

# **Pocket Guide to K-12 Certificated Employee Classification and Dismissal**

## **Additions and Corrections to May 2004 edition (as of December 31, 2007)**

### **II. Classification**

#### **A. Generally**

**Add to FN. 11, p. 6:** In *Reis v. Biggs Unified School Dist.* (2005) 126 Cal.App.4th 809, 171 CPER 51, a teacher who concurrently held a .57 full-time equivalent (FTE) position in the regular education program and a .43 FTE position in the ROP program was a permanent .57 FTE teacher who could not be summarily non-reelected under Sec. 44929.21. However, the court held that he was not entitled to permanent status for the part-time ROP position because he had not been “subsequently assigned” from the regular education program as required by Sec. 44910.

#### **C. Probationary Employees**

**Add to FN. 30, p. 10:** *Fine v. Los Angeles Unified School Dist.* (2004) 116 Cal.App.4th 1070, 165 CPER 31. See also, p. 18, n. 67.

#### **D. Employees in Categorically Funded Positions**

**Add new para., p. 10:** In *Bakersfield Elementary Teachers Assn. v. Bakersfield City School Dist.* (2006) 145 Cal.App.4th 1260, 1281, 1286, *rev. denied* (2007), the court underscored that employees who begin their service in categorically funded programs are *not* temporary employees, although

they are treated *like* temporary employees if and when their programs are eliminated. See III.B(D dismissal) VI.D (Layoff). In line with these cases, as well as *Kavanaugh, supra*, and *Golden Valley, supra*, certificated employees hired into categorically funded programs are probationary.

**Add at end of second para., p. 10:** However, in *Schnee v. Alameda Unified School Dist.* (2004) 125 Ca1.App.4th 555, 170 CPER 39, the court distanced itself from a footnote in *Zalac* stating that the teacher who served two years as a categorically funded, temporary teacher in a class-size reduction kindergarten program was entitled to permanent status at the “commencement” of her third year when she taught in the regularly funded program. In *Schnee*, Justice Pollack, who also authored *Zalac*, clarified that the footnote was merely dicta and that a teacher who serves several years in a categorically funded position, as *Schnee* did, still must serve a full year in a probationary position and then be reelected for the following year in order to attain permanent status.

#### **E. Temporary Employees**

**Add to first para., p. 11:** Prior to *Bakersfield, supra*, and *California Teachers Assn. v. Vallejo Unified School Dist.* (2007) 149 Cal.App.4th 135, districts routinely classified as “temporary” all teachers holding less than regular credentials, including emergency permits (now Short-Term Staff Permits) and internship certificates. Now, it is clear that the temporary classification must be narrowly construed and that a person’s credential is not the decisive factor in determining classification. “The Education Code’s ‘complex and somewhat rigid’ classification scheme is intended...to limit rather than to enlarge the power of school districts to classify teachers as temporary employees.” *Bakersfield, supra* at 180, quoting *Kavanaugh, supra*, at 917.

## **F. Employees Serving in Internship Programs**

### **2. Interns employed under the Teacher Education Internship Act of 1967 (“University Interns”)**

#### **Replace second para., pp. 15-16, with:**

*Bakersfield* clarified that university interns serving under the Teacher Education Internship Act of 1967 (Secs. 44450 et seq.) cannot be classified as temporary employees based solely on the fact that they hold something less than a preliminary or clear credential. Thus, the court afforded university interns the same layoff rights to which other probationary employees are entitled. See, III.E. and VI.B.

**Add to third para., p. 16:** In other words, “the final year of employment under a university internship credential counts for one year toward tenure” under Sec. 44929.21(b). *Peoples v. San Diego Unified School Dist.* (2006) 138 Cal.App.4th 463, 469.

## **H. Teachers Holding Provisional Credentials**

### **Revise paras. 1-3, pp. 17-18, regarding emergency permits:**

As of July 1, 2006, the CCTC stopped issuing emergency permits because teachers serving on multiple and single subject emergency permits and Education Specialist Emergency permits were not considered to be compliant with the federal No Child Left Behind Act (NCLB). The CCTC also has stopped issuing pre-intern certificates. But the changes are more cosmetic than substantive.

In place of the emergency permit, CCTC now is issuing Short-Term Staff Permits to individuals who have passed CBEST and a subject matter exam but are not yet enrolled in an internship program. The Short-Term Staff Permit is valid only for one school year and may not be renewed. In place of the pre-intern certificate, CCTC may issue a Provisional Internship Permit to an individual who has the requisite number of college semester units in a subject matter area but who has not yet passed a subject matter exam. The Provisional Internship Permit is valid for one year and may be renewed for one additional year. Neither permits are NCLB-compliant.

**Add to FN. 65, p. 18:** *Smith v. Governing Board of Elk Grove Unified School Dist.* (2004) 120 Cal.App.4th 563, 168 CPER 37. (A teacher who taught special education for two years under an emergency permit did not attain permanent status, even though she held a clear single-subject credential.)

*Culbertson v. San Gabriel Unified School Dist.* (2004) 121 Cal.App.4th 1392, 168 CPER 35, rev. denied. (Because employment under an emergency permit does not count toward permanent status, under Sec. 44929.21 [b], a district may lawfully non-reelect a teacher after March 15th of his second year where he served his first year under an emergency permit and his second year under a clear credential.); *Motevalli v. Los Angeles Unified School Dist.* (2004) 122 Cal.App.4th 97, 168 CPER 28. (“Provisional” characterizes a “licensure status, not [an] employment classification.” *Id.* at 109. Therefore, a teacher with an emergency permit and no written classification was probationary by operation of law. But, non-renewal of a probationary contract is not an “adverse employment action” for purposes of maintaining a tort claim for wrongful termination in violation of public policy because the teacher was not dismissed.)

### **III. Dismissal of Non-Permanent Employees**

#### **A. Probationary Employees**

##### **1. Reelection and Non-reelection Process**

**Add to para. 3, p. 20:** If a second-year probationary employee is not notified by March 15, he or she is deemed reelected for the following year and achieves permanent status.

To non-reelect a probationary employee, a district must use “personal service or some other method imparting actual notice.” *Hoschler v. Sacramento City Unified School Dist.* (2007) 149 Cal.App.4th 258, 269 (rev. denied). In that case, the district mailed a non-reelection notice to a second-year probationary employee on March 12, but he did not receive it until after March 15. The court ruled that the employee

was deemed reelected for the next year as a permanent teacher because the district had not given him timely notice.

**E. Employees Serving in Internship Programs**

**Revise paras. 4-5, p. 27, regarding University Interns:** In *Bakersfield, supra*, the court referred to, but did not discuss, Sec. 44464 of the Teacher Education Internship Act of 1967 (Secs. 44450 et seq.), which provides that university interns are not entitled to procedural rights afforded to other probationary employees dismissed during the school year for cause or unsatisfactory performance. *Id.* at 1290. In light of the court’s emphasis on the legislature’s attempt to achieve consistency between the two types of internships, university interns’ mid-year rights continue to be unsettled.

**F. Teachers Holding Provisional Credentials**

**Add to p. 28:** Short-Term Staff Permits and Provisional Internship Permits are considered “provisional” credentials under Sec. 44911. (See, II.H). As such, service under either does not count toward attainment of permanent status, but teachers holding short-term staff permits are probationary employees for all other purposes, including the right to be dismissed only for cause during the school year following a hearing. See, *Golden Valley, supra*.

**V. Suspensions and Leaves of Absence**

**Errata for Chap. V Footnotes (pp. 36-40)**

FN.126-129 are correct.

FN. 130 should be: Secs. 44940(a), (c), (d).

FN. 131 should be: Secs. 44940.5(a), (d).

FN. 132 should be: Secs. 44940.5(b), (c).

FN. 133 should be: Secs. 44940(b), (e).

FN. 134 should be: Sec. 44940.5(d).

FN. 135 should be *Raven v. Oakland Unified School Dist.* (1989) 213 Cal.App.3d 1347.

FN. 136 should be: Sec. 44942.

FN. 137 should be: Sec. 44942(a).

FN. 138 should be: Sec. 44942(c).

FN. 139 should be: Sec. 44942(c).

FN. 140 should be: Sec. 44942(d).  
FN. 141 should be: Sec. 44942(d).  
FN. 142 should be: Sec. 44942(d).  
FN. 143 should be: Sec. 44942(d).  
FN. 144 should be: Sec. 44942(d).  
FN. 145 should be: Sec. 44942(e).  
FN. 146-148 are correct.

## **VI. Layoffs**

### **B. Employees Subject to Layoff**

**Replace second and third paras., p. 42-43, with:** An employee's proper classification will determine whether he or she is covered by the layoff statutes. Two recent Court of Appeal decisions have resolved questions that had created much confusion during "layoff season." It is now clear that entitlement to layoff rights is not premised on whether the teacher holds a regular or provisional credential. Thus, school districts cannot avoid providing layoff rights by classifying an employee as "temporary," simply because he or she holds a provisional credential. *Bakersfield, supra*, and *California Teachers Assn. v. Vallejo Unified School Dist.* (2007) 149 Cal.App.4th 135. Unless they were hired to replace teachers on leave, the following are entitled to layoff rights: Fully credentialed teachers serving under permanent or probationary contracts, categorically funded employees whose programs have not been eliminated, teachers holding emergency permits, district interns, and university interns.

After *Golden Valley*, practitioners took to using the term "P-0" to describe provisionally credentialed teachers. Now, after *Bakersfield*, *Vallejo*, and other cases, practitioners are advised that the moniker, "P-0," is outdated. All employees, other than those properly classified as permanent, temporary, or substitute must be classified as "probationary" teachers. And, for layoff purposes, seniority dates are counted from the first date the employee rendered paid service, regardless of the credential he or she held on that date. *Bakersfield, supra* at 1300-01.

## **IX. Hearing Procedures**

### **D. Time of Hearing**

**Correct citation, FN. 256, p. 67:** *Governing Board v. Felt* (1976) 55 Cal.App.3d 156.

### **I. The Four-Year Rule**

**Add at end of second para, p. 75:** The Supreme Court issued *Atwater Elementary School Dist. v. Dept. of General Services (Truitt)* (2007) 41 Cal.4th 227. The Court of Appeal had found Sec. 44944(a) was an absolute “evidentiary bar” to the admissibility of claims that had occurred more than four years before the dismissal action. The Supreme Court disagreed. It held that the four-year limitation was not absolute but was subject to “equitable principles.” Focusing on “equitable estoppel,” the court concluded that if a district can prove that the delay in commencing the dismissal action was induced by the teacher’s own conduct, “it could be allowed to introduce evidence of, and base its dismissal on, incidents falling outside the four-year window.” *Id.* at 233.

## **Chaps. XI-XIII, Commission on Teacher Credentialing Process, Generally**

As used in the Pocket Guide, the term “credential holder” refers to both a “holder” and a “credential applicant,” unless otherwise noted.

For an overview of the CTC’s procedures, see *California Teachers Assn. v. California Commission on Teacher Credentialing* (2003) 111 Cal.App.4th 1001, 1006-08, 162 CPER27.

## **XI. Reporting Requirements of the Commission on Teacher Credentialing**

### **D. p. 84: Teacher’s Reporting Requirements (New)**

Whenever a person submits an application for a new credential or seeks renewal of a credential, he or she must

answer questions regarding “character and fitness.” These include questions about: past criminal convictions; current criminal charges or current inquiries by a state or federal law enforcement agency or any licensing agency; disciplinary action by any teacher-licensing agency; inquiries by a state or federal law enforcement agency or licensing agency regarding alleged misconduct that involved children or that took place on school property; a change of employment status because of allegations of misconduct or while allegations of misconduct were pending; any disciplinary action pending in any school district or other school employer.

Failure to provide truthful answers to any of the questions on CTC’s application form may constitute a separate basis for disciplinary action. It should be especially noted that even if a criminal conviction has been dismissed pursuant to Penal Code Sec. 1203.4, it still must be disclosed on an application form for a new or renewed credential.

## **XII. The Credential Revocation Process**

### **C. CTC’s Limited Right to Initiate an Investigation**

**Clarify:** The committee does not actually have jurisdiction over credentialing matters prior to commencement of an initial review. However, it may initiate inquiries and requests for information and records as described in the text.

### **D. Initial Review**

**Add to para 1, p. 88:** In addition to having jurisdiction to commence an initial review for the reasons enumerated in the text, the committee also may act when it receives: a notice from an employer that a complaint was filed with the district alleging sexual misconduct; a notice from an employer that a holder failed to fulfill his or her contract, misuses student records to recruit customers, or subverts a licensing exam; or an affirmative response on a credentialing application as to any criminal conviction or pending criminal



investigation, adverse action, or denial of any license or pending investigation of non-criminal allegations by a governmental licensing agency. (Sec. 44242.5[b])

However, CTC's authority to conduct investigations is not unlimited. According to CTC's regulations, unless it receives information as specified in Sec. 44242.5, it has no jurisdiction to undertake any investigation or preliminary review. (Tit. 5, Sec. 80308).

**Add to para. 6, p. 89:** The committee is permitted to redact the addresses of complainants and witnesses from writings disclosed to a credential holder during its review. *CTA v. California Commission on Teacher Credentialing, supra.*, 111 Cal.App.4th 1001.

#### **E. Formal Review**

**Correct para. 1, 90:** The chairperson of the commission may grant an extension of up to six months for commencement of a formal review.

**Replace first bullet in para. 3, p. 90, with:** The committee has jurisdiction to commence a formal review whenever it receives official records that show any conviction or plea to *any* offense. The committee also may commence a formal review when it receives official records adjudging a juvenile to be a dependent of the court due to allegations of sexual misconduct or physical abuse by a credential holder.

**Add to third bullet in para. 3, p. 90:** A formal review may also be commenced whenever the committee receives a statement from an employer that an employee has left employment as a result of an allegation of misconduct or while an allegation of misconduct is pending. (Sec. 44242.5[d])

### **F. Results of the Investigation**

**Replace para. 2, p. 92, with:** CTC always sends the holder a copy of the committee's recommendation, the committee's findings, and a notice of appeal rights. If the recommendation is for a private admonition, *only* the credential holder is notified of the recommended adverse action. If the recommendation is for any other disciplinary action, the recommendation, but not the findings, is mailed to the reporting employer, the current employer if known, parties who have requested notice, and members of the public on request. However, except where the recommendation is for a private admonition, the holder's current or last known school employer may request a copy of the findings from the committee. And, within one year of the recommended adverse action, a prospective employer to whom the holder has applied for a job also may request the committee's findings. Disclosed findings must be kept confidential. (Secs. 44244, 44244.1[b], 44242.5[e]; Tit. 5, Sec. 80314.5).

See XIII.A. regarding disclosure after final action.

### **H. Commission Retains Authority (New)**

A credential holder is not permitted to surrender his or her credential and an applicant may not withdraw a credential application without the written consent of the commission. Thus, CTC retains authority to institute or continue any disciplinary action, even if a holder wants to voluntarily self-revoke a credential or has allowed the credential to expire. (Sec. 44440).

## **XIII. Grounds for Credential Revocation**

### **A. Generally**

**Replace with:** Section 44000.5 defines "adverse action" that CTC may take as "the denial of an application for a credential, a private admonition, or public reproof of a credential holder, or the suspension or revocation of a credential." All final adverse actions must be made public, except for private admonitions. (Secs. 44245[b] and [c]).

If CTC's final action is the issuance of a private admonition, notification is sent to the credential holder and to his or her employer at the time of the admonition. A private admonition is considered a "personnel record," and generally is protected from public disclosure under the Public Records Act, Gov. Code. Sec. 6254(c). The commission and the employer are required to expunge private admonitions after three years. (Sec. 44438). There is no statute or regulation authorizing the expungement of any adverse action other than a private admonition.

CTC notifies the public of all application denials, public reprovals, suspensions, and revocations in a publication called the "All Points Bulletin" (APB). The APB is electronically transmitted to all public and private school district administrators and county offices of education throughout the state. In addition, CTC's consent calendar lists all final disciplinary actions, including the names of individuals receiving discipline, and is searchable online.

#### **B. Discretionary Grounds for Revocation**

**Clarify para. 6, p. 95:** As always, CTC conducts a hearing only if a holder requests one.

#### **C. Mandatory Grounds for Immediate Revocation**

**Replace FN 387, p. 96 with:** Sec. 44425(a).

**Add to para. 5, p. 97:** citation to Sec. 44425(c).

**Clarify para. 6, p. 97:** If the sex or controlled substance offense *is a felony* and involves a minor, the credential revocation will be final with no possibility of reinstatement.

**Clarify para. 8, p. 97:** A plea of *nolo contendere* to any misdemeanor sex offense specified in Sec. 44010 does not subject the credential to mandatory revocation but is subject to discretionary review by CTC. (Sec. 44245[c].) In contrast, a *nolo* plea to a misdemeanor drug offense will still result in mandatory revocation.

On the other hand, it is "easier" for an individual who has been convicted of a misdemeanor or felony drug offense

to *apply* (or reapply, in the case of a holder whose credential was revoked) for a credential than it is for an applicant convicted of any sex offense. Thus, CTC may issue a credential to an applicant convicted of any drug offense who has been rehabilitated for at least five years, or has received a certificate of rehabilitation and pardon, or has received a dismissal pursuant to Penal Code Sec. 1203.4. But, an applicant convicted of a sex crime will be eligible for a credential only if he or she has obtained a certificate of rehabilitation and pardon, and if probation has been terminated and the applicant has received a Sec. 1203.4 dismissal. (Secs. 44346[b] and [c]). Thus, there is no five-year rehabilitation period offered to sex offenders.

As noted above, even if the criminal case is dismissed under Sec. 1203.4, it still must be disclosed on any credential application submitted to CTC.

**D. Effect of Deferred Entry of Judgment (Previously Known as ‘Diversion’)**

**Replace FN 397, p. 98 with:** Penal Code Sec. 1000.1(d).