



# SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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

February 18, 2020

5350 Skylane Boulevard  
Santa Rosa, CA 95403

Tel: (707) 524-2690  
Fax: (707) 578-0517  
santarosa@sclscal.org  
www.sclscal.org

*General Counsel*  
Carl D. Corbin

*Attorneys*  
Monica D. Batanero  
Jennifer Henry  
Sarah Hirschfeld-Sussman  
Nancy L. Klein  
Damara L. Moore  
Jennifer E. Nix  
Steven P. Reiner  
Kaitlyn A. Schwendeman  
Loren W. Soukup  
Erin E. Stagg

*Of Counsel*  
Robert J. Henry  
Margaret M. Merchat  
Patrick C. Wilson  
Frank Zotter, Jr

**To: Superintendents, Member School Districts (K-12)**  
**From: Carl D. Corbin *CDC*  
General Counsel**  
**Subject: Temporary Employee Reemployment Rights  
Memo No. 06-2020**

As a gentle reminder we are re-issuing a previously published legal update regarding the rights of temporary certificated employees:

### **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 years<sup>1</sup>... 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.” (Education Code § 44918(c))

In *Henderson v. Newport Mesa Unified School District*<sup>2</sup> 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

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

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

<sup>2</sup> (2013) 154 Cal.Rptr.3d 333.



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.* (Education Code § 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...." (Education Code § 44918(d))
4. Temporary employee reemployment rights are secondary to the reemployment rights of laid off employees. (Education Code § 44918(e))

Please contact our office with questions regarding this Legal Update or any other legal matter.

*The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.*

© 2020 School and College Legal Services of California

*All rights reserved. However, SCLS grants permission to any current SCLS client to use, reproduce, and distribute this Legal Update in its entirety for the client's own non-commercial purposes.*