

# *San Diego Education Association*



## *FAQ Handbook for Probationary & Temporary Teachers*

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# Probationary and Temporary Teachers and the Law

## *1. As a probationary teacher, can I be dismissed at any time?*

### MID-YEAR DISMISSAL OF PROBATIONARY IN DISTRICTS OF 250

#### ADA (Average Daily Attendance) OR MORE

- First and second-year probationary employees may be dismissed during the school year for unsatisfactory performance determined by evaluation and assessment guidelines in sections 44460-44465 or for cause pursuant to section 44932 (grounds for dismissal of permanent employees). **First year probationary teachers can be non-re-elected without cause at the end of the school year.** In the case of second-year probationary employees, the superintendent shall give 30 days written notice, not later than March 15. The notice is to contain a statement of reasons for dismissal and notice of the opportunity to appeal. In a dismissal for unsatisfactory performance, a copy of the evaluation pursuant to section 44664 shall be included.
- The employee has 15 days to request a hearing. Failure to request a hearing in 15 days waives the right to a hearing. **Upon receiving Notice of Dismissal, unit members should contact SDEA immediately.** The board may arrange an administrative law judge to conduct the hearing and prepare a recommended decision, but the board makes the final decision. (49948.3)

## *2. What is a non-renewal notice, and when can one be issued?*

### NON-RENEWAL OF PROBATIONARY EMPLOYEES IN DISTRICTS OF 250 ADA OR MORE

- If you receive a non-renewal notice, this means that your contract will not be renewed the following year.
- First year probationary teachers may be given notice of non-renewal effective at the end of the school year at any time without any statement of reasons or hearing. Second year probationary teachers in districts of 250 ADA or more may be given notice of non-renewal effective at the end of the school year at any time before March 15 of the second year without any statement of reasons or hearing. (California Education Code 44929.21)

### ***3. Can I resign at any time?***

#### **RESIGNATION**

- Governing boards shall accept the resignation of any employee and fix the time when it takes effect. This date shall not be later than the end of the school year during which the resignation was received. A resignation may be requested but not required. It does not become effective until it has been formally accepted by the board, unless the board has delegated the power to accept resignations to the superintendent. (44930)
- **REMEMBER, YOU SIGNED A CONTRACT!!!** A teacher who without good cause fails to fulfill an employment contract or resigns without the consent of the superintendent **may have his or her credential(s) suspended for up to one year pursuant to Education Section 44420.** The Commission on Teacher Credentialing regulations provide that: “good cause includes, but is not necessarily limited to, circumstances not caused by or under the voluntary control of the certificated person.”
- The Education Code permits school districts to send letters to certificated employees no later than May 30<sup>th</sup> requesting notification to the district of intent to remain or not to remain in the employ of the district for the next school year. An employee who has notified the district of his or her intent to return to work would be deemed to have entered into a contract of employment for the upcoming school year. (44420)
- Remember, the district does not permit current employees from having simultaneous contracts with other districts.

### ***4. If I’m transferring school districts, can I take my accumulated sick leave with me?***

#### **TRANSFER OF ACCUMULATED BENEFITS**

- A teacher is entitled to transfer accumulated leave of absence for illness or injury upon change of employment from one district to another. It is the teacher’s responsibility to notify the new district in writing of the name and address of the district of last employment so that necessary documents may be completed to accomplish the transfer. (44979)
- Any certificated person employed by a school district or by a county superintendent of schools shall transfer accumulated sick leave upon acceptance of employment in an academic position with the Department of Education or the Chancellor’s Office of the California Community colleges, if such position is or will become permanent. The amount of accumulated sick leave, which may be transferred, is limited to that amount which would have been earned in the system to which the employee is transferring. (44982)

## ***5. Can I view my personnel files?***

### **PERSONNEL FILES**

- Materials in personnel files that may serve as a basis for affecting employment status must be made available for inspection by the employee involved. Materials not accessible for inspection include reports and records obtained by the district before the person's employment, materials prepared by identifiable examination committee members, or materials obtained in connection with a promotional examination. Information of a derogatory nature, except that mentioned above, shall not be entered or filed in a personnel file unless and until the employee is given notice concerning such and an opportunity to review and comment thereon. An employee has the right to comment in writing on the derogatory materials, and such comments shall take place during the normal teaching day and the employee shall be released from duty for this purpose without loss or reduction of salary. (44031)
- A district may not avoid the requires of section 44031 by maintaining a separate file for certain documents relating to an employee, segregated elsewhere under a different label and including materials affecting employment status, nor may the district simply neglect to file such materials. (Miller v. Chico Unified School District (1979) 24 Cal.3d704, 157 Cal.Rptr.72)

## ***6. What is the difference between a temporary employee and a probationary employee?***

- Probationary teachers are continuing employees until given proper notice by the district.
- A temporary employee works for the district until the end date listed on his/her contract.

## ***7. I'm a temporary teacher. What does that mean?***

### **TEMPORARY TEACHERS**

- A teacher may be classified as temporary only if the temporary classification is authorized by statute. If the classification is not authorized, the teacher must be classified as probationary.
- *The Education Code authorizes teachers to be classified as temporary only in the following circumstances:*
  - a. Teacher is initially hired to teach and teaches in a categorically-funded project which is not required by federal or state statute and terms and

conditions of employment are mutually agreed upon by the teacher and governing board and reduced to writing; or,

- b. Teacher is replacing a teacher who was transferred from the regular program to a categorically-funded project that is not required by federal or state statute; or,
  - c. Teacher is hired for one semester or more, or teacher is hired before March 15 to teach in the second semester only, to replace another teacher who is on leave of absence (replacement temporary employee need not serve in the exact position vacated by the employee on leave as long as the total number of persons employed as replacement temporary teachers does not exceed the total number of regular teachers on leave (44920)); or,
  - d. Teacher is hired to serve day-to-day during the first three months of any school semester to teach classes or perform other duties lasting three months or less (44919); or,
  - e. Teacher is hired to teach special day and evening classes for adults or in schools of migratory population for not more than four months of an school semester (44919); or,
  - f. Teacher is hired for no more than 20 working days in emergency period when no persons are available for probationary classification (44919); or,
  - g. Teacher is hired for first semester only where district expects student decline in second semester due to mid-year graduations (44921).
- When initially hired and upon each later rehire, a temporary teacher has a right to be given a written statement clearly indicating the temporary nature of the employment and the length of time for which the teacher is being employed. If such notification is not provided, he/she has a right to be deemed a probationary employee of the school district (44916).

### ***8. I'm a temporary teacher. Will I be re-employed next year?***

#### **REEMPLOYMENT RIGHTS OF TEMPORARY TEACHERS**

- A temporary contract has a start date and an end date after which, you are no longer an employee of the district. Re-employment for the following year is at the discretion of the District.
- If a temporary teacher is notified of release in the last 25% of the school year and "has nevertheless been retained" as a temporary employee for two consecutive years and has served 75% of each of those years, that employee shall receive "first priority" if the district fills a vacant position in the same

grade level and, if departmentalized, same subject area that the employee has taught during either of those two years.

***9. As a temporary teacher, will I gain any seniority credit for the year I've worked?***

**SERVICE ENTITLED TO PROBATIONARY CREDIT**

- Temporary teachers who have served for more than 75% of the school year and who are *hired without a break in service* in probationary positions must receive retroactive credit for one year's service as a probationary employee. (44918) Service as a day-to-day substitute does not qualify for this credit. However, a teacher who actually functions as a long term substitute will receive the credit even if the district has inaccurately classified the assignment as "day-to-day". Eureka Teachers Association v Board of Education of the Eureka Schools (1988) 201 Cal.App.3d 550, 247 Cal.Rptr. 790

Unless otherwise noted, numbers in parentheses are California Education Code numbers.