

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF RICHMOND

MYMOENA DAVIDS, by her parent and natural guardian
MIAMONA DAVIDS, *et.al.*, and JOHN KEONI WRIGHT,
et. al.,

Plaintiffs,

-against-

THE STATE OF NEW YORK, *et. al.*,

Defendants,

-and-

MICHAEL MULGREW, as President of the UNITED
FEDERATION OF TEACHERS, Local 2, American
Federation of Teachers, AFL-CIO, SETH COHEN,
DANIEL DELEHANTY, ASHIL SKURA DREHER,
KATHLEEN FERGUSON, ISRAEL MARTINEZ,
RICHARD OGNIBEBE, JR., LONNETTE R. TUCK,
and KAREN E. MAGEE, Individually and as President
of the New York State United Teachers; PHILLIP A.
CAMMARATA, MARK MAMBRETTI, and THE
NEW YORK CITY DEPARTMENT OF EDUCATION,

Intervenor-Defendants.

**NOTICE OF MOTION
TO RENEW**

HON. PHILIP G. MINARDO
DCM PART 6

Index No. 101105/14

PLEASE TAKE NOTICE that upon the annexed affirmation of Jennifer L. Carlson, Esq.,
dated May 26, 2014 with exhibits "A" through "C" attached thereto, the accompanying
memorandum of law, and all of the papers and proceedings had in this action, a motion will be
made on behalf of the intervenors-defendants Phillip A. Cammarata and Mark Mambretti, at a
civil part of the Supreme Court of the State of New York, Richmond County, at the Courthouse
located at 18 Richmond Terrace, Staten Island, New York 10301, on the 11th day of August,
2014, at 9:30 a.m., or as soon thereafter as counsel can be heard, for an order: renewing their
October 24, 2014 Motion to Dismiss on the basis of intervening changes in the challenged law
and dismissing the Complaints in their entirety for mootness, failure to state a cause of action,


lack of standing and lack of subject matter jurisdiction, and granting such other and further relief as may be just and proper.

PLEASE TAKE FURTHER NOTICE, that pursuant to Court Order, all answering papers must be served no later than June 26, 2015 and replies must be served no later than July 27, 2015.

Dated: Latham, New York
May 21, 2015

SCHOOL ADMINISTRATORS ASSOCIATION
OF NEW YORK STATE,
OFFICE OF GENERAL COUNSEL
ARTHUR P. SCHEURMANN

By:



Jennifer L. Carlson, Counsel
8 Airport Park Boulevard
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TO: Philip G. Minardo, J.S.C.
Supreme Court Richmond County
18 Richmond Terrace, 2nd Floor
Staten Island, New York 10301

Stephen J. Fiala, Supreme Court Clerk
Richmond County Supreme Court
130 Stuyvesant Place
Staten Island, New York 10301

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Of the United Federation of Teachers*

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF RICHMOND

MYMOENA DAVIDS, by her parent and natural guardian
MIAMONA DAVIDS, *et.al.*, and JOHN KEONI WRIGHT,
et. al.,

Plaintiffs,

-against-

THE STATE OF NEW YORK, *et. al.*,

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MICHAEL MULGREW, as President of the UNITED
FEDERATION OF TEACHERS, Local 2, American
Federation of Teachers, AFL-CIO, SETH COHEN,
DANIEL DELEHANTY, ASHIL SKURA DREHER,
KATHLEEN FERGUSON, ISRAEL MARTINEZ,
RICHARD OGNIBEBE, JR., LONNETTE R. TUCK,
and KAREN E. MAGEE, Individually and as President
of the New York State United Teachers; PHILLIP A.
CAMMARATA, MARK MAMBRETTI, and THE
NEW YORK CITY DEPARTMENT OF EDUCATION,

Intervenor-Defendants.

**AFFIRMATION IN
SUPPORT OF MOTION
TO RENEW**

HON. PHILIP G. MINARDO
DCM PART 6

Index No. 101105/14

JENNIFER L. CARLSON, an attorney duly admitted to the practice of law before the courts of
the State of New York, affirms the following under the penalty of perjury:

1. I am Counsel for the School Administrators Association of New York State
("SAANYs"), Arthur P. Scheuermann, General Counsel, attorneys for the Intervenor-
Defendants Philip Cammarata and Mark Mambretti. I am fully familiar with pleadings, facts and
circumstances of this matter.

2. I submit this affirmation in support of the Intervenor-Defendants' motion to renew their
October 23, 2014 motion to dismiss in light of intervening changes in law.

3. This Affirmation is based on personal knowledge and information and belief, the source being my review of the instant file.

4. The following exhibits are attached hereto in support of the instant Motion:

Exhibit A: March 12, 2015 Decision and Order of Hon. Phillip G. Minardo

Exhibit B: Excerpts of New York Senate Bill S2006B-2015, enacted on April 13, 2015, relating to changes in the New York's Education Law as a part of the 2015 Budget.

Exhibit C: Pleadings related to Intervenor-Defendants Cammarata and Mambretti's October 24, 2014 Motion to Dismiss.¹

5. The instant matter stems from two separate matters John Keoni Wright, et al., v. State of New York, et al. (Albany County Index Number A00641/2014) and Mymoena Davids, et al., v. State of New York, et al. (Richmond County Index Number 101105/2014), which were consolidated into this single action. Plaintiffs in both matters challenge the constitutionality of sections within New York's Education Law pertaining to the awarding of tenure, discipline of tenured educators, the evaluations of educators, and the layoff/recall system (collectively, "the Challenged Statutes") on the basis that they permit ineffective educators to remain within New York's public schools, thereby denying them to the "sound basic education" guaranteed within Article XI of the New York State Constitution.

6. On October 24, 2014, Intervenor-Defendants Cammarata and Mambretti filed a Motion to Dismiss the Complaints for (a) failure to state a cause of action; (b) lack of standing; (c) lack of justiciability; and (c) the fact that this matter is a political question that is not subject to

¹For convenience of the Court and the parties herein, hard copies of the motion papers filed on behalf of Intervenor-Defendants Cammarata and Mambretti, Plaintiff's papers in opposition, as well as the reply, are submitted to the Court only. All parties shall receive this exhibit in electronic form on an enclosed compact disk, as they are already in possession of such papers. Hard copies will be provided to the parties upon request.

judicial intervention. (Exhibit C) The other defendants herein also filed motions to dismiss, which the Plaintiffs opposed.

7. On March 12, 2015, Hon. Phillip G. Minardo, issued a Decision and Order, denying the motions in their entirety, except insofar as the Complaints were dismissed as against Commissioner of Education John King and Chancellor Merryl Tisch. (Exhibit A)

8. Plaintiffs served a Notice of Entry on March 24, 2015.

9. Intervenor-Defendants Cammarata and Mambretti timely filed a Notice of Appeal on April 14, 2015.

10. Subsequent to the Decision and Order being issued, the New York State Legislature, as part of its 2015 Budget Bill enacted extensive revisions to the Education Law, amending the Challenged Statutes and promulgating new statutes. (Exhibit B) The effect of these amended and new laws is that Plaintiffs' concerns within their Complaints have been legislatively mooted out.

11. Pursuant to CPLR §2221(e), a motion to renew is appropriate when an intervening change in law occurs that, if it had been available at the time of the original motion, likely would have resulted in a different outcome.

12. The 2015 changes to the Challenged Statutes were unavailable at the time of the underlying motion to dismiss, as there were enacted approximately one month after the Decision and Order was issued, which is why they were not raised at that time.

13. The Legislature's revisions to the Education Law essentially eviscerated the Challenged Statutes, as clearly illustrated in Senate Bill 2006-B, which was enacted on April 13, 2015. The underlined text indicates new language and removed sections of text are struck out. In addition to amending the Challenged Statutes, the Legislature has added three new statutes, Education

Law §§211-f, 3012-d, and 3020-b, all of which directly address the concerns raised within the Complaints herein. (Exhibit B)

14. Case law is clear that the courts only have authority to hear actual, live controversies and laws and regulations that are voided and replaced with new laws after the commencement of litigation render the Complaints moot because the challenged laws no longer exist to cause injury to the parties.

15. Not only does the legislative changes to the Challenged Statutes render the claims moot, but it also necessitates the dismissal of the Complaints for failure to state a cause of action and also for lack of standing because the statutes cited in the Complaints no longer exist in the forms that allegedly caused injury and there is no injury, alleged or otherwise stemming from the new statutes.

16. Notably, with regard to the statutes conferring tenure upon educators, Plaintiffs' alleged injuries due to a lack of accountability in the area of educator performance have been specifically addressed through statutory amendments. An educator's probationary period has been increased by one year to a four-year term and there are specific ratings on annual evaluations that an educator must and/or must not achieve during the probationary period in order to obtain tenure. (Exhibit B, revisions to Education Law §§ 2509, 2573, 3012).

17. Plaintiffs' concerns surrounding educator effectiveness not being taken into consideration when layoffs occur have also been addressed within the 2015-2016 Budget Bill by enacting a new statute, Education Law §211-f. Under this statute, failing schools may be assigned to a receiver, who could either be the Superintendent of Schools or an independent third party. This receiver has the ability to hire and fire employees and abolish positions without approval of the Board of Education. When layoffs occur, it is not the least senior in a tenure area that will be let

go, but rather the person with the lowest evaluation ratings. Further, any individual who is laid off after receiving two consecutive "ineffective" ratings will not be eligible to be recalled into another position in the employing district in the future. (Exhibit B, Education Law §211-f)

18. The Legislature has also made substantial revisions to the disciplinary statutes, rendering Plaintiffs' claims that the statutes cost too much time and money moot. For example, in disciplinary charges involving the sexual or physical abuse of a student brought on or after July 1, 2015, school districts may issue unpaid suspensions pending the disciplinary hearing. If an unpaid suspension is issued, a probable cause hearing must be held within ten days and the charges will be subject to an expedited hearing. Expedited hearings must be completed within 60 days of a pre-hearing conference. (Exhibit B, amendments to Education Law §3020-a)

19. Additionally, a new statute, Education Law § 3020-b, has created streamlined removal procedures for teachers who have been rated Ineffective for two or more consecutive years. Specifically, §3020-b permits school districts to file disciplinary charges based upon incompetence for classroom teachers who have been rated Ineffective for two consecutive years and **requires** the filing of charges for classroom teachers who have been rated Ineffective for three consecutive years. It further provides that either two consecutive Ineffective ratings or three consecutive Ineffective ratings constitute prima facie proof of incompetence that can only be overcome by clear and convincing evidence. (Exhibit B, Education Law §3020-b).

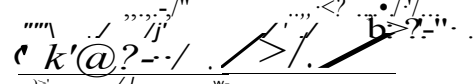
20. The teacher and principal evaluation statutes, Education Law §3012-c, has just now undergone its fifth revision since its inception in 2010. Under the most recent amendments, the majority of the statute has been deleted and replaced with new Education Law §3012-d, which has taken away a significant amount of local control, leaving the scoring calculations and the bases for evaluation up to the State to determine. Given that the statute cited essentially no

longer exists, Plaintiffs' complaints herein are moot as well. (Exhibit B, Education Law §§3012-c, 3012-d)

21. As the Challenges no longer exist in form or substance as they had at the time the Complaints were filed, there is no longer any theoretical injury to the Plaintiffs and the instant litigation must be dismissed as moot as a matter of law.

Dated: May 26, 2015
Latham, New York

SCHOOL ADMINISTRATORS ASSOCIATION
of NEW YORK STATE
Office of General Counsel, Arthur P. Scheuermann

By: 

JENNIFER L. CARLSON

// Interlocutory-Defendants Cammarata and Mambretti

8 Airport Park Boulevard
Latham, New York 12110
518-782-0600

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF RICHMOND

MYMEONA DAVJDS, by her parent and natural guardian, MIAMONA
DAVIDS, *et al.*, ~~and~~ JOHN KEONI WRIGHT, *et al.*,

Plaintiffs,

- against -

THE STATE OF NEW YORK, *et al.*,

Defendants,

.and -

MICHAEL MULGREW, as President of the UNITED FEDERATION
OF TEACHERS, Local 2, American Federation of Teachers, AFL-CIO,
SETH COHEN, DANIEL DELEHANTY, ASHLI SKURA DREHER,
KATHLEEN FERGUSON, ISRAEL MARTINEZ, RJCHARD
OGNIBENE, JR., LONNETTE R TUCK, ~~and~~ KAREN E. MAGEE,
Individually and as President of the New York State United Teachers;
PHILIP A. CAMM ARATA, MARK MAMBRE'ITI, and THE NEW
YORK CITY DEPARTMENT OF EDUCATION,

~~Intervenor~~-Defendants.

Index No.: 101105/2014

JUSTICE: Hon. Philip
G. Minardo

NOTICE OF ENTRY

PLEASE TAKE NOTICE that the within is a copy of a decision and order entered in this action

on the 20th day of March, 2015, in the office of the Clerk of the County of Richmond .

Dated: March 24, 2015



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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

DCM PART 6

MIAMONA DAVIDS, by her partner and child, MIAMONA DAVIDS, et al.,
and JOHN KIONI WRIGHT,
et al.,

HON. JUDGE J. MICHAEL FIDELL

Plaintiffs,

DECISION & ORDER

against-

THE STATE OF NEW YORK, et al.,

Defendants,

Index No. 10110 Sit 4

-and-

MICHAEL MULGREW, as President of the UNITED
FEDERATION OF TEACHERS, Local 2, American
Federation of Teachers, AFL-CIO, SETH (JOHN)
DANIEL PELEHANTY, ASHLI SKURADREIER,
KATHLEEN FERGUSON, ISRAEL MARTINEZ;
RICHARD OGIBENE, JR., LONNETTE R. JACK,
and KAREN E. MAGEE, Individually, and as President
of the New York State United Teachers PHILIP A
CAMMARATA, MARK MAMHRETTI, and THE
NEW YORK CITY DEPARTMENT OF EDUCATION.

Motion Nos. 13580-008
3581-009
3593-010
3595-011
3596-011

Intervenor-Defendants

RICHMOND COUNTY CLERK
2015 MAR 20 P 2:58
DIVISION OF LAW & ENFORCEMENT

The following have been consolidated for purpose of disposition.

MYMOENA DAVIDS, et al. vs. STATE OF NEW YORK, et al.,

The following papers were fully submitted on the 14th day of

January, 2015.

Papers
Numbered

Notice of Motion to Dismiss by Defendant THE CITY OF NEW YORK and THE NEW YORK CITY DEPARTMENT OF EDUCATION, with Exhibits and Memorandum of Law, (dated October 28, 2014) _____

Notice of Motion to Dismiss by Intervenor-Defendant MICHAEL MULGREW, as President of the UNITE HERE LOCAL 2, American Federation of Teachers, AFL-CIO, with Exhibits and Memorandum of Law, (dated October 28, 2014) _____

Notice of Motion to Dismiss by Intervenor-Defendants PHILIP MARATA and MARK MAMBRETTI, with Exhibits and Memorandum of Law, (dated October 23, 2014) _____

Notice of Motion to Dismiss by Intervenor-Defendant SETH COHEN, et al., with Exhibits and Memorandum of Law, (dated October 27, 2014) _____

Notice of Motion to Dismiss by Defendant STATE OF NEW YORK, et al., with Affidavit and Supplemental Affidavit of Assistant Attorney General Steven L. Bania, Exhibits and Memorandum of Law, (dated October 28, 2014) _____

Affirmation in Opposition of Plaintiff MYOMENA DAVIDS, et al. to Defendants' Motions to Dismiss, with Exhibits and Memorandum of Law, (dated December 5, 2014) _____

Affirmation in Opposition by Plaintiff JOHN KEON WRIGHTE, et al., to Defendants' and Intervenor's Motions to Dismiss, with Exhibits and Memorandum of Law, (dated December 5, 2014) _____ 1.

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Reply Memorandum of Law by Defendant THE CITY OF NEW YORK and THE NEW YORK CITY DEPARTMENT OF EDUCATION.
(dated December 16, 2014) _____

Reply Memorandum of Law by Intervenor-Defendant MICHAEL MULGREW, as President of the: UNITED FEDERATION OF TEACHERS, Local 2, American Federation of Teachers, AFL-CIO,
(dated December 15, 2014) _____ 9

Reply Memorandum of Law by Intervenor-Defendants PHILIP CAMMARATA and MARK MAMBRITZ.
(dated December 15, 2014) _____

Reply Memorandum of Law by Intervenor-Defendants SETH COHEN, et al.,
(dated December 15, 2014) _____

Reply Memorandum of Law by Defendants STATE OF NEW YORK, et al.,
(dated December 15, 2014) _____ 12

Upon the foregoing papers, the two numerical motions to dismiss the complaint pursuant to CPLR 37.11(a)(2), (3), (7), and (j), by the defendants and intervenor-defendants in this action are denied, as hereby provided.

This consolidated action, brought on the behalf of certain prescriptive public school children in the State and City of New York, seeks, *inter alia*, a declaration that various sections of the Education Law with regard to teacher tenure, teacher discipline, teacher layoff and teacher evaluations are violative of the Education Article (Article XI, §1) of the New York State Constitution. The foregoing provides, in relevant part, that "It shall be the duty of the Legislature to provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated." (NY Const. An. XI, §1). As construed by plaintiffs, the Education Article guarantees to all children in New York State a "sound basic education", which is alleged to be the

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MYMOENA DAVIDS, et al. v. THE STATE OF NEW YORK, et al.

key to a promising future, insofar as it adequately prepares students with the ability to realize their full potential, become productive citizens, and contribute to society. More specifically, plaintiffs argue that the State is constitutionally obligated, e.g., § 10, to provide its pupils with the opportunity to obtain "the basic literacy, \geq reading, and verbal skills necessary to enable them] to eventually function productively as civic participants capable of voting and serving on a jury" (umsmh 1 n for fiscu. 1 Equity, Inc. v. State of New York, 86 NY2d 307, 316), i.e., "to speak, hear, read and write clearly, to function productively in English, perform basic mathematical calculations, be knowledgeable about political, economic and social institutions and procedures in this country and abroad, and to acquire the skills, knowledge, understanding and attitudes necessary to participate in democratic self-government" (*id.* at 319). More recently, the Court of Appeals has refined the constitutional mandate mandated initially to require the teaching of "skills that enable students to undertake civic responsibilities meaningfully: to function productively as civic participants" (IllDnn 1 n fQT flstal Us:uihy. In9. 3: State of New York, 8 NY3d 14, W-20. Plaintiff's further argue that the Court of Appeals has recognized that the Education Article requires adequate teaching by effective personnel as the "most important" factor in the effort to provide children with a "sound basic education" (se. i umpoign for Eiscul Equity, Inc. ... sm11: v. Ns: w Y. 11A. 100 NY2d 93, 909). With this as background, plaintiffs maintain that certain identifiable sections of the Education Law foster the continued, permanent employment of ineffective teachers, thereby falling out of compliance with the constitutional mandate that students in New York be provided with a "sound basic education". Finally, it is claimed that the Legislature has been vested with the legal and moral authority to ensure that this constitutional mandate is honored (He CmnnjJ. 11 fIr Fiscal Equity, Inc. v. State of New York, 100 NY2d 902).

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At bar, the statutes challenged by plaintiffs as impairing compliance with the Education Article include Education Law §§ 1102(3), 2509, 2510; 2573, 2558, 2590j, 3012, §(13)(2), 3014, and 3020. To the extent relevant, these statutes provide, *inter alia*; for (1) the award of, e.g., tenure of public school teachers after a probationary period of only three years; (2) the procedures required to discipline and/or remove teachers for ineffectiveness and (3) the statutory procedure governing teacher lay-offs and the elimination of teaching positions? In short it is claimed that these statutes, both individually and collectively, have been proven to have a negative impact on the quality of education in New York, and by violating the Students' constitutional right to a "sound basic education" (see NY Const Art. XI. § I).

As alleged in the respective complaints, sections §§ 209, 2573, 3012 and 3012(c) of the Education Law, referred to by plaintiffs as the "primary employment statute", normally provide, *inter alia*, for the appointment to tenure of those probationary teachers who have been found to be competent, efficient and worthy, under the applicable rules of the board of regents adopted pursuant to Education Law § 3(1)(b) of this article. However, since these teachers are typically granted tenure after only three years on probation, plaintiffs argue that when viewed in conjunction with the statutory provision for their removal, tenured teachers are virtually guaranteed lifetime employment regardless of their ineffectiveness or ineptness. It is alleged by plaintiffs that three years is an inadequate period of time to assess whether a teacher has demonstrated or earned the right to avail him or herself of the lifelong benefits of tenure. Also

2. The present statutes require that probationary teacher be evaluated first, and the remaining positions be filled on a merit basis, i.e., the teachers with the greatest tenure being the last to be terminated. For ease of reference, this manner of proceeding is known as "last-in, first-out" or "LIFO".

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MYMOENA DAVIDS, et al. v. STATE OF NEW YORK, et al.

drawn into question *are* the methods employed for evaluating teachers during their probationary period.

In support of these allegations, plaintiffs rely on studies which have shown that it is unusual for a teacher to be denied tenure at the end of the probationary period, and that the granting of tenure in most school districts is more of a formality rather than the result of any meaningful appraisal of their performance or ability. For statistical support, plaintiffs argue, *e.g.*, that in 2007, 97% of tenure-eligible teachers in the New York City school districts were awarded tenure, and that recent legislation intended to implement reforms in the evaluation process had a minimal impact on this state of affairs. In addition, they note that in 2011 and 2012, only 3% of tenure-eligible teachers were denied tenure.

With regard to the method for evaluating teacher effectiveness prior to an award of tenure, plaintiffs maintain that the commonly-implemented Annual Professional Performance Review ("APPR"), now used to evaluate teachers and principals is an unreliable and inconsistent measure of teacher effectiveness, since it is based on students' performance on standardized tests, other locally selected (*i.e.*, non-standardized) measures of student achievement, and classroom observations by administrative staff, which are clearly subjective in nature. On this issue, plaintiffs note that 60% **of the scored review on an APPR is based on this final criterion, making for a non-uniform,** superficial and deficient review of effective teaching that generally fails to identify ineffective teachers. As support of this position, plaintiffs refer to studies that have shown that in 2012, only 1% of teachers were rated "ineffective" in New York (as compared to the 91.5% who were rated as "highly effective" or "effective"), while only 31% of students taking the standardized tests in English Language Arts and Math met the minimum standard for proficiency. As a further example,

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plaintiffs allege that only 21% of teachers eligible for tenure between 2010 and 2013 received a final rating of "ineffective", even though 8% of teachers had low attendance, and 12% received low "value-added" ratings. Notably, these allegations are merely representative of the widespread facts pleaded in support of plaintiffs' challenge to the current laws, and are intended simply to illustrate the statutes' reliance on some of the more superficial and unilateral means of assessing teacher effectiveness, leading to an unfairness of the law without a sufficient demonstration of merit. Each of the above is alleged to operate to the detriment of New York students.)

With regard to plaintiffs' challenge to the sections of the Education Laws which address the matter of disciplining or obtaining the dismissal of a tenured teacher, this is alleged that they, too, operate to deny children the right to a "sound educational" environment. Also, these statutes are claimed to prevent school administrators in New York from dismissing teachers for poor performance, thereby forcing the retention of ineffective teachers to the detriment of their students. Among other impediments, these statutes are claimed to affirm New York teachers' "super" due process rights before they may be terminated for unsatisfactory performance by requiring an inordinate number of procedural steps before any action can be taken. Among the barriers cited are the lengthy investigation periods, protracted hearings, and unquibbled grievance procedures and appeals, all of which are claimed to be excessively time-consuming, with no guarantee that an underperforming teacher will actually be dismissed. As a result, dismissal proceedings are alleged to be rare when based on unsatisfactory performance alone, with scant chance of success. As a result, the cumbersome nature of dismissal proceedings is alleged to be a strong disincentive for

* Also worthy of note in this regard is plaintiffs' allegation that most of the teachers unable to satisfactorily complete probation are asked to extend their probation.

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Administrators attempting to obtain the dismissal of ineffective teachers, the result of which is that their retention is virtually assured.

Pertinent to this cause of action, plaintiffs rely upon the results of a survey indicating that 48% of districts which had considered bringing disciplinary charges at least once, decided to do so. In addition, it was reported that between 2004 and 2008, the number of disciplinary proceedings took an average of 502 days to complete, and between 1995 and 2006, the dismissal proceedings based on allegations of incompetency took an average of 830 days to complete, at a cost of \$30,000 per teacher. It is further alleged that more often than not these proceedings allow the ineffective teachers to remain in the classroom, which deprives students of their constitutional right to a "sound basic education".

Finally, plaintiffs allege that the so-called "UFO" statutes (Education Law §§2511(5) and 2511(6) and 3013) violate the Education Article of the New York State Constitution in that they have failed, and will continue to fail to provide children throughout the State with a "sound basic education". In particular, plaintiffs maintain that the foregoing sections of the Education Law create a seniority-based layoff system which operates without regard to a teacher's performance, effectiveness or quality, and prohibits the administration from taking teacher quality into account when implementing layoff and budget cuts. In combination, these statutes are alleged to permit ineffective teachers with greater seniority to be retained without any consideration of the needs of the students, who are collectively disadvantaged. It is also alleged that the LIFO system hinders the recruitment and retention of new teachers, a factor which was cited by the Court of Appeals (albeit on other grounds) as having a negative impact on the constitutionality of the law (*Evans v. State of New York*, 100 NY2d at 909 (1991)).

MYMQENA DAYJDS. et al. v. HIE SIATL:OF NIW YQBK... et al.

In nHwing to dismis the complaiits, t.kfendants nrid in lervenor-defondnnts (hereinafter collectively referred to as the "movants") singly and jointly, seek dismissal of the complaints on the grounds (1) that the c-ourts are nM the proper forum In whkh to bring these claims, i.r!..thnt they nre nonjusliabile; (2) thHt the stated grievances should be brought before the state legislature; and (J) tbn the courts are not perrillitoo to substitute lhdrjudgmcm for thni of u lcg,istBiiw bOO)' & to the wisdom lnd expediency of lcgisiion (.rel.' e.g. Mtt1Yr of Retired Pub Enm. LfilSOI: Im:v. CuomQ. - MiscJd -. 2012 NY Slip Op 32979 (UJ!Sup Ct Albny Co)). hi bnct: it is argued that tencher tcnuren<1 the other s1a1u1es rprese1L u "legislative expression cfrn finn public poUcy-dctctmination that the intt"res-t of the public in the education of our youth c.an best be sel"t-ed by [the pre l-ent l system [which is l dsignmd io fostor atadcmil:" freedom ia our schools Md 10PM\ 'tt competent teachers fr-om the nhuses they might be- ;!!Ubjected to if they co l. ltd bt! dismissed at the Whlni of their s1lrvisors" <Bkci1 v Boord of EQ.y. 47 N Y2d 385, J91), '11\us. it is claimed that the policy dedsions made by the Legislature ate beyond the scope of the Judicial Branch of govmmcnt

It is further dniined tha1 if tht:>sc sta1uttt1 violnd ihe Hducation Article of th Canslition, thi: Legislature would have re<ln:sscd the issue long ago. To lht!' c:onirary. tcourt'! lAW!; hove been expanded through luttthe y1iars, and have been amended 011 several occasions in order to lniposc.oφw 'omprchen:whc s.tand:1rds for measurin n leacher's perfomtance .b)', i.g, measuring student m.:bievemnt, while fulfilling the pr'odpal purpose of rhesc starutcs,, i.e., to pttit<i tcnuni! leachetS from official and bul'eaucrntk caprice, In bric f it is movants' 'lOsition tha1 "lobbyitl b]liti(!fllion" for changes in educationnl policy represents an incursion t)π the province. of ihe Legislative and Executive branches of the government, a11di.san improp1.tvehicle through which t<ioblrun changes in c:ducationo policy. Accordingl)' while conceding that thc:te may be somt:' room for judicial

MYMQENA I'JAVIDS. tal, v, Till:JITAH5 OF NEW YORK, et al..

t-nroachm!nl. educational policy i.s sad lq reI with the Legislature.

Monmts [llSO nrguc that the complainl:: foil m sll lH a cnusc of udon. In this regard, it is daimed dwt ia order to state 11 vruid cl\usc of uctinn under Article XL n plaintiff must alltgetwo elemnts: (1) the di:prl'atioo of a sowid basic educatiun, iind (..2) tause.s anrib\table to tb¢ Swte (.me New York (jy Liberties Union v. Sllltcuf New Yvrk, 4 NYld 177. 17&-1 79). Moreover, the i;ruX of n claim under the Education Article is said to be the foilurC' ot' the su.1¢ b "provide tbt the mainh.nance nnd support" of the public school system lfii):' lllcr v. Sime of N')w Y or Js, WONY2d 434, 439 {internal quotation marks omitted t; Ni:w York Stai A\$sn Of.8mnl Cit) \$ebos>l Dists ln. ' State of New Y'Q! .k. 42 A03d 648.652). Here, it is clnimc-0 thal the respectl Y cornpll.lints WE devoid llf nuy fncu tending to show l..hut the foilurc \\\) offl.lra -sound basic educntfon;• is cnusa Uy connt. ted to the Staie, ru lhl.r th:m. as claimed. mlministerc<l locally.

Thi:' movants also argue that the Slaic's respointibility lll!der the .Education Article is to, provide minimally 11dcqtulle funding. reources, and edU\':alfonal upporu to ma.kc busk foaming possible, f,t>, the requisite. funding and rc:!!oures to mn\,;e possible "u mund basic cclucrttkin consisilingJ of lhc basic literncy, cnkularing mid verbal Jkil!s necessary to enable ¢hilCJtt'tl to cveniuajly function proJl lctively us ci,ic pilnicipallt<i capable r voting l1lID serving On iijttry" {f:\vnter " Srntc of New York, 100 NY2d m 4:\9-440). On lhis analysis, it is- alleged. to be the ultimmc responsibility of the local schtml distrkls to regulate. their c.urriculae in order to dfoct l'.(lmpliance with the Education Article while respt! Ctintl ""' consliiutfonal principle l hut di;tricts make the basic decision on ... operating their own schools" (New York Civ Liberties Union v. State of i'lew Ymx, 4 NY3d at 1S2}, Thus. !l is the local districts rathet Lhan tlw .Slat whicb .is responsible for remiiting, hiring, disciplining nnd otherwise manug:ing hs leaohers. For cxnm pl the APPR.

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M.YMOENA DAVIDS. 1uL,, THE STATE OF NEW YORK. ct;ll.
implemented to me... urc Lhe c-ffocti vcnes ofnc.hi:rS and principals..resen·C5 80%of the cvaluatiM
criteria for negotiation hct'vten the local school di.sLrict and its relevant 11dmini111 tut)r and unions.
Movunts i.uguw: tlml these detcm1 ination; do ilOI constitute state action.

Jn a<ldili(In, mo\ruUs urguc thal bl.th complainrn foil b stmc a c"use of action because they
are riddled with vague and cond urory ulleg,ation. resarding lhcfr claim lhat the u:uure and other laws
combine to violarn the Education Article. basinE their enu!reS of acrk m on (1) alleged "spedous
statistics" rt:garding the number of leachers receiving tenure, (2.) the Hllegt!<i ci;)st of lermii'tilting
ibaohers for i r lreflectivencss. O) inconclusive surveys of sdrool ndministmktrs oTi the rtasons why
charges often an: n<llpursued, uod (4)a showing thal the challenged statules result in 11 denial of u
"sound basic cd ucotion". Acconling to ihe mt.wants. none of these allegations art sufficient h>
establish the unconstitutionality l.,f the subject statutes.. i.e.. thal there exists no rational and
compelling buses for the challenged probationnry. tenure Md stoirily slatutes.

Also said 10be problematic llrc plaintiffs' l:ondusory stntcmnts that students In Ne"Yotk
arc somehow recei ving an inrt dC(jU1tle C(lucation due io rhe retention ol'lneffect iwducutoril because
of the chnllenged statutes. Mt'lrcover, while pl'aimi ffs argue that public education is plagued byan
indetcmlioate number of "ineffective cru:hi:!"\$; they fail to idnlify MY suc'h teachers the actual
percentage of inetihdvc cducutors.: or L11 rlationship bc1wecfl the pr!!Setil.e of ahese nllcdly
ineffecti vr:cm:her.i an<l the faUure to pmvide schtXll hildn.m \With a minimally adequait education.
i\trcordlngly. movan.ts claim Lhat merely b<CR H!Oi: filUll of the 250,000 teal!her! lkn5cd to teach in
New York tnily be inetleciive. is not a vinhle b(isi for clim inal ing these bnsic sufogunt ds for the
n::rnnioing teachers.. In hrkf, movan1!! mulntnin lha! aside from vague references to ineffective
leachern and "cherry-picked" statistics without widN significance, the plaintiffs have done liitle to

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t.D'MQFNA 1)8.Y]DS. e;l al. vJIE STATE Of NEW YQBK. ct at_
<lelmmstrute lha1 the alleged problem is llnc of constitotouJ diml!nf;itin.

Movants also urti.ue that the ac.tfon sl1l)Uld be dismissi."11 for Lhc J'wlure tojoin necessary parties
as required by CPLR 1001 and 1003. In lhis regard, ii is dnirnl!d that sum:!!l;:rdkf which plaintHTs
seek would affect all school districts iH:ross the slme. this Court should either order the joimicr of
evry school distrkt statewide, m dismiss the action. In tlddiliun, the m0Ya111s argui:..: 1hul plaiutiOs
h11Ye foiled to allege injury-in-fo<:I, and tha1 the chiims which they do moke arc either not ripe or foil
to plead any imminent or >pe.tiJk hann. More imp<1rtantly, the complai uls foil W iakx into aci:0un1
the recent amendm!nls 10lhc.sc 51lltutes, which tLtc chlmed \o rc!!llder all of their claims moot (.!?&
enertlUy 11 umi n '· State of .s.W Ydk. 81 AD3d 132). In Ule ahcrMtive, ii is alleged tfoi1 the
subj1 statues arc rnt'lni.. inll:r alia. to proH!Ct 5'. hool district employees from arbitrlry terminuljgn
rnthc-r than the sentm1public or ils !1tud lmts (but we Chiarn v. 'fown ufNi;w C11sl!!'i. -ADJ<l --. 2015
NY Slip Op 00326. •21+22 ('2d Dcpl])

FirmJly, defendunn; 1hc Sr.l\TE uf NEW YORK, the BOARD OF REGENTS OF THE
UNIVFRSITY OF THE 'TATE OF NF W VORK. f.t.ERRYL IL 'rSCH, in her oOkial c-llpadty as
Chancedlot of the Hoard of Regents (If lhc Unh- crsity l)ftlic Siate of New York; and JOHN B. KING.
in his ol1kiul cipachy u.s the Cummi ioac.r of Cducation of lnr: St<'.!te of New York and Presidnt of
the University of the State of New York, argue that complaints as against them should be dismissed
since they w1:rl! nn1 i nvolved in he cnactmctH llf ihc r;hallengi:d !!Ut!UHS tlJld cannot b fU1t the relief
n questL-<l by plaintiff.

Die motion; to dismiss arc gmnt"d w the extcut 1hat 1he cuuses of uction agains1 MERR YL
11. TISCH a.nd JOHN B. KINO. in 1heir official cupac.itks as Ctmme!lt>r and Co.lmmissh:mer are

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severed and \.lism sseJ. the balance of the motions nre denied}

The law b well settled that when reviewing 11 amlion lod illlll:ispursUIDII\O CPLR 3211 {a)(7) for failure to smtt: a e//use uf .wl ion, a court "must m:cept as true the fruts as alleged itt the wmlplaint :tnd any submissions in opposition to the mollon. accord plaintiffs the biJ.netit of every possible favornble inference nnd lwithout expreing any opinio11 11S itiwhether the trtlth of tbc allegations be estnblished at Lria11. dclcrminc only whether the facts a'> alleged l11 'Within any cogni::; abk lcgnl thilory" (Sovloff v. Hordm: m Ew1 vs DL.V. Com. 96 NY2d 409, 414; J.!!! Snnders v. Winship 57 NY2d 391, 394). Acum:lingly. "the- sole criterion is whether the plcadli"!g \$ntcs a cause ofac1 ion, <'Ind if from i11! four omen; Jhct1 till illlegations fcl1n bej discerned which taken logethor manifestan)' caa faction cogniwble at Jaw the motion ... will fail" (Gmucnheimery, Gimhur.i 43 NY2d 268, 275). However, where evident.int)' r: Mterinl ill ...om;idered (In the motion...the criterion [becomes] whether the J'ifn)ffCTil#1U uf lhc pleading has a cause of action. not whcthet *htr* {orshe] has stated o"O' and, unless it l\as been slim...n thar n rrunerfol fuc.1 as claimed by the pleader m be one iirnot il fn.ct tu all and, unless it can be said that Msigniticnt disputlt e'<ists ret!atdins it". the matlon must be denied (*itJ*). Here, ii is the opinion of this Court tha1 the compl1ints nrc suffkiently pleaded to avoid dismissal.

The corrl! of plaintiffs' argument at bur is that school children in New Yilrk Slati: arc b,:ing denied the npportunitr for a • sound basic cducniion" 11511 itesu)l of teacher tenure, dlsciplirie and seniority laws (see Ei.lucation Lnws §§257J, JO 12, 1103(3), JO'14.3012, 3020, 2510, 2585, 2588,

¹ Claims against municipal offidals in their ollicial c.:apncitics are really claims ugainsl the municipality nnd t-lrc thercfott::; redundant when the municipal ity is nlso no.med n.s a defendruu i.H"- frank v, Stat1; Qf.tlCff, _ Mi: .ll!nlBctm\!u1im1 s'\: J)\, Di::i11iliti 86 AD3d 183, 188).

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(013). While the papers submitted on this motion to dismiss undoubtedly explain that the primary purpose of these statutes is to provide employment security, protect teachers from arbitrary dismissal, and attract and keep young teachers, when afforded a liberal construction, the facts uncovered in the respective complaints are sufficient to state a cause of action for a judgment declaring that the challenged sections of the Education Law operate to deprive students of their "sowu: basic education" in violation of Article XI of the New York State Constitution, i.e., that the subject tenure law permit ineffective teacher to remain in the classroom; that said ineffective teachers continue to teach in New York due to statutory impediments to their discharge; and that the problem is exacerbated by the structurally-established "UFO" system designed to teach in response to mandated layoffs and budgetary shortfalls. In opposition to the defendant's or intervenor-defendant's have demonstrated that any of the allegations alleged in the complaints are untrue.

It is undisputed that the Education Article requires "[t]he legislature [to] provide for maintenance and support of a system of free common schools wherein all the children of this state may be educated." (NY Const. Art. XI, § 1). Moreover, this Article has been held to guarantee all students within the state a "sound basic education", which is recognized by all to be the key to a promising future, preparing children to realize their potential, become productive citizens, and contribute to society. In this regard, it is the state's responsibility to provide minimum adequate funding, resources, and educational supports to make basic learning possible, i.e., "the basic literacy, calculating and verbal skills necessary to enable children to; learn to learn productively and participants capable of voting and serving on a jury." Id. v. State of New York, 2014 NY 440), which has been judicially recognized to entitle children to "minimally adequate teaching of reasonably appropriate basic curriculum ... by sufficient personnel adequately trained to teach those

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subject areas" Cnmnuhm for Fiscal fatuity. to.v. Stnl\ of New York. 86NY2d at 317). Further, it
llmi lx n held that the slate may be talkJ 10 account when ii fails ill its ohligulion to *meet* minimum.
conllclitlionnnl standards of educational qu.1lity (St'<' cw York Cj)' Libi:Oics Union " Stn'<: of N
Yfilk, 4 NY3d Ht178). which ls capnbk orn1 cuurcmcnl.nsallege<l. by. *fnret alia*, .Slib•9randurd tt
results and fatling graduation rates (M.) tbal plaintiffs have tmrlbule<l 10 Inc impnei o(certain
leggttilntion.

More to the point, in accepting the plaintiffs' allegations of serious deficiencies in teacher quality: its negative impact on the performance of students; the role played by subject statutes in compelling ineffective teachers to continue teaching despite ineffective ratings and poor job performance; a legislatively prescribed rating system that is inadequate to identify truly ineffective teachers; the disclosure that these deficiencies will curtail a student's right to receive a "minimum basic education": the still existing studies and surveys dated in support thereof are sufficient to identify a prima facie case; of constitutional dimension connecting the retention of ineffective teachers to the low performance levels exhibited by New York students, *e.g.*, a lack of proficiency in mathematics and English (see Illinois for Fiscal Equity, Inc. v. State of New York, 100 NY2d 111 (1991). Once it is determined that plaintiffs may be entitled to relief under any reasonable view of the facts stated, the court's inquiry is: whether the complaint must be deemed legally sufficient (see Campaign for Fiscal Equity, Inc. v. State of New York, 86 NY2d at 318).

The Court also finds this matter before it to be justiciable since under the separation of powers doctrine, the action is well suited to the role of the judiciary and safeguard constitutional rights and review the acts of the other branches of government, not for the purpose of making policy decisions, but to preserve the constitutional rights of its citizens. *See* *United States v. Windsor*, 133 S. Ct. 2612, 2636 (2013).

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NY2dUI9.'..ll).

With regard to the issue of standing in the litigation of this Court, the individual plaintiffs have standing to assert their claims as students attending various public schools within the State of New York who have been or are being injured by the deprivation of their constitutional right to receive a "sound basic education", which injury it is claimed will continue into the future. The plaintiffs submit that the injury continues to occur in the public schools. Further, the plaintiffs are alleging that the individual plaintiffs' purported injuries can certainly be ascertained during discovery. Moreover, since all the children are the intended beneficiaries of the Education Law, in the opinion of this Court, they are clearly within the scope of protected interests.

Only recently have the courts recognized the right of plaintiffs to seek redress and not have the courthouse doors closed to them at the very inception of an action where the pleading meets the minimal standards to avoid dismissal (see Cammiel v. Board of Education of New York, 86 NY2d at 318). This Court is in complete agreement with this sentiment and will not close the courthouse doors to parents and children with viable constitutional claims (see Illinois v. State of New York, 19 NY3d 899). Municipally, movements aimed at dealing with the merits of plaintiffs' lawsuit, including any constitutional challenges to the sections of the Education Law that are the subject of this lawsuit, is a matter for another day, following a further development of the record.

The balance of the arguments tendered in support of dismissal, including the joinder of other parties, have been considered and rejected.

Accordingly, it is

ORDERED that the motion (No. J59B • 012J) of defendant-intervenor MERRYL IL TISCH, in her official capacity as Chancellor of the Board of Regents of the University of the State of New

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York, and JOINT LKJNG, in his; official capacity as the Commissioner of Education of the State of New York and President of the University of the State of New York is granted and it is further

ORDERED that the causes of action against said individuals are hereby severed and dismissed; and it is further

ORDERED that the balliffs' motions are denied; and it is further

ORDERED that the clerk shall enter judgment accordingly.

ENTER,

P. J. Menendez
J.S.C.

Dated: MAR. 12, 2015

GRANTED

MAft t 7 2015

STEPHEN J. f\ALA

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CHANGES

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1 contained within such Subpart is set forth in the last section of such
2 Subpart. Any provision in any section contained within a Subpart,
3 including the effective date of the Subpart, which makes a reference to
4 a section "of this act", when used in connection with that particular
5 component, shall be deemed to mean and refer to the corresponding
6 section of the Subpart in which it is found. Section four of this act
7 sets forth the general effective date of this act.
8 § 2. This act shall be known as the "education transformation act of
9 2015".

SUBPART A

11 Section 1. The education law is amended by adding a new section 669-f
12 to read as follows:

13 § 669-f. New York state masters-in-education teacher incentive schol-
14 arship program. 1. Eligibility. Students who are matriculated in an
15 approved master's degree in education program at a New York state public
16 institution of higher education leading to a career as a teacher in
17 public elementary or secondary education shall be eligible for an award
18 under this section, provided the applicant: (a) earned an undergraduate
19 degree from a college located in New York state; (b) was a New York
20 state resident while earning such undergraduate degree; (c) achieved
21 academic excellence as an undergraduate student, as defined by the
22 corporation in regulation; (d) enrolls in full-time study in an approved
23 master's degree in education program at a New York state public institu-
24 tion of higher education leading to a career as a teacher in public
25 elementary or secondary education; (e) signs a contract with the corpo-
26 ration agreeing to teach in a classroom setting on a full-time basis for
27 five years in a school located within New York state providing public
28 elementary or secondary education recognized by the board of regents or
29 the university of the state of New York, including charter schools
30 authorized pursuant to article fifty-six of this chapter; and (f)
31 complies with the applicable provisions of this article and all require-
32 ments promulgated by the corporation for the administration of the
33 program.

34 2. Within amounts appropriated therefor, awards shall be granted to
35 applicants that the corporation has certified are eligible to receive
36 such awards. Up to five hundred awards may be granted to new recipients
37 annually. Such awards shall be granted upon successful completion of
38 each term, as defined by the corporation.

39 3. An award shall entitle the recipient to annual payments for not
40 more than two academic years of full-time graduate study leading to
41 certification as an elementary or secondary classroom teacher.

42 4. The corporation shall grant such awards in an amount equal to the
43 annual tuition charged to state resident students attending a graduate
44 program full-time at the state university of New York, or actual tuition
45 charged, whichever is less; provided, however, (i) a student who
46 receives educational grants and/or scholarships that cover the student's
47 full cost of attendance shall not be eligible for an award under this
48 program; (ii) for a student who receives educational grants and/or scho-
49 larships that cover less than the student's full cost of attendance,
50 such grants and/or scholarships shall not be deemed duplicative of this
51 program and may be held concurrently with an award under this program,
52 provided that the combined benefits do not exceed the student's full
53 cost of attendance; and (iii) an award under this program shall be
54 applied to tuition after the application of all other educational grants

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A. 3006--B

1 and scholarships limited to tuition and shall be reduced in an amount
2 equal to such educational grants and/or scholarships. Upon notification
3 of an award under this program, the institution shall defer the amount
4 of tuition equal to the award. No award shall be final until the recipi-
5 ent's successful completion of a term has been certified by the institu-
6 tion. A recipient of an award under this program shall not be eligible
7 for an award under the New York state math and science teaching incen-
8 tive program.

9 5. The corporation shall convert to a student loan the full amount of
10 the award granted pursuant to this section, plus interest, according to
11 a schedule to be determined by the corporation if: (a) two years after
12 the completion of the deg-ree program and receipt of initial certif-
13 ication it is found that a recipient is not teaching in a public school
14 located within New York state providing elementary or secondary educa-
15 tion recognized by the board of regents or the university of the state
16 of New York, including charter schools authorized pursuant to article
17 fifty-six of this chapter; (b) a recipient has not taught in a public
18 school located within New York state providing elementary or secondary
19 education recognized by the board of regents or the university of the
20 state of New York, including charter schools authorized pursuant to
21 article fifty-six of this chapter, for five of the seven years after the
22 completion of the graduate degree program and receipt of initial certif-
23 ication; (c) a recipient fails to complete his or her graduate degree
24 program in education; (d) a recipient fails to receive or maintain his
25 or her teaching certificate or license in New York state for the
26 required period; or (e) a recipient fails to respond to requests by the
27 corporation for the status of his or her academic or professional
28 progress. The terms and conditions of this subdivision shall be deferred
29 for any interruption in graduate study or employment as established by
30 the rules and regulations of the corporation. Any obligation to comply
31 with such provisions as outlined in this section shall be cancelled upon
32 the death of the recipient. Notwithstanding any provisions of this
33 subdivision to the contrary, the corporation is authorized to promulgate
34 rules and regulations to provide for the waiver or suspension of any
35 financial obligation which would involve extreme hardship.

36 6. The corporation is authorized to promulgate rules and regulations,
37 and may promulgate emergency regulations, necessary for the implementa-
38 tion of the provisions of this section including, but not limited to,
39 the criteria for the provision of awards on a competitive basis, and the
40 rate of interest charged for repayment of the student loan.

41 § 2. This act shall take effect immediately and shall be deemed to
42 have been in full force and effect on and after April 1, 2015.

SUBPART B

44 Section 1. The education law is amended by adding a new section 210-a
45 to read as follows:

46 § 210-a. Admission requirements for graduate-level teacher and educa-
47 tional leader programs. Each institution registered by the department
48 with graduate-level teacher and leader education programs shall adopt
49 rigorous selection criteria geared to predicting a candidate's academic
50 success in its program, including but not limited to, a minimum score on
51 the graduate record examination or a substantially equivalent admission
52 examination, as determined by the institution, and achievement of a
53 cumulative grade point average of 3.0 or higher in the candidate's
54 undergraduate program. Each program may exempt no more than fifteen

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1 percent of any incoming class of students from such selection criteria
2 set forth in this section based on a student's demonstration of poten-
3 tial to positively contribute to the teaching profession or other exten-
4 uating circumstances pursuant to the regulations of the commissioner. A
5 program shall report to the department the number of students admitted
6 pursuant to such exemption and the selection criteria used for such
7 exemptions.

8 § 2. The education law is amended by adding a new section 210-b to
9 read as follows:

10 § 210-b. Graduate-level teacher and educational leadership program
11 deregistration and suspension. 1. The department shall suspend a gradu-
12 ate program's authority to admit new students if for three consecutive
13 academic years, fewer than fifty percent of its students who have satis-
14 factorily completed the program pass each examination that they have
15 taken that is required for certification and shall notify currently
16 admitted and enrolled students of such suspension. The graduate program
17 shall be permitted to continue operations for the length of time it
18 would take all currently admitted and/or enrolled students, if they were
19 to attend classes on a full-time basis, to complete the requirements for
20 their degrees. If, at any time during such period, the commissioner
21 determines that student and/or program performance has significantly
22 improved, the commissioner may reinstate the program's ability to admit
23 new students. If the commissioner does not affirmatively reinstate the
24 program's authority to admit new students during such time period, the
25 program shall be deregistered. For purposes of this subdivision,
26 students who have satisfactorily completed the graduate program shall
27 mean students who have met each educational requirement of the program,
28 excluding any requirement that the student pass each required New York
29 State teacher certification examination for a teaching certificate
30 and/or school building leader examination for a school building leader
31 certificate in order to complete the program. Students satisfactorily
32 meeting each educational requirement may include students who earn a
33 degree or students who complete each educational requirement without
34 earning a degree. When making such a determination, the department
35 shall consider the performance on each certification examination of the
36 cohort of students completing an examination not more than five years
37 before the end of the academic year in which the program is completed or
38 not later than the September thirtieth following the end of such academ-
39 ic year, where academic year is defined as July first through June thir-
40 tieth, and shall consider only the highest score of individuals taking a
41 test more than once. When making such a determination the department
42 may adjust its methodology for determining examination passage rates for
43 one or more certification examinations to account for sample size and
44 accuracy.

45 2. The institution may submit an appeal of a suspension of a graduate
46 program's ability to admit students or deregistration pursuant to this
47 section in a manner and timeframe as prescribed by the commissioner in
48 regulations. However, a program that has had its ability to admit
49 students suspended shall not admit new students while awaiting the
50 commissioner's decision on any appeal. An institution with a deregis-
51 tered program shall not admit any new students in such program while
52 awaiting the commissioner's decision on its application for registra-
53 tion.

54 3. The department may also, as prescribed by the commissioner in regu-
55 lations, conduct expedited suspension and registration reviews for grad-
56 uate programs, pursuant to regulations of the commissioner.

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1 § 3. This act shall take effect July 1, 2015, provided that the
2 provisions of section one of this act shall first apply to admissions
3 requirements for programs commencing instruction on or after July 1,
4 2016, and provided further that the authority of the board of regents to
5 adopt regulations necessary to implement the provisions of this act on
6 such effective date shall take effect immediately.

SUBPART C

8 Section 1. Section 3006 of the education law is amended by adding a
9 new subdivision 3 to read as follows:

10 3. Registration. a. Commencing with the two thousand sixteen--two
11 thousand seventeen school year, any holder of a teaching certificate in
12 the classroom teaching service, teaching assistant certificate, or
13 educational leadership certificate that is valid for life as prescribed
14 by the commissioner in regulations shall be required to register with
15 the department every five years in accordance with regulations of the
16 commissioner. Such regulations shall prescribe the date or dates by
17 which applications for initial registration must be submitted and may
18 provide for staggered initial registration and/or rolling re-registra-
19 tion so that re-registrations are distributed as equally as possible
20 throughout the year and across multiple years.

21 b. The department shall post an application for registration on its
22 website. An application shall be submitted for a registration certif-
23 icate. Except as otherwise provided in this section, the department
24 shall renew the registration of each certificate holder upon receipt of
25 a proper application on a form prescribed by the department. Any certif-
26 icate holder who fails to register by the beginning of the appropriate
27 registration period may be subject to late filing penalties as
28 prescribed by the commissioner. No certificate holder resuming practice
29 after a lapse of registration shall be permitted to practice without
30 verification of re-registration.

31 c. Any certificate holder who is not engaging in the practice of his
32 or her profession in this state and does not desire to register shall so
33 advise the department. Such certificate holder shall not be subject to
34 penalties as prescribed by the commissioner for failure to register at
35 the beginning of the registration period.

36 d. Certificate holders shall notify the department of any change of
37 name or mailing address within thirty days of such change. Willful fail-
38 ure to register or provide such notice within one hundred eighty days of
39 such change may constitute grounds for moral character review under
40 subdivision seven of section three hundred five of this chapter.

41 § 2. The education law is amended by adding a new section 3006-a to
42 read as follows:

43 § 3006-a. Registration and continuing teacher and leader education
44 requirements for holders of professional certificates **in** the classroom
45 teaching service, holders of level **III** teaching assistant certificates,
46 holders of professional certificates in the educational leadership
47 service. 1. a. Commencing with the two thousand sixteen--two thousand
48 seventeen school year, each holder of a professional certificate in the
49 classroom teaching service, holder of a level III teaching assistant
50 certificate and holder of a professional certificate in the educational
51 leadership service shall be required to register every five years with
52 the department to practice in the state and shall comply with the
53 provisions of the continuing teacher and leader education requirements
54 set forth in this section.

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1 b. Any of the certified individuals described in paragraph a of this
2 subdivision who do not satisfy the continuing teacher and leader educa-
3 tion requirements shall not practice until they have met such require-
4 ments and have been issued a registration or conditional reg.isL.caL.iuJJ
5 certificate.

6 c. In accordance with the intent of this section, adjustments to the
7 continuing teacher and leader education requirement may be granted by
8 the department for reasons of health certified by a health care provid-
9 er, for extended active duty with armed forces of the United States, or
10 for other good cause acceptable to the department which may prevent
11 compliance.

12 d. Any certificate holder who is not practicing as a teacher, teaching
13 assistant or educational leader in a school district or board of cooper-
14 ative educational services in this state shall be exempt from the
15 continuing teacher and leader education requirement upon the filing of a
16 written statement with the department declaring such status. Any holder
17 of a professional certificate in the classroom teaching service, holder
18 of a level III teaching assistant certificate and holder of a profes-
19 sional certificate in the educational leadership service who resumes
20 practice during the five-year registration period shall notify the
21 department prior to resuming practice and shall meet such continuing
22 teacher and leader education requirements as prescribed in regulations
23 of the commissioner.

24 2. a. During each five-year registration period beginning on or after
25 July first, two thousand sixteen, an applicant for registration shall
26 successfully complete a minimum of one hundred hours of continuing
27 teacher and leader education, as defined by the commissioner. The
28 department shall issue rigorous standards for courses, programs, and
29 activities, that shall qualify as continuing teacher and leader educa-
30 tion pursuant to this section. For purposes of this section, a peer
31 review teacher, or a principal acting as an independent trained evalu-
32 ator, conducting a classroom observation as part of the teacher evalu-
33 ation system pursuant to section three thousand twelve-ct of this article
34 may credit such time towards his or her continuing teacher and leader
35 effectiveness requirements.

36 b. Nothing in this section shall limit the ability of local school
37 districts to agree pursuant to collective bargaining to additional hours
38 of professional development or continuing teacher or leader education
39 above the minimum requirements set forth in this section.

40 c. A certified individual who has not satisfied the continuing teacher
41 and leader education requirements shall not be issued a five-year regis-
42 tration certificate by the department and shall not practice unless and
43 until a registration or conditional registration certificate is issued
44 as provided in subdivision three of this section. For purposes of this
45 subdivision, "continuing teacher and leader education requirements"
46 shall mean activities designed to improve the teacher or leader's peda-
47 gogical and/or leadership skills, targeted at improving student perform-
48 ance, including but not limited to formal continuing teacher and leader
49 education activities. Such activities shall promote the professionaliza-
50 tion of teaching and be closely aligned to district goals for student
51 performance which meet the standards prescribed by regulations of the
52 commissioner. To fulfill the continuing teacher and leader education
53 requirement, programs must be taken from sponsors approved by the
54 department, which shall include but not be limited to school districts,
55 pursuant to the regulations of the commissioner.

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1 3. The department, in its discretion, may issue a conditional regis-
2 tration to a teacher, teaching assistant or educational leader in a
3 school district or board of cooperative educational services in this
4 state who fails to meet the continuing teacher and leader education
5 requirements established in subdivision two of this section but who
6 agrees to make up any deficiencies and take any additional continuing
7 teacher and leader education which the department may require. The dura-
8 tion of such conditional registration shall be determined by the depart-
9 ment. Any holder of a professional certificate in the classroom teaching
10 service, holder of a level teaching assistant certificate or holder
11 of a professional certificate in the educational leadership service and
12 any other certified individual required by the commissioner to register
13 every five years who is notified of the denial of registration for fail-
14 ure to submit evidence, satisfactory to the department, of required
15 continuing teacher and leader education and who practices without such
16 istration, shall be subject to moral character review under subdivi-
17 sion seven of section three hundred five of this chapter.

18 § 3. This act shall take effect July 1, 2015, provided that the
19 provisions of section one of this act shall first apply to admissions
20 requirements for programs commencing instruction on or after July 1,
21 2016, and provided further that the authority of the board of regents to
22 adopt regulations necessary to implement the provisions of this act on
23 such effective date shall take effect immediately.

SUBPART D

25 Section 1. Paragraphs (a) and (b) of subdivision 1 of section 2509 of
26 the education law, paragraph (a) as amended by chapter 551 of the laws
27 of 1976, and paragraph (b) as amended by chapter 468 of the laws of
28 1975, are amended to read as follows:

29 (a) i. Teachers and all other members of the teaching staff [7]
30 appoind prior to July first, two thousand fifteen and authorized by
31 section twenty-five hundred three of this article, shall be appointed by
32 the board of education, upon the recommendation of the superintendent of
33 schools, for a probationary period of three years, except that in the
34 case of a teacher who has rendered satisfactory service as a regular
35 substitute for a period of two years or as a seasonally licensed per
36 session teacher of swimming in day schools who has served in that capac-
37 ity for a period of two years and has been appointed to teach the same
38 subject in day schools on an annual salary, the probationary period
39 shall be limited to one year; provided, however, that in the case of a
40 teacher who has been appointed on tenure in another school district
41 within the state, the school district where currently employed, or a
42 board of cooperative educational services, and who was not dismissed
43 from such district or board as a result of charges brought pursuant to
44 subdivision one of section three thousand twenty-a of this chapter, the
45 probationary period shall not exceed two years. The service of a person
46 appointed to any of such positions may be discontinued at any time
47 during such probationary period, on the recommendation of the super-
48 intendent of schools, by a majority vote of the board of education. Each
49 person who is not to be recommended for appointment on tenure shall be
50 so notified by the superintendent of schools in writing not later than
51 sixty days immediately preceding the expiration of his probationary
52 period.

53 ii. Notwithstanding any other provision of law or regulation to the
54 contrary, teachers and all other members of the teaching staff appointed

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on or after July first, two thousand fifteen and authorized by section twenty-five hundred three of this article, shall be appointed by the board of education, upon the recommendation of the superintendent of schools, for a probationary period of four years, except that in the case of a teacher who has rendered satisfactory service as a regular substitute for a period of two years and, if a classroom teacher, has received composite annual professional performance review ratings in each of those years, or has rendered satisfactory service as a seasonally licensed per session teacher of swimming in day schools who has served in that capacity for a period of two years and has been appointed to teach the same subject in day schools on an annual salary, the teacher shall be appointed for a probationary period of two years; provided, however, that in the case of a teacher who has been appointed on tenure in another school district within the state, the school district where currently employed, or a board of cooperative educational services, and who was not dismissed from such district or board as a result of charges brought pursuant to subdivision one of section three thousand twenty-a or section three thousand twenty-b of this chapter, the teacher shall be appointed for a probationary period of three years; provided that the teacher demonstrates that he or she received an annual professional performance review rating pursuant to section three thousand twelve-c or section three thousand twelve-d of this chapter in his or her final year of service in such other school district or board of cooperative educational services. The service of a person appointed to any of such positions may be discontinued at any time during such probationary period, on the recommendation of the superintendent of schools, by a majority vote of the board of education. Each person who is not to be recommended for appointment on tenure shall be so notified by the superintendent of schools in writing not later than sixty days immediately preceding the expiration of his/her probationary period.

(b) i. Administrators, directors, supervisors, principals and all other members of the supervising staff, except associate, assistant and other superintendents[7], appointed prior to July first, two thousand fifteen and authorized by section twenty-five hundred three of this article, shall be appointed by the board of education, upon the recommendation of the superintendent of schools for a probationary period of three years. The service of a person appointed to any of such positions may be discontinued at any time during the probationary period on the recommendation of the superintendent of schools, by a majority vote of the board of education.

ii. Notwithstanding any other provision of law or regulation to the contrary, administrators, directors, supervisors, principals and all other members of the supervising staff, except associate, assistant and other superintendents, appointed on or after July first, two thousand fifteen and authorized by section twenty-five hundred three of this article, shall be appointed by the board of education, upon the recommendation of the superintendent of schools for a probationary period of four years. The service of a person appointed to any of such positions may be discontinued at any time during the probationary period on the recommendation of the superintendent of schools, by a majority vote of the board of education.

§ 2. Subdivision 2 of section 2509 of the education law, as amended by section 6 of part A of chapter 57 of the laws of 2007, is amended to read as follows:

2. a. At the expiration of the probationary term of any persons appointed for such term prior to July first, two thousand fifteen, or

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1 within six months prior thereto, the superintendent of schools shall
2 make a written report to the board of education recommending for
3 appointment on tenure those persons who have been found competent, effi-
4 cient and satisfactory[, consistent with any applicable rules of the
5 board of reents ad€l'fl'olo-ed f'l!l:rsuant to section three thousana twelve b--e-f
6 this chapter]. By a majority vote the board of education may then
7 appoint on tenure any or all of the persons recommended by the super-
8 intendent of schools. Such persons and all others employed in the teach-
9 ing service of the schools of such school district who have served the
10 full probationary period shall hold their respective positions during
11 good behavior and efficient and competent service, and shall not be
12 removable except for cause after a hearing as provided by section three
13 thousand twenty-a or section three thousand twenty-b of [such law] this
14 chapter. Failure to maintain certification as required by this chapter
15 and the regulations of the commissioner [ef education] shall constitute
16 cause for removal.

17 b. For persons appointed on or after July first, two thousand fifteen,
18 at the expiration of the probationary term of any persons appointed for
19 such term, or within six months prior thereto, the superintendent of
20 schools shall make a written report to the board of education recommend-
21 ing for appointment on tenure those persons who have been found compe-
22 tent, efficient and satisfactory and in the case of a classroom teacher
23 or building principal, who have received annual professional performance
24 review ratings pursuant to section three thousand twelve-c or section
25 three thousand twelve-ct of this chapter, of either effective or highly
26 effective in at least three of the four preceding years, exclusive of
27 any breaks in service; provided that, notwithstanding any other
28 provision of this section to the contrary, when a teacher or principal
29 receives an effective or highly effective rating in each year of his or
30 her probationary service except he or she receives an ineffective rating
31 in the final year of his or her probationary period, such teacher or
32 principal shall not be eligible for tenure but the board of education in
33 its discretion, may extend the teacher's probationary period for an
34 additional year; provided, however, that if such teacher or principal
35 successfully appealed such ineffective rating, such teacher or principal
36 shall immediately be eligible for tenure if the rating resulting from
37 the appeal established that such individual has been effective or highly
38 effective in at least three of the preceding four years and was not
39 ineffective in the final year. By a majority vote, the board of educa-
40 tion may then appoint on tenure any or all of the persons recommended by
41 the superintendent of schools. At the expiration of the probationary
42 period, the classroom teacher or building principal shall remain in
43 probationary status until the end of the school year in which such
44 teacher or principal has received such ratings of effective or highly
45 effective for at least three of the four preceding school years exclu-
46 sive of any breaks in service and subject to the terms hereof, during
47 which time a board of education shall consider whether to grant tenure
48 for those classroom teachers or building principals who otherwise have
49 been found competent, efficient and satisfactory. Provided, however,
50 that the board of education may grant tenure contingent upon a classroom
51 teacher's or building principal's receipt of a minimum rating in the
52 final year of the probationary period, pursuant to the requirements of
53 this section, and if such contingency is not met after all appeals have
54 been exhausted, the grant of tenure shall be void and unenforceable and
55 the teacher's or principal's probationary period may be extended in
56 accordance with this subdivision. Such persons who have been recommended

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1 for tenure and all others employed in the teaching service of the
2 schools of such school district who have served the full probationary
3 period as extended pursuant to this subdivision shall hold their respec-
4 tive positions during good behavior and efficient and competent service,
5 and shall not be removable except for cause after a hearing as provided
6 by section three thousand twenty-a or section three thousand twenty-b of
7 this chapter. Failure to maintain certification as required by this
8 chapter and the regulations of the commissioner shall constitute cause
9 for removal.

10 § 3. Subdivisions 1, 5 and 6 of section 2573 of the education law,
11 subdivision 1 as amended by chapter 732 of the laws of 1971, paragraph
12 (a) of subdivision 1 as amended by chapter 640 of the laws of 1983,
13 paragraph (b) of subdivision 1 as amended by chapter 468 of the laws of
14 1975, subdivisions 5 and 6 as amended by section 7 of part A of chapter
15 57 of the laws of 2007, are amended to read as follows:

16 1. (a) i. Teachers and all other members of the teaching staff,
17 appointed prior to July first, two thousand fifteen and authorized by
18 section twenty-five hundred fifty-four of this article, shall be
19 appointed by the board of education, upon the recommendation of the
20 superintendent of schools, for a probationary period of three years,
21 except that in the case of a teacher who has rendered satisfactory
22 service as a regular substitute for a period of two years or as a
23 seasonally licensed per session teacher of swimming in day schools who
24 has served in that capacity for a period of two years and has been
25 appointed to teach the same subject in day schools on an annual salary,
26 the probationary period shall be limited to one year; provided, however,
27 that in the case of a teacher who has been appointed on tenure in another
28 school district within the state, the school district where currently
29 employed, or a board of cooperative educational services, and who was
30 not dismissed from such district or board as a result of charges brought
31 pursuant to subdivision one of section three thousand twenty-a or
32 section three thousand twenty-b of this chapter, the probationary period
33 shall not exceed two years; provided, however, that in cities with a
34 population of one million or more, a teacher appointed under a newly
35 created license, for teachers of reading and of the emotionally hand-
36 icapped, to a position which the teacher has held for at least two years
37 prior to such appointment while serving on tenure in another license
38 area who was not dismissed as a result of charges brought pursuant to
39 subdivision one of section three thousand twenty-a or section three
40 thousand twenty-b of this chapter, the probationary period shall be one
41 year. The service of a person appointed to any of such positions may be
42 discontinued at any time during such probationary period, on the recom-
43 mendation of the superintendent of schools, by a majority vote of the
44 board of education. Each person who is not to be recommended for
45 appointment on tenure shall be so notified by the superintendent of
46 schools in writing not later than sixty days immediately preceding the
47 expiration of his or her probationary period. In city school districts
48 having a population of four hundred thousand or more, persons with
49 licenses obtained as a result of examinations announced subsequent to
50 the twenty-second day of May, nineteen hundred sixty-nine appointed upon
51 conditions that all announced requirements for the position be fulfilled
52 within a specified period of time, shall not acquire tenure unless and
53 until such requirements have been completed within the time specified
54 for the fulfillment of such requirements, notwithstanding the expiration
55 of any probationary period. In all other city school districts subject
56 to the provisions of this article, failure to maintain certification as

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1 required by this article and by the regulations of the commissioner [e+
2 education] shall be cause for removal within the meaning of subdivision
3 five of this section.

4 ii. Teachers and all other members of the teaching staff appointed on
5 or after July first, two thousand fifteen and authorized by section
6 twenty-five hundred fifty-four of this article, shall be appointed by
7 the board of education, upon the recommendation of the superintendent of
8 schools, for a probationary period of four years, except that in the
9 case of a teacher who has rendered satisfactory service as a regular
10 substitute for a period of two years and, if a classroom teacher, has
11 received annual professional performance review ratings in each of those
12 years, or has rendered satisfactory service as a seasonally licensed per
13 session teacher of swimming in day schools who has served in that capac-
14 ity for a period of two years and has been appointed to teach the same
15 subject in day schools on an annual salary, the teacher shall be
16 appointed for a probationary period of two years; provided, however,
17 that in the case of a teacher who has been appointed on tenure in another
18 school district within the state, the school district where currently
19 employed, or a board of cooperative educational services, and who was
20 not dismissed from such district or board as a result of charges brought
21 pursuant to subdivision one of section three thousand twenty-a or
22 section three thousand twenty-b of this chapter, the teacher shall be
23 appointed for a probationary period of three years; provided that, in
24 the case of a classroom teacher, the teacher demonstrates that he or she
25 received an annual professional performance review rating pursuant to
26 section three thousand twelve-c or section three thousand twelve-d of
27 this chapter in his or her final year of service in such other school
28 district or board of cooperative educational services; provided, howev-
29 er, that in cities with a population of one million or more, a teacher
30 appointed under a newly created license, for teachers of reading and of
31 the emotionally handicapped, to a position which the teacher has held
32 for at least two years prior to such appointment while serving on tenure
33 in another license area who was not dismissed as a result of charges
34 brought pursuant to subdivision one of section three thousand twenty-a
35 or section three thousand twenty-b of this chapter, the teacher shall be
36 appointed for a probationary period of two years. The service of a
37 person appointed to any of such positions may be discontinued at any
38 time during such probationary period, on the recommendation of the
39 superintendent of schools, by a majority vote of the board of education.
40 Each person who is not to be reconunended for appointment on tenure shall
41 be so notified by the superintendent of schools in writing not later
42 than sixty days immediately preceding the expiration of his or her
43 probationary period. In all city school districts subject to the
44 provisions of this article, failure to maintain certification as
45 required by this article and by the regulations of the commissioner
46 shall be cause for removal within the meaning of subdivision five of
47 this section.

48 (b) Administrators, directors, supervisors, principals and all
49 other members of the supervising staff, except executive directors,
50 associate, assistant, district and community superintendents and examiners,
51 appointed prior to July first, two thousand fifteen and authorized
52 by section twenty-five hundred fifty-four of this article, shall be
53 appointed by the board of education, upon the recommendation of the
54 superintendent or chancellor of schools, for a probationary period of
55 three years. The service of a person appointed to any of such positions
56 may be discontinued at any time during the probationary period on the

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1 recommendation of the superintendent of schools, by a majority vote of
2 the board of education.

3 ii. Administrators, directors, supervisors, principals and all other
4 members of the supervising staff, except executive directors, associate,
5 assistant, district and community superintendents and examiners,
6 appointed on or after July first, two thousand fifteen and authorized by
7 section twenty-five hundred fifty-four of this article, shall be
8 appointed by the board of education, upon the recommendation of the
9 superintendent or chancellor of schools, for a probationary period of
10 four years provided that such probationary period may be extended in
11 accordance with paragraph (b) of subdivision five of this section. The
12 service of a person appointed to any of such positions may be discontin-
13 ued at any time during the probationary period on the recommendation of
14 the superintendent of schools, by a majority vote of the board of educa-
15 tion.

16 5. (a) At the expiration of the probationary term of any persons
17 appointed for such term prior to July first, two thousand fifteen, the
18 superintendent of schools shall make a written report to the board of
19 education recommending for permanent appointment those persons who have
20 been found competent, efficient and satisfactory[, consistent with any
21 applicable rules of ~~td~~ of regents ~~adBf~~* --s-uant to section
22 thousand twel've-b ~~0f~~ this chapter]. Such persons and all others
23 employed in the teaching, service of the schools of a city, who have
24 served the full probationary period, shall hold their respective posi-
25 tions during good behavior and efficient and competent service, and
26 shall not be removable except for cause after a hearing as provided by
27 section three thousand twenty-a or section three thousand twenty-b of
28 this chapter.

29 (b) At the expiration of the probationary term of any persons
30 appointed for such term on or after July first, two thousand fifteen,
31 the superintendent of schools shall make a written report to the board
32 of education recorrunending for permanent appointment those persons who
33 have been found competent, efficient and satisfactory and, in the case
34 of a classroom teacher or building principal, who have received compos-
35 ite annual professional performance review ratings pursuant to section
36 three thousand twelve-c or section three thousand twelve-d of this chap-
37 ter, of either effective or highly effective in at least three of the
38 four preceding years, exclusive of any breaks in service; provided that,
39 notwithstanding any other provision of this section to the contrary,
40 when a teacher or principal receives an effective and/or highly effec-
41 tive rating in each year of his or her probationary service except he or
42 she receives an ineffective rating in the final year of his or her
43 probationary period, such teacher or principal shall not be eligible for
44 tenure but the board of education in its discretion, may extend the
45 teacher's probationary period for an additional year; provided, however,
46 that if such teacher or principal successfully appealed such ineffective
47 rating, such teacher or principal shall immediately be eligible for
48 tenure if the rating resulting from the appeal established that such
49 individual has been effective or highly effective in at least three of
50 the preceding four years. At the expiration of the probationary period,
51 the classroom teacher or building principal shall remain in probationary
52 status until the end of the school year in which such teacher or princi-
53 pal has received such ratings of effective or highly effective for at
54 least three of the four preceding school years, exclusive of any breaks
55 in service and subject to the terms hereof, during which time a board of
56 education shall consider whether to grant tenure for those classroom

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1 teachers or building principals who otherwise have been found competent,
2 efficient and satisfactory. Provided, however, that the board of educa-
3 tion grant tenure contingent upon a classroom teacher's or building
4 principal's receipt of a minimum rating in the final year of the proba-
5 tionary period, pursuant to the requirements of this section, and if
6 such contingency is not met after all appeals have been exhausted, the
7 grant of tenure shall be void and unenforceable and the teacher's or
8 principal's probationary period may be extended in accordance with this
9 subdivision. Such persons who have been recommended for tenure and all
10 others employed in the teaching service of the schools of such school
11 district who have served the full probationary period as extended pursu-
12 ant to this subdivision shall hold their respective positions during
13 good behavior and efficient and competent service, and shall not be
14 removable except for cause after a hearing as provided by section three
15 thousand twenty-a or section three thousand twenty-b of this chapter.
16 Failure to maintain certification as required by this chapter and the
17 regulations of the commissioner shall constitute cause for removal.

18 6. In a city having a population of four hundred thousand or more,
19 at the expiration of the probationary term of any persons appointed for
20 such term prior to July first, two thousand fifteen, the superintendent
21 of schools shall make a written report to the board of education recom-
22 mending for permanent appointment those persons who have been found
23 satisfactory; consistent with any applicable rules of the board of
24 regents adopted pursuant to section three thousand twelve b of this
25 chapter], and such board of education shall immediately thereafter issue
26 to such persons permanent certificates of appointment. Such persons and
27 all others employed in the teaching service of the schools of such city,
28 who have served the full probationary period shall receive permanent
29 certificates to teach issued to them by the certificating authority,
30 except as otherwise provided in subdivision ten-a of this section, and
31 shall hold their respective positions during good behavior and satisfac-
32 tory teaching service, and shall not be removable except for cause after
33 a hearing as provided by section three thousand twenty-a or section
34 three thousand twenty-b of this chapter.

35 (b) At the expiration of the probationary term of any persons
36 appointed for such term on or after July first, two thousand fifteen,
37 the superintendent of schools shall make a written report to the board
38 of education recommending for permanent appointment those persons who
39 have been found competent, efficient and satisfactory and, in the case
40 of a classroom teacher or building principal, who have received compos-
41 ite annual professional performance review ratings pursuant to section
42 three thousand twelve-c or section three thousand twelve-d of this chap-
43 ter, of either effective or highly effective in at least three of the
44 four preceding years, exclusive of any breaks in service; provided that,
45 notwithstanding any other provision of this section to the contrary,
46 when a teacher receives an effective and/or highly effective rating in
47 each year of his or her probationary service except he or she receives
48 an ineffective rating in the final year of his or her probationary peri-
49 od, such teacher or principal shall not be eligible for tenure but the
50 board of education in its discretion, may extend the teacher's proba-
51 tionary period for an additional year; provided, however, that if such
52 teacher or principal successfully appealed such ineffective rating, such
53 teacher or principal shall immediately be eligible for tenure if the
54 rating resulting from the appeal established that such individual has
55 been effective or highly effective in at least three of the preceding
56 four years and was not ineffective in the final year. At the expiration

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1 of the probationary period, the classroom teacher or building principal
2 shall remain in probationary status until the end of the school year in
3 which such teacher or principal has received such ratings of effective
4 or highly effective for at least three of the four preceding school
5 years, exclusive of any breaks in service and subject to the terms here-
6 of, during which time a board of education shall consider whether to
7 grant tenure for those classroom teachers or building principals who
8 otherwise have been found competent, efficient and satisfactory.
9 Provided, however, that the board of education may grant tenure contin-
10 gent upon a classroom teacher's or building principal's receipt of a
11 minimum rating in the final year of the probationary period, pursuant to
12 the requirements of this section, and if such contingency is not met
13 after all appeals have been exhausted, the grant of tenure shall be void
14 and unenforceable and the teacher's or principal's probationary period
15 may be extended in accordance with this subdivision. Such persons who
16 have been recommended for tenure and all others employed in the teaching
17 service of the schools of such school district who have served the full
18 probationary period as extended pursuant to this subdivision shall hold
19 their respective positions during good behavior and efficient and compe-
20 tent service, and shall not be removable except for cause after a hear-
21 ing as provided by section three thousand twenty-a or section three
22 thousand twenty-b of this chapter. Failure to maintain certification as
23 required by this chapter and the regulations of the commissioner shall
24 constitute cause for removal.

25 § 4. Section 3012 of the education law, the section heading as amended
26 by chapter 358 of the laws of 1978, subdivision 1 as amended by chapter
27 442 of the laws of 1980, paragraph (a) of subdivision 1 as amended by
28 chapter 737 of the laws of 1992, subdivision 2 as amended by section 8
29 of part A of chapter 57 of the laws of 2007, subdivision 3 as added by
30 chapter 859 of the laws of 1955 and as renumbered by chapter 717 of the
31 laws of 1970, is amended to read as follows:

32 § 3012. Tenure: certain school districts. 1. (a) i. Teachers and all
33 other members of the teaching staff of school districts, including
34 common school districts and/or school districts employing fewer than
35 eight teachers, other than city school districts, who are appointed
36 prior to July first, two thousand fifteen, shall be appointed by the
37 board of education, or the trustees of common school districts, upon the
38 recommendation of the superintendent of schools, for a probationary
39 period of three years, except that in the case of a teacher who has
40 rendered satisfactory service as a regular substitute for a period of
41 two years or as a seasonally licensed per session teacher of swimming in
42 day schools who has served in that capacity for a period of two years
43 and has been appointed to teach the same subject in day schools, on an
44 annual salary, the probationary period shall be limited to one year;
45 provided, however, that in the case of a teacher who has been appointed
46 on tenure in another school district within the state, the school
47 district where currently employed, or a board of cooperative educational
48 services, and who was not dismissed from such district or board as a
49 result of charges brought pursuant to subdivision one of section three
50 thousand twenty-a or section three thousand twenty-b of this [chapter]
51 article, the probationary period shall not exceed two years. The service
52 of a person appointed to any of such positions may be discontinued at
53 any time during such probationary period, on the recommendation of the
54 superintendent of schools, by a majority vote of the board of education
55 or the trustees of a common school district.

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1 ii. Teachers and all other members of the teaching staff of school
2 districts, including common school districts and/or school districts
3 employing fewer than eight teachers, other than city school districts,
4 who are appointed on or after July first, two thousand fifteen, shall be
5 appointed by the board of education, or the trustees of common school
6 districts, upon the recommendation of the superintendent of schools, for
7 a probationary period of four years, except that in the case of a teacher
8 who has rendered satisfactory service as a regular substitute for a
9 period of two years and, if a classroom teacher, has received annual
10 professional performance review ratings in each of those years, or has
11 rendered satisfactory service as a seasonally licensed per session
12 teacher of swimming in day schools who has served in that capacity for a
13 period of two years and has been appointed to teach the same subject in
14 day schools, on an annual salary, the teacher shall be appointed for a
15 probationary period of two years; provided, however, that in the case of
16 a teacher who has been appointed on tenure in another school district
17 within the state, the school district where currently employed, or a
18 board of cooperative educational services, and who was not dismissed
19 from such district or board as a result of charges brought pursuant to
20 subdivision one of section three thousand twenty-a or section three
21 thousand twenty-b of this article, the teacher shall be appointed for a
22 probationary period of three years; provided that, in the case of a
23 classroom teacher, the teacher demonstrates that he or she received an
24 annual professional performance review rating pursuant to section three
25 thousand twelve-c or section three thousand twelve-d of this chapter in
26 his or her final year of service in such other school district or board
27 of cooperative educational services. The service of a person appointed
28 to any of such positions may be discontinued at any time during such
29 probationary period, on the recommendation of the superintendent of
30 schools, by a majority vote of the board of education or the trustees of
31 a common school district.

32 (b) Principals, administrators, supervisors and all other members
33 of the supervising staff of school districts, including common school
34 districts and/or school districts employing fewer than eight teachers,
35 other than city school districts, who are appointed prior to July first,
36 two thousand fifteen, shall be appointed by the board of education, or
37 the trustees of a common school district, upon the recommendation of the
38 superintendent of schools for a probationary period of three years. The
39 service of a person appointed to any of such positions may be discontinued
40 at any time during the probationary period on the recommendation of
41 the superintendent of schools, by a majority vote of the board of education
42 or the trustees of a common school district.

43 ii. Principals, administrators, supervisors and all other members of
44 the supervising staff of school districts, including common school
45 districts and/or school districts employing fewer than eight teachers,
46 other than city school districts, who are appointed on or after July
47 first, two thousand fifteen, shall be appointed by the board of education,
48 or the trustees of a common school district, upon the recommendation
49 of the superintendent of schools for a probationary period of four
50 years. The service of a person appointed to any of such positions may be
51 discontinued at any time during the probationary period on the recommendation
52 of the superintendent of schools, by a majority vote of the board
53 of education or the trustees of a common school district.

54 (c) Any person previously appointed to tenure or a probationary period
55 pursuant to the provisions of former section three thousand thirteen of
56 this [chapter] article shall continue to hold such position and be

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1 governed by the provisions of this section notwithstanding any contrary
2 provision of law.

3 2. .@J_ At the expiration of the probationary term of a person
4 C!J:JJointed for such term prior to July first, two thousand fifteen,
5 subject to the conditions of this section, the superintendent of schools
6 shall make a written report to the board of education or the trustees of
7 a common school district recommending for appointment on tenure those
8 persons who have been found competent, efficient and satisfactory[7
9 consisten t uith any applica ble rules of the board of re<JBB
10 pursuant to section three thousand twelve b of t his art:A:ele]. Such
11 persons, and all others employed in the teaching service of the schools
12 of such union free school district, common school district and/or school
13 district employing fewer than eight teachers, who have served the proba-
14 tionary period as provided in this section, shall hold their respective
15 positions during good behavior and efficient and competent service, and
16 shall not be removed except for any of the following causes, after a
17 hearing, as provided by section three thousand twenty-a or section three
18 thousand twenty-b of [such law] this article: (a) insubordination,
19 immoral character or conduct unbecoming a teacher; (b) inefficiency,
20 incompetency, physical or mental disability, or neglect of duty; (c)
21 failure to maintain certification as required by this chapter and by the
22 regulations of the commissioner. Each person who is not to be recom-
23 mended for appointment on tenure, shall be so notified by the super-
24 intendent of schools in writing not later than sixty days immediately
25 preceding the expiration of his probationary period.

26 (b) At the expiration of the probationary term of a person appointed
27 for such term on or after July first, two thousand fifteen, subject to
28 the conditions of this section, the superintendent of schools shall make
29 a written report to the board of education or the trustees of a common
30 school district recormnding for appointment on tenure those persons who
31 have been found competent, efficient and satisfactory and, in the case
32 of a classroom teacher or building principal, who have received compos-
33 ite annual professional performance review ratings pursuant to section
34 three thousand twelve-c or section three thousand twelve-ct of this arti-
35 cle, of either effective or highly effective in at least three of the
36 four preceding years, exclusive of any breaks in service; provided that,
37 notwithstanding any other provision of this section to the contrary,
38 when a teacher or principal receives an effective or highly effective
39 rating in each year of his or her probationary service except he or she
40 receives an ineffective rating in the final year of his or her proba-
41 tionary period, such teacher shall not be eligible for tenure but the
42 board of education, in its discretion, may extend the teacher's proba-
43 tionary period for an additional year; provided, however, that if such
44 teacher or principal successfully appealed such ineffective rating, such
45 teacher or principal shall immediately be eligible for tenure if the
46 rating resulting from the appeal established that such individual has
47 been effective or highly effective in at least three of the preceding
48 four years and was not ineffective in the final year. At the expiration
49 of the probationary period, the classroom teacher or building principal
50 shall remain in probationary status until the end of the school year in
51 which such teacher or principal has received such ratings of effective
52 or highly effective for at least three of the four preceding school
53 years, exclusive of any breaks in service, and subject to the terms
54 hereof, during which time the trustees or board of education shall
55 consider whether to grant tenure for those classroom teachers or build-
56 ing principals who otherwise have been found competent, efficient and

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1 satisfactory. Provided, however, that the trustees or board of education
2 may grant tenure contingent upon a classroom teacher's or building prin-
3 cipal's receipt of a minimum rating in the final year of the probation-
4 ary period, pursuant to the requirements of this section, and if such
5 contingency is not met after all appeals have been exhausted, the grant
6 of tenure shall be void and unenforceable and the teacher's or princi-
7 pal's probationary period may be extended in accordance with this subdi-
8 vision. Such persons who have been recommended for tenure and all others
9 employed in the teaching service of the schools of such school district
10 who have served the full probationary period as extended pursuant to
11 this subdivision shall hold their respective positions during good
12 behavior and efficient and competent service, and shall not be removable
13 except for cause after a hearing as provided by section three thousand
14 twenty-a or section three thousand twenty-b of this article. Failure to
15 maintain certification as required by this chapter and the regulations
16 of the commissioner shall constitute cause for removal.

17 3. Notwithstanding any other provision of this section no period in
18 any school year for which there is no required service and/or for which
19 no compensation is provided shall in any event constitute a break or
20 suspension of probationary period or continuity of tenure rights of any
21 of the persons hereinabove described.

22 § 5. Section 3014 of the education law, as added by chapter 583 of the
23 laws of 1955, subdivision 1 as amended by chapter 551 of the laws of
24 1976, subdivision 2 as amended by section 10 of part A of chapter 57 of
25 the laws of 2007, is amended to read as follows:

26 § 3014. Tenure: boards of cooperative educational services. 1.
27 Administrative assistants, supervisors, teachers and all other members
28 of the teaching and supervising staff of the board of cooperative educa-
29 tional services appointed prior to July first, two thousand fifteen,
30 shall be appointed by a majority vote of the board of cooperative educa-
31 tional services upon the recommendation of the district superintendent
32 of schools for a probationary period of not to exceed three years;
33 provided, however, that in the case of a teacher who has been appointed
34 on tenure in a school district within the state, the board of cooper-
35 ative educational services where currently employed, or another board of
36 cooperative educational services, and who was not dismissed from such
37 district or board as a result of charges brought pursuant to subdivision
38 one of section three thousand twenty-a or section three thousand twen-
39 ty-b of this [chapter] article, the probationary period shall not exceed
40 two years. Services of a person so appointed to any such positions may
41 be discontinued at any time during such probationary period, upon the
42 recommendation of the district superintendent, by a majority vote of the
43 board of cooperative educational services.

44 (b) Administrative assistants, supervisors, teachers and all other
45 members of the teaching and supervising staff of the board of cooper-
46 ative educational services appointed on or after July first, two thou-
47 sand fifteen, shall be appointed by a majority vote of the board of
48 cooperative educational services upon the recommendation of the district
49 superintendent of schools for a probationary period of not to exceed
50 four years; provided, however, that in the case of a teacher who has
51 been appointed on tenure in a school district within the state, the
52 board of cooperative educational services where currently employed, or
53 another board of cooperative educational services, and who was not
54 dismissed from such district or board as a result of charges brought
55 pursuant to section three thousand twenty-a or section three thousand
56 twenty-b of this article, the teacher shall be appointed for a proba-

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tionary period of three years; provided that, in the case of a classroom teacher, the teacher demonstrates that he or she received a composite annual professional performance review rating pursuant to section three thousand twelve-c or three thousand twelve-ct of this chapter of either effective or highly effective in his or her final year of service in such other school district or board of cooperative educational services. Services of a person so appointed to any such positions may be discontinued at any time during such probationary period, upon the recommendation of the district superintendent, by a majority vote of the board of cooperative educational services.

2. On or before the expiration of the probationary term of a person appointed for such term prior to July first, two thousand fifteen, the district superintendent of schools shall make a written report to the board of cooperative educational services recommending for appointment on tenure persons who have been found competent, efficient and satisfactory [consistent with any applicable rules of the board of education adopted pursuant to section three thousand twelve-b of this chapter and article]. Such persons shall hold their respective positions during good behavior and competent and efficient service and shall not be removed except for any of the following causes, after a hearing, as provided by section three thousand twenty-a or section three thousand twenty-b of [such law] this article: (i) Insubordination, immoral character or conduct unbecoming a teacher; (ii) Inefficiency, incompetency, [physical or mental disability] or neglect of duty; (iii) Failure to maintain certification as required by this chapter and by the regulations of the commissioner. Each person who is not to be so recommended for appointment on tenure shall be so notified in writing by the district superintendent not later than sixty days immediately preceding the expiration of his or her probationary period.

(b) On or before the expiration of the probationary term of a person appointed for such term on or after July first, two thousand fifteen, the district superintendent of schools shall make a written report to the board of cooperative educational services recommending for appointment on tenure persons who have been found competent, efficient and satisfactory and, in the case of a classroom teacher or building principal, who have received composite annual professional performance review ratings pursuant to section three thousand twelve-c or section three thousand twelve-ct of this article, of either effective or highly effective in at least three of the four preceding years, exclusive of any breaks in service; provided that, notwithstanding any other provision of this section to the contrary, when a teacher or principal receives an effective or highly effective rating in each year of his or her probationary service except he or she receives an ineffective rating in the final year of his or her probationary period, such teacher shall not be eligible for tenure but the board of education in its discretion, may extend the teacher's probationary period for an additional year; provided, however that if such teacher or principal successfully appealed such ineffective rating, such teacher or principal shall immediately be eligible for tenure if the rating resulting from the appeal established that such individual has been effective or highly effective in at least three of the preceding four years and was not ineffective in the final year. At the expiration of the probationary period, the classroom teacher or building principal shall remain in probationary status until the end of the school year in which such teacher or principal has received such ratings of effective or highly effective for at least three of the four preceding school years, exclusive of any breaks

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1 in service, during which time a board of cooperative educational
2 services shall consider whether to grant tenure for those classroom
3 teachers or building principals who otherwise have been found competent,
4 efficient and satisfactory. Provided, however, that the board of cooper-
5 ative educational services may grant tenure contingent upon a classroom
6 teacher's or building principal's receipt of a minimum rating in the
7 final year of the probationary period, pursuant to the requirements of
8 this section, and if such contingency is not met after all appeals have
9 been exhausted, the grant of tenure shall be void and unenforceable and
10 the teacher's or principal's probationary period may be extended in
11 accordance with this subdivision. Such persons shall hold their respec-
12 tive positions during good behavior and competent and efficient service
13 and shall not be removed except for any of the following causes, after a
14 hearing, as provided by section three thousand twenty-a or section three
15 thousand twenty-b of this article: (i) Insubordination, immoral charac-
16 ter or conduct unbecoming a teacher; (ii) Inefficiency, incompetency, or
17 neglect of duty; (iii) Failure to maintain certification as required by
18 this chapter and by the regulations of the commissioner. Each person who
19 is not to be so recommended for appointment on tenure shall be so noti-
20 fied in writing by the district superintendent not later than sixty days
21 immediately preceding the expiration of his or her probationary period.

22 § 6. Subdivision 1 of section 3012-c of the education law, as amended
23 by chapter 21 of the laws of 2012, is amended to read as follows:

24 1. Notwithstanding any other provision of law, rule or regulation to
25 the contrary, the annual professional performance reviews of all class-
26 room teachers and building principals employed by school districts or
27 boards of cooperative educational services shall be conducted in accord-
28 ance with the provisions of this section. Such performance reviews which
29 are conducted on or after July first, two thousand eleven, or on or
30 after the date specified in paragraph c of subdivision two of this
31 section where applicable, shall include measures of student achievement
32 and be conducted in accordance with this section. Such annual profes-
33 sional performance reviews shall be a significant factor for employment
34 decisions including but not limited to, promotion, retention, tenure
35 determination, termination, and supplemental compensation, which deci-
36 sions are to be made in accordance with locally developed procedures
37 negotiated pursuant to the requirements of article fourteen of the civil
38 service law where applicable. Provided, however, that nothing in this
39 section shall be construed to affect the unfettered statutory right of a
40 school district or board of cooperative educational services to termi-
41 nate a probationary teacher or principal for any statutorily and consti-
42 tutionally permissible reasons [e]ther than the perfoERance of the teacft-
43 er or principal in the classre-em or schoe-±J, including but not limited
44 to misconduct and until a tenure decision is made, the performance of
45 the teacher or principal in the classroom. Such performance reviews
46 shall also be a significant factor in teacher and principal development,
47 including but not limited to, coaching, induction support and differen-
48 tiated professional development, which are to be locally established in
49 accordance with procedures negotiated pursuant to the requirements of
50 article fourteen of the civil service law.

51 § 7. Paragraph b of subdivision 5 of section 3012-c of the education
52 law, as added by chapter 21 of the laws of 2012, is amended to read as
53 follows:

54 b. Nothing in this section shall be construed to alter or diminish the
55 authority of the governing body of a school district or board of cooper-
56 ative educational services to grant or deny tenure to or terminate

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1 probationary teachers or probationary building principals during the
2 pendency of an appeal pursuant to this section for statutorily and
3 constitutionally permissible reasons [ether than] including the teach-
4 er's or principal's performance that is the subject of the appeal.
5 § 8. This act shall take effect immediately.

SUBPART E

7 Section '1. Authority of the commissioner. Notwithstanding any
8 provisions of section 3012-c of the education law to the contrary, the
9 commissioner of the state education department, is hereby authorized and
10 directed to, subject to the provisions of section 207 of the education
11 law, adopt regulations of the commissioner and guidelines no later than
12 June 30, 2015, to implement a statewide annual teacher and principal
13 evaluation system in New York state pursuant to section 3012-d of the
14 education law, as added by this act, after consulting with experts and
15 practitioners in the fields of education, economics and psychometrics
16 and taking into consideration the parameters set forth in the letter
17 from the Chancellor of the Board of Regents and acting commissioner
18 dated December 31, 2014, to the New York State Director of State Oper-
19 ations. The commissioner shall also establish a process to accept public
20 comments and recommendations regarding the adoption of regulations
21 pursuant to section 3012-d of the education law and consult in writing
22 with the Secretary of the United States Department of Education on
23 weights, measures and ranking of evaluation categories and subcomponents
24 and shall release the response from the Secretary upon receipt thereof
25 but in any event prior to publication of the regulations hereunder.

26 § 2. The education law is amended by adding a new section 3012-d to
27 read as follows:

28 § 3012-d. Annual teacher and principal evaluations. 1. General
29 provisions. Notwithstanding any other provision of law, rule or regu-
30 lation to the contrary, the annual teacher and principal evaluations
31 (hereinafter, evaluations) implemented by districts shall be conducted
32 in accordance with the provisions of this section. Such annual evalu-
33 ations shall be a significant factor for employment decisions including
34 but not limited to, promotion, retention, tenure determination, termi-
35 nation, and supplemental compensation. Such evaluations shall also be a
36 significant factor in teacher and principal development including but
37 not limited to coaching, induction support, and differentiated profes-
38 sional development.

39 2. Definitions.

40 a. "District" shall mean school district and/or board of cooperative
41 educational services, except that for purposes of subdivision eleven of
42 this section it shall only mean a school district;

43 b. "Principal" shall mean a building principal or an administrator in
44 charae of an instructional program of a board of cooperative educational
45 services;

46 c. "Student growth" shall mean the change in student achievement for
47 an individual student between two or more points in time.

48 d. "State-designed supplemental assessment" shall mean a selection of
49 state tests or assessments developed or designed by the state education
50 department, or that the state education department purchased or acquired
51 from (i) another state; (ii) an institution of higher education; or
52 (iii) a commercial or not-for-profit entity, provided that such entity
53 must be objective and may not have a conflict of interest or appearance
54 of a conflict of interest; such definition may include tests or assess-

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ments that have been previously designed or acquired by local districts, but only if the state education department significantly modifies growth targets or scoring bands for such tests or assessments or otherwise adapts the test or assessment to the state education department's requirements.

3. Ratings. The annual evaluations conducted pursuant to this section shall rate teacher and principal effectiveness using the following categories: highly effective or "H", effective or "E", developing or "D" and ineffective or "I".

4. Categories. The annual evaluation system shall consist of multiple measures in two categories: student performance and teacher observations.

a. Student performance category. Such category shall have at least one subcomponent and an optional second subcomponent as follows:

(1) For the first subcomponent, (A) for a teacher whose course ends in a state-created or administered test for which there is a state-provided growth model, such teacher shall have a state-provided growth score based on such model; and (B) for a teacher whose course does not end in a state-created or administered test such teacher shall have a student learning objective (SLO) consistent with a goal-setting process determined or developed by the commissioner, that results in a student growth score; provided that, for any teacher whose course ends in a state-created or administered assessment for which there is no state-provided growth model, such assessment must be used as the underlying assessment for such SLO;

(2) For the optional second subcomponent, a district may locally select a second measure in accordance with this subparagraph. Such second measure shall apply in a consistent manner, to the extent practicable, across the district and be either: (A) a second state-provided growth score on a state-created or administered test under clause (A) of subparagraph one of this paragraph, or (B) a growth score based on a state-designed supplemental assessment, calculated using a state-provided or approved growth model. The optional second subcomponent shall provide options for multiple assessment measures that are aligned to existing classroom and school best practices and take into consideration the recommendations in the testing reduction report as required by section one of subpart F of the chapter of the laws of two thousand fifteen which added this section regarding the reduction of unnecessary additional testing.

The commissioner shall determine the weights and scoring ranges for the subcomponent or subcomponents of the student performance category that shall result in a combined category rating. The commissioner shall also set parameters for appropriate targets for student growth for both subcomponents, and the department must affirmatively approve and shall have the authority to disapprove or require modifications of district plans that do not set appropriate growth targets, including after initial approval. The commissioner shall set such weights and parameters consistent with the terms contained herein.

b. Teacher observations category. The observations category for teachers shall be based on a state-approved rubric and shall include up to three subcomponents. Such category must include: (1) a subcomponent based on classroom observations conducted by a principal or other trained administrator and must also include (2) a subcomponent based on classroom observations by an impartial independent trained evaluator or evaluators selected by the district. An independent trained evaluator may be employed within the school district, but not the same school

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1 building, as the teacher being evaluated. Such category may also include
2 a subcomponent based on classroom observations conducted by a trained
3 peer teacher rated effective or highly effective from the same school or
4 from another school in the district.

5 The commissioner shall determine the weights, and/or weighting options
6 and scoring ranges for the subcomponents of the observations category
7 that result in a combined category rating. The commissioner shall also
8 determine the minimum number of observations to be conducted annually,
9 including frequency and duration, and any parameters therefor. The
10 commissioner shall set such weights and scores consistent with the terms
11 contained herein.

12 5. Rating determination. The overall rating determination shall be
13 determined according to a methodology as follows:

14 a. The following rules shall apply: a teacher or principal who is (1)
15 rated using two subcomponents in the student performance category and
16 receives a rating of ineffective in such category shall be rated irtef-
17 fective overall; provided, however, that if the measure used in the
18 second subcomponent is a state-provided growth score on a state-created
19 or administered test pursuant to clause (A) of subparagraph one of para-
20 graph a of subdivision four of this section, a teacher or principal who
21 receives a rating of ineffective in such category shall not be eligible
22 to receive a rating of effective or highly effective overall; (2) rated
23 using only the state measure subcomponent in the student performance
24 category and receives a rating of ineffective in such category shall not
25 be eligible to receive a rating of effective or highly effective over-
26 all; and (3) rated ineffective in the teacher observations category
27 shall not be eligible to receive a rating of effective or highly effec-
28 tive overall.

29 b. Except as otherwise provided in paragraph a of this subdivision, a
30 teacher's composite score shall be determined as follows;

31 (1) If a teacher receives an H in the teacher observation category,
32 and an H in the student performance category, the teacher's composite
33 score shall be H;

34 (2) If a teacher receives an H in the teacher observation category,
35 and an E in the student performance category, the teacher's composite
36 score shall be H;

37 (3) If a teacher receives an H in the teacher observation category,
38 and a D in the student performance category, the teacher's composite
39 score shall be E;

40 (4) If a teacher receives an H in the teacher observation category,
41 and an I in the student performance category, the teacher's composite
42 score shall be D;

43 (5) If a teacher receives an E in the teacher observation category,
44 and an H in the student performance category, the teacher's composite
45 score shall be H;

46 (6) If a teacher receives an E in the teacher observation category,
47 and an E in the student performance category, the teacher's composite
48 score shall be E;

49 (7) If a teacher receives an E in the teacher observation category,
50 and a D in the student performance category, the teacher's composite
51 score shall be E;

52 (8) If a teacher receives an E in the teacher observation category,
53 and an I in the student performance category, the teacher's composite
54 score shall be D;

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(9) If a teacher receives a D in the teacher observation category, and an H in the student performance category, the teacher's composite score shall be E;

(10) If a teacher receives a D in the teacher observation category, and an E in the student performance category, the teacher's composite score shall be E;

(11) If a teacher receives a D in the teacher observation category, and a D in the student performance category, the teacher's composite score shall be D;

(12) If a teacher receives a D in the teacher observation category, and an I in the student performance category, the teacher's composite score shall be I;

(13) If a teacher receives an I in the teacher observation category, and an H in the student performance category, the teacher's composite score shall be D;

(14) If a teacher receives an I in the teacher observation category, and an E in the student performance category, the teacher's composite score shall be D;

(15) If a teacher receives an I in the teacher observation category, and D in the student performance category, the teacher's composite score shall be I;

(16) If a teacher receives an I in the teacher observation category, and an I in the student performance category, the teacher's composite score shall be I.

6. Prohibited elements. The following elements shall no longer be eligible to be used in any evaluation subcomponent pursuant to this section:

a. evidence of student development and performance derived from lesson plans, other artifacts of teacher practice, and student portfolios, except for student portfolios measured by a state-approved rubric where permitted by the department;

b. use of an instrument for parent or student feedback;

c. use of professional goal-setting as evidence of teacher or principal effectiveness;

d. any district or regionally-developed assessment that has not been approved by the department; and

e. any growth or achievement target that does not meet the minimum standards as set forth in regulations of the commissioner adopted hereunder.

7. The commissioner shall ensure that the process by which weights and scoring ranges are assigned to subcomponents and categories is transparent and available to those being rated before the beginning of each school year. Such process must ensure that it is possible for a teacher or principal to obtain any number of points in the applicable scoring ranges, including zero, in each subcomponent. The superintendent, district superintendent or chancellor and the representative of the collective bargaining unit (where one exists) shall certify in the district's plan that the evaluation process shall use the standards for the scoring ranges provided by the commissioner. Provided, however, that in any event, the following rules shall apply: a teacher or principal who is:

a. rated using two subcomponents in the student performance category and receives a rating of ineffective in such category shall be rated ineffective overall, except that if the measure used in the second subcomponent is a second state-provided growth score on a state-administered or sponsored test pursuant to clause (A) of subparagraph one of

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1 paragraph a of subdivision four of this section, a teacher or principal
2 that receives a rating of ineffective in such category shall not be
3 eligible to receive a rating of effective or highly effective overall;

4 b. rated using only the state measure subcomponent in the student
5 performance category and receives a rating of ineffective in such cate-
6 gory shall not be eligible to receive a rating of effective or highly
7 effective overall; and

8 c. rated ineffective in the observations category shall not be eligi-
9 ble to receive a rating of effective or highly effective overall.

10 8. A student may not be instructed, for two consecutive school years,
11 by any two teachers in the same district, each of whom received a rating
12 of ineffective under an evaluation conducted pursuant to this section in
13 the school year immediately prior to the school year in which the
14 student is placed in the teacher's classroom; provided, that if a
15 district deems it impracticable to comply with this subdivision, the
16 district shall seek a waiver from the department from such requirement.

17 9. Nothing in this section shall be construed to affect the unfettered
18 statutory right of a district to terminate a probationary (non-tenured)
19 teacher or principal for any statutorily and constitutionally permissi-
20 ble reasons.

21 10. The local collective bargaining representative shall negotiate
22 with the district:

23 a. whether to use a second measure, and, in the event that a second
24 measure is used, which measure to use, pursuant to subparagraph two of
25 paragraph a of subdivision four of this section and

26 b. how to implement the provisions of paragraph b of subdivision four
27 of this section, and associated regulations as established by the
28 commissioner, in accordance with article fourteen of the civil service
29 law.

30 11. Notwithstanding any inconsistent provision of law, no school
31 district shall be eligible for an apportionment of general support for
32 public schools from the funds appropriated for the 2015--2016 school
33 year and any year thereafter in excess of the amount apportioned to such
34 school district in the respective base year unless such school district
35 has submitted documentation that has been approved by the commissioner
36 by November fifteenth, two thousand fifteen, or by September first of
37 each subsequent year, demonstrating that it has fully implemented the
38 standards and procedures for conducting annual teacher and principal
39 evaluations of teachers and principals in accordance with the require-
40 ments of this section and the regulations issued by the commissioner.
41 Provided further that any apportionment withheld pursuant to this
42 section shall not occur prior to April first of the current year and
43 shall not have any effect on the base year calculation for use in the
44 subsequent school year. For purposes of this section, "base year" shall
45 mean the base year as defined in paragraph b of subdivision one of
46 section thirty-six hundred two of this chapter, and "current year" shall
47 mean the current year as defined in paragraph a of subdivision one of
48 section thirty-six hundred two of this chapter.

49 12. Notwithstanding any other provision of law, rule or regulation to
50 the contrary, all collective bargaining agreements entered into after
51 April first, two thousand fifteen shall be consistent with the require-
52 ments of this section, unless the agreement relates to the two thousand
53 fourteen--two thousand fifteen school year only. Nothing in this section
54 shall be construed to abrogate any conflicting provisions of any collec-
55 tive bargaining agreement in effect on April first, two thousand fifteen
56 during the term of such agreement and until the entry into a successor

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1 collective bargaining agreement, provided that notwithstanding any other
2 provision of law to the contrary, upon expiration of such term and the
3 entry into a successor collective bargaining agreement the provisions of
4 this section shall apply.

5 13. Any reference in law to "annual professional performance review"
6 shall be deemed to refer to an annual professional performance review
7 pursuant to section three thousand twelve-c of this article or annual
8 teacher and principal evaluations pursuant to this section and any
9 references to section three thousand twelve-c of this article shall be
10 deemed to refer to section three thousand twelve-c of this article
11 and/or this section, as applicable.

12 14. The commissioner shall adopt regulations to align the principal
13 evaluation system as set forth in section three thousand twelve-c of
14 this article with the new teacher evaluation system set forth herein.

15 15. The provisions of paragraphs d, k, k-1, k-2 and l of subdivision
16 two and subdivisions four, five, five-a, nine, and ten of section three
17 thousand twelve-c of this article, as amended, shall apply to this
18 section to the extent determined by the commissioner.

19 § 3. This act shall take effect immediately.

20 SUBPART F

21 Section 1. Testing reduction report. New York families in many
22 districts are expressing significant stress and anxiety from over-test-
23 ing. The demands of state tests have been growing and there has been an
24 increase in the number of local tests. As a result, testing in many
25 districts has reached a level that is counterproductive and must be
26 addressed. On or before June 1, 2015, the Chancellor of the Board of
27 Regents shall submit a report to the Governor, the Temporary President
28 of the Senate, and the Speaker of the Assembly outlining recommendations
29 that shall help to: reduce the amount of state and local student test-
30 ing, improve the quality thereof, and thereby reduce test-related stress
31 and anxiety for students and educators. The report shall outline ways in
32 which any future testing in New York shall be implemented in a manner
33 that minimizes classroom preparation, student stress and student anxie-
34 ty. The Chancellor shall work with students, parents, educators, school
35 districts, and other relevant stakeholders in preparing the report.

36 § 2. This act shall take effect immediately.

37 SUBPART G

38 Section 1. Subdivision 7-a of section 305 of the education law, as
39 added by chapter 296 of the laws of 2008, is amended to read as follows:

40 7-a. a. In addition to the authority to revoke and annul a certificate
41 of qualification of a teacher in a proceeding brought pursuant to subdi-
42 vision seven of this section, the commissioner shall be authorized, and
43 it shall be his or her duty, to revoke and annul in accordance with this
44 subdivision the teaching certificate of a teacher convicted of a sex
45 offense for which registration as a sex offender is required pursuant to
46 article six-C of the correction law or of any other violent felony
47 offense or offenses committed against a child when such child was the
48 intended victim of such offense.

49 b. As used in this subdivision, the following terms shall have the
50 following meanings:

51 (1) "conviction" means any conviction whether by plea of guilty or
52 nolo contendere or from a verdict after trial or otherwise;

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1 (2) "sex offense" means an offense set forth in subdivision two or
2 three of section one hundred sixty-eight-a of the correction law,
3 including an offense committed in any jurisdiction for which the offen-
4 dcr is required to register as a sex offender in New York;

5 (3) "teacher" means any professional educator holding a teaching
6 certificate as defined in subparagraph four of this paragraph, including
7 but not limited to a classroom teacher, teaching assistant, pupil
8 personnel services professional, school administrator or supervisor or
9 superintendent of schools; [a-R-fi)

10 (4) "teaching certificate" means the certificate or license or other
11 certificate of qualification granted to a teacher by any authority what-
12 soever; and

13 (5) "violent felony offense" means any offense as defined in subdivi-
14 sion one of section 70.02 of the penal law.

15 c. Upon receipt of a certified copy of a criminal history record show-
16 ing that a teacher has been convicted of a sex offense or sex offenses
17 or a violent felony offense or offenses committed against a child when
18 such child was the intended victim of such offense or upon receipt of
19 notice of such a conviction as provided in paragraph d of this subdivi-
20 sion, the commissioner shall automatically revoke and annul the teaching
21 certificate of such teacher without the right to a hearing. The commis-
22 sioner shall mail notice of the revocation and annulment pursuant to
23 this subdivision by certified mail, return receipt requested, and by
24 first-class mail directed to the teacher at such teacher's last known
25 address and, if different, the last address filed by the certificate
26 holder with the commissioner and to the teacher's counsel of record in
27 the criminal proceeding as reported in the notice pursuant to paragraph
28 d of this subdivision. Such notice shall inform the teacher that his or
29 her certificate has been revoked and annulled, identify the sex offense
30 or sex offenses or violent felony offense or offenses committed against
31 a child when such child was the intended victim of such offense of which
32 the teacher has been convicted and shall set forth the procedure to
33 follow if the teacher denies he or she is the person who has been so
34 convicted. If such teacher notifies the commissioner in writing within
35 twenty-five days after the date of receipt of the notice that he or she
36 is not the same person as the convicted offender identified in the crim-
37 inal record or identified pursuant to paragraph d of this subdivision,
38 provides proof to reasonably support such claim and the commissioner is
39 satisfied the proof establishes such claim, the commissioner shall,
40 within five business days of the receipt of such proof, restore such
41 teacher's teaching certificate retroactive to the date of revocation and
42 annulment.

43 d. Upon conviction of a teacher of a sex offense defined in this
44 subdivision, the district attorney or other prosecuting authority who
45 obtained such conviction shall provide notice of such conviction to the
46 commissioner identifying the sex offense or sex offenses or violent
47 felony offense or offenses committed against a child when such child was
48 the intended victim of such offense of which the teacher has been
49 convicted, the name and address of such offender and other identifying
50 information prescribed by the commissioner, including the offender's
51 date of birth and social security number, to the extent consistent with
52 federal and state laws governing personal privacy and confidentiality of
53 information. Such notice shall also include the name and business
54 address of the offender's counsel of record in the criminal proceeding.

55 e. Upon receipt of proof that the conviction or convictions that
56 formed the basis for revocation and annulment of the teacher's teaching

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1 certificate pursuant to this subdivision have been set aside upon appeal
2 or otherwise reversed, vacated or annulled, the commissioner shall be
3 required to conduct a due process hearing pursuant to subdivision seven
4 of this section and part eighty-three of title eight of the New York
5 codes, rules and regulations prior to making a determination as to
6 whether to reinstate the teacher's original teaching certificate. Such
7 determination shall be made within ninety days after such proof has been
8 received.

9 f. Except as provided in paragraph g of this subdivision, and notwith-
10 standing any other provision of law to the contrary, a teacher shall be
11 reinstated to his or her position of employment in a public school, with
12 full back pay and benefits from the date his or her certificate was
13 revoked or annulled to the date of such reinstatement, under the follow-
14 ing circumstances:

15 (i) The termination of employment was based solely on the conviction
16 of a sex offense, or conviction of a violent felony offense or offenses
17 committed against a child when such child was the intended victim of
18 such offense or the revocation or annulment of a certificate based on
19 such conviction, and such conviction has been set aside on appeal or
20 otherwise reversed, vacated or annulled and the commissioner has rein-
21 stated the teacher's certification pursuant to paragraph e of this
22 subdivision; or

23 (ii) The termination of employment was based solely on the conviction
24 of a sex offense or violent felony offense or offenses committed against
25 a child when such child was the intended victim of such offense and it
26 has been determined that the teacher is not the same person as the
27 convicted offender.

28 g. If a teacher's employment was terminated as a result of a discipli-
29 nary proceeding conducted pursuant to section three thousand twenty-a of
30 this chapter or other disciplinary hearing conducted pursuant to any
31 collective bargaining or contractual agreement on one or more grounds
32 other than conviction of a sex offense, or the revocation or annulment
33 of a certificate based on such conviction, then nothing in paragraph f
34 of this subdivision shall require a school district to reinstate employ-
35 ment of such teacher or be liable for back pay or benefits.

36 h. No provision of this article shall be deemed to preclude the
37 following: (i) the commissioner from conducting a due process hearing
38 pursuant to subdivision seven of this section and part eighty-three of
39 title eight of the New York codes, rules and regulations; or (ii) a
40 school district or employing board from bringing a disciplinary proceed-
41 ing pursuant to section three thousand twenty-a or three thousand twen-
42 ty-b of this chapter; or (iii) a school district or employing board from
43 bringing an alternative disciplinary proceeding conducted pursuant to a
44 collective bargaining or contractual agreement.

45 i. The commissioner shall be authorized to promulgate any regulations
46 necessary to implement the provisions of this subdivision.

47 § 2. Subdivision 3 and paragraph a of subdivision 4 of section 3020 of
48 the education law, as amended by chapter 103 of the laws of 2010, are
49 amended to read as follows:

50 3. Notwithstanding any inconsistent provision of law, the procedures
51 set forth in section three thousand twenty-a of this article and subdivi-
52 sion seven of section twenty-five hundred ninety-j of this chapter may
53 be modified or replaced by agreements negotiated between the city school
54 district of the city of New York and any employee organization repres-
55 enting employees or titles that are or were covered by any memorandum of
56 agreement executed by such city school district and the council of

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1 supervisors and administrators of the city of New York on or after
2 December first, nineteen hundred ninety-nine. Where such procedures are
3 so modified or replaced: (i) compliance with such modification or
4 replacement procedures shall satisfy any provision in this chapter that
5 requires compliance with section three thousand twenty-a, (ii) any
6 employee against whom charges have been preferred prior to the effective
7 date of such modification or replacement shall continue to be subject to
8 the provisions of such section as in effect on the date such charges
9 were preferred, (iii) the provisions of subdivisions one and two of this
10 section shall not apply to agreements negotiated pursuant to this subdivi-
11 sion, and (iv) in accordance with paragraph (e) of subdivision one of
12 section two hundred nine-a of the civil service law, such modification
13 or replacement procedures contained in an agreement negotiated pursuant
14 to this subdivision shall continue as terms of such agreement after its
15 expiration until a new agreement is negotiated; provided that any alter-
16 nate disciplinary procedures contained in a collective bargaining agree-
17 ment that becomes effective on or after July first, two thousand ten
18 shall provide for an expedited hearing process before a single hearing
19 officer in accordance with subparagraph (i-a) of paragraph c of subdivi-
20 sion three of section three thousand twenty-a of this article in cases
21 in which charges of incompetence are brought against a building princi-
22 pal based solely upon an allegation of a pattern of ineffective teaching
23 or performance as defined in section three thousand twelve-c of this
24 article and shall provide that such a pattern of ineffective teaching or
25 performance shall constitute very significant evidence of incompetence
26 which may form the basis for just cause removal of the building princi-
27 pal and provided further that any alternate disciplinary procedures
28 contained in a collective bargaining agreement that becomes effective on
29 or after July first, two thousand fifteen shall provide that all hear-
30 ings pursuant to sections three thousand twenty-a or three thousand
31 twenty-b of this article shall be conducted before a single hearing
32 officer and that two consecutive ineffective ratings pursuant to annual
33 professional performance reviews conducted in accordance with the
34 provisions of section three thousand twelve-c or three thousand twelve-ct
35 of this article shall constitute prima facie evidence of incompetence
36 that can only be overcome by clear and convincing evidence that the
37 employee is not incompetent in light of all surrounding circumstances,
38 and if not successfully overcome, the finding, absent extraordinary
39 circumstances, shall be just cause for removal, and that three consec-
40 utive ineffective ratings pursuant to annual professional performance
41 reviews conducted in accordance with the provisions of section three
42 thousand twelve-c or three thousand twelve-ct of this article shall
43 constitute prima facie evidence of incompetence that can only be over-
44 come by clear and convincing evidence that the calculation of one or
45 more of the principal's underlying components on the annual professional
46 performance reviews pursuant to section three thousand twelve-c or three
47 thousand twelve-ct of this article was fraudulent, and if not successful-
48 ly overcome, the finding, absent extraordinary circumstances, shall be
49 just cause for removal. For purposes of this subdivision, fraud shall
50 include mistaken identity. Notwithstanding any inconsistent provision of
51 law, the commissioner shall review any appeals authorized by such
52 modification or replacement procedures within fifteen days from receipt
53 by such commissioner of the record of prior proceedings in the matter
54 subject to appeal. Such review shall have preference over all other
55 appeals or proceedings pending before such commissioner.

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1 a. Notwithstanding any inconsistent provision of law, the procedures
2 set forth in section three thousand twenty-a of this article and subdi-
3 vision seven of section twenty-five hundred ninety-j of this chapter may
4 be modified by agreements negotiated between the city school district of
5 the city of New York and any employee organization representing employ-
6 ees or titles that are or were covered by any memorandum of agreement
7 executed by such city school district and the united federation of
8 teachers on or after June tenth, two thousand two. Where such proce-
9 dures are so modified: (i) compliance with such modified procedures
10 shall satisfy any provision of this chapter that requires compliance
11 with section three thousand twenty-a of this article; (ii) any employee
12 against whom charges have been preferred prior to the effective date of
13 such modification shall continue to be subject to the provisions of such
14 section as in effect on the date such charges were preferred; (iii) the
15 provisions of subdivisions one and two of this section shall not apply
16 to agreements negotiated pursuant to this subdivision, except that no
17 person enjoying the benefits of tenure shall be disciplined or removed
18 during a term of employment except for just cause; and (iv) in accord-
19 ance with paragraph (e) of subdivision one of section two hundred nine-a
20 of the civil service law, such modified procedures contained in an
21 agreement negotiated pursuant to this subdivision shall continue as
22 terms of such agreement after its expiration until a new agreement is
23 negotiated; and provided further that any alternate disciplinary proce-
24 dures contained in a collective bargaining agreement that becomes effec-
25 tive on or after July first, two thousand ten shall provide for an exp-
26 edited hearing process before a single hearing officer in accordance with
27 subparagraph (i-a) of paragraph c of subdivision three of section three
28 thousand twenty-a of this article in cases in which charges of incomp-
29 etence are brought based solely upon an allegation of a pattern of inef-
30 fective teaching or performance as defined in section three thousand
31 twelve-c of this article and shall provide that such a pattern of inef-
32 fective teaching or performance shall constitute very significant
33 evidence of incompetence which may form the basis for just cause
34 removal, and provided further that any alternate disciplinary procedures
35 contained in a collective bargaining agreement that becomes effective on
36 or after July first, two thousand fifteen shall provide that all hear-
37 ings pursuant to sections three thousand twenty-a or three thousand
38 twenty-b of this article shall be conducted before a single hearing
39 officer and that two consecutive ineffective ratings pursuant to annual
40 professional performance reviews conducted in accordance with the
41 provisions of section three thousand twelve-c or three thousand twelve-ct
42 of this article shall constitute prima facie evidence of incompetence
43 that can only be overcome by clear and convincing evidence that the
44 employee is not incompetent in light of all surrounding circumstances,
45 and if not successfully overcome, the finding, absent extraordinary
46 circumstances, shall be just cause for removal, and that three consec-
47 utive ineffective ratings pursuant to annual professional performance
48 reviews conducted in accordance with the provisions of section three
49 thousand twelve-c or three thousand twelve-d of this article shall
50 constitute prima facie evidence of incompetence that can only be over-
51 come by clear and convincing evidence that the calculation of one or
52 more of the teacher's underlying components on the annual professional
53 performance reviews pursuant to section three thousand twelve-c or three
54 thousand twelve-d of this article was fraudulent, and if not successful-
55 ly overcome, the finding, absent extraordinary circumstances, shall be

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1 just cause for removal. For purposes of this paragraph, fraud shall
2 include mistaken identity.

3 § 3. Section 3020-a of the education law, as amended by section 1 of
4 part B of chapter 57 of the laws of 2012, is amended to read as follows:

5 § 3020-a. Disciplinary procedures and penalties. 1. Filing of charges.
6 All charges against a person enjoying the benefits of tenure as provided
7 in subdivision three of section eleven hundred two, and sections twenty-
8 ty-five hundred nine, twenty-five hundred seventy-three, twenty-five
9 hundred ninety-j, three thousand twelve and three thousand fourteen of
10 this chapter shall be in writing and filed with the clerk or secretary
11 of the school district or employing board during the period between the
12 actual opening and closing of the school year for which the employed is
13 normally required to serve. Except as provided in subdivision eight of
14 section twenty-five hundred seventy-three and subdivision seven of
15 section twenty-five hundred ninety-j of this chapter, no charges under
16 this section shall be brought more than three years after the occurrence
17 of the alleged incompetency or misconduct, except when the charge is of
18 misconduct constituting a crime when committed.

19 2. Disposition of charges. a. Upon receipt of the charges, the clerk
20 or secretary of the school district or employing board shall immediately
21 notify said board thereof. Within five days after receipt of charges,
22 the employing board, in executive session, shall determine, by a vote of
23 a majority of all the members of such board, whether probable cause
24 exists to bring a disciplinary proceeding against an employee pursuant
25 to this section. If such determination is affirmative, a written state-
26 ment specifying (i) the charges in detail, (ii) the maximum penalty
27 which will be imposed by the board if the employee does not request a
28 hearing or that will be sought by the board if the employee is found
29 guilty of the charges after a hearing and (iii) the employee's rights
30 under this section, shall be immediately forwarded to the accused
31 employee by certified or registered mail, return receipt requested or by
32 personal delivery to the employee.

33 b. The employee may be suspended pending a hearing on the charges and
34 the final determination thereof. The suspension shall be with pay,
35 except the employee may be suspended without pay if the employee has
36 entered a guilty plea to or has been convicted of a felony crime
37 concerning the criminal sale or possession of a controlled substance, a
38 precursor of a controlled substance, or drug paraphernalia as defined in
39 article two hundred twenty or two hundred twenty-one of the penal law;
40 or a felony crime involving the physical abuse of a minor or student.

41 c. Where charges of misconduct constituting physical or sexual abuse
42 of a student are brought on or after July first, two thousand fifteen,
43 the board of education may suspend the employee without pay pending an
44 expedited hearing pursuant to subparagraph (i-a) of paragraph c of
45 subdivision three of this section. Notwithstanding any other law, rule,
46 or regulation to the contrary, the commissioner shall establish a process
47 in regulations for a probable cause hearing before an impartial
48 hearing officer within ten days to determine whether the decision to
49 suspend an employee without pay pursuant to this paragraph should be
50 continued or reversed. The process for selection of an impartial hear-
51 ing officer shall be as similar as possible to the regulatory framework
52 for the appointment of an impartial hearing officer for due process
53 complaints pursuant to section forty-four hundred four of this chapter.
54 The hearing officer shall determine whether probable cause supports the
55 charges and shall reverse the decision of the board of education to
56 suspend the employee without pay and reinstate such pay upon a finding

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1 that probable cause does not support the charges. The hearing officer
2 may also reinstate pay upon a written determination that a suspension
3 without pay is grossly disproportionate in light of all surrounding
4 circumstances. Provided, further, that such an employee shall be eligi-
5 ble to receive reimbursement for withheld pay and accrued interest at a
6 rate of six percent compounded annually if the hearing officer finds in
7 his or her favor, either at the probable cause hearing or in a final
8 determination pursuant to the expedited hearing held pursuant to subpar-
9 agraph (i-a) of paragraph c of subdivision three of this section. Any
10 suspension without pay shall last no longer than one hundred and twenty
11 days from the decision of the board of education to suspend the employee
12 without pay and such suspension shall only relate to employee compen-
13 sation, exclusive of other benefits and guarantees. Notwithstanding any
14 other provision of law or regulation to the contrary, any provision of a
15 collective bargaining agreement entered into by the city of New York as
16 of April first, two thousand fifteen, that provides for suspension with-
17 out pay for offenses as specified in this paragraph shall supersede the
18 provisions hereof and shall continue in effect without modification and
19 may be extended.

20 The employee shall be terminated without a hearing, as provided for
21 in this section, upon conviction of a sex offense, as defined in subpar-
22 agraph two of paragraph b of subdivision seven-a of section three
23 hundred five of this chapter. To the extent this section applies to an
24 employee acting as a school administrator or supervisor, as defined in
25 subparagraph three of paragraph b of subdivision seven-b of section
26 three hundred five of this chapter, such employee shall be terminated
27 without a hearing, as provided for in this section, upon conviction of a
28 felony offense defined in subparagraph two of paragraph b of subdivision
29 seven-b of section three hundred five of this chapter.

30 [c. Wit-l:H:t] e. (i) For hearings commenced by the filing of charges
31 prior to July first, two thousand fifteen, within ten days of receipt of
32 the statement of charges, the employee shall notify the clerk or secre-
33 tary of the employing board in writing whether he or she desires a hear-
34 ing on the charges and when the charges concern pedagogical incompetence
35 or issues involving pedagogical judgment, his or her choice of either a
36 single hearing officer or a three member panel, provided that a three
37 member panel shall not be available where the charges concern pedagog-
38 ical incompetence based solely upon a teacher's or principal's pattern
39 of ineffective teaching or performance as defined in section three thou-
40 sand twelve-c of this article. All other charges shall be heard by a
41 single hearing officer.

42 (ii) All hearings commenced by the filing of charges on or after July
43 first, two thousand fifteen shall be heard by a single hearing officer.

44 [Eh-] f. The unexcused failure of the employee to notify the clerk or
45 secretary of his or her desire for a hearing within ten days of the
46 receipt of charges shall be deemed a waiver of the right to a hearing.
47 Where an employee requests a hearing in the manner provided for by this
48 section, the clerk or secretary of the board shall, within three working
49 days of receipt of the employee's notice or request for a hearing, noti-
50 fy the commissioner of the need for a hearing. If the employee waives
51 his or her right to a hearing the employing board shall proceed, within
52 fifteen days, by a vote of a majority of all members of such board, to
53 determine the case and fix the penalty, if any, to be imposed in accord-
54 ance with subdivision four of this section.

55 3. Hearings. a. Notice of hearing. Upon receipt of a request for a
56 hearing in accordance with subdivision two of this section, the commis-

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1 sioner shall forthwith notify the American Arbitration Association
2 (hereinafter "association") of the need for a hearing and shall request
3 the association to provide to the commissioner forthwith a list of names
4 of persons chosen by the association from the association's panel of
5 labor arbitrators to potentially serve as hearing officers together with
6 relevant biographical information on each arbitrator. Upon receipt of
7 said list and biographical information, the commissioner shall forthwith
8 send a copy of both simultaneously to the employing board and the
9 employee. The commissioner shall also simultaneously notify both the
10 employing board and the employee of each potential hearing officer's
11 record in the last five cases of commencing and completing hearings
12 within the time periods prescribed in this section.

13 b. (i) Hearing officers. All hearings pursuant to this section shall
14 be conducted before and by a single hearing officer selected as provided
15 for in this section. A hearing officer shall not be eligible to serve in
16 such position if he or she is a resident of the school district, other
17 than the city of New York, under the jurisdiction of the employing
18 board, an employee, agent or representative of the employing board or of
19 any labor organization representing employees of such employing board,
20 has served as such agent or representative within two years of the date
21 of the scheduled hearing, or if he or she is then serving as a mediator
22 or fact finder in the same school district.

23 (A) Notwithstanding any other provision of law, for hearings commenced
24 by the filing of charges prior to April first, two thousand twelve, the
25 hearing officer shall be compensated by the department with the custom-
26 ary fee paid for service as an arbitrator under the auspices of the
27 association for each day of actual service plus necessary travel and
28 other reasonable expenses incurred in the performance of his or her
29 duties. All other expenses of the disciplinary proceedings commenced by
30 the filing of charges prior to April first, two thousand twelve shall be
31 paid in accordance with rules promulgated by the commissioner. Claims
32 for such compensation for days of actual service and reimbursement for
33 necessary travel and other expenses for hearings commenced by the filing
34 of charges prior to April first, two thousand twelve shall be paid from
35 an appropriation for such purpose in the order in which they have been
36 approved by the commissioner for payment, provided payment shall first
37 be made for any other hearing costs payable by the commissioner, includ-
38 ing the costs of transcribing the record, and provided further that no
39 such claim shall be set aside for insufficiency of funds to make a
40 complete payment, but shall be eligible for a partial payment in one
41 year and shall retain its priority date status for appropriations desig-
42 nated for such purpose in future years.

43 (B) Notwithstanding any other provision of law, rule or regulation to
44 the contrary, for hearings commenced by the filing of charges on or
45 after April first, two thousand twelve, the hearing officer shall be
46 compensated by the department for each day of actual service plus neces-
47 sary travel and other reasonable expenses incurred in the performance of
48 his or her duties, provided that the commissioner shall establish a
49 schedule for maximum rates of compensation of hearing officers based on
50 customary and reasonable fees for service as an arbitrator and provide
51 for limitations on the number of study hours that may be claimed.

52 (ii) The commissioner shall mail to the employing board and the
53 employee the list of potential hearing officers and biographies provided
54 to the commissioner by the association, the employing board and the
55 employee, individually or through their agents or representatives, shall

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1 by mutual agreement select a hearing officer from said list to conduct
2 the hearing and shall notify the commissioner of their selection.

3 (111) Within fifteen days after receiving the list of potential hear-
4 ing officers as described in subparagraph (ii) of this paragraph, the
5 employing board and the employee shall each notify the commissioner of
6 their agreed upon hearing officer selection. If the employing board and
7 the employee fail to agree on an arbitrator to serve as a hearing offi-
8 cer from the list of potential hearing officers, or fail to notify the
9 commissioner of a selection within such fifteen day time period, the
10 commissioner shall appoint a hearing officer from the list. The
11 provisions of this subparagraph shall not apply in cities with a popu-
12 lation of one million or more with alternative procedures specified in
13 section three thousand twenty of this article.

14 (iv) In those cases commenced by the filing of charges prior to July
15 first, two thousand fifteen in which the employee elects to have the
16 charges heard by a hearing panel, the hearing panel shall consist of the
17 hearing officer, selected in accordance with this subdivision, and two
18 additional persons, one selected by the employee and one selected by the
19 employing board, from a list maintained for such purpose by the commis-
20 sioner. The list shall be composed of professional personnel with admin-
21 istrative or supervisory responsibility, professional personnel without
22 administrative or supervisory responsibility, chief school administra-
23 tors, members of employing boards and others selected from lists of
24 nominees submitted to the commissioner by statewide organizations
25 representing teachers, school administrators and supervisors and the
26 employing boards. Hearing panel members other than the hearing officer
27 shall be compensated by the department at the rate of one hundred
28 dollars for each day of actual service plus necessary travel and subsis-
29 tence expenses. The hearing officer shall be compensated as set forth in
30 this subdivision. The hearing officer shall be the chairperson of the
31 hearing panel.

32 c. Hearing procedures. (i) (A) The commissioner shall have the power
33 to establish necessary rules and procedures for the conduct of hearings
34 under this section.

35 (B) The department shall be authorized to monitor and investigate a
36 hearing officer's compliance with statutory timelines pursuant to this
37 section. The commissioner shall annually inform all hearing officers who
38 have heard cases pursuant to this section during the preceding year that
39 the time periods prescribed in this section for conducting such hearings
40 are to be strictly followed. A record of continued failure to commence
41 and complete hearings within the time periods prescribed in this section
42 shall be considered grounds for the commissioner to exclude such indi-
43 vidual from the list of potential hearing officers sent to the employing
44 board and the employee for such hearings.

45 (C) Such rules shall not require compliance with technical rules of
46 evidence. Hearings shall be conducted by the hearing officer selected
47 pursuant to paragraph b of this subdivision with full and fair disclo-
48 sure of the nature of the case and evidence against the employee by the
49 employing board and shall be public or private at the discretion of the
50 employee and provided further that the hearing officer, at the pre-hear-
51 ing conference, shall set a schedule and manner for full and fair
52 disclosure of the witnesses and evidence to be offered by the employee.
53 The employee shall have a reasonable opportunity to defend himself or
54 herself and an opportunity to testify in his or her own behalf. The
55 employee shall not be required to testify. Each party shall have the
56 right to be represented by counsel, to subpoena witnesses, and to cross-

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examine witnesses. All testimony taken shall be under oath which the hearing officer is hereby authorized to administer. A child witness under the age of fourteen may be permitted to testify through the use of live, two-way closed-circuit television, as such term is defined in subdivision four of section 65.00 of the criminal procedure law, when the hearing officer, after providing the employee with an opportunity to be heard, determines by clear and convincing evidence that such child witness would suffer serious mental or emotional harm which would substantially impair such child's ability to communicate if required to testify at the hearing without the use of live, two-way closed-circuit television and that the use of such live, two-way closed-circuit television will diminish the likelihood or extent of such harm. In making such determination, the hearing officer shall consider any applicable factors contained in subdivision ten of section 65.20 of the criminal procedure law. Where the hearing officer determines that such child witness will be permitted to testify through the use of live, two-way closed-circuit television, the testimony of such child witness shall be taken in a manner consistent with section 65.30 of the criminal procedure law.

(D) An accurate record of the proceedings shall be kept at the expense of the department at each such hearing in accordance with the regulations of the commissioner. A copy of the record of the hearings shall, upon request, be furnished without charge to the employee and the board of education involved. The department shall be authorized to utilize any new technology or such other appropriate means to transcribe or record such hearings in an accurate, reliable, efficient and cost-effective manner without any charge to the employee or board of education involved.

(i-a)(A) [Wl::lerecl::la:i:ges of incOffll*ltence are brought upon or principal, as defined in section three thousand two-hundred and thirty-five article, the hearing shall be conducted before and by a single hearing officer in an expedited hearing, which shall commence within seven days after the pre hearing conference and shall be completed within thirty days after the pre hearing conference. The hearing officer shall establish a hearing schedule at the pre hearing conference to ensure that the expedited hearing is completed within the required timeframes and to ensure an equitable distribution of days between the employee and the charged employee. Notwithstanding any other law, rule or regulation to the contrary, no adjournments may be granted that would extend the hearing beyond sixty days, except as authorized in this paragraph. A hearing officer, upon request, may grant a limited and time specific adjournment that would extend the hearing beyond such sixty days if the hearing officer determines that the delay is attributable to a circumstance or occurrence substantially beyond the control of the requesting party and an injustice would result if the adjournment were

]

(-B) Such charges shall allege that the employing board has developed a substantially implemented a teacher or principal improvement plan in accordance with subdivision four of section three thousand two-hundred and thirty-five article for the first evaluation in which the employee was rated ineffective, and the immediately preceding evaluation if the employee was rated ineffective. Notwithstanding any provision of law to the contrary, an ineffective teaching or performance as defined in section three thousand two-hundred and thirty-five article constitute very significant evidence of incompetence for]

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[purposes of this section. Nothing in this subparagraph shall be construed to limit the defenses which the employee may place before the hearing officer in challenging the allegation of a pattern of ineffective teaching or performance.]

[(C) The commissioner shall annually inform all hearing officers who have heard cases pursuant to this section during the preceding year that the time periods prescribed in this subparagraph for conducting CJ!pe

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(i) This subparagraph shall be considered grounds for the Commissioner to exclude such individual from the list of potential hearing officers sent to the employing board and the employee for such expedited hearings.] Where charges of misconduct constituting physical or sexual abuse of a student are brought, the hearing shall be conducted before and by a single hearing officer in an expedited hearing, which shall commence within seven days after the pre-hearing conference and shall be completed within sixty days after the pre-hearing conference. The hearing officer shall establish a hearing schedule at the pre-hearing conference to ensure that the expedited hearing is completed within the required timeframes and to ensure an equitable distribution of days between the employing board and the charged employee. Notwithstanding any other law, rule or regulation to the contrary, no adjournments may be granted that would extend the hearing beyond such sixty days, except as authorized in this subparagraph. A hearing officer, upon request, may grant a limited and time specific adjournment that would extend the hearing beyond such sixty days if the hearing officer determines that the delay is attributable to a circumstance or occurrence substantially beyond the control of the requesting party and an injustice would result if the adjournment were not granted.

(B) The commissioner shall annually inform all hearing officers who have heard cases pursuant to this section during the preceding year that the time periods prescribed in this subparagraph for conducting expedited hearings are to be strictly followed and failure to do so shall be considered grounds for the commissioner to exclude such individual from the list of potential hearing officers sent to the employing board and the employee for such expedited hearings.

(ii) The hearing officer selected to conduct a hearing under this section shall, within ten to fifteen days of agreeing to serve in such position, hold a pre-hearing conference which shall be held in the school district or county seat of the county, or any county, wherein the employing school board is located. The pre-hearing conference shall be limited in length to one day except that the hearing officer, in his or her discretion, may allow one additional day for good cause shown.

(iii) At the pre-hearing conference the hearing officer shall have the power to:

(A) issue subpoenas;

(B) hear and decide all motions, including but not limited to motions to dismiss the charges;

(C) hear and decide all applications for bills of particular or requests for production of materials or information, including, but not limited to, any witness statement (or statements), investigatory statement (or statements) or note (notes), exculpatory evidence or any other evidence, including district or student records, relevant and material to the employee's defense.

(iv) Any pre-hearing motion or application relative to the sufficiency of the charges, application or amendment thereof, or any preliminary

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1 matters shall be made upon written notice to the hearing officer and the
2 adverse party no less than five days prior to the date of the pre-hear-
3 ing conference. Any pre-hearing motions or applications not made as
4 provided for herein shall be deemed waived except for good cause as
5 determined by the hearing officer.

6 (v) In the event that at the pre-hearing conference the employing
7 board presents evidence that the professional license of the employee
8 has been revoked and all judicial and administrative remedies have been
9 exhausted or foreclosed, the hearing officer shall schedule the date,
10 time and place for an expedited hearing, which hearing shall commence
11 not more than seven days after the pre-hearing conference and which
12 shall be limited to one day. The expedited hearing shall be held in the
13 local school district or county seat of the county or any county, where-
14 in the said employing board is located. The expedited hearing shall not
15 be postponed except upon the request of a party and then only for good
16 cause as determined by the hearing officer. At such hearing, each party
17 shall have equal time in which to present its case.

18 (vi) During the pre-hearing conference, the hearing officer shall
19 determine the reasonable amount of time necessary for a final hearing on
20 the charge or charges and shall schedule the location, time(s) and
21 date(s) for the final hearing. The final hearing shall be held in the
22 local school district or county seat of the county, or any county, where-
23 in the said employing school board is located. In the event that the
24 hearing officer determines that the nature of the case requires the
25 final hearing to last more than one day, the days that are scheduled for
26 the final hearing shall be consecutive. The day or days scheduled for
27 the final hearing shall not be postponed except upon the request of a
28 party and then only for good cause shown as determined by the hearing
29 officer. In all cases, the final hearing shall be completed no later
30 than sixty days after the pre-hearing conference unless the hearing
31 officer determines that extraordinary circumstances warrant a limited
32 extension.

33 (vii) All evidence shall be submitted by all parties within one
34 hundred twenty-five days of the filing of charges and no additional
35 evidence shall be accepted after such time, absent extraordinary circum-
36 stances beyond the control of the parties.

37 d. Limitation on claims. Notwithstanding any other provision of law,
38 rule or regulation to the contrary, no payments shall be made by the
39 department pursuant to this subdivision on or after April first, two
40 thousand twelve for: (i) compensation of a hearing officer or hearing
41 panel member, (ii) reimbursement of such hearing officers or panel
42 members for necessary travel or other expenses incurred by them, or
43 (iii) for other hearing expenses on a claim submitted later than one
44 year after the final disposition of the hearing by any means, including
45 settlement, or within ninety days after the effective date of this para-
46 graph, whichever is later; provided that no payment shall be barred or
47 reduced where such payment is required as a result of a court order or
48 judgment or a final audit.

49 4. Post hearing procedures. a. The hearing officer shall render a
50 written decision within thirty days of the last day of the final hear-
51 ing, or in the case of an expedited hearing within ten days of such
52 expedited hearing, and shall forward a copy thereof to the commissioner
53 who shall immediately forward copies of the decision to the employee and
54 to the clerk or secretary of the employing board. The written decision
55 shall include the hearing officer's findings of fact on each charge, his
56 or her conclusions with regard to each charge based on said findings and

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shall state what penalty or other action, if any, shall be taken by the employing board. At the request of the employee, in determining what, if any, penalty or other action shall be imposed, the hearing officer [-sfr.a-ld:] may consider the extent to which the employing board made efforts towards correcting the behavior of the employee which resulted in charges being brought under this section through means including but not limited to: remediation, peer intervention or an employee assistance plan. In those cases where a penalty is imposed, such penalty may be a written reprimand, a fine, suspension for a fixed time without pay, or dismissal. In addition to or in lieu of the aforementioned penalties, the hearing officer, where he or she deems appropriate, may impose upon the employee remedial action including but not limited to leaves of absence with or without pay, continuing education and/or study, a requirement that the employee seek counseling or medical treatment or that the employee engage in any other remedial or combination of remedial actions. Provided, however, that the hearing officer, in exercising his or her discretion, shall give serious consideration to the penalty recommended by the employing board, and if the hearing officer rejects the recommended penalty such rejection must be based on reasons based upon the record as expressed in a written determination.

b. Within fifteen days of receipt of the hearing officer's decision the employing board shall implement the decision. If the employee is acquitted he or she shall be restored to his or her position with full pay for any period of suspension without pay and the charges expunged from the employment record. If an employee who was convicted of a felony crime specified in paragraph b of subdivision two of this section, has said conviction reversed, the employee, upon application, shall be entitled to have his or her pay and other emoluments restored, for the period from the date of his or her suspension to the date of the decision.

c. The hearing officer shall indicate in the decision whether any of the charges brought by the employing board were frivolous as defined in section eighty-three hundred three-a of the civil practice law and rules. If the hearing officer finds that all of the charges brought against the employee were frivolous, the hearing officer shall order the employing board to reimburse the department the reasonable costs said department incurred as a result of the proceeding and to reimburse the employee the reasonable costs, including but not limited to reasonable attorneys' fees, the employee incurred in defending the charges. If the hearing officer finds that some but not all of the charges brought against the employee were frivolous, the hearing officer shall order the employing board to reimburse the department a portion, in the discretion of the hearing officer, of the reasonable costs said department incurred as a result of the proceeding and to reimburse the employee a portion, in the discretion of the hearing officer, of the reasonable costs, including but not limited to reasonable attorneys' fees, the employee incurred in defending the charges.

5. Appeal. a. Not later than ten days after receipt of the hearing officer's decision, the employee or the employing board may make an application to the New York state supreme court to vacate or modify the decision of the hearing officer pursuant to section seventy-five hundred eleven of the civil practice law and rules. The court's review shall be limited to the grounds set forth in such section. The hearing panel's determination shall be deemed to be final for the purpose of such proceeding.

b. In no case shall the filing or the pendency of an appeal delay the implementation of the decision of the hearing officer.

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1 § 4. The education law is amended by adding a new section 3020-b to
2 read as follows:

3 § 3020-b. Streamlined removal procedures for teachers rated ineffec-
1 tive. 1. Applicability. This section shall apply to classroom teachers
5 and building principals who receive two or more consecutive annual inef-
6 fective ratings pursuant to annual professional performance reviews
7 conducted in accordance with the provisions of section three thousand
8 twelve-c or three thousand twelve-d of this article.

9 2. Filing and disposition of charges. a. A school district or employ-
10 ing board may bring charges of incompetence pursuant to this section
11 against any classroom teacher or building principal who receives two
12 consecutive ineffective ratings. A school district or employing board
13 shall bring charges of incompetence pursuant to this section against any
14 classroom teacher or building principal who receives three consecutive
15 ineffective ratings. All charges against a person enjoying the benefits
16 of tenure as provided in subdivision three of section eleven hundred
17 two, and sections twenty-five hundred nine, twenty-five hundred seven-
18 ty-three, twenty-five hundred ninety-j, three thousand twelve and three
19 thousand fourteen of this chapter shall be in writing and filed with the
20 clerk or secretary of the school district or employing board. Except as
21 provided in subdivision eight of section twenty-five hundred seventy-
22 three and subdivision seven of section twenty-five hundred ninety-j of
23 this chapter, no charges under this section shall be brought more than
24 three years after the occurrence of the alleged incompetency. When such
25 charges are brought, a written statement specifying (i) the charges in
26 detail, (ii) that the penalty that will be imposed by the board if the
27 employee does not request a hearing or that will be sought by the board
28 after a hearing is dismissal; and (iii) the employee's rights under this
29 section, shall be immediately forwarded to the accused employee by
30 certified or registered mail, return receipt requested or by personal
31 delivery to the employee.

32 b. The employee may be suspended pending a hearing on the charges and
33 the final determination thereof and such suspension shall be with pay.

34 c. Within ten days of receipt of the statement of charges, the employ-
35 ee shall notify the clerk or secretary of the employing board in writing
36 whether he or she desires a hearing on the charges. The unexcused fail-
37 ure of the employee to notify the clerk or secretary of his or her
38 desire for a hearing within ten days of the receipt of charges shall be
39 deemed a waiver of the right to a hearing. Where an employee requests a
40 hearing in the manner provided for by this section, the clerk or secre-
41 tary of the board shall, within three working days of receipt of the
42 employee's notice or request for a hearing, notify the commissioner of
43 the need for a hearing. If the employee waives his or her right to a
44 hearing the employing board shall proceed, within fifteen days, by a
45 vote of a majority of all members of such board, to determine the case
46 and fix the penalty to be imposed in accordance with subdivision four of
47 this section.

48 . Charges brought pursuant to this section for two consecutive inef-
49 fective ratings shall allege that the employing board has developed and
50 substantially implemented a teacher or principal improvement plan in
51 accordance with section three thousand twelve-c or section three thou-
52 sand twelve-ct of this article for the employee following the first eval-
53 uation in which the employee was rated ineffective, and the immediately
54 preceding evaluation if the employee was rated developing.

55 3. Hearings. a. Notice of hearing. Upon receipt of a request for a
56 hearing in accordance with subdivision two of this section, the commis-

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1 sioner shall forthwith notify the American Arbitration Association
2 (hereinafter "association") of the need for a hearing and shall request
3 that the association provide to the commissioner forthwith a list of
4 names of persons chosen by the association from the association's panel
5 of labor arbitrators to potentially serve as hearing officers together
6 with relevant biographical information on each arbitrator. Upon receipt
7 of said list and biographical information, the commissioner shall, in
8 the case of an employee who has received three consecutive ineffective
9 ratings, directly appoint a hearing officer from the list. In the case
10 of an employee who has received two consecutive ineffective ratings, the
11 commissioner shall forthwith send a copy of the list and biographical
12 information simultaneously to the employing board and the employee. The
13 commissioner shall also simultaneously notify both the employing board
14 and the employee of each potential hearing officer's record in the last
15 five cases of commencing and completing hearings within the time periods
16 prescribed in this section. The commissioner shall establish time peri-
17 ods for the employing board and the employee to notify the commissioner
18 of their agreed upon hearing officer selection. If the employing board
19 and the employee fail to agree on an arbitrator to serve as a hearing
20 officer from the list of potential hearing officers, or fail to notify
21 the commissioner of a selection within such established time period, the
22 commissioner shall appoint a hearing officer from the list.

23 b. Hearing officers. All hearings pursuant to this section shall be
24 conducted before and by a single hearing officer selected as provided
25 for in this section. A hearing officer shall not be eligible to serve in
26 such position if he or she is a resident of the school district, other
27 than the city of New York, under the jurisdiction of the employing
28 board, an employee, agent or representative of the employing board or of
29 any labor organization representing employees of such employing board,
30 he or she has served as such agent or representative within two years of
31 the date of the scheduled hearing, or if he or she is then serving as a
32 mediator or fact finder in the same school district. Subject to an
33 appropriation, the hearing officer shall be compensated by the depart-
34 ment for each day of actual service plus necessary travel and other
35 reasonable expenses incurred in the performance of his or her duties,
36 provided that the commissioner shall establish a schedule for maximum
37 rates of compensation of hearing officers based on customary and reason-
38 able fees for service as an arbitrator and provide for limitations on
39 the number of study hours that may be claimed.

40 c. Hearing procedures. (i) The commissioner shall have the power to
41 establish necessary rules and procedures for the conduct of hearings
42 under this section, and shall establish timelines in regulations to
43 ensure that the duration of a removal proceeding pursuant to this
44 section, as measured from the date an employee requests a hearing to the
45 final hearing date, is no longer than ninety days in the case of an
46 employee who has received two consecutive ineffective ratings and no
47 longer than thirty days in the case of an employee who has received
48 three consecutive ineffective ratings. The commissioner shall establish
49 timeframes in regulations for a pre-hearing conference wherein a hearing
50 officer shall have the power to issue subpoenas, hear motions and decide
51 on other discovery and evidentiary issues. At such pre-hearing confer-
52 ence, the hearing officer shall establish a hearing schedule at the
53 pre-hearing conference to ensure that the hearing is completed within
54 the required time period and to ensure an equitable distribution of days
55 between the employing board and the charged employee. Notwithstanding
56 any other law, rule or regulation to the contrary, no adjournments may

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1 be granted that would extend the hearing beyond such timelines, except
2 as authorized in this subparagraph. A hearing officer may grant a limit-
3 ed and time specific adjournment that would extend the hearing beyond
4 such timelines if the hearing officer determines that the delay is
5 attributable to a circumstance or occurrence substantially beyond the
6 control of the requesting party and an injustice would result if the
7 adjournment were not granted.

8 (ii) The department shall be authorized to monitor and investigate a
9 hearing officer's compliance with timelines pursuant to this section and
10 to any regulations promulgated by the department. The commissioner shall
11 annually inform all hearing officers who have heard cases pursuant to
12 this section during the preceding year that the time periods prescribed
13 in this section for conducting such hearings are to be strictly
14 followed. A record of continued failure to commence and complete hear-
15 ings within the time periods prescribed in this section shall be consid-
16 ered grounds for the commissioner to exclude such individual from the
17 list of potential hearing officers to be considered for such hearings.

18 (iii) Such rules shall not require compliance with technical rules of
19 evidence. Hearings shall be conducted by the hearing officer selected
20 pursuant to paragraph a of this subdivision and shall be public or
21 private at the discretion of the employee. The employee shall have a
22 reasonable opportunity to defend himself or herself and an opportunity
23 to testify on his or her own behalf. The employee shall not be required
24 to testify. Each party shall have the right to be represented by coun-
25 sel, to subpoena witnesses, and to cross-examine witnesses. All testimo-
26 ny taken shall be under oath which the hearing officer is hereby author-
27 ized to administer.

28 (iv) An accurate record of the proceedings shall be kept at the
29 expense of the department at each such hearing in accordance with the
30 regulations of the commissioner. A copy of the record of the hearings
31 shall, upon request, be furnished without charge to the employee and the
32 board of education involved. The department shall be authorized to
33 utilize any new technology or such other appropriate means to transcribe
34 or record such hearings in an accurate, reliable, efficient and cost-ef-
35 fective manner without any charge to the employee or board of education
36 involved.

37 (v) Legal standard. (A) Two consecutive ineffective ratings pursuant
38 to annual professional performance reviews conducted in accordance with
39 the provisions of section three thousand twelve-c or three thousand
40 twelve-ct of this article shall constitute prima facie evidence of incom-
41 petence that can be overcome only by clear and convincing evidence that
42 the employee is not incompetent in light of all surrounding circum-
43 stances, and if not successfully overcome, the finding, absent extraor-
44 dinary circumstances, shall be just cause for removal. (B) Three consec-
45 utive ineffective ratings pursuant to annual professional performance
46 reviews conducted in accordance with the provisions of section three
47 thousand twelve-c or three thousand twelve-ct of this article shall
48 constitute prima facie evidence of incompetence that can be overcome
49 only by clear and convincing evidence that the calculation of one or
50 more of the teacher's or principal's underlying components on the annual
51 professional performance reviews pursuant to section three thousand
52 twelve-c or three thousand twelve-ct of this article was fraudulent, and
53 if not successfully overcome, the finding, absent extraordinary circum-
54 stances, shall be just cause for removal. For purposes of this subpara-
55 graph, fraud shall include mistaken identity.

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1 4. Post hearing procedures. a. The hearing officer shall render a
2 written decision within ten days of the last day of the final hearing,
3 and shall forward a copy thereof to the commissioner who shall imme-
4 diately forward copies of the decision to the employee and to the clerk
5 or secretary of the employing board. The written decision shall include
6 the hearing officer's findings of fact on each charge, his or her
7 conclusions with regard to each charge based on said findings and shall
8 state whether the penalty of dismissal shall be taken by the employing
9 board.

10 b. Within fifteen days of receipt of the hearing officer's decision
11 the employing board shall implement the decision. If the employee is
12 acquitted he or she shall be restored to his or her position and the
13 charges expunged from the employment record.

14 5. Appeal. a. Not later than ten days after receipt of the hearing
15 officer's decision, the employee or the employing board may make an
16 application to the New York state supreme court to vacate or modify the
17 decision of the hearing officer pursuant to section seventy-five hundred
18 eleven of the civil practice law and rules. The court's review shall be
19 limited to the grounds set forth in such section. The hearing panel's
20 determination shall be deemed to be final for the purpose of such
21 proceeding.

22 b. In no case shall the filing or the pendency of an appeal delay the
23 implementation of the decision of the hearing officer.

24 6. Nothing in this section shall be construed to prevent the use of
25 any evidence of performance to support charges of incompetence brought
26 pursuant to the provisions of section three thousand twenty-a of this
27 article.

28 § 5. This act shall take effect July 1, 2015 and shall apply to hear-
29 ings commenced by the filing or service of charges on or after July 1,
30 2015, provided that effective immediately, the commissioner of education
31 shall be authorized to promulgate any regulations needed to implement
32 the provisions of this act on such effective date.

33 SUBPART H

34 Section 1. The education law is amended by adding a new section 211-f
35 to read as follows:

36 § 211-f. Takeover and restructuring failing schools. 1. Eligibility
37 for appointment of an external receiver. (a) Failing schools. The
38 commissioner shall designate as failing each of the schools that has
39 been identified under the state's accountability system to be among the
40 lowest achieving five percent of public schools in the state (priority
41 schools) for at least three consecutive school years, or identified as a
42 "priority school" in each applicable year of such period except one
43 school year in which the school was not identified because of an
44 approved closure plan that was not implemented, based upon measures of
45 student achievement and outcomes and a methodology prescribed in the
46 regulations of the commissioner, provided that this list shall not
47 include schools within a special act school district as defined in
48 subdivision eight of section four thousand one of this chapter or
49 schools chartered pursuant to article fifty-six of this chapter. Except
50 as otherwise provided in paragraph (c) of this subdivision, and pursuant
51 to regulations promulgated by the commissioner, a school designated as
52 failing under this paragraph shall be eligible for receivership under
53 this section upon a determination by the commissioner.

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(b) Persistently failing schools. Based upon measures of student achievement and outcomes and a methodology prescribed in the regulations of the commissioner, the commissioner shall designate as persistently failing each of the schools that have been identified under the state's accountability system to be among the lowest achieving public schools in the state for ten consecutive school years, based upon identification of the school by the commissioner as: a "priority school" for each applicable year from the two thousand twelve--two thousand thirteen school year to the current school year, or identified as a "priority school" in each applicable year of such period except one year in which the school was not identified because of an approved closure plan that was not implemented; and as a "School Requiring Academic Progress Year 5", "School Requiring Academic Progress Year 6", "School Requiring Academic Progress Year 7" and/or a "School in Restructuring," for each applicable year from the two thousand six--two thousand seven school year to the two thousand eleven--two thousand twelve school year. This designation shall not include schools within a special act school district as defined in subdivision eight of section four thousand one of this chapter or schools chartered pursuant to article fifty-six of this chapter.

(c) Specific provisions. (i) For schools designated as persistently failing pursuant to paragraph (b) of this subdivision, the local district shall continue to operate the school for an additional school year provided that there is a department-approved intervention model or comprehensive education plan in place that includes rigorous performance metrics and goals, including but not limited to measures of student academic achievement and outcomes including those set forth in subdivision six of this section. Notwithstanding any other provision of law, rule or regulation to the contrary, the superintendent shall be vested with all powers granted to a receiver appointed pursuant to this section for such time period; provided, however that such superintendent shall not be allowed to override any decision of the board of education with respect to his or her employment status. At the end of such year, the department shall conduct a performance review in consultation and cooperation with the district and school staff to determine, based on the performance metrics in the school's model or plan, whether (1) the designation of persistently failing should be removed; (2) the school should remain under continued school district operation with the superintendent vested with the powers of a receiver; or (3) the school should be placed into receivership; provided, however, that a school that makes demonstrable improvement based on the performance metrics and goals herein shall remain under district operation for an additional school year and if such school remains under district operation, it shall continue to be subject to annual review by the department, in consultation and cooperation with the district, under the same terms and conditions.

(ii) For schools designated as failing, but not persistently failing, the local district shall continue to operate the school for two additional school years provided that there is a department-approved intervention model or comprehensive education plan in place that includes rigorous performance metrics and goals, including but not limited to measures of student academic achievement and outcomes including those set forth in subdivision six of this section. Notwithstanding any other provision of law, rule or regulation to the contrary, the superintendent shall be vested with all powers granted to a receiver appointed pursuant to this section; provided, however that such superintendent shall not be allowed to override any decision of the board of education with respect

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1 to his or her employment status. At the end of such two years, the
2 department shall conduct a school performance review in consultation and
3 cooperation with the district and school staff to determine, based on
4 the performance metrics in the school's model or plan, whether (1) the
5 designation of failing should be removed; (2) the school should remain
6 under continued school district operation with the superintendent vested
7 with the powers of a receiver; or (3) the school should be placed into
8 receivership; provided, however, that a school that makes demonstrable
9 improvement based on the performance metrics and goals herein shall
10 remain under district operation for an additional school year and if
11 such school remains under district operation, it shall continue to be
12 subject to such annual review by the department under the same terms and
13 conditions. For schools newly designated as failing after the two thou-
14 sand sixteen--two thousand seventeen school year, the school shall be
15 immediately eligible for receivership upon such designation.

16 (iii) Nothing in this paragraph shall be construed to limit (1) a
17 school district's ability to modify, subject to approval by the depart-
18 ment, such department approved intervention model or comprehensive
19 education plan, or (2) the commissioner's ability to require a school
20 district to modify such department approved intervention model or
21 comprehensive education plan and require his or her approval of such
22 modifications.

23 (iv) The district shall provide notice to parents and guardians of the
24 students of the school which may be placed into receivership pursuant to
25 this subdivision and provided further that the district or the commis-
26 sioner shall hold a public meeting or hearing for purposes of discussing
27 the performance of the school and the construct of receivership.

28 1-a. Community engagement team. Upon designation as failing or persis-
29 tently failing pursuant to subdivision one of this section, the district
30 shall establish a community engagement team which shall include communi-
31 ty stakeholders, including but not limited to the school principal,
32 parents and guardians, teachers and other school staff and students.
33 Membership of such team may be modified at any time. Such team shall
34 develop recommendations for improvement of the school and shall solicit
35 input through public engagement. The team shall present its recommenda-
36 tions periodically to the school leadership and, as applicable, the
37 receiver.

38 2. Appointment of a receiver. (a) Upon a determination by the commis-
39 sioner that a school shall be placed into receivership, the applicable
40 school district shall appoint an independent receiver, subject to the
41 approval of the commissioner, to manage and operate all aspects of the
42 school and to develop and implement a school intervention plan for the
43 school that shall consider the recommendations developed by the crnmuni-
44 ty engagement team when creating such plan. The independent receiver may
45 be a non-profit entity, another school district, or an individual. If
46 the school district fails to appoint an independent receiver that meets
47 with the commissioner's approval within sixty days of such determi-
48 nation, the commissioner shall appoint the receiver.

49 (b) The receiver shall be authorized to manage and operate the failing
50 or persistently failing school and shall have the power to supersede any
51 decision, policy or regulation of the superintendent of schools or chief
52 school officer, or of the board of education or another school officer
53 or the building principal that in the sole judgment of the receiver
54 conflicts with the school intervention plan; provided however that the
55 receiver may not supersede decisions that are not directly linked to the
56 school intervention plan, including but not limited to building usage

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1 plans, co-location decisions and transportation of students. The receiver
2 shall have authority to review proposed school district budgets prior
3 to presentation to the district voters, or in the case of a city school
4 district in a city having a population of one hundred twenty-five thou-
S sand or more, of the adoption of a contingency budget, prior to approval
6 by the board of education, and to modify the proposed budget to conform
7 to the school intervention plan provided that such modifications shall
8 be limited in scope and effect to the failing or persistently failing
9 school and may not unduly impact other schools in the district. A school
10 under receivership shall operate in accordance with laws regulating
11 other public schools, except as such provisions may conflict with this
12 section.

13 (c) The commissioner shall contract with the receiver, and the compen-
14 sation and other costs of the receiver appointed by the commissioner
15 shall be paid from a state appropriation for such purpose, or by the
16 school district, as determined by the commissioner, provided that costs
17 shall be paid by the school district only if there is an open adminis-
18 trative staffing line available for the receiver, and the receiver will
19 be taking on the responsibilities of such open line. Notwithstanding any
20 other provision of law to the contrary, the receiver and any of its
21 employees providing services in the receivership shall be entitled to
22 defense and indemnification by the school district to the same extent as
23 a school district employee. The receiver's contract may be terminated by
24 the commissioner for a violation of law or the commissioner's regu-
25 lations or for neglect of duty. A receiver appointed to operate a
26 district under this section shall have full managerial and operational
27 control over such school; provided, however, that the board of education
28 shall remain the employer of record, and provided further that any
29 employment decisions of the board of education may be superseded by the
30 receiver. It shall be the duty of the board of education and the super-
31 intendent of schools to fully cooperate with the receiver and willful
32 failure to cooperate or interference with the functions of the receiver
33 shall constitute willful neglect of duty for purposes of section three
34 hundred six of this title. The receiver or the receiver's designee shall
35 be an ex officio non-voting member of the board of education entitled to
36 attend all meetings of the board of education.

37 3. Before developing the school intervention plan, the receiver shall
38 consult with local stakeholders such as: (a) the board of education; (b)
39 the superintendent of schools; (c) the building principal; (d) teachers
40 assigned to the school and their collective bargaining representative;
41 (e) school administrators assigned to the school and their collective
42 bargaining representative; (f) parents and guardians of students attend-
43 ing the school or their representatives; (g) representatives of applica-
44 ble state and local social service, health and mental health agencies;
45 (h) as appropriate, representatives of local career education providers,
46 state and local workforce development agencies and the local business
47 community; (i) for elementary schools, representatives of local prekin-
48 dergarten programs; (j) students attending the school as appropriate;
49 (k) as needed for middle schools, junior high schools, central schools
50 or high schools, representatives of local higher education institutions;
51 and (l) the school stakeholder team set forth in subdivision one-a of
52 this section.

53 4. In creating the school intervention plan, the receiver shall (i)
54 consider the recommendations developed by the community engagement team
55 set forth in subdivision one-a of this section; (ii) include provisions
56 intended to maximize the rapid academic achievement of students at the

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1 school; and (iii) ensure that the plan addresses school leadership and
2 capacity, school leader practices and decisions, curriculum development
3 and support, teacher practices and decisions, student social and
4 emotional developmental health, and family and community engagement. The
5 receiver shall, to the extent practicable, base the plan on the findings
6 of any recent diagnostic review or assessment of the school that has
7 been conducted and, as applied to the school, student outcome data
8 including, but not limited to: (a) student achievement growth data based
9 on state measures; (b) other measures of student achievement; (c)
10 student promotion and graduation rates; (d) achievement and growth data
11 for the subgroups of students used in the state's accountability system;
12 (e) student attendance; and (f) long-term and short-term suspension
13 rates.

14 5. (a) The receiver shall include the following in the school inter-
15 vention plan: (i) measures to address social service, health and mental
16 health needs of students *in the school and their families in order to*
17 *help students arrive and remain at school ready to learn; provided that*
18 *this may include mental health and substance abuse screening; (ii) meas-*
19 *ures to improve or expand access to child welfare services and, as*
20 *appropriate, services in the school community to promote a safe and*
21 *secure learning environment; (iii) as applicable, measures to provide*
22 *areater access to career and technical education and workforce develop-*
23 *ment services provided to students in the school and their families in*
24 *order to provide students and families with meaningful employment skills*
25 *and opportunities; (iv) measures to address achievement gaps for English*
26 *language learners, students with disabilities and economically disadvan-*
27 *tagged students, as applicable; (v) measures to address school climate*
28 *and positive behavior support, including mentoring and other youth*
29 *development programs; and (vi) a budget for the school intervention*
30 *plan.*

31 (b) As necessary, the commissioner and the commissioners of the
32 department of health, the office of children and family services, the
33 department of labor and other applicable state and local social service,
34 health, mental health and child welfare officials shall coordinate
35 regarding the implementation of the measures described in subparagraphs
36 (i) through (iii) of paragraph (a) of this subdivision that are included
37 in the school intervention plan and shall, subject to appropriation,
38 reasonably support such implementation consistent with the requirements
39 of state and federal law applicable to the relevant programs that each
40 such official is responsible for administering, and grant failing
41 schools priority in competitive grants, as allowable before and during
42 the period of receivership.

43 6. In order to assess the school across multiple measures of school
44 Performance and student success, the school intervention plan shall
45 include measurable annual goals including, but not limited to, the
46 following: (a) student attendance; (b) student discipline including but
47 not limited to short-term and long-term suspension rates; (c) student
48 safety; (d) student promotion and graduation and drop-out rates; (e)
49 student achievement and growth on state measures; (f) progress in areas
50 of academic underperformance; (g) progress among the subgroups of
51 students used in the state's accountability system; (h) reduction of
52 achievement gaps among specific groups of students; (i) development of
53 college and career readiness, including at the elementary and middle
54 school levels; (j) parent and family engagement; (k) building a culture
55 of academic success among students; (l) building a culture of student
56 support and success among faculty and staff; (m) using developmentally

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1 appropriate child assessments from pre-kindergarten through third grade,
2 if applicable, that are tailored to the needs of the school; and (n)
3 measures of student learning.

4 7. (a) Notwithstanding any general or special law to the contrary, in
5 creating and implementing the school intervention plan, the receiver
6 shall, after consulting with stakeholders and the community engagement
7 team, convert schools to community schools to provide expanded health,
8 mental health and other services to the students and their families.

9 In addition, the receiver may: (i) review and if necessary expand, alter
10 or replace the curriculum and program offerings of the school, including
11 the implementation of research-based early literacy programs, early
12 interventions for struggling readers and the teaching of advanced place-
13 ment courses or other rigorous nationally or internationally recognized
14 courses, if the school does not already have such programs or courses;
15 (ii) replace teachers and administrators, including school leadership
16 who are not appropriately certified or licensed; (iii) increase salaries
17 of current or prospective teachers and administrators to attract and
18 retain high-performing teachers and administrators; (iv) establish steps
19 to improve hiring, induction, teacher evaluation, professional develop-
20 ment, teacher advancement, school culture and organizational structure;
21 (v) reallocate the uses of the existing budget of the school; (vi)
22 expand the school day or school year or both of the school; (vii) for a
23 school that offers the first grade, add pre-kindergarten and full-day
24 kindergarten classes, if the school does not already have such classes;
25 (viii) in accordance with paragraphs (b) and (c) of this subdivision, to
26 abolish the positions of all members of the teaching and administrative
27 and supervisory staff assigned to the failing or persistently failing
28 school and terminate the employment of any building principal assigned
29 to such a school, and require such staff members to reapply for their
30 positions in the school if they so choose; (ix) include a provision of a
31 job-embedded professional development for teachers at the school, with
32 an emphasis on strategies that involve teacher input and feedback; (x)
33 establish a plan for professional development for administrators at the
34 school, with an emphasis on strategies that develop leadership skills
35 and use the principles of distributive leadership; and/or (xi) order the
36 conversion of a school in receivership that has been designated as fail-
37 ing or persistently failing pursuant to this section into a charter
38 school, provided that such conversion shall be subject to article
39 fifty-six of this chapter and provided further that such charter conver-
40 sion school shall operate pursuant to such article and provided further
41 that such charter conversion school shall operate consistent with a
42 community schools model and provided further that such conversion char-
43 ter school shall be subject to the provisions in subdivisions three,
44 four, five, six, nine, ten, eleven, twelve and thirteen of this section.

45 (b) Notwithstanding any other provision of law, rule or regulation to
46 the contrary, upon designation of any school of the school district as a
47 failing or persistently failing school pursuant to this section, the
48 abolition of positions of members of the teaching and administrative and
49 supervisory staff of the school shall thereafter be governed by the
50 applicable provisions of section twenty-five hundred ten, twenty-five
51 hundred eighty-five, twenty-five hundred eighty-eight or three thousand
52 thirteen of this chaeter as modified by this paragraph. A classroom
53 teacher or building principal who has received two or more composite
54 ratings of ineffective on an annual professional performance review
55 shall be deemed not to have rendered faithful and competent service
56 within the meaning of section twenty-five hundred ten, twenty-five

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1 hundred eighty-five, twenty-five hundred eighty-eight or three thousand
2 thirteen of this chapter. When a position of a classroom teacher or
3 building principal is abolished, the services of the teacher or adminis-
4 trator or supervisor within the tenure area of the position with the
5 lowest rating on the most recent annual professional performance review
6 shall be discontinued, provided that seniority within the tenure area of
7 the position shall be used solely to determine which position should be
8 discontinued in the event of a tie.

9 (c) The receiver may abolish the positions of all teachers and peda-
10 gogical support staff, administrators and pupil personnel service
11 providers assigned to a school designated as failing or persistently
12 failing pursuant to this section and require such staff members to reap-
13 ply for new positions if they so choose. The receiver shall define new
14 positions for the school aligned with the school intervention plan,
15 including selection criteria and expected duties and responsibilities
16 for each position. For administrators and pupil personnel 8- rvice
17 providers, the receiver shall have full discretion over all such rehiring
18 decisions. For teachers and pedagogical support staff, the receiver
19 shall convene a staffing committee including the receiver, two appoint-
20 ees of the receiver and two appointees selected by the school staff or
21 their collective bargaining unit. The staffing committee will determine
22 whether former school staff reapplying for positions are qualified for
23 the new positions. The receiver shall have full discretion regarding
24 hiring decisions but must fill at least fifty percent of the newly
25 defined positions with the most senior former school staff who are
26 determined by the staffing committee to be qualified. Any remaining
27 vacancies shall be filled by the receiver in consultation with the
28 staffing committee. Notwithstanding any other provision of law to the
29 contrary, a member of the teaching and pedagogical support, administra-
30 tive, or pupil personnel service staff who is not rehired pursuant to
31 this paragraph shall not have any right to bump or displace any other
32 person employed by the district, but shall be placed on a preferred
33 eligibility list in accordance with the applicable provisions of section
34 twenty-five hundred ten, twenty-five hundred eighty-five, twenty-five
35 hundred eighty-eight or three thousand thirteen of this chapter. Teach-
36 ers rehired pursuant to this paragraph shall maintain their prior status
37 as tenured or probationary, and a probationary teacher's probation peri-
38 od shall not be changed.

39 (d) For a school with English language learners, the professional
40 development and planning time for teachers and administrators identified
41 in clauses (vi) and (vii) of the closing paragraph of paragraph (a) of
42 this subdivision, shall include specific strategies and content designed
43 to maximize the rapid academic achievement of the English language lear-
44 ners.

45 8. (a) In order to maximize the rapid achievement of students at the
46 applicable school, the receiver may request that the collective bargain-
47 ing unit or units representing teachers and administrators and the
48 receiver, on behalf of the board of education, negotiate a receivership
49 agreement that modifies the applicable collective bargaining agreement
50 or agreements with respect to any failing schools in receivership appli-
51 cable during the period of receivership. The receivership agreement may
52 address the following subjects: the length of the school day; the length
53 of the school year; professional development for teachers and adminis-
54 trators; class size; and changes to the programs, assignments, and
55 teaching conditions in the school in receivership. The receivership
56 agreement shall not provide for any reduction in compensation unless

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1 there shall also be a proportionate reduction in hours and shall provide
2 for a proportionate increase in compensation where the length of the
3 school day or school year is extended. The receivership agreement shall
4 not alter the remaining terms of the existing/underlying collective
5 bargaining agreement which shall remain in effect.

6 (b) The bargaining shall be conducted between the receiver and the
7 collective bargaining unit in good faith and completed not later than
8 thirty days from the point at which the receiver requested that the
9 bargaining commence. The agreement shall be subject to ratification
10 within ten business days by the bargaining unit members in the school.
11 If the parties are unable to reach an agreement within thirty days or if
12 the agreement is not ratified within ten business days by the bargaining
13 unit members of the school, the parties shall submit any remaining unre-
14 solved issues to the commissioner who shall resolve any unresolved
15 issues within five days, in accordance with standard collective bargain-
16 ing principles.

17 (c) For purposes only for schools designated as failing pursuant to
18 subparagraph (ii) of paragraph (c) of subdivision one of this section,
19 bargaining shall be conducted between the receiver and the collective
20 bargaining unit in good faith and completed not later than thirty days
21 from the point at which the receiver requested that the bargaining
22 commence. The agreement shall be subject to ratification within ten
23 business days by the bargaining unit members of the school. If the
24 parties are unable to reach an agreement within thirty days or if the
25 agreement is not ratified within ten business days by the bargaining
26 unit members of the school, a conciliator shall be selected through the
27 American Arbitration Association, who shall forthwith forward to the
28 parties a list of three conciliators, each of whom shall have profes-
29 sional experience in elementary and secondary education, from which the
30 parties may agree upon a single conciliator provided, however, that if
31 the parties cannot select a conciliator from among the three within
32 three business days, the American Arbitration Association shall select a
33 conciliator from the list of names within one business day, and the
34 conciliator shall resolve all outstanding issues within five days. After
35 such five days, if any unresolved issues remain, the parties shall
36 submit such issues to the commissioner who shall resolve such issues
37 within five days, in accordance with standard collective bargaining
38 principles.

39 9. A final school intervention plan shall be submitted to the commis-
40 sioner for approval and, upon approval, shall be issued by the receiver
41 within six months of the receiver's appointment. A copy of such plan
42 shall be provided to the board of education, the superintendent of
43 schools and the collective bargaining representatives of teachers and
44 administrators of the school district. The plan shall be publicly avail-
45 able and shall be posted on the department's website and the school
46 district's website, and the school district shall provide notice to
47 parents of such school intervention plan and its availability.

48 10. Each school intervention plan shall be authorized for a period of
49 not more than three years. The receiver may develop additional compo-
50 nents of the plan and shall develop annual goals for each component of
51 the plan in a manner consistent with this section, all of which must be
52 approved by the commissioner. The receiver shall be responsible for
53 meeting the goals of the school intervention plan.

54 11. The receiver shall provide a written report to the board of educa-
55 tion, the commissioner, and the board of regents on a quarterly basis to
56 provide specific information about the progress being made on the imple-

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1 mentation of the school intervention plan. One of the quarterly reports
2 shall be the annual evaluation of the intervention plan under subdivi-
3 sion twelve of this section.

4 12. (a) The commissioner shall, in consultation and cooperation with
5 the district and the school staff, evaluate each school with an
6 appointed receiver at least annually. The purpose of the evaluation
7 shall be to determine whether the school has met the annual goals in its
8 school intervention plan and to assess the implementation of the plan at
9 the school. The evaluation shall be in writing and shall be submitted to
10 the superintendent and the board of education not later than September
11 first for the preceding school year. The evaluation shall be submitted
12 in a format determined by the commissioner.

13 (b) If the commissioner determines that the school has met the annual
14 performance goals stated in the school intervention plan, the evaluation
15 shall be considered sufficient and the implementation of the school
16 intervention plan shall continue. If the C?Inrnissioner determine_ that
17 the school has not met one or more goals in the plan, the commissioner
18 may require modification of the plan.

19 13. Upon the expiration of a school intervention plan for a school
20 with an appointed receiver, the commissioner, in consultation and coop-
21 eration with the district, shall conduct an evaluation of the school to
22 determine whether the school has improved sufficiently, requires further
23 improvement or has failed to improve. On the basis of such review, the
24 commissioner, in consultation and cooperation with the district, may:

25 (a) renew the plan with the receiver for an additional period of not
26 more than three years; (b) if the failing or persistently failing school
27 remains failing and the terms of the plan have not been substantially
28 met, terminate the contract with the receiver and appoint a new receiver;
29 or (c) determine that the school has improved sufficiently for the
30 designation of failing or persistently failing to be removed.

31 14. Nothing in this section shall prohibit the commissioner or a local
32 district from closing a school pursuant to the regulations of the
33 commissioner.

34 15. The commissioner shall be authorized to adopt regulations to carry
35 out the provisions of this section.

36 16. The commissioner shall report annually to the governor and the
37 legislature on the implementation and fiscal impact of this section. The
38 report shall include, but not be limited to, a list of all schools
39 currently designated as failing or persistently failing and the strate-
40 gies used in each of the schools to maximize the rapid academic achieve-
41 ment of students.

42 17. The commissioner shall provide any relevant data that is needed to
43 implement and comply with the requirements of the chapter of the laws of
44 two thousand fifteen which added this section to any school district
45 that has a school or schools designated as failing or persistently fail-
46 ing pursuant to this section by August fifteenth of each year, to the
47 fullest extent practicable. Provided that the commissioner shall
48 provide guidance to districts and may establish a model intervention
49 plan. And provided further, that the conunissioner shall make available
50 to the public any school intervention plan, or other department-approved
51 intervention model or comprehensive education plan of a school or
52 district provided that such measures are consistent with all federal and
53 state privacy laws.

54 § 2. This act shall take effect immediately.

55 § 3. Severability clause. If any clause, sentence, paragraph, subdivi-
56 sion, section or part of this act shall be adjudged by a court of compe-

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1 tent jurisdiction to be invalid, such judgment shall not affect, impair,
2 or invalidate the remainder thereof, but shall be confined in its opera-
3 tion to the clause, sentence, paragraph, subdivision, section or part
4 thereof directly involved in the controversy in which such judgment
5 shall have been rendered. It is hereby declared to be the intent of the
6 legislature that this act would have been enacted even if such invalid
7 provisions had not been included herein.

8 § 4. This act shall take effect immediately provided, however, that
9 the applicable effective date of Subparts A through H of this act shall
10 be as specifically set forth in the last section of such Subparts.

11 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-
12 sion, section or part of this act shall be adjudged by any court of
13 competent jurisdiction to be invalid, such judgment shall not affect,
14 impair, or invalidate the remainder thereof, but shall be confined in
15 its operation to the clause, sentence, paragraph, subdivision, section
16 or part thereof directly involved in the controversy in which such judg-
17 ment shall have been rendered. It is hereby declared to be the intent of
18 the legislature that this act would have been enacted even if such
19 invalid provisions had not been included herein.

20 § 3. This act shall take effect immediately provided, however, that
21 the applicable effective date of Parts A through EE of this act shall be
22 as specifically set forth in the last section of such Parts.

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF RICHMOND

MYMOENA DAVIDS, by her parent and natural guardian
MIAMONA DAVIDS, *et. al.*, and JOHNN KRONEN WRIGHT,
et. al.,

Plaintiffs.

-against-

THE STATE OF NEW YORK, *et. al.*,

Defendants.

-and-

MICHAEL MULGREW, as President of the UNITED
FEDERATION OF TEACHERS, Local 2, American
Federation of Teachers, AFL-CIO, SEYMOUR
DAVID DELEHANTY, ASHLEY SKURA, DRILLER,
KATHLEEN FERGUSON, ISRAEL MARSHALL,
RICHARD OGNIEMBE, JR., LONNETTE R. FICK,
and KAREN E. MAGILL, Individually and as President
of the New York State United Teachers; PULLIP A.
CAMMARATA, MARK MAMBRETTI and THE
NEW YORK CITY DEPARTMENT OF EDUCATION,

JOHN PHILIP G. MINARDO
DCM PART 6

Index No. 101105114

Intervenor-Defendants.

NOTICE OF MOTION TO RENEW AND AFFIRMATION
IN SUPPORT OF MOTION TO RENEW

SCHOOL ADMINISTRATORS ASSOCIATION OF NEW YORK STATE
Office of General Counsel, Arthur P. Scheuermann
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SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF RICHMOND

MYMOENA DAVIDS, by her parent and natural guardian
MIAMONA DAVIDS, *et.al.*, and JOHN KEONI WRIGHT,
et. al.,

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-against-

THE STATE OF NEW YORK, *et. al.*,

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-and-

MICHAEL MULGREW, as President of the UNITED
FEDERATION OF TEACHERS, Local 2, American
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KATHLEEN FERGUSON, ISRAEL MARTINEZ,
RICHARD OGNIBEBE, JR., LONNETTE R. TUCK,
and KAREN E. MAGEE, Individually and as President
of the New York State United Teachers; PHILLIP A.
CAMMARATA, MARK MAMBRETTI, and THE
NEW YORK CITY DEPARTMENT OF EDUCATION,

HON. PHILIP G. MINARDO
DCM PART 6

Index No. 101105/14

Intervenor-Defendants.

MEMORANDUM OF LAW

SCHOOL ADMINISTRATORS ASSOCIATION OF NEW YORK STATE
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PRELIMINARY STATEMENT

Public education has long been, and continues to be, issue at the forefront of the political landscape. With his recent controversial emphasis on testing, Governor Andrew Cuomo has sought to hold both the students and professional educators who teach them accountable for test results. To this end, as a part of the 2015 budget cycle, Governor Cuomo proposed and the Legislature enacted a series of amendments to the Education Law. These changes radically changed the statutes challenged by the Plaintiffs in the combined litigation herein, including (1) providing new timeframes and requirements for achieving tenure, (2) new evaluation systems, (3) extensive revisions and a new statute concerning the removal of tenured educators who are alleged to be ineffective and/or engaged in alleged misconduct, and (4) significantly increasing control by local districts to remove educators from persistently failing schools without regard to seniority.

These changes have a direct impact on the allegations contained within the complaints. Not only do they clearly demonstrate the political nature of the issues, but also the legislative changes render the Complaints moot and further expose the already stale data relied on in the Complaints to be completely and utterly without merit. Accordingly, this action must be dismissed as a matter of law.

STATEMENT OF FACTS

Plaintiffs in the consolidated action herein are parents and school age children attending public schools in New York City, Albany and Rochester. Using vague and conclusory statements and outdated data referring to early versions of statutes that have been repeatedly amended since their enactment, plaintiffs alleged that the statutes relating to tenure, discipline,

evaluations, and layoffs/seniority ("the Challenged Statutes"), are inexplicably violating the students' constitutional rights to a sound basic education.

Each of the defendants in this consolidated action, including Intervenor-Defendants Cammarata and Mambretti, filed pre-Answer Motions to Dismiss. Oral argument took place on January 14, 2015 and on March 12, 2015 Hon. Phillip Minardo issued a Decision and Order, denying the motions, except insofar as to dismiss the cases against Commissioner of Education John King and Chancellor Meryll Tisch, on the basis that the Plaintiffs successfully alleged a cause of action. The Decision and Order was entered on March 20, 2015 and each of the defendants timely filed notices of appeal.

Subsequent to the issuance of the Decision and Order, as part of the 2015 Budget Bill, the Legislature enacted radical amendments to each of the Challenged Statutes. These amendments, and one new statute, specifically address the crux of Plaintiffs' contentions. Namely, that the statutes are unconstitutional because there was a lack of accountability for teacher performance, leading to ineffective educators being hired and retained. While Intervenor-Defendants Cammarata and Marnbretti absolutely disagreed with this assertion in the first place, as demonstrated below, there can be no doubt that in light of the April 13, 2015 amendments to the Challenged Statutes, the gravamen within the Complaints are moot.

At a status conference May 6, 2015, Hon. Phillip G. Minardo granted the defendants until May 27, 2015 to file motions to renew in light of these new statutory changes. For the reasons set forth below, the issues raised in the instant Complaints are moot and must be dismissed as a matter of law.

ARGUMENT

POINT I

IN LIGHT OF THE RECENT STATUTORY AMENDMENTS, PLAINTIFFS' COMPLAINTS ARE MOOT.

Dismissal of an action on the ground of mootness is appropriate when the rights of the parties are no longer affected by the alleged statute or regulation due to an intervening change in law because a ruling by the courts on the validity of the original statute "would have no practical effect and would merely be an impermissible advisory opinion." NRG Energy, Inc. v. Crotty, 18 A.D.3d 916 (3d Dept. 2005). In NRG Energy, an Article 78 proceeding was brought challenging the validity of Department of Environmental Conservation regulations. Id. The Appellate Division, Third Department, declared that the challenged regulations were rendered moot by the implementation of emergency and, subsequently, final new regulations. Since the challenged regulations no longer existed, the parties were no longer subject to alleged injury by the defunct statutes. Id.

Similarly, in the instant action, the Legislature has enacted extensive amendments and created new statutes that eviscerated the Challenged Statutes. Under the new statutory schemes, the Complaints completely and utterly fail to state a cause of action, as the bulk of the alleged "problems" with the Challenged Statutes have been legislatively edited out. Accordingly, as detailed below, the Plaintiffs are no longer injured by the Challenged Statutes that were in effect at the commencement of this litigation and the Complaints are now moot as a matter of law.

a. Statutes conferring tenure upon educators (Education Law §§ 2509, 2573, 3012).

The gravamen of the plaintiffs' complaints concerning the statutory process surrounding the granting of tenure was that the three-year probationary period was too short for a proper

evaluation of incoming educators, particularly given the statutory notice requirements if a district was not going to recommend tenure. Plaintiffs alleged that these timeframes, combined with a supposed lack of accountability relating to educator performance during probationary periods, in essence amounted to "ineffective" educators being granted tenure by default.

While Defendants Cammarata and Mambretti adamantly deny that the prior process was faulty, as evinced by the fact that they intervened, there can be absolutely no doubt that the Legislature's recent revisions have accomplished exactly what Plaintiffs sought in their complaints when it comes to awarding tenure. Under these amendments, any educator appointed to a probationary position as of July 1, 2015, must now serve out a four (4) year probationary term, instead of a three (3) year term. This increase of one (1) year is not the only change. Also eliminated is the discretion by school boards to award tenure before the end of a probationary period.

Not only has the Legislature addressed Plaintiffs' complaints that the length of the probationary period is too short, but also the Legislature has taken affirmative action to address Plaintiffs' further allegations that there is a lack of accountability that has allowed for ineffective educators to gain tenure. Under the revised evaluative system, probationary educators must be annually evaluated pursuant to the terms and conditions contained within the newly enacted Education Law §3012-d. Under the new legislation, not only must teachers and administrators receive annual evaluations, but the ratings they receive have a direct impact as to whether the educator may even be awarded tenure. A new tenure prerequisite is that a probationary educator must now be rated either "Effective" or "Highly Effective" in at least three out of the four years as a probationary employee in order to receive tenure. Moreover, the

statutes now specifically prohibits an educator from receiving tenure if they were rated "Ineffective" the year before.

These changes dispel Plaintiffs' fears of ineffective educators being granted tenure impossible to achieve. With the lengthened period of time to evaluate administrators and new stringent requirements for obtaining tenure that Plaintiffs were seeking as potential remedies to the alleged problems being legislatively enacted, plaintiffs' alleged deprivations no longer exist as they pertain to the tenure system and the Complaints fail to state a cause of action under the current statutory scheme. Accordingly, the Complaints must be dismissed as a matter of law.

b. Statutes providing guidelines in the event of layoffs (Education Law §§ 2510, 2585, 2588¹).

Layoff and recall rights in New York State public education operate under a last in, first out ("LIFO") system. In this consolidated action, according to the plaintiffs, the statutes enabling this system are unconstitutional because they permit newer, more competent, teachers and administrators to be laid off in favor of retaining older, less competent, educators. While the Plaintiffs offered no legitimate data in support of their "newer equals better" theory of educator effectiveness, nonetheless, they allege that a system that does not take educator effectiveness into account when conducting layoffs is de facto unconstitutional.

While defendants maintain that changing the system is both unnecessary and liable to have unintended consequences throughout public sector, the Legislature did as a part of the 2015 budget bill create a new statute addressing the issues cited to be problems by the Plaintiffs for failing schools. The new Education Law §211-f provides that schools designated to be either

¹ Although not specifically challenged in the Complaints, Education Law § 3013 also deals with layoffs and seniority.

failing or persistently failing may be handed over to a receiver, who will be in control of curriculum and staffing decisions within the failing school. Depending on how long the school has been designated by the state to be a failing school, the receiver may be the superintendent of schools or an outside third party. In either case, the designated receiver has the sole authority to, without approval of the Board of Education, abolish positions, change salaries to entice and hire qualified educators, and/or fire ineffective educators. In the event that the receiver decides to abolish positions, layoffs are designated by tenure area, however, the person laid off is controlled by their evaluation ratings within the tenure area and not their length of service. Education Law §211-f(7)(b), (c). In other words, the ineffective educators will be the first ones to be laid off in the schools. Those who are laid off are entitled to be placed on the preferred eligibility list, however they cannot be recalled back into the failing school. *Id.* Further, if an educator has two consecutive ineffective ratings prior to their position being abolished, they are not considered to have been an employee in good standing pursuant to the statute in order to be eligible to be recalled to any position within the district. *Id.*

Thus, as the statutory scheme concerning the topic of layoffs and recall have been radically altered in a manner that the Plaintiffs sought relief for, the Complaints fail to state a cause of action under the current schemes as a matter of law and must be dismissed as moot.

c. Statutes providing for due process prior to the termination of tenured administrators (Education Law §§ 3020, 3020-a).

Relying on data that does not even account for the recent 2012 promulgation and amendments to disciplinary statutes or the resulting reports on the impact of these legislative changes from the New York State Education Department, Plaintiffs collectively allege that the statutes providing for due process procedures prior to the removal of a tenured educator, either

for ineffective performance or misconduct, violates their constitutional rights to a sound basic education because school districts find the procedures too lengthy, expensive and/or otherwise cumbersome to bother commencing the process. This supposedly results in ineffective educators, who would otherwise be terminated, remaining in schools.

It had been previously noted in Intervenor-Defendants Cammarata and Mambretti's October 23, 2014 motion to dismiss that the disciplinary statute, Education Law §3020-a, was amended in 2012 to expedite the process so that the hearings would be completed within 125 days of the charges against the tenured educators being filed. Data compiled by the State in 2013 -14 school year up to April 30, 2014, which is more recent than any alleged statistics cited by either set of Plaintiffs in their Complaints, demonstrated a marked decrease in the length of time that disciplinary hearings were taking to complete. (Exhibit C, October 23, 2014 Aff. of Arthur P. Scheuermann at 70) Moreover, with the creation of Education Law §3012-c in 2010, which specifically addressed Plaintiffs' concerns about the removal of ineffective educators, a school district was given the right to charge any educator who received two consecutive ineffective ratings with incompetency and the hearing needed to be completed within a mere 30 days after charges are issued.

Nevertheless, the Legislature recently engaged in further substantial revisions to these disciplinary statutes. For example, in disciplinary charges involving the sexual or physical abuse of a student brought on or after July 1, 2015, school districts may issue unpaid suspensions pending the disciplinary hearing. If an unpaid suspension is issued, a probable cause hearing must be held within ten days and the charges will be subject to an expedited hearing. Expedited hearings must be completed within 60 days of a pre-hearing conference. Teachers and administrators charged with pedagogical incompetence will no longer have the option to have a

panel hear the charges against them, but are instead limited to a single hearing officer, which also will significantly speed up the hearing.

Additionally, a new statute, Education Law § 3020-b, has created streamlined removal procedures for teachers who have been rated Ineffective for two or more consecutive years. Specifically, §3020-b permits school districts to file disciplinary charges based upon incompetence for classroom teachers who have been rated ineffective for two consecutive years and **requires** the filing of charges for classroom teachers who have been rated ineffective for three consecutive years. It further provides that either two consecutive ineffective ratings or three consecutive ineffective ratings constitute prima facie proof of incompetence that can only be overcome by clear and convincing evidence. The hearing officers presiding in these matters will be paid by the State Education Department.

With these significant hurdles to overcome and changes to the processes, the Legislature has clearly paved the way for an expeditious and economical method of removing tenured educators while still providing a modicum of due process. Since school districts no longer have the discretion to allow ineffective educators to continue working after demonstrating a pattern of ineffectiveness, Plaintiffs' allegations are moot as a matter of law.

d. Statute relating to the evaluations of teachers and principals (Education Law § 3012-c²).

Plaintiffs also contend that the evaluation statute, Education Law §3012-d, violates their constitutional rights insofar as it leaves too much power in the hands of districts and unions to negotiate higher ratings than ineffective educators should otherwise receive. It is also alleged that the removal process for ineffective educators within this statute were inefficient.

² As a part of the 2015 budget bill, Education Law 3012-c has been replaced with Education Law 3012-d.

Initially, it should be remembered that Education Law §3012-c was only enacted in 2010 and has been amended four times prior to when Defendant-Intervenors Cammarata and Mambretti filed their motion to dismiss on October 23, 2014. As part of the 2015 budget cycle, Education Law §3012-c has once again been radically revised and renamed Education Law §3012-d and is subject to regulations promulgated by the State Education Department that must be issued by June 30, 2015. Some of the changes under the revisions include, but are not limited to, reducing the number of subcomponents from three to two to calculate the educator's composite score and restricting the discretion of districts and unions to negotiate the formulation of annual professional performance review plans. The Commissioner of Education must develop regulations that (1) set the weights and scoring ranges of each APPR component and subcomponent; (2) establish goal setting procedures; (3) set parameters for appropriate SLO targets; and, (4) establish the parameters for teacher and principal observations. Under the new revisions, at least one observation is to be performed by an outside evaluator. Further, if the teacher/principal receives a rating of "Ineffective" on either the student performance (testing) or the observation component, he/she will be ineligible to receive an overall rating of "Effective" or "Highly Effective." These changes, and others, currently must be implemented by November 15, 2015 or else the district will be ineligible to receive State funding. Additionally, as detailed above, districts are now required to proceed with an expedited termination hearing if an educator receives three consecutive ineffective ratings, with an enhance burden of proof being placed squarely on the educator's shoulders. Finally, Education Law §3012-d(S) provides that no student will be taught in two consecutive years by any teachers who received a rating of ineffective in the previous school year.

Thus, the recent statutory changes have eviscerated Plaintiffs' allegations and the Complaints are now moot as a matter of law.

POINT II

THE VALIDITY OF THE CHALLENGED STATUTES IS A POLITICAL QUESTION, AS EVINCED BY THE FACT THAT THE LEGISLATURE HAS ADDRESSED PLAINTIFFS' CONCERNS.

A matter is deemed justiciable when there exists a case or controversy that can be finally decided by a judicial entity as opposed to a political entity, such as a legislative or executive branch. Aetna Life Ins. Co. v. Haworth, 300 U.S.227 (1937); Sedita v. Board of Ed. of City of Buffalo, 43 N.Y.2d 827 (1977). As a matter of policy, the courts will abstain from hearing cases if the allegations are such that the judiciary would be ill-equipped to undertake and other branches of government are better suited to the task. Jones v. Beame, 45 N.Y.2d 402, 408-09 (1978). When "policy matters have demonstrably and textually been committed to a coordinate, political branch of government, any consideration of such matters by a branch or body other than that in which the power expressly is reposed would, absent extraordinary or emergency circumstances ... constitute an *ultra vires* act." New York State Inspection, Sec. & Law Enforcement Employees, Dist. Council 82, AFSCME, AFL-CIO v. Cuomo, 64 N.Y.2d 233, 239-40, 475 N.E.2d 90, 93 (1984) (Claim not justiciable because, "[b]y seeking to vindicate their legally protected interest in a safe workplace, petitioners call for a remedy which would embroil the judiciary in the management and operation of the State correction system."), *citing* James v. Board of Educ., 42 N.Y.2d 357, 367.

The courts particularly acknowledge the non-justiciability of cases involving political questions, as they involve "controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the legislative and executive

branches." Roberts v. Health & Hospitals Corp., 87 A.D.3d 311, 323 (1st Dep't., 2011), *citing* 16A Am. Jur. 2d, Constitutional Law § 268. Specifically, the Court of Appeals has been very clear that matters pertaining to the maintenance and standards within a school district are largely not justiciable. James v. Bd. of Ed. of City of New York, 42 N.Y.2d 357, 366-68 (1977).

With the extensive revisions to the Challenged Statutes last month, there can be no doubt as a matter of law that the issue of public education is a political question that is best left to the Legislature. The Legislature has taken affirmative steps to address the issues contained within the Complaints and a decision by the Court would be an impermissible advisory opinion. This is especially true in light of the fact that the revised and new statutes have just been enacted and there has not been the passage of any time in order to ascertain whether the injuries alleged under the former versions of the Challenged Statutes will ever occur under the revised versions. Should this Court allow this action to continue, it will impermissibly be guessing without any substantiated allegation by the Plaintiffs that there is a likelihood of future harm under the revised statutes. As amply demonstrated herein and in Intervenor-Defendants' October 24, 2014 Motion to Dismiss, should the need arise for further adjustments in the Education Law, the Legislature has had no qualms about amending statutes. Accordingly, the Challenged Statutes, in any form are the subject of a non-judicial political question and the Complaints must be dismissed as a matter of law.

POINT III

**IN LIGHT OF THE FACT THAT THERE IS NO INJURY TO THE PLAINTIFFS
STEMMING FROM THE AMENDED/NEW STATUTES, THE PLAINTIFFS DO NOT
HAVE STANDING.**

Standing is a threshold requirement for a plaintiff seeking to challenge governmental action. New York State Ass'n of Nurse Anesthetists v. Novello, 2 N.Y.3d 207, 211 (2004);

Dairylea Coop., Inc. v. Walkley, 38 N.Y.2d 6, 9 (1975); VTR FV, LLC v. Town of Guilderland, 101 A.D.3d 1532, 1533 (3d Dep't 2012). There is a two-part test for determining standing. First, it must be shown that there is an "injury in fact" and a speculative injury is insufficient to establish harm. Id. Second, the parties must fall within the zone of interests or concerns sought to be promoted or protected by the statutory provision being challenged. Id.


The Court of Appeals has very clearly held that an injury in fact is necessary in order to avoid the judiciary rendering advisory opinions. Soc'y of Plastics Indus., Inc. v. Cnty. of Suffolk, 77 N.Y.2d 761, 773 (1991), *citing* Cuomo v. Long Is. Light. Co., 71 N.Y.2d 349, 354. As set forth above, the courts have also made it quite clear that there is no injury when laws or regulations challenged in a litigation a subsequently replaced by an intervening change in law. NRG Energy, 795 N.Y.S.2d 129. As the Challenged Statutes have all been radically changed through either amendments or entirely altered in new statutes to address the areas of alleged weakness in the Education Law, there cannot be any remaining injury to the Plaintiffs under those statutes as a matter of law. Further, Plaintiffs were afforded the opportunity by this Court to amend their Complaints to reflect any new injuries as a result of the statutory revisions, but they declined to do so. Accordingly, without injury under the current statutes, the Plaintiffs do not have standing as a matter of law and the Complaints must, therefore, be dismissed.

CONCLUSION

For the foregoing reasons, the Intervenor-Defendants respectfully request that the Court grant their motion to renew and dismiss the Complaints in their entirety, along with such other relief as the court may deem appropriate, as a matter of law.

Dated: Latham, New York
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