

CVUSD Board Policy

BP 4117.3

Personnel

Personnel Reduction

***Note: Pursuant to Education Code 44929.21 and 44929.23, a district can choose to not re-elect a probationary employee without cause and without a hearing. See AR 4117.6 - Decision Not to Rehire. However, in Cousins v. Weaverville Elementary School District, a court held that, when the reason for the employee's termination is economic rather than performance-based, then the district must use the layoff notice and hearing process detailed in this policy rather than the nonreelection process. ***

***Note: Education Code 44955 and 44955.5 detail the circumstances under which a district may layoff certificated employees, as specified below. Generally, items #1 and #2 below are the most common bases. Collective bargaining agreements should be reviewed to determine whether any provisions are applicable to the layoff, and all layoffs must be conducted in accordance with Education Code provisions. ***

The Governing Board may reduce the number of probationary and permanent certificated employees when, in the opinion of the Board, one or more of the following conditions makes such reduction necessary:

1. Average daily attendance (ADA) in all of the schools in the district during the first six months of the school year has declined below the level for the same period in either of the previous two school years. (Education Code 44955)
2. A particular kind of service is to be reduced or discontinued not later than the beginning of the following school year. (Education Code 44955)
3. Attendance in the district will decline in the following year as a result of the termination of an interdistrict tuition agreement. (Education Code 44955)
4. An amendment of state law requires modification of the curriculum. (Education Code 44955)
5. The state Budget Act reveals that the district's total revenue limit per ADA for the fiscal year of that Budget Act has not increased by at least two percent. (Education Code 44955.5)

Seniority

Except as otherwise provided by law, a permanent employee who is certificated and competent to render a service shall not be terminated or given a reduction in hours and wages while a probationary employee, or other employee with less seniority, is retained to render the service. (Education Code 44955)

Prior to determining the seniority of employees, the Superintendent or designee shall require certificated employees to provide verification, in writing, of their employment date and credentials, as well as any documentation supporting an employment or credential(s) different from that shown in the district's records.

The Superintendent or designee shall prepare a master seniority list on the basis of district records and evidence presented. (Education Code 44846)

When two or more employees first rendered paid service on the same date, the Board shall adopt a resolution specifying the criteria based on the needs of the district and students for the order of termination among those employees. Upon the request of any employee whose order of termination is so determined, the Board shall furnish, in writing, no later than five days prior to the commencement of the administrative hearing on the layoff, a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking the employee relative to the other employees in the group. (Education Code 44955)

(cf. 4113 - Assignment)

(cf. 4115 - Evaluation/Supervision)

(cf. 4117.4 - Dismissal)

***Note: Prior to determining which employees will ultimately be laid off, a district must make assignments and reassignments in such a manner, pursuant to Education Code 44955, that employees shall be retained to render any service which their seniority and qualifications entitle them to render. This process of "bumping" is extremely complex, and the district should determine the order of layoff upon the advice of legal counsel. ***

***Note: Education Code 44955 allows a district, in certain limited circumstances, to deviate from the seniority list and to retain a more junior employee ("skipping"). ***

The district may deviate from terminating certificated employees in order of seniority for either of the following reasons: (Education Code 44955, 44956)

1. To fill a demonstrated specific need for personnel to teach a specific course or courses of study, or to provide services authorized by a services credential with a specialization in either student personnel services or health for a school nurse, when the certificated employee has the necessary special training and experience which others with more seniority do not possess

2. To maintain or achieve compliance with constitutional requirements related to equal protection of the law

Notice and Hearing Rights

When it becomes necessary, as the result of a reduction or discontinuation of services, to reduce the number of permanent and/or probationary employees, the district shall give notice to the affected employees stating the reasons for the action and the employees' right to a hearing, no later than March 15. The district shall adhere to the notice, hearing, and layoff procedures in Education Code 44949 and 44955.

Note: Education Code 44949 allows employees given notice of a layoff to request a hearing before an administrative law judge who will submit a proposed decision to the Board and affected employees on or before May 7. The proposed decision contains a determination as to the sufficiency of the cause and a recommendation as to disposition regarding the layoff.

When an employee has requested a hearing before an administrative law judge regarding the reduction or discontinuation of services, 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 of the administrative law judge shall be binding on the Board. (Education Code 44949)

The Board may conduct its own hearing, adopt the judge's proposed decision, refer the case back to the judge for additional evidence, or reject or modify the proposed decision and make its own determination based upon its review of the record.

Upon adoption of the Board's decision, the Superintendent or designee shall give final notice, in the manner specified, to the affected employees before May 15. (Education Code 44955)

Special Procedure Based Upon Late Adoption of the State Budget

When the Board, during the time period between five days after enactment of the Budget Act and August 15, determines that the total revenue limit per ADA has not increased by at least two percent and that the district therefore needs to reduce the number of certificated staff pursuant to Education Code 44955.5, the Board shall adopt a schedule of notice and hearings and the district shall otherwise proceed pursuant to Education Code 44949 and 44955. (Education Code 44955.5)

Reappointment

If the number of employees is increased or the discontinued service reestablished, permanent certificated employees under 65 years of age shall have the right to reappointment, in order of seniority for 39 months, after being terminated. Probationary certificated employees under 65 years of age shall have the same right for 24 months after being terminated, subject to the prior reappointment rights of permanent employees. (Education Code 44956, 44957)

Before reappointing any certificated employee to teach a subject which he/she has not previously taught and for which he/she does not have a teaching credential or which is not within the employee's major area of postsecondary study, the Board shall require the employee to pass a subject matter competency test in the appropriate subject. (Education Code 44955, 44956)

(cf. 4112.2 - Certification)

(cf. 4112.24 - Teacher Qualifications Under the No Child Left Behind Act)

(cf. 4113 - Assignment)

Reappointed certificated employees shall not be subject to any requirements that were not imposed on employees who continued in service. Their period of absence shall be treated as a leave of absence and not considered a break in the continuity of their service. (Education Code 44956, 44957)

Legal Reference:

EDUCATION CODE

44830 Employment of certificated persons

44949 Dismissal of probationary employees

44955 Reduction in number of permanent employees

44955.5 Termination of certificated employees

44956-44959.5 Rights of employees

GOVERNMENT CODE

3543.2 Scope of representation

COURT DECISIONS

California Teachers Association v. Vallejo City Unified School District, (2007) 149 Cal.App.4th 135

Bakersfield Elementary Teachers Association v. Bakersfield City School District, (2006) 145 Cal.App.4th 1260

Cousins v. Weaverville Elementary School District, (1994) 24 Cal.App.4th 1846

Forker v. Board of Trustees, (1984) 160 Cal.App.3d 13

Moreland Teachers Assoc. v. Kurze, (1980) 109 Cal.App.3d 648

King v. Berkeley Unified School District, (1979) 89 Cal.App.3d 1016

Management Resources:

WEB SITES

CSBA: <http://www.csba.org>

CSBA: (6/88 10/94) 7/07

CVUSD Global Adoption: August 19, 2008