



# Probationary Teacher Statute: The Court has Ruled

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# Probationary Teachers

## § 15.1-15-02. Probationary teachers--Review of evaluations-- Renewal and nonrenewal of contracts

1. If the board of a school district contemplates not renewing the contract of an individual employed as a probationary teacher, the board shall review the individual's evaluations [...] and meet with the individual in an executive session to discuss the reasons for the contemplated nonrenewal.
2. The individual employed as a probationary teacher may be accompanied by two representatives [...] and by the individual's spouse or one other family member.
3. No claim for relief for libel or slander may be brought [...].
4. If the board of a school district elects not to renew the contract of an individual employed as a probationary teacher, the board shall provide written notification of the decision, together with a detailed description of the board's reasons, to the individual no earlier than April fifteenth nor later than May first.
5. Failure by the board of a school district to provide the notification required by subsection 4 constitutes an offer to renew the individual's contract on the same terms and conditions as the individual's contract for the current year.
6. The board of a school district may waive probationary status for a teacher with at least two years of teaching experience in the state.
7. The board of a school district shall offer, as needed, based on the teacher's evaluation, a teacher mentoring program for probationary teachers.
8. For purposes of this section, "probationary teacher" means an individual teaching for less than two years.

# Background of the Case

- ▶ Teacher (Motisi) was employed by the School District for the 2019-20 and 2020-21 school years.
  - ▶ Prior to that, he was employed at another ND school district for a few years.
- ▶ On April 13, 2021, principal met with Motisi to go over his eval and informed him that admin would be recommending the School Board vote to nonrenew his contract.
- ▶ On April 14, 2021, School Board voted to contemplate not renewing Motisi's contract for the coming school year, and set a date and time for the Board to meet with Motisi to discuss the reasons for the contemplated nonrenewal.
- ▶ On April 16, 2021, Motisi received a Probationary Teacher Notice of Contemplated Nonrenewal, informing him the Board voted to contemplate his nonrenewal for 3 reasons, and that the Board would be holding an executive session meeting for the purpose of discussing the reasons for his contemplated nonrenewal on April 22.

# Background continued..

- ▶ On April 22, the Board met and discussed his evals and reasons for contemplated nonrenewal in executive session.
  - ▶ Motisi did not attend, nor did he ask to reschedule it.
  - ▶ Board voted to nonrenew probationary teacher Motisi's contract.
- ▶ On April 23, Motisi received a Probationary Teacher Notice of Nonrenewal.
- ▶ On April 26, Motisi submitted a letter, notifying the school of his acceptance of a continuing contract for the following year.
  - ▶ On April 27, the supt responded, reminding Motisi he was a probationary teacher, that the District never waived his probationary teacher status, and that he was already provided notice of nonrenewal. The letter also offered that the board would still meet with Motisi between then and April 30 to discuss the reasons with him.
  - ▶ Motisi didn't respond.

# Motisi Sued the School District

- ▶ Mike Geiermann, attorney for ND United, sent us a letter demanding the school district provide Motisi with a contract or buy him out of his continuing contract.
- ▶ July 8, 2021, Motisi brought a lawsuit against the school district.
- ▶ He argued:
  - ▶ The probationary teacher statute didn't apply to him, so the school board didn't follow the proper procedure to nonrenew him.
  - ▶ Since the board didn't follow the proper procedure, he was entitled to a contract.

# School District Responded

- ▶ We argued the probationary teacher statute did apply and he was correctly nonrenewed. We pointed out:
  - ▶ The prior version of the statute applied to first-year teachers, and we went through what language was changed and why the changes clearly reflected the legislature intended the current version to apply to teachers who are teaching for less than 2 years in the school district.
  - ▶ The current statute includes a subsection, which would have no meaning if the statute applied to teachers who are teaching for less than 2 years in the state.
    - ▶ NDCC 15.1-15-02(6): “The board of a school district may waive probationary status for a teacher with at least two years of teaching experience in the state.”
  - ▶ And if the statute itself is not clear just by reading it, then a review of the legislative history shows the legislature intended the current version to apply to teachers who are teaching for less than 2 years in the school district.

# District Court Agreed with Us

- ▶ The District Court judge agreed with us, and determined the probationary statute applies to individuals teaching for less than 2 years in the school district.
- ▶ Motisi appealed to the ND Supreme Court.

# ND Supreme Court Affirmed

- ▶ The ND Supreme Court also agreed, and affirmed the district court's judgment.
  - ▶ “Although the plain language of subsection 8, when read in isolation, does not appear to require that teaching experience come from a particular school district, this Court considers the whole statute to determine the intent of the legislature, deriving that intent by comparing every section and subsection as a part of that whole, and by considering other statutes on the same subject matter.....**Subsection 6 would not need to provide for a waiver of probationary status for individuals with at least two years of teaching experience in the state if subsection 8 referred to individuals teaching for less than two years total.**
  - ▶ “Considering the statute a whole and giving meaning to each of its parts, we conclude the district court did not err in interpreting ‘probationary teacher’ to mean an individual teaching for less than two years in a particular school district.”

# Take-Away

- ▶ School districts can follow probationary teacher statute for teachers employed less than 2 years **at a school district**, unless board waives probationary teacher status.

# When would a school waive probationary teacher status?

- ▶ As negotiation tool for new hire:
  - ▶ (Teacher with multiple years of experience at another school says they'll only sign a contract with your school if you waive probationary teacher status for them.)
- ▶ Strongly suggest to not include anything in the negotiated agreement about whether or not the board can waive probationary teacher status for new hires.
  - ▶ If your local education association brings up any kind of proposal about this, inform them the board will follow the law and not agree to give up the district's powers this way.

# Why did NDU take this case?

- ▶ ND United was not happy with the change in the statute where it used to apply only to first-year teachers and then was changed to probationary teachers.
- ▶ Perhaps they wanted to test it in the court first, and then they might come back to the legislature and argue for changing it back.

# Thank you!

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