

Policy 4121: Temporary/Substitute Personnel

Status: DRAFT

Original Adopted Date: 09/18/2019

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, ~~on or after the first day of instruction~~ **September 1** of any school year, the Board may employ substitute personnel for the remainder of the school year ~~for~~ in 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 44956, 44957)

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)

~~The Board may classify as a temporary employee a teacher who is employed for at least one semester and up to one complete school year based on~~

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 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~~ **Additionally, 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)
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~~**mid-year** graduations (Education Code 44921)

For purposes of classifying employees pursuant to ~~item~~**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~~**An employee** 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 Substitute employees shall not participate in the health and welfare plans or other fringe benefits of the district.

Paid Sick Leave

Except for a retired annuitant who is not reinstated to the retirement system, any temporary or substitute employee who works for 30 or more days within a year of employment shall accrue, on a regular basis, paid sick leave of up to 24 hours by the 120th calendar day of employment or each calendar year or 12-month period, and at least 40 hours of accrued sick leave by the 200th calendar day of employment, each calendar year, or 12-month period. Accrued paid sick days shall carry over to the following year of employment, up to a maximum of 80 hours or ten days. However, the district may limit an employee's use of accrued paid sick days to 40 hours or five days in each year of employment. (Labor Code 246)

Any temporary or substitute employee may begin to use accrued paid sick days on the 90th day of employment, after which the employee may use the sick days as they are accrued. (Labor Code 246)

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

1. **The employee's own need or the need of a family member, as defined in Labor Code 245.5, for the diagnosis, care, or treatment of an existing health condition or for preventive care**
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 the employee's child, when the employee has been a victim of domestic violence, sexual assault, or stalking**

No employee shall be denied the right to use accrued sick days and the district shall not in any manner discriminate or retaliate against an 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 records of employees' use of sick leave for three years, and comply with other requirements specified in Labor Code 245-249 and in Administrative Regulation 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~~**the employee** is notified, before the last day of June, of the district's decision not to reelect ~~him/her~~**the temporary employee** for the following school year. (Education Code 37200, 44954)

Reemployment as a Probationary Employee

Reemployment provisions contained in Education Code 44918 do not apply to districts with average daily attendance of over 250,000; such districts should modify the following section accordingly.

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~~**the employee's** 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~~**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~~**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~~**position** in the district for which he/~~she~~**the employee** 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, ~~any~~ temporary or substitute employee who was released pursuant to Education Code 44954 but who has nevertheless served ~~for two consecutive school years, in a~~ **certificated position in the district** for at least 75 percent of each year, ~~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)

Policy Reference Disclaimer: These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State References

Description

5 CCR 5502	Filing of notice of physical examination for employment of retired person
5 CCR 5503	Physical examination for employment of retired persons
5 CCR 5590	Temporary athletic team coach
5 CCR 80025-80025.5	Emergency substitute teaching permits
Ed. Code 22455.5	STRS information to potential members
Ed. Code 22515	Irrevocable election to join retirement plan
Ed. Code 37200	School calendar
Ed. Code 44252.5	State basic skills assessment required for certificated personnel
Ed. Code 44300	Emergency permits
Ed. Code 44830	Employment of certificated persons
Ed. Code 44839.5	Requirements for employment of retiree
Ed. Code 44845	Date of employment
Ed. Code 44846	Criteria for reemployment preferences
Ed. Code 44909	Employees providing services through categorically funded programs
Ed. Code 44914	Substitute and probationary employment computation for classification as permanent employee
Ed. Code 44915	Classification of probationary employees
Ed. Code 44916	Written statement of employment status

State References

Ed. Code 44917	Classification of substitute employees
Ed. Code 44918	Substitute or temporary employee deemed probationary employee; reemployment rights
Ed. Code 44919	Classification of temporary employees; classifications
Ed. Code 44920	Employment of certain temporary employees; classifications
Ed. Code 44921	Employment of temporary employees; reemployment rights (unified and high school districts)
Ed. Code 44953	Dismissal of substitute employees
Ed. Code 44954	Nonreelection of temporary employees
Ed. Code 44955	Reduction in number of permanent employees
Ed. Code 44956	Rights of laid-off permanent employees to substitute positions
Ed. Code 44957	Rights of laid-off probationary employees to substitute positions
Ed. Code 44977	Salary schedule for substitute employees
Ed. Code 45030	Substitutes
Ed. Code 45041	Computation of salary
Ed. Code 45042	Alternative method of computation for less than one school year
Ed. Code 45043	Compensation for employment beginning in the second semester
Ed. Code 56060-56063	Substitute teachers in special education
Gov. Code 3540.1	Public employment; definitions
Lab. Code 220	Sections inapplicable to public employees
Lab. Code 230	Accommodations and leave for victims of domestic violence
Lab. Code 230.1	Employers with 25 or more employees; domestic violence, sexual assault, and stalking victims; right to time off
Lab. Code 233	Leave to attend to family illness
Lab. Code 234	Absence control policy
Lab. Code 245-249	Healthy Workplaces, Healthy Families Act of 2014

Management Resources References

	Description
Court Decision	Kavanaugh v. West Sonoma Union High School District (2003) 29 Cal.4th 911
Court Decision	McIntyre v. Sonoma Valley Unified School District (2012) 206 Cal.App.4th 170
Court Decision	Neily v. Manhattan Beach Unified School District (2011) 192 Cal.App.4th 187
Court Decision	Stockton Teachers Association CTA/NEA v. Stockton Unified School District (2012) 204 Cal.App.4th 446
Court Decision	Bakersfield Elementary Teachers Association v. Bakersfield City School District (2006) 145 Cal.App.4th 1260
Court Decision	California Teachers Association v. Vallejo City Unified School District (2007) 149 Cal.App.4th 135
Website	CSBA District and County Office of Education Legal Services
Website	Commission on Teacher Credentialing
Website	CSBA

Cross References**Description**

0500	Accountability
4111.2	Legal Status Requirement
4111.2	Legal Status Requirement
4112	Appointment And Conditions Of Employment
4112.1	Contracts
4112.2	Certification
4112.2	Certification
4112.3	Oath Or Affirmation
4112.3-E PDF(1)	Oath Or Affirmation
4112.4	Health Examinations
4112.5	Criminal Record Check
4112.5-E(1)	Criminal Record Check
4112.9	Employee Notifications
4112.9-E(1)	Employee Notifications
4113	Assignment
4113	Assignment
4116	Probationary/Permanent Status
4116	Probationary/Permanent Status
4117.14	Postretirement Employment
4117.3	Personnel Reduction
4127	Temporary Athletic Team Coaches
4127	Temporary Athletic Team Coaches
4140	Bargaining Units
4141.6	Concerted Action/Work Stoppage
4141.6	Concerted Action/Work Stoppage
4151	Employee Compensation
4154	Health And Welfare Benefits
4154	Health And Welfare Benefits
4161.1	Personal Illness/Injury Leave
4161.2	Personal Leaves
4211.2	Legal Status Requirement
4212.3-E PDF(1)	Oath Or Affirmation
4212.4	Health Examinations
4212.5	Criminal Record Check
4212.5-E(1)	Criminal Record Check
4212.9	Employee Notifications
4212.9-E(1)	Employee Notifications
4217.3	Layoff/Rehire
4227	Temporary Athletic Team Coaches
4227	Temporary Athletic Team Coaches

Cross References**Description**

4240	Bargaining Units
4241.6	Concerted Action/Work Stoppage
4241.6	Concerted Action/Work Stoppage
4251	Employee Compensation
4254	Health And Welfare Benefits
4254	Health And Welfare Benefits
4261.2	Personal Leaves
4311.2	Legal Status Requirement
4312.3-E PDF(1)	Oath Or Affirmation
4312.4	Health Examinations
4312.5	Criminal Record Check
4312.5-E(1)	Criminal Record Check
4312.9	Employee Notifications
4312.9-E(1)	Employee Notifications
4317.14	Postretirement Employment
4327	Temporary Athletic Team Coaches
4327	Temporary Athletic Team Coaches
4340	Bargaining Units
4351	Employee Compensation
4354	Health And Welfare Benefits
4354	Health And Welfare Benefits
4361.1	Personal Illness/Injury Leave
4361.2	Personal Leaves
5141.52	Suicide Prevention
5141.52	Suicide Prevention
6175	Migrant Education Program
6175	Migrant Education Program
6200	Adult Education
6200	Adult Education