

Information for Probationary Teachers on being non-reelected



The district can decide not to reelect (continue to employ) a probationary teacher in the first two years of the probationary period (and 3 years if the employee started as an intern with Probationary 0 status). However, for employees with Probationary 2 status, the district must provide notice by March 15th. If the district provides no notice, the teacher is deemed reelected for the following year as a default. If this happens in the last year of probationary status, the employee will receive tenure when they return to work for the next school year.

Note: Even when a Probationary teacher is non-reelected, they are still employed until the end of the current school year.

So what reasons does the district have to give for not reelecting me?

Actually, none. If you are a probationary teacher the district can decide not to reelect you for any or no reason at all. All they have to do is get you the notice of non-reelection before March 15 of your second complete school year as a certified probationary teacher.

Well that doesn't seem fair...

Contrasted with the protections for permanent teachers it certainly does not seem fair. But this provisions allows districts to weed out who they deem underperforming or apparently troubled teachers before they become tenured and have due process rights. The California Court of Appeals has openly acknowledged this balance “[t]his seemingly draconian provision [talking about § 44929.21(b)] represents the Legislature’s balance between the rights of the teacher and the overall purpose of the system of public education, which is to educate the young.” *Sunnyvale Unified School District v. Jacobs*, 171 Cal. App. 4th 168 (Ct. App. 2009).

What are my options?

Your options are somewhat limited. Since the district has the **absolute right not to reelect you** while you are a probationary employee, it is very difficult to challenge a non-reelection. Ultimately, each case is different. In some cases, the district may allow you to resign instead of receiving a formal non-reelection, but timing is important if you

decide to take this route, so talk with your site rep. There is also nothing to stop you from advocating for yourself by gathering letters of recommendation to add to your personnel file before the end of the school year, asking to meet with HR to discuss your take on the situation, and making a case why you believe you should continue to be employed. Just remember to always keep it professional, no matter how wronged you may feel, and that realistically, the district rarely changes their mind on a non-reelection notice.

Conclusion

Probationary teachers have drastically limited rights when it comes to non-reelections. If you are a teacher that has been notified of your non-reelection (or received a mid-year evaluation that states you are not being recommended for advancement) you may want to pursue a resignation in lieu of non-reelection. Districts have broad discretion when it comes to reelection. So, in some cases, rather than trying to fight a reelection it may be better just to move on and find employment elsewhere. If you do want to challenge a non-reelection you need to consider whether your non-reelection was based on your membership in a protected class or a protected disclosure you made.

Excerpts of CA. Ed. Code

California Education Code 44,929.21

(b) Every employee of a school district of any type or class having an average daily attendance of 250 or more who, after having been employed by the district for two complete consecutive school years in a position or positions requiring certification qualifications, is reelected for the next succeeding school year to a position requiring certification qualifications shall, at the commencement of the succeeding school year be classified as and become a permanent employee of the district.

The governing board shall notify the employee, on or before March 15 of the employee's second complete consecutive school year of employment by the district in a position or positions requiring certification qualifications, of the decision to reelect or not reelect the employee for the next succeeding school year to the position. In the event that the governing board does not give notice pursuant to this section on or before March 15, the employee shall be deemed reelected for the next succeeding school year.

Sources: California Education Code, <https://www.ivancelaw.com>