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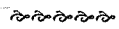
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To: Superintendents, Member School Districts (K-12)

From: Nancy L. Klein, Senior Associate General Counsel

Subject: Temporary Employee Reemployment Rights and Updated Certificated Seniority Reference Chart
Memo No. 05-2014

Temporary Employee Reemployment Rights

A temporary employee released pursuant to Education Code section 44954(b) who “has nevertheless been retained as a temporary or substitute employee for two consecutive years¹... shall receive first priority if the district fills a vacant position, at the grade level at which the employee served during either of the two years, for the subsequent school year.” (EC § 44918(c))

In *Henderson v. Newport Mesa Unified School District*² the California Court of Appeal concluded that the “two consecutive years” of service do *not* have to occur after receipt of the release notice. A released temporary employee, who has served two consecutive years as a temporary employee, has reemployment rights the following year to a vacant position, but only at the grade level in which the employee served as a temporary employee in either of the two years. The temporary service may occur *before or after* release by board action.

Year 1 - Temporary Employment – 44954(b) Release
Year 2 - Temporary Employment – 44954(b) Release
Year 3 – “First Priority” Reemployment Right to vacancy at grade level served in either
Year 1 or Year 2

¹ “Year” means at least 75% of the days the regular schools of the district are in session.

² (2013) 154 Cal.Rptr.3d 333.

- Year 1 - Temporary Employment – Not released; no vacancies in Year 2; rehired to a temporary assignment for following year
- Year 2 - Temporary Employment – 44954(b) Release
- Year 3 - “First Priority” Reemployment Right to vacancy at grade level served in either Year 1 or Year 2

Some final notes:

1. The “first priority” right to reemployment is a preferential right, not a guaranty of reemployment. A district is not obligated to reemploy a temporary employee without regard to qualifications; therefore, administrators should document any temporary employee performance or conduct issues and maintain a copy in the employee’s personnel file.
2. After serving one “year,” any temporary employee *who has not been released, has reemployment rights the following year to any vacant position for which the employee is qualified to teach.* (Ed. Code sec. 44918(b)) The right to reemployment of such an employee is neither limited to the grade level(s) previously taught nor dependent upon two consecutive years of service. Unless the district’s certificated staffing plan is to offer a temporary employee a probationary position the following year, we recommend that action be taken annually to release temporary employees.
3. Temporary employee reemployment rights do not apply to “employees classified as substitutes, and who are employed in an on-call status to replace absent regular employees on a day-to-day basis....” (Ed. Code sec. 44918(d))
4. Temporary employee reemployment rights are secondary to the reemployment rights of laid off employees. (Ed. Code sec. 44918(e))

Certificated Seniority Reference Chart

We have updated and attached our Certificated Seniority Reference Chart to assist you with resolving certificated employee seniority issues.

Please call our office if you have any questions regarding temporary reemployment rights or certificated seniority.

Certificated Seniority Reference Chart K-12 Districts of 250 or more ADA

↕ Service Years	↕ Service Years ⇨ (each box equals 1 yr = 75% or more of work days in school year unless otherwise noted below)										Notes:	
												2 consecutive years as Prob w/ appropriate credential E.C. 44929.21(b)
												2 years (Temp + Prob) w/ appropriate credential E.C. 44917 and 44920
↑	Temp with appropriate credential	Temp with appropriate credential		Temp with appropriate credential	Prob-2 with appropriate credential	Perm						Same as above, regardless of # prior years as Temp E.C. 44917 and 44920
	Temp emergency credential	Temp emergency credential		Prob-0	Prob-0	⇨	⇨	Prob-1 with credential	Prob-2 with credential	Perm		Service under an emergency credential does not count toward tenure but seniority dates to first date of paid service as Prob. 0 E.C. 44845 and E.C. 44911
			Seniority date is 1 st day of paid service as PROB or 1 year prior as Temp if appropriately credentialed									
			Prob-0	Prob-0	Prob-0	Non-reelection						To count toward tenure probationary service must be service under a credential E.C. 44911 (Schnee)
			Temp with appropriate credential	Prob-0	Prob-0	same status	⇨	Prob-2 assigned to a position with an appropriate credential	Perm			Seniority dates to first date of paid services as Temp – See E.C. 44917 and 44920

¹ A leave of absence is not a break in service but the period of the leave is not considered employment for purpose of serving 75% or more of year. (EC 44975; *Greigo v Los Angeles USD* (1994) 28 Cal.App.4th 515)

Certificated Seniority Reference Chart K-12 Districts of 250 or more ADA

↔ **Service Years** ↔ **Service Years** ↔ (each box equals 1 yr = 75% or more of work days in school year unless otherwise noted below)

Notes:

		Temp with appropriate credential		Prob-2	Perm															Mid year conversion from Temp to Prob allows but does not require Prob 2 status if Temp/Prob combination is > 75% E.C. 44914 (See Note ²)	
																					Leave without pay year neither counts toward, nor penalizes against permanent status E.C. 44975
																					Leave without pay year neither counts toward, nor penalizes against permanent status E.C. 44975
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Prob-1	Layoff	Temp Leave replacement 24 month rehire list expires at end of school year																			Retains Prob 1 seniority date after layoff, if reinstated within time limits. E.C. 44997 (See Note ³)
																					Retains Prob 1 seniority date while on 24 month layoff list, but does not move to Prob 2 while employed as Temp. Thus, when employed as temp in 4 th year seniority begins anew because re-hire rights had expired E.C. 44997
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																					Retains Prob 1 seniority date while on 24 month layoff list, but does not move to Prob 2 while employed as Temp. Thus, when employed as temp in 4 th year seniority begins anew because re-hire rights had expired E.C. 44997

² The first year as a temp cannot count toward permanent status because E.C. 44918 applies only where the teacher is "employed as a probationary employee for the following year." In this example the year following the first temp assignment began as a temp assignment. The second year may count — See E.C. 44914. It seems likely though, if the second year of employment included 75% or more as a temp or 75% or more as a probationary teacher, that year must be counted as Prob 1.

³ If the former employee is rehired after June 30 then re-hire rights have been extinguished and a new two-year probationary cycle would need to begin.

Certificated Seniority Reference Chart K-12 Districts of 250 or more ADA

↩ Service Years Service Years ⇌ (each box equals 1 yr = 75% or more of work days in school year unless otherwise noted below) Notes:

			Prob-1 .60 <75% yr	Prob-1 .60 >75% yr	Prob-1 .60 <75% yr	Prob-1 .60 <75% yr	Prob-1 .60 <75% yr	Prob-1 .60 <75% yr	Prob-1 .60 <75% yr	Prob-1 .60 <75% yr	Prob-1 .60 <75% yr	Prob-1 .60 <75% yr	Prob-1 .60 <75% yr	Prob-1 .60 <75% yr	Prob-1 .60 <75% yr	Prob-1 .60 <75% yr	Perm .60	Must work ≥ 75% of days in year, for year of service credit; seniority date is 1 st Prob service
			Temp Prob combination >75% yr	Prob 2	Perm													Education Code allows but does not require the board to consider the first year to count as Prob 1 E.C. 44914
	Perm	Resign	Perm															Re-employed within 39 months; new seniority date but Perm status retained E.C. 44848 and 44931
			Feb hire As Prob	Prob-1	Prob-2	Perm												1 st date of Prob service is Feb. but first year does not count because less than 75% of # of days E.C. 44908
	Categorically funded with appropriate credential	Categorically funded with appropriate credential	Categorically funded with appropriate credential	Prob	Perm													E.C. 44909
			Intern Prob O	Intern Prob O	Prob	Perm												E.C. 44885.5