



## MAKING TOUGH BUDGET DECISIONS FAQ

What are the board's options when budget cuts affect school personnel? Generally, personnel expenses make up approximately 80-85% of Colorado school district budgets. With the anticipated shortfall in revenue in the next few years, it is unlikely that even the most strategic and well-positioned school board will be able to avoid budget cuts impacting school personnel.

This FAQ is intended to explore how boards can make tough budget decisions strategically and provide a brief overview of the choices available to boards. It is for informational purposes only and does not constitute legal advice. Specific questions should be referred to the school district's legal counsel.

### Freezing or reducing salaries

#### **Q: Can the board modify its salary schedule/policy for the 2020-2021 school year?**

A: Yes. State law requires the board to adopt a salary schedule that may be by job description and job definition, a teacher salary policy based on the level of performance demonstrated, or a combination of the schedule and policy.<sup>1</sup> This salary schedule or policy remains in effect until changed or modified by the board, which the board may determine on an annual basis.

#### **Q: Can the board modify its salary schedule/policy during the 2020-2010 school year?**

A: Yes, in the event of a fiscal emergency. While state law specifically prohibits a "reduction in the salary of any classroom teacher unless there is a general reduction in the salaries of all teachers in the district,"<sup>2</sup> it also provides that if the board determines, during any budget year, that the anticipated revenues and amounts appropriated for expenditure in the budget exceed actual revenues available to the district due, in whole or in part, to action by the legislature or governor, the board may declare a fiscal emergency.<sup>3</sup>

Once an emergency is declared, the board may implement a reduction in salaries for all employees of the school district on a proportional basis or may alter the work year of employees. This reduction may be made notwithstanding any adopted salary schedule or policy.

<sup>1</sup> C.R.S. § 22-63-401.

<sup>2</sup> C.R.S. § 22-63-401(4).

<sup>3</sup> C.R.S. § 22-44-115.5.

This action requires an affirmative vote of two-thirds of the members of the board. Before taking such action, the board must hold at least one public hearing.

**Q: What if the board engages in master contracts?**

A: Even with master contracts, salaries must still be determined on an annual basis. State law prohibits boards from entering into an agreement with any group, association, or organization representing district employees that commits revenues for a period of time longer than one year unless the agreement includes a provision which allows for the reopening of the portion of the agreement relating to salaries and benefits.<sup>4</sup>

This provision allows adjustments in the agreement based on changes in the district’s available funds or needs. These changes are those produced by the budget adoption process at the state and local level, processes which are generally outside of the control of either party to these kinds of collective bargaining agreements. This provision also establishes a reasonable expectation among employees that salaries and benefits have a one-year horizon.

*Is your board policy up to date? See CASB sample policies DBK, Fiscal Emergencies, GCBA, Instructional Staff Contracts/Compensation/Salary Schedules, GCBAA, Performance Pay for Instructional Staff, and GCBD, Professional Staff Fringe Benefits.*

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**Furloughs and reduced hours**

A furlough is a mandatory temporary leave of absence from which an employee is expected to return to work or to be restored from a reduced work schedule. Furloughed employees may be required to take a certain number of unpaid days or hours throughout the year, or take a single block of unpaid time off.

**Q: When may the board furlough employees?**

A: Furloughs of instructional staff may be possible if the district has built in extra time in the school calendar that can be reduced. Schools must be in session for a specified number of days and hours, unless the school has received specific prior approval from CDE.

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<sup>4</sup> C.R.S. § 22-32-110(5).

[CDE](#) is planning to provide guidance on counting instructional hours while students are involved in remote learning. It is unlikely that CDE will provide a blanket time waiver like was done in the spring of 2020.

***Note:** Districts operating a four-day school week (fewer than 160 scheduled days per school year) are required to submit a request for approval to [CDE](#). The deadline to submit a four-day school application is June 11, 2020.*

***Is your board policy up to date?** See CASB sample policy IC/ICA, School Year/School Calendar/Instruction Time.*

**Q: What are the limits on furloughed employees?**

A: There are implications under the Fair Labor Standards Act (FLSA) that need to be considered when reducing hours and/or cutting days for exempt and nonexempt employees. When employees are furloughed, employers should expect that employees will not work. The FLSA does not permit an individual to perform hours of volunteer service for a public agency when such hours involve the same type of services which the individual is employed to perform for the same public agency. Employees on a mandatory furlough may be able to draw from their vacation or compensatory time off to supplement their income during the furlough.

***Is your board policy up to date?** See CASB sample policy GDBA, Support Staff Salary Schedules.*

**Q: Can the board reduce an employee's contract from full-time to part-time?**

A: Maybe. There is no guidance in state law concerning reduction of a non probationary teacher's contract from full to part time. In many situations, a reduced contract will be preferable to a cancellation of the entire contract.

We recommend that school officials consider whether there is an opportunity to nonrenew the contract of a probationary teacher before reducing the contract of a non probationary teacher, and that school officials follow a modified reduction in force (RIF) process when offering a full time teacher a contract with a reduced schedule for the upcoming academic year. This involves giving the teacher the rationale for the contract change (fiscal exigency or program change) and an opportunity to contest the rationale (due process). Boards should use the RIF policy as a guide.

## **Non-renewal, reduction in force, and displacement**

Non-renewal is the process by which a board implements its decision not to re-employ a probationary teacher following expiration of a one-year contract. Teaching positions may be eliminated through the nonrenewal of a probationary annual contract for any lawful reason.

Reduction in force (RIF) is the process by which a board cancels a teacher's employment contract during the contractual period when there is a justifiable decrease in the number of teaching positions.<sup>5</sup> RIFs may result from either a program change or financial exigency resulting in a decrease in the number of teaching positions in the district. Nonprobationary teachers may only be terminated for cause through a dismissal action or have their contracts cancelled through a RIF.

Displacement occurs when a nonprobationary teacher loses their position as a result of: a drop in enrollment; turnaround; phase-out; reduction in program; reduction in building, including closure, consolidation, or reconstitution.

### **Q: What is required for the board to nonrenew an employee's contract?**

A: The board must give written notice to the teacher on or before June 1st of the academic year during which the teacher is employed. The law allows nonrenewal of a probationary teacher's contract (upon the superintendent's recommendation) for any lawful reason, as long as the reasons are not based on the teacher's exercise of a constitutional right or do not violate the teacher's civil rights. If the board fails to take proper action, the teacher will be automatically reemployed for the next academic year. The teacher may request a statement of reasons for the non-renewal.

*Is your board policy up to date? See CASB sample policy GCQF, Discipline, Suspension and Dismissal of Professional Staff.*

### **Q: What is required before the board can engage in a reduction in force (RIF)?**

A: Before a board may implement a RIF there must be a justifiable decrease in the number of teaching positions in the district. Case law recognizes two broad classifications of circumstances that result in a justifiable decrease: fiscal exigency and program change.

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<sup>5</sup> C.R.S. § 22-63-202(3).

A fiscal exigency is any significant decline in the board's ability to fund the operations of the district as a result of a decline in student enrollment, restriction on revenues, increased costs or any other action, event or condition that may cause the district's current or projected budget to be insufficient to adequately meet the district's current or projected needs. A fiscal exigency may exist based solely upon the district's current revenue and expenditure projections.

Program change is defined as the elimination, curtailment or reorganization of curriculum, programs, or operations, or a reorganization or consolidation of two or more individual schools. A program change does not have to be caused by a fiscal exigency.

Fiscal exigency and program change are legislative determinations made by the board. The board's decision is entitled to great deference and will be upheld unless the board acted arbitrarily or capriciously.

**Q: How can a board implement a RIF?**

A: The Superintendent recommends which contracts will be cancelled. The manner in which employment contracts will be cancelled must be provided for in agreement or policy. In general, probationary teachers must always be the first to go in any RIF. A district must also make an effort to transfer a nonprobationary teacher to another position for which they are qualified if that teacher's position is eliminated. Case law expresses a strong preference for the use of objective criteria, such as length of service.

State law provides that, in the absence of specific contract language, when a justifiable reduction in the number of teaching positions within a particular endorsement area occurs, the employment contracts of first-year probationary teachers who are occupying such positions must be cancelled first. Further reductions in the number of teaching positions through the cancellation of employment contracts of second-year and third-year probationary teachers and nonprobationary teachers must be made in accordance with established board policy.

A teacher subject to a RIF is entitled to due process.<sup>6</sup> Due process is provided for in policy or collective bargaining agreement. At a minimum, a teacher must receive timely notice and an opportunity to contest the action before an impartial hearing officer or the board.

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<sup>6</sup> *Howell v. Woodlin Sch. Dist.*, 596 P.2d 56 (1979).

**Q: What are the standards of due process in a RIF hearing?**

A: Generally, the minimum standards of due process in a RIF hearing will be met if the hearing is limited to the following issues:

1. Was there a rational basis to determine that a reduction-in-force was necessary?
2. Was the employment cancellation procedure arbitrary or capricious?
3. Was the decision to cancel the teacher’s employment arbitrary, capricious, or pretextual?
4. Was the teacher qualified to fill positions held by probationary teachers who were retained?

*Is your board policy up to date? See CASB sample policies GCQA, Instructional Staff Reduction in Force, and GCQA-R, Instructional Staff Reduction in Force.*

**Q: When is a teacher displaced?**

A: Teachers are displaced from a school as a result of: a drop in enrollment, turnaround, phase-out, reduction in program, or reduction in building including closure, consolidation, or reconstitution.<sup>7</sup> Displacement occurs when the district needs to reshuffle teachers into different schools, but the net number of teaching positions remains level. The district cannot transfer any employed teacher until it follows displacement procedures.

**Q: What are the board’s options for handing a displaced teacher?**

A: A displaced teacher may be assigned to a particular school only with the consent of the hiring principal, with input from at least two teachers at the school who were chosen by the faculty to represent them in the hiring process (known as mutual consent).

If the hiring principal does not consent to the transfer, the teacher may be placed on administrative leave with pay, or temporarily assigned to another position in the district. The teacher may be placed on administrative leave without pay, if they fail to obtain a mutual consent placement within one year or two hiring cycles, whichever is greater.

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<sup>7</sup> C.R.S. § 22-63-202(2)(c.5)(VII).

## **Strategies to avoid litigation**

### **1. Ensure policies are up-to-date**

Boards can limit liability and litigation by ensuring that policies are up-to-date. Boards should be aware of financial obligations incurred or having the potential to be incurred in board policy. The board should revise policies as necessary to meet at least minimum legal requirements or temporarily suspend, if appropriate, financial obligations in the following areas:

- Staff leaves (sick leave, sick leave bank, vacation, personal, jury duty, military, etc.)
- Staff benefits (fringe benefits, early retirement, supplemental employment, etc.)
- Incentive programs (scholarship programs, payback for unused leaves, etc.)

### **2. Foster transparency**

Boards should vigilantly comply with the Colorado Open Meetings Law as they work through budget issues by sharing the challenges and concerns caused by the tight budget with the public--through conducting public meetings or publishing information. Boards should use executive sessions as needed to discuss individuals' personnel matters or developing strategy for negotiations.

### **3. Consult with legal counsel**

Throughout the process of making tough budget decisions, boards should consult with their legal counsel, as early as possible, especially regarding RIFs and nonrenewals.

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*May 2020*