



WINDHAM SCHOOL
DISTRICT

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March 12, 1998

WINDHAM BOARD POLICY

SUBJECT: REDUCTION IN FORCE

AUTHORITY: Texas Government Code §§ 657.002, 657.007; 38 U.S.C. §§ 4301-4334, Uniformed Services Employment and Re-employment Rights Act

APPLICABILITY: Windham School District (WSD) contracted employees with the exception of employees in temporary or grant funded positions and employees on active military service.

EMPLOYMENT AT-WILL CLAUSE:

These guidelines **do not** constitute an employment contract or a guarantee of continued employment. The WSD reserves the right to change the provisions of these guidelines at any time.

Nothing in these guidelines and procedures limits the superintendent's authority to establish or revise human resources policy. These guidelines and procedures are adopted to guide the internal operations of the WSD and **do not** create any legally enforceable interest or limit the superintendent's authority to terminate a noncontract employee at will.

POLICY:

When the WSD is required to delete positions through a reduction in force (RIF), the identification of filled positions to be deleted shall be conducted without regard to an incumbent employee's race, color, religion, gender, national origin, age, disability, or genetic information. In addition, the identification of filled positions to be deleted shall comply with the provisions of applicable federal and state laws relating to employment for current or former members of the uniformed services. The WSD has zero tolerance for all forms of employment discrimination in the RIF process. No employee shall be subjected to harassment or retaliation for opposing or reporting employment discrimination in the RIF process.

DEFINITIONS:

"Certified Employee" is an employee holding a valid certification issued by the State Board for Educator Certification.

“Financial Exigency” means any decline in financial resources brought about by decline in enrollment, cuts in funding, or any actions or events that create a need for the WSD to reduce financial expenditures for personnel.

“Program Change” means any elimination, curtailment, or reorganization of a curriculum offering, program, or school operation that is unrelated to financial exigency.

“Reduction-in-Force” is the dismissal of a teacher, administrator, or other professional certified employee at or before the end of a contract term for reasons of financial exigency or program change. Non-renewal of an employee's term contract is not a reduction in force as used in this policy, and non-renewal issues, policies, or procedures are not addressed herein.

“Reduction-In-Force Priority Consideration” is the process by which selection reviewers shall perform the following prior to considering other qualified applicants for a position vacancy: (1) consider those qualified employee applicants whose position has been identified for RIF and who are in a position with an established salary rate the same or higher than the established salary rate of the position being filled; and (2) if the qualified employee applicant identified for RIF is not selected for the position, provide a written justification for not selecting the employee for the position, such as note if prior history was considered during this selection process. Priority consideration shall be maintained until the date the employee accepts a position within the WSD or 31 calendar days after the employee is separated.

“Reduction-In-Force Separation” is the involuntary separation from employment of an employee whose position has been eliminated by the WSD for reasons not related to job performance or disciplinary violations.

“Veteran’s Employment Preference” is preferential consideration in retaining employment given to a veteran who served at least 90 consecutive days of active duty in any branch of the United States Armed Forces or in an auxiliary service or reserve component of one of the branches. A veteran also includes anyone discharged for an established service-connected disability, regardless of length of service. Further, to be defined as a veteran, the applicant shall have been honorably discharged. Provided the veteran meets the above criteria, employment preference is extended to a veteran’s surviving spouse who has not remarried or an orphan of a veteran killed while on active duty, whether the death was service-connected or not.

PROCEDURES:

I. General Provisions

The WSD may require a RIF for any business-related reason, including a legislative mandate, financial exigency, program curtailments or program changes for educational or institutional reasons, or a consolidation or reorganization to include the deletion or merger of functions. A RIF may take place when the superintendent determines that, because such condition or conditions exist, the superintendent's contractual obligation to one or more teachers, administrators, or other professional certified employees cannot be met. Such a determination constitutes the necessary cause for dismissal.

II. RIF Implementation

The superintendent shall determine when a RIF becomes necessary. A RIF may be made by program, department, region, campus, and/or position.

A. Criteria for Decision

If the superintendent determines that a RIF shall be implemented, the division director of the affected program or department shall submit to the superintendent a recommendation for dismissing specific positions. Division directors shall be responsible for their respective departments and identifying and recommending specific positions for consideration of a RIF. The directors for the Division of Instruction and Operational Support shall be responsible for identifying and recommending reductions in instructional programs. The superintendent shall be responsible for identifying reductions of regional offices, school campuses, director positions, and staff assigned to the ECHO.

The director of the Division of Human Resources shall recommend to the superintendent the discharge of employees within the affected employment area(s) based on the following criteria. These criteria are listed in order of importance; the director shall apply them sequentially to the extent necessary to identify the employees who least satisfy the criteria and therefore are subject to the RIF. If all necessary reductions can be accomplished by applying the certification criterion, it is not necessary to apply the performance criterion.

1. Certification: Appropriate certification for area of assignment.
2. Performance: Effectiveness as reflected by appraisal records, defined as the most current complete appraisal on file in the Human Resources Division, or the current school year appraisal for employees new to WSD, and other written evaluative information, including the fact that an employee was on a growth plan, a plan for improvement, or a Teacher in Need of Assistance plan, in the current school year and failed to complete the requirements of the plan by the earlier of: (1) the date required by the plan or (2) the date the superintendent determines that a financial exigency or a program change requires the discharge of one or more employees in accordance with this policy.
3. Seniority: Years of professional experience with the WSD, including experience in a position with another agency while being supervised by the WSD, such as Project Reintegration of Offenders.
4. Professional background: Years of professional experience prior to employment by the WSD.
5. Educational background: In the event that two or more employees are equally qualified under the four criteria set forth above, the superintendent

may consider advanced degrees and coursework beyond the bachelor's degree in the area of assignment.

B. Superintendent Action

After considering the division director's recommendation, the superintendent shall determine which employees shall be dismissed.

C. Exclusive RIF Procedure

No personnel action other than a RIF shall be considered under this procedure. A RIF cannot be grieved. Contracted employees, upon request, shall be given a hearing in accordance with WBP-7.05, "Term Contract Employment," for termination during contract.

D. When it becomes necessary for the WSD to implement a RIF, the provisions in the WSD Reduction-in-Force (RIF) Fact Sheet (Attachment A) shall be followed.

III. Written Notification for Affected Employees

The director of the Human Resources Division shall be responsible for coordinating the process of providing a written notification of RIF separation to employees in positions identified for deletion.

A. Each written notification shall include:

1. A statement of the reasons and conditions requiring such dismissal;
2. The date the employee's position is to be deleted; and
3. Information relating to continued employment options.
4. Notice of the option to request a hearing.

B. An employee shall be notified by hand delivery, regular or certified mail, or other delivery service.

IV. RIF Priority Consideration for Position Vacancies

An employee who received RIF notification may apply for any WSD position vacancy, including one or more posted positions.

A. Posted Positions

1. A RIF employee shall be eligible for RIF priority consideration for posted positions closing on or after the date of the employee's formal written RIF notification, if the RIF employee:

- a. Applies for a posted position with the same or lower established salary plan of the RIF employee's current position; and
 - b. Meets the minimum qualifications for the position.
2. A RIF employee who is eligible for RIF priority consideration shall be interviewed and a determination made for selection or non-selection prior to interviewing other applicants.
- a. Documentation of interviews with RIF employees who are eligible for RIF priority consideration shall be in accordance with all established policies and procedures.
 - b. A RIF employee identified as being entitled to the veteran's employment preference shall be given preferential consideration for selection when the RIF employee is equally qualified with other RIF priority applicants.
 - c. If one or more RIF employees who are eligible for RIF priority consideration apply for a position and a RIF employee is not selected, a rationale for non-selection of each qualified RIF employee who was eligible for RIF priority consideration shall be forwarded in writing to the appropriate division director and regional administrator for concurrence. This documentation shall become part of the selection packet. If the appropriate division director and regional administrator concur with the non-selection, the screening and interview process for the other applicants may proceed in accordance with the selection procedures.

B. General Provisions

1. When a RIF employee accepts a position in accordance with WSD policies, the employee is no longer eligible for RIF priority consideration when applying for other positions.
2. If a RIF employee does not accept an offered position, the RIF employee shall still be eligible for RIF priority consideration until 31 calendar days after the employee's RIF separation.
3. A RIF employee who accepts a position within the WSD shall do so at the rate established by the current approved salary schedule.

V. Impact of RIF Separation on Leave Accruals

A. State Sick Leave Accrued Before May 30, 1995 and State Personal Leave

1. A RIF employee shall not be permitted to remain on the WSD's payroll

after the RIF separation effective date to exhaust the employee's accrued state personal leave or state sick leave. Use of such leave shall be in accordance with WBP-07.11, "Employee Leave."

2. If a RIF employee is reemployed by a school district all accrued and unused state personal leave and state sick leave shall be documented on the service record according to WSD OP-7.46, "Service Records." A RIF employee re-employed by the WSD shall have all unused state leave re-instated per the last official service record. Such an employee shall not receive a lump sum payment for accrued and unused state personal leave or state sick leave.

B. Compensatory Time and Overtime

Contract staff shall be allowed to use accrued compensatory leave balances prior to the RIF separation date. A contracted exempt employee shall not be allowed to run these accrued leave balances past the RIF separation date. A contracted exempt employee shall not be paid for any compensatory balance remaining upon RIF separation. Such balances shall be re-instated upon re-employment with the WSD.

C. Local Sick Leave

A RIF employee shall have the employee's accrued unused sick leave balance restored if the employee is re-employed by the WSD. Such an employee shall not receive a lump sum payment for accrued and unused local sick leave. Use of such leave shall be in accordance with WBP-07.11.

VI. Appeal by Employee Entitled to the Veteran's Employment Preference

An employee entitled to the veteran's employment preference who is aggrieved by the WSD decision to delete the employee's position through a RIF may appeal the decision by filing a written complaint with the WSD Board of Trustees (board). The board may render a different decision if the board determines that the veteran's employment preference was not applied.

* Signature on file _____
Oliver J. Bell, Chairman
Windham School District Board of Trustees

WSD Reduction-In-Force (RIF) Fact Sheet

1. Military Reservists

- Federal and state law provides that an employee on active military service is entitled to reemployment into the same or similar job. Therefore, an employee on active military duty is not subject to the RIF.
- State law provides that an employee who returns from active military duty is not subject to a RIF for a period of one year after reinstatement.

2. Family and Medical Leave (FML) Impact

An employee on FML does not receive a preference. The question to be asked is whether the position would be deleted if the employee were actively working. If the answer is yes, then the position may be deleted.

3. RIF Methodology

- It is not necessary to apply the RIF methodology when a one-of-a-kind position is to be deleted or when all positions with the same title and function within the same geographical area or working group are to be deleted.
- The RIF methodology shall be applied only when some but not all positions within the same geographical area or working group and with the same salary plan and function are to be deleted.