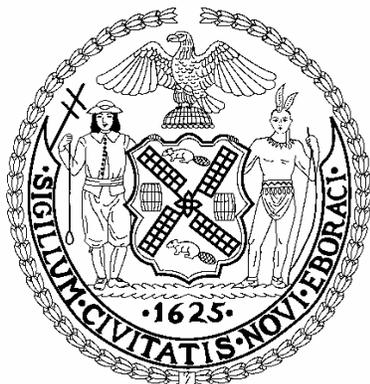


New York City Public Schools



The Appeal Process

Division of Human Resources

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Appeal From An Adverse Rating

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FOREWORD

Inherent in the By-laws of the New York City Department of Education are the guiding principles of fairness and impartiality regarding a pedagogical employee's rights to appeal an adverse rating.

The Office of Appeals and Reviews' publication, "The Appeal Process," contains important information for Rating Officers as well as Appellants with regard to the procedures conducted before, during and after the Review of any Appeal. Considerations and requirements pertinent to dates (time intervals) and documentation to an Appellant's rights germane to appeal underscore the document. Procedural steps regarding advisors, witnesses, Chancellor's Committee composition, documentation, questioning and cross-examination leading to the Chancellor's decision are listed and documented.

Section II of the Office of Appeals and Reviews User's Guide will be useful to rating officers in determining appropriate procedures and actions necessary for rating employees who are not regularly appointed, i.e. substitute teachers and acting supervisors or administrators. Regulation of the Chancellor C-31 defines the categories of employees under its aegis and explains the provisions and procedures under which it applies to employees who are not regularly appointed. The provisions of C-31 are applied in instances where the teaching or conduct of an employee who is not regularly appointed initiates action by a Superintendent to terminate the employee's license.

Section III provides rating officers with information germane to length of probation, evaluation of probation, technical assistance conferences, review by the Chancellor's Committee and final actions.

The Supervisory Performance Planning Report has been replaced by the Performance Plan for Principals. However, the Supervisory Performance Planning Report remains in effect for all other supervisory personnel. The Supervisory Performance Planning Report was developed to serve a multitude of purposes, the foremost of which is the requirement that Principals, Executive Directors, and other Rating Officers are required to plan for the optimum functioning of the members of their supervisory or administrative staffs and must evaluate their performance based upon these plans and the discharge of their other regular responsibilities. Section IV provides rating officers with critical information regarding setting goals, developing performance objectives, use of the Supervisory Performance Planning Report, on-going follow-up of performance objectives and the completion of the End-of-Year Summary.

The Office of Appeals and Reviews will welcome all requests for technical assistance or clarification concerning the Appeal of an Adverse Rating and can be contacted by telephone at: (718) 935-2991 or by Fax: at (718) 935-2983.

Section I

APPEAL FROM AN ADVERSE RATING FOR ALL PEDAGOGICAL EMPLOYEES

A. Right to Appeal

Employees who received Doubtful or Unsatisfactory ratings may appeal such rating under Section 4.3.3 of the By-laws of the Department of Education.

1. Notice of Appeal

- a. The employee may submit a written Appeal to an adverse rating by letter within three (3) weeks, exclusive of the summer vacation, after receiving an Unsatisfactory rating and must send the Appeal, plus a copy of the Evaluation Form to:

Chief Executive
Division of Human Resources

65 Court Street - Room 717
Brooklyn, NY 11201
Attention: Office of Appeals and Reviews

- b. The employee, simultaneously, should mail a copy of the Appeal to the Rating Officer.

Note: From this point on, the employee will be referred to and is considered to be an Appellant.

- c. The Office of Appeals and Reviews will communicate with the Appellant and the Rating Officer, acknowledging receipt of the materials and advising each of the requirements prior to the Review.

2. Rating Officer's Response to the Appeal

The Rating Officer is required to respond to the Appeal within three (3) weeks, exclusive of the summer vacation, after being made aware by the Appellant or the Office of Appeals and Reviews that an Appeal has been made.

a. Documentation

The Appellant is to be furnished with a complete set of the documentation used by the Rating Officer to support the reason(s) for the adverse rating.

b. Receipt for Materials

Dated postal receipts, as well as a listing and description of the documentation issued, should be obtained by the Rating Officer and sent to the Office of Appeals and Reviews.

c. Materials for the Office of Appeals and Reviews

The Rating Officer must send three (3) sets of the materials and data given to the Appellant and copies of all receipts to the Office of Appeals and Reviews.

3. Appellant's Response to Documentation

Upon receipt of the above specified materials, the Appellant has three (3) weeks, exclusive of the summer vacation, in which to respond.

a. Written Answer

The Appellant must file a full, written rebuttal to any of the reasons and documents furnished, and must notify the Office of Appeals and Reviews if any of the documents are being grieved with the Office of Labor Relations. If the Appellant so requests, the scheduling of the Review will be delayed until all grievance steps have been completed. The Appellant is required to file a Waiver Form with the Office of Appeals and Reviews to delay scheduling the Review.

b. Materials to the Rating Officer

Copies of the Appellant's responses are to be served on the Rating Officer, personally or by mail.

c. Materials to the Office of Appeals and Reviews

One (1) copy of the Appellant's rebuttal must be forwarded to the Office of Appeals and Reviews.

Note: The Appellant's failure to submit the written rebuttal within the allotted time may be considered a withdrawal of the Appeal.

d. Materials in Grievance

In order to postpone the scheduling of a Review until matters have been resolved in grievance, the Appellant must submit a Waiver Request to the Office of Appeals and Reviews. The Appellant is obligated to notify the Office of Appeals and Reviews as soon as the grievance matter has been decided.

4. Response From the Office of Appeals and Reviews

After materials have been received from the Rating Officer and Appellant, the Chancellor's Committee is selected and the Review is scheduled. The Appellant, Rating Office and other required individuals are notified at least one week in advance of the date, time and place of the Review. The Appellant is made aware that he/she is entitled to appear in person, be accompanied and advised by a Department of Education employee or Union representative, call witnesses and also introduce any relevant evidence.

B. The Review

1. Before the Review

a. The Appellant's Advisor

The Appellant has the right to be accompanied and advised by a person of his/her choice. The use of advisors is governed by certain requirements and conditions established in Article 4 Section 4.3.3 of the By-laws of the Department of Education.

- The advisor may be an employee of the Department of Education or a representative of the Union recognized as the bargaining agent.
- In accordance with the By-laws the advisor may *not* be an attorney.
- The advisor may not serve in more than two Review matters per school year (September-June).
- No persons in the employ of the Department of Education may accept, directly or indirectly, any remuneration or other consideration for his/her services as advisor or witness.
- If the advisor is a Department of Education employee, his/her attendance at a Review is not deemed to be an absence from official duty and substitutes may be employed for the period of the review, where permitted.

b. The Appellant's Witnesses

- The Appellant has the right to call witnesses.
- Within one week prior to be scheduled date of the Review, the Appellant must notify the Office of Appeals and Reviews of the name, work site and position of all persons who have agreed to appear as witnesses.

Note: If any of these witnesses are Department of Education employees, their attendance at the Review is not deemed to be an absence from official duty and substitutes may be employed, where permitted.

c. Persons Accompanying the Rating Officer

At the Review the Rating Officer may be accompanied by any supervisor or member of the Rating Team. This individual should have had some involvement in the supervision or training of the Appellant and should have written material that is included in the documentation. He or she will be permitted to participate fully at the Review.

d. Witnesses for the Rating Officer

The Rating Officer may summon other individuals as witnesses who can offer testimony concerning the matters under Review.

Note: If any of these witnesses are Department of Education employees, their attendance at the Review is not deemed to be an absence from official duty and substitutes may be employed, where permitted.

e. Composition of the Chancellor's Committee

- The Chancellor's Committee may consist of one or more persons at the Chancellor's discretion.
- Chairpersons and Committee members may be individuals assigned to the Office of Appeals and Reviews or may be brought in as consultants for this purpose.
- Committee members who would be unable to render an impartial decision are required to disqualify themselves immediately and to notify the Office of Appeals and Reviews so that they may be replaced.
- Committee members must maintain strict and continuing confidentiality about any matters discussed during the Review or during the deliberation periods and about any information contained in the report.

2. At the Review

a. Record of the Proceedings

Proceedings are recorded and the tapes become part of the official record. Copies of the tapes of the Review are available to the Appellant, upon request, at a cost of \$10.00 per tape in the form of a Postal Money Order or a check made out to the New York City Department of Education.

b. Start of the Review

The review is formally opened by the Chairperson who asks the participants to introduce themselves and state the capacity in which they are present.

c. Procedural Matters

Procedural objections are offered at the outset of the Review and rulings made by the Chairperson become part of the official record.

d. Witnesses

Major participants at the Review may present appropriate witnesses on their behalf.

e. Presentations

- The Rating Officer may stand on the written record or make oral statements with respect to supervisory involvement, the Statement of Reasons, the supporting documents previously submitted and may also present witnesses.

- The Superintendent or designee has the same presentation rights as the Rating officer.
- The Appellant or advisor may stand on the rebuttal, or make an oral presentation and introduce any relevant evidence or witnesses on his/her behalf.

f. Questioning and Cross-Examination

Persons participating at Reviews are subject to direct questioning by members of the Committee and are subject to cross examination on their testimony.

Note: The chairperson will designate who and when someone is to cross-examine and determine relevance of the question.

3. After the Review

Following the Review, the Chancellor's Committee meets for a period of deliberation and writes a confidential report containing the findings and the rationale for the recommendation. The report is countersigned by the Chief Executive Director, Division of Human Resources/ , who then forwards it to the Chancellor.

The Chancellor's Committee recommends either a denial of the Appeal, which sustains the adverse rating, or a granting of the Appeal which results in the reversal of the Adverse rating on all school, district and central headquarters' records. The issuance of a new overall evaluation is required of the Rating Officer. The revised rating sheet must be signed by the principal and the appropriate Superintendent and should be forwarded to the Office of Appeals and Reviews with copies to the Office of Teacher Records, the Office of Field Services and the Renewal Unit (all of which are located at 65 Court St.).

4. The Chancellor's Decision

The final determination is made by the Chancellor. This decision is made known to all concerned parties.

Section II

Rating Employees Who Are Not Regularly Appointed

The following guidelines and procedures apply to employees who are not regularly appointed, for example, substitute teachers and acting supervisors or administrators.

A. Staff Development

Section 89.6 of the Regulations specifies that Principals and other Rating Officers are responsible for training and developing the potential of all pedagogical personnel.

B. Ratings

The timing and conditions for rating employees who are *assigned* to a position are similar to those which apply to regularly *appointed* pedagogical personnel (please refer to the Office of Appeals and Reviews' publication, "The Rating Process.")

C. Interruption of Service for Cause

1. Regulation of the Chancellor C- 31 (Appendix E)

Regulation of the Chancellor C-31, 10/16/02 provides authority for terminating the license(s) or certificate(s) of substitute teachers or regularly licensed personnel who have not achieved tenure.

- a. There are five (5) categories of employees who are subject to the provisions of C-31:
 - Substitute license holders, including per diem certificates
 - Non-tenured regular license holders on leave who are doing per-diem work
 - Regular license holders who have not been appointed
 - Regular license holders who have either retired or resigned and are doing per-diem work
 - Persons for whom probationary service has been discontinued or who have been denied tenure and for whom termination of license is recommended

- b. The provisions of C-31 are applicable where the behavior, conduct or services of the non-tenured employee is such that the district or 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
- Conduct which brings disrepute to the district, school or school system
- 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 a teacher's position
- Substantial cause rendering the teacher unfit to perform his/her duties

c. Procedure

When the conduct or services of the non-tenured employee is such that the Superintendent believes the employee's license(s)/certificate(s) should be terminated, the Superintendent must reduce all pertinent information in writing and notify the Office of Appeals and Reviews. A Technical Assistance Conference will then be arranged with the Office of Appeals and Reviews, Office of Legal Services and the employee's supervisors to review the facts and documents. The employee does not attend the Technical Assistance Conference.

If the recommendation to terminate (revoke) the non-tenured employee's license or certificate is accepted, the Superintendent will notify the employee in writing. (See Appendices F, G, H, I.) Where appropriate, appointed employees on probation will receive the reasons for termination with the 30-day discontinuance notice or the 60-day denial notice. Non-appointed pedagogical employees, where appropriate, shall receive the U-rating with the termination notice. All termination notices and reasons shall be mailed (Certified Mail-Return Receipt Requested and Regular Mail) to the last known address of the employee.

The employee has 15 school days from the date of service or mailing, exclusive of summer vacation, to appeal the termination decision to the Office of Appeals and Reviews.

d. Review

The Chancellor has designated the Office of Appeals and Reviews to conduct the Review in the manner prescribed by Article 4, Section 4.3.3 and applicable Collective Bargaining Provisions.

The Office of Appeals and Reviews will notify the employee, Rating Officer, Superintendent and other required parties three weeks in advance of the scheduled hearing date. They will also be informed that they are entitled to:

- Be represented by an advocate selected by the Union
- Present all relevant evidence
- Call witnesses on their behalf
- Cross-examine witnesses
- Make oral presentations

After the Review, the Reviewing Officer will submit a report and a recommendation to the Chancellor. The Chancellor will then make the final determination.

The Chancellor will notify the employee of his decision by letter.* If the employee's license(s) or certificate(s) is terminated, all districts will be informed that no further

hiring of that employee is permitted. The employee's social security number will be placed or remain on the Ineligible List and the employee will be informed that he/she is no longer eligible to work for the New York City Public School system.

*Exception: When the sole issue is incompetent or inefficient teaching service in a specific license area, only the license in that subject area will be terminated.

2. Acting Supervisors or Administrators

Acting supervisory or administrative personnel may have their service interrupted, with or without cause, at any time during such service. However, after a year of such service, they are entitled to receive a written notice of dismissal (together with a Statement of Reasons which can be appealed to the Chancellor. No special forms are needed for this process.

Section III

Special Circumstances of Probationary Services

A. Probationary Service for All Pedagogical Employees

1. Length of Probationary Period

Pedagogical employees appointed to serve in the New York City Public Schools by any of the various school authorities are required to serve a probationary term as specified in the State Education Law. The current period of probation is three (3) years for non-supervisory personnel. The current period of probation is five (5) years for assistant principals.

a. Credit Toward Probation

The three (3) year period of probation for a teacher may be shortened by as much as two (2) years, if he/she is eligible for credit granted for prior service rendered in the New York City Public Schools in the same subject area and at the same level.

"Jarema Credit" is granted only to teachers.

b. Teachers who have previously achieved tenure in any New York State school system, including New York City, may apply that service, known as "Traveling Tenure" credit, toward one of the three (3) years of probation.

Note: Regardless of the combined Jarema and New York State credit, a teacher must serve a minimum of one (1) year of probation.

2. Evaluation of Probation

a. The Rating Officer is required to make periodic evaluations of the probationary service of employees. The Rating Officer must indicate to the Superintendent his/her recommendation concerning an employee's Continuation or Completion of Probation, Discontinuance or Denial of Certification of Completion of Probation on the Evaluation Form.

b. Formal evaluation of probationary service occurs just prior to the anniversary

date of the regular appointment on the appropriate rating form.

Note: Since an employee's probationary years do not always parallel the normal school year (September through June), the Rating Officer and Superintendent should be aware of the exact date on which each pedagogue was appointed in license, and the precise date on which the probationary period is scheduled to end. Special attention should be given to the possibility of reduction of probationary time through the application of Jarema or Traveling Tenure credit. Rating Officers should keep abreast of any credit given to employees on probation either through Jarema or Traveling Tenure.

c. Completing the Report

Use appropriate forms (available through the Office of Purchase Management.)

The Rating Officer completes, signs, dates, and forwards the Probationary Report to the Superintendent. The Superintendent makes a recommendation, signs, dates and returns the form(s) to the Rating Officer.

d. Upon return of the signed Probationary Report Form from the Superintendent, the Rating Officer is to follow these guidelines:

- In cases of adverse reports, attach all substantiating documentation for issuance to the employee, and have the employee sign the Probationary Report Form acknowledging receipt of the total package.
- In the case of positive recommendations, the employee is to sign the Probationary Report Form acknowledging receipt of the form.

Note: Compliance with prescribed procedures for the delivery of materials is best established by dated, signed receipts and use of certified and regular mail. Refusal to sign for materials should be attested to in writing by a witness on the document.

f. Recommendations on the Probationary Report Form

Positive Recommendations

- Continuation of Probationary Service

This indicates a recommendation to continue the employee's probationary service for another year.

- Certification of Completion of Probation

This indicates that the employee has satisfactorily completed his/her probationary period and is being so certified.

Adverse Recommendations

Adverse recommendations are reviewed automatically unless the employee expresses

a desire to forego the process.

- Authority and Conditions for **Discontinuance**.

The authority and conditions for discontinuance of probationers are contained in Section 3019A of the State Education Law which states that... “School authorities which desire to terminate the services of a teacher during the probationary period shall give a written notice thereof to such teacher at least thirty (30) days prior to the effective date of such termination of service.” (Please see Appendices A, B, & C.)

Note: The decision of the Superintendent to Discontinue Probationary Service is final. Employees may respond in writing no later than seven (7) days prior to the effective date of the Discontinuance. Recommendations for Discontinuance indicate that probationary service is to be terminated. This judgment may be made at any time during the probationary period. Discontinuance actions are reviewed automatically by the Office of Appeals and Reviews.

- Authority and Conditions for **Denial of Completion of Probation**.

The authority and conditions for Denial of Completion of Probation are contained in Section 2573, Subdivision 1, State Education Law, which states that... “Each person who is not to be recommended for appointment on tenure shall be so notified by the Superintendent of Schools in writing no later than sixty (60) days immediately preceding the expiration of his/her probationary period.” (Please see Appendix D.)

Note: The term Superintendent is substituted for “Superintendent of Schools” and Denial of Certification of Completion of Probation is equivalent to denial of tenure and terminates service in that license area in that School District. Denials are made toward the end of probationary periods and employees usually continue to draw a salary up to and including the last day of probation. Denial actions are reviewed automatically by the Office of Appeals and Reviews. Superintendents who intend to deny Completion of Probation are to inform the employee at least sixty(60) days prior to the expiration of his/her probation. The decision of the Superintendent to Deny Completion of Probation is final. Employees may respond in writing no later than seven (7) days prior to the effective date of the Denial.

3. Tenure by “Estoppel” or “Acquiescence”

Employees who work beyond the end of the probation period may achieve tenure by “Estoppel” or “Acquiescence.”

CAUTION: To avoid any possibility that an employee might achieve tenure by Estoppel or Acquiescence, the date of termination must not extend beyond the last day of the employee’s probationary period.

4. Involvement by the Superintendent

Recommendation for Discontinuance or Denial of Certification of Completion of Probation represents a very serious educational judgment with grave consequences and is made when authorities are convinced that the employee is unable or unwilling to render

competent and effective service.

The Rating Officer should consult with and involve the Superintendent as soon as it becomes clear that attempts to train and develop the potential of the employee are not producing the expected results. Early involvement of the Superintendent is essential since an independent evaluation must be made.

Note: This involvement may take place through the use of designees in all cases, except where employees are supervisors or administrators of equivalent or higher rank as that of the designee.

5. The Technical Assistance Conference

When it appears that the employee's service may have to be discontinued, an in-house Technical Assistance Conference may be scheduled by contacting the Office of Appeals and Reviews at (718) 935-2991.

a. At the Technical Assistance Conference

A member of the Office of Appeals and Reviews meets with the Rating Officer and others involved in the case including the Superintendent or designee to determine:

- Admissibility of documentation planned for use at the Review
- Specific reasons which justify the action
- Support for these reasons from documents and records brought to the Technical Assistance Conference
- Evidence of a staff development program
- Extent of involvement by the Superintendent or designee
- Need for witnesses to establish or support certain facts, incidents or events

Note: The participants will be given an advisory opinion as to whether or not supportable grounds have been established for the contemplated action.

b. After the Technical Assistance Conference

- For Discontinuance of Probationary Service

The Superintendent notifies the employee by letter sent certified and regular mail that he/she will be discontinued effective thirty (30) days from the date of the letter. (See Appendices B, C.)

- For Denial of Certification of Completion of Probation

The Superintendent notifies the employee by letter sent certified and via regular mail that he/she has been denied Certification of Completion of Probation effective sixty (60) days from the date of the letter. (See Appendix D.)

- Cautions Regarding Discontinuance or Denial Actions

In order to assure that Discontinuances and Denials are the result of educationally sound judgment which can be substantiated at a subsequent review, the following conditions must prevail:

- The Rating Officer and Superintendent are convinced that the actions are necessary and advisable.
- The employee has been made aware of his/her deficiencies, has been given assistance and has had an opportunity to improve his/her performance prior to the adverse recommendation.
- The employee has been given the documentation and reasons for the contemplated action.
- The employee receives notification of all final actions.

6. Review Before the Chancellor's Committee

a. Right to a Review

Employees who are recommended for a Discontinuance of Probation or a Denial of Certification of Completion of Probation are entitled to a Review as prescribed in Article 4, Section 4.3.2 of the By-laws. This right is cited in Article 21C of the United Federation of Teachers' Contract and Article VII J-2 of the Council of Supervisors' and Administrators' Contract.

b. Composition of the Chancellor's Committee

- Employees Covered by the United Federation of Teachers' Agreement

The Chancellor's Committee consists of three professional educators. The first member, the Chairperson, is a Reviewing Officer selected by the Office of Appeals and Reviews. The second member is an educator selected by the employee from an approved list and the third member is an educator selected in rotation from a list of professional educators agreed upon by the Department of Education and the United Federation of Teachers.

- Employees covered by the Council of Supervisors and Administrators' Agreement

A three-person Chancellor's Committee conducts a Review. The Office of Appeals and Reviews selects the chairperson and the supervisors or administrators who serve on the Committee.

7. Actions by the Office of Appeals and Reviews

When the Office of Appeals and Reviews receives its three (3) sets of materials, the following steps are taken:

- a. All parties are informed of their rights and responsibilities.
- b. Committees are impaneled and members are given a set of the documents and records.
- c. Major participants are notified of the scheduled date, time and place of the

Review.

8. The Review Format

The format used at a Review of Discontinuance of Probationary Service or Denial of Certification of Completion of Probation is the same as that used at Reviews of Unsatisfactory Ratings.

9. Chancellor's Committee Report and Recommendation

After the Review and a period of deliberation, the Chancellor's Committee writes a report which includes findings and recommendations that may or may not concur with the Discontinuance or Denial action. If the Committee cannot reach a unanimous recommendation, separate majority and minority opinions are submitted as part of the report.

- a. Where employees are covered by the United Federation of Teachers' Agreement, reports and recommendations are sent directly to the Superintendent.
- b. Where employees are covered by the Council of Supervisors' and Administrators' Agreement, reports and recommendations are sent to the Chancellor, who, in turn, sends a separate advisory recommendation to the Superintendent.

10. Final District Actions

a. Discontinuances and Denials

The Committee's recommendation to the District regarding both Discontinuances and Denials is advisory. The Superintendent is free to accept or reject the recommendation of the Chancellor's Committee after the Review is held, and the *final* determination is made by the Superintendent. Notification of same is sent to all parties concerned in writing (including O.A.R.) by the Superintendent.

b. Results of Final Actions

- Termination of Probationary Service does not result in cancellation of a person's license. However, the individual no longer has the right to work, under the same license, in the particular District from which services were terminated.
- The employee is to seek new employment in any other location where a proper vacancy exists in that license, and where the proper authorities request such an appointment.
- An employee hired by a different District, after being discontinued or denied completion of probation is required to start another three (3) year period of probation with no Jarema or New York State tenure credit applicable.

- An employee who has served under a previous appointment in any other license prior to the Discontinuance or Denial, has the right to revert to the previous license area.

Section IV

The Supervisory Performance Planning Report

A. The Supervisory Performance Planning Report

Plans and objectives and the relative importance given to them by the Supervisor or Administrator are intended to give the Rating Officer an insight into the employees' thinking, capabilities, fairness, anticipated difficulties and administrative talents.

Descriptive evaluations are made on the basis of mutually understood, specific objectives established at the beginning of and during the given periods of rating. The objectives are to be related to the regular areas of responsibility of the Supervisor or Administrator as identified in the job description for the positions.

1. Initiating the Supervisory Performance Planning Report

Supervisory Performance Planning Reports are initiated at the beginning of the school year by the Rating Officer for each Supervisor or Administrator.

2. Setting Goals

Performance goals are based on the major areas of responsibility of the particular Supervisor or Administrator, and are prepared in consultation with him/ her. The Supervisory Planning Report suggests four (4) specific areas (noted below) and allows for others which may be developed to be included. Since there are many different types of positions, the Supervisor or Administrator should decide on those objectives or goals that are appropriate and applicable to his/her position. Periodically, the objectives may be modified or eliminated for a variety of reasons.

Listed are the four (4) areas on the Supervisory Performance Planning Reports with an explanation of each:

a. To Improve Instructional and School Programs

This includes, to the extent applicable, effectiveness in curriculum development and implementation, teacher training, selection and use of instructional materials, meeting individual and/or group needs, motivating students, guidance, discipline, testing, co-curricular activities, etc.

b. To Achieve Effectiveness in Administration Functioning

This includes effectiveness in planning, organizing, leadership, follow-up, control and establishment of management procedures for such purposes as record keeping, reports and correspondence, security, school plant

operations, etc.

c. To Initiate and Strengthen Staff Activities

This includes effectiveness in selecting, training, evaluating and supporting staff. In this regard, objectivity, sensitivity, morale building, participation, incentives, firmness and cooperation are to be considered.

d. To Improve the Relationships with Staff, Students, Parents and Community

This includes relations at all levels, i.e. pupils, parents, teachers, paraprofessionals, supervisors, community school boards, community agencies and professional organizations.

3. Developing Performance Objectives

a. Establishing the Performance Objectives

Early in each school year, usually during the month of September, the Rating Officer schedules conferences with those Supervisors or Administrators to be rated.

b. Cautions

- Since the Supervisor or Administrator as well as the Rating Officer shall have input into the establishment of objectives, they should plan cooperatively for the meetings.
- Objectives are to be meaningful and attainable during the periods in question.
- Where long-range objectives have been set, intermediate goals (for the given periods) are also to be set.

4. Use of the Supervisory Performance Planning Report

- a. Four (4) copies are completed for each Supervisor or Administrator.
- b. Basic information matters are entered by the Rating Officer.
- c. The Rating Officer enters the understood specific objectives/goals and both he/she and the supervisor or administrator sign and date the document to avoid later questions or confusion regarding the actual goals and objectives that have been set.

Note: *The Supervisory Performance Planning Report Form* is available from the Office of Purchase Management.

5. Monitoring of Objectives

The Supervisor or Administrator and the Rating Officer must meet at regular intervals during the school year to review the objectives and discuss progress towards achievement. Such follow-up often reveals a need to modify or cancel certain objectives. If new objectives are agreed upon, additional sheets are prepared and appended to the original Supervisory Performance Planning Report and reasons for the changes are noted thereon.

The Supervisor or Administrator and the Rating Officer date and initial any attachments. The Supervisor or Administrator retains a copy.

6. End-of-Year Summary

The End-of -Year Summary is filled out by the Rating Officer and includes a summary of the Supervisor's or Administrator's strengths and areas for future concentration. It also indicates whether the Supervisor's or Administrator's performance exceeded, met or was below expectations. The rating should consider factors or constraints within the framework of operations over which the individual Supervisor or Administrator had no control. If necessary, additional pages should be added.

Completed forms contain spaces for three (3) signatures: Those of

- the Supervisor or Administrator,
- the Rating Officer and
- the Superintendent or other Rating Officer of record.

**SAMPLE LETTER ADVISING PROBATIONER OF
CONSIDERATION OF DISCONTINUANCE OF PROBATIONARY
SERVICE**

(Letter #1 – Discontinuance)

Date

Name
Address
City, State Zip
Dear :

This is to inform you that on _____ (date not less than thirty (30) days from the date this letter is given to the addressee), I will review and consider whether your services as a probationer be discontinued as of the close of business _____ (same date as above—a date not less than (30) days from the date this letter is given to the addressee).

My consideration of your discontinuance is based on the reasons included in the documentation you received with your rating sheet. Therefore, your rating sheet and any accompanying documentation constitute a written statement of the reasons for my consideration of your discontinuance. You may submit a written response to the reasons no later than seven (7) days prior to the date of my consideration and final determination of your Discontinuance.

Very truly yours,

Superintendent
District _____

c: Principal
Office of Appeals and Reviews

DISCONTINUANCE LETTER

APPENDIX A

**SAMPLE LETTER TO PROBATIONER AFTER WRITTEN
RESPONSE IS RECEIVED AND DISCONTINUANCE
REMAINS IN EFFECT**

(Letter #2 – Discontinuance)

Date

Name
Address
City, State Zip
Dear :

This is to inform you that after reviewing your written response dated _____, I reaffirm your Discontinuance of Probationary Service effective close of business _____ (This date is the same effective date which appeared in Letter #1 sent previously to the employee).

Very truly yours,

Superintendent
District _____

c: _____, Principal, _____
Joyce R. Coppin, Chief Executive, Division of Human Resources/Center for
Recruitment and Professional Development
Lawrence E. Becker, Deputy Executive Director, Division of Human Resources
Virginia Caputo, Director, Office of Appeals and Reviews
Denise Hallett, Director, Office of Field Services
Ludell Bailey, Director, Pedagogic Payroll
Donald S. Miller, Executive Director, Teachers' Retirement System
Althea James, Teacher Records

**SAMPLE LETTER TO PROBATIONER AFTER WRITTEN
RESPONSE IS RECEIVED AND DISCONTINUANCE IS
WITHDRAWN**

(Letter # 3 – Discontinuance)

Date

Name

Address

City, State Zip

Dear :

This is to inform you that after reviewing your written response dated _____, I have determined that your services should not be Discontinued.

Very truly yours,

Superintendent
District_____

C: _____, Principal, _____

Joyce R. Coppin, Chief Executive, Division of Human Resources/

Lawrence E. Becker, Deputy Executive Director, Division of Human Resources

Virginia Caputo, Director, Office of Appeals and Reviews

Denise Hallett, Director, Office of Field Services

Ludell Bailey, Director, Pedagogic Payroll

Donald S. Miller, Executive Director, Teachers' Retirement System

Althea James, Teacher Records

DISCONTINUANCE LETTER

APPENDIX C

**SAMPLE LETTER TO EMPLOYEE
ADVISING OF SUPERINTENDENT'S DENIAL
OF CERTIFICATION OF COMPLETION OF PROBATION**

Date

Name
Address
City, State Zip Code

Dear :

This is to inform you in accordance with Section 2573 Subdivision 1 of the State Education Law, I am denying your Certification of Completion of Probation in Community School District #_____.

Under the Collective Bargaining Agreement between the Department of Education and the United Federation of Teachers, you are entitled to the review procedures as prescribed in Article 4, Section 4.3.2. C of the Bylaws of the Department of Education.

Please be advised that your service under this appointment shall terminate as of the close of business (date not less than sixty (60) days from the date this letter is given to the addressee).

Very truly yours,

Superintendent
District_____

c: _____, Principal, _____
Joyce R. Coppin, Chief Executive, Division of Human Resources/
Lawrence E. Becker, Deputy Executive Director, Division of Human Resources
Virginia Caputo, Director, Office of Appeals and Reviews
Denise Hallett, Director, Office of Field Services
Ludell Bailey, Director, Pedagogic Payroll
Donald S. Miller, Executive Director, Teachers' Retirement System
Althea James, Teacher Records



Regulation of the Chancellor

Category: **PERSONNEL**

Number: **C-31**

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

Issued: 10/16/02

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.



NEW YORK CITY DEPARTMENT OF EDUCATION

Regulation of the Chancellor

Category: **PERSONNEL**

Number: **C-31**

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

Issued: 10/16/02

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 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 these regulations should be addressed to:

Director, Office of Appeals and Reviews
New York City Department of Education
65 Court Street - Room 717
Brooklyn, New York 11201
Telephone: **(718) 935-2991**

**SAMPLE LETTER TO EMPLOYEE
ADVISING OF SUPERINTENDENT'S TERMINATION**

Date

Name
Address
City, State Zip Code

Dear :

Your principal has informed me that s/he is rating you "Unsatisfactory" based on _____ . After a review of the circumstances surrounding this rating, I have determined that you be terminated from service and your license(s) certificate(s) be revoked, effective _____ (immediately or ten (10) days notice.)

In accordance with Regulation of the Chancellor C-31 and under the Collective Bargaining Agreement, you have the right to appeal this decision to the Office of Appeals and Reviews within 15 school days of the date of this letter.

Please be advised that your social security number will be placed on the Inquiry List.

Very truly yours,

Superintendent
District_____

c: _____, Principal, _____
Joyce R. Coppin, Chief Executive, Division of Human Resources/
Lawrence E. Becker, Deputy Executive Director, Division of Human Resources
Virginia Caputo, Director, Office of Appeals and Reviews
Denise Hallett, Director, Office of Field Services
Ludell Bailey, Director, Pedagogic Payroll
Donald S. Miller, Executive Director, Teachers' Retirement System
Althea James, Teacher Records

Letter of **U**nsatisfactory **S**ervice and **T**ermination

Appendix **F**

SAMPLE LETTER ADVISING PROBATIONER OF CONSIDERATION OF DISCONTINUANCE OF PROBATIONARY SERVICE AND TERMINATION OF LICENSE

(Letter #1 – Discontinuance and Termination)

Date

Name

Address

City, State Zip Code

Dear :

This is to inform you that on _____ (date not less than thirty (30) days from the date this letter is given to the addressee) I will review and consider whether your services as a probationer be discontinued and your license terminated as of the close of business _____ (same date as above – a date not less than thirty (30) days from the date this letter is given to the addressee.)

My consideration of your discontinuance and termination is based on _____. (The specific reasons for the discontinuance and termination must be indicated here. It is not sufficient to list a reason or general statement such as “neglect of duty.”)

You may submit a written response to the reasons no later than seven (7) days prior to the date of my consideration and final determination.

Very truly yours,

Superintendent
District _____

c: _____, Principal, _____
Office of Appeals and Review

**SAMPLE LETTER TO PROBATIONER AFTER WRITTEN REPSONSE IS
RECEIVED AND
DISCONTINUANCE/TERMINATION REMAINS IN EFFECT**

(Letter # 2 – Discontinuance and Termination)

Date

Name

Address

City, State Zip Code

Dear :

This is to inform you that after reviewing all appropriate documentation; I affirm your Discontinuance of Probationary Service and Termination effective close of business _____. (This date is the same effective date that appeared in Letter #1 sent previously to the employee.) In accordance with Regulation of the Chancellor C-31 and under the Collective Bargaining Agreement, you have the right to appeal this decision to the Office of Appeals and Reviews within 15 school days of the date of this letter. In addition, please be advised that your social security number will be placed on the Inquiry List.

Very truly yours,

Superintendent
District_____

c: _____, Principal, _____
Joyce R. Coppin, Chief Executive, Division of Human Resources/
Lawrence E. Becker, Deputy Executive Director, Division of Human Resources
Virginia Caputo, Director, Office of Appeals and Reviews
Denise Hallett, Director, Office of Field Services
Ludell Bailey, Director, Pedagogic Payroll
Donald S. Miller, Executive Director, Teachers' Retirement System
Althea James, Teacher Records

SAMPLE LETTER TO EMPLOYEE ADVISING OF SUPERINTENDENT'S DENIAL OF CERTIFICATION OF COMPLETION OF PROBATION AND TERMINATION

Date

Name
Address
City, State Zip Code

Dear :

This is to inform you in accordance with Section 2573 Subdivision 1 of the State Education Law, I am denying your Certification of Completion of Probation in District # ____ and am also recommending termination of your license(s).

Your service under this appointment shall terminate as of the close of business _____ (date not less than sixty (60) days from the date this letter is given to the addressee.)

My consideration of the denial and termination is based on _____ (The specific reasons for the Denial of Certification of Completion of Probation must be included here. It is not sufficient to list as a reason a general statement such as "neglect of duty.")

In accordance with Regulation of the Chancellor C-31 and under the Collective Bargaining Agreement, you have the right to appeal this decision to the Office of Appeals and Reviews within 15 school days of the date of this letter.

In addition, please be advised that your social security number will be placed on the Inquiry List.

Very truly yours,

Superintendent
District _____

c: _____, Principal, _____
Joyce R. Coppin, Chief Executive, Division of Human Resources/
Lawrence E. Becker, Deputy Executive Director, Division of Human Resources
Virginia Caputo, Director, Office of Appeals and Reviews
Denise Hallett, Director, Office of Field Services
Ludell Bailey, Director, Pedagogic Payroll
Donald S. Miller, Executive Director, Teachers' Retirement System
Althea James, Teacher Records

Denial and Termination

Appendix I