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THE *GOLDEN VALLEY* COURT STRIKES AGAIN:  
TEMPORARY TEACHERS WORKING UNDER EMERGENCY PERMITS,  
WAIVERS, PRE-INTERNSHIP OR UNIVERSITY INTERN CREDENTIALS  
MUST, IN MANY CASES, BE RECLASSIFIED AS *PROBATIONARY* AND  
AFFORDED STATUTORY LAYOFF PROTECTIONS

On December 19, 2006, the California Court of Appeal for the Fifth District held that certificated employees working under emergency permits, pre-internship credentials, university internship credentials and credential waivers must be classified as probationary employees unless the Education Code specifically defines them as temporary based on the positions they hold. (*Bakersfield Elementary Teachers Association v. Bakersfield City School District* (Cal. App. 5<sup>th</sup> Dist.) 2006 WL 3734564.)

In most school districts, teachers holding anything less than a clear credential are classified as temporary employees in light of Education Code § 44911, which provides that service under a provisional credential is not included in the calculation of time served toward tenure. Under *Bakersfield*, many of these provisionally credentialed teachers must be reclassified as probationary employees with full statutory layoff rights – *i.e.*, the right to accrue seniority (§ 44845), the right to notice and a hearing prior to layoff (§§ 44949 and 44955), and reemployment rights (§ 44957), even though they are not on the tenure track.

*Bakersfield* follows the trend established by the same court in *CTA v. Golden Valley Unified School District* (2002) 98 Cal.App.4th 369. *Golden Valley* created what has been called the “Prob 0” – a teacher who cannot attain tenure due to his or her credential, but who is entitled to the due process afforded probationary teachers before a mid-year dismissal for cause. *Bakersfield* similarly expands the due process umbrella to cover provisionally credentialed teachers in the context of certificated layoffs.

From a policy standpoint, the implications of the *Bakersfield* decision are significant and troubling. Despite the strong legislative preference for fully credentialed teachers reflected in both state and federal law, *Bakersfield* could

require districts to lay off teachers with clear credentials while retaining teachers working under emergency permits, waivers, or university internship credentials. These provisionally credentialed teachers may also possess superior reemployment rights over clear credentialed teachers.

RECOMMENDATIONS:

We recommend that school districts take the following steps to minimize the impact of the *Bakersfield* decision and to avoid potential liability arising from misclassification of teachers:

- Identify the certificated employees who are properly classified as temporary by virtue of the positions they occupy, such as:
  - teachers working in categorically funded projects, or “back filling” a vacancy caused by a tenured teacher’s assignment to a categorically funded project (§ 44909);
  - replacements for teachers who have left the district, who are employed to serve for less than three or four months, or in certain types of limited, emergency, or temporary assignments (§§ 44852, 44917, 44919, 44921, 44986);
  - long term replacements for teachers who are on leave of absence (§ 44920), *etc.*
- Reclassify as probationary the remaining temporary certificated employees;
- Update your district’s seniority list in accordance with *Bakersfield*;
- Consider non-reelecting newly reclassified probationary teachers with provisional credentials;
- Meet and confer with the affected unions over effects of the layoff-related changes.

Given the potential impact of *Bakersfield*, we recommend that you seek legal counsel to conduct an individual analysis of your district’s policies and procedures, seniority list, and options. We offer our assistance in this regard and are available to address any specific questions arising from this recent decision.

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