

DFF(LOCAL) Policy Revisions

The process for a reduction in force (RIF) is governed by local school district policy at DFF(LOCAL). Districts do not have a legally referenced policy at DFF because there are no statutory provisions governing the RIF process. This means that the local school board determines the process of deciding which positions, and ultimately which employees, will be affected by a RIF. For this reason, a district implementing a RIF should review its RIF policy, DFF(LOCAL), in consultation with the district's school attorney, before beginning the RIF process by declaring a financial exigency or program change.

The attached policy includes recommended revisions for your consideration when reviewing the district's RIF policy, including:

- A new introductory paragraph to explain that, in addition to the formal RIF process outlined in DFF(LOCAL), the superintendent may pursue the reduction of personnel employed under employment arrangements not covered by the formal RIF process. The types of employment arrangements not included in the RIF process were formerly listed in a Note on page 1.
- Removal from the DFF(LOCAL) process probationary contracts that will be terminated during the contract period. The Education Code permits mid-year termination of these contracts only for good cause, defined as the failure to meet the accepted standards of conduct for the profession. Under current law, a mid-year termination pursuant to a RIF would not satisfy this standard.
- An expanded definition of "financial exigency" to include "an increase in expenses" as a basis for declaring a financial exigency.
- Additional text at GENERAL GROUNDS to explain that the superintendent recommends to the board the declaration of a financial exigency or program change. We have also clarified that although financial exigency continues to constitute sufficient reason for discharge or nonrenewal, a determination of a program change constitutes sufficient reason only for nonrenewal, not discharge. This clarification stems from a 2010 decision by an independent hearing examiner that a program change is not good cause for a mid-year termination.
- Additional text at EMPLOYMENT AREAS, item 3, to address career and technical education and to include special education "and related services." We also added as a sample employment area, "programs funded by state or federal grants or other dedicated funding."
- Several changes at CRITERIA FOR DECISION, including:
 - 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 licensure, bilingual or multilingual capabilities, and/or specialized or advanced content-specific training or skills for district programs related to the current or projected assignment.
 - An expanded definition of "performance" to clarify that it includes consideration of the most recent formal appraisal and any other written evaluative information, including

disciplinary information, within 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 chair, band director, athletic coach, or activity sponsor.
- Reordering of the criteria, so that the “seniority” criterion is applied last.
- At CONSIDERATION FOR AVAILABLE POSITIONS, a clarification that an employee who applies for an open position must be offered the position in accordance with the policy provisions up until the final action by the board to end the employee’s contract, not until the date of a hearing requested in accordance with the policy.
- At DISCHARGE, deletion of text specifying that the discharge hearing is before an independent hearing examiner, as this is adequately reflected at DFD.

You should consider whether the order of criteria is right for your district and whether you wish to add more detail to your criteria.

We recommend that you consult with the district’s attorney and TASB policy consultant in revising the district’s DFF(LOCAL) policy. Your consultant can assist you in preparing a draft for you to present to the board for adoption. If you have questions concerning the recommended revisions described above, 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.

As determined by the Superintendent, a necessary reduction in personnel may include the reduction of personnel employed pursuant to employment arrangements not covered by this policy. For the termination at any time of at-will employment, see DCD; for the termination of a probationary contract, see DFAA and DFAB; for the termination of a continuing contract, see DFCA; and for the termination at the end of the contract period of a contract not governed by Chapter 21 of the Education Code, see DCE.

APPLICABILITY

This policy shall apply only ~~when a~~ reductions in force ~~of contractual employees when the reduction in force~~ requires ~~the termination of:~~

1. ~~The nonrenewal or termination of a term contract; or A contract governed by Chapter 21 of the Education Code in the following circumstances:~~
 - a. ~~A probationary contract during the contract period;~~
 - b. ~~A term contract during the contract period; or~~
 - c. ~~A term contract at the end of the contract period.~~
2. ~~The termination of a~~ A contract not governed by Chapter 21 of the Education Code during the contract period.

Note: ~~— This policy shall not apply to termination at any time of at-will employment [see DCD]; termination of a continuing contract [see DFCA]; termination of a probationary contract at the end of the contract period [see DFAA]; or termination at the end of the contract period of a contract not governed by Chapter 21 of the Education Code [see DCE].~~

DEFINITIONS

Definitions used in this policy are as follows:

1. “Financial exigency” shall mean any event or occurrence that creates a need for the District to reduce financial expenditures for personnel, including, **for example, but not limited to,** a decline in the District’s financial resources, a decline in enrollment, a **reduction in** ~~cut in~~ funding, a decline in tax revenues, ~~or an unanticipated expense or capital need, or an increase in expenses.~~
2. “Program change” shall mean any elimination, curtailment, or reorganization of a curriculum offering, program, or school operation, **including, for example,** ~~The term shall include, but not be limited to,~~ a change in curriculum objectives, a

modification or reorganization of staffing patterns on a particular campus or Districtwide, a redirection of financial resources to meet the educational needs of the students, a lack of student response to particular course offerings, legislative revisions to programs, or a reorganization or consolidation of two or more individual schools or school districts.

3. "Discharge" shall mean termination of a contract during the contract period.
4. "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 determines that **a** financial exigency or a program change requires the discharge or nonrenewal of one or more employees in accordance with this policy. ~~A Such a~~ determination **of financial exigency** constitutes sufficient cause for discharge or **sufficient reason for** nonrenewal. **A determination of a program change constitutes sufficient reason for nonrenewal.**

SCOPE OF
REDUCTION

When a reduction in force is to be implemented, the Superintendent shall ~~make recommendations to the Board~~ and the Board shall determine the employment areas to be affected. In determining affected employment areas, the Board may combine or coordinate employment areas, ~~as defined below~~ (e.g., the Board may combine "elementary programs" and "compensatory education programs" to identify an employment area of "elementary compensatory education programs").

EMPLOYMENT AREAS

Employment areas **may** include, **for example,** ~~but are not limited to:~~

1. Elementary grades, levels, subjects, departments, or programs.
2. Secondary grades, levels, subjects, departments, or programs.
3. Special programs, such as gifted and talented, bilingual/ESL programs, special education **and related services**, compensatory education, **career and technical education**, and migrant education. Each special program is a separate employment area.
4. Counseling programs.
5. Library programs.
6. Nursing and other health services programs.

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DECISION

7. An educational support program that does not provide direct instruction to students.
8. Other Districtwide programs.
9. An individual campus.
10. Any administrative position(s), unit, or department.

11. Programs funded by state or federal grants or other dedicated funding.

~~11.~~**12.** Other contractual position(s).

After the Board has determined the employment area(s) to be affected, ~~the Superintendent shall recommend to the Board the discharge or nonrenewal of employees within the affected employment area(s) because of a reduction in force,~~ based on the following criteria. These criteria are listed in order of importance; the Superintendent shall apply them 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, i.e.,** if all necessary reductions can be accomplished by applying the ~~first certification~~ criterion, it is not necessary to apply the ~~second performance~~ criterion **and so forth, etc.**

1. **Qualifications for Current or Projected Assignment**~~Certification: Appropriate e~~**Certification, multiple or composite certifications, licensure, endorsement, and/or highly qualified status for current or projected assignment, bilingual or multilingual capabilities, and/or specialized or advanced content-specific training or skills for the current or projected assignment.**
2. Performance: Effectiveness, as reflected by: ~~appraisal records and other written evaluative information.~~
 - 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 at his or her discretion decides that the documented performance differences between two or more reduction-in-force prospects are too insubstantial to rely upon, he or she may proceed to apply **the remaining criteria in the order listed below** ~~criterion 3 and, thereafter and to the extent needed, criterion 4.~~

- ~~3. Seniority: Length of service in the District, as measured from the employee's most recent date of hire.~~

3. **Extra Duties: Currently performing an extra-duty assignment, such as department 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.**

CONSIDERATION
FOR AVAILABLE
POSITIONS

Once the Superintendent has identified the appropriate employees in the affected area(s), those employees may apply for other available positions for which they are qualified. An employee is responsible for reviewing posted vacancies, submitting an application, and otherwise complying with District procedures to be considered for a particular vacancy.

Up until **final action by the Board to end an employee's contract** ~~the date of a hearing requested in accordance with this policy, the an employee who applies for an open position~~ must be offered **an open** ~~the~~ position if the employee **applies for the position**, meets the District's objective criteria for ~~the that~~ position, and is the most qualified internal applicant ~~for the position~~.

NOTICE AND HEARING

After considering the Superintendent's recommendation, the Board shall determine the employees to be proposed for discharge or nonrenewal, as appropriate. The Superintendent shall provide each employee written notice of the proposed action, including a statement of the reason(s) requiring such action and notice that the employee is entitled to a hearing.

NONRENEWAL

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

DISCHARGE

An employee receiving notice of proposed discharge during the period of a contract governed by Chapter 21 of the Education Code may request a hearing ~~before an independent hearing examiner~~ in accordance with DFD.

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.

As determined by the Superintendent, a necessary reduction in personnel may include the reduction of personnel employed pursuant to employment arrangements not covered by this policy. For the termination at any time of at-will employment, see DCD; for the termination of a probationary contract, see DFAA and DFAB; for the termination of a continuing contract, see DFCA; and for the termination at the end of the contract period of a contract not governed by Chapter 21 of the Education Code, see DCE.

APPLICABILITY

This policy shall apply only when a reduction in force requires:

1. The nonrenewal or termination of a term contract; or
2. 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. "Financial exigency" shall mean any event or occurrence that creates a need for the District to reduce financial expenditures for personnel, including, for example, a decline in the District's financial resources, a decline in enrollment, a reduction in funding, a decline in tax revenues, an unanticipated capital need, or an increase in expenses.
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GENERAL GROUNDS

A reduction in force may take place when the Superintendent recommends and the Board determines that a financial exigency or a program change requires the discharge or nonrenewal of one or more employees in accordance with this policy. A determination of financial exigency constitutes sufficient cause for discharge or sufficient reason for nonrenewal. A determination of a program change constitutes sufficient reason for nonrenewal.

TERMINATION OF EMPLOYMENT
REDUCTION IN FORCE

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(LOCAL)

SCOPE OF
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6. Nursing and other health services programs.
7. An educational support program that does not provide direct instruction to students.
8. Other Districtwide programs.
9. An individual campus.
10. Any administrative position(s), unit, or department.
11. Programs funded by state or federal grants or other dedicated funding.
12. Other contractual position(s).

CRITERIA FOR
DECISION

After the Board has determined the employment area(s) to be affected, the Superintendent shall recommend discharge or nonrenewal of employees within the affected employment area(s), based on the following criteria. These criteria are listed in order of importance; the Superintendent shall apply them 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.

TERMINATION OF EMPLOYMENT
REDUCTION IN FORCE

DFF
(LOCAL)

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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.

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TERMINATION OF EMPLOYMENT
REDUCTION IN FORCE

DFE
(LOCAL)

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