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LEGAL UPDATE

October 28, 2009

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

From: Nancy L. Klein, Senior Associate General Counsel

**Subject: PERMANENT TEACHERS MAY BE TERMINATED FOR FAILURE
TO OBTAIN ENGLISH LANGUAGE LEARNER CERTIFICATION
Memo No. 28-2009**

A California Court of Appeal has affirmed that a school district may terminate permanent teachers who fail to obtain English language learner (EL) certification in violation of a district rule requiring certification as a condition of continuing employment.

In *Ripon Unified School District v. Commission on Professional Competence* (2009) WL 3088417 (Cal.App. 3 Dist.), the district adopted a rule requiring all teachers to become EL certified by a specified future date in order for the district to meet state and federal requirements that EL students be taught by specially trained teachers and have equal access to all school programs.¹ By collectively bargained agreement with the teachers' union, the district agreed to pay for the training necessary for teachers to become EL certified and further agreed to provide a \$400.00 stipend. When one teacher refused to complete the training despite repeated efforts to encourage her compliance, the district commenced dismissal proceedings charging her with unprofessional conduct, evident unfitness for service, and persistent violation of or refusal to obey the school laws of the State or reasonable regulations of the State Board or governing board of the district.

In her defense the teacher asserted that the district's rule impermissibly invalidated her teaching credential and violated Education Code section 45033, which prohibits reductions of a permanent teacher's salary based on failure to meet additional education requirements. She also asserted that the agreement with the teachers' union went beyond the permissible scope of bargaining.

¹ Ed. Code secs. 44253.3, 44253.4, and 44253.10; Equal Education Opportunities Act of 1974 (20 U.S.C. sec. 1703.)

Rejecting all of the teacher's defenses, the Court of Appeal reasoned that the district's rule did not invalidate the teacher's music credential. The credential still authorized her to teach music, but it did not guaranty her continuing employment with the district. Secondly, Section 45033 pertains to salary reductions, not grounds for termination, and, therefore, does not limit a school district's authority to terminate a permanent teacher pursuant to Education Code section 44932(a)(7) for persistent violation of a reasonable district regulation. Finally, the Court of Appeal held that the EL certification requirement was an appropriate subject of bargaining because it reasonably relates to hours, wages and conditions of employment.

The *Ripon* decision affirms a school district's authority to discipline a permanent certificated employee for failure to comply with a district regulation adopted in furtherance of a legislative mandate, in this case, that teachers be specially certified to teach EL students. Please note that the decision, which was issued on September 29, 2009, is still subject to appeal. We will notify you of any developments in that regard. In the interim, please contact us with any questions you may have.