

CLIENT NEWS BRIEF

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SCHOOL DISTRICTS ARE NOT REQUIRED TO SPLIT A FULL-TIME POSITION TO ACCOMMODATE SENIOR PART-TIME EMPLOYEES

In a recent decision, Hildebrandt v. St. Helena Unified School District (2009) __ Cal.App.4th __, 2009 WL 708800, the First District Court of Appeal upheld the authority of a school district to determine the type and level of services it requires, how to best provide those services to its students and how best to assign employees to provide those services. Specifically, the court upheld the school district's decision to retain a more junior full-time employee rather than split a full time position to accommodate two more senior part-time employees. Lozano Smith filed an amicus brief in this case in support of the school district on behalf of the California School Boards Association's Education Legal Alliance.

In this case, as part of a reduction of particular kinds of services provided by certificated employees, the St. Helena Unified School District ("District") determined that it would eliminate 1.0 Full Time Equivalent ("FTE") of school psychologist positions. The District retained a full-time 1.0 FTE school psychologist and laid off two part-time employees, who were .2 FTE and .8 FTE school psychologists. The two part-time psychologists who were laid off were more senior than the 1.0 FTE psychologist who was retained. The District determined that it was necessary to retain the services of the full-time junior employee over the part-time senior employees to ensure the continuity of the District's psychology program and to provide the necessary services to the District students.

The laid off employees attempted to argue in this case that under Education Code section 44955, subdivision (b), which provides that "the services of no permanent employee may be terminated . . . while any probationary employee, or any other employee with less seniority, is retained to render a service which [the] permanent employee is certificated and competent to render" the District did not have the discretion to retain the more junior full-time psychologist over the more senior part-time psychologists. However, the court accepted as reasonable the District's determination that the two part-time school psychologists did not necessarily perform the same "service" as the full-time school psychologist despite their similar job titles and held that the District was not required to split the 1.0 FTE position to accommodate the two more senior part-time employees.

This case affirms the holdings of two earlier cases, King v. Berkeley Unified School District (1979) 89 Cal.App.3d 1016 and Murray v. Sonoma County Office of Education (1989) 208 Cal.App.3d 456, both of which held that school districts and county offices are not required to split a full-time position to accommodate more senior part-time employees under Education Code section 44956, which relates to reinstatement following a layoff.

This case is significant in that the court recognized the broad discretion of school districts “in defining the positions within the district and establishing requirements for employment . . .” including “determining the training and experience necessary for particular positions”

If you have any questions about this case, please contact one of our seven offices located statewide.

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

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