

Stockton Decision on Categorically-Funded Temporary Employees Now Binding on School Districts

Last week, the California Supreme Court chose not to review a court of appeal case, *Stockton Teachers Association CTA/NEA v. Stockton Unified School District* (Mar. 1, 2012) __ Cal.App.4th __ (2012 WL 663158), that clarified when a school district may designate a certificated employee as a temporary employee under Education Code section 44909.

Earlier this year, the Third District Court of Appeal published its *Stockton* decision which limited a district's ability to rely upon section 44909 to justify a temporary, rather than a probationary, classification for certificated employees. The court held that a temporary classification was allowed under section 44909 only if the employee is: (a) hired for the term of a categorically funded project or a program or project conducted under a contract with a public or private agency; and (b) terminated at the expiration of the contract, project or program for which they were hired.

Previously, school districts commonly applied section 44909 to allow the hiring of categorically-funded temporary employees who could be released at the end of the year pursuant to section 44954. The court recognized that section 44909 does allow a district to release such employees under section 44954, but only if the employee is terminated "at the expiration of the contract or specially funded project." The court held that if the contract, project or program is not expiring, a district must treat the employee as a probationary employee for purposes of release (e.g., non-reelection, layoff, or mid-year dismissal for cause). Notwithstanding the *Stockton* decision, the service of these employees still "shall not be included in computing the service required" to obtain permanent status unless: (1) the person serves at least 75% of the school year; and (2) the person is subsequently employed as a probationary employee in a regular certificated position.

The California Supreme Court's denial of review establishes the court of appeal's decision as a binding and precedential interpretation of section 44909. This will affect a district's hiring, release, dismissal, and layoff of certificated employees who are employed to work in categorically funded positions and those arranged under private or public agency contracts. Districts should review their current staffing for such projects and programs to review whether certificated employees in categorically-funded projects, or in projects or programs pursuant to contracts with public or private agencies, are properly classified. Districts may wish to consult with legal counsel to specifically tailor their employment contracts with guiding language provided in the *Stockton* decision.

CLIENT NEWS BRIEF

June 2012
Number 32

See Lozano Smith News No. 10, March 2012, for more information on the impact of the court of appeal's decision. If you have any further questions, please feel free to contact one of our [eight offices](#) located statewide. You can also visit our [website](#) or follow Lozano Smith on [Facebook](#).

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