Undue Process

The Burden of Law on Colorado's Public Schools

Steps to dismiss an unsatisfactory teacher in a Colorado public school.

Since the steps below are based on Colorado state statutes, the process will be similar in all Colorado school districts. This chart is accompanied by an example based on an actual case in a Colorado school district (details have been altered to protect the privacy of those involved).

A principal recommends to the Superintendent that a teacher be dismissed.

First, determine if the teacher is "probationary" or "non-probationary."

A teacher is considered "non-probationary" if he/she works full time (more than 4 hours per day) and has been employed by the district for at least 3 continuous years (22-63-103(6), (7), C.R.S.). Rather than dismiss, a probationary teacher's contract will simply not be renewed (22-63-203(3),(4), C.R.S.).

The teacher is "non-probationary…"

If the Superintendent decides to pursue the dismissal, he/she must send written notice to the Board of Education recommending the teacher be dismissed and specifying at least one of the following reasons (22-63-302(2), C.R.S.):

- a. Physical or mental disability
- b. Incompetency
- c. Neglect of duty (e.g., failure to teach the curriculum).
- d. Immorality
- e. Unsatisfactory performance
- f. Insubordination
- g. Conviction of a felony or acceptance of a guilty plea, a plea of *nolo contendere*, or a deferred sentence for a felony
- h. Other good and just cause (22-63-301, C.R.S.).

Determination of "unsatisfactory performance" must follow the complex teacher evaluation process as mandated by state law (22-63-302(8), C.R.S.; 22-9-101 -107, C.R.S.). In addition, many districts have collective bargaining agreements that include additional steps that must be followed for teacher evaluations.

At a dismissal hearing for unsatisfactory performance, a school district should expect experts to be brought by the teacher to criticize the district's evaluation procedures and to support the teacher's instructional practices. The district may have to bring in its own experts to defend its actions. Of course, this increases the cost of dismissing a teacher.

EXAMPLE:

A high school teacher with 10 years of experience was transferred to a new school. The teacher refused to teach the approved science curriculum or distribute the approved textbooks.

The science department chair informed the teacher (in writing) that the school's curriculum and textbooks must be used.

To ensure compliance, the principal ordered the teacher to distribute the textbooks and inform him (in writing) when this was done. The teacher did not comply.

Instead, the teacher asked the principal for permission to send a letter to parents asking them to purchase new textbooks. The principal denied this request.

The teacher sent the letter anyway and did not distribute the required textbooks.

RUNNING TOTAL: 2 months, $0 taxpayer dollars

Over the next few months, students and parents complained to the principal and other district officials about the lack of textbooks. The principal again directed the teacher to distribute the textbooks and teach the approved curriculum. Textbooks were distributed to some, but not all, students.

RUNNING TOTAL: 5 months, $0 taxpayer dollars

The principal requested the teacher submit daily lesson plans to monitor the teacher's use of the approved curriculum. During the next month, no lesson plans were submitted, so the request was made again.

The teacher then submitted a variety of published curriculum documents, but no lesson plans. The teacher was still not teaching the approved curriculum.

RUNNING TOTAL: 6 months, $0 taxpayer dollars

Within 3 days following the Superintendent's recommendation for dismissal, written notice of the intent to dismiss must be sent to the teacher by certified mail. The notice must include:

- a. A copy of Article 63 of Title 22, C.R.S.
- b. The reasons for dismissal
- c. All exhibits the Superintendent intends to submit in support of the case against the teacher, including a list of witnesses to be called, their phone numbers and addresses, and any other pertinent information
- d. An explanation of the teacher's rights and procedures when dismissal is recommended (22-63-302(2), C.R.S.).

The teacher was placed on administrative leave (with pay as required by law). Dismissal for insubordination and neglect of duty was eventually recommended by the Superintendent. Legal costs were incurred by the district.

RUNNING TOTAL: 7 months, $9,150 taxpayer dollars

Even if the teacher was convicted and imprisoned for, say, sexual abuse, the Superintendent still must send written notice of intent to dismiss to the teacher.

If the teacher misses the 5-day deadline for filing a hearing request, not to worry. He/she can have another chance as long as there's a good excuse for missing it. Presumably, "my dog ate it" will not do the trick.

Within 5 days of receipt of the notice, the teacher may file a written objection with the Superintendent and request a hearing (22-63-302(3), C.R.S.).

The teacher filed a written objection.

RUNNING TOTAL: 8 months, $9,150 taxpayer dollars

If the teacher is charged with a crime that would result in losing his/her teacher's license (such as sexual assault), then the teacher will not receive pay. If the teacher isn't convicted, the district must give them back pay (22-63-302(3), C.R.S.; 22-60.5-107(2.5), C.R.S.).

Until amendments to Colorado law in 2004, some teachers were paid during this period, even if in jail.

If the teacher is not charged with such a crime, he/she will continue to receive regular compensation for up to 100 days (22-63-302(3), C.R.S.).

Assuming our teacher was earning $50,000 per year (and this is a conservative estimate of the average salary of a non-probationary teacher with a Master's Degree) with benefits equivalent to 25 percent of salary, the 100 days would mean paying the teacher $17,810.

RUNNING TOTAL: 8 months, $14,547 taxpayer dollars

An impartial hearing officer must be selected by the teacher and the Superintendent within 5 days of receipt of the teacher's request for a hearing (22-63-302(4)(a), C.R.S.).

The 100-day period does not begin until the Superintendent makes a recommendation to the Board of Education.

The district must pay for the hearing officer's time (22-63-302(4)(c), C.R.S.).

A hearing officer was selected. For the pre-hearing review of the evidence, 5-day hearing, and preparation of the findings of fact and recommendations, the hearing officer cost the district approximately $15,000.

RUNNING TOTAL: 8 months, $29,547 taxpayer dollars

Within 3 days of being selected, the hearing officer must set the date for a pre-hearing conference and the hearing itself, which must begin within 30 days of the pre-hearing conference (22-63-302(5)(a), C.R.S.).

The pre-hearing conference is held, and the parties and their respective attorneys are required to attend (22-63-302 (5), C.R.S.).

The teacher continued to get paid, and the district incurred additional legal fees as its attorney prepared for the pre-hearing. The pre-hearing conference was held in April, but before the hearing was held, the teacher threatened to sue his attorney, who subsequently withdrew from the case. A new attorney was found and a second pre-hearing conference was held.

RUNNING TOTAL: 10 months, $49,960 taxpayer dollars

Within 10 days of the selection of the hearing officer, the teacher must provide the Superintendent with a copy of all exhibits and witnesses (22-63-302 (6)(a), C.R.S.).

The teacher's initial list included 62 witnesses and 59 exhibits. The district's list included 45 witnesses and 115 exhibits.

Within 7 days after the teacher submits his/her list, the Superintendent and the teacher may amend their lists of witnesses and exhibits (22-63-302(6)(a), C.R.S.).

The district must make all district records pertaining to the dismissal available to the teacher and hearing officer (22-63-302(7)(c), C.R.S.).

The time the principal spent in the hearing is nothing compared to the time he and his administrative staff spent preparing the necessary documentation and meeting with attorneys.

The hearing is held. The hearing can last 6 days or longer if extended upon showing of good cause. At the hearing, the Superintendent must prove the teacher was dismissed for at least one of the approved reasons and also must prove that all of the procedures listed above were followed to the letter (22-63-302(7)(e), (8), C.R.S.).

The hearing took 5 days. The teacher spent a great deal of time trying to prove that the curriculum he preferred was better than the curriculum required by the district. In addition to the teacher and 4 attorneys (2 for each side), the principal had to attend for all 5 days, and the department chair attended for more than one day. Numerous witnesses, including some students, were required to testify. The district's attorney fees were more than $45,000 (some of which are documented in previous steps). The appearance fee for the court reporter cost the district about $1000.

RUNNING TOTAL: 12 months, $76,160 taxpayer dollars

Within 20 days of the conclusion of the hearing, the hearing officer must review the evidence and make a written recommendation of either dismissal or retention (22-63-302(8), C.R.S.).

The hearing officer found the following:

- The teacher willfully and intentionally did not teach the required curriculum.
- The teacher did not distribute textbooks to all of his students.
- The teacher distributed a letter to parents that could reasonably be interpreted to require them to purchase textbooks, which is a violation of district policy.
- The teacher did not provide lesson plans as directed.
- Students did not receive complete and proper instruction.

Based on these findings, the hearing officer recommended dismissal for insubordination and neglect of duty.

RUNNING TOTAL: 13 months, $76,160 taxpayer dollars

The Board of Education must review the hearing officer's findings and recommendations. Within 20 days of the hearing officer's report, the Board must vote to dismiss, retain or place the teacher on probation. The Board must notify the teacher of its decision (22-63-302(9), C.R.S.).

The Board of Education cannot be advised by the attorney who prosecuted the case. Therefore, additional legal fees are often incurred at this stage because the Board often needs legal advice on the required procedures as it considers and acts upon the hearing officer's recommendations.

The Board of Education dismissed the teacher. The teacher filed an appeal with the Colorado Court of Appeals.

RUNNING TOTAL: 14 months, $76,160 taxpayer dollars

If the teacher is dismissed, he/she may file an action for review with the Colorado Court of Appeals within 20 days of the Board's action (22-63-302(10)(a), C.R.S.) and…

…the audiotape of the hearing has to be transcribed (22-63-302(7)(d), C.R.S.).

For some reason, the teacher and school district are required to split the cost of the transcription.

The hearing transcript and exhibits included more than 2,500 pages and 15 textbooks. The cost for transcribing was more than $5,000. Additional time was required by the school district's attorney to prepare the response to the appeal.

RUNNING TOTAL: 15 months, $87,360 taxpayer dollars

The Court of Appeals hears the review (22-63-302(10), C.R.S.).

If the Court of Appeals finds on behalf of the teacher, the teacher is reinstated. If not, the teacher's dismissal is upheld. Of course, the teacher can always…

…file a petition asking the Colorado Supreme Court to hear an appeal.

If the Colorado Supreme Court refuses to hear the appeal, the dismissal is final.

The Colorado Supreme Court did not accept the appeal, and the dismissal became final.

RUNNING TOTAL: 27 months, $81,160 taxpayer dollars

Otherwise, the Court will hear the appeal and make a final decision. If the Court finds for the district, the teacher has (finally) been dismissed.

If either appellate court holds that a procedural error occurred, the case can be remanded to the school district and the proceedings start again.

The teacher's dismissal was eventually upheld by the Court of Appeals. The teacher was ordered to pay the district $6,200 for attorney's fees and costs because the teacher's appeal lacked substantial justification (22-63-302(10)(e), C.R.S.).

The teacher filed a petition asking the Colorado Supreme Court to hear an appeal.

RUNNING TOTAL: 21 months, $81,160 taxpayer dollars

The teacher filed for bankruptcy so the district never collected the $6,200 awarded by the Court of Appeals.

RUNNING TOTAL: 27 months, $87,360 taxpayer dollars

In the end, this school district spent 27 months and $87,360 taxpayer dollars to accomplish one simple task—dismiss an unsatisfactory employee.

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