

CLIENT NEWS BRIEF

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CALIFORNIA COURT OF APPEALS DECISION ADDRESSES MID-YEAR DISMISSAL OF A PROBATIONARY TEACHER

In Achene v. Pierce Joint Unified School District __ Cal.App.4th __ [2009 WL 2466818] (“Achene”), a California Court of Appeal ruled that where a probationary teacher is dismissed mid-year for unsatisfactory performance, the probationary teacher must be given written notice identifying particular instances of unsatisfactory performance at least 90 days before the dismissal, thereby giving the probationary teacher time to correct the deficiencies. This case raises concerns about the ability of school districts to accomplish a mid-year dismissal of a probationary employee for unsatisfactory performance.

Sarah Achene was a first year probationary English teacher at Pierce High School. Following two formal evaluations, Ms. Achene was notified in December that she was being terminated effective January 10th for unsatisfactory performance. The teacher challenged the dismissal on the grounds that the District had failed to provide her with a 90-day notice of unsatisfactory performance prior to termination pursuant to Education Code section 44938.

Education Code section 44948.3 governs dismissal of probationary employees. It states that probationary employees may be dismissed during the school year for unsatisfactory performance as determined through the evaluation process or for cause as outlined in Education Code section 44932. The mid-year probationary teacher dismissal procedures require that districts give 30 days’ prior written notice of dismissal. In the case of second year probationary employees, this notice must be given no later than March 15. (Ed. Code, § 44948.3, subd. (a)(1).) Dismissals for unsatisfactory performance must also be accompanied by a copy of the teacher's evaluation conducted pursuant to Education Code section 44664.

Education Code section 44664, subdivision (b) requires that a teacher’s evaluation “shall include recommendations, if necessary, as to areas of improvement in the performance of the employee. If an employee is not performing his or her duties in a satisfactory manner according to the standards prescribed by the governing board, the employing authority shall notify the employee in writing of that fact and describe the unsatisfactory performance.” Districts then must make specific recommendations and endeavor to assist the teacher in improving performance. (Ed. Code, § 44664, subd. (b).)

In Achene, the court held that in addition to the procedures specified in Education Code section 44948.3 regarding mid-year dismissal and section 44664 regarding evaluations, the procedures in section 44938 also apply to the dismissal of probationary teachers for unsatisfactory performance. “Section 44938 requires that a teacher be given written notice identifying particular instances of unsatisfactory performance 90 days prior to a notice of dismissal and gives the teacher that period of time to correct the specified deficiencies.” (Achene.)

The court in Achene found that the District failed to satisfy the procedures for mid-year dismissal based on unsatisfactory performance because the District did not provide the teacher with written notice that her performance was unsatisfactory or that a failure to improve her performance would result in dismissal. Even though the District provided the teacher with notice that her performance could be “refined,” the District did not identify particular instances of unsatisfactory performance 90 days prior to the notice of dismissal, nor did the District make any effort to make recommendations and assist the teacher in improving her performance as required by Education Code section 44938 before issuing the notice of termination.

Because of the District's failure to comply with the procedural requirements, the Appellate Court affirmed the trial court’s judgment finding the teacher’s dismissal was null and void. The District was also directed to restore the probationary teacher’s lost wages and benefits from January through the end of the school year.

Please note that Pierce Joint Unified School District may appeal the decision to the California Supreme Court. We will continue to keep you updated on the status of this case.

If you have any questions about this case, or about certificated discipline and dismissals, please contact one of our seven offices located statewide.

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.



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