

20 FREQUENTLY ASKED QUESTIONS REDUCTION IN FORCE (RIF)



“A school without a teacher is like a day without sunshine!”

PRESENTED BY:

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1. Is there any good news about RIF's?

Yes. The kids will be returning to school next fall and they will need their teachers.

2. I just got a RIF Notice. What do I do now?

Immediately demand a hearing by filing out the form provided by the District and return it to the District office. Call your Chapter President and call your local CTA Staff Representative.

3. What is a RIF?

RIF is reduction in force or layoff.

4. Why should I demand a RIF hearing?

Demanding a hearing tends to discourage Districts from proceeding with unnecessary layoffs. It also serves as a focal point for the Chapter to organize in support of the teachers' jobs. Most importantly, the teacher could save their job if the District has failed to follow the law, the seniority list or properly apply its own policy.

5. What gives the District the legal authority to RIF?

The RIF hearing and procedures are governed by *Education Code Section 44955, Section 44949* and numerous reported Appellate Court cases.

6. What are the key issues in a RIF hearing?

RIF's are primarily about procedure, seniority and credentials.

Procedure: Prior to March 15th, the school board must adopt a resolution authorizing a reduction in services or programs. The District must give the preliminary notice to the teachers by March 15th and the final notice by May 15th.

Seniority: The general rule is that Districts must RIF the teachers with the least seniority, allowing teachers with more seniority to retain their jobs.

Credentials: The credentials that matter are those that have actually been granted and filed with the County Office of Education and the District prior to March 15th.

7. Which type of teachers can the District cut or reduce?

Any program and any teacher can be cut as long as the District has correctly applied the law, the school board's resolution and the seniority list.

8. Can the District "Skip" junior teachers and layoff senior teachers?

The *Education Code* permits Districts to retain junior teachers and RIF senior teachers if the junior teacher has special skills and is employed in a position where those special skills are required to perform the job. For example, the District can retain special education teachers and bilingual teachers with a BCLAD credential with lower seniority and lay off senior teachers without those special skills. However, these junior teachers that are retained must actually be using those special skills in their assignment to be retained.

9. How is seniority determined?

Seniority is determined by the date of first paid service in a probationary position in the district. *Education Code Section 44845*. In other words, seniority commences on the day the teacher started to work for the District (i.e. paid in-service), not the day they signed the contract or were promised the job or when the students begin.

10. How is seniority determined among teachers who started to work on the same day?

The School Board is required to adopt criteria on the basis of needs of the District and students. The District must apply the criteria fairly and uniformly to determine seniority amongst those teachers that otherwise would have the same seniority date. *Education Code Section 44955* The criteria the District uses may appear to be strange and unusual, but they have the discretion to adopt the criteria. Districts frequently use a second credential, CLAD, and years of experience in other Districts, as tie-breaking criteria.

11. What are the legal grounds for laying off teachers?

Under *Education Code Section 44955*, the District can lay off teachers for a decline in average daily attendance (ADA) or a reduction in particular kinds of services that are offered. Almost all of the layoffs in recent years have been due to a reduction of a particular kind of service. A District can define a particular kind of service as almost anything from regular classroom teaching in the elementary schools to high school history classes, biology classes, music departments, or shop classes.

12. Do I have the right to an individual hearing, or is the hearing held as a group?

The Administrative Law Judge conducts one hearing for each school district conducting a RIF. If there are a large number of teachers subject to the RIF, the Administrative Law Judge will sometime divide up the hearing by issue and departments.

13. How is the hearing conducted?

The hearing is conducted as an informal trial before an Administrative Law Judge. Everything that is said at the hearing is taken down by a court reporter. The District's main witness is usually the Director of Human Resources. This witness will testify about the school board's resolution reducing services and the seniority list. Then the District's witness will testify that the District laid teachers off according to the seniority list. Then, it is then up to the teachers' attorney to establish that the District's procedures, seniority list and tie-breaking criteria were not followed. For example, evidence will be offered, if applicable, that the District did not list all of the credentials a teacher had or courses they could teach. Teachers usually only testify if necessary to their specific seniority date and the credentials that they have.

14. How does a teacher prepare for a RIF hearing?

The teacher must make sure the District has their correct seniority date and all of their credentials prior to March 15th. Teachers must review the tie breaking criteria and its application to them.

Do not allow your credentials to lapse. (even ones you are not using and may not be particularly fond of using) Make yourself as employable as possible with as many credentials, certificates, and classes as possible.

15. What should the Chapter do?

The Chapter leadership and the teachers who receive the RIF notices need to organize. Teachers need to attend Board meetings and make it clear to the District administration, the School Board, and the parents the impact of the District's proposed cuts. Make the point that education cuts never heal. Teachers have been able to convince school boards that their services are essential, even in difficult economic times.

16. Should I get my CLAD if I'm a senior teacher?

Yes. Why take a chance. We have seen Administrative Law Judges rule that senior teachers without CLAD could be laid off while junior teachers with the CLAD were retained in districts with a high ELL population.

17. What's the difference between a RIF and a non-re-election of a probationary contract?

Teachers who receive a notice of non-reelection do not have any re-employment rights or the right to a RIF hearing. Districts are entitled to give any probationary teacher a notice that their employment will be not to continue at the end of the school year prior to March 15th of their second probationary year. This notice can be given prior to June 30th in the first probationary year. *Education Code Section 44929.21* This notice does not require any cause. It is not defense to a non-reelection that the teacher's evaluations are excellent. However, Districts cannot use probationary non-reelection for financial reasons to enact program cuts.

18. Are temporary teachers entitled to a layoff hearing?

No. However, there is frequently an issue as to whether or not a teacher is a temporary teacher. If the District has misclassified the teacher as a temporary employee and they are actually a probationary employee, the teacher is entitled to a layoff hearing and, if one is not provided, would be entitled to reinstatement. This reinstatement could also greatly affect the seniority rights of other teachers.

19. What are my re-employment rights if I am laid off?

Permanent teachers have 39 months of re-employment rights pursuant to Education Code Section 44956. Probationary teachers have 24 months of re-employment rights. *Education Code Section 44957*

20. Am I entitled to Unemployment Insurance if I am laid-off?

Yes. Teachers should apply for Unemployment Insurance the day after school is out. Do not wait until July 1st. If school is out June 10th, apply June 11th. The Unemployment Insurance Application is made to the Employment Development Department-EDD. Their web page is www.edd.ca.gov. Their toll free telephone number is 1-800-300-5616.

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