



# THE ADVOCATE

CAYUGA-ONONDAGA BOCES  
OFFICE OF PERSONNEL RELATIONS  
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AUBURN, NEW YORK 13021-9430

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*Providing comprehensive  
employment and personnel  
relations services to local  
school districts for over  
40 years.*

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# The Time to Review Recommendations for Tenure is Here

Tenure recommendations are approaching, so it is helpful to review notification requirements under Education Law Section 3031. Keep in mind that this process may differ, depending on circumstances and your particular collective bargaining agreement.

## TERMINATION DURING THE PROBATIONARY PERIOD

Sections 3012 (§3014 for BOCES and §2509 for city school districts), 3031<sup>1</sup>, and 3019-a of the Education Law are applicable to the discontinuation of employment of a probationary employee during the probationary period.

A superintendent of schools must give a probationary teacher written notice that the superintendent will be recommending the discontinuation of services of the teacher at least thirty (30) days prior to the meeting of the board of education at which such recommendation will be considered. Please see Sample Letter A.

The probationary teacher may request in writing that the superintendent of schools provide the reasons for the recommendation for discontinuation. The written request must be made not later than twenty-one (21) days prior to the meeting of the board of education. Within seven (7) days after the request, the Superintendent must provide the reasons in

<sup>1</sup> *There have been many decisions of the Commissioner of Education and the courts addressing the issue of the application of §3031 of the Education Law to administrators. In Oleska v. Board of Education of East Rockaway Union Free School District, 199 A.D.2d 270, 604 N.Y.S.2d 227 (2nd Dept. 1993) and Robinson v. Bruni, 193 A.D.2d 1072, 598 N.Y.S.2d 625 (4th Dept. 1993) two of the appellate divisions held that §3031 did not apply to administrators. Effective August 4, 1993, Chapter 691 of the Laws of 1993 amended §3031 to make the statute applicable to administrators and supervisors.*

writing.

The teacher may file a written response with the clerk of the board of education no later than seven (7) days before the date of the meeting of the board of education. At the meeting, the board of education must review the recommendation of the superintendent, the reasons for the recommendation, and the response of the teacher. If a majority of the board of education approves the superintendent's recommendation, the teacher must be notified that his/her employment with the District will end thirty (30) days after the date of the notice.

## TERMINATION AT THE CONCLUSION OF THE PROBATIONARY PERIOD

The discontinuation of services of a probationary teacher at the end of a probationary period must be distinguished from a termination during the probationary period. At least sixty (60) days prior to the end of the probationary period, the superintendent of schools must notify the probationary teacher in writing that the teacher will not be recommended for tenure. This notice must be provided to the probationary teacher at least thirty (30) days before the board meeting at which the board will review the superintendent's recommendation. Usually, both notices are contained in the same written statement. Please see Sample Letter B. The notices could, however, be transmitted separately.

The probationary teacher may, in writing, request that the superintendent of schools provide the reasons for the failure to recommend. The teacher's written request must be made not later than twenty-one (21) days prior to the meeting of the board of education at which the superintendent's failure to recommend for appointment to tenure will be reviewed. Within seven (7) days after the request, the reasons must be furnished in writing. The teacher may file a written response to the reasons with the clerk of the board of education no later than seven (7) days before the date of the meeting of the board of education.

At the meeting of the board of education, the superintendent's recommendation to not grant tenure is reviewed together with the superintendent's reasons and the teacher's written response. The board of education cannot grant tenure where the superintendent fails to make a recommendation for tenure. *Matter of Anderson v. Board of Education of the City of Yonkers*, 46 A.D.2d 360, 362 N.Y.S.2d 536 (2nd Dept. 1974), *aff'd.*, 38 N.Y.2d 897, 382 N.Y.S.2d 750 (1976). Nevertheless, the prevailing law at this time appears to require the Board to vote on the Superintendent's failure to recommend. *Matter of Fusco v. Board of Education of East Quogue Union Free School District*, 185 A.D.2d 887, 586 N.Y.S.2d 1012 (2nd Dept. 1992); *Matter of Dembovich v. Liberty Central School District Board of Education*, 296 A.D.2d 794, 745 N.Y.S.2d 342 (3rd Dept. 2002).

At the end of the probationary period, the services of the teacher are discontinued. Section 3019-a of the Education Law does not apply. If the teacher provides any services beyond the end of the probationary period with the knowledge and consent of the board of education, the teacher acquires tenure by estoppel.

### **BOARD OF EDUCATION REJECTION OF THE RECOMMENDATION OF THE SUPERINTENDENT OF SCHOOLS**

Tenure is granted when a majority of a board education affirmatively votes to approve a recommendation of the superintendent of schools. Any vote which falls short of the majority constitutes a rejection of the recommendation.

Section 3031 of the Education Law provides that, where a board of education votes to reject the recommendation of the superintendent of schools, such vote shall be considered advisory. At least thirty (30) days prior to the meeting of the board of education at which the board intends to take final action, notice shall be given to the teacher that the board intends to deny tenure.

The teacher may, in writing, request that the board of education provide a written state-

ment, giving the board's reasons for its intended action. The teacher's written request must be made no later than twenty-one (21) days prior to the meeting of the board of education at which it intends to take final action. Within seven (7) days after the request, the reasons must be furnished. The teacher may file a written response to the reasons with the clerk of the board of education no later than seven (7) days before the date of the meeting.

At this second meeting, the board of education must consider the recommendation of the superintendent of schools, its first advisory vote, its statement of written reasons, and the response of the teacher. If the board of education does vote to award tenure, then the services of the teacher will be discontinued at the end of the probationary period. If the teacher provides any services beyond the end of the probationary period with the consent and knowledge of the board of education, the teacher acquires tenure by estoppel.

\*\*\*\*\*

### **SAMPLE LETTER "A"**

*(Teacher must receive letter thirty [30] days before meeting of board of education)*

Date\_\_\_\_\_

Jane Doe  
100 Anywhere Street  
Anywhere, NY 11111

Dear Ms. Doe:

Please be advised that I will be submitting a recommendation to the Board of Education that your services as a social studies teacher in the academic tenure area of social studies in the Columbus Central School District be discontinued effective (date must be at least thirty (30) days after the teacher receives notice of Board's affirmative vote on Superintendent's recommendation).

The Board of Education will be considering my recommendation at its meeting on

\_\_\_\_\_.

Should you wish to discuss this matter with me, please contact my secretary for an appointment.

Very truly yours,

Chief School Officer  
Superintendent of Schools

\*\*\*\*\*

### SAMPLE LETTER "B"

*(Notice of failure to recommend for appointment to tenure must be received by teacher at least sixty [60] days prior to the end of the probationary period.)*

Date\_\_\_\_\_

John Doe  
100 Anywhere Street  
Anywhere, NY 11111

Dear Mr. Doe:

Please be advised that I will not be recommending you to the Board of Education for appointment to tenure in the academic tenure area of social studies in the Columbus Central School District.

The Board of Education will review my failure to recommend your appointment to tenure at its meeting of (date must be at least 30 days after teacher receives letter).

Should you wish to discuss this matter with me, please contact my secretary for an appointment.

Very truly yours,

Chief School Officer  
Superintendent of Schools

# Sending Letters of Reasonable Assurance

In 1944, the New York State Legislature enacted what is now known as the Unemployment Insurance Law as an economic insurance buffer for workers who lost their jobs as a result of a layoff. The statute provided that a laid off employee who lost his or her job through no fault of his or her own would receive an income for a limited period of time to assist in the transitional period between jobs.

Today the law has been liberalized to the extent that employees who are suspended or even discharged for just cause may still be eligible for this insurance benefit. For example, a teacher in one school district was suspended for a two-year period after being judged incompetent by a tenure hearing panel. The teacher applied for and was ultimately granted unemployment insurance because the suspension for incompetency was not sufficient grounds to preclude the instructor from receiving the unemployment insurance benefit. The decision of the Unemployment Insurance Appeal Board, which reversed the decision of the administrative law judge, suggested that had the tenure hearing panel issued a suspension for misconduct, the teacher would not have been eligible for unemployment insurance.

There are steps school districts can take to guard against paying employees during summer vacation. As the end of the academic school year approaches, the Cayuga-Onondaga BOCES Office of Personnel Relations reminds Superintendents of the need to notify district employees of an intent to continue their employment for the following school year. Should you not do so, they may be eligible for unemployment insurance during the summer vacation period.

Attached you will find sample letters for a regular classroom teacher, a substitute teacher, and a non-instructional employee which cur-

rently meet the requirements of the Unemployment Insurance Appeals Board and recent court decisions. Care should be exercised in the use of these documents, and particular attention should be given about oral statements made by subordinate administrations. Suggestions to an employee that he/she will not be returning next year or that someone should look for alternate work may undo the notices and result in an entitlement to unemployment insurance compensation.

We also recommend that each Superintendent be directed by a resolution of the Board of Education to initiate and forward these letters to each employee.

**NOTE: Do not send a reasonable assurance letter to any employee who will be laid off.**

### Sample Teacher Letter

Date

Dear Employee:

Please be advised that the (School District) with this letter is providing you with reasonable assurance that you will perform services for the (School District) in the capacity of (blank) for the school year 2014-2015 beginning on July 1, 2014 and ending on June 30, 2015.

This assurance will also continue for periods of employment immediately before and after any vacation and/or holiday term during the school year 2014-2015. Attached please find a copy of the 2014-2015 school calendar.

Please notify this office by June 30, 2014, should you be unable to accept this employment for the 2014-2015 school year.

This reasonable assurance is being transmitted to you for the sole and express purpose of complying with the revisions of the Federal Unemployment Act enacted under Public Law 94-566 and commonly referred to as the Unemployment Insurance Amendments of 1976. These amendments require each state to provide unemployment insurance coverage to local government employees which by companion legislation was enacted in 1977 by New York

State. Therefore, and as noted above, you are presumed to have a reasonable assurance that you will perform services with the (School District) and to resume work at the beginning of the ensuing year or term and immediately following vacation periods and/or holiday recesses unless otherwise notified.

Should you have any questions, please feel free to contact the Business Office.

Chief School Officer  
School District

*I, \_\_\_\_\_, have read the above and understand its contents and intend, or do not intend (circle one and return to the School District) to return to the (School District) as a regular classroom teacher.*

*Employee's Signature  
Regular Classroom Teacher*

### Sample Non-Instructional Letter

Date

Dear Employee:

Dear Employee:

Please be advised that the (School District) with this letter is providing you with reasonable assurance that you will perform services for the (School District) in the capacity of (blank) for the school year 2014-2015 beginning on July 1, 2014 and ending on June 30, 2015.

This assurance will also continue for periods of employment immediately before and after any vacation and/or holiday term during the school year 2014-2015. Attached please find a copy of the 2014-2015 school calendar.

Please notify this office by June 30, 2014 should you be unable to accept this employment for the 2014-2015 school year.

This reasonable assurance is being transmitted to you for the sole and express purpose of complying with the revisions of the Federal Unemployment Act enacted under Public Law 94-566 and commonly referred to as the Unemployment Insurance Amendments of 1976. These amendments require each state to pro-

vide unemployment insurance coverage to local government employees which by companion legislation was enacted in 1977 by New York State. Therefore, and as noted above, you are presumed to have a reasonable assurance that you will perform services with the (School District) and to resume work at the beginning of the ensuing year or term and immediately following vacation periods and/or holiday recesses unless otherwise notified.

Should you have any questions, please feel free to contact the Business Office.

Chief School Officer  
School District

*I, \_\_\_\_\_, have read the above and understand its contents and intend, or do not intend (circle one and return to the School District) to return to the (School District) as a non-instructional employee.*

*Employee's Signature  
Non-Instructional Employee*

### **Sample Substitute Teacher Letter**

Date

Dear Employee:

Please be advised that the (School District) with this letter is providing you with reasonable assurance that you will perform services for the (School District) in the capacity of (blank) for the school year 2014-2015 beginning on July 1, 2014 and ending on June 30, 2015. As long as your availability for assignments remains the same as it was during the last school year, it is expected that you will be receiving substantially the same economic terms and conditions of employment.

This assurance will also continue for periods of employment immediately before and after any vacation and/or holiday term during the school year 2014-2015. Attached please find a copy of the 2014-2015 school calendar.

Please notify this office by June 30, 2014, should you be unable to accept this employment for the 2014-2015 school year.

This reasonable assurance is being transmitted to you for the sole and express purpose of complying with the revisions of the Federal Unemployment Act enacted under Public Law 94-566 and commonly referred to as the Unemployment Insurance Amendments of 1976. These amendments require each state to provide unemployment insurance coverage to local government employees which by companion legislation was enacted in 1977 by New York State. Therefore, and as noted above, you are presumed to have a reasonable assurance that you will perform services with the (School District) and to resume work at the beginning of the ensuing year or term and immediately following vacation periods and/or holiday recesses unless otherwise notified.

Should you have any questions, please feel free to contact the Business Office.

Chief School Officer  
School District

*I, \_\_\_\_\_, have read the above and understand its contents and intend, or do not intend (circle one and return to the School District) to return to the (School District) as a regular classroom teacher.*

*Employee's Signature  
Substitute Teacher*

### **A NOTE REGARDING SUBSTITUTE TEACHERS:**

Although the last sentence has been added to the first paragraph, please note that a substitute teacher may still ultimately be entitled to unemployment insurance if he/she did not receive at least ninety (90%) percent of the income he/she previously earned. As another alternative, the District could state in the letter of reasonable assurance of continuing employment that the substitute teacher will work a specified number of days in the successor school year equal to the days the substitute worked during the previous school year. Once again, however, the substitute might ultimately be entitled to unemployment insurance if he/she did not receive at least ninety (90%) percent of the income he/she previously earned.

# AREA UNEMPLOYMENT RATES

## New York State Rate

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2014	7.3%	7.7%	7.3%										
2013	9.1%	8.6%	8.0%	7.4%	7.5%	7.8%	7.8%	7.5%	7.4%	7.3%	6.8%	6.6%	7.7%

## Syracuse, NY Metropolitan Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2014	7.4%	7.6%	7.1%										
2013	9.3%	8.9%	8.2%	7.5%	7.4%	7.7%	7.5%	7.1%	7.1%	6.8%	6.6%	6.5%	7.6%

## Auburn, NY Micropolitan Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2014	7.5%	7.8%	7.2%										
2013	9.2%	9.0%	8.2%	7.3%	6.7%	6.9%	6.9%	6.6%	6.4%	6.3%	6.2%	6.2%	7.2%

## Cayuga County Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2014	7.5%	7.8%	7.2%										
2013	9.2%	9.0%	8.2%	7.3%	6.7%	6.9%	6.9%	6.6%	6.4%	6.3%	6.2%	6.2%	7.2%

## Broome County Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2014	8.0%	8.2%	7.6%										
2013	9.7%	9.2%	8.4%	7.6%	7.5%	8.0%	7.8%	7.4%	7.4%	7.1%	7.0%	7.0%	7.8%

## Ithaca, NY Metropolitan Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2014	4.9%	4.9%	4.4%										
2013	6.3%	5.5%	5.0%	4.6%	4.9%	5.6%	5.6%	5.4%	4.7%	4.6%	4.2%	4.0%	5.0%

## Ontario/Seneca/Wayne/Yates Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2014	7.3%	7.7%	7.0%										
2013	9.2%	9.0%	8.3%	7.3%	6.7%	6.7%	6.3%	5.8%	5.9%	5.7%	5.8%	6.0%	6.9%

## Rochester, NY Metropolitan Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2014	7.0%	7.2%	6.7%										
2013	8.7%	8.3%	7.7%	7.1%	7.0%	7.1%	7.2%	6.8%	6.8%	6.5%	6.2%	6.1%	7.1%

*Source: New York State Department of Labor  
Labor Statistics  
[www.labor.state.ny.us](http://www.labor.state.ny.us)*

# CONSUMER PRICE INDEX

## April 2014

	INDEX 1982-84 BASE YEAR=100	% INCREASE FROM 2013	% INCREASE FROM PRIOR MONTH
NY-Northeastern New Jersey Area			
1. All Urban Consumers	259.985	0.0	1.6
2. Urban Wage Earners & Clerical Workers	255.937	0.0	1.6
U.S. City Average			
1. All Urban Consumers	237.072	0.3	2.0
2. Urban Wage Earners & Clerical Workers	233.443	0.4	2.0



# COST OF LIVING UPDATE

## ALL CITIES

## NY - NORTHEASTERN NEW JERSEY

Month	Revised Wage Earner Index	%	All Urban Consumers Index	%	Revised Wage Earner Index	%	All Urban Consumers Index	%
Jan-12	223.2	3.1	226.7	2.9	245.5	3.0	249.3	2.8
Feb-12	224.3	3.1	227.7	2.9	246.5	2.8	250.3	2.6
Mar-12	226.3	2.9	229.4	2.7	248.2	2.7	245.1	2.5
Apr-12	227.0	2.4	230.1	2.3	248.7	2.5	245.9	2.3
May-12	226.6	1.6	229.8	1.7	249.0	1.9	252.7	1.8
Jun-12	226.0	1.6	229.5	1.7	248.5	1.6	252.4	1.6
Jul-12	225.6	1.3	229.1	1.4	248.2	1.2	252.0	1.1
Aug-12	227.1	1.7	230.4	1.7	249.7	1.5	253.5	1.4
Sep-12	228.2	2.0	231.4	2.0	251.0	1.7	254.6	1.6
Oct-12	228.0	2.2	231.3	2.2	250.5	1.7	254.3	1.7
Nov-12	226.6	1.7	230.2	1.8	250.6	2.1	254.3	2.0
Dec-12	225.9	1.7	229.6	1.7	249.5	2.0	253.6	2.1
Jan-13	226.5	1.5	230.3	1.6	250.8	2.2	254.8	2.2
Feb-13	228.7	1.9	232.2	2.0	252.3	2.3	256.2	2.4
Mar-13	229.3	1.3	232.8	1.5	252.7	1.8	256.6	1.9
Apr-13	228.9	0.9	232.5	1.1	252.0	1.3	256.0	1.4
May-13	229.4	1.2	232.9	1.4	252.3	1.3	256.3	1.4
Jun-13	230.0	1.8	233.5	1.8	252.9	1.8	256.9	1.8
Jul-13	230.1	2.0	233.6	2.0	253.3	2.1	257.3	2.1
Aug-13	230.4	1.5	233.9	1.5	253.6	1.6	257.7	1.7
Sep-13	230.5	1.0	234.1	1.2	254.4	1.4	258.5	1.6
Oct-13	229.7	0.8	233.5	1.0	252.9	0.9	257.1	1.1
Nov-13	229.1	1.1	233.1	1.2	253.0	1.0	257.4	1.2
Dec-13	229.2	0.0	233.0	0.0	253.1	0.0	257.3	0.0
Jan-14	230.0	0.4	233.9	0.4	255.5	0.9	259.6	0.9
Feb-14	230.9	0.4	234.8	0.4	254.8	-0.3	259.0	-0.2
Mar-14	232.6	0.7	236.3	0.6	255.9	0.5	260.0	0.4
Apr-14	233.4	0.4	237.1	0.3	255.9	0.0	260.0	0.0
May-14								
Jun-14								
Jul-14								
Aug-14								
Sep-14								
Oct-14								
Nov-14								
Dec-14								

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