



November 20, 2023

The Honorable Kathy Hochul
Governor of New York State
NYS Capitol Building
Albany, NY 12244

Re: S.1039-A, Jackson / A.3748-A, Pheffer Amato

Provides procedures to be followed in appointing a hearing officer for removal and disciplinary action against certain public employees not in the service of the city of New York, including the fees to be paid for such hearing officer; provides for suspension, with pay, pending the determination

Dear Governor Hochul,

The New York State School Boards Association, the New York State Council of School Superintendents, the Association of School Business Officials – New York, the BOCES of New York State, the New York Conference of Mayors, the New York State Association of Counties and the Association of Towns of the State of New York all **strongly oppose** the above referenced legislation and urge your immediate veto.

If enacted, this legislation would dramatically increase the requirements placed on employers in the employee disciplinary process. Disciplinary hearings would be required to be conducted by an independent hearing officer utilizing a limited list of hearing officers with a selection process that will inevitably be used to delay hearings. Employers would then be required to implement the penalty selected by the hearing officer even when the conduct is such that the individual has no business working in a school or other position of public employment and is guilty of the misconduct.

In addition, employers would only have the option to place employees on paid suspension, pending the hearing. Such leave would be limited to a maximum of just 30 days. Such disciplinary hearings could be the result of accused felony offenses, sexual abuse, illegal substances or other actions that could endanger the safety of the public and even coworkers. Based on history and past practice, it is very likely that this legislation would lead to more delays and increased costs, due to litigation and other tactics.

Under current law, civil service employees are entitled to extensive statutory due process protections before any disciplinary action can be taken against them, including but not limited to written notice of the charges, the right to be represented by their employee organization during questioning and the hearing on the charges, and the right to collectively bargain additional disciplinary procedures. Moreover, in the event that the charges an employee faces are related to misconduct or incompetence, employers are permitted to suspend the employee without pay. It should be noted, that it is commonplace for school to hire a hearing officer even if not technically required. This protects the fidelity of the process and ensures a fair outcome for the employee.

If this bill were enacted, public employers would be subject to significant additional costs through delay tactics and gaming of the system. This selection process has the potential to devolve into a rotating selection and strike scenario where six names are stricken and the seventh is chosen by default. This change would affect every step of the progressive discipline process. Public employees have generous protections and rights under Section 75 of the Civil Service Law and are further able to negotiate other conditions through their collective bargaining agreements. In fact, this legislation specifically excludes New York City public employees, who have negotiated other disciplinary arrangements, and also does not supersede any other collectively bargained disciplinary processes elsewhere in the state.

The public employers represented by our organizations are required to follow a graduated, multi-step discipline process to the letter. Adding the requirement of a hearing officer that must be agreed upon by both parties, and making the hearing officer's decision binding, tilts the scales even further in favor a disciplined employee and further weakens the already limited role of management.

For school districts in particular, this bill would further diminish the rights of public employers in a process for employees that don't undergo the same rigorous review process as tenured educators. Tenured educators generally have a four-year probationary period, and must receive the recommendation of the superintendent and approval of the board of education before receiving extensive due process rights. To grant the same rights to civil service employees is an affront to the process that teachers and principals must undergo to receive due process protections. The Section 75 discipline process gives employees vast protections and multiple, mandated opportunities to appeal a disciplinary issue. This bill will now effectively subject those steps to the whims of binding arbitration, in which the collective bargaining unit will help choose the arbitrator.

Our groups are not proposing to eliminate any existing protections for those employees covered by this section of Civil Service Law. However, we believe the current law, which can be supplemented by the collective bargaining process, provides generous protections in an efficient manner, and should not be expanded.

For the reasons stated above, we ***strongly oppose*** this legislation, and urge your veto.

Sincerely,

Robert S. Schneider
Executive Director
NYS School Boards Association

Barbara Van Epps
Executive Director
NY Conference of Mayors

Stephen J. Acquario
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NYS Association of Counties

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District Superintendent, Eastern Suffolk BOCES
Chair, BOCES of New York State

CC: Senator Robert Jackson
Assemblymember Stacey Pheffer Amato
Elizabeth Fine
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