

Non servare cupiam aut servare cupiam

Safety Services Nova Scotia

Halifax, Nova Scotia

April 16, 2019

Discipline Scenario #1 – Smoking



- An employee with 5 years' seniority and no prior discipline on their record is observed (& videotaped by security) smoking cigarettes on two occasions, one hour apart, while on duty.
- They are standing next to several drums of solvent in an area where smoking is prohibited due to the risk of explosions. They deny the smoking when management calls them to a meeting.
- They have previously been caught smoking in this area and have promised that it would not happen again.
- *Do you discipline, and if so, how much?*

If you do discipline, how much?

Coaching

Verbal
warning

Written
warning

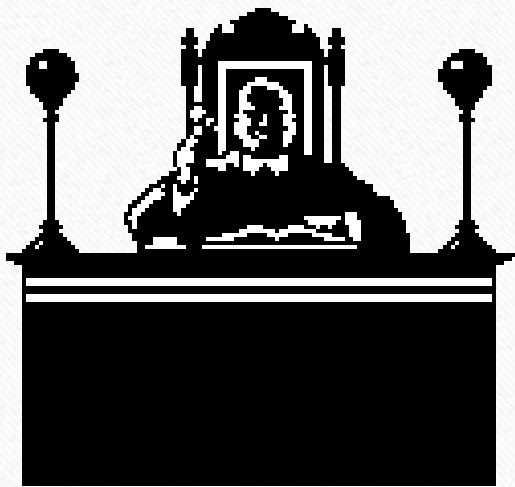
Suspension

Termination

Other



Discipline Scenario #1 – Court Decision



- The employee was terminated!
- Employer had clear rule that everyone knew about
- Employee lied to management
- Court's message: *trust is important!*

WHO?

Employers have a legal obligation to ensure the safety within their workplace

Employers have the right to insist their employees work safely

WHY?

Supports your
safety culture

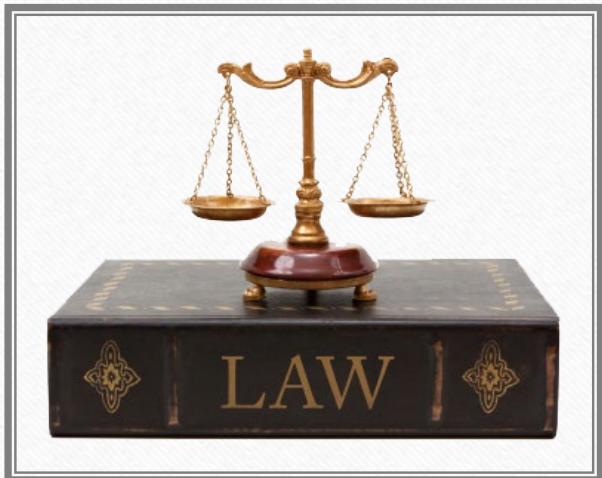
Supports your
due diligence
defence
(if charged)

Supports your
dismissal of
persistently
unsafe employees

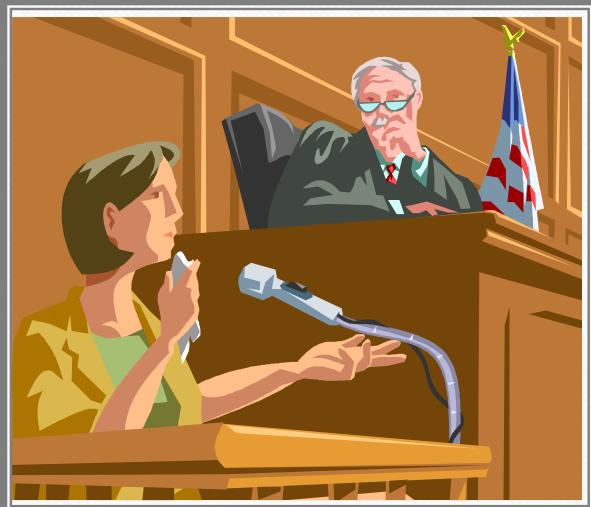
WHAT?

What is Discipline?

- "*discipline*" is derived from the Latin word "*disciple*", which means **"to teach"**
- The **true** goal of progressive discipline is to provide a positive, fair process for correcting problems in a non-punitive way
- While termination can be the outcome, successful turnaround of the situation is really the desired outcome



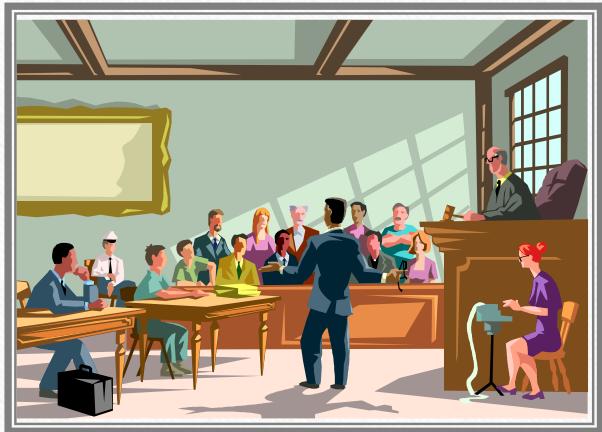
The Law



- The courts expect enforcement of rules and procedures with discipline **as a fundamental part of due diligence**
- When this element is entirely missing or lacking, this can be the end of your “*due diligence*” defence
- Once the Employer says NO to having disciplined an Employee, the Employer’s case is pretty well finished!

Due Diligence

- Legal standard which allows a defence if stringent, court-developed standards can be met by workplace parties
- You must be able to show the court that you took every reasonable precaution in the circumstances to avoid the harm **prior** to an incident
- **Proactive** due diligence = before the incident
- **Reactive** due diligence = after you learn of a hazard, but before the incident



Due Diligence – Basic Elements



- Knowledge of legal obligations
- Knowledge and assessment of workplace and its hazards
- Detailed written policies, practices and procedures
- Training in workplace hazards, policies and procedures and in requirements of OHSA & Regs

Discipline Scenario #2 – Lockout



- An operator of a press neglects to lock it out before changing the trim die and receives a three-day suspension.
- They have had other discipline, unrelated to safety, in their last 14 years with the company. There was a fatality caused by failure to lockout at a satellite facility a year ago.
- Then, the operator, two months after the first lockout suspension, is again caught inside a press without locking it out.
- *Do you discipline, and if so, how much?*

If you do discipline, how much?

Coaching

Verbal
warning

Written
warning

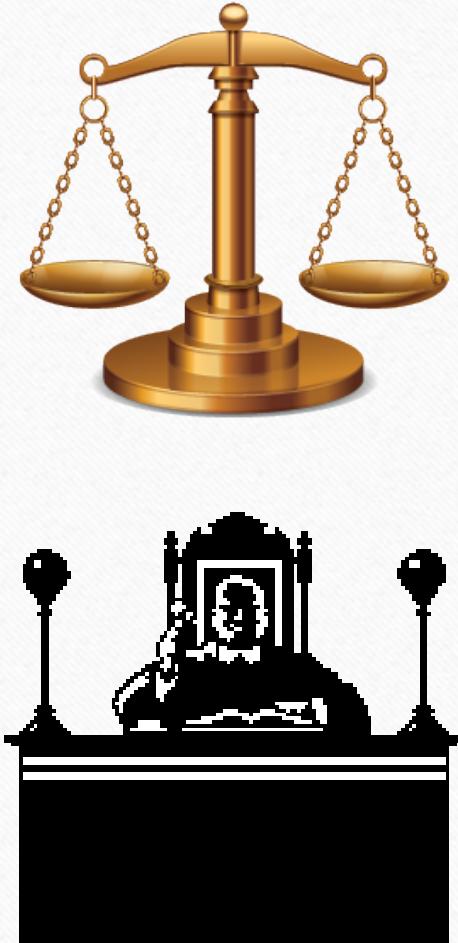
Suspension

Termination

Other

Discipline Scenario #2 – Court Decision

- Employee should be terminated!
- The employee has lengthy service and relatively clean safety record...prospects for rehabilitation are good!
- Employee actually received a three month suspension!
- Big time suspensions are OK if the severity is also big time!!



4 Mistakes We Make When Disciplining for Safety!!!!

Mistake # 1

Teaching Them A Lesson

Most common mistake made in the progressive discipline process

Thought of as punishment for the employee

Misguided belief that the threat of *negative* consequences will somehow translate into a *positive* outcome

Discipline is an educational process – an opportunity to improve

Change the behaviour – not the employee!!

Mistake # 2

Too Little, Too Late

Most managers are focused on one thing:
Productivity

They don't want to deal with disciplinary problems

It's easy to let small things slide

And by not taking action, managers send employees the message that *undesirable behaviour will be accepted*

Small issues rarely go away by themselves – they almost always get worse

Mistake # 3

The “Nuclear” Option

Managers who drag their feet on dealing with employee problems tend to wait until things get so bad they must act – and often, the action they take is extreme

This results in two unintended consequences:

1. The punishment often appears overly harsh to the employee and their co-workers

2. “Nukes” the progressive discipline process - opportunity for a well-thought out, step-by-step approach to solving the problem is largely gone

Guaranteed NOT to produce a good outcome!!

Mistake # 4

Not Digging Deep Enough

Sometimes, managers are so busy and so stressed out they simply issue a proclamation to an employee: “*Don’t be late again.*” “*Put your helmet on now!*” “*Lock that grinder out!*”

There may well be reasonable causes for the employee’s tardiness or temporary lack of safety performance

Threats or managerial edicts have little effect on behaviour, simply because they don’t address the root cause of the problem

Discipline is an educational process – an opportunity to improve

A collaborative approach to the problem has a far better chance for success!

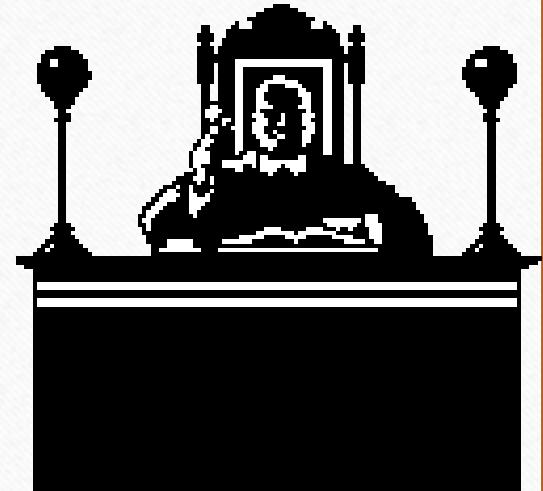
Discipline Scenario #3 – Various

- A forklift operator with shoulder length hair has operated the forklift at least three times in contravention of a clear rule that requires **ALL** employees with long hair to restrain their hair.
- Each of these three times, the operator has complied with reminders to follow the rule. One shift, their supervisor motions several times to tie back their hair, but they just smile and drive away.
- This operator is also violating clear rules requiring safety footwear and prohibiting jewelry.
- *Do you discipline, and if so, how much?*



Discipline Scenario #3 – Court Decision

- Employee was terminated!
- Already had three warnings!



Key Elements of Operating An Effective System

Communications

- Ongoing monitoring by supervisors of worker compliance – ongoing reminders and training
- Communication of work hazards and changes, coordination of work
- **Enforce legal requirements and *your organization's policies* with discipline as often as necessary!**



Collect Evidence

- Physical evidence such as damaged tools, damaged company property, or any other object useful to support disciplinary decision
- Photographs where preserving the physical evidence is not practical, i.e. damage to equipment before repair, missing guards, etc.
- Sketches and drawings – the location of pieces of equipment or employees during an incident may become significant



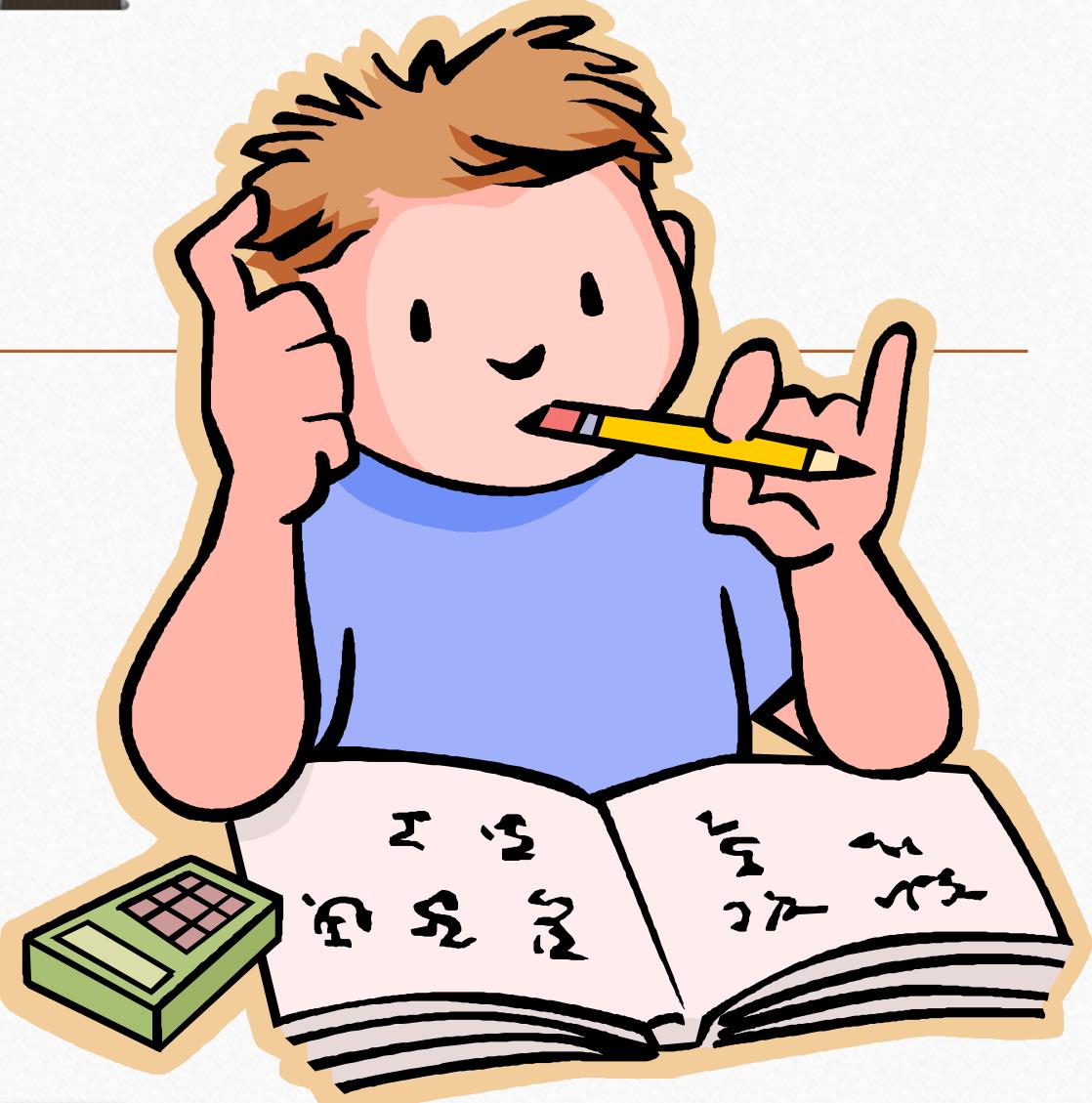
Investigate & Record

- You must investigate ALL safety concerns, no matter how frivolous they may seem
- Notes should be made by all involved, or by an interviewer
- Include supervisors/managers regarding what they saw, heard, said, and decision-making respecting discipline. All of these can be significant later on.
- Provide the employee who may be disciplined with the opportunity to present their version of what happened!



Reviewing The Facts

- Review of the facts and evidence from an objective standpoint
- Personal feelings about employees or prior poor records , or the feeling that *“everyone knows they did it”* should never enter into consideration of whether you can prove it



Is There Just Cause For Discipline?

After the facts have been established, the next question is whether there is “cause” for discipline



Is There Just Cause For Discipline?

A fundamental principle of discipline is the need to establish just cause



Is There Just Cause For Discipline?

Was the misconduct by the employee intentional (within the control of the employee)?



Is There Just Cause For Discipline?

Did the misconduct involve a violation of a recognized standard of conduct (contrary to the published company rules/regulations)?



Is There Just Cause For
Discipline?

Can you
prove that
the
employee
knew the
standard of
conduct?



Is There Just Cause For
Discipline?

Do you
maintain
proof that
rules were
brought to
the attention
of
employees?



Is There Just Cause For Discipline?

- Once satisfied that the incident occurred, and misconduct involved “*just cause*” for discipline, an appropriate level of discipline must be determined



The Appropriate Level of Discipline

Purpose of discipline is to correct unacceptable conduct, NOT to punish

Generally less severe for first infraction than subsequent occurrences

- *Exceptions:*
SERIOUS safety infractions

Advise employee EACH time of future potential consequences



Assessing The Appropriate Level of Discipline

LESSER VIOLATIONS

- No actual/potential injury
- Lack of consistent enforcement
- Prior spotless disciplinary record
- Long service employee
- Acknowledgement of wrongdoing & preparedness to be retrained or to change behaviour



Assessing The Appropriate Level of Discipline

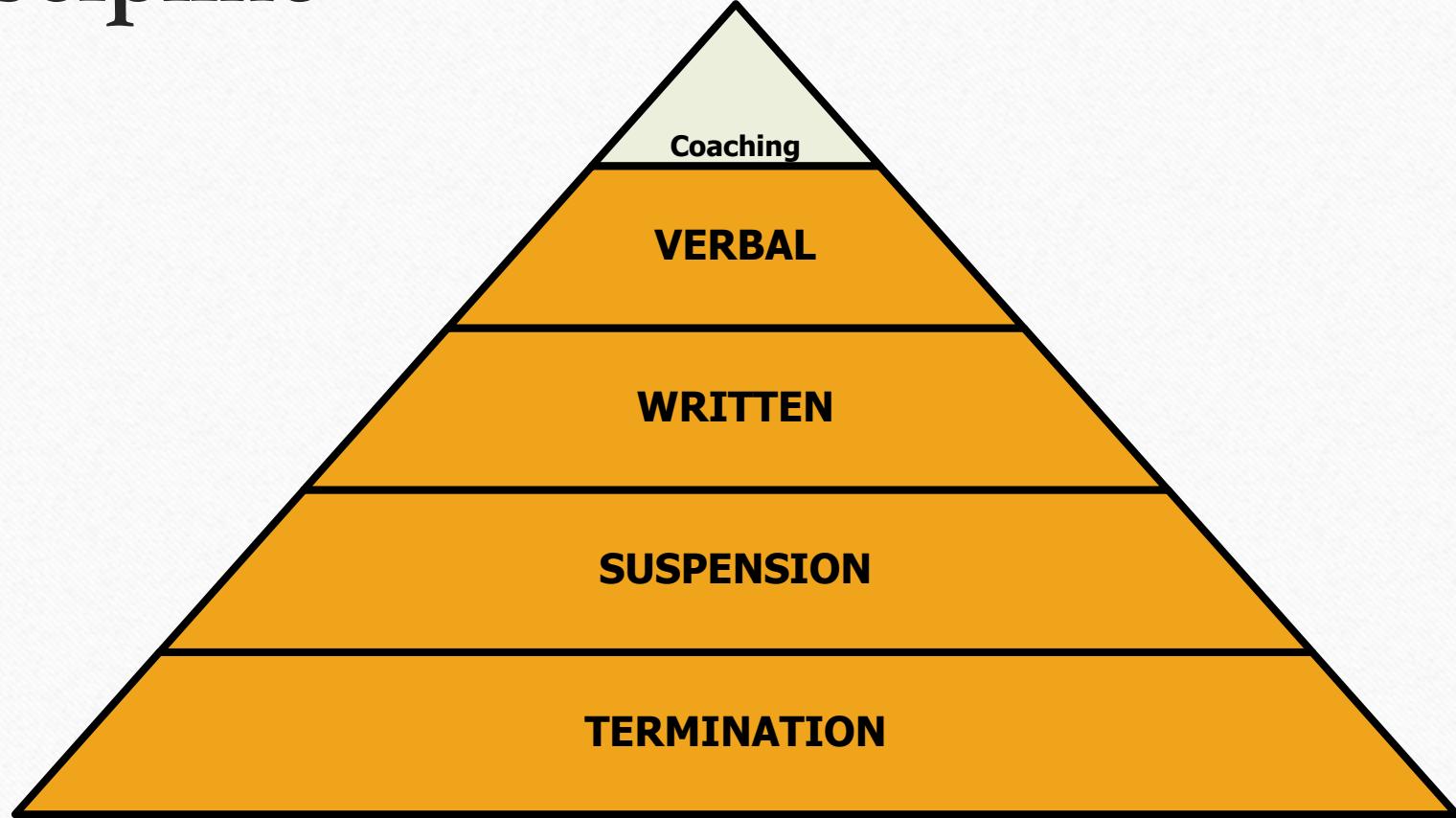
SERIOUS POTENTIAL

- Serious infraction of rule or actual/potential injury
- Repeat infraction, proof of prior discipline
- Lack of remorse or acknowledgement
- Short service with organization

***GET HUMAN
RESOURCES INVOLVED
RIGHT AWAY!!!***



Steps of Progressive Discipline



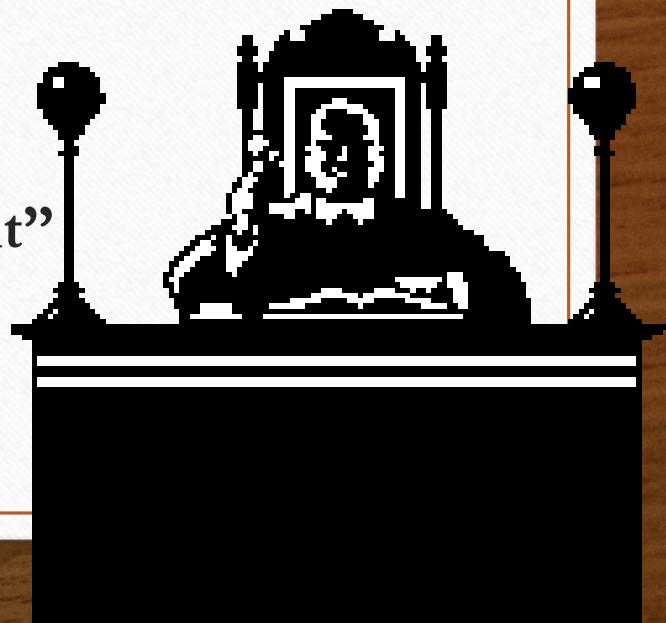
Discipline Scenario #4 – Machine Guarding

- You have had recent ongoing problems with employees removing guards from equipment and/or maintenance employees failing to return guards to equipment.
- You observe an employee operating equipment, with the guard off and sitting on the ground approximately 10 feet away. There are two other employees on the line who are clearly watching while you approach the operator and have them reattach the guard to the equipment.
- The operator says to you and the other two workers "*I didn't see a guard off, did you guys?*" One of the other employees smiles and the other looks down at their feet.
- *How do you proceed?*



Discipline Scenario #4 – Court Decision

- Did employees have care and control of their equipment?
- Is there evidence that they signed off on the pre-shift safety checklist?
- Interview the two other employees separately
- The OHSA states that operators must be “competent”
- Discipline for all three employees merited



Hot Stove Rule Approach to Progressive Discipline

**Foreseeable
Immediate
Impersonal
Consistent**



“Hot stove” rule

Foreseeable

Just as the flames provide warning that you will be burned by touching the stove, your employees should know in advance that poor conduct or performance will result in specific, predetermined consequences



“Hot stove” rule

Immediate

When you touch a hot stove, you know instantaneously that you have done something wrong

Similarly, an employee should be quickly told if he or she is failing to meet expectations



“Hot stove” rule

Impersonal

The fact that you are burned is a function of the stove, not who you are

Likewise, the discipline applied in a particular situation should reflect the offense, not the person who committed it

The focus is on “what failed?” not “who failed!”



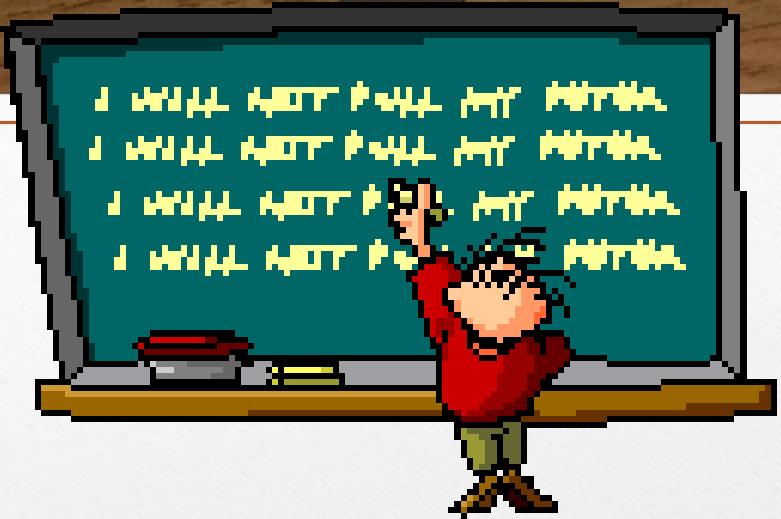
“Hot stove” rule

Consistent

Regardless of who touches a hot stove, the result will be the same each and every time

This is also true of discipline; it should not be applied arbitrarily, nor should it differ, for the same offense, from one person to the next





Questions?