

CLIENT NEWS BRIEF

Reminder: Don't Forget to Review Categorically Funded Employee Status

With the passage of Proposition 30 by voters in November 2012, many school districts are in a position where they may avoid certificated layoffs. In order to achieve this result, school districts may be planning to release all temporary certificated employees when their temporary employment agreements expire at the end of the 2012-2013 school year. In light of the *Stockton Teachers Association v. Stockton Unified School District* decision issued last year, administrators should review the status of their temporary employees before concluding that certificated layoffs are unnecessary.

Properly classified temporary employees who, for example, are hired as walk-on athletic coaches, to teach classes that will not last beyond the first three months of any school term, or to replace teachers on leave, may be released at the end of the school year without cause pursuant to Education Code section 44954. However, the same is not always true for categorically funded temporary employees employed pursuant to Education Code section 44909.

In March of 2012, the court in *Stockton Teachers Association v. Stockton Unified School District* (2012) 204 Cal.App.4th 446, held that under Education Code section 44909, a school district may classify certificated employees hired into a categorically funded position as temporary only if they are (1) hired for the term of a categorically funded project or a program or project conducted under a contract with a public or private agency; and (2) terminated at the expiration of the contract, project, or program for which they were hired. This determination can be fact-specific and nuanced, and districts should consult with legal counsel when addressing the issue.

If a categorically funded employee's temporary designation cannot be justified under the *Stockton* decision, the employee must be treated as probationary, and the district may release the categorically-funded employee through a probationary non-reelection or through the certificated layoff process. Both methods require a district to give notice to the employee no later than March 15th. Districts should note that the *Stockton* decision does not affect a district's ability to hire "categorical backfills" on a temporary basis. "Categorical backfills" are hired to fill vacancies in the regular educational program created when existing certificated employees are reassigned to categorically funded positions.

If you have any questions regarding the classification of categorical employees, please feel free to contact one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#), or download our [Client News Brief App](#).

February 2013
Number 8



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