STATE OF NEW YORK

7189

2021-2022 Regular Sessions

IN SENATE

June 4, 2021

Introduced by Sen. MAYER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the education law, in relation to the granting of tenure

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

Section 1. Paragraph (b) of subdivision 2 of section 3012 of the education law, as amended by a chapter of the laws of 2021 amending the education law relating to the granting of tenure, as proposed in legislative bills numbers S.5576-C and A.6750-B, is amended to read as follows:

(b) At the expiration of the probationary term of a person appointed for such term on or after July first, two thousand fifteen, subject to the conditions of this section, the superintendent of schools shall make a written report to the board of education or the trustees of a common school district recommending for appointment on tenure those persons who have been found competent, efficient and satisfactory and, in the case of a classroom teacher or building principal, who have received composite annual professional performance review ratings pursuant to section three thousand twelve-c or section three thousand twelve-d of this article, of either effective or highly effective in at least three of the four preceding years, exclusive of any breaks in service; provided that in the case of a classroom teacher or building principal appointed during the two thousand seventeen--two thousand eighteen, two thousand eighteen--two thousand nineteen or two thousand nineteen--two thousand twenty school year, who have received composite annual professional performance review ratings pursuant to section three thousand twelve-c or section three thousand twelve-d of this article, of either effective or highly effective in at least one of the four preceding years, exclusive of any breaks in service, and did not receive an ineffective rating in the final year of his or her probationary period, or during the most recent school year where a rating was received**, and would have been in**

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

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the superintendent of schools' discretion qualified for appointment on tenure based upon performance, notwithstanding that his or her annual professional performance review had not been completed and he or she had not received an annual professional performance rating for the two thousand nineteen--two thousand twenty and two thousand twenty--two thousand twenty-one school years; provided that, in the case of a classroom teacher or building principal appointed during the two thousand twenty--two thousand twenty-one school year who have received composite annual professional performance review ratings pursuant to section three thousand twelve-c or section three thousand twelve-d of this article of either effective or highly effective in at least two of the four preceding years, exclusive of any breaks in service, and did not receive an ineffective rating in the final year of his or her probationary period, or during the most recent school year where a rating was received**, and would have been in the superintendent of schools' discretion qualified for appointment on tenure based upon performance, notwithstanding that his or her annual professional performance review had not been completed and he or she had not received an annual professional performance rating for the two thousand twenty--two thousand twenty-one school year**; provided further that, notwithstanding any other provision of this section to the contrary, when a teacher or principal receives an effective or highly effective rating in each year of his or her probationary service except he or she receives an ineffective rating in the final year of his or her probationary period, such teacher shall not be eligible for tenure but the board of education, in its discretion, may extend the teacher's probationary period for an additional year; provided, however, that if such teacher or principal successfully appealed such ineffective rating, such teacher or principal shall immediately be eligible for tenure if the rating resulting from the appeal established that such individual has been effective or highly effective in at least three of the preceding four years and was not ineffective in the final year. At the expiration of the probationary period, the classroom teacher or building principal shall remain in probationary status until the end of the school year in which such teacher or principal has received such ratings of effective or highly effective for at least three of the four preceding school years, exclusive of any breaks in service, and subject to the terms hereof, during which time the trustees or board of education shall consider whether to grant tenure for those classroom teachers or building principals who otherwise have been found competent, efficient and satisfactory. Provided, however, that the trustees or board of education may grant tenure contingent upon a classroom teacher's or building principal's receipt of a minimum rating in the final year of the probationary period, pursuant to the requirements of this section, and if such contingency is not met after all appeals have been exhausted, the grant of tenure shall be void and unenforceable and the teacher's or principal's probationary period may be extended in accordance with this subdivision. Such persons who have been recommended for tenure and all others employed in the teaching service of the schools of such school district who have served the full probationary period as extended pursuant to this subdivision shall hold their respective positions during good behavior and efficient and competent service, and shall not be removable except for cause after a hearing as provided by section three thousand twenty-a or section three thousand twenty-b of this article. Failure to maintain certification as required by this chapter and the regulations of the commissioner shall constitute cause for removal.

§ 2. Subdivision 17 of section 3012-d of the education law, as added by a chapter of the laws of 2021 amending the education law relating to the granting of tenure, as proposed in legislative bills numbers S.5576-C and A.6750-B, is amended to read as follows:

17. Notwithstanding any other provision of this section, for the two thousand twenty--two thousand twenty-one school year, no school district or board of cooperative educational services shall **be required to** complete an annual teacher and principal evaluation required by this section for any classroom teacher or building principal and state funding shall not be withheld from any school district for not complying with the requirements of this section.

§ 3. Paragraph (b) of subdivision 2 of section 3014 of the education law, as amended by a chapter of the laws of 2021 amending the education law relating to the granting of tenure, as proposed in legislative bills numbers S.5576-C and A.6750-B, is amended to read as follows:

(b) On or before the expiration of the probationary term of a person appointed for such term on or after July first, two thousand fifteen, the district superintendent of schools shall make a written report to the board of cooperative educational services recommending for appointment on tenure persons who have been found competent, efficient and satisfactory and, in the case of a classroom teacher or building principal, who have received composite annual professional performance review ratings pursuant to section three thousand twelve-c or section three thousand twelve-d of this article, of either effective or highly effective in at least three of the four preceding years, exclusive of any breaks in service; provided that, in the case of a classroom teacher or building principal appointed during the two thousand seventeen--two thousand eighteen, two thousand eighteen--two thousand nineteen or two thousand nineteen--two thousand twenty school year who have received composite annual professional performance review ratings pursuant to section three thousand twelve-c or section three thousand twelve-d of this article of either effective or highly effective in at least one of the four preceding years, exclusive of any breaks in service, and did not receive an ineffective rating in the final year of his or her probationary period or in the most recent school year where a rating was received**, and would have been in the district superintendent of schools' discretion qualified for appointment on tenure based upon performance, notwithstanding that his or her annual professional performance review had not been completed and he or she had not received an annual professional performance rating for the two thousand nineteen--two thousand twenty and two thousand twenty--two thousand twenty-one school years**; provided that, in the case of a classroom teacher or building principal appointed during the two thousand twenty--two thousand twenty-one school year who have received composite annual professional performance review ratings pursuant to section three thousand twelve-c or section three thousand twelve-d of this article of either effective or highly effective in at least two of the four preceding years, exclusive of any breaks in service, and did not receive an ineffective rating in the final year of his or her probationary period, or during the most recent school year where a rating was received**, and would have been in the district superintendent of schools' discretion qualified for appointment on tenure based upon performance, notwithstanding that his or her annual professional performance review had not been completed and he or she had not received an annual professional performance rating for the two thousand twenty--two thousand twenty-one school year**; provided further that, notwithstanding any other provision of this section to the contrary,

when a teacher or principal receives an effective or highly effective rating in each year of his or her probationary service except he or she receives an ineffective rating in the final year of his or her probationary period, such teacher shall not be eligible for tenure but the board of education in its discretion, may extend the teacher's probationary period for an additional year; provided, however that if such teacher or principal successfully appealed such ineffective rating, such teacher or principal shall immediately be eligible for tenure if the rating resulting from the appeal established that such individual has been effective or highly effective in at least three of the preceding four years and was not ineffective in the final year. At the expiration of the probationary period, the classroom teacher or building principal shall remain in probationary status until the end of the school year in which such teacher or principal has received such ratings of effective or highly effective for at least three of the four preceding school years, exclusive of any breaks in service, during which time a board of cooperative educational services shall consider whether to grant tenure for those classroom teachers or building principals who otherwise have been found competent, efficient and satisfactory. Provided, however, that the board of cooperative educational services may grant tenure contingent upon a classroom teacher's or building principal's receipt of a minimum rating in the final year of the probationary period, pursuant to the requirements of this section, and if such contingency is not met after all appeals have been exhausted, the grant of tenure shall be void and unenforceable and the teacher's or principal's probationary period may be extended in accordance with this subdivision. Such persons shall hold their respective positions during good behavior and competent and efficient service and shall not be removed except for any of the following causes, after a hearing, as provided by section three thousand twenty-a or section three thousand twenty-b of this article: (i) Insubordination, immoral character or conduct unbecoming a teacher; (ii) Inefficiency, incompetency, or neglect of duty; (iii) Failure to maintain certification as required by this chapter and by the regulations of the commissioner. Each person who is not to be so recommended for appointment on tenure shall be so notified in writing by the district superintendent not later than sixty days immediately preceding the expiration of his or her probationary period.

§ 4. Paragraph (b) of subdivision 1 of section 3014 of the education law, as amended by a chapter of the laws of 2021 amending the education law relating to the granting of tenure, as proposed in legislative bills numbers S.5576-C and A.6750-B, is amended to read as follows:

(b) Administrative assistants, supervisors, teachers and all other members of the teaching and supervising staff of the board of cooperative educational services appointed on or after July first, two thousand fifteen, shall be appointed by a majority vote of the board of cooperative educational services upon the recommendation of the district superintendent of schools for a probationary period of not to exceed four years; provided, however, that in the case of a teacher who has been appointed on tenure in a school district within the state, the board of cooperative educational services where currently employed, or another board of cooperative educational services, and who was not dismissed from such district or board as a result of charges brought pursuant to section three thousand twenty-a or section three thousand twenty-b of this article, the teacher shall be appointed for a probationary period of three years; provided that, in the case of a classroom teacher, the teacher demonstrates that he or she received a composite

annual professional performance review rating pursuant to section three thousand twelve-c or three thousand twelve-d of this article of either effective or highly effective in his or her final year of service in such other school district or board of cooperative educational services; and provided further that in the case of a principal, administrator, supervisor, or other member of the supervising staff who has been appointed on tenure pursuant to this chapter as an administrator within an authorized administrative tenure area in another school district within the state, the school district where currently employed, or a board of cooperative educational services, and who was not dismissed from such district or board as a result of charges brought pursuant to subdivision one of section three thousand twenty-a or section three thousand twenty-b of this article, the principal, administrator, supervisor, or other member of the supervising staff shall be appointed for a probationary period of three years. Provided further, however, that in the case of a classroom teacher who has been appointed for a probationary period during the two thousand twenty--two thousand twenty-one school year and who has been appointed on tenure in a school district within the state, state school for the blind or deaf, the board of cooperative educational services where currently employed, or another board of cooperative educational services, and who was not dismissed from such district, board or state school for the blind or deaf as a result of charges brought pursuant to section three thousand twenty-a or section three thousand twenty-b of this article, such teacher shall be appointed for a probationary period of three years; provided that, in the case of a classroom teacher, such teacher demonstrates that he or she received an annual professional performance review rating pursuant to section three thousand twelve-c or section three thousand twelve-d of this article **of either effective or highly effective** in the two thousand seventeen--two thousand eighteen or two thousand eighteen--two thousand nineteen school year in such other school district, state school for the blind or deaf or board of cooperative educational services. Services of a person so appointed to any such positions to which this paragraph applies may be discontinued at any time during the probationary period, upon the recommendation of the district superintendent, by a majority vote of the board of cooperative educational services.

§ 5. Paragraph b of subdivision 2 of section 2509 of the education law, as amended by a chapter of the laws of 2021 amending the education law relating to the granting of tenure, as proposed in legislative bills numbers S.5576-C and A.6750-B, is amended to read as follows:

b. For persons appointed on or after July first, two thousand fifteen, at the expiration of the probationary term of any persons appointed for such term, or within six months prior thereto, the superintendent of schools shall make a written report to the board of education recommending for appointment on tenure those persons who have been found competent, efficient and satisfactory and in the case of a classroom teacher or building principal, who have received annual professional performance review ratings pursuant to section three thousand twelve-c or section three thousand twelve-d of this chapter, of either effective or highly effective in at least three of the four preceding years, exclusive of any breaks in service; provided that, in the case of a classroom teacher or building principal appointed during the two thousand seventeen--two thousand eighteen, two thousand eighteen--two thousand nineteen or two thousand nineteen--two thousand twenty school year, who have received composite annual professional performance review ratings pursuant to section three thousand twelve-c or section three thousand twelve-d of

this chapter, of either effective or highly effective in at least one of the four preceding years, exclusive of any breaks in service, and did not receive an ineffective rating in the final year of his or her probationary period, or during the most recent school year where a rating was received**, and would have been in the superintendent of schools' discretion qualified for appointment on tenure based upon performance, notwithstanding that his or her annual professional performance review had not been completed and he or she had not received an annual professional performance rating for the two thousand nineteen--two thousand twenty and two thousand twenty--two thousand twenty-one school years**; provided that, in the case of a classroom teacher or building principal appointed during the two thousand twenty--two thousand twenty-one school year who have received composite annual professional performance review ratings pursuant to section three thousand twelve-c or section three thousand twelve-d of this chapter of either effective or highly effective in at least two of the four preceding years, exclusive of any breaks in service, and did not receive an ineffective rating in the final year of his or her probationary period, or during the most recent school year where a rating was received**, and would have been in the superintendent of schools' discretion qualified for appointment on tenure based upon performance, notwithstanding that his or her annual professional performance review had not been completed and he or she had not received an annual professional performance rating for the two thousand twenty--two thousand twenty-one school year**; provided further that, notwithstanding any other provision of this section to the contrary, when a teacher or principal receives an effective or highly effective rating in each year of his or her probationary service except he or she receives an ineffective rating in the final year of his or her probationary period, such teacher or principal shall not be eligible for tenure but the board of education in its discretion, may extend the teacher's probationary period for an additional year; provided, however, that if such teacher or principal successfully appealed such ineffective rating, such teacher or principal shall immediately be eligible for tenure if the rating resulting from the appeal established that such individual has been effective or highly effective in at least three of the preceding four years and was not ineffective in the final year. By a majority vote, the board of education may then appoint on tenure any or all of the persons recommended by the superintendent of schools. At the expiration of the probationary period, the classroom teacher or building principal shall remain in probationary status until the end of the school year in which such teacher or principal has received such ratings of effective or highly effective for at least three of the four preceding school years exclusive of any breaks in service and subject to the terms hereof, during which time a board of education shall consider whether to grant tenure for those classroom teachers or building principals who otherwise have been found competent, efficient and satisfactory. Provided, however, that the board of education may grant tenure contingent upon a classroom teacher's or building principal's receipt of a minimum rating in the final year of the probationary period, pursuant to the requirements of this section, and if such contingency is not met after all appeals have been exhausted, the grant of tenure shall be void and unenforceable and the teacher's or principal's probationary period may be extended in accordance with this subdivision. Such persons who have been recommended for tenure and all others employed in the teaching service of the schools of such school district who have served the full probationary period as extended pursuant to this subdivision shall hold

their respective positions during good behavior and efficient and competent service, and shall not be removable except for cause after a hearing as provided by section three thousand twenty-a or section three thousand twenty-b of this chapter. Failure to maintain certification as required by this chapter and the regulations of the commissioner shall constitute cause for removal.

§ 6. Paragraph (b) of subdivision 5 of section 2573 of the education law, as amended by a chapter of the laws of 2021 amending the education law relating to the granting of tenure, as proposed in legislative bills numbers S.5576-C and A.6750-B, is amended to read as follows:

(b) At the expiration of the probationary term of any persons appointed for such term on or after July first, two thousand fifteen, the superintendent of schools shall make a written report to the board of education recommending for permanent appointment those persons who have been found competent, efficient and satisfactory and, in the case of a classroom teacher or building principal, who have received composite annual professional performance review ratings pursuant to section three thousand twelve-c or section three thousand twelve-d of this chapter, of either effective or highly effective in at least three of the four preceding years, exclusive of any breaks in service; provided that, in the case of a classroom teacher or building principal appointed during the two thousand seventeen--two thousand eighteen, two thousand eighteen--two thousand nineteen or two thousand nineteen--two thousand twenty school year, who have received composite annual professional performance review ratings pursuant to section three thousand twelve-c or section three thousand twelve-d of this chapter of either effective or highly effective in at least one of the four preceding years, exclusive of any breaks in service, and did not receive an ineffective rating in the final year of his or her probationary period or during the most recent school year where a rating was received**, and would have been in the superintendent of schools' discretion qualified for appointment on tenure based upon performance, notwithstanding that his or her annual professional performance review had not been completed and he or she had not received an annual professional performance rating for the two thousand nineteen--two thousand twenty and two thousand twenty--two thousand twenty-one school years**; provided that, in the case of a classroom teacher or building principal appointed during the two thousand twenty--two thousand twenty-one school year who have received composite annual professional performance review ratings pursuant to section three thousand twelve-c or section three thousand twelve-d of this chapter of either effective or highly effective in at least two of the four preceding years, exclusive of any breaks in service, and did not receive an ineffective rating in the final year of his or her probationary period or during the most recent school year where a rating was received**, and would have been in the superintendent of schools' discretion qualified for appointment on tenure based upon performance, notwithstanding that his or her annual professional performance review had not been completed and he or she had not received an annual professional performance rating for the two thousand twenty--two thousand twenty-one school year**; provided further that, notwithstanding any other provision of this section to the contrary, when a teacher or principal receives an effective and/or highly effective rating in each year of his or her probationary service except he or she receives an ineffective rating in the final year of his or her probationary period, such teacher or principal shall not be eligible for tenure but the board of education in its discretion, may extend the teacher's probationary period for an addi-

tional year; provided, however, that if such teacher or principal successfully appealed such ineffective rating, such teacher or principal shall immediately be eligible for tenure if the rating resulting from the appeal established that such individual has been effective or highly effective in at least three of the preceding four years. At the expiration of the probationary period, the classroom teacher or building principal shall remain in probationary status until the end of the school year in which such teacher or principal has received such ratings of effective or highly effective for at least three of the four preceding school years, exclusive of any breaks in service and subject to the terms hereof, during which time a board of education shall consider whether to grant tenure for those classroom teachers or building principals who otherwise have been found competent, efficient and satisfactory. Provided, however, that the board of education may grant tenure contingent upon a classroom teacher's or building principal's receipt of a minimum rating in the final year of the probationary period, pursuant to the requirements of this section, and if such contingency is not met after all appeals have been exhausted, the grant of tenure shall be void and unenforceable and the teacher's or principal's probationary period may be extended in accordance with this subdivision. Such persons who have been recommended for tenure and all others employed in the teaching service of the schools of such school district who have served the full probationary period as extended pursuant to this subdivision shall hold their respective positions during good behavior and efficient and competent service, and shall not be removable except for cause after a hearing as provided by section three thousand twenty-a or section three thousand twenty-b of this chapter. Failure to maintain certification as required by this chapter and the regulations of the commissioner shall constitute cause for removal.

§ 7. Paragraph (b) of subdivision 6 of section 2573 of the education law, as amended by a chapter of the laws of 2021 amending the education law relating to the granting of tenure, as proposed in legislative bills numbers S.5576-C and A.6750-B, is amended to read as follows:

(b) At the expiration of the probationary term of any persons appointed for such term on or after July first, two thousand fifteen, the superintendent of schools shall make a written report to the board of education recommending for permanent appointment those persons who have been found competent, efficient and satisfactory and, in the case of a classroom teacher or building principal, who have received composite annual professional performance review ratings pursuant to section three thousand twelve-c or section three thousand twelve-d of this chapter, of either effective or highly effective in at least three of the four preceding years, exclusive of any breaks in service; provided that, in the case of a classroom teacher or building principal appointed during the two thousand seventeen--two thousand eighteen, two thousand eighteen--two thousand nineteen or two thousand nineteen--two thousand twenty school year, who have received composite annual professional performance review ratings pursuant to section three thousand twelve-c or section three thousand twelve-d of this chapter of either effective or highly effective in at least one of the four preceding years, exclusive of any breaks in service, and did not receive an ineffective rating in the final year of his or her probationary period or during the most recent school year where a rating was received**, and would have been in the superintendent of schools' discretion qualified for appointment on tenure based upon performance, notwithstanding that his or her annual professional performance review had not been completed and he or she had**

not received an annual professional performance rating for the two thousand nineteen--two thousand twenty and two thousand twenty--two thousand twenty-one school years; provided that, in the case of a classroom teacher or building principal appointed during the two thousand twenty--two thousand twenty-one school year who have received composite annual professional performance review ratings pursuant to section three thousand twelve-c or section three thousand twelve-d of this chapter of either effective or highly effective in at least two of the four preceding years, exclusive of any breaks in service, and did not receive an ineffective rating in the final year of his or her probationary period or during the most recent school year where a rating was received, and would have been in the superintendent of schools' discretion qualified for appointment on tenure based upon performance, notwithstanding that his or her annual professional performance review had not been completed and he or she had not received an annual professional performance rating for the two thousand twenty--two thousand twenty-one school year; provided further that, notwithstanding any other provision of this section to the contrary, when a teacher receives an effective and/or highly effective rating in each year of his or her probationary service except he or she receives an ineffective rating in the final year of his or her probationary period, such teacher or principal shall not be eligible for tenure but the board of education in its discretion, may extend the teacher's probationary period for an additional year; provided, however, that if such teacher or principal successfully appealed such ineffective rating, such teacher or principal shall immediately be eligible for tenure if the rating resulting from the appeal established that such individual has been effective or highly effective in at least three of the preceding four years and was not ineffective in the final year. At the expiration of the probationary period, the classroom teacher or building principal shall remain in probationary status until the end of the school year in which such teacher or principal has received such ratings of effective or highly effective for at least three of the four preceding school years, exclusive of any breaks in service and subject to the terms hereof, during which time a board of education shall consider whether to grant tenure for those classroom teachers or building principals who otherwise have been found competent, efficient and satisfactory. Provided, however, that the board of education may grant tenure contingent upon a classroom teacher's or building principal's receipt of a minimum rating in the final year of the probationary period, pursuant to the requirements of this section, and if such contingency is not met after all appeals have been exhausted, the grant of tenure shall be void and unenforceable and the teacher's or principal's probationary period may be extended in accordance with this subdivision. Such persons who have been recommended for tenure and all others employed in the teaching service of the schools of such school district who have served the full probationary period as extended pursuant to this subdivision shall hold their respective positions during good behavior and efficient and competent service, and shall not be removable except for cause after a hearing as provided by section three thousand twenty-a or section three thousand twenty-b of this chapter. Failure to maintain certification as required by this chapter and the regulations of the commissioner shall constitute cause for removal.

§ 8. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2021 amending the education law relating to the granting of tenure, as proposed in legislative bills numbers S.5576-C and A.6750-B, takes effect.