

# Nuts & Bolts of Layoff Decisions

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# AGENDA

- ▶ General overview of Layoff Process
- ▶ Classified Employee Layoffs
- ▶ Administrator Layoffs
- ▶ Licensed Employee Layoffs
  - ▶ Focus on implementation of cultural/linguistic expertise provisions
- ▶ Recall Process
- ▶ Questions

## Poll

- ▶ How many of you are facing layoffs this spring?
- ▶ How many buildings do you have in your District?

## Breakout Room Discussion

- ▶ What has been your experience with layoffs in your role?
- ▶ Are you currently planning for layoffs this spring?
- ▶ Please choose one person to report out.

# Basics



Reductions in Force (RIF)



Triggered by District decision that it has limited/declining financial resources



Process for reducing costs of an organization by “layoff” of employees



Process for “recall” of employees when it is determined financially viable

# Start & Continue Community Conversation

- ▶ Communicate out to employees and community of impending budget difficulties early and often.
  - ▶ Community forums
  - ▶ Newsletters
- ▶ Ensure all administrators and supervisors are up to date on financial picture.
- ▶ Have regular updates of Board regarding financial picture; educate board on legal requirements related to RIFs, budget law; ensure Board is equipped to speak with one voice on this issue.
- ▶ Utilize labor-management meetings to ensure union leadership is informed of tough decisions ahead.

# Prior to RIF Decision Making

- ▶ **Limit Employees Impacted**
  - ▶ Minimize hiring into vacant positions- manage through attrition
  - ▶ Strategic hires for must-fills (e.g. special education positions)
  - ▶ Monitor and address performance issues in accordance with CBA
  - ▶ Review legal sources and identify language or process issues to be worked through with administrative team first

# Legal Sources

- ▶ Oregon law: **Licensed Teachers and Administrators ORS 342.934**
- ▶ Classified & Licensed Collective Bargaining Agreement
- ▶ Administrator Handbook
- ▶ Board Policies
  - ▶ Layoff/Recall – Administrative Personnel- Board Policy CPA
  - ▶ Reduction or Recall of Licensed Staff- Board Policy GCPA
- ▶ Very little guidance from Employment Relations Board

# Pass Board Resolution (?)

## **RESOLUTION – LAY OFF**

WHEREAS, the \_\_\_ School District has identified a \$XX million deficit for the 2023-24 school year based upon inadequate funding to support current staffing levels;

WHEREAS, the \_\_\_\_\_ School District must comply with ORS 324.934 as well as collective bargaining agreements in making decisions related to reductions in force;

IT IS HEREBY RESOLVED, that the \_\_\_\_\_ School District Board of Directors declares that it must lay off multiple staff positions, including XX administrative position, XX teaching positions and XX classified positions effective June 30, 2024.

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Board Chair





# Classified Employees

COLLECTIVE BARGAINING AGREEMENT ONLY

# Classified Employees

- ▶ No applicable state law
- ▶ Review collective bargaining agreement provisions
  - ▶ Classification group is key to organizing lay off
- ▶ Example language:

If the District determines the need for a permanent reduction in its classified work force, (excluding temporary reductions), notice of not less than two (2) weeks shall be provided to employees to be laid off.

The District reserves the right to determine positions to be eliminated. When a position is to be eliminated, the layoff will occur within the affected job title or, if there is more than one equally- ranked job title in that job classification group, within those equally-ranked titles.

The employee to be laid off will be determined by inverse order of unbroken length of service with the District. . . . No permanent employees shall be laid off within a job title(s) until all probationary employees and temporary employees in such job title(s) have been terminated.



# Classified Reductions in Force

- ▶ Identify specific needs of District/ESD:
  - ▶ Areas of service: Instruction, Transportation, Maintenance, Food Services, etc.
  - ▶ Geography: by building or region if relevant
  - ▶ Seniority
  - ▶ Experience
  - ▶ Performance/Merit/Evaluations
  - ▶ Funding restrictions (Grants, funding sources)



# Licensed Administrators

BOARD POLICY CPA, ADMINISTRATOR WORKING CONDITIONS &  
ORS 342.934

# Licensed Administrators

- ▶ Double-check any administrator working conditions documents
- ▶ Primary resource is **Board Policy CPA**
- ▶ Board decision through resolution(?)
- ▶ Factors considered:
  - ▶ License
  - ▶ Seniority (in administrator position only, not prior teaching positions)
  - ▶ Qualifications
  - ▶ Merit (i.e. comparative ability and effectiveness) and/or
  - ▶ Competence (i.e. recent experience, additional training, educational attainments).

# Seniority (as defined in Board policy)

Seniority is calculated from the first day of actual service as an administrator in the district inclusive of approved leaves of absence. If necessary, ties in length of service shall be broken by drawing lots.



# License (as defined by Board Policy)

License means a document or documents issued by Teacher Standards and Practices Commission permitting an individual to perform certain duties within a public school district.

# Competence (as defined by Board Policy)

Competence means the ability to perform the essential functions of a job or assignment based on:

- ▶ recent experience,
- ▶ additional training or
- ▶ educational attainments,
- ▶ but not based solely on type of license or endorsements of an employee.

The superintendent or designee may interpret “recent experience” as having performed the essential functions of the job or assignment within the last five school years.



# Merit (as defined in Board Policy)

- ▶ Merit means the measurement of one administrator's ability and effectiveness against the ability and effectiveness of another administrator.
- ▶ Be cautious to only use formal discipline, poor evaluations and/or plans of assistance when making a call about merit.

Qualifications (as defined in Board policy)

Qualifications mean training, experience, skill and other attributes in addition to the individual's license.

# Licensed Administrators: Groupings

Administrative positions will be grouped by positions or assignments which the superintendent or designee determines are sufficiently comparable to use in the layoff process.

OR

The superintendent or designee may use the following job groups as a guideline: a. School Administrators Group 1: High school/Middle school/Elementary principals Group 2: Assistant principals b. Central Office Administrators Group 3: Directors (e.g., human resources, technology, business and support services and special education, etc.) Group 4: Coordinators (e.g., English Language Development (ELD), literacy and special education, etc.) Group 5: Others



## What process is used?

The superintendent or designee may recommend layoffs within job groups based on license, seniority, qualifications, merit and/or competence.

# Application of ORS 342.934 to Administrators

- ▶ Administrator retains status and seniority as contract teacher and may return to teaching position in RIF unless: never employed as teacher at district and effect is to displace a non-administrative **contract** teacher
  - ▶ Note: Work with Licensed Ass'n on salary placement, coordination with other provisions of CBA when placing laid off administrator
- ▶ Right of recall for 27 months



# Does the HB 2001 cultural/linguistic expertise requirement apply to administrators?

- ▶ School districts could decide to include this factor regardless of law.
- ▶ HB 2001 uses the definition of teacher in ORS 342.120, which includes a separate definition of administrator:

**342.120 Definitions for chapter.** As used in this chapter, unless the context requires otherwise:

(1) “Administrator” includes but is not limited to all superintendents, assistant superintendents, principals and academic program directors in public schools or education service districts who have direct responsibility for supervision or evaluation of licensed teachers and who are compensated for their services from public funds.

\* \* \*

(8) “Teacher” includes all licensed employees in the public schools or employed by an education service district who have direct responsibility for instruction or coordination of educational programs and who are compensated for their services from public funds. “Teacher” does not include a school nurse as defined in ORS 342.455 or an instructional assistant.

## Breakout Room Discussion

- ▶ Have you addressed this question of the application of the cultural/linguistic expertise provisions within your school district?
- ▶ What do you see as the pros/cons of applying these provisions to the administrator group?
- ▶ Please choose one person to report out.



# Licensed Teachers

COLLECTIVE BARGAINING AGREEMENT, BOARD POLICY GCPA, &  
ORS 342.934



# ORS 342.934

## Procedure for Reduction of Teacher

### Creates threshold

- “Due to funding or administrative decision”
- Defines cultural & linguistic expertise, competence, merit
- RIF is not a discharge or non-renewal
- Outlines “reasonable efforts” for District to take before proceeding with RIF

# STEP 1: ORS 342.934: Start with Reasonable Efforts to Avoid RIF



Transfer teachers to other positions if licensed and qualified



Combine positions in manner to retain teachers who are qualified and competent for positions to meet District curriculum needs



Having most up-to-date information on retirements & resignations greatly assists with this initial analysis

# STEP 2: Determine which teachers have cultural/linguistic expertise

- Definition of Cultural or Linguistic Expertise: “the expertise of one teacher, as measured against the expertise of another teacher, based on consideration of any of the following factors:”
  1. **Linguistic ability in an in-district language** – determined by method of verification or attestation of fluency of in-district language
  2. Completion of **a pathway program that has primary focus of increasing # of culturally/linguistically diverse teachers**
  3. Current work assignment where teacher works at least 50% at one school or a combination of schools (if teacher has multiple assignments) **where at least 25% of students are from historically underserved backgrounds**



## Definition of “historically underserved backgrounds”

1. English language learner; or
2. Group that has historically experienced academic disparities – Black, African American, American Indian, Alaska Native, Latino or Hispanic; or
3. Is economically disadvantaged (this is not defined in the statute); or
4. Has a disability .

# How can you determine teachers' status?

- ▶ **Linguistic ability in an in-district language:**
  - ▶ Do you already provide a stipend in your licensed CBA for this skill or only if required by the job?
  - ▶ If a teacher self-reports, will you require an attestation or will you require a proficiency exam to comply with law?

# How can you determine teachers' status?

- ▶ Completion of **a pathway program that has primary focus of increasing # of culturally/linguistically diverse teachers**
  - ▶ Do you record this information upon hire?
  - ▶ Can you work with the Licensed Association to develop an online form to allow for self-reporting and documentation of participation in a pathway program?

# How can you determine teachers' status?

- ▶ Current work assignment where teacher works at least 50% at one school or a combination of schools (if teacher has multiple assignments) **where at least 25% of students are from historically underserved backgrounds**
  - ▶ How do you quantify this?
  - ▶ What happens if all of your buildings qualify as serving students from historically underserved backgrounds?
  - ▶ If only one or some of your buildings qualifies, are all of the teachers in that building exempt from lay off?

# Goals of C/L Expertise Analysis

- ▶ Ensure you meet the statutory requirement to retain the same proportion of teachers with cultural or linguistic expertise compared to teachers without cultural or linguistic expertise
  - ▶ EXAMPLE: If, pre-layoff, 35% of teachers were cultural/linguistic expertise teachers (“C/L teacher”), then post-layoff there still must be 35% CL teachers.
- ▶ Ensure there is a clean, verifiable approach to the application of the law, with corresponding data to share with the licensed union prior to execution



# Different Approaches to C/L Application

Do you apply weights for each of the 3 criteria?

- One weight for Linguistic ability in an in-district language:
- One weight for Pathway Program
- One weight for assignment to building serving historically underserved population

Does the application of any one of the 3 criteria result in exemption from the RIF process?

Name	Position	Licensure	Building	Seniority	Linguistic Expertise	Pathway Program	Building-historically underserved	Documented performance concerns?
Teacher A	5th	Elementary - Multiple Subjects	Washington Elem	9/1/2003	X		X	
Teacher B	MS Health	Health Endorsement	South MS	9/1/2021		X		
Teacher C	HS LA	Language Arts	Lakeside HS	9/1/2018				
Teacher D	Elem PE	Elementary - Multiple Subjects- PE Endorsement	Washington Elem	9/1/2015			X	
Teacher E	3rd	Elementary - Multiple Subjects	Washington Elem	9/1/2013	X	X	X	
Teacher F	Secondary Music	Music endorsement	South MS/Lakeside HS	9/1/2023				
Teacher G	HS Math	Advanced math endorsement	Lakeside HS	9/1/2016				
Teacher H	Elem Sped	Special Education Endorsement	Lincoln Elem.	9/1/2023			X	

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Teacher B	MS Health	Health Endorsement	South MS	9/1/2021		X		
Teacher D	Elem PE	Elementary - Multiple Subjects- PE Endorsement	Washington Elem	9/1/2015			X	
Teacher E	3rd	Elementary - Multiple Subjects	Washington Elem	9/1/2013	X	X	X	
Teacher H	Elem Spec	Special Education Endorsement	Lincoln Elem.	9/1/2023			X	
Teacher G	HS Math	Advanced math endorsement	Lakeside HS	9/1/2016				
Teacher C	HS LA	Language Arts	Lakeside HS	9/1/2018				
Teacher F	Secondary Music	Music endorsement	South MS/Lakeside HS	9/1/2023				

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Teacher E	3rd	Elementary - Multiple Subjects	Washington Elem	9/1/2013	X	X	X	
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Teacher D	Elem PE	Elementary - Multiple Subjects- PE Endorsement	Washington Elem	9/1/2015			X	
Teacher B	MS Health	Health Endorsement	South MS	9/1/2021		X		
Teacher H	Elem Spect	Special Education Endorsement	Lincoln Elem.	9/1/2023			X	
Teacher G	HS Math	Advanced math endorsement	Lakeside HS	9/1/2016				
Teacher C	HS LA	Language Arts	Lakeside HS	9/1/2018				
Teacher F	Secondary Music	Music endorsement	South MS/Lakeside HS	9/1/2023				

## Breakout Room Discussion

- ▶ What do you think is the best approach for implementing the three factors of the cultural/linguistic expertise (Linguistic ability, Pathway Program, Assignment to School/Program serving historically underserved population)?
- ▶ How can you gather this information from District educators?
- ▶ Please choose one person to report out.



## Once the C/L Analysis is Completed:

- ▶ Does the percentage of retained C/L teachers meet the same percentage of C/L teachers pre-layoff?
- ▶ Do you need to use additional analysis to determine competence and merit of the non-CL teachers remaining? Is the teacher “qualified” for the new position?
  - ▶ Measurement of one teacher’s ability to teach at the particular grade level or subject matter in which the teacher is placed *after* the RIF
  - ▶ Shall be measured by more than seniority and licensure, may include criteria to reasonably measure fitness to teach at grade or subject level

# Recall Rights



When a vacancy arises post-RIF, determine who is most senior and qualified for the position, based upon “competence” and “merit:”

- ▶ **Competence:** ability to teach
  - ▶ At subject/grade level; based on recent teaching experience in area within last 5 years, or educational attainment, or both
  - ▶ Not based solely on license
  - ▶ May consider willingness to get training/education
- ▶ **Merit:** Measurement of one teacher’s ability and effectiveness against the ability and effectiveness of another teacher

# Recall Rights



- ▶ Statute: 27 months allowed for recall
  - ▶ Employee typically waives right if specific position is rejected.
  - ▶ Recall process should give clear notice of employee obligation to provide contact information; notice should put burden on employee for timeline to respond or presumed “rejected”



# RIF/RECALL challenges

- ▶ Challenges on decisions for RIF/Recall:
  - ▶ May go to ERB or Arbitrator, or “mutually agreed upon process” in CBA
  - ▶ Can combine multiple reductions in one action
  - ▶ “Final and binding”
    - ▶ Can only reverse decision based on certain grounds, e.g., exceeded jurisdiction, failed to apply procedure, improper construction of law

# Questions?

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