

CSBA Sample

Board Policy

Personnel Reduction

BP 4117.3

Personnel

***Note: Education Code 44955 and 44955.5 detail the circumstances under which a district may lay off certificated employees for lack of funds, as specified in the following optional policy. Collective bargaining agreements also should be reviewed to determine whether any provisions are applicable to the layoff. Government Code 3543.2 provides that, upon request by either the district or certificated employee bargaining unit, the parties must meet and negotiate procedures and criteria for the layoff of certificated employees for lack of funds. If mutual agreement is not reached, then the provisions of Education Code 44955 will apply. ***

***Note: Pursuant to Education Code 44929.21 and 44929.23, a district can choose to not re-elect a probationary employee without cause and without a hearing; see AR 4117.6 - Decision Not to Rehire. The decision to not re-elect a probationary certificated employee for no cause is distinguishable from the causes that must be established to lay off a certificated employee. ***

***Note: Because of the complexity of related Education Code provisions, it is strongly recommended that school districts consult with legal counsel before instituting layoff proceedings for any reason. ***

The Governing Board may reduce the number of probationary and permanent certificated employees when, in its opinion, any 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)

***Note: Layoffs may also be made by reducing or eliminating "particular kinds of service" (PKS). Examples of PKS that may be reduced or eliminated include specific curricular offerings, class size reduction, or nonteaching services. ***

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)

Determination of the Order of Layoffs

***Note: In Vergara v. State of California, a California superior court found Education Code 44955 unconstitutional. Education Code 44955 requires that certificated employees with less seniority be laid off before certificated employees with more seniority. However, this decision has been stayed until appeals can be settled. Thus, until further action is taken, Education Code 44955 remains in effect. ***

***Note: Pursuant to Education Code 44844, an employee's employment date is considered to be the date he/she first rendered paid service in a probationary position. However, determination of employees' seniority, the order of layoff, and the permissibility of certain exceptions to the order of layoff are complex and require consideration of multiple factors. The district should consult legal counsel in making decisions related to establishing the order of layoff. ***

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.

***Note: Education Code 44955 grants a permanent employee the right to be retained over a probationary employee or other employee with less seniority if the position is one for which he/she is certificated and competent to render service. However, an employee must pass a subject matter competency test before he/she is assigned to teach a subject which he/she has not previously taught, if he/she does not have a teaching credential or major area of postsecondary study, or the equivalent, in that subject. ***

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 service. (Education Code 44955)

(cf. 4112.2 - Certification)
(cf. 4112.22 - Staff Teaching English Learners)
(cf. 4112.23 - Special Education Staff)
(cf. 4113 - Assignment)
(cf. 4116 - Probationary/Permanent Status)

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 an 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

***Note: In California Teachers Association v. Vallejo City Unified School District, the court found that state law expressly provides layoff rights to permanent and probationary employees but makes no further distinction based on the status of an employee's credential. According to the court, "provisional" is not a recognized classification for the purpose of determining an employee's status and rights during a layoff. Thus, unless classified as a substitute or temporary employee in accordance with law, an employee with provisional certification (e.g., intern credential, emergency credential, short-term staff permit, provisional internship permit) would by default be classified as probationary pursuant to Education Code 44915 and would be entitled to layoff rights, including notice and hearing rights, applicable to probationary employees. ***

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, no later than March 15, stating the reasons for the action and the employees' right to a hearing. The district shall adhere to the notice, hearing, and layoff procedures in Education Code 44949, 44955, and other applicable provisions of law.

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

***Note: Education Code 44949 allows employees given notice of a layoff to request a hearing before an administrative law judge. On or before May 7, the administrative law judge must submit the proposed decision, containing a determination as to the sufficiency of the cause and a recommendation as to disposition regarding the layoff, to the Board for consideration and to affected employees. ***

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.

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 from 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)

***Note: Education Code 44956 and 44957 grant priority for substitute service to employees who have been laid off pursuant to Education Code 44955, during the period of preferred right to reappointment, as provided below and in BP 4121 - Temporary/Substitute Personnel. Education Code 44957 gives permanent employees first priority for substitute service over probationary employees. However, Education Code 44918 and 44957 give probationary employees laid off pursuant to Education Code 44955 first rights to any vacant position in which they are qualified to serve over other employees whose right to a substitute position is derived from Education Code 44918 (i.e., substitute or temporary employees who become probationary employees after serving for at least 75 percent of the school days in a school year). ***

***Note: If such a laid-off employee serves as a substitute in any position requiring certification for 21 days or more within a period of 60 school days during any school year, the compensation he/she receives during that 60-day period, including the first 20 days of substitute service, must not be less than he/she would receive if he/she were being reappointed. ***

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:

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>

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