

# Certificated and Classified Layoffs – Everything Old is New Again



**Presented by:**  
**Mark W. Thompson, Esq.**

**Inland Personnel Council**  
**January 26, 2024**

**aa/r**  
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A Professional Law Corporation

# Certificated and Classified Layoffs – Everything Old is New Again



## Agenda

- ✓ ☐ Certificated Layoffs
- ✓ ☐ Classified Layoffs
- ✓ ☐ Administrator and TOSA Reassignments
- ✓ ☐ Temporary Teachers
- ✓ ☐ Bumping Exercise

Q&A

# Certificated Layoffs

- **THE PROCESS – EC 44949/44955**
  - Commenced with notice served by March 15.
    - Layoff according to PKS and FTE
    - Significant preparation leading to Board action
  - ALJ Hearing and decision, usually in April – May
    - Significant preparation for hearing
  - Board action and final notice by May 14
    - Mandatory, immutable deadlines
  - Recommended timeline beginning in December
    - See attached

# Certificated Layoffs

- **THE PROCESS – EC 44949/44955**
  - Under EC 44955, certificated layoffs proceed according to seniority.
    - A layoff case lives and dies on the quality and accuracy of your seniority list
  - Seniority order is determined by:
    - Status/Classification
    - Seniority Date

# Certificated Layoffs - Classification

- **STATUS / CLASSIFICATION**
  - Four types of teachers under the Ed. Code
  - EC 44915:
    - Permanent
    - Substitute (EC 44917-18)
    - Probationary (default)
  - Temporary Teachers
    - EC 44917-21
    - EC 44909 (Categorical positions or backfills)



# Certificated Layoffs - Classification

- **PERMANENT STATUS**

- EC 44929.21(b): If reelected for the next succeeding school year after serving two complete consecutive school years in a certificated position.
  - Complete = 75% of the days the schools are maintained (EC 44908)
  - Consecutive = immediately following
- **Exceptions:**
  - Certain breaks in service can toll.
  - See *Griego v. LAUSD*
  - Resignation & rehire after 39 months (see EC 44931)



# Certificated Layoffs - Classification

- **SUBSTITUTES**

- EC 44917 / 44918: Filling the position of a regularly employed teacher who is temporarily absent from service.
  - Day-to-day / on-call
  - “Long term” (a contractually established condition)
- NOT subs:
  - Vacancies, growth positions
  - “Resident” or roving subs (maybe)
  - Intervention teachers



# Certificated Layoffs - Classification

- **PROBATIONARY TEACHERS**

- **EC 44915: Everyone else (almost).**

- Newly hired teachers in first 2 years
- More than 2 years if less than 75%
- Interns, PIPs
- ROP/CTE teachers
- Provisional credentials (STSP, 30-day sub permit)
- Small school districts <250 ADA (maybe)



# Certificated Layoffs - Classification

- **THE TEMPORARY TEACHER**

- **Typical Temp Assignments**

- Leave replacements, including positional leaves (EC 44920)
  - A placeholder for an employee in a promotional or transitional position with retreat rights (administrators, TOSAs, etc.)
- Categorically funded positions and backfills (EC 44909)
- Others:
  - Walk on coaches (EC 44919(b))
  - First semester (EC 44921)
  - First 3 months, first 4 months (migrant) (EC 44919(a))
  - Retired teachers (EC 24216.5)
  - Emergencies – 20 days (EC 44919(c))
  - Adult school – less than 60% of full time (EC 44929.25)
  - Disability leave replacements (EC 44986)

# Certificated Layoffs - Classification

- **THE TEMPORARY TEACHER**

- Who is NOT a temp?

- Vacancies. See *Vasquez v. Happy Valley Union School District*
- Growth positions – maybe, for up to 3 months
- Resident or Roving Subs – maybe
- Site funded “intervention” teachers
- Provisional credentials. See *Bakersfield*

- *Must be able to balance your temporary employees with the total number of authorized temporary positions*

# Certificated Layoffs - Classification

- **TEMPS AND SUBS**

- **Watch out!**

- Improperly classified temps and subs become probationary by default. These can disrupt your seniority list and layoff!
    - Remember *Kavanaugh* rules. Contract in hand!
    - Temps and subs who serve a complete school year (75%) are deemed to have served a probationary year if rehired (EC 44918, 44918(a)). “Tacking”
    - Also – reemployment preference in the following year (EC 44918(b)).
    - First priority after 2 years - temps (EC 44918(c)).

# Certificated Layoffs – Seniority

- **GETTING YOUR SENIORITY LIST RIGHT**
  - **Seniority Date Rule**
    - EC 44945: First date of paid service in a probationary position.
    - Seniority ties must be broken according to board-adopted criteria based upon the needs of the district and students (EC 44955(b)).
    - Leaves, layoffs, other breaks do not affect seniority date.
  - **Exceptions**
    - Early starts: Coaching, in-service / orientation.
    - Tacking: Temps and subs can get one year of credit if rehired (EC 44917, 44918).
    - Resignation & rehire – always a new seniority date (EC 44848).

# Certificated Layoffs – Seniority

- **IS YOUR SENIORITY LIST ACCURATE?**
  - **Verification Letter**
    - Seniority Date & Status / Classification
    - Tie-breaking data
    - All credentials
    - Competency / Skipping criteria
    - Current assignments
  - **Sign & return to confirm accuracy or indicate changes**
    - “This information will be used in the event of a layoff”
    - Deadline for response – Jan or Feb
    - At least publish and distribute the seniority list early

# Certificated Layoffs

- **BUMPING**

- The **EXCEPTION** to a Straight Seniority Layoff

- EC 44955: No permanent (senior) employee may be terminated while any probationary or junior employee is retained in a position for which the senior employee is “certificated” and “competent.”
  - **Certificated:** They hold the necessary document to teach the position.
  - **Competent:** They meet the basic job requirements.
  - In a plain vanilla layoff, anyone with a credential is competent.
  - Note “whole assignment” rule (*see Hildebrandt v. St. Helena*).

# Certificated Layoffs

- **SPECIAL METHODS AND TECHNIQUES**
  - EC 44955 provides built-in exceptions to the strict seniority rule
    - Skipping criteria
    - Competency requirements



# Certificated Layoffs

- **SKIPPING**

- EC 44955(d): District may deviate from seniority order if there is a specific need for teachers:
  - To teach a specific course or course of study, and
  - Who possess special training and experience to provide those services, which senior teachers do not possess.
  - Note: they need to be using that training and experience



# Certificated Layoffs

- **SKIPPING EXAMPLES**
  - Based on OBJECTIVE training and experience
  - Related to LEGITIMATE job requirements
    - English Language Learner certification / BCLAD
    - TOSAs with special training or experience
    - Advanced Placement / AVID training
    - IB or Dual Immersion
    - PE teachers with a dance degree
    - Head coaching experience (be careful)
    - Any unique quality held by some, but not all, of the teachers within a PKS

# Certificated Layoffs

- **ADVANCED BUMPING ISSUES / CONCERNS**
  - **Special Assignments.** Some assignments will allow any credential, so watch for junior employees in Alt. Ed., OCS, AVID, TOSA, and the ubiquitous “activities director” positions.
  - **Vacancies/Attrition.** These positions, if not reduced as a part of the layoff, are arguably open for bumping.
  - **Partial bumping.** Holders of partial or split assignments are typically laid off in bits and pieces, and therefore are allowed to bump in bits and pieces.
  - **Whole Assignment Rule.** To bump a junior employee, one must be certificated and competent to bump into their entire assignment, not just a portion thereof. *See Hildebrandt v. St. Helena.*

# Certificated Layoffs

- **DOCUMENTS**

1. Seniority Verification Letter
2. Board Resolution
3. Tiebreak Criteria Resolution or Policy
4. Preliminary Layoff Notice – March 15
5. Statement of Reduction in Force (formerly Accusation)
6. Notice of Participation
7. Notice of Hearing
8. Proposed Decision by Administrative Law Judge – May 7
9. Final Board Resolution
10. Final Layoff Notice – May 14

# Certificated Layoffs

- **WHAT DO YOU DO NOW?**
  - Layoff decisions are driven by:
    - Current budget concerns – What is today's situation? Can you avoid cutting positions?
    - Advance planning / budget projections – If the triggers hit, can you avoid cutting positions?
    - What is your worst-case scenario?
    - Consider the “paper layoff”
      - Can you reassign TOSAs?
      - Resignations, Retirements
      - Vacancies



# Classified Layoffs

- **THE RULES HAVE CHANGED SIGNIFICANTLY**
  - Proceed According to Statute (EC 45117, 45308)
    - By position, hours and classification
    - Seniority by hours in class or higher classes, or hire date!
    - Bumping rights by prior service in other classes
  - ED 45117 revised to nearly match Certificated
  - Also governed by CBA
    - Most units negotiate MOUs – must now defer to statute
    - Decision to eliminate is discretionary, effects are negotiable
    - Decision to reduce hours or work year is decision-negotiable

# Classified Layoffs

- **THE PROCESS**

- **Now, Essentially the Same as Certificated**

- Board resolution to reduce and or eliminate positions
    - Lack of work or lack of funds
    - Notification of bumping rights, employee election
    - Must complete all rounds of bumping in time for March 15 notices
    - Hearing if requested
    - ALJ decision and final Board action, final notices by May 14

- **Differences/Exceptions**

- **Seniority list(s) are more complex**
    - **Multiple rounds of bumping**
    - For Cat Funded positions, 60 days' notice and no hearing (old school)
    - Probationary employees excluded from layoff requirements

# Certificated and Classified Layoffs

- **WHAT DO YOU DO NOW?**
  - Is there any chance you will need to do a certificated or classified layoff?
    - You need accurate seniority lists, with ties broken, ASAP!
    - Prelim designation of positions for reduction/elimination
    - Brief the board in advance, confirm they are prepared and have all information and options
    - Contact legal counsel – this is high stakes, complex litigation!
  - What about Negotiations?
    - Certificated: Effects; Classified Decision or Effects
    - Early negotiating for concessions to avoid a layoff
    - Do not cross your fingers for rollbacks of furlough days.
    - Can you benefit from negotiating aspects of a layoff?

# Admin/TOSA Reassignments

- **CERTIFICATED ADMINISTRATORS**
  - EC 44951 – Board may release and reassign to another administrative position or to the classroom
    - Board action and notice by March 15
    - Reasons include lack of confidence, lack of vision, etc.
    - Not for cause
    - Can be combined with a layoff if the reassignment results in overstaffing, or the position can simply be laid off
    - Modified seniority, limited bumping rights
      - District administrators have no seniority
      - Site administrators may gain up to 3 years' seniority
      - Teachers promoted to administration retain original seniority

# Admin/TOSA Reassignments

- **TEACHERS ON SPECIAL ASSIGNMENT**
  - Can return to the classroom and generate savings
    - Through standard layoff process
    - Through a “paper layoff” process:
      - Eliminate the TOSA position, return to the classroom
      - Release the temp placeholder
      - Since there are no regular employees losing a job, there are no March 15 notices and no hearing.
      - Can happen at any time.
    - Simple reassignment to vacancy – must follow CBA
  - The key is to accomplish this through a series of discretionary actions

# Temporary Teachers

- **RELEASE OF TEMPORARY TEACHERS**
  - At the pleasure of the Board (EC 44954):
    - At any time prior to 75% of school year
    - At end of school year, after 75% mark
    - Board action and written notice
  - Can possibly be used in place of a layoff, but this represents a short-term savings only:
    - Leave replacement temps are placeholders for other employees who have a right to return. When they do, savings are negated.
    - However, certain temps hold a separate position and represent ongoing savings

# Temporary Teachers

- **MORE ON TEMPORARY TEACHERS**
  - What is **GOOD** about a temp?
    - Can be released at the pleasure of the board (EC 44954)
    - Does not require due process (or a layoff hearing) – no cost
    - Achieves court-recognized need for flexibility in staffing
  - What is **BAD** about a temp?
    - Tendency to turn into a probe (or even perm) at the worst possible time – in the middle of your layoff hearing
    - CTA is attacking this issue more and more each year
  - Districts must be diligent in justifying every temporary position

# Temporary Teachers

- **CATEGORICAL TEMPS**

- Three situations, three different treatments:

- New employee hired into categorically funded position. Can be a temp, but release must be tied to a specific loss of cat. funding. See Stockton.
  - Existing employee moved into categorically funded position. NOT A TEMP! Retains same probe/perm classification.
  - New employee hired to backfill for existing employee moved into categorically funded position. Definitely may be treated as temp if the rules were followed (i.e written contract).
- Dangers:
    - CTA is challenging categorical temps, during and after layoffs.

# Staff Reductions - Summary

- **CERTIFICATED/CLASSIFIED LAYOFFS**

- Certificated in Spring, Classified ~~at any time~~ same!
  - Plan ahead, prepare your seniority lists

- **ADMIN. AND TOSA REASSIGNMENTS**

- Admin. in Spring, TOSAs by layoff.:
  - Savings through discretionary eliminations and filling vacancies

- **TEMPORARY TEACHERS**

- Short term savings, release at Board discretion
  - Must balance and ensure proper classification

# Bonus: Certificated Bumping Exercise

# Certificated Layoff – Bumping Exercise

<u>Last</u>	<u>First</u>	<u>Status</u>	<u>Sen Date</u>	<u>Tie</u>	<u>Assignment</u>	<u>Credential</u>
Atkinson	Steve	Perm	5/1/2015		Elem - K	Clear Multiple Subject
Andelson	Steve	Perm	9/1/2015		Elem - 3rd	Clear Multiple Subject, Clear Single Subj English
Loya	Paul	Perm	9/1/2016		9th Math	Single Subject Math, Single Subject Biology
Ruud	Ron	Perm	10/12/2017		11th/12th Engl	Clear Multiple Subj, Clear Single Subj English
Romo	Jim	Perm	9/21/2021		Biology	Clear Multiple Subject, Prelim Single Subj Biology
Jimenez	Brooke	Prob	2/5/2020		Elem – 1st/2nd	Clear Multiple Subject
Malan	Jeff	Prob	8/1/2022		Phys Science	Clear Single Subj Math, Clear Single Subj Phys Science, Prelim Single Subj Biology
Ozowara	Beverly	Intern	9/1/2022	1	Elem - K	PIP Multiple Subject
Gomez	Edwin	Intern	9/1/2022	2	10th Soc Sci	Intern Single Subj Soc Stud
Alejandro	Ted	Prob	9/10/2023		Elem - 5th	Prelim Multiple Subject

# Certificated Layoff – Bumping Exercise

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Seniority order, first by status, then by seniority date including tiebreaks.

# Certificated Layoff – Bumping Exercise

Basic (No PKS) – 5.0 FTE

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Basic rule, start from the bottom.

# Certificated Layoff – Bumping Exercise

PKS – 1.0 FTE Math, 4.0 FTE Elementary

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PKS Layoff: Identify the lowest positions in each PKS.

# Certificated Layoff – Bumping Exercise

PKS – 1.0 FTE Math, 4.0 FTE Elementary

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Who can Steve bump?

# Certificated Layoff – Bumping Exercise

PKS – 1.0 FTE Math, 4.0 FTE Elementary

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Ron is laid off, Steve bumps and takes his position.

# Certificated Layoff – Bumping Exercise

PKS – 1.0 FTE Math, 4.0 FTE Elementary

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Romo	Jim	Perm	9/21/2021		<b>Biology</b>	Clear Multiple Subject, <b>Prelim Single Subj Biology</b>
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Who can Paul bump?

# Certificated Layoff – Bumping Exercise

PKS – 1.0 FTE Math, 4.0 FTE Elementary

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Paul bumps Jim but not Jeff. No more bumps.

# Certificated Layoff – Bumping Exercise

PKS – 1.0 FTE Math, 4.0 FTE Elementary - Competency

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**Competency Criterion – Must have Single Subject to Bump into secondary.**

# Certificated Layoff – Bumping Exercise

PKS – 1.0 FTE Math, 4.0 FTE Elementary - Skipping

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Skipping criteria: BCLAD/Dual Imm.: Brooke is skipped and Steve is laid off.

# Questions, Answers, & Discussion

# Thank You

Questions or comments? Please contact:

**Mark W. Thompson – [mthompson@aalrr.com](mailto:mthompson@aalrr.com)**

**(951) 683-1122**

***aalrr***

**Atkinson, Andelson  
Loya, Ruud & Romo**

A Professional Law Corporation

# Appendix

## PROPOSED PROCEDURAL TIMELINE FOR CERTIFICATED LAYOFFS

By November 30	Cabinet to discuss whether layoffs are needed and to review timelines listed below
By December 10	<ol style="list-style-type: none"> <li>1. Prepare initial draft of Seniority List.</li> <li>2. Meet with legal counsel to begin planning for the process.</li> <li>3. Discuss the need for a layoff/reduction in force with Board.</li> </ol>
By January 5	Send credential/seniority verification letters (set deadline for updates).
By January 25	<ol style="list-style-type: none"> <li>1. Finalize Seniority list</li> <li>2. Provide preliminary copy to the union (mark as draft / in-progress).</li> <li>3. Identify PKS to be reduced and number of FTE's (HR, Bus. Serv. and Ed. Serv.)</li> <li>4. Verify Board is ready to proceed with layoff as previously discussed.</li> <li>5. Review Board Meeting calendar. Plan pre-March 15 and May Board Meeting dates.</li> </ol>
By February 10	<ol style="list-style-type: none"> <li>1. Provide "final" seniority list in electronic format.</li> <li>2. Prepare list of probationary non-reelections and other attrition</li> <li>3. Review all temp teacher placements (incl. categorically funded positions/backfills).</li> <li>4. Complete all site and department meetings with administrators to determine site funding and identify additional FTE and positions for potential layoff.</li> <li>5. Meet again with legal counsel to discuss scope of layoff, review seniority list, and address procedural requirements and concerns.</li> <li>6. Make sure Board approved/adopted seniority tiebreak criteria are in place.</li> <li>7. Schedule acceptable dates for hearing in April.</li> <li>8. Notification to union of planned scope of layoff.</li> </ol>
By February 15	<ol style="list-style-type: none"> <li>1. Review and finalize list of potential layoffs (PKS &amp; FTE)</li> <li>2. Verify Board is ready to proceed with layoff as previously discussed.</li> </ol>
February 15 to March 5	HR and legal counsel to prepare bump analysis and identify appropriate employees that should be noticed
By March 1	[Legal counsel to prepare all necessary documents]
<b>Last Board Meeting prior to March 15</b>	<ol style="list-style-type: none"> <li>1. Resolution or Board Action to non-reelect probationary teachers and release temporary employees, reassign administrators. Typically Closed Session.</li> <li>2. <b>Adopt Layoff Resolution - Open Session</b></li> </ol>
No later than March 15	Serve layoff, non-reelection, reassignment, and temp release notices to employees (NR notices must be personally served).
March 15 - April 1	<ol style="list-style-type: none"> <li>1. Meetings for hearing and witness preparation.</li> <li>2. Discovery.</li> </ol>
April	<ol style="list-style-type: none"> <li>1. Final hearing preparation.</li> <li>2. Additional discovery, preliminary motions.</li> <li>3. Hearing, typically one or two days.</li> </ol>
No Later than May 7	Receive ALJ decision, distribute to all Respondents.
May 7-13	Regular or Special Board Meeting to adopt or modify hearing decision.
No later than May 14	Serve final layoff notices to employees.

## PROPOSED PROCEDURAL TIMELINE FOR CLASSIFIED LAYOFFS

By November 30	Cabinet to discuss whether layoffs are needed and to review timelines listed below.
By December 10	<ol style="list-style-type: none"> <li>1. Prepare initial draft of Seniority List.</li> <li>2. Meet with legal counsel to begin planning for the process.</li> <li>3. Discuss the need for a layoff/reduction in force with Board.</li> </ol>
By January 5	Send seniority verification letters (set deadline for updates).
By January 25	<ol style="list-style-type: none"> <li>1. Finalize Seniority list</li> <li>2. Provide preliminary copy to the union (mark as draft / in-progress).</li> <li>3. Identify job classifications to be reduced and number of FTE's and hours. (HR, Business Services and Ed. Services)</li> <li>4. Verify Board is ready to proceed with layoff as previously discussed.</li> <li>5. Review Board Meeting calendar. Plan pre-March 15 and May Board Meeting dates.</li> </ol>
By February 10	<ol style="list-style-type: none"> <li>1. Provide "final" seniority list in electronic format.</li> <li>2. Prepare list of classified grant funded positions that will expire</li> <li>3. Complete all site and department meetings with administrators to determine site funding and identify additional FTE for potential layoff.</li> <li>4. Meet again with legal counsel to discuss scope of layoff, review seniority list, and address procedural requirements and concerns.</li> <li>5. Schedule acceptable dates for hearing in April.</li> <li>6. Notification to union of planned scope of layoff.</li> </ol>
By February 15	<ol style="list-style-type: none"> <li>1. Review and finalize list of potential layoffs (classifications and FTE/hours)</li> <li>2. Verify Board is ready to proceed with layoff as previously discussed.</li> </ol>
February 15 to March 5	<ol style="list-style-type: none"> <li>1. HR to identify appropriate employees that should be noticed</li> <li>2. Engage in bumping process and meetings with affected employees, union involvement is likely necessary, multiple rounds of bumping are likely necessary</li> </ol>
By March 1	[Legal counsel to prepare all necessary documents]
<b>Last Board meeting prior to March 15</b>	<b>1. Adopt Layoff Resolution - Open Session</b>
No later than March 15	Serve layoff and reduction in hour notices to employees
March 15 - April 1	<ol style="list-style-type: none"> <li>1. Meetings for hearing and witness preparation.</li> <li>2. Discovery.</li> </ol>
April	<ol style="list-style-type: none"> <li>1. Final hearing preparation.</li> <li>2. Additional discovery, preliminary motions.</li> <li>3. Hearing, typically one or two days.</li> </ol>
No Later than May 7	Receive ALJ decision, distribute to all Respondents.
May 7-13	Regular or Special Board Meeting to adopt or modify hearing decision.
No later than May 14	Serve final layoff notices to employees.