Quality Educators *in* Every School

New York State School Boards Association

2008

Quality Educators *in* Every School

The New York State School Boards Association's (NYSSBA) Recommendations for Statutory Change to the Tenured Teacher and Administrator Disciplinary Process

In New York State (excluding the City of New York which has an alternative disciplinary process) tenured teachers and administrators may only be disciplined under the provisions of section 3020-a of the Education Law. These provisions establish extensive administrative hearing procedures that must be followed before a school district can take any disciplinary action against any such tenured staff. These rights extend regardless of circumstance. The practical effect is that even if the employee in question has been convicted of a serious crime or lost his or her professional certification, the district must embark on a lengthy and costly hearing process to terminate the employee in question.

According to the most recent survey conducted by NYSSBA, under current law a 3020-a proceeding takes an average of 520 days from the date charges were brought to the date a decision was issued, at an average cost of $128,000. Proceedings addressing charges of pedagogical incompetence are even longer, spanning on average 830 days and costing on average $313,000. Most of that money (approximately 47%) goes to pay for the salary and benefits of the employee who, in most cases, is suspended with pay while charges are pending and the hearing is held. In the case of teachers, another 21% goes to pay the substitute hired to take the place of a suspended teacher. The remaining 32% is devoted toward legal and administrative costs, as well as the costs related to the participation of other staff and administrators in the hearing process.

In order to address the prohibitive costs and shorten the duration of this process, NYSSBA calls for much needed statutory reforms to this disciplinary process. Capping paid suspensions and empowering districts to immediately terminate without a hearing teachers and administrators who have already been convicted of certain crimes, who have lost their certification, or who have failed to obtain proper certification would help to control the most costly aspects of the process. Additionally, amending the law to provide for prompt selection of hearing officers to hear cases would immediately shorten the proceeding by eliminating the delay inherent in waiting for a hearing officer "acceptable" to the two parties. Finally, requiring reciprocal discovery and mutual cooperation prior to and during hearings would also shorten the process and reduce costs.

School districts do not embark upon this process lightly. The decisions included in NYSSBA's 3020-a database indicate that between 1995 and 2006, there were 633 reported decisions in 3020-a disciplinary proceedings. Of the 633, only 86 cases resulted in an acquittal. In all other cases not resolved by a settlement, there was a guilty finding of some kind, with more than two-thirds of the decisions resulting in an order for termination or unpaid suspension.

With the high standards for school district performance accountability set by New York State and federal laws, undue delays and prohibitive costs must not be allowed to impede a district's ability to effectively and efficiently remove unfit or incompetent staff from schools. The reforms proposed by NYSSBA would streamline the current process and allow districts to redirect many of the resources expended in this process to successful educational programs for students.

Recommendations *for* Reform

1. Establish a state selection process for the designation of hearing officers and a review panel to hear section 3020-a appeals. Currently, section 3020-a hearings are generally conducted by a single hearing officer mutually selected by the teacher or administrator 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). Delays are caused by the unavailability of arbitrators mutually acceptable to the employee and the school district. This system also creates an incentive for the hearing officers to avoid displeasing either party. By empowering the State Education Department to select the hearing officer, based strictly on prompt availability, these delays would be eliminated.

Further, the establishment of a review panel to hear appeals of the hearing officers' decisions would establish a body of binding law that would ensure consistency in initial decisions and further decrease the time frame associated with these proceedings. The review panel decisions would be subject to appeal in state court pursuant to an article 78 proceeding.

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 and administrators who have been criminally convicted of offenses involving child abuse and certain felonies, or have had their certification revoked, or have failed to obtain permanent certification within a requisite statutory time frame. Since school districts should no longer employ such individuals, 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 or administrator cannot be compelled to testify at his or her section 3020-a hearing. Some courts have interpreted this to mean a teacher or administrator need not ever 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, nor are they granted in any other civil proceeding. 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 possible resolution of issues.

4. Cap the length of time that teachers or administrators may be suspended with pay while 3020-a proceedings are pending. The vast majority of 3020-a decisions have ended with a finding of guilt on the part of the employee. Nevertheless, with very limited exceptions, most teachers and administrators 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 the employing school district must disclose the nature of the case and evidence against an employee. Requiring the same of teachers and administrators would expedite identification and possible resolution of the issues at the pre-hearing stage. Without such "reciprocal discovery" school districts must typically seek hearing adjournments to prepare their responses. This needlessly delays the process and increases the cost to state and local taxpayers. Reciprocal discovery would also foster settlement opportunities that are hampered by the present system.

For more information, contact
the Governmental Relations Department
at the
New York State School Boards Association
24 Century Hill Drive, Suite 200
Latham, New York 12110
Tel: 518-783-0200 • Fax: 518-783-0211
www.nyssba.org • info@nyssba.org