

# *Reductions in Force (RIFs)*

## *First Steps*

There are several key steps in the RIF process. You must follow each of these steps carefully and within the specified timelines. If you fail to do so, you may waive your rights. Please consult the *CTA RIF Procedures Advice Memorandum and Related Forms* for full details.

- If you believe you may receive a RIF Notice, give the District a **written** list of all your special areas of competence, credentials and work experience **prior to March 15**.
- If you have been served a RIF Notice, you are entitled to a hearing to determine the appropriate order of layoffs and/or whether you should be laid off at all.
- To participate, **you** must request a hearing within the time specified in the Notice, usually within **seven calendar days** from the date you received the Notice.
- The District will then send you a "Statement to Respondent and an Accusation." After you receive the Accusation, fill out a CTA-supplied Notice of Defense and submit it to the District within **five calendar days** of receiving the Accusation.
- If the District has not served you a RIF Notice by March 15 – and you believe you are entitled to participate in the hearing – contact your local President and the District *immediately*.
- Assuming you are an Association member (prior to receiving the Notice), you may choose to have CTA representation during the process. Please stay tuned for more details regarding this assistance.

## *Two Reasons for Layoff*

- Decline in student count
- Reduction of a particular kind of service

(All attrition and reasonably anticipated attrition of staff should be taken into account before determining the number of active employees who are to be laid off)

## *General Principles (Ed Code Sections 44949, 44955)*

- Layoffs generally occur in reverse order of seniority (the least senior should be laid off first).
- The District should make assignments and reassignments so that the most senior employee(s) are assigned to areas which they are qualified/certified to teach (senior employees have "bumping" rights in order to avoid layoff).
- The district may choose between employees "who first rendered service... on the same date" (those with equal seniority) "solely on the basis of needs of the district and the students." The first date of service, in this case, is defined as the first date of *probationary* service (or service later deemed to be probationary service, i.e., the year of "full-time" temporary/substitute service prior to a year of probationary service).
- The district may deviate from making layoffs in reverse order of seniority when:
  - It can demonstrate a specific need for a given teacher to teach a specific course or provide a specific service, that the teacher has special training and experience *necessary* to teach that course/provide that service (for which he/she will be retained), and that the more senior teacher(s) do(es) not possess the needed training, credential

(over, please)

and/or experience to “bump” into that area. Evaluation of performance is *not* a factor that can be considered in this process.

- There is need to retain the more junior employee(s) “for the purpose of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws” (specific desegregation policies and/or orders).

Temporary hires are neither protected through the layoff process nor entitled to a layoff hearing; however, you may be entitled to these rights if the District has improperly classified you as a temporary employee (i.e., if you should have been given probationary status prior to the layoff). Contact your local President and District *immediately* if you believe this applies to you.

### ***What's Next?***

If you are a CTA member (prior to receiving the Notice), the Association will assign a private attorney or staff member to represent you in the layoff hearing. Non-members have the right to participate in the hearing but must hire their own lawyer or represent themselves.

In order to participate in the hearing and to be best represented, you **MUST**:

- Fill out and timely hand deliver to the District a Request for Hearing, usually within seven (7) calendar days from your receipt of the Notice of Layoff (keep a date-stamped copy).
- Within five (5) calendar days after receiving the Accusation, fill out and hand deliver the Notice of Defense, unless your CTA representative instructs you to use another form (keep a date-stamped copy).
- Immediately fill out the CTA “RIF Data Form” and give it to your local President.
- Meet with your CTA representative prior to the hearing to prepare the case; and, attend the hearing (the District should provide you release time).

### ***Recall Rights (Ed Code Sections 44956, 44957, 44918(e))***

- Any permanent employee (under age 65 at the time of recall) has the right to priority reappointment for 39 months after layoff (24 months for probationary employees), should an opening exist for which he/she is qualified/credentialed to fill. The reappointment process will generally follow the same guidelines as listed above (those with greater seniority and/or special credentials/skills necessary for the job will be recalled first). If reemployed, the period of layoff will be characterized as a leave of absence (with all prior seniority and certification status intact).
- During the recall period, anyone laid off has the right, in order of seniority, to substitute teach as needed (on a long or short-term basis). A permanent employee serving as a sub for 21 days or more (during a 60 school day period) will be paid at his/her regular rate of pay.
- You may waive your right to recall for one school year without giving up that right for future recall opportunities. The School Board may extend this “grace period” beyond one school year.

Education Code Sections may be found at: <http://www.leginfo.ca.gov/calaw.html>

## IMPORTANT INSTRUCTIONS FOR TEACHERS SERVED WITH RIF (LAYOFF) NOTICES

Dear CTA Member:

Each certificated employee who is served with a RIF notice is entitled to a hearing upon request. You must mail or deliver **both** a Request for Hearing and a Notice of Defense to the District within the specified time limit or you may waive your right to a hearing.

1. **REQUEST FOR HEARING.** In order to have a hearing, you must request one. This request must be made in writing within the time specified in the Notice of Intended Dismissal, usually **seven (7) calendar days after you receive the Notice**. Failure to request a hearing within the appropriate time limit will waive your right to participate in the hearing and you may be laid off as a consequence.

To request a hearing, fill out the attached form entitled Request for Hearing and address it to the district official who signed the Notice of Intended Dismissal. Deliver the original to the addressee, either in person or by registered mail, to the school district at the address provided in the Notice. If you deliver the form personally, get a receipt or keep a record of the date, time, place, and recipient. Keep a copy for your records and provide a copy to your chapter president.

2. **NOTICE OF DEFENSE.** After the district receives your Request for Hearing, it will provide you with documents including a Statement to Respondent and an Accusation. After you receive the Accusation, fill out the form entitled Notice of Defense which is attached to these instructions, unless your attorney has provided you with different instructions. Do not use the forms provided by the district for this purpose. You must deliver the Notice of Defense to the superintendent, or the district official named in the Statement to Respondent within **five (5) calendar days after the Accusation is served**. The Accusation is served on the day the district hand-delivers the Accusation, or, in the case of service by mail, the day the Accusation is placed in the mail. You may deliver the Notice of Defense personally or by registered mail to the school district at the address given in the Statement to Respondent so long as the Notice is received by the District within the five day period. If you fail to deliver the Notice of Defense on time you may waive your right to participate in the hearing.

If you have any questions about filing a Request for Hearing and/or Notice of Defense, contact your CTA chapter president immediately.

## REQUEST FOR HEARING

Dear \_\_\_\_\_:

I hereby request a hearing to determine whether there is cause to not re-employ me for the 2008-09 school year.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Address

\_\_\_\_\_

\_\_\_\_\_  
Date

## NOTICE OF DEFENSE

TO: Governing Board

\_\_\_\_\_ School District

Address: \_\_\_\_\_

\_\_\_\_\_

In response to your accusation, dated \_\_\_\_\_, 2008, I: \_\_\_\_\_

1. Request a hearing.
2. Object to the accusation upon the ground that it does not state acts or omissions upon which you may proceed.
3. Object to the form of the accusation on the ground that it is so indefinite or uncertain that I cannot identify the transaction or prepare my defense.

This constitutes my notice of defense pursuant to Government Code Section 11506.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Address

\_\_\_\_\_

\_\_\_\_\_  
Date

## CALIFORNIA TEACHERS ASSOCIATION RIF DATA FORM

NOTE: You must complete the entire questionnaire and return it to your chapter president immediately. If you are unsure about past training or experience, check your personnel file. Please type or print legibly.

1. Last Name \_\_\_\_\_
2. First Name \_\_\_\_\_
3. Home Address \_\_\_\_\_
4. Home Phone \_\_\_\_\_ Cell Phone \_\_\_\_\_
5. Personal Email Address \_\_\_\_\_
6. School/Campus \_\_\_\_\_
7. School/Campus address \_\_\_\_\_
8. School Phone Number \_\_\_\_\_
9. Current employment status \_\_\_\_\_  
(K-12: Probationary 1, 2 or Permanent) (CC: Contract 1, 2 or Regular)
10. Seniority date according to district (if incorrect, explain)  
\_\_\_\_\_  
\_\_\_\_\_
11. Seniority Number \_\_\_\_\_
12. First Date of Paid Service \_\_\_\_\_
13. Credentials and Certificates Held (District Notified)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14. District employment history. State teaching assignments (subjects and grade levels), classification and hours worked per week if less than full-time. List your current assignment first.

Dates	Teaching Assignment	Classification	Hours Per Week (If Not Full-Time)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

15. If any employment listed above is other than probationary (contract) or permanent (regular), please explain the basis for your classification.

\_\_\_\_\_

\_\_\_\_\_

16. Degrees Held (w/Major & Minor): \_\_\_\_\_

\_\_\_\_\_

17. Degrees Anticipated (w/Major & Minor): \_\_\_\_\_

\_\_\_\_\_

18. Post Bachelor's Degree Units: \_\_\_\_\_

19. Please explain any breaks in your service with the district. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

20. Identify every district certificated employee you know of who resigned, was dismissed or otherwise terminated, retired or announced his or her intention to terminate employment during the previous or current school year.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

21. Identify every district certificated employee who you think may retire or resign effective next school year who has not yet done so.

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22. If you know of any person in the district with less seniority than yourself who is being retained to perform services that you are credentialed to perform (be sure to check a seniority list that indicates persons not served with layoff notices) state the name of that individual, his or her current position, and the position he or she will hold next year.

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23. Do you know why any of the individuals listed in paragraph 22 is being retained? If so, explain:

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24. List all positions held on committees, advisory groups and appointed or elected positions within the district.

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25. Please provide any other relevant information regarding your qualifications for service.

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26. State any other information you think is important to your case.

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## **INFORMATION REGARDING REPRESENTATION**

### **GROUP REPRESENTATION**

You are one of several certificated employees in your district (respondents) who were served with layoff notices who have requested a hearing and filed a Notice of Defense in the layoff proceeding. CTA has arranged to provide representation to all members in your situation.

The purpose of the representation provided is to ensure protection of the rights of all respondents to a full, fair and impartial hearing. Representation will include discovery and review of relevant documents, objection to the introduction of improper evidence, cross-examination of district witnesses, and presentation of evidence and motions on behalf of respondents as a group. (For example, in some cases it may be appropriate to move to dismiss the entire proceeding on various procedural grounds.)

### **POTENTIAL CONFLICTS OF INTEREST**

However, each respondent must consider the possibility that he or she may also have particular individual defenses. You must understand that the representation provided by CTA cannot properly assert such an individual defense if it conflicts with the rights of another member of the group being represented in this proceeding.

It is improper for the group's attorney or representative to assert any contention on behalf of one person to the possible detriment of another person being represented. Therefore, respondents who wish to assert individual and possibly conflicting defenses must do so themselves or through a separate attorney or other representative.

Such conflicts of interest among respondents may arise in asserting seniority rights. For example, if you feel that your date of first paid service is earlier than that asserted by the district, you may argue that your retention (and rehire) rights are superior to those of another respondent. Similarly, it may be appropriate for you to present testimony and argue that because of your special qualifications, you have rights superior to those of another respondent employed on the same date as your date of hire.

You will be given an opportunity to assert any individual conflicting defenses or contentions at the hearing and you should exercise this right. You may also retain an attorney at your expense to represent you at the hearing.

Because of their ethical obligations, your CTA attorney or representative cannot properly assert any such defenses or contentions on your behalf. Accordingly, respondents represented by CTA in the layoff proceeding should immediately inform the attorney or staff representative of the existence of any such individual defenses or contentions they may have, so that they may be properly presented at the hearing.

## CONSENT TO LEGAL REPRESENTATION

I declare that I am a permanent or probationary certificated employee of the \_\_\_\_\_ DISTRICT and a member of \_\_\_\_\_ (CTA/NEA). I have received from the district a notice of recommendation of non-reemployment, and have requested a hearing pursuant to Education Code Section 44949. The reasons given for the recommendation for non-reemployment are those set forth in Education Code Section 44955. I understand that similar notices were delivered to other certificated employees of the district and that other employees have also requested a hearing.

I understand that CTA has agreed to provide representation to its members to the extent possible to the entire group or class of certificated employees similarly affected by the district's action.

I hereby consent to and authorize representation at said hearing by \_\_\_\_\_, an attorney who participates in the CTA Group Legal Services Program. By executing this document, I understand and consent to such representation as a member of \_\_\_\_\_ and CTA and as a member of the group or class of employees similarly affected by the district's action.

In that regard, I agree to abide by, authorize and ratify all decisions made on behalf of the group or class represented. Such decisions may include, but not be limited to, decisions relating to strategy, the presentation of evidence, continuances of hearing dates, and extensions of notice deadlines.

I acknowledge that I have been advised and understand that relevant issues involved in the hearing include assignments, qualifications, seniority, and so-called "bumping rights", so that real and potential competing and conflicting rights and interests may exist within the group or class represented. I further acknowledge that I have been advised and understand that I am free to secure independent counsel and representation at my own expense in lieu of that provided by CTA and, further, that I may do so at any time upon notice.

I agree to cooperate fully in the defense of this matter and acknowledge my individual responsibility promptly to request a hearing, thoroughly to read and review all notices served, and to provide all relevant information, including that relating to seniority and qualifications.

I understand that the representation provided herein relates only to the administrative hearing and that it does not include appeal or judicial review.

DATED: \_\_\_\_\_, 2008

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Address  
\_\_\_\_\_

\_\_\_\_\_  
Home Phone

\_\_\_\_\_  
School Phone

\_\_\_\_\_  
Membership Number