

CLIENT NEWS BRIEF

Court Clarifies Status of Former Permanent Certificated Employee Hired as Substitute

If a permanent certificated employee resigns from a school district and is reemployed within 39 months by the same school district, the school district must restore the employee to permanent status. (Ed. Code § 44931.) If the district hires the former employee as a substitute teacher, is it required to designate the teacher as permanent?

In *Edwards v. Lake Elsinore Unified School District* (October 30, 2014) __ Cal.App.4th __ 2014 WL 5474984, the court confirmed that Education Code section 44931 does not apply to substitute teachers. Therefore, a former permanent certificated employee rehired as a substitute teacher is not eligible for permanent status.

Substitute teachers are employed from day to day to fill the position of a regular employee who is absent from service on a short-term basis. Lori Edwards was a permanent certificated employee and voluntarily resigned her employment with the Lake Elsinore Unified School District (District) in June 2006. Edwards applied for reemployment as a substitute teacher with the District and was hired for the 2007-2008 school year. Edwards served as a substitute teacher in the classroom of a categorically funded employee who was on medical leave for an indefinite period of time. Edwards taught the entire 2007-2008 school year.

Edwards sued the District and asserted that she had been incorrectly classified as a substitute employee and was entitled to be classified as a permanent employee for the 2007-2008 school year. The court disagreed with Edwards and held that the District had properly classified Edwards as a substitute employee and that Education Code section 44931 does not apply to substitutes.

Edwards also asserted that she was a permanent employee because the school district did not provide her with an employment contract stating she was a substitute employee. The court held that the District was not required to issue a substitute teacher an employment contract under Education Code sections 44916 or 44909. Education Code section 44916 requires that at the time of initial employment, the employee must receive a written statement of employment status. However, the court reasoned that since Edwards was not hired as a temporary employee or a regular (probationary or permanent) employee, Education Code section 44916 did not apply. The court further held that Education Code section 44909 did not apply because Edwards was not hired as a categorically funded employee or to backfill a position vacated by an employee placed in a categorically funded position.

Ultimately, the court found that there was substantial evidence that Edwards was seeking a substitute teacher job and was aware that she was hired as such: Edwards had returned a letter to the District verifying that she was seeking employment as a substitute teacher; the District had provided Edwards with several letters that identified her as a substitute teacher; and the District required substitutes to fill out time sheets that stated, "SUBSTITUTE TIMESHEET" at the top and write in the name of the person whose position they were filling.

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In the 2008-2009 school year, the District honored Edwards' right to preferential reemployment under Education Code section 44918, and rehired her in a regular position. At that point in time, the District classified Edwards as a permanent employee in accordance with Education Code section 44931. Based on this, Edwards also argued that Education Code sections 44918 and 44986 granted her retroactive pay as a permanent employee for the year she served as a substitute teacher. The court rejected both arguments and held that:

- Education Code section 44918, grants a substitute teacher who serves 75 percent of the school year a preferential reemployment right to a regular position. However, it does not grant the employee retroactive pay or benefits for the year the employee served as a substitute.
- Under Education Code section 44986, a temporary employee who fills in for a teacher on a leave of absence for a disability is entitled to credit as a probationary employee for all days served if the employment extends beyond the number of days of absence of the employee on disability leave. The court held that Edwards was not entitled to retroactive reclassification, salary, benefits, or seniority based on 44986, because she was not hired as a temporary employee and her employment did not extend beyond the period of absence of the teacher whose position she was filling.

This case provides clarity on the proper classification of substitute employees and former employees whom are rehired as substitute employees. While the case held that school districts are not required to notify substitute teachers of status prior to beginning employment, we recommend that school districts provide all certificated employees, including substitutes, with written notification of their status prior to beginning employment each school year. Substitute employees can be notified of employment status by contract, letter, notice of assignment and/or on time cards.

If you have questions about this case or other issues concerning the classification of employees, please contact one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).