



Probationary Teacher Entitled to Notice of Unsatisfactory Performance Prior to Mid-Year Termination

A school district's mid-year dismissal of a first year probationary teacher, for unsatisfactory performance, was deemed void in Achene v. Pierce Joint Unified Sch. Dist. (August 13, 2009) __ Cal. Rptr. 3d __ (2009 WL 2466818) because the District failed to issue a 90-day notice of unsatisfactory performance.

Sarah Achene was a first year probationary English teacher during the 2006-2007 school year. The school principal conducted informal classroom observations and conferences with Ms. Achene about his observations. The principal also performed two formal classroom observations on October 19th and November 30th. The October 19th observation generated positive comments. Following the November 30th observation, the principal met with the teacher and expressed concerns about the students' behavior and lesson content. The principal also stated that the governing board had discussed terminating the teacher because the board president felt his daughter had not learned anything while in the teacher's class. The teacher received an observation report on December 5th, which was followed by a notice of dismissal on December 8th.

The Court of Appeal held that if the reason for termination of a probationary employee is unsatisfactory performance the district must notify the employee in writing, i.e. issue a 90-day notice, make specific recommendations as to areas of improvement and provide assistance. The Court noted that delivery of the written report of the teacher's unsatisfactory performance on December 5th and the notice of dismissal on December 8th was unreasonable. Furthermore, the district made no effort to make recommendations and assist the teacher after December 5th.

Based on Achene termination of probationary teachers for unsatisfactory performance will require service of a 90-day notice and offers of assistance. This reasoning will most likely be applied to terminations for unprofessional conduct, i.e. the requirement to issue a 45-day notice and opportunity to improve.

Should you have any questions regarding this case and its impact, please contact one of our four offices.

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