

Personnel

BP 4121 (a)

Temporary/Substitute Personnel

The Governing Board recognizes that substitute and temporary personnel perform an essential role in promoting student achievement and desires to employ highly qualified, appropriately credentialed employees to fill such positions.

(cf. 4112.2 - Certification)

Hiring

The Superintendent or designee shall recommend candidates for substitute or temporary positions for Board approval, and shall ensure that all substitute and temporary employees are assigned in accordance with law and the authorizations specified in their credential.

(cf. 4113 - Assignment)

Substitute personnel may be employed on an on-call, day-to-day basis.

In addition, after September 1 of any school year, the Board may employ substitute personnel for the remainder of the school year for positions for which no regular employee is available. The district shall first demonstrate to the Commission on Teacher Credentialing the inability to acquire the services of a qualified regular employee. (Education Code 44917)

(cf. 4117.14/4317.14 - Postretirement Employment)

Permanent or probationary certificated employees who were laid off pursuant to Education Code 44955 and who have a preferred right of reappointment shall be given priority for substitute service in the order of their original employment. (Education Code 44956, 44957)

(cf. 4117.3 - Personnel Reduction)

Classification

At the time of initial employment and each July thereafter, the Board shall classify substitute and temporary employees as such. (Education Code 44915, 44916)

The Board may classify as substitute personnel a teacher hired to fill the position of a regularly employed person who is absent from service. (Education Code 44917)

To address the need for additional certificated employees when regular district employees are absent due to leaves or long-term illness, the Board may classify a teacher who is employed for at least one semester and up to one complete school year as a temporary employee. Any person whose service begins in the second semester and before March 15 may be classified as a temporary employee even if employed for less than a semester. The

TEMPORARY/SUBSTITUTE PERSONNEL (continued)

Board shall determine the number of persons who shall be so employed, which shall not exceed the identified need based on the absence of regular employees. (Education Code 44920)

The Board also shall classify as temporary employees those certificated persons, other than substitute employees, who are employed to:

1. Serve from day-to-day during the first three months of any school term to teach temporary classes which shall not exist after that time, or perform any other duties which do not last longer than the first three months of any school term (Education Code 44919)
2. Teach in special day and evening classes for adults or in schools of migratory population for not more than four months of any school term (Education Code 44919)

(cf. 6175 - Migrant Education Program)

(cf. 6200 - Adult Education)

3. Serve in a limited assignment supervising student athletic activities provided such assignments have first been made available to teachers presently employed in the district (Education Code 44919)

(cf. 4127/4227/4327 - Temporary Athletic Team Coaches)

4. Serve in a position for a period not to exceed 20 working days in order to prevent the stoppage of district business during an emergency when persons are not immediately available for probationary classification (Education Code 44919)

For purposes of classifying employees pursuant to item #1 or #2 above, the school year shall not be divided into more than two school terms. (Education Code 44919)

Any employee hired to provide services in a categorically funded program or project may be employed for a period less than a full school year. He/she may be classified as a temporary employee if the period of employment will end at the expiration of that program or project. (Education Code 44909)

Salary and Benefits

The Board shall adopt and make public a salary schedule setting the daily or pay period rate(s) for substitute employees for all categories or classes of certificated employees of the district. (Education Code 44977, 45030)

Temporary employees shall participate in the health and welfare plans or other fringe benefits of the district.

(cf. 4140/4240/4340 - Bargaining Units)

(cf. 4154/4254/4354 - Health and Welfare Benefits)

TEMPORARY/SUBSTITUTE PERSONNEL (continued)**Paid Sick Leave**

Any temporary or substitute employee who works for 30 or more days within a year of his/her employment shall be entitled to one hour of paid sick leave for every 30 hours worked. Such employee may begin to use accrued paid sick days on the 90th day of his/her employment, after which he/she may use the sick days as they are accrued. Accrued paid sick days shall carry over to the following year of employment, up to a maximum of 48 hours. (Labor Code 246)

A temporary or substitute employee may use accrued sick leave for absences due to: (Labor Code 246.5)

1. The diagnosis, care, or treatment of an existing health condition of, or preventive care for, the employee or his/her family member as defined in Labor Code 245.5
2. Need of the employee to obtain or seek any relief or medical attention specified in Labor Code 230(c) and 230.1(a) for the health, safety, or welfare of the employee, or his/her child, when the employee has been a victim of domestic violence, sexual assault, or stalking

(cf. 4161.1/4361.1 - Personal Illness/Injury Leave)

(cf. 4261.1 - Personal Illness/Injury Leave)

No employee shall be denied the right to use accrued sick days and the district shall not in any manner discriminate or retaliate against any employee for using or attempting to use sick leave, filing a complaint with the Labor Commissioner, or alleging district violation of Labor Code 245-249. The Superintendent or designee shall display a poster containing required information, provide notice to eligible employees of their sick leave rights, keep of records of employees' use of sick leave for three years, and comply with other requirements specified in Labor Code 245-249 and in AR 4161.1/4361.1 - Personal Illness/Injury Leave.

Release from Employment/Dismissal

The Board may dismiss a substitute employee at any time at its discretion. (Education Code 44953)

The Board may release a temporary employee at its discretion if the employee has served less than 75 percent of the number of days the regular schools of the district are maintained during one school year. After serving 75 percent of the number of days that district schools are maintained during one school year, a temporary employee may be released as long as he/she is notified, before the last day of June, of the district's decision not to reelect him/her for the following school year. (Education Code 37200, 44954)

(cf. 4112.9/4212.9/4312.9 - Employee Notifications)

TEMPORARY/SUBSTITUTE PERSONNEL (continued)**Reemployment as a Probationary Employee**

Unless released from employment pursuant to Education Code 44954, any person employed for one complete school year as a temporary employee shall, if reemployed for the following school year in a vacant position requiring certification qualifications, be classified as a probationary employee. With the exception of on-call, day-to-day substitutes, if a temporary or substitute employee performs the duties normally required of certificated employees for at least 75 percent of the number of days the regular schools of the district were maintained in that school year and is then employed as a probationary employee for the following school year, his/her previous employment as a temporary or substitute employee shall be credited as one year's employment as a probationary employee for purposes of acquiring permanent status. (Education Code 44917, 44918, 44920)

(cf. 4116 - Probationary/Permanent Status)

Vacant position means a position in which the employee is qualified to serve and which is not filled by a permanent or probationary employee. It shall not include a position which would be filled by a permanent or probationary employee except for the fact that such employee is on leave. (Education Code 44920, 44921)

A temporary employee hired pursuant to item #1 or #2 in the section "Classification" above shall be classified as a probationary employee if the duties continue beyond the time limits of the assignment. (Education Code 44919)

With the exception of on-call, day-to-day substitutes, any temporary or substitute employee who was released pursuant to Education Code 44954 but who has nevertheless served in a certificated position in the district for at least 75 percent of each of two consecutive school years shall receive first priority if the district fills a vacant position for the subsequent school year at the grade level at which the employee served during either year. In the case of a departmentalized program, the employee shall have taught the subject matter in which the vacant position occurs. (Education Code 44918)

*Legal Reference:*EDUCATION CODE

22455.5 Provision of retirement plan information to potential members

22515 Irrevocable election to join retirement plan

37200 School calendar

44252.5 State basic skills assessment required for certificated personnel

44300 Emergency teaching or specialist permits

44830 Employment of certificated persons; requirements of proficiency in basic skills

44839.5 Employment of retirant

44845 Date of employment

44846 Criteria for reemployment preferences

44909 Employees providing services through categorically funded programs

44914 Substitute and probationary employment computation for classification as permanent employee

44915 Classification of probationary employees

44916 Time of classification; statement of employment status

TEMPORARY/SUBSTITUTE PERSONNEL (continued)

- 44917 *Classification of substitute employees*
- 44918 *Substitute or temporary employee deemed probationary employee; reemployment rights*
- 44919 *Classification of temporary employees*
- 44920 *Employment of certain temporary employees; classifications*
- 44921 *Employment of temporary employees; reemployment rights (unified and high school districts)*
- 44953 *Dismissal of substitute employees*
- 44954 *Release of temporary employees*
- 44955 *Layoff of permanent and probationary employees*
- 44956 *Rights of laid-off permanent employees to substitute positions*
- 44957 *Rights of laid-off probationary employees to substitute positions*
- 44977 *Salary schedule for substitute employees*
- 45030 *Substitutes*
- 45041 *Computation of salary*
- 45042 *Alternative method of computation for less than one school year*
- 45043 *Compensation for employment beginning in the second semester*
- 56060-56063 *Substitute teachers in special education*

GOVERNMENT CODE

- 3540.1 *Educational Employment Relations Act, definitions*

LABOR CODE

- 220 *Sections inapplicable to public employees*
- 230 *Jury duty; legal actions by domestic violence, sexual assault and stalking victims, right to time off*
- 230.1 *Employers with 25 or more employees; domestic violence, sexual assault and stalking victims, right to time off*
- 233 *Illness of child, parent, spouse or domestic partner*
- 234 *Absence control policy*
- 245-249 *Healthy Workplaces, Healthy Families Act of 2014*

CODE OF REGULATIONS, TITLE 5

- 5502 *Filing of notice of physical examination for employment of retired person*
- 5503 *Physical examination for employment of retired persons*
- 5590 *Temporary athletic team coach*
- 80025-80025.5 *Emergency substitute teaching permits*

COURT DECISIONS

- McIntyre v. Sonoma Valley Unified School District (2012) 206 Cal.App.4th 170*
- Stockton Teachers Association CTA/NEA v. Stockton Unified School District (2012) 204 Cal.App.4th 446*
- Neily v. Manhattan Beach Unified School District, (2011) 192 Cal.App.4th 187*
- California Teachers Association v. Vallejo City Unified School District, (2007) 149 Cal.App.4th 135*
- Bakersfield Elementary Teachers Assn. v. Bakersfield City School District, (2006) 145 Cal.App.4th 1260, 1277*
- Kavanaugh v. West Sonoma Union High School District, (2003) 29 Cal.4th 911*

Management Resources:

WEB SITES

- CSBA: <http://www.csba.org>
- Commission on Teacher Credentialing: <http://www.ctc.ca.gov>
(7/12) 12/14

Policy

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JEFFERSON SCHOOL DISTRICT

Tracy, California