

In Brief

February 2012

EDUCATIONAL SUPPORT STAFF RIF CHECKLIST

A reduction-in-force (“RIF”) of ESPs occurs whenever a district decides to decrease the number of ESPs employed by the school board or to discontinue a particular type of support service. A RIF also occurs when a district decides to reduce the hours of an ESP. A district is not obligated to wait until the end of a school year to conduct a RIF of ESPs.

Prior to implementing a RIF of ESPs, a district must carefully review its obligations under *The School Code*, the district’s collective bargaining agreement (“CBA”), and any district seniority/RIF policies. A RIF must be conducted in reverse order of seniority, unless an alternative method of layoff is provided in the CBA.

If a district determines that it is necessary to RIF ESPs, we recommend that the district take the following actions:

- *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.).
 - *Caution:* If a district selects an alternative method for the order of RIF pursuant to a collective bargaining agreement, the alternative sequence must be based upon objective criteria unrelated to an ESPs skills, ability, or performance.
 - 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.

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

RSNLT has prepared model ESP dismissal resolutions and notices. If you have any questions regarding support staff dismissals or RIFs, please contact the RSNLT Labor & Employment attorney you regularly consult with.

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