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COVID-19 Advisory



Certificated Summer Layoffs - Another Outcome of COVID-19?

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The COVID-19 pandemic has rocked the economy and in turn California's Budget. In response many school districts are considering whether certificated layoffs will be necessary and permissible *this summer*.

This bulletin provides a general overview of the summer layoff process permitted by Education Code section 44955.5, including when a district may proceed with summer layoffs, the general steps a district must take to implement summer layoffs, and the requisite timeline associated with the process.

Relevant Education Code Sections

Education Code section 44955.5 authorizes summer layoffs, under certain circumstances, and provides:

(a) *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 two 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.*

(b) This section is inoperative from July 1, 2002, to July 1, 2003, inclusive, and from July 1, 2011, to July 1, 2012, inclusive. [Emphasis added.] (Ed. Code §44955.5.)

When the Legislature enacted the Local Control Funding Formula (LCFF), it also enacted Section 42238.06, which clarified that, "...where the context requires otherwise, all of the following shall apply: ...'revenue limit' shall instead refer to the 'local control funding formula.'" (Ed. Code §42238.06(a).) As a result, when interpreting Section 44955.5(a), the term "total revenue limit" should be replaced with LCFF.

Process to Conduct Summer Layoffs

Before summer layoffs are legally authorized by Section 44955.5, certain conditions must be satisfied. First, the State Budget must be enacted. Second, it must be determined that the LCFF per Average Daily Attendance (ADA) has not increased by at least two percent for the coming fiscal year. If the LCFF per ADA does not exceed two percent for 2020-2021, a district may decide to proceed with certificated staff reductions, establish a "schedule of notice and hearing," and initiate the layoff process. Third, the Legislature must not make Section 44955.5 inoperative as it did in 2002-2003 and 2011-2012. (To date, the Legislature has not enacted a new law making Section 44955.5 inoperative for the 2020-2021 fiscal year. If the Legislature does so, then certificated summer layoffs will not be permissible.)

What happens if the three conditions above are met? By its own terms, Section 44955.5 incorporates Section 44955 ("the termination shall be pursuant to Section ... 44955"). Section 44955 permits the reduction of certificated employees due to a

decline in ADA and/or a reduction or discontinuance of a particular kind of service (PKS). In most cases, districts conduct PKS layoffs and thus identify services/programs, and corresponding FTE, to be eliminated. The corresponding process for a Section 44955.5 summer layoff mirrors that of the standard March 15 certificated layoff.

Timeline

A key difference between a Section 44955.5 layoff and a March 15 layoff is the “schedule” for when notices and the hearing occur. The summer layoff statute does not clearly specify which timelines remain in effect and which timelines the board may alter. Conservatively interpreting the statute, we believe the steps would be as follows:

- Serve preliminary layoff notices, and allow each respondent seven days to request a hearing;
- Serve a Reduction in Force (RIF) packet to each respondent who timely requests a hearing, and allow each respondent five days to file a Notice of Participation;
- Fifteen days after service of the RIF packet, a respondent may request discovery;
- Hearing before an Administrative Law Judge from OAH;
- Final Governing Board action on layoffs; and
- Timely service of final layoff notices.

Please note these timelines may be shortened based on the specific needs of each school district. Nevertheless, the board determines when initial notices are to be served, the final date on which the ALJ must submit the proposed decision to the board, and the date for service of final layoff notices, **which must be before August 15. Below is one example of what a timeline, should the California budget be enacted on June 30, 2020. (This timeline would be moved back, should the budget be enacted earlier in June.)**

July 3 - Special Board meeting to adopt a PKS Resolution
July 7 - Service of initial layoff notices
July 15 - Deadline for requesting a hearing
July 17 - Service of packets
July 24 - Deadline for return of notice of defense
July 30 - Last day to request discovery
Between July 31-August 5 - Hearing
August 10 - Deadline for ALJ to submit proposed decision to board
August 12 - Special board meeting to consider ALJ decision
August 14 - Service of final notices

As you can see, even an expedited effort will likely take a minimum of five to six weeks. If a district has completed a layoff previously and/or if the seniority list is in reasonable order, then executing a summer layoff on an expedited schedule is possible.

Recommendations

We recommend districts determine, as soon as practicable, whether summer layoffs are necessary and whether the statutory preconditions are met. Should it be necessary, immediate effort should be put into updating the seniority list and establishing a schedule for the layoff process, including the steps outlined above. We also recommend districts work with legal counsel on this process to ensure compliance with Section 44955.5 and preparation of necessary documents.

DWK will continue to provide guidance as information becomes available. For more information regarding the impact of COVID-19 on your district’s operations, please visit our COVID-19 Resources page at <https://www.dwkesq.com/covid-19-resources-page/>.