

PART 83

WHO, WHEN, WHERE AND HOW TO FILE:

AN OVERVIEW OF THE PROCESS AND YOUR ROLE.



PART 83

- 8 NYCRR 83.1 - 83.6
- Any person who knows that a certificate holder or an applicant for certification has been convicted of a crime, or has committed an act which raises a reasonable question as to the individual's moral character, may file a written complaint with the Department.

PART 83: WHO FILES

- **Who:**

- **Must File:**

- The Superintendent must report. (8 NYCRR 83.1(a))
 - A superintendent's failure to file the report may result in a part 83 investigation into the moral character of the superintendent and the possible revocation of the superintendent's certifications. (*See Skiptunas v. Mills*, 2000 U.S. Dist. LEXIS 65 (N.Y.N.D. Jan. 5, 2000)).

- **May File:**

- Any person with information. (8 NYCRR 83.1(c))

PART 83: WHEN TO FILE

•**When**: When he/she is aware of *any* information indicating that an individual holding a teaching certificate:

1. has been convicted of a crime, or
2. has committed an act which raises a reasonable question as to the individual's moral character.

PART 83: WHEN TO FILE (CONTINUED)

- What does “an act which raises a reasonable question as to the individual's moral character...” mean?

- No guidance – subjective standard.

- Examples might include:

- Inappropriate relationships
 - Inflating grades
 - Willful test security violations
 - Possessing inappropriate or pornographic images at school
 - Failing to timely file a part 83 report

PART 83: WHERE TO FILE

- The Office of School Personnel Review and Accountability (OSPRA) investigates allegations concerning the moral character of individuals who hold or who are applicants for New York State teaching certificates.

<http://www.highered.nysed.gov/tcert/respublic/teacherdiscipline.html>

PART 83: HOW TO FILE

- Complete a [complaint form](#) and forward to the OSPRA.
- Attach copies of any applicable documents (e.g., Photos, police reports, etc.).
- Required to report but no requirement that every single detail is reported. What is included in report is often calculated and done for a specific reason.
 - For example, may use to leverage cooperation from a union to settle a matter without a 3020-a hearing.

PART 83: OSPRA INVESTIGATION

- The professional conduct officer shall direct that an investigation be done of the circumstances surrounding such conviction or act, and shall submit a report of the findings and a recommendation as to whether to proceed to a formal hearing to the state professional standards and practices board. (8 NYCRR 83.2)

–In short, when your complaint is received, it will be assigned to an investigator who will contact you in writing or by telephone (typically both).

- You will have an opportunity to explain your complaint in more detail.
- They will ask for more information (see example).

PART 83: OSPRA DETERMINATION

- **Adequate Character:** If upon review of the professional conduct officer's report, the state professional standards and practices board for teaching concludes that a certified individual's moral character is adequate to permit continued certification as a teacher (or that an applicant's moral character is adequate to permit certification as a teacher), a report to this effect shall be forwarded by the board to the executive director of the Office of Teaching Initiatives.
(8 NYCRR 83.3)

PART 83: OSPRA DETERMINATION

(CONTINUED)

- **Substantial Question**: If upon review, the board concludes that a substantial question exists as to the moral character of a certified individual or an applicant, notice of the basis for this conclusion and a copy of this Part (i.e., 8 NYCRR 83) shall be sent by certified mail, return receipt requested, to the certified individual or applicant. (8 NYCRR 83.3)

PART 83: SUBSTANTIAL QUESTION HEARING

- **Requested Hearing:** The teacher has 30 days from receipt of certified notice to request a hearing on the question of whether his/her certification should be revoked, suspended, or whether another penalty should be imposed.
 - Teacher may request hearing before hearing officer, or hearing officer and three-member panel.

(8 NYCRR 83.4(a))

PART 83: SUBSTANTIAL QUESTION

HEARING (CONTINUED)

- **Hearing Officer**: Upon receipt of a request for a hearing, a hearing officer shall be appointed by the commissioner to hear and recommend, and a hearing scheduled.
 - In the order designating a hearing officer, the commissioner shall also designate the place where said hearing will be held.
 - At least 15 days before the hearing, the hearing officer shall give to the certified individual written notice by mail of the time and place of said hearing.

(8 NYCRR 83.4(a))

PART 83: SUBSTANTIAL QUESTION

HEARING (CONTINUED)

- **Three Member Panel:** If three-member panel requested: the members shall be selected from the list maintained by the commissioner pursuant to the provisions of Education Law section 3020-a, as follows:
 - 1 member shall be selected by the certified individual,
 - 1 member shall be selected by the state professional standards and practices board for teaching, and
 - the third member shall be chosen by mutual agreement of the first two, or, if they fail to agree, by the commissioner.

(8 NYCRR 83.4(b))

PART 83: SUBSTANTIAL QUESTION

HEARING (CONTINUED)

- **Burden**: SED has the burden of proof that the individual lacks good moral character.
- **Rights**: Individual has the right to call witnesses and offer evidence of his/her good moral character.
- **Subpoenas**: Hearing Officer may issue at the request of a party.
- **Record**: Verbatim record of shall be kept (i.e., court reporter).

(8 NYCRR 83.4(c))

PART 83: SUBSTANTIAL QUESTION HEARING (CONTINUED)

- **Evidence:** Conviction of crime does not create a conclusive presumption that the individual lacks good moral character.
 - Conviction of the following crimes (post-certification) create a rebuttable presumption:
 - criminal sale, possession or use of marijuana, a controlled substance, a precursor of controlled substance or drug paraphernalia;
 - any crime involving physical or sexual abuse of a minor or student;
 - any crime committed either on school property or while in the performance of teaching duties; or
 - any crime committed involving the submission of false information, or the commission of fraud, related to a criminal history record check.

(8 NYCRR 83.4(b))

PART 83: SUBSTANTIAL QUESTION

HEARING (CONTINUED)

- **Findings:** A report detailing the findings and recommendations, and a copy of the transcript shall be submitted to the commissioner at the conclusion of the hearing. (8 NYCRR 83.4(b))
- **Appeal:** Individual may appeal to commissioner within 30 days of receipt of notification of the findings and recommendations. (8 NYCRR 83.5(a))

PART 83: SUBSTANTIAL QUESTION HEARING (CONTINUED)

- **Penalties:**

- (1) revocation of a certificate; or
- (2) suspension of a certificate:
 - (i) wholly for a fixed period of time;
 - (ii) partially, until the certificate holder successfully completes a course of retraining in the area to which the suspension applies; or
 - (iii) wholly, until the certificate holder successfully completes a course of therapy or treatment.
- (3) limitation of the scope of a teaching certificate through revocation of an extension to teach additional subjects or grades; or
- (4) a fine not to exceed five thousand dollars; or
- (5) a requirement that the certified individual pursue a course of continuing education or training.

(8 NYCRR 83.6(b))

PART 83: SKIPTUNAS V. MILLS

- In October 1994, the Middletown School District received a complaint about a relationship that had developed between a probationary teacher and one of his students. The District began an investigation. Although the investigation concluded that no sexual conduct was involved, the District nevertheless decided against granting tenure. The teacher was given the option of resigning or having his appointment terminated. On October 23, 1994, he resigned. After his resignation, he engaged in sexual intercourse with the student. He was arrested in December 1994 and pled guilty to rape in the third degree in May 1995.
- On November 7, 1995 -- **more than one year after the teacher's resignation and six months after his conviction** -- Plaintiff reported the incidents involving the teacher to the senior professional conduct investigator with the SED.

2000 U.S. Dist. LEXIS 65 (N.Y.N.D. Jan. 5, 2000)).

PART 83: SKIPTUNAS V. MILLS

(CONTINUED)

- Due to the span of time that passed before Plaintiff made his report, SED investigated whether Plaintiff's failure to file a timely report demonstrated a lack of moral character that would cause Plaintiff to lose his certifications. Board determined that substantial questions existed as to the moral character of Plaintiff.
- Pursuant to Part 83, Plaintiff requested a formal hearing on the charges. After the conclusion of the Education Department's case, the hearing panel issued a decision in October 1996, which determined that the circumstances surrounding Plaintiff's Part 83 report raised no moral issue involving Plaintiff's character.
- However, this was done in public and because of the negative publicity, Plaintiff was terminated as an adjunct associate professor at college.

(2000 U.S. Dist. LEXIS 65 (N.Y.N.D. Jan. 5, 2000)).

PART 83: SKIPTUNAS V. MILLS

(CONTINUED)

- **Lesson:**

- Protect yourself - when you have any information, report it.
 - Consult with attorney.
 - You can put as little or as much information in the report as necessary.
 - A school official obligated to file a part 83 report is entitled to qualified immunity from lawsuits as long as the statements in them are not false or made maliciously. (*See Rizzo v. Edison, Inc. Charter School, et al.*, 172 Fed. Appx. 391 (2d Cir. 2006)).
 - Although you may not lose your certification, the negative publicity is not worth it.