

**AGREEMENT**  
between  
**THE BOARD OF EDUCATION**  
of the  
City School District  
of the  
City of New York  
and  
**UNITED FEDERATION OF TEACHERS**  
Local 2, American Federation  
of Teachers, AFL-CIO  
covering

**TEACHERS**

**October 1, 1991-October 15, 1995**

 X1093

**ARTICLE TWENTY-ONE  
DUE PROCESS AND REVIEW PROCEDURES**

**A. Teacher Files**

Official teacher files in a school shall be maintained under the following circumstances:

1. No material derogatory to a teacher's conduct, service, character or personality shall be placed in the files unless the teacher has had an opportunity to read the material. The teacher shall acknowledge that he has read such material by affixing his signature on the actual copy to be filed, with the understanding that such signature merely signifies that he has read the material to be filed and does not necessarily indicate agreement with its content. However, an incident which has not been reduced to writing within three months of its occurrence, exclusive of the summer vacation period, may not later be added to the file.

2. The teacher shall have the right to answer any material filed and his answer shall be attached to the file copy.

3. Upon appropriate request by the teacher, he shall be permitted to examine his files.

4. The teacher shall be permitted to reproduce any material in his file.

5. Material will be removed from the files when a teacher's claim that it is inaccurate or unfair is sustained.

**B. Summons**

1. A teacher summoned by the principal to a conference which may lead to disciplinary action for reasons of misconduct may be accompanied, at his option, by the chapter chairman or his designated alternate.

2. Teachers summoned to the office of a community or assistant superintendent or to the Division of Human Resources shall be given two days notice and a statement of the reason for the summons, except where an emergency is present or where considerations of confidentiality are involved.

Whenever an employee is summoned for an interview for the record which may lead to disciplinary action, he shall be entitled to be accom-

panied by a representative who is employed by the city school system, or by an employee of the Union who is not a lawyer, and he shall be informed of this right. However, where the community or assistant superintendent or the Division of Human Resources permits an attorney who is not a member of the city school system to represent any participant in the interview, the employee shall be entitled to be represented by an attorney. An interview which is not held in accordance with these conditions shall not be considered a part of the employee's personnel file or record and neither the fact of the interview nor any statements made at the interview may be used in any subsequent Board proceeding involving the employee. It is understood that informal conferences, such as those between a community or assistant superintendent and a teacher, or the Division of Human Resources and a teacher, for professional improvement, may be conducted off the record and shall not be included in the employee's personnel file or record.

3. Incidents investigated by the Chancellor or by a governmental investigatory agency must be reduced to writing by the appropriate supervisor within 6 months and 12 months respectively from the date the incident either occurred or should have been discovered by the appropriate school officials. Employees must receive a complete copy of any such writing and an opportunity to answer in writing and to have such response attached. The writing may not be incorporated into the employee's personnel file or record, unless this procedure is followed, and any such writing will be removed when an employee's claim that it is inaccurate or unfair is sustained.

**C. Discontinuance of Probationary Service and Appeals of Unsatisfactory Ratings.**

1. Regular substitutes and teachers on probation, except as provided in subparagraph 2 below, shall be entitled to the review procedures before the Chancellor as prescribed in Section 5.3.4 of the by-laws of the Board of Education.

By-law 5.3.4 procedures for the review of a recommendation by a superintendent for discontinuance of probationary service of a teacher shall be modified to provide for the following:

a. The 5.3.4 committee shall be a tripartite committee of professional educators, one selected by the teacher, one by the Board and a third selected by the other two from a list agreed upon by the Board and the Union.

b. The committee will make an advisory recommendation to the community school board or the Chancellor for central programs within 20 days after the hearing.

c. The costs of the teacher's representative shall be paid by the teacher. The costs of the Board's representative shall be paid by the Board. The costs of the mutually selected member of the committee shall be shared

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by the Board and the teacher.

2. Teachers on probation who have completed at least three years of service on regular appointment in the school shall be entitled, with respect to the discontinuance of their probationary service, to the same review procedures as are established for tenured teachers under Section 3020-a of the Education Law.

3. Teachers who receive doubtful or unsatisfactory ratings may appeal under Section 5.3.4 of the by-laws of the Board of Education.

### D. Suspension

Any teacher who is suspended pending hearing and determination of charges shall receive full compensation pending such determination and imposition of any penalty.

### E. Expedited 3020-a Procedure

The parties are in agreement that it is in the best interests of the school system and the teacher involved to expedite the proceedings under 3020-a in a manner consistent with due process. The parties have therefore agreed to expedite the 3020-a proceedings in the following manner:

1. The parties shall mutually designate a panel of arbitrators, to be known as the 3020-a impartial chairpersons, selected from the panel of impartialists of the State Education Department. The State Education Department shall continue to administer the assignment of 3020-a matters to the panel. The impartialists shall be paid their customary rates and the difference between those rates and the rates paid by the State Education Department shall be borne equally by the parties.

2. Charges against tenured teachers shall be processed in accordance with 3020-a; heard by a tripartite hearing panel composed of an impartial chairperson, a Board member and a Union member. As charges are brought to the State Education Department, they shall assign each case in rotation to an impartial chairperson who is available to schedule the case for hearing within thirty (30) calendar days. The impartial chairperson shall hold an informal conference within two weeks of receipt of the charges for the purpose of clarification of issues and expedition of the scheduling of the case which shall be scheduled for consecutive days under the conditions set forth in the regulations of the Commissioner. The cost of daily and/or expedited transcripts, when requested, shall be shared equally by the parties if mutually requested and by one party if not mutually requested. The parties shall submit any memoranda of law within two weeks of the receipt of the transcripts. Decisions in each case shall be issued within two weeks of the closing of the record.

### F. Disciplinary Arbitration Option

Tenured teachers facing disciplinary charges may elect final and binding arbitration, in lieu of the expedited 3020-a procedure above.

1. Within 10 working days of receipt of the Statement of Charges, the teacher, on a prescribed form shall notify the Board and the Union of the

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desire to pursue one of the following procedures:

- a. No hearing
- b. Expedited 3020-a procedure
- c. Final and binding Arbitration

2. The unexcused failure by the teacher to elect an option within ten working days of the receipt of charges will be deemed a waiver of the right to arbitration, and as provided by law, a waiver of the right to a hearing under 3020-a. In the event of a late election for arbitration, the arbitrator will determine, as a threshold issue, whether the failure to make the election within 10 working days shall be excused.

3. It is understood that the teacher is bound by the alternative selected and will not be permitted to pursue more than one procedure.

4. If the teacher chooses to pursue the arbitration procedure all applicable provisions of Article 22C of this Agreement and Article 75 of the Civil Practice Laws and Rules shall apply.

a. The parties shall mutually designate a panel of arbitrators who shall be assigned cases by rotation and who shall schedule such assigned cases and informal conferences on the same basis and within the time frame as set forth in the expedited 3020-a procedure.

b. All hearings shall be conducted in accordance with the rules and procedures in the AAA's Voluntary Labor Arbitration Rules. The Arbitrator's powers include the power to conduct hearings; decide motions and hold pre-hearing conferences; administer oaths and affirmations; compel the attendance of witnesses and the production of documents; issue subpoenas; and take whatever actions are necessary to expeditiously resolve the case or render a determination. The Board and the teacher may present statements of fact, witnesses, documentary and other evidence and argument, and may cross-examine the witnesses of the other party. The hearings shall be transcribed with the cost of transcription shared by the Board and the Union. The cost of daily and/or expedited transcripts shall be shared equally by the parties if mutually requested, and by one party if not mutually requested. The expenses of witnesses for either side shall be paid by the party producing such witnesses. Memoranda of law shall be submitted within two weeks of the receipt of transcripts.

c. The Arbitrator shall issue a written decision within two weeks after the closing of the record. The decision shall fully detail the arbitrator's conclusions and any finding of facts; and state the penalty, if any. Such penalty may include an oral or written reprimand, a fine, a suspension for a fixed time without pay, or a dismissal. An acquitted teacher shall be restored to his/her position and all charges shall be expunged from the teacher's record.

d. Any fees and expenses in excess of that paid by the State Education Department, including the Arbitrator's rate shall be borne equally by the Board and the Union.

e. Any arbitration determination shall be final and binding, subject only to judicial review under Article 75 of the CPLR.

**G. Peer Intervention Program**

The Board and Union recognize that instructional services should be delivered by a highly qualified and motivated staff, accorded the respect and professional treatment to which they are entitled.

Towards that end the Board and the Union have agreed to seek resources and to provide peer assistance on a voluntary confidential basis to staff who have completed probation and who believe that their teaching competence will benefit from that assistance in the manner provided below:

1. The peer intervention panel shall be composed of nine members, six of whom shall be selected by the Union and three of whom shall be administrators selected by the Board.

2. This Panel will set qualifications and procedures for the selection of intervenors, an alternative careers liaison and a coordinator of the program. The Panel shall advertise, as needed, the intervenor, coordinator and alternative careers liaison positions on a city-wide basis, posting the qualifications and procedures previously developed. The program's professional staff shall be selected in accordance with the posted procedure.

3. The Panel will also design and continually monitor a professional development program that enables the selected staff to meet the goals set forth above.

4. The intervenors shall serve for a four year term.

5. Any teacher who has a reasonable basis for needing such assistance and/or receives a U-rating or formal warning may request assistance from the peer intervention program, in writing on a form promulgated by the Panel. The Panel will review the requests and promptly notify the teacher of its determination as to whether assistance will be provided in that case. Such communications will be kept completely confidential.

6. The intervenor will develop a plan to assist the participating teacher tailored to the specific needs of that teacher and will work with the teacher directly for not more than one year.

7. For three months following the start of the intervention period, supervisors will not evaluate or observe the participating teacher. However, supervisors will otherwise continue to exercise their responsibilities.

8. The Board, the Union, and the participating teacher agree that for any disciplinary action other than an appeal of a previous U-rating, all time limitations within which to bring such actions will be tolled for the three month period in which the supervisor does not evaluate or observe the participating teacher. For such U-rating appeals, the parties agree that the time limitations are tolled for the entire period of intervention.

9. All communications between the intervenor and the participating teacher shall be completely confidential. As a condition of involvement

in the program, all participants in the program, including the intervenor and the participating teacher, must consent to the confidentiality provisions set forth in this paragraph. The Board and Union agree that the intervenor, or any other person involved in the peer intervention program shall not be subpoenaed by the Board or the Union or called to testify, produce documents or participate in any other way concerning the intervention in any proceeding involving the participating teacher, including potential subsequent proceedings under Section 3020-a of the Education Law. No arbitrator, in any proceeding under the parties' control, shall accept evidence regarding such communications.

10. Except as otherwise herein provided, the Union, the Board or any participating teacher may exercise any constitutional, statutory, regulatory or contractual right otherwise provided by law, regulation or contract.

11. The Board agrees to make available on a best efforts basis alternative career opportunities for teachers who decide to leave the teaching profession in the course of or following intervention.

12. Administrative procedures for effectuation of these provisions will be formulated by the Panel in consultation with the Board and the Union and thereafter distributed by the Panel.

13. These procedures relate solely to issues of competency and no other grounds of discipline.

14. The acts of the Panel, intervenor, coordinator, Union and Board shall be final.