

POSSIBLE SUMMER REDUCTIONS in FORCE (RIFs)

CTA Legal Department, Center for Organizing and Bargaining (C4OB), and Governmental Relations Department Advisory

With the recent May Revision to the Governor's state budget proposal, the Legislature now begins considering cuts to education funding which *may or may not* result in summer Reductions in Force (RIFs). While we are not certain that RIFs will occur, and are advocating for suspension of the Education Code section that allows summer layoffs, we do, however, wish to arm you with information needed to address the situation should RIFs occur. Please use this Advisory and accompanying documents to prepare for the possibility of summer layoffs of K-12 certificated employees (particularly if your district is taking steps to initiate them), while at the same time being ready to join together to oppose them.

Many questions have been raised about the possibility of RIFs occurring this summer. This Advisory is intended to answer those questions.

Q. Can districts proceed with summer layoffs of certificated employees after the March 15 RIF process has concluded?

A. Yes. Education Code section 44955.5 allows summer layoffs of certificated employees if all three of the following conditions are met:

1. **Timing:** The layoffs occur during the period between five days after enactment of the Budget Act for a fiscal year and August 15 of that fiscal year;
2. **Revenue:** The school district's board determines that its total LCFF Revenue per unit of average daily attendance for that fiscal year will increase by less than 2%; **and**
3. **Necessity:** The school board decides that, consequently, it is "necessary to decrease the number of permanent employees in the district."

Given the economy's rapid decline and the Governor's dramatic budget proposal, we anticipate the second requirement above will be met in most, if not all, districts funded under the LCFF and in many Basic Aid districts. California will enact the budget for the coming year on or before June 30, and the period for summer layoffs will then open five days after passage of the Budget Act. The Legislature could enact the budget sooner, so please stay tuned regarding the timing of enactment, since that will trigger the beginning of the summer RIF window.

The significant question remaining unanswered is whether school boards will determine that, as a result of reduced LCFF revenue, it is "necessary to decrease the number of permanent employees..." Districts are analyzing the Governor's May Revision and will be tracking budget changes made by the Legislature, as well the positive impacts of any possible federal relief funding. Education Code section 44955.5 requires a district to conclude that the revenue cuts are deep enough to necessitate laying off permanent employees (if the district reaches this conclusion, it can then proceed to lay off both permanent and probationary employees consistent with section 44955's usual rules). We expect districts will determine if summer layoffs are "necessary" by the end of June, *at the latest*. Organizing efforts to prevent possible RIFs should therefore begin immediately.

Q. Have districts ever proceeded with summer layoffs?

A. Only rarely. Summer RIFs are highly disruptive to the start of school. In past years, the law has been amended to prohibit the summer layoff window to avoid those disruptions (for example, Education Code section 44955.5(b) states summer RIFs were not permitted “from July 1, 2002, to July 1, 2003, inclusive, and from July 1, 2011, to July 1, 2012, inclusive,” during past economic downturns). But, unfortunately, the current economic conditions are unprecedented, and if summer RIF are permitted, we should be prepared for many districts to reduce staffing to increase their budget flexibility.

Q. If a district decides to proceed with summer layoffs, what procedures does it have to follow?

A. Except for the timelines, the procedures governing March 15 layoffs apply to summer RIFs. Summer layoffs must conclude by August 15, but otherwise proceed on a schedule set by the school board. Although the statute does not set a deadline for issuing layoff notices, districts should be encouraged to give employees as much notice as possible. This includes urging districts to send out proposed layoff notices by the end of June, with the hearings to follow by early August, the proposed Administrative Law Judge (ALJ) decision issued by August 7, and the school board’s final decision and notification to employees made no later than August 14 (as the 15th falls on a Saturday this year).

Q. What issues will likely come up in a summer layoff?

A. Summer RIF hearings should focus on whether the district can show it is “necessary” to reduce permanent certificated employees due to decreases in the LCFF revenue that occurred after the March layoff window closed. Any decreases in funding that the district knew about before March 15 should have been dealt with through the earlier layoff procedure. Please note, however, that until the Governor’s May Revision, there was only uncertainty about how the pandemic would affect the state budget (and now that picture is clearer and, unfortunately, much worse).

If the district demonstrates financial necessity (and a less than 2% increase in LCFF revenue for the coming year), the hearing will then turn to whether the district has complied with the usual layoff rules set forth in Education Code section 44955 for laying off permanent and probationary employees. This may include resolving disputes over seniority dates, credentials, competency, and the appropriateness of skipping more junior employees. These are the same issues that are always at play during March RIF hearings. If the district did a March layoff, the outcome of the prior hearing on these issues is not binding but will be persuasive authority to an Administrative Law Judge who hears the summer layoff challenge.

Q. What can chapter leaders and staff do now to prepare for summer RIFs?

A. Organize, organize, organize at the local, state, and federal level. We must not only challenge staffing reductions locally but join colleagues statewide to oppose education cuts and nationally to advocate for additional federal funding to ease the pain our students and schools will otherwise face. Stay tuned for the many upcoming opportunities we will have to stand up for our profession and public education!

Request the district’s budget documents. Since the window for summer layoffs can open only due to a change in the district’s financial situation, specifically a further decline in the district’s funding, if you haven’t already done so, request the district’s relevant budget documents for analysis. If your district cannot show the proposed layoffs are necessary due to reductions in revenue, it will have difficulty proceeding with the layoff.

Organize around and plan to attend school board meetings, even virtually, particularly special meeting(s) called in June or July to consider layoffs. A district that decides to move forward with summer layoffs must do so in a public meeting. Organize to make the case that your students need all hands on deck to return to any sense of normalcy, particularly to provide the appropriate social distancing and other health/safety precautions required. If summer layoffs are nevertheless approved by the board, your CTA staff person should immediately notify the CTA Legal Department and chapter leaders should use the accompanying documents to help prepare for the RIF hearing.

Educate members about the summer RIF process. Just as with the March 15 process, CTA members who want to challenge their layoff will have to serve the district both a request for a hearing and a notice of participation. Members will also have to prove their years of service and credential status and should take steps now to ensure that they can do so (the accompanying documents will help with that process).

Obtain updated, summertime contact information for members, especially those likely subject to layoff. Districts may not decide to proceed with layoffs until after this school year ends. Staff and chapter leaders should make sure they have current summertime phone numbers and email addresses for every member.

Fine tune the seniority list. Chapters that went through a March 15 layoff process have already done a lot of work to check and challenge the seniority list used for that layoff. Build on that work to make sure you have an accurate seniority list for this round. If teachers on the list were not credited with certain credentials because they did not file them with the district before the March 15 cutoff, contact those members and ask them to file their credentials with the district now so they are credited during this round. If your chapter did not go through March layoffs, work with the district and your members now to assemble an accurate seniority list that reflects all your members' dates of hire and credentials. Again, the accompanying documents will assist with this work.

Q. If a district proceeds with summer layoffs, what is the process for securing representation for members in those hearings?

A. CTA will respond to summer RIFs in the same way it handles March layoffs. CTA primary contact staff should immediately notify the CTA Legal Department when a district initiates a summer layoff, providing a copy of the board's resolution to the Legal Department. If a GLS attorney is assigned to represent members in the process, CTA will pay the first \$5,000 for counsel, with CTA and the chapter splitting the remaining fees equally.

Q. What if the district makes complex or unusual claims about its financial situation?

A. Consult your CTA primary contact staff person in all cases, particularly when there is any doubt about the district's claims.

Q. Can a district lay off administrators as part of a summer RIF?

A. Yes, and one of our organizing efforts during this difficult time should be to ensure that no district remains top heavy with administrators.

Please stay tuned and stay active as the situation evolves, especially as we organize to fight for additional federal funding relief and to oppose education cuts and staffing reductions. In the meantime, questions and concerns should be directed to your local CTA primary contact staff.



Q&A Regarding Possible Summer 2020 Layoffs

1. What triggers a district’s ability to conduct a summer layoff?

A summer layoff may be triggered if state LCFF funding for the coming school year increases by less than 2% over the current year.

2. When will the district know what its funding will be for 2020-21?

Districts will know their funding when the Legislature passes, and the Governor signs, the Budget Act for 2020-21 (which by law must be passed by June 30 for Legislators to be paid).

3. What is the timeline during which the district can run a summer layoff?

A district may initiate a summer layoff between five days after enactment of the Budget Act and August 15. However, as in the past, we are vigorously opposing summer layoffs, especially given the expectation that schools may reopen under social distancing norms, requiring at least as many staff as are currently employed. Therefore, we are advocating for suspension of the Education Code section that allows summer layoffs.

4. What are the legal requirements a district must meet to initiate a summer RIF?

- a. A district must initiate the layoff in the timeline identified in Question 3 above.
- b. The school board must “determine” that the trigger identified in Question 1 above has been met. And,
- c. Assuming the first two requirements are met, the school board must decide that it is “necessary to decrease the number of permanent employees in the district.” (Education Code section 44955.5)

5. Given the projected fiscal crisis, won’t all districts be allowed to make summer layoffs?

Under the current budget proposal, it is likely all districts will receive less than a 2% increase in their funding the coming year. But whether a specific district chooses to initiate a layoff may depend on the rest of its fiscal circumstances. What is its reserve level? What are its other ongoing obligations? As noted above, CTA is also advocating that, especially during this year’s return to work, summer layoffs not be permitted.

6. What is the process for a summer layoff, assuming a district meets all the criteria and determines it needs to decrease the number of certificated staff?

The process is identical to a regular March layoff, albeit on a much shorter timeframe. Additionally, rather than the Education Code establishing when notices must go out; when a request for hearing must be returned; when the hearing must occur; and when a decision must be issued by an Office of Administrative Hearings officer and adopted (or not) by the

school board, those timelines all have to fit so that by August 15 the process is complete. For summer RIFs, **it is the district's board that sets the timelines** (other than the opening of the window and end date). Because of this, it is imperative that the chapter work closely with the district to make sure members are aware of the dates and deadlines of the process.

- 7. How can our chapter possibly manage all these pieces during the summer, when many folks aren't available, don't pick up their mail, and may not even think they could be named in a RIF?**
It is precisely because the timing of a summer layoff is extremely difficult that chapters must actively engage members now, before school closes. Chapter leaders should: a) inform members of the possibility of a summer layoff; b) collect summer contact information from members; c) ensure that at least one chapter leader will be available and knowledgeable about the timelines and specific processes adopted by the school board; and d) make sure that your CTA primary contact staff person is fully apprised and updated during this period. Please see the accompanying two documents, one for local leaders titled "Summer 2020 RIF Survival Kit for Chapter Leaders" and the other for members titled "Attention All CTA Members," which will help during this process.
- 8. Who will represent members at the possible RIF hearing?**
As soon as you know your districts is planning a summer layoff, inform your CTA primary contact staff person (who may in turn consult with the CTA Legal Department and/or Center for Organizing and Bargaining). Your staff person will take the lead in either representing members during the hearing or securing another staff person/attorney to fill that role.
- 9. How can a district hold a summer layoff when we may be starting school at the same time, under conditions that will require more staffing rather than less?**
That is the question. It is certainly a conundrum. But our job is to prepare and be poised to fight, or manage, the chaos in the best ways possible. So, as we attempt to prohibit summer layoffs at the state level, we must also fight against them – and prepare for them – at the local level.
- 10. Are community college employees subject to summer layoffs?**
No. The layoff statute, Education Code Section 44955.5, applies to K-12 certificated employees and districts. There is no comparable statute that applies to community college districts.



Summer 2020 RIF Survival Kit for Chapter Leaders

To prepare for the possibility our district may conduct a RIF this summer, you should do the following:

1

Distribute the attached information sheet to all members.

2

Collect summer contact information from all members (and enter it into a database or spreadsheet for easy use).

3

Designate who will be available when you (the chapter president) may not be during the summer. Forward that contact information to your CTA staff person, so he/she may continue to assist.

4

Monitor school board meeting agendas (both regularly scheduled and special), watching for layoff resolutions.

5

Provide copies of any layoff resolutions and RIF documents (skipping and tie-breaker criteria, etc.) to your CTA staff person immediately.

6

Check mail/email daily – whether you are the chapter president or designee.

7

Contact your CTA staff person with questions or concerns.

8

Take the possibility of summer RIFs as an opportunity to communicate with non-members. Perhaps some will join to be supported/represented by CTA.



ATTENTION

ALL (INSERT LOCAL HERE)/CTA MEMBERS

Summer Layoffs Are Possible

While CTA is fighting hard to prohibit summer layoffs, the Governor's May Revision to the proposed state budget suggests the financial trigger for layoffs may occur when the Legislature passes the budget by the end of June.

If/when that happens, the district may determine that summer layoffs are necessary. The window for the layoffs may occur between five days after adoption of the Budget Act and August 15.

Here's what we need from you now to prepare and best help protect your rights



- **PROVIDE** (insert local leader's info here) your accurate summer contact information.



- **HAVE**, at your fingertips, all employment and credential information (don't leave it at school).



- **WATCH** your mail for a registered letter from the district (and provide them with a summertime address if it is different from the one on record).



- **HAVE** someone check your mail if you are away.



- **CALL** us immediately if you receive a layoff notice.

OUR CONTACT INFORMATION IS: