

# Common Mistakes in Personnel Actions

AND WAYS TO AVOID THEM

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## Probationary Teachers Statutory and NDE Rule Requirements

Evaluate teachers

- Based on classroom observations
- Include concerns outside the classroom
- Observe for full instructional period every semester
- Complete and deliver the evaluation in the semester
- Use the district's evaluation form filed with NDE

Note the time the class or lesson begins and ends

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## Evaluating Probationary Teachers

When you observe deficiencies, provide:

- A "written" list of the deficiencies
- "Concrete" suggestions for improvement
- Assistance in overcoming the deficiencies
- Follow-up evaluations and assistance
- Sufficient time to improve

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### Probationary Hearing Requirements

Notice of proposed nonrenewal by April 15<sup>th</sup>

7 days to request a hearing

Hearing within 30 days of request

Notice of employment-related reasons

Right to be represented, discuss reasons, question the administration's witnesses

Right to present evidence and testimony

Decision of the board by May 15<sup>th</sup>

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### Legal Standard for Nonrenewal

“The school board may elect to amend or not renew the contract of a probationary certificated employee for any reason it deems sufficient if such nonrenewal is not for constitutionally impermissible reasons, and such nonrenewal shall be in accordance with sections [79-824](#) to [79-842](#).” (79-828(4))

To pass a motion to nonrenew requires a majority of a quorum of the board (e.g. 4-2, 4-1, 3-1)

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### The School Wins When . . . Your Ducks are in a Row



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### Common Problems

**Failing to treat the matter seriously enough**

- “Just a probie”

**Effusive, unnecessary written**

- Use oral praise

**Lack of or spotty documentation**

- When the issues begin to be of concern, document
- Communicate with the teacher about your concerns
- Keep a running log of contacts and communications

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### Common Problems

**Insufficient follow up**

- Issue identified in October; next addressed in March

**Doing only the minimum**

**Putting things off during the year**

**Putting things off during the probationary period**

- We have a year (or two) left
- Nonrenewals are harder after the 2<sup>nd</sup> year
- Nonrenewals are much harder after the 3<sup>rd</sup> year

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### Common Problems

**Failure to follow the rules**

- Statutes
- Rule 10
- Board policy and handbooks

**Review board policies and handbooks – make sure that they are congruent**

**Used approved (and filed) evaluation forms**

**Meet statutory and policy deadlines**

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**Cox v. Board of Education**

Kristen Cox was a first-year music teacher  
Not evaluated 1<sup>st</sup> semester (1<sup>st</sup> evaluation January 28)  
All her evaluation categories were “satisfactory”  
except “Relationship with Students”  
Cox – I asked for specific guidance but received none  
March 14<sup>th</sup> – board renewed all teachers except Cox  
Superintendent interviewed candidates before giving  
Cox her initial nonrenewal notice

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**Cox Case – Supreme Court**

Court found in Cox’s favor – the district failed to  
evaluate her as required by statute  
“While the Legislature has not yet obliterated all  
distinctions between probationary and permanent  
employees, it has unquestionably given probationary  
teachers greater protection than they formerly  
enjoyed and has thereby correlatively limited the  
power of boards of education over them.”

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**Bentley v. School District**

Maris Bentley was a 3<sup>rd</sup> year probationary teacher  
April 10<sup>th</sup> – given written evaluation by principal  
April 12<sup>th</sup> – conferred with superintendent  
April 16<sup>th</sup> – given notice of proposed nonrenewal  
Bentley did not request a hearing  
May 13<sup>th</sup> – board voted not to renew her contract  
Bentley filed for declaratory judgment  
Supreme Ct. – Bentley won; April 16<sup>th</sup> notice was late

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Statutory and NDE Rule Requirements**

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**Tenured Teachers' Rights**

Evaluated on classroom and other performance

Written list of deficiencies

Concrete suggestions for improvement

Assistance in overcoming deficiencies

Adequate time to improve

Follow up evaluations and assistance

Right to:

- Due process
- Finding of just cause

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**Due Process**

Due process includes the following rights:

- Timely, adequate notice of reasons for the school's proposed action.
- To confront witnesses.
- To present oral argument.
- To present evidence orally.
- To cross examine witnesses.
- To disclosure of the administration's evidence.
- To be represented by an attorney.
- To a determination based solely on the evidence.
- To have the decision maker indicate the evidence relied upon.
- To an impartial decision maker.

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## Settlement Considerations

Agreement between:

- Superintendent and teacher
- Board and teacher

Letter of recommendation

Payment to the teacher

Payment for unused PTO or vacation days

Complaint to the Commissioner of Education

Unemployment compensation

Confidentiality

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