

# Discipline and Discharge

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# Non-Tenured Teachers and Job Protection

On July 1, 1972, the so-called Fair Dismissal Law, Section 3031 of the Education Law, went into effect in New York State. Since that time, many teachers have come to believe that they had more rights than the law granted them.

The law provides that in those instances where a superintendent of schools intends to recommend that a teacher's services be discontinued (i.e. not be granted tenure) the following shall take place:

Boards of education shall review all recommendations ... that their services be discontinued shall, at least 30 days prior to the Board meeting where the recommendation of discontinuance is to be considered and the teacher shall be informed of the date of the Board meeting at which said recommendation shall be considered.

Such teacher may, not later than twenty-one days prior to such meeting, request in writing that he be furnished with a written statement giving the reasons for such recommendation and

Within seven days thereafter such written statement shall be furnished.

Such teacher may file a written response to such statement with the district clerk not later than seven days prior to the date of the board meeting.

# The so-called “Fair Dismissal Law” DOES NOT:

- Guarantee, or even provide for a hearing.
- Grant the teacher the right to confront or cross examine any school official.
- Provide the teacher the right to appear before the Board to argue his/her case, either in a private or public session.



**Any questions about the Fair Dismissal Law?**

The background of the slide features abstract, overlapping geometric shapes in various shades of green, ranging from light lime to dark forest green. These shapes are primarily located on the right side and bottom of the slide, creating a modern, layered effect. The main text is positioned in the upper left area of the slide.

# Tenured Teacher Discipline

A tenured teacher may not be disciplined or terminated unless the school district complies with the rules and procedures set forth in Education Law Sections 3020-a and 3020-b, or at the written election of the teacher, rules specified in the applicable collective bargaining agreement between the teachers' union and the school district.

Tenured teachers may only be disciplined or terminated for "just cause." (Education Law Sections 3020(1), 3012-c(k)(6), 3020-a(3)(c)(i-a)(A), 3020-b(3)(c)(v)). The tenured teacher is entitled to a due process hearing to determine if the district has just cause to impose discipline. *TeBordo v. Cold Spring Harbor CSD*, 126 A.D.2d 542-543 (2d Dept 1987).

Statute of Limitations is three years.

# Disciplinary action under CSL §75





# Who is covered by Section 75?

Public employees in the following classifications/categories:

1. Competitive class holding a position by permanent appointment who have successfully completed probation.
2. Qualified veterans and qualified exempt volunteer firefighters within the classified service.
3. Non-competitive after 5 years of continuous uninterrupted service.
4. Labor after 5 years of continuous uninterrupted service.
5. Anyone to whom coverage is extended pursuant to a CBA.

# What are the grounds for disciplinary action under Section 75?

- ▶ Covered person “shall not be removed or otherwise subjected to any disciplinary penalty ... except for incompetency or misconduct...” CSL § 75(1)
- ▶ Incompetence: dereliction or neglect of duty
- ▶ Misconduct: intentional and willful disobedience

# *Standard of Proof*

## *Preponderance of the Evidence*

*Amount of evidence that a reasonable person would need to find that the conduct described has taken place.*

# DISCIPLINE IN THE WORKPLACE

## (Sec. 75 and 3020-a)

- ▶ Discipline in the workplace is the means by which supervisory personnel correct behavioral deficiencies and ensure adherence to established rules.
- ▶ In theory the purpose of discipline is correct behavior. Not to punish or embarrass an employee.

# GROUNDS FOR DISCIPLINE



# GROUNDS FOR DISCIPLINE

- ▶ DISCLOSING ANSWERS ON EXAMNS
- ▶ EXCESSIVE OR IMPROPER USE OF PHYSICAL FORCE AGAINST PUPILS
- ▶ USE OF PROFANITY, VERBAL ABUSE
- ▶ REFUSAL TO ACCEPT AN ASSIGNMENT
- ▶ SEXUAL HARASSMENT OR MISCONDUCT
- ▶ CRIMINAL CONDUCT

# OFFENSES

► HOW DO PEOPLE GET IN TROUBLE?



Advice to member, Responsibility can go a long way...





# MISCONDUCT

- ▶ The term “misconduct” in the Labor Law. However, the Court of Appeals in Matter of James (34 NY 2d 491; A-750-1775) has indicated that “misconduct” is any volitional act or omission which is detrimental to an employer’s interests.

# INSUBORDINATION

- ▶ AN EMPLOYEE MUST CARRY OUT AN ORDER BY A PROPERLY DESIGNATED REPRESENTATIVE OF MANAGEMENT
- ▶ Obey and Grieve

# INSUBORDINATION

- ▶ AN EMPLOYEE SHOULD OBEY AN ORDER WHICH HE/SHE QUESTIONS AND THEN FILE A GRIEVANCE IF APPROPRIATE
- ▶ ULTRA IMPORTANT CONCEPT

# INSUBORDINATION

- ▶ EXCEPTION: AN EMPLOYEE NEED NOT CARRY OUT AN ORDER THAT WOULD ENDANGER THE HEALTH AND SAFETY OF HIMSELF OR OTHERS.
- ▶ THIS BETTER BE TRUE

# ABSENTEEISM

- ▶ CHRONIC ABSENTEEISM IS JUST CAUSE FOR DISCIPLINE
- ▶ PROBLEM: WHEN IS ABSENTEEISM EXCESSIVE?
  - ▶ NO GENERAL RULES

# ABSENCE

- ▶ FALSELY INFORMING EMPLOYER THAT ABSENCE WAS DUE TO ILLNESS, IS MISCONDUCT

# ABSENCE

- ▶ Claimant's precipitous action in announcing that he would take the next two days off for vacation, and then doing so in defiance of supervisor's denial of permission, is misconduct.



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# ABSENCE

- ▶ ABSENCE FOR NON-COMPELLING REASON AFTER THE EMPLOYER HAS INDICATED ITS DISPLEASURE WITH AN EXCESSIVE ABSENCE RECORD, IS MISCONDUCT.



# ABSENCE

- ▶ **OVERSTAYING A LEAVE OF ABSENCE AND FAILING TO COMMUNICATE PROMPTLY WITH EMPLOYER TO EXPLAIN WHY, IS MISCONDUCT, UNLESS THERE IS A COMPELLING REASON FOR BOTH INFRACTIONS. (A.B. 196,403; A.B. 199,005; A-750-1781)**

# TARDINESS

- ▶ PARTICULARLY SERIOUS IN SCHOOLS
- ▶ RUN ON SCHEDULES
  - ▶ CLASSES
  - ▶ BUSES
  - ▶ FOOD SERVICE



CAN REACH A POINT THAT EMPLOYEES  
WILL COME TO WORK ON TIME WHERE  
EMPLOYEE IS FOUND TO BE  
UNSUITABLE FOR WORK  
EMPLOYER HAS LEGITIMATE  
EXPECTATION

# ABSENCE

- ▶ REPEATED LATENESS FOR NON-COMPELLING REASONS, DESPITE WARNING BY SUPERVISOR, IS MISCONDUCT.



# ABSENTEEISM-FACTORS CONSIDERED

- ▶ LENGTH OF TIME HAD A POOR ATTENDANCE RECORD
- ▶ REASONS
- ▶ NATURE OF EMPLOYEE'S JOB
- ▶ DISTRICT POLICY
- ▶ EMPLOYEE WARNING
- ▶ DID EMPLOYEE PROVIDE A REASONABLE OR JUSTIFIABLE EXCUSE FOR ABSENCES

# ALCOHOL/DRUGS



# ALCOHOL/DRUGS

- ▶ **SMOKING MARIJUANA DURING WORK HOURS IS MISCONDUCT. (A.B. 219,239; A-750-1810)**

# ALCOHOL/DRUGS

- ▶ Failure to attend a drug or alcohol abuse treatment and counseling program, in violation of a condition of probation imposed after a formal disciplinary hearing for drug/alcohol related absenteeism, is misconduct.



# **ABSENTEEISM - ALCOHOLISM**

- ▶ **LOOKED AT AS A DISEASE**
- ▶ **EMPLOYER ISN'T OBLIGATED  
TO KEEP AN EMPLOYEE  
WHOSE ALCOHOLISM  
PREVENTS HIM/HER FROM  
WORKING**

# OTHER REASONS FOR POSSIBLE DISCHARGE/DISCIPLINE

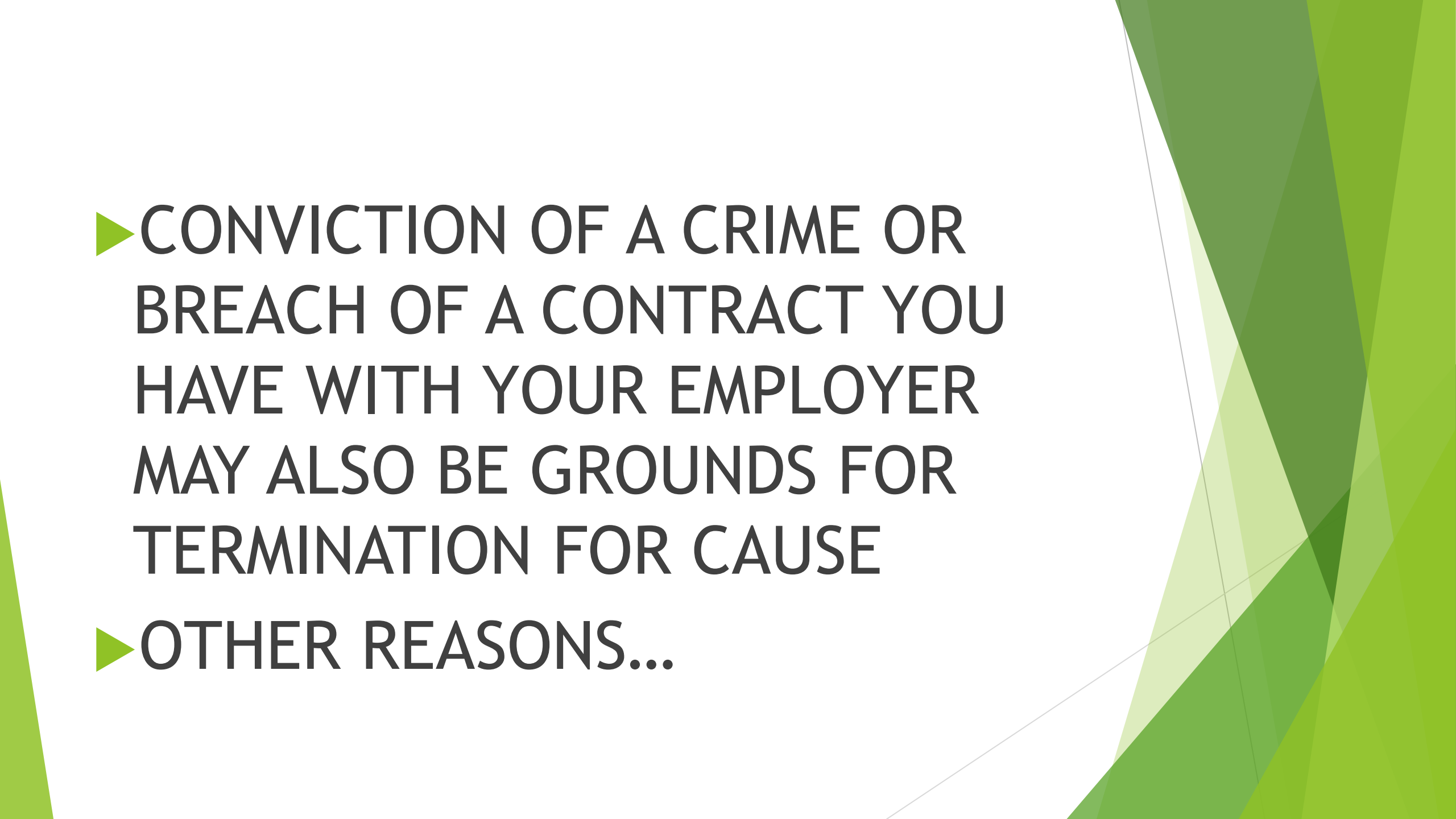
- ▶ OFF DUTY CONDUCT
- ▶ MEDICAL ISSUES
- ▶ PROBATIONARY EMPLOYEES
- ▶ PUBLIC STATEMENTS

# OFF DUTY CONDUCT

CAN AN EMPLOYEE BE  
DISCIPLINED FOR OFF DUTY  
CONDUCT?

# OFF DUTY CONDUCT

- ▶ AN EMPLOYER'S RIGHT TO QUESTION EMPLOYEE CONDUCT IS GENERALLY LIMITED TO BEHAVIOR THAT OCCURS WHILE THE EMPLOYEE IS ON DUTY.
- ▶ BUT?

- 
- The background of the slide features abstract, overlapping green geometric shapes, primarily triangles and polygons, in various shades of green, creating a modern and dynamic visual effect.
- ▶ CONVICTION OF A CRIME OR BREACH OF A CONTRACT YOU HAVE WITH YOUR EMPLOYER MAY ALSO BE GROUNDS FOR TERMINATION FOR CAUSE
  - ▶ OTHER REASONS...

# ABSENTEEISM-PUBLIC SECTOR

- ▶ EMPLOYER CAN ORDER A PHYSICAL OR MENTAL EXAM TO DETERMINE FITNESS TO WORK



# Education Law § 913

- ▶ Education Law § 913 - allows the Board of Education to require any employee of the school district to submit to a medical examination in order to determine the individual's physical or mental fitness to perform their duties. This can include an examination by a physician or a psychiatrist.
- ▶ Must have some justification for ordering the examination - arbitrary and capricious or unreasonable standard.

- The Board of Education may select the physician and direct the employee to undergo the medical examination. If additional follow-up examinations are necessary in order for the physician to render a determination the employee may be required to attend.
- Refusal to comply with a directive to undergo a 913 examination may be considered insubordination and may form a basis for discipline. It could also result in the employee being taken off the payroll.



- Employee has the right to be accompanied by a physician or an individual they choose.
- The employee may be required to submit relevant medical records upon a reasonable and legitimate request.
- The request must be limited in scope and not overly broad (*i.e.* time limitation, limited subject matter and to whom the employee must provide the information).
- Employee may be asked to complete a HIPPA release.
- The “913 report” issued by the medical provider is not discipline but can form the basis for a 3020-a proceeding.

# PROGRESSIVE DISCIPLINE

- ▶ ORIGINS IN COLLECTIVE BARGAINING
- ▶ MOST CASES EMPLOYEE MUST BE GIVEN WARNINGS
- ▶ OPPORTUNITY TO CONFORM
- ▶ PENALTIES INCREASE WITH EACH OFFENSE

# FREEDOM OF SPEECH

- ▶ CAN A PUBLIC EMPLOYEE BE DISCIPLINED FOR EXERCISING RIGHTS GUARANTEED UNDER THE CONSTITUTION?



# FREEDOM OF SPEECH

- ▶ A TEACHER DOES NOT SURRENDER CONSTITUTIONALLY PROTECTED FREEDOM OF EXPRESSION AS A CONDITION OF PUBLIC EMPLOYMENT

# FREEDOM OF SPEECH

- ▶ WHEN A PUBLIC EMPLOYEE SPEAKS NOT AS A CITIZEN UPON MATTERS OF PUBLIC CONCERN, BUT INSTEAD AS AN EMPLOYEE UPON MATTERS ONLY OF A PERSONAL INTEREST, SPEECH IS NOT PROTECTED

# FREEDOM OF SPEECH

- ▶ OKAY TO DISCUSS SINCE THEY RELATE TO THE EXPENDITURE OF PUBLIC FUNDS
- ▶ ISSUES OF MILEAGE REIMBURSEMENT
- ▶ LIABILITY INSURANCE

# Cadet Rights - Right to Remain Silent

- Named for the *Cadet* case, are those rights of a teacher not to testify against themselves in the context of a 3020-a hearing – includes the right to refuse to answer questions from an employer (or its investigator) during the investigation and/or pre-charge period.
- Court held that a teacher who refuses to answer questions in connection with a 3020-a proceeding including a pre-hearing investigation is not guilty of insubordination.
- Employees, whether or not they are subject to Education Law 3020-a, have a right to union representation -- Weingarten Rights -- during disciplinary interrogations. **Cadet rights are only available to individuals subject to 3020-a rights.**

# MATTER OF CADET

- ▶ DOES NOT APPLY TO NON-TENURED OR SRP EMPLOYEES
- ▶ ASSUME THAT IT DOES
- ▶ IF CRIMINAL ISSUE, EMPLOYEE GETS “USE IMMUNITY”



# Right to Representation

- ▶ Private Sector Weingarten Rights
- ▶ Civil Service Section 75
- ▶ Taylor Law Rights

# Weingarten Rights

- ▶ Employees in unionized workplaces have a right under Section 7 of the National Labor Relations Act (NLRA) to the presence of a union representative during any inquiry where the employee's job might be in jeopardy

# Taylor Law Rights

- ▶ Taylor Law explicitly makes it an improper practice (specifically, a 209-a-1-g charge) for a public employer to deny an employee's demand for union representation when the employee is facing an interview by the employer that could reasonably lead to potential discipline.

# And...

- ▶ If an employee's rights were violated with regard to representation, then
- ▶ any and all statements of the employee made during the questioning, and
- ▶ any evidence or information derived from that questioning, or as a result of that questioning, will be excluded from being considered as evidence in a hearing

# DISCIPLINARY INTERVIEWS: SRP EMPLOYEES

- ▶ MATTER OF CADET DOES NOT APPLY
- ▶ MUST ANSWER QUESTIONS
- ▶ IF CRIMINAL ISSUE, EMPLOYEE GETS  
“USE IMMUNITY”

# Disciplinary action under CSL §75 continued...



# What penalties are possible under Section 75?

- ▶ Reprimand
- ▶ Fine not to exceed \$100.00 deducted from employee's wages
- ▶ Suspension without pay not to exceed 2 months
- ▶ Demotion in grade and title
- ▶ Dismissal from service

# What is the applicable statute of limitations?

- ▶ 18 months after the occurrence
- ▶ EXCEPT: this SOL “shall not apply where the incompetency or misconduct complained of and described in the charges would, if proved in a court of appropriate jurisdiction, constitute a crime.”



# What procedures & employee rights are provided by Section 75?

- ▶ Right to representation at a disciplinary interrogation
- ▶ Right to notice of the charges
- ▶ Right to submit an answer to the charges within 8 days
- ▶ Right to a hearing
- ▶ Right to representation at a hearing
- ▶ Right to summon witnesses
- ▶ Employer bears the burden of proof

# Pre-Hearing Suspension

- ▶ An employee against whom charges have been preferred may be suspended without pay for no more than calendar thirty days.
- ▶ If the employee causes a delay in the proceeding (e.g., needs an adjournment of hearing date), the employee can be kept off payroll for the amount of the delay.

# Hearing officer appointment and authority

- ▶ Must be either the appointing authority or a designee of the appointing authority.
- ▶ It will frequently be an independent “neutral” who may or may not be an arbitrator and/or attorney.
- ▶ Designation must be done in writing and before the hearing.
- ▶ Failure to properly designate the hearing officer is a jurisdictional defect.
- ▶ Authorized to create a hearing record and issue recommendations to the appointing authority for review and decision.

# Mitigating Factors

- ▶ Assume you are representing a teacher aide who was issued a District-owned laptop computer so they could work remotely. Unfortunately, the computer was damaged when the employee spilled coffee on the keyboard. The aide reported the damage to the District immediately and acknowledged how the damage occurred.
  - The District is now seeking to suspend the employee for 2 weeks.
  - There is no dispute that the employee negligently caused the damage.

What facts might be helpful in arguing for a lesser penalty?

# Detour: Section 75-b

## Whistleblower protection

- ▶ Employer cannot take adverse personnel action against employee because the employee disclosed information to a governmental body regarding “a violation of a law, rule, or regulation, which creates and presents a substantial and specific danger to the public health or safety; or which the employee reasonably believes to be true and reasonably believes constitutes an improper governmental action.”
- ▶ Mandatory pre-disclosure notification

# SETTLEMENT: Effect of resignation

A civil service agency may disqualify for appointment any person who has been removed from the service on formal written charges, or any person who has resigned from a position in the public service, where it finds, after appropriate investigation or inquiry, that such resignation was due to misconduct or incompetency (Civil Service Law, section 50(4)(e)).

# What is the appeals process?

- ▶ Written appeal to appropriate civil service commission/personnel office within 20 days after the employee has received written notice of the determination.
- ▶ Preferred option: appeal to courts via an Article 78 proceeding.
- ▶ Notice of Claim requirement (3 months for a school district) and 4-month SOL

**Any questions regarding  
Section 75?**



# DISCIPLINARY ACTION UNDER 3020-a Continued...

# WHAT IS DUE PROCESS?

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- Right to know charges
- Right to see, confront and rebut evidence
- Right to impartial decision maker
- Right to counsel

# DUE PROCESS

- ▶ PROCEDURAL RESPONSIBILITY IN DISCIPLINING EMPLOYEES
- ▶ REVIEW BY MANAGEMENT
- ▶ NEUTRAL GRIEVANCE PROCEDURE
- ▶ LAW LEGAL REVIEW

# GUIDELINES FOR JUST CAUSE

- ▶ HAS THE EMPLOYER APPLIED ITS RULES, ORDERS AND PENALTIES EVEN-HANDEDLY AND WITHOUT DISCRIMINATION?

# GUIDELINES FOR JUST CAUSE

- ▶ WAS THE EMPLOYER'S RULE OR MANAGERIAL ORDER REASONABLY RELATED TO THE ORDERLY, EFFICIENT AND SAFE OPERATIONS OF THE ORGANIZATION?

# GUIDELINES FOR JUST CAUSE

- ▶ DID THE EMPLOYER GIVE THE EMPLOYEE FOREWARNING OF POSSIBLE OR PROBABLE DISCIPLINARY CONSEQUENCES OF CONDUCT?

# GUIDELINES FOR JUST CAUSE

- ▶ WAS THE EMPLOYER'S INVESTIGATION CONDUCTED FAIRLY AND OBJECTIVELY?



# GUIDELINES FOR JUST CAUSE

- ▶ EVEN IN THE ABSENCE OF SPECIFIC CONTRACT LANGUAGE, JUST CAUSE IS THE TOUCHSTONE BY WHICH THE APPROPRIATENESS OF DISCIPLINE IS JUDGED





# PRINCIPALS OF JUST CAUSE

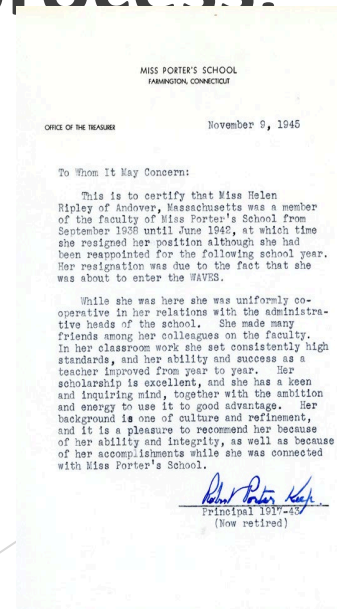
- ▶ DUE PROCESS: LEGAL PROCEEDINGS ACCORDING TO CERTAIN LAWS, RULES, REGULATIONS. I.E. ARBITRATION OR ADMINISTRATIVE HEARING
- ▶ PROGRESSIVE DISCIPLINE

# Penalties may include:

- Reprimand
- Fine
- Suspension without pay for a fixed period of time
- Termination

# Counseling (“Holt”) Letters

A written admonition such as a counseling letter of a tenured teacher does not constitute discipline and does not trigger the formal hearing process.



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## Characteristics of a Holt Letter:

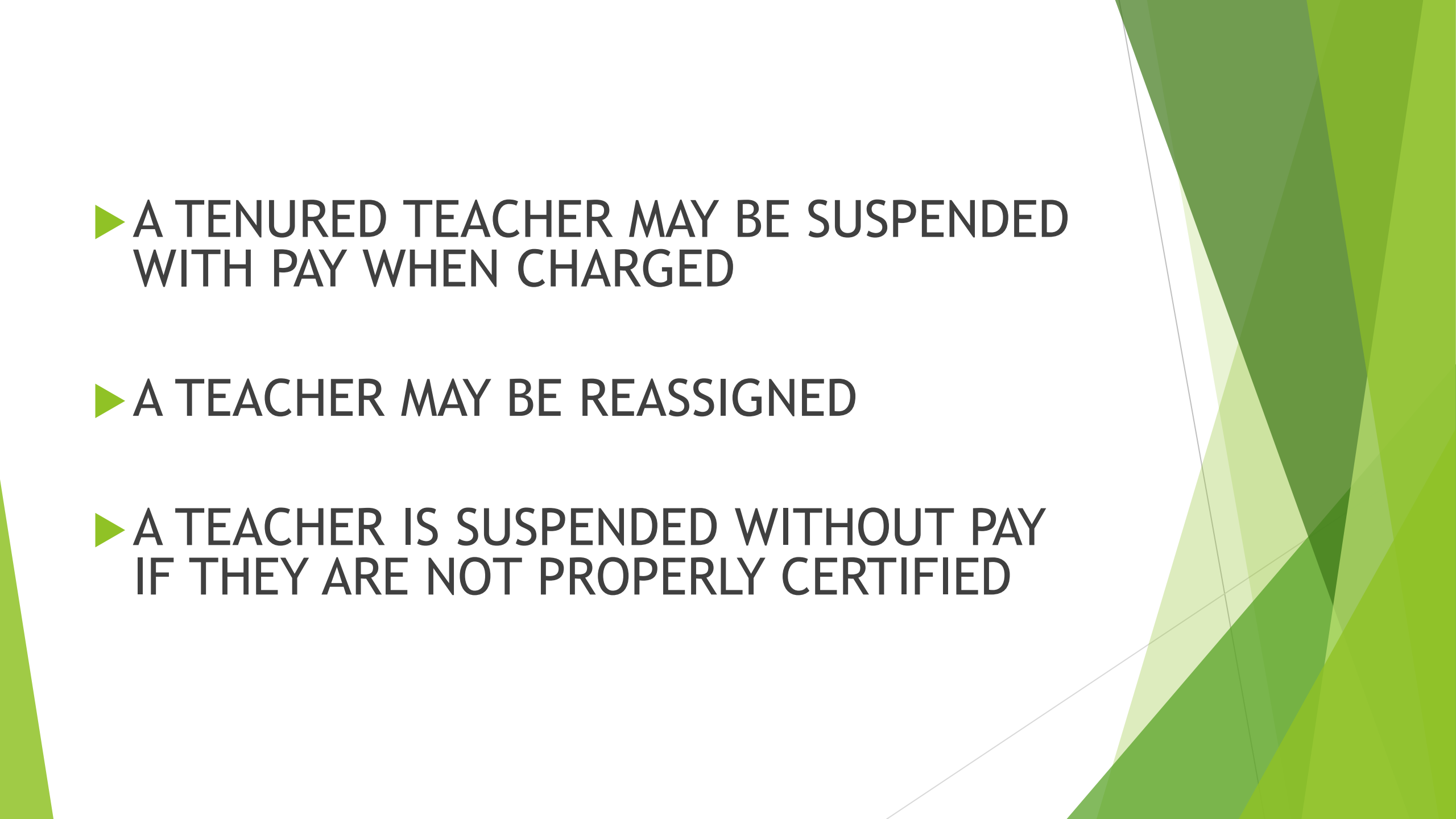
- Should be labeled as a “counseling memorandum”
- Letter should be from the teacher’s immediate supervisor and not the Superintendent or Board of Education.
- Purpose of letter must be to instruct, correct, warn, or discuss future expectations– should not use accusatory language or impose punishment.

- Calls the teacher's attention to a relatively minor breach of school policy and encourages compliance.
- Contains constructive criticism and suggestions for improvement. May contain sharply critical language.
- Sign Letter?

# Characteristics of a Letter of Reprimand

- Often labeled as a “letter of reprimand” or “formal reprimand”.
- Prepared and sent by the Board of Education or the Superintendent of Schools.
- Chastises the teacher for serious misconduct.
- The purpose of the letter is to punish.  
Focus is exclusively on castigating the teacher and lacks constructive criticism.

Requires the teacher to undergo some form of remediation or training.

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- The background of the slide features abstract, overlapping green geometric shapes, primarily triangles and polygons, in various shades of green, creating a modern and dynamic visual effect.
- ▶ A TENURED TEACHER MAY BE SUSPENDED WITH PAY WHEN CHARGED
  - ▶ A TEACHER MAY BE REASSIGNED
  - ▶ A TEACHER IS SUSPENDED WITHOUT PAY IF THEY ARE NOT PROPERLY CERTIFIED

# Grounds for Discipline: Education Law 3012(2)

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Charges filed may incorporate any of the grounds of discipline set forth in the Education Law.

- Insubordination
- Immoral character
- Conduct unbecoming a teacher
- Inefficiency
- Incompetency
- Physical or mental disability
- Neglect of duty
- Failure to maintain certification



# Tenured Teacher Discipline: Types of Hearings

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- Standard Education Law 3020-a.
- Probable cause hearing for suspension without pay due to allegations of physical or sexual abuse.
- Expedited 3020-a hearing based upon allegations of physical or sexual abuse.
- Expedited 3020-a hearing for revocation of a teacher's certification.
- Expedited 3020-b hearing based upon two consecutive ineffective APPR ratings.
- Mandatory Expedited 3020-b hearing based upon three consecutive ineffective APPR ratings.

# Overview of the § 3020-a Process

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- Process is initiated through the filing of written charges (usually by the Superintendent).
- The School Board votes to “prefer” the charges against the tenured teacher.
- Request a Hearing: A teacher must request a hearing within 10 calendar days of receipt of the statement of the charges. The teacher must notify the secretary or clerk of the Board of Education.
- Failure to timely and properly request a hearing is deemed a waiver of the right to the due process hearing.
- The OGC strongly recommends, and best practices dictate, the LRS’s serve the 3020-a demand for the hearing both personally and by mail.

# Overview of the § 3020-a Process (Con't)

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- ▶ Hearing Officer Selection: Mutually selected by the parties from the list provided by the State Education Department.
- ▶ Pre-Hearing Conference: Held within 10 -15 days of the hearing officer agreeing to serve.
- ▶ Hearing: The hearing is to be completed within 60 days of the pre-hearing conference. All evidence shall be submitted by all parties within 125 days of the filing of the charges and no additional evidence shall be accepted after such time, absent extraordinary circumstances beyond the control of the parties.
- ▶ Decision: The hearing officer must render a written decision within 30 days of the last day of the hearing. In the case of an expedited hearing, the decision must be rendered within 10 days.
- ▶ Appeal: Any appeal of the hearing officer's decision must be filed within 10 days after receipt of the decision. The appeal process is governed by Article 75 of the CPLR.

# Scope of a 3020-a Hearing

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- Hearing officer will determine guilt or innocence of the teacher on each of the specifications/charges.
- Did the District prove each specification by a “preponderance of the evidence.”
- Hearing officer can order a penalty and/or remediation such as professional development, coursework, treatment or anger management.

# Probable Cause Hearing for Suspension Without Pay Due to Allegations of Physical or Sexual Abuse

- A tenured teacher may be suspended without pay only in limited circumstances in which they have pled guilty to or have been convicted of certain crimes relating to felony drugs or crimes involving physical abuse of a minor or students or when the case alleges physical or sexual abuse of a student.
- Where the allegations involve physical or sexual abuse of a student an unpaid suspension can be commenced by the school district prior to the probable cause hearings.
- Commissioner of Education selects the hearing officer.
- “Probable Cause” Hearing held within 10 days of the decision to suspend in order to determine whether sufficient probable cause exists to support charges.
- If the hearing officer decides sufficient probable cause exists, teacher will be suspended without pay up to 120 days.
- If the hearing officer finds no probable cause, the teacher is returned to the payroll. The individual may be entitled to backpay with 6% interest in certain circumstances. The hearing officer could also reverse the suspension without pay and reinstate the pay if such suspension *“is grossly disproportionate in light of all surrounding circumstances.”*
- Expedited hearing on merits of charges must be held after probable cause determination.

# Expedited 3020-a: Physical or Sexual Abuse

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- ▶ Hearing Officer Selection: Parties have 15 days to select a hearing officer from the list provided by NYSED.
- ▶ Pre-hearing conference: Held within 10 to 15 days of confirmation of the hearing officer's acceptance of the appointment.
- ▶ Hearing: The hearing is to commence within 7 days of the pre-hearing conference and be completed within 60 days of the pre-hearing conference.
- ▶ Decision: The hearing officer must issue a decision within 10 days of the close of the hearing.

# Expedited §3020-a: Revocation of Certification

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- Hearing Officer Selection: Parties have 15 days to pick hearing officer from receipt of list.
- Pre-hearing conference: Held within 10 to 15 days of confirmation of acceptance of appointment.
- Hearing: The hearing is to commence within 7 days of pre-hearing conference.
  - Hearing limited to 1 day -- each party has equal time to present its case.
- Decision: Written decision must be within 10 days of final hearing date.

# Expedited §3020-b: 2 or 3 Ineffective Ratings

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Limited to the discipline/removal of teachers with 2 or more ineffective APPR ratings.

- A school board may prefer charges of incompetence if a teacher receives 2 consecutive ineffective ratings.
- A school board must bring charges of incompetence if a teacher receives 3 consecutive ineffective ratings.



# Expedited §3020-b: Two Ineffective Ratings

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- Two consecutive Ineffective ratings district MAY bring charges.
- Hearing Officer Selection: Parties have 7 days to pick hearing officer from receipt of list.
- Pre-hearing conference: Held within 7 days of appointment.
- Hearing: The hearing is to commence within 7 days of the pre-hearing conference. The final hearing within 90 days of request for hearing.
- Decision: The hearing officer must render a decision within 10 days of final hearing day.

# Mandatory Expedited §3020-b: Three Ineffective APPR Ratings

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- District **MUST** bring §3020-a charges.
- The defenses available to the teacher are limited to fraud, which includes mistaken identity.
- Hearing Officer Selection: Commissioner picks hearing officer.
- Pre-hearing conference: Held within 5 days of appointment of hearing officer.
- Hearing: The hearing commences within 5 days of pre-hearing conference and must conclude within 30 days of hearing request date.
- Decision: Hearing officer must issue decision within 10 days of final hearing day.

# Alternative Procedures to 3020-a

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A local teachers' union and a board of education may negotiate and agree to alternative procedures to discipline teachers.

Those provisions must provide the tenured teacher with the option to elect the alternative procedures to the disciplinary set forth in Education Law 3020-a and presumably, under section 3020-b.

# Part 83

## Moral Character Actions

Generally, a complaint should be filed if you have information that a certified educator has been convicted of a crime or committed an act that raises a serious question as to his or to her moral character, or when you believe that the conduct of a teacher or administrator poses a threat to the welfare of a child or a school community.

## Part 83 con't

- Complaints concerning incompetence, negligence, or dissatisfaction with teaching style or philosophy will typically not result in State action against certification. Those issues should be reported directly to your local school district.

## Part 83 con't

Under the law, School District Superintendents must file a report with the Department upon the knowledge that a certificate holder has been convicted of a crime or has committed an act that raises a reasonable question about the individual's moral character.

The range of penalties includes the imposition of a fine, continuing education, certificate suspension, certificate revocation, and the denial to be issued a certificate in the case of an applicant.

# Returning to all Disciplinary Matters

- ▶ Pre-charge Settlement?
- ▶ How do they come about?
- ▶ Who is involved?
- ▶ Advantages/Disadvantages?



# A MEMBER IS CHARGED, WHAT DOES THE LOCAL REP DO?

- ▶ NOTIFY NYSUT ASAP
- ▶ USUALLY, NO EXTENSION OF TIME
- ▶ NYSUT LAWYER HANDLES HEARING
- ▶ HAVE MEMBER COPY FILE
- ▶ MEMBER WRITE UP WHAT HAPPENED
- ▶ CHECK CONTRACT FOR DISCIPLINARY PROVISIONS

# WHAT THE LOCAL REP DOES NOT DO

- ▶ TELL THE MEMBER TO RESIGN
- ▶ MAKE PROMISES
- ▶ RECOMMEND ANY OUTSIDE ATTORNEY
- ▶ DISCUSS CASE WITH ANYONE OTHER THAN LEADERSHIP (AS NEEDED)
- ▶ TALK TO THE MEDIA

# WHAT NYSUT DOES

- ▶ MEET WITH MEMBER ASAP AT TRO
- ▶ PROCESS APPEALS
- ▶ PROVIDE ATTORNEY AT NO COST



# WHAT NYSUT DOES

- ▶ APPEAL MUST BE FILED TIMELY
- ▶ NO EXTENSIONS
- ▶ APPEAL MUST BE SERVED ON DISTRICT
  - ▶ USUALLY DONE BY LRS
- ▶ REP/PRESIDENT MUST CALL TRO IMMEDIATELY



**Thank you!**

A teal rectangular sticky note is centered on a white background. The note has a dark teal corner tab in the top right. The text 'Thank you!' is written in a large, bold, black sans-serif font. Below the text is a thick, light beige horizontal line. In the bottom left corner of the note, there are two small, stylized icons: a dark teal paperclip and a white speech bubble with a dark teal outline. The right side of the image features a background of overlapping, semi-transparent green and yellow geometric shapes.