



**The University of the State of New York
The State Education Department
Teacher Tenure Hearing Unit
EBA Room 981
Albany, New York 12234**

**Ph: (518) 474-3021
Fax: (518) 402-5940**

(06/12)

Rights of Tenured Employees

(This document only applies to cases where charges are filed on or after April 1, 2012)

Tenured educators have the right to retain their positions and may only be disciplined or removed from office if there is "just cause" pursuant to Education Law §3020. The rules specifying the process for such discipline or removal are set forth in Education Law §3020-a and the Commissioner's Regulations found at 8 NYCRR Part 82. This document, while not intended to be exhaustive, describes the rights of tenured employees in 3020-proceedings. Individuals should consult the Education Law or regulations to resolve any questions they may have. ****Individuals are strongly advised to consult an attorney due to the significant adverse consequences that can result from Education Law §3020-a proceedings.****

Special Notice to Tenured Employees of the New York City Department of Education

Many of the provisions in Education Law §3020-a, including those described in this document have been substantially modified by the collective bargaining agreement and subsequent amendments and/or revisions between the United Federation of Teachers ("UFT") and the New York City Department of Education ("NYCDOE"). Education Law §3020(3) permits the NYCDOE to modify the provisions of Education Law §3020-a through the collective bargaining process. If you are a tenured employee of the NYCDOE, you are advised to review your collective bargaining agreement and any amendments and/or revisions thereto to determine whether your rights may deviate from the provisions described below. If you have any questions, you are urged to consult with the UFT and/or an attorney.

Charges

1. The board of education must first meet to consider the charges. If, by a vote of the majority, the board finds probable cause for the charges, the tenured employee must be immediately served with: a.) a written copy of the charges; b.) the maximum penalty sought by the board if the employee is found guilty of the charges; and c.) a copy of this form outlining the employee's rights, by certified or registered mail or by personal delivery.

Suspension

2. The board may suspend the employee with pay pending disposition of the charges. The employee may be suspended without pay if: a.) the charges are based on failure to maintain certification for a course the teacher has been hired to teach; or b.) the employee has pleaded guilty to or has been convicted of certain felony drug crimes or a felony crime involving the physical or sexual abuse of a minor or student.

Termination Without A Hearing

3. The employee may be terminated without a hearing if the employee has been convicted of a sex offense in accordance with Education Law §305(7-a)(b)(2), or a school administrator or supervisor has been convicted of defrauding the government in accordance with Education Law §305(7-b)(b)(2).

Hearing Request/Waiver/Failure to Request

4. The employee has the right to choose whether to have a hearing on the charges, or to waive the right to a hearing. The employee must exercise this right **within 10 days** of receipt of charges by completing the appropriate section on the Hearing Request/Waiver form and submitting the form to the school district clerk or the secretary of the board of education.
5. If the charges involve pedagogical misconduct or issues of pedagogical judgment and the employee chooses to have a hearing, the employee must also choose whether to proceed in front of a single hearing officer or a three member panel. Please note that there is no right to a three member panel where the charges are incompetence based solely on a pattern of ineffective teaching or performance as set forth in Education Law §3012-c.
6. In the Hearing Request/Waiver form, the employee should indicate the name and contact information for the attorney who will represent the employee, if any. The attorney shall be authorized to receive all correspondence related to the proceeding on the employee's behalf. If no attorney is identified, the employee shall be deemed to be pro se.

Rights of Tenured Employees (cont.)

7. If the employee takes no action **within 10 days** of receipt of the charges, the employee shall be deemed to have waived the right to a hearing.
8. If the employee waives or is deemed to have waived his right to a hearing, the board of education shall then meet and determine the case **within 15 days** of the waiver.

Hearing Officer Selection Process

9. **Within 3 working days** of receipt of the Hearing Request/Waiver form, the clerk or secretary of the board of education shall send to the commissioner a Notice of the Need for a Hearing with a copy to the employee or the employee's attorney.
10. Upon receipt of the request, the commissioner shall request that the American Arbitration Association provide a list of names of individuals to potentially serve as hearing officers along with relevant biographical information.
11. The commissioner shall forthwith simultaneously forward such list to both parties, along with information about the hearing officer's record of commencing and completing hearings within the prescribed time periods for the last five cases.
12. **Within 15 days** of receipt of the list of potential arbitrators, the employee and the employing board must notify the commissioner of their agreed upon hearing officer selection.
13. If the parties fail to notify the commissioner of their selection within 15 days, the commissioner shall appoint a hearing officer from the list.

Hearing Panel Selection Process

14. Where the charges are based on pedagogical misconduct or issues of pedagogical judgment, and the employee chooses to have the hearing before a three member panel, the clerk or secretary of the board of education shall forthwith request a copy of the most recent list of potential panel members from the commissioner. The commissioner shall make such list available to the clerk or secretary of the board of education who shall make such list available to the employee.
15. **Within 5 days** after receiving the copy of the notification to the commissioner of the need for a panel hearing, the employee shall, in writing by certified mail, notify the board and the commissioner of the name of his or her selection for the hearing panel. If the employee fails to notify the commissioner and the board as required and the employee has not waived his or her right to a hearing, the commissioner shall select the employee panel member for the employee.

Pre-Hearing Conference

16. The hearing officer shall, **within 10-15 days** of agreeing to serve, hold a pre-hearing conference which shall be limited to one day (except where good cause is shown, the hearing officer may allow a second day).
17. The prehearing conference shall be private.
18. At the pre-hearing conference, the hearing officer shall have the power to: a.) issue subpoenas; b.) hear and decide all motions, including motions to dismiss and/or amend the charges; c.) hear and decide requests for more information, including but not limited to: materials, statements, notes, and student records, relevant and material to the employee's defense; and d.) set the time and place for hearings to ensure that the hearing is conducted within the statutory timelines.
19. Any motions must be made in writing and provided to both the hearing officer and the other party **at least 5 days before** the pre-hearing conference. Motions not made in this manner are deemed waived, except for good cause shown, as determined by the hearing officer. The hearing officer may only dismiss the charges based on sufficiency, unless the board of education or its attorney, otherwise consents to a dismissal of the charges.
20. The hearing officer shall determine a reasonable amount of time necessary for the hearing and shall schedule the time, date and location of the hearing. In the event that the hearing requires more than one day, the days shall be consecutive and shall not be postponed, except upon the request of a party, and only for good cause shown. In all cases, the final hearing shall be completed **no later than 60 days after** the pre-hearing conference, unless the hearing officer determines extraordinary circumstances warrant a limited extension.
21. The hearing officer shall have the power to consolidate amended or additional charges with the pending charges, provided that the board has found that probable cause exists **no later than 5 days before** the pre-hearing conference. The employee may file a waiver of hearing concerning such amended or additional charges with the hearing officer. Charges involving pedagogical incompetence or issues involving pedagogical judgment may not be consolidated with pending charges unless the employee has previously exercised his or her right to choose between a single hearing officer and a hearing panel.

Rights of Tenured Employees (cont.)

22. If the board presents evidence that the professional license or certification of the employee has been revoked and all judicial and administrative remedies have been exhausted or foreclosed, or the charges for incompetence are based solely on a pattern of ineffective teaching pursuant to Education Law §3012(c), the hearing officer shall schedule a time and place **within 7 days** for an expedited hearing. The rules for expedited hearings differ based upon the underlying charges. There are two types of expedited hearings which are described below.

Expedited Hearing Based on Revocation

23. If the charges are based upon revocation of the employee's license or certification, an expedited hearing must be held ("expedited revocation hearing"). The hearing officer must schedule the expedited revocation hearing **within 7 days** of the pre-hearing conference.
24. An expedited revocation hearing is different from an expedited ineffective teaching hearing (see below).
25. The expedited revocation hearing shall be scheduled in the school district or the county seat where the board is located, and shall take **no longer than one day**. The expedited revocation hearing may not be adjourned except upon request of a party, and only for good cause shown.
26. At the expedited revocation hearing, each party shall have equal time to present its case.
27. The decision for an expedited revocation hearing must be issued **within 10 days** of the hearing.

Expedited Hearing Based on Pattern of Ineffective Teaching

28. If the charges are incompetence based solely on a pattern of ineffective teaching as set forth in Education Law §3012-c, an expedited hearing must be held ("expedited ineffective teaching hearing"). The hearing officer must schedule the expedited ineffective teaching hearing **within 7 days** of the pre-hearing conference.
29. An expedited ineffective teaching hearing is different from an expedited revocation hearing (see above).
30. The expedited ineffective teaching hearing shall be completed **within 60 days**. The number of hearing days shall be equitably distributed between the board and the employee. No adjournments may be granted to extend the hearing time past 60 days, except the hearing officer may grant a limited and time specific adjournment for a circumstance or occurrence beyond the control of the requesting party and an injustice would result if the adjournment were not granted.
31. At the expedited ineffective teaching hearing, a pattern of ineffective teaching as set forth in Education Law §3012(c) shall constitute very significant evidence of incompetence, however, there is no limit on the defenses the employee may choose to use to challenge the allegation of ineffective teaching.
32. The decision for an expedited ineffective teaching hearing must be issued **within 10 days** of the hearing.

Hearing

33. The hearing will be conducted by the hearing officer. The hearing officer has the power to: regulate the course of the hearing; administer oaths; set the time and place for continued hearings; and direct the parties to appear. All testimony shall be under oath.
34. The employee must have a reasonable opportunity to defend himself and an opportunity to testify on his own behalf, however, the employee shall not be required to testify.
35. Each party has the right to be represented by counsel, and may subpoena and cross-examine witnesses.
36. Copies of any subpoenas served on prospective witnesses must be presented to the chairman of the panel at the start of the hearing.
37. All evidence must be submitted **within 125 days** of the filing of charges and no additional evidence shall be accepted after such time, absent extraordinary circumstances beyond control of the parties.
38. Original exhibits marked into evidence during the course of the hearing will not be returned to the parties at the conclusion of the hearing. If the parties need to retain an original record for other purposes, application must be made to the hearing officer for permission to use a photocopy or other accurate replica or facsimile.
39. If the employee or his attorney desires a public hearing, a written demand for such a public hearing must be served upon the hearing officer **at least twenty-four hours before** the date set for the hearing. Public hearings are open to both the public and the media. The hearing officer, may in his discretion exclude anyone other than the parties, their attorneys or the witness, from any portion of a public hearing, if the hearing officer deems it necessary to protect the privacy or reputation of any person under the age of 18.
40. Photographs and recordings are prohibited at private hearings, and are permitted at public hearings, only at the discretion of the hearing officer and where not otherwise prohibited by law.

Rights of Tenured Employees (cont.)

41. An accurate record of the hearing must be kept at the expense of the commissioner, however, the commissioner is authorized to utilize new technology to transcribe or record the hearings. The employee is entitled to receive a copy of the record upon request without charge. The employee may request that a daily copy of the record be prepared, provided that the requesting party pays for any additional incremental expense for such copy.
42. If a hearing panel member is absent and the hearing is before a three-member panel, the hearing officer must order a replacement panel member, if the hearing officer determines that such absence will unduly delay the hearing. The party who selected the absent panel member must select a replacement panel member **within 2 business days** or the commissioner will name a replacement. In no event shall a panel hearing proceed except in the presence of two panel members and the hearing officer.
43. If the hearing officer needs to be replaced and the parties fail to notify the commissioner of their mutually agreed upon replacement **within 2 business days**, the commissioner shall select the replacement.
44. At the conclusion of the testimony, the hearing officer may adjourn the hearing to a specified date to permit the preparation of the record, the submission of any memoranda of law, and deliberation; provided however, that such adjourned date is **no more than 60 days** after the pre-hearing conference, unless the hearing officer determines that extraordinary circumstances warrant a later date.
45. The decision for a hearing must be issued **within 30 days** of the last day of the final hearing.

Decision

46. The hearing officer or panel shall make findings of fact on each charge and recommendations as to disciplinary action, or punishment, if any, against the employee on each charge, which findings of fact and recommendations are then to be submitted by the hearing officer, along with the original transcript or record, and the original exhibits, to the commissioner within the following timelines:
 - Expedited revocation hearings – **10 days**
 - Expedited ineffective teaching hearings – **10 days**
 - All other hearings – **30 days**
47. The findings of the panel on each charge and the recommendations of the panel as to disciplinary action, if any, shall be based solely upon the record of the proceedings before the hearing panel and shall set forth the reasons and the factual basis for the determination.
48. Upon forwarding the findings and recommendations to the Commissioner, along with the complete record, the hearing officer declares the hearing concluded.
49. The Commissioner will **immediately** forward said findings of fact and the recommendations as to penalty, if any is warranted, to the parties, or the attorney of record, if the party was represented by an attorney.
50. **Within 15 days** of the receipt of the hearing officer's decision, the employing board shall implement the recommendations of the panel. If the employee is acquitted of the charges, he or she must be restored to his or her position with full pay for any period of suspension without pay and the charges expunged from the employment record.
51. The hearing officer shall indicate whether any of the charges brought by the employing board are frivolous as defined by the Civil Practice Laws and Rules §8303-a. The hearing officer shall order the employing board to reimburse both the employee and the department reasonable costs as specified in Education Law §3020-a(4)(c).

Appeal

52. **Not later than 10 days after** receipt of the decision, either the employee or the employing board may make an application to the New York State Supreme Court to vacate or modify the hearing officer's decision under Civil Practice Laws and Rules §7511.
53. The filing of the pendency of an appeal shall not delay the implementation of the hearing officer's decision.

Restoration of Rights

54. If an employee who was convicted of a felony crime as specified in Education Law §3020-a(2)(b) has his or her conviction reversed, the employee, upon application, shall be entitled to have his pay and other emoluments restored, for the period of time extending from the date of suspension to the date of the decision.

