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Schools Legal Service
is a joint powers entity
providing legal and
collective bargaining
services to California
public education
agencies since 1976.

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To: Schools Legal Service Clients

From: Peter C. Carton 

Re: Creating and Maintaining a Certificated Seniority List
(Preparation for Possible March 15 Staff Reductions)

The last practical day for adopting a certificated services reduction resolution leading to layoff notices will be March 11, 2010.

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

The biggest potential problem remains the upward creep in seniority by underprepared (underqualified) certificated employees. The *Bakersfield City* and *Vallejo* litigation confirmed warnings given by Schools Legal Service over the last three decades: identify and separate from service each June 30 all persons who are not moving forward on the path toward permanent status. This means employers should annually notice, by nonreelection or nonrenewal 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 nonreelect 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 by staff 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 March 15 nonreelection notices to underqualified or underprepared teachers. The decision to not separate out the unqualified teacher each June impacts every future layoff decision. 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 July 1.

THE BASICS OF A CERTIFICATED SENIORITY LIST

Schools Legal Service continues to advise members to maintain a district-wide certificated seniority list. The certificated seniority list is a basic, permanent, durable record which should be regularly updated by every public school employer. Some lists, however, may have fallen into neglect because the district does not usually consult the seniority list except at layoff time. [Note: In some bargaining agreements, seniority also earns preference in transfer situations.]

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.

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 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)
- 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)

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 should also be identified. Account for everyone. Some employers already maintain an additional list of temporary staff, interns and underqualified teachers, anticipating an inability to offer them continuing employment.

Administrators.

Administrators, including the Superintendent, must also 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 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 1, and a different tie-break ranking may be applied for future layoffs.

What is the "First Paid Date" of Service?

Employer payroll records and STRS reports should show the initial date of compensated service. Compensated service does not include midsummer stipend work, such as coaching or athletic conditioning. Compensated service usually starts with scheduled 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
- 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

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 Educ. 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 district administration has assembled a tentative updated 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 March 15 layoff resolution and notices are pending, the employer should establish a cutoff deadline for updating seniority list information. Belated attempts by staff to register credentials, for example, could disrupt efforts to notice the appropriate people. We recommend an information update cutoff not later than March 1. State hearing officers traditionally accept a reasonable data cutoff deadline. Even then, a March 1 cutoff date will allow barely enough time to finalize and serve timely notices prior to March 15.

* * * * *

Time, especially the March 15 initial layoff notice deadline, is of the essence. Please contact Schools Legal Service immediately when the subject first surfaces.

Enclosures: (Sample certificated seniority list)
(Sample Data Survey memo)

MEMO TO STAFF RE: EMPLOYMENT DATA
[SAMPLE FORM]

Date:

To: [Certificated Employee Name and Address]

From: District Superintendent

Re: Confirmation of Employment Data

The District is compiling an updated certificated employment list. We ask confirmation from you that our information is current and accurate. A review of your personnel records indicates the following information:

First Paid Date of Service *in current employment*
[]

Credentials held (include expiration date, if applicable)
[]

Major, minor or authorized subjects
[]

Advanced academic degrees held
[]

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

NCLB Highly Qualified?
[]

Current Assignment(s)
[]

Prior Assignments
[]

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 your position with respect to these matters, you should make them available to us. 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. All credentials listed above are already on file with the County Office.

Important pending personnel decisions will be based on this information. Any corrections or additions must be made prior to March 1. If we do not hear from you before then, the above information will be considered accurate.

SAMPLE
CERTIFICATED SENIORITY LIST
[PARTIAL -- JULY 1996 TO PRESENT]

			Credential Information						Assignments		Notes
First Paid Service Date	Employee Name**	Contract Status	Credentials Held?	Majors	Subjects: Minors	Additional Authorizations	Advance Degrees Held	Current	Prior	NCLB? ELL ?	
050257	Sue U. Daly	Perm.	Clear	M/S		B-CLAD		6	K, 1-2		
035885	Hy Fees	Perm.	Preliminary	M/S				5	23		
			S/S Clear	P.E.		B-CLAD					
080386	Toner Low	Prob.	S/S Preliminary	Math				34			
			Preliminary	M/S							
111203	U.N. Payed	Temp.	Preliminary	M/S		Music-Waiver		Spec Ed	45		
			Spec Ed	Speech Therapist							
072806	Cannon Schatt	Intern	Univ. Intern	M/S				K-2			
082407	Hy Li Housed	Prob.	Prelim M/S, Math SS	M/S, Math	Lang Arts, (Thai)			P.E.		Soccer coach, math tutor	

***NOTE: For larger groups, prepare two versions for the hearing as cross-reference. The second should be sorted alphabetically.

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