

# SCHOOL AND COLLEGE LEGAL SERVICES of California

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## LEGAL UPDATE

February 3, 2009

**To: Superintendents, Member School Districts (K-12)**

**From: Adam S. Ferber, Associate General Counsel**

**Subject: District Responsibilities Concerning Employee Bumping Rights**  
**Memo No. 06-2009**

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A recent judicial decision concerning certificated employee lay-offs has reemphasized the importance of acting in advance both to apply tie breaking criteria and to ask the consent of the senior employee to reassignment.

In *Bledsoe v. Biggs Unified School District* (2008 WL 5352261) the California Court of Appeal reviewed Mr. Bledsoe's challenge to the District's decision to retain two community day school teachers with less seniority. The court upheld the decision, holding that the District had established both a special need for the two teachers and that the teachers had special training and experience that exceeded Mr. Bledsoe's.

However, the Court also found that the District had failed to seek Mr. Bledsoe's consent to a reassignment, and had failed to determine whether Mr. Bledsoe had the seniority and qualifications that would entitle him to bump into either of the day school positions and had failed to apply its governing board's tie breaking criteria. It held:

We reject the District's claim that it was Bledsoe's obligation to anticipate his inclusion in the District's economic layoff and to offer his consent to such an assignment in order to establish his qualification for it. No: it was the District's obligation...to determine whether any permanent employee whose employment is to be terminated in an economic layoff possessed the seniority and qualifications which would entitle him/her to be assigned to another position.

The layoff decision was upheld nonetheless, the Court holding that in light of the entire administrative record the District's failures did not prejudice Mr. Bledsoe.

Despite the favorable outcome for the District, our office believes that the Court's findings are a strong signal to our clients to observe consent and tie-breaking procedures scrupulously.

Please contact any of our attorneys if you have any questions concerning this legal update.