

N.Y. Comp. Codes R. & Regs. tit. 8, § 82-1.1

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Title 8. Education Department

Chapter II. Regulations of the Commissioner

Subchapter C. Teachers

Part 82. Hearings of Charges Against Employees on Tenure

 [Subpart 82-1](#). Procedures for Hearings Commenced on or After August 25, 1994 ([Refs & Annos](#))

→→ Section 82-1.1. Application of Subpart

This Subpart applies to hearings on charges against tenured school employees pursuant to [section 3020-a of the Education Law](#) that are commenced by the filing of charges on or after August 25, 1994.

Sec. filed: Sept. 27, 1994 as emergency measure; Dec. 20, 1994 as emergency measure eff. Dec. 20, 1994; Dec. 20, 1994 eff. Jan. 5, 1995.

8 NYCRR 82-1.1, 8 NY ADC 82-1.1

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→→ **Section 82-1.2. Definitions**

(a) As used in this Subpart:

(1) *Employee* means any person or persons against whom charges may be filed pursuant to [section 3020-a of the Education Law](#), or, except where the context indicates a contrary intent, the attorney designated to represent such person or persons in a hearing pursuant to this Part.

(2) *Chief school administrator* means the district superintendent of schools of the board of cooperative educational services employing a person against whom charges are made; or the superintendent of schools, community superintendent, chancellor or the principal of the school district employing a person against whom charges are made.

(3) *Board* means the employing trustee, board of trustees, board of education, community board or board of cooperative educational services.

(4) *Commissioner* means Commissioner of Education.

(5) *Association* means the American Arbitration Association.

(6) *Hearing officer* means a single hearing officer selected to conduct a hearing pursuant to [section 3020-a of the Education Law](#), or the panel chairperson in the case of a hearing before a three member hearing panel.

(7) *Panel member* means a member of a three member hearing panel, other than a hearing officer, who is selected by either the employee or the board.

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8 NYCRR 82-1.2, 8 NY ADC 82-1.2

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EMERGENCY REGULATION

(a) Charges may not be filed by the chief school administrator or other party authorized to file charges against an employee more than five days before the next regularly scheduled meeting of the board except with the permission of the board.

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

(c) Charges against an employee must be made separately from charges against any other employee.

(d) Where charges concerning pedagogical incompetence or issues involving pedagogical judgment are filed with other charges, the employee shall have the right to choose either a single hearing officer or a three member panel to hear all charges.

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8 NYCRR 82-1.3, 8 NY ADC 82-1.3

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EMERGENCY REGULATION

Where the employee desires a hearing, he or she may file a written request for a hearing with the clerk or secretary of the employing board within 10 days of receipt of the charges, and where the charges concern pedagogical incompetence or issues involving pedagogical judgment, the employee shall choose either a single hearing officer or a three member panel. In the request for a hearing, the employee may designate an attorney who will represent the employee at the hearing and who shall be authorized to receive correspondence from the commissioner pertaining to the 3020-a proceeding on his or her behalf.

Sec. filed: Sept. 27, 1994 as emergency measure; Dec. 20, 1994 as emergency measure eff. Dec. 20, 1994; Dec. 20, 1994 eff. Jan. 5, 1995; emergency rulemaking eff. Apr. 24, 2012, expires July 22, 2012.

8 NYCRR 82-1.4, 8 NY ADC 82-1.4

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→→ **Section 82-1.5. Notice of need for hearing**

EMERGENCY REGULATION

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

- (1) an affidavit of service of the charges upon the employee;
- (2) a copy of the employee's request for hearing;
- (3) a place within the district or the county seat of a county in which the board is located which will be made available by the board at school district expense for the holding of the prehearing conference and hearing;
- (4) the name and contact information for the attorney, if any, who will represent the board at the hearing;
- (5) whether an expedited hearing is sought, and whether the employee is suspended either with, or without pay;
- (6) an estimate of the number of days needed for the hearing;
- (7) the name of the panel member selected by the board, if applicable; and
- (8) where the board has received written notice that the employee will be represented by an attorney at the hearing, the name and contact information for such attorney.

(b) If the board shall fail to notify the commissioner of its selection of a panel member and the employee has not waived his or her right to a panel hearing, the commissioner shall select the member of the hearing panel for the board.

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

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

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

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8 NYCRR 82-1.5, 8 NY ADC 82-1.5

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

EMERGENCY REGULATION

(a) Forthwith after receipt of notification of the need for a hearing, the commissioner shall notify the association, obtain a list of potential hearing officers, together with relevant biographical information, and send a copy thereof to the attorneys representing the employing board and employee, or to the employee if he or she is not so represented. Such list shall consist of individuals selected by the association who are qualified to serve as hearing officers. To be qualified to serve as a hearing officer, an individual shall:

- (1) be on the association's panel of labor arbitrators;
- (2) be a resident of New York or an adjoining state;
- (3) be willing to serve under the conditions imposed by [Education Law, section 3020-a](#) and this Subpart; and
- (4) not be ineligible to serve in the particular hearing pursuant to [Education Law, section 3020-a\(3\)\(i\)](#).

(b) Within 15 days after receiving the list of potential hearing officers, the parties or their agents or representatives shall by agreement select a hearing officer and each party shall notify the commissioner thereof.

(c) If the parties fail to notify the commissioner of a selection within the 15 day time period prescribed by subdivision (b) of this section, the commissioner shall appoint a hearing officer from the list. The provisions of this subdivision shall not apply in cities with a population of one million or more with alternative procedures specified in [section 3020 of the Education Law](#).

(d) The commissioner shall notify the hearing officer selected pursuant to subdivision (b) or (c) of this section, and confirm his or her acceptance of such selection.

(e) The hearing officer shall contact the parties and, within 10 to 15 days of receipt of notice from the commissioner confirming his or her acceptance of a selection to serve as hearing officer, hold a prehearing conference.

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8 NYCRR 82-1.6, 8 NY ADC 82-1.6

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EMERGENCY REGULATION

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

(b) Copies of such list of panel members appointed by the commissioner shall be available for public inspection upon request to the commissioner.

(c) No person may be selected from a list to serve as a panel member when that person is serving as a panel member in connection with charges being heard against another employee, except with the consent of the commissioner.

Sec. filed: Sept. 27, 1994 as emergency measure; Dec. 20, 1994 as emergency measure eff. Dec. 20, 1994; Dec. 20, 1994 eff. Jan. 5, 1995; emergency rulemaking eff. Apr. 24, 2012, expires July 22, 2012.

8 NYCRR 82-1.7, 8 NY ADC 82-1.7

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→→ Section 82-1.8. Selection of panel member by employee

Where an employee has exercised the option to have the hearing conducted before a hearing panel, within five days after receiving the copy of the notification to the commissioner of the need for a panel hearing, the employee shall, in writing by certified mail, notify the board and the commissioner of the name of his or her selection for the hearing panel. If the employee shall fail to notify the commissioner and the board as required and the employee has not waived his or her right to a hearing, the commissioner shall select the employee panel member for the employee.

Sec. filed: Sept. 27, 1994 as emergency measure; Dec. 20, 1994 as emergency measure eff. Dec. 20, 1994; Dec. 20, 1994 eff. Jan. 5, 1995.

8 NYCRR 82-1.8, 8 NY ADC 82-1.8

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→→ Section 82-1.9. Demand for public hearing

Unless the employee notifies the hearing officer at least 24 hours before the first day of the hearing that he or she demands a public hearing, the hearing shall be private. The prehearing conference shall be private.

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8 NYCRR 82-1.9, 8 NY ADC 82-1.9

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→→ **Section 82-1.10. Conduct of hearings**

EMERGENCY REGULATION

(a) Cine photographs, still photographs, videotape recordings and audiotape recordings may not be taken at private hearings, and may be taken at public hearings only when permitted by the hearing officer.

(b) Public hearings shall be open to members of the public and to representatives of the news media, except that the hearing officer may, in his or her discretion, exclude any persons other than parties, witnesses, and their attorneys from all or any portion of the hearing where such exclusion is warranted for the protection of the privacy or reputation of any person under the age of 18 years.

(c) The hearing officer shall have the power to consolidate with the pending charges amended or additional charges against an employee as to which the board has found that probable cause exists no later than five days before the date of the prehearing conference, provided that the employee may file a waiver of the right to a hearing on such amended or additional charges with the hearing officer and provided further that charges involving pedagogical incompetence or issues involving pedagogical judgment may not be consolidated with pending charges unless the employee has previously exercised his or her right to choose between a single hearing officer and hearing panel in the request for a hearing.

(d) If the hearing officer determines that the absence of a hearing panel member is likely to delay unduly the prosecution of the hearing, he or she shall order the replacement of such panel member. If the party who selected such panel member fails to select a replacement within two business days, the commissioner shall select such replacement. If the hearing officer needs to be replaced and the parties fail to notify the commissioner of their mutually agreed upon replacement within two business days, the commissioner shall select the replacement. In no event shall a panel hearing proceed except in the presence of two panel members and the hearing officer.

(e) Members of the hearing panel may question witnesses and parties, subject to the right of the hearing officer to disallow such questions if he or she deems them improper. Notwithstanding the foregoing, no questions may be addressed to the employee unless he or she has been sworn as a witness with his or her own consent.

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

(g) The hearing officer shall have the power to regulate the course of the hearing, set the time and place for contin-

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ued hearings, and direct the parties to appear, so that no party is unduly prejudiced by the prohibition on the submission of evidence after one hundred twenty five days.

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

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

Sec. filed: Sept. 27, 1994 as emergency measure; Dec. 20, 1994 as emergency measure eff. Dec. 20, 1994; Dec. 20, 1994 eff. Jan. 5, 1995; emergency rulemaking eff. Apr. 24, 2012, expires July 22, 2012.

8 NYCRR 82-1.10, 8 NY ADC 82-1.10

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→→ Section 82-1.11. Monitoring and enforcement of timelines

EMERGENCY REGULATION

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

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8 NYCRR 82-1.11, 8 NY ADC 82-1.11

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→→ Section 82-1.12. Reimbursable hearing expenses

EMERGENCY REGULATION

- (a) Except as otherwise provided in this section, the commissioner shall compensate the hearing officer with the customary fee paid for service as an arbitrator for each day of actual service rendered by the hearing officer. For hearings commenced by the filing of charges prior to April 1, 2012, a day of actual service shall be five hours. In the event a hearing officer renders more or less than five hours of service on a given calendar day, the per diem fee shall be prorated accordingly. For hearings commenced by the filing of charges on or after April 1, 2012, a day of actual service shall be defined in guidelines prescribed by the commissioner. Any late cancellation fee charged by the hearing officer shall be paid by the party or parties responsible for the cancellation.
- (b) In addition to the statutory fees payable to the hearing officer and panel members for each day of actual service, the commissioner shall reimburse hearing officers and panel members for their necessary travel and other related reasonable expenses in accordance with the rules and limits on travel applicable to state employees.
- (c) The commissioner shall arrange for the preparation of an accurate record of the proceedings. Upon request, a copy of the record shall be provided by the commissioner to the hearing officer, panel members and/or the parties at the department's expense. Upon request of one or more parties, the commissioner may arrange to have a daily copy of the record prepared and distributed to each party making such request and to the hearing officer, in addition to any final copies provided by the commissioner after conclusion of the hearing. Any incremental cost incurred for preparing a daily copy for a party and the hearing officer that is in addition to the base amount payable by the commissioner for preparation of the final record shall be paid by the party requesting daily copy, or shall be shared equally by the parties where both parties request daily copy.
- (d) Additional hearing costs, other than facilities costs, incurred to make a reasonable accommodation to an employee or a witness based on such individual's disability, including but not limited to the retention of a qualified interpreter for the deaf or hearing impaired, shall be paid by the commissioner. Except as otherwise provided in this Subpart, any other additional hearing costs shall be paid by the board.
- (e) Limitations on fees for hearing officers. For hearings commenced by the filing of charges on or after April 1, 2012, a hearing officer shall be not be reimbursed beyond the maximum rates of compensation of hearings officers, as set forth in a schedule prescribed by the commissioner, based on customary and reasonable fees for service as an arbitrator and shall not reimbursed for more than a certain amount of study hours, as prescribed by the commissioner.

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

- (1) compensation of a hearing officer or hearing panel member;
- (2) reimbursement of such hearing officers or panel members for necessary travel or other expenses incurred by them, or
- (3) for other hearing expenses.

Renumbered from § 82-1.11 by emergency rulemaking eff. Apr. 24, 2012, expires July 22, 2012.

8 NYCRR 82-1.12, 8 NY ADC 82-1.12

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