

**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.

*(cf. 4112.2 - Certification)*

The Governing Board may employ substitute certificated personnel to fill positions of regularly employed persons absent from service. (Education Code 44917)

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

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

*(cf. 4117.14/4317.14 - Postretirement Employment)*

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)

*(cf. 4117.3 - Personnel Reduction)*

**Classification**

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 the need for additional certificated employees when regular employees are absent due to leaves or long-term illness. 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:

**TEMPORARY/SUBSTITUTE PERSONNEL** (continued)

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)

*(cf. 4127/4227/4327 - Temporary Athletic Team Coaches)*

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)

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)

Temporary employees shall participate in the health and welfare plans or other fringe benefits of the district.

**Paid Sick Leave**

Any temporary or substitute employee who works for 30 or more days within a year of his/her employment shall be credited on July 1 of each year of employment with 24 hours of paid sick leave for use during that same school year. Unused sick leave shall not carry over to the following school year of employment. (Labor Code 246) An employee is eligible to take sick leave once he/she has completed 90 days of employment and worked 30 days for the District.

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

**TEMPORARY/SUBSTITUTE PERSONNEL (continued)**

1. The diagnosis, care, or treatment of an existing health condition of, or preventive care for, the employee or his/her family member (which includes parent, child, spouse, registered domestic partner, parent-in-law, sibling, grandchild, or grandparent) as defined in Labor Code [245.5](#) and/or
2. The need of the employee to obtain or seek any relief or medical attention for the health, safety, or welfare of the employee, or his/her child, when the employee has been a victim of domestic violence, sexual assault, or stalking as specified in Labor Code [230\(c\)](#) and 230.1(a).

If the need for sick leave is foreseeable, an employee must provide reasonable advance notice – either orally or in writing – to the AESOP sub caller clerk of an absence from work. If the use sick leave is unforeseeable, an employee must provide notice – either orally or in writing – to the AESOP sub caller clerk of the need to use sick leave as soon as practicable. In all circumstances, an employee is responsible for specifying the underlying reason in general terms for use of sick leave, so that the absence may be designated as sick leave. Failure to obtain approval as soon as possible after determining the need to take such leave may result in discipline.

Sick leave may be used in increments of two hours or greater to cover all or part of a work day. Sick leave benefits will be based upon the employee's current regular rate of pay. If an employee has two different rates of pay, sick leave will be paid upon an average of the two rates of pay.

Employees using sick leave are not required to search for or find a replacement employee to cover their designated sick-leave absence.

**Separation From Employment & Rehire**

An employee who separates from employment with the District will not be paid out unused sick leave at separation. If an employee is rehired within the same 12-month period in which the separation occurred, and the employee previously qualified for use sick leave, the employee will receive back the unused portion of his/her annual sick leave allotment and will be able to use that time as of the date of rehire. If the employee is hired back within 12 months of his/her separation from employment, and the employee previously qualified for use of sick leave, but the reemployment occurs in a new 12-month period, the employee will receive the full 3 days or 24 hours of sick leave for the new 12-month period and will be eligible to use upon rehire. If the employee did not qualify to use sick leave (i.e. did not work a total of 90 days from the prior employment to the time of rehire), the employee is required to work 90 days total, including days worked in prior employment, before the employee may use sick leave.

**Discrimination & Retaliation Prohibited**

No employee shall be denied the right to use accrued sick days and the district shall not in any manner discriminate or retaliate against any employee for using or attempting to use sick leave. The Superintendent or designee shall display a poster containing required information, provide notice to eligible employees of their sick leave rights, keep of records of employees' use of sick leave for three years, and comply with other requirements specified in Labor Code [245-249](#).

## **TEMPORARY/SUBSTITUTE PERSONNEL (continued)**

### **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 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)

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

### **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)

*(cf. 4116 - Probationary/Permanent Status)*

*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)

**TEMPORARY/SUBSTITUTE PERSONNEL (continued)**

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

Policy  
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**SAN CARLOS ELEMENTARY SCHOOL DISTRICT**  
San Carlos, California