

In Brief

March 2012

SB 7 SEQUENCE OF DISMISSAL RIF LIST DEADLINE APPROACHES

This In Brief will highlight the upcoming deadlines related to reductions-in-force (“RIF”) of teachers. It specifically addresses the timelines and additional requirements a district may have under SB 7.

Timeline for the remainder of 2011-2012 school year:

75 days prior to last school day: The school district must submit sequence of honorable dismissal list to union.

45 days prior to last school day: The school district must adopt any resolutions for RIF dismissal of tenured and non-tenured teachers, and dismissal for cause or non-reemployment of non-tenured teachers.

May 10, 2012: The district’s board of education must adopt any job descriptions to be used to establish teacher qualifications for RIF dismissals for the 2012-2013 school year.

The Honorable Sequence of Dismissal (“SOD”) list:

Pre-SB 7 and “grandfathered” collective bargaining agreements:

Before SB 7, school districts were required by Section 5/24-12 of the School Code to prepare and post a teacher seniority list “categorized by positions, showing the length of continuing service of each teacher who is qualified to hold any such positions” by February of each year with copies to the union. Many school districts maintained a RIF/seniority policy which included a time frame for teachers to review their ranking on the teacher seniority list and submit any objections to the list.

School districts with “grandfathered” collective bargaining agreements based upon existing RIF seniority provisions which conflict with SB 7

requirements need not prepare an SOD list. Any such district should continue to prepare and post the teacher seniority list required by Section 5/24-12 of the School Code until expiration of the contract, or June 30, 2013, whichever occurs first.

Post-SB 7:

SOD List Requirements - SB 7 requires school districts to establish a “sequence of dismissal” list comprised of tenured and non-tenured teachers. SB 7 provides:

“Each teacher must be categorized into one or more positions for which the teacher is qualified to hold, based upon legal qualifications and any other qualifications established in a district or joint agreement job description, on or before the May 10 prior to the school year during which the sequence of dismissal is determined.”

Composition of SOD List - The SOD list should include tenured and non-tenured teachers categorized by positions, with teachers placed in RIF groups based upon their performance evaluation rating on their previous two performance evaluations (or three previous evaluations if two of the teacher’s previous three evaluations are “excellent”). SB 7 specifically refers to “teachers” who must be placed on the SOD list, and there is no reference to certificated administrators in SB 7.

Teacher Rankings on SOD List - Teachers in RIF group 2 must be ranked in order of their average performance evaluation rating. Teachers in RIF groups 3 and 4 must be ranked in order of their “length of continuing service with the school district” (i.e.,

seniority), unless the district has negotiated an alternative sequence of dismissal.

Part-time teachers - Prior to SB 7, tenured, part-time teachers were generally included on seniority lists for RIF purposes, while non-tenured, part-time teachers were not. Although SB 7 grants RIF seniority and RIF recall rights to both tenured and non-tenured teachers, we do not believe that it extended RIF seniority and RIF recall rights to part-time, non-tenured teachers. We note that Section 5/24-11 of the School Code limits tenure accrual rights to full-time probationary teachers. We believe, therefore, that only full-time, non-tenured and tenured teachers are entitled to SOD list placement and RIF and RIF recall rights under SB 7. We caution districts, however, that the ISBE has not issued any guidance whether or not part-time, non-tenured teachers are entitled to placement on the SOD list.

Dissemination of SOD List - SB 7 requires that the SOD list be distributed to the union at least 75 days before the end of the school term. SB 7 provides that a district may disclose a teacher's RIF group and ranking on the SOD list to the union "notwithstanding any laws prohibiting disclosure of such information". This provision clarifies that a district's disclosure of the SOD list does not violate the statutory prohibition regarding public disclosure of a teacher's performance evaluation.

School districts should consider the option of providing the SOD list to the union with teachers not identified by name on the list. School districts can list teachers by identification numbers and provide the union President with the information to identify teachers listed by identification number. The district should advise the union that an individual teacher's RIF group placement or ranking on the SOD list should not be distributed to or shared with other teachers, including teachers on the SB 7 joint committee.

Districts subject to SB 7 RIF requirements are only required to submit the SOD list to the union. There is no requirement to post the SOD list, or to maintain a teacher seniority list as previously required under the School Code.

SOD List Changes - SB 7 specifically permits districts to move non-tenured teachers from RIF group 1 to another RIF group after the 75-day period for submission of the SOD list to the union, but prior to

the 45-day period for notifying teachers of any RIF layoff.

Teacher Qualifications for SOD List - SB 7 provides that a teacher's qualifications for positions on the SOD list are based upon the teacher's legal qualifications and any other qualifications established in a district job description. Absent a job description for the teaching position, a teacher's qualifications are determined by the teacher's teaching certificate and legal qualifications. If the district maintains a job description for all teachers in a specific teaching position, then the job description qualifications are additional criteria for determining the teacher's qualifications for positions on the SOD list.

RIF Layoff Order - Under SB 7, the RIF layoff order and sequence of dismissal must be based upon the teacher's RIF group placement. The RIF sequence of dismissal begins with teachers in RIF group 1, then proceeds to group 2, 3, and group 4.

Note that the teacher RIF layoff sequence should begin by focusing on the teachers currently teaching in the position subject to RIF, rather than other teachers who are qualified for the position but not currently teaching in that assignment. If the lowest ranked teacher is qualified for other positions, the district should review the teacher's placement on the SOD list in those other positions. If the teacher is ranked higher than other teachers on the SOD list in those positions, the teacher has RIF bumping rights, and the lowest ranked teacher is subject to RIF layoff.

Creation of Job Descriptions:

Teacher job descriptions establishing a teacher's qualifications must be established on or before the May 10 prior to the school year during which the sequence of dismissal is determined. Thus, a district must establish its job descriptions by May 10 in order to use the job descriptions in categorizing teachers on the SOD list for the 2012-2013 school year.

While creation of a teacher job description and the qualifications for a teaching position are management rights not subject to bargaining, the union will likely contend that any new or additional qualifications constitute a change in teachers' hours, wages, or terms and conditions of employment. We recommend, therefore, that districts provide teacher job descriptions to the union and bargain the impact of any changes.

RSNLT has prepared model teacher non-reemployment and RIF dismissal resolutions and notices, and non-re-disclosure language related to the SOD list.

If you have any questions regarding teacher dismissals, the SOD list, RIF's, or creation of teacher

job descriptions, please contact Philip Gerner in the Chicago office or Susan Nicholas in the Decatur office.

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