

School Safety Supervisors Disciplinary Proceedings

NY Civil Service Law Section 75

Those Subject to Provisions:

the disciplinary procedures described below are those set forth in statute. The contracts negotiated between State employee unions and the Governor's Office of Employee Relations has substituted "Contract Disciplinary Procedures" for these provisions. Thus, the following information applies mainly to Managerial/Confidential employees and persons not in a negotiating unit or subject to the Taylor Law.

CSL § 75.1 Employees who are subject to the provisions of Section 75 may not be removed or otherwise subjected to disciplinary penalty except for incompetence or misconduct established after a hearing on stated charges.

CSR § 75.1(b)(c)

CSL § 4.5

4.5(b)(5)(i)

4.5(b)(5)(ii) The provisions of the Civil Service Law dealing with removal for incompetence or misconduct apply to permanent competitive class employees, and, except as noted below, honorably discharged war veterans and exempt volunteer firefighters holding a position by permanent appointment in the classified service. State and local employees holding non-competitive class position by permanent appointment for at least five years are likewise covered. In addition, a probationer who has not completed eight weeks of service is entitled to notice and hearing pursuant to Section 75 if he/she is to be removed from the position for misconduct or incompetence before the end of the minimum probationary period.

Investigations

Frequently, charges are preceded by an investigation by the appointing authority. It is well established that an appointing officer has the right to question an employee with respect to matters involving or affecting job performance and that an employee is obligated to answer such questions. Refusal to answer constitutes insubordination. The appointing officer may question the employee under oath, and have the questions and answers recorded. Any employee, including managerial/confidential, who appears to be a potential subject of disciplinary action, has, at the time of questioning, a right to representation and shall be notified in advance, in writing, of this right.

CSL§ 75.2

75.4 Charges

Charges of misconduct or incompetence, under Section 75, must be brought within 18 months of the act or omission unless the charge would constitute a crime if proved in a court of competent jurisdiction. For managerial/confidential employees or those employees covered by a collective bargaining agreement, the period is reduced to one year. The charges must be in writing and sufficiently specific to apprise the employee of what he/she is being charged with to enable him/her to defend him/herself. The charges may be served on the employee personally or by mail. The individual is then entitled to at least eight days in which to answer the charges in writing.

CSL § 75.2 Hearings:

The hearing must be conducted by the officer or body having the power to remove the person or by a deputy or other person designated, in writing, by that officer or body. The burden of proving the charges rests on the official or supervisor making the charges.

The employee is entitled to be represented by counsel or a union official, to summon witnesses to testify on his/her behalf at the hearing, and to confront and cross-examine those testifying against him/her.

CSL § 75.3

Case law requires that the hearing be open to the public; however, it may be closed if the employee so requests. A transcript of the hearing is required, and the determination of the appointing officer must be in writing and supported by substantial evidence in the record.

If found guilty of some or all of the charge(s), an employee's entire work history may be considered in setting the penalty to be imposed.

Suspension/Dismissal

If the employee is suspended pending the hearing and determination of charges and is subsequently found not guilty, he/she is entitled to reinstatement with back pay, less any unemployment benefits. If found guilty, he/she may be:

- dismissed or demoted,
- suspended without pay for a period not exceeding two months,
- fined an amount not exceeding \$100 to be deducted from his/her salary, or
- reprimanded.

The statute permits the appointing officer to suspend an employee without pay for up to 30 days pending a hearing and determination of disciplinary charges. Such a suspension is procedural only and not a penalty. Thus, if an employee is found guilty and receives a reprimand, he/she is not entitled to back pay for the period of suspension. However, the statute permits an appointing officer, in his/her discretion, to consider the suspension as part of the penalty. The appointing authority should be prepared to defend at the hearing a determination to impose a suspension without pay. Prior to initiating a suspension without pay, an employee must be provided with a notice of the charge lodged or to be lodged, an explanation of the evidence and an opportunity to present reasons not to impose the suspension.

An employee who is found guilty is entitled, upon request, to be furnished a copy of the transcript of the hearing without charge. Also, when an employee is found guilty, a copy of the charges, the written answer, the transcript of the hearing and the determination must be placed on file in the office of the department or agency in which he/she has been employed. Copies must be filed with the State Civil Service Commission.

CSL § 76.1 Appeals:

An employee who is dismissed, demoted, suspended without pay, fined or reprimanded, unaccompanied by a remittance of his/her pre-hearing suspension without pay, may appeal either to the State Civil Service Commission or to the courts. If he/she elects to appeal to the Commission, the appeal must be filed in writing within 20 days after receipt of the written notice of the determination.

CSL § 76.2 The Commission reviews the record of the disciplinary proceeding and the transcript of the hearing, and makes a determination on the basis of such record and transcript and such oral or written argument as it may deem necessary. No new evidence may be presented before the State Civil Service Commission or its designated representative. The record is reviewed to determine whether the decision of the appointing officer is based on substantial evidence, whether procedural rights and safeguards have been observed, and whether the penalty imposed is reasonable in light of all the circumstances.

CSL § 76.3 The Commission may affirm, reverse or modify the determination appealed. It may, in its discretion, direct the reinstatement of the employee or permit transfer to a vacancy in a similar position in another division or department, or direct that the employee's name be placed on a preferred list. In appropriate circumstances the Commission may arrange a transfer of the employee, in order to avoid the difficult and unproductive work situation that might ensue were he/she returned to his/her former job. The employee is entitled to back pay for the period of his/her removal less unemployment insurance benefits. No adjustment is made for other earnings during that time.

Command Discipline (CD)

<u>(1)</u>	<u>(2)</u>	<u>(3)</u>
Accept	Accept	Hearing (Appeal)
Dispensation	SSI Review Panel Command HQ (3 person Panel)	Spec. & Charges GO15 – Tape Session or 49 - Manager’s Decision & Recommendation NYPD Advocate (1 Police Plaza.) Recommendations CHQ – Personnel Hearing(s)

Civil Service Law § 75 OR Office of Labor Relations (Contract – Binding Arbitration)