

Number: 2005-D
Date: September 2005

Nullifying the Probationary Period: Extra Job Protection for Many New Jeffco Teachers Takes Priority over Kids

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Summary

The three-year probationary period for teachers is enshrined in Colorado Revised Statutes and serves to make sure teachers who are unable to fulfill professional qualifications can be removed before they receive their tenure rights. However, Colorado's largest school district—Jefferson County R-1 (Jeffco)—has a negotiated policy that nullifies the purpose of the probationary period:

- Jeffco is the only school district in the state to have negotiated a provision with the teachers union that guarantees a probationary instructor the right to file a grievance if her contract is not renewed.
- The terms and conditions of the grievance process are outlined in Jeffco's negotiated agreement, allowing teachers to appeal their claims to an arbitrator, a process which may cost the district thousands of dollars in legal fees.
- In a 2004 grievance case, the district conceded to overrule a Jeffco principal's recommendation to non-renew a probationary teacher who was cited for repeated unprofessional behavior, when key witnesses did not come to testify against her.
- Of 326 probationary teachers Jeffco hired for 2004-05, seven resigned and four others did not have their contracts renewed. While none of the four non-renewals filed a grievance, one teacher negotiated for and received "a neutral letter of recommendation."
- Recently developed procedures in Jeffco requiring documentation of evaluations and reprimands of newer teachers, if properly applied by a principal, may help to prevent some potential grievances of non-renewals, but certainly do not alleviate the problem.

Rather than standing out as a district so heavily weighted toward protecting ineffective educators at the expense of students in the classroom, Jeffco should make repeal of the contract provision guaranteeing grievance rights to probationary teachers a non-negotiable item for its next bargaining session.

Teacher Tenure in Colorado and Jefferson County

Teacher Tenure in Colorado

A Colorado public school teacher with veteran status acquires something that most private-sector workers in the state never will have: a legally-recognized property right to his job. Colorado Revised Statutes include a set of special conditions and procedures that make it extremely difficult and costly for local school boards to remove an instructor from the classroom, even if his performance is persistently ineffective or his conduct consistently unprofessional.

While the word “tenure” has been removed from the statutes, a teacher’s employment property right implicitly remains. After three years of probation, a teacher cannot lose her licensed teaching position without her employer meeting a significant and costly burden of proof.

A school district can only terminate a non-probationary teacher’s contract for one of a series of specifically listed causes.¹ To ensure this right of tenure, a teacher threatened with dismissal by an administrator is guaranteed the right to defend himself before a fact-finding hearing officer. Only a conviction or guilty plea to charges of certain types of crimes against children exempts a teacher from the guarantee. Both sides are entitled to present evidence to the hearing officer and call witnesses.

The local board of education determines whether to accept the hearing officer’s recommendation to keep the teacher, dismiss him, or place him on probation. If dissatisfied with the board’s decision to strip away his employment property right, the teacher has recourse defined in state law to appeal the case to the judicial system. The losing party may be subject to pay reasonable legal fees.²

Teacher Tenure Cases in Jeffco

Jefferson County R-1 (Jeffco), Colorado’s largest school district, has had its share of high-profile teacher tenure cases in recent years. During the mid-1990s the district spent roughly \$125,000 to fight the appeals of dismissed Columbine High School instructor Alfred Wilder. The school board found that he failed to perform assigned duties, was persistently tardy, and demeaned colleagues. The immediate controversy that prompted Wilder’s firing came when he showed his class a highly controversial R-rated film without seeking permission from the parents or giving notice to the principal.³

More recently, the Jefferson County Board of Education faced another steep bill in order to remove an instructor. An administrative law judge upheld the decision to dismiss elementary gifted and talented teacher Susan Romeo for intimidating and harassing students, defying administrative authority, and interacting poorly with parents. According to one published report, the school district’s case against her cost taxpayers more than \$145,000.⁴ Many smaller districts cannot afford to spend such sums to remove poorly-performing or insubordinate teachers from the classroom.

Jeffco Contract Nullifies the Probationary Period

Applying the Probationary Period as State Law

A primary means to preclude the costliness and lengthiness of extensive dismissal procedures is the probationary period. Colorado laws give teachers three years to adapt to the profession and prove their basic classroom capabilities. During this time, district officials and administrators should be able to weed out instructors who are not cut out for the job.

Proponents of Colorado’s existing system of teacher tenure have pointed to the three-year probationary period as a buffer that adequately justifies the statutory system granting employment security to poorly-performing teachers. Many tenure advocates would say that virtually all ineffective instructors either improve or are removed during the probationary period.

Yet Colorado Revised Statutes give local school districts a way to bypass the spirit of a new teacher’s initial three-year trial run. While the state legislature expressed its intent not to “create any property right or contract right” to employment for probationary teachers, the law allows a local school board “to make the reasons for nonrenewal [*sic*] a grievable action.”⁵ In other words, the board can determine—through a contract agreement with the teachers’ union or through its own policies—the specific criteria under which an instructor without tenure protections can be dismissed.

A handbook for Denver Public Schools principals, for example, states: “Non-renewal must be based on legitimate non-discriminatory reasons.” Nevertheless, a Denver probationary teacher could be let go without grounds for protest in the cases of poor performance, failure to complete professional development requirements, or staff reduction.⁶ Colorado’s largest school district grants significantly broader protections.

Jeffco Flouts the Purpose of the Probationary Period

Jeffco has agreed to extend probationary teachers the fullest range of protections, well beyond the basic requirements of state law. Erasing the distinction between probationary and non-probationary teachers, the district has negotiated terms with the Jefferson County Education Association (JCEA) that give even the newest of teachers virtual job security. As soon as the Board of Education receives a recommendation that a probationary teacher should not have her contract renewed, the collective bargaining agreement requires the Board to notify JCEA.

Jeffco is the only Colorado school district to agree that any decision not to renew a probationary teacher’s contract “shall be subject to the grievance process,” as outlined in the bargaining agreement.⁷ Going beyond the restrictions of state-sanctioned tenure protections, this contract provision further undermines a key tool of administrative authority: the ability to make personnel decisions in the best interests of students and the school community.

Jeffco’s Grievance Process

The negotiated grievance process in Jeffco—as in many school districts—is separated into clearly-defined stages, or levels. At Level One, the “immediate supervisor” must meet with the complaining teacher to redress the grievance within five school days of receiving the claim. If a Level One hearing renders either an untimely decision or one unsatisfactory to the employee

filing the grievance, JCEA can file a request to have a Level Two hearing before a district administrator. Extra district expenses for legal fees start to accrue if the case moves to Level Three.⁸

A Level Three hearing, conducted before “an impartial arbitrator,” occurs if the aggrieved party is still not pleased with the proposed resolution rendered at Level Two. The two parties may agree to share the costs of a mutually-acceptable mediator to address the dispute. The arbitrator must submit his final report within 30 days of the close of the inquiry. Although the arbitrator’s report carries a lot of weight, the board of education reserves the right to accept or reject his determination.⁹ Jeffco’s Employee Relations Administrator Carl Koonsman said he rarely sees a teacher dismissal case even reach arbitration (Level Three).¹⁰

JCEA proudly proclaims itself the only union local in Colorado “that has negotiated just cause protection for all teachers, probationary and non-probationary.” This statement refers to the union’s authority to file a grievance on behalf of any instructor who has been fired, or even disciplined. The contract’s guaranteed protection of teachers has been in place since 1968, and according to a union publication, “JCEA views the issue to be non-negotiable” during all its bargaining sessions with the school district.¹¹ Nevertheless, the provision stands as an impediment to meaningful reform, bolstering the union’s reputation as a protector of teachers at the expense of students struggling in poorly-taught and poorly-managed classrooms.

Koonsman confirmed that there is not much difference in the way his office handles dismissal of probationary and non-probationary teachers. The experienced administrator cannot recall ever having seen another district with a policy that guarantees grievance rights to non-renewed probationary teachers, before or since taking his current job.¹² One Jeffco principal stated that probationary and non-probationary teachers “all have the exact same rights.”¹³

Developing Procedures to Reduce the Number of Grievances

In order to counter JCEA’s enshrined demands for “just cause” protections, the school district in recent years has developed a well-documented policy to address shortcomings in teacher performance. A probationary instructor who fails to meet district performance standards in the first semester is required to work with his principal to create an action plan for improvement. The second-semester evaluation must be conducted before April 20, and the principal must submit her recommendation not to renew the probationary contract by May 1.

Documentation of all evaluations, the jointly-developed remediation plan, a formal letter of expectations, and a formal letter of reprimand are among the paperwork principals are expected to compile and save. Koonsman noted that an administrator or union official then typically counsels a poorly-performing teacher not to file a grievance. In fact, he says many choose to resign rather than receive the black mark of a non-renewal. “The process is fair; it gives teachers a chance to improve,” Koonsman said. He also said the evaluation procedure “reduces the possibility of outliers,” like the Wilder case.¹⁴

Addressing Egregious Problems with Teachers

Concerning issues of character and conduct, a principal is authorized to “yank [a teacher] from the classroom,” if the problem is “serious enough.”¹⁵ A teacher who showed up to class intoxicated, for example, would be removed immediately from her assignment, given a blood

alcohol test to confirm the problem, and then placed on administrative leave. After documenting and reviewing the evidence, the district would state its intention to fire the disorderly instructor. The case would then proceed before a legally-trained hearing officer—as required by state law—unless the offending teacher would choose to resign and accept 100 days of severance pay, the maximum allowed by Colorado state law.¹⁶

Yet while site administrators may be able to act decisively in many egregious cases, like that of a teacher showing up in the classroom drunk, the onerous provision in the district’s contract with JCEA can hamper its ability to deal effectively with serious personnel problems.

Examples of Overruled Non-renewals

One of two known probationary teacher dismissal cases that have reached arbitration during the five years of Koonsman’s work in Jeffco occurred in 2004.¹⁷ In this case, JCEA officials touted a victory after they used the guaranteed grievance measure to overrule a principal’s recommendation to dismiss a probationary non-classroom teacher.¹⁸

Koonsman said the complaint issues against the educator focused around “conflict of interest” and “unprofessional behavior.” Colleagues complained that she consistently gave bad advice to parents and had concerns about “derogatory comments” she made to outside vendors and contractors. The behavior allegedly persisted even after a formal letter of reprimand. The probationary educator challenged the decision to fire her by filing a formal grievance.

The decision to dismiss held until arbitration, when parents who had agreed to testify against her backed out at the last minute. The district ended her administrative leave and placed her in another assignment, where she was still serving as of the end of the 2004-2005 school year.¹⁹ In this case, the buffer of the probationary period did nothing to protect the interests of students and the school community. Instead, one uncouth educator still had an employment property right.

Reports from the Board of Education indicate that Jeffco signed 326 teachers to probationary contracts in 2004-05, seven of whom officially resigned before the beginning of the next school year.²⁰ Upon the superintendent’s recommendation, the Board also authorized the non-renewal of four probationary teacher contracts.²¹

Koonsman said two of the four non-renewed probationary teachers reached settlements with the district allowing them to return to work. One teacher was reinstated after investigators cleared him of charges of inappropriate behavior, and another was transferred to a different Jeffco school after a disagreement between the principal and instructional coach about her performance.²²

None of the four non-renewed probationary teachers carried out a grievance. Instead of grieving his case, one of the non-renewed teachers who were ultimately released settled with the school district to receive a “neutral letter of recommendation.”²³ The district sent one teacher out the door with an official letter that omitted the real reasons for non-renewal. Other school districts could hire on a false basis, without the knowledge of past problems in the classroom. New students under the instructor’s charge may suffer as a result.

Dealing with Probationary Teachers at the Building Level

The Seed of Potential Future Problems

Two Jeffco principals praised the Employee Relations office for making the process of dealing with ineffective teachers more streamlined and consistent.²⁴ Yet the district's procedures cannot atone for the fundamental flaw of the negotiated policy: opening up the grievance process to every probationary teacher who has been removed from the classroom.

An individual grievance of a non-renewal does not leave the school district with nearly as much immediate costs as the prolonged dismissal of a tenured teacher does. But the excessive limitation on administrative authority imposes a substantial burden on the students affected and may result some time later in the district facing a significant legal price tag.

Cases in which school officials have to spend \$100,000 or more to dismiss a problem veteran teacher most distinctly highlight the problems caused by tenure. These problems could be exacerbated if such a case might have been averted years earlier by an administrator who instead lacked the full, effective authority to terminate the contract of an ineffective probationary teacher.

The administrator either would have had to dedicate scarce time and resources to the uncertain outcome of fighting her out of the profession, to abide her presence, or to transfer her to another school within the district. The first selection would have solved the problem but at a high cost to educational efficiency. Either of the latter choices would yield a negative effect on present and future students.

Addressing the Lack of Distinction between Probationary and Non-Probationary Teachers

One Jeffco principal said that the collective bargaining agreement between the district and JCEA "debunks the whole idea of a probationary teacher" and "has taken away our ability to weed out problems early on."²⁵ Many competent administrators have done their best to try to mitigate the effects of the harmful contract provision, but their capabilities are limited. They stress the primary importance of conducting thorough screenings to weed out many potentially bad cases, though certainly not all of them.

In Jeffco, principals also may forego dealing with the probationary period altogether by hiring instructors on a temporary basis, a one-year contract renewable up to three years. The bargaining agreement with JCEA declares that temporary contracts can only be issued if the position was not properly advertised, replaces a teacher on leave of absence, or is of a temporary nature.²⁶ A human resources administrator said that those conditions only apply during the normal hiring period between February 1 and June 30. Any teacher hired on July 1 or after automatically receives a temporary contract, regardless of the conditions.²⁷

A Jeffco principal said that if principals could hire all teachers on a temporary basis, "so much the better." Inevitably, even the best building administrators will make at least a couple poor hiring decisions and "should be able to get rid of them," the principal said.²⁸

Limitations on Administrative Authority

A principal may be able to “get rid of” poorly-performing and other problem teachers, yet students may still suffer. A second Jeffco principal recounted an example of such a limitation on effective administrative authority. All other avenues exhausted, the principal sought to initiate dismissal proceedings against “an inferior teacher” who was regularly “passed from school to school.” Before the process could get underway, the district approved the teacher’s application for medical leave and later allowed the teacher to resume work at another location. The repeated occurrence merely transferred the problem from students in one classroom to students in another.²⁹

The two principals separately spoke highly of the need for some form of due process for teachers. While these competent administrators and many others like them have not been inclined to arbitrary management practices, they acknowledge that the instructors working under their supervision need protection from possible discrimination and retribution. Nevertheless, they asserted that their “hands are tied” by the contract provisions that overrule the purpose of a three-year trial period for teachers.³⁰

Handling employee discipline and dismissal issues frequently requires the principal to work with the JCEA building representative. One principal asserted and another assented that success in resolving difficult issues depends on a case-by-case basis of how the JCEA representative chooses to address the situation: some counsel ineffectual probationary teachers to resign and some do not.³¹ District administrators should not be dependent on the good will of the teachers’ union to weed out instructors who are not up to the task of helping students to learn adequately.

One principal emphasized that 95 percent of the teachers she has worked with “make a huge difference” because they “have a passion for the job,” are qualified, and “connect well with kids.” But a troubling provision protects an inept, and even harmful, minority.³² The principal believes that she and her fellow principals should be held accountable for finding successful teachers. She also believes that they need to have their hands free so they can get the job done.³³ Colorado’s statutory teacher tenure protections frustrate principals’ authority enough. When the state’s largest school district concedes further that the probationary period is virtually meaningless, principals are truly in a bind.

A Matter of Priority and Authority

The highest priority of the public school system should be to educate children, not to provide jobs for adults. The ability to attract, promote, and reward the highest-quality teachers, while enabling local leaders to weed out those who perform poorly, is an important means to the higher end.

However, Jeffco’s negotiated policy egregiously elevates employment security over the interests of the children and families the district serves. The policy presumes that almost anyone with a teaching license automatically deserves to stay in the classroom, even in their first few years of experience. It expects district leaders to achieve a very high and costly burden of proof before firing an unfit instructor.

For the sake of the students being served, Jeffco’s district leaders ought to give their most highly-qualified principals an important key of authority. Without the capability to remove poorly-performing teachers during their first three years of service, even the best principal cannot ensure all her classrooms are filled with qualified, effective teachers. Skilled, dedicated instructors have less incentive to stay in the profession when the protection of the lowest common denominator takes precedence over excellence in the classroom.

To bring about a system that more effectively centers on student needs and strives for academic success, the Jefferson County Board of Education should make repeal of the contract provision guaranteeing grievance rights to probationary teachers a non-negotiable item for its next bargaining session. Strong leadership could rid Jeffco of the uniquely burdensome provision, helping to make students a greater priority than job security.

¹ Colorado Revised Statutes § 22-63-301.

² Colorado Revised Statutes § 22-63-302.

³ Bill Scanlon, “Dismissal hearing for teacher Thursday: Instructor at Columbine showed R-rated film without parental consent,” *Rocky Mountain News*, 7 February 1996, 24A. Cathy Cummins, “Firing teacher cost district \$125,000: Board president calls it money well-spent,” *Rocky Mountain News*, 1 July 1998.

⁴ Nancy Hull, “Firing teacher comes at a cost,” *Columbine Courier*, 27 July 2005.

⁵ Colorado Revised Statutes §22-63-203(4)(b)(II).

⁶ Denver Public Schools, “Teacher Staffing 2005/2006 Principals Handbook,” Section 7, “Non-Renewal Procedures,” http://hr.dpsk12.org/T_Staffing_PrincipalHandbk_05.doc.

⁷ *Agreement between the Jefferson County School District R-1 Board of Education and the Jefferson County Education Association, Affiliated with the Colorado Education Association and the National Education Association, Effective September 1, 2003 – August 31, 2007*, Article 14-4, <http://sc.jeffco.k12.co.us/education/components/docmgr/default.php?sectiondetailid=60698&catfilter=430×tamp=1113939584#showDoc>.

⁸ Author’s interview of Carl Koonsman, Employee Relations Administrator, Jefferson County School District R-1, 20 April 2005.

⁹ *Jeffco Agreement*, Article 7-4.

¹⁰ Author’s interview of Carl Koonsman, 20 April 2005.

¹¹ “A ‘just cause’ victory,” *The JCEA Insight*, 6 October 2004, 2.

¹² Author’s interview of Carl Koonsman, 20 April 2005.

¹³ Author’s interview of Jefferson County school principals, 15 June 2005. Names have been withheld in order to protect the private identities of current employees of the Jefferson County School District R-1.

¹⁴ Author’s interview of Carl Koonsman, 20 April 2005.

¹⁵ *Ibid.*

¹⁶ *Ibid.* Colorado Revised Statutes § 22-63-302(3).

¹⁷ Cumulative records compiling the numbers of teacher dismissal cases within Jefferson County R-1 are not available. Therefore, anecdotal and case evidence must suffice in the place of statistical data.

¹⁸ “A ‘just cause’ victory,” *The JCEA Insight*.

¹⁹ Telephone conversation of the author with Carl Koonsman, Employee Relations Administrator, Jefferson County School District R-1, 19 May 2005.

²⁰ Agenda, Regular Meeting, Board of Education, Jefferson County School District R-1, 4 November 2004, <http://jeffcoweb.jeffco.k12.co.us/board/agendas/2004/agenda11-4-04.pdf>.

²¹ Official Minutes, Regular Meeting, Board of Education, Jefferson County School District R-1, 27 January 2005, <http://jeffcoweb.jeffco.k12.co.us/board/minutes/2005/minutes01-27-05off.pdf>. Official Minutes, Special Meeting, Board of Education, Jefferson County School District R-1, 19 May 2005, <http://jeffcoweb.jeffco.k12.co.us/board/minutes/2005/minutes05-19-05off.pdf>. Telephone conversation of the author with Carl Koonsman, Employee Relations Administrator, Jefferson County School District R-1, 8 September 2005.

²² Telephone conversations of the author with Carl Koonsman, 8 September 2005 and 12 September 2005.

²³ Telephone conversation of the author with Carl Koonsman, 8 September 2005.

²⁴ Author’s interview of Jefferson County school principals, 15 June 2005.

²⁵ *Ibid.*

²⁶ Jeffco Agreement, Article 40, "Temporary Contracts."

²⁷ Electronic mail to the author from Sue Gill, Director of Licensed Employment and Teacher Induction, Jefferson County R-1, 26 July 2005.

²⁸ Author's interview of Jefferson County school principals, 15 June 2005.

²⁹ Ibid. Telephone conversation of the author with Carl Koonsman, 15 September 2005, clarified the nature of the leave as "medical."

³⁰ Ibid.

³¹ Ibid.

³² The principal's estimate implies that about 250 of Jefferson County's 5,000 teachers probably should be removed from their jobs.

³³ Author's interview of Jefferson County school principals, 15 June 2005.

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