND NINE--TWO THOUSAND TEN OR TWO THOUSAND TEN--TWO THOUSAND ELEVEN SCHOOL YEAR, HOWEVER THAT IF FEWER LAYOFFS ARE REQUIRED THAN THERE ARE PERSONS IN THIS CATEGORY, LAYOFFS SHALL BE DONE IN THE FOLLOWING ORDER:

(1) A TEACHER OR SUPERVISOR WITH UNSATISFACTORY RATINGS IN BOTH TWO THOUSAND NINE--TWO THOUSAND TEN AND TWO THOUSAND TEN--TWO THOUSAND ELEVEN; AND

(2) A TEACHER OR SUPERVISOR WITH AN UNSATISFACTORY RATING RECEIVED IN THE TWO THOUSAND TEN--TWO THOUSAND ELEVEN SCHOOL YEAR;

(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 AND SINCE BEING APPOINTED AS A TEACHER OR SUPERVISOR. "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; 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 SINCE BEING APPOINTED AS A TEACHER OR SUPERVISOR, WITH LAYOFFS DONE BASED UPON THE CHRONOLOGICAL ORDER OF THE DATE OF CONVICTION, BEGINNING WITH THE MOST RECENT; AND

II. A TEACHER OR SUPERVISOR CONVICTED OF A CLASS A MISDEMEANOR IN THE LAST FIVE YEARS AND SINCE BEING APPOINTED AS A TEACHER OR SUPERVISOR, WITH LAYOFFS DONE BASED UPON THE CHRONOLOGICAL ORDER OF THE DATE OF CONVICTION, BEGINNING WITH THE MOST RECENT; AND

III. A TEACHER OR SUPERVISOR CONVICTED IN THE LAST FIVE YEARS AND SINCE BEING APPOINTED AS A TEACHER OR SUPERVISOR 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 MISDEMEANOR UNDER SECTIONS ELEVEN HUNDRED NINETY-TWO AND ELEVEN HUNDRED NINETY-THREE OF THE VEHICLE AND TRAFFIC LAW, WITH LAYOFFS DONE BASED UPON THE CHRONOLOGICAL ORDER OF THE DATE OF CONVICTION, BEGINNING WITH THE MOST RECENT;

(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; AND

(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.

(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 THIS PARAGRAPH 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. UPON NOTIFICATION BY THE CITY SCHOOL DISTRICT OF THE PUBLIC EMPLOYMENT RELATIONS BOARD, THE MATTER OF HOW ADDITIONAL LAYOFFS SHALL BE EFFECTUATED SHALL BE REFERRED TO ARBITRATION. WITHIN TWO DAYS OF RECEIPT OF THE PETITION THE BOARD SHALL SUBMIT TO THE PARTIES A LIST OF QUALIFIED, DISINTERESTED PERSONS FOR THE SELECTION OF A SINGLE ARBITRATOR. EACH PARTY SHALL ALTERNATELY STRIKE FROM THE LIST ONE OF THE NAMES WITH THE ORDER OF STRIKING DETERMINED BY LOT, UNTIL THE REMAINING ONE PERSON SHALL BE DESIGNATED TO HEAR THE MATTER. THIS PROCESS SHALL BE COMPLETED WITHIN

ONE DAY OF RECEIPT OF THIS LIST. THE PARTIES SHALL NOTIFY THE BOARD OF THE DESIGNATED ARBITRATOR. THE ARBITRATION SHALL BE COMMENCED NO LATER THAN SEVEN DAYS AND COMPLETED NO LATER THAN THIRTY DAYS OF THE DATE THE PARTIES NOTIFIED THE BOARD OF THE DESIGNATION OF THE ARBITRATOR, PROVIDED THAT NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION TO THE CONTRARY, NO ADJOURNMENTS MAY BE GRANTED THAT WOULD EXTEND THE ARBITRATION BEYOND SUCH THIRTY DAYS. THE ARBITRATOR SHALL ISSUE A DECISION TO THE PARTIES WITHIN TEN DAYS OF COMPLETION OF THE HEARING. SAID DECISION SHALL BE FINAL AND BINDING ON THE RESPECTIVE PARTIES AND NOT SUBJECT TO JUDICIAL REVIEW PURSUANT TO ARTICLE SEVENTY-FIVE OF THE CIVIL PRACTICE LAW AND RULES OR ANY OTHER LAW, RULE OR REGULATION. EACH OF THE RESPECTIVE PARTIES SHALL EQUALLY SHARE THE COST OF THE ARBITRATOR. ANY DECISION ISSUED PURSUANT TO THIS SUBPARAGRAPH 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 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 DECISION 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 LOCALLY DEVELOPED PROCESS PURSUANT TO THE REQUIREMENTS OF ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW, AND DECISION ISSUED PURSUANT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH, OR THE LAYOFFS EFFECTUATED PURSUANT TO SUBPARAGRAPH (V) OF THIS PARAGRAPH, THE CITY SCHOOL DISTRICT SHALL NOT BE PROHIBITED FROM ABOLISHING ALL POSITIONS IN AN ENTIRE LICENSE AREA.

(V) SHOULD THE CITY SCHOOL DISTRICT AND ITS COLLECTIVE BARGAINING AGENTS FAIL TO ESTABLISH A PROCEDURE GOVERNING THE ABOLISHMENT OR REDUCTION OF TEACHING OR SUPERVISORY POSITIONS CITYWIDE PURSUANT TO ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW NO LATER THAN NINETY DAYS PRIOR TO THE TWO THOUSAND TWELVE--TWO THOUSAND THIRTEEN SCHOOL YEAR AND SUBSEQUENT SCHOOL YEARS, THE MATTER SHALL BE SUBMITTED TO ARBITRATION PURSUANT TO THE PROCEDURES IN SUBPARAGRAPH (III) OF THIS PARAGRAPH. ANY DECISION ISSUED PURSUANT TO THIS SUBPARAGRAPH SHALL BE SIGNIFICANTLY BASED ON THE ANNUAL PROFESSIONAL PERFORMANCE REVIEW FOR THE PRECEDING SCHOOL YEAR PURSUANT TO SECTION THREE THOUSAND TWELVE-C OF THIS CHAPTER AND 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 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 DECISION 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.

(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 SIGNIFICANTLY 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 TWO THOUSAND ELEVEN--TWO THOUSAND TWELVE 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 MATTER SHALL BE REFERRED TO ARBITRATION AS SET FORTH IN SUBPARAGRAPH (III) OF PARAGRAPH (A) OF THIS SUBDIVISION. ANY DECISION BY AN ARBITRATOR PURSUANT TO THIS SUBPARAGRAPH 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. THE ARBITRATOR SHALL FURTHER BE REQUIRED TO INCORPORATE THE FOLLOWING FACTORS IN ANY AWARD SETTING FORTH A PROCESS FOR THE DISTRICT REGARDING WHICH POSITIONS SHALL BE ABOLISHED AND WHICH PERSONS OCCUPYING SUCH POSITIONS ARE TO BE EXCESSED:

(A) SCHOOLS' NEEDS FOR PARTICULAR LICENSE AREAS; AND

(B) WHEN MORE THAN ONE PERSON HOLDS A POSITION WITHIN THE SAME LICENSE AREA:

(1) SIGNIFICANT RELEVANT CONTRIBUTIONS, ACCOMPLISHMENTS, OR PERFORMANCE OF EACH SUCH PERSON;

(2) RELEVANT SUPPLEMENTAL PROFESSIONAL EXPERIENCES OF EACH SUCH PERSON AS DEMONSTRATED ON THE JOB;

(3) OFFICE OR SCHOOL NEEDS, INCLUDING CURRICULUM SPECIALIZED EDUCATION, DEGREES, LICENSES OR AREAS OF EXPERTISE; AND

(4) LENGTH OF SATISFACTORY SERVICE BY EACH SUCH PERSON. SHOULD CITY-WIDE 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.

(II) SHOULD THE CITY SCHOOL DISTRICT AND ITS COLLECTIVE BARGAINING AGENTS FAIL TO ESTABLISH A PROCEDURE GOVERNING THE ABOLISHMENT OR REDUCTION OF TEACHING OR SUPERVISORY POSITIONS AT INDIVIDUAL SCHOOLS PURSUANT TO ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW NO LATER THAN NINETY DAYS PRIOR TO THE TWO THOUSAND TWELVE--TWO THOUSAND THIRTEEN SCHOOL YEAR AND SUBSEQUENT SCHOOL YEARS, THE MATTER SHALL BE SUBMITTED TO ARBITRATION PURSUANT TO THE PROCEDURES IN SUBPARAGRAPH (III) OF PARAGRAPH A OF THIS SUBDIVISION. ANY DECISION ISSUED PURSUANT TO THIS SUBPARAGRAPH SHALL BE SIGNIFICANTLY BASED ON THE ANNUAL PROFESSIONAL PERFORMANCE REVIEW FOR THE PRECEDING SCHOOL YEAR PURSUANT TO SECTION THREE THOUSAND TWELVE-C OF THIS CHAPTER AND 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 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;

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. WHENEVER A TEACHING OR SUPERVISORY POSITION IS ABOLISHED PURSUANT TO SUBPARAGRAPH (III) OF PARAGRAPH (A) OF SUBDIVISION THREE OF THIS SECTION EFFECTIVE BEFORE OR DURING THE TWO THOUSAND ELEVEN--TWO THOUSAND TWELVE SCHOOL YEAR, 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 SUBPARAGRAPH (II) OF PARAGRAPH (A) OF SUBDIVISION THREE OF THIS SECTION, AND ALL TEACHERS OR SUPERVISORS LAID OFF EFFECTIVE FOR THE TWO THOUSAND TWELVE-TWO THOUSAND THIRTEEN SCHOOL YEAR AND BEYOND, 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.