

School and College LEGAL SERVICES LEGAL UPDATE

Serving School and College Districts in Northern California

May 15, 2002

To: Superintendents, Member School Districts (K-12)

From: Robert J. Henry, General Counsel

Subject: Potential Summer Reductions of Certificated Staff
Memo No. 6-2002

Education Code section 44955.5 provides 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. 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.

The Governor's budget announcement of May 14, 2002 indicates that there may actually be a 2% COLA on the revenue limit, but something less than that for categorical and other programs. In our view this may allow use of Section 44955.5 for certificated staff reductions this summer. We are a long way from an approved budget and a final determination regarding the application of Section 44955.5 will need to be made after the budget is approved.

Nevertheless it now appears possible that the "total revenue limit" for K-12 school districts will not increase by "at least 2 percent" and that school districts may be allowed to initiate "summer layoffs" of certificated employees or reductions of administrative staff where the administrators are employed pursuant to Section 44951. Section 44951 applies to individuals who hold positions requiring administrative credentials but it does not apply to those with multi-year contracts that extend beyond the 2002-03 school year.

If you believe it may be necessary to consider this option please note that the school board will need to adopt "a schedule of notice and hearing" prior to implementing layoffs. An example is enclosed. If you have any questions about this matter please let us know.

DRAFT

_____ SCHOOL DISTRICT
Schedule of Notice and Hearing
(Education Code section 44955.5)

Date

Action

__/__/02

1. Board of Education to adopt resolution
 - (a) Showing revenue limit calculation;
 - (b) Finding need to reduce number of certificated employees;
 - (c) Adopting schedule of Notice and Hearing; and
 - (d) Determining need to reduce and/or discontinue particular kinds of service
2. Board of Education to:
 - (a) Adopt tie-breaking criteria
 - (b) Identify positions to be exempted from layoff.

By __/__/02

1. Superintendent to file recommendation with Board of Education that identified certificated employees be laid off.
2. Serve employees with
 - (a) Notice of Termination of Employment/Notice of Superintendent's Recommendation to Terminate Employment/ Notice to Respondent
 - (b) Schedule of Notice and Hearing
 - (c) List of Services to be Reduced or Discontinued
 - (d) Request for Hearing Form
 - (e) Accusation
 - (f) Notice of Defense form
 - (g) Notice of Hearing
 - (h) Education Code sections 44944, 44955, 44955.6
 - (i) Government Code sections 11506, 11507.5, 11507.6, 11507.7, and 11520

__/__/02

Requests for Hearing and Notice of Defense to be received by District.

__/__/02

Last day for District to respond to request for statement of specific criteria used in determining the order of termination and the application of the criteria in ranking each employee with the same first day of paid service relative to other employees in his group.

__/__/02

Hearing

Within ten
calendar days
following close of
Hearing

Administrative Judge's Proposed Decision due

Within seven
calendar days
after receipt of
Proposed Decision

Board of Education to accept, reject, or modify the Decision

Within five days
after Board action

Affected employees served with Notice of Board Action

NOTE: The Administrative Law Judge may, for good cause, grant a continuance. A continuance shall result in a day-for-day extension of the schedule. If, as a result of a continuance, any deadline falls on a Saturday or Sunday, it shall be moved to the next succeeding workday. All scheduling dates shall be adjusted accordingly.