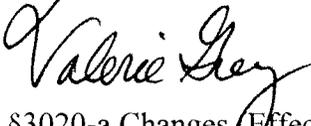




EXECUTIVE DEPUTY COMMISSIONER
E-mail: vgrey@mail.nysed.gov

To: District Superintendents
School Superintendents
New York City Department of Education
New York State Council of School Superintendents
New York State School Boards Association
United Federation of Teachers
New York State United Teachers
School Administrators Association of New York State
Council of School Supervisors & Administrators
New York State Association of School Personnel Administrators
New York State Association of School Attorneys
New York State Association of Management Advocates for School Labor Affairs
American Arbitration Association

From: Valerie Grey 

Subject: Education Law §3020-a Changes (Effective April 1, 2012)

Date: April 4, 2012

As part of its 2011 legislative agenda, the Board of Regents sought a number of modifications to the tenured teacher hearing process set forth in Education Law §3020-a to address spiraling costs and the extraordinary length of time to conduct hearings. This legislation was introduced in the Assembly and Senate. The Governor's proposed 2012-13 State Budget included some of these reforms and the State Budget as adopted by the Legislature included a number of important programmatic and fiscal reforms.

The purpose of this memorandum is to clarify and provide guidance on the major changes set forth in Education Law §3020-a. The Department is reviewing these changes and will make conforming amendments to the regulations to implement the law. The Department will also be updating TEACH (a web-based data information system) to allow for greater access to case information and relevant dates. During this transitional period, the Department thanks all affected parties in advance for their patience and cooperation as we work together to ensure successful implementation of the new Education Law §3020-a reform measures.

Below is a summary of the major Education Law §3020-a revisions. For specific guidance, please refer to the actual statutory language, a copy of which has been attached to this memo.

Effective Date

The change set forth in the amendments to Education Law §3020-a take place **immediately** and apply to all charges against tenured educators filed with the clerk or secretary of the school district or employing board on or after April 1, 2012.

- All affected parties should be aware of this effective date and are strongly advised to carefully review these changes and how they may affect any cases currently in progress or those that are anticipated.
- The parties are strongly encouraged to develop the necessary tracking systems to ensure that responsibilities are carried out in a timely and professional manner, so that no party is unduly penalized by the very stringent timelines set forth in the statute.

Prohibition on Introduction of Evidence After 125 days

A significant change is the prohibition on the introduction of evidence more than 125 days after the filing of charges unless there are extraordinary circumstances beyond control of the parties set forth in Education Law §3020-a(3)(c)(vii). Proceedings under §3020-a have traditionally taken far too long to resolve and this provision is designed to ensure timely resolution by prohibiting the introduction of evidence beyond a certain point in the proceeding. This means that once the charges are filed, all parties should work expeditiously and cooperatively to complete the case in a timely manner so that cases are resolved within the statutory timeline of 125 days after the filing of charges. After 125 days no additional evidence shall be accepted unless there are extraordinary circumstances beyond control of the parties. The “extraordinary circumstances” rule was meant to provide for that rare occasion when evidence truly could not be introduced in a timely manner.

- The Department anticipates that modifications to TEACH will help the parties easily identify the relevant dates. Until that time, arbitrators are expected to closely monitor the relevant dates and ensure adherence.

Department Selects Arbitrator When Parties Can Not Agree

The new amendments also modify the manner in which an arbitrator is selected if the parties fail to agree on an arbitrator selection within 15 days of receipt of the list. Education Law §3020-a(3)(b)(iii) states that “[i]f the employing board and the employee fail to agree on an arbitrator to serve as a hearing officer from the list of potential hearing officers, or fail to notify the commissioner of a selection within such fifteen day time period, the commissioner shall appoint a hearing officer from the list.” This provision authorizes the Commissioner to select the arbitrator if the parties fail to agree by the 15th day. It does not apply to NYC where there is an alternative procedure.

- Historically, the Department only intervened when notified of the failure to agree, however, the amended language does not require the Commissioner to wait until notification of the failure to agree. The Commissioner will be authorized to select an arbitrator if no selection is affirmatively made by the 15th day.

- To ensure that all parties get proper notice of the list, the Department will continue its current practice of emailing the list of potential arbitrators to the school attorney and the employee attorney, if one has been designated by the employee. Where no attorney is provided by the employee, the list will be sent directly to the employee.
- A hearing officer selection will be considered timely, if it is emailed to the dedicated tenure email box (TENURE@mail.nysed.gov) by the close of business on 15th calendar day.
- To minimize any potential delays that may occur at the school district level, the American Arbitration Association (“AAA”) has agreed to directly bill the school district for the production of the arbitrator list. Schools are strongly encouraged to send the charges to the Department immediately without a check to AAA and make payment arrangements directly with AAA after the compilation of the list. AAA will take payment in the form of check or credit card for the \$150 fee.

Department Can Establish Maximum Arbitrator Rates and Study Hours

An amendment to Education Law §3020-a(3)(b)(i)(B) requires the Commissioner to establish a schedule for “maximum rates of compensation of hearing officers based on *customary and reasonable* fees for service as an arbitrator and provide for limitations on the number of study hours that may be claimed” (emphasis added). The purpose of this amendment was to give the Commissioner the authority to control costs.

- Over the next several weeks, the Department will be conducting an analysis to determine both the appropriate rates and the maximum number of study hours for these types of proceedings. Once the analysis is complete, the Commissioner will be establishing guidelines for arbitrator fees and study hours.
- All new arbitrator appointments will be contingent upon accepting the new maximum fee and study hour rates established by the Commissioner.
- It is anticipated that the new TEACH modifications will incorporate changes in the manner in which arbitrator invoices are filed with the Department, to permit online filing to ensure accuracy, and improve the time it takes to process payments.

Department Can Exclude Arbitrators For Untimeliness

Pursuant to Education Law §3020-a(3)(c)(i)(B) the Department is authorized to monitor and investigate a hearing officer’s compliance with the timelines set forth in the statute. The Commissioner may exclude any hearing officer who has a record of continued failure to commence and conclude hearings within the timelines prescribed in the statute.

- The Department anticipates that modifications to TEACH will help the parties easily identify the relevant dates. Until that time, the Department will monitor manually.

New Technology for Recording Hearings is Allowed

Education Law §3020-a(3)(c)(i)(D) continues the requirement that an accurate “*record*” of the proceedings be kept at the expense of the Department and furnished upon request to the employee and the board of education. The statutory changes, however, permit the Department to take advantage of any new technology to transcribe or record the hearings in an accurate, reliable, efficient and cost effective manner.

- The Department will explore other cost-effective alternatives to recording and producing transcripts for these proceedings, however, there will be no immediate change to the manner in which these hearings are recorded.

Appropriation For New Cases

In order to ensure that the new reforms are successful, the law provides that any claims for cases in which charges were filed after April 1, 2012 be paid first out of the funds appropriated for the 2012-13 fiscal year pursuant to Education Law §3020-a(3)(b)(i)(A). Total spending for 2012-13 is limited to \$3.8 million.

- This amendment will ensure that the Department is able to make timely payments for services rendered for new cases under the new system during 2012-13. Thus arbitrators who accept cases under the new system with the new time constraints will be reimbursed for their services in a timely manner. Any funds remaining will be used to pay for claims on cases that had charges filed prior to April 1, 2012.

One Year limitation on Claims

Education Law §3020-a(3)(d) imposes a one-year limitation, following the final disposition of the hearing, for the submission of claims for reimbursement for services rendered. The purpose of this amendment was to encourage timely submission of claims so that accurate budget assumptions can be made and claims can be paid for in a reasonable time.

New Forms

The Education Law §3020-a forms are in the process of being updated. It is imperative that schools use the updated forms for any cases commenced under the new system because they will reflect the new changes and provide critical information necessary to expedite the administrative steps for opening of cases and the appointment of the hearing officer. It is anticipated that the new forms will be available within a week. Please refer to:

www.highered.nysed.gov/tcert/resteachers/employeremployee for further information.

Questions

If you have any questions please contact Deborah A. Marriott, Director, Office of School Personnel Review and Accountability at 518-474-3021 or send an email to her attention at TENURE@mail.nysed.gov.

c: Deborah A. Marriott

49 Section 1. Section 3020-a of the education law, as amended by chapter
50 691 of the laws of 1994, paragraph (b) of subdivision 2 as separately
51 amended by chapters 296 and 325 of the laws of 2008, paragraph (c) of
52 subdivision 2 and paragraph a of subdivision 3 as amended and subpara-

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1 graph (i-a) of paragraph c of subdivision 3 as added by chapter 103 of
2 the laws of 2010, is amended to read as follows:

3 § 3020-a. Disciplinary procedures and penalties. 1. Filing of charges.
4 All charges against a person enjoying the benefits of tenure as provided
5 in subdivision three of section [~~one thousand one~~] eleven hundred two,
6 and sections [~~two thousand five~~] twenty-five hundred nine, [~~two thousand~~
7 five] twenty-five hundred seventy-three, twenty-five hundred ninety-j,
8 three thousand twelve and three thousand fourteen of this chapter shall
9 be in writing and filed with the clerk or secretary of the school
10 district or employing board during the period between the actual opening
11 and closing of the school year for which the employed is normally
12 required to serve. Except as provided in subdivision eight of section
13 [~~two thousand five~~] twenty-five hundred seventy-three and subdivision
14 seven of section twenty-five hundred ninety-j of this chapter, no charg-
15 es under this section shall be brought more than three years after the
16 occurrence of the alleged incompetency or misconduct, except when the
17 charge is of misconduct constituting a crime when committed.

18 2. [~~a~~] Disposition of charges. a. Upon receipt of the charges, the
19 clerk or secretary of the school district or employing board shall imme-
20 diately notify said board thereof. Within five days after receipt of
21 charges, the employing board, in executive session, shall determine, by
22 a vote of a majority of all the members of such board, whether probable
23 cause exists to bring a disciplinary proceeding against an employee
24 pursuant to this section. If such determination is affirmative, a writ-
25 ten statement specifying (i) the charges in detail, (ii) the maximum
26 penalty which will be imposed by the board if the employee does not
27 request a hearing or that will be sought by the board if the employee is
28 found guilty of the charges after a hearing and [~~outlining~~] (iii) the
29 employee's rights under this section, shall be immediately forwarded to
30 the accused employee by certified or registered mail, return receipt
31 requested or by personal delivery to the employee.

32 [~~b~~] b. The employee may be suspended pending a hearing on the charg-
33 es and the final determination thereof. The suspension shall be with
34 pay, except the employee may be suspended without pay if the employee
35 has entered a guilty plea to or has been convicted of a felony crime
36 concerning the criminal sale or possession of a controlled substance, a
37 precursor of a controlled substance, or drug paraphernalia as defined in
38 article two hundred twenty or two hundred twenty-one of the penal law;
39 or a felony crime involving the physical abuse of a minor or student.
40 The employee shall be terminated without a hearing, as provided for in
41 this section, upon conviction of a sex offense, as defined in subpara-
42 graph two of paragraph b of subdivision seven-a of section three hundred
43 five of this chapter. To the extent this section applies to an employee
44 acting as a school administrator or supervisor, as defined in subpara-
45 graph three of paragraph b of subdivision seven-b of section three
46 hundred five of this chapter, such employee shall be terminated without
47 a hearing, as provided for in this section, upon conviction of a felony
48 offense defined in subparagraph two of paragraph b of subdivision
49 seven-b of section three hundred five of this chapter.

50 [~~c~~] c. Within ten days of receipt of the statement of charges, the
51 employee shall notify the clerk or secretary of the employing board in
52 writing whether he or she desires a hearing on the charges and when the

53 charges concern pedagogical incompetence or issues involving pedagogical
54 judgment, his or her choice of either a single hearing officer or a
55 three member panel, provided that a three member panel shall not be
56 available where the charges concern pedagogical incompetence based sole-

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1 ly upon a teacher's or principal's pattern of ineffective teaching or
2 performance as defined in section three thousand twelve-c of this arti-
3 cle. All other charges shall be heard by a single hearing officer.

4 ~~[(d)]~~ d. The unexcused failure of the employee to notify the clerk or
5 secretary of his or her desire for a hearing within ten days of the
6 receipt of charges shall be deemed a waiver of the right to a hearing.
7 Where an employee requests a hearing in the manner provided for by this
8 section, the clerk or secretary of the board shall, within three working
9 days of receipt of the employee's notice or request for a hearing, noti-
10 fy the commissioner ~~[of education]~~ of the need for a hearing. If the
11 employee waives his or her right to a hearing the employing board shall
12 proceed, within fifteen days, by a vote of a majority of all members of
13 such board, to determine the case and fix the penalty, if any, to be
14 imposed in accordance with subdivision four of this section.

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

29 b. (i) Hearing officers. All hearings pursuant to this section shall
30 be conducted before and by a single hearing officer selected as provided
31 for in this section. A hearing officer shall not be eligible to serve
32 ~~[as such]~~ in such position if he or she is a resident of the school
33 district, other than the city of New York, under the jurisdiction of the
34 employing board, an employee, agent or representative of the employing
35 board or of any labor organization representing employees of such
36 employing board, has served as such agent or representative within two
37 years of the date of the scheduled hearing, or if he or she is then
38 serving as a mediator or fact finder in the same school district.

39 (A) Notwithstanding any other provision of law, for hearings commenced
40 by the filing of charges prior to April first, two thousand twelve, the
41 hearing officer shall be compensated by the department with the custom-
42 ary fee paid for service as an arbitrator under the auspices of the
43 association for each day of actual service plus necessary travel and
44 other reasonable expenses incurred in the performance of his or her
45 duties. All other expenses of the disciplinary proceedings commenced by
46 the filing of charges prior to April first, two thousand twelve shall be
47 paid in accordance with rules promulgated by the commissioner ~~[of educa-~~
48 tion]. Claims for such compensation for days of actual service and
49 reimbursement for necessary travel and other expenses for hearings
50 commenced by the filing of charges prior to April first, two thousand
51 twelve shall be paid from an appropriation for such purpose in the order
52 in which they have been approved by the commissioner for payment,
53 provided payment shall first be made for any other hearing costs payable
54 by the commissioner, including the costs of transcribing the record, and
55 provided further that no such claim shall be set aside for insufficiency
56 of funds to make a complete payment, but shall be eligible for a partial

1 payment in one year and shall retain its priority date status for appro-
2 priations designated for such purpose in future years.

3 (B) Notwithstanding any other provision of law, rule or regulation to
4 the contrary, for hearings commenced by the filing of charges on or
5 after April first, two thousand twelve, the hearing officer shall be
6 compensated by the department for each day of actual service plus neces-
7 sary travel and other reasonable expenses incurred in the performance of
8 his or her duties, provided that the commissioner shall establish a
9 schedule for maximum rates of compensation of hearing officers based on
10 customary and reasonable fees for service as an arbitrator and provide
11 for limitations on the number of study hours that may be claimed.

12 (ii) ~~Not later than ten days after the date the~~ The commissioner
13 ~~mails~~ shall mail to the employing board and the employee the list of
14 potential hearing officers and biographies provided to the commissioner
15 by the association, the employing board and the employee, individually
16 or through their agents or representatives, shall by mutual agreement
17 select a hearing officer from said list to conduct the hearing and shall
18 notify the commissioner of their selection.

19 (iii) ~~If the employing board and the employee fail to agree on an~~
20 ~~arbitrator to serve as a hearing officer from said list and so notify~~
21 ~~the commissioner within ten days after receiving the list from the~~
22 ~~commissioner, the commissioner shall request the association to appoint~~
23 ~~a hearing officer from said list.~~ Within fifteen days after receiving
24 the list of potential hearing officers as described in subparagraph (ii)
25 of this paragraph, the employing board and the employee shall each noti-
26 fy the commissioner of their agreed upon hearing officer selection. If
27 the employing board and the employee fail to agree on an arbitrator to
28 serve as a hearing officer from the list of potential hearing officers,
29 or fail to notify the commissioner of a selection within such fifteen
30 day time period, the commissioner shall appoint a hearing officer from
31 the list. The provisions of this subparagraph shall not apply in cities
32 with a population of one million or more with alternative procedures
33 specified in section three thousand twenty of this article.

34 (iv) In those cases in which the employee elects to have the charges
35 heard by a hearing panel, the hearing panel shall consist of the hearing
36 officer, selected in accordance with this subdivision, and two addi-
37 tional persons, one selected by the employee and one selected by the
38 employing board, from a list maintained for such purpose by the commis-
39 sioner ~~of education~~. The list shall be composed of professional
40 personnel with administrative or supervisory responsibility, profes-
41 sional personnel without administrative or supervisory responsibility,
42 chief school administrators, members of employing boards and others
43 selected from lists of nominees submitted to the commissioner by state-
44 wide organizations representing teachers, school administrators and
45 supervisors and the employing boards. Hearing panel members other than
46 the hearing officer shall be compensated by the department ~~of educa-~~
47 ~~tion~~ at the rate of one hundred dollars for each day of actual service
48 plus necessary travel and subsistence expenses. The hearing officer
49 shall be compensated as set forth in this subdivision. The hearing offi-
50 cer shall be the ~~chairman~~ chairperson of the hearing panel.

51 c. Hearing procedures. (i) (A) The commissioner ~~of education~~ shall
52 have the power to establish necessary rules and procedures for the
53 conduct of hearings under this section.

54 (B) The department shall be authorized to monitor and investigate a
55 hearing officer's compliance with statutory timelines pursuant to this
56 section. The commissioner shall annually inform all hearing officers

1 who have heard cases pursuant to this section during the preceding year
2 that the time periods prescribed in this section for conducting such
3 hearings are to be strictly followed. A record of continued failure to

4 commence and complete hearings within the time periods prescribed in
5 this section shall be considered grounds for the commissioner to exclude
6 such individual from the list of potential hearing officers sent to the
7 employing board and the employee for such hearings.

8 (C) Such rules shall not require compliance with technical rules of
9 evidence. Hearings shall be conducted by the hearing officer selected
10 pursuant to paragraph b of this subdivision with full and fair disclo-
11 sure of the nature of the case and evidence against the employee by the
12 employing board and shall be public or private at the discretion of the
13 employee. The employee shall have a reasonable opportunity to defend
14 himself or herself and an opportunity to testify in his or her own
15 behalf. The employee shall not be required to testify. Each party shall
16 have the right to be represented by counsel, to subpoena witnesses, and
17 to cross-examine witnesses. All testimony taken shall be under oath
18 which the hearing officer is hereby authorized to administer.

19 ~~[A competent stenographer, designated by the commissioner of education~~
20 ~~and compensated by the state education department, shall keep and tran-~~
21 ~~scribe a]~~ (D) An accurate record of the proceedings shall be kept at the
22 expense of the department at each such hearing in accordance with the
23 regulations of the commissioner. A copy of the [transcript] record of
24 the hearings shall, upon request, be furnished without charge to the
25 employee and the board of education involved. The department shall be
26 authorized to utilize any new technology or such other appropriate means
27 to transcribe or record such hearings in an accurate, reliable, effi-
28 cient and cost-effective manner without any charge to the employee or
29 board of education involved.

30 (i-a) (A) Where charges of incompetence are brought solely upon a
31 pattern of ineffective teaching or performance of a classroom teacher or
32 principal, as defined in section three thousand twelve-c of this arti-
33 cle, the hearing shall be conducted before and by a single hearing offi-
34 cer in an expedited hearing, which shall commence within seven days
35 after the pre-hearing conference and shall be completed within sixty
36 days after the pre-hearing conference. The hearing officer shall estab-
37 lish a hearing schedule at the pre-hearing conference to ensure that the
38 expedited hearing is completed within the required timeframes and to
39 ensure an equitable distribution of days between the employing board and
40 the charged employee. Notwithstanding any other law, rule or regulation
41 to the contrary, no adjournments may be granted that would extend the
42 hearing beyond such sixty days, except as authorized in this subpara-
43 graph. A hearing officer, upon request, may grant a limited and time
44 specific adjournment that would extend the hearing beyond such sixty
45 days if the hearing officer determines that the delay is attributable to
46 a circumstance or occurrence substantially beyond the control of the
47 requesting party and an injustice would result if the adjournment were
48 not granted.

49 (B) Such charges shall allege that the employing board has developed
50 and substantially implemented a teacher or principal improvement plan in
51 accordance with subdivision four of section three thousand twelve-c of
52 this article for the employee following the first evaluation in which
53 the employee was rated ineffective, and the immediately preceding evalu-
54 ation if the employee was rated developing. Notwithstanding any other
55 provision of law to the contrary, a pattern of ineffective teaching or
56 performance as defined in section three thousand twelve-c of this arti-

1 cle shall constitute very significant evidence of incompetence for
2 purposes of this section. Nothing in this subparagraph shall be
3 construed to limit the defenses which the employee may place before the
4 hearing officer in challenging the allegation of a pattern of ineffec-
5 tive teaching or performance.

6 (C) The commissioner shall annually inform all hearing officers who
7 have heard cases pursuant to this section during the preceding year that
8 the time periods prescribed in this subparagraph for conducting expe-

9 dited hearings are to be strictly followed. A record of continued fail-
10 ure to commence and complete expedited hearings within the time periods
11 prescribed in this subparagraph shall be considered grounds for the
12 commissioner to exclude such individual from the list of potential hear-
13 ing officers sent to the employing board and the employee for such expe-
14 dited hearings.

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

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

24 (A) issue subpoenas;

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

27 (C) hear and decide all applications for bills of particular or
28 requests for production of materials or information, including, but not
29 limited to, any witness statement (or statements), investigatory state-
30 ment (or statements) or note (notes), exculpatory evidence or any other
31 evidence, including district or student records, relevant and material
32 to the employee's defense.

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

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

52 (vi) During the pre-hearing conference, the hearing officer shall
53 determine the reasonable amount of time necessary for a final hearing on
54 the charge or charges and shall schedule the location, time(s) and
55 date(s) for the final hearing. The final hearing shall be held in the
56 local school district or county seat of the county, or any county, wher-

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1 ein the said employing school board is located. In the event that the
2 hearing officer determines that the nature of the case requires the
3 final hearing to last more than one day, the days that are scheduled for
4 the final hearing shall be consecutive. The day or days scheduled for
5 the final hearing shall not be postponed except upon the request of a
6 party and then only for good cause shown as determined by the hearing
7 officer. In all cases, the final hearing shall be completed no later
8 than sixty days after the pre-hearing conference unless the hearing
9 officer determines that extraordinary circumstances warrant a limited
10 extension.

11 (vii) All evidence shall be submitted by all parties within one
12 hundred twenty-five days of the filing of charges and no additional
13 evidence shall be accepted after such time, absent extraordinary circum-

14 stances beyond the control of the parties.

15 d. Limitation on claims. Notwithstanding any other provision of law,
16 rule or regulation to the contrary, no payments shall be made by the
17 department pursuant to this subdivision on or after April first, two
18 thousand twelve for: (i) compensation of a hearing officer or hearing
19 panel member, (ii) reimbursement of such hearing officers or panel
20 members for necessary travel or other expenses incurred by them, or
21 (iii) for other hearing expenses on a claim submitted later than one
22 year after the final disposition of the hearing by any means, including
23 settlement, or within ninety days after the effective date of this para-
24 graph, whichever is later; provided that no payment shall be barred or
25 reduced where such payment is required as a result of a court order or
26 judgment or a final audit.

27 4. Post hearing procedures. ~~(a)~~ a. The hearing officer shall render
28 a written decision within thirty days of the last day of the final hear-
29 ing, or in the case of an expedited hearing within ten days of such
30 expedited hearing, and shall ~~forthwith~~ forward a copy thereof to the
31 commissioner ~~of education~~ who shall immediately forward copies of the
32 decision to the employee and to the clerk or secretary of the employing
33 board. The written decision shall include the hearing officer's findings
34 of fact on each charge, his or her conclusions with regard to each
35 charge based on said findings and shall state what penalty or other
36 action, if any, shall be taken by the employing board. At the request of
37 the employee, in determining what, if any, penalty or other action shall
38 be imposed, the hearing officer shall consider the extent to which the
39 employing board made efforts towards correcting the behavior of the
40 employee which resulted in charges being brought under this section
41 through means including but not limited to: remediation, peer inter-
42 vention or an employee assistance plan. In those cases where a penalty
43 is imposed, such penalty may be a written reprimand, a fine, suspension
44 for a fixed time without pay, or dismissal. In addition to or in lieu of
45 the aforementioned penalties, the hearing officer, where he or she deems
46 appropriate, may impose upon the employee remedial action including but
47 not limited to leaves of absence with or without pay, continuing educa-
48 tion and/or study, a requirement that the employee seek counseling or
49 medical treatment or that the employee engage in any other remedial or
50 combination of remedial actions.

51 ~~(b)~~ b. Within fifteen days of receipt of the hearing officer's deci-
52 sion the employing board shall implement the decision. If the employee
53 is acquitted he or she shall be restored to his or her position with
54 full pay for any period of suspension without pay and the charges
55 expunged from the employment record. If an employee who was convicted of
56 a felony crime specified in paragraph ~~(b)~~ b of subdivision two of this

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1 section, has said conviction reversed, the employee, upon application,
2 shall be entitled to have his or her pay and other emoluments restored,
3 for the period from the date of his or her suspension to the date of the
4 decision.

5 ~~(c)~~ c. The hearing officer shall indicate in the decision whether
6 any of the charges brought by the employing board were frivolous as
7 defined in section ~~[eight thousand three]~~ eighty-three hundred three-a
8 of the civil practice law and rules. If the hearing ~~[officers]~~ officer
9 finds that all of the charges brought against the employee were frivo-
10 lous, the hearing officer shall order the employing board to reimburse
11 the ~~[state education]~~ department the reasonable costs said department
12 incurred as a result of the proceeding and to reimburse the employee the
13 reasonable costs, including but not limited to reasonable attorneys'
14 fees, the employee incurred in defending the charges. If the hearing
15 officer finds that some but not all of the charges brought against the
16 employee were frivolous, the hearing officer shall order the employing
17 board to reimburse the ~~[state education]~~ department a portion, in the
18 discretion of the hearing officer, of the reasonable costs said depart-

19 ment incurred as a result of the proceeding and to reimburse the employ-
20 ee a portion, in the discretion of the hearing officer, of the reason-
21 able costs, including but not limited to reasonable attorneys' fees, the
22 employee incurred in defending the charges.

23 5. Appeal. a. Not later than ten days after receipt of the hearing
24 officer's decision, the employee or the employing board may make an
25 application to the New York state supreme court to vacate or modify the
26 decision of the hearing officer pursuant to section [~~seven thousand~~
27 ~~five~~] seventy-five hundred eleven of the civil practice law and rules.
28 The court's review shall be limited to the grounds set forth in such
29 section. The hearing panel's determination shall be deemed to be final
30 for the purpose of such proceeding.

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

33 § 2. This act shall take effect immediately, except that if this act
34 shall have become a law on or after April 1, 2012 this act shall take
35 effect immediately and shall be deemed to have been in full force and
36 effect on and after April 1, 2012.