

STATE OF NEW YORK

7245

2019-2020 Regular Sessions

IN ASSEMBLY

April 18, 2019

Introduced by M. of A. ABBATE -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to the removal and discipline of part-time teaching assistants

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The education law is amended by adding a new section 3020-c
2 to read as follows:

3 § 3020-c. Removal and other disciplinary action of part-time teaching
4 assistants. 1. Removal and other disciplinary action. A teaching
5 assistant employed by a public school district or a board of cooperative
6 educational services less than full-time in the unclassified civil
7 service who since his or her last entry into service has completed at
8 least five years of continuous service in the unclassified civil service
9 shall not be removed or otherwise subjected to any disciplinary penalty
10 provided in this section except for incompetency or misconduct shown
11 after a hearing upon stated charges pursuant to this section.

12 2. Procedure. An employee who at the time of questioning appears to be
13 a potential subject of disciplinary action shall have a right to repre-
14 sentation by his or her certified or recognized employee organization
15 under article fourteen of the civil service law and shall be notified in
16 advance, in writing, of such right. If representation is requested a
17 reasonable period of time shall be afforded to obtain such represen-
18 tation. If the employee is unable to obtain representation within a
19 reasonable period of time the employer has the right to then question
20 the employee. A hearing officer under this section shall have the power
21 to find that a reasonable period of time was or was not afforded. In the
22 event the hearing officer finds that a reasonable period of time was not
23 afforded then any and all statements obtained from said questioning as
24 well as any evidence or information obtained as a result of said ques-
25 tioning shall be excluded, provided, however, that this subdivision

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

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1 shall not modify or replace any written collective agreement between a
2 public employer and employee organization negotiated pursuant to article
3 fourteen of the civil service law. A person against whom removal or
4 other disciplinary action is proposed shall have written notice thereof
5 and of the reasons therefor, shall be furnished a copy of the charges
6 preferred against him or her and shall be allowed at least eight days
7 for answering the same in writing. The hearing upon such charges shall
8 be held by the officer or body having the power to remove the person
9 against whom such charges are preferred, or by a deputy or other person
10 designated by such officer or body in writing for that purpose. In case
11 a deputy or other person is so designated, he or she shall, for the
12 purpose of such hearing, be vested with all the powers of such officer
13 or body and shall make a record of such hearing which shall, with his or
14 her recommendations, be referred to such officer or body for review and
15 decision. The person or persons holding such hearing shall, upon the
16 request of the person against whom charges are preferred, permit him or
17 her to be represented by counsel, or by a representative of a recognized
18 or certified employee organization, and shall allow him or her to summon
19 witnesses in his or her behalf. The burden of proving incompetency or
20 misconduct shall be upon the person alleging the same. Compliance with
21 technical rules of evidence shall not be required.

22 3. Suspension pending determination of charges; penalties. Pending the
23 hearing and determination of charges of incompetency or misconduct, the
24 employee against whom such charges have been preferred may be suspended
25 without pay for a period not exceeding thirty days. If such employee is
26 found guilty of the charges, the penalty or punishment may consist of a
27 reprimand, a fine not to exceed one hundred dollars to be deducted from
28 the salary or wages of such officer or employee, suspension without pay
29 for a period not exceeding two months, demotion in grade and title, or
30 dismissal from the service; provided, however, that the time during
31 which an employee is suspended without pay may be considered as part of
32 the penalty. If he or she is acquitted, he or she shall be restored to
33 his or her position with full pay for the period of suspension less the
34 amount of any unemployment insurance benefits he or she may have
35 received during such period. If such employee is found guilty, a copy of
36 the charges, his or her written answer thereto, a transcript of the
37 hearing, and the determination shall be filed in the office of the
38 department or agency in which he or she has been employed, and a copy
39 thereof shall be filed with the civil service commission having juris-
40 isdiction over such position. A copy of the transcript of the hearing
41 shall, upon request of the officer or employee affected, be furnished to
42 him or her without charge.

43 4. Notwithstanding any other provision of law, no removal or discipli-
44 nary proceeding shall be commenced more than eighteen months after the
45 occurrence of the alleged incompetency or misconduct complained of and
46 described in the charges or, provided, however, that such limitations
47 shall not apply where the incompetency or misconduct complained of and
48 described in the charges would, if proved in a court of appropriate
49 jurisdiction, constitute a crime.

50 § 2. This act shall take effect immediately.