GROSSMONT EDUCATION ASSOCIATION

February 24, 2020

Dear GEA Member,

As your representative we would like to provide you with some important information since you have recently been non-re-elected by your District. You may be entitled to receive Unemployment Insurance Benefits even if you chose to resign instead of being non-re-elected. To file for unemployment, the application process can be completed online or by phone.

To apply online go to the web site **www.edd.ca.gov** and click on the link "File for Unemployment" under the heading File and Manage a Claim. Once there, go to "Apply for UI" under self-service options. When you are on the claim process page you can apply for unemployment benefits online. The online application process takes about thirty (30) minutes to complete.

Another option is to phone the EDD at (800) 300-5616 to file the claim. This can be done Monday thru Friday between the hours of 8:00 a.m. and Noon.

You must personally decide which process to use in filing your claim.

Also, when you find employment in a new school district, the sick leave that you accumulated in GUHSD can be transferred to the new district. It is your responsibility to inform the new district, and provide them with the necessary information. This Ed. Code provision has also been included to assist you.

If you have additional questions please do not hesitate to contact the GEA office at (619) 460-3465.

Sincerely,

James Messina
GEA President

9015 Grossmont Blvd., La Mesa, CA 91941
P.O. Box 756, La Mesa, CA 91944-0756
Phone: (619) 460-3465 Fax: (619) 460 9325
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To: Dr. Terry Stanfill
Assistant Superintendent
Human Resources Division
Grossmont Union High School District

Subject: Notice of Non Re-Election

Date: February 24, 2020

I, **[FULL NAME]**, am resigning from the Grossmont Union High School District effective **[DATE]** in lieu of being non re-elected. It is also my intent to apply for unemployment benefits as allowed under the California Code of Regulations Title 22, Section 1256-1, Subsection (d).

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Instructions after receiving letter from the District:

This is a SAMPLE resignation letter to be sent to the District.

Retype and write-in your full name as it appears on your paycheck.

Send as soon as possible to the District office via:
Fax: (619) 465-5361
Scan & e-mail as a PDF: tstanfill@guhsd.net
U.S. mail:
Grossmont Union High School District
Human Resources Department
PO Box 1043
La Mesa, CA 91944

Retain a copy for your records and if you like, you can send a copy to your site administrator.

Probationary Teachers Rights

The following is a summary of the Education Code as well as the cases that have handled probationary teacher rights based on receiving the Non-Reelection notice. This information was generated as a summary of the law for informational purposes and some of it may not pertain to your individual situation.

NON-REELECTION OF PROBATIONARY TEACHERS

California K-12 teachers earn permanent status, not tenure. It takes two years working with an appropriate credential in a regular educational school program to acquire permanent status.

Districts have the right to non-reelect a probationary teacher at the end of the school year any time prior to March 15th of their second year of employment. Districts do not need any cause or reason to give the notice. Teachers are not entitled to a hearing. Good evaluations or a failure to follow the collective bargaining contract are no defense to a non-reelection notice.

HISTORY

Before 1984, teachers were required to teach three years to obtain permanent status. Teachers were entitled to a hearing to determine if there was some cause or reason not to re-employ them. The hearing officer made a proposed decision that the school board could accept or reject. The law was changed to reduce the time to acquire permanent status from three to two years and to eliminate these hearing procedures.

LAW

Education Code §44929.21 is the statutory authority for district rights regarding non-reelection of probationary teachers. This law has been repeatedly challenged by CTA in the courts. The courts have consistently found in favor of the district and against probationary teachers. One case was decided by the California Supreme Court. A brief summary of the legal precedents is as follows:

(1) Bellflower Education Association vs. Bellflower Unified School District (1991) 228 Cal.App.3d 805. The district failed to comply with its evaluation policy in the collective bargaining contract. An arbitrator awarded reinstatement. The court vacated the arbitrator's award and held that the arbitrator did not have that power to reinstate the teacher and that the district had the right to terminate the teacher regardless of the collective bargaining agreement.

(2) Board of Education vs. Round Valley Teachers Association (1996) 13 Cal.4th 269. The collective bargaining contract provided that the district had to give thirty days notice to the teacher prior to giving a Notice of Non-Reelection. The California Supreme Court held that Section 44929 preempted the collective bargaining contract and that the district had the right to give the Notice of Non-reelection regardless of the contract.

(3) Grimsley vs. Board of Trustees of Muroc Joint Unified School District (1987) 189 Cal.App.3d 1440. The Notice of Non-Reelection was given after March 15th of the first year of employment. The court found that the Notice of Non-Reelection could be given in the first year of employment up to June 30th. See also CTA vs. Mendocino Unified School District (2001) 92 Cal.App.4th 522.

(4) Fine vs. Los Angeles Unified School District (2004) 116 Cal.App.4th 1070. The teacher was teaching with an emergency credential. She had applied for her preliminary credential and had met all of the qualification for the credential. The credential was granted in approximately March of the school year and was backdated to the beginning of the school year. The court held that year did not count as one of the two years necessary for the attainment of permanent status since the teacher did not actually have the credential at the time she was working. Since the credential was granted in March, she did not complete seventy-five percent of the school year with a credential and the year could not be counted.

(5) Smith vs. Governing Board of Elk Grove Unified School District (2004) at 120 Cal.App.4th 563. The teacher had a regular credential when she was hired. She taught special education with an emergency credential for two years. The court held that the time she taught special education with an emergency credential did not count towards permanent status.

(6) Zalac vs. Governing Board of Ferndale Unified School District (2002) 98 Cal.App.4th 838. The court held that teaching in a class-size reduction program was a categorically funded program and that the years spent in the class-size reduction program did not count for permanent status.

(7) Motevalli vs. Los Angeles Unified School District (2004) 122 Cal.App.4th 97. The court held that a probationary teacher had (1) no entitlement to a renewal of her contract and (2) that no cause of action existed for non-renewal of an employment contract in violation of public policy. The court stated, "Motevalli cannot make a Tameny claim for wrongful termination in violation of public policy because she was not terminated. Defendant (school district) had a right not to renew her contract, which is what it did. Since plaintiff was not fired, discharged or terminated, she cannot claim wrongful termination in violation of public policy."

SOME SUCCESSES.

(1) McFarland Unified School District vs. PERB (1991) 228 Cal.App.3d 166. The court upheld a PERB decision that found that the non-reelection was due primarily to the teacher's union activities and therefore voided the non-reelection.

(2) Cousins vs. Weaverville (1994) 24 Cal.App.4th 1846. The court held that the district could not use the non-reelection provisions to layoff teachers when the undisputed sole reason for the layoff was for financial reasons. The court held that the district should have used the layoff provisions of §44955. This would have given the teachers the right to return to work if the programs were reinstated. However, the court in CTA vs. Mendocino Unified School District (2001) 92 Cal.App.4th 522 held that a district could use §44955 to layoff a teacher in May, and decide in June of her first year of employment not to reelect her and thus eliminate her reassignment rights.

(3) Sexual Orientation. We have been successful and other GLS attorneys have been successful in obtaining reinstatement and/or significant financial settlement for teachers when we could prove they were non-reelected due to their sexual orientation.

(4) Grievances. Some teachers have filed grievances regarding the district's violation of the evaluation provisions and have been awarded some money. However, the law is now clear that reinstatement cannot be ordered.

RESIGNATION/NON-REELECTION

Many districts will tell the probationary teacher that they are going to give a Notice of Non-Reelection and give the teacher the option to resign. However, the District is not required to give the teachers this option. Many teachers wonder whether they would be better off to resign or be non-reelected. In our experience, it has not mattered too much one way or the other. We believe in general that it would be better for the teacher to resign. It may be of some help in employment applications in another district. However, the teacher would have to answer questions honestly. Also, under Unemployment Insurance Code §1256, a teacher could still be eligible for unemployment benefits on the basis that if a reasonable person would resign under the circumstances, unemployment insurance benefits are not precluded.

44929.21. (a) 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 three 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.

This subdivision shall apply only to probationary employees whose probationary period commenced prior to the 1983-84 fiscal year.

(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.

This subdivision shall apply only to probationary employees whose probationary period commenced during the 1983-84 fiscal year or any fiscal year thereafter.

44930. (a) Governing boards of school districts shall accept the resignation of any employee and shall fix the time when the resignation takes effect, which, except as provided by subdivision (b), shall not be later than the close of the school year during which the resignation has been received by the board.

b) Notwithstanding any other provision of law, an employee and the governing board of a school district may agree that a resignation will be accepted at a mutually agreed upon date not later than two years beyond the close of the school year during which the resignation is received by the board.

44979. Any certificated employee of any school district who has been an employee of that district for a period of one school year or more and who accepts a position requiring certification qualifications in another school district or community college district at any time during the second or any succeeding school year of his or her employment with the first school district, or who, within the school year succeeding the school year in which employment is terminated, signifies acceptance of his or her election or employment in a position requiring certification qualifications in another school district or community college district, shall have transferred with him or her to the second district the total amount of **leave** of absence for illness or injury to which he or she is entitled under Section 44978. The State Board of **Education** shall adopt rules and regulations prescribing the manner in which the first district shall certify to the second district the total amount of **leave** of absence for illness or injury to be transferred. No governing board shall adopt any policy or rule, written or unwritten, which requires any certificated employee transferring to its district to waive any part or all of the **leave** of absence which he or she may be entitled to have transferred in accordance with this section.

NOTE: This is the teacher's responsibility to notify the new district in writing of the name and address of the district of last employment so that necessary documents may be completed to accomplish the transfer.

Temporary Teacher Rights

In general, school districts may hire people/employees with a temporary classification ("Temps") to replace regular employees on leaves of absence or to fill in for regular employees who have been given categorically funded positions. The Temp doesn't actually have to replace a particular person; but the number of certificated employees on leave and those in categorical positions throughout the district cannot exceed the number of temporary employees.

Temps are at-will employees who serve on contracts for one school year or shorter periods of time. This means the District can release them at any time during the first 75% of the school year, with or without cause and without a hearing. If they receive a release notice from the District, Temps don't have an automatic right to reemployment the next year, but under certain circumstances, they must be given some preference if there are vacancies. A person may be a temporary employee for many years. But, if she is rehired into a probationary position for the next school year, then the one previous year in a temporary position will count toward permanent status.

In the event of a layoff, Temps don't receive layoff notices or have preferential rehire rights because their contracts simply terminate at the end of the school year.

Term
22 CCR § 1256-1

Cal. Admin. Code tit. 22, § 1256-1

Barclays Official California Code of Regulations Currentness
Title 22. Social Security
Division 1. Employment Development Department [FNA1]
Subdivision 1. Director of Employment Development
Division 1. Unemployment and Disability Compensation
Part 1. Unemployment Compensation
Chapter 5. Unemployment Compensation Benefits
Article 1. Eligibility and Disqualifications (Refs & Annos)
[FNa1] Formerly Department of Human Resources Development.

§ 1256-1. Voluntary Leaving or Discharge -Relationship to and Distinction from Discharge, Layoff and Other Types of Unemployment.

(a) Scope. This section relates to a voluntary leaving of work within the meaning of Section 1256 of the code and contrasts it with those situations in which an individual leaves work involuntarily as the result of a discharge, a layoff, a disciplinary suspension or any other cause of cessation of employment. This section distinguishes a suspension of work arising out of a trade dispute pursuant to Section 1262 of the code. This section also distinguishes causes of unemployment in which a separation issue does not arise.

If an individual is separated from his or her “most recent work,” as defined in Section 1256.3 of the code and Section 1256-2 of these regulations, the individual is disqualified under Section 1256 of the code only if he or she quits work voluntarily and without good cause or is discharged by the employer for work-connected misconduct. A claimant is not disqualified under Section 1256 of the code if his or her employment is terminated either as the result of a voluntary leaving with good cause or as the result of a discharge or suspension by the employer for reasons other than work-connected misconduct of the claimant.

If an individual voluntarily leaves his or her most recent work, the disqualification under Section 1256 of the code depends upon whether or not the leaving was with good cause. Section 1256-3 of these regulations sets forth general principles of good cause. Sections 1256-4 to 1256-23 of these regulations describe circumstances which are or are not good cause.

Sections 1256-30 to 1256-43 of these regulations relate to discharges for misconduct.

(b) Voluntary Leaving. A voluntary leaving of work occurs when an employee is the moving party causing his or her unemployment. A voluntary leaving includes, but is not limited to, the following common situations in which the employee is the moving party in causing his or her own unemployment:

(1) A leaving of work at a time when work is available.

(2) The employee's voluntary act or conduct is not work-connected misconduct, but compels the employer to discharge the employee which the employee knew or reasonably should have known would be the result (see subdivision (f) of this section).

(3) A leave of absence requested by the employee (see Section 1256-16 of these regulations).

(c) Involuntary Leaving. An involuntary leaving of work occurs when the employer is the moving party in causing the unemployment of an employee at a time when the employee is able and willing to continue working. An involuntary leaving includes, but is not limited to, the following common situations in which the employer is the moving party in causing the employee's unemployment:

(1) A discharge or disciplinary suspension for work-connected misconduct (see Sections 1256-30 to 1256-43 of these regulations).

(2) A discharge for reasons other than misconduct.

(3) A layoff, due to a lack of work, for an indefinite period of time. However, a temporary layoff, due to a lack of work, for a reasonably definite period of time does not sever the employment relationship and if the employee terminates the employment relationship during such temporary layoff, the leaving is a voluntary leaving.

(4) A layoff due to a mandatory leave of absence policy pursuant to employer rules or to the provisions of a collective bargaining agreement to which the employer is a party (see Section 1256-16 of these regulations).

(5) A layoff due to limited tenure or job rotation provisions of a collective bargaining agreement between the employer and the union (see Section 1256-16 of these regulations).

(6) A layoff of an employee during the course of a trade dispute in which he or she is not involved.

(7) A change in the ownership of a business which results in an indefinite layoff of the employee even though the successor business extends an offer of new work to the employee. This would raise an issue of refusal of suitable employment under subdivision (b) of Section 1257 of the code.

(d) Moving Party. Whether an individual leaves work voluntarily or involuntarily depends upon which party initiated a termination or suspension of the employment. The employer who refuses to permit an able and willing employee to continue working or the employer who is unable to provide continuing work is the moving party and the employee is involuntarily unemployed due to a discharge or layoff. Therefore, a voluntary leaving occurs only when work is available and the employee leaves work of his or her own free will.

An employee who leaves work when asked by the employer to either resign or be fired, or an employee who resigns rather than agree to a forced leave of absence, has not left work of his or her own free will. In these situations, since the employee did not choose to quit, the employer is the moving party in the separation and the employee becomes involuntarily unemployed.

The employer is also the moving party if the employer discharges the employee but then gives the employee the option of either leaving immediately or remaining a few days longer, and the employee elects to leave immediately. However, the employer must in fact discharge the employee. For example, if the employer, in response to a complaint by the employee, replies that the employee can quit if the job is not satisfactory and the employee then does so, the employee is the moving party.

In the following situations the employee is the moving party in terminating the employment and thus the employee has voluntarily left his or her employment:

(1) The employee resigns in anticipation of a discharge or layoff and before the employer takes any action.

(2) The employee resigns but delays the effective date of the resignation at the request of the employer.

(3) The employee resigns effective as of a future date, the employer accepts the resignation and makes a firm offer to a potential replacement or incurs substantial expenses in recruiting or other efforts to obtain a replacement, and the employee subsequently unsuccessfully attempts to withdraw the resignation prior to its effective date.

(4) The employee leaves work prior to the effective date of a discharge and is not paid beyond the last day actually worked. However, if the employee leaves work on the effective date of discharge but prior to the end of the normal workday, there is a discharge rather than a voluntary leaving, even if the employee is paid for that day's work. The employer would also become the moving party if the employer terminates the employee's employment prior to the effective date of the employee's resignation and does not pay the employee any wages beyond the date of the termination.

(5) The employee refuses to exercise his or her right to “bump” another employee and instead elects to be laid off.

(e) Termination of Employment.

(1) General. Employment is terminated when, at the time of leaving, neither the employer nor the employee contemplates a resumption of the employment relationship. A termination of the employment relationship or a disciplinary suspension is necessary before there can be either a voluntary leaving or a discharge, but is not essential to other types of leaving. For example, there may be a physical leaving of work by the employee and yet the employment relationship continues in certain situations where the employee is on leave of absence, is temporarily laid off, suspended for a definite period, or is unemployed because of a trade dispute.

(2) Leave of Absence or Layoff. Although an employee neither performs services nor receives wages during an authorized true leave of absence or a temporary layoff due to lack of work, the employment relationship continues because the work will resume at a later date, and there has been no termination of employment. A layoff for an indefinite period, or for an unreasonable length of time, or where there is no contemplation that the employee will resume his or her work in the future may sever the employer-employee relationship. In such cases there can be no leaving after the date of such a layoff.

A true leave of absence exists if the employer and the employee mutually agree that the employee will return to his or her work after a period of absence and that the employment relationship is not terminated although the performance of services is suspended for the period of the absence from work. A leaving of work occurs when an employee voluntarily commences a true leave of absence. If the employer is unable to return the employee to his or her work upon the expiration of a true leave of absence, the employment is terminated at that point and the employee is laid off due to a lack of work. However, if an employee merely leaves for a fixed period of time with an understanding that he or she would be rehired at the end of that period only if work were available, then a true leave of absence does not exist. If no work is available when the period expires, the employment has been terminated and the employee has voluntarily left work as of the commencement of the period. A termination and voluntary leaving of work also occur if upon expiration of a true leave of absence the employee fails to return to work, or, if unable to return, the employee fails to request or requests without success an extension of the leave.

Section 1256-16 of these regulations should be consulted for a detailed discussion of a true leave of absence as it relates to the question of a voluntary quit with or without good cause.

(3) Suspension. A disciplinary suspension of an employee for a specific period of time raises a separation issue if the employee files an unemployment insurance claim during the period he or she is suspended. Whether or not the claimant will be eligible for benefits depends upon the reason the claimant was suspended by the employer. If the claimant was suspended for willfully and knowingly violating reasonable employer rules, the claimant will be disqualified on the basis of a discharge for misconduct connected with the work.

This situation is similar to a constructive voluntary leaving, discussed below in subdivision (f) (see also Section 1256-43 of these regulations which discusses discharge for misconduct for violation of employer's rules).

(4) Termination by Mutual Agreement. There may be a separation by mutual agreement if the employer and employee have mutually agreed to separate, either at the time of termination or, initially, at the time of hire. In such cases the termination is neither a discharge nor a leaving and thus

a disqualification cannot arise under Section 1256 of the code. The expiration of a fixed term contract of hire to which the parties initially agreed is an example of a termination by mutual agreement.

EXAMPLE 1. A's employment was under a written contract which required two years of service in a foreign country. Approximately two weeks before the expiration of this contract the employer offered A similar contract for another two-year term. For personal reasons, A declined to enter into the new contract and did not continue working after the expiration of the contract.

Since A satisfied the terms of a specific period of employment, A became involuntarily unemployed and A's refusal to enter into a new contract of employment is not a voluntary leaving.

(5) Trade Dispute. A leaving of work by an employee because of a trade dispute pursuant to Section 1262 of the code results in merely a suspension of the employment relationship rather than a termination of employment. Such a leaving is not treated as a leaving under Section 1256 of the code (see Section 1262-1 of these regulations). An individual may not be directly involved in a trade dispute but may become unemployed due to the actions of others. For example, a nonunion employee who becomes unemployed, due to a plant closure arising out of a trade dispute with union employees, is temporarily laid off due to lack of work. Section 1256 of the code is not applicable at the time of the temporary layoff and would become applicable only by a subsequent termination of employment. This could arise by a refusal of either the employer or the employee to continue the employment relationship at the time work is resumed following the end of the trade dispute. An employee may voluntarily quit during a trade dispute if there is an unequivocal severance of the employment relationship. This could occur where the employee intends to sever the employment relationship and to abandon the employment. If this does occur, it raises an issue under Section 1256 of the code.

(f) Constructive Voluntary Leaving. In some cases, the employee is deemed to have left work voluntarily even though the apparent cause of termination is the employee's discharge by the employer. Such a leaving is designated as a constructive voluntary leaving and it occurs when an employee becomes the moving party by engaging in a voluntary act or in a course of conduct which leaves the employer no reasonable alternative but to discharge the employee and which the employee knew or reasonably should have known would result in his or her unemployment. However, an employee is not required to comply with an unreasonable order of an employer, and a discharge in such circumstances would be a discharge for reasons other than misconduct and not a constructive voluntary leaving. The following examples involve a constructive voluntary leaving since the loss of employment is directly caused by the employee's voluntary action which set in motion the events leading to the employer's action of discharging the employee

EXAMPLE 2. The driver's license of B, a truck driver, was revoked by the state due to a drunk driving conviction. The employer discharges B because B is no longer able to continue operating the employer's delivery truck.

EXAMPLE 3. C refuses to join a labor organization within the required time limit or fails to pay C's union dues as required by the terms of a collective bargaining agreement between the employer and a union representing the employees. The employer discharges C as required by the agreement with the union.

EXAMPLE 4. D is hired by a cannery for a workweek of Monday through Saturday. D works under such conditions for several years but then decides that for personal reasons D will no longer work on Saturdays. The employer discharges D due to D's refusal to work Saturdays.

Note: Authority cited: Sections 305 and 306, Unemployment Insurance Code. Reference: Sections 1256 and 1257, Unemployment Insurance Code.

HISTORY

1. New section filed 4-18-80; effective thirtieth day thereafter (Register 80, No. 16).

2. Change without regulatory effect repealing subsection (b)(3) and renumbering subsection (b)(4) to subsection (b)(3) (Register 87, No. 40).

22 CCR § 1256-1, ◄22 CA ADC § 1256►-◄1►

This database is current through 2/8/13 Register 2013, No. 6

END OF DOCUMENT

Dear GEA Member:

In the past, members have called with questions concerning the application for Unemployment Insurance. Below you will find responses to the questions most members have when filling out the application.

Members are entitled to Unemployment Insurance if they have been dismissed for reasons other than misconduct.

Page 5, Question 25g, asks for a brief explanation of why “you are no longer working for your very last employer.” If you were non-reelected, the answer is “let go at the end of school year, denied permanent status,” or words to that effect. If you resigned after being told you would be non-reelected, the answer is “resigned, after being told I would be fired if I did not resign. No misconduct involved.”

Page 6, Question 27d, asks if the applicant has “reasonable assurance to return to work after the recess period or the off-track period with any school or educational institution?” The answer to this question will be “no.”

Page 6 Question 30a, on the application asks “What is the name of your union or non-union organization?" The answer is the name of your local chapter, not CTA.

Page 6, Question 30b, there is no “local number” because we do not name our chapter affiliates that way. You must enter zero “0”.

Page 6, Question 30d, asks if “your union looks for work for you.” The answer is “no.”

Page 6, Question 30e, asks if “your union controls your hiring.” The answer is “no.”

Page 6, Question 30f asks “are you registered with your union as out of work?” and the answer to that is “no.”

Please don’t hesitate to call the GEA office at (619) 460-3465 if you have any questions.