

# *In Brief*

## **EDUCATIONAL SUPPORT STAFF RIF CHECKLIST**

School districts continue to confront financial and staffing challenges stemming from the COVID-19 pandemic. One of the options available for reducing costs is workforce reductions. While there may be staffing shortages in certain areas, a school district may have a need for workforce reductions in other areas. For example, if additional support staff were hired this school year to assist with COVID-19 mitigation and/or exclusion measures, school districts may find it necessary to implement a reduction-in-force (“RIF”) of its educational support personnel (“ESPs”), including paraprofessionals, administrative assistants, bus drivers, payroll clerks, and custodial and maintenance employees given the uncertainty of what the public health guidance related to COVID-19 will be for the 2022-2023 school year. That said, we also recognize that workforce reductions may be very limited or possibly not a suitable option given the substantial staffing shortages that many school districts continue to struggle with.

An ESP RIF occurs when a school district (1) decreases the number of ESPs employed by the school board; (2) reduces the number of hours worked by an ESP; or (3) discontinues some particular type of support service provided by the district. The first step a school district must take in making RIF decisions is to carefully consider its legal obligations under *The School Code*, RIF/seniority provisions in the district’s collective bargaining agreement(s) (“CBA”), and any applicable district seniority or RIF policies. RIFs must be conducted in reverse order of seniority, unless the applicable CBA covering the affected ESPs provides an alternative method for layoffs. Further, districts are not required to wait until the end of the 2021-2022 school year to conduct a RIF of ESPs.

If a district determines that its best course of action would be to implement a RIF layoff of ESPs, we recommend the following steps and actions be followed to ensure compliance with all legal obligations.

### **ESP RIF Steps and 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. The categories of position should be set forth in the ESP seniority list and supported by distinct job descriptions. Categories of position cannot be established for the first time when conducting the RIF.
- *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.).
  - 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 their 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 or reduce the hours of an ESP must be given at least thirty (30) days prior to the employee's last workday or reduction of hours.
    - Note, however, if the RIF or reduction of work hours is due to an unforeseen reduction in student population, only five (5) days' notice is required.
    - Note, also, 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. Further, if the affected employees are covered by a CBA, the contract with the third party must not be entered into or become effective during the term of the CBA.

- The RIF notice must include a statement of honorable dismissal and the reason 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 or ESP RIF policy 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 RIF dismissal resolutions and notices – please contact us for more information.