

TOP HIDDEN TRAPS FOR SCHOOL HR AND HOW TO NAVIGATE AROUND THEM FOR SCHOOL HR

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Discipline and Association Representation Article – Added In Back to School Act

16.X Discipline and Association Representation

16.X.1 For disciplinary actions that are not regulated by the *Education Act*, no Teacher, substitute teacher, teacher with a principal or other administrative, supervisory or consultative designation shall be formally disciplined without just cause. Such cause shall be provided to the Teacher in writing within five (5) operational days from when the Teacher is informed of a formal disciplinary action.

16.X. 2 Before the imposition of any formal disciplinary action or investigation, the Teacher shall be given particulars of the matter being considered or investigated that may lead to any formal disciplinary action.

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16.X Association Representation

16.X.1 Teachers shall have a right to Association representation during any proceedings and/or any meetings where there is a substantial likelihood that the allegation(s) being investigated or discussed, if substantiated, would lead to formal disciplinary action, except where the Education Act authorizes the School Division to proceed without notice.

16.X.2 Where circumstances permit, the School Division shall schedule a proceeding and/or meeting referred to in 16.X.1 with the Teacher by giving reasonable advance notice which shall not be less than 24 hours, with reasonable consideration for non-operational days. At such proceeding and/or meeting a teacher may be accompanied by a representative of the Association and the Association representative shall have the opportunity to be present and participate fully on behalf of the Teacher.

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6.X.3 The School Division shall inform the Teacher prior to such proceeding and/or meeting taking place that a representative of the Association may accompany the Teacher. However, should the Association representative be unavailable in a reasonable amount of time, the School Division shall not be prevented from proceeding with the disciplinary process. The Association shall not withhold or unreasonably delay requested representation.

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Key Thoughts and Tips

- Right to ATA Representation "where there is a substantial likelihood that the allegation(s) being investigated or discussed, if substantiated, would lead to formal disciplinary action …" **Grey area here but in our practical legal opinion:**
  - Does not include urgent in-the-moment response to evolving incident
  - Does not prohibit preliminary due diligence and fact gathering by a school administrative team
  - Key trigger for pause/advise of ATA Representation/schedule further meeting: When the alleged facts gathered / known, if substantiated, are likely to lead to formal disciplinary action
  - Discuss common examples

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Key Thoughts and Tips

- "Before the imposition of any formal disciplinary action or investigation, the Teacher shall be given particulars of the matter being considered or investigated…"
  - Providing particulars prior to taking disciplinary action, not much a change from past practice from a practical perspective
  - Potential trap or subtlety here is the wording expressly requires communication of the particulars of the matter to the Teacher "before … investigation" therefore, it is important prior to having an investigative meeting with the Teacher that the particulars of the matter that you are investigating be provided to the Teacher in advance of that investigative meeting

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Key Thoughts and Tips

- Timing and notice requirements for investigative/disciplinary meetings
  - At least 24 hours or more notice required to the Teacher for any investigative/disciplinary meeting
  - Advise of ATA Representation right away and reasonably accommodate scheduling, however, ATA Representation should not hold up or unreasonably delay the process

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Example Scenario

1. Immediate on the spot in school reaction, due diligence, safety and inquiry at school permitted without notice / particulars and without ATA Representation, etc.

2. As soon as particulars, or alleged particulars are known, which if substantiated are likely to ground formal disciplinary action – pause.

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Example Scenario

3. At this point, whether it be school admin or central office admin, any further meeting inquiry or investigation should be paused, the Teacher advised of the potential for disciplinary action and as a result, the recommendation to obtain ATA Representation and to stand by for next steps.

4. Ensure the involvement and insight of central office admin/HR, prepare known or alleged particulars, provide written notice to the Teacher of the particulars, with recommendation to seek ATA Representation and the next steps of meeting to review or investigate the matter.

Hidden/Most Often Missed Traps on Teacher Contracts

- Second-Year Probationary Contracts:
  - To issue a valid second-year probationary contract you must have documented "evaluations" which "indicate to the Board that an additional probationary year is required" (s. 206 (4) *Education Act)*
  - A school division cannot simply implement a practice of Second-Year Probationary Contracts for operational flexibility or planning reasons. You must have documented evaluations supporting the further probationary period.

Hidden/Most Often Missed Traps on Teacher Contracts

- Improper use of a Temporary Teaching Contract:
  - A Temporary Teaching Contract gives a school division maximum flexibility and ease of termination compared to other forms of contract, but can only be used when “replacing a teacher who is absent from their teaching duties for a period of 20 or more days”.
  - The key is a Temporary Teaching Contract is to temporarily replace an absent teacher not a temporary assignment / project. A temporary or uncertain assignment / project is more suited for an Interim contract.

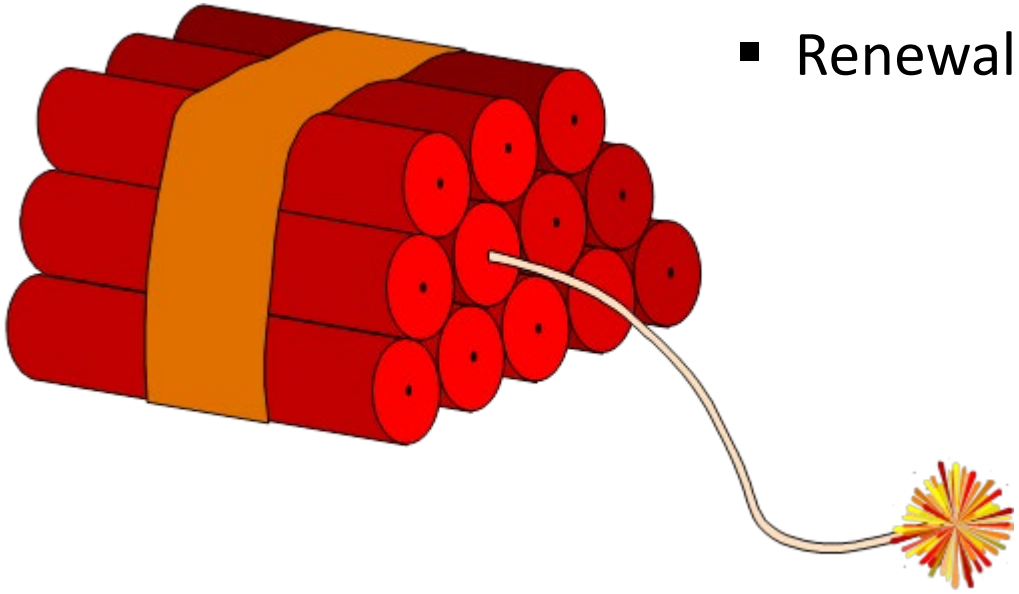
Hidden/Most Often Missed Traps on Teacher Contracts

- Incorrectly using an Interim or Probationary Contract when the teacher was employed in the prior school year:
  - For both an Interim and a Probationary Teaching Contract, the Teacher must not have been employed by your School Division in the prior school year (with the exception of employment as a substitute or temporary teacher)
  - Common mistakes that we see:
    - Teacher who is employed with the Division on an Interim Contract and then is hired on a First-Year Probationary Contract
    - A teacher on an Interim Contract the prior year who is rehired in the subsequent school year on a new Interim Contract
  - For a teacher employed on an Interim Contract in the prior year, we recommend an agreed amendment/extension of that prior Interim Contract going into the following school year as an Interim Contract can be extended by agreement and can be extended for a further total period up to 360 teaching days

Fixed Term Contracts

Typical problems:

- Costly absence of a termination clause
- Working past the end of the term
- Renewal clause confusion





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QUESTIONS?

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