

EDUCATION LAW §913

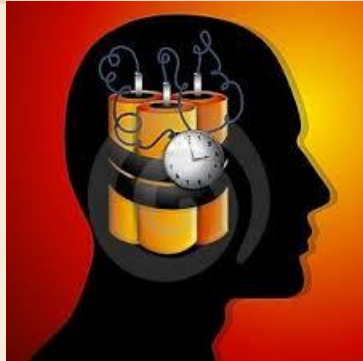
MEDICAL AND MENTAL HEALTH EXAMINATIONS OF STAFF



EDUCATION LAW §913

- Generally
- Purpose
- When To Use It
- Who it applies to
- The formal process
- Employee's Rights
- Possible Outcomes





HYPOTHETICAL SCENARIO

- You have a teacher that has been losing his temper and otherwise behaving in an unprofessional manner such that you are concerned he has mental health issues and is not mentally competent to perform his job duties:
 - How do you handle this situation?



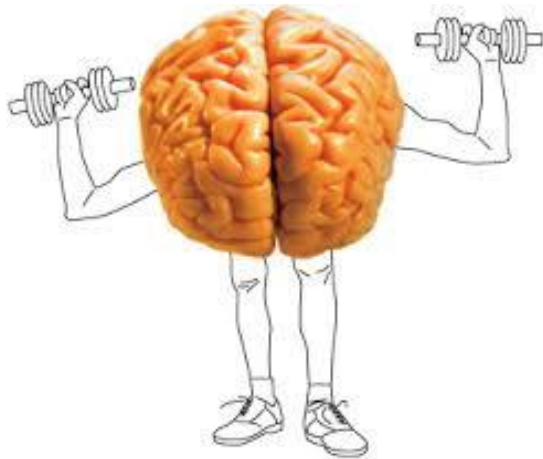
HYPOTHETICAL SCENARIO

- Send him to a psychiatrist for an examination to determine his competency pursuant to Education Law §913.



GENERALLY

- In general, Ed. Law §913 provides a district with the ability to require employees to submit to a medical examination for the purpose of determining their physical or mental capacity to performing their job duties. (*See Appendix 1*).



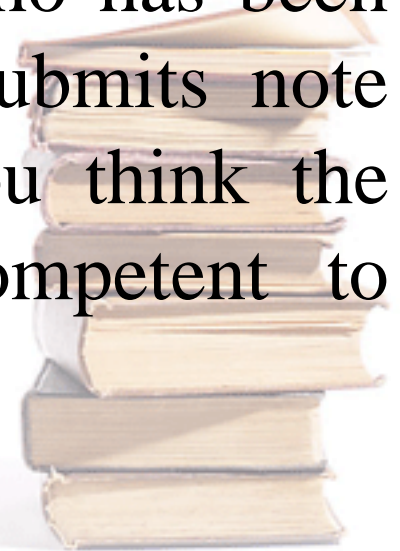
PURPOSE OF §913

- TO SAFEGUARD THE HEALTH OF CHILDREN ATTENDING THE PUBLIC SCHOOLS.



WHEN TO USE

- When you suspect that an employee may not have the physical or mental capacity to perform job duties.
- Ex.: A physical education teacher who has been on extended leave due to illness, submits note from doctor clearing for return. You think the teacher may not be physically competent to perform the duties of her position.



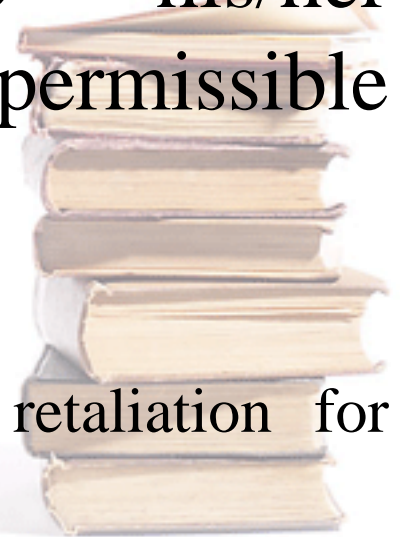


WHEN TO USE

(CONTINUED)

- In short, districts have an absolute statutory right to order an employee to submit to an examination to determine his/her competency, if it is done for permissible reasons.

–Impermissible reasons would include retaliation for filing a grievance or for union activity.

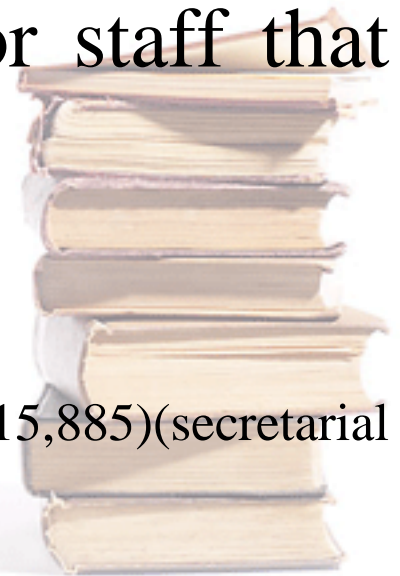


APPLIES TO ALL EMPLOYEES



- Education Law §913 applies to all District employees.
- Not limited to instructional staff or staff that has contact with students.*

*Appeal of D.R., 48 Ed Dept Rep 358 (Decision No. 15,885)(secretarial assistant in technology department).



FORMAL PROCESS

1. Select a medical professional to perform the exam
2. Board Resolution designating professional to perform examination
3. Notify the professional of designation
4. Notify employee of appointment
5. Share report with Board
6. Further action as appropriate



FORMAL PROCESS



1. Select a medical professional to perform the exam:

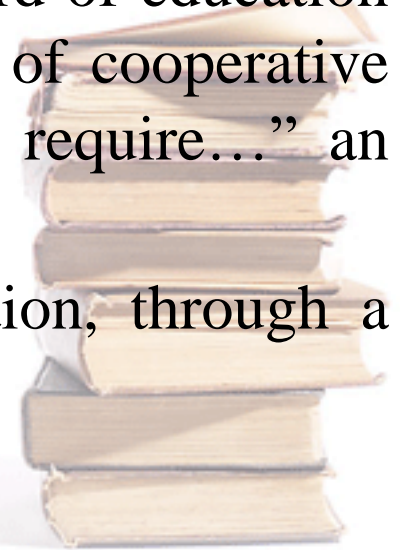
- Who:
 - Specialist, psychiatrist, other?
 - Who has district used in the past?
 - Who have colleges used in the past?
 - Employee's doctor or the district's doctor
- Contact the professional and inquire whether they are able and willing to perform.





FORMAL PROCESS

2. Board must pass a resolution designating the professional to perform the exam.
 - The statute provides that only the “...the board of education or trustees of any school district or a board of cooperative educational services shall be empowered to require...” an employee to submit to an examination.
 - Thus, the board of education must take action, through a formal resolution. (*see Appendix 2*).



EXAMPLE

BE IT HEREBY RESOLVED, that the Board of Education of the _____ Central School District hereby designates Dr. (Name) as school medical inspector for the purpose of preparing a (medical or psychological) examination pursuant to Education Law Section 913 regarding an employee's capacity to perform his/her duties. The doctor's report shall be given to the Board of Education in executive session after the examination is complete.

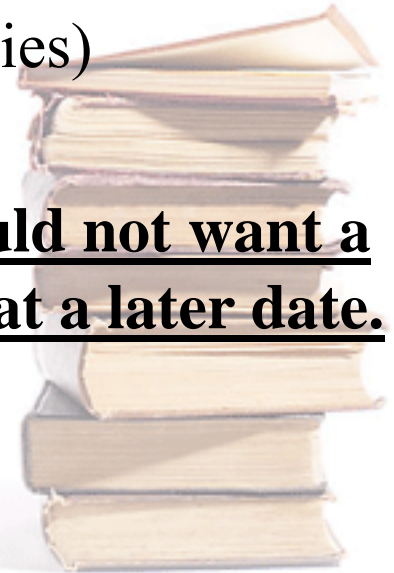
BE IT FURTHER RESOLVED that the Superintendent is delegated the authority to coordinate such examination.

FORMAL PROCESS



3. Notify the professional

- Send a formal letter notifying the professional that:
 - the Board has designated him/her
 - the purpose of the examination (i.e., to determine the individual's capacity to perform his/her duties)
 - what should be included in the report
- **Do not put anything in writing that you would not want a judge, arbitrator or hearing officer to read at a later date.** (ex.: "We think she's lying.").
- Form letter - *see Appendix 3.*



FORMAL PROCESS

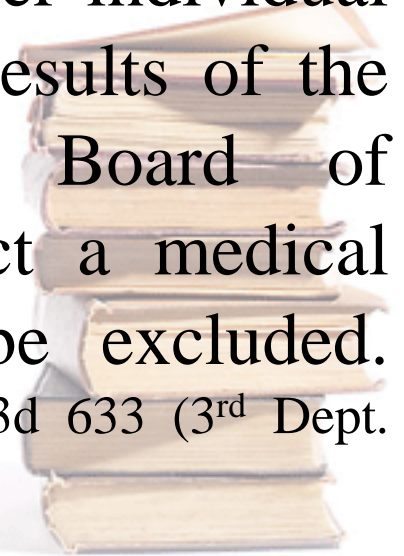
4. Notify the employee

- Send a formal letter (hand delivery or certified with return receipt only) notifying the employee:
 - that the Board is directing him/her to submit to an examination pursuant to Ed. law §913
 - of the date and time of the exam
 - to bring his/her medical records to the exam
 - to sign and return the enclosed authorization
 - of his/her right to be accompanied by own physician, or other person of his/her choosing
- Form letter and HIPPA Authorization- *see Appendices 4 and 5.*



EMPLOYEE'S RIGHTS

- The person required to submit to such medical examination shall be entitled to be accompanied by a physician or other person of his or her choice.
- However, where the presence of another individual would compromise or invalidate the results of the evaluation, thereby frustrating a Board of Education's statutory right to conduct a medical examination, such individual shall be excluded. (Gardner v. Niskayuna Cent. School Dist., 42 A.D.3d 633 (3rd Dept. 2007)).

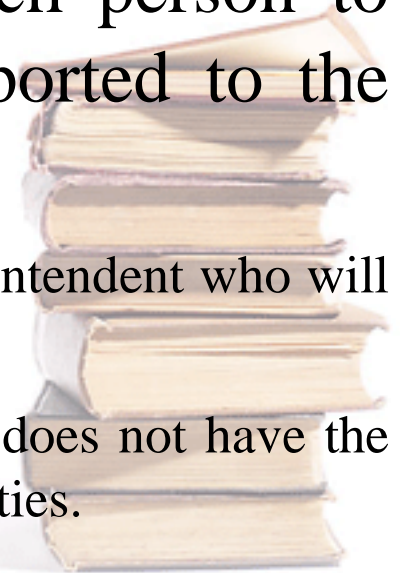


FORMAL PROCESS



5. Share the report with the Board:

- The statute provides that the medical professional’s “determination based upon such examination as to the physical or mental capacity of such person to perform his or her duties shall be reported to the board of education...”
 - In practice the report will be provided to the Superintendent who will then share it with the Board in executive session.
 - The report should state that the employee does or does not have the physical or mental capacity to perform his or her duties.



FURTHER ACTION AS APPROPRIATE

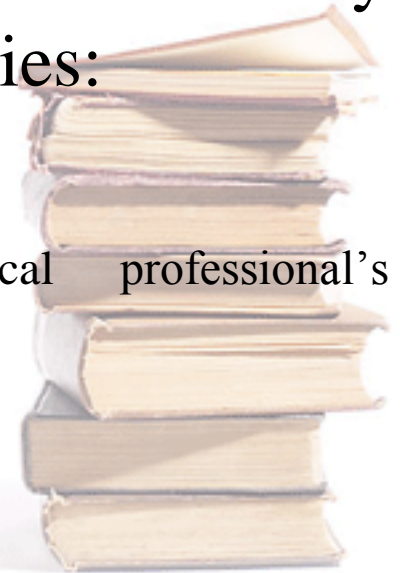
- If the medical professional concludes that the individual is physically capable of performing his or her job duties, the next step depends on the circumstances:
 - Ex. 1: A physical education teacher who has been on extended leave due to illness, submits note from doctor clearing for return. You think the teacher may not be physically competent to perform the duties of her position.
 - Send the employee a letter (hand delivery or certified with return receipt only) notifying him/her that Dr. _____ has certified that they are fit to perform their duties and that they are reinstated or directed to return to their position. (*See Appendix 6*)

FURTHER ACTION AS APPROPRIATE

- Ex. 2: A monitor has been experiencing angry outbursts around other employees and recently kicked a desk across a class room after the students left for the day. Sent for a 913 exam and psychiatrist certified that the employee is competent to perform the duties of their position.
 - Send the employee a letter (hand delivery or certified with return receipt only) notifying him/her that Dr. _____ has certified that they are fit to perform their duties.
 - Proceed with a counseling memo or discipline if appropriate in the same manner you would with other employee.

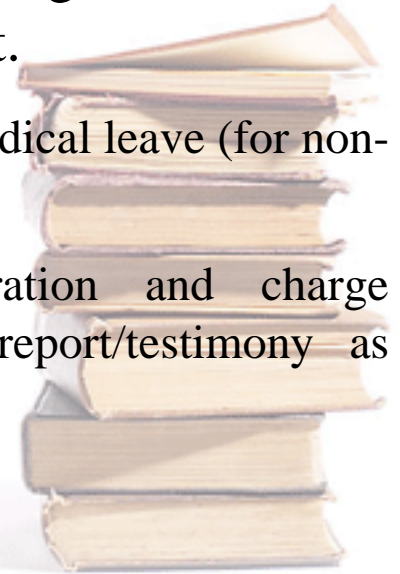
FURTHER ACTION AS APPROPRIATE

- If the medical professional concludes that a teacher or administrator is not physically or mentally capable of performing his or her job duties:
 - Follow Education Law § 3020-a.
 - Charge incompetence and use the medical professional's report/testimony as evidence of incompetence.



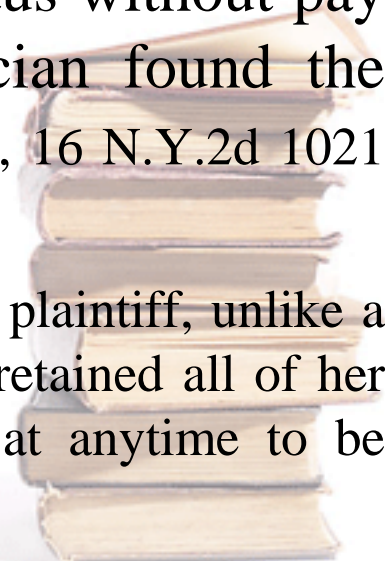
FURTHER ACTION AS APPROPRIATE

- If the medical professional concludes that a non-instructional staff member is not physically or mentally capable of performing his or her job duties:
 - Follow Civil Service Law §§ 72 or 75, or binding arbitration if included in the collective bargaining agreement.
 - Utilize § 72 to place the employee on involuntary medical leave (for non-work related illness or disability)
 - Alternatively, utilize § 75 or binding arbitration and charge incompetence using the medical professional's report/testimony as evidence of incompetence.



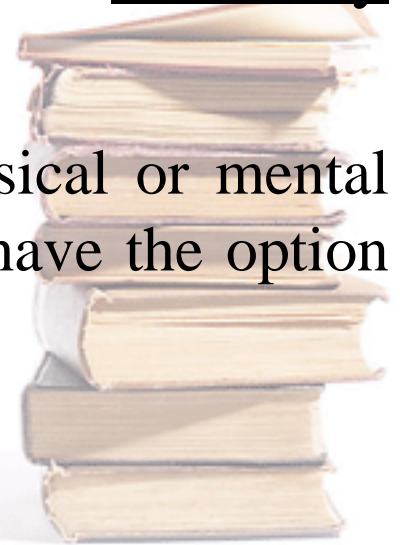
FURTHER ACTION AS APPROPRIATE

- Involuntary Sick Leave or Inactive Status?
 - In 1965 the New York Court of Appeals held that a hearing is not necessary before placing a tenured teacher on involuntary sick leave, i.e., inactive status without pay due to illness, after the District's physician found the teacher unfit for duty. Brown v. Bd. of Educ., 16 N.Y.2d 1021 (1965).
 - The Court's decision rested on the fact that the plaintiff, unlike a teacher who had been suspended or removed, retained all of her rights as a tenured teacher and could apply at anytime to be returned to active status.



FURTHER ACTION AS APPROPRIATE

- Education Law §913 provides that the report shall be shared with the board of education “...and may be referred to and considered for the evaluation of service of the person examined or for disability retirement.”
 - If an employee does not possess the physical or mental capacity to perform the duties, they may have the option of a disability retirement.



OTHER ISSUES

- What if the employee refuses to submit to the examination?
 - Refusal may constitute insubordination and could result in separate disciplinary charges.
 - A board may withhold an employee's pay where the sole reason the employee is precluded from reporting for duty is due to her own failure to comply with the board's reasonable directives. Under such circumstances a teacher is not deemed "suspended" and hearing requirement is not triggered. (Appeal of McCall, 33 Ed Dept Rep 148 (1993), citing Kurzius v. Board of Education, 81 AD2d 827 (2d Dept. 1981)).

OTHER ISSUES

- What if the employee refuses to provide their medical records for the examination?
 - Refusal may constitute insubordination and could result in separate disciplinary charges.
 - The 2nd Cir. Court of Appeals held that a teacher's rights were not violated when she was barred from returning to work and her salary withheld after she refused to produce her medical records. Although teacher agreed to examination by District's doctor, the District's doctor maintained that he could not certify her capacity to perform duties without medical reports from teacher's physician. See Strong v. Bd. of Educ. of Uniondale Free School Dist., 902 F.2d 208 (2d Cir. 1990).