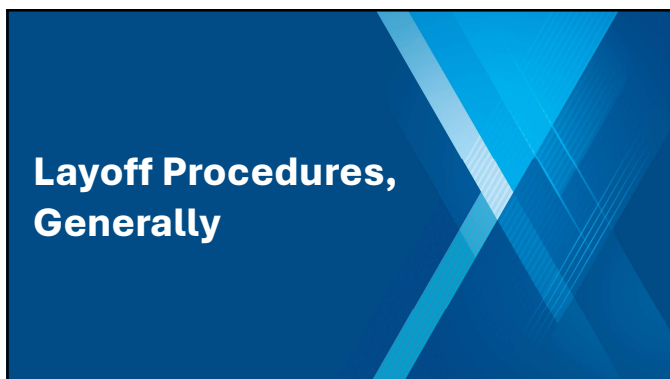




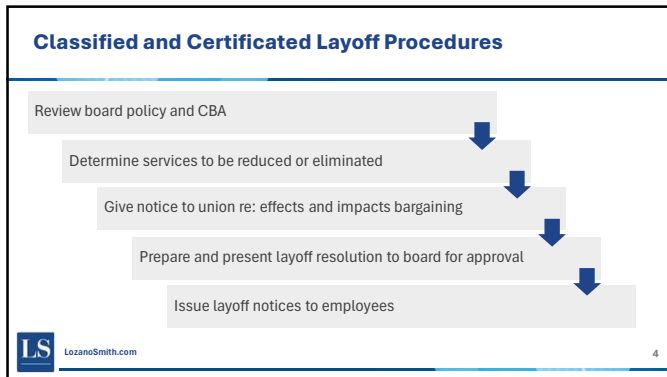
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Big Picture

- The **only** reason for layoffs or reduction in services:
 - Lack of work
 - Lack of funds

(Education Code sections 45114, *et seq.*)

A layoff is not disciplinary and cannot be used for disciplinary reasons.

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Layoff – The Basics



- **Layoff** – suspends employment relationship
 - Decision to layoff is **not** negotiable
 - Effects are negotiable
- **Reduction of Hours** – maintains the employment relationship but alters the terms
 - Decision **is** negotiable
 - Effects are negotiable

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Classified Layoff Process Under AB 438

(Effective Jan. 1, 2022)

- Permanent classified employees can only be laid off for the following school year.
- Basis for layoff is lack of work or lack of funds.
- Must be given preliminary notice of layoff by March 15
- Employee(s) have the right to a hearing to challenge their layoff.
- Administrative Law Judge issues proposed decision
- Board retains final authority to adopt proposed decision, reject it, or modify it*
- Final layoff notices must be sent to employees before May 15.
- Employees retain reemployment rights for 39 months.

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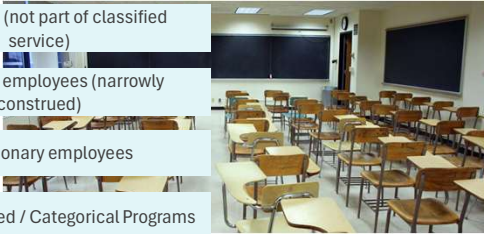
Exceptions to Hearing Rights

Substitutes (not part of classified service)

Short-term employees (narrowly construed)

Probationary employees

Specially Funded / Categorical Programs



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Classified Layoff Action Items and Timeline	
Date	Action
Before March 15	Board acts to designate positions to be abolished due to lack of work or lack of funds
By March 15	Preliminary layoff notices are sent to affected employees via certified mail
By March 15	Board is notified that preliminary layoff notices were sent
At least 7 days from the date layoff notices were mailed	Employee(s) must submit a request for hearing
After the deadline to request a hearing has passed	Statement of Reduction in Force (SRF) packet sent to employees who timely requested a hearing
5 days from the date the SRF packet is sent	Employee(s) must submit a Notice of Participation

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Classified Layoff Action Items and Timeline	
Date	Action
After the 5-day window to submit a Notice of Participation has passed	File a Request to Set Hearing with the Office of Administrative Hearings *
Within 15 days of service of the SRF	Employee may submit a request for discovery under Gov. Code § 11505
Before May 7*	Hearing takes place (there may also be a prehearing conference)
Before May 7	Administrative Law Judge issues proposed decision
Before May 15	Personnel Commission takes action to approve, modify, or reject the proposed decision and directs staff to issue final layoff notices
Before May 15	Final layoff notices must be sent to affected employees

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Classified Layoff Steps Before March 15

Things to Do Before Next March 15:

- Update Rules and Regulations to comply with AB 438
- Verify seniority dates
- Verify employee status
- Meet with union to modify CBA, if necessary
 - Consider negotiating seniority date = date of hire
- Create/organize seniority list
- If needed, get a contract on file with the Office of Administrative Hearings



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Classified Layoff Steps Before March 15

Things to Do in December/January:

- Evaluate enrollment and funding projections for upcoming school year
- Determine whether a layoff will be necessary and to what extent
- Contact legal counsel to make sure you have the right layoff documents



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Classified Layoff Steps Before March 15

Things to Do in February/March:

- Board should approve layoff resolution in February
- Verify positively assured attrition (resignations, retirements, etc.)
- Determine who should receive layoff notices (apply bumping)
 - Give yourself plenty of time for this process
- Preliminary layoff notices must go out by March 15

Practice Tip: Remember, the classified and certificated layoff process will happen on the exact same timeline, so give yourself plenty of time to apply bumping and prepare preliminary layoff notice packets.



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Identify which Employee Should Get a Layoff Notice under AB 438

- Only permanent classified employees have layoff rights
- Permanent = "employee who was **permanent at the time the notice or right to a hearing was required** and an employee who **became permanent after the date of the required notice**"
- Can't retain short-term employees if **classified employee is qualified to provide that service**



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Probationary Employees

Most probationary employees will be swept into the "layoff definition" of permanent.

- Ed. Code 45113(a) makes a classified employee "permanent" after serving a probationary period for six months or 130 days of paid service, whichever is longer. (Can be shorter if bargained.)
- Ed. Code 45117(e)(2) makes them "permanent" if they are **permanent at the time the notice or right to a hearing was required** and an employee who **became permanent after the date of the required notice [before the work year ends].**

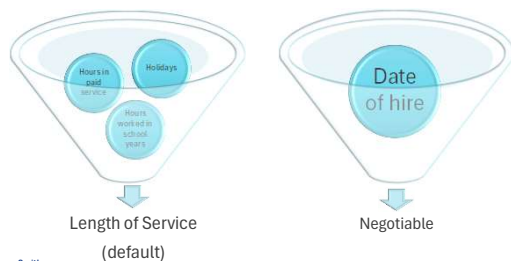


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Classified Seniority – "Length of Service"



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Bumping Rights

- If an employee is laid off from their current position, they may be able to bump another employee from a lower, but related, classification in which the laid-off employee has previously served.
- The Education Code does not specifically describe classified employees' bumping rights, but **this can be addressed in the union contract or district policies.**

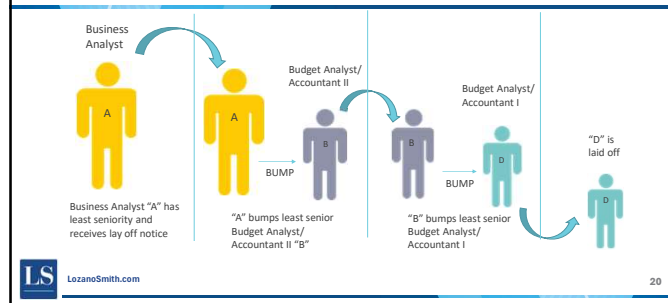


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Example: Bumping Rights



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Seniority List

Employee ID	Seniority Date	Current Position	Status	FTE (or hours)	Prior Positions Held
17	05.03	10.00			
20	05.03	10.00			
19	10.07	0.00			
30	05.07	10.00			
31	05.07	10.00			
301	05.07	10.00			
21	05.07	10.00			
8	05.07	10.00			
0	0	0			
30	05.07	10.00			
15	05.07	10.00			
27	05.07	10.00			
27	05.07	10.00			
27	05.07	10.00			

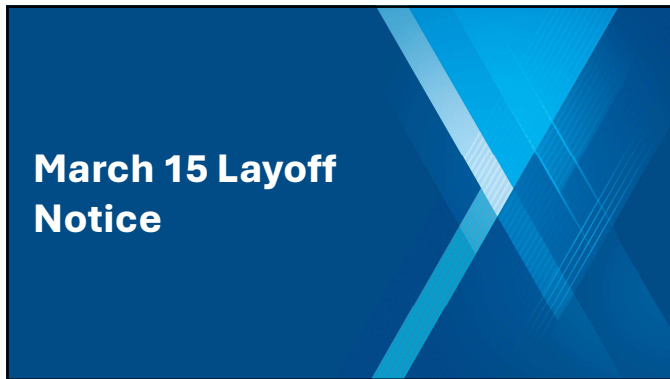
- Lists all classified employees, seniority date, current position, status, FTE (or hours), and prior positions held (for bumping)
- This is **the key document** in a layoff hearing
- The seniority list dictates who should receive a layoff notice.
- If your seniority list is not accurate, your layoff analysis will not be accurate.



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Preliminary Notice of Layoff

Notice must:

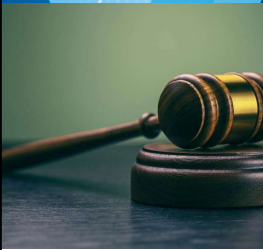
1. Be given to employees **no later than March 15**;
2. State the reasons that the employee's services will not be required for the ensuing year;
3. Inform the employee of their displacement rights (if any), and reemployment rights; and
4. Advise the employee of their hearing rights.


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Employee Request for Hearing



- Once layoff notices are served, an employee may request a hearing.
- In response to a request, the District must send its Statement of Reduction in Force packet.


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The Administrative Law Judge's Role

- The role of the administrative law judge (ALJ) is to conduct an audit of the layoff.
- The ALJ is making sure the district follows the process correctly.
- Issues that can arise during hearing:
 - Layoff documents sent to the wrong address
 - Seniority date calculated incorrectly
 - Bumping applied incorrectly
- ALJ looks at case law and prior layoff decisions for guidance.
- Consequences for errors: layoff notice rescission



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Final Notice of Layoff



A final notice of layoff must be sent to each employee **before May 15**.

(Ed. Code, § 45117(c)(3)(A).)



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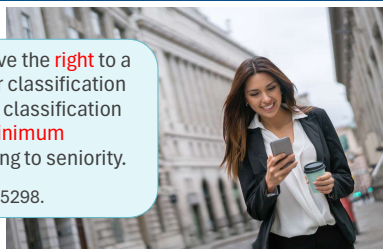
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39 Month Re-employment Rights

Laid-off employees have the **right** to a vacancy in their former classification or a **preference** for any classification for which they meet **minimum qualifications**, according to seniority.

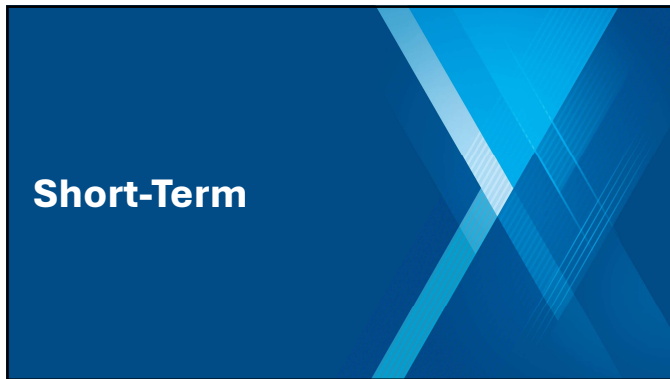
Education Code section 45298.



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Short-Term Employees (Ed Code 45103)

Short Term Employees

- Before a short-term employee is hired, the school board must specify the service to be performed by the employee and an ending date of the service.
- Length of Service must be no more than 75% of the year, defined as 195 working days.
- A short-term employee may only perform services, upon the completion of which, will not be extended or needed on a continuing basis, or for which similar types of service will not be needed on a continuing basis.

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Specially Funded/Categorical Programs

Education Code 45117 provides:

- Notwithstanding the other requirements of this code respecting layoff of permanent classified employees, **when classified positions must be eliminated as a result of the expiration of a specially funded program, the employees to be laid off shall be given written notice not less than 60 days prior to the effective date of their layoff** informing them of their layoff date and their displacement rights, if any, and reemployment rights.



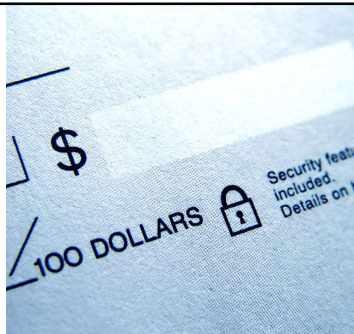
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Specially Funded/Categorical Programs

- What do you have to show that a position is specially funded?
- Are the funds actually expiring or finished?




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Classified Layoff Takeaways

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Takeaways

- Budget classified positions annually.
- Clean up seniority lists.
- Track probationary periods and short-term projects.
- Review contract language regarding seniority and bumping.
- Work with union to resolve differences related to seniority and bumping, and to bargain effects/impacts.

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Certificated Layoffs

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Certificated Layoff Overview

- **Particular Kinds of Service ("PKS")**
 - Service must be "particular"
 - Full time equivalent ("FTE") to be reduced
 - Focus on the service and not the credential
- **Average Daily Attendance ("ADA")**
 - Declining enrollment
- **Summer Layoff**
 - Ed Code section 44955.5



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Certificated Layoff Overview

No permanent employee may be terminated while the services of a probationary or less senior employee is retained . . .

- Have to lay off probationary employees before permanent employees
- Release properly classified temporary employees by the end of the year



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Certificated Layoff Overview



Seniority list is driven by first day of paid “probationary” service (§ 44845)

Employee classification is critical



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Certificated Employee Classifications

**Four (and a half?)
Certificated
Classifications:**

Substitute

Temporary

Categorically-funded?

Probationary

Permanent



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Substitutes

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Substitute Employees

- Definition: an employee serving in an absent employee's position.
- At-will employees → instant dismissal
- No right to hearing/progressive discipline
- Anti-discrimination laws still apply



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Temporary

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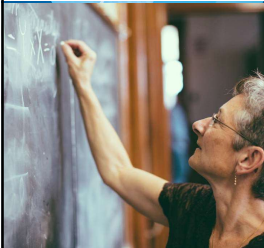
Temporary Employees

- Schools can classify teachers as temporary only for limited reasons defined by statute. Be careful!
- District **must** give written notice of temporary status on or before the first day of paid service.



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Temporary Employees



- If not properly assigned and notified, default classification is **probationary or permanent**.
- Teachers are routinely misclassified as temporary

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Temporary Employees

Common types of temporary employees:

- Replacing teacher on leave for a semester or year ("long-term sub")
- Walk-on athletic coaches
- Teachers for classes that will not last beyond initial semester
- Categorically funded positions

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Temporary Termination

- Can be dismissed at the pleasure of governing board prior to serving 75% of the days in the school year
- or
- After 75% mark, give notice prior to the end of the school year of the District's decision not to reelect the employee for the next school year.
- Personal service of notice is probably required.



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Layoff and Re-employment Rights of Temps

Temporary employees do not have layoff rights.

If employee serves as temp/sub for at least 75% of a school year:

- Employee deemed to have served one complete year if employed as probationary next year ("tacking")
- And, if not given release notice, temporary employee shall be employed in vacant position for the following school year



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**Categorically-
funded**

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Categorically Funded Positions

Defining Categorical Programs

- Funding is designated for a specific program or educational purpose
- Program **is not** mandated by state or federal law
 - E.g., funding for special education is mandated by state and federal law. Therefore, special education teachers cannot be considered temporary (as categorical).



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Categorically Funded Positions



Termination

- May be terminated at the **expiration** of the categorically funded program
- The employment agreement may also specify a duration of less than one school year.



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Categorically Funded Positions

Acquiring Permanent Status

- A categorical teacher who serves more than 75% of the school year and is rehired as a probationary employee the next year, will receive **at most** one-year probationary credit.
- This is true even if the teacher serves several years in a categorically funded position.



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New Law Regarding Categorically Funded Employees (AB 897)

Employment contract should include terms and conditions of employment, including the following:

- The expected end date of employment,
- the source of funding, and
- the nature of the categorically funded program or project shall also be included in this writing.
- If known, expiration date of the program.



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Interns

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Types of Certificated Interns

University Internships

- Cooperative programs between a university and employing school district

District Internships

- For teachers only, administered by the employing District



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Certificated Interns Acquiring Permanent Status

- Interns do not acquire permanent status while serving under an internship credential.
- Will receive one year credit as a probationary employee if hired by the District to serve in a position requiring certification qualifications in the year following completion of the internship.



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Status of Certificated Interns

- University and District interns are probationary, if in a probationary position.
- University interns get a lay-off notice **but not a hearing.**



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Probationary

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Probationary Release

- Employee must be given notice of non-reelection on or before March 15 of their **second complete, consecutive school year**

Prior to March 15:

- Board non-reelection decision (adopts resolution)
- Written notice must be **personally** served on employee
(*Hoschlerv. Sacramento City Unified Sch. Dist.* (2007) 149 Cal.App.4th 258)

- During first year, notice after March 15 usually acceptable, but the sooner the better.

(*Grimsley v. Bd. of Trustees* (1987) 189 Cal. App.3d 1440)



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Probationary Release



Caution:

- Cannot be for unlawful reason
- Cannot be based on financial reasons
- Usually, avoid giving reasons



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Probationary Layoff Rights

Probationary employees have layoff rights

Probationary employees are laid off before permanent employees, even if the probationary is more senior.

Twenty-four months of rehire rights



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Districts With Less Than 250 ADA

- Option A (default): “forever probationary”
- Option B: 3-Year Probationary Period
 - Board may classify as permanent after 3 complete, consecutive school years
- Option C: 2-year probationary period, then employee becomes permanent



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Permanent

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Permanent Status For Certificated Employees

Teachers must serve two complete, consecutive school years as a probationary employee to achieve permanent status.

- 1 complete school year = 75% of school days
- Leaves ≠ break in service (generally)
- Service on a provisional (“emergency”) credential does not count towards permanent status



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Permanent Employees

Entitled to layoff rights

Thirty-nine months of rehire rights



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Notice of Layoff and Hearing

- Employee must be given written notice of layoff **on or before March 15**.
- If the employee requests a hearing, the District must send a Statement of Reduction in Force packet.
- An ALJ will hear the case to determine if there is cause for termination and issue their proposed decision **on or before May 7**.
- Employee must be given final written notice of layoff **before May 15**.



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Administrators

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Certificated Administrators

- Administrators do not acquire permanent status in administrative positions
- Instead, they become permanent certificated employees after completing probationary period
- Essentially, administrators earn “retreat” rights to the classroom.



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Administrator Seniority



- If hired first as a teacher, they always keep their teacher seniority date.
- District office administrators do not gain seniority
- Site administrators gain up to three years seniority



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Administrator Reassignment

- Administrator can be reassigned to classroom OR to different administrative assignment at pleasure of the Board
- Notice is given by March 15 by personal delivery (with employee's signature acknowledging receipt) or by certified mail.
- Administrator can request statement of reasons



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Seniority Lists

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Seniority Lists - Certificated

Seniority date:

- ✓ First date of
- ✓ Paid service
- ✓ In probationary position

Interns: Accrue seniority (not permanency) if in a probationary position

Temporary employees: Do not accrue seniority or permanent status

Seniority and classification are two separate concepts

(Ed. Code §§ 44845, 44911)



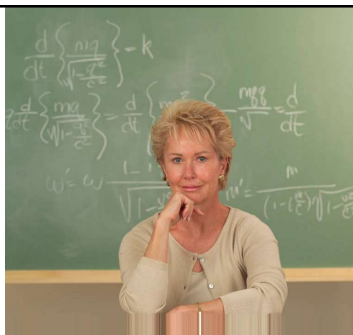
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Seniority Lists

- Name
- Status
- Seniority Date
- FTE
- Assignment(s)
- Site(s)
- Credential(s)
- Credential Expiration
- Other Authorization(s)



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Tie-Breaking Criteria

- For those with same seniority date
- Needs of District
- Adopt before March 15



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Credentialed and Competent

- Certificated employees can bump if they are “certificated and competent” to render the services of a less senior employee who is being retained.
- What is meant by competent?
- May adopt “competency standards”

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Skipping Criteria

A district may deviate from seniority order if it can demonstrate a specific need for personnel to teach a specific course or course of study, or to provide counseling or nursing services, and that the employee has special training and experience to teach the courses.

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Certificated Layoff Steps Before March 15

Evaluate enrollment and funding projections for upcoming school year.

Determine whether a layoff will be necessary.

What PKS will be reduced.

Verify seniority dates to avoid disagreements.

Verify employees' status.

Is tie-breaking necessary?


Will the District want to skip any less senior employees or establish competency criteria?

Board should approve layoff resolution in February.

Find out who should receive layoff notices (apply bumping/skipping).

Check CBA.

Preliminary layoff notices should go out before March 15.


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Documents/Information You Need Before March 15

1.Seniority list (with all necessary info).

2.CBA (check to see if there is anything about layoffs).

3.Layoff resolutions (including competency, skipping, and tie-breaking).

4.Non-reelection resolution (closed session).

5.Admin release/reassignment resolution (closed session).


6. Temp. release resolution (closed session).

7. Verify temps are really temps (may need temp contracts).

8. Verify prob. zero employees.

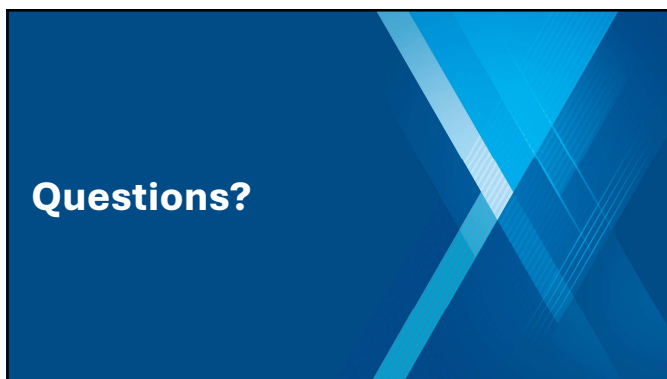
9. Verify any unique staffing situations (check Ed. Code 44865, adult ed., true ROP, etc.).

10. CTC Administrator's Assignment Manual.


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Questions?

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