TABLE OF CONTENTS

Preface vii

Chapter 1. Overview of the Section 3020-a Disciplinary Process 1
Grounds for Discipline 2
The Charges 4
Post Charges and Pre-hearing Procedures 7
Pre-hearing Suspension 10
Hearing Officer and Panel Selection 12
The Hearing 14
Post-hearing Procedures 17

Chapter 2. Grounds for Discipline 25
Pedagogical Incompetence 26
Physical or Mental Disability 28
Lack of Certification 32
Absence from Work 34
Insubordination 37
Corporal Punishment and Use of Excessive Physical Force 39
Improper Remarks, Physical Contact and Relationships with Students 42
Endangerment of Student Safety 45
Other Types of Chargeable Misconduct 46

Chapter 3. Defenses to 3020-a Charges 57
Mootness 57
Statute of Limitations 58
Defective Service or Filing of Charges 59
Collateral Estoppel 60
Collective Bargaining Agreements 61
Vague and Ambiguous Charges 62

Chapter 4. Hearing Procedure and Admission of Evidence 65
Employee Representation 65
Conduct of Hearing 66
Standard of Proof 67
Disclosure 68
Admissible Evidence 70
Witness Testimony 73
Subpoenas 75

Chapter 5. Penalties and Remedial Actions 81
Available Penalties and Remedial Actions 81
Penalty Appropriateness 83
Aggravating and Mitigating Factors 84
Remediation 86

Chapter 6. Appeals and Other Actions 93

Appendix. Key to Endnote Abbreviations 97

PREFACE

The decision to discipline a tenured teacher or administrator is not one to be taken lightly. Since 1970 the process has been governed by a complex legal and regulatory system, commonly known as section 3020-a of the Education Law, which was amended in 1994.

Disciplining Tenured Teachers and Administrators examines the 3020-a disciplinary process from various perspectives, including the statute and applicable commissioner regulations, court rulings, and decisions from 3020-a hearing officers and panels adjudicating disciplinary charges preferred against tenured teachers and administrators. It provides school board members, school officials, and school attorneys an easily accessible question-and-answer resource to assist them in understanding the process and the issues involved in disciplining tenured teachers and administrators.

The 3020-a process is expensive, time-consuming and fraught with potential pitfalls unless one has a basic understanding of its complexities. An average 3020-a proceeding takes 319 days from the date charges are preferred to the date the decision is rendered and costs more than $94,000, according to a New York State School Boards Association 1997 survey. Understanding how to navigate the 3020-a process may save a school district scarce tax dollars and needless frustration while helping the district maintain a high-quality tenured staff to help its students succeed.

Disciplining Tenured Teachers and Administrators includes references to New York State law, regulations of the commissioner of education, and court decisions relevant to the 3020-a disciplinary process. It is the first book of its kind to offer a comprehensive analysis of the application of the changes made by the 1994 amendments to the 3020-a statute. In addition, it includes an analysis of the 437 hearing officer and panel decisions in the State School Boards Association's 3020-a database.

In short, *Disciplining Tenured Teachers and Administrators* offers a highly customized look at the process that will be useful to school board members and officials faced with the need to discipline or even terminate employees whose standards of performance and conduct do not meet the expectations defined in law, regulations, and/or included in local school board policy and administrative regulations.

The New York State School Boards Association is confident that the information in this book will be of value to those who read it. However, it is not a substitute for legal advice, so school boards and school officials should consult with their school attorney as the need arises.

Chapter 1

OVERVIEW OF THE SECTION 3020-A DISCIPLINARY PROCESS

The process that school boards must follow to remove or otherwise discipline tenured teachers and administrators is mandated by section 3020-a of the Education Law. A school board has no independent obligation to hold a hearing and determine the tenure status of a teacher or administrator it believes is probationary. Such a hearing might be reasonable only if the employee challenges his or her probationary status.[1]

Tenured teachers and administrators have the right to retain their positions as long as they exhibit good behavior and competent and efficient service,[2] and may be discharged or otherwise disciplined only for "just cause."[3] Thus, 3020-a prescribes procedures that are intended to both protect tenured teachers and administrators from "official and bureaucratic caprice" and assess the fitness of such employees to carry out their professional responsibilities. Moreover, those procedures are designed not to punish but to determine the fitness of a tenured employee and, if possible, remediate the problem(s) that cause disciplinary charges to be filed.[4]

Detailed charges specifying the grounds for discipline, often referred to as *3020-a charges,* must be filed in writing with the school district clerk or the secretary of the district or employing board.[5] A school board must vote to prefer charges against the employee,[6] except in New York City where community superintendents exercise the duties of employing boards elsewhere in the state regarding section 3020-a matters.[7] A copy of the charges must be forwarded to the teacher or administrator involved, and to the commissioner of education.[8]

Teachers and administrators facing 3020-a charges are entitled to a hearing, often referred to as a *section 3020-a hearing*.[9] However, they may waive the right to a hearing as part of a stipulation of settlement in a 3020-a case, provided the waiver is made knowingly and freely.[10] In addition, alternative disciplinary procedures may be available under a negotiated collective bargaining agreement.[11]

A hearing officer or three-person panel presides over the hearing.[12] The district and the teacher or administrator involved both have the right to call and cross-examine witnesses, and to have an attorney present.[13] The district and the teacher or administrator involved may obtain a free transcript of the hearing, upon request.[14] The hearing officer or panel must issue a written decision within 30 days of the last day of the hearing or within 10 days in the case of an expedited hearing where an employee's certification has been revoked.[15]

Grounds for Discipline

1:1. What constitutes grounds for discipline under section 3020-a of the Education Law?

As further discussed in chapter 2, a tenured teacher or administrator may be disciplined or removed only for "just cause."[16] The grounds establishing just cause must be sufficient to warrant the penalty imposed (see chapter 5).

1:2. May teachers and administrators be disciplined for off-campus, off-duty conduct?

It depends on whether the school board can establish that there is a connection, or "nexus", between the off-campus, off-duty conduct and the employee's performance of his or her duties.[17] A nexus may be deemed to exist when the "conduct in question directly affects the performance of the professional responsibilities of the [employee], or if, without contribution on the part of school officials, the conduct has become the subject of such public notoriety that it significantly and reasonably impairs his or her ability to discharge the responsibilities of the position."[18]

Such was the case where a teacher was convicted of a criminally negligent homicide for a "hit and run" accident that caused the death of a teenager. The nature of the crime coupled with the widespread publicity of the case justified a two-year suspension without pay.[19]

Similarly, dismissal was warranted in a case where a teacher actively participated in a group that advocates for the release of convicted pedophiles and the abolition of child pornography laws and laws preventing consensual relations between men and boys.[20]

In addition, the reasonableness of commencing 3020-a proceedings against a tenured teacher or administrator based on off-campus conduct does not depend on a school board's ultimate success in proving the charges at a hearing. That was the case where a school board charged a teacher and girls' softball coach with conduct unbecoming a teacher and suspended him while charges were pending after law enforcement officials informed the board that the teacher surreptitiously took pictures of young girls and used them in a sexually gratifying manner. Although a hearing panel dismissed the charges, this information "implicated the health, safety and welfare of the district's students…[and] the actions taken by the board were more than reasonable," according to a court. Moreover, "presented with information that a school teacher engaged in sexual self-stimulation with the aid of photographs of school-age children –whether ultimately true or not – the [school officials] would have been remiss had they taken no action at all."[21]

Of the 31 decisions in the New York State School Boards Association's 3020-a database regarding off-campus, off-duty misconduct, 12 resulted in termination, nine resulted in unpaid suspensions, four resulted in fines, two resulted in reprimands, and three resulted in acquittals. Termination was warranted in cases involving:

- Weapons possession convictions.[22]
- Indecent exposure or public lewdness.[23]
- Purchase of cocaine in close proximity to the school where the employee worked and being arrested for same while students were present.[24]
- Possession of a large number of marijuana plants.[25]
- Felony conviction for tenant fraud.[26]
- Felony causing an accident with injury and failing to report same ("hit and run accident").[27]
- Felony conviction for making a false statement to the Federal Bureau of Investigation (regarding having sex with a minor in another state).[28]
- Multiple felony and misdemeanor arrests over a three-year period.[29]

1:3. What alternatives to section 3020-a are available to school boards for disciplining tenured teachers and administrators?

First, school boards and their unions may negotiate such alternatives, provided that, except in New York City, the employee remains free to choose between the negotiated alternatives and the 3020-a process and the charges are disposed of within the time constraints of section 3020-a.[30] In addition,

negotiated alternative disciplinary procedures may not impair the statutory obligation of school district officials to report to law enforcement allegations of child abuse in an educational setting.[31]

Second, schools boards may place a counseling letter critical of an employee's performance in the employee's personnel file.[32] However, such letter, often referred to as a *Holt* letter, may not be used as a reprimand which is one of the statutory penalties under section 3020-a that, as such, requires a hearing.[33]

The Charges

1:4. What do 3020-a charges look like?

Section 3020-a charges consist of two components: the charge(s) and the specification(s). *Charges* involve the grounds for the disciplinary action. *Specifications* follow each charge and provide details of the specific incident(s) the school board believes constitute grounds for discipline. For example, a specification to a charge of pedagogical incompetence lists dates, time, places and other details that establish classroom incompetence.

A single incident may give rise to separate charges and corresponding specifications. This may happen where a teacher strikes a student after being told not to hit students. That teacher may be charged with corporal punishment and the specifications would describe the incident in which the teacher hit the student. The same teacher also could be charged with insubordination and the specification would describe the prior directive to not engage in such conduct in addition to a description of the incident.

1:5. Who may file 3020-a charges?

Any individual may file disciplinary charges against a tenured teacher or administrator.[34] However, they usually are filed by the superintendent of schools. The charges must be in writing and filed with the district clerk or board secretary during the period between the actual opening and closing of the school year for which the employee is normally required to serve.[35] Charges may not be filed more than five days before the next regularly scheduled school board meeting except with the permission of the board.[36]

The district clerk must notify the school board of any 3020-a charges filed immediately upon receipt of the charges.[37]

1:6. Is there a date by which charges must be filed?

Yes. Generally, no charges may be filed more than three years after the incident(s) underlying the charges occur.[38] The one exception applies when the conduct underlying the charges constituted a crime when committed.[39] Thus, in one case, a teacher was properly charged and terminated after being found guilty of having engaged in illegal sexual misconduct with two of his former students over 20 years earlier.[40] However, in large city school districts, the underlying conduct must have resulted in conviction of a crime.[41]

1:7. What is the school board's role regarding filed charges?

Within five days of the filing of charges, a school board must decide by majority vote in executive session whether there is probable cause to proceed with the charges.[42] The employee is not entitled to know the school board's basis for determining probable cause.[43]

The school board's decision to proceed with the charges may not be arbitrary, capricious, or discriminatory. If a hearing officer determines that any or all 3020-a charges filed against a teacher or administrator are frivolous, a district will have to reimburse the State Education Department and the teacher for all or a portion of the reasonable costs incurred as a result of the hearing, including the teacher's or administrator's attorney fees.[44]

1:8. What is the difference between "filing" and "bringing" 3020-a charges?

Charges are considered "brought" when they are served upon the employee, as opposed to when the charges are filed with the district clerk or voted on by the school board, before they are served.[45] The difference is significant when determining whether charges have been brought within the time frame specified in section 3020-a.

1:9. Must a school board interview an employee before voting to proceed with the charges?

No. A school board does not have to interview a teacher or administrator prior to, or after, bringing 3020-a charges against him or her. However, the teacher or administrator must be given an opportunity to present his or her case at a hearing.[46]

Furthermore, a teacher or administrator does not have to speak with persons investigating his or her alleged misconduct. Requiring the teacher or administrator to cooperate with the investigation would violate the constitutional right against self-incrimination under 3020-a.[47]

1:10. What type of notice are teachers and administrators entitled to when 3020-a charges are voted against them?

Section 3020-a requires that they be notified of charges voted against them by certified or registered mail, return receipt requested, or personal service. A copy of the charges must also be sent to the commissioner of education by first-class mail.[48]

The statement of charges does not need to be as specific as charges in a criminal proceeding but it must be detailed enough to apprise the teacher or administrator of the charges and allow him or her to "adequately prepare and present a defense."[49] A hearing officer may dismiss charges that are vague.[50]

It is not necessary for the charges to specify federal and/or state laws that a teacher or administrator has allegedly violated.[51] In addition, a school board may cure a lack of specificity by amending its charges or by serving a "bill of particulars" which is a written statement providing more details about the charges.[52]

The notice of charges also must include a copy of the school board vote on each charge and inform the teacher or administrator of his or her rights under the law. At least one hearing officer has determined that a school board's failure to timely provide a teacher or administrator with its vote on the charges warrants dismissal of the charges albeit with permission to reinstate those charges that may still be brought within the 3020-a statute of limitations.[53]

In addition, the notice of charges must indicate the maximum penalty the school board would impose if the teacher or administrator does not request a hearing or would seek if the teacher is found guilty of the charges after a hearing.[54]

Post Charges and Pre-hearing Procedures

1:11. Does a school board's decision to proceed with 3020-a charges always result in a hearing?

No. A teacher or administrator facing 3020-a charges must notify the district clerk or board secretary that he or she wants a hearing on the charges within 10 days of receipt of the statement of charges. If the charges involve pedagogical incompetence or issues of pedagogical judgment, the teacher or administrator must further indicate at that time if he or she prefers that the charges be heard by a single hearing officer or a three-member panel.[55]

In addition, the school board and the employee may enter into a settlement agreement. Such agreements are permissible to avoid expensive, time-consuming and uncertain litigation, and are consistent with the public policy favoring non-judicial resolution of legal claims.[56] Moreover, a settlement agreement that involves the payment of a sum of money in exchange for an employee's resignation and general release of claims against a school board does not constitute an unconstitutional gift of public funds.[57]

However, there may be no agreement to withhold from law enforcement allegations of child abuse in an educational setting in exchange for the employee's resignation or voluntary suspension. Any such agreement is a class E felony punishable by a civil penalty of up to $20,000.[58]

Generally, 3020-a settlement agreements are subject to disclosure under New York's Freedom of Information Law (FOIL). However, certain portions of such agreements should be reviewed and redacted (blacked out) before disclosure as necessary to protect privacy, including charges denied and charges mentioning the names of other employees or students.[59]

In one case, a hearing officer determined that a 3020-a proceeding was not the appropriate forum for addressing an alleged violation of a settlement agreement in a prior 3020-a case because the agreement provided that any such violation would be addressed through the grievance process.[60]

1:12. What must a school board do when it receives a request for a hearing?

If the teacher or administrator facing 3020-a charges requests a hearing, the district clerk or board secretary must notify the commissioner of education of

the need for a hearing and forward the charges to the commissioner within three working days of receipt of the request.[61] A copy of the notice of need for a hearing sent to the commissioner also must be sent to the employee by certified mail return receipt requested. [62] Failure to timely notify the commissioner of the need for a hearing has resulted in the dismissal of charges.[63]

1:13. What does the commissioner of education do after receiving notice of the need for a 3020-a hearing?

Upon receipt of a notice of the need for a hearing, the commissioner will request from the American Arbitration Association (AAA) a list of names and relevant biographical information of labor arbitrators who may serve as hearing officers, and forward that information to the school board and the employee.[64]

Within 10 days of the commissioner's mailing, the school board and the employee must agree on a hearing officer from the list and notify the commissioner of their selection.[65] If the school board and employee fail to agree on a hearing officer, the commissioner will ask AAA to appoint one from its list.[66] The commissioner notifies the individual selected to serve as hearing officer and confirms his or her acceptance.[67]

1:14. What happens if a teacher or administrator fails to request a hearing?

Failure to request a hearing within 10 days of receipt of the statement of charges will be deemed to constitute a waiver of the right to a hearing, unless the failure is excusable,[68] such as when the employee is admitted to the hospital with a mental disability[69] or the employee requests permission to file a late demand for a hearing.[70] "Extreme emotional pressure" as a result of charges being brought does not constitute an appropriate excuse.[71]

If the teacher or administrator waives the right to a hearing, the school board itself must proceed, within 15 days, to determine the case without a hearing and fix the penalty to be imposed, if any, by a majority vote of its members.[72]

The district must notify the commissioner of education immediately of an employee is deemed to have warned the right to a hearing.[73]

1:15. May a teacher or administrator challenge a school board's decision to proceed without a hearing?

Yes. However, the teacher or administrator challenging any such decision must initiate proceedings in state Supreme Court. The employee cannot appeal a board's decision to prefer 3020-a charges to the commissioner of education.[74]

1:16. Can a court order a school board to cease a 3020-a hearing?

Yes, if the employee involved is successful in asking the court to issue a preliminary injunction. This might happen, for example, if he or she believes that the charges were brought in bad faith and/or in retaliation for the exercise of constitutional rights such as of free speech. However, the employee would have to prove he or she would suffer irreparable harm if the injunction is not granted, in addition to either a likelihood of success on the merits of his or her claim or that there are sufficiently serious questions on the merits and a balance of hardships tips in the employee's favor.[75]

Irreparable harm would be hard to establish where the employee continues to receive full pay and benefits and his or her rights are not being curtailed while charges are pending.[76] In addition, where an employee seeks an injunction in federal court, such courts are reluctant to exercise jurisdiction because there is an important state interest involved in 3020-a cases related to the maintenance of the proper and orderly functioning of local schools. In addition, employees have adequate opportunity during the hearing process to raise as defenses the same claims that would be advanced in federal court.[77]

1:17. Must a pre-hearing conference be held prior to the start of a 3020-a hearing?

Yes. Within 10 to 15 days of agreeing to serve, the hearing officer must hold a pre-hearing conference at a location within the school district.[78] This conference is limited to one day, but a hearing officer may extend it to two days for good cause.[79]

In addition, the pre-hearing conference must be held in private, unlike the 3020-a hearing itself which can be public or private at the employee's discretion.[80]

1:18. What happens at a pre-hearing conference?

At a pre-hearing conference the hearing officer determines the reasonable amount of time necessary for a final hearing on the charge(s) and schedules the hearing date. If more than one hearing date is needed, the dates scheduled must be consecutive.[81]

At this time the hearing officer will hear and decide all requests for bills of particular or production of materials and information, issue subpoenas, and hear and decide all motions, including a motion to dismiss the charges and motions over the admissibility of evidence.[82] Upon an employee's motion, the hearing officer may dismiss any charges he or she determines are too vague.[83]

All motions and requests must be submitted to the hearing officer at least five days before the pre-hearing conference. Motions and requests not made at the pre-hearing conference are deemed waived and may not be made later at the hearing, including motions to suppress certain evidence.[84]

The hearing officer also may schedule an expedited hearing in cases where a district demonstrates that the teacher's or administrator's certification has been revoked, and all judicial and administrative remedies have been exhausted. Such a hearing must be held no more than seven days after the pre-hearing conference, and is limited to one day. It may be postponed only upon request of the school board or employee for good cause.[85]

Pre-hearing Suspension

1:19. May a teacher or administrator be suspended while 3020-a charges are pending?

Yes. Prior to the actual filing of charges, a school superintendent may suspend a teacher or administrator with pay until the meeting when the school board will consider the charges.[86] A school board may suspend with pay a teacher or administrator pending a hearing and decision on the charge(s) only after it votes to proceed with the charges.[87]

However, a school board may not unilaterally impose a sign-in, sign-out procedure on an employee who is assigned other duties while 3020-a charges are pending. Any such procedure is subject to collective bargaining under New York's Taylor Law.[88]

1:20. May a school board suspend without pay a tenured teacher or administrator while 3020-a charges are pending?

Generally, tenured teachers and administrators must be given full pay and benefits during periods of suspension pending a final determination of 3020-a charges.[89] This is so because as tenured employees they have a "property interest" in their position and constitutional due process rights requires they be afforded an opportunity for a meaningful hearing prior to the depravation of that interest.[90] For similar reasons, the continued payment of salary and benefits to an employee suspended while 3020-a charges are pending does not constitute and unlawful gift of public funds under the New York State Constitution.[91]

Suspensions without pay are permissible only in limited circumstances:

- Provisions in a collective bargaining agreement specifically allow for suspensions without pay.[92]
- The employee has pled guilty to or been convicted of a felony crime involving the criminal sale or possession of illegal drugs or drug paraphernalia, or a felony crime involving the physical or sexual abuse of a minor or student.[93]
- The employee faces charges for lack of certification for the position.[94]

A school board may not suspend a teacher or administrator without pay during the pendency of 3020-a charges for delays caused by a *good faith* request for a hearing adjournment.[95] That may be the case, for example, where the request for delays results from documented medical reasons, conflicts in the schedule of the employee's attorney, or the unavailability of witnesses.[96] Suspension without pay would not be appropriate either as a result of an involuntary reassignment to a position for which the employee is not certified.[97]

Although a teacher or administrator does not have to mitigate or reduce damages by seeking other employment,[98] a school board can reduce his or her pay during the period of suspension while charges are pending by the amount of income the employee has earned in another job.[99]

1:21. May a school board recall an employee placed on suspension while 3020-a charges are pending?

Yes. A school board that initially suspends an employee may end the suspension and request that he or she return to service even though the 3020-a charges are still pending.[100]

1:22. May a teacher or administrator be assigned different duties while 3020-a charges are pending?

Yes. However, the duties assigned must "bear reasonable relationship to the suspended [employee's] competence and training, and [be] consistent with the dignity of the profession."[101] By comparison, absent 3020-a charges, the reassignment of a tenured teacher or employee for alleged misconduct is not permissible. That was the case where, even though 3020-a charges were not filed or preferred, a principal was involuntarily transferred to an assistant principal position based on parental complaints.[102]

1:23. What happens if a tenured teacher or administrator suspended with pay while 3020-a charges are pending refuses to accept reassignment to different duties during that period?

A tenured teacher or administrator who refuses to accept reassignment in this instance waives any claim he or she may have to continued salary during that period of suspension.[103] In addition, the school board may prefer additional charges for insubordination against any such employee. The same would be true if the teacher or employee appears for the reassigned duties but fails to perform them adequately.[104]

Hearing Officer and Panel Selection

1:24. How are 3020-a hearing officers and panel members selected?

Hearing officers are mutually selected by a school board and the employee from a list of labor arbitrators obtained by the commissioner of education from the American Arbitration Association (AAA).[105] If the school board and the employee fail to come to an agreement, the commissioner will arrange for a selection of a hearing officer.[106] In cases involving pedagogical incompetence or issues of pedagogical judgment where the employee requests a hearing

before a three-member panel, the school board and the employee's union each separately selects one of the two additional panel members from a list of "partisan panelists" maintained by the State Education Department. The AAA hearing officer acts as the chair of the panel.[107]

1:25. Are there any restrictions on who may serve as a hearing officer?

Yes. Except in New York City, no person may serve as a hearing officer if he or she resides within the school district. In addition, a hearing officer may not be an employee or agent of the school board or the employee's union, or have served as an agent or representative within two years of the hearing. Individuals currently serving as a mediator or fact finder in the school district also are precluded from serving as a hearing officer.[108] An individual may not serve simultaneously on more than one 3020-a hearing without the consent of the commissioner.[109]

1:26. How does NYSSBA help its members with the selection of 3020-a hearing officers and panel members?

NYSSBA maintains a database of 3020-a decisions that helps its members obtain accurate, updated information on proposed hearing officers. The database is also a valuable resource when preparing to bring 3020-a charges or preparing legal briefs during 3020-a hearing. NYSSBA members and their attorneys can access the database information through the Association's Legal Services Department.

NYSSBA, along with other management groups, submits nominees for the list of potential employer partisan panelists. The list includes school board members, superintendents, administrators and others. Similarly, the New York State United Teachers (NYSUT) and the National Education Association-New York (NEA-NY) and other employee groups submit nominees for the employee partisan panelist list.[110]

1:27. Are there alternative methods for the selection of hearing officers?

Yes. School boards and employee unions can negotiate alternative methods for selecting a hearing officer, including the automatic assignment of hearing officers from a list of persons previously agreed upon by them, rather than by mutual agreement at each hearing.[111]

1:28. Are hearing officers and panel members conducting a 3020-a hearing compensated for their service?

Yes. The State Education Department pays hearing officers the customary American Arbitration Association (AAA) fee for each day of actual service plus necessary travel and other reasonable expense.[112] Travel and related reasonable expenses are paid at the same rate applicable to state employees.[113] Late cancellation fees charged by a hearing officer are paid by the party responsible for the cancellation.[114] Nonetheless, the fees paid a hearing officer may not exceed $200 per day when a hearing is conducted under a contractual alternative procedure that alters the way the hearing officer is selected to otherwise conduct a hearing in accordance with the provisions of section 3020-a.[115]

The State Education Department pays the partisan panelists $100 for each day of actual service plus travel and subsistence expenses incurred even when panel members are selected under negotiated contractual alternatives.[116] A school board or employee may not supplement this fee because its payment creates an appearance of impropriety that would warrant overturning a decision.[117]

The Hearing

1:29. Who conducts a 3020-a hearing?

Section 3020-a hearings usually are conducted by a single hearing officer who determines the guilt or innocence of the teacher or administrator involved, and orders any penalty to be imposed. But cases involving pedagogical incompetence or issues of pedagogical judgment may be conducted by a three-member panel, upon request by the employee, with the hearing officer serving as the panel chair.[118]

A panel hearing may not proceed without all three members present. However, both the hearing officer or panel members may be replaced. A hearing officer may order the replacement of a panel member if his or her absence from a hearing is likely to unduly delay the process.[119] However, the resignation or replacement of a panel member does not require the selection of a new hearing officer.[120]

Further information on how a 3020-a hearing is conducted is provided in chapter 4.

1:30. Is there a time line for completing a 3020-a hearing?

Yes. With two exceptions, the final hearing in all cases must be completed within 60 days after the pre-hearing conference takes place.[121] The first exception applies in expedited hearing cases where an employee's certification has been revoked. Such a hearing must take place within seven days of the pre-hearing conference.[122] The second exception applies in cases where the hearing officer determines that extraordinary circumstances warrant a limited extension.[123]

1:31. Is there a time line for hearing officers to issue a decision?

Yes. A 3020-a hearing officer must issue a decision within 30 days of the last final hearing day, or 10 days in the case of an expedited hearing based on revocation of certification.[124]

The decision must be in writing and include findings of act on each charge, a conclusion on each charge based on the findings, and the penalty or other action to be imposed.[125]

The findings, conclusions, and evidence must be based solely on the record in the proceeding. In addition, they must set forth the reasons and factual basis for the determination.[126] They also must be in a form that enables the school board or employee to understand their basis and "permit[s] intelligent challenge . . . and adequate judicial review." Otherwise, the hearing officer's or panel's determination may be annulled and sent back for proper determination.[127]

The decision goes to the commissioner of education who forwards a copy to the employee and the clerk or secretary of the employing board.[128]

1:32. May a 3020-a hearing date be postponed?

The Education Law states that a hearing date may be postponed only if the school board or employee requesting an adjournment shows good cause. However, the final hearing still must be completed within 60 days from the pre-hearing conference.[129]

1:33. What happens if a teacher or administrator facing 3020-a charges fails to appear at the scheduled hearing?

A teacher or administrator who requests a hearing but fails to appear is deemed to waive the right to a hearing on the merits of his or her case. The school board is then free to determine the case and the penalty, if any, as if the employee had never requested a hearing.[130]

1:34. What happens if a teacher or administrator resigns before the 3020-a hearing officer or panel issues a decision?

The resignation of an employee after the conclusion of a 3020-a hearing but prior to the hearing officer's decision does not preclude a school board from continuing the proceedings and placing a record of the final determination in the employee's personnel file.[131] Absent in irrevocable resignation or voluntary settlement, there is no reason to compel a school board to terminate a hearing upon receipt of the resignation. Moreover, according to at least one court, an irrevocable resignation is tantamount to a waiver of the right to a hearing.[132]

Terms of a collective bargaining agreement that would allow a tenured teacher or administrator to withdraw a resignation and seek reemployment would further provide a valid reason to proceed with a 3020-a hearing. Placement of the decision of a hearing officer or panel in the employee's personnel file would foreclose the potential of unwittingly approving a reemployment request from an unfit employee.[133]

1:35. Are 3020-a decisions subject to public disclosure?

It depends. A 3020-a hearing officer or panel decision with a finding of guilt is not exempt from disclosure under New York's Freedom of Information Law (FOIL) as part of an employee's "employment history."[134] But portions of the decision should be reviewed and redacted as necessary to protect privacy, including charges dismissed and those parts of the decision that mentions the names of other employees or students.

Post-hearing Procedures

1:36. What types of penalties can a hearing officer or panel impose on an employee who is found guilty of 3020-a charges?

The penalty can range from a written reprimand to dismissal.[135]A hearing officer or panel may choose to impose remedial remedies instead of or in addition to a penalty.[136]

A school board must implement the penalty or remedial action within 15 days of receiving the hearing officer's or panel's decision.[137] The only recourse for a board that disagrees with the penalty is to appeal the decision. The pendency of an appeal will not delay implementation of the hearing officer or panel's decision.[138]

More information on remedial actions and penalties is provided in chapter 5. A school board's right to appeal a hearing officer's or panel's decision is further discussed in chapter 6.

1:37. What happens when an employee is acquitted of 3020-a charges?

A school board must reinstate an employee acquitted of all charges to his or her position, with back pay for any period of suspension. It also must expunge from the employee's personnel file any and all of the charge(s) on which the employee was acquitted.[139]

In addition, a school board may be ordered to reimburse the State Education Department and the employee for certain costs if the hearing officer determines that the charges were frivolous.[140] For example, in one case a hearing officer acquitted a teacher of all charges after finding the school board did not reasonably accommodate her disability. He also found the charges to be frivolous and ordered the board to pay the teacher's legal fees in an amount of $17,500.[141] In another case where only some of the charges were deemed frivolous, the school board was ordered to pay 80 percent of the teacher's legal fees. [142]