THE NEW YORK CITY DEPARTMENT OF EDUCATION
JOEL I. KLEIN, *Chancellor*

OFFICE OF THE CHANCELLOR
52 CHAMBERS STREET - NEW YORK, NY 10007

April 15, 2010

Michael Mulgrew, President
United Federation of Teachers
52 Broadway, 14th Floor
New York, New York 10004

Dear Mr. Mulgrew:

This letter will confirm the mutual understandings and agreements between the Board of Education of the City School District of the City of New York ("DOE") and the United Federation of Teachers ("UFT"). Nothing in this Agreement shall constitute a waiver or modification of any provision of any collective bargaining agreement, letter (including but not limited to the June 27, 2008 letter from the Chancellor to the President of the UFT) or other agreement between the DOE and the UFT except as specifically set forth herein. Nothing in this agreement shall be construed to convert non-mandatory subjects of bargaining into mandatory subjects of bargaining. As used herein, the term "CBA" shall refer to the collective bargaining agreement covering teachers and corresponding provisions of other UFT-DOE collective bargaining agreements.

The long delays that have arisen in the current process of investigating alleged acts of misconduct and adjudicating charges pursuant to Education Law § 3020-a benefit neither the DOE nor the employees represented by the UFT. The DOE and the UFT are committed to ensuring that the agreements reached here will be carried out so that those delays will be ended and the process outlined in the law, the contracts between the parties, and this Agreement will be adhered to.

For purposes of this Agreement, all timelines shall be measured in calendar days, but shall not include the summer break, all recess periods and holidays.

Reassignment

Misconduct Cases (*i.e.,* any case deemed by the DOE to deal exclusively or primarily with an employee's behavior, not his or her pedagogy): Pending investigation of possible misconduct and completion of the § 3020-a hearing, the DOE may reassign an employee only to (i) a DOE administrative office to do work consistent with law (an "Administrative Office Assignment") or (ii) an administrative assignment within his or her school with a program consisting of Professional or Administrative Activities (as listed in CBA Articles 7(A)(6)(a), 7(B)(8)(a), 7(C)(4)(g)(1), or 7(K)(3)(d)) other than items #1 (small group instruction), #2 (one to one tutoring), #3 (advise student activities such as clubs, teams or publications) and #7 (conflict resolution for students), which shall be scheduled consistent with CBA Article 7(B)(2)(c) regardless of the division in which the employee works ("Administrative School Assignment").

Where the Chancellor or his designee determines that it is in the best interests of the school system that an employee accused of sexual misconduct as defined in CBA Article 21(G)(6) or serious financial misconduct involving more than $1,000 not be allowed to work in an Administrative Office Assignment or an Administrative School Assignment pending the outcome of the investigation, the DOE may suspend the employee with pay rather than reassign him/her. The determination of the Chancellor or his designee to suspend an employee with pay shall be in writing. Prior to a suspension from all duties with pay, the Chancellor or his designee shall consult with the UFT President or his designee.

The DOE shall prefer charges pursuant to Education Law § 3020-a[1] within 60 days of an employee being reassigned or suspended, except in cases where the reassignment or suspension was caused by (i) an allegation of sexual misconduct as defined in CBA Article 21(G)(6) that is being investigated by the Special Commissioner of Investigation for the New York City School District ("SCI"), (ii) an allegation of serious financial misconduct involving more than $1,000 that is being investigated by SCI, (iii) criminal charges pending against the employee, (iv) an allegation of serious assault that is being investigated by SCI, (v) an allegation of tampering with a witness or evidence, where the allegation of tampering is being investigated by SCI. In cases where the 60 day period does not apply, when SCI issues a report or, in the case of criminal charges, the employee notifies the DOE of the disposition of the criminal case pursuant to Chancellor's Regulation C-105, the DOE shall have 15 days to bring § 3020-a charges against the employee or return the employee to his or her prior assignment. Nothing herein shall waive any limitations period for the bringing of charges pursuant to Education Law § 3020-a. The Chancellor or his designee and the President of the UFT or his designee shall meet monthly, or less frequently if the UFT and DOE agree, to review the status of these cases. At the end of the first year of this Agreement, and in subsequent years if requested by the UFT, the DOE and the UFT will meet to review the issue of investigations and reassignments extending beyond 60 days and, if there has been a significant increase in the number of such investigations and reassignments, to negotiate ways to address this issue.

Except in those cases where the DOE is not required to prefer charges within 60 days, should the DOE not prefer § 3020-a charges within 60 days, the employee shall be returned to his/her prior assignment. If an employee is returned to his/her prior assignment, adverse action shall not be taken against the employee solely because of the reassignment. If § 3020-a charges are preferred subsequent to the expiration of the 60 day period, the employee may then again be reassigned to an Administrative Office Assignment or an Administrative School Assignment or, where the Chancellor or his designee determines that it is in the best interests of the school system that an employee accused of sexual misconduct as defined in CBA Article 21(G)(6) or serious financial misconduct involving more than $1,000 not be allowed to work in an Administrative Office Assignment or an Administrative School Assignment pending the outcome of the investigation, suspend the employee with pay rather than reassign him/her pending determination of the § 3020-a charges. The determination of the Chancellor or his designee to suspend an employee with pay shall be in writing. Prior to a suspension from all duties with pay, the Chancellor or his designee shall consult with the UFT President or his

[1] Probationary employees will be reassigned in the same manner as tenured employees under this Agreement, *i.e,* to an Administrative Office Assignment, Administrative School Assignment, or suspension with pay (if permitted by this Agreement). This Agreement shall not be construed to create tenure or Education Law § 3020-a rights for an employee.

designee. An employee's assignment pending investigation and/or a hearing shall not be raised at the hearing or deemed relevant in any way to the determination of the charges, any penalty issued or the adjudication of any issue in the hearing.

Incompetence Cases (*i.e.,* any case deemed by the DOE to deal exclusively or primarily with an employee's pedagogy) – Pending the bringing of Education Law § 3020-a charges for alleged incompetence and completion of the § 3020-a hearing, the DOE may reassign an employee only to an (i) Administrative Office Assignment or (ii) an Administrative School Assignment. The DOE shall prefer charges pursuant to Education Law § 3020-a within 10 days of an employee being reassigned. Should the DOE not prefer § 3020-a charges within 10 days, the employee shall be returned to his/her prior assignment. If an employee is returned to his/her prior assignment, adverse action shall not be taken against the employee solely because of the reassignment. If § 3020-a charges are preferred subsequent to the expiration of the 10 day period, the employee may then again be reassigned to an Administrative Office Assignment or an Administrative School Assignment pending determination of the § 3020-a charges.

Tolling: If the DOE gives a reassigned employee 48 hours notice of an interview which may lead to disciplinary action and the reassigned employee either fails to appear on the scheduled day or fails to notify the DOE that s/he is invoking any right he/she may have to not answer questions, the DOE shall reschedule the interview within a reasonable period of time and the time between the originally scheduled interview and the rescheduled interview shall not count towards the applicable 60-day or 10-day limits on the length of time an employee may be reassigned or suspended with pay. Where a principal schedules an interview which may lead to disciplinary action of an employee that has been given an Administrative School Assignment and 48 hours notice is not required by the CBA, Chancellor's regulations, or law, the following shall apply: If the reassigned employee either fails to appear on the scheduled day or fails to notify the principal that s/he is invoking any right he/she may have to not answer questions, the principal shall reschedule the interview within a reasonable period of time and the time between the first scheduled interview and the rescheduled interview shall not count towards the applicable 60-day or 10-day limits on the length of time an employee may be reassigned. Nothing herein shall constitute a waiver or alteration of any right the DOE may have to compel an employee to attend an interview which may lead to disciplinary action or any right an employee may have to not answer questions.

Service of Charges

In order to make the process as efficient as possible, service of notice of the nature of the charges and the actual charges shall be consolidated and served together upon an employee along with specifications and, in incompetence cases, a bill of particulars. Nothing in this Agreement shall alter a Respondent's entitlement, if any, to a bill of particulars in misconduct cases.

Probable Cause Determinations

In addition to the enumerated acts set forth in CBA Article 21(G)(5), serious misconduct shall also include actions that would constitute a class A-I or A-II felony or any felony defined as a violent felony offense in NY Penal Law § 70.02. An indictment on a class A-I or A-II felony, an indictment on any felony defined as a violent felony offense in NY Penal Law § 70.02, or a felony indictment on any other conduct that constitutes serious misconduct pursuant to CBA Article 21(G)(5) shall create a rebuttable presumption of probable cause.

If a finding of probable cause was based on an indictment pursuant to CBA Article 21(G)(5), the employee shall remain off payroll pending the disposition of the criminal case. The DOE shall have 15 days after the employee notifies the DOE of the disposition of the criminal case pursuant to Chancellor's Regulation C-105 to bring Education Law § 3020-a charges based on the same conduct as was at issue in the criminal case. If the DOE prefers § 3020-a charges on the same conduct as was at issue in the criminal case within the 15 days, and the employee was convicted in the criminal case of any offense that constitutes serious misconduct, he/she shall remain off payroll until a decision in the § 3020-a case and such § 3020-a case shall be completed within the timeframes for hearings set forth in this Agreement. If the DOE prefers § 3020-a charges on the same conduct as was at issue in the criminal case within the 15 days, and the employee was acquitted of all offenses that constitute serious misconduct, the DOE shall reassign the employee to an Administrative Office Assignment or an Administrative School Assignment, suspend the employee with pay (if permitted pursuant to this Agreement) or request a second probable cause hearing to continue the suspension without pay until the final outcome of the § 3020-a hearing and such § 3020-a case shall be completed within the timeframes for hearings set forth in this Agreement. If the DOE does not bring Education Law § 3020-a charges within those 15 days, the employee shall be restored to the payroll effective as of the date the disposition of the criminal case and returned to his/her prior position.

If a finding of probable cause was based on criminal charges pursuant to CBA Article 21(G)(6), the DOE shall have 15 days after the employee notifies the DOE of the disposition of the criminal charge pursuant to Chancellor's Regulation C-105 to bring Education Law § 3020-a charges based on the same conduct as was at issue in the criminal charge. If the DOE brings such a § 3020-a charge, the employee shall remain off payroll until a decision in the § 3020-a case and such § 3020-a case shall be completed within the timeframes for hearings set forth in this Agreement. If the DOE does not bring § 3020-a charges based on the same conduct as was at issue in the criminal charge within 15 days of the employee notifying the DOE of the disposition of the criminal charge pursuant to Chancellor's Regulation C-105, the employee shall be restored to the payroll effective as of the date the disposition of the criminal charge.

Nothing in this Agreement shall alter the provisions of CBA Article 21(G)(5) and (6) with respect to entitlement to back pay. The DOE agrees to meet on a bimonthly basis with the UFT to assess the status of investigations extending beyond 60 days where the employee has been suspended without pay. ***Timeframe for Hearings***

Within 10 - 15 days of DOE's receipt of the request for a hearing from an employee charged under Education Law § 3020-a, a pre-hearing conference shall be held. Both Education Law

§ 3020-a and the collective bargaining agreements require hearings, including closing statements, to be completed within sixty (60) days of the pre-hearing conference and a decision to be rendered within thirty (30) days of the final hearing date. The UFT and DOE agree this timeframe must be adhered to by all parties to the hearings and strictly enforced by hearing officers. Hearing officers shall establish a trial schedule at the pre-hearing conference to ensure that hearings are completed within the required statutory and contractual timeframes and ensure an equitable distribution of days between the DOE and the charged employee.
Education Law § 3020-a permits "limited extensions" beyond the 60 days where it is determined that "extraordinary circumstances" warrant. "Extraordinary circumstances" shall be construed narrowly by hearing officers so that the granting of "limited extensions" allowing hearings to last beyond sixty (60) days is the exception and not the rule. Pursuant to CBA Article 21, a hearing officer may be removed prior to the end of his or her one-year term only for good and sufficient cause, which may include failure to comply with this Agreement, upon mutual agreement of the UFT and DOE.

If the hearing officer determines that a necessary witness is a former student who is unavailable because he/she is residing outside of New York City or a current student who is unavailable because he/she has left New York City for an extended period of time, this shall constitute an "extraordinary circumstance." In such a case, the hearing officer shall schedule the hearing to begin or continue as soon as possible given the availability of the witness as demonstrated to the hearing officer.

Arbitrators serving on the competence panel must agree to provide seven (7) consecutive hearing dates as defined in CBA Article 21(G)(2)(a) per month for the months of September through June and two (2) hearing dates for the months of July and August.

Discovery and Testimony

In order to comply with timelines for hearings, the UFT and DOE agree that hearings must be held in as efficient a manner as possible. Disputes relating to document production, witness lists and other procedural issues often consume hearing time and should be dealt with to the maximum extent possible in the pre-hearing conference. To that end, the UFT and DOE have already agreed in the June 27, 2008 letter from the Chancellor to President of the UFT to certain discovery procedures.

The hearing process itself can be conducted in a more efficient manner that allows for issues to be fully and fairly litigated. To accomplish this, the parties to the hearings shall adhere to the following guidelines:

1. It is the intent of the UFT and DOE that, to the extent practicable, hearing days shall be fully utilized, that hearing days not end before 5pm and the parties to the hearing have multiple witnesses ready to testify to avoid the loss of part of the day.
2. Where a hearing day is not fully used, the unused time will be counted towards the time allocated to the party that caused the delay.
3. Attorneys shall not meet with others between direct and cross examination for longer than 20 minutes, except in unusual circumstances.

4. Hearing Officers shall ensure that cross-examination is not used by either party as a dilatory tactic in order to reduce one of the parties' allotted time to present its case.
5. Evidence shall be limited to relevant matters.
6. Rebuttal shall be used only to deny some affirmative fact that the opposing party has tried to prove. During rebuttal, a party to the hearing may not offer proof to corroborate evidence that has already been presented by that party or proof tending merely to support that party's case after the opposing party has rested.

If relevant and requested at the pre-hearing conference, either party may introduce (i) relevant background evidence about a witness by affidavit from the witness; (ii) an affidavit from a doctor's office attesting to an employee's visit or non-visit on a particular date; (iii) an affidavit attesting to the date of an employee's arrest, the charge (if any) against the arrested employee, and the disposition of that charge. Such a witness may be cross-examined regarding any matter discussed in an affidavit.

If relevant, a (i) business record, (ii) attendance list from a faculty meeting, orientation and/or training session, or (iii) any human resource document submitted by a respondent (*e.g.,* absence or sick note) may be admitted with an affidavit from a custodian of the record, without the need for live testimony from a witness to authenticate the document.

A party to the hearing or the hearing officer may request an unedited copy of the relevant transcript if a certified transcript is not available when needed. The unavailability of a certified transcript shall not excuse adherence to the time limitations for completion of a hearing and issuance of a decision.

Non-Termination Cases

The expedited hearing process as described in CBA Article 21(G)(3) shall be utilized as set forth therein, with the following modification: If the DOE decides not to seek a penalty of more than a suspension of 4 weeks or an equivalent fine, the case shall be heard under the expedited procedures provided in CBA Article 21(G)(3), without the need for the employee to accept an offer of expedited arbitration.

A separate track of "non-termination" cases will be established with a separate panel of additional hearing officers that exclusively hears expedited cases.

Panel of Hearing Officers

The number of hearing officers shall be as follows:

Incompetence Cases shall be heard by a panel of 14 hearing officers.

Misconduct Cases shall be heard by a panel of 25 hearing officers.

Expedited Cases shall be heard by a panel of hearing officers, the size of which will be set by the UFT and DOE as described below.

Representatives of the UFT and DOE shall meet monthly, or less frequently if the UFT and DOE agree, for the first year of this Agreement and at least twice a year thereafter (i) to agree on the number of hearing officers hearing expedited cases, (ii) to discuss the appropriateness of the number of hearing officers, including the possibility of agreeing to increase or decrease the number of hearing officers on either the incompetence or misconduct panels on either a temporary or permanent basis, and (iii) to discuss the appropriateness of the number of probable cause arbitrators, including the possibility of agreeing to increase or decrease the number of probable cause arbitrators. If the DOE believes there is a need for more hearing officers to comply with the timelines set forth in this Agreement, it shall request that the UFT agree to increase the number of hearing officers and the UFT shall not unreasonably deny an increase.

Decisions

Both Education Law § 3020-a and the collective bargaining agreements require decisions within 30 days of the completion of the hearing.

Meeting with the Panel of Hearing Officers

The Chancellor and the President of the UFT will personally, jointly meet with the panel of hearing officers annually to impress upon the hearing officers that both parties to this Agreement are serious about meeting the timelines in the law, the collective bargaining agreements, and this Agreement. The Chancellor and the President will urge the hearing officers to strictly control the hearings and require all parties to the hearing to conform to the timelines provided herein. They will assure the hearing officers that no hearing officer will be removed by either party to this Agreement for enforcing these rules.

Mediation of Education Law § 3020-a charges

This section, "Mediation of Education Law § 3020-a charges," shall apply to all employees with pending Education Law § 3020-a charges on or before September 1, 2010 or being investigated on or before September 1, 2010 and the investigation results in § 3020-a charges. The parties to the § 3020-a hearings shall begin mediating such cases upon the signing of this Agreement.

The UFT and DOE shall agree on hearing officers on the rotational panel that shall serve as mediators one day per month (in addition to their required hearing days that month). The UFT and DOE may also jointly select mediators not currently on the panel of hearing officers.

Each case subject to mediation shall be assigned, on a rotational basis, to a mediator, other than the hearing officer assigned to decide the case.

The employee (and the employee's representative, if any) and a representative of the DOE with authority to negotiate settlement agreements (subject to final supervisory approval) shall meet with the mediator. The mediator shall work informally to assist the charged employee and the DOE in reaching, if possible, a voluntary, negotiated resolution of the Education Law § 3020-a charges. The mediator shall not decide the merits of the Education Law § 3020-a charges or

impose a decision. Instead, the mediator shall help the charged employee and the DOE to, if possible, agree on a mutually acceptable resolution.

No mediator shall be compelled to or voluntarily disclose (including in any subsequent proceedings under §3020-a of the Education Law) any information learned during the mediation.

Backlog

Effective the first day of the 2010-2011 school year, all employees who, prior to August 31, 2010, have been (i) removed from their positions and assigned to a temporary reassignment center or (ii) charged pursuant to Education Law § 3020-a shall be reassigned to an Administrative Office Assignment or an Administrative School Assignment or suspended with pay (if permitted by this Agreement).

For all employees charged prior to August 31, 2010, the requirement that the pre-hearing conference be scheduled within 10-15 days of the charge shall not apply, but the § 3020-a hearing and decision shall be completed by December 31, 2010.

For all employees who were assigned to a TRC prior to August 31, 2010 and were not charged prior to August 31, 2010, the 10 or 60 day period to charge an employee or return him/her to his/her prior assignment, shall run from September 1, 2010.
Effective September 1, 2010, the parties will implement the new timelines set forth in this Agreement, which shall apply to all cases charged after September 1, 2010.

Sincerely,

Joel I. Klein
Chancellor
New York City Department of Education

Agreed and Accepted By:

Michael Mulgrew
President
United Federation of Teachers