



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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LEGAL UPDATE

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To: Superintendents, Member School Districts (K-12)
From: Carl D. Corbin, General Counsel
Subject: SB 98 Limits Certain Certificated and Classified Layoffs for 2020-2021 Memo No. 39-2020

The Governor signed the budget trailer education Senate Bill ("SB") 98 on June 29, 2020. Our office will be issuing a Legal Update that summarizes the main implications of SB 98. The purpose of this Legal Update is to specifically address two provisions regarding certificated and classified layoffs.

Certificated Summer Layoffs and Administrative Releases

SB 98 revised Education Code § 44955.5, which authorizes summer certificated layoffs and administrative releases when there is a lack of increased funding to school districts as follows:

SEC. 38.

Section 44955.5 of the Education Code is amended to read:

44955.5.

(a) During the time period between five days after the enactment of the annual 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 local control funding formula apportionment 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 the governing board of a school district determines it is therefore necessary to decrease the number of permanent employees in the school district, the governing board of the school district may terminate the services of any permanent or probationary certificated employees of the school 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 of the school district.

(b) This section is inoperative from July 1, 2002, to July 1, 2003, inclusive, and from July 1, 2011, to July 1, 2012, inclusive.



(c) (1) Except as provided in paragraph (2), this section is inoperative from July 1, 2020, to July 1, 2021, inclusive.

(2) Notwithstanding paragraph (1), from July 1, 2020, to July 1, 2021, inclusive, a certificated employee of a school district holding a position that requires an administrative or supervisory credential may be terminated pursuant to subdivision (a).

The effect of SB 98 is to eliminate the ability of school districts to implement any summer certificated layoffs. Essentially, Education Code § 44955.5 has suspended summer layoffs. This will be the third time the Legislature has suspended this statute.

Interestingly, the Legislature did not suspend the right of school districts from releasing a certificated administrator. So, school districts may release a certificated administrator from their administrative position so long as notice is provided to the certificated administrator by August 14, 2020. However, please note that while certificated administrators may be released from their administrative assignment, the released administrator may have “retreat rights” to a non-administrative certificated position within the school district.

Please note that this statute does not apply to charter schools, nor does this restriction.

Layoffs/Release Prohibited for Three Classified Positions for the 2020-2021 School Year

SB 98 provides the following:

SEC. 94.

(a) Given the critical role of classified employees in reopening school and college campuses and addressing the learning loss caused by COVID-19, it is the intent of the Legislature that school districts, county offices of education, community college districts, and joint powers authorities retain all classified employees. With the amount of funding and flexibility provided to schools and community colleges in the Budget Act of 2020, schools and community colleges should avoid layoffs of classified employees in the 2020–21 fiscal year.

(b) From July 1, 2020, to June 30, 2021, inclusive, the governing board of a school district, county office of education, community college district, or joint powers authority shall not implement layoffs or releases of any permanent or probationary classified employees of the school district, county office of education, community college district, or joint powers authority who hold classifications in, or are assigned to positions in, nutrition, transportation, or custodial services. Nothing in this section shall be construed to prohibit a school district, county office of education, community college district, or joint powers authority from terminating a classified employee for good cause. [Emphasis added].

The effect of SB 98 is to protect classified employees who are classified or assigned to three positions:

1. Nutrition;
2. Transportation; and
3. Custodial.



Permanent or probationary employees in these three positions cannot be laid off and, in addition, probationary employees cannot be released from July 1, 2020, to June 30, 2021. Classified employees not in these three positions can be laid off and probationary classified employees not in these three positions can be released from service during the 2020-2021 school year.

Regarding probationary employees, this means that since all probationary employees in these three classes cannot be released except for good cause, all probationary employees in these three classes will become permanent classified employees during the 2020-2021 school year so long as they complete at least 130 days of paid service. Classified employees, permanent or probationary, in these three classes may be terminated for good cause from July 1, 2020, to June 30, 2021.

The language regarding layoffs is clear in that a board (or county superintendent) cannot adopt a resolution to initiate the layoff of any classified employee in the three positions anytime during the period from July 1, 2020, to June 30, 2021.

Furthermore, in a letter from the Chair of the Senate Committee on Budget and Fiscal Review expressing the Legislative Intent of SB 98, it is clear that the Legislature intended to retroactively negate layoffs for these classes of employees that were initiated but have not yet been implemented:

The word “implement” refers to the actual effectuation of layoffs between July 1, 2020, to June 30, 2021, which includes layoffs for which notice was given to employees between May 2, 2020 and the time up to and including July 1, 2020. If as of July 1, 2020, a school district, county office of education, community college district, or joint powers authority has provided a layoff notice to an employee covered by this section, but the 60-day notice period has not concluded, then the employer is barred from carrying out the layoff from July 1, 2020, to June 30, 2021.¹

[Emphasis supplied.] Therefore, school districts, county offices of education, community college districts, or joint powers authorities should rescind layoffs of classified employees in one of those three positions when their layoff resolution was adopted on or after May 2, 2020.

Please contact our office if you have questions regarding this Legal Update, or regarding any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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¹ Undated Letter from the Chair of the Senate Committee on Budget and Fiscal Review expressing the Legislative Intent of SB 98, issued on or around July 1, 2020.