

## 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.

### 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.

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

In addition, after September 1 of any school year, the Governing 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)

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 44957)

### CLASSIFICATION

At the time of initial employment and each July thereafter, the Board shall classify substitute and temporary employees as such.

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

The Board may classify as a temporary employee a teacher who is employed at least one semester and up to one complete school year. 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 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 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 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)
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)

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)
5. Serve only for the first semester because the district expects a reduction in student enrollment during the second semester due to midyear graduations (Education Code 44921)

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)

OPTION 1: Substitute and temporary employees shall participate in the health and welfare plans or other fringe benefits of the district.

OPTION 2: Substitute and temporary employees shall not participate in the health and welfare plans or other fringe benefits of the district.

### **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. 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)

### **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)

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)

A person employed pursuant to item #5 in the section "Classification" above who is then continued in employment beyond the first semester shall be classified as a probationary employee for the entire school year and shall be reemployed to fill any vacant positions in the district for which he/she is certified. Preference for available positions shall be determined by the Board as prescribed by Education Code 44845 and 44846. (Education Code 44921)

With the exception of on-call, day-to-day substitutes, a temporary or substitute employee who was released pursuant to Education Code 44954 but who has nevertheless served for two consecutive school years, for at least 75 percent of each year, 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  
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

**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****WEBSITES**

CSBA: <http://www.csba.org>  
Commission on Teacher Credentialing: <http://www.ctc.ca.gov>