



March 2012

# Policy Advisory

## March 15 Notices

As a member of a school board governance team, few situations are more sensitive than a school district delivering March 15 notices. Although familiar to most, the March 15 notice, its implementation process, the strict legal requirements attached to the process, and a review of the governance team role and resources in this situation bear repetition.

This document is not intended as legal advice. The legal issues surrounding certificated layoffs are incredibly complex, and each district and COE will have unique circumstances due to questions about seniority lists, employee classification, services to be reduced or eliminated, and “bumping” rights. Legal counsel should be consulted in order to ensure that district, COE and employee rights are protected.

### Governance Considerations

The board’s role in the March 15 Notice process is one that is often difficult for the board as a whole and for individual members. If the layoffs are related to decreasing revenue or when services are reduced, the board has an obligation to maintain a balanced budget. This fiduciary responsibility – an enforcement role placed upon boards by the state - may conflict with their representation role. Because they are locally elected, board members are challenged with taking action that the community may find hard to accept. Accusations of board members being uncaring or hiding the money often arise. Board members may also have friendships with district staff impacted by the layoff process. These difficulties were characterized by one board member in this way: “We are being required to make decisions that are in conflict with our personal beliefs and relationships.”

In the layoff process, boards must ensure that:

- The process follows the requirements of law, district policy and bargaining agreements;

- The number of layoffs across classifications minimizes the harm to serving students to the extent possible.

The board role is not limited to enforcement. Boards can add value to this process.

- Boards can be proactive in articulating what they are required to do, and what they wish they could do.
- Boards can support the superintendent in implementing the layoff process and decisions, and refrain from any comments that cast doubt on the process.
- Board members can demonstrate compassion and support for those impacted by the layoff process.
- Board members can help explain the board’s action to community members.

### Avoiding the political ‘No’

After a majority has voted ‘Yes’ on the recommended layoffs, board members who vote last can be tempted to vote ‘No’ as a sign of solidarity with staff impacted by the process, knowing the motion to accept the recommended layoffs already has enough votes to pass. This is a political vote – basing a vote on how it might be perceived by the community instead of basing the vote on whether or not the action is the right thing to do. It could be misunderstood as implying that a board member thinks the recommendations are not appropriate.

CSBA recommends that board members make their thinking clear by articulating the fiduciary burden and other factors that compel them to take action that they find personally difficult.

**What is the March 15 Notice?** As you know, the March 15 notice is a formal, written announcement from a school district to administrators, certificated employees and others, informing them that they may be released, demoted or reassigned for the following school year beginning July 1.

**What is the March 15 Notice process?** Because Education Code section 44949 requires that an employee selected for possible layoff at the end of the school year be given written notice no later than March 15, districts and COEs should begin preparing for layoffs in January and February. Every district has its own implementation process and protocol. This calendar represents the typical decision points during the calendar year.

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## January/February

### Prepare the seniority list

One of the first steps in the layoff process is to determine seniority. In order to help ensure that a district or COE's records are accurate, many attorneys recommend that districts and COEs mail employees a letter asking them to verify their credentials and seniority date. Employees should be given a specified date (e.g., 10 calendar days) by which they should respond and notify the district or COE of any errors or corrections. The district and COE should consider mailing these letters via certified mail, return receipt requested.

### Employee classification

The proper classification of employees is a crucial component of an accurate seniority list; however, the many different types of employees authorized by the Education Code can complicate the situation for districts and COEs. Whether an employee is accurately classified as temporary, probationary, permanent, intern, part-time or an emergency credential holder may affect the validity of the layoff, so legal counsel should be consulted.

### Probationary employees

Although the Education Code permits districts and COEs to non-reelect probationary employees without cause, when the decision is economic rather than performance-based the district or COE must use the same layoff process as is used for permanent employees.

### Emergency and intern credential holders

Two California appellate courts have held that teachers with "provisional credentials," such as emergency and intern certificates, must be classified as probationary employees for layoff purposes. Thus, such employees

must receive the same layoff protections as probationary employees with full credentials, including March 15 notice, hearing, and re-employment rights. Districts or COEs may, however, take qualifications into account when determining standards for competency, as discussed below.

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## February

### Superintendent recommendation

The superintendent should decide in early February whether to recommend a layoff to the board.

### Adopt criteria and standards

The superintendent should develop and the board should adopt criteria for breaking ties. Criteria are necessary to determine how ties in seniority will be broken for employees with the same employment date. One example would be establishing standards for determining competency. The competency standards would allow a districts or COEs to align its program needs with the competencies of employees to provide specific services.

### Reserve a date at the state Office of Administrative Hearings

Employees have the right to request a hearing before an administrative law judge to determine if there is cause for not re-employing the noticed employee. Because a decision must be sent to districts or COEs by May 7, it's important that districts or COEs considering a layoff reserve a hearing date for April.

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## Before March 15

### Board resolution

The district board must adopt a resolution stating that services are to be reduced and/or discontinued and that it is necessary to reduce the staff, and specifying the extent of the reduction. The resolution must also direct the superintendent to notify affected employees.

### Written notice to employees

The superintendent or designee must send notice of the proposed layoff to each affected employee no later than March 15. The notice must advise the employee that the superintendent has recommended to the board that the employee be notified that his or her services will not be required for the following year, the reasons for the recommendation, and the employee's right to request a hearing to determine whether there is cause for the action.

The notices must be delivered personally or mailed by certified mail, return receipt requested. See Education Code section 44949 for further details concerning the content of the notice.

### **Providing notice**

Districts and COEs should consult with legal counsel and examine how the district or COE maintains evidence of receipt of the notice by the employee. Such evidence might include a signed and dated certified mail receipt, a signed and dated receipt in the employee's file, or some other means of establishing personal service. Also a California appellate court held that a probationary employee must have actual personal knowledge of a notice of non-re-election before the statutory deadline. Although that case did not apply specifically to layoff notices, districts and COEs should review notice procedures for legal compliance and to ensure that procedures are in place to maintain evidence of how employees were provided notice.

### **Who should receive the notice?**

Some districts and COEs, out of an abundance of caution, send notices to staff in excess of anticipated staff reduction. However, such a notification may cause a morale problem and may also cause problems with bargaining partners. The decision as to which staff should receive notice should be made in consultation with legal counsel.

## **Other Important Dates**

### **On or before May 7—If there are any appeals:**

Proposed decision of the administrative law judge must be delivered to the board or county superintendent. A copy of the proposed decision must be sent to all affected employees.

### **Before May 15**

The board must adopt a final decision regarding laying off employees effective for the following school year.

## **Resources**

There are a number of resources for governance teams to consider during this process:

### **CSBA Policy Services**

Policy Services offers information related to the March 15 notices in its Sample Board Policy on Personnel Reduction (BP 4117.3). This sample policy includes Legal References in the Education and Government Code as well as Court Decisions.

### **CSBA Communications**

CSBA's communications team offers both media training and training related to speaking to your community about controversial issues including the March 15 notice.