

SCHOOLS
L E G A L
SERVICE



MARCH 15TH: CERTIFICATED LAYOFFS AND STAFFING DECISIONS

Essential Training For Educational Administrators | 2013

SCHOOLS LEGAL SERVICE

is an education law consortium providing legal and collective bargaining services exclusively to school and community college districts and county offices of education since 1976. The first agency of its kind in California, Schools Legal Service represents education agencies throughout the state.

As part of the education community, Schools Legal Service personnel understand the needs of our educational agency clients. SLS members include some of the largest as well as the smallest districts in the state, both urban and rural.

Our attorneys represent varied practice areas and legal disciplines, including personnel and collective bargaining, special education, student issues, and business and construction. Collectively, we have more than a century of experience in education law. Helping our clients make good decisions in a complex environment means more of their resources can be dedicated to serving students.

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CERTIFICATED LAYOFFS:

TIMELINES AND DEADLINES FOR PREPARING AND IMPLEMENTING CERTIFICATED LAYOFFS

Before November 1, 2013:	<p>Establish your district's "LAYOFF TEAM"</p> <p>Calendar team members to attend SLS Layoff Workshop on November 7, 2013</p> <p>Review these timelines with all team members</p> <p>Determine number of employees close to retirement</p>
On November 7, 2013:	<p>All team members attend SLS Layoff Workshop</p> <p>Take your most recent certificated seniority list to the workshop</p>
Before December 15, 2013:	<p>Import existing seniority list information onto new SLS Excel-version of certificated seniority list template</p> <p>Analyze the projected cost savings of offering a retirement incentive package</p> <p>Consult with your negotiator about offering a retirement incentive package</p> <p>Create the retirement incentive package</p> <p>Present the package to the Board of Trustees for adoption</p> <p>Meet with employees to discuss the retirement package</p> <p>Prepare the retirement incentive paperwork/notices</p> <p>Prepare a Staff Survey form using the SLS required content on district letterhead</p>

<p>On or before December 15, 2013:</p>	<p>Send out Staff Survey forms to all certificated employees</p> <hr/> <p>Open the retirement incentive package</p> <hr/> <p>*Under 250 ADA districts - call SLS by November 1 to discuss staffing concerns.</p> <hr/> <p>CBO to prepare contingency FTE reduction plans and have data for the actual savings of each FTE reduction</p>
<p>On January 6, 2014:</p>	<p>Send out reminders to certificated employees that Staff Survey forms MUST be returned on or before January 13, 2014</p>
<p>Before January 13, 2014:</p>	<p>Continue updating seniority list with information received from incoming Staff Survey forms</p>
<p>On January 14, 2014:</p>	<p>STOP accepting Staff Survey forms from employees</p> <hr/> <p>Begin finalizing the certificated seniority list with final data</p>
<p>Before January 31, 2014:</p>	<p>Schedule "Seniority List Help Meeting" with SLS, if needed</p> <hr/> <p>Identify number of FTEs to be reduced</p> <hr/> <p>Identify areas of reduction (multi-subject, single, admin, etc.)</p> <hr/> <p>Prepare written proposed layoff plan</p> <hr/> <p>Prepare written list of proposed recipients of RIF notices, skips, bumping chart, etc.</p> <hr/> <p>Make sure your "Layoff Meeting" is on calendar with SLS</p>
<p>Before February 7, 2014:</p>	<p>Have completed "Layoff Meeting" with SLS attorneys (Meeting should take place between January 1 and February 7, 2014)</p> <hr/> <p>Prearrange meeting of Board of Trustees to adopt the Layoff Resolution and Tiebreaker Resolution (Board Meeting should occur between February 10th and February 28th)</p>

Before February 24, 2014:	Recalibrate proposed layoff plan to account for last minute retirements received
Between February 10 and February 28, 2014:	Board Meeting and Implementation of Layoff Resolution and Tie Breaker Resolution
Before March 7, 2014:	Begin preparing layoff notices for all affected employees
On or before March 7, 2014:	Personally serve all employees with layoff notices and follow SLS guidance as to service of additional hearing procedure documents
After March 7, 2014:	Provide SLS with any Demands for Hearing received
Before May 1, 2014:	Prearrange regular or special board meeting <u>before</u> May 15th for final layoff resolutions
<u>Before</u> May 15, 2014:	Board adopts final layoff resolution
	Employees receive final layoff notices

BASIC DEFINITION OF KEY LAYOFF TERMS AND ABBREVIATIONS

ADA	Average Daily Attendance – the average number of students attending a district on a daily basis.
ALJ	Administrative Law Judge – a third party, hired through the Office of Administrative Hearings (“OAH”) who will preside over a district’s layoff hearing and render a non-binding decision to the district’s board of trustees.
BCLAD	Bilingual Cross-cultural, Language, and Academic Development)
Bumping	Permitting a more senior teacher to bump or displace a more junior teacher when the more senior teacher would normally be affected by the layoff, but he/she is “saved” because the more senior teacher can teach in another subject or discipline due to his/her credentials.
CBA	Collective Bargaining Agreement
CLAD	Cross-cultural Learning and Development
CTC or CCTC	California Commission on Teacher Credentialing
CTEL	California Teachers of English Learners First Date of Paid Service
ELL	English Language Learner
ELD	English Language Development
ESL	English as Second Language
Exhibit “A”	The attachment to the district’s layoff resolution which identifies the services to be eliminated or reduced.
First Date of Paid Service	A term used in determining an employee’s seniority date; the date is determined by the date an employee starts service in a probationary certificated position.
FTE	Full Time Equivalent
HQ or HQT	Highly Qualified or Highly Qualified Teacher - Title II of NCLB designates federal funds to educational agencies for the purpose of improving the student achievement through the professional development of highly qualified teachers and principals. HQ status is often used as a criteria for tie breaking and/or skipping in layoffs.

March 15 th	The critical deadline by which all employees to be laid off must receive preliminary notice of layoff.
May 15 th	The critical deadline <u>before</u> which all employees to be laid off must receive final notice of layoff.
NCLB (“Nickleby”)	No Child Left Behind – the federal No Child Left Behind Act of 2001 requires states to develop assessments in basic skills. To receive federal school funding, States must give these assessments to all students at select grade levels. Also promotes having a “HQ” teacher in every classroom.
Non-reelect	In a district with an ADA of 250 or more a probationary teacher may be dismissed from service with no stated reason and without affording the probationary teacher with a hearing on the merits. Not a layoff.
OAH	Office of Administrative Hearings – the quasi-judicial tribunal in California that hears administrative disputes; the office that will coordinate the judge to preside over a district’s layoffs hearing.
PERB	Public Employment Relations Board - the quasi-judicial administrative agency charged with administering the collective bargaining statutes covering employees of California's public schools.
Permanent	A teacher who is no longer probationary and cannot be non-reelected
Pink Slip (“pinked”)	A common term for preliminary notice of layoff delivered on or before March 15 th .
PKS	Particular Kind of Service – a type of layoff where a district reduces the type of classes or services offered by the district in the next school year.
“Prob”	Probationary – referring to either the probationary period a teacher must serve before becoming permanent or referring to the probationary teacher himself/herself.
Rescind or “rescission”	When a district cancels an employee’s layoff by issuing a formal notice retracting the employee’s layoff.
Resolution	A motion that is formally adopted by the district’s board of trustees to enact rules, regulations, policies or to formalize other types of board decisions. In a layoff, the board will adopt a “March 15 th resolution” to formalize the district’s need to layoff certificated employees.
RIF	Reduction in Force (another term for “layoff”)
Skipping	Not serving a junior/less senior teacher with a layoff notice (“skipping them”) and serving a more senior teacher instead.

SDAIE	Specially Designed Academic Instruction Delivered in English
Seniority List	Chart of all certificated employees in the district, listed in order of seniority with most senior employee listed first and least senior employee listed last.
STSP/STIP (“Stip”)	Short Term Staff Permit
“Temps”	A temporary employee.
“Tie Break”	A resolution adopted by the board of trustees setting policy as to how the district will deal with layoffs amongst employees with the same first date of paid service; the “tie” is that all employees have the same seniority date.
Tenure	A teacher who has attained permanent status or “tenure” – one who is no longer probationary or a “prob” (NOTE: this term does not exist in the education code <i>per se</i> and the proper term is “permanent”).
TESOL	Teaching English to Speakers of Other Languages

A DATE TO REMEMBER: MARCH 15TH

A CRUCIAL DEADLINE FOR CERTIFICATED PERSONNEL DECISIONS

**SOOTHSAYER,
BEWARE THE IDES OF MARCH.
- FROM JULIUS CAESAR (I,II, 33)**

March 15th **mandatory** deadlines appear in five certificated personnel situations in the Education Code.

Layoff Notices. A certificated layoff notice must be served or delivered to an employee being laid off on or before March 15th. (Ed. Code § 44949.)

Administrator Reassignment. A Board must notify an administrator of possible reassignment on or before March 15th. (Ed. Code § 44951.)

Non-reelection Notices. Non-reelection notices must be served on or before March 15th of the second “qualifying” probationary year. (Ed. Code § 44929.21 [Ed. Code § 1296 for employees of a County Superintendent; Ed. Code § 44885.5 for interns].)

For Cause Dismissal +250. For districts of 250 ADA or more, “for cause” dismissal notices must be served before March 15th of the second “qualifying” probationary year. (Ed. Code § 44929.21.)

For Cause Dismissal -250. For districts under 250 ADA, “for cause” dismissal notices must be served by March 15th of the current school year. (Ed. Code § 44948.5.)

“March 15th” also roughly coincides with certain related certificated personnel decisions. See, for instance:

1. Computation of entitlement to a year’s probationary service credit based on working “. . . at least 75% of the number of . . .” school days. (Ed. Code § 44914.)
2. Temporary teachers hired under Education Code section 44917 who serve at least 75% of the school year may earn a year’s retroactive service credit *if rehired in a probationary vacancy* for the following year.
3. Temporary teachers hired under Education Code section 44919 who hold over beyond the initial authorized three months and serve a full year (see the 75% rule in Ed. Code § 44914) may earn retroactive service credit.
4. Temporary teachers hired as replacements for a semester or more under Education Code section 44920 may also qualify for retroactive service credit *if rehired in a probationary vacancy* for the following year.

SECTION 1 - LAYOFFS

THE CERTIFICATED LAYOFF PROCESS - AN OVERVIEW

Education Code

The statutes addressing certificated layoffs are found at Education Code sections 44949 and 44955. Rehire preferences are discussed at Education Code sections 44848, 44956 and 44957. Education Code section 44955 provides that an elimination or reduction in service may be for one of two reasons: (a) elimination or reduction of a particular kind of service, or (b) a decline in enrollment. Although there may be other reasons for layoffs, these two are the most common.

We recommend that the reduction in service be based on Option (a), an elimination or reduction of a particular kind of service. Option (b) lacks flexibility and can get mired in math computations.

Layoff notices are based on seniority, which is computed on the basis of first date of paid service with the district. Notwithstanding several exceptions, the general rule is that the least senior employee will be the first laid off. It is imperative that the district have an up-to-date, accurate seniority list.

Some employees will have the same first date of paid service. If the Board intends to layoff employees in such a seniority "tie," it must adopt a "tie-breaker" resolution to determine the order of layoff among employees. The district has great latitude in adopting criteria for the resolution.

Procedure for the Layoff

1. The administration recommends the elimination/reduction in specific services to the Board.
2. The Board adopts (1) a resolution authorizing the elimination/reduction of services with an Exhibit A identifying the affected services, and (2) a "tie-breaker" resolution.
3. The affected employees are notified of the Board's action. ***The notices must be served no later than March 15th by personal service or registered or certified mail.***
4. The affected employees may file a written request for a hearing.
5. The district issues a district Statement of Reduction in Force (a technical term, carried over from the Administrative Procedure Act), along with related documents.
6. If requested by the noticed employees, a state Administrative Law Judge conducts a hearing.

7. The Administrative Law Judge prepares and submits a proposed decision to the Board and the affected employees no later than **May 7th**. This decision is only a recommendation and is not binding on the district.

8. The Board takes final action to order the elimination/reduction of services.

9. All affected employees must be notified of the Board's final action **before May 15th**. Please note that even if the affected employees do not request hearings, the Board must still take final action and notify the affected employees **before May 15th**. ***The notices must be served by personal service or registered or certified mail.***

Permanent employees have a preferred right to reemployment for 39 months after a layoff beginning July 1st of the next fiscal year. For probationary employees, there is a similar right to reemployment, but for only 24 months. (Ed. Code §§ 44956 and 44957.) “Reemployment” includes a priority for substitute work.

Midsummer layoffs: Education Code section 44955.5 provides that after the state budget is enacted — but before August 15 — the Board may order a layoff if the district's revenue limit has not increased by at least two percent (2%). No one can or should assume how this statute will operate next summer.

SKIPPING

There are exceptions to the general rule that the least senior employee is the first impacted by the layoff. Most of the action centers on “**skipping**” issues.

Skipping Allowed

Skipping and saving a junior teacher who would normally be impacted by the layoff may or may not be allowed, depending on the precise fact pattern of a layoff. The Education Code permits deviation from seniority-based reductions when the district demonstrates a specific need for personnel to teach a specific course or course of study, and that the employee has special training or experience necessary to teach that course or course of study which more senior employees do not possess. (Ed. Code § 44955(d)(1).) Junior employees have been successfully exempted in the following situations:

- Possession of bilingual credentials.
- ELL, CLAD or B-CLAD certification. (Has the State sent the district warning letters regarding unqualified staff working with ELL students?)
- NCLB highly qualified (“HQ”) status.
- Interns in critical need areas.
- Continuation school teacher with experience or NCLB highly qualified status in core subject areas.
- Possession of special training or experience necessary to work in a specialized position.

Skipping Is Not Allowed

- To save junior teachers because they happen to belong to racial or ethnic minorities.
- To save union leaders or bargaining team members.
- Mere ability to speak a foreign language.
- To save a teacher because of his/her extracurricular activities such as coaching.

Unresolved Skipping Issues

- *Williams* Settlement issues; a perceived need to keep teachers willing to serve in impacted schools, even if they undergo significant additional training.

Skipping for ELL Requirements

The *Ripon*¹ court decision confirms that a certificated employee may be dismissed for failure to follow a directive to obtain ELL certification.

Skipping for NCLB Highly Qualified Status

Administrative law judges in layoff cases have consistently allowed districts to skip and retain junior teachers who have fulfilled NCLB “Highly Qualified” requirements. However, as of this writing, we are not aware of any court precedents on this precise legal issue.

¹ (*Ripon*) *Gov. Bd. of Ripon USD v. Comm. on Prof. Competence* (2009) 177 Cal.App.4th 1379.

NOTES ON A SELECTED LAYOFF ISSUE

Underqualified Employees

The biggest administrative problem remains the upward creep in seniority by underprepared (underqualified) certificated employees. The courts have confirmed warnings given by Schools Legal Service over the last three decades: prudent employers should identify and separate from service each June 30th all persons who are not moving forward on the path toward permanent status. This means employers should annually notice, by non-reelection or non-renewal, all persons working in the following situations:

- Temporary replacement teachers
- Waivers, whether granted by the State or by local boards
- Temporary County Certificate holders
- Interns and pre-interns
- Short term staff permit [STSP(STIP)] holders
- Retired teachers

Failure to annually separate from service these persons may wind up hurting the district by advancing the seniority of underprepared (unqualified) staff to the detriment of recently hired fully qualified staff. In addition, multiple outside agencies and community advocates will inevitably criticize or even penalize districts for perpetuating a system which conflicts with one or more regulatory or public policy concerns, such as:

- Inadequate training
- Failure to complete credential preparation
- Misassignments - working outside the scope of a teaching authorization
- Lack of NCLB highly qualified status
- Lack of CLAD or English learner authorizations for those serving ELL populations
- Williams* settlement issues

Plan now. Be prepared to give non-reelection or non-renewal notices to underqualified or underprepared teachers. In several recent layoff hearings, Administrative Law Judges have made clear that holders of emergency permits or waivers cannot claim layoff seniority for service in prior years. If properly documented by the employer, service should cease each June 30th, to be reset to zero if and when a rehire occurs. The decision to not separate out the unqualified teacher each June impacts every future layoff decision. Again, the less qualified person may well hold a better layoff seniority date *even when compared to a newly hired, fully qualified teacher*.

Of course, the employer may later offer re-employment to any teacher who has been released. We advise maintaining and documenting that clear break in service by, among other things, issuance of COBRA notices and unemployment notices, and not returning that person to the employment ranks until well after the start of the Fall Semester.

THE BASICS OF A CERTIFICATED SENIORITY LIST

Certificated seniority lists require great care and demand regular follow-up maintenance. The data base often has more uses than just at layoff time. For example, seniority often affects determinations of transfer priorities and the award of stipend assignments.

Schools Legal Service continues to advise members to maintain a district-wide certificated seniority list on a continuing basis. The certificated seniority list is a basic, permanent, durable record which should be regularly updated by every public school employer. The certificated seniority list remains the most important evidentiary document in a layoff hearing.

Format

Certificated layoff notices are based on district-wide seniority. Ranking is computed on the basis of first date of paid service with the district. Failure to present an accurate, integrated seniority list at a layoff hearing can frustrate the entire program reduction process. You may lose the entire layoff.

Starting the Update Process

To avoid last minute haste and potential errors, we recommend at this time that each employer:

- Review existing personnel records.
- Survey each individual employee for confirmation of data.
- Establish and distribute a current certificated seniority list.

What Each Seniority List Should Contain

Please see the enclosed sample format for reference.

Content should always include:

- Employee name.
- First date of paid service in a probationary position.
- Current position or assignment.

- All credentials held and registered with the County Office of Education, with authorized teaching subjects (see note on deadlines, below); including supplemental and subject matter authorizations.
- ELL Authorization
- NCLB compliance status
- Degree(s) held
- Other previously assigned subject areas or departments with special attention to credentials held during the prior assignment.
- Employment contract status (temporary, intern or probationary/permanent track).

Remember seniority list information is not confidential. (Ed. Code § 44846.) This means private information, such as social security numbers, must be omitted.

Accounting for Temporary and Intern, Probationary or Permanent Staff

For layoff seniority purposes, the Education Code makes no distinction among temporary, probationary and permanent staff. Interns and post-retirement staff should also be identified. Account for everyone. Some employers already maintain, then for layoff purposes merge, an additional list of temporary staff, interns and underqualified teachers, anticipating an inability to offer them continuing employment. However, due to the unique employment status of temporary employees serving in categorically-funded programs, these employees should be on a separate seniority list.

Important note: Tracking permanent status can be especially important if a person with low seniority has acquired immediate permanent status upon hire or rehire. The Education Code exempts those persons from layoff if any probationary employee in the same area of teaching authorization does not first get a layoff notice.

Administrators

Administrators, including the Superintendent, must always be included in the seniority list. An extra note should be made if the administrator has never served as a teacher in the district.

Tie-breaks

Complete and accurate data is definitely needed in layoff tie-break situations. Before layoff notices are mailed out, a district may need a mechanism to distinguish among employees with the same “first paid date” of service. The Code permits, and sometimes requires, a school board to adopt a tie-breaker criteria resolution. The district has great flexibility in choosing criteria for the tie-breaker resolution, leaving to the Superintendent the duty to apply the criteria. In our view, the tie-break ranking applies solely to the current process of selecting or skipping among those with the same “first paid date” of service. This determination expires

as of the following July 1st, and a different tie-break ranking may be applied for future layoffs. In our view, the criteria may not necessarily apply in subsequent rehire decisions.

What is the “First Paid Date” of Service?

An employee’s seniority date is determined by the date the employee commences paid service in a probationary position. Some temporary service may qualify; substitute service does not qualify. (See Ed. Code § 44845.) This definition was confirmed in the *Bakersfield City and Vallejo*² court decisions.

Employer payroll records and STRS reports will help establish the initial date of compensated service. Compensated service should not include midsummer stipend work, such as coaching or athletic conditioning. Compensated service usually starts with scheduled mandatory new teacher orientation days. Some written contracts for coaches may specify earlier commencement dates.

What Constitutes a Break in Service?

A break in service resets layoff seniority to “zero.” A break in service means a complete separation from service.

Examples of separation from service include:

- Non-reelection under Education Code section 44929.21
- Termination for cause
- Layoff (unless the employee is rehired within the 39-month period for permanent employees or 24-month period for probationary employees)
- Resignation
- Expiration of a written temporary employment agreement

The following are not breaks in service for continuing employees:

- Summer breaks
- Going “off track” in a year-round program
- Approved leaves of absence, paid or unpaid

² *Bakersfield Elem. Teachers Assn. v. Bakersfield City School District* (2006) 145 Cal.App.4th 1260; *California Teachers Assn. v. Vallejo City Unified School District* (2007) 149 Cal.App.4th 135.

Restoration of Layoff Seniority Dates

The Code and appellate case law deny restoration of a layoff seniority date upon rehire except for previously laid-off employees. (See Ed. Code §§ 44956 and 44957 for eligibility time limits. Also, see *San Jose Teachers v. Allen* (1983) 144 Cal.App.3d 627.) A resignation followed by a rehire does not restore a layoff seniority date.

Assembling the Data: The Staff Survey

Once the district administration has assembled data and prepared a tentative updated layoff seniority list, an advance copy should be provided to the exclusive representative, if any. At the same time, each individual employee should be given a survey memo (sample enclosed) asking for “confirmation of employment data.” If no response is received from the employee by a specified date, the data may be presumed by the employer to be accurate.

Deadline for the “Final” Seniority List

If a tentative March 15th layoff is pending, the employer should establish a cutoff deadline for employee input updating seniority list information. Belated attempts by staff to register (or surrender) credentials, for example, could disrupt efforts to notice the appropriate people. We recommend an information update cutoff not later than mid-January. State hearing officers traditionally accept a reasonable data cutoff deadline.

Can Non-reelecting a Probationary Employee Substitute for a Layoff?

Never.

(See *Cousins v. Weaverville Elem. Sch. Dist.* (1994) 24 Cal.App.4th 1846.)

What About Adjusting Seniority Dates to Account For:

1. Immediate prior service as a substitute — No.
2. Summer school assignments — No (consult with SLS in certain cases).
3. Coaches who start on a stipend basis in early August for “conditioning” programs — No, but beware of individual contracts that might be in the file.
4. Date(s) a teacher recruit signs and accepts the district's offer of employment — No.
5. Date(s) the school Board approves the employment contract — No.
6. Leaves of absence or sabbaticals — No.

(By analogy, see also *Oprah Griego v. L..A. Unified* (1994) 28 Cal.App.4th 515.)

7. Rehires after a resignation. Such an employee is given a new seniority date when rehired.

(*San Jose Teachers v. Allen* (1983) 144 Cal.App.3d 627; Ed. Code § 44848.)

8. Rehires after a layoff — Yes, status is restored if within limited time frames specified in Education Code sections 44956 and 44957. (Also, see Ed. Code § 44848.)

9. Rehire as a return of a formerly ill teacher previously moved to the 39-month rehire list — Yes, seniority restored. (See Ed. Code § 44978.1.)

10. Site administrators who have never taught in the district. Does the Honig Bill's three-year “teaching” seniority cap upon reassignment to the teaching ranks still apply? Yes. (See Ed. Code § 44956.5.) This means site administrators who have never served as teachers may only claim three years of service credit if involved in a layoff process.

11. The teacher on technical unpaid leave whose credential has been suspended or has lapsed — He/she cannot be “skipped/retained” or claim a right to displace anyone.

12. A switch from part-time to full-time status, or the reverse. No change in seniority date.

(*Vassallo v. Lowrey* (1986) 178 Cal.App.3d 1210.)

Coping with Interns

Does it matter whether these are “university” interns rather than “district” interns? No.

Has it now become prudent to give a precautionary notice of non-renewal to all interns? Yes. (Automatic rehire on July 1st is strongly discouraged.)

See the discussion of the status of interns, especially the *Welch v. Oakland Unified Sch. District* and *Peoples v. San Diego* issues in Section 4 of this Handbook.

Remedies for Errors in the Seniority List

The Domino Theory Revisited. Some earlier cases considered claims by each senior noticed employee that they could render the same service as a single skipped junior employee. The debate over the arguable consequences of the failure to notify (skipping over) a junior teacher has largely subsided, and hearing officers use a “one-for-one” standard when skipping errors are discovered. (See *Alexander v. Bd. of Trustees Delano Jt. Un. High Sch. Dist.* (1983) 139 Cal.App.3d 567 at 576.)

Tie-break Resolutions

The district Board must specify criteria for tie-breaks among teachers with the same first paid date of service in a tie-break resolution. (See Ed. Code § 44955(b), third paragraph.)

This tie-break resolution only applies when teachers have the same seniority date, it does not otherwise apply.

Caution: The “tie-break” resolution and ranking for the K-12 system should be limited to the current school year’s layoff process. Compare the fixed ranking created upon hire at community colleges.

Why Prefer a PKS Layoff Rather than a Layoff Based on Reduction in ADA?

PKS (“particular kind of service”) layoffs need not account for positively assured attrition. In contrast, loss of ADA layoffs do require a side accounting and offset for attrition. (See *Burgess v. Bd. of Educ. Norwalk-LaMirada Unif. Sch. Dist.* (1974) 41 Cal.App.3d 571; *Brough v. Gov. Bd. El Segundo Unif. Sch. Dist.* (1981) 118 Cal.App.3d 702.) That being said, this issue comes up regularly at layoff hearings. Districts should be prepared to state that positively assured attrition was considered before layoff notices were issued.

Special Considerations for Choosing Who to Rehire

Those on the preferred reemployment list (Ed. Code §§ 44956 and 44957) are eligible for rehire based on seniority with the most senior previously laid off employee being brought back first. However, teachers seeking to be brought back to teach a subject outside their credential area may have to pass a subject matter competency examination. (Also, see Ed. Code § 44848 and NCLB regulations on teacher qualifications.)

Collective Bargaining Issues

PERB cases hold that the decision to layoff certificated staff is not negotiable. However, the employer must respond to a demand to negotiate the effects of layoff.

SECTION 2 - ADMINISTRATOR REASSIGNMENT

REASSIGNMENT OF CERTIFICATED ADMINISTRATORS OVERVIEW

Basic Considerations

1. Certificated staff members serving in administrative positions do not acquire permanent status in the role of “administrators.”
2. However, administrators advance towards permanency as a “certificated employee” in the same manner as any other certificated employee meaning if they are employed for two complete consecutive years, and are not non-reelected, they become permanent once they commence work in the third year. (Ed Code § 44929.21(b).)³
3. Technically, formal Education Code section 44951 reassignment notices are required solely for potential transfers to a non-administrative position. However, many school employers consider using the same process even when the transfer is to a lower ranked administrative position or to another school.
4. *Reminder:* Administrators in small (under 250 ADA) districts do not acquire permanent status as district certificated employees, nor do any other certificated staff.

Reassignment: The Regular Process

Education Code section 44951 establishes a two-step notice procedure. The district must act, and must notify the administrator, no later than **March 15th** that there is a *possibility* that he/she may be reassigned. If there is a final decision to reassign, the Board must act and the administrator must give the final notice no later than **June 30th**.

Phase One: Pre-March 15th

If not employed pursuant to a multi-year contract, a certificated administrator has a right to a preliminary warning before he/she is released from his/her position. Courts have held Board approval is not required, and the Superintendent may serve a March 15th notice that the administrator “may” be reassigned.

The preliminary Notice of Possible Reassignment must be delivered to the administrator **no later than March 15**. ***NOTE: Education Code section 44951 expressly requires that this notification letter must be served via registered mail or personal service with a written signature obtained from the employee on the Notice, acknowledging receipt.***

³ Compare Education Code section 1296 for County Offices of Education which require that a certificated administrator serve in a “teaching position” to become permanent.

Phase Two: Before June 30th

In the second phase of the reassignment process, “the other shoe drops” and the Board takes final action, **prior to June 30th**, as follows:

1. The Superintendent notifies the administrator by letter that the Board will be asked to reassign him/her to a non-administrative position.
2. The appropriate item again appears on the agenda, as a closed session item. Agenda language should read:

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE
(REASSIGNMENT)

Discussion and action on proposed notice(s) of reassignment
to certificated administrators.

3. The administrator may attend and address the Board.
4. The Board takes action to order the reassignment and this action and vote are reported out of closed session.
5. The Superintendent sends or delivers a confirming letter to the administrator no later than **June 30th**. ***NOTE: The notification letter must be served in person.***

Shorter Process

Some Boards make their final reassignment decision prior to March 15th. That obviously shortens the process. In that case, the Notice of Possible Reassignment and the Final Notice of Reassignment are consolidated and issued at the same time. **(Prior to March 15 and after Board action).**

Probationary Administrators and Complete Separation From Service?

If the administrator is in his/her first or second year of employment with the district, and complete termination of employment is the objective, we strongly recommend that the notice also reference non-reelection under Education Code section 44929.21. The notice must be given prior to March 15th.

Demand for Statement of Reasons

Any administrator demoted or reassigned may demand a statement of reasons for the district's action. (Ed. Code § 44896.) Schools Legal Service should definitely be consulted if the district receives such a demand.

SECTION 3 - NON-REELECTIONS

NON-REELECTION OF PROBATIONARY CERTIFICATED EMPLOYEES

Non-reelection

The non-reelection system is designed for districts over 250 ADA and is found at Education Code section 44929.21(b).

In a district or county office with an ADA of 250 or more, a probationary teacher may be “nonreelected” with no stated reason.⁴ There is no evidentiary hearing. The teacher must be notified of the Board’s decision by March 15th of the second complete consecutive⁵ probationary year of service.⁶

Procedural Steps:

1. The appropriate item goes on the Board agenda as a closed session item. (Some districts find it useful to invite the employee to the Board meeting.) The following agenda description should be used:

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

Discussion and action on Superintendent’s recommendation that notice of non-reelection be given to one or more probationary certificated employees. (Ed. Code § 44929.21.)

2. Board takes action and reports out the action and vote.

⁴ *Board of Education Round Valley Unif. Sch. Dist. v. Round Valley Teachers Assn.* (1996) 13 Cal.4th 269, 277.

There must be documentation somewhere in the employee’s file sufficient to defend against a claim of bad faith. *Example:* Consider a case where there are no negative evaluations. The Superintendent’s public statements confirmed his/her improper motive in recommending non-reelection to the Board - bias against a member of union leadership. (*McFarland Unif. Sch. Dist. v. PERB* (1991) 228 Cal.App.3d 166.)

⁵ Be careful. An intervening one-year leave of absence does not “reset” the consecutive two-year clock. Upon return in year #3, the teacher is treated for non-reelection purposes as a second year probationary employee. (See Ed. Code § 44975, and *Griego v. Los Angeles Unif. Sch. Dist.* (1994) 28 Cal.App.4th 515.) Also note that a leave of absence will not count towards the requirement that an employee work two complete years before becoming permanent. (See Ed. Code § 44975 and *Cox v. Los Angeles USD* (2013) 218 Cal.App.4th 1441.)

⁶ The March 15th deadline does not apply in the first year. The courts have noted that first year notices can go out after March 15th. (*Grimley v. Bd. of Trustees Muroc Jt. Unif. Sch. Dist.* (1987) 189 Cal.App.3d 1440.)

3. District Superintendent notifies the employee in writing by the deadline. Actual notice of the non-reelection is required. We recommend personal service as the most efficient and sure way to comply with the statutory timelines.⁷

Highlights

The Tenure Track Runs for (at Least) Two Consecutive Years

An employer may not circumvent the minimum two-year service requirement by mistake or otherwise.⁸

Not a Substitute for the Layoff Process

While budget shortfall concerns may prompt difficult staff reduction decisions, the courts have explicitly held that a (very inexpensive) non-reelection letter is not a suitable substitute for a more costly layoff. With layoffs, the noticed teacher retains preferred rehire rights, while a non-reelection gives no rights at all.⁹

Qualifying Credentials Are Required

Time spent working an assignment outside the scope of a qualifying credential does not earn tenure track progress credit.¹⁰

Be Sure that the Employment is Truly “Probationary”

Does the employment contract specify temporary or substitute employment? Otherwise, Education Code section 44915 presumes the employment to be probationary.¹¹

⁷ See *Hoschler v. Sacramento City Unif. Sch. Dist.* (2007) 149 Cal.App.4th 258, voiding a non-reelection where the mailed notice letter did not arrive until after March 15th in year #2. Also see, *Peoples v. San Diego Unif. Sch. Dist.* (2006) 138 Cal.App.4th 463, *Sullivan v. Centinela Valley Union High Sch. Dist.* (2011) 194 Cal.App.4th 69, and *Grace v. Beaumont Unif. Sch. Dist.* (2013) 216 Cal.App.4th 1325.

⁸ *Fleice v. Chualar Union Elem. Sch. Dist.* (1988) 206 Cal.App.3d 886; where the superintendent at the end of year #1 sent a teacher a congratulatory letter for attaining permanent (tenure) status. The district later non-reelected the teacher in year #2. The courts confirmed that non-reelection was proper, holding that a school board lacks the statutory discretion to shorten the tenure track. But see, Education Code section 44929.28, which permits (but does not require) a grant of immediate tenure when the employer hires a tenured teacher away from another district.

⁹ *Cousins v. Weaverville Elem. Sch. Dist.* (1994) 24 Cal.App.4th 1846.

¹⁰ Holders of non-qualifying credentials (pre-intern, emergency permits or waivers) may claim to be probationary. (*Bakersfield City, supra*; *Golden Valley*, discussed later in this handbook.) But that period of service can never be counted toward attainment of permanent status. (Ed. Code § 44911; *Summerfield v. Windsor Unif. Sch. Dist.* (2002) 95 Cal.App.4th 1026. Also, *Motevalli v. Los Angeles Unif. Sch. Dist.* (2004) 122 Cal.App.4th 97; and *Schnee v. Alameda Unified School District* (2004) 125 Cal.App.4th 555. Also, *Smith v. Gov. Bd. Elk Grove Unif. Sch. Dist.* (2004) 120 Cal.App.4th 563.)

¹¹ Employees must be told of temporary status prior to the first day of work. Otherwise, they are probationary. (Ed. Code § 44916; *Kavanaugh v. West Sonoma County Union High Sch. Dist.* (2003) 29 Cal.4th 911. See discussion earlier.)

Categorical Time Does Not Count for Tenure Track Credit

Education Code section 44909 exempts categorical service from tenure track computation.¹²

Interaction with the Collective Bargaining Process: Some Notes

A collective bargaining agreement cannot override the statutory tenure track and non-re-election process. Three court cases illustrate the boundaries beyond which a bargaining agreement cannot stray.

A collectively bargained mid-year dismissal process cannot be applied to the non-re-election system. (*Fontana Teachers Association v. Fontana Unif. Sch. Dist.* (1988) 201 Cal.App.3d 1517. [Note: as discussed below, the use of the Ed. Code § 44948.3 mid-year non-re-election process has been effectively mooted by later court action].)

Arbitrators dealing with alleged employer violations of collectively bargained evaluation timelines lack the power to order reinstatement or confer permanent status. (*Bellflower Education Association, CTA/NEA v. Bellflower Unif. Sch. Dist.* (1991) 228 Cal.App.3d 805.) Recent litigation has reconfirmed that the decision of a school Board to non-reelect is not arbitrable for any reason. (*Sunnyvale Unif. Sch. Dist. v. Jacobs* (2009) 171 Cal.App.4th 168.)

Temporary Replacement Teachers: Recommended Annual Notices

Do March 15th considerations apply to temporary teachers? The sole court decision on this point makes clear that true temporary teachers need not get farewell notices by March 15th. However, some sort of courtesy notice should probably be given before the end of the school year confirming that employment ends as of June 30th. (See *Culbertson v. San Gabriel Unif. Sch. Dist.* (2004) 121 Cal.App.4th 1392.¹³) (See discussion of annual notices in Section 5 of this handbook.)

Temporary Replacement Teachers Who Serve More than 75 Percent of the Year

Some teachers serving as replacements under Education Code sections 44917-44921 may claim a preferred right to re-employment if they have worked more than 75 percent of a year. (See Ed. Code § 44954.) (See discussion of annual notices in Section 5.)

Interns

See discussion in Section 4 of this handbook.

¹² *Zalac v. Gov. Bd. of Ferndale Unif. Sch. Dist.* (2002) 98 Cal.App.4th 838.

¹³ An emergency permit teacher serves under a “provisional” authorization under Education Code section 44911 and consequently has no right to a “non-renewal” notice. (*Fine v. Los Angeles Unif. Sch. Dist.* (2004) 116 Cal.App.4th 1070, 1078.) And, see discussion of *Bakersfield City* and *Vallejo* cases.

Education Code section 44948.3

“For Cause” Dismissals for Probationary Employees - Over 250 ADA

Since 1984, Education Code section 44948.3 has provided for midyear “for cause” dismissals of probationary teachers upon 30-day notice. However, in 2009, a Court of Appeal¹⁴ essentially gutted this option by grafting in procedural restrictions from an apparently unrelated statute. The Legislature has not made any effort since then to address this problem. This means that a midyear “for cause” dismissal of a probationary teacher is now cost prohibitive and a waste of time.

The decision interposes an impossibly expensive and time-consuming hurdle by requiring an Education Code section 44938 warning letter in advance of any decision to dismiss for unsatisfactory performance or unprofessional conduct. By the time that hurdle is cleared, the district will decide to simply non-reelect.

¹⁴ *Achene v. Pierce Jt. Unif. Sch. Dist.* (2009) 176 Cal.App.4th 757.

DISTRICTS UNDER 250 ADA - FOR CAUSE DISMISSAL ONLY - NO NON-REELECTIONS

Unless the district has previously conferred permanency or “tenure” on its teachers, no certificated employee ever becomes “permanent” in an under 250 ADA district. Although these teachers remain in perpetual probationary status, the district is unable to implement a non-reelection like larger districts. Under 250 ADA districts must utilize the “for cause” dismissal process instead. (Ed. Code § 44948.5.)

Small Districts Cannot Use the Non-reelection Process.

Throughout his/her career a small district certificated employee may be released upon proper pre-March 15th notice statement of charges and a full evidentiary hearing. A state Administrative Law Judge conducts the hearing and prepares a non-binding decision for the Board’s final review and action. Final notice then goes out before May 15th and employment ends as of June 30th. (See Ed. Code § 44948.5 for the detailed procedure.)

Exception Available for Small Districts to Convert to a Non-reelection Process.

Technically, the “under 250 ADA” employer can choose to voluntarily convert to a tenure track system. That decision would allow non-reelection of all current staff with less than two years of qualifying service, while granting instant permanent status (tenure) to those with more than two years of service. Small districts are advised to avoid this option and contact SLS before converting its employees to the tenure track system. (See Ed. Code § 44929.23.)

Please contact SLS immediately if your district is considering a “for cause” dismissal.

SECTION 4 - INTERNS

WHAT ARE INTERNS?

Two statutes, not necessarily in harmony, create the world of district interns and university interns. However, two court decisions leave us with a single system for dealing with intern employment rights. Meanwhile, the Federal Courts consider whether interns meet NCLB highly qualified standards.

Employment Rights in the Courts

Welch v. Oakland Unif. Sch. Dist. (2001) 91 Cal.App.4th 1421

In 2001, the First District Court of Appeal attempted to review the statutes on district interns in order to resolve a claim that intern teachers had the same dismissal procedural rights as probationary staff.

The employer argued that all interns are temporary and can be let go at any time. The interns actually signed written contracts confirming that status. However, the Court voided that portion of the employment contract, ruling that interns must be dismissed in the same manner as probationary teachers. (Ed. Code § 44955 (layoff); Ed. Code § 44929.21 (non-reelection); or Ed. Code § 44948.3 (30-day for cause).)

Important Things to Recognize and Distinguish About *Welch*

1. Not a layoff case.

Welch did not consider the layoff statutes.

2. No consideration of requirement for the employer to file a new declaration of need.

The California Commission on Teacher Credentialing requires employers to account for interns when filing renewed declarations of need. Technically, state permission for employment lapses each June 30th and the intern can render no further service absent a new employer declaration. This should mean that intern employment ends not later than each June 30th. (See Title 5, C.C.R., § 80026.¹⁵)

Interaction with the Non-reelection Statutes

Peoples v. San Diego Unif. Sch. Dist (2006) 138 Cal.App.4th 463

The final year of employment under a university internship credential counts for one year towards tenure under Education Code section 44929.21(b) if the teacher is employed during the next consecutive year under a clear credential. (Ed. Code § 44466.) In *Peoples*, the

¹⁵ The *Bakersfield City* and *Vallejo* decisions sweep interns into the advanced seniority status and fuses district and university interns. This gives all the more reason to annually release interns.

plaintiff held and taught under a university intern credential during the 2001-2002 and 2002-2003 school years. During the 2003-2004 school year, the plaintiff taught under a clear credential. In May of 2004, the district notified the plaintiff that she was being non-reelected. The plaintiff claimed the notice was untimely because she was in her second year of probationary employment and, therefore, Education Code section 44929.21 required the district to notify her of its decision not to rehire on or before March 15, 2004.

The Court, on appeal, noted that the Legislature intended interpretation of the statutes governing university interns (Ed. Code § 44466) and district interns (Ed. Code § 44885.5) to be similar for the purposes of attaining permanent employment. Based on the statutory language and legislative intent, the Court agreed with the plaintiff and held that the 2002-2003 school year (year #2 of the internship) counted towards the two-year tenure requirement even though the Legislature did not directly state in Education Code section 44466 that a university intern is a probationary employee as it did in the statute applicable to district interns. Therefore, the notice of non-reelection was untimely since it was given after March 15, 2004.

Are Interns Highly Qualified Under NCLB?

In *Sonya Renee, et al. v. Duncan* (2010) 623 F.3d 787, the Federal Ninth Circuit Court of Appeals held that federal administrative regulations purporting to grant NCLB highly qualified status to interns was in conflict with the controlling federal law. Significantly, the plaintiffs did not add California or any local school districts as parties to the lawsuit. That means the Court technically did not consider or rule on California's regulations - which mirror the federal regulation.

In response to the *Sonya Renee* decision, Congress added a provision to a Continuing Resolution to fund the government in 2011. This provision indicates that interns are in fact highly qualified under the NCLB. President Obama signed this federal legislation in December 2010 and this provision remained in effect until at least the end of the 2012-2013 school year.

As of this writing, it appears that interns are again considered highly qualified under the NCLB. Recent correspondence with the Title 2, Part A, State Coordinator at the California Department of Education confirms that the California Department of Education does continue to recognize California interns as highly qualified. Many school districts preparing for layoffs may want to use highly qualified status as a reason for either (a) tie-break or (b) skipping decisions. Currently, that practice seems acceptable.

SECTION 5 - TEMPORARY CERTIFICATED EMPLOYEES

EMPLOYMENT AND RELEASE ISSUES

The Education Code requires that certificated employees be classified in one of four ways: permanent, probationary, temporary, or substitute.¹⁶ Proper classification is critical due to certificated employees' statutory retention and promotion rights and the level of procedural safeguards in place in the event of dismissal or non-re-election for the next school year. Because temporary employees, like substitutes, receive the least amount of job protection, a district must ensure that all statutory requirements are met before classifying a certificated employee as temporary.

There are two general kinds of temporary employees – those who are employed in short-term temporary assignments (Ed. Code §§ 44919, 44921, 44986); and those who are employed for up to one year to replace other certificated employees who are absent on leave or have a lengthy illness (Ed. Code §§ 44920, 44918).¹⁷ If all requirements of the statute are not met, then the employee must be classified as “probationary” as mandated by the default or catch-all provision of Education Code section 44915.¹⁸ This rigid classification scheme for certificated employees is intended to limit the ability of the employer to classify teachers as temporary, rather than enlarge it. The Code grants no discretion to deviate from this classification scheme in an effort to maintain hiring discretion and desired flexibility. Even if the employee agrees in writing to be hired as a temporary employee, such a written agreement is not determinative unless the classification is permitted by statute.¹⁹

Timely Notice

Education Code section 44916 requires districts to classify their employees into one of the four classifications noted above at the time of employment. The district must give each new employee a written statement indicating the appropriate classification no later than the first day of paid service. If hired as a temporary employee, the statement must clearly indicate the temporary nature of the employment and the length of the employment term. If such statement is untimely, the employee will be deemed probationary, not temporary.²⁰

Temporary Employees Hired for Categorically-Funded Projects

Section 44909 was intended to benefit districts by authorizing the use of temporary employees in specially-funded programs without having to retain a surplus of probationary and permanent

¹⁶ Education Code section 44916; *McIntyre v. Sonoma Valley Unified School District (McIntyre)* (2012) 206 Cal.App.4th 170.

¹⁷ *McIntyre*. A teacher may also be classified as temporary where the teacher serves under a categorically-funded project or program (Ed. Code § 44909). The code also permits the use of temporary employees in other very limited circumstances which will not be covered in these materials (i.e. Ed. Code §§ 1294.1 – alternative schools; 44929.23 – adult schools; 44986(b)91) – STRS replacements; 44910 – ROP program)

¹⁸ *Vasquez v. Happy Valley Union School District* (2008) 159 Cal.App.4th 969.

¹⁹ *Stockton Teachers Association v. Stockton Unified School District (Stockton)* (2012) 204 Cal.App.4th 446.

²⁰ *Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911.

employees when such special programs expire. The only time temporary employees hired for categorically-funded programs may be terminated without regard to the procedural safeguards in the Code for probationary and permanent employees is at expiration or termination of the categorically-funded program or contract with the public or private agency. If a school district terminates an employee hired for a categorically-funded project or contract before the end of the term of the project or contract, the employee must be afforded all rights of a probationary employee, including notice, seniority and re-employment rights.²¹ In light of the unique status of “44909 temporary employees,” we recommend that a specialized employment contract without an employment ending date drafted by SLS be used to notify such employees of their employment status before their first day of paid service under the contract. We also recommend that such employees be listed on a separate seniority list apart from other certificated employees.

Long-Term Temporary Teachers

A district’s ability to use temporary employees for employee absences pursuant to Education Code section 44920 is not dependent on a one-to-one match. All that is required is that the number of temporary employees on the entire certificated payroll not exceed the total number of probationary and permanent employees on leave at any one time. Additionally, the Education Code does not preclude a district from hiring temporary employees to replace employees on leave on a year-to-year basis without elevating them to probationary status.²²

Classification and Certification Operate Independently

Employee classification and employee certification operate independently of each other. Certificated employees with less than a regular credential which do not meet the statutory temporary classifications described above must be classified as probationary employees. As probationary employees with less than a regular credential, they are entitled to the procedural protections for dismissal and layoffs and seniority is determined as of the date the employee “first rendered paid service in a probationary position.” They are not, however, entitled to accrue credit toward permanent status.²³

Employment Audits

In light of the issues addressed above, districts should audit the employment records of all temporary employees to ensure that all statutory requirements are met, including proper notice of initial temporary employment status. If the required notice was not timely given, the employee may need to be retroactively classified as probationary. Obviously, this may affect the layoff process.

Annual Separation from Service Action

To avoid any misunderstandings, we recommend that each district send annual non-renewal notices/non-reelection notices to all temporary employees, except for employees hired for

²¹ *Stockton*.

²² *McIntyre*.

²³ *Bakersfield Elementary Teachers Association v. Bakersfield City School District* (2007) 145 Cal.App.4th 1260; Ed. Code § 44911.

categorically-funded projects. (As noted above, their employment contracts are terminated at the conclusion of the categorically-funded project, not a specific date.) Following Board action, a confirming notice letter should be sent to each affected employee. This will ensure a proper break in service at the end of each school year and prompt the district to renew a temporary contract at the beginning of the following school year, if applicable.

As examples in this publication, we enclose two sample letters for annual separation from service notice to (a) replacement temporary employees and (b) emergency/STPS(STIP)/PIP/Waiver/Interns.

SECTION 6 - RETIRED TEACHERS

RETIRED TEACHERS

Retired teachers do not gain probationary or permanent status. They have no layoff seniority date. STRS limits their earnings potential by various regulations adopted under a number of Education Code sections. The sample contract on our website sets a definite term of employment.

A courtesy letter should be issued in the Spring to confirm pending cessation of employment. The letter used for "Replacement Temporary Certificated Employees" may be modified for this purpose.

THE ANNUAL FAREWELL LETTER FOR REPLACEMENT

TEMPORARY CERTIFICATED EMPLOYEES Adaptable for Many Temporary Employments

[To Be Finalized On District Letterhead]

[Date]

[Employee's Name and Address]

Re: Expiration of Temporary Employment

Dear [Employee Name]:

As you know, you are employed on a temporary basis under Education Code section [*]. Your written contract will end on [the last day of instruction for the current school year]. For record purposes, we will show the completion date as June 30, 20__, which is the date of your final salary warrant. This notice is also given under Education Code section 44954.

Thank you for your service to the District. [*Optional: Although funding for next year remains uncertain, we look forward to receiving an application from you.*]

Sincerely,

Name and Title

cc: Board of Trustees

* Show applicable code section authorizing temporary service, i.e., 44909, 44910, 44917, 44919, 44920 or 44921.

**THE ANNUAL FAREWELL LETTER FOR
EMERGENCY/STSP(STIP)/PIP/WAIVER/INTERN**

[To Be Finalized On District Letterhead]

[Date]

[Employee's Name and Address]

Re: Expiration of Your Employment with this District

Dear [Employee Name]:

This will confirm your current employment status with the District.

You were employed this year under an emergency permit, STSP(STIP), PIP, Waiver or Intern authorization which was issued because you do not hold a regular credential. Neither your contract with this District nor the Education Code recognize your service for tenure track credit. Your employment contract and all employment with this District will expire automatically, effective June 30, 20____. This notice is also given under Education Code section 44929.21. Sincerely,

Name and Title

cc: Board of Trustees

Staff Survey [Sample Form]

THIS IS A TIME SENSITIVE DOCUMENT. YOUR REVIEW AND RESPONSE IS REQUIRED.

Date:

To: [Certificated Employee Name and Address]

From: District Superintendent

Re: Confirmation of Your Employment Data

The District is compiling an updated certificated employment list, also known as the “seniority list.” It is important that you review the below information and confirm that our information is current, accurate and complete. **YOUR RESPONSE IS REQUIRED ON OR BEFORE JANUARY 14, 2014.**

A review of your personnel records indicates the following information:

First Paid Date of Service in a probationary position with the District:

[]

Credentials held (include expiration date, if applicable):

[]

College/university major, minor and/or authorized subjects:

[]

Bilingual, bicultural or other language certificates [CLAD, BCLAD, ELL, etc.]:

[]

NCLB Highly Qualified [Yes or No in relation to your credential(s)]:

[]

Current Assignment(s):

[]

Prior Assignments:

[]

Other:

[]

Do you plan to take the CSET this year? YES NO
If yes, when? _____ Subject: _____

If you believe that any of this information is incorrect or incomplete, you must contact the Personnel Office immediately. If you have documents which establish additional or different information than that which is listed above, you should make them available to the Personnel Department immediately. Credentials cannot be considered until you register them with the Office of the County Superintendent of Schools. It is your responsibility to see that this registration is accomplished.

Important pending personnel decisions will be based on this information. Any corrections or additions, and/or supporting documents, must be submitted to the District/Personnel Office **prior to January 14, 2014**. If we do not hear from you or receive additional information from you before then, the above information will be considered accurate and will be used for the purpose of compiling the certificated employment list. **Changes to your information on the certificated employment list will not be considered or made if documents are received after January 14, 2014. The District WILL NOT accept late, but back-dated credentials.** It is your responsibility to make sure the District has all of your accurate information in advance of that date. Any future staffing and employment decisions will be made with the information available to the District as of January 14, 2014.

Please initial the appropriate box and sign below. Please return this document to the District Office/Personnel Department.

I agree that the above information provided is accurate, complete and correct and I do not have challenges to the above information. I will not be providing the District with additional information.

I disagree with the above information, and I will be providing supporting documentation in order to make changes. I understand and agree that all information and documents must be received before January 14, 2014, for consideration. I understand that if I do not submit supporting documentation in advance of January 14, 2014, the above information will be used in the District's certificated seniority list.

EMPLOYEE SIGNATURE

Date _____

**BEFORE THE GOVERNING BOARD OF THE
_____ SCHOOL DISTRICT
COUNTY OF _____, STATE OF CALIFORNIA**

Determination of Seniority Among Certificated)
Employees With Same First Paid Date of) Resolution No. _____
Service ("Tie-Breaker Resolution"))
_____)

WHEREAS, the Governing Board anticipates that it will be necessary to reduce or eliminate certain particular kinds of services effective at the close of this school year; and

WHEREAS, the Governing Board has determined that as between certificated employees who first rendered paid service to the District on the same date, certain criteria should be used in determining the order of termination of said employees; and

WHEREAS, the determination of the order of termination is based solely upon the needs of the District and the students thereof;

NOW THEREFORE, BE IT RESOLVED by the Governing Board of the _____ School District:

1. That each of the above recitals is true and correct.
2. The criteria used to determine the order of termination of certificated employees who first rendered paid service to the District on the same date, shall be as follows and will be applied in the priority order indicated:
 - a. CTC issued teaching and/or special service credentials, authorizations and certificates held (Credentialing)
 - b. Bilingual Cross-cultural Language and Academic Development (BCLAD) certification
 - c. Other types of authorization for instruction of English Language Learners besides BCLAD, including Cross-cultural Language and Academic Development (CLAD) certification
 - d. Special Education Needs
 - e. Experience
 - f. Training
 - g. Competence
 - h. Evaluations
 - i. Extracurricular Activities

I CERTIFY that the above resolution, proposed by Trustee _____
and seconded by Trustee _____, was duly passed and adopted by the
Governing Board of the _____ School District of _____
County, California, at an official and public meeting thereof held on _____, 2013, by
the following vote:

AYES:
NOES:
ABSTENTIONS:
ABSENT:

DATED: _____

GOVERNING BOARD OF THE
_____ SCHOOL DISTRICT

By: _____

Title: _____

**BEFORE THE GOVERNING BOARD OF THE
SCHOOL DISTRICT
COUNTY OF _____, STATE OF CALIFORNIA**

Reducing or Eliminating Certain Certificated)
Services for the 2014-2015 School Year) Resolution No. _____
_____)

WHEREAS, sections 44949 and 44955 of the Education Code require action by the Governing Board in order to reduce or eliminate services and permit the layoff of certificated employees; and,

WHEREAS, the District Superintendent has recommended to the Governing Board that particular kinds of services be reduced or eliminated no later than the beginning of the 2014-2015 school year; and,

WHEREAS, the Governing Board has determined that it is in the best interest of the District, and the welfare of the students thereof, to reduce or discontinue certain particular kinds of services no later than the beginning of the 2014-2015 school year; and,

WHEREAS, as a result of the reduction or elimination of particular kinds of services, it will be necessary to reduce the number of certificated employees of the District;

NOW THEREFORE, BE IT RESOLVED by the Governing Board of the _____ School District:

1. That each of the above recitals is true and correct.
2. That because of the financial constraints resulting from revenue being insufficient to maintain the current levels of programs, and necessary program changes resulting therefrom, the Governing Board hereby determines to reduce or eliminate those particular kinds of services set forth in **Exhibit A**, attached hereto and incorporated by reference herein.
3. That because of the elimination and reduction of particular kinds of services listed in **Exhibit A** it is necessary to terminate at the end of the 2013-2014 school year certificated employees equal in number to the positions affected in the reduction or elimination of the above-described particular kinds of services.
4. That the Superintendent or Superintendent's designee is hereby authorized and directed to initiate and take all actions necessary and appropriate to implement this Resolution.

I CERTIFY that the above resolution, proposed by Trustee _____ and seconded by Trustee _____, was duly passed and adopted by the Governing Board of the _____ School District of _____ County, California, at an official and public meeting thereof held on _____, 2014, by the following vote:

AYES:
NOES:
ABSTENTIONS:
ABSENT:

DATED: _____

GOVERNING BOARD OF THE
_____ SCHOOL DISTRICT

By: _____

Title: _____

[Attachment: Exhibit A]

[DRAFT—TO BE FINALIZED BY DISTRICT]
[Please note that you may need to make significant revisions to this document to fit the needs of your District. This is a sample only.]

_____ SCHOOL DISTRICT

**RESOLUTION REDUCING OR DISCONTINUING
PARTICULAR KINDS OF SERVICES**

EXHIBIT A

FTE*

Elementary School Services

Self-contained classroom.....

Music.....

Special Education Mild Moderate.....

Sub-total:

Middle School Services [or] Junior High Services

English/Reading/Language Arts.....

Foreign Language: French.....

Mathematics.....

Social Science.....

Visual and Performing Arts: Art.....

Visual and Performing Arts: Music.....

Special Education Moderate Severe.....

Sub-total:

High School Services

English.....

Independent Study.....

Physical Education.....

Foreign Language: Latin.....

Special Education Mild Moderate.....

Sub-total:

TOTAL FTE Reduced or Discontinued.....

*FTE = Full Time Equivalent

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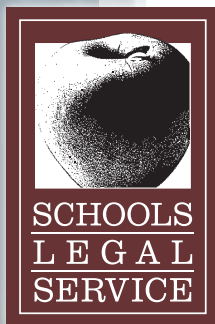
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