



# Client Alert

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February 4, 2009

## CERTIFICATED LAYOFFS MAY SAVE JUNIOR TEACHERS SERVING IN ALTERNATIVE EDUCATION PROGRAMS

A timely published appellate decision (*Bledsoe v. Biggs Unified School District*, Third District No. C058222, January 12, 2009) confirms long-standing advice by management advocates on layoff seniority bumping (displacement) issues. Education Code section 44955(d) makes clear that Section 44865 does not guarantee a senior teacher's right to bump a junior teacher currently serving in an alternative education<sup>1</sup> program. Additional case-by-case analysis of qualifications and training would be necessary.

The Biggs Unified School District decided to reduce certain certificated services for the 2007-08 school year. Mr. Bledsoe, a senior teacher, received a layoff notice while the employer skipped and saved a junior teacher serving in an alternative education program assignment. Bledsoe argued to the administrative law judge and to the Court that he had an absolute right under Education Code section 44865 to bump out any junior teacher serving in an alternative education program. There was no question that Bledsoe held a credential allowing alternative education service, as long as he consented (Section 44865).

Here, the junior teachers had highly qualified status under NCLB as to every core area taught in the program. In addition, they had special training in coping with special needs students typically found in alternative education settings. Bledsoe, by comparison, did not hold highly qualified status in some of the core areas and did not have the same specialized training.

Citing subdivision (d) of Education Code section 44955, the Court accepted the employer's argument that alternative education positions may be considered for protection and skipping of junior staff.

A case-by-case analysis and comparison of qualifications and duties must be documented at the administrative hearing.

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<sup>1</sup> The term "alternative education" generally refers to a program or service other than one typically offered through, or located at, a comprehensive school. *Bledsoe/Biggs* involved a continuation high school program. But the Court's reference to Education Code section 44865 indicates an intent to apply the analysis to any program listed in that statute. Specifically, section 44865 lists home teachers, adult classes, hospital classes, necessary small high schools, continuation high schools, alternative schools, opportunity classes, juvenile court schools, community schools and community day schools.

Note: For many years, Schools Legal Service has successfully made the same argument for clients in administrative hearings. *Bledsoe/Biggs*, as the first judicial case to establish a judicial precedent, confirms our advice.

ADVICE TO CLIENTS:

*Bledsoe/Biggs* is not a blanket authorization to skip and save junior teachers currently serving in alternative ed settings. The specific requirements for service in those programs should be well-documented. At a minimum, the employer should specify the requirements for matters such as CLAD certification, NCLB highly-qualified status, and any special training in meeting the needs of these students.

We recommend that clients contact us if there are any questions regarding this case.

— Peter C. Carton, of Counsel

*Client Alerts are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.*