

NYSSBA Webinars

The NYSSBA Webinar on

Teacher Quality & Required Remediation:

Lessons Learned from Other Districts' 3020-a Hearings

will air on

Wednesday, Oct. 7 from 11:30 am – 12:30 pm

Thank you for testing your connectivity
beforehand! Please remember to turn on
your computer speakers and adjust your
volume.



NEW YORK STATE SCHOOL BOARDS ASSOCIATION

www.nyssba.org



The NEW YORK STATE
SCHOOL BOARDS ASSOCIATION
presents

*Teacher Quality and Required
Remediation:
Lessons Learned from Other
Districts' 3020-a Hearings*

Presenter:
Patricia H. Gould,
Assistant Counsel

Moderator:
Marilyn Morey,
Leadership Development Manager

Overview

- ✓ Your Role in Assuring Teacher Quality
- ✓ Teacher Quality as Grounds for Discipline
- ✓ Teacher Disciplinary Process (3020-a)
- ✓ Statewide Data on Teacher Discipline
- ✓ Lessons Learned: Prior 3020-a Actions



Your Role in Assuring Teacher Quality

The school board must:

- Ensure the annual review of the performance of all instructional and pupil personnel teachers' performance.
8 NYCRR §100.2(o)(2)
- Adopt annual professional performance review plan (“APPR”).
 - can be annual or multi-year.
 - superintendent develops “in collaboration with teachers, pupil personnel professionals, administrators and parents.”
 - parent organizations and teachers' bargaining unit can comment.
 - procedures subject to collective bargaining, consistent with Article 14 of Civil Service Law.
 - must be available for review by public by September 10th .

Your Role in Assuring Teacher Quality

The APPR must describe criteria used to evaluate teachers, including but not limited to, his or her

- content knowledge,
- preparation,
- instructional delivery,
- classroom management,
- student development,
- student assessment,
- collaboration, and
- reflective and responsive practice.



Your Role in Assuring Teacher Quality

The APPR must describe how the district will :

- **Assess teachers' performance**, including but not limited to methods such as classroom observation, videotape, reviews by self, peers, portfolio.
- **Address teachers evaluated as unsatisfactory.** The district must, in consultation with teacher so evaluated, develop a **teacher improvement plan or “TIP”** for that teacher. The district must annually report TIPs being implemented.
- **Train those conducting performance evaluations.**



Grounds for Teacher Discipline

- Tenured teachers
 - keep job as long as “exhibit good behavior and competent and efficient service”
 - may only be disciplined or discharged for “just cause” ((2509(2), 2573(5), 3012(2)), 3020(1)).
 - cannot be removed except for insubordination, immoral character or conduct unbecoming a teacher, inefficiency, incompetency, physical or mental disability, or neglect of duty, or failure to maintain certification. (3012(2)).



Teacher Disciplinary Process (3020-a)

- Before can discipline *in any way*, teacher entitled to hearing under Education Law §3020-a (“3020-a hearing”)
 - Or at written election of teacher, in CBA (§3020, 3020-a; 8 NYCRR Part 82). Special rules for New York City (2590-f(1)(c), 3020(4)).
- Compare: *Probationary* teacher may be fired at any time, on superintendent’s recommendation, by majority vote of board (2509(1)(a), 2573(1)(a), 3012(1)(a))



Teacher Disciplinary Process (3020-a)

- Anyone, usually Sup't, files written charges.
- Sup't may suspend with pay until next regular board meeting (1711(2)(e), 2508(5), 2566(6)).
- School board votes in executive session on probable cause for charges, by majority vote (3020-a(2)(a)).



Teacher Disciplinary Process (3020-a)

- Board may suspend teacher until case over.
- Full pay and benefits, *unless*:
 - CBA provides for suspension without pay
 - Lacks certification for course hired to teach or
 - Guilty of felony crime for drug charges or physical or sexual abuse of minor or student (3020-(2)(b)).



Teacher Disciplinary Process (3020-a)

- Board authorized to negotiate settlement of 3020-a charges to avoid expensive, time-consuming and uncertain litigation (*Appeal of Allard*, 43 Educ. Dept Rep. 167 (2003)).
- May offer teacher cash incentive to resign or retire in lieu of prosecuting 3020-a.
- Teacher may waive hearing to settle 3020-a case, if made knowingly and freely.



Teacher Disciplinary Process (3020-a)

- If teacher fails to demand hearing, deemed waived.
- Board must, by majority vote, determine case and fix penalty, if any (3020-a(2)(d); 8 NYCRR 82-1.5(e)).



Teacher Disciplinary Process (3020-a)

- ***Every action disciplinary in nature triggers right to formal due process under 3020-a.***
- Counseling letter (“*Holt* letter”) critical of teachers performance may be put in teacher’s personnel file (*Holt v. Bd. of Educ.*, 52 N.Y.2d 625 (1981)
 - A “TIP” was a critical evaluation and not a disciplinary reprimand, according to one federal court. *Marino v. Shoreham-Wading River Central School*, 2008 WL 5068639 (E.D.N.Y. 2008)
- *Holt* letter may not be used as reprimand (e.g., *Appeal of Irving*, 39 Educ. Dept Rep. 761 (2000)).



Teacher Disciplinary Process (3020-a)

- Charges may not be brought more than 3 years after occurrence of alleged misconduct...
- *Unless* constituted crime when committed (3020-a(1), 2590-j(7)(c)).
 - in large city school districts, same 3 year limit, unless misconduct resulted in *conviction* of crime (2573(8)).



Teacher Disciplinary Process (3020-a)

- 3020-a hearing usually before one hearing officer.
 - If charged with pedagogical incompetence or judgment, teacher may choose a 3 member panel (3020-a(2)(c); 8 NYCRR 82-1.3(d), 82-1.4).
- Independent hearing officer (IHO) selected from American Arbitration Association (AAA) list.
- Board and teacher must agree on IHO within 10 days. If cannot agree, SED requests AAA to select IHO (3020-a(3)(b)(iii)).



Teacher Disciplinary Process (3020-a)

- If acquitted, teacher restored, with full back pay, charges expunged from employment record (3020-a(4)(b)).
- If IHO finds any charges frivolous, board reimburses SED for costs and teacher for all or part of reasonable costs incurred in defending charges (3020-a(4)(c)).



Teacher Disciplinary Process (3020-a)

- IHO, or panel, determines guilt and penalty
- Penalties authorized by law:
 - written reprimand,
 - fine,
 - suspend without pay for a specified period, or
 - terminate.



Teacher Disciplinary Process (3020-a)

IHO may also impose remedial action,
including but not limited to

- Leaves of absence with/without pay
- Continuing education
- Counseling or medical treatment
- Or any other remedial action (§3020-a(4))



Teacher Disciplinary Process (3020-a)

- Board must implement penalty (3020-a(4)(b)).
- If disagree with IHO, sole recourse: appeal to court (3020-a(5)).
- Both teacher and district can appeal within 10 days of receipt of IHO decision (3020-a(5)).



Teacher Disciplinary Process (3020-a)

- Appeal governed by Article 75 of the CPLR (3020-a(5)).
- Court can reverse IHO decision but only on very narrow grounds
 - unusual for a court to reverse;
 - IHO decision likely final in most cases.
- Appellate court no authority to impose new penalty.
- Must remand to IHO, or different IHO.



Teacher Disciplinary Process (3020-a)

- If teacher requests, IHO must consider extent to which board tried to correct behavior in question, including but not limited to remediation, peer intervention or EAP (§3020-a(4))



Statewide Data on Teacher Discipline: NYSSBA's §3020-a SURVEY [2008]

- 400 districts completed surveys, 59% response rate.
- Since 2004, 48% considered bringing charges at least once, but *did not* file charges because...
 - Employee resigned / retired when faced with charges (61%)
 - District's case not strong enough / no documentation (36%)
 - 3020-a too expensive (17%)
 - 3020-a too cumbersome (15%)



NYSSBA's §3020-a SURVEY [2008]

	1997	2004	2008
Cases settled <i>after</i> charges filed:	34%	49%	46%

NYSSBA's §3020-a SURVEY [2008]

Length of Full Hearing

513 days

520 days

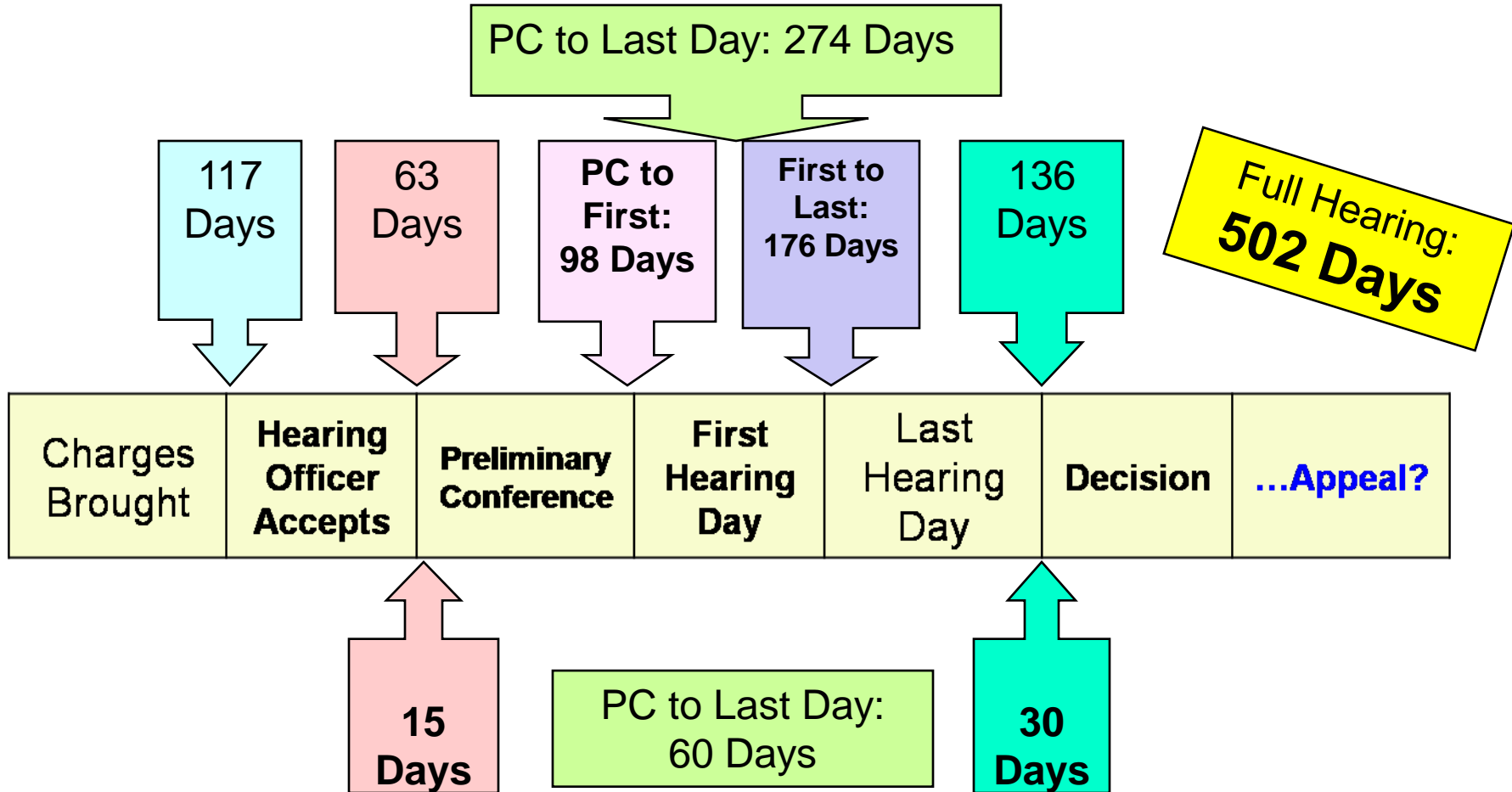
502 days

475 days

319 days



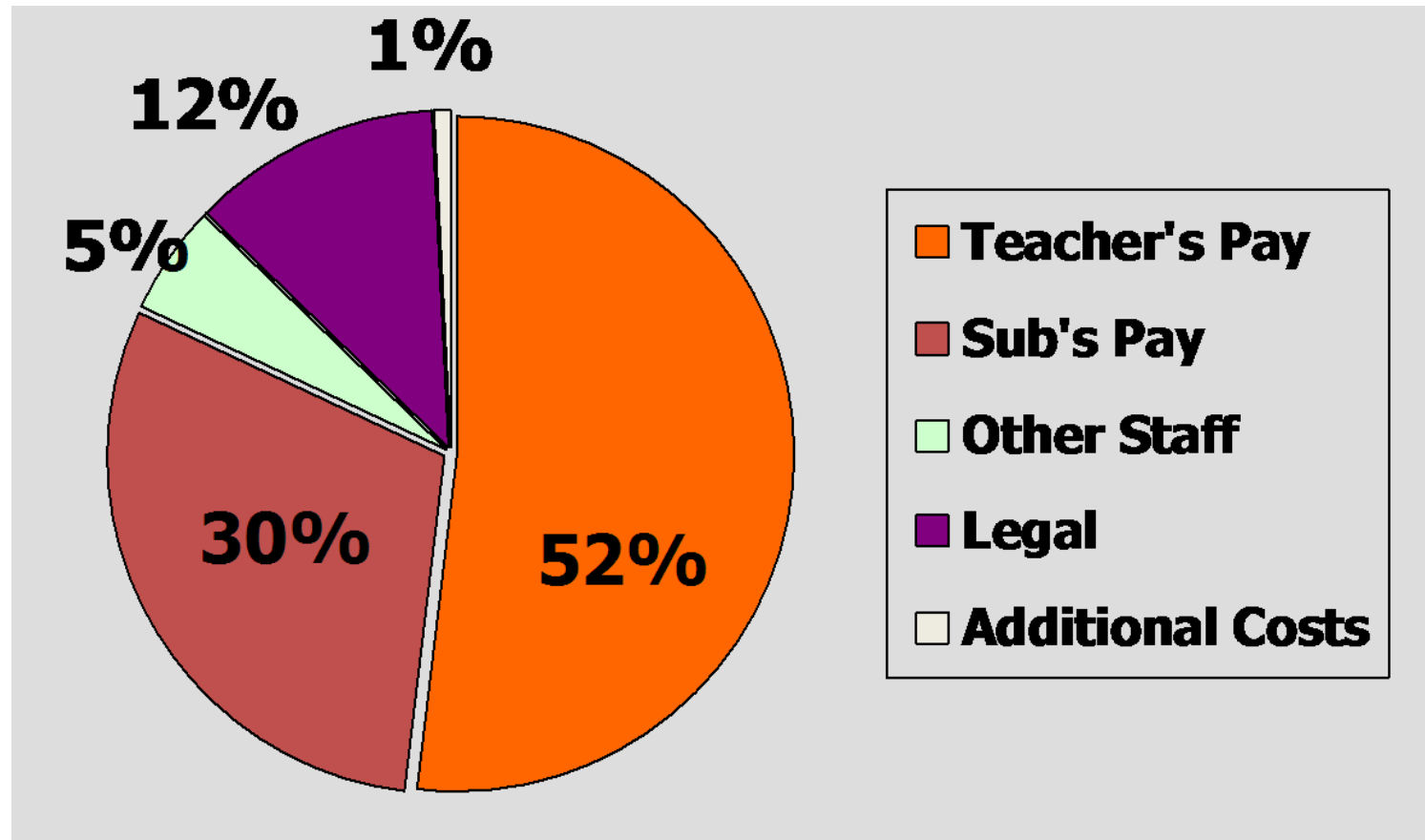
NYSSBA's §3020-a Survey Breakdown of Process...?



NYSSBA's §3020-a Survey: School District Costs

AVERAGE	1997	2004	2008
Cost per Case	\$ 94,527	\$128,941	\$216,588
Suspended Employee's Salary & Benefits	\$ 61,274	\$ 93,944	\$136,676
Substitute's Salary & Benefits	\$ 30,549	\$ 39,487	\$ 75,866
Staff Days	18	19	21

NYSSBA's §3020-a Survey: Cost Breakdown



NYSSBA's §3020-a Survey: *Penalties Imposed*

	2008
Terminated	39%
Suspended	28%
Fined	6%
Reprimanded	11%
Acquitted	17%

2008: Frequency of Charges

Pedagogical Incompetence	24%
Insubordination	23%
Corporal Punishment	17%
Excessive Absenteeism	13%
Verbal Abuse	12%
Remarks Sexual Nature	9%
Sexual Contact or Relationship	8%



Lessons Learned: Anatomy of a 3020-a Hearing

~ Case I ~

- Teacher “lacked pedagogic judgment...lazy... complaisant... rude.”
- Couldn’t control anger nor classroom.
- Many sub-standard evaluations, unsatisfactory performances cited
- Yelled at supervisor; later defied principal at student parent meeting.
- At that point, charged and suspended.
- Note: District faulted for interrupting a TIP already in place.
- *Not* found incompetent

Penalty:

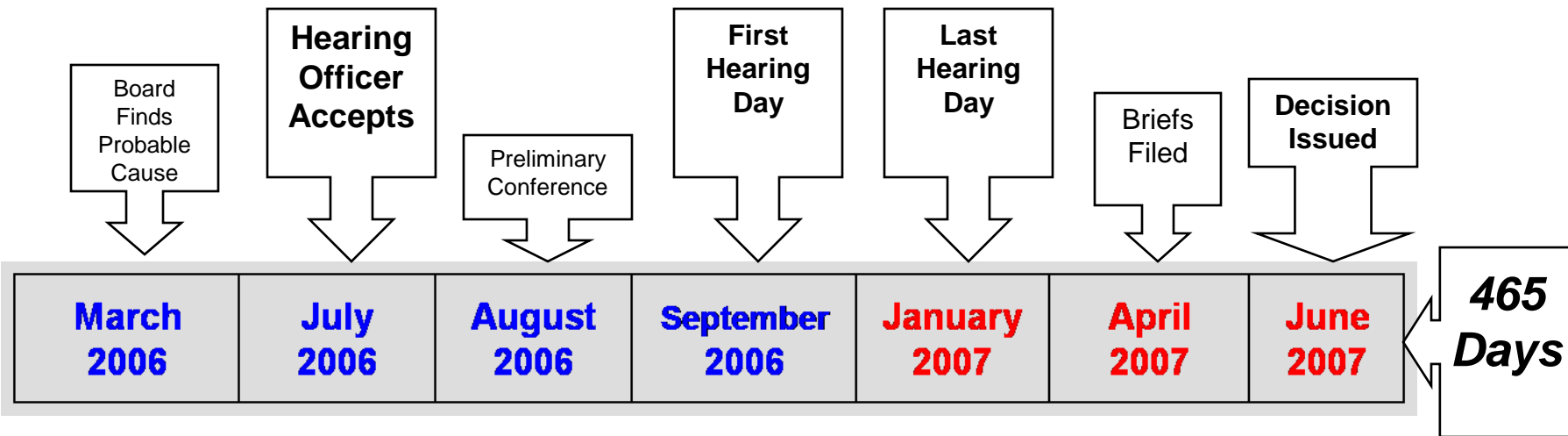
Fined \$15,000

Complete training in teaching methods,
classroom management and anger control.



Anatomy of a 3020-a Hearing

~ Case I ~



**School District's
Costs:
\$182,000**

9 hearing days
11 witnesses testified
68 documents introduced



Lessons Learned from Other 3020-a Actions

~ Case II ~

- Elementary bilingual teacher.
- Pedagogical incompetence: 7 unsatisfactory observations by 4 different administrators over 2 years citing:
 - Failed to explain lesson, plan lesson, establish routines, properly introduce material, and
 - Didn't attend professional development nor implement instructions from observers, and
 - Left 3rd grade students alone and unsupervised.



Lessons Learned

~ Case II ~

REMEDIATION GIVEN:

- One on one assistance by supervisors, coaches and peers; who
 - demonstrated appropriate lessons,
 - helped set up classroom,
 - were available to consult.
- Professional development sessions.
- Extensive feedback from administrators who observed him.
- Mentored 3 to 10 periods/month for 6 months.
- Numerous examples teacher failed to take help offered.
- Refused to meet with supervisor, nor review materials given.



Lessons Learned

~ Case II ~

Per IHO:

- “Termination not excessive if teacher warned about deficiencies, provided with assistance and training, given adequate opportunity to improve and yet persists in rendering incompetent service.”
- Finds extensive assistance and training given by SD.
- Finds teacher insubordinate for not heeding supervisors’ instructions to improve.
- **Penalty:** Termination. SED File No. 7794 (2009)



Lessons Learned

~ Case III ~

- High School Spanish teacher, 8 years employed. Prior unsatisfactory ratings.
- Pedagogical incompetence: 9 unsatisfactory observations, 2 years.
- Repeated insubordination for noncompliance with 5 "Teacher Improvement Plans" (TIPs) given to her.
- SD also provided conferences, continuing education, visits to other faculty members, and "extraordinary amounts of management time" to no avail.
- **Penalty:** Terminated. (**SED File No. 9031 (H.O. Bolter) (2009)**). See also, SED File No. 6001 (H.O. LaManna) (2007) (similar)



Lessons Learned

~ Case IV ~

- Special education teacher
- Pedagogical incompetence: 8 unsatisfactory observations, 2 years.
- IHO finds SD met obligation to remediate.
- However, 4 observations held in 1 week in June, without realistic opportunity to implement recommendations to improve performance.
- “Serious concern SD not in good faith, was conducting observations to create record for §3020-a charges.”
- Teacher in same time period had several satisfactory observations, so redeemable, said IHO.

- **Penalty:** Six months unpaid suspension, and
Course in curriculum and classroom management.
(SED File No. 7113 (H.O. Pfeffer) (2008))



Lessons Learned

~ Case V ~

- Special education teacher, 15 years employed. Just 1 year prior, settled §3020-a action for incompetence: got fine, transfer, and remediation. Teacher referred to, but did not participate in a TIP.
- 5 unsatisfactory observations in 1 year (first in new school); failed to deliver lesson planned, engage students, properly question, disjointed and confusing lessons.
- IHO faults SD for failure to follow up on TIP and remediation.
- Teacher rated satisfactory prior 10 years; per IHO, redeemable if supervised.
- **Penalty:** Suspended without pay 1.5 semesters and 6 credit hours in teaching methods (SED File No. 5234 (H.O. Lawson) (2006)).



RECAP: School Board Role

- Ensure annual review of all teaching staff
- Adopt APPR:
 - How will teacher quality be assessed?
 - How does SD train evaluators?
 - What TIP is used for unsatisfactory teachers?



RECAP: School Board Role

- Vote on probable cause
- Suspend teacher until case resolved
- Settle case in lieu of 3020-a
- Determine guilt & penalty if hearing waived
- Reimburse teacher & SED if frivolous
- Implement penalty imposed by HO
- Appeal, if necessary

Lessons Learned

Remediate teacher's
behavior ***BEFORE***
pursuing 3020-a...



NEW YORK STATE SCHOOL BOARDS ASSOCIATION
www.nyssba.org

Q & A

- Now is your chance to ask questions of Pat.
- Simply type your question in the chat box on the left hand side of the screen.
- We will answer the questions in the order we receive them and according to the time we have.
- You can always email questions to Pat anytime at pat.gould@nyssba.org



Feedback – Your needs are our work!

- In order to know how this webinar helped you, please take a moment now to complete an evaluation.
- I will bring the survey up; this should only take you a few minutes.
- We will also email you in a few months to see how long-term your learning from today might be. Thanks for participating!

