



## *Labor and Employment Law Update*

---

TEL: 661.636.4830  
FAX: 661.636.4843  
E-mail: [sls@kern.org](mailto:sls@kern.org)  
[www.schoolslegalservice.org](http://www.schoolslegalservice.org)

July 31, 2012

### NEW CONTRACT FOR CATEGORICAL CERTIFICATED EMPLOYEES

A recent California Appeals Court decision addressed the issue of whether certificated employees who were employed in categorical programs pursuant to Education Code section 44909 were temporary or probationary employees. In *Stockton Teachers Association CTA/NEA v. Stockton Unified School District* (2012) 203 Cal.App.4th 1552, the Court found that certificated employees employed in categorically-funded programs pursuant to Education Code section 44909 could only be considered as temporary employees in the event that the funding was ended or the contract terminated. In all other instances, the certificated employees under Education Code section 44909 must be considered to be probationary employees and subject to all of the protections afforded probationary employees under the Education Code. At the same time, it does not appear that such probationary employees are credited with progress towards permanent employment (i.e., “tenure”) unless they are subsequently employed as a probationary employee in a position which is not governed by section 44909.

In order to comply with the new requirements promulgated by the Court in the *Stockton* decision, Schools Legal Service has created a new categorical employment contract for teachers hired into categorical programs pursuant to section 44909. The contract must be signed prior to the first date of paid service in a section 44909 program. This contract has now been posted on the Schools Legal Service website in the “Members Only” section and, although it is similar to our temporary employment contracts, there are significant differences which have been incorporated in order to comply with the *Stockton* decision. Please note that the contract should not be used for teachers who are already employed by the district in either permanent or probationary positions who are subsequently reassigned into positions governed by section 44909. If the district is contemplating such assignments, please contact Schools Legal Service to discuss what contract documents might be appropriate.

Please contact any member of the Personnel Group at Schools Legal Service if you have any questions regarding the *Stockton* decision or the use of the new section 44909 contract.

— Christopher W. Hine

---

*Education Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.*