

## **CLASSIFICATION IN A NUTSHELL**

By Dale Brodsky, CTA Group Legal Services Attorney

There are only four classifications of certificated, public school employees: permanent, probationary, temporary, and substitute. Your classification will dictate what rights you have under the Education Code. To determine if you have been properly classified, first review your written contract. Sometimes contracts can be wrong, and if you have any doubts, be sure to check with CTA.

### **PERMANENT**

In general, “permanent” employees are those who passed their two years of probation and are reelected to serve a third year. To be a permanent certificated employee, the person must hold either a preliminary or clear credential.

Under the Education Code, permanent employees can only be terminated for just cause or if you are a part of a layoff. If notified that the termination is for cause, they must be afforded the opportunity to have a full evidentiary hearing before a three-person panel that is independent of the school district or governing board.

If a permanent employee is laid off because of a reduction in services, she has a 39-month preferential right to rehire. Probationary employees must be laid off before permanent employees, even if the probationary employee has more seniority.

### **PROBATIONARY**

An individual who is hired as a probationary employee (“Probe”) usually must serve in that capacity for two consecutive, complete school years (at least 75% of the number of school days) before being eligible for permanent status. Probationary employees may be non-reelected for the next school year without a hearing for any or no lawful reason, at any time up to March 15 of their second year. After March 15 of her second year, a “Probe 2” cannot be terminated without a full evidentiary hearing, and she is deemed to be permanent on the first day of the following school year.

During the school year, a Probe cannot be summarily dismissed unless the District proves at an administrative hearing that there is just cause for the dismissal. However, in these hearings, the governing board, and not an independent panel, has the final say. If a probationary employee is laid off because of a reduction in services, she has a 24-month preferential right to rehire.

A person who is hired into a “categorically-funded” position and remains in a categorically-funded position can never attain permanent status. In other words, he will be probationary forever, unless he is subsequently placed in a regularly-funded, probationary position and serves in it for at least one school year. The preceding, complete year he served in the categorically-funded position will count toward permanent status. If an employee was initially hired to fill a regularly-funded, probationary position and is subsequently reassigned to a categorically-funded position, service in both positions will count toward attaining permanent classification. And, a permanent employee doesn’t lose her permanent status by accepting a categorically-funded assignment.

A person who holds a provisional credential, such as a Short Term Staff Permit (“STSP”) or Provisional Intern Permit (“PIP”), which replaced emergency permits, must be classified as probationary unless she is correctly classified as a Temporary or Substitute (see below). However, she will not be eligible for permanent status until she obtains a preliminary or clear credential and serves in a probationary position for two years. A person holding an Intern credential is treated a bit differently: a year as an intern will count toward permanent status if the employee obtains a regular credential and subsequently is reemployed in a probationary position.

An employee’s seniority date is determined by the first date of paid, probationary employment. Ironically,

this means that an employee who was first hired with less than a preliminary or clear credential and served for several years in that capacity may actually have more seniority than a fully-credentialed employee who became permanent after serving only two probationary years. Similarly, an employee who is probationary because she has always served in a categorically-funded position might have more seniority date than a permanent employee. None of this matters, however, in a lay off situation, because a probationary employee must be laid off before a permanent employee with the same certification and qualifications.

If a person doesn't receive any employment contract or receives a contract after her first paid day of the school year, then she is deemed to be probationary.

### **TEMPORARY**

In general, school districts may hire people employees with a temporary classification ("Temps") to replace regular employees on leaves of absence or to fill in for regular employees who have been given categorically funded positions, like TSA's, department heads, and class size reduction. The Temp doesn't actually have to replace a particular person; but the number of certificated employees on leave throughout the district cannot exceed the number of temporary employees.

Temps are at-will employees who serve on contracts for one school year or shorter periods of time. This means the District can release them at any time during the first 75% of the school year, with or without cause and without a hearing. If they receive a release notice from the District, Temps don't have an automatic right to reemployment the next year, but under certain circumstances, they must be given some preference if there are vacancies. A person may be a temporary employee for many years. But, if she is rehired into a probationary position for the next school year, then the one previous year in a temporary position will count toward permanent status.

In the event of a layoff, Temps don't receive layoff notices and do not have the same guaranteed rehire rights as Probes or Permanent employees because their contracts simply terminate at the end of the school year. Because Temps have fewer rights, it is especially important to verify the accuracy of the temporary classification.

### **SUBSTITUTE**

To be hired as a substitute employee ("Sub"), a person does not have to possess any kind of regular teaching credential, but only a 30-day Substitute permit. A Sub permit issued by the Commission on Teacher Credentialing requires only a bachelor's degree and passage of CBEST. Even a sub hired for a long-term assignment during the school year may be released at any time, with or without cause, and without a hearing. Subs are paid for each day actually worked, and they usually do not receive benefits.