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Special Policy Update: June 10, 2015



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To access the new sample policy distributed with this *Special Policy Update* in both Word and PDF formats, [click here](#).

Teacher portability a factor for 2015-16 school year

“Portability” is a complex concept that is part of the Educator Effectiveness Act, SB 10-191. Portability allows a teacher to take his or her nonprobationary status from one Colorado school district to another, if the teacher provides evidence of student academic growth and “effective” ratings for the two prior years. C.R.S. 22-63-203.5. Portability is premised on the assumption that the statewide evaluation standards required by SB 10-191 will create evaluations that are consistent across the state and, therefore, the status attained from those evaluations should be recognized by all Colorado school districts.

According to state law, portability of a teacher’s nonprobationary status began in the 2014-15 school year. *Id.* Because nonprobationary teachers won’t have two evaluations based on effectiveness until the spring of 2015, this statutory provision first affects districts’ hiring processes and decisions for the 2015-16 school year.

Under the statute, a nonprobationary teacher is *not* automatically granted nonprobationary status when he or she is hired by a new school district. Rather, the statute places the burden on the nonprobationary teacher to request nonprobationary status and produce two consecutive evaluations of effectiveness as well as student academic growth data for the prior two school years. If the teacher does not or cannot produce the required documentation, then the teacher’s status in the hiring district is *probationary*.

Addressing portability at the local level

An informal opinion from the Colorado Attorney General concluded that should the teacher demonstrate eligibility for nonprobationary status by providing the required documentation, “the hiring district cannot by policy or otherwise abrogate that right by conditioning employment on an involuntary waiver of that status.”

Limiting a school board’s ability to define the nature of its positions and the status of its employees conflicts with the local board’s constitutional and statutory duties. Moreover, the Attorney General’s informal opinion is not supported by the express language of the statute. Not surprisingly, therefore, many school attorneys disagree with the Attorney General’s opinion. However, given that this statute has not been tested in court, we strongly encourage districts to consult with their attorneys before pursuing this argument.

Even if the statute arguably prohibits a school district from requiring a teacher to waive his or her nonprobationary status if the teacher requests portability and meets the documentation requirements, it does seem permissible for districts to clarify the standards and procedures applicable to a teacher’s assertion of portability. For example, the statute is not clear regarding *when* a teacher must assert nonprobationary status and provide the required documentation and *what* “evidence of student academic growth data” means. Ways to address this issue include: (1) advising teacher applicants during the district’s hiring process about the district’s timeline to assert nonprobationary status; (2) addressing portability in the teacher’s contract; (3) addressing portability through local board policy; or (4) all of the above.

To assist our members with the policy option, we created new CASB sample policy **GCFA*, Hiring of Instructional Staff/Portability of Nonprobationary Status**. This sample policy provides that a teacher seeking recognition of nonprobationary status must do so during the hiring process and prior to an offer of employment from the district. Sample **GCFA*** also provides that the superintendent or designee, in his or her discretion, may waive this timeline requirement in exceptional circumstances and if it’s in the district’s best interests to do so. This language addresses those circumstances when the teacher seeks employment with the district in the spring for the following school year and has not yet received his or her written evaluation for the current school year. It also permits local flexibility to better meet the district’s needs and circumstances.

Importantly, sample **GCFA*** defines “prior two years” to mean the current school year and the school year immediately prior to the current year. That way, the policy is consistent with the statute, which requires the teacher to be currently employed by a Colorado school district to assert portability in another district.

Sample policy **GCFA*** also provides that the district shall determine, in its sole discretion, whether the teacher’s documentation shows evidence of student academic growth and effectiveness. While the State Board of Education’s rules implementing SB 10-191 define “teacher effectiveness” and “student academic growth,” the hiring district, at minimum, has the discretion to determine whether the teacher’s written evaluation and/or other provided documentation shows evidence of the district’s or local board’s expectations concerning “student growth.”

Again, given the lack of clarity in the law, we encourage districts to consult with their attorneys before adopting this sample policy and/or revising any other applicable Board policies, regulations, employment contracts or hiring practices to address portability.

Portability not applicable to probationary teachers

Portability cannot be asserted by probationary teachers and years of employment in a prior district do not transfer when a probationary teacher takes a job in another school district. For example, a second year probationary teacher who is hired by a new district does not get credit in the new district for his or her prior years of service. Similarly, if a first year probationary teacher receives an effective evaluation, that evaluation does not count as “year one” of effectiveness in the new school district. In both scenarios, the teacher will start over in the new district as a first year probationary teacher.

Timely adoption of policy

If a local board chooses to address portability via policy, the board should consult its policy adoption process to determine whether there is a provision that allows the adoption of a policy upon first reading. That way, the policy will be in place to help address teachers’ assertions of portability for the 2015-16 school year.

State law does not mandate a specific number of readings before the board adopts a policy; rather, this issue is dictated by board policy. For example, CASB sample policy **BG, School Board Policy Process**, requires three readings before a policy is adopted but permits the board to temporarily suspend this requirement in “unusual circumstances to meet emergency conditions.” Sample policy **BG** also allows the board to waive any policy requirement, including its own operating procedures, in “special circumstances” upon a “majority vote of board members present at any regular or special meeting.”

- [GCFA*, Hiring of Instructional Staff/Portability of Nonprobationary Status](#)
- [SB 10-191, Educator Effectiveness Act](#)
- [CDE’s webpage concerning Educator Effectiveness](#)
- [Colorado Education Initiative’s SB 191 Toolkit, which includes a discussion of portability in a question and answer format](#)

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