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## Refresher on Educational Support Staff RIF Procedures and Updates to Teacher Non-Renewal/RIF Deadlines

As we quickly approach the conclusion of the 2023-2024 school year, school districts are in the midst of planning for their teacher and educational support personnel staffing needs for the 2024-2025 school year and beyond. In assessing staffing options, some districts may determine it is necessary to implement a reduction-in-force of its educational support staff, a process governed by *The School Code*. In addition to planning for future staffing levels of educational support staff, school districts are, at the same time, also likely to be considering the potential non-reemployment of non-tenured teachers at the end of the 2023-2024 school year, or a reduction-in-force of teachers, statutory processes that were modified in August 2023 via Public Act 103-0500. In light of the myriad of procedural requirements imposed on school districts, we believe a brief refresher will assist districts plan for their future personnel and staffing needs.

### ESP RIF Steps and Actions

Pursuant to Section 10-23.5 of *The School Code*, school districts hold the right to implement a reduction-in-force (“RIF”) of educational support personnel (“ESPs”), including paraprofessionals, bus drivers, custodial and maintenance employees, payroll clerks, and administrative assistants. A RIF of ESPs occurs when an ESP employee is removed or dismissed or the hours they work are reduced as a result of a decision of the school board to (1) decrease the number of ESPs employed by the school board; or (2) discontinue some particular type of support service provided by the district. When making RIF decisions, a school district must first 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 an alternative method of layoff is provided in the applicable CBA covering the affected ESPs. Unlike RIFs of teachers, districts are not required to wait until the end of the 2023-2024 school year to conduct an ESP RIF.

If a school district determines it necessary to implement a RIF of ESPs, we recommend the following steps and actions be taken to ensure compliance with all legal obligations:

- *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 (e.g., 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 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, 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.

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## Modified Deadlines for Teacher Non-Renewal and RIF Notices

School districts need to also take into account the changes made via P.A. 103-0500 when considering the non-reemployment of non-tenured teachers and/or teacher RIFs during the 2023-2024 school year. *The School Code* previously required non-reemployment and RIF notices to be provided to impacted teachers no later than 45 days before the end of the school term. However, pursuant to P.A. 103-0500, these required notices now must be provided to teachers on or before April 15, 2024. If the notice is not received by the teacher on or before this date, the teacher will be re-employed for the following school term.

Robbins Schwartz also has prepared updated model teacher non-reemployment and RIF resolutions and notices – please contact us for more information.