

# Due process & just cause: It's simply fundamental fairness!



## a jcea backgrounder

Due process of law is a basic tenet of our American democratic society and stems from both the Fifth and Fourteenth Amendments to the U.S. Constitution. These amendments say that no state (or jurisdiction thereof) shall deprive a person of life, liberty, or property without due process of law.

As it relates to public schools, the courts have ruled that states cannot deprive non-probationary teachers of their "property"—their jobs—without providing due process. As a result, all but two states have laws that provide some degree of due process protection for teachers who have completed their probationary period of employment.

Due process means that before being deprived of one's job, a person should, at the very least:

- Receive adequate notice of the impending action and the reasons for it,
- Have a meaningful opportunity to present a defense, including evidence and reasons why he/she should not be dismissed.

### **That's it! Due process is simply a legal way of ensuring fundamental fairness for teachers.**

Colorado state law provides all non-probationary teachers due process. However, state law does not provide the same degree of protection for probationary teachers—those who have not yet completed three years of supervised, satisfactory teaching.

JCEA believes all teachers—probationary or non-probationary—should receive fundamental fairness. Since 1970 the school district has shared that belief. In that year the school district and JCEA negotiated their first comprehensive contract and incorporated minimal protections for probationary teachers. This was achieved through the "just cause" clause of Article 14.

As a result, a probationary teacher may appeal (by filing a contract grievance) a dismissal decision to determine if the district afforded him/her appropriate "just cause." Ultimately, this appeal may be heard in an arbitration, which is not binding, by an impartial arbitrator.

In considering whether the district has acted appropriately, arbitrators rely on seven standards set forth by arbitrator Carroll Daugherty. They are: 1) Did the employer give the employee forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee's conduct? 2) Was the employer's rule or managerial order reasonably related to the orderly, efficient, and safe operation of the employer's business? 3) Did the employer, before administering discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management? 4) Was the employer's investigation conducted fairly and objectively? 5) At the investigation, did the "judge" obtain substantial evidence or proof that the employee was guilty as charged? 6) Has the employer applied its rules, orders, and penalties evenhandedly without discrimination to all employees? 7) Was the degree of discipline administered by the employer in a particular case reasonable to (a) the seriousness of the employee's proven offense and (b) the record of the employee in his service with the employer?

By mutually agreeing to provide the right to contractual just cause since 1970, both JCEA and the school district have demonstrated their commitment to providing **fundamental fairness** for all teachers.

### **Why is due process critical?**

It is reasonable to ask why due process is so important and necessary to the teaching profession, especially since many workers in the private sector do not enjoy this right.

First, teachers work in an intensely political environment. Schools are managed by elected board members who have the right to hire and fire. Colorado's education history is littered with accounts of one political, ideological faction or another fighting for control of local school boards. Again, this reality is so well founded that Colorado law provides due process for non-probationary teachers. **But it does not provide that same level of protection for probationary teachers, those who are most vulnerable.**

Second, becoming a teacher is expensive. It requires a minimum of four-years of college and many new teachers come to the district with advanced degrees. JCEA does not believe that one's dream to teach should be eliminated by arbitrary or capricious actions. **A new teacher's significant investment of time and money demands a higher standard of fairness.**

Third, a teacher's dismissal generally must be reported on any future application to teach. Therefore, a dismissal in one school district may actually mean a person is never able to teach again. This is very different from what may be reality in the private sector. **A teacher dismissal is not just about the loss of a job; it's about the loss of a profession and career.**

Fourth, in many school districts across the state when school districts want to reduce costs, they just non-renew their probationary teachers. Why? Because they can! **Having just cause protections for all teachers ensures that school districts—like Jeffco Public Schools—establish policies and practices that create educationally defensible criteria for staff reductions.**

Unfortunately, there has been a recent debate about eliminating fundamental fairness for probationary teachers. Such action would have a significant chilling effect on the teaching/learning process.

JCEA strongly believes that denying rights for some ultimately hurts all teachers. We worry that if those who oppose fundamental fairness are successful in denying just cause rights for new teachers, denying them for non-probationary teachers will certainly be next on their agenda.

### **Does providing fundamental fairness protect bad teachers?**

In a word: no! JCEA does not support any system that would promote the protection of professionals who lack competence. That would be harmful to our students and our profession. The process used to determine competence must, however, be fundamentally fair. **The truth is, in the last 25 years there has been only one arbitration hearing regarding the non-renewal of a probationary teacher.**

Instead of eliminating fundamental rights, we urge the school district to improve administration. Do a better job screening applicants before they are hired. Improve resources and training to help new teachers continue their professional growth. Reprioritize principals' time to ensure that teachers are evaluated competently, professionally, and fairly.

Every experienced teacher understands that becoming a successful teacher takes time. And like our students we learn from our mistakes, as well as our successes. If the school district denies basic fundamental fairness, most teachers will opt not to risk making a mistake and therefore miss important learning opportunities. We believe one can learn the science of teaching in college, but the art of teaching comes only from experience.