

## AMENDMENT TO REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 207, 305, 3020-a and Part B of Chapter 57 of the Laws of 2012.

1. Subdivision (b) of section 82-1.3 of the Regulations of the Commissioner of Education is amended, effective April 24, 2012, to read as follows:

(b) A copy of a written statement specifying in detail each charge as to which the board finds probable cause exists[, and a copy of the vote of the board on each charge,] shall be immediately forwarded [at once] to the employee by certified or registered mail, return receipt requested, or by personal delivery to the employee and to the commissioner by first class mail. Such statement shall state the maximum penalty which will be imposed by the board if the employee does not request a hearing or that will be sought by the board if the employee is found guilty of the charge after a hearing and shall outline the employee's rights under section 3020-a, including the right to request a hearing and the right to choose either a single hearing officer or a three member panel when the charges involve pedagogical incompetence or issues involving pedagogical judgment.

2. Section 82-1.4 of the Regulations of the Commissioner of Education shall be amended, effective April 24, 2012, to read as follows:

### Section 82-1.4. Request for a hearing

Where the employee desires a hearing, he or she may file a written request for a hearing with the clerk or secretary of the employing board within 10 days of receipt of the charges, and where the charges concern pedagogical incompetence or issues involving pedagogical judgment, the employee shall choose either a single hearing

officer or a three member panel. In the request for a hearing, the employee may designate an attorney who will represent the employee at the hearing and who shall be authorized to receive correspondence from the commissioner pertaining to the 3020-a proceeding on his or her behalf.

3. Section 82-1.5 of the Regulations of the Commissioner of Education is amended, effective April 24, 2012, as follows:

Section 82-1.5. Notice of need for hearing

(a) The notification [to the commissioner] of the need for a hearing shall be sent to the commissioner within three working days of the request for a hearing with a copy to the employee, or the employee's designated attorney, and shall contain the following information:

(1) . . .

(2) . . .

(3) . . .

(4) the name and [address of] contact information for the attorney, if any, who will represent the board at the hearing;

(5) . . .

(6) . . .

(7) the name of the panel member selected by the board, if applicable; and

(8) where the board has received written notice that the employee will be represented by an attorney at the hearing, the name and [address of] contact information for such attorney.

(b) . . .

(c) [At the same time that the notification is sent to the commissioner, the board shall, by certified mail return receipt requested, send to the employee the information provided in paragraphs (a)(3), (4), (5), (6) and (7) of this section.

(d)] Separate notification of the need for a hearing shall be given with respect to each employee against whom charges have been filed.

[(e)] (d) Whenever an employee shall be deemed to have waived his/her right to a hearing, the clerk or secretary of the board shall immediately file notice of such waiver with the commissioner.

(e) Where the matter is resolved prior to the decision of the hearing officer, the board shall notify the commissioner and send a copy of such resolution to the commissioner within ten days of the resolution.

4. Section 82-1.6 of the Regulations of the Commissioner of Education is amended, effective April 24, 2012, to read as follows:

Section 82-1.6. Appointment of hearing officer and notice of prehearing conference

(a) . . .

(b) [Not later than 10 days from the mailing of the list] Within 15 days after receiving the list of potential hearing officers, the parties or their agents or representatives shall by agreement select a hearing officer and each party shall notify the commissioner thereof.

(c) If the parties fail to notify the commissioner of [an agreed upon hearing officer within the time] a selection within the 15 day time period prescribed by subdivision (b) of this section, the commissioner shall [request the association to select a hearing officer

from said list] appoint a hearing officer from the list. The provisions of this subdivision shall not apply in cities with a population of one million or more with alternative procedures specified in section 3020 of the Education Law.

(d) . . .

(e) . . .

5. Subdivisions (a) and (b) of section 82-1.7 of the Regulations of the Commissioner of Education shall be amended, effective April 24, 2012, to read as follows:

(a) The commissioner shall maintain a list of persons eligible to serve as panel members pursuant to Education Law, section 3020-a(3)(b)(iv), which list shall be updated [at least annually] as necessary.

(b) Copies of such list of panel members appointed by the commissioner [shall be filed in the office of the school district clerk or secretary of the board of each district and] shall be available for public inspection upon request to the commissioner.

6. Section 82-1.10 of the Regulations of the Commissioner of Education is amended, effective April 24, 2012, to read as follows:

Section 82-1.10. Conduct of hearings

(a) . . .

(b) . . .

(c) . . .

(d) If the hearing officer determines that the absence of a hearing panel member is likely to delay unduly the prosecution of the hearing, he or she shall order the

replacement of such panel member. If the party who selected such panel member fails to select a replacement within two business days, the commissioner shall select such replacement. If the hearing officer needs to be replaced and [if the commissioner determines that] the parties [cannot agree on a replacement] fail to notify the commissioner of their mutually agreed upon replacement within two business days, the commissioner shall [request the association to select a replacement from the list of hearing officers] select the replacement. In no event shall a panel hearing proceed except in the presence of two panel members and the hearing officer.

(e) . . .

(f) All evidence shall be submitted by all parties within one hundred twenty five days of the filing of charges and no additional evidence shall be accepted after such time, absent extraordinary circumstances beyond the control of the parties.

(g) The hearing officer shall have the power to regulate the course of the hearing, set the time and place for continued hearings, and direct the parties to appear, so that no party is unduly prejudiced by the prohibition on the submission of evidence after one hundred twenty five days.

(h) At the conclusion of the testimony, the hearing officer may adjourn the hearing to a specified date after conclusion of the testimony, to permit preparation of the [transcript] record, submission by the parties of memoranda of law, and deliberation; provided that such specified date may not be more than 60 days after the prehearing conference unless the hearing officer determines that extraordinary circumstances warrant a later date. [The] Upon request, the hearing officer shall arrange for the

preparation and delivery of one copy of the [transcript] record of the hearing to each panel member, to the employee and the board.

[(g)] (i) The hearing officer or hearing panel shall render a written decision within 30 days of the last day of the final hearing, or within 10 days of the last day of an expedited hearing and shall forthwith forward a copy to the commissioner, in a manner prescribed by the commissioner, who shall send copies to [the employee and the clerk or secretary of the employing board] the parties and/or their designated attorneys. Such written decision shall include the hearing officer's findings of fact on each charge, his or her conclusions with regard to each charge based on such findings and shall state the penalty or other action, if any, which shall be taken by the board, provided that such findings, conclusions and penalty determination shall be based solely upon the record in the proceedings before the hearing officer or panel, and shall set forth the reasons and the factual basis for the determination.

7. A new section 82-1.11 of the Regulations of the Commissioner of Education shall be added, effective April 24, 2012, to read as follows:

Section 82-1.11 Monitoring and Enforcement of Timelines

The Department will monitor and investigate a hearing officer's compliance with the timelines prescribed in Education Law section 3020-a. A record of continued failure to commence and complete hearings within the time periods prescribed in this section shall be considered grounds for the commissioner to exclude such individual from the list of potential hearing officers for these hearings.

8. The existing section 82-1.11 of the Regulations of the Commissioner of Education shall be renumbered as section 82-1.12 of the Regulations of the Commissioner of Education and is amended, effective April 24, 2012, to read as follows:  
[Section 82-1.11] Section 82-1.12. Reimbursable hearing expenses

(a) [The] Except as otherwise provided in this section, the commissioner shall compensate the hearing officer with the customary fee paid for service as an arbitrator for each day of actual service rendered by the hearing officer. For [this purpose] hearings commenced by the filing of charges prior to April 1, 2012, a day of actual service shall be five hours. In the event a hearing officer renders more or less than five hours of service on a given calendar day, the per diem fee shall be prorated accordingly. For hearings commenced by the filing of charges on or after April 1, 2012, a day of actual service shall be defined in guidelines prescribed by the commissioner. Any late cancellation fee charged by the hearing officer shall be paid by the party or parties responsible for the cancellation.

(b) In addition to the statutory fees payable to the hearing officer and panel members for each day of actual service, the commissioner shall reimburse hearing officers and panel members for their necessary travel and other related reasonable expenses [incurred at rates not to exceed the rates] in accordance with the rules and limits on travel applicable to state employees.

(c) The commissioner shall arrange for the preparation of [a hearing transcript by a competent stenographer and shall compensate the stenographer for the cost of preparing the transcript and copies thereof for the hearing officer, each panel member, the department, the employee and the board] an accurate record of the proceedings.

Upon request, a copy of the record shall be provided by the commissioner to the hearing officer, panel members and/or the parties at the department's expense. Upon request of one or more parties, the commissioner may arrange to have a daily copy of the [transcript] record prepared and distributed to each party making such request and to the hearing officer, in addition to [the] any final copies [to be] provided by the commissioner after conclusion of the hearing. Any incremental cost incurred for preparing a daily copy for a party and the hearing officer that is in addition to the base amount payable by the commissioner for preparation of the final [transcript] record shall be paid by the party requesting daily copy, or shall be shared equally by the parties where both parties request daily copy.

(d) . . .

(e) Limitations on fees for hearing officers. For hearings commenced by the filing of charges on or after April 1, 2012, a hearing officer shall be not be reimbursed beyond the maximum rates of compensation of hearings officers, as set forth in a schedule prescribed by the commissioner, based on customary and reasonable fees for service as an arbitrator and shall not reimbursed for more than a certain amount of study hours, as prescribed by the commissioner.

(f) Limitation on claims. No payments shall be made by the department on or after April 1, 2012 for the following if they are on a claim submitted later than one year after the final disposition of the hearing by any means, including settlement, or within 90 days after April 1, 2012 whichever is later; provided that no payment shall be barred or reduced where such payment is required as a result of a court order or judgment or a final audit:

(1) compensation of a hearing officer or hearing panel member;

(2) reimbursement of such hearing officers or panel members for necessary travel or other expenses incurred by them, or

(3) for other hearing expenses.