



CLIENT NEWS BRIEF

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COURT APPROVES SETTLEMENT SHIELDING LOW-PERFORMING LOS ANGELES USD SCHOOLS FROM TEACHER LAYOFFS

In *Reed v. State of California, et al.*, (Los Angeles Superior Court, Case No. BC432420) the Americans Civil Liberties Union (“ACLU”) brought a class-action lawsuit on behalf of students at three schools in the Los Angeles Unified School District (“LAUSD”) alleging that they had been denied their fundamental right to equal educational opportunity as guaranteed by the California Constitution. During the 2008-2009 and 2009-2010 school years LAUSD laid off thousands of teachers due to the state’s fiscal crisis. At least half of the teachers at each of the three schools at issue in the lawsuit were laid off because they were less senior than other teachers.

According to the plaintiffs’ complaint, at the beginning of the 2009-2010 school year some of the positions at the schools had not been filled, so LAUSD used substitutes and teachers from the reemployment list, many of whom lacked the appropriate credential to teach in their assigned subject area or grade level. Some classes had as many as ten substitutes in a single semester.

The plaintiffs sought several remedies, including an injunction to prevent LAUSD from laying off teachers at the three schools during the 2010-2011 school year. On May 13, 2010, the court granted the injunction.

Shortly after the lawsuit was filed the United Teachers of Los Angeles (“UTLA”), the union that represents all LAUSD teachers, and Partnership for Los Angeles Schools (“Partnership”), which operates two of the three schools through an agreement with LAUSD, were added as parties to the lawsuit. The parties began negotiating a settlement soon after the injunction was issued. However, UTLA withdrew from the process before an agreement was reached.

In October 2010, the plaintiffs reached a settlement agreement with LAUSD and the Partnership, which was preliminarily approved by the court on December 14, 2010. UTLA objected to the settlement on several grounds, so the court ordered a fairness hearing on January 18-21, 2011. Following the hearing, the court approved the settlement on February 8, 2011, finding that it was fair, adequate and reasonable. The court relied in part on Education Code section 44955, subdivision (d)(2), which allows districts to deviate from seniority-based layoffs by skipping certain teachers to maintain or achieve compliance with constitutional requirements related to equal protection of the laws. UTLA argued that this provision only protects teachers’ equal protection rights. However, the court disagreed holding that it was intended to protect students’ equal protection rights.

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Under the agreement, LAUSD's twenty-five lowest academically performing schools with the highest teacher turnover will be exempt from layoff. Additionally, LAUSD can designate up to twenty other schools that it anticipates will be negatively and disproportionately affected by teacher turnover. The agreement requires that if LAUSD conducts a layoff starting this spring, it must skip teachers at the protected schools. The agreement also requires that LAUSD must ensure that no other school is impacted more heavily than its district-wide average. LAUSD is required to hire teachers at the protected schools that are properly credentialed, NCLB compliant and authorized to instruct English language learners where appropriate. If LAUSD cannot find a suitable person on the rehire list, it is authorized to fill the vacancy from elsewhere. LAUSD is also required to create retention incentive programs for teachers and administrators at the protected schools. The settlement does not have an end date. The court may terminate, continue, or continue the agreement with modifications at any time.

In response to this case, the California State Board of Education ("SBE") has proposed regulations affirming that school districts and county offices of education may not conduct a reduction in force based solely on seniority if it would violate a student's right to basic equity of educational opportunity, and specifying the bases under which districts may deviate from seniority-based layoffs at a particular school pursuant to Education Code section 44955, subdivision (d)(2). The bases include, but are not limited to, API rankings, percentages of students who are at or above proficiency in math and reading/language arts, academic growth over time, student drop-out rates, whether interventions have been implemented pursuant to state or federal law, the attrition rate of certificated employees from year to year including attrition caused by reductions in force, and the extent to which the district or county office has implemented policies to retain highly-effective teachers and administrators.

The final basis specified in the proposed regulations is the extent to which a certificated employee has contributed to the academic growth of students based on multiple measures, including no less than 30 percent based on growth in student achievement toward meeting grade-level proficiency in the core academic content areas included in the API, and the employee's evaluation.

Interested persons had until January 10, 2011, to submit written comments to the SBE. A public hearing was also held on that date to receive further input. After considering relevant comments, the SBE may adopt the proposed regulations with or without modifications. A date for further SBE consideration of the proposed regulations has not been scheduled.

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If the SBE adopts the regulations as currently proposed, school districts and county offices of education will have specific guidance to help determine whether their circumstances support deviating from seniority-based layoffs at particular schools.

Lozano Smith will provide updates on the Reed case and SBE's proposed regulations as they occur. If there are any questions, please do not hesitate to contact one of our eight offices located statewide or consult our website.

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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.