

CLIENT NEWS BRIEF

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**MAY 19TH SPECIAL ELECTION RESULTS AND AN OVERVIEW OF THE
AUGUST 15TH LAYOFF PROCESS**

On May 19, 2009, California voters rejected Propositions 1A, 1B, 1C, 1D, and 1E, which were part of the Budget Act adopted by the State Legislature and Governor Schwarzenegger on February 20, 2009. This will undoubtedly lead to even greater funding cuts to public education for the 2009-10 year. School districts should be aware that, while rarely utilized, the “August layoff” process set forth in Education Code 44955.5 (“Section 44955.5”) is an option to consider.

Section 44955.5 authorizes a school district’s governing board to “terminate [or layoff] the services of any permanent or probationary certificated employees of the district, including employees holding a position that requires an administrative or supervisory credential.” Section 44955.5 also states that the layoff “shall be pursuant to Sections 44951 and 44955” of the Education Code, but that it must also be conducted “in accordance with a schedule of notice and hearing adopted by the governing board.”

There are two key restrictions to the use of section 44955.5:

- **Timing Restriction:** Section 44955.5 may only be applied “[d]uring 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 ...”.
- **Funding Restriction:** Section 44955.5 is also limited to use during years in which a school district’s governing board “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...”.

This year, the State Legislature and the Governor approved a Budget Act for the 2009-10 fiscal year on February 20, 2009, which, as of now, creates an opportunity to use Section 44955.5 as a basis to lay off certificated employees.

School districts contemplating use of the section 44955.5 “August layoff” process should carefully consider the potential legal and practical issues that may arise relative to that process, including:

- Governing boards must adopt a schedule that provides notice and hearing rights to the affected employees. Districts should work with legal counsel to develop a schedule that allows the district to complete each step of the layoff process while affording affected employees with due process.
- Districts should schedule board meetings during the summer months to adopt appropriate resolutions.
- If your district did not conduct a certificated layoff this year, or if that process resulted in changes to the district’s seniority list, steps should be taken to update the seniority list.

In summary, California’s unprecedented budget crisis has placed school districts in a most difficult situation, and may require them to consider new and less frequently used options to reduce expenditures and maintain fiscal solvency. School districts are cautioned to move forward in consultation with legal counsel and with a full understanding of the potential risks and benefits associated with such action.

If you have any questions about Section 44955.5 or the “August layoff” process, 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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