

SUPPLEMENTAL MEMORANDUM OF AGREEMENT

BY AND BETWEEN THE SUPERINTENDENT OF SCHOOLS AND BOARD OF EDUCATION OF THE NEWBURGH ENLARGED CITY SCHOOL DISTRICT, hereinafter referred to as "The District" and THE NEWBURGH TEACHERS' ASSOCIATION, hereinafter referred to as "the Association" or "the NTA";

WHEREAS, the parties have mutually agreed to the following appeals process to be incorporated into the District's APPR Plan Document for teachers covered by education law § 3012-c and part 30-2 regents rules;

1. Appeals Process:

- A. Any teacher who receives an ineffective rating on their annual composite APPR or a tenured teacher who receives a developing rating on his/her 60 point measure shall be entitled to appeal their annual APPR rating, based upon a paper submission to the Superintendent of Schools or the Superintendent's administrative designee from the Human Resources Department, who shall be trained in accordance with the requirements of the statute and regulations and also possesses either an SDA or SDL Certification; provided, however, in the event that the Superintendent or the Superintendent's administrative designee served as an evaluator or lead evaluator he or she shall not hear the appeal.
- B. The appeal must be brought in writing, specifying the area(s) of concern, but limited to those matters that may be appealed as prescribed in Section 3012-c of the Education Law. Further, a teacher who is placed on a Teacher Improvement Plan ("TIP") shall have a corresponding right to appeal concerns regarding the TIP in accordance with the requirements set forth in Section 3012-c of the Education Law.
- C. An appeal of an APPR evaluation or a TIP must be commenced within ten school days in the case of a tenured teacher and twenty calendar days in the case of a probationary teacher of the presentation of the final document to the teacher or else the right to appeal shall be deemed waived in all regards; provided, however, that in the case of a TIP appeal, there shall be a second fourteen business day period for a TIP appeal following the end date of the TIP.
- D. The Superintendent or the Superintendent's administrative designee shall respond to the appeal with a written answer granting the appeal and directing further administrative action, or denying the appeal. The Superintendent or the Superintendent's administrative designee shall review the evidence underlying the observations of the teacher along with all other evidence submitted by the teacher

prior to rendering a decision. Such decision shall be made within fourteen business days of the receipt of the appeal. If the Superintendent or designee upholds the evaluation, then the teacher shall be entitled to a meeting with the Superintendent and Union representative. So long as the decision is made within the timeframe set forth in this paragraph, the decision of the Superintendent or the Superintendent's administrative designee shall be final and binding in all regards and shall not be subject to review at arbitration, before any administrative agency or in any court of law.

- E. 1. Notwithstanding the above, in the event that a tenured teacher has received two consecutive ineffective APPR evaluation ratings, if the Board find probable cause to convene Section 3020-a disciplinary proceedings based upon those evaluation ratings a further appeal shall lie with an arbitrator selected on a rotating basis from the following list, based on order and reasonable timeframe of availability: Bonnie Siber-Weinstock, Ira Lobel, Jeffrey Selchick, Margaret Leibowitz and Sheila Cole, who shall make a final and binding decision upon the appeal of the APPR evaluation and the TIP. The documentation to be furnished to the arbitrator on behalf of the tenured teacher and by the District shall be exchanged between the tenured teacher and the administration on an immediate basis at the time of submission to the arbitrator. In the event that either party has a question regarding the authenticity of such documentation, the same shall be presented in writing immediately to the arbitrator and copied to the other party for the arbitrator's review and consideration. The Arbitrator shall review the evidence underlying the observations of the teacher along with all other evidence submitted by the teacher prior to rendering a decision. If the arbitrator upholds the evaluation and the TIP then he/she shall be appointed to be the Section 3020-a hearing officer in the matter. Notwithstanding the aforementioned language, nothing herein shall be construed as limiting the right of the employee to challenge said evaluation in any proceeding brought pursuant to Education Law §3020-a, so long as the identical issue wasn't resolved in the appeal before the arbitrator or clearly should have been presented in the appeal but was not. It is expected that the cost of said hearing shall be paid for in accordance with the provision of the Education Law. In the event that the State Education Department will not appoint the arbitrator as the described above, then the matter will be determined as a contractual "for cause" disciplinary arbitration by said arbitrator with the District bearing the cost for the "for cause" disciplinary arbitration. Regarding the evaluation and TIP, the District and the Association share the cost equally.
2. In order to take advantage of the procedure outlined in E(1) above, the tenured teacher must consent, following consultation with an Association representative, to

the use of an arbitrator from the arbitration panel set forth in paragraph E(1) above, when notified of the District's intent to have a probable cause determination under Section 3020-a of the Education Law. If the tenured teacher is unwilling to do so, the appeal shall be heard by the Superintendent or the Superintendent's administrative designee.

- F. The provisions set forth above shall neither be construed to alter or affect the rights of probationary teachers pursuant to § 3031 of the New York State Education Law, nor shall the provisions set forth above limit the right of probationary teachers to file contractual grievances under Article X, Sections A through I of the NTA Collectively Negotiated Agreement.

SO AGREED, this 23 day of May, 2012.

THE DISTRICT

By: Ralph A. Pizzo

THE ASSOCIATION

By: Patricia M. Vanduse
Association President