

## 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](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](http://www.tasb.org/services/legal/esource/personnel/documents/sb8_flexibilities_reducing_costs_july11.pdf).

Instruction Sheet  
TASB Localized Policy Manual Update 92

District      Celina ISD

<b>Code</b>		<b>Action To Be Taken</b>	<b>Note</b>
D	(LEGAL)	Replace table of contents	Revised table of contents
DEA	(LEGAL)	Replace policy	Revised policy
DEAB	(LEGAL)	ADD policy	See explanatory note
DFF	(LEGAL)	ADD policy	See explanatory note
DFF	(LOCAL)	DELETE policy	See explanatory note
DFFA	(LOCAL)	ADD policy	See explanatory note
DFFB	(LOCAL)	ADD policy	See explanatory note

# Explanatory Notes

## TASB Localized Policy Manual Update 92

District: Celina ISD

D (LEGAL) PERSONNEL

The D section table of contents has been revised to reflect the renaming of policy code DEA, now titled Wage and Hour Laws, and the addition of DEAB, Salaries and Wages. Three other new codes have been added in the DFF series that address reduction in force due to financial exigency (DFFA), as a result of program change (DFFB), and for continuing contracts (DFFC).

DEA (LEGAL) COMPENSATION AND BENEFITS  
WAGE AND HOUR LAWS

Update 92 includes reorganization of the DEA policy series addressing compensation and benefits. Content on the Fair Labor Standards Act will remain at DEA. General content on salaries and wages has been moved to DEAB, Salaries and Wages.

The reorganization also resulted in the following changes to this policy:

- Deletion of several expired or repealed provisions, including provisions addressing salaries for the 2009–10 and 2010–11 school years.
- Deletion of provisions on the allotment of funds for support staff health-care supplements, since this one-time pay mandate, which is still in law, has been incorporated into pay practices.
- Revision of the margin note addressing breaks for employees to express breast milk to BREAKS FOR NURSING MOTHERS to better reflect the statutory provisions.
- Addition of an existing statutory provision on the PAYDAY LAW EXEMPTION for school districts. See page 5.

DEAB (LEGAL) COMPENSATION AND BENEFITS  
SALARIES AND WAGES

DEAB includes several provisions moved from DEA without revision: minimum salary schedule, employees formerly on career ladder, pay increases, designation of compensation for benefits, TRS contributions and surcharges, and the earned income tax credit.

On page 4, new material has been added from a 2009 commissioner of education decision addressing a district's authority for DECREASING PAY of an educator. A reduction is permissible if the district gives formal and specific warning to the educator of the salary reduction when the educator still has the opportunity to unilaterally resign from his or her contract.

New provisions have also been added from SB 8 (First Called Session, 82<sup>nd</sup> Legislative Session) addressing salary reductions and furloughs. When a district implements WIDESPREAD SALARY REDUCTIONS for teachers based on district financial conditions, the district must also reduce the salaries of administrators or other professional employees in a proportionate amount.

# Explanatory Notes

## TASB Localized Policy Manual Update 92

Districts also now have the option of implementing a FURLOUGH PROGRAM in accordance with the statutory requirements and district policy. The district may reduce the number of days of service required by up to six days if the commissioner certifies that the district will receive less state and local funding for the year than was provided to the district during the 2010–11 school year. The commissioner must certify a decrease in FUNDING LEVELS by July 1 of each year. A new recommended local policy provision at DFFA provides authorization for the district to pursue a furlough. See the explanatory note for DFFA(LOCAL), below. A board's decision to implement a furlough is not subject to appeal.

For either a widespread reduction in salaries or a furlough, the district must also follow a specific process outlined in statute to implement the programs. The SALARY REDUCTION/FURLOUGH PROCESS requires the district to include the involvement of the district's professional staff in development of the program and to give district employees an opportunity to comment at a public meeting. At the PUBLIC MEETING, the district must provide information about:

- The options the district considered for managing the district's financial resources,
- How the program will limit the number of staff who will lose their jobs, and
- The district's local option of providing a residence homestead exemption.

### DFF (LEGAL) TERMINATION OF EMPLOYMENT REDUCTION IN FORCE

This new legally referenced policy on reduction in force (RIF) includes existing commissioner of education decisions and statutory provisions, as well as new provisions from SB 8:

- The commissioner's decision in *Stidham v. Anahuac Independent School District* explains that the general BOARD AUTHORITY to govern the district includes making responsible choices in managing the finances and personnel of the district. *Wasserman v. Nederland Independent School District*, another commissioner's decision, clarifies that a district is free to change its organizational structure to increase efficiency.
- The commissioner's decision in *Amerson v. Houston Independent School District* outlines when an employee whose position was eliminated due to a RIF must be given CONSIDERATION FOR OPEN POSITIONS.
- Specific provisions on each type of contract describe when and under what circumstances an employee may be discharged and the board's options for the type of hearing to provide if requested by the employee.
- Repeated from CEA(LEGAL) is the requirement for a board to adopt a resolution declaring a FINANCIAL EXIGENCY. Also at this margin note is a provision explaining that the board can decide whether to use the independent hearing examiner process for terminations based on financial exigency.
- A provision from the federal WARN ACT clarifies that a school district is not subject to the Act's notice requirements for mass layoffs.

### DFF (LOCAL) TERMINATION OF EMPLOYMENT REDUCTION IN FORCE

We have revised and moved local policy provisions addressing reduction in force due to financial exigency and program change to DFFA and DFFB, respectively.

# Explanatory Notes

## TASB Localized Policy Manual Update 92

DFFA (LOCAL) REDUCTION IN FORCE  
FINANCIAL EXIGENCY

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

DFFA(LOCAL) focuses on available methods of reducing personnel costs and outlines the process for a RIF based on a financial exigency. Because of the extensive nature of the changes from text previously at DFF(LOCAL), we have included with Update 92 a separate "Update 92 Policy Revisions" document explaining the changes in detail.

DFFB (LOCAL) REDUCTION IN FORCE  
PROGRAM CHANGE

DFFB(LOCAL) provides recommended text for a RIF based on a program change. See the "Update 92 Policy Revisions" document included with the update for a detailed explanation of the changes from text previously at DFF(LOCAL).



**Please Note:** This manual does not have policies in all codes. The coding structure is common to all TASB manuals and is designed to accommodate expansion of both (LEGAL) and (LOCAL) policy topics and administrative regulations.

## SECTION D: PERSONNEL

DA	EMPLOYMENT OBJECTIVES
DAA	Equal Employment Opportunity
DAB	Objective Criteria for Personnel Decisions
DB	EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
DBA	Credentials and Records
DBAA	Criminal History and Credit Reports
DBB	Medical Examinations and Communicable Diseases
DBD	Conflict of Interest
DBE	Nepotism
DC	EMPLOYMENT PRACTICES
DCA	Probationary Contracts
DCB	Term Contracts
DCC	Continuing Contracts
DCD	At-Will Employment
DCE	Other Types of Contracts
DE	COMPENSATION AND BENEFITS
DEA	Wage and Hour Laws
DEAA	Incentives and Stipends
DEAB	Salaries and Wages
DEB	Fringe Benefits
DEC	Leaves and Absences
DECA	Family and Medical Leave
DECB	Military Leave
DED	Vacations and Holidays
DEE	Expense Reimbursement
DEG	Retirement
DF	TERMINATION OF EMPLOYMENT
DFA	Probationary Contracts
DFAA	Suspension/Termination During Contract
DFAB	Termination at End of Year
DFAC	Return To Probationary Status
DFB	Term Contracts
DFBA	Suspension/Termination During Contract
DFBB	Nonrenewal
DFC	Continuing Contracts
DFCA	Suspension/Termination
DFD	Hearings Before Hearing Examiner
DFE	Resignation
DFF	Reduction in Force
DFFA	Financial Exigency

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## **SECTION D: PERSONNEL**

DFFB	Program Change
DFFC	Continuing Contracts
DG	<b>EMPLOYEE RIGHTS AND PRIVILEGES</b>
DGA	Freedom of Association
DGB	Personnel-Management Relations
DGBA	Employee Complaints/Grievances
DGC	Immunity
DH	<b>EMPLOYEE STANDARDS OF CONDUCT</b>
DHA	Gifts and Solicitations
DHE	Searches and Alcohol/Drug Testing
DI	<b>EMPLOYEE WELFARE</b>
DIA	Freedom from Discrimination, Harassment, and Retaliation
DJ	<b>EMPLOYEE RECOGNITION AND AWARDS</b>
DK	<b>ASSIGNMENT AND SCHEDULES</b>
DL	<b>WORK LOAD</b>
DLA	Staff Meetings
DLB	Required Plans and Reports
DM	<b>PROFESSIONAL DEVELOPMENT</b>
DMA	Required Staff Development
DMB	Career Advancement
DMC	Continuing Professional Education
DMD	Professional Meetings and Visitations
DME	Research and Publication
DN	<b>PERFORMANCE APPRAISAL</b>
DNA	Evaluation of Teachers
DNB	Evaluation of Other Professional Employees
DP	<b>PERSONNEL POSITIONS</b>
DPB	Substitute, Temporary, and Part-Time Positions

COMPENSATION AND BENEFITS  
WAGE AND HOUR LAWS

DEA  
(LEGAL)

FAIR LABOR  
STANDARDS ACT

MINIMUM WAGE  
AND OVERTIME

Unless an exemption applies, the District shall pay each of its employees not less than minimum wage for all hours worked. 29 U.S.C. 206(a)(1)

Unless an exemption applies, the District shall pay an employee not less than one and one-half times the employee's regular rate of pay for all hours worked in excess of forty in any workweek. 29 U.S.C. 207(a)(1); 29 CFR pt. 778

BREAKS FOR  
NONEXEMPT  
EMPLOYEES

Rest periods of up to 20 minutes must be counted as hours worked. Coffee breaks or time for snacks are rest periods, not meal periods. 29 CFR 785.18

Bona fide meal periods of 30 minutes or more are not counted as hours worked if the employee is completely relieved from duty. The employee is not relieved from duty if the employee is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his or her desk is working while eating. It is not necessary that an employee be permitted to leave the premises if the employee is otherwise completely freed from duties during the meal period. 29 CFR 785.19

BREAKS FOR  
NURSING  
MOTHERS

The District shall provide a nonexempt employee a reasonable break to express breast milk, each time the employee needs to express breast milk for her nursing child, for one year after the child's birth. The District shall provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

The District is not required to compensate the employee receiving reasonable break time for any work time spent for such purpose.

A district that employs fewer than 50 employees is not subject to these requirements if the requirements would impose an undue hardship by causing the District significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the District.

29 U.S.C. 207(r)

COMPENSATORY  
TIME

ACCRUAL

Nonexempt employees may receive, in lieu of overtime compensation, compensatory time off at a rate of not less than one and one-half hours for each hour of overtime work, pursuant to an agreement or understanding arrived at between the employer and employee before the performance of the work. Such agreement or understanding may be informal, such as when an employee works overtime knowing that the employer rewards overtime with compensatory time.

COMPENSATION AND BENEFITS  
WAGE AND HOUR LAWS

DEA  
(LEGAL)

	<p>An employee may accrue not more than 240 hours of compensatory time. If the employee's overtime work included a public safety activity, an emergency response activity, or a seasonal activity, the employee may accrue not more than 480 hours of compensatory time. After the employee has reached these limits, the employee shall be paid overtime compensation for additional overtime work.</p>
PAYMENT FOR ACCRUED TIME	<p>Compensation paid to an employee for accrued compensatory time shall be paid at the regular rate earned by the employee at the time of payment. An employee who has accrued compensatory time off shall be paid for any unused compensatory time upon separation from employment at the rates set forth at 29 U.S.C. 207(o)(4).</p>
USE	<p>An employee who has requested the use of compensatory time shall be permitted to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the District.</p> <p>The Fair Labor Standards Act does not prohibit the District from compelling the use of accrued compensatory time.</p> <p><i>29 U.S.C. 207(o); Christensen v. Harris County, 529 U.S. 576 (2000); Houston Police Officers' Union v. City of Houston, 330 F.3d 298 (5th Cir. 2003)</i></p>
EXEMPT EMPLOYEES	<p>The minimum wage and overtime provisions do not apply to any employee employed in a bona fide executive, administrative, or professional capacity. 29 U.S.C. 213(a)(1)</p>
ACADEMIC ADMINISTRATORS	<p>The term "employee employed in a bona fide administrative capacity" includes an employee:</p> <ol style="list-style-type: none"><li>1. Compensated for services on a salary or fee basis at a rate of not less than \$455 per week exclusive of board, lodging, or other facilities, or on a salary basis that is at least equal to the entrance salary for teachers in the District by which employed; and</li><li>2. Whose primary duty is performing administrative functions directly related to academic instruction or training in the District or department or subdivision thereof.</li></ol> <p>"Performing administrative functions directly related to academic instruction or training" means work related to the academic operations and functions in a school rather than to administration along the lines of general business operations. Such academic administrative functions include operations directly in the field of education. Jobs relating to areas outside the educational field are not within the definition of academic administration.</p>

COMPENSATION AND BENEFITS  
WAGE AND HOUR LAWS

DEA  
(LEGAL)

Employees engaged in academic administrative functions include:

1. The Superintendent or other head of an elementary or secondary school system, and any assistants, responsible for administration of such matters as curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students, establishing and maintaining academic and grading standards, and other aspects of the teaching program;
2. The principal and any vice principals responsible for the operation of an elementary or secondary school;
3. Academic counselors who perform work such as administering school testing programs, assisting students with academic problems and advising students concerning degree requirements; and
4. Other employees with similar responsibilities.

Jobs relating to building management and maintenance, jobs relating to the health of the students, and academic staff such as social workers, psychologists, lunch room managers, or dietitians do not perform academic administrative functions, although such employees may qualify for another exemption.

*29 CFR 541.204*

SALARY BASIS

To qualify as an exempt executive, administrative, or professional employee, the employee must be compensated on a salary basis, unless the employee is a teacher. Subject to the exceptions listed in the rule, an employee must receive the full salary for any week in which the employee performs any work, without regard to the number of days or hours worked. A district that makes improper deductions from salary shall lose the exemption if the facts demonstrate that the District did not intend to pay exempt employees on a salary basis. *29 CFR 541.600, .602(a), .603*

PARTIAL-DAY  
DEDUCTIONS

A District employee who otherwise meets the salary basis requirements shall not be disqualified from exemption on the basis that the employee is paid according to a pay system established by statute, ordinance, or regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and which requires the employee's pay to be reduced or the employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one workday when accrued leave is not used by an employee because:

COMPENSATION AND BENEFITS  
WAGE AND HOUR LAWS

DEA  
(LEGAL)

1. Permission for its use has not been sought or has been sought and denied;
2. Accrued leave has been exhausted; or
3. The employee chooses to use leave without pay.

Deductions from the pay of a District employee for absences due to a budget-required furlough shall not disqualify the employee from being paid on a salary basis except in the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced.

*29 CFR 541.710*

SAFE HARBOR  
POLICY

If the District has a clearly communicated policy that prohibits improper pay deductions and includes a complaint mechanism, reimburses employees for any improper deductions, and makes a good faith commitment to comply in the future, the District will not lose the deduction unless the District willfully violates the policy by continuing to make improper deductions after receiving employee complaints.

The best evidence of a clearly communicated policy is a written policy that was distributed to employees before the improper pay deductions by, for example, providing a copy of the policy to employees upon hire, publishing the policy in an employee handbook, or publishing the policy on the District's intranet.

*29 CFR 541.603(d)*

TEACHERS

The term "employee employed in a bona fide professional capacity" includes any employee with a primary duty of teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an elementary or secondary school system by which the employee is employed. The salary basis requirements do not apply to teaching professionals.

Exempt teachers include:

1. Regular academic teachers;
2. Teachers of kindergarten or nursery school pupils;
3. Teachers of gifted or disabled children;
4. Teachers of skilled and semi-skilled trades and occupations;
5. Teachers engaged in automobile driving instruction;
6. Home economics teachers; and

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WAGE AND HOUR LAWS

DEA  
(LEGAL)

7. Vocal or instrumental music instructors.

Those faculty members who are engaged as teachers but also spend a considerable amount of their time in extracurricular activities such as coaching athletic teams or acting as moderators or advisors in such areas as drama, speech, debate, or journalism are engaged in teaching. Such activities are a recognized part of the schools' responsibility in contributing to the educational development of the student.

The possession of an elementary or secondary teacher's certificate provides a clear means of identifying the individuals contemplated as being within the scope of the exemption for teaching professionals. Teachers who possess a teaching certificate qualify for the exemption regardless of the terminology (e.g., permanent, conditional, standard, provisional, temporary, emergency, or unlimited) used by the state to refer to different kinds of certificates. However, a teacher who is not certified may be considered for exemption, provided that such individual is employed as a teacher by the employing school or school system.

*29 CFR 541.303*

WAGE AND HOUR  
RECORDS

The District shall maintain and preserve payroll or other records for nonexempt employees containing the information required by the regulations under the Fair Labor Standards Act. *29 CFR 516.2(a)*

PAYDAY LAW  
EXEMPTION

The Texas Payday Law does not apply to the state or a political subdivision. *Labor Code 61.003*

COMPENSATION AND BENEFITS  
SALARIES AND WAGES

DEAB  
(LEGAL)

MINIMUM SALARY  
SCHEDULE —  
EDUCATORS

The District shall pay each classroom teacher, full-time librarian, full-time counselor, or full-time nurse not less than the minimum monthly salary, based on the employee's level of experience, specified in Education Code 21.402 and 19 Administrative Code 153.1021.

DEFINITIONS

'CLASSROOM  
TEACHER'

"Classroom teacher" means an educator who teaches an average of at least four hours per day in an academic or career and technology instructional setting, focusing on the delivery of the Texas Essential Knowledge and Skills, and who holds the relevant certificate from the State Board for Educator Certification (SBEC). Although noninstructional duties do not qualify as teaching, necessary functions related to the educator's instructional assignment, such as instructional planning and transition between instructional periods, should be applied to creditable classroom time.

'LIBRARIAN'

"Librarian" means an educator who provides full-time library services and holds the relevant certificate from SBEC.

'COUNSELOR'

"Counselor" means an educator who provides full-time counseling and guidance services and holds the relevant certificate from SBEC.

'NURSE'

"Nurse" means an educator employed to provide full-time nursing and health-care services and who meets all the requirements to practice as a registered nurse (RN) pursuant to the Nursing Practice Act and the rules and regulations relating to professional nurse education, licensure, and practice and has been issued a license to practice professional nursing in Texas.

'FULL-TIME'

"Full-time" means contracted employment for at least ten months (187 days) for 100 percent of the school day, in accordance with the definitions of school day in Education Code 25.082, employment contract in Education Code 21.002, and school year in Education Code 25.081.

*19 TAC 153.1022(a)*

PLACEMENT ON  
SALARY SCHEDULE

The Commissioner's rules determine the experience for which a teacher, librarian, counselor, or nurse is to be given credit in placing the teacher, librarian, counselor, or nurse on the minimum salary schedule. The District shall credit the teacher, librarian, counselor, or nurse for each year of experience, whether or not the years are consecutive. *Education Code 21.402(a), .403(c); 19 TAC 153.1022*

EMPLOYEES  
FORMERLY ON  
CAREER LADDER

A teacher or librarian who received a career ladder supplement on August 31, 1993, is entitled to at least the same gross monthly salary the teacher or librarian received for the 1994-95 school year as long as the teacher or librarian is employed by the same district.



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In addition, a teacher or librarian who was on level two or three of the career ladder is entitled, as long as he or she is employed by the same district, to placement on the minimum salary schedule according to the guidelines at Education Code 21.403(d).

*Education Code 21.402(f), .403(d)*

PAY INCREASES

The District shall not grant any extra compensation, fee, or allowance to a public officer, agent, servant, or contractor after service has been rendered or a contract entered into and performed in whole or in part. *Tex. Const. Art. III, Sec. 53*

SALARY ADVANCES  
AND LOANS

The District shall not lend its credit or gratuitously grant public money or things of value in aid of any individual, association, or corporation. *Tex. Const. Art. III, Sec. 52; Brazoria County v. Perry, 537 S.W.2d 89 (Tex. Civ. App.—Houston [1st Dist.] 1976, no writ)*

DESIGNATION OF  
COMPENSATION FOR  
BENEFITS

An employee who is covered by a cafeteria plan or who is eligible to pay health-care premiums through a premium conversion plan may elect to designate a portion of the employee's compensation to be used as health-care supplementation. The amount designated may not exceed the amount permitted under federal law. *Education Code 22.103*

USE

An employee may use the compensation designated for health-care supplementation for any employee benefit, including depositing the designated amount into a cafeteria plan in which the employee is enrolled or using the designated amount for health-care premiums through a premium conversion plan. *Education Code 22.106*

ANNUAL ELECTION

Each school year, an active employee must elect in writing whether to designate a portion of the employee's compensation to be used as health-care supplementation. The election must be made at the same time that the employee elects to participate in a cafeteria plan, if applicable. *Education Code 22.105*

DEFINITION

For purposes of the designation of compensation as health-care supplementation, "employee" means an active, contributing member of TRS who:

1. Is employed by the District;
2. Is not a retiree eligible for coverage under Insurance Code Chapter 1575 (retiree group health benefits);
3. Is not eligible for coverage by a group insurance plan under Insurance Code Chapter 1551 (state employee health insurance) or Chapter 1601 (state university employee health insurance); and

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4. Is not an individual performing personal services for the District as an independent contractor.

*Education Code 22.101(2)*

TRS CONTRIBUTIONS  
FOR NEW HIRES

During each fiscal year, the District shall pay an amount equal to the state contribution rate, as established by the General Appropriations Act for the fiscal year, applied to the aggregate compensation of new members of the retirement system, during their first 90 days of employment.

"New member" means a person first employed on or after September 1, 2005, including a former member who withdrew retirement contributions under Government Code 822.003 and is reemployed on or after September 1, 2005.

On a monthly basis, the District shall:

1. Certify to TRS the total amount of salary paid during the first 90 days of employment of a new member and the total amount of employer payments under this section for the payroll periods; and
2. Retain information, as determined by TRS, sufficient to allow administration of this section, including information for each employee showing the applicable salary as well as aggregate compensation for the first 90 days of employment for new employees.

The District must remit the amount required under this section to TRS at the same time the District remits the member's contribution. In computing the amount required to be remitted, the District shall include compensation paid to an employee for the entire pay period that contains the 90th calendar day of new employment.

*Gov't Code 825.4041*

TRS SURCHARGE FOR  
REHIRED RETIREES

TRS FUND  
CONTRIBUTIONS

During each payroll period for which a retiree is reported, the District shall contribute to the retirement system for each retiree reported an amount based on the retiree's salary equal to the sum of:

1. The current contribution amount that would be contributed by the retiree if the retiree were an active, contributing member; and
2. The current contribution amount authorized by the General Appropriations Act that the state would contribute for that retiree if the retiree were an active, contributing member.

COMPENSATION AND BENEFITS  
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HEALTH  
INSURANCE  
CONTRIBUTIONS

In addition, each payroll period and for each rehired retiree who is enrolled in TRS Care (retiree group health insurance), the District shall contribute to the TRS Care trust fund any difference between the amount the retiree is required to pay for the retiree and any enrolled dependents to participate in the group program and the full cost of the retiree's and enrolled dependents' participation in the group program, as determined by TRS. If more than one employer reports the retiree to TRS during a month, the amount of the required payment shall be prorated among employers.

EXCEPTION

The District is not required to contribute these amounts for a retiree who retired from the retirement system before September 1, 2005.

*Gov't Code 825.4092; Insurance Code 1575.204*

NOTICE REGARDING  
EARNED INCOME TAX  
CREDIT

Not later than March 1 of each year, the District shall provide employees with information regarding general eligibility requirements for the federal earned income tax credit by one of the following means:

1. In person;
2. Electronically at the employee's last known e-mail address;
3. Through a flyer included, in writing or electronically, as a payroll stuffer; or
4. By first class mail to the employee's last known address.

The District may not satisfy this requirement solely by posting information in the workplace.

In addition, the District may provide employees with IRS publications and forms, or information prepared by the comptroller, relating to the earned income tax credit.

*Labor Code 104.001-.003*

DECREASING PAY

The Commissioner has held that a district may reduce educator compensation if it gives sufficient warning of a possible reduction in pay when educators can still unilaterally resign from their contracts. A sufficient warning must be both formal enough and specific enough to give educators a meaningful opportunity to decide whether to continue employment with the District. *Brajenovich v. Alief Indep. Sch. Dist., Tex. Comm'r of Educ. Decision No. 021-R10-1106 (2009)*

WIDESPREAD  
SALARY  
REDUCTIONS

The following provisions apply only to a widespread reduction in the amount of annual salaries paid to classroom teachers in the District based primarily on District financial conditions rather than on teacher performance.

COMPENSATION AND BENEFITS  
SALARIES AND WAGES

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For any school year in which the District has reduced the amount of the annual salaries paid to classroom teachers from the amount paid for the preceding school year, the District shall reduce the amount of the annual salary paid to each District administrator or other professional employee by a percent or fraction of a percent that is equal to the average percent or fraction of a percent by which teacher salaries have been reduced.

*Education Code 21.4023*

The Board may not reduce salaries until the District has complied with the requirements at Education Code 21.4022 [see SALARY REDUCTION/FURLOUGH PROCESS, below]. *Education Code 21.4022*

FURLOUGH  
PROGRAM

In accordance with District policy [see DFFA(LOCAL)], the Board may implement a furlough program and reduce the number of days of service otherwise required under Education Code 21.401 [see DC] by not more than six days of service during a school year if the Commissioner certifies that the District will be provided with less state and local funding for that year than was provided to the District for the 2010–11 school year. *Education Code 21.4021(a)*

The Board may not implement a furlough program until the District has complied with the requirements at Education Code 21.4022 [see SALARY REDUCTION/FURLOUGH PROCESS, below]. *Education Code 21.4022*

FUNDING LEVELS

Not later than July 1 of each year, the Commissioner shall determine whether the estimated amount of state and local funding per student in weighted average daily attendance to be provided to the District under the Foundation School Program for maintenance and operations for the following school year is less than the amount provided to the District for the 2010–11 school year. If the amount estimated to be provided is less, the Commissioner shall certify the percentage decrease in funding to be provided to the District. *Education Code 42.009*

SALARIES

Notwithstanding Education Code 21.402 (minimum salary schedule), the Board may reduce the salary of an employee who is furloughed in proportion to the number of days by which service is reduced. Any reduction in the amount of the annual salary must be equally distributed over the course of the employee's current contract with the District.

FURLOUGH DAYS

A furlough program must subject all contract personnel to the same number of furlough days. An educator may not be furloughed on a day that is included in the number of days of instruction required under Education Code 25.081 [see EB]. Implementation of a fur-

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lough program may not result in an increase in the number of required teacher workdays. An educator may not use personal, sick, or any other paid leave while the educator is on a furlough.

CONTRACT  
RESIGNATION

If the Board adopts a furlough program after the date by which a teacher must give notice of resignation from a probationary, term, or continuing contract [see DFE], an employee who subsequently resigns is not subject to sanctions imposed by SBEC.

NO APPEAL

A decision by the Board to implement a furlough program is final and may not be appealed and does not create a cause of action or require collective bargaining.

*Education Code 21.4021*

SALARY  
REDUCTION/  
FURLOUGH  
PROCESS

The Board may not implement a furlough program under Education Code 21.4021 or reduce salaries until the District has complied with the requirements below.

EMPLOYEE  
INVOLVEMENT

The District must use a process to develop a furlough program or other salary reduction proposal, as applicable, that:

1. Includes the involvement of the District's professional staff; and
2. Provides District employees with the opportunity to express opinions regarding the furlough program or salary reduction proposal, as applicable, at the public meeting described below.

PUBLIC MEETING

The Board must hold a public meeting at which the Board and District administration present:

1. Information regarding the options considered for managing the District's available resources, including consideration of a tax rate increase and use of the District's available fund balance;
2. An explanation of how the District intends, through implementation of a furlough program or salary reductions, as applicable, to limit the number of District employees who will be discharged or whose contracts will not be renewed. Any explanation of a furlough program must state the specific number of furlough days proposed to be required; and
3. Information regarding the local option residence homestead exemption.

The public and District employees must be provided with an opportunity to comment at the public meeting.

*Education Code 21.4022*

TERMINATION OF EMPLOYMENT  
REDUCTION IN FORCE

DFF  
(LEGAL)

BOARD AUTHORITY

The Board is charged with the responsibility of governance of the District; governance includes the making of responsible choices in managing the finances and personnel of the District. Stidham v. Anahuac Indep. Sch. Dist., Tex. Comm'r of Educ. Decision No. 205-R2-687 (1990) (upholding reduction in force due to financial exigency)

The District is always free to change its organizational structure as it seeks to increase its efficiency. Wasserman v. Nederland Indep. Sch. Dist., Tex. Comm'r of Educ. Decision No. 171-R1-784 (1988)

CONSIDERATION FOR  
OPEN POSITIONS

The Commissioner has held that, when a position is eliminated due to a necessary reduction in force, the District must transfer the employee to a different position if the teacher meets the District's objective criteria for that position. Objective criteria may include credentials, education, experience, applying for the position, and interviewing for the position. The District need not offer a position to a teacher who refuses to apply and interview for an open position. Amerson v. Houston Indep. Sch. Dist., Tex. Comm'r of Educ. Decision No. 022-R2-1202 (2003)

PROBATIONARY  
CONTRACT

A probationary contract employee may be discharged at any time for good cause as determined by the Board. If the employee is protesting proposed action to terminate a probationary contract before the end of the contract period on the basis of a financial exigency declared under Education Code 44.011 [see CEA], the employee is entitled to a hearing in the manner provided under Education Code 21.207 for nonrenewal of a term contract [see DFBB] or a hearing under Education Code Chapter 21, Subchapter F (hearings before independent hearing examiner) [see DFD], as determined by the Board. *Education Code 21.104(a), .1041, .159*

The Board may terminate a probationary contract at the end of the contract period if in the Board's judgment such termination will serve the best interests of the District. *Education Code 21.103(a)*

TERM CONTRACT

The Board may terminate a term contract and discharge a term contract employee at any time due to a financial exigency that requires a reduction in personnel. *Education Code 21.211(a)*

An employee who is protesting proposed action to terminate a term contract at any time on the basis of a financial exigency declared under Education Code 44.011 [see CEA] that requires a reduction in personnel must notify the Board in writing not later than the tenth day after the date the employee receives notice of the proposed action. The employee is entitled to a hearing in the manner provided under Education Code 21.207 for nonrenewal of a term contract [see DFBB] or a hearing under Education Code Chapter 21,

TERMINATION OF EMPLOYMENT  
REDUCTION IN FORCE

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	<p>Subchapter F (hearings before independent hearing examiner) [see DFD], as determined by the Board. <i>Education Code 21.159</i></p>
CONTINUING CONTRACT	<p>An employee employed under a continuing contract may be discharged at any time for good cause as determined by the Board. <i>Education Code 21.156</i></p> <p>Continuing contract employees may be released from employment by the District at the end of a school year because of a necessary reduction of personnel. A necessary reduction of personnel shall be made primarily based upon teacher appraisals administered under Education Code 21.352 in the specific teaching fields and other criteria as determined by the Board. <i>Education Code 21.157</i></p> <p>A hearing of a proposed action based on a declaration of financial exigency shall be conducted in the manner provided under Education Code 21.207 for nonrenewal of a term contract [see DFBB] or in the manner provided under Education Code Chapter 21, Subchapter F (hearings before independent hearing examiner) [see DFD], as determined by the Board. <i>Education Code 21.1041, .159</i></p>
FINANCIAL EXIGENCY	<p>The Board may adopt a resolution declaring a financial exigency for the District. <i>Education Code 44.011</i> [See CEA]</p>
HEARING EXAMINER	<p>The independent hearing examiner process does not apply to a decision to terminate a probationary or term contract before the end of the contract period or terminate a continuing contract at any time, based on a financial exigency declared under Education Code 44.011 [see CEA] that requires a reduction in personnel, unless the Board has decided to use this hearing process. <i>Education Code 21.251</i></p>
WARN ACT	<p>Local governments are not covered by the federal Worker Adjustment and Retraining Notification Act (WARN Act) (plant closings and mass layoffs). <i>20 C.F.R. 639.3(a)(ii)</i></p>

REDUCTION IN FORCE  
FINANCIAL EXIGENCY

DFFA  
(LOCAL)

PLAN TO REDUCE  
PERSONNEL COSTS

If the Superintendent determines that there is a need to reduce personnel costs, the Superintendent shall develop, in consultation with the Board as necessary, a plan for reducing costs that may include one or more of the following:

- Salary reductions [see DEAB]
- Furloughs, if the District has received certification from the Commissioner of a reduction in funding under Education Code 42.009 [see CBA and DEAB]
- Reductions in force of contract personnel due to financial exigency, if the District meets the standard for declaring a financial exigency as defined by the Commissioner [see CEA and provisions at REDUCTION IN FORCE DUE TO FINANCIAL EXIGENCY, below]
- Reductions in force of contract personnel due to program change [see DFFB]
- Other means of reducing personnel costs

A plan to reduce personnel costs may include the reduction of personnel employed pursuant to employment arrangements not covered at APPLICABILITY, below.

- See DCD for the termination at any time of at-will employment.
- See DFAB for the termination of a probationary contract at the end of the contract period.
- See DFCA for the termination of a continuing contract.
- See DCE for the termination at the end of the contract period of a contract not governed by Chapter 21 of the Education Code.

REDUCTION IN FORCE  
DUE TO FINANCIAL  
EXIGENCY

APPLICABILITY

The following provisions shall apply when a reduction in force due to financial exigency requires:

1. The nonrenewal or termination of a term contract;
2. The termination of a probationary contract during the contract period; or
3. The termination of a contract not governed by Chapter 21 of the Education Code during the contract period.

DEFINITIONS

Definitions used in this policy are as follows:

1. "Nonrenewal" shall mean the termination of a term contract at the end of the contract period.



REDUCTION IN FORCE  
FINANCIAL EXIGENCY

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2. "Discharge" shall mean termination of a contract during the contract period.

GENERAL GROUNDS

A reduction in force may take place when the Superintendent recommends and the Board adopts a resolution declaring a financial exigency. [See CEA] A determination of financial exigency constitutes sufficient reason for nonrenewal or sufficient cause for discharge.

EMPLOYMENT AREAS

When a reduction in force is to be implemented, the Superintendent shall recommend the employment areas to be affected.

Employment areas may include, for example:

1. Elementary grades, levels, subjects, departments, or programs.
2. Secondary grades, levels, subjects, departments, or programs, including career and technical education subjects.
3. Special programs, such as gifted and talented, bilingual/ESL programs, special education and related services, compensatory education, or migrant education.
4. Disciplinary alternative education programs (DAEPs) and other discipline management programs.
5. Counseling programs.
6. Library programs.
7. Nursing and other health services programs.
8. An educational support program that does not provide direct instruction to students.
9. Other Districtwide programs.
10. An individual campus.
11. Any administrative position, unit, or department.
12. Programs funded by state or federal grants or other dedicated funding.
13. Other contractual positions.

The Superintendent's recommendation may address whether any employment areas should be:

1. Combined or adjusted (e.g., "elementary programs" and "compensatory education programs" can be combined to identify an employment area of "elementary compensatory education programs"); and/or

REDUCTION IN FORCE  
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2. Applied on a Districtwide or campus-wide basis (e.g, "the counseling program at [named elementary campus]").

The Board shall determine the employment areas to be affected.

CRITERIA FOR  
DECISION

The Superintendent or designee shall apply the following criteria to the employees within an affected employment area when a reduction in force will not result in the nonrenewal or discharge of all staff in the employment area. The criteria are listed in the order of importance and shall be applied sequentially to the extent necessary to identify the employees who least satisfy the criteria and therefore are subject to the reduction in force. For example, if all necessary reductions can be accomplished by applying the first criterion, it is not necessary to apply the second criterion, and so forth.

1. **Qualifications for Current or Projected Assignment:** Certification, multiple or composite certifications, bilingual certification, licensure, endorsement, highly qualified status, and/or specialized or advanced content-specific training or skills for the current or projected assignment.
2. **Performance:** Effectiveness, as reflected by:
  - a. The most recent formal appraisal, whether completed by the District or by a previous district; and
  - b. Any other written evaluative information, including disciplinary information, from the last 36 months.

If the Superintendent or designee at his or her discretion decides that the documented performance differences between two or more employees are too insubstantial to rely upon, he or she may proceed to apply the remaining criteria in the order listed below.

3. **Extra Duties:** Currently performing an extra-duty assignment, such as department or grade-level chair, band director, athletic coach, or activity sponsor.
4. **Professional Background:** Professional education and work experience related to the current or projected assignment.
5. **Seniority:** Length of service in the District, as measured from the employee's most recent date of hire.

SUPERINTENDENT  
RECOMMENDATION

The Superintendent shall recommend to the Board the nonrenewal or discharge of the identified employees within the affected employment areas.

REDUCTION IN FORCE  
FINANCIAL EXIGENCY

DFFA  
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BOARD VOTE

After considering the Superintendent's recommendations, the Board shall determine the employees to be proposed for nonrenewal or discharge, as appropriate.

If the Board votes to propose nonrenewal of one or more employees, the Board shall specify the manner of hearing in accordance with DFBB(LOCAL).

If the Board votes to propose discharge of one or more employees, the Board shall determine whether the hearing will be conducted by a TEA-appointed hearing examiner [see DFD] or will be a local hearing under Education Code 21.207 [see DFBB].

NOTICE

The Superintendent or designee shall provide each employee written notice of the proposed nonrenewal or discharge, as applicable. The notice shall include:

1. The proposed action, as applicable;
2. A statement of the reason for the proposed action; and
3. Notice that the employee is entitled to a hearing of the type determined by the Board.

CONSIDERATION FOR  
AVAILABLE POSITIONS

An employee who has received notice of proposed nonrenewal or discharge may apply for available positions for which he or she wishes to be considered. The employee is responsible for reviewing posted vacancies, submitting an application, and otherwise complying with District procedures.

If the employee meets the District's objective criteria for the position and is the most qualified internal applicant, the District shall offer the employee the position until:

1. Final action by the Board to end the employee's contract, if the employee does not request a hearing.
2. The evidentiary hearing by the independent hearing examiner, the Board, or other person designated in DFBB(LOCAL), if the employee requests a hearing.

HEARING REQUEST  
NONRENEWAL:  
TERM CONTRACT

An employee receiving notice of proposed nonrenewal of a term contract may request a hearing in accordance with DFBB.

DISCHARGE:  
CHAPTER 21  
CONTRACT

An employee receiving notice of proposed discharge from a contract governed by Chapter 21 of the Education Code may request a hearing. The hearing shall be conducted in accordance with DFD or the nonrenewal hearing process in DFBB, as determined by the Board and specified in the notice of proposed discharge.

REDUCTION IN FORCE  
FINANCIAL EXIGENCY

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DISCHARGE: NON-  
CHAPTER 21  
CONTRACT

An employee receiving notice of proposed discharge during the period of an employment contract not governed by Chapter 21 of the Education Code may request a hearing before the Board or its designee in accordance with DCE.

FINAL ACTION  
HEARING  
REQUESTED

If the employee requests a hearing, the Board shall take final action after the hearing in accordance with DCE, DFBB, or DFD, as applicable, and shall notify the employee in writing.

NO HEARING  
REQUESTED

If the employee does not request a hearing, the Board shall take final action in accordance with DCE, DFBB, or DFD, as applicable, and shall notify the employee in writing.

REDUCTION IN FORCE  
PROGRAM CHANGE

DFFB  
(LOCAL)

APPLICABILITY

This policy shall apply when a reduction in force due to a program change requires the nonrenewal of a term contract. A program change may be due to, for example, a redirection of resources; efforts to improve efficiency; a change in enrollment; a lack of student response to particular course offerings; legislative revisions to programs; or a reorganization or consolidation of two or more individual schools, departments, or school districts.

DEFINITIONS

Definitions used in this policy are as follows:

1. "Program change" shall mean any elimination, curtailment, or reorganization of a program, department, school operation, or curriculum offering, including, for example, a change in curriculum objectives; a modification of the master schedule; the restructuring of an instructional delivery method; or a modification or reorganization of staffing patterns in a department, on a particular campus, or Districtwide.
2. "Nonrenewal" shall mean the termination of a term contract at the end of the contract period.

GENERAL GROUNDS

A reduction in force may take place when the Superintendent recommends and the Board approves a program change. A determination of a program change constitutes sufficient reason for non-renewal.

EMPLOYMENT AREAS

When a reduction in force is to be implemented, the Superintendent shall recommend the employment areas to be affected.

Employment areas may include, for example:

1. Elementary grades, levels, subjects, departments, or programs.
2. Secondary grades, levels, subjects, departments, or programs, including career and technical education subjects.
3. Special programs, such as gifted and talented, bilingual/ESL programs, special education and related services, compensatory education, or migrant education.
4. Disciplinary alternative education programs (DAEPs) and other discipline management programs.
5. Counseling programs.
6. Library programs.
7. Nursing and other health services programs.
8. An educational support program that does not provide direct instruction to students.

REDUCTION IN FORCE  
PROGRAM CHANGE

DFFB  
(LOCAL)

9. Other Districtwide programs.
10. An individual campus.
11. Any administrative position, unit, or department.
12. Programs funded by state or federal grants or other dedicated funding.
13. Other contractual positions.

The Superintendent's recommendation may address whether any employment areas should be:

1. Combined or adjusted (e.g., "elementary programs" and "compensatory education programs" can be combined to identify an employment area of "elementary compensatory education programs"); and/or
2. Applied on a Districtwide or campus-wide basis (e.g., "the counseling program at [named elementary campus]").

The Board shall determine the employment areas to be affected.

CRITERIA FOR  
DECISION

The Superintendent or designee shall apply the following criteria to the employees within an affected employment area when a program change will not result in the nonrenewal of all staff in the employment area. The criteria are listed in the order of importance and shall be applied sequentially to the extent necessary to identify the employees who least satisfy the criteria and therefore are subject to the reduction in force. For example, if all necessary reductions can be accomplished by applying the first criterion, it is not necessary to apply the second criterion, and so forth.

1. Qualifications for Current or Projected Assignment: Certification, multiple or composite certifications, bilingual certification, licensure, endorsement, highly qualified status, and/or specialized or advanced content-specific training or skills for the current or projected assignment.
2. Performance: Effectiveness, as reflected by:
  - a. The most recent formal appraisal, whether completed by the District or by a previous district; and
  - b. Any other written evaluative information, including disciplinary information, from the last 36 months.

If the Superintendent or designee at his or her discretion decides that the documented performance differences between two or more employees are too insubstantial to rely upon, he

REDUCTION IN FORCE  
PROGRAM CHANGE

DFFB  
(LOCAL)

or she may proceed to apply the remaining criteria in the order listed below.

3. Extra Duties: Currently performing an extra-duty assignment, such as department or grade-level chair, band director, athletic coach, or activity sponsor.
4. Professional Background: Professional education and work experience related to the current or projected assignment.
5. Seniority: Length of service in the District, as measured from the employee's most recent date of hire.

SUPERINTENDENT  
RECOMMENDATION

The Superintendent shall recommend to the Board the nonrenewal of the identified employees within the affected employment areas.

BOARD VOTE

After considering the Superintendent's recommendations, the Board shall determine the employees to be proposed for nonrenewal, as appropriate. If the Board votes to propose nonrenewal of one or more employees, the Board shall specify the manner of hearing in accordance with DFBB(LOCAL).

NOTICE

The Superintendent or designee shall provide each employee written notice of the proposed nonrenewal. The notice shall include a statement of the reason for the proposed action and notice that the employee is entitled to a hearing of the type determined by the Board.

CONSIDERATION FOR  
AVAILABLE POSITIONS

An employee who has received notice of proposed nonrenewal may apply for available positions for which he or she wishes to be considered. The employee is responsible for reviewing posted vacancies, submitting an application, and otherwise complying with District procedures.

If the employee meets the District's objective criteria for the position and is the most qualified internal applicant, the District shall offer the employee the position until:

1. Final action by the Board to end the employee's contract, if the employee does not request a hearing.
2. The evidentiary hearing by the independent hearing examiner, the Board, or other person designated in DFBB(LOCAL), if the employee requests a hearing.

HEARING REQUEST

An employee receiving notice of proposed nonrenewal of a term contract may request a hearing in accordance with DFBB.

FINAL ACTION

HEARING  
REQUESTED

If the employee requests a hearing, the Board shall take final action after the hearing in accordance with DFBB and shall notify the employee in writing.

REDUCTION IN FORCE  
PROGRAM CHANGE

DFFB  
(LOCAL)

NO HEARING  
REQUESTED

If the employee does not request a hearing, the Board shall take final action in accordance with DFFB and shall notify the employee in writing.