

SPECIAL EDITION

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Questions and Answers About Your Seniority, Tenure and Rehire Rights in the Oakland Unified School District

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Question #1: What law determines whether I am still considered a probationary or have reached permanent (aka “tenured”) status in the District?

Answer #1: The California Education Code governs the above determination. Any certificated employee who has successfully completed two (2) whole years of probationary service automatically becomes permanent on the first day of their third consecutive year depending on credential status.

Question #2: Are there any exceptions to the two (2) years of probationary service requirement?

Answer #2: Yes. If you were on a Temporary Contract and served over 75% of the year immediately preceding the issuance of a Probationary Contract, you may be entitled to an earlier tenure date.

Question #3: In other words, I may already be a permanent employee and the District still believes that I am a second year probationary?

Answer #3: Yes. Oakland Unified's employee records are notoriously incomplete, incorrect and/or inconsistent!

Question #4: I heard that a CTA attorney represented two (2) Oakland USD interns in 2001 in an important case which forced the District to classify teaching interns as probationary, not temporary employees?

Answer #4: True. David Weintraub, CTA Attorney, successfully argued that the Education Code "conferred probationary status on all district interns, even those who had been employed less than a year."

Question #5: Why is it so important to be classified a probationary rather than a temporary employee?

Answer #5: Probationary status usually leads to permanent status. Temporary employees have a specific termination date on their yearly contracts. Also, a probationary employee cannot be dismissed in the middle of a school year unless there is just cause. A temporary teacher can be unilaterally dismissed and has no formal right to appeal.

Question #6: Why did you say, "Probationary status usually leads to permanent status?"

Answer #6: The Education Code allows for the dismissal of a first year probationary at the end of the school year with no formal right to appeal. It allows for the "non-renewal" of a second year probationary teacher at the end of the school year as long as the employee has been given notice by March 15. This is not a lay-off. It is a termination.

Question #7: What's the difference between a lay-off and a termination letter?

Answer #7: A lay-off letter can be challenged in a hearing and possibly overturned. A laid-off teacher has "recall rights." Probationary employees can be rehired by seniority during a two (2) year period. Permanent employees have a 39-month period during which they can be recalled. Any rehired employee is reinstated at the appropriate step and column without prejudice.

Furthermore, while awaiting recall, laid-off employees can substitute at their former contracted per diem on a priority basis.

Question #8: Will there be lay-offs this 2002-03 school year in Oakland?

Answer #8: It is up to the District to issue lay-off notices by March 15. The OEA believes that lay-offs are unnecessary and will only serve to encourage more good teachers to leave Oakland.

Question #9: If there are lay-offs, what system is used to determine who is fired?

Answer #9: The Education Code has specific language regarding Reductions in Force (RIFs):

- A. Seniority, Credential and Program are the variables. All things being equal, seniority is the key factor.
- B. Seniority is district-wide, not school-based.
- C. Affirmative action does not influence lay-offs.
- D. Temporary employees are dismissed before probationary and permanent employees unless a specific program is eliminated.
- E. A less senior employee may stay if their credential is needed to staff a specific program in the District (e.g., high school calculus).

Question #10: How can I challenge an incorrect status (temporary or probationary) and/or a wrong seniority date?

Answer #10: Write a memo (copy yourself and OEA) to Human Resources (Attention: Lewis Cohen/Assistant Superintendent) disputing what appears on your Employee Action Form (EAF) or on any District memos. Please see the sample form on the back of this page.

Question #11: Will OEA represent me if I cannot convince OPS of the mistake?

Answer #11: Certainly. Any OEA member who believes that their status/seniority is incorrect should document the error and give OPS two (2) weeks to respond. If there is no or an unsatisfactory response, OEA will intervene.

While the OEA does not expect certificated lay-offs to occur (due to attrition, retirement and the release of temporary employees), we must advise our members to prepare for the worst. Document ASAP your challenge to your status and/or seniority date.

This publication is intended only as a general guide to education law in California; it is not intended to provide legal advice on a particular problem. Statutes may be amended and court cases may change the interpretation of statutory provisions. If you are confronted with a particular problem, review the current provisions of the law involved, and consult with a CTA staff representative or an attorney.

SAMPLE MEMO

Date: _____

To: Lewis Cohen/Assistant Superintendent for Human Resources

From: _____

Credential(s): _____ Assignment: _____

I believe that my employment status is incorrect. I should be a (probationary or permanent) employee.

My true date of hire was _____.

Attached is a copy of my original (temporary and/or probationary) contract(s) and/or my latest Employee Action Form (EAF).

Signature

Date

Print Name

Site

cc: OEA Center/File