



## **MORE THAN JUST SENIORITY: Protecting school communities from the unequal impact of seniority-based layoffs**

On March 15, 2011 almost 20,000 layoff notices, or “pink slips,” were delivered to teachers, counselors, and other certificated staff because of projected budget cuts to local school districts. As a result, students in schools across the state—from Eureka to Stockton, from Oakland to San Diego— are once again forced to suffer through a revolving door of instructors. This instability and inconsistency harms those very students who are most in need of stability and already receiving fewer resources than their more advantaged peers.

The pain of these budget cuts and layoffs is exacerbated by the way in which they are conducted. California law requires districts to lay off newer teachers first, regardless of how well they do their jobs. This system, known as seniority-based or quality-blind layoffs has a disproportionate impact on schools serving the highest numbers of low-income students, who are more likely than others to experience layoffs and mass teacher shuffling.

But it doesn't have to be this way. Other states, from Illinois to Florida, have taken bold steps to end the practice of layoffs based on seniority and some have given greater authority to local decision-makers. Our state lawmakers have failed to show the same courage. However, current state law does provide school districts with some authority to deviate from the “last in, first out” layoff process, under certain conditions. By learning more about these conditions, parents and community leaders can work with districts to mitigate the negative impacts of seniority-based layoffs on high-need students and schools. This brief provides evidence and examples of how some districts around the state have used these exceptions.

### **EVEN UNDER CURRENT STATE LAW, DISTRICTS MAY DEVIATE FROM SENIORITY-BASED LAYOFFS**

Although the state law requires layoff decisions to be seniority-based, the law (Education Code Section 44955(d)) allows districts to deviate from seniority-order in two cases. Both of these cases are known as “skipping,” but occur for different reasons:

- (1) To protect employees with special training and experience and who are teaching specialized courses; and
- (2) To maintain or achieve equal protection under the law.

In the first case, an individual teacher may be skipped if the school district has a specific need for teachers who teach a specific course or course of study (such as math or special education) or who have a specialized credential or training (such as teachers with a certificate to teach bilingual education). For example, consider a math teacher with five years of experience, and an English teacher with six years of experience. Under “last in, first out,” the math teacher would generally receive a layoff notice before the English teacher. But if the district chooses to protect math teachers, a traditionally hard-to-staff subject area, district officials have the right to skip that teacher and issue a layoff notice to the more senior teacher. To act on this right, the district must convincingly make the case to an administrative law judge that skipping teachers with specialized training satisfies the law, and then the district's school board can adopt a skipping policy. Teachers also have the right to challenge this policy.

In the second case, districts appear to have the authority to deviate from seniority in order to maintain or achieve equal protection under the law. For example, consider students in certain high-need schools that have already suffered serious educational harm from, among other things, past layoffs and the instability caused by teacher churn. If the district is forced to conduct additional layoffs that would result in increased teacher turnover in these schools, it could materially harm those schools' ability to provide a constitutionally adequate education. In this case, the district may have the right to use its discretion in the seniority-based layoff process “to ‘skip’ teachers to prevent an equal protection violation.”<sup>1</sup>

## **DISTRICTS AROUND THE STATE ARE ALREADY USING THIS AUTHORITY**

- **Los Angeles Unified:** Los Angeles Unified protected 45 schools from the seniority-based layoff process. This action was the result of a lawsuit brought on behalf of students in three high-need schools that had suffered significant staff instability as a result of the layoff process. A Superior Court judge approved a settlement agreement in March 2011 that prohibits LAUSD from issuing any layoffs to 45 schools (25 schools that are lowest-performing, highest-turnover, or that are demonstrating academic progress, and 20 schools that are new or in intense need of protection.)
- **Sacramento City Unified:** Sacramento City set out to designate six schools as “Superintendent’s Priority Schools” as part of an effort to turn around persistently failing schools. The district has had difficulty recruiting staff to these schools. Superintendent Jonathan Raymond and the Board of Education decided to protect the students in these schools from the effects of teacher layoffs. An administrative law judge approved skipping teachers in the layoff process in five of the six schools for the 2011-2012 school year.
- **Pasadena Unified:** Pasadena Unified is launching Linked Learning in several of its high schools. This represents a considerable investment of public and private dollars to train teachers in this research-based strategy for college and career pathways. Last year, under seniority-based layoffs, the district laid off many teachers involved in this course of study, resulting in the loss of resources spent on professional development, stalled school improvement efforts, and the placement of new teachers who were not bought-in to the program. This year, the district decided to “skip” teachers who have the competency and training to teach in pathways programs, to preserve the programs’ integrity.
- **San Francisco Unified:** In a more traditional use of the statute, San Francisco Unified School District did not issue layoff notices to teachers qualified to teach Math, Science, Special Education and Bilingual Education. Without enough teachers in these subjects, students would be less likely to meet graduation requirements. Therefore, the Board adopted a policy in March 2011 that teachers who are credentialed and currently teaching those subjects or in those programs would not receive a layoff notice, regardless of seniority, for the 2011-12 school year.

## **DISTRICTS SHOULD CONSIDER THESE STRATEGIES TO MITIGATE THE IMPACT OF LAYOFFS**

Traditionally, many of the layoff notices that California teachers received in March of a given year are rescinded before the next school year. When deciding which pink slips to recall, school districts should use the authority they already have under state law to uphold every student’s right to equal educational opportunity, including the right of all students to be taught by highly effective teachers.

The best possible solution is for a school district to avoid teacher layoffs altogether, and to come up with creative alternatives to keep difficult budget cuts from impacting the classrooms. But if layoffs are unavoidable, they must be conducted equitably. Publicly available data can help parents and community members identify which schools in a district are most in need of protection from the impacts of layoffs (for example, schools with higher-than-average numbers of first and second year teachers, or schools serving the highest numbers of low-income students). Such data can be accessed [here](#).

With these data in hand, school districts and community organizations can work together to determine the best course of action. Options might include skipping teachers in a group of high-need schools, as happened in Sacramento City and Los Angeles, or protecting certain types of specialized teachers, as Pasadena and San Francisco chose to do.<sup>ii</sup> Another option chosen by community members in Los Angeles was to pursue litigation.

## **NOW IS THE TIME TO TAKE ACTION**

As the budget crisis in California continues, school districts around the state are forced to confront the possibilities of massive teacher layoffs. While fighting for education funding and advocating for replacing our seniority based layoff laws, we must also take action to ensure that the damaging impact of teacher layoffs do not disproportionately affect high-need schools and students. All members of our school community should work together to leverage the existing authority granted to them in state law to deviate from seniority-based layoffs based on the interests of their most vulnerable students and schools.

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<sup>i</sup> *Reed v. State of California, etc., Los Angeles Unified School District*, May 13, 2010.

<sup>ii</sup> Great Oakland Public Schools, “Why Sacramento City Matters for Oakland,” March 30, 2011