

Update 92 Policy Revisions

Update 92 Overview

Update 92 includes substantial revisions to the reduction in force (RIF) policies and incorporates provisions on several cost reduction options from Senate Bill (SB) 8 (First Called Session, 82nd Legislative Session). A new legally referenced policy, DEAB(LEGAL), includes the provisions from SB 8 on salary reductions and furloughs. Statutory provisions on the state salary schedule and related content have also been moved to this new policy from DEA(LEGAL). Another new legally referenced policy, DFF(LEGAL), includes statutory provisions on RIFs and several existing commissioner of education decisions. A district wishing to pursue a RIF based on financial exigency must meet the standards established by the commissioner and adopt a resolution declaring a financial exigency. As of Update 92, the commissioner has not yet published the standards for declaring a financial exigency. We expect to include these standards in CEA(LEGAL) at Update 93, which will be issued next spring.

The local policy content addressing the process for a RIF, previously at DFF(LOCAL), has been split into two new codes: DFFA(LOCAL), addressing RIFs based on a financial exigency, and DFFB(LOCAL), addressing RIFs based on a program change.

Despite the new statutory provisions addressing RIFs, the local school board still determines much of the RIF process, including deciding which positions, and ultimately which employees, will be affected by a RIF. TASB Legal Services advises that a district implementing a RIF should review its RIF policies, in consultation with the district's school attorney, and adopt any changes before beginning the RIF process by declaring a financial exigency or program change. Moreover, to avoid future legal disputes about the timing of policy changes, policy revisions would ideally be accomplished before new educator contracts for the 2012–13 school year are signed. A district that issues multiyear contracts should consult its attorney about the application of the RIF policy changes to those contracts.

The policies in Update 92 include revisions recommended for your consideration as you review the district's local RIF policies.

DFFA(LOCAL) – REDUCTION IN FORCE, FINANCIAL EXIGENCY

DFFA(LOCAL) focuses on available methods for reducing personnel costs and outlines the process for a RIF based on a financial exigency. Significant changes from text previously at DFF(LOCAL) include:

- A new introductory paragraph at PLAN TO REDUCE PERSONNEL COSTS explains that, if the superintendent determines a need to reduce personnel costs, he or she will develop a plan, in consultation with the board as necessary, that may include several methods to reduce costs. These methods would be in addition to the formal RIF processes outlined in DFFA(LOCAL) and DFFB(LOCAL). For example, the superintendent may pursue salary reductions, furloughs, and other means of reducing personnel costs, such as the reduction of personnel employed under employment arrangements not covered by the formal RIF processes. The inclusion of furloughs in this paragraph provides the district the necessary local policy, as required by SB 8 [see DEAB(LEGAL)], to implement a furlough program.
- Deletion of the DEFINITIONS of “financial exigency,” since the commissioner’s standards for declaring a financial exigency will be included in CEA(LEGAL) at Update 93, and “program change,” since this and other provisions on program change were moved to DFFB(LOCAL).
- Additional text at GENERAL GROUNDS to explain the process of declaring a financial exigency: the superintendent recommends to the board the declaration of a financial exigency. The board

- considers the recommendation and, if appropriate, adopts a resolution declaring a financial exigency.
- Restructuring of the text at EMPLOYMENT AREAS to outline the steps for identifying the affected employment areas. The superintendent begins this process by recommending to the board the employment areas to be affected, including whether any employment areas should be combined or adjusted and/or should be applied on a districtwide or campus-wide basis. Based on the superintendent's recommendations, the board determines the employment areas to be affected. In addition, several changes are recommended to the examples of employment areas included in the policy:
 - Item 2, addressing secondary grades, levels, subjects, departments, or programs, has been adjusted to include a reference to "career and technical education subjects."
 - Item 3, addressing special programs, has been adjusted to include special education "and related services."
 - Item 4, "Disciplinary alternative education programs (DAEPs) and other discipline management programs," has been added.
 - Item 12, "Programs funded by state or federal grants or other dedicated funding," has been added.
 - Several changes at CRITERIA FOR DECISION, including:
 - A reminder that the superintendent applies the listed criteria to employees within each affected employment area only if the RIF will not result in the nonrenewal or discharge of all staff in the affected employment area.
 - Renaming the "certification" criterion to "qualifications for current or projected assignment." This criterion will continue to include consideration of certification, endorsement, and highly qualified status related to the current or projected assignment but has been expanded to also include bilingual certification, licensure, and/or specialized or advanced content-specific training or skills.
 - An expansion of the "performance" criterion to clarify that it includes consideration of the most recent formal appraisal and any other written evaluative information, including disciplinary information, from the last 36 months. This could include, for example, documentation that a teacher was placed on a growth plan.
 - Addition of an "extra duties" criterion to include consideration of whether an employee is currently performing an extra-duty assignment, such as department or grade-level chair, band director, athletic coach, or activity sponsor.
 - Reordering of the criteria, so that the "seniority" criterion is applied last.
 - Clarification at SUPERINTENDENT RECOMMENDATION to reflect the next step in the RIF process, which is for the superintendent to recommend to the board the nonrenewal or discharge of identified employees within the affected employment areas.
 - A new margin note, BOARD VOTE, to explain that the board will then vote on which employees will be proposed for nonrenewal or discharge. Also, new text at this margin note outlines the board's options for determining which type of hearing an employee is entitled to if the employee requests a hearing. For a proposed nonrenewal, the policy directs the board to consider DFBB(LOCAL), which provides boards in larger districts the option of designating an

attorney to hold the hearing. [See policy DFBB in Update 91.] For a proposed discharge, the board must decide whether the hearing will be held by an independent hearing examiner or will be a local hearing by the board or, if applicable, a board designee.

- Additional text specifying that the NOTICE given to the employee shall include the type of hearing the employee may request.
- At CONSIDERATION FOR AVAILABLE POSITIONS, a clarification of the time period during which the employee must be considered for open positions. An employee who applies for an open position must be offered the position in accordance with the policy provisions until final action by the board to end the employee's contract, if the employee does not request a hearing, and until the date of the evidentiary hearing, if the employee requests a hearing.
- At DISCHARGE: CHAPTER 21 CONTRACT, a reiteration that the employee may request a hearing of the type determined by the board and specified in the notice of proposed discharge.
- New provisions explaining that, regardless of whether the employee has requested a hearing, the board must take FINAL ACTION on the proposed nonrenewal or discharge in accordance with relevant timelines.

DFFB(LOCAL) – REDUCTION IN FORCE, PROGRAM CHANGE

DFFB(LOCAL) provides recommended text for a RIF based on a program change. Although the process for a RIF based on a program change is very similar to a RIF based on financial exigency, a separate policy addressing program change is recommended:

- Hearing decisions indicate that a program change constitutes sufficient reason for nonrenewal of a term contract, but it is not clear whether a program change may be good cause for midyear discharge of an employee's contract. For this reason, DFFB(LOCAL) does not include any reference to discharge.
- The hearing process is simpler for a program change. An employee who requests a hearing after receiving a notice of proposed nonrenewal is entitled to a hearing in accordance with DFBB, which addresses nonrenewal hearings.

In moving the provisions addressing program change to DFFB(LOCAL), the list of situations that could result in the need for a program change was moved from the DEFINITION of program change to APPLICABILITY and adjusted slightly to include "a change in enrollment." Except for these changes and the differences in the applicability and hearing process described above, the remaining policy text mirrors that at DFFA(LOCAL), addressing financial exigency.

DFFC(LOCAL) – REDUCTION IN FORCE, CONTINUING CONTRACTS

SB 8 clarified that a reduction of employees on continuing contracts must be based primarily on teacher appraisals in the specific teaching fields and other criteria as determined by the board. Because the new provisions reference criteria as determined by the board, it is recommended that districts expecting to pursue a reduction of employees on continuing contracts have board-adopted policy on the process the district will use in determining which employees will be terminated. (Please note that a continuing contract differs from a single year or multiple year term contract in that a continuing contract is comparable to "tenure" and is for an indefinite length of time.)

DFFC(LOCAL), addressing reduction of employees on continuing contracts, is not being issued as part of this update because it is not expected that many districts will pursue reductions of employees on continuing contracts. Moreover, the reduction of employees on continuing contracts is a relatively untested area, suggesting a cautious approach. If you wish to review sample text on reduction of personnel on continuing contracts, please contact your policy consultant at 800-580-7529 and work with the district's attorney to develop appropriate local policy provisions for your district.

Adoption of Update 92

We recommend that you consult with the district's attorney in revising the district's RIF policies as part of Update 92. If you have questions concerning the recommended revisions described above or have changes to the recommended text, please contact your policy consultant at 800-580-7529. If you have legal questions, contact TASB Legal Services at 800-580-5345 or the district's attorney. **Be sure to notify Policy Service after your district adopts the Update 92 local policies.**

Additional Resources

Additional TASB resources on RIFs, other options to reduce personnel costs, and SB 8 are provided by TASB HR Services at http://www.tasb.org/services/hr_services/cost_cutting.aspx and by TASB Legal Services through School Law eSource at http://www.tasb.org/services/legal/esource/personnel/documents/sb8_flexibilities_reducing_costs_july11.pdf.