

Reflections on ethics and teacher reviews

blog by [Penelope Swenson](#) is licensed under a [Creative Commons Attribution-Noncommercial-No Derivative Works 3.0 United States License](#).

March 15 looms large in districts across California

I teach a course for prospective school administrators called Supervision of Instruction. The subtitle or tag line is "for the purpose of improving student learning." The principal can be key to the improvement of student learning, yet many miss that great opportunity. NCLB and other factors seem to have encouraged some principals to be less involved in improving student learning though supporting teachers and more focused on moving probationary teachers out to try another "flavor."

California has an interesting process and March 15 looms large. Probationary teachers, i.e. those in the first two years, may be Non-Reelected if there is not a "fit" with the school or district. The administrator is exempt from demonstrating any reason. He or she can recommend a Non-Reelect without having followed the association contract, without having provided assistance, without even stepping into the classroom! There is no recourse for the Non-Reelected teacher. There are no safeguards, no due process. Compounding this is virtually all California teacher applications require a candidate answer this question: "Have you ever been non-reelected?" While the Non-Reelect initially was to be like a no-fault divorce, it has become tantamount to dismissal for cause, *any cause*, without having to state the cause, provide opportunity for remediation, or offer a means for the teacher to present any information or evidence.

Having been a high school principal, I know that if I had suspended a kid without any due process, I would have been in deep trouble. Our system is built on due process, regardless of whether one is popular, of the correct background, or has deep pockets. Yet, in this situation, an individual's ability to seek another position is damaged and the reason may never be known. Assumptions are made that the Non-Reelected is not worthy to be a teacher, yet, in truth, it may be that the administrator had other motives. Sometimes there are conflicts of style certainly. Sometimes there are personal issues. Sometimes there are real reasons that the individual should not be a teacher. Regardless, the Governing Boards of districts generally are simply given a list of names in a closed session and they are not presented with evidence. As noted earlier, there is no due process, despite the implications of the decision. Boards usually simply go along with the lists presented and the motion to Non-Reelect is made and passed when they have returned to open session.

Non-Reelection carries with it a stigma, even when there is ample evidence that the individual is a solid teacher. "Graciously" most districts offer the soon to be Non-Reelected the opportunity to resign so they can save or salvage their reputations. (Of course that means the district does not have these people collecting unemployment benefits, thus saving on the portion the district needs to pay into that system.)

A situation recently occurred in a California district where several teachers, in one school, were pressured to resign or face Non-Reelection. The pressure began in October and six resigned at various times between October and March. Eventually both the principal and assistant principal were given notice and reassigned, but

the damage to the six remains.

Lest a reader think I am soft and ready to keep poor teachers, as an administrator I fired two teachers, going through the whole show cause process. I too want the best. But, I want an ethical system.

A few nights ago I asked students in the Supervision course how they approach putting an F grade on the progress report and, ultimately, the report card. Their responses were quick. "I wonder what I could do or could have done." "A piece of me asks if I failed the student." "I look in a mirror and reflect on how I tried to help." My suggestion to them was that they, when holding the Non-Reelection power, hold up that mirror. One student quickly said, "it's the right thing."

Yes, it is the right thing. California principals who are engaged in "Supervision of Instruction for the purpose of improving student learning" have about a year and a half to support, encourage, and shape teachers before applying the Non-Reelect provision. Is there any aspect of running a school that is more important to the success of students and the school generally than "Supervision of Instruction for the purpose of improving student learning?"

What options are available to principals who think they may have a teacher who could be good, but the placement is not right, or who need more "seasoning?" After the first year, see if there is another setting within the district that might work better. If that is determined, sit down with the teacher, other administrator (if a different school) and discuss the possibilities and frankly the reasons for making such a change. Recommend specific professional development and follow through! Do all that is possible to assist the teacher in mitigating any problems--many districts have support providers, specialists, and helpful Professional Learning Communities. CTA regional representatives have, occasionally, negotiated a third year of probation within a district for an individual.

Financial woes are huge in California's schools. Some districts see the Non-Reelection as a way to reduce teachers without the paperwork and hassle of the Reduction in Force (RIF) process. Most of the legal services ask their districts not to use that hammer, but we cannot count on legal services to provide our ethical compasses. Shapiro and Stefkovich have a fine chart on the cover of their book on Ethical Leadership and Decision Making. Dilemmas are complex. Lives of children and youths are involved as education is a large part of their days and years. The lives of teachers and their families are involved. There are standards and professional codes, community ethics, personal ethics, and the best interests of the students. These decisions are not about power; they are about what is best and right.

I remember making a decision that was not what I wanted to do emotionally. I did not like the individual's style, but he could engage the students and I had to admit that if I worked with him and encouraged him, he could become a very solid teacher. He grew and so did I.

What do I suggest? Immediately that every administrator act within an ethical framework, setting aside

personal likes and dislikes, and look at teachers as the greatest resource for improving student learning that he or she has. Teamwork and collegiality, a climate of mutual support and respect does give dividends. Professional learning communities, if the product of support and respect, are helpful in improving school climate and increasing student learning.

Over the longer term, I believe the Non-Reelect provision must be overhauled. If it has the connotation of a negative on one's career, the purpose has been sullied. The old three year probation with dismissal for cause, with the causal requirement less stringent than the provision for permanent teachers, was better, although not easier for principals. Due process is part of our birthright, our expectation.

Below are some websites with information about the process. Also some of the pertinent California Ed Code sections are printed. (CTA does not have a website for Non-Reelection as the options are, essentially, all with the districts since there is no due process obligation.)

California Education Code 44929.21(b) Every employee of a school district of any type or class having an average daily attendance of 250 or more who, after having been employed by the district for two complete consecutive school years in a position or positions requiring certification qualifications, is reelected for the next succeeding school year to a position requiring certification qualifications shall, at the commencement of the succeeding school year be classified as and become a permanent employee of the district.

The governing board shall notify the employee, on or before March 15 of the employee's second complete consecutive school year of employment by the district in a position or positions requiring certification qualifications, of the decision to reelect or not reelect the employee for the next succeeding school year to the position. In the event that the governing board does not give notice pursuant to this section on or before March 15, the employee shall be deemed reelected for the next succeeding school year.

http://cper.berkeley.edu/pocketguide/K12_corrections07.pdf Pocket guide to dismissals, etc.

[http://www.schoolslegalservice.org/stories/storyReader\\$68](http://www.schoolslegalservice.org/stories/storyReader$68) Schools Legal public Client Handbook. More if member.

<http://www.lozanosmith.com/briefs/pdf/CNB132007.pdf> Another legal group for districts comments.

<http://www.kern.org/fcmat/library/bargain.html> '90s decision of State Supreme Court on Non-Reelect and contracts.

http://www.pvandf.com/pubs/govlaw/govlaw_6.html?section=9 Interesting case where RIF became Non-reelect.