



Regulation of the Chancellor

Number: C-31

Subject: PROCEDURES FOR TERMINATION OF LICENSES OR CERTIFICATES HELD BY SUBSTITUTE TEACHERS OR REGULARLY LICENSED PERSONNEL WHO HAVE NOT ACHIEVED TENURE

Category: PERSONNEL

Issued: October 16, 2002

SUMMARY OF CHANGES

This regulation supersedes and replaces Chancellor's Regulation C-31 dated 9/05/00.

It sets forth the procedures to be followed to terminate the New York City license(s) of untenured pedagogical employees.

New Provisions:

- The revised regulation provides that hearings to terminate licenses will be combined with hearings regarding discontinuance and u-ratings.
- Appointed pedagogical employees on probation who have been discontinued, and non-appointed pedagogical employees who are entitled to a review of a u-rating, who timely appeal the decision to terminate their license or certificate, shall have the termination decision reviewed at the applicable proceeding prescribed by section 5.3.4 of the by-laws of the Department of Education.
- In all other cases, where a timely appeal of the decision to terminate is made, a separate hearing will be conducted.



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ABSTRACT

This amended regulation supersedes and replaces C-31 issued September 5, 2000 which replaced Special Circular 31R, 1992-1993, and is designed to provide a procedure whereby all licenses or certificates of a non-tenured pedagogical employee of the New York City Department of Education may be terminated for cause and the employee prevented from working for the New York City Department of Education. The Chancellor may change this regulation consistent with applicable federal and state laws.

The process set forth below applies to license and certificate holders in the following categories:

1. Persons on eligible lists who have not yet been appointed (regular license).
2. Persons who have resigned or retired (regular license) and are doing per-diem work.
3. Persons who hold "substitute" licenses or certificates, including per-diem certificates.
4. Persons on leave who are not tenured (regular license) but are doing per-diem work.
5. Persons for whom probationary service has been discontinued or who have been denied tenure and for whom termination of license is recommended.

1. PRECIPITATING CIRCUMSTANCES

The behavior, conduct or services of the non-tenured employee must be such that a community school district or Central Headquarters feels that the employee's license or certificate should be terminated.

Such behavior includes but is not limited to allegations of criminal wrongdoing, drug use, sexual misconduct, other misconduct which would pose a threat to the safety of students and staff, and conduct which brings disrepute to the district, school or school system. Also included is other conduct constituting incompetent and inefficient service, neglect of duty (including but not limited to excessive and/or unauthorized absence

and/or lateness), acts of insubordination, conduct unbecoming the teacher's position, and/or substantial cause rendering the teacher unfit to perform his/her duties.

The appropriate Superintendent/Executive Director must proceed promptly to reduce all pertinent information to writing.

2. PRELIMINARY STEPS

2.1 Notification of the Office of Appeals and Reviews

2.1.1 The Superintendent/Executive Director shall notify the Office of Appeals and Reviews by telephone and by letter, with a copy to the Executive Director, Division of Human Resources, of the need to terminate a non-tenured employee's license or certificate.

2.1.2 Written requests may be sent to the Chancellor to suspend, temporarily, the use of the license or certificate pending the completion of a review. A copy of this request should be sent to the Executive Director, Division of Human Resources.

2.2 The Technical Assistance Conference

2.2.1 The Office of Appeals and Reviews will arrange for a Technical Assistance Conference with the Office of Legal Services, which will arrange the time, place and date of the meeting. The Office of Legal Services also may initiate such a conference for cases coming directly to its attention, and will inform the Office of Appeals and Reviews of its actions.

Note: The employee is not involved in the Technical Assistance Conference.

2.2.2 At this Conference, which will be attended by supervisors of the employee, all the facts and documents which pertain to this matter will be received and a determination will be made as to the advisability of proceeding further.

2.2.3 If the recommendation to terminate the non-tenured employee's license or certificate is accepted, the Chancellor or his designee will present the specific reasons for the termination, together with a statement of intent to terminate the license(s) or certificate(s) to the employee. Where appropriate, appointed pedagogical employees on probation shall receive the termination notice with reasons for the termination simultaneously with the notice of discontinuance of their service; non-appointed pedagogical employees who are u-rated, where appropriate, shall receive the termination notice and reasons simultaneously with the u-rating. In all other cases, the termination notice and reasons shall be mailed (Certified Mail-Return Receipt Requested and Regular Mail) to the employee's last known address.

- 2.2.4 The employee shall have 15 school days from the date of service or mailing, exclusive of the summer vacation, to appeal the termination decision. Appeals must be sent to: Executive Director, Division of Human Resources, 65 Court Street, Room 717, Brooklyn, NY 11201, Attention: Office of Appeals and Reviews.
- 2.2.5 During the pendency of a review, if the employee is still employed by the Department of Education, they will be suspended without pay.

3. THE REVIEW PROCEDURES

- 3.1 Appointed pedagogical employees on probation who have been discontinued, and non-appointed pedagogical employees who are entitled to a review of a u-rating, who timely appeal the decision to terminate their license or certificate, shall have the termination decision reviewed at the applicable proceeding prescribed by section 5.3.4 of the by-laws of the Department of Education and applicable collective bargaining agreement provisions. In all other cases, where a timely appeal of the decision to terminate is made, a Hearing Officer from the Office of Appeals and Reviews will be designated to review the matter and render a report and recommendation to the Chancellor.
- 3.2 Before the Review
- 3.2.1 The Office of Appeals and Reviews will notify the employee, the Rating Officer, the Superintendent/Executive Director and all other concerned parties of the time, date and place of the review three weeks prior to the date set for the review. This will provide time for the employee to prepare testimony/documentation to support his/her position.
- The employee will be permitted only one adjournment of the Review, which must be requested in advance of the date of review. All other adjournments will be at the absolute discretion of the Office of Appeals and Reviews.
- 3.2.2 A copy of this regulation will be provided to the employee.
- 3.2.3 Decisions to terminate licenses or certificates reviewed at the applicable proceeding prescribed by section 5.3.4 of the by-laws of the Department of Education and applicable collective bargaining agreement provisions, shall be conducted in accordance with the rules applicable to those proceedings, and the employee will be so notified in writing (Certified Mail-Return Receipt Requested and Regular Mail). In all other cases, the employee will be notified in writing (Certified Mail-Return Receipt Requested and Regular Mail) in the notice prescribed above in subsection 3.2.1 that he/she is entitled at the review to:
- be represented by an advocate selected by the Union

- present all relevant evidence;
- call witnesses in his/her behalf;
- cross-examine witnesses; and
- make an oral presentation.

A copy of the notice will go to all other concerned parties.

At the review, the employer shall present evidence in support of its decision, but shall not be obligated to present witnesses. The review shall be scheduled to be heard within one year of the employee's request for a hearing, and shall not exceed one review day. If the review is not timely scheduled, the Union shall contact Counsel to the Chancellor and he/she shall use his/her best efforts to schedule a review expeditiously.

3.2.4 The review will be tape recorded.

3.3 Final Determination

The final decision regarding license/certificate termination on the case will be made by the Chancellor upon review of the report issuing from the applicable review process. With respect to a recommendation related to discontinuance, which also involves a decision to terminate a license or certificate, the Union will be advised at the time the recommendation is forwarded to the Chancellor whether the decision to terminate a license or certificate is recommended.

4. TERMINATION OF LICENSE OR CERTIFICATE

- 4.1 Where a license or certificate of a non-tenured employee is terminated based upon this proceeding, all Department of Education licenses or certificates held by the employee will be terminated, except when the sole issue before the Hearing Officer is incompetent or inefficient teaching service only in a specific license area. In such a case, only the license in the area where the pedagogue has been demonstrated to be incompetent will be terminated. In the event, however, that two licenses of a pedagogue have been removed for incompetence, the employee will forfeit all licenses with the New York City Department of Education.
- 4.2 When all licenses or certificates have been terminated, all districts will be advised that no further hiring of the employee under that file number will be permitted. The file number and social security number will appear on the next listing of invalid file numbers.
- 4.3 The employee will be advised in writing that he/she is no longer eligible to work in the New York City School System.

5. WHEN A LICENSE OR CERTIFICATE IS NOT TO BE TERMINATED

5.1 When the license or certificate of a non-tenured employee is not terminated as a result of the above procedures, all concerned parties will be so advised.

5.2 The employee will be advised in writing of the Chancellor's determination.

6. INQUIRIES

Inquiries pertaining to this regulation should be addressed to:

Director, Office of Appeals and Review

N.Y.C. Department of Education

65 Court Street – Room 717

Brooklyn, NY 11201

Telephone: 718-935-2991