

Court of Appeal Affirms School District Discretion in Hiring Temporary Certificated Employees

In an important case for school district employers, *McIntyre v. Sonoma Valley Unified School District* (May 1, 2012) __ Cal.App.4th __, 2012 WL 1858959, the California Court of Appeal for the First District recently held that certificated employees may be classified as temporary for multiple school years and affirmed prior court decisions holding that school districts are not required to “match” employees on leave of absence with any specific temporary employee.

Ms. McIntyre commenced employment in the Sonoma Valley Unified School District on August 21, 2006 as a temporary teacher. She was assigned to a position that was previously held by a teacher who had retired. In March 2007, pursuant to Education Code section 44954, Ms. McIntyre was notified she would be released from continued temporary employment in the District for the 2007-08 school year.

In May 2007, Ms. McIntyre was notified that the District had certificated employee positions available for the 2007-08 school year and that Ms. McIntyre would be returned to District employment as a temporary employee for that school year. During the 2007-08 school year, Ms. McIntyre was assigned to a class previously taught by a teacher who transferred to another site. In March 2008, Ms. McIntyre was notified that she would again be released from continued temporary employment in the District for the 2008-09 school year.

In May 2008, Ms. McIntyre was notified that the District had certificated employee positions available for the 2008-09 school year and that she could accept a position as a temporary employee of the District for that school year. In October 2008, Ms. McIntyre was notified that the District’s Board of Trustees approved changing her status from temporary employee to second-year probationary employee for the 2008-09 school year. In converting Ms. McIntyre to second-year probationary status, the District included or “tacked on” her service as a temporary employee during the 2007-08 school year. Prior to March 15, 2009, Ms. McIntyre was notified that the Board had taken action pursuant to Education Code section 44929.21 to nonreelect her from continued probationary employment in the District for the 2009-10 school year.

In upholding the District’s nonreelection of Ms. McIntyre, the court rejected Ms. McIntyre’s claim that because she was assigned to positions which were vacated by other employees, she necessarily had to be classified as a probationary employee. The court recognized that California courts have “repeatedly held that a district’s ability to use section 44920’s temporary classification is not dependent on a one-to-one match of an employee on leave to a temporary teacher. . . . Rather, all that is required under section 44920 is that the ‘number of temporary teachers not exceed the total number of probationary and permanent employees on leave at any one time.’”

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The court also rejected Ms. McIntyre's claim that she could not be employed as a temporary employee for multiple school years. The court held that "there is nothing in the Education Code that precludes a school district from hiring temporary teachers to replace teachers on leave on a year-to-year basis without elevating them to probationary status."

Finally, the court clarified the relationship between several provisions of the Education Code that address temporary employee status. The court held that Education Code sections 44918 and 44920, which were enacted after section 44917, prevail over any conflicting language in section 44917. In clarifying the statutory provisions governing temporary employment status for certificated employees, the court held that section 44917 does not compel probationary status for an employee based solely on the fact that the employee served as a temporary employee for two consecutive years.

If you have any questions about this decision, or how it impacts the classification of temporary employees in your school district, please feel free to contact one of our [eight offices](#) located statewide. You can also visit our [website](#) or follow Lozano Smith on [Facebook](#).

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