

Changes to Tenure and the Tenured Teacher Removal Process



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Chapter 56 of the Laws of 2015 includes a number of amendments to New York State (NYS) Education Law that address teacher preparation and certification, tenure, annual professional performance reviews (APPR), testing reduction, school receivership, and teacher removal. This *NYSUT Fact Sheet* will provide an overview of the specific changes affecting teacher tenure and removal.

NYS is widely recognized for its exemplary teaching force and has earned high marks for its rigorous standards and credentialing requirements — typically ranking among the nation’s top ten¹. Tenure is just one of the safeguards NYS has put in place to ensure every student has an effective teacher. A teacher must earn tenure after successfully completing a probationary period of effective teaching, oversight and evaluation. A tenured teacher then is entitled to a fair hearing before being dismissed — a basic right to due process.

Tenure also provides teachers freedom to advocate for their students without fear of reprisal. Because tenure exists, teachers in NYS can speak out freely on issues such as over-testing; cuts in academic programs; elimination of art, music, foreign language and other programs; and inappropriate programs and services for students with disabilities.

Without tenure, working under the constant threat of arbitrary firing would have a chilling effect on a teacher’s professional judgment and create an environment that would erode, not enhance, educational quality.

This *NYSUT Fact Sheet* contains:

- A summary of the recent changes to tenure;
- Frequently asked questions and answers regarding tenure;
- A summary of changes to the teacher removal process;
- Frequently asked questions and answers regarding teacher removal;
- Advice to local leaders on this topic; and
- Additional resources

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¹ Education Week, Quality Counts 2012.



Summary of Tenure Changes

- The new requirement begins with those teachers appointed on or after July 1, 2015.
- The mandated changes to tenure enacted by Chapter 56 in 2015 specifically tie the granting of tenure to §3012-c and §3012-d of NYS's Education Law regarding teacher and principal evaluation law.
- The probationary period is extended from three to four years for untenured teachers. Boards of Education will no longer be able to specify an end date to the probationary period and teachers will be notified at their appointment that tenure will depend on their APPR ratings.
- A teacher seeking tenure would need to attain an effective or highly effective rating for at least three of the four years. These ratings do not need to be consecutive.
- A teacher rated ineffective in the fourth year cannot receive tenure at that time. A Board of Education can agree to extend the probationary period an additional year (thus offering a fifth probationary year). The law does not prohibit additional years of probation.
- A tenured teacher in a school district or BOCES who obtains employment in another district will now have a three year probationary period, provided the teacher did not receive an ineffective in their last year at the prior school.
- School boards will be able to terminate probationary teachers without regard to their Annual Professional Performance Review (APPR) rating.

Questions & Answers Regarding Tenure

Q: What is tenure?

A: Tenure is simply a statutory right to due process that was first enacted for New York City teachers in 1897 and expanded to cover Union Free School districts in 1937. Teachers were uniquely vulnerable in a public school setting. There were few, if any policies in place to protect teachers from being fired. Without job protection, teachers could be fired for literally any reason. Race, faith, gender and favoritism were some of the most common reasons for firing teachers before 1885, as was their political affiliation. Women could even be fired for becoming pregnant. Teacher unions in NYS did not negotiate the tenure laws. Tenure law was established in State Education Law decades before teachers' unions were recognized in NYS. In 1945, tenure law was amended to extend basic due process rights to all public school teachers. The tenure law has been amended several times in the last 40 years.

Q: Who is covered by the new tenure law and when does it begin?

A: The four-year probation in Chapter 56 applies to all classroom teachers, building principals, all other members of the teaching and supervisory staff, teaching assistants, and pupil personnel services providers appointed by a Board of Education on or after July 1, 2015. The linkage between the APPR and granting or denying tenure only applies to classroom teachers and building principals. Section 30.-1.3 of the Regulations define classroom teacher as a teacher in the classroom teaching service as defined in §80-1.1 of the Regulations: *Classroom teaching service means teaching service in the public schools of New York State, which requires certification pursuant to this Part (80), excluding pupil personnel service or administrative and supervisory service.*

- Teacher aides are not covered under the new tenure law.

- Pupil personnel service providers are not included in the definition of the classroom teaching service. Section 80-1.1(b)(30) of the Regulations defines pupil personnel services providers to mean school psychologists, school counselors and school social workers.

For Example:

1. If you were appointed by a board of education **on or before June 30, 2015** with a September 1, 2015 start date, you would have a three year probationary period.
2. If you were appointed by a board of education **on or after July 1, 2015** with a September 1, 2015 start date, you would have a four year probationary period.

Q: What happens if a tenured teacher is appointed to a new tenure area in the same school district?

A: The probationary period is now three years instead of two.

Q: What happens if a teacher has tenure in one district and obtains employment in another district in NYS?

A: The probationary period in the new district is now three years instead of two.

Q: What if a teacher has served in a district for at least two years as a regular substitute classroom teacher?

A: The new law says that the probationary period would be two years if the teacher received an APPR rating in each of the two years of substitute service.

Q: What happens if a teacher receives an ineffective APPR rating in the fourth and final year of probation?

A: The board of education may extend the probationary period for another (fifth) year. If the teacher successfully appeals the ineffective rating, the teacher would be immediately eligible for tenure. The law does not prohibit additional years of probation beyond five.

Q: What is 3020-a and how does it relate to Due Process?

A: Education Law § 3020-a governs the disciplinary procedures of tenured teachers and administrators (except superintendents) and provides due process. Due process consists of the minimum procedural requirements that each public school district must satisfy when dismissing a teacher who has attained tenure. Due process is one of the core foundations of our judicial system. Similar safeguards are in place to ensure police officers, firefighters and other public servants at the state and local levels cannot be arbitrarily dismissed based on allegations alone, or for politically motivated reasons. Due process and tenure are **NOT** a job protection for life.

Q. What are the due process requirements concerning charges of incompetence or misconduct under § 3020-a?

- Charges in writing filed with the school district during the school year.
- Within five days of receipt of charges, the Board of Education determines if there is probable cause to bring disciplinary proceedings.
- If yes, a written notice sent to the employee detailing charges, the penalty imposed if employee waives hearing, and the employee's rights, sent by certified or registered mail.
- The employee may be suspended with pay (there are exceptions, see below).
- Within 10 days of receipt of charges, the employee will notify the district in writing if they request a hearing.
- The district will notify the Commissioner within 3 (working) days of the need for a hearing.
- If the employee waives the hearing, the employing board determines the outcome in 15 days.
- If the employee demands a hearing, such hearing is held before an impartial hearing officer. Different rules apply to the hearing itself depending upon the nature of the charges.

Summary of Changes in the Tenured Teacher Removal Process

Hearings to discipline or remove tenured teachers in NYS for alleged incompetency or misconduct are commonly referred to as the 3020-a process, referring to Section 3020-a of Education Law which establishes rights to due process for teachers who have obtained tenure. Chapter 56 of the Laws of 2015 amended Section 3020 and 3020-a and adds a new Section 3020-b. The following changes are effective with regard to charges brought on or after July 1, 2015.

Revocation of Teaching Certification

Chapter 56 amended Section 305 of Education Law to extend the duty of the Commissioner of Education to revoke the certification of a teacher upon certain criminal convictions. In addition to such automatic license revocation for sex offense convictions, the Commissioner must now also revoke certification of any teacher convicted of a violent felony committed against a child when the child was the intended victim.

Disciplinary Procedure Changes

- Hearings on all charges brought **on or after July 1, 2015** will be heard by single hearing officers.
- At the pre-hearing conference the hearing officer will set a schedule and manner for –full and fair disclosure of the witnesses and evidence to be offered by the employee as part of the defense (in addition to discovery to be disclosed by the employer as required by current law).
- A child witness under the age of fourteen may be permitted to testify through the use of live two-way closed circuit television if the hearing officer determines that the witness would suffer serious mental or emotional harm if required to testify in person.
- Hearing officers must give serious consideration to the penalty recommended by the employing Board. If the penalty is rejected by the hearing officer, the rejection must reflect reasons based upon the record as expressed in a written determination.
- For charges of physical or sexual abuse of a student:
 - A teacher charged with physical or sexual abuse of a student will have an expedited hearing by a single hearing officer commenced within seven days after the pre-hearing conference and completed within 60 days after the pre-hearing conference.

- A teacher may be suspended without pay when charged with physical or sexual abuse of a student pending an expedited hearing. (This provision does not apply to New York City which has different rules governing suspension without pay in the NYCDOE/UFT contract.)
- When a Board of Education decides to suspend a teacher without pay, a probable cause hearing before an impartial hearing officer must be held within ten days to determine whether the decision to suspend without pay should be continued or reversed. Upon a finding that probable cause does not support the charges or suspension without pay is grossly disproportionate in light of all surrounding circumstances, the employee would receive reimbursement of withheld pay with any applicable interest.
- Suspension without pay can last no longer than 120 days from the decision of the Board of Education to suspend without pay.
- If the hearing officer finds in the employee’s favor as a final determination at the conclusion of the expedited hearing, the employee would receive reimbursement of withheld pay with any applicable interest.

Streamlined Procedures for Removing Teachers Rated “Ineffective”

- Chapter 56 repealed the previously-established expedited hearing process for two consecutive ineffective ratings, and added a new Education Law §3020-b which establishes procedures for expedited hearings for teachers or building principals charged with incompetence after receiving either two or three consecutive ineffective overall APPR ratings under Education Law §3012-c and/or 3012-d.
- All charges brought on or after July 1, 2015 will be heard by a single hearing officer.
- Two consecutive ineffective APPR ratings constitute –prima facie (Latin for "at first sight") evidence of incompetence which establishes just cause for removal. In such a case, a district may choose to file a charge of incompetence. Such evidence can only be overcome by clear and convincing evidence that the employee is not incompetent in light of all surrounding circumstances.
- Three consecutive ineffective APPR ratings constitute –prima facie evidence of incompetence which establishes just cause for removal. In such a case, a district must file a charge of incompetence. The evidence of three consecutive ineffective ratings can only be overcome by clear and convincing evidence that the calculation of one or more of the teacher’s underlying components of the APPRs was fraudulent. Fraud in this instance shall include mistaken identity.

Questions & Answers Regarding Teacher Removal

Q: What is the timeline for a 3020-a disciplinary hearing?

A: Generally, the process is as follows:

ACTION	TIMELINE	PROCESS
Filing of Charges	<ul style="list-style-type: none"> • Within the period between actual opening and closing of school year. • Within three years unless the alleged misconduct constitutes a crime. 	Filed by Chief School Administrator with the District Clerk. The Clerk notifies Board of Education (BOE) immediately.
Disposition of Charges	<ul style="list-style-type: none"> • The BOE votes within five days after receipt of charges. • BOE decision whether there is probable cause to move forward with a 	If affirmative decision, written statement forwarded immediately to employee (by certified or registered mail, return receipt requested, or personal delivery)

ACTION	TIMELINE	PROCESS
	hearing.	specifying: <ul style="list-style-type: none"> – Charges in detail; – Maximum penalty; and – Employee’s rights. The employee may be suspended with pay pending a hearing and final determination (suspension without pay may occur if employee has plead guilty or has been convicted of a felony crime concerning sale or possession of a controlled substance, a precursor of a controlled substance, drug paraphernalia, or physical abuse of a minor or student).
Hearing Request	<ul style="list-style-type: none"> • Within ten days of receipt of charges, employee notifies District Clerk to request hearing. • No request indicates that the right to a hearing is waived and the BOE will issue a determination within fifteen days. 	Upon receipt of the request for a hearing, the Clerk shall notify the State Education Department (SED) of the need for a hearing within three working days.
Notice of Hearing	<ul style="list-style-type: none"> • SED requests list of hearing officers from American Arbitration Association. • Upon receipt, list simultaneously forwarded to both BOE and employee. 	Within fifteen days after receiving officer list, BOE and employee notify SED of agreed-upon hearing officer. If no agreement, then SED will appoint the officer.
Pre-Hearing Conference	<ul style="list-style-type: none"> • Hearing officer to hold a pre-hearing conference within ten to fifteen days of agreeing to serve. • Limited to one day (additional day may be allowed at hearing officer’s discretion). 	Activities to include scheduling of the final hearing, prehearing motions to dismiss, and motions for prehearing discovery.
Hearing	The final hearing is completed no later than 60 days after the pre-hearing conference.	All evidence is submitted by all parties within 125 days of the filing of charges, absent extraordinary circumstances beyond the parties control.
Decision	Written decision within 30 days of the last day of the final hearing.	Within fifteen days of receipt of the hearing officer’s decision, the BOE must implement the decision.
Appeal	Not later than ten days after receipt of the decision an application may be made to the state Supreme Court to vacate or modify the decision.	The filing or pendency of an appeal does not delay the implementation of the decision.

Q: What are the circumstances that can result in an expedited hearing?

A: There are four categories of expedited hearings:

- Expedited hearings upon revocation of a teaching certificate;
- Expedited hearings on charges of misconduct constituting the physical or sexual abuse of students;
- Expedited 3020-b hearings based on two consecutive ineffective APPR ratings; and
- Expedited 3020-b hearings based on three consecutive ineffective APPR ratings.

Q: What is the expedited 3020-a timeline for charges arising from the revocation of a teaching certificate?

A: The process is as follows with specific expedited timelines highlighted in **bold**:

ACTION	TIMELINE	PROCESS
Filing of Charges	<ul style="list-style-type: none"> • Within the period between actual opening and closing of school year. • Within three years unless the alleged misconduct constitutes a crime. 	Filed by Chief School Administrator with the District Clerk. The Clerk notifies Board of Education (BOE) immediately.
Disposition of Charges	<ul style="list-style-type: none"> • The BOE votes within five days after receipt of charges. • BOE decision whether there is probably cause to move forward with a hearing. 	<p>If affirmative decision, written statement forwarded immediately to employee (by certified or registered mail, return receipt requested, or personal delivery) specifying:</p> <ul style="list-style-type: none"> – Charges in detail – Maximum penalty – Employee’s rights. <p>According to case law, the employee may be suspended without pay pending a hearing and final determination.</p>
Hearing Request	<ul style="list-style-type: none"> • Within ten days of receipt of charges, employee notifies District Clerk to request hearing. • No request indicates that the right to a hearing is waived and the BOE will issue a determination within fifteen days. 	Upon receipt of the request for a hearing, the Clerk shall notify the State Education Department (SED) of the need for a hearing within three working days.
Notice of Hearing	<ul style="list-style-type: none"> • SED requests list of hearing officers from American Arbitration Association. • Upon receipt, list simultaneously forwarded to both BOE and employee. 	Within fifteen days after receiving officer list, BOE and employee notify SED of agreed-upon hearing officer. If no agreement, then SED will appoint the officer.
Pre-Hearing Conference	<ul style="list-style-type: none"> • Hearing officer to hold a pre-hearing conference within ten to fifteen days of agreeing to serve. • Limited to one day (additional day may be allowed at officer’s discretion). 	Activities to include scheduling of the final hearing, prehearing motions to dismiss, and motions for prehearing discovery.
Hearing	<ul style="list-style-type: none"> • The final hearing takes place within seven days of the pre-hearing conference. • The hearing is limited to one day. 	
Decision	Written decision within ten days of the last day of the hearing.	Within fifteen days of receipt of the hearing officer’s decision, the BOE must implement the decision.
Appeal	Not later than ten days after receipt of the decision an application may be made to the state Supreme Court to vacate or modify the decision.	The filing or pendency of an appeal does not delay the implementation of the decision.

Q: What is the expedited 3020-a timeline for charges involving the physical or sexual abuse of a student?

A: The process is as follows with specific expedited timelines highlighted in **bold**:

ACTION	TIMELINE	PROCESS
Filing of Charges	<ul style="list-style-type: none"> • Within the period between actual opening and closing of school year. • Within three years unless the alleged misconduct constitutes a crime. 	Filed with the District Clerk. The Clerk notifies Board of Education (BOE) immediately.

ACTION	TIMELINE	PROCESS
Disposition of Charges	<ul style="list-style-type: none"> The BOE votes within five days after receipt of charges. BOE decision to move forward with a hearing based upon probable cause. 	<p>If affirmative decision, written statement forwarded immediately to employee (by certified or registered mail, return receipt requested, or personal delivery) specifying:</p> <ul style="list-style-type: none"> Charges in detail Maximum penalty Employee's rights <p>The employee may be suspended without pay pending an expedited hearing and final determination.</p>
Probable Cause Hearing	<ul style="list-style-type: none"> If BOE decides to suspend without pay, the district notifies SED within one business day to request a probable cause hearing. SED selects the hearing officer from a regional rotational list. Failure to accept the case within 24 hours is deemed a declination. Hearing conducted within ten days of suspension to determine whether BOE decision to suspend employee without pay should be continued or reversed. 	<p>Grounds for reinstatement of paid status are that probable cause does not support the charges, or suspension without pay is grossly disproportionate in the circumstances. Suspensions without pay shall last no longer than 120 days from the decision of the BOE to suspend the employee. The suspension only relates to employee compensation exclusive of health insurance and other benefits and guarantees.</p>
Hearing Request	<ul style="list-style-type: none"> Within ten days of receipt of charges, employee notifies District Clerk to request hearing. No request indicates that the right to a hearing is waived and the BOE will issue a determination within fifteen days. 	<p>Upon receipt of the request for a hearing, the Clerk shall notify the State Education Department (SED) of the need for a hearing within three working days.</p>
Notice of Hearing	<ul style="list-style-type: none"> SED requests list of hearing officers from American Arbitration Association. Upon receipt, list simultaneously forwarded to both BOE and employee. 	<p>Within fifteen days after receiving officer list, BOE and employee notify SED of agreed-upon hearing officer. If no agreement, then SED will appoint the officer.</p>
Pre-Hearing Conference	<ul style="list-style-type: none"> Hearing officer to hold a pre-hearing conference within ten to fifteen days of agreeing to serve. Limited to one day (additional day may be allowed at officer's discretion). 	<p>Activities to include scheduling of the final hearing, prehearing motions to dismiss, and motions for prehearing discovery.</p>
Hearing	<p>The final hearing begins within seven days of the pre-hearing conference and is completed no later than 60 days after the pre-hearing conference.</p>	<p>All evidence is submitted by all parties within 125 days of the filing of charges absent extraordinary circumstances beyond the control of the parties.</p>
Decision	<p>Written decision within ten days of the last day of the final hearing.</p>	<p>Within fifteen days of receipt of the hearing officer's decision, the BOE must implement the decision.</p>
Appeal	<p>Not later than ten days after receipt of the decision an application may be made to the state Supreme Court to vacate or modify the decision.</p>	<p>The filing or pendency of an appeal does not delay the implementation of the decision.</p>

Q: What is the “streamlined” timeline for teachers receiving two consecutive ineffective ratings in the new 3020-b process?

A: A school district or employing board may bring charges of incompetence against any classroom teacher or building principal who receives two consecutive ineffective APPR ratings.

- All such charges brought against a tenured teacher must be in writing specifying:
 - the charges in detail;
 - the penalty imposed by the board will be dismissal if the employee does not request a hearing; and
 - the employee’s rights under 3020-b, forwarded to the accused employee by certified or registered mail, return receipt requested or by personal delivery; and filed with the clerk or secretary of the school district or employing board.
- The school must have developed and substantially implemented a Teacher Improvement Plan (TIP) following the first evaluation in which the educator was rated ineffective and the immediately preceding evaluation if the rating was developing under Education Law §3012-c and/or 3012-d.
- The parties jointly select the hearing officer within seven days after receiving a list of potential hearing officers from the Commissioner. (The Commissioner must appoint the hearing officer if the two parties are unable to agree.)
- The pre-hearing conference must be held within seven days after the appointment of the hearing officer.
- The hearing must begin within seven days of the pre-hearing conference.
- The final hearing date must be within 90 days of the employee’s request for a hearing. Adjournments beyond the 90 day period may be granted if the hearing officer determines that the delay is due to circumstances beyond the control of the requesting party and an injustice would result if the adjournment were not granted.
- The hearing officer must render a decision within 10 days of the last day of the hearing.
- Within 15 days of receipt of decision, the school board must implement the decision.
- Not later than ten days after receipt of the decision, an appeal may be made to the State Supreme Court to vacate or modify the decision.

Q: What is the “streamlined” timeline for teachers receiving three consecutive ineffective ratings in the new 3020-b process?

A: A school district or employing board must bring charges of incompetence against any classroom teacher or building principal who receives three consecutive ineffective APPR ratings.

- All charges brought against a tenured teacher must be in writing specifying:
 - the charges in detail;
 - the penalty imposed by the board will be dismissal if the employee does not request a hearing; and
 - the employee’s rights under 3020-b, forwarded to the accused employee by certified or registered mail, return receipt requested or by personal delivery; and filed with the clerk or secretary of the school district or employing board.
- The Commissioner of Education selects the hearing officer, not the parties.
- The final hearing date must be within 30 days after the date of the employee’s request for a hearing. Adjournments beyond the 30 day period may be granted if the hearing officer determines that the delay is due to circumstances beyond the control of the requesting party and an injustice would result if the adjournment were not granted.
- The hearing officer must render a decision within 10 days of the last day of the hearing.
- Within 15 days of receipt of decision, the school board must implement the decision.
- Not later than ten days after receipt of the decision, an appeal may be made to the State Supreme Court to vacate or modify the decision.

Q: How are “days” defined?

A: Days are calendar days unless specified otherwise.

Q: How is “teacher” defined?

A: For disciplinary purposes, a teacher is any professional educator holding a teaching certificate including but not limited to a classroom teacher, teaching assistant, pupil personnel services professional, school administrator or supervisor or superintendent of schools.

For incompetence procedures based upon the APPR process, it would only include classroom teachers subject to the APPR process under Section 3012-c or 3012-d of the Education Law.

Q: What are “Cadet Rights”?

A: The 3020-a hearing process is the sole method by which tenured teachers can be disciplined in NYS, and the statute provides that no teacher can be compelled to testify at the hearing. Consequently, it has been established that a teacher can refuse to answer questions, without being found insubordinate, during an investigation that the teacher believes could lead to such disciplinary action. Known as Cadet Rights, this principle was established through a disciplinary case involving a tenured teacher who was found guilty of misconduct through a 3020-a hearing. However, the decision of the hearing officer to dismiss a charge of insubordination was appealed by the school district. The insubordination charge was related to the teacher’s refusal to answer questions during an investigation prior to the hearing. In the appeal decision, the Commissioner of Education agreed that a teacher need not answer questions in any pre-hearing investigation which precedes a 3020-a hearing. The decision was in turn affirmed by the courts.

Advice to Local Leaders

- Continue to look for additional analysis and information through NYSUT’s Leader and Member Briefings and presentations at regional conferences.
- Specific questions about tenure and teacher removal as a result of disciplinary issues or the APPR process should be referred to your NYSUT Labor Relations Specialist (LRS).

Resources

- Chapter 56 of the Laws of 2015 can be found at: <http://open.nysenate.gov/legislation/bill/S2006B-2015>
See Part EE for the Education Transformation Act of 2015. Within Part EE, Subpart D details the teacher tenure provisions and Subpart G details the teacher removal provisions.
- Emergency regulations implementing these new statutory changes were adopted by the Board of Regents. An overview of the changes and the amended regulations can be found at: <http://www.regents.nysed.gov/common/regents/files/meetings/Sep%202015/915hea2.pdf>