

**CLIENT NEWS BRIEF**

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**COURT UPHOLDS DISTRICT'S AUTHORITY TO TERMINATE TEACHER  
FOR FAILURE TO OBTAIN ENGLISH LANGUAGE AUTHORIZATION**

In Ripon Unified School Dist. v. Comm. on Professional Competence (2009) \_\_\_ Cal.4th \_\_\_, the California Third District Court of Appeal upheld the Ripon Unified School District's ("District") authority to move for termination against a certificated employee who failed to comply with the District's requirement to obtain an English Language ("EL") certification.

In this case, a tenured teacher at Ripon High School, Theresa Messick, held a Life Single Subject Credential (Music), and had been employed by the District for twenty-six years. During a Coordinated Compliance Review conducted by the California Department of Education in 2002 the District was found to be out of compliance based on the fact that students with designated English language identification needs were placed in classrooms where the teacher lacked EL certification. In response to the findings, the District developed an "EL Master Plan" that included an agreement with the teachers' union that all certificated staff would have until December 31, 2005 to obtain the certification or else resign or be terminated. The District took various actions to inform staff about the need to obtain the certification and offered staff a stipend to assist with the costs of obtaining the authorization.

For three years, Ms. Messick refused to obtain the necessary training, despite numerous follow-up memos, directives and warnings from the District that she could lose her job for failing to comply. The District eventually issued a Notice of Unprofessional Conduct to Ms. Messick based on her failure to comply with directives to obtain the certification. The Notice again directed Ms. Messick to comply with the District's directives to obtain the EL authorization or face termination. Following the Notice, Ms. Messick signed up for a course and completed the coursework necessary to obtain certification. However, she did not complete the portfolio, and, as a result, the certification process was not completed.

Ms. Messick persistently refused to get the training because she maintained that it was unfair to require a tenured teacher to obtain additional training. In response, the District moved to terminate Ms. Messick based on unprofessional conduct, evident unfitness for service and persistent violation of the school laws of the state or the District. At the dismissal hearing, Ms. Messick filed a motion to dismiss the statement of charges and the Administrative Law Judge granted the motion.

The District filed a petition for writ of mandate requesting that the Administrative Law Judge's decision be set aside. The Superior Court agreed with the District holding that the District had the authority to proceed with the termination hearing. Ms. Messick appealed the trial court's decision to the Third District Court of Appeal. Ms. Messick argued that the District's requirement that certificated employees obtain EL certification violated the statutes governing (1) the efficacy of her life credential, (2) the ability of a school district to mandate additional training, and (3) the permissible scope of negotiations. Specifically, Ms. Messick argued that the District's requirement that certificated employees obtain EL certification beyond their credential would render her life credential ineffective. The court disagreed with this argument and determined that the District's actions did not impact Ms. Messick's credentials, but simply imposed a condition on her continued employment in the District.

The District further rejected Ms. Messick's argument that the District's requirement violated the prohibition in Education Code section 45033 on decreasing the annual salary of a teacher for failure to meet any requirement of the district that additional units, course of study or work be completed. The court found that statute to be applicable only to salaries, and therefore distinguishable from this case because the District was not attempting to decrease Ms. Messick's salary for failure to comply with the certification requirement.

Finally, the court rejected Ms. Messick's argument that the agreement between the District and the union that employees obtain the certification by a date certain violated the Educational Employment Relations Act. The court determined that the certification requirement was an appropriate subject of negotiation because it was a condition of continuing employment.

This case clarifies the general authority of a school district to impose certain requirements on employees in order to comply with a legislative mandate. More specifically, this case clarifies that school districts may take disciplinary action against employees who fail to comply with a district requirement to obtain EL certification.

Please note that this decision may be appealed to the California Supreme Court. We will continue to keep you updated on the status of this case.

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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