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# HR 101: Employment Basics

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# Agenda

- What we will cover:
  - Certificated/Classified Employment
  - Personnel Evaluations
  - Union Representation
  - Responding to Claims of Employment Discrimination
  - Grievances

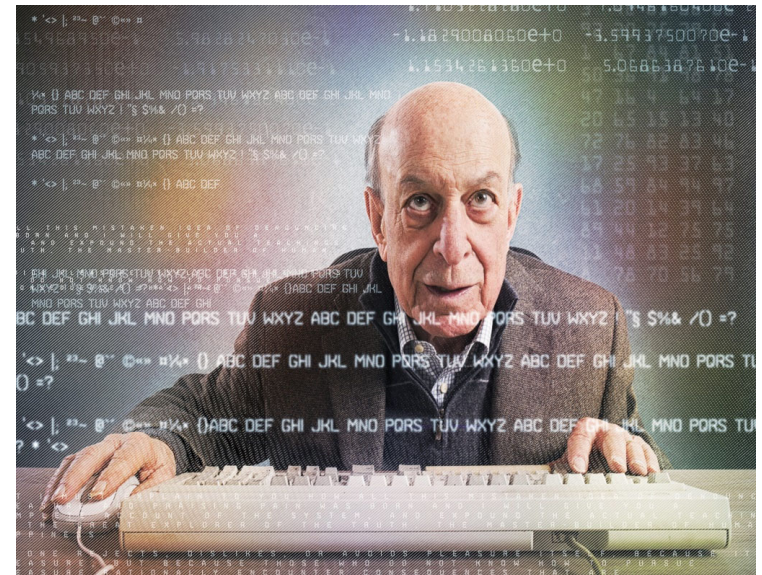


# HR Basics

Certificated and Classified Employees Explained

# Public Employment in California

- Is Complicated
- Steep Learning Curve
- Many Sources of Information
- Many Potential Pitfalls



# Sources of Rules for California School Employment

- Education Code
  - Certificated Employees: Education Code sections 44800 – 44988
  - Classified Employees: Education Code sections 45100 – 45460
- Collective Bargaining Agreements
- Government Code
  - Primarily Sections 3540, *et seq.* (Educational Employment Relations Act)
- Board Policies and Administrative Regulations



# Certificated Employees

- Education Code section 44830 describes “certificated employees” as only those individuals who possess the qualifications to work in “positions requiring certification qualifications.”
  - Includes teachers, principals, substitutes, certain district-level administrators, and nurses.
- As a general rule, the hiring, release, and termination of certificated employees is governed exclusively by the Education Code.
- Discipline short of dismissal and other matters may be supplemented by CBAs.

# Certificated Employees – Hiring and Beyond

- When hiring certificated employees, Education Code section 44830.1(a) provides, in part, that “...no [certificated] person who has been convicted of a violent or serious felony shall be hired by a school district...”
- The assignment of certificated employees, once hired, is governed by Title 5 of the California Code of Regulations.
  - Commission on Teacher Credentialing Publishes The Administrator’s Assignment Manual as a guide for administrators in navigating the many nuances of teaching credentials.

# Certificated Employees

- Status / Classification
  - Only four types of teachers are recognized by the Education Code:
    - Permanent
    - Substitute
    - Probationary
    - Temporary





# Certificated Employees

- Permanent Status
  - A teacher will gain permanency if he or she is re-elected for the next succeeding school year after serving two complete consecutive school years in a position requiring certification qualifications. (See Ed. Code § 44929.21(b).)
    - Complete = 75% of the days the schools are maintained. (Ed. Code, § 44908.)
  - Exceptions:
    - Certain breaks in service can delay
    - *See Griego v. LAUSD*
    - Resignation & rehire after 39 months

# Certificated Employees

- Substitutes

- Education Code sections 44917 / 44918: Filling the position of a regularly employed teacher who is temporarily absent from service.

- Day-to-day / on-call
- “Long term” (a contractually established condition)

- NOT subs:

- Vacancies, growth positions
- “Resident” or roving subs (maybe)
- Intervention teachers



# Certificated Employees

- Probationary Teachers
  - Education Code section 44915: Everyone else (almost).
    - Newly hired teachers in first 2 years
    - More than 2 years if less than 75%
    - Interns, PIPs
    - ROP teachers
    - Provisional credentials (STSP, 30-day sub permit)
    - Small school districts <250 ADA (maybe)



# Certificated Employees

- Temporary Teacher
  - Temporary employees must be notified in writing of temporary status before beginning their assignment.
  - Typical Temp Assignments:
    - Leave replacements, including positional leaves (Ed. Code, § 44920)
    - Categorically funded positions and backfills (Ed. Code, § 44909)
    - Others:
      - » Walk-on coaches (Ed. Code, § 44919(b))
      - » First semester (Ed. Code, § 44921)
      - » First 3 months, first 4 months (migrant) (Ed. Code, § 44919(a))
      - » Retired teachers (Ed. Code, § 44917)
      - » Emergencies – 20 days (Ed. Code, § 44919(c))
      - » Adult school – less than 60% of full time (Ed. Code, § 44929.25)
      - » Disability leave replacements (Ed. Code, § 44986)

# Certificated Employees

- Temporary Teacher
  - What is NOT a temp?
    - Vacancies (*See Vasquez v. Happy Valley Union School District*)
    - Growth positions – maybe
    - Resident or Roving Subs – maybe
    - Site funded “intervention” teachers
    - Provisional credentials (*See Bakersfield*)

# Certificated Employees

- Benefits and burdens of certificated employment are governed by the Education Code.
- Education Code section 44924:
  - “Except as provided in Sections 44937 and 44956, any contract or agreement, express or implied, made by any employee to waive the benefits of this chapter or any part thereof is null and void.”
- “Non-waiver” provision prohibits side agreements between individual teachers and administrators that weaken or otherwise dilute the rights provided by Education Code.



# Certificated Employees

- Sources of Discipline

- Education Code (Causes and Procedure)

- Dismissal and unpaid suspension
    - Sections 44932 and 44939
    - Sections 44934, 44934.1, 44936, 44944 (and others)

- Collective Bargaining Agreement

# Classified Employees

- Education Code section 45103 defines “classified employees” as those employees working in positions that do not require certification qualifications.
- The term “classified employee” does not include:
  - Substitute and short-term employees employed and paid for less than 75 percent of a school year.
  - Apprentices and professional experts employed on a temporary basis for a specific project.
  - Students employed part time in college work study or work experience program.
- These individuals have limited rights under the Education Code.
- These individuals are not necessarily excluded from the bargaining unit and may have enhanced rights under collective bargaining agreements.

# Classified Employees

- **Substitute Employees (Ed. Code, § 45103(d)(1)):**

“...a person employed to replace a classified employee who is temporarily absent from duty. In addition, if the school district is then engaged in a procedure to hire a permanent employee to fill a vacancy in any classified position, the governing board of the school district may fill the vacancy through the employment, for not more than 60 calendar days, of one or more substitute employees, except to the extent that a collective bargaining agreement then in effect provides for a different period of time.”

- **Short-Term Employees (Ed. Code, § 45103(d)(2)):**

“...a person who is employed to perform a service for the school district, upon the completion of which, the service required or similar services will not be extended or needed on a continuing basis.”

- **75% of School Year (Ed. Code, § 45103(d)(3)):**

“...195 working days, including holidays, sick leave, vacation, and other leaves of absence, irrespective of number of hours worked per day.”

# Classified Employees

- Classified Probationary Periods
  - Education Code section 45113 establishes a maximum six-month probationary period for newly-hired classified employees and permanent classified employees who are promoted.
  - Permanent classified employees who are promoted and fail to complete their probationary period are returned to the classification from which they were promoted.

# Classified Employees

- Classified Discipline
  - Education Code section 45113 requires school districts to adopt rules and regulations for management of classified personnel, including discipline.
  - Permanent classified employees can be disciplined and terminated for cause only.
  - A classified employee cannot be terminated or disciplined for any cause which, “arose more than two years preceding the date of the filing of the notice of cause...”

# HR Basics

## Evaluation Basics



## Evaluation Basics

- Every certificated employee must be evaluated regularly at least once a year for probationary employees and at least every other year for permanent employees. (Ed. Code, § 44664(a).)
- Probationary classified employees must be evaluated regularly as well, pursuant to district policy and collective bargaining agreement.



## Evaluation Basics

- Five-Year Evaluation Cycle. (Ed. Code, § 44664(a)(3))
- Permanent certificated employees who have been employed at least 10 years with the district, occupy a position required to be filled by a highly qualified teacher/professional and had a previous evaluation of meeting or exceeding standards, may qualify.
- Evaluator and evaluatee must agree.
  - Can withdraw consent at any time.
- Subject to bargaining.

# Evaluation Basics

- Recommendations as to areas for improvement in performance are mandatory, if necessary. (Ed. Code, § 44664(b).)
- Once a permanent certificated employee receives an unsatisfactory evaluation:
  - The employee must be evaluated annually until the employee receives a positive evaluation, or is separated from the district.
  - If the district participates in a program designed to improve employee performance, the district may require the employee to participate in that program.

## Evaluation Basics

- All evaluations (especially if they are for probationary employees or indicate a need for improvement) should be reviewed by a District-level administrator.
- Meet all timelines prescribed in the collective bargaining agreement!

## Evaluation Basics

- Provide a copy of each completed evaluation to the employee and hold a conference with the employee to discuss.
- If evaluation indicates a need for improvement, also discuss improvement plan and expectations for next evaluation period. (Ed. Code, § 44664(b).)

# Evaluation Basics

- At this conference, get the employee to initial or sign the document to indicate receipt, but not necessarily agreement, as to its contents.
- If the employee refuses to initial, simply write “refused to sign,” and put down the date and your initials.



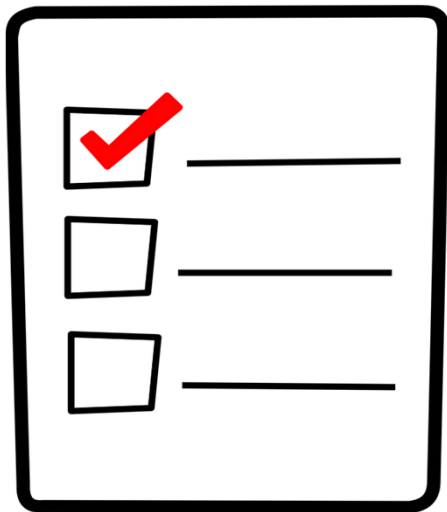


## Evaluation Basics

- The evaluation goes in the employee's personnel file after the employee has been given sufficient time to respond.
- (See your local CBA for exact number of days.)



## Evaluation Basics



- Take your time and do a thoughtful evaluation.
- Don't just check boxes.
- Box checking evaluations are useless for the purpose of progressive discipline.

# Evaluation Basics



- If employee was “written up” during the year, make reference to these FRISK documents and attach them.
- If an employee is receiving a less-than-satisfactory evaluation, it should not be a surprise.

# Doing it Right: Taking the Time to Properly Document is of Paramount Importance

- Proper documentation will assist in achieving successful remediation of employee deficiencies and misconduct.
- Where misconduct and deficiencies are beyond correction, proper documentation will assist in successful separation.
- Failure to prepare proper documentation can result in:
  - Lack of notice of:
    - Misconduct and areas of deficiency
    - District policies to abide by
    - District's intended action
  - Lack of improvement by employee
  - LACK OF DUE PROCESS!





## **HR Basics**

### Union Representation Basics

# Employee Right to Representation During Investigations

- *NLRB v. J. Weingarten, Inc.* (1975)
- An employee may be represented by the union at an **investigatory interview** with his or her supervisor when the employee **reasonably believes** that the interview may lead to a **disciplinary action**.





## Employee Right to Representation, cont.

**Does employee have the right to union representative of his/her choice?**



**Does the employee have the right to a union representative during an annual evaluation meeting or other routine meeting?**



**Must an employer postpone an investigatory meeting to allow employee to secure a union representative?**



# HR Basics

## Employment Discrimination Basics

# The Law - Federal & State

## Federal Laws



- Title VII of the Civil Rights Act of 1964
- The Americans with Disabilities Act (“ADA”)
- The Age Discrimination in Employment Act (“ADEA”)
- Title IX of the Civil Rights Act of 1964

## State Law



- The California Fair Employment and Housing Act (“FEHA”)

*Both federal and state laws prohibit harassment and discrimination in the workplace.*

# What Constitutes Discrimination?

1. Conduct with DISCRIMINATORY INTENT towards a person of a protected group; or
2. Conduct that results in DISPARATE TREATMENT of a person in a protected group; or
3. A facially neutral policy that has a DISPARATE IMPACT on a person in a protected group.

# What Are “Protected Classes”?



Protected  
Characteristics

- ✓ Race
- ✓ Color
- ✓ Religious Creed
- ✓ Sex
- ✓ National Origin / Ancestry
- ✓ Physical / Mental Disability
- ✓ Medical Condition
- ✓ Genetic Information
- ✓ Marital Status
- ✓ Gender Identity
- ✓ Age
- ✓ Military Status
- ✓ Gender / Pregnancy
- ✓ Sexual Orientation
- ✓ Association/Perception

# Grievances

## Union Representation Basics

## What is a Grievance?

- An allegation that there has been a “violation,” “misinterpretation,” or “misapplication” of the “specific provisions” of the collective bargaining agreement.
- A grievance also may extend to memorandums of understanding.

## Who can file a Grievance?

- Individual bargaining unit member or a group of affected members.
- The Association/Union.

***Keep in mind that it is unlawful to use the negotiations process to prohibit an association from filing a grievance.***



# Avoiding a Grievance

- Know your collective bargaining agreements.
- Before changing a different practice or implementing a new policy:
  - Check to see if it is something that must be negotiated and get advice.
  - While a new practice may seem to not be prohibited by the contract, make sure it would not otherwise violate the law.
- If unsure, ask someone who knows. Avoid setting off alarms.

# Grievance Steps

- Informal Resolution – If informal resolution is required, make employees go through this step. If not required, encourage employees to use this step.
- Level I – Immediate Supervisor
- Level II – Superintendent or Designee (typically the Personnel Administrator)
- Level III – Board or Mediation (typically not both)
- Level IV – Arbitration

***Tips for Success: It is better to make the sequence work for you than allow it to be used against you. Know in advance at what step you want the grievance to be resolved.***

# Responding to Grievances

- Understand what the grievance is about - it may not really say so.
  - Tip: Treat grievances seriously. If you refuse to respond to the grievant's or the association's letters or offers for discussion, this will not be viewed favorably by an arbitrator.
- Check the Procedural Boxes
  - Tip: Keep in mind that some contracts automatically award grievant's proposed remedy if you fail to respond in time.
- Investigate and Analyze the Grievance
  - Tip: Remember any written materials, notes, etc., may have to be turned over to the association. Be discreet with personal notations and confidential information.

# Settling Grievances

- If you have to make up special conditions to satisfy the grievant, which may abridge the rights of other unit members (e.g., granting a transfer outside of mandatory seniority order), both the grievant and the association must waive future grievances on that issue.
- It is usually better to settle than to admit a violation, but there may be exceptions.

# Fighting Grievances

- If this is an issue that must be fought to the finish (make this decision early), involve legal counsel as early as possible. Arbitrations are true litigation, with large financial costs and large potential consequences.
- *Tip: When in doubt, check with legal counsel.*



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Question & Answer  
Session

# Thank You

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### **My goal is to identify clients' needs and find the most sensible way to fulfill those needs.**

Brooke Romero represents California school districts, community college districts, and county offices of education, as well as private schools, in a variety of general education and labor and employment matters. Her areas of expertise include labor relations, contract administration, certificated and classified employee discipline and dismissal matters, and school board governance.

Prior to attending law school, she received a scholarship from the Women Lawyers Association of San Luis Obispo County. During law school, she served as a staff editor on the *Nexus Journal of Law and Policy*, and as an Academic Fellow for first-year Contracts students. Ms. Romero was also the recipient of several CALI awards (highest class grade) for courses including Contracts, Legal & Equitable Remedies, and Legal Analysis.

### **Events & Speaking Engagements**

2024 EdLaw Tech Virtual Conference  
At Your Desk, 10.04.2024

### **Alerts & Articles**

Attorney General Opinion Allows Board Members to Attend Meetings Remotely as an ADA Accommodation  
08.09.2024

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U.S. Supreme Court Clarifies School District Authority to Punish Off-Campus Student Speech  
06.24.2021

State Issues Clear Guidance on School Reopening, Face Coverings and More  
07.20.2020

Postsecondary Schools Have a Duty of Care to Protect Students from Foreseeable Harm That Occurs During Curricular Activities  
03.28.2018

### Publications

Ms. Romero is an active contributor to the firm's education law publications and blog.

### Blog Posts

Does the Public Have a First Amendment Right to Post Comments on a Public Official's Twitter Feed? First Amendment Challenges to Social Media Access in the 21st Century  
*EdLawConnect Blog*, 07.09.2018

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Gabriela Rodriguez represents educational agencies in all employment matters, including employee evaluations, discipline, reasonable accommodations, interactive process meetings, restraining orders, and other areas of general education law. Ms. Rodriguez also conducts investigations for school districts with respect to allegations of discrimination, harassment, bullying, and retaliation. Additionally, Ms. Rodriguez has successfully defended clients against charges brought by the California Civil Rights Department, Equal Employment Opportunity Commission, and Division of Labor Standards Enforcement.

Prior to joining AALRR, Ms. Rodriguez represented clients in labor and employment and business litigation disputes where she drafted various pleadings and documents such as discovery requests and responses, motions, demand letters, and mediation briefs. She also conducted legal research and attended hearings.

While in law school, Ms. Rodriguez served as the Senior Content Editor for the *Southern California Review of Law and Social Justice Journal* and served on the executive board for the Women's Law Association and the Latino Law Students Association. Ms. Rodriguez was also selected for the Mexican American Bar Association Scholarship and as a mediator for USC's award winning Mediation Clinic.

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