

SCOE BIZ

Business Services

Bulletin No. 22-10



November 18, 2021

To: District and Charter Business Services
From: Sarah Lampenfeld, Director, External Fiscal Services
Subject: November 2021 Edition

New Principal Apportionment Data Collection (PADC) platform

Beginning with fiscal year (FY) 2021-22, the PADC will be a web-based application. This new application **replaces** the PADC desktop software. The data reporting screens for FY 2021-22, P-1 will be available in the PADC web-based application **on or about December 1, 2021**.

In preparation of the application's full release, SCOE is offering multiple training opportunities in November and December. November's training focused on PADC user access (set up and forms); **the last mini-training is tomorrow, November 19th at 9:00 am**. The goal is to have ALL PADC users set up by December 1st. December's trainings will focus on data entry, the certification process, and the printing process. To meet the needs of all LEAs we are offering multiple training sessions; however, each training session will cover the same information. We are also offering a Saturday session (if necessary).

December's training sessions schedule (Mark your calendars now – link to follow 12/1):

- December 9th 1:00 – 2:30 pm
- December 14th 10:00 – 11:30 am
- December 18th 10:00 – 11:30 am (RSVP will be required for Saturday's session)

If your LEA needs individual assistance with user setup, please reach out to me, Vickie, or your Fiscal Advisor. SCOE's PADC Assignment forms are available [here](#).

Educator Effectiveness Block Grant

AB 130 established funding for professional learning for teachers, administrators and paraprofessionals who work with pupils. The funds may be used to support professional learning with a focus on any of the ten outlined in Education Code 41480. This funding will be available from fiscal year 2021-22 through 2025-26. As a condition of receiving these funds by December 30, 2021, LEAs must develop and adopt a plan outlining the expenditures for these funds. **The plan shall be presented in a public meeting of the governing board before its adoption at a subsequent public meeting.** Allocation and allowable uses can be found [here](#).

American Rescue Plan – Home Children and Youth II (ARP-HCY II)

The American Rescue Plan (ARP) includes funds to support efforts to identify homeless children and youth, and to provide such youth with comprehensive, wrap-around services that address needs as a result of the COVID-19 pandemic. In order to receive an allocation, all LEAs must submit the ARP-HCY II Assurance by December 31, 2021. Additionally, an LEA receiving less than \$5,000 must join a consortium with their County Office of Education. If your LEA is interested in participating in SCOE consortium, please contact Debra Sanders at dsanders@scoe.org. Allocations can be found [here](#) while program information can be found [here](#).

LCAP Template Trainings

Annually, the CDE offers a series of trainings on the LCAP template. The training webinars are approximately one hour and offered on Tuesdays and Thursdays. This year's series kicks off November 30th with an introduction to LCFF, which is geared toward newcomers to the LCAP process. Each training focuses on a different component of the LCAP template. Participants can attend one session or all of the series. Registration for the training can be found [here](#).

LCAP Supplement (One-time supplemental)

As a result of AB 130, LEAs are required to present an update to their governing board or body and the LEA's educational partners (name change – was stakeholders) on the funds received through the 2021 Budget Act. The update has to include: 1) A one-time supplement to the annual update to the 2021-22 LCAP, 2) All available mid-year outcome data related to metrics identified in the 2021-22 LCAP, and 3) Mid-year expenditure and implementation data on all actions identified in the 2021-22 LCAP. While this Supplement and mid-year outcome and expenditure data must be **presented by February 28, 2022**, the Supplement does not require approval by the board. Rather the Supplement will be included with the 2022-23 LCAP for the purpose of review, adoption, and approval. The CDE approved template can be found [here](#).

ESSA Per-Pupil Expenditure Reporting

The Elementary and Secondary Education Act of 1965 (ESEA), as reauthorized by Every Student Succeeds Act (ESSA), requires state educational agencies and their local educational agencies (LEAs) to prepare and publish annual report cards that contain specified data elements, including LEA and school-level per-pupil expenditures (PPE).

For this requirement, the California Department of Education (CDE) developed the ESSA Per-Pupil Expenditure Application. This web-based application will allow LEA's and direct-funded charter schools the ability to submit their required PPE information.

The reporting window is expected to open mid-November. Emails containing the LEA's unique access codes will be sent to Superintendents, Charter School Administrators, and CBOs this month. The deadline for each LEA to submit their PPE information to the CDE will be announced once the window opens. Note last year the deadline was March 1st.

To submit your LEA's data, please access the website below, and enter the LEA's unique access code.

Application website: <https://www3.cde.ca.gov/essars>

To provide support to LEAs, the CDE will conduct monthly webinar sessions to briefly go through the application and answer questions related to the ESSA per-pupil expenditure requirement.

The resources listed below provide additional information and tools related to the ESSA per-pupil expenditure reporting requirement:

- CDE's August 1, 2018 letter, "The Every Student Succeeds Act Per-Pupil Expenditure Reporting Requirement" <https://www.cde.ca.gov/fg/ac/co/essappeltr.asp>
- U.S. Department of Education's Non-Regulatory Guidance <https://www2.ed.gov/policy/elsec/leg/essa/report-card-guidance-final.pdf>
- CDE's Local Educational Agency Accountability Report Card <https://www.cde.ca.gov/ta/ac/le/>

If you have any questions, please contact the Office of Financial Accountability and Information Services by email at essappe@cde.ca.gov.

Expanded Learning Opportunities Program

As you will recall, the 2021-22 Budget Act included a new ongoing program intended to expand learning opportunities for all students, with a focus on students who are low-income, foster youth, or English learners. As a condition of receiving these funds, in 2021-22, LEAs must offer expanded learning to all of its classroom-based unduplicated students in grades K-6 and must provide expanded learning to at least half of these students. LEAs can expect the requirements of this program to increase in fiscal year 2022-23.

Please note expanded learning provided through this program must comply with the following requirements:

- 1) On school days, before or after school, expanded learning opportunities plus instructional day must total at least nine hours
- 2) During summer break or other intersessional periods, at least 30 days of 9 hour expanded learning opportunities days must be provided
- 3) Programs that serve transitional kindergarten or kindergarten students must maintain a pupil-to-staff ratio of no more than 10 to 1. For all other students, the ratio must be no more than 20 to 1
- 4) Educational enrichment and tutoring or homework assistance must be provided in accordance with the After-School Education and Safety (ASES) Program
- 5) A nutritious snack, meal, or both, must be provided

This month, eligible LEAs will receive 55 percent of their 2021-22 funds while the remaining 45 percent will be allocated through the Principal Apportionment schedule beginning with 2021-22 First Principal Apportionment. Additionally, First Apportionment will include a new funding exhibit for this program.

REMINDERS:

Requisition account code restrictions for object 9110

LEAs should never use object code 9110 on a requisition or payment. Proper accounting practices dictate that all entries are two sided. The code on the requisition or payment should be the proper expenditure code for the expense and cash (object 9110) is the hit automatically. Did you know that you can restrict your requisitions or payments to specific object code ranges, and exclude specific ranges to prevent errors? Depending on your LEA system set ups in ESCAPE, you may be able to change these settings at the fiscal level. If you need assistance you can send a help desk ticket to helpdesk@scoe.org.

Audit extension requests: inoperable for 2020-21 audit

In a "normal year", written request for an audit report filing extension would have been due to SCOE before November 30. **Districts:** A reason for the extension request and the expected date of audit submission on District letterhead or via email was required. Subsequently, SCOE would submit the extension request to the State Controller's Office (SCO) by December 15. The SCO and CDE would then review the request and accompanying justification and provide notification as to whether the extension will be granted. The guidelines state that extensions will be granted only under extraordinary circumstances.

For the 2020-21 audit, authorized under AB 130 State Budget Trailer bill language, the deadline for 2020-21 audit submission to the SCO and SCOE has been delayed to on or before January 31, 2021 for Districts and Independent Charters.

Please see SCOE Biz Bulletin 22-09 for full details for the 2020-21 Audit submission process. For 2020-21, Audit Report deadlines are extended HOWEVER, if your audit is completed earlier than the extended deadline, please complete filing requirements as soon as possible!

Sections 18 and 19 of Assembly Bill 130 (Chapter 44, Statutes of 2021) and Section 7 of Assembly Bill 167 (Chapter 252, Statutes of 2021) extended the following due dates contained in *Education Code (EC)* for the 2020–21 annual audit:

- *EC 41020(h)(2)* and (3) - 2020-21 audit report filing is extended from December 15, 2021 to January 31, 2022.
- *EC 41020.3(b)* - LEAs review of their 2020–21 annual audit and corrective action is extended from January 31, 2022 to February 28, 2022.
- *EC 41020(j)(2)(B)* - LEAs deadline to provide corrective action to COEs for their 2020-21 audit is extended from March 15, 2022 to April 15, 2022.
- *EC 41020(k)(2)* - COE deadline for the annual certification for 2020–21 audits to SCO and CDE is extended from May 15, 2022 to June 15, 2022

Developer Fee reporting reminder

Developer fees are required to be deposited in a separate capital facilities account/fund so that their collection and use is accounted for separately, away from the rest of the district's activities. Interest earned must be credited to the same fund and must be used for the same purpose as the fees. Government Code section 66006 requires that within 180 days of the end of the fiscal year, each district that levies developer fees should make the accounting available to the public

by **December 26, 2021, which is within 180 days after the last day of the fiscal year as required by statute.** The governing board must review the information at its next regularly scheduled meeting held no earlier than 15 days after the information becomes available to the public.

Additionally, Government Code section 66001 requires each district that collects developer fees to **make further findings every five years** about any fund in which those fees remained unexpended at the end of the fiscal year. It is recommended that the five-year accounting be made in conjunction with the annual accounting for each fund or account. Failing to comply with the statute, results in a refund of fees in question.

For more detail information, please see School & College Legal Services of California's Legal Update Annual Development Fee Accounting attached.

Fiscal Reports by School Services of California

School Services does an excellent job of providing explanations to current topics. If you are a member of School Services of California you can also see these reports by logging in to view on their web page or subscribe to their email services. Attached for your convenience are:

- Late School Start Time Law and the Rural School District Exemption
- Ask SSC... Full-Day TK – What's the Requirement?

School & College Legal Update

Yesterday SCLS provided a legal update on AB-438: Significant Changes in Classified Layoff Process. Attached for your convenience is the recent update.

Dates to Remember:

12/02/2021	Escape - 2021 1099 Reporting Click here to register
12/10/2021	Escape W2 Reporting Click here to register
12/15/2021	1 st Interim Report due to SCOE
12/17/2021	Escape ACA Reporting Click here to register
12/17/2021	Fall 1 Certification Deadline
01/07/2021	P-1 Principal Apportionment Data Collection due to SCOE

NOTE:

- Want to add something to a DBUG Agenda? Want a topic added to SCOE Biz? Contact DBUG Chair Christina Menicucci
- Documents presented at [DBUG](#) found posted at <http://www.scoe.org/pub/htdocs/fiscal-dbug.html>
- [Workshop manuals](#) and [Fiscal Services/IT forms](#) may be found at <http://www.scoe.org/escape> under the heading of Resources on the left side of the page.

[Click Here for COVID-19 Related Resources](#)

FISCAL REPORT

PUBLIC EDUCATION'S POINT OF REFERENCE FOR MAKING EDUCATED DECISIONS

Late School Start Time Law and the Rural School District Exemption

 [BY KYLE HYLAND](#)

 [BY ROBERT MCENTIRE, EDD](#)

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posted November 3, 2021

It is hard to believe that it has been over two years since Governor Gavin Newsom signed the late school start time measure, Senate Bill (SB) 328 (Chapter 868/2019), into law (see "[Late School Start Time Bill \(SB 328\) FAQs](#)" in the November 2019 *Fiscal Report*).

We at School Services of California, Inc. know that local educational agencies (LEAs) that serve middle school and high school students are currently preparing for the mandate as it takes effect on July 1, 2022 (or later depending on when your collective bargaining agreement operative on January 1, 2020, expires).

We also know that many LEAs are wondering if they qualify for the rural exemption in the bill, which states that rural school districts (the exemption does not extend to charter schools) do not need to comply with the school start time restrictions. The bill itself is silent on what qualifies a district as rural and there currently is no state statute that defines a rural LEA. While there was an effort by the author of SB 328, Senator Anthony Portantino (D-La Cañada Flintridge), to define rural for the purposes of the law during this past legislative session (see "[Legislation Would Amend School Start Time Law](#)" in the March 2021 *Fiscal Report*), that bill was held in the Assembly Education Committee and did not make it to Governor Newsom's desk.

With that bill stalling and the state yet to provide guidance on how districts should proceed if they think they qualify as rural, we wanted to provide you with some rural designations that have been used from some federal and state programs that you and your legal counsel can use as a resource.

Rural Education Achievement Program

The federal [Rural Education Achievement Program](#) (REAP) is comprised of two grants, each with a definition of rural LEA for the purposes of qualifying for the funding. It is important to note that REAP is included as a part of the Every Student Succeeds Act (ESSA), which is the 2015 federal bill that reauthorized the Elementary and Secondary Education Act, the national education law that governs K-12 public education policy.

The two grant programs in REAP are the Small, Rural School Achievement (SRSA) Program and the Rural and Low-Income School (RLIS) Program, which use the following ESSA-approved definitions for a rural LEA:

- **SRSA Program:** Each school served by the LEA has a school locale number of 41, 42, or 43 by the National Center for Education Statistics (NCES) and either the average daily attendance is fewer than 600 or the county population density is fewer than ten persons per square mile
- **RLIS Program:** 20% or more of the children served by the LEA are from families with incomes below the poverty line, and all of the schools served by the LEA are designated with a school locale code of 32, 33, 41, 42, or 43 by the NCES

One of the three rural definitions in Senator Portantino's stalled bill included LEAs eligible to receive grants under the SRSA Program or any other federal grant program in which eligibility is determined based on a "rural" designation. Again, while that bill did not make it through the legislative process, it does signal that the author and the bill's stakeholders were looking at the federal programs under REAP as a proxy for the rural exemption in SB 328.

E-Rate Program

The federal [E-Rate Program](#), which assists schools and libraries in obtaining affordable broadband, divides their eligible participants into rural and urban buckets.

The program designates a school as "urban" if is located in an urbanized area or urban cluster area with a population equal to or greater than 25,000, as determined by the most recent rural-urban classification by the Bureau of the Census. The program defines any eligible school that does not fit the "urban" designation as "rural."

The E-Rate Program's designation of rural was another acceptable definition under Senator Portantino's stalled bill.

School Facilities Program

The California School Facilities Program (SFP) also provides a definition for rural. The SFP defines "rural area" as a school with the locale classification code of 31, 32, 33, 41, 42, or 43 as classified by the NCES.

LEAs can use the following link to look up each school's classification by inputting the address here: <https://nces.ed.gov/programs/maped/LocaleLookup/>.

Next Steps

Unfortunately, without a clear legal definition of rural for the purposes of SB 328, districts are left to self-determine whether they are exempt from this law. We want to be clear that this article is to provide you a resource and remind you that there are rural designations from other programs, but we are not advising you

to use these definitions for the purposes of SB 328. Instead, we implore any district that is considering not implementing the late start time law next year, due to your belief that you are a rural school district, to work closely with your legal counsel before ultimately making that decision. If the state finds that you are not in compliance with SB 328 there could be funding implications for your district.

At this point the only way the state can define rural school district for the purposes of SB 328 implementation is if the Legislature introduces an urgency measure when they come back in January 2022 or include language in the 2022-23 education omnibus budget trailer bill that explicitly defines rural.

We will continue to keep you apprised of any state guidance on SB 328 or any push by lawmakers to define rural school district before next July's implementation deadline.

[Click Here for COVID-19 Related Resources](#)

FISCAL REPORT

PUBLIC EDUCATION'S POINT OF REFERENCE FOR MAKING EDUCATED DECISIONS

Ask SSC . . . Full-Day TK—What's the Requirement?

 [BY PATTI F. HERRERA, EDD](#)

 [BY DANYEL CONOLLEY](#)

 [BY MATT PHILLIPS, CPA](#)

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posted November 15, 2021

Q. Does my district need to offer full-day transitional kindergarten (TK) and adopt an expansion plan as part of the new universal TK law?

A. First, thank you for submitting your question. The short answer to your question is “No”. However, the State Budget included two programs that can be leveraged to enhance your TK programs, and we will discuss that momentarily. But let’s start with the basics:

Universal TK

Assembly Bill (AB) 130—the 2021 budget education trailer bill—amended [Education Code Section \(EC §\) 48000](#) requiring school districts and charter schools to expand their TK programs to include four-year-olds whose fifth birthdays occur between September 2 and February 2 in the 2022-23 school year. [EC § 48000](#) then expands TK by an additional two months each year until 2025-26 when all four-year-olds in California will have access to a TK program.

AB 130 made other changes affecting TK, including:

- At each school site, limiting all TK classroom ratios to an average of 12 students to one adult beginning in 2022-23 with the potential of reducing them further to 10:1 if funding is provided
- Extending the deadline by which certain TK teachers must obtain additional authorizations to teach or continuing teaching in a TK classroom to August 1, 2023
- Allowing California State Preschool Programs (CSPP) to provide wraparound services to CSPP-eligible students enrolled in a TK or kindergarten program
- Retaining parent choice to enroll their four-year-old child(ren) in TK or another government subsidized program for which they are eligible, including CSPP, Head Start, or General Childcare

To answer your question more explicitly, [EC § 48000](#) does *not* require school districts and charter schools to offer full-day TK, nor does it require them to adopt a TK expansion plan as part of the universal TK law.

Additionally, [EC § 37202\(b\)](#) allows an local educational agency (LEA) to maintain differing instructional days for TK and kindergarten programs during the school day at the same school site or at different school sites. However, for apportionment purposes, both TK and kindergarten are subject to the same minimum daily and annual instructional minute requirements as codified in [EC § 46207](#) and [EC § 46114\(c\)](#), respectively.

Now that we have clarified what law requires school districts and charter schools to do to expand TK until universal TK is achieved by the 2025-26 school year, let's discuss two categorical programs included in the 2021 Budget Act that seem to be causing some confusion around universal TK planning.

California Prekindergarten Planning and Implementation Grant and the Expanded Learning Opportunities Programs

First, the [California Prekindergarten Planning and Implementation Grant Program](#)—established by EC § 8281.5—is a one-time \$200 million program that will provide LEAs with funding to strategically plan their preschool and TK programs, and to help create or establish partnerships within their local communities to expand access to preschool programs. LEAs will receive funding based on a statutory formula with the average statewide one-time grant being \$87,000 (see "[2021-22 Education Investments—Preliminary Allocations](#)" in the July 2021 *Fiscal Report*).

Unlike the universal TK requirements in EC § 48000, EC § 8281.5 *does* require LEAs to develop a plan by June 30, 2022, as a condition of receipt of the grant funds. Specifically, the EC § 8281.5(c)(3)(B) states that LEAs must:

Develop a plan for consideration by the governing board or body at a public meeting on or before June 30, 2022, for how all children in the attendance area of the local educational agency will have access to full-day learning programs the year before kindergarten that meet the needs of parents, including through partnerships with the local educational agency's expanding learning offerings, the After School Education and Safety Program, the California state preschool program, Head Start programs, and other community-based early learning and care programs.

It is important to note a few things about EC § 8281.5(c)(3)(B):

- It only requires governing boards to consider a plan on or before June 30, 2022, and does not require board adoption
- It does not require LEAs to use a specific template, nor does it require LEAs to submit their plans to their county superintendents, the California Department of Education, or any other local or state agency

- This plan is a condition of funding under the California Prekindergarten Planning and Implementation Grant Program and is not a condition of receiving general apportionment funding for TK expansion (e.g., Local Control Funding Formula grants for TK students)

Expanded Learning Opportunities Program (AB 130)

The last 2021 Budget Act investment that may affect your universal TK planning and implementation is the [Expanded Learning Opportunities Program](#), which broadly requires LEAs to offer extended day and year services to English learners, low-income students, and foster youth in grades TK-6, inclusively (LEAs with unduplicated pupil percentages of at least 80% must offer extended day and year services to *all* TK-6 grade students). This program is governed by [EC § 4.6120](#) and is distinct from universal TK, and we encourage LEAs to review its requirements carefully through the link we provide.

While this program will supplement some TK programs to extend instruction and services to students to no less than nine hours per day and at least 30 nine-hour days during academic intersessions, this program in and of itself does *not* require TK programs to be full-day programs (or six hours of daily instruction). As noted earlier, the minimum daily instructional minute requirement for TK is governed by [EC § 4.6114\(c\)](#), which stipulates that kindergarten must be a minimum of 180 minutes each day. TK is statutorily defined as the first year of a two-year kindergarten program and is thus subject to the daily 180 instructional minute requirement.

In summary, we understand that educational leaders don't plan in a vacuum and will be considering a multitude of factors when planning, designing, and implementing their universal TK programs. We thought it would be important to distinguish these programs and their various requirements so that LEAs can make informed decisions that comply with law and meet the needs of their communities.



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

*A Joint Powers Authority
serving school and college
districts throughout the
state.*

5350 Skylane Boulevard
Santa Rosa, CA 95403

Tel: (707) 524-2690
Fax: (707) 578-0517
santarosa@sclscal.org
www.sclscal.org

General Counsel
Carl D. Corbin

Attorneys
Jennifer Henry
Nancy L. Klein
Damara L. Moore
Jennifer E. Nix
Steven P. Reiner
Kaitlyn A. Schwendeman
Leah M. Smith
Loren W. Soukup
Erin E. Stagg

Of Counsel
Robert J. Henry
Frank Zotter, Jr.

LEGAL UPDATE

November 17, 2021

To: Superintendents, Member School Districts (K-12)
From: Carl D. Corbin *CDC*
General Counsel
Subject: **AB 438 - Significant Changes in Classified Layoff Process**
Memo No. 38-2021

On October 8, 2021, the Governor approved Assembly Bill (“AB”) 438.¹ Effective January 1, 2022, Education Code section 45117 is amended to treat layoffs of permanent classified employees through essentially the same process that has long been used for layoffs of certificated employees.² Our office will be conducting a workshop (“Layoffs 101”) on January 12, 2022, that will discuss the layoff and probationary non-reelection process for certificated employees and will also cover the new layoff process for classified employees. Our office will also be updating our “layoff packets” (which include instructions and model templates) to assist our clients in effectuating the new layoff process for classified employees.

Below, key points in AB 438 will be discussed along with a summary of the new classified layoff process. Also, in addition to updating relevant Board Policies and Administrative Regulations, we anticipate that our clients will also need to review any applicable Collective Bargaining Agreement (“CBA”) and will very likely need to negotiate revisions to the layoff procedures with their classified labor partner.

Key Points

- The new layoff process does not apply to “short-term” employees who are hired for a period not exceeding 60 days after which the short-term service may not be extended or renewed.³ The new layoff process also does not apply to substitute employees.⁴

¹ Available at: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB438.

² In addition, as per Education Code § 45117(h), if certificated employees are granted any additional rights associated with layoffs then classified employees will also be granted those same rights.

³ Education Code § 45117(f)(2). All subsequent references are to the Education Code.

⁴ §§ 45103(b)(1), (d)(1).



- The new layoff process does not apply to classified positions that are eliminated as a result of the expiration of a “specially funded position.”⁵ In this situation the classified employee is only entitled to 60 days’ notice, which includes notice of any displacement (“bumping”) rights to another position.
- The new layoff process applies to any “permanent” classified employee, defined as “an 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.”⁶
- If a classified employee is not provided a timely layoff notice and a right to a hearing, then the employee will be deemed rehired for the next school year.⁷
- However, employers do retain the right to release probationary employees without a layoff notice or right to a hearing.⁸

Summary of Layoff Process

- Layoffs are authorized by the governing board of the school district due to a “lack of work or lack of funds.”⁹ This is the same legal standard that has been historically used for classified layoffs.¹⁰
- No later than March 15, “the governing board of the school district and the employee shall be given written notice by the superintendent of the school district or the superintendent’s designee, or, in the case of a school district that has no superintendent, by the clerk or secretary of the governing board of the school district, that it has been recommended that the notice be given to the employee, stating the reasons that the employee’s services will not be required for the ensuing year, and informing the employee of the employee’s displacement rights, if any, and reemployment rights.”¹¹
- The notice must be delivered to the employee in person or via registered mail to the last known address of the employee.¹²
- The notice must inform the employee of the right to request a hearing to determine if there is cause for not reemploying the employee for the subsequent school year. Cause for a layoff includes the employer complying with all Education Code seniority requirements including those in Section 45308.¹³
- The request for a hearing must be made by the employee on or before a date selected by the employer, but must allow at least seven days after the notice is served on the employee.¹⁴
- Upon an employee requesting a hearing, the employer must serve on the employee a District Statement of Reduction in Force after which the employee has five days after service to file a Notice of Participation in Reduction in Force Hearing.¹⁵

⁵ § 45117(g).

⁶ § 45117(e)(2).

⁷ § 45117(e)(1).

⁸ *Id.* Specifically, if “a permanent classified employee is not given the notices and a right to a hearing as provided for in this section, the employee shall be deemed reemployed for the ensuing school year, except that nothing in this section shall be construed to interfere with the right of a district to release probationary employees who never become permanent without notice or hearing.”

⁹ § 45117(a)(1).

¹⁰ § 45308(a).

¹¹ *Id.*

¹² § 45117(c)(3)(A).

¹³ §§ 45117(b), (c)(3)(B).

¹⁴ § 45117(b).



- Any request for discovery must be made within 15 days after the District Statement of Reduction in Force is served on the employee by the employer.¹⁶
- The hearing will be conducted by an Administrative Law Judge (“ALJ”) from the Office of Administrative Hearings (“OAH”) and a proposed decision will be issued; however, the governing board will make the final decision as whether to proceed with the layoff.¹⁷
- Copies of the ALJ’s proposed decision must be submitted by the ALJ to the governing board and the employee on or before May 7.¹⁸
- The final decision of the governing board on whether to proceed with the layoff must be made and a copy of the decision provided to the employee on or before May 14.¹⁹
- All costs associated with the layoff hearing process, including the costs of the ALJ, are paid by the employer.²⁰

In closing, AB 438 represents a significant shift in the process to lay off permanent classified employees and employers will have to prepare to navigate this new process and some of the associated unanswered questions²¹ and challenges.²²

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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¹⁵ § 45117(c)(1).

¹⁶ § 45117(c)(2).

¹⁷ § 45117(c)(3)(A).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ There is an open question regarding two classified employees with the same date of hire and the tie-breaking process. The certificated layoff process (§ 44955) provides explicit authority to resolve certificated tie-breaking, but there does not appear to be a similar classified statute on point. The tie-breaking issue will need to be resolved through the bargaining process and/or through the adoption of a policy. There is also no provision for classified layoff “skipping” like there is for certificated layoffs (§ 44955(d)).

²² OAH will have to address how to “scale up” to handle all of the classified layoff hearings that are in addition to the certificated layoff hearings.