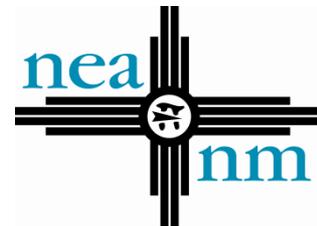




UNDERSTANDING TERMINATION & DISCHARGE for Education Support Professionals

National Education Association – New Mexico





Termination and Discharge

All Educational Support Professionals
Should Know Their Rights.

Knowledge is Power!

"TERMINATION MEANS"

**"in the case of a non-certified school employee,
the act of severing the employment relationship..."**

(22-10A-2, NMSA 1978)



Termination and Discharge

- *“Discharge” is a term that does not apply to E.S.P.*
- *“Discharge” means the act of severing the employment relationship with a *certified* employee prior to the expiration of the current employment contract.”*

(22-10A-2, NMSA 1978)



Termination (continued)

- A local board may not terminate an employee who has been employed by a school district for three (3) consecutive years without “just cause.”
- *“Due process” must be followed to establish that the District had “just cause” not to rehire the employee.*



Termination (continued)

- For E.S.P., the law states the employee must have completed three (3) consecutive years of employment for this purpose.
- E.S.P. who are in their 1st, 2nd, and 3rd year of employment do not have “due process” rights. An employer can “terminate” such an employee for any reason the school board deems sufficient. *During the fourth contract year, E.S.P. gain “due process” rights.*

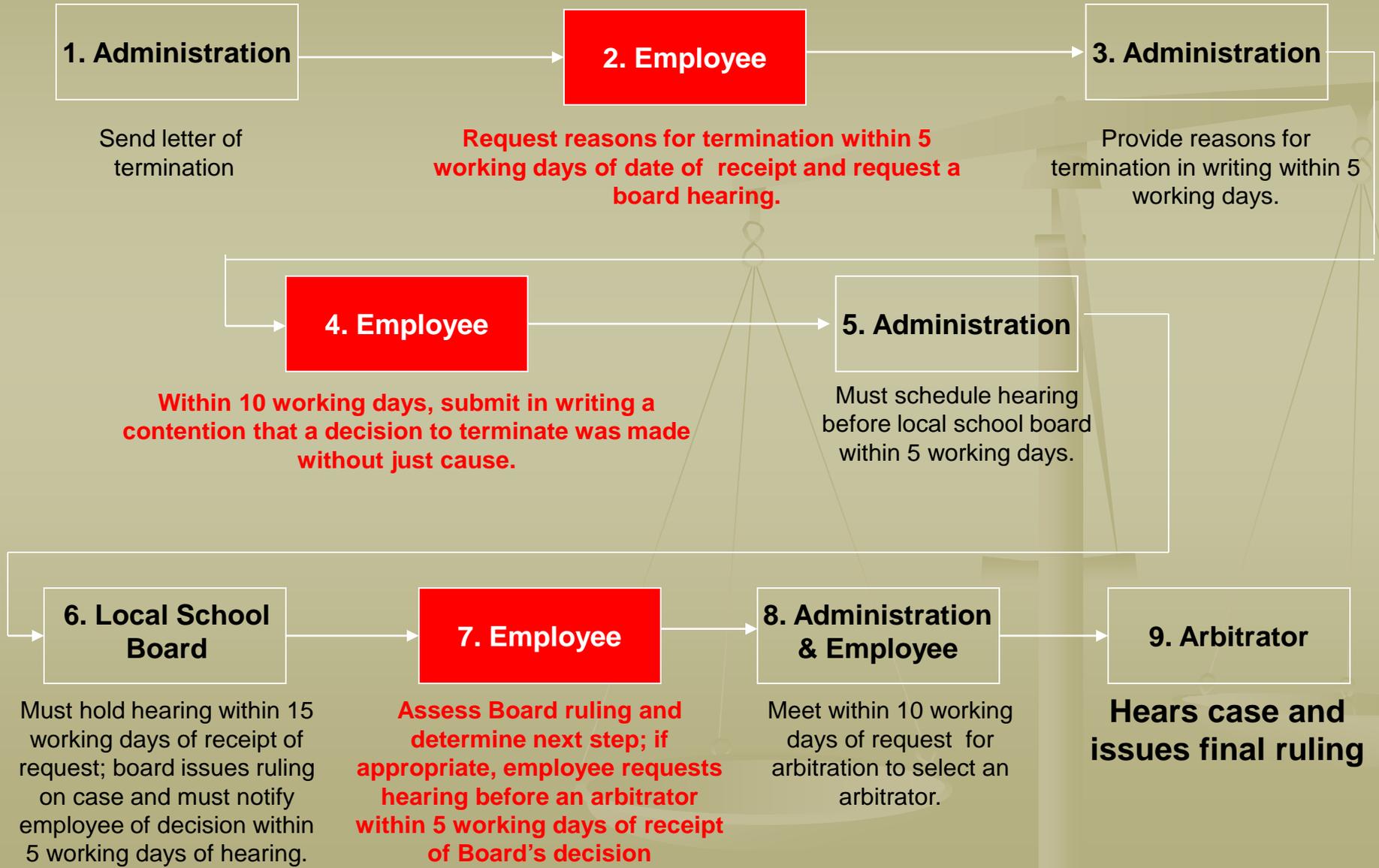


Termination (continued)

- “Just cause” is a legal term of art used in many different employment contexts.
- For our purposes it means “a reason that is rationally related to an employee's competence or turpitude or the proper performance of the employee's duties and that is not in violation of the employee's civil or constitutional rights.”
- If a employee who has been employed for three or more consecutive years receives a notice of termination, several steps exist to challenge the termination.

TERMINATION STEPS

of Employees Employed By A School District For Three (3) Consecutive Years Without Just Cause.





Termination (continued)

The chart on the previous slide shows the course of a termination and the steps an employee may take to appeal a termination. Specifically, it shows the process for an E.S.P. employed for three consecutive years. The following slides explore this in detail.

Of course, Step One in the entire process starts with a letter from the District. If an employee has been told they are being terminated, know that until they receive the letter, the action is not formal.



Termination (continued)

Step 2:

Within five workdays of receiving the notice of termination, the employee must provide written notice to the school board requesting the reasons for termination and requesting a hearing.

Step 3:

The employer has five workdays to respond in writing with its reasons for the termination.



Termination (continued)

Step 4:

Within ten workdays of receipt of the reasons for termination, the employee must submit to the superintendent a 'statement of contention' that the termination is without just cause. The statement should include a statement of facts supporting the contention that no just cause exists.



Termination (continued)

Step 5:

The school board hearing must be no less than five and no more than fifteen workdays after the superintendent's receipt of the statement of contention.

Step 6:

After the board hearing, the board has five workdays to submit its ruling on the case and must notify the employee of their decision.



Termination (continued)

Step 7:

Upon receiving the Board's decision, the employee should meet with their local representative and their UniServ to assess whether sufficient grounds exist to appeal an adverse decision by the school board to an independent arbitrator. The appeal must be submitted within five workdays of receipt of the school board's decision.



Termination (continued)

Step 8:

The employee and their representative meet with the school board within ten days of the employees request to appeal the decision to arbitration. An arbitrator is selected at this meeting.



Termination (continued)

Step 9:

The Arbitrator hears the case, and then issues a final ruling.

Your UniServ, working closely with NEA-NM's attorneys, is likely serving as your representative at the arbitration hearing.



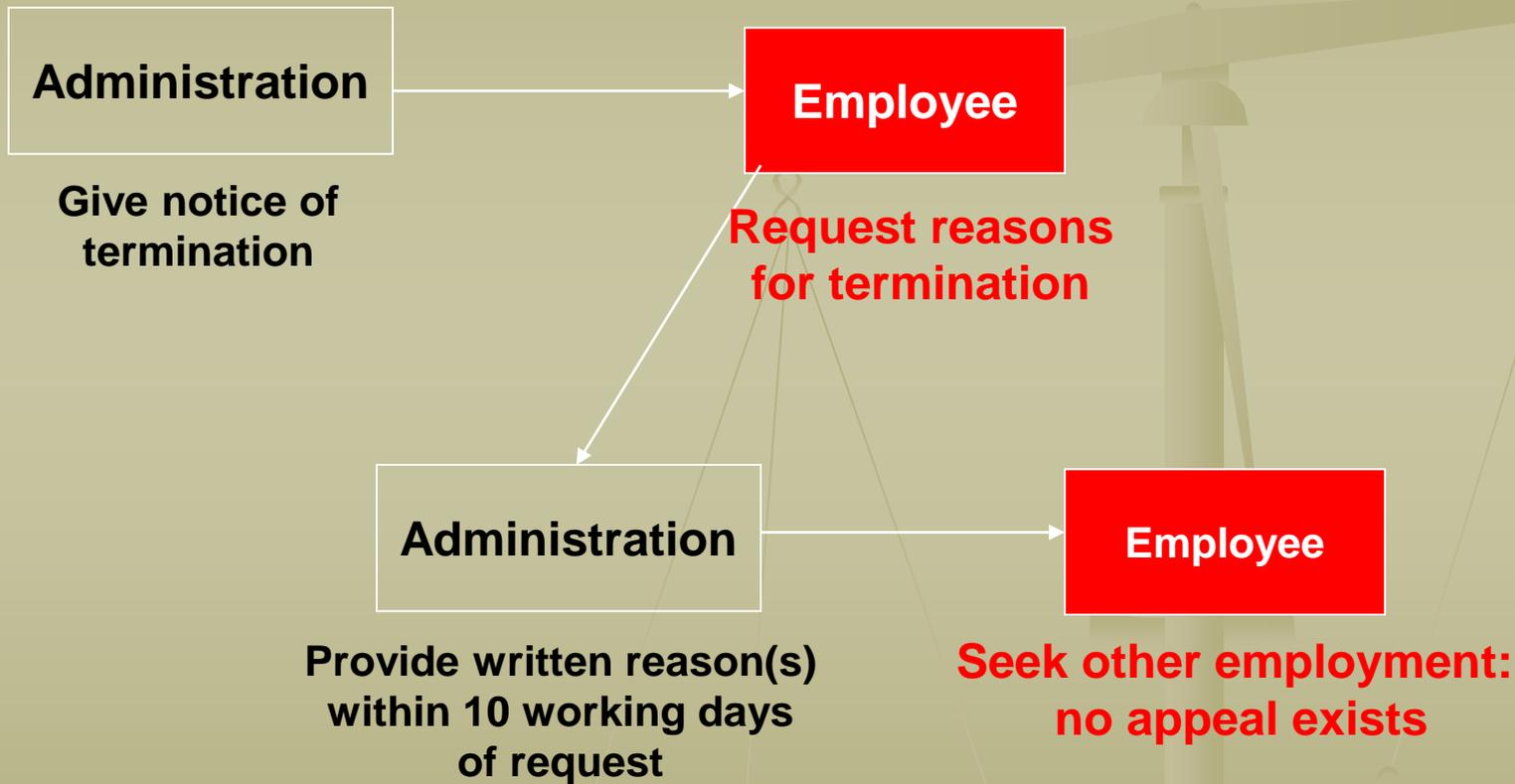
Termination Less than Three (3) Years

The course of the Termination steps for an employee with less than three (3) years of consecutive service with that district is shown on the “flow chart” on the next slide, and explained in the next few slides.

Of course, step one in this process starts with a letter from the District.

TERMINATION STEPS

of Employees With Fewer Than Three (3) Years of Service

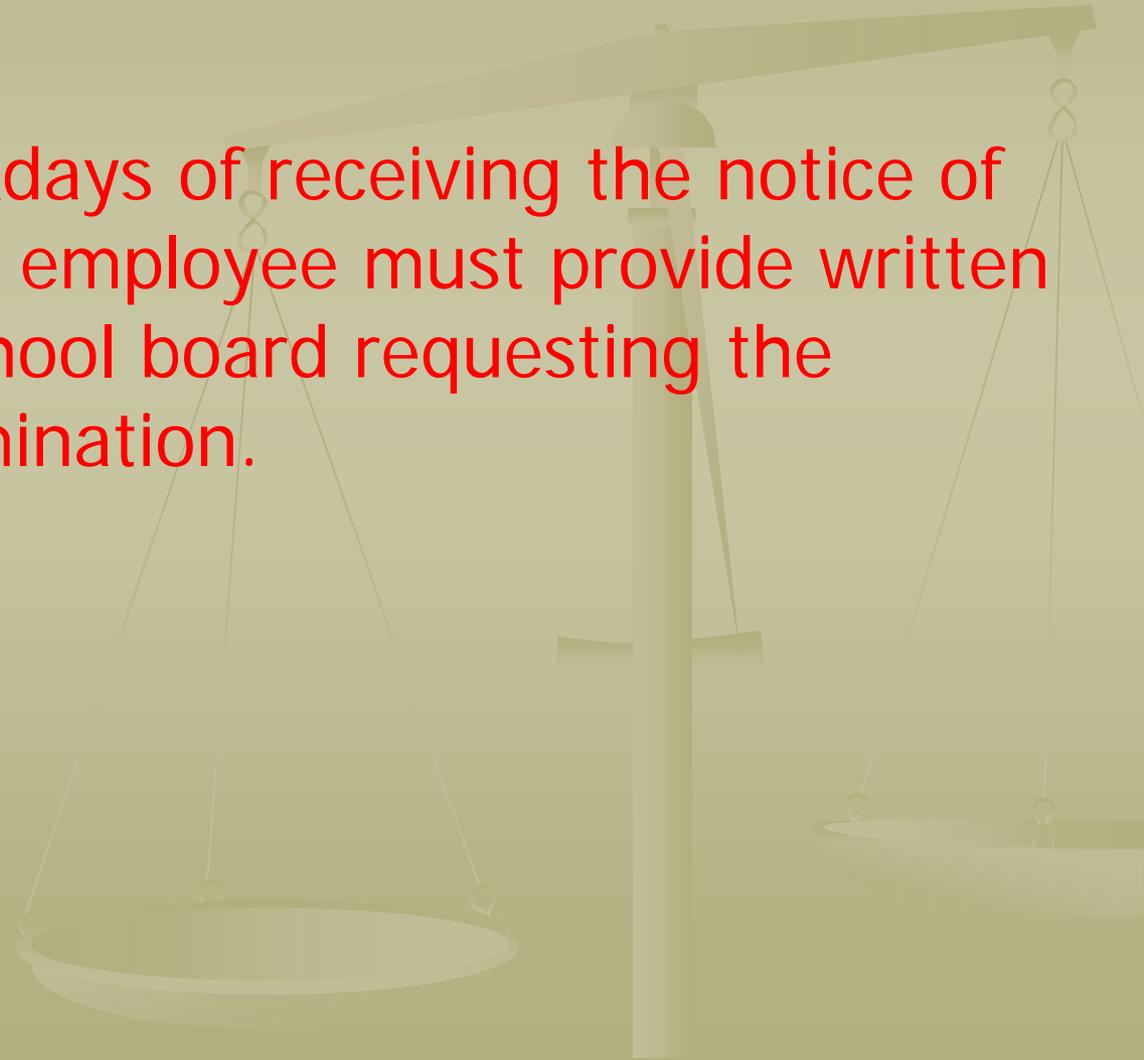




Termination Less than Three (3) Years

Step 2:

Within five workdays of receiving the notice of termination, the employee must provide written notice to the school board requesting the reasons for termination.





Termination Less than Three (3) Years

Step 3:

The administration has ten working days to provide their reasons for termination to the employee.

There is no appeal process for the termination of an employee with less than three years of consecutive service in the same district.



Termination Less than Three (3) Years

However, even though the employee with less than three consecutive years may not appeal a termination, *no employee may ever be terminated for a discriminatory reason.*



Termination Less than Three (3) Years

- **Discriminatory reasons are** those based on your membership in a “class” of people recognized by the law.
- It could include a physical disability, age discrimination, racial discrimination, gender discrimination, **or retaliation for certain protected acts** such as filing a worker's compensation claim, or for participation in organizing for collective bargaining and union activities.



Termination Less than Three (3) Years

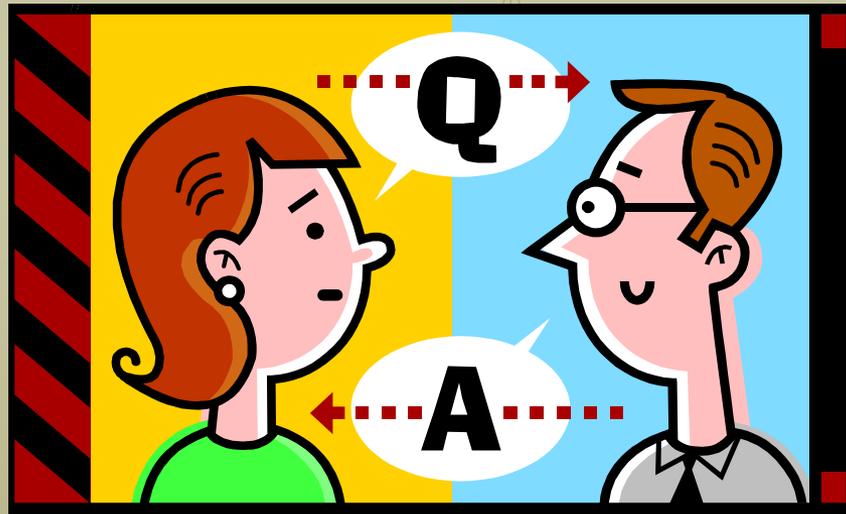
Although the same procedural appeals are not provided for employees with three years or less of consecutive service, *you do have the ability to file suit in court if you have been terminated for a prohibited reason (such as discrimination).*

However, keep in mind that the standard of proof is very high in proving such a claim.



TERMINATION

Any Questions???



Thank You!!!