


[Home](#)
[About SSC](#)
[Services &
Products](#)
[Workshops &
Registration](#)
[Tools &
Resources](#)
[Contact Us](#)
[MySSC](#)
[Client Login](#)
[Welcome back](#)
[Logout](#)
[Change Password](#)
[Fiscal Reports](#) | [Current Reports](#) | [Video Reports](#) | [Search Reports](#) | [View Archive](#) | [Printable Version](#)

The FISCAL REPORT an informational update

Copyright © 2009 School Services of California, Inc.

Volume 29

For Publication Date: September 18, 2009

No. 19

Ask SSC . . . Can Donated Funds be Used to Pay for Employee Salaries?

Q: One of our board members asked if school district employees' salaries could be funded by private individuals or organizations. This question came up as a result of the recent layoffs. Could you give us your input regarding this question, including collective bargaining and other legal implications, the effect on layoff regulations due to funding sources other than the general fund, and any effect on seniority rules?

A: Yes, the salaries and benefits of school employees can be funded through these other sources. While donations are welcome in order to continue programs that otherwise would be eliminated, the district has to be cautious. Our advice is to make sure that the funds are gathered and available to the district before making a hiring commitment, and to make sure that the funds cover the cost of not only the salary but also the statutory fringe benefits, plus any health benefits that are attached to the position. The donor also needs to know that the district is required to follow standard hiring and selection procedures, so the donor cannot specify the particular person that would fill the position. Usually we see it done in this way:

1. A community group expresses interest in paying for the continuance of a position that has been eliminated.
2. The district responds by specifying the cost of the position, including statutory fringe and health benefits.
3. The community group conducts its fundraiser and donates the funds to the district with the specification that the funds are to be used for a position (for example, a part-time art teacher).
4. The district's board formally accepts the donation.
5. The district follows its standard selection procedures to fill the position.

In terms of the second part of your question, and specifically collective bargaining, the decision to reinstate a position is not a mandatory subject of collective bargaining. However, if, as a result of reinstating a position, you plan to make changes to existing duties, the impact of those changes is subject to collective bargaining. For example, if you eliminated all Library Media Technicians and Library Clerks and now you want to bring back some clerks and have them perform some of the duties previously assigned to the Library Media Technicians, you will need to make changes to the existing job description, the impact of which is subject to collective bargaining. If duties, job descriptions, salary, and working conditions are not an issue in your particular case, regardless of funding source, we see no statutory requirement to sit down with either your certificated or classified employee groups to discuss continuance of a position that may have been eliminated. If you are reinstating a position that was previously eliminated, you will need to rehire certificated and classified employees by order of seniority, being sure to follow existing laws and any locally negotiated agreements.

While not explicitly asked, your inquiry suggests that you may be considering designating positions funded with donations as "temporary" positions. If that is the case, then yes, there are some things you need to keep in mind.

First, let's talk about classified employees or the reinstatement of positions in the classified service of the district. Unlike certificated service, classified positions cannot be designated as "temporary," whether funded through general fund or categorical resources. Education Code Section (E.C.) 45103 does allow the governing board of a district to employ "short-term" classified employees. Specifically E.C. 45103(d)(2) defines "short-term employees" as persons employed to "perform a service for the district, upon the completion of which, the service required or similar service will not be extended or needed on a continuing basis." Short-term employees cannot work for more than 75% of a school year, even if the beginning and ending

dates of the service have been certified and the service itself is expected to expire. If a "short-term employee" is hired and the service extends beyond 75% of a school year, the position would be considered permanent and the employee is entitled to holiday pay, vacation, and sick leave retroactive to the first day of employment. Thereafter, the service could only be eliminated through a layoff process.

Can you designate a reinstated certificated position funded through donations as "temporary"? Per E.C. 44909, a certificated position can be designated as "temporary" if it is not part of the "core program" or not required under state or federal law. Essentially, if you are reinstating a position that was previously considered "categorical," then arguably, that position could continue to be considered "temporary." In our May 15, 2009, *Fiscal Report*, we published a response to a similar "Ask SSC" question. The article, [*Ask SSC . . . Can We Hire Temporary Teachers for Positions in Our Categorical Programs Now Considered Unrestricted?*](#) states, "We believe you can continue to hire temporary teachers under E.C. 44909. While this is not a legal opinion, the fact is that categorical dollars remain separate and apart from revenue limit dollars in the 2009-10 Budget, and in light of *Zalac v. Ferndale Unified School District (2002)*, it is reasonable to assume that hiring temporary teachers under E.C. 44909 is permissible." In this case, you are not using dollars moved from the restricted side of the budget to the unrestricted side, but if you are using donations to fund positions that were previously categorical, you may be able to make the same argument. If you are planning to make this argument, keep in mind that this is not a legal opinion and we would encourage you to seek legal counsel.

Now, if you are hoping to fund programs or positions that were previously funded through the general fund and they are part of your core program, then arguably these positions are not temporary. Regardless of the funding and the risks that the donation(s) may not continue into the future, if you reinstate a certificated position that was previously a permanent position in the certificated service of the district and you rehire a certificated employee from the 39-month rehire list, their service will be considered permanent. You should, regrettably, assume that the funds will not continue into the future and list any positions reinstated and funded through donations on your certificated layoff resolution in late February or early March of 2010.

—*Suzanne Speck and Sheila Vickers*

posted 09/15/2009