

Memorandum of **OPPOSITION**

S.5205 (Gounardes)/A.7624 (Abbate)

An act to amend the civil service law, in relation to hearing procedures for certain public employees

The New York State School Boards Association (NYSSBA) *opposes* the above referenced legislation and urges your negative vote.

Under current law, civil service employees are entitled to statutory due process protections before any disciplinary action can be taken against them, including but not limited to written notice of the charges, the right to be represented by their employee organization during questioning and the hearing on the charges, and the right to collectively bargain additional disciplinary procedures. Moreover, in the event that the charges an employee faces are related to misconduct or incompetence, employers, including school districts, are permitted to suspend the employee without pay for up to thirty days.

If enacted, this legislation would dramatically increase the requirements placed on employers in the disciplinary process. Hearings would now be required to be conducted by an independent hearing officer, mutually selected by the employer and employee. Employers, including school districts, would then be limited to implementing the penalty selected by the hearing officer. In addition, employers would only have the option to place employees on paid suspension, pending the hearing, even in cases of misconduct or incompetence.

This bill establishes a disciplinary process that is similar to that which school districts are required to engage in when dealing with tenured instructional staff. These hearings are both administratively and financially burdensome and frequently do not result in the desired result.

It is important to note that discipline is not euphuism for dismissal and can include actions many would consider managerial in nature. For example, a recent case involved a district that had a school bus driver who had taken a second job and was unavailable for her regularly assigned route. The district moved the driver to a different position with different responsibilities and a different title that would accommodate her new scheduling needs. However, the new assignment and title resulted in diminished benefits. Despite the fact that she was no longer willing or able to perform her prior job assignment and the changes were made to accommodate her, upon her challenge, the appellate court found that this was technically a “disciplinary action” and was therefore impermissible without going through the full investigation and hearing process.

If this bill were enacted, not only would the district have to engage in a hearing, but they would take on the added time and expense of hiring an external hearing officer to hear the dispute.

School district employees have extensive protections and rights under state Civil Service Law and are further able to negotiate other conditions through their collective bargaining agreements. They would retain this right to further negotiate if this bill were enacted.

NYSSBA does not propose eliminating any existing employee protections for those employees covered by this section of Civil Service Law. However, we believe that current law, which can be supplemented by the collective bargaining process, provides generous protections in an efficient manner, which should not be expanded.

For the reasons, NYSSBA ***opposes*** the above reference legislation and urges your negative vote. For additional information, please contact NYSSBA Governmental Relations at 518-783-0200.