Four County School Boards Association

Sharon A. Sweeney
Executive Director

131 Drumlin Court
Newark, NY 14513
315/332-7294
315/332-7474 FAX
Email:
4countysba@edutech.org

REFORM OF EDUCATION LAW SECTION 3020-a – TEACHER DISCIPLINE
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Preamble

Section 3020-a of New York State Education Law sets forth the process by which tenured teachers and administrators are to be disciplined. Provisions in the law were amended in 1994 to address concerns about cost and length of time to complete. Initially, both concerns were eased by the new provisions that were fair to the employee while offering a more expedient and cost effective tool for the school district in maintaining disciplinary standards. Under these reforms a Section 3020-a case should take approximately 128 days from the time charges were served on an employee until a hearing officer issued a written decision on the charges. The experience of school boards in the Four County region and across the state demonstrate that while there may have been some initial improvement, the length of the 3020-a process never comes even close to128 days. The attached charts the history of cases in Four County Districts since 1996. It is clear that additional reform is required to make Section 3020-a a fair and efficient tool for tenured employee discipline.

To achieve this reform, the members of the Four County School Boards Association recommend the following:

- ***State Education Department appointed neutral hearing officers that perform only in 3020-a matters.***
  Currently hearings are conducted either by a single hearing officer (misconduct cases) or a three-person panel (incompetency cases) that are mutually selected by the teacher facing charges and the employing district. These hearing officers are selected from a list of arbitrators obtained by the Commissioner of Education from the American Arbitration Association. This system creates an economic incentive for the hearing officers to avoid displeasing either party. Hearing officers selected by the state should be part of the State Education Department that conducts disciplinary proceedings for professional misconduct by licensed professionals. This would expedite the assignment of hearing officers who would not be beholden to any interest other than the resolution of Section 3020-a disciplinary charges. This would also likely improve the consistency and fairness of the decisions.

- ***Elimination of the requirement for a 3020-a process to terminate tenured teachers when the individual lacks valid certification or has been convicted of or pleads guilty to a felony.***
  Currently school districts must conduct costly section 3020-a proceedings even to terminate teachers or administrators who have been criminally convicted of child abuse in an educational setting, have had their certification revoked, or have failed to obtain permanent certification. Such individuals are not appropriate employees for school districts; their dismissal should not require elaborate separate proceedings

- ***Requirement for teachers to cooperate in the investigations of possible 3020-a charges against them.***
  Under current law a teacher or administrator cannot be compelled to testify at his or her 3020-a hearing. Some courts have interpreted this to mean the individual need not even cooperate with a school district's investigation into the alleged misconduct. Tenured school district employees alone enjoy this right which hinders the ability to determine whether or not implementing a 3020-a process is even appropriate. All other employees including Civil Service employees are required to answer questions in an investigation of

their conduct or performance under penalty of discipline if they refuse a directive to cooperate. Requiring cooperation would facilitate prompt determination of probable cause as well as early identification and resolution of the issues.

- ***Limitation on paid suspensions to the first 90 days of the hearing process with full reimbursement should the outcome return the teacher to employment.***
  Most accused teachers/administrators continue to collect full pay and benefits, providing no incentive to expedite a resolution.

- ***Requirement that teachers facing 3020-a disciplinary action disclose the nature of their*** **defense and evidence** ***prior to the start of the hearing. In cases of misconduct, requirement of a mandatory plea of guilt or innocence at the start of the hearing process.***
  Currently only the school district must disclose the nature of their defense and the evidence against the tenured employee. Requiring the same of the accused would expedite identification and possible resolution of the issues at the pre-hearing stage. Without such "reciprocal" discovery, attorneys for the school district must typically seek hearing adjournments to prepare their response. Reciprocal discovery would also foster legitimate mediation opportunities that do not exist under the present requirements. The plea of guilt or innocence would clarify and expedite the process as well.

- ***Require 3020-a proceedings only in cases where dismissal is sought. Allow for other disciplinary actions to be taken when dismissal is not the penalty sought.***
  Currently the 3020-a process is the only allowable means for disciplining tenured teachers and administrators even for a simple reprimand. Because it is costly and disruptive to the educational process it should be reserved for those cases where it is no longer appropriate for the individual to work in the school district. There should be an alternative process for lesser infractions, such as tardiness, poor attendance, insubordination, inappropriate language, which can be implemented by the school district.

- ***When the decision of a hearing officer is appealed to the courts, by either party, the judge should be allowed to modify both findings and penalty.***
  Under current law, when a case is appealed, the only course of action allowed is for the judge to send the case back to the original hearing officer for re-consideration. This is not the optimum process to assure an unbiased review. Empowering the judge to modify the finding or penalty would bring a fairer outcome and faster resolution to the process.