



**TO:** Higher Education Committee  
**FROM:** Valerie Grey  
**SUBJECT:** Tenured Teacher Hearings (Education Law §3020-a Reform)  
**DATE:** February 3, 2012  
**AUTHORIZATION(S):**

Issues for Discussion

The Governor's 2012-13 Executive Budget includes proposed revisions to the Tenured Teacher Hearings.

Reason(s) for Consideration

The Governor's proposal is similar to the Board of Regents Legislative proposal and will be under consideration during state budget negotiations.

Proposed Handling

This issue will come before the Higher Education Committee in the February 2012 meeting for review and discussion.

Procedural History

For more than a year the Board of Regents has identified a growing problem in the Tenured Teacher Hearing program and proposed legislative changes last session to address them.

Background Information

The attached table illustrates the various components of the Board's legislative proposal and the Executive legislative proposal.

Timetable for Implementation

The Executive's proposal will be under consideration during the state budget negotiations.

**Education Law §3020-a Reform**  
**Regents Proposal v. Governor’s Proposal**

Provision	Regents/SED Proposal (A.6225/S.4629)	Governor’s Executive Budget Proposal
Cost Sharing (all arbitrator expenses and reasonable and necessary travel) [§3020-a(3)(b)(i)(A)-(C)]	Yes – 3 way (SED up to appropriation, then excess split between the school district and bargaining unit, or employee if no union)	Yes – 2 way (costs split equally by school and bargaining unit or employee, if no union), but includes baseline appropriation to cover accumulated deficit.
Authorizes Commissioner to set maximum rates for arbitrators and study hours [§3020-a(3)(b)(i)(B)-(C)]	Yes	Yes
Authorizes disqualification of arbitrators for failure to comply with time frames [§3020-a(3)(c)(i)(B)]	Yes	Yes
Limitation on length of time to submit claims [§3020-a(3)(d)]	Yes	Yes
Authorizes SED to use new technologies to record or transcribe procedures [§3020-a(3)(c)(i)(D)]	Yes	Yes – <i>different policy approach</i> - phases out requirement to have a stenographer and provides that a recording or transcript may be requested by a party or both parties at their own expense.
Reciprocal Discovery pursuant to rules in State Administrative Procedure Act [§3020-a(3)(c)(i)(C)]	Yes	No
Clarify discovery provisions at the pre-hearing conference applies to both parties [§3020-a(3)(c)(iii)(C)] (Note: Arbitrators advise that they already do this, but not clear in statute)	Yes	No
Authorizes termination without a §3020-a hearing for lack of appropriate certification [§3020-a(2)(b)]	Yes	No - continues standard §3020-a hearing process to terminate for lack of appropriate certification.
Civil Practice Law and Rules (CPLR) Article 78 Review <sup>1</sup> [§3020-a(5)(b)]	Yes	No – maintains Article 75 CPLR review

<sup>1</sup> In Article 78 review of Education Law §3020-a decisions, which was available prior to 1994, the reviewing court could set aside a penalty where it is so disproportionate to the offense that it is shocking to the conscience and could set aside a finding of guilt if it is not supported by substantial evidence in the record.

Article 75 review, which applies to arbitrations, is limited to determining if the decision was affected by corruption, fraud or partiality or the arbitrator exceeded his or her jurisdiction. Article 75 review does not permit the reviewing court to correct errors of fact or law committed by the hearing officer or to set aside a penalty that is shockingly lenient or excessive as long as it is a penalty the arbitrator is authorized to impose.

