

LEGAL MAILBAG – APRIL 11, 2024



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The “Legal Mailbag Question of the Week” is a regular feature of the CAS Weekly NewsBlast. We invite readers to submit short, law-related questions of practical concern to school administrators. Each week, we will select a question and publish an answer. While these answers cannot be considered formal legal advice, they may be of help to you and your colleagues. We may edit your questions, and we will not identify the authors. Please submit your questions to: legalmailbag@casciac.org.

Dear Legal Mailbag,

As I was falling asleep last night, I awoke with a start, wondering whether we should be doing more to part company with a long term substitute. I am the principal of an elementary school, and one of my teachers went out on leave last fall for an illness. At the time, we thought that it would be a short absence, and we hired a warm body to cover the absence. However, last December we learned from the teacher on leave that her recovery would be lengthy and that she will be out through the end of the year.

When we hired the long term substitute, we told him that the position was temporary and he would be employed only as long as the teacher was on leave. He had no problem with that, and he told us at the time that he was just happy to have a job. My concern, however, is that his employment with us as a long term substitute has morphed into an assignment that will last for the better part of the school year.

How can I make sure that his employment is limited and that it will now end with the school year in June?

Signed,
Better Safe Than Sorry

Dear Better:

Thank you for your question, because the answer may be helpful to others as we approach the end of April and the non-renewal deadline. As explained below, this long term substitute is now a “teacher” under the Teacher Tenure Act, and your Superintendent is well-advised to send a written notification of non-renewal to this teacher promptly to be sure that he receives that non-renewal notification before May 1.

The Teacher Tenure Act defines a “teacher” as “each certified professional employee below the rank of superintendent employed by a board of education for at least ninety calendar days in a position requiring a certificate issued by the State Board of Education.” Conn. Gen. Stat. § 10-151(a)(2). Moreover, the certification regulations provide that a person teaching in the same assignment for forty or more school days must have either a substitute authorization or a teaching certificate. Conn. St. Regs. § 10-145d-420. If the long term substitute here is certified for the position he holds, therefore, he is a “teacher” because he has been employed for more than ninety calendar days in a position requiring certification.

As a “teacher,” the long term substitute has rights under the Teacher Tenure Act. Of greatest concern is the following provision in Conn. Gen. Stat. § 10-151(c):

The contract of employment of a teacher who has not attained tenure may be terminated at any time for any of the reasons enumerated in subdivisions (1) to (6), inclusive, of subsection (d) of this section; ***otherwise the contract of such teacher shall be continued into the next school year unless such teacher receives written notice by May first in one school year that such contract will not be renewed for the following year.*** (Emphasis added).

Given this provision in the Teacher Tenure Act, the long term substitute could possibly claim here that his contract of employment as a “teacher” was renewed for the coming school year by operation of law unless he receives written notification of non-renewal prior to May 1. It is the rare circumstance when a long term substitute would make this claim, but prudence dictates providing such notification of non-renewal. Otherwise, you risk receiving an unwelcome email from the long term substitute next fall asking what his assignment is for 2024-2025.

A related question is whether the superintendent is authorized to send a non-renewal notification to teachers without Board authorization. Conn. Gen. Stat. § 10-157 provides that the superintendent is the “chief executive officer” of the board of education. Moreover, a teacher who receives such notification has the right under the Teacher Tenure Act to request a hearing before the board of education unless the reason for non-renewal is elimination of position or loss of position to another teacher. Accordingly, Legal Mailbag predicts that a court on review would find that the superintendent has the authority to issue non-renewal notifications without board action. However, the required notification is described in the statute in the passive voice without specifying who may send it, and the conservative approach is to have the Board vote to authorize the superintendent to provide such notifications.