

CHAPTER X
METHOD OF FILLING POSITION OPENINGS

10.01 Type of Appointment

All position opening(s) in the classified service shall be filled by transfer, reemployment, reinstatement or demotion or from eligible persons certified from the appropriate eligibility list by the Director. In the absence of the appropriate eligibility list, provisional appointments may be permitted in accordance with these rules.

10.02 Request for Certification of Eligible Persons

- A. A position opening in any regular or restricted class shall be defined as an unfilled position in the classified service.
- B. The Assistant Superintendent, Human Resources shall be responsible for maintaining a roster of the position opening(s) amongst the classified service.
- C. Whenever a position opening is to be filled, the appointing authority shall notify the Assistant Superintendent, Human Resources, who shall verify the position opening, shall transmit to the Director, in advance, of the date of the anticipated need, a request for certification, describing the following characteristics of the position:
 - 1. Official class title
 - 2. Position identification number
 - 3. Position status (e.g., fulltime, part-time, regular, limited-term)
 - 4. Work hours, work days/year, starting and ending times
 - 5. Department and location
 - 6. Name of supervisor
 - 7. Any special requirements
 - 8. Other pertinent information

10.03 Notices for Position Opening(s)

Prior to certifying names of eligible persons, notices of position openings shall be made available for transfer, demotion, reinstatement in accordance with these rules and appropriate collective bargaining agreements, except to mitigate the affect of a layoff or when involuntary transfer is necessary for the good of the classified service.

10.04 Order of Certification

The names of eligible persons or employees, who are available to accept employment, shall be certified for appointment from the following employment lists for the classification.

- A. Transfer Lists.
- B. Reemployment (Layoff) List of persons laid off or demoted because of lack of work or lack of funds (One name).
- C. Reinstatement (Restoration) List of persons requesting reemployment in the classification within (39) months after resignation.
- D. Competitive Eligibility List resulting from examination announced as open competitive, open and promotional competitive or as dual certification. Appointment shall be made from the first three (3) ranks of available candidates on the eligibility list.
- E. Notwithstanding, provisions of Sub Rule C and D, above, eligible ranks from the open eligibility list may be certified prior to eligible ranks on the promotional eligibility list, if the final score(s) of eligible(s) on the open competitive list are higher than those of eligible(s) on the promotional list after service points have been added (Education Code Section 45284).

10.05 Other Sources of Eligibility: Transfer, Demotion or Reinstatement

Position openings may, prior to the certification of eligible persons, be filled through other sources of eligibility such as from employees requesting transfer, demotion or by persons formerly employed in permanent status. The decision to appoint a candidate to a position opening through transfer, demotion or reinstatement shall rest with the appointing authority.

A. Transfer

A transfer is the reassignment of an employee without examination from one position to another position in the same class or to a position in a related class (same occupational group) with an equal maximum salary rate and in the same employee unit.

1. A transfer shall not be used as a device to alter the sequence of an impending layoff, although employees whose positions are to be eliminated may transfer to position opening(s) as this rule contemplates.
2. A represented employee may be involuntarily transferred to a position in the same class to meet the needs of the County Office pursuant to the appropriate contractual agreement. Such transfer shall not be made for the good of the service and not for disciplinary or preferential reasons, or to a position with less hours except through regular layoff or disciplinary procedures. The immediate supervisor shall discuss the transfer with the employee to be affected, in advance, and reiterate the discussion, in writing, to the employee.
3. A managerial employee may be involuntarily transferred for the good of the organization from one position to another in the same class at the request of his/her immediate supervisor and department head, and with the endorsement of the appropriate assistant superintendent(s). Such transfer shall not be taken for punitive or preferential reasons. The County Superintendent of Schools or his/her designee shall determine involuntary transfer position assignments for managerial employees with the approval of the Personnel Commission.
4. A request for transfer, initiated by the employee, shall be submitted on the appropriate form to the Director prior to the final filing deadline. The Director shall, if approved, forward the name(s) of the transfer candidate(s) to the appointing authority when certification is made for the names of eligible persons and other candidates.
5. If appointed, a represented employee shall be completed pursuant to the appropriate contractual agreement. The transfer of a managerial employee shall be completed within 30 working days of appointment.
6. A represented employee may transfer to a position in a related class provided such class is in the same employee unit, occupational group and assigned to a range with same maximum rate. Transfers between related classes require the approval of the Director.
7. A managerial employee may transfer to a position in a related managerial class at the same range, provided the class is sufficiently similar to his/her current class to permit transfer. The Director shall determine the transferability between two related managerial classes. Such determinations are subject to appeal to the Commission. In general, more latitude in transfers between related classes is permitted: a) as the employee's seniority in the classified service increases; b) when the transfer request is based on reclassification, impending layoff or reasons of health; and c) when the employee meets the minimum requirements for the class.
8. When an employee transfers to a related class in which he/she has not achieved permanency, he/she shall be in probationary status for a period of six (6) months or 130 days whichever is longer.
9. A transfer to another position in the same class shall not affect the seniority earnings of an employee. When an employee transfers from a position to another position in a related class, he/she shall earn seniority in the former class and in the class belonging to his/her current position.

B. Demotion

A demotion is the reassignment of an employee to a position in a related class with a lower maximum salary rate than his/her prior class.

1. A demotion between classes or series within the same group (family) shall be without examination, unless otherwise determined by the Director. Such determination shall be subject to appeal to the Commission.
2. A request for demotion shall be submitted on the normal application form to the Director prior to the final filing deadline. The Director shall forward the name(s) of the demotion candidate(s) to the

appointing authority when certification is made for the names of eligible persons and other candidates. After demotion, the employee shall be in permanent status unless permanency in such class has never been attained.

3. An involuntary demotion is a disciplinary action for cause, the procedures for which are set forth in Rules 14.03-14.05.

C. Reinstatement (Restoration)

1. A former employee may be reinstated, within 39 months, without examination, to any prior class held in permanent status, provided the same or significantly similar tests of fitness still apply.
2. Any reinstatement to a different class held with a lower maximum salary rate than the class held, at the time of resignation, shall be considered a demotion, and the reinstated employee shall be eligible to subsequent reinstatement to his/her higher permanent status pursuant to Sub Rule C(1), above (Education Code Section 45309).
3. Reinstatement of an employee may be in regular or limited-term status.
4. In instances where the class from which a former permanent employee resigned has ceased to exist or has been separated into more than one class or expanded into an alternate class series, the former employee may be reinstated into the most appropriate class or series level at the same or closest range for which the former employee is qualified, subject to approval of the Director.
5. An employee who accepts a demotion from his/her permanent position may be reinstated or restored to a vacant position in his/her former class or to a position in a related lower class as determined by the Commission within 39 months, provided the same or similar tests of fitness under which he/she qualified for appointment to the class still apply. Restoration (reinstatement) is at the discretion of the appointing authority.
6. Reinstatement or restoration of an employee shall have the following effects:
 - Restoration to former step in the salary range for the class, or if re-employed in a class with a lower maximum salary step, to the step on the salary range which is equal or closest to, but not less than, the former salary step.
 - When the former class ceases to exist or has been reallocated to more than one class or expanded into an alternate class series, the Director shall determine the step placement. Such determinations may be appealed to the Personnel Commission.
 - Restoration of former anniversary date, but without step advancement credit for the off-duty period.
 - Restoration of all rights, benefits and burdens of a permanent employee in the class to which restored (Education Code 45309).

10.06 Method of Certification

- A. All eligible persons occupying the first three (3) ranks on the list who are ready and willing to accept the position shall be certified for the opening. The department with the opening may appoint any one of these candidates. The eligible persons not selected shall have their names returned to the eligibility list and will be certified along with eligible person(s) occupying the next highest rank on the eligibility list for the next opening.
- B. Notwithstanding the provisions in Sub Rule A, whenever certification is for a position opening in an alternate class series (with two (2) levels), the names of eligible persons occupying the first three (3) ranks from both class level (sub) lists shall be certified. The department with the alternate class series position opening may make appointment to such opening from either class level (sub) list. When only one (1) class level (sub) list exists for a position in a two (2) level alternate class series, such position shall be certified in the same manner as a position in a regular class.
- C. Notwithstanding the provisions in Sub Rules A or B, certification for a restricted position opening shall consist of the names of eligible persons occupying the first three (3) ranks as well as other eligible persons in lower ranks who are current or former parents of enrolled children in the Head Start Program. A restricted position opening in an alternate class series shall be certified in the same manner as an alternate class series position opening in a regular class; except the names certified shall also include other eligible persons in lower ranks who are current and former parents of enrolled children in the Head Start Program.

- D. The person or persons designated to recommend the final selection shall interview all eligible persons certified and shall notify the Director of the recommendation within thirty (30) days following receipt of the certification list. If, for any reason, the certification list is not utilized, or if the candidates fail to respond, the Director must be notified within five (5) workdays following receipt of the certification list.
- E. Notwithstanding the provisions in Sub Rules A, B or C, if the appointing authority has previously interviewed one (1) or more of the eligible person(s) certified for the same class within the preceding four (4) weeks, he/she may base a recommendation for selection/non-selection on the original interview. If more than four (4) weeks but less than three (3) months have elapsed, the person(s) certified and the appointing authority may agree mutually to have a recommendation based on the earlier interview. When more than three (3) months have elapsed since an earlier interview (or if mutual agreement cannot be reached as previously stated) the appointing authority shall be required to re-interview such candidate(s).
- F. Appointment may be made from other than the first three (3) ranks of eligible persons when the ability to speak, read or write a language in addition to English, or when a valid or special driver's license is a requirement of the position. The three (3) candidates possessing the requirement shall be certified in the order of their relative place on the list. If less than three (3) eligible persons meet the requirement, the top eligible person(s) shall be certified plus those possessing the requirement, provided that the total number certified not exceed three (3).
- G. In the absence of an eligibility list for a class in which an opening exists, the Director may authorize certification from a list of a another class at the same or higher salary level, if the duties and qualifications of the class for which the examination was given included substantially all of the duties of the position to be filled, provided that the Commission determines that the use of the list is in the best interest of the County Office of Education.
- H. The names of eligible persons certified shall remain on the list from which certification was made and shall be certified along with eligible person(s) occupying the next highest rank on that list for the next opening.
- I. When fewer than three (3) ranks of eligible persons are available for certification, the available persons in those ranks shall be certified; however, the appointing authority may request a new examination be given.
 - 7. Notwithstanding the provisions of Sub Rule H, above, when certification is for an alternate class series, fewer than three (3) ranks shall be interpreted to mean the number of remaining ranks, after combining the ranks of all available eligible persons from all class level lists for the same series, is less than three (3).
 - 8. Notwithstanding the provisions of Sub Rule H, above, when certification is for a position in a class designated as "restricted," fewer than three (3) ranks shall be interpreted to mean the number of remaining ranks with available eligible persons, including eligible parents, is less than three (3).

10.07 Withholding Names from Certification

Name of eligible persons may be withheld from certification or removed from the eligibility list by the Director for any of the following:

- A. The reason(s) enumerated in Rule 7.06.
- B. Inability to contact the eligible person within a reasonable time, due to inaccurate telephone number, electronic mail address or a change in address (place of residence).
- C. Failure to respond to an inquiry from the Director or his/her designee regarding available regular employment.
- D. Conviction of felony or misdemeanor involving a charge of any sex or narcotics offense or mistreatment of children.
- E. Proof of fraud of false statements in the application or proof of fraudulent conduct in connection with an examination.
- F. Permanent appointment to a position in the class with a standing eligibility list.
- G. Certification to the same appointing authority three (3) times without appointment. The appointing authority shall communicate his/her reasons for rejection to the Director and the eligible person so rejected may request a hearing by the Commission to determine the sufficiency of the reasons given. The Commission may order the person's eligibility be restored.
- H. Termination of employment, for cause, with this County Office of Education or a record of unsatisfactory work performance from a previous employer.

- I. Upon request, death, or upon resignation from the classified service of an on a dual certification or promotional competitive list.
- J. Failure to appear or to arrange for an interview with an appointing authority within a reasonable time after notification or certification or failure to appear for work after appointment.
- K. This rule shall not apply to a promoted employee if his/her start date (change of status) is determined by mutual agreement between the employee's current supervisor and the appointing authority.
- L. Waiver to accept two (2) regular positions includes promotional opportunities for employees after certification from eligibility lists established under competitive examinations announced such as open, promotional or open and promotional.
- M. Waiver to accept employment in a regular employment or a promotional opportunity for any position certified from an eligibility list established under dual certification or unranked.
- N. Does not possess the special license, skill, or the required Bona Fide Occupational Qualification (BFOQ). NOTE: The Director shall release for certification the name of any such eligible when the particular requirement has been met.
- O. Eligible related to the appointing authority or another manager with influence as to his/her supervision, evaluation or discipline or decisions relating to his/her compensation.
- P. Eligible, if appointed, will supervise, evaluate or discipline a relative or may influence or make decisions relating to the compensation of a relative.
- Q. For the purposes of Paragraphs (O) and (P), "relative" shall mean mother, father, spouse, brother, sister, son, daughter, niece, nephew, aunt, uncle, stepfather, stepmother, stepbrother, stepsister, stepson, stepdaughter, whether by marriage, blood, or legal adoption.

10.08 Waiver of Certification

An eligible person may waive certification upon giving satisfactory reason, in writing, to the Director. Such name shall not be certified until waiver has expired or has been withdrawn. An eligible may waive certification of temporary appointment in a particular location or section to which he/she wishes not to be certified. After three (3) waivers, the candidate shall be removed from the eligibility list.

10.09 Rules for Restoring Names to Eligibility List

When the name of a person has been withheld from an eligibility list or removed from certification, the name of the former eligible may be restored or activated by the Director under the following circumstances:

- A. When removal is caused by waiver or inability of the eligible person to accept employment or failure to respond to inquiry as to his/her availability to appear for interview, or to present himself/herself for duty, and the applicant presents a good and valid reason and certifies to the Personnel Commission that he/she is now willing and able to accept appointment.
- B. When withholding or removal was for a reason stated in Rule 10.07 and such action was improper or the defect has since been corrected.
- C. Revisions and withdrawals of voluntary waivers shall not require approval by the Personnel Commission. A former employee reinstated and assigned in accordance with Rule 10.05(C) shall, upon written request to the Director, have his/her name restored for certification purposes to its place according to score on any promotional only or open and promotional list which is still current, in which his/her name appeared at the time of separation.
- D. Persons whose names are not certified from promotional only and open and promotional eligibility lists in accordance with this rule shall not have the right of appeal.

10.10 Appointment

After interview and any investigation desired, the County Superintendent of Schools or his/her designee shall make appointments from among those certified and shall immediately notify the Director of the person or persons appointment. If the eligible fails to report for duty at the time and place agreed upon, he/she shall be deemed to have declined the appointment. The County Superintendent of Schools or his/her designee shall have a choice of three (3) persons in filling any vacancy. If less than three (3) persons are available, a regular appointment may be made from among those available or a provisional appointment may be made in accordance with Rule 10.11.

10.11 Provisional Appointment

- A. If no regular appointment is made and less than three (3) eligible persons are available for appointment, a provisional appointment may be made of a person meeting the employment standards for the class with the approval of the Director.
- B. If a provisional appointment is made, the Director shall immediately proceed to establish a list of persons qualified for testing and shall make certification from the resulting list to the appointing authority. A regular employee may receive provisional appointment for a period not to exceed a total of 90 working days. A 90 calendar-day interval shall then elapse during which the person will be ineligible to serve in any full-time provisional capacity (Education Code Section 45287).
- C. The Director may authorize the extension of a provisional employee's assignment for a period not to exceed 36 working days. No person shall be employed in provisional capacities for a total of more than 126 working days in any one fiscal year, except that when no one is available on an appropriate eligibility list for a part-time position as defined in Section 45256, successive 90 working day provisional appointments may be made to the part-time position for a total of more than 126 working days in a fiscal year (Education Code Sections 45287 and 45288).
- D. The services of a provisional appointee shall be terminated within 20 days after the date on which an eligibility list has been established, provided that this 20 day period does not extend beyond the 90 working day provisional assignment (Education Code Section 45287).
- E. A provisional appointment may be terminated at any time at the discretion of the appointing power.

10.12 Emergency Appointment

- A. To meet the immediate requirements of an emergency condition, the County Superintendent of Schools or his/her designee may appoint persons to the Classified Service as may be needed for the duration of the emergency without regard for these rules affecting appointments, except that no such appointees shall serve no more than fifteen (15) workdays.
- B. Current and appropriate reemployment lists and eligibility lists shall be given priority in making emergency appointments; however, Personnel Commission Rule 10.04, (the rule of three ranks) shall not apply (Education Code Section 45290).
- C. If emergency appointments cannot be made from current reemployment lists or eligibility lists, the County Superintendent of Schools, may make emergency appointments of persons who are immediately available.
- D. When an emergency appointment is made, the appointing authority making the appointment shall notify the Director, in writing, giving the name of the appointee, date of appointment, rate of pay, duties to be performed and justification for the appointment.

10.13 Substitute Appointment

- A. Whenever necessary, in any class, there may be established and maintained a list for substitute or relief position assignments. Selection of candidates for such a list shall be made in the following order: first, from the reemployment list; second, from the eligibility list for that class in the order of rank on such lists and the willingness of the candidate to accept such employment; third from other lists specifically created to provide available substitute personnel for position openings or relief during periods of peak work loads.
- B. Substitute assignments may be made in the absence of the regular employees or to fill a vacant position while recruitment efforts are made. Also, a substitute assignment may be made in a lower class related to that of the absent employee if the assigned duties are adjusted accordingly.
- C. A substitute assignment may not exceed in duration the absence of the employee, but it need not coincide with the dates of the absence.

10.14 Limited-term Appointment

- A. The County Superintendent of Schools may establish positions in which duration is six (6) months or less; such positions shall be designated "limited-term", shall be a part of the classified service and subject to classification by the Personnel Commission. The Director may classify limited-term positions subject to later ratification if the good of the service demands expeditious action (Education Code Section 45286).

- B. Persons on layoff, who have expressed interest in limited-term employment within 39 months, shall be re-employed as limited-term employees (in same class or another class exhibiting similar characteristics) in preference to other employees, eligible persons or substitute workers.
- C. When a limited-term position is not filled through the temporary promotion of a regular employee, a limited-term position shall be filled from candidates appearing on appropriate eligibility lists established under Rules 9.01 and 9.02 (same class or class exhibiting similar characteristics). Prior to accepting (through temporary promotional appointment) a limited-term vacancy in a higher class, the regular employee must meet the minimum qualifications for the higher class and obtain a release from his/her regular position. When necessary, Commission staff shall administer the appropriate examinations (except Qualifications Appraisal Interview (QAI) test parts) to verify or reaffirm fitness of the employee recommended for the limited-term vacancy in the higher class (Education Code Section 45286).
- D. If an eligible has been appointed from an eligibility list to a limited-term position he/she shall continue to be eligible for limited-term appointments in the same or related lower class after the eligibility list has expired. The same privilege of continued eligibility shall apply to a former employee who resigned in good standing and who accepted a limited-term appointment within 39 months after resignation. The names of such persons shall be ranked in the order of seniority on a special list used for limited-term appointments and shall be certified before the current eligibility list. Names may be removed from this list for any of the causes listed in Rule 7.06 and 10.07.
- E. In the absence of the appropriate eligibility list, a limited-term position may be filled from persons appearing on a substitute relief lists (classes within same occupational group). Substitute relief lists shall be established meet the immediate staffing needs of the County Office (refer to Rule 10.13).
- F. Provisional appointments may be made to limited-term positions subject to the provisions of Rule 10.11.
 - 1. When a regular (represented) employee is appointed to limited-term position in a higher class designated as management, supervisory or confidential, he/she shall be paid in accordance with Rule 15.15.
 - 2. Laid-off employees who are re-employed as limited-term employees in the same class or lower related class within 39 months or former regular employees who are reinstated as well as employees who are serving in limited-term positions while retaining regular status in the same class or in another class shall be paid in accordance with Rule 10.05(C)(6) and shall continue to earn and be granted all rights and benefits of a regular employee. All other limited-term employees shall be entitled to only those benefits provided by these rules, law or granted at the discretion of the County Office of Education.
- G. Regular employees who are serving in limited-term positions while retaining regular status in the same class or in another class shall continue to earn and be granted all rights and benefits of a regular employee. All other limited-term employees shall be entitled to only those benefits provided by these rules, law or granted at the discretion of the County Office of Education.
- H. Limited-term appointments shall be subject to termination at any time. Limited-term employees may be dismissed for cause, which cause shall be made known to them and to the Director in writing. The Director may remove the employee's name from the special list for limited-term appointments, if his/her investigation supports such action.

10.15 Employment of Professional Expert Persons

- A. For the purposes of this section, the Personnel Commission delegates its approval authority for professional expert assignments or community representative employment to the Director.
- B. The employment of a professional expert shall not exceed six (6) months.
- C. When a professional expert position assignment is to be established by the administration shall submit to the Director a description of the project or service to be provided, its duration and the duties to be performed as well as the individual's name and supporting data relative to his/her qualifications. Any request to extend individuals employed in professional expert shall be submitted to the Director and subject to approval by the Commission.
- D. The Director shall review supporting documents and the individual's qualifications to ensure that: 1) the authorized duties are not those normally assigned to a class of positions in the classified service; 2) the authorized employment is not made to avoid payment of overtime to an appointed employee; 3) the authorized duties are approved, in advance, as provided by these rules, and; 4) a regular classified or certificated employee of the County Office shall not receive concurrent appointment to such a

position/assignment. In order to be exempted from the classified service as a professional expert, the individual must be recognized as such by reputable members of his/her own profession.

NOTE: Examples of professional expert positions and community representative employees include, but are not limited to, auditors, building inspectors, engineers, executive search advisors, police officers and other licensed personnel as well as individuals employed as lecturers or trainers.

10.16 Employment of CALPERS Retired Members

- A. Any person receiving a retirement allowance from the California Public Employees Retirement System (CALPERS) may be temporarily employed for a period not to exceed 120 days or 960 hours in any calendar year or 35 percent of the hours the retired person was employed during the last fiscal year of service prior to retirement in the calendar year whenever other eligible persons are not available and the retiree's skills or knowledge are needed, or during an actual emergency to prevent stoppage of school business, provided that:
 1. The retired person has been approved by the Assistant Superintendent, Human Resources, or his/her designee for assignment prior to initial assignment in each fiscal year.
 2. The retired person certifies to an understanding that employment with the County Office of Education and any other employer under contract with CALPERS shall not exceed 120 working days or 960 hours except as otherwise provided by Education Code Section 45135, 59007 and 59113, and that employment shall be at the discretion of the County Superintendent of Schools.
 3. For the purposes of this rule, "working day" shall mean any day for which pay is received regardless of the number of hours worked.
- B. CALPERS retired persons who work for the County Office of Education shall be compensated in the following manner:
 1. A retired person who is a former permanent classified employee of the County Office of Education may be compensated in accordance with his/her prior salary history (before retirement) and in classes where permanency was achieved. Compensation to a retiree person, assigned to a class where he/she has no record of prior salary earnings, shall be paid at the first step in the salary range for the class assigned.
 2. Other retired persons of CALPERS shall be paid on the first step in the approved salary range of the class to which the retired person is assigned, but may be paid on a higher step upon the recommendation of the appointing authority and the approval of the Director. In no case shall compensation be at a rate other than the salary paid to regular employees in that class.
 3. The above rules shall be the factors that determine the compensation paid to a retiree. Compensation paid to a retiree in a substitute assignment shall be equivalent to compensation paid in a limited-term position, provided the work is of the same class.
- C. A retired person may be employed without reinstatement or loss or interruption of benefits provided by CALPERS upon temporary appointment by the County Office of Education.
- D. A retiree person may be employed under this rule in limited term position shall be entitled to all fringe benefits applicable to limited term status only, except retirement adjustments.
- E. A retiree shall not be granted leaves, other than paid industrial accident leave as provided in Rule 12.08.
- F. The appointing authority shall certify to the Director that a retiree employed under this rule meets the provisions, thereof, and has combined calendar-year employment with all CALPERS covered employers, does not exceed 120 days or 960 hours, or 35 percent of the hours the retired person was employed during the last fiscal year of service prior to retirement. It is recommended that the appointing authority secures an affidavit from the retiree as to his/her eligibility and/or authorizes the County Office of Education to certify eligibility with CALPERS.