

**PROTECTING YOUR DISTRICT IN TRYING TIMES:
HOW TO PROPERLY CONDUCT REDUCTIONS IN FORCE**

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Introduction

As Missouri public school districts are all too painfully aware, districts state-wide are facing budgetary problems, the likes of which have not been seen in some time. Districts are left with the incredibly difficult task of adjusting to budgetary changes from the Missouri Legislature on almost a daily basis.¹ With seemingly ever-shrinking budgets, more and more districts are looking at the possibility of having to reduce staff, in order to bring spending in line with funding. After making the significant decision to reduce staff, the next difficult question for school districts is: Now what? This article will explore the blue print for properly conducting reductions in force, in order for districts to stay in compliance with the applicable statute, while adjusting workforce levels during these trying times.

Reduction in Force Procedures

1. Application of Rules to Workforce

The process for conducting reductions in force ("RIF") is controlled by Missouri statute² and Board policies. It is important to note at the outset that while the statute is applicable to teachers, it can also be used on principals and contracted non-certified staff, if necessary. The first point for consideration is whether your circumstances qualify for use of a RIF. A RIF may be used in the following situations: 1) decrease in enrollment; 2) district reorganization; and 3) financial conditions in the district. If your district meets one of the three scenarios, then a RIF is authorized.

The next issue becomes which positions are subject to the RIF. Tenured teachers, as one might presume, are given priority over probationary teachers. Under the statute, no tenured teacher may be placed on leave, so long as there is a probationary teacher in a position

¹ Jessica Bock, *Wentzville Schools Lose Budget Battle*, St. Louis Post-Dispatch, April 9, 2010, available at: <http://www.stltoday.com/stltoday/news/stories.nsf/education/story/43FD7DC2675E10998625770000BBF5D?OpenDocument>; Jessica Bock, *School districts to share cuts evenly, Gov. Nixon asserts*, St. Louis Post-Dispatch, April 14, 2010, available at: <http://www.stltoday.com/stltoday/news/stories.nsf/education/story/BAAD9AD4936819FC862577050009F1DE?OpenDocument>.

² Missouri Revised Statute § 168.124

for which the tenured teacher is certified. It is critically important to note that the district must look at all areas of certification for the tenured teachers, and not simply the tenured teacher's current position.

For example, assume a district has a tenured teacher as the librarian, who is also certified in high school English. If the district wants to eliminate the librarian position, the librarian could not be placed on leave, unless, and until, all probationary high school English teachers have already been released. Under the RIF rules, the librarian would have the right to move to any other position for which she is qualified, prior to being placed on leave.

Between two tenured teachers, a district may rely upon its teacher evaluations to select which tenured teacher will be placed on leave. If the evaluations are the same, then the district must give priority to the tenured teacher with the most seniority. Districts should realize seniority only comes into play if all other factors are equal, meaning districts will be able to retain the best tenured teachers, as reflected in the teacher evaluations.

The rules permit a teacher to be placed on leave for three years, but this time period may also be extended by the board. No tenured teacher placed on leave will lose tenured status, and the teacher retains the right to be recalled if the district's circumstances improve. If a district decides to recall teachers it should do so in reverse order, meaning the last teacher placed on leave, should be the first returned. Any recalled teachers shall be placed in the same positions, if possible, or otherwise placed into positions for which they are qualified.

Shifting focus, the RIF procedures also may be utilized on probationary teachers, contracted non-certified staff, and contracted principals, if they must be placed on leave mid-contract. Ideally, the district will simply non-renew these employees, and avoid having to address the RIF procedures. Nonetheless, with the uncertainty of funding for next school year and beyond, it may become necessary to eliminate these contracted positions, after contracts have been issued to those employees. If so, a district may use the RIF procedures to avoid a mid-contract termination. While the statute is silent on the exact RIF procedure for such contracted employees, the best practice is to employ the same process as with the tenured teachers and focus on keeping the best employees, as demonstrated by the evaluations. When evaluating probationary teachers for possible RIF, districts must bear in mind the tenured teachers take precedent over any probationary teacher.

2. Process for Notifying Staff of RIF

Once a district has identified which employees will be placed on RIF leave, the next step is following the proper notice procedures. Under most, if not all, Board policies, certain due process steps are set out. Due process in this instance requires the district provide the

employee being placed on leave with a written statement of the reason for why the teacher is being placed on the involuntary leave.

Dependent on the policies the district uses, the written statement may also need to include a description of the procedure used to implement the RIF, along with identifying the information the board relied upon to make the RIF decisions. Some policies only require the district to provide this additional information, if it is requested by the teacher.

Finally, upon written request, any employee placed on involuntary leave may appear before the board to discuss the RIF and why the employee believes she was placed on leave in error. Significantly, the appearance before the board is **not** a due process hearing. The teacher has no right, under statute or policy, to have an attorney, present witnesses, or provide evidence. The employee merely has the right to appear and discuss the matter.

3. Cautionary Notes

To address a common question that is typically raised in these situations is how the district is to conduct its consideration of these difficult issues. Under the Missouri Sunshine Act, any board discussion of a possible RIF shall be held in open session, so long as the discussion is in regards to positions and not individuals. If the board is reviewing evaluations to determine between certain individuals, which one will be placed on leave, this individual-specific review can, and should, be held in closed session.

Also, a word of caution concerning placing teachers on involuntary leave mid-year, the RIF statute contains a provision, which may obligate the district to pay even these teachers some wage. This little known provision within the statute is very specific and only applies to teachers who are placed on leave because of adverse financial conditions in the district, caused by a decrease in funding. In those situations, districts must determine its funding balance for the previous school year. If the combined ending fund balance exceeds ten percent of expenditures in the teachers' fund, then the statute may require the district to pay a teacher placed on involuntary leave the greater of \$3,000, or her salary for the days worked prior to being placed on leave. As can be seen, this provision is unnecessarily complicated, but districts should, at a minimum, be aware of this issue and discuss the matter with counsel, prior to making any RIF decisions.

Conclusion

As districts struggle with the challenge of continuing to provide students with a quality education in difficult economic times, more and more districts may need to utilize the RIF process. In order to make this process more effective, we have created and provided with this article a flow chart on how the RIF process should be conducted. As with any time a district is

considering a change to an employee's status, district counsel should always be consulted; however, this article provides districts with a blue print for the proper implementation of the RIF process.