

## **AUGUST 15 LAYOFF PROCESS – EC 44955.5**

This year the ACSA Member Assistance & Legal Support Team, under the direction of Assistant Executive Director Joe Jones, is receiving calls from members asking questions about August 15 layoff notices under Education Code 44955.5.

EdCal asked member assistance advocates Lloyd Wamhof, Sharon Dezutti and Bill Tschida to answer several clarifying questions regarding this process.

**Question: Are members concerned or confused about possible layoffs under the provisions of Education Code 44955.5?**

Wamhof: Yes, this is a rarely used code. What is shocking to our members is they thought their positions were secure for next year and are now finding out there is an education code that allows districts to lay off staff until August 15 if the district meets and follows the criteria of this code.

**Question: If an administrator hasn't received a March 15 notice under EC 44951, can the district still give him/her a lay off notice under EC 44955.5?**

Dezutti: Yes. However, this code can only be used to enact lay-offs if a very specific fiscal emergency exists, whereby the board declares that the revenue limit has decreased by 2 percent. All other procedures parallel the March 15 process. The district board must take action and have in board minutes that they are following the guidelines of EC 44955.5 to lay off employees after March 15 has passed.

**Question: Does the same answer apply to assistant superintendents who would normally fall under EC 35031?**

Tschida: Yes, if the 45 day notice requirement has passed under EC 35031, the district may use EC 44955.5 to lay off Assistant Superintendents with the exception of those who have multi-year contracts.

**Question: What about other administrators who have multi-year contracts?**

Wamhof: The district might attempt to lay off assistant superintendents or other administrators who have multi-year contracts; however, it could be (and most likely will be) argued that it isn't legal and, therefore, open to a negotiated buyout or retention of the position.

**Question: Does the district need to give notice to the administrator who is being laid off?**

Dezutti: Yes, and it must be specific by mentioning EC 44955.5, otherwise it can be left open for legal challenges. The local governing board must take formal action related to this type of layoff.

**Question: In the actual board agenda item, is the district required to pass a board resolution declaring a fiscal crises or emergency, or is referencing EC 44955.5 enough?**

Tschida: It is recommended that the district adopt a resolution that states something to the effect, “The district is declaring the revenue limit has decreased by at least 2 percent and is, therefore, in accordance with EC 44955.5, adopting layoff procedures to be effective for the 2009-10 school year.” The term “fiscal crises” is probably not necessary to state. More important is declaring the loss of the revenue limit.

All districts considering layoffs using EC 44955.5 should work closely with their district’s legal counsel to make sure that they are following all of the requirements of EC 44955.5.

**Question: Does the district also need to establish a new certificated seniority procedure for layoffs?**

Wamhof: Yes, the district would need to establish a new certificated seniority procedure for the resolution adopted under EC 44955.5.

**Question: Would the certificated seniority procedure established for the March 15 notice comply with the 44955.5 code?**

Dezutti: No, a new layoff procedure must be adopted by the board.

**Question: Have the issues related to EC 44955.5 been tested in court?**

Tschida: Not to our knowledge. That is why districts using this process should strictly comply with the code and consult with their district’s legal counsel.

If you have any questions, call the ACSA Member Assistance & Legal Support Team at 800-608-2272 and ask to speak with an Advocate.

EdCal 7/20/09