

**Regulation 4217.3: Layoff/Rehire**

Status: DRAFT

| Last Revised Date: 02/15/2022

Classified employees shall be subject to layoff for lack of work or lack of funds. (Education Code 45114, 45308)

A classified employee shall not be laid off if a short-term employee is retained to render a service that the classified employee is qualified to render. (Education Code 45117)

**Order of Layoff Within a Classification/Determination of Seniority**

Within each class, the order of layoff shall be determined by length of service. (Education Code 45114, 45308)

**Length of service shall be determined by the date of hire. The employee who has been employed the shortest time in the class, plus higher classes, by the district shall be laid off first. (Education Code 45308)**

For an employee in a "restricted position" under Education Code 45105 or 45259, the original date of employment in the restricted position shall be used to determine the length of service, provided the employee has completed six months of satisfactory service and has successfully passed the qualifying examination required for service in the class. (Education Code 45105)

**Notice of Layoff and Hearing Rights**

Whenever a permanent classified employee is to be laid off for lack of work or lack of funds, the Superintendent or designee shall, no later than March 15 and before the employee is given formal notice by the Governing Board, give to the employee written notice of the recommendation, the reasons that the employee's services will not be required for the ensuing year, any displacement rights, reemployment rights, and the employee's right to a hearing. The district shall adhere to the notice, hearing, and layoff procedures in Education Code 45117, Government Code 11503 and 11505, and other applicable provisions of law. (Education Code 45117)

An employee who is so notified may request a hearing to determine if there is cause for not reemploying the employee for the ensuing year. The request shall be in writing and shall be delivered to the person who sent notice to the employee, on or before March 15 but not less than seven days after the date the notice is served on the employee. Failure of an employee to request a hearing on or before the date specified shall constitute a waiver of the employee's right to a hearing. (Education Code 45117)

The Superintendent or designee shall serve an employee who timely requests a hearing with the District Statement of Reduction in Force documents. The employee has five calendar days from service of the District Statement of Reduction in Force documents to timely file a notice of participation with the district. The parties are entitled to discovery, if requested, within 15 days of service of the District Statement of Reduction in Force documents. (Education Code 45117)

If a hearing is requested by a permanent classified employee, the proceeding shall be conducted and a decision made by an administrative law judge in accordance with Government Code 11500-11529. **At the hearing, the employee may be represented by an attorney or by a nonattorney representative of the employee organization designated as the exclusive representative for classified employees.** 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 in the proposed decision prepared by the administrative law judge shall be binding on the Board. (Education Code 45117)

Following the Board's decision, the Superintendent or designee shall give final notice of termination to the affected employee(s) before May 15 unless a continuance was granted after a request for hearing was made, in which case such date may be extended by the number of days of the continuance. (Education Code 45117)

If during the time between five days after the enactment of an annual Budget Act and August 15 of the fiscal year to which the Budget Act applies, the Board determines that the district's local control funding formula apportionment per unit of ADA for that fiscal year has not increased by at least two percent, and that it is therefore necessary to decrease the number of classified employees due to lack of work or lack of funds, the Board may issue a District Statement of Reduction in Force to those employees in accordance with a schedule of notice and hearing adopted by the Board, and layoff proceedings shall be carried out as required by law. (Education Code 45117)

When classified positions are eliminated as a result of the expiration of a specifically funded program, the district shall give written notice to the affected employee(s) not less than 60 days prior to the effective date of the layoff informing the employee(s) of the layoff date, any displacement rights, and employment rights. (Education Code 45117)

The district is not required to provide a layoff notice to any person hired as a short-term employee for a period not exceeding 60 days whose service may not be extended or renewed. (Education Code 45117)

Additionally, the district may release probationary classified employees without notice or hearing for reasons other than lack of work or lack of funds. (Education Code 45117)

### **Reemployment**

Classified employees laid off because of lack of work or lack of funds shall be eligible for reemployment for a period of 39 months and shall be reemployed in preference to new applicants. Reemployment shall be in order of seniority. Persons so laid off also have the right to apply and establish their qualification for vacant promotional positions within the district during the 39-month period. (Education Code 45114, 45298, 45308)

When a vacancy occurs, the district shall give the employee with the most seniority an opportunity to accept or reject the position, by first calling the employee at the employee's last known telephone number to notify the employee of the vacancy and then sending written notice by certified and standard mail to the employee's last known address. The employee shall advise the district of the decision by any means no later than 10 calendar days from the date the notice was sent. If the employee accepts, the employee shall report to work no later than two calendar weeks from the vacancy notification date or on a later date specified by the district.

In order to be reemployed, the employee must be capable of performing the essential duties of the job with or without reasonable accommodations. When an otherwise eligible employee is unable to perform the essential duties of the job, the employee shall be kept on the reemployment list until another opportunity becomes available or the period of reemployment eligibility expires, whichever occurs first.

Upon rejecting two offers of reemployment, the employee's name shall be removed from the reemployment list and the employee will forfeit all reemployment rights to which the employee would otherwise be entitled.

When an employee is notified of a vacancy and fails to respond or report to work within time limits specified by district procedures, the employee's name shall be removed from the reemployment list and all reemployment rights to which the employee would otherwise be entitled shall be forfeited.

If an employee is reemployed in a new position and fails to complete the probationary period in the new position, the employee shall be returned to the reemployment list for the remainder of the 39-month period. The remaining time period shall be calculated as the time remaining in the 39-month period as of the date of reemployment. (Education Code 45114, 45298)

### **Reinstatement of Benefits**

When a laid-off employee is reemployed, all accumulated sick leave credit shall be restored.

A laid-off permanent employee shall be reemployed with all rights and benefits accorded at the time of layoff.

A laid-off probationary employee shall be reemployed as a probationary employee, and the previous time served toward the completion of the required probationary period shall be counted. The employee shall also be reemployed with all rights and benefits accorded to a probationary employee at the time of layoff.

A laid-off employee, when reemployed, shall be placed on the salary step held at the time of layoff. An employee who was bumped into a lower class shall, when reinstated to the previous class, be placed on the salary step to which the employee would have progressed had the employee remained there. An adjusted anniversary date shall be established for step increment purposes so as to reflect the actual amount of time served in the district.

### **Voluntary Demotion or Reduction of Hours**

Classified employees who take a voluntary demotion or voluntary reduction in assigned time in lieu of layoff, or in order to remain in their present position rather than be reclassified or reassigned, shall be granted the same rights as

employees who are laid off. In addition, such employees shall retain eligibility to be considered for reemployment in their previously held class or position with increased assigned time, for an additional period of time up to 24 months as determined by the Board on a class-by-class basis, provided that the same test of fitness under which they qualified for appointment to that class shall still apply. (Education Code 45114, 45298)

Employees who take voluntary demotion or voluntary reduction in assigned time in lieu of layoff shall have the option of returning to a position in their former class or to positions with increased assigned time as vacancies become available and without limitation of time. If there is a valid reemployment list, they shall be ranked on that list in accordance with their proper seniority. (Education Code 45114, 45298)

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**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**

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|-----------------------|---|
| Ed. Code 45101        | Definitions; disciplinary action and cause -<br><a href="https://simbli.eboardsolutions.com/SU/hgmslshSjgUkul81naAtyEIQ==">https://simbli.eboardsolutions.com/SU/hgmslshSjgUkul81naAtyEIQ==</a>   |
| Ed. Code 45103        | Classified service in districts not incorporating the merit system -<br><a href="https://simbli.eboardsolutions.com/SU/NJ3x1mSOGslshplusdAG7Mgplus0dplusw==">https://simbli.eboardsolutions.com/SU/NJ3x1mSOGslshplusdAG7Mgplus0dplusw==</a> |
| Ed. Code 45105        | Positions under various acts not requiring certification qualifications -<br><a href="https://simbli.eboardsolutions.com/SU/MpoolN7GjspluslbHmcb9IRJQ==">https://simbli.eboardsolutions.com/SU/MpoolN7GjspluslbHmcb9IRJQ==</a>              |
| Ed. Code 45113        | Notification of charges; classified employees -<br><a href="https://simbli.eboardsolutions.com/SU/ipluslv7IKgjZqYaGNLdhSslshXw==">https://simbli.eboardsolutions.com/SU/ipluslv7IKgjZqYaGNLdhSslshXw==</a>                                  |
| Ed. Code 45114        | Layoff and reemployment procedures; definitions -<br><a href="https://simbli.eboardsolutions.com/SU/IPLNTZjf5D8qkP7sYLdDFw==">https://simbli.eboardsolutions.com/SU/IPLNTZjf5D8qkP7sYLdDFw==</a>  |
| Ed. Code 45115        | Layoff; reinstatement from service retirement -<br><a href="https://simbli.eboardsolutions.com/SU/JsRbgsLshj3RdUDVdTIplusyoxZw==">https://simbli.eboardsolutions.com/SU/JsRbgsLshj3RdUDVdTIplusyoxZw==</a>                                  |
| Ed. Code 45117        | Notice of layoff; classified employees -<br><a href="https://simbli.eboardsolutions.com/SU/uAz1v3pTWd6FoatRP235XA==">https://simbli.eboardsolutions.com/SU/uAz1v3pTWd6FoatRP235XA==</a>   |
| Ed. Code 45286        | Limited term employees -<br><a href="https://simbli.eboardsolutions.com/SU/rG3xzjp7Zs5IWHoclKq7hA==">https://simbli.eboardsolutions.com/SU/rG3xzjp7Zs5IWHoclKq7hA==</a>   |
| Ed. Code 45297        | Right to take equivalent examination while employee in military service -<br><a href="https://simbli.eboardsolutions.com/SU/vAYyD4uO8At0qpEP3v35Q==">https://simbli.eboardsolutions.com/SU/vAYyD4uO8At0qpEP3v35Q==</a>                      |
| Ed. Code 45298        | Reemployment of persons laid off; voluntary demotions or reductions in time -<br><a href="https://simbli.eboardsolutions.com/SU/D3cQJpnR1HJ5IG5fRhechQ==">https://simbli.eboardsolutions.com/SU/D3cQJpnR1HJ5IG5fRhechQ==</a>                |
| Ed. Code 45308        | Order of layoff and reemployment; length of service -<br><a href="https://simbli.eboardsolutions.com/SU/7Uqsslshr2x58VWaplusZrn5ZI5g==">https://simbli.eboardsolutions.com/SU/7Uqsslshr2x58VWaplusZrn5ZI5g==</a>                            |
| Ed. Code 45309        | Reinstatement of permanent noncertified employees after resignation -<br><a href="https://simbli.eboardsolutions.com/SU/1wplusX8i4CcvbUI9SrmgTddg==">https://simbli.eboardsolutions.com/SU/1wplusX8i4CcvbUI9SrmgTddg==</a>                  |
| Gov. Code 11500-11529 | Administrative adjudication; formal hearings -<br><a href="https://simbli.eboardsolutions.com/SU/FAOCcBSXGeMKeEphk0aOkg==">https://simbli.eboardsolutions.com/SU/FAOCcBSXGeMKeEphk0aOkg==</a>   |

**Federal References**

**Description**

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| 38 USC 4301-4335 | Employment and reemployment rights of members of the uniformed services |
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**Management Resources References**

**Description**

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| Court Decision | San Mateo City School District v. Public Employment Relations Board (1983)<br>33 Cal.3d 850  |
| Court Decision | Tucker v. Grossmont Union High School District (2008) 168 Cal.App.4th 640  |
| Website        | CSBA District and County Office of Education Legal Services -<br><a href="https://simbli.eboardsolutions.com/SU/UdykszdmPETuDsLshXk6R5akQ==">https://simbli.eboardsolutions.com/SU/UdykszdmPETuDsLshXk6R5akQ==</a> |

Website [California School Employees Association -  
https://simbli.eboardsolutions.com/SU/NOB1plusNOcLNRMHnggHE1slshjg==](https://simbli.eboardsolutions.com/SU/NOB1plusNOcLNRMHnggHE1slshjg==)

**Cross References**

**Description**

- 1240 Volunteer Assistance -  
<https://simbli.eboardsolutions.com/SU/s1kDPms91ZslshXvtuUxCKMdw==>
- 1240 Volunteer Assistance -  
<https://simbli.eboardsolutions.com/SU/KR2sg4KWAHgxai0qdzjyQA==>
- 4032 Reasonable Accommodation -  
<https://simbli.eboardsolutions.com/SU/xCU2Q3bo4IrdA5Kslsh5iqGslshA==>
- 4112.9-E(1) Employee Notifications -  
<https://simbli.eboardsolutions.com/SU/f28Y8g0QzDvpW3nyGgLPQ==>
- 4112.9 Employee Notifications -  
<https://simbli.eboardsolutions.com/SU/bsOgFtrRnArFvO1jSIWslshww==>
- 4112.9-E PDF(1) Employee Notifications -  
<https://simbli.eboardsolutions.com/SU/TOWynt27j11e84Ed9go0cQ==>
- 4121 Temporary/Substitute Personnel -  
<https://simbli.eboardsolutions.com/SU/DcCmKPh09vg5JzXomtjUHA==>
- 4121 Temporary/Substitute Personnel -  
<https://simbli.eboardsolutions.com/SU/YykFd9RvVplus6GgB2BddENyw==>
- 4161.11 Industrial Accident/Illness Leave -  
<https://simbli.eboardsolutions.com/SU/Z0plusudejslshsmM4HPD2Djivlg==>
- 4161.5 Military Leave -  
<https://simbli.eboardsolutions.com/SU/VuS4q4L3GS3Fplus8qD1TJVg==>
- 4161.8 Family Care And Medical Leave -  
<https://simbli.eboardsolutions.com/SU/iY6sUnvYd5r1R9fklv64Qg==>
- 4200 Classified Personnel -  
<https://simbli.eboardsolutions.com/SU/C90JPJ3boOQpjmshG7vAdEQ==>
- 4200 Classified Personnel -  
<https://simbli.eboardsolutions.com/SU/CqrCbB5TOJA30vio8CB6gQ==>
- 4212.9-E(1) Employee Notifications -  
<https://simbli.eboardsolutions.com/SU/YqWUYpdygnuZuo18RoSdsQ==>
- 4212.9 Employee Notifications -  
<https://simbli.eboardsolutions.com/SU/X1lugfJF59UTBAfZrUqN4Q==>
- 4212.9-E PDF(1) Employee Notifications -  
<https://simbli.eboardsolutions.com/SU/cXGwH831aenCNbQC6jA3hQ==>
- 4261.1 Personal Illness/Injury Leave -  
<https://simbli.eboardsolutions.com/SU/NbmFlv1J1eoV9plusRT1mhpfw==>
- 4261.11 Industrial Accident/Illness Leave -  
<https://simbli.eboardsolutions.com/SU/4V3v5daPNAoVUMjjGN825w==>
- 4261.5 Military Leave -  
<https://simbli.eboardsolutions.com/SU/GLN7CSJBkaa4wNV7TZ7t0Q==>
- 4261.8 Family Care And Medical Leave -  
<https://simbli.eboardsolutions.com/SU/8kazlBnUU8fvVzqBG4CvcA==>
- 4312.9-E(1) Employee Notifications -  
<https://simbli.eboardsolutions.com/SU/9md7WpFplusE6EVrvrSxbTuTA==>
- 4312.9 Employee Notifications -  
<https://simbli.eboardsolutions.com/SU/t37hWtTlplusSVslsh21DyFGE4w==>
- 4312.9-E PDF(1) Employee Notifications -  
<https://simbli.eboardsolutions.com/SU/s7slshgH4vgyvlStF0p9iUWHA==>

- 4361.11 Industrial Accident/Illness Leave -  
<https://simbli.eboardsolutions.com/SU/3cLqPb0ZXIIMnwJFplusftdg==>
- 4361.5 Military Leave -  
<https://simbli.eboardsolutions.com/SU/HxmjV90lpHeE2ojNvULbzg==>
- 4361.8 Family Care And Medical Leave -  
<https://simbli.eboardsolutions.com/SU/FPDiN7slsh1vldOD17mf0GNkQ==>