

Probationary Teachers Rights

The following is a summary of the Education Code as well as the cases that have handled probationary teacher rights based on receiving the Non-Reelection notice. This information was generated as a summary of the law for informational purposes and some of it may not pertain to your individual situation.

NON-REELECTION OF PROBATIONARY TEACHERS

California K-12 teachers earn permanent status, not tenure. It takes two years working with an appropriate credential in a regular educational school program to acquire permanent status.

Districts have the right to non-reelect a probationary teacher at the end of the school year any time prior to March 15th of their second year of employment. Districts do not need any cause or reason to give the notice. Teachers are not entitled to a hearing. Good evaluations or a failure to follow the collective bargaining contract are no defense to a non-reelection notice.

HISTORY

Before 1984, teachers were required to teach three years to obtain permanent status. Teachers were entitled to a hearing to determine if there was some cause or reason not to re-employ them. The hearing officer made a proposed decision that the school board could accept or reject. The law was changed to reduce the time to acquire permanent status from three to two years and to eliminate these hearing procedures.

LAW

Education Code §44929.21 is the statutory authority for district rights regarding non-reelection of probationary teachers. This law has been repeatedly challenged by CTA in the courts. The courts have consistently found in favor of the district and against probationary teachers. One case was decided by the California Supreme Court. A brief summary of the legal precedents is as follows:

- (1) Bellflower Education Association vs. Bellflower Unified School District (1991) 228 Cal.App.3d 805. The district failed to comply with its evaluation policy in the collective bargaining contract. An arbitrator awarded reinstatement. The court vacated the arbitrator's award and held that the arbitrator did not have that power to reinstate the teacher and that the district had the right to terminate the teacher regardless of the collective bargaining agreement.
- (2) Board of Education vs. Round Valley Teachers Association (1996) 13 Cal.4th 269. The collective bargaining contract provided that the district had to give thirty days notice to the teacher prior to giving a Notice of Non-Reelection. The California Supreme Court held that Section 44929 preempted the collective bargaining contract and that the district had the right to give the Notice of Non-reelection regardless of the contract.

- (3) Grimsley vs. Board of Trustees of Muroc Joint Unified School District (1987) 189 Cal.App.3d 1440. The Notice of Non-Reelection was given after March 15th of the first year of employment. The court found that the Notice of Non-Reelection could be given in the first year of employment up to June 30th. See also CTA vs. Mendocino Unified School District (2001) 92 Cal.App.4th 522.
- (4) Fine vs. Los Angeles Unified School District (2004) 116 Cal.App.4th 1070. The teacher was teaching with an emergency credential. She had applied for her preliminary credential and had met all of the qualification for the credential. The credential was granted in approximately March of the school year and was backdated to the beginning of the school year. The court held that year did not count as one of the two years necessary for the attainment of permanent status since the teacher did not actually have the credential at the time she was working. Since the credential was granted in March, she did not complete seventy-five percent of the school year with a credential and the year could not be counted.
- (5) Smith vs. Governing Board of Elk Grove Unified School District (2004) at 120 Cal.App.4th 563. The teacher had a regular credential when she was hired. She taught special education with an emergency credential for two years. The court held that the time she taught special education with an emergency credential did not count towards permanent status.
- (6) Zalac vs. Governing Board of Ferndale Unified School District (2002) 98 Cal.App.4th 838. The court held that teaching in a class-size reduction program was a categorically funded program and that the years spent in the class-size reduction program did not count for permanent status.
- (7) Motevalli vs. Los Angeles Unified School District (2004) 122 Cal.App.4th 97. The court held that a probationary teacher had (1) no entitlement to a renewal of her contract and (2) that no cause of action existed for non-renewal of an employment contract in violation of public policy. The court stated, "Motevalli cannot make a Tameny claim for wrongful termination in violation of public policy because she was not terminated. Defendant (school district) had a right not to renew her contract, which is what it did. Since plaintiff was not fired, discharged or terminated, she cannot claim wrongful termination in violation of public policy."

SOME SUCCESSES.

- (1) McFarland Unified School District vs. PERB (1991) 228 Cal.App.3d 166. The court upheld a PERB decision that found that the non-reelection was due primarily to the teacher's union activities and therefore voided the non-reelection.
- (2) Cousins vs. Weaverville (1994) 24 Cal.App.4th 1846. The court held that the district could not use the non-reelection provisions to layoff teachers when the undisputed sole reason for the layoff was for financial reasons. The court held that the district should have used the layoff provisions of §44955. This would have given the teachers the right to return to work if the programs were reinstated. However, the court in CTA vs. Mendocino Unified School District (2001) 92 Cal.App.4th 522 held that a district could use §44955 to layoff a teacher in May, and decide in June of her first year of employment not to reelect her and thus eliminate her reassignment rights.

- (3) Sexual Orientation. We have been successful and other GLS attorneys have been successful in obtaining reinstatement and/or significant financial settlement for teachers when we could prove they were non-reelected due to their sexual orientation.
- (4) Grievances. Some teachers have filed grievances regarding the district's violation of the evaluation provisions and have been awarded some money. However, the law is now clear that reinstatement cannot be ordered.

RESIGNATION/NON-REELECTION

Many districts will tell the probationary teacher that they are going to give a Notice of Non-Reelection and give the teacher the option to resign. However, the District is not required to give the teachers this option. Many teachers wonder whether they would be better off to resign or be non-reelected. In our experience, it has not mattered too much one way or the other. We believe in general that it would be better for the teacher to resign. It may be of some help in employment applications in another district. However, the teacher would have to answer questions honestly. Also, under Unemployment Insurance Code §1256, a teacher could still be eligible for unemployment benefits on the basis that if a reasonable person would resign under the circumstances, unemployment insurance benefits are not precluded.