

Nonrenewal of Probationary Teachers

By Ken Soo

Probationary public school teachers in North Carolina hold one-year contracts that school boards may decline to renew for any rational, nondiscriminatory reason. The standard for nonrenewal of probationary teachers is far less stringent than that for dismissal of teachers who have completed their probationary service and earned career status. Career status, commonly called *tenure*, carries a constitutionally protected interest in future employment. Dismissal of a career-status teacher requires compliance with a host of due process protections outlined in the North Carolina General Statutes (hereinafter G. S.).¹

In contrast, probationary teachers are not entitled to due process or to pre-nonrenewal hearings to challenge a recommendation for contract nonrenewal. Under G.S. 115C-325(n) they do have, however, the right to judicial review of the school board's nonrenewal decision. School boards can prepare for legal challenges to nonrenewal decisions by providing probationary teachers with ample feedback on performance and an avenue for raising complaints. This article discusses past legal challenges to nonrenewal decisions and suggests strategies that districts can use to prepare for future nonrenewals of probationary teachers.

Probationary teachers must receive timely notice of nonrenewal.

Before becoming eligible for tenure, teachers must work for four consecutive probationary school years for at least 120 days in each year. If a teacher fails to work 120 days in a year because of illness or disability, that year counts as neither a break in service nor a year worked toward career status. Teachers who once held tenure in a North Carolina public school system serve at most a one-year probationary period.

At the close of the probationary period, the school board must vote on whether to grant the teacher career status. A teacher attains career status when a majority of the board approves tenure and the teacher receives notice of the decision. If the board does not vote on whether to grant a

teacher career status, it may not employ that teacher for the following school year and must pay his or her salary for each thirty-day period after June 16 that it fails to vote.²

Probationary teachers who are not eligible for a vote on career status are subject to a vote by the school board on contract renewal by the end of each school year. A probationary teacher must be notified of the board's decision on contract nonrenewal by June 15.³ School districts should take care to avoid any question of whether a probationary teacher received timely notice of contract nonrenewal. Although the law does not require written notice of a nonrenewal decision, a letter can provide confirmation of notice. If a district sends such letters by certified mail, the letter should also be hand-delivered to ensure timely notice.

Contract nonrenewal decisions must have a rational basis.

School boards have extremely broad discretion in deciding whether to renew the contract of a probationary teacher. A school board, "upon recommendation of the superintendent, may refuse to renew the contract of any probationary teacher . . . for any cause it deems sufficient: Provided, however, that the cause may not be arbitrary, capricious, discriminatory or for personal or political reasons."⁴ The school board may not merely rely on the superintendent's recommendation but must determine the rational basis for nonrenewal and ensure that nonrenewal is not put forward for a prohibited reason.⁵

Nonrenewal decisions are subject to court review. Probationary teachers have the right to appeal the school board's nonrenewal decision to the superior court in the judicial district in which the teacher was employed.⁶ Either side may appeal the superior court decision to the North Carolina Court of Appeals. In court, the burden is on the teacher to show that the nonrenewal decision is arbitrary and capricious. The courts have upheld the principle that school

The author is an attorney with Tharrington Smith, LLP, in Raleigh. He specializes in education law, employment law, and civil litigation.

1. N.C. GEN. STAT. § 115C-325 (hereinafter G.S.).

2. G.S. 115C-325(c)(1).

3. G.S. 115C-325(o).

4. G.S. 115C-325(m)(2).

5. *Abell v. Nash County Bd. of Educ.*, 71 N.C. App. 48, 52 (1984) (*Abell I*).

6. G.S. 115C-325(n).

boards have broad discretion in making renewal decisions;⁷ nonetheless, the school board must show some rational basis for the nonrenewal decision in the record of the decision. In the *Abell* case, for example, the board refused to renew teachers who also served as assistant football coaches so that a new head football coach could make staff changes. The North Carolina Court of Appeals upheld the decision as based on a rational reason.⁸

The broad discretion of school boards to decide contract renewals is not, however, a *carte blanche*. Nonrenewal of a probationary teacher solely because the teacher refused to sign a “conditional employment” agreement that had no legal effect could be found an arbitrary and capricious cause for failure to rehire.⁹ School districts, therefore, should ensure that the record of each nonrenewal decision is clear in order to allow careful examination of the teacher’s entire record and lay a cornerstone for defense of the decision if it is appealed to superior court.

The record of a nonrenewal decision may include the teacher’s personnel file as well as board minutes or recommendation memoranda.¹⁰ The file should be available for board members to review. The Court of Appeals has ruled in an unpublished opinion that the school board may also consider information that has not been placed in the employee’s personnel file.¹¹ Nonetheless, it is wise to check in advance of the hearing to be sure that all relevant performance documents have been placed in the teacher’s personnel file. Signed complaints or suggestions may be placed in the teacher’s file only after five days notice is given to the teacher.¹² Principals and other evaluators should be aware of the five-day notice requirement and make a habit of including a copy of performance letters and memos in teachers’ personnel files. In cases where relevant documents have not yet been placed in the file, the district still may notify the teacher that they will be filed, preferably at least five days before the school board makes its decision on contract renewal.

The superintendent also may present a memorandum in support of the contract nonrenewal, summarizing performance or conduct issues and identifying relevant board policies. For example, many school district policies state a goal of retaining only those employees whose job performance is clearly above standard. A memorandum that summarizes an employee’s past evaluations can help illustrate the employee’s improvement or lack of improvement. In some

cases, it may be relevant to show that the employee’s overall ratings are low in comparison with those of other teachers eligible for tenure.

Building an effective record goes hand in glove with providing probationary employees with performance feedback during the school year. State law requires that probationary employees receive at least four observations per year, at least three by the principal or a designee and one by a teacher. Probationary teachers also must receive an annual evaluation from the principal. Although discussion of evaluation systems is beyond the scope of this article, it is worth noting that the evaluation process used must be one adopted by the State Board of Education or an alternative, properly validated system.¹³ A system of regular observations by trained personnel will provide new teachers with better feedback and prepare the school district for potential challenges to nonrenewal decisions.

A common basis for contract nonrenewal is failure to meet the requirements for continuation of a teaching license. This basis should pass muster with the court as long as license requirements are consistently applied. A teacher’s improper conduct may also serve as an appropriate basis for nonrenewal. As long as the board’s record reveals a rational basis for concluding that a probationary teacher should not be renewed, the board is not required to consider potentially exculpatory material offered by the teacher before making its decision.¹⁴

The school board should review its minutes to be sure they accurately reflect the basis for nonrenewal. In drafting minutes, the board can incorporate performance memoranda, the personnel record, and other documents presented by the superintendent. Including such documents avoids the problem of board minutes that, through mistake or poor drafting, appear to conflict with the reasons for the nonrenewal decision stated elsewhere in the record.

Probationary teachers are not generally entitled to a hearing on a recommendation for contract nonrenewal.

G.S. 115C-325 does not provide for a hearing on a contract nonrenewal recommendation for probationary teachers, and the courts have consistently held that probationary teachers have no statutory right to such a hearing.¹⁵ In contrast, the General Assembly specifically granted contract school administrators the right to a hearing on contract nonrenewal.¹⁶

7. *Abell v. Nash County Bd. of Educ.*, 89 N.C. App. 262, 265 (1988) (*Abell II*).

8. *Id.* at 267.

9. See, e.g., *Hasty v. Bellamy*, 44 N.C. App. 15 (1979).

10. *Abell II*, 89 N.C. App. at 266.

11. *Kryder v. Chapel Hill-Carrboro City Sch. Bd. of Educ.*, COA94-1176, p. 14 (1995) (unpublished opinion).

12. G.S. 115C-325(b).

13. G.S. 115C-333(a).

14. *Moore v. Charlotte-Mecklenburg Board of Education*, 649 S.E.2d 41 (N.C. App. 2007).

15. See, e.g., *Sigmon v. Poe*, 564 F.2d 1093, 1096 (4th Cir. 1977); *Satterfield v. Edenton-Chowan*, 530 F.2d 567, 570-71 (4th Cir. 1975); *Moore*, 649 S.E.2d at 417-18 (2007).

16. G.S. 115C-287.1(d).

Some teachers may argue they are entitled to a hearing on contract renewal under the statute that establishes the judicial role of school boards. That statute creates the right of appeal from any “final administrative decision . . . concerning the terms or conditions of employment or employment status of a school employee.”¹⁷ That provision, however, does not apply to nonrenewal decisions, because the school board itself makes the final decision, not a school administrator.

Another argument for hearings arises from the 1997 change in the tenure law that granted probationary teachers the right to seek review in superior court of a school board’s contract nonrenewal decision.¹⁸ Before the change, probationary teachers were entitled to request a jury trial on the validity of contract nonrenewal decisions. The argument for the right to a hearing is that since probationary teachers are entitled to appeal on the record, there must have been a hearing to create such a record. This argument, however, ignores settled precedent that the record of a contract nonrenewal includes the teacher’s personnel file, board minutes, and administrative memoranda. As noted above, the board is not statutorily required to consider other evidence proffered by the probationary teacher, even though the North Carolina Court of Appeals has implicitly conceded that the failure to do so creates an evidentiary record that is of little use to the appealing teacher, because the court will not consider materials other than those included in the board’s record.¹⁹

17. G.S. 115C-45.

18. G.S. 115C-325(n).

19. *Moore*, 649 S.E.2d at 420 (N.C. App. 2007).

A probationary teacher may be entitled to procedural due process if the contract nonrenewal is based on allegations of dishonest or immoral conduct.

The federal and state constitutions require the government to provide due process before it deprives a person of a property or liberty interest. While a probationary teacher lacks a property interest in contract renewal, charges of dishonesty or immorality that jeopardize an employee’s standing in the community may implicate a liberty interest.²⁰ If the contract nonrenewal recommendation arises from allegations of embezzlement, sexual misconduct, fraud, or other serious wrongdoing, the school district may wish to consider granting at least limited due process. Due process is a flexible concept. At the least, it might include providing the teacher a meeting with a school administrator to hear the allegations and respond to them. More formal due process might include a right to confront and cross-examine witnesses.

Recently the North Carolina Court of Appeals has raised explicitly, but not considered on the merits, the possibility that denial of a preliminary hearing could be unconstitutional in certain cases.²¹ Given this specter, boards should consider seriously the suggestions above. ■

20. *See, e.g.*, *Board of Regents v. Roth*, 408 U.S. 564, 573 (1972).

21. *Moore*, 649 S.E.2d at 416–17.