

# *In Brief*

January 2020

## **EDUCATIONAL SUPPORT STAFF RIF CHECKLIST**

School boards employ educational support personnel (“ESPs”) to perform various jobs in support of school services and operations. Examples of ESP positions include: paraprofessionals, administrative assistants, bus drivers, payroll clerks, and custodial and maintenance employees. When assessing staffing needs, a school district may determine that it is necessary to (1) decrease the number of ESPs employed by the school board; (2) reduce the number of hours worked by an ESP; or (3) discontinue some particular type of support service provided by the district. Decisions of this nature constitute a reduction-in-force (“RIF”) of ESPs and, as such, school districts must first carefully consider its legal obligations under not only The School Code but also under the terms of the district’s collective bargaining agreement(s) (“CBA”) and any applicable internal district seniority or RIF policies. RIFs must be conducted in reverse order of seniority, unless an alternative method of layoff is provided within the applicable CBA covering the affected ESPs. Notably, districts are not required to wait until the end of the school year to conduct a RIF of ESPs.

If a district determines it is necessary to RIF ESPs prior to the conclusion of the 2019-2020 school year, we recommend the following steps and actions be reviewed and taken in order to ensure compliance with any and all legal obligations imposed on the district:

- *Identify the type of support service targeted for RIF and the number of ESPs who must be RIF’ed.*
  - Review budget and financial projections.
  - Review projected student enrollment.
  - Confirm status of grant-funded services.
- Consider the impact of staff changes (i.e., resignations, retirements, transfers, reassignments, and leaves of absence).
- *Identify the categories of position and individual ESPs who will be impacted by the RIF.*
  - Note that the RIF layoff must be targeted to the employee’s category of position, rather than overall district ESPs.
- *Determine the seniority of the ESPs subject to the potential RIF layoff:*
  - Determine how the district defines seniority (district-wide vs. departmental seniority, how part-time status or leaves of absence affect seniority accrual, etc.).
  - *Note:* If a district selects an alternative method for the order of RIF pursuant to a collective bargaining agreement, the bargained criteria should be objective and readily identifiable/measurable in order to avoid grievance challenges.
  - Review qualifications and the district’s seniority tie-breaker rules to determine whether the ESP is qualified to hold any other position within the district.
- *Consult the seniority list which must be posted by February 1 of each year.*
- *Determine “bumping” rights of ESPs impacted by the RIF:*

- If an ESP subject to a RIF is able to “bump” another ESP based upon his or her greater seniority, initiate the process again for the displaced ESP, until all ESPs have been allowed to exercise “bumping” rights.
- *Comply with collective bargaining obligations.*
  - If the decision to conduct the RIF is for economic reasons (i.e., financial cost savings), the district is obligated to bargain the decision to RIF ESPs.
  - If the decision to conduct the RIF is for non-economic reasons (i.e., the district decides to discontinue a support service due to lack of student enrollment), the district is only obligated to bargain the impact of the decision.
  - The district is required to initiate but not complete its bargaining obligations prior to complying with the statutory RIF notice requirements.
- Issue written notice of dismissal decision.
  - The Board must adopt a resolution by a majority vote authorizing the RIF of an ESP.
  - Notice of the Board decision to RIF an ESP must be given thirty (30) days prior to the employee’s last workday.
    - Note, however, that if the decision to RIF an ESP is due to subcontracting non-instructional services, a ninety (90) day notice must be given to the affected employees prior to the implementation of a decision to subcontract work to a third party.
  - Notice of the Board decision to reduce the work hours of an ESP must be given thirty (30) days before the employee’s hours are reduced. However, if the reduction of work hours is due to an unforeseen reduction in student population, only five (5) days’ notice is required.
- The RIF notice must include a statement of honorable dismissal and the reasons for the RIF.
- The notice must be given to the ESP by first class mail and either certified mail, return receipt requested, or personal delivery with receipt.
- Recall RIF’ed ESPs if positions become available.
  - The statutory RIF recall period is one (1) calendar year from the beginning of the school term following the RIF.
- Confirm that CBA does not provide for a longer RIF recall period.
- During the RIF recall period, a RIF’ed ESP has recall rights to vacancies in the specific category of position from which the employee was RIF’ed or any other category of position they are qualified to hold.
  - A RIF’ed ESP who obtains additional qualifications during the RIF recall period (and notifies the district of the additional qualifications) is entitled to recall to any vacant positions they are qualified to hold.
  - If a RIF’ed ESP accepts a vacancy within one (1) calendar year from the beginning of the school term following the RIF, they maintain any rights accrued during their previous service with the district.

*Reminder:* A RIF’ed ESP must receive all earned compensation on or before the next regular pay date following their last day of employment.

Robbins Schwartz has prepared model ESP dismissal resolutions and notices; please contact us for more information.