

School Administrators Association of New York State

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Testimony of the

School Administrators Association of New York State

Senate Hearing

Retention and Recruitment of Civil Service Jobs in New York State,

the New York Pension Fund, Pensions, and Civil Service Benefits

October, 2023

Chairperson Jackson and honorable members of the Senate, thank you for the opportunity to submit testimony on the retention and recruitment of civil service jobs in New York State, the New York Pension Fund, pensions, and civil service benefits. This testimony is submitted on behalf of members of the School Administrators Association of New York State (SAANYS). SAANYS is the largest professional association of school administrators in New York State, whose membership has grown to over 16,000 active building administrators and program directors across the state. We represent members in approximately 428 school districts and in each of the Big 5 Cities. Thank you for your examination of this important topic. The timing of the hearing is most appreciated, as the field of education struggles with staffing challenges. Changes to current policies that will help school districts to recruit and retain highly qualified workers are most welcome.

Nature of Civil Service Positions in School-based Settings

It is critical to ensure that New York State has an expansive, diverse, and highly skilled workforce. The New York Civil Service System has played a significant role in working towards that goal. The report “*New York State’s Civil Service Examination Process and Its Impact on Diversity in the Public Sector*” is a comprehensive analysis of the factors that challenge the civil service system within the current employment environment. The issues cited in the report, such as lagging examinations, types of exams, and timeframe for the current civil service processes significantly impact school districts with civil service employees.

Disparities in Protection

It is important to understand that there are unique intersections between civil service and certificated positions (non-civil service). The process for certification is regulated by the New York State Education Department, whereas civil service positions are regulated by the New York Department of Civil Service. This often results in disparities in a variety of working conditions, job protections and other job-related processes.

There are significant differences between civil service and certificated employees in terms of protections from loss of employment due to alleged misconduct. For most certificated employees, state law provides due process safeguards during their probationary and tenure process. Most certificated educators have a four-year probationary period during which time they are evaluated annually. Although a non-tenured educator may be dismissed for very little reason, such employee has the ability to request the reasons for termination and an appeal to the board of education. A tenured certificated employee has significant statutory due process rights that do not apply to a civil service employee.

The process for civil service employees to move from provisional appointment to permanent appointment is fraught with challenges not of the employee's making. They are comprehensively examined in the report "*New York State's Civil Service Examination Process and Its Impact on Diversity in the Public Sector*". Some of the most significant challenges cited in the report are:

- Lack of viable lists of eligible candidates, due to lack of appropriate examinations for positions within schools. A provisional appointment must then be used.

- The timeframe for the availability of appropriate exams is quite long, often several years.
- Once an examination is offered, there is a long application period.
- The opportunity of civil service exams is not transparent to the general public. Further, the timeframe from taking a test, and scoring the test, is very long in many instances. Subsequently, the timeframe for issuing a list is protracted.
- Some test formats are not aligned to provide sufficient information to determine best candidates for the position. Differing test formats elicit different information and often present challenges for many persons.
- Civil service requires employers to select a person who attained one of the top three scores. While the merit-based system in place can prevent patronage, it sometimes disqualifies employees who have shown exemplary service while in the position but did not have a high enough score. This also impacts the ability to create a diverse workplace.
- Civil exams are also often issued at the county level, which can have the preclusive effect of not attracting qualified candidates in neighboring counties. In many instances, although titles may be similar in counties, the exams may not be. In some cases, this means that a new hire could be in similar position to the one in another county, but remain in a probationary period, without an exam for long periods of time.

Although the report provides many other examples of current pitfalls in the civil service examination process, the above are very salient to school districts. Each of the above impact recruitment and retention.

Of particular concern is the length of time that potential civil service employees must be in provisional and probationary status. During those time periods, civil service employees are not well protected. Employees who are in a provisional status find that their salaries are lower and/or have varying vacation payouts. Many contracts will differentiate between probationary and permanent employees for certain terms in their contract.

The differences in protections between certificated and civil service employees is more noticeable once they have passed their probationary periods and have achieved tenure (certificated)/permanent (civil service) status. Tenured certificated employees received due process protections pursuant to Education Law §3020-a, which entitles them to a full hearing before a mutually agreed upon hearing officer, who has been preapproved by the State Education Department. The results of this hearing are final and binding upon the parties. Conversely, discipline of permanent civil service employees is governed by the due process provisions within Civil Service Law §75. This statute currently allows the employer to unilaterally pick the hearing officer, who may be another employee, and the decision is not binding on the employer. These employees are also subject to a 30-day unpaid suspension prior to guilt or innocence ever being determined, whereas certificated tenured employees remain with pay until the determination. Such differences fly in the face of the longstanding principle of “innocent until proven guilty.”

Difference in Pension Systems

Although the pension systems for civil service and certificated employees are different, they both remain a significant benefit. However, each system differs and may create disparities for employees. There can be varying terms for vestment, employer contributions, investments and other conditions such as ages for retirement. The NYSERS and NYSTRS are in fact two separate systems, potentially producing varying benefits.

Recommendations

- Expand the number of top scores from which school districts may select potential candidates. Additionally, scores should also allow credit or points for successful employment service.
- Revise the current provisional appointment process. If a test is not offered within a set period of time after a provisional appointment, then the employer should have the flexibility to convert the provisional to a permanent appointment.
- The current civil service process for disciplinary hearings for employees in permanent positions is outdated and inequitable. Such employees may be removed or have other disciplinary actions taken after a hearing is held before an officer or body who has brought the charges. This is not fair hearing practice. Passage of S.1039-A/A.3748-A would require the hearing officer to be agreed upon mutually, the decision of the hearing officer would be binding and the employee may not be suspended without pay during the hearing.
- Adjust the base salary on which COLAs are based for retirees. The floor of \$18,000 has not been changed for many years and should be raised to at least \$22,000.
- Increase the number of training and experience exams and ensure that raters of such exams are trained on school district positions in order to determine equivalency to school-based positions.
- Establish a standardized metric for grading T&E exams, with required rater training.

Thank you for your consideration to this written testimony and should any additional information be requested please contact Dr. Cynthia Gallagher at cgallagher@saanys.org or 518-782-0060.