

**PERSONNEL REDUCTION**

The Board of Trustees may reduce the number of probationary and permanent certificated employees when, in the opinion of the Board, one or more of the following conditions makes such reduction necessary:

1. Average daily attendance (ADA) in all of the schools in the district during the first six months of the school year has declined below the level for the same period in either of the previous two school years. (Education Code 44955)
2. A particular kind of service is to be reduced or discontinued not later than the beginning of the following school year. (Education Code 44955)
3. Attendance in the district will decline in the following year as a result of the termination of an interdistrict tuition agreement. (Education Code 44955)
4. An amendment of state law requires modification of the curriculum. (Education Code 44955)
5. During the time period between five days after the enactment of the Budget Act and August 15 of that fiscal year, the Board determines that the district's total revenue limit per ADA for the fiscal year of that Budget Act has not increased by at least two percent. (Education Code 44955.5)

**Seniority**

When it is necessary to reduce the number of certificated employees for any of the reasons listed above, the services of employees shall be terminated in the inverse of the order in which they were employed by the district in probationary status, except as otherwise authorized by law. (Education Code 44844, 44955)

The Superintendent or designee shall maintain the seniority list for this purpose and shall make it available upon request.

Unless otherwise provided by law, a permanent employee shall have the right to be retained over a probationary employee or any employee with less seniority if the position is one for which he/she is certificated and competent to render a service. (Education Code 44955)

*(cf. 4112.2 - Certification)*

*(cf. 4112.22 - Staff Teaching English Language Learners)*

*(cf. 4112.23 - Special Education Staff)*

*(cf. 4112.24 - Teacher Qualifications Under the No Child Left Behind Act)*

*(cf. 4113 - Assignment)*

*(cf. 4116 - Probationary/Permanent Status)*

**PERSONNEL REDUCTION** (continued)

To determine the order of termination between employees who first rendered paid service on the same date, the Board shall rank order those employees solely on the basis of the needs of the district and students. Upon the request of any employee whose order of termination is to be determined based on such ranking, the Board shall furnish the employee, no later than five days prior to the commencement of the administrative hearing on the layoff, a written statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking the employee relative to the other employees in the group. (Education Code 44955)

The district may deviate from terminating certificated employees in order of seniority for either of the following reasons: (Education Code 44955, 44956)

1. To fill a demonstrated specific need for personnel to teach a specific course or courses of study, or to provide services authorized by a services credential with a specialization in either student personnel services or health for a school nurse, when the certificated employee has the necessary special training and experience which others with more seniority do not possess
2. To maintain or achieve compliance with constitutional requirements related to equal protection of the law

**Notice and Hearing Rights**

When it becomes necessary to reduce the number of permanent and/or probationary employees pursuant to Education Code 44955 as specified in items #1-4 above, the district shall give notice to the affected employees stating the reasons for the action and the employees' right to a hearing, no later than March 15. The district shall adhere to the notice, hearing, and layoff procedures in Education Code 44949 and 44955 and other applicable provisions of law.

*(cf. 4112.9/4212.9/4312.9 – Employee Notification)*

When an employee has requested a hearing before an administrative law judge regarding the reduction or discontinuation of services, the Board shall make a final decision regarding the sufficiency of the cause and disposition of the layoff upon receipt of the administrative law judge's proposed decision. None of the findings, recommendations, or determinations of the administrative law judge shall be binding on the Board. (Education Code 44949)

The Board may conduct its own hearing, adopt the administrative law judge's proposed decision, refer the case back to the administrative law judge for additional evidence, or reject or modify the proposed decision and make its own determination based upon its review of the record.

## **PERSONNEL REDUCTION** (continued)

Following the Board's decision, the Superintendent or designee shall give final notice, in the manner specified, to the affected employees before May 15 unless the parties agree otherwise in accordance with procedures required by law. (Education Code 44955)

When layoffs become necessary pursuant to Education Code 44955.5 as specified in item #5 above, layoff proceedings shall be carried out as required by law but in accordance with a schedule of notice and hearing adopted by the Board. (Education Code 44955.5)

### **Reappointment**

If the number of employees is increased or the discontinued service reestablished, permanent certificated employees shall have the right to reappointment, in order of seniority for 39 months, the date of termination. Probationary certificated employees shall have the same right for 24 months after being terminated, subject to the prior reappointment rights of permanent employees. (Education Code 44846, 44956, 44957)

During the period of the preferred right to reappointment, permanent certificated employees shall, in the order of original employment, be offered first opportunity for substitute service during the absence of any employee who has been granted a leave of absence or who is temporarily absent from duty. Such substitute service may be terminated upon the return to duty of the other employee. Such substitute service shall not affect the retention of the employees' previous classification and rights. Probationary certificated employees shall have the same right to substitute service during the period of preferred right to reappointment to the extent required by law, subject to the rights of permanent certificated employees. (Education Code 44918, 44956, 44957)

*(cf. 4121 - Temporary/Substitute Employees)*

Before reappointing any certificated employee to teach a subject which he/she has not previously taught and for which he/she does not have a teaching credential or which is not within the employee's major area of postsecondary study, the Board shall require the employee to pass a subject matter competency test in the appropriate subject. (Education Code 44956)

Reappointed certificated employees shall not be subject to any requirements that were not imposed on employees who continued in service. Their period of absence shall be treated as a leave of absence and not considered a break in the continuity of their service. (Education Code 44956, 44957)

*Legal Reference: (see next page)*

**PERSONNEL REDUCTION** (continued)

*Legal Reference:*

EDUCATION CODE

44830 *Employment of certificated persons*

44949 *Dismissal of probationary employees*

44955 *Reduction in number of permanent employees*

44955.5 *Termination of certificated employees*

44956-44959.5 *Rights of employees*

GOVERNMENT CODE

3543.2 *Scope of representation*

UNEMPLOYMENT INSURANCE CODE

1089 *Notification of unemployment insurance benefits*

CODE OF REGULATIONS, TITLE 22

1089-1 *Notification of unemployment insurance benefits*

COURT DECISIONS

*Vergara v. State of California*, (2014) Superior Court State of California, County of Los Angeles, Case. No. BC 484642

*California Teachers Association v. Vallejo City Unified School District*, (2007) 149 Cal.App.4th 135

*Bakersfield Elementary Teachers Association v. Bakersfield City School District*, (2006) 145 Cal.App.4th 1260

*Cousins v. Weaverville Elementary School District*, (1994) 24 Cal.App.4th 1846

*Forker v. Board of Trustees*, (1984) 160 Cal.App.3d 13

*Moreland Teachers Assoc. v. Kurze*, (1980) 109 Cal.App.3d 648

*King v. Berkeley Unified School District*, (1979) 89 Cal.App.3d 1016

*Management Resources:*

WEB SITES

CSBA: <http://www.csba.org>