

# SCHOOL AND COLLEGE LEGAL SERVICES of California

General Counsel  
Carl D. Corbin

Attorneys  
Monica D. Batanero  
Nancy L. Klein  
Margaret M. Merchat  
Mia N. Robertshaw  
Loren W. Soukup  
Patrick C. Wilson  
Frank Zotter, Jr.

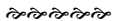
A Joint Powers Authority serving school and  
college districts throughout the state

Reply to:  
Santa Rosa Office  
5350 Skylane Blvd.  
Santa Rosa, CA 95403  
(707) 524-2690  
Fax: (707) 578-0517  
[santarosa@sclscal.org](mailto:santarosa@sclscal.org)

## LEGAL UPDATE

July 2, 2014

Of Counsel  
Robert J. Henry  
Janna L. Lambert  
Virginia A. Riegel

  
Susanne K. Reed  
(1947 – 2010)

**To: Superintendents, Member School Districts (K-12) and  
County Offices of Education**

**From: Nancy L. Klein, Senior Associate General Counsel**

**Subject: Categorical Employee Agreements Should Be in Writing and Signed  
By The Employee to Document Mutual Agreement  
Memo No. 15-2014**

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Education Code sections 1294.5 and 44909 provide that a county superintendent of schools and school district, respectively, may employ *certificated* employees in “[1] programs and projects to perform services conducted under contract with public or private agencies, or [2] categorically funded projects which are not required by federal or state statutes” and specifically require that the terms and conditions of categorical employment be “mutually agreed upon” and “reduced to writing.”

In 2012 the California Court of Appeal for the Third District<sup>1</sup> held that categorical employees may be treated as temporary and summarily terminated only at the expiration of the contract or specially funded project. If terminated at any other time, categorical employees are entitled to be treated like probationary employees. Thus, to make clear that an employee’s status is categorical, rather than probationary, and subject to termination when the contract or funding terminates, we recommend that county offices of education and school districts:

1. Give written notice to the employee on or before the first date of paid service that the employment is in a categorical project or program pursuant to Education Code section 1294.5 or 44909;

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<sup>1</sup> *Stockton Teachers Association v. Stockton Unified School District* (2012) 204 Cal.App.4<sup>th</sup> 446.

2. Memorialize the terms and conditions of the categorical employment in a written agreement; and
3. Document that the terms and conditions of employment were “mutually agreed upon” by obtaining the employee’s signature on the written agreement preferably on or before the employee’s first date of paid service.

Please contact one of our attorneys with any questions concerning categorical employment or to request a sample categorical employment agreement.