



LAW UPDATE

LABOR AND EMPLOYMENT

PHONE: (661) 636-4830 • FAX: (661) 636-4843
E-mail: sls@kern.org • www.schoolslegalservice.org

May 2020

UPDATED GUIDANCE

AVAILABILITY OF SUMMER LAYOFFS IN 2020 AND BEYOND

As a result of the serious economic consequences of the COVID-19 pandemic, we understand local education agencies are prudently considering all options to reduce expenditures as they look ahead to fiscal year 2020-2021 and beyond. One of those considerations is the potential for a summer certificated layoff window. More information on that option is provided below.

A. Background

Section 44955.5 of the Education Code¹ creates a brief window of opportunity for summer layoffs of certificated employees and release of administrators from their administrative positions.² In order for this opportunity to apply, very specific criteria must be met. Section 44955.5 provides, in pertinent part, as follows:

“During the time period between five days after the enactment of the Budget Act and August 15 of the fiscal year to which that Budget Act applies, if the governing board of a school district determines that *its total revenue limit per unit of average daily attendance for the fiscal year of that Budget Act has not increased by at least 2 percent*, and if in the opinion of the governing board it is therefore necessary to decrease the number of permanent employees in the district, the governing board may terminate the services of any permanent or probationary certificated employees of the district, including employees holding a position that requires an administrative or supervisory credential.” (Emphasis added.)

¹ All further statutory references are to the Education Code unless otherwise stated.

² Section 44955.55 is not included in the sections made applicable to a county superintendent of schools under Section 1294. Therefore, summer layoffs of certificated employees are not an option for a county superintendent of schools. However, administrators could be released from their assignment by a county superintendent of schools after March 15 since Section 1294 also does not include Section 44951 (which requires notice by March 15 in order to release an administrator at the end of the school year).

This statute was last amended in 2011. In 2013, the Local Control Funding Formula (LCFF) was enacted.

According to the California Department of Education, “[u]nder the LCFF funding system, revenue limits and most state categorical programs have been eliminated.”³ As part of the LCFF legislation, the California Legislature enacted Section 42238.06, which provides in subsection (a) that “[r]eferences to ‘revenue limit’ shall instead refer to the ‘local control funding formula’.”

Therefore, the phrase “total revenue limit” from Section 44955.5(a) could be replaced with “local control funding formula” pursuant to Section 42238.06. However, Section 42238.06 also includes the phrase “or where the context requires otherwise.” The issue here is the LCFF incorporates average daily attendance into the formula.⁴ Thus, the entire phrase “total revenue limit per unit of average daily attendance” should instead refer to the “local control funding formula” in Section 44955.5(a) so that the context is clear.

A key question is what needs to be below two percent in completing this analysis and in order for a district to utilize the summer layoff window. The guidance from the California Department of Education (CDE) regarding the LCFF is instructive. Under the previous funding system (and similar to the language used in Section 44955.5), each school district was funded based on a unique revenue limit, multiplied by its average daily attendance. According to the CDE, the LCFF entitlement components for school districts and charter schools consist of grade span-specific base grants plus supplemental and concentration grants that are calculated based on student demographic factors and, for county offices of education (COEs), the LCFF entitlement components consist of an amount for COE oversight activities and instructional programs.⁵

Based on the foregoing, if a district’s LCFF entitlements have not increased by at least two percent in the fiscal year to which the Budget Act applies, then Section 44955.5 could become operative. This will be a very fact specific analysis. Your district’s Chief Business Official (or other appropriate resource) should be consulted for assessment of the applicability of the two percent threshold to your district. This information would then need to be presented to the district’s Board of Trustees in a resolution for a determination that, based on the lack of a two percent increase in LCFF entitlements, it is therefore necessary to decrease the number of certificated employees.

B. Timeline for Summer Layoffs

As a preliminary matter, it is of critical importance that districts start evaluating whether there could be a need to utilize the summer layoff process as soon as the May revision to the state budget is available from the Governor given the very compressed timeframe for the process. Districts should also take all steps, including potentially resurveying employees for confirmation of data, to confirm a current, accurate and integrated seniority list is available for use.

³ <https://www.cde.ca.gov/fg/aa/lc/lcfaq.asp#FC>

⁴ <https://www.cde.ca.gov/fg/aa/lc/lcfoverview.asp>

⁵ <https://www.cde.ca.gov/fg/aa/lc/lcfaq.asp#FC>; <https://www.cde.ca.gov/fg/aa/lc/lcfoverview.asp>. Information on how the LCFF entitlements are calculated is shown in Figure 1 (School Districts and Charter Schools) and Figure 2 (County Office of Education) on the CDE LCFF overview site.

Under Section 44955.5, the layoff window opens five days after the enactment of the Budget Act and closes August 15 of the fiscal year to which that Budget Act applies. During that short window of time, the layoff process must be in accordance with a schedule of notice and hearing adopted by the Governing Board.⁶ While the timelines set forth in Sections 44951 and 44955 do not apply, the procedural process does. It is therefore recommended as a best practice for districts anticipating the need to utilize summer layoffs to have a skeleton of a schedule developed in advance of the budget passing that can easily be modified in the event the budget deadline slips. This schedule may include the need for special Board of Trustees meetings, especially given that some Boards may have an already reduced meeting schedule in the summer. There must be sufficient time in the schedule for all steps in the process to occur prior to August 15. A proposed timeline is included in the Procedure for the Layoff Section below.

A Board meeting would need to be held in close proximity to the passage of the state budget to adopt the following:

- a layoff resolution finding that the Budget Act for the new fiscal year will not increase the district's LCFF entitlements for the fiscal year to which it applies by at least two percent and it is therefore necessary to decrease the number of certificated employees in the district; and
- a resolution setting a schedule of notice and hearing under Section 44955.5; and
- a "tie-breaker" resolution to address employees that have the same seniority date.

C. Procedure for the Layoff

1. The district administration reviews the district's finances and any matters affecting its finances. If the Budget Act for the new fiscal year will not increase the district's LCFF entitlements by at least two percent, the administration then makes a plan to decrease the number of certificated employees in the district and makes a recommendation to the Board accordingly.
2. ***The initial Board meeting should be held as soon as possible after enactment of the state budget.*** The Board adopts appropriate versions of the three resolutions described above at this meeting.
3. The affected employees are notified of the Board's action. ***The layoff notices should be served as soon as possible after the initial Board meeting discussed above 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 Statement of Reduction in Force (a technical term required by the Education Code), along with related documents.
6. If a hearing is requested by the noticed employees, a state Administrative Law Judge conducts the hearing. The hearing should be held by **July 31**.

⁶ Cal. Educ. Code § 44955.5: "The termination shall be pursuant to Sections 44951 and 44955 but, notwithstanding anything to the contrary in Sections 44951 and 44955, in accordance with a schedule of notice and hearing adopted by the governing Board."

7. The Administrative Law Judge prepares and submits a proposed decision to the Board which should be sent to the affected employees no later than **August 10**. This decision is only a recommendation and is not binding on the district.
8. The Board takes final action to order the decrease in employees. This Board meeting must take place by **August 11** at the latest to allow sufficient time for notice to the affected employees.
9. All affected employees must be notified of the Board's final action before **August 15 (no later than August 14)**. 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 **August 15 (no later than August 14)**. ***The notices must be served by personal service or registered or certified mail.***

D. Legislative Action

During the Great Recession, the Legislature previously made the summer layoffs window under Section 44955.5 unavailable by amending the statute.⁷ It is possible that the Legislature could amend the statute again this year and remove the option for summer layoffs for a set period of time. We will be monitoring this situation and will keep clients updated. If the summer certificated layoff window is an option for districts and COEs, our office is available to assist with all aspects of the process.

Should you have any questions about the foregoing information, please contact our office.

- Abigale M. Auffant

Education Law Updates are intended to alert Schools Legal Service 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. Consult legal counsel as to how the issue presented may affect your particular circumstances.

⁷ Subsection (b) to section 44955.5 provides: "This section is inoperative from July 1, 2002, to July 1, 2003, inclusive, and from July 1, 2011, to July 1, 2012, inclusive".