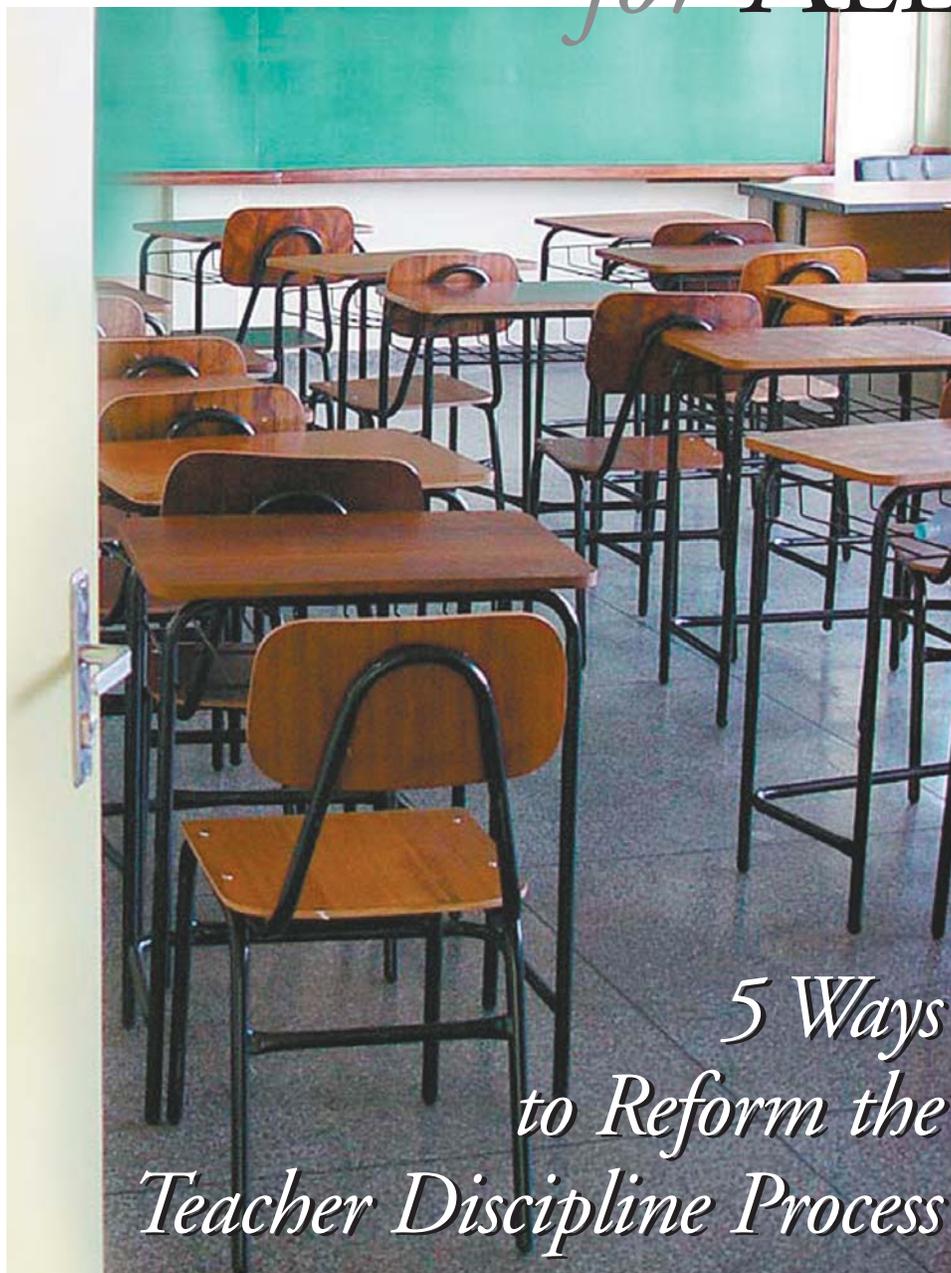


# ACCOUNTABILITY *for ALL*



*5 Ways  
to Reform the  
Teacher Discipline Process*



New York State School Boards Association

March 2007

## **Section 3020-a Reform**

### *The New York State School Boards Association's Recommendations for Legislative Change*

#### **The Issue**

In 1994, then-Gov. Mario Cuomo signed legislation revising Section 3020-a of the Education Law. That section of law sets forth the procedures that apply to the discipline of tenured teachers and administrators. The 1994 revisions were based, in part, on findings by the Moreland Act Commission appointed by Governor Cuomo to study New York State's education system, including the discipline of tenured teachers.

At that time, teacher disciplinary actions cost an estimated \$80,000 and, in many instances, took over one year to resolve. Accordingly, the 1994 revisions aimed to "balance due process protection for tenured teachers against the need for districts to have an expedient and cost-effective tool for maintaining disciplinary standards" (Governor's Approval Memo, L. 1994, Ch. 691).

Under the 1994 reforms a Section 3020-a case should take approximately 128 days from the time charges are served on a teacher until a hearing officer or panel issues a written decision on the charges (see box). However a 1997 NYSSBA survey showed that an average Section 3020-a proceeding at that time was taking 319 days from the date charges were preferred to the date a decision was rendered, and costing more than \$94,000. Seven years later a new survey shows cases taking 520 days on average and costing more than \$128,000. Clearly, the goals of the 1994 revisions have not been achieved.

The Zarb Commission appointed by former Gov. George Pataki included a recommendation that the "teacher discipline and removal process should be accelerated" NYSSBA asks that Gov. David Paterson and the Legislature enact the following reforms to the Section 3020-a process.

#### **3020-a Process**

- A teacher must request a hearing within 10 days after receiving a statement of the 3020-a charges preferred against him or her (§3020-a(2)(c); 8 NYCRR §82-1.4).
- A school district must notify the commissioner of education within three working days of such a request, and the commissioner must immediately contact the American Arbitration Association for a list of arbitrators (§3020-a(3)(a); 8 NYCRR §82-1.6(a)).
- The school district and the teacher must agree on a hearing officer within 10 days of receipt of the commissioner's list (§3020-a (3)(b)(kkk); 8 NYCRR §82-1.6(c)).
- After that, the hearing officer must hold a pre-hearing conference within 10-15 days of agreeing to serve, complete the final hearing within 60 days after the pre-hearing conference, and issue a written decision within 30 days of the last final hearing day (§§3020-a (3)(c)(ii); 8 NYCRR §82-1.6(c)).

## **Recommendations for Reform**

### **1. *Establish a state panel to hear and decide Section 3020-a cases.***

Currently, Section 3020-a hearings are generally conducted by a single hearing officer mutually selected by the teacher facing disciplinary charges and his or her employing district from a list of arbitrators obtained by the commissioner of education from the American Arbitration Association (“AAA”). Often delays are caused by the unavailability of arbitrators mutually acceptable to the teacher and the school district. This system creates an economic incentive for the hearing officer 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 other licensed professionals. This would expedite assignment of hearing officers. These state officials would not be beholden to any interest other than resolution of Section 3020-a disciplinary charges. The proposed solution would also likely improve the consistency of decisions.

### **2. *Authorize the dismissal of tenured personnel without a Section 3020-a proceeding in certain limited circumstances.***

Currently, school districts must conduct costly Section 3020-a proceedings even to terminate teachers who have been criminally convicted of child abuse in an educational setting, have had their certification revoked, or have failed to obtain permanent certification within requisite statutory time frames. Since school districts should not employ such individuals in a school setting, their dismissal should not require an elaborate separate proceeding.

### **3. *Clarify that teachers must cooperate in investigations of possible 3020-a charges against them.***

Currently a teacher cannot be compelled to testify at his or her Section 3020-a hearing. Some courts have interpreted this to mean a teacher need not even cooperate with a school district’s investigation into the alleged misconduct. This hinders districts in investigating whether it is even appropriate to initiate a disciplinary proceeding. No other civil servants enjoy such rights. The proposed change would facilitate a prompt determination as to whether probable cause exists to bring Section 3020-a charges, as well as early identification and resolution of issues.

### **4. *Eliminate paid suspensions for all teachers while 3020-a proceedings are pending, or cap the length of time that they must be paid.***

Most 3020-a cases have found the accused guilty. Nevertheless, with very limited exceptions, most accused teachers continue to collect full pay and benefits, and have little incentive to expedite a resolution.

### **5. *Require that teachers facing Section 3020-a disciplinary action disclose the nature of their defense prior to the hearing.***

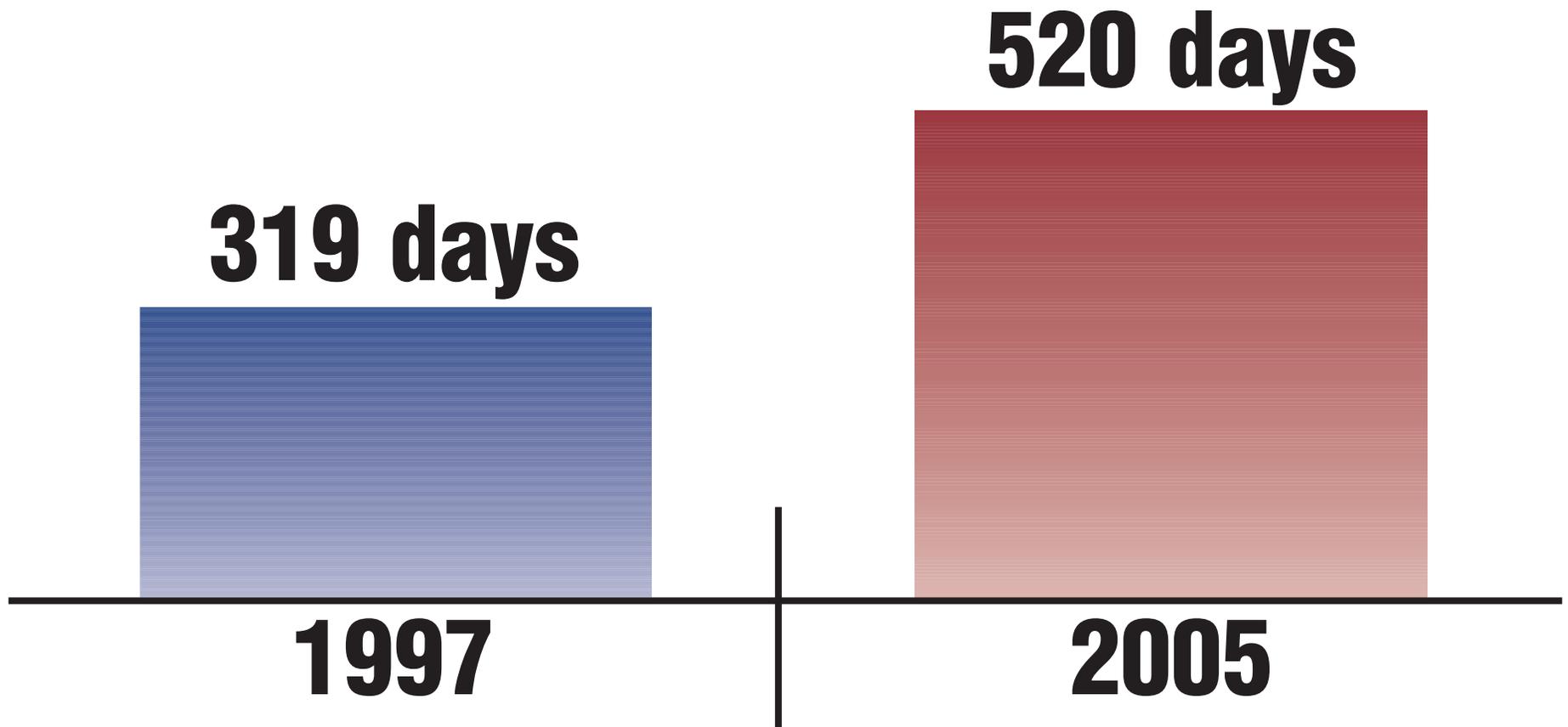
Currently, only school districts must disclose the nature of the case and evidence against the teacher. Requiring the same of the accused would expedite identification and possible resolution of the issues at the pre-hearing stage. Without such “reciprocal discovery,” attorneys for the school district must typically seek hearing adjournments to prepare their response. Reciprocal discovery would also foster legitimate mediation opportunities that do not exist under the present system.

# Frequency of 3020-a Charges 1995 - 2005

Charge	Count	% of Total
<b>Incompetence</b>	<b>176</b>	<b>30%</b>
<b>Improper Student Contact</b>	<b>128</b>	<b>22%</b>
<b>Corporal Punishment</b>	<b>59</b>	<b>10%</b>
<b>Insubordination</b>	<b>47</b>	<b>8%</b>
<b>Off Campus Misconduct</b>	<b>42</b>	<b>7%</b>
<b>Student Safety</b>	<b>21</b>	<b>4%</b>
<b>Cheating</b>	<b>21</b>	<b>4%</b>
<b>Lack of Certification</b>	<b>9</b>	<b>2%</b>



# Teacher Discipline Length of proceedings

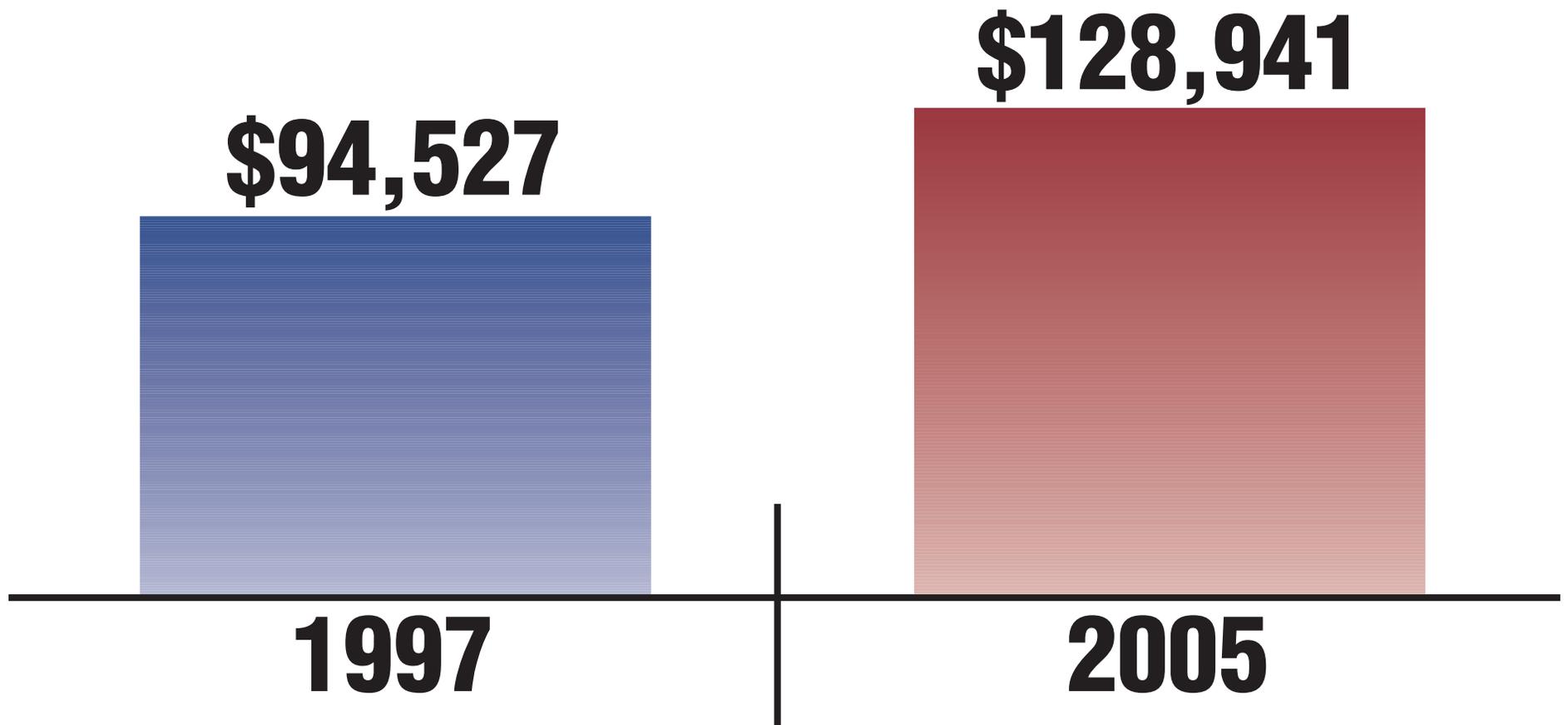


# 3020-a Decisions

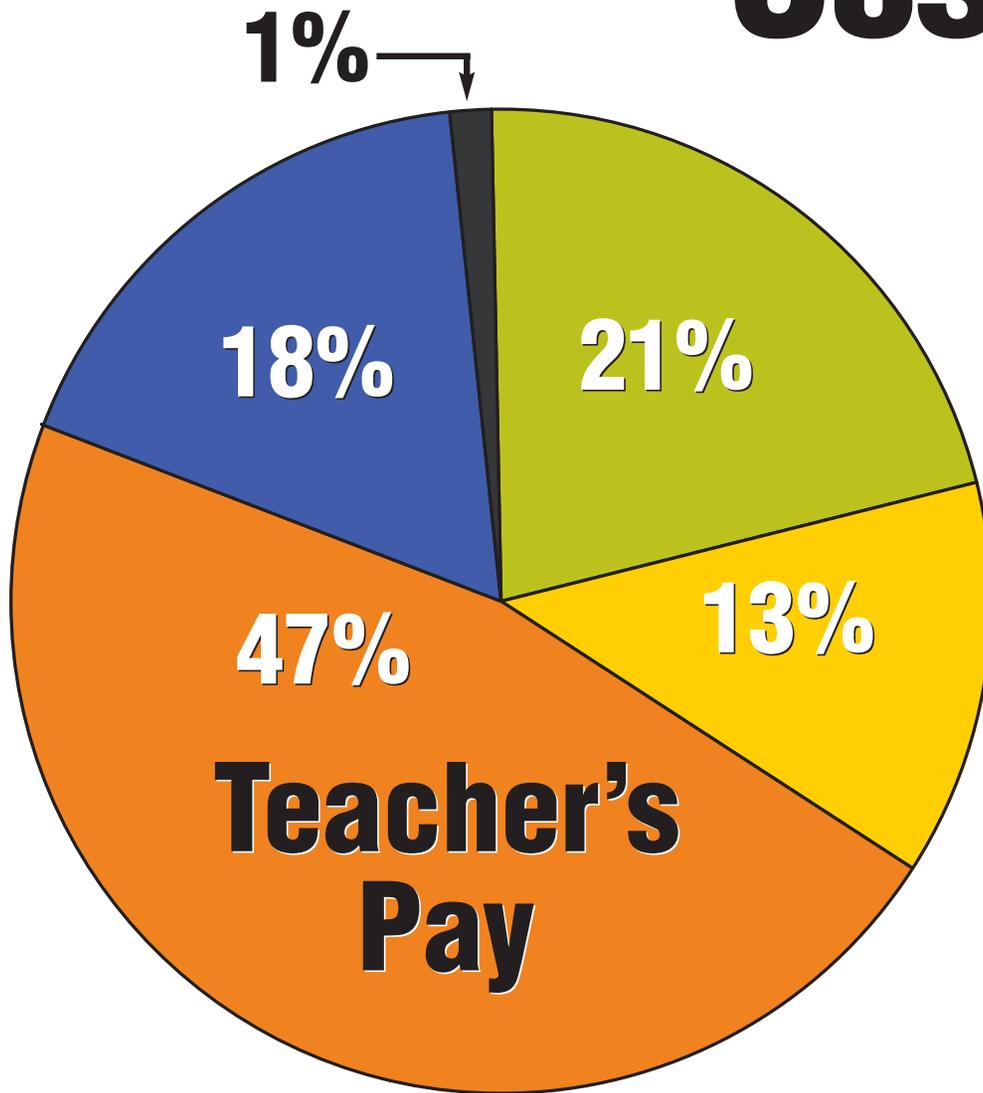
<b>Year</b> (1995-2005)	<b>95</b>	<b>96</b>	<b>97</b>	<b>98</b>	<b>99</b>	<b>00</b>	<b>01</b>	<b>02</b>	<b>03</b>	<b>04</b>	<b>05</b>	<b>Total</b>
<b>Terminate</b>	8	8	10	8	10	15	13	22	34	22	20	170
<b>Unpaid Suspension</b>	9	5	16	11	14	19	24	21	28	32	34	213
<b>Fine</b>	2	3	5	5	5	4	5	5	11	11	17	73
<b>Reprimand</b>	0	1	3	1	0	5	7	3	2	3	3	28
<b>Acquit</b>	3	4	8	3	5	11	17	16	10	4	4	85
<b>Other</b>	0	0	0	1	0	0	4	0	1	3	2	11
<b>Total</b>	<b>22</b>	<b>21</b>	<b>42</b>	<b>29</b>	<b>34</b>	<b>54</b>	<b>70</b>	<b>67</b>	<b>86</b>	<b>75</b>	<b>80</b>	<b>580</b>



# Teacher Discipline Cost per case



# Costs



- Substitute's Salary & Benefits
- Other Staff Costs
- Suspended Teacher's Pay
- Legal
- Additional Costs

# Reform Recommendations

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- 1. Establish state hearing panel to hear and decide 3020-a cases**
- 2. Terminate without 3020-a hearing if**
  - Criminal conviction for child abuse in educational setting, or**
  - Certificate revoked by SED, or**
  - Failed to obtain permanent certification in requisite time**



# Reform Recommendations

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- 3. Clarify that teachers must cooperate in district investigations of 3020-a charges against them**
- 4. Eliminate paid suspensions for teachers awaiting 3020-a proceedings, or cap the length of time they are paid**
- 5. Require teachers facing 3020-a hearings to disclose nature of their defense before the hearing**



SUMMARY OF CASE:  
BINGHAMTON CITY SCHOOL DISTRICT V. BRIAN PEACOCK  
Appellate Division Citation: 33 A.D. 3d 1074 (3<sup>rd</sup> Dept., 2006)

Brian Peacock had 10 years of experience as a Business Teacher in the Binghamton City School District. In June of 2003, the District received reports about a student possibly being involved in an illicit relationship with a teacher. The District responded by conducting a multi-faceted investigation.

On June 17, 2003, Peacock left the Binghamton High School building, without authorization, when he should have been proctoring an exam. He drove to a location two blocks from a female student's house where he picked her up. She got into his car and laid down across the back seat. They drove to his residence where they spent more than six hours behind closed doors.

The District's investigation revealed that Peacock had made more than 1,551 calls to the student in a six-month period. Peacock also provided hundreds of dollars worth of gifts to the student, including cell phone cards, gift certificates for tanning sessions, and other inappropriate gifts.

The District filed charges under Education Law §3020-a and the case was assigned to Hearing Officer, James R. Markowitz. After hearing all of the testimony, Markowitz found that the District had not proven that the relationship was "sexual". Despite proof of the relationship and its extremely negative effect upon the student and her family, as well as proof of insubordination, leaving work without permission, and getting paid for the time, the hearing officer ordered a mere one-year unpaid suspension.

The District appealed and argued that the penalty was excessively lenient. A State Supreme Court Judge found that there was substantial evidence of a sexual relationship and directed that a much harsher penalty be imposed. The employee appealed.

During the pendency of the appeal, a new proceeding was commenced before the same hearing officer. The hearing officer then imposed a two-year unpaid suspension. Shortly thereafter, the Appellate Division Court, in a panel of five Justices, ruled that a one-year suspension was far too lenient and affirmed the vacatur of that penalty. Subsequently, a State Supreme Court Justice ruled that the two-year suspension was also "grossly lenient" and ordered the matter be re-heard before a new hearing officer.

The entire process has taken more than three years and remains without resolution. The cost to the District through January 2007 totals \$171,877. These costs include salary and benefits for the teacher while on suspension, legal fees and expenses, investigator's fees and expenses, and various other expenses.

Based on this experience, the District believes that Education Law § 3020-a must be reformed to better meet the needs of school districts and students.

SUMMARY OF CASE:  
ALDEN CENTRAL SCHOOL DISTRICT  
S.E.D. File No. 3635

A special education teacher had been employed by the district for 15 years. She performed satisfactorily but then began to perform satisfactorily only sporadically. While receiving some positive evaluations, she also received negative evaluations. Three different principals questioned her performance, followed by some improvement by her.

The District, pursuant to a negotiated evaluation procedure, put the teacher on a one year remediation program. Rather than participate in that program, though, the teacher transferred to another assignment. The teacher was also assigned an “assistance team” of the principal and another special education teacher. Despite such efforts by the District to rehabilitate the teacher, there remained serious issues with her ability as a special education teacher.

When the teacher was subsequently told to submit her final exam for review by an administrator, she failed to do and when she finally turned them in, they were inappropriate and had to be re-written. She also failed to follow an individualized education plan (IEP) for several students, and even failed to use an adaptive device required by one student’s IEP. The failure to implement an IEP is a violation of the student’s rights, and exposes the district to liability.

The District then brought disciplinary charges against the teacher and sought to suspend the teacher for one year to “send a clear message that [her] activity cannot and will not be tolerated.” The District argued it should not have to deal with performance deficiencies every few years for a veteran teacher.

After a full disciplinary hearing held pursuant to Education Law §3020-a, the hearing officer assigned to hear the case recommended only a two week unpaid suspension. The hearing officer said that he had not been shown exactly what was done by the assistance team. He also noted, though, that it had been shown that the teacher did not respond well to criticism.

The hearing officer then ordered the teacher, once she returned from her two week suspension, to prepare weekly reports as to how she provided instruction to her special education students. The reports were to be reviewed by the principal and department chair, and any report not commented on was to be deemed acceptable. These reports were to be in addition to any other evaluation done by the district.

The case took two years and two months from the time charges were filed and a decision was issued. The District reports it cost over \$170,000 dollars to bring the case.

	<b>§3020-a Hearings</b>	<b>Part 83 Hearings</b>
<b>What is It?</b>	The hearing held when a school district wants to impose any kind of discipline against a tenured teacher (NY Educ. Law §§3012, 3020, 3020-a)	The hearing held when the Commissioner of SED (the State Office of Teaching Initiatives) ascertains whether a teacher's certification should be revoked. (§ 305(7))
<b>Grounds for Bringing</b>	No person who is tenured shall be disciplined except for "just cause" (§3020). Tenured teachers hold their positions "during good behavior, and efficient and competent service" and shall not be removed unless, after a §3020-a hearing, they are found guilty of insubordination, immoral character, conduct unbecoming a teacher, inefficiency, incompetency, physical or mental disability, and/or neglect of duty, and/or failure to maintain certification. §3012(2)	A substantial question exists that a teacher has a lack of good moral character, or has failed to complete an employment contract. 8 NYCRR §§ 83.1, 83.4, 83.5(c).
<b>Who Can Initiate</b>	Anyone can initiate a charge of misconduct, but charges are usually brought by the school board who, in either case, must make of a finding of probable cause for the charges.(§3020-a(2))	<p>Any individual may refer information of a criminal conviction or other act that raises a reasonable question as to the moral character to SED(8 NYCRR § 83.1(c)).</p> <p>DCJS data about an arrest and/or conviction of a teacher received by SED while conducting a criminal history record check, must also be forwarded to the Office of Teaching for a determination of that individual's good moral character (8 NYCRR § 87.6 (b)).</p> <p>3020-a hearing officers or panels findings must be considered by SED to consider whether or not teachers subject to such local disciplinary charges should retain their teaching certificates (8 NYCRR § 83.1(d)).</p> <p>School superintendents must report to SED "any information indicating that a person holding a teaching certificate has been convicted of a crime, or has committed an act which raises a reasonable question as to the individual's moral character" (8 NYCRR § 83.1(a)). A superintendent's failure to do so may result in a part 83 investigation into the moral character of the superintendent himself or herself.</p>
<b>Who Hears It</b>	A single hearing officer selected by the parties from a list of arbitrators maintained by SED, or if pedagogical charges, the teacher can opt for a panel consisting of a hearing officer and a panel member selected by the teacher and one selected by the board. (§3020-a(3))	The teacher is entitled to request a hearing before either a hearing officer or a three member panel (8 NYCRR § 83.4(a), (b)).
<b>Possible Outcomes</b>	<p>A hearing officer or panel may recommend, and the school board would then impose: either</p> <ul style="list-style-type: none"> <li>termination,</li> <li>unpaid suspension,</li> <li>fine or</li> <li>reprimand.</li> </ul> <p>In addition, the hearing officer or panel can also recommend remedial measures such as counseling or coursework. (§3020-a(4)).</p>	<p>A hearing officer or panel may recommend, and the commissioner may impose one of the following alternative penalties:</p> <ul style="list-style-type: none"> <li>revocation of a certificate;</li> <li>suspension of a certificate for a fixed period of time or until completion of retraining in the area to which the suspension applies or until completion of therapy or treatment;</li> <li>limitation of the scope of a certificate by revoking an extension to teach additional subjects or grades;</li> <li>or a fine not to exceed \$5,000;</li> <li>a requirement that the certificate holder pursue continuing education or training (§ 305(7); 8 NYCRR § 83.6).</li> </ul>
<b>Appeals</b>	Either party can appeal to the state supreme court (§3020-a(5))	The commissioner or teacher may appeal the decision to the commissioner. The commissioner can only appeal in cases for criminal convictions for drug-related crimes or the physical or sexual abuse of minors or students, or committed on school property or performance of teaching duties (8 NYCRR § 83.5).