



CLIENT NEWS BRIEF

May 2011

Number 16

COURT REJECTS PROBATIONARY TEACHER'S ATTEMPT TO EVADE SERVICE OF NOTICE OF NONREELECTION

Pursuant to case law interpreting Education Code section 44929.21 ("section 44929.21"), a certificated employee on probationary status for the second consecutive year is deemed to have been reelected for the next school unless personally or actually notified by March 15 of the decision not to reelect the employee. In Sullivan v. Centinela Valley Union High School District (2011) ___ Cal.App.4th ___ ("Sullivan"), the court of appeal held that a second-year probationary teacher may not assert failure of personal service of a nonreelection notice if he deliberately evades service. The court also emphasized that the notice of nonreelection may be delivered by other methods, including oral notice, so long as the other methods impart actual notice of nonreelection to the employee.

In Sullivan, the Centinela Valley Union High School District ("District") hired Michael Sullivan as a probationary teacher for the 2006-2007 school year and reemployed him for the 2007-2008 school year. On March 10, 2008, the District's human resources director told Mr. Sullivan that the District had decided not to recommend his reelection for the following school year and that he could resign in lieu of being nonreelected. Mr. Sullivan called in sick on March 11 and 12. On March 13, the District's governing board approved Mr. Sullivan's nonreelection against the wishes expressed by Mr. Sullivan's attorney during the public comments portion of the board meeting. On March 14, Mr. Sullivan called in sick. On March 15, the District personally delivered a nonreelection notice to Mr. Sullivan's home address of record and, because Mr. Sullivan was not home for the entire day on March 15, another resident accepted the letter on Mr. Sullivan's behalf. On March 16, Mr. Sullivan returned home and read the nonreelection notice.

Mr. Sullivan challenged his nonreelection and sought a court order compelling the District to reinstate him as a permanent teacher because the District was one day late in serving him with the nonreelection notice. Mr. Sullivan's argument was based on section 44929.21 of the Education Code, which states that a second-year probationary certificated employee is deemed to have been reelected for the next succeeding school year unless notified by March 15 of the nonreelection decision. If the governing board does not meet the statutory deadline, the probationary employee attains tenure.

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While the statute is silent as to the method to serve notice, a court of appeal in Hoschler v. Sacramento City Unified School District (2007) 149 Cal.App.4th 258, 269 (“Hoschler”) held that the notification requirement of section 44929.21 “contemplates personal service or some other method equivalent to imparting actual notice.”

Sullivan clarifies how a nonreelection notice may be properly served under section 44929.21 in light of the Hoschler decision. In Sullivan, the court held that Mr. Sullivan had actual notice of his nonreelection, as required by Hoschler, before March 15. The court found that substantial evidence existed to reasonably infer that Mr. Sullivan was responsible for frustrating the District’s attempts to personally serve the nonreelection notice, and held that the District’s failure to personally serve him under such circumstances was excusable. Importantly, the court found that Mr. Sullivan had actual notice that the board would not reelect him for the following school year on March 10, when the District’s human resources director gave Mr. Sullivan the option of resigning in lieu of being nonreelected by the board. The court further found that Mr. Sullivan’s actual knowledge of his nonreelection was evidenced by his attempts to avoid personal service of the notice.

The Sullivan case expands the holding of the Hoschler by allowing a school district to notify a probationary certificated employee of his or her nonreelection by any method that imparts actual notice. Thus, Sullivan gives districts the option of delivering notices of nonreelection by methods other than personal service, including oral notice of intended nonreelection when coupled with a stated option to resign in lieu of nonreelection.

If you have any questions regarding this decision, please do not hesitate to contact one of our [eight offices](#) located statewide or consult our [website](#).

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