Understanding Teacher Discipline
Overview

The process that school boards must follow to remove or discipline tenured teachers and administrators is governed by section 3020-a of New York’s Education Law. Tenured teachers and administrators have the right to retain their positions as long as they exhibit good behavior and competent and efficient service, and may be discharged or otherwise disciplined only for “just cause.” Thus, 3020-a prescribes procedures that are intended to both protect tenured teachers and administrators from “official and bureaucratic caprice” and assess the fitness of such employees to carry out their professional responsibilities.

Filing Charges under Section 3020-a

After an investigation has been completed there are three options available to the administrator:

1. Determine that no disciplinary action is warranted
2. Decide that there is insufficient evidence for filing charges, but that some other action is appropriate
3. Recommend the filing of disciplinary charges against the individual

If charges are files against an individual:

1. Written charges should be submitted during the school year to the board
2. The school board is to be immediately notified. The board shall determine, within five days after receipt of charges, whether probable cause exists to bring a disciplinary proceeding against an employee
3. If the board votes to proceed with disciplinary action, a written statement specifying the charges in detail must be sent to the employee

Statute of Limitations
Charges must be brought within three years of the occurrence of the alleged incompetency or misconduct. Charges must also be filed during the period between the actual opening and closing of the school year.

**Grounds for Discipline**

A tenured teacher or administrator may be disciplined or removed only for “just cause.” NY CLS Educ § 3012(2) states: Such persons (Tenured Teachers), and all others employed in the teaching service of the schools of such union free school district, common school district and/or school district employing fewer than eight teachers, who have served the probationary period as provided in this section, shall hold their respective positions during good behavior and efficient and competent service, and shall not be removed except for any of the following causes, after a hearing, as provided by section three thousand twenty-a of such law: (a) insubordination, immoral character or conduct unbecoming a teacher; (b) inefficiency, incompetency, physical or mental disability, or neglect of duty; (c) failure to maintain certification as required by this chapter and by the regulations of the commissioner.

The grounds establishing just cause must be sufficient to warrant the penalty imposed. Off-campus activity can also result in discipline when there is a sufficient connection or nexus between the off-campus, off-duty conduct and the employee’s performance of his or her duties. A nexus may be deemed to exist when the “conduct in question directly affects the performance of the professional responsibilities of the [employee], or if, without contribution on the part of school officials, the conduct has become the subject of such public notoriety that it significantly and reasonably impairs his or her ability to discharge the responsibilities of the position.”

Termination was warranted in cases involving:

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

The Charges

Section 3020-a charges consist of two components: the charge(s) and the specification(s). Charges involve the grounds for the disciplinary action. Specifications follow each charge and provide details of the specific incident(s) the school board believes constitute grounds for discipline. Any individual may file disciplinary charges against a tenured teacher or administrator. However, they usually are filed by the superintendent of schools.

Within five days of the filing of charges, a school board must decide by majority vote in executive session whether there is probable cause to proceed with the charges. The employee is not entitled to know the school board’s basis for determining probable cause. The school board’s decision to proceed with the charges may not be arbitrary, capricious, or discriminatory.

Post Charges and Pre-hearing Procedures

A school board’s decision to proceed with 3020-a charges does not always result in a hearing. A teacher or administrator facing 3020-a charges must notify the district clerk or board secretary that he or she wants a hearing on the charges within 10 days of receipt of the statement of charges. In addition, the school board and the employee may enter into a settlement agreement.

If the teacher or administrator facing 3020-a charges requests a hearing, the district clerk or board secretary must notify the commissioner of education of the need for a hearing and forward the charges to the commissioner within three working days of receipt of the request. A copy of the notice of need for a hearing sent to the commissioner also must be sent to the
employee by certified mail return receipt requested. Failure to timely notify the commissioner of the need for a hearing has resulted in the dismissal of charges.

Failure to request a hearing within 10 days of receipt of the statement of charges will be deemed to constitute a waiver of the right to a hearing, unless the failure is excusable, such as when the employee is admitted to the hospital or the employee requests permission to file a late demand for a hearing. “Extreme emotional pressure” as a result of charges being brought does not constitute an appropriate excuse. If the teacher or administrator waives the right to a hearing, the school board itself must proceed, within 15 days, to determine the case without a hearing and fix the penalty to be imposed, if any, by a majority vote of its members.

**Pre-hearing Suspension**

A teacher or administrator may be suspended while 3020-a charges are pending. A superintendent may suspend a teacher or administrator with pay until the meeting when the school board will consider the charges. A school board may suspend with pay a teacher or administrator pending a hearing and decision on the charge(s) only after it votes to proceed with the charges.

Generally, tenured teachers and administrators must be given full pay and benefits during periods of suspension pending a final determination of 3020-a charges. This is so because as tenured employees they have a “property interest” in their position and constitutional due process rights requires they be afforded an opportunity for a meaningful hearing prior to the deprivation of that interest. Suspensions without pay are permissible only in limited circumstances.

**The Hearing**

Section 3020-a hearings usually are conducted by a single hearing officer who determines the guilt or innocence of the teacher or administrator involved, and orders any penalty to be imposed. Cases involving pedagogical incompetence or issues of pedagogical judgment may be conducted by a three member panel.

**Penalties**
The penalty imposed by a hearing officer or panel can range from a written reprimand to dismissal. A hearing officer or panel may choose to impose remedial remedies instead of or in addition to a penalty.

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

**Examples of Conduct that May Lead to Charge**

**Physical contact with pupils**

Excessive or otherwise improper use of physical force against pupils comes within scope of provision of Education Law governing removal of tenured teachers even though provision does not in so many words expressly refer to physical abuse of pupils as a ground on which tenured teachers may be removed. Bott v Board of Education (1977) 41 NY2d 265, 392 NYS2d 274, 360 NE2d 952. It was not arbitrary and capricious for Commissioner of Education to find tenured elementary school teacher guilty of misconduct stemming from incident in which he used unnecessary physical force on disruptive student, since finding of guilt was based, not on teacher's action in grabbing student, but on additional aggressive act of pushing student against chalkboard. Cargill v Sobol (1991, 3d Dept) 165 App Div 2d 131, 565 NYS2d 902, app den (1991) 78 NY2d 854, 573 NYS2d 644, 578 NE2d 442.

**Refusal of assignment; absenteeism**

The refusal by a tenured teacher to accept assignment in his tenure area, but in a different school, following reinstatement after suspension on charges which were sustained, constituted insubordination warranting dismissal. Educ Law § 2566(6) authorizes the superintendent of schools of the City of New York, expressly and without limitation, "to transfer teachers from one school to another," and that power is absolute in the absence of contractual provision otherwise, or of malice, bad faith, gross error, or prejudice, none of which were demonstrated in the instant case. Adlerstein v Board of Education (1984) 64 NY2d 90, 485 NYS2d 1, 474 NE2d 209.

Tenured teacher who was absent 200 days in 3 consecutive school years was properly found guilty of incompetence where, because of her excessive absences, board of education had to employ large number of substitute teachers, some of whom were not appropriately certified, at
considerable expense; resulting lack of continuity had detrimental impact on students. 1994 Op Comm Ed No. 13278.

Lack of class control or discipline

Hearing panel did not err in finding third grade teacher incompetent to provide instruction where several witnesses who observed her classroom performance testified that no instruction took place during their observation, several students were injured in her classroom while entire class was in potential danger due to her inability to maintain adequate control, other teachers were able to manage her classroom, and her performance remained inadequate despite respondent's efforts at remediation. 1994 Op Comm Ed No. 13242.

Failure to maintain discipline is a sufficient cause for dismissal of a teacher under this section. 50 St Dept 32 (1934).

Sexual harassment; pornography

There was a rational basis for the dismissal of a tenured high school teacher where three students testified that a pornographic film involving oral sex had been shown in the teacher's photography class and testified that, before showing the film, the teacher announced that the film might be pornographic or "X-rated," even though the teacher testified that at no time during the school year did he show such a film. Shurgin v Ambach (1981, 3d Dept) 83 App Div 2d 665, 442 NYS2d 212.

Respondent school district did not improperly dismiss complaint that 6th grade teacher committed sexual harassment as petitioner alleged, where district officials thoroughly investigated petitioner's complaint, teacher cooperated fully and candidly admitted that she answered "in a clinical fashion" numerous sex-related questions that she had permitted students to submit anonymously during human reproduction lesson, she indicated that she had been instructed by district personnel to answer such questions in clinical fashion, and it was clear that she did not intend to make petitioner's daughter or any other student uncomfortable, that incident was isolated, and that petitioner's daughter remained in class for remainder of school year. 2001 Op Comm Ed No. 14,747ec.

Inappropriate or offensive language

Unsatisfactory rating for tenured math teacher was supported by respondent's investigation of formal complaint made by one of his students, concerning sarcastic and demeaning remarks allegedly made by him about her and other students during classroom time,
and respondent's conclusion that student's allegations were true; there was no showing that rating was result of malice, prejudice, bad faith or gross error, and teacher did not allege or prove that he was given unsatisfactory rating based on single incident while other teachers similarly situated were not so rated. 2005 Op Comm Ed No. 15,209.

Respondent did not act improperly in voting that probable cause did not exist to warrant disciplinary charges against 11th grade history teacher for allegedly showing his students "R" rated movies, for allowing petitioner's daughter to view them without parental consent, and for using vulgar language in petitioner's presence, where respondent reviewed teacher's actions and concluded that movies in question presented issues relevant to United States history and current racial problems, and that teacher's use of inappropriate language did not warrant proceeding under CLS Educ § 3020-a. 1994 Op Comm Ed No. 13260.

Use of alcohol

The Commissioner of Education was justified in dismissing a tenured teacher for incompetency and insubordination after a hearing panel recommended a one year suspension of the teacher due to her alcoholism since there was sufficient evidence of the charges and the Commissioner did not have to consider the teacher's alcoholism in assessing the penalty. Dunnigan v Ambach (1985, 3d Dept) 107 App Div 2d 961, 484 NYS2d 373, app den (1985) 65 NY2d 602.

Where teacher served wine in his apartment and continued showing R rated film to students, teacher's conduct does not rise to level rendering him unfit to teach; therefore, 2-month suspension without pay is appropriate penalty to such offense; termination of teacher's services would be excessive penalty under circumstances. Re Board of Education of the City School District of the City of New York, 1988 Op Comm Ed No. 11943.