

MARCH 15 NOTICE

In another uncertain budget year, March 15 layoff notes loom large

Despite state budget funding uncertainty, district will need to meet the current law regarding informing personnel of pending layoff, demotion or reassignment. Each year the ACSA Member Assistance & Legal Support Team, under the direction of Assistant Executive Director Joe Jones, receives several hundred calls from members asking questions about the March 15 Notice.

In this article, Lloyd Wamhof, one of ACSA's five member assistance advocates, responds to a series of questions clarifying the March 15 Notice.

Question: Exactly what is a March 15 Notice?

Wamhof: It's a notice given by districts to administrators notifying them that they may be released, demoted or reassigned for the following school year beginning July 1. The courts have stated that "the legislative purpose of the statute was to afford the administrator proper notice of possible change in duties and assignment in sufficient time to seek other satisfactory employment as an administrator."

Question: What can districts do to help prepare people who are receiving a March 15 Notice?

Wamhof: It is so important to remember we are dealing with human lives, and our colleagues deserve respect. Understand how emotional it is to be told you are being demoted, re-assigned or terminated or that your job is being changed. How that message is delivered speaks volumes for the culture in the district.

ACSA member assistance advocates are reminded regularly of the importance of treating others with civility and dignity. It doesn't mean you don't have to make the tough decisions. It just means that how you deliver the message will have an impact on how the individual receiving the message reacts.

Question: Why is it normally referred to as the March 15 Notice?

Wamhof: Education Code 44951 states, "unless a certificated employee holding a supervisory or administrative position is sent written notice deposited in the U.S. registered mail with postage prepaid and addressed to his/her last known address by March 15 that he/she may be released from his/her position for the following school year, or unless the signature of such an employee is obtained by March 15 on such notice that he/she may be

released from his/her position for the following school year, he/she shall be continued in such position.”

Question: So the notice may be delivered to the employee in two ways?

Wamhof: Yes, either by registered mail or hand delivered. If the notice is hand delivered, the district must obtain a signature from the employee signifying they have received it.

Question: What if the district fails to obtain a signature on hand delivery?

Wamhof: The employee is then considered to not have received proper notice and is therefore continued in the same position for the next school year. In a 1980 court case, the Court of Appeals ruled that the provisions of EC 44951 are “mandatory” and are to be strictly construed. In this particular case the employee was neither given the notice by registered mail nor was she asked to sign the form.

In a lower court ruling, the Superior Court found she had been improperly removed from assignment as a principal and reassigned to a teaching position as of July 1 because the notice did not comply with the specific requirements of Education Code 44951.

Question: Is the district required to give reasons for the March 15 Notice?

Wamhof: Yes and no. If the employee is to be demoted to a teaching position the answer is yes. EC 44896 entitles an employee whose position requires an administrative or supervisory credential to a statement of reasons from “the governing board” when demoted to a teaching position. If the employee is being terminated or demoted to another administrative or supervisory position, the answer is no.

Question: What reasons must a district give for reassignment to the classroom?

Wamhof: The courts have stated, “except when the reason is one that impinges upon constitutional rights, any reason, no matter how trivial, is sufficient.” This means, “We have lost confidence in you” would be sufficient.

Question: Does the board have to approve the March 15 Notice?

Wamhof: The board must approve the second step in the process, which is final notice with the specific action to be taken, prior to July 1.

Question: There seems to be some confusion as to whether an employee who has received a positive evaluation can still be given a March 15 Notice. Can you clarify this?

Wamhof: The courts have ruled, in simple terms, that there isn't a connection between a March 15 Notice and the administrator having received a positive evaluation. The one exception is when an administrator is being demoted to a teaching position and the reasons include incompetency. An evaluation of the person shall have been completed not more than 60 days prior to giving the notice of the transfer.

Question: Are there any exceptions to the steps you have outlined for the March 15 Notice?

Wamhof: Yes, administrators working in county offices of education are not required to receive a March 15 Notice unless they had previously been employed in a teaching position by the county superintendent and are being reassigned back to the classroom.

Because the Education Code doesn't speak to a required March 15 Notice for administrators in county offices, we must rely on a 1985 court case, *Harris v. State Personnel Board*, which included a finding that since there was an absence of mention of the March 15 requirement, then a "reasonable" notice must be given.

Although this case refers to a state university system, it has the same implications for county offices in that neither entity is mentioned in the Education Code regarding the March 15 Notice for administrators who haven't taught for the entity.

Another exception is any administrator who has "superintendent" in his or her title is also not included in the March 15 Notice process. This group is referred to in EC 35031, which requires a 45-day notice. If a district wants to notice anyone with superintendent in their title, they are required to give the individual a 45-day notice prior to the end of their contract.

Finally, probationary, temporary and substitute certificated administrators have much fewer due process rights than other employees. Education Code 44929.21 states that the governing board shall notify the probationary status employee, on or before March 15 of the second complete consecutive school year, of the decision to reelect or not reelect for the next succeeding school year.

Question: What happens if a district gives an administrator with "superintendent" in his or her title a March 15 Notice instead of the 45-day notice (normally around May 15)?

Wamhof: The district has given an improper notice. The courts have been very clear that these notices must be given properly in accordance with the Education Code.

In *Evans v. Golden Plains School District*, the district had given an assistant superintendent a notice of reassignment to the classroom for the next school year. The notice cited EC 44951. The court ruled the district had given improper notice because it cited the incorrect Education Code section and had really given her a March 15 Notice. She retained her position for the next year.

Question: Does ACSA have any other resource materials that members can refer to?

Wamhof: Yes, we have on our ACSA website a grid that clearly demonstrates the procedures county offices and districts must follow in demoting, reassigning or terminating an administrator. It can be found at www.acsa.org/legalassistance under “Quick Tasks.”

Question: What advice do you have for administrators who suspect they may be receiving a March 15 Notice?

Wamhof: Before you take any action, call Joanne Godfrey in the ACSA Member Assistance and Legal Support Team at (800) 608-ACSA and ask to speak with one of the five member assistance advocates: Brad Lantz, Sharon Dezutti, Bill Tschida, Rod Todd or Lloyd Wamhof.

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