



700 Broadway, Suite 810 • Denver, CO 80203-3442 • 303.299.3600 • Fax: 303.296.8332 •

Reduction in Force Policies

By Emily Workman

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During tough economic times, some states and districts are forced to cut teaching positions to balance budgets. The process for determining which staff will be “let go” (reduction in force) is highly contentious, particularly when young or less-experienced teachers are the first staff to be cut, even though they might be higher performing than their more experienced peers.

For many years, having attained tenure or a degree of seniority was the sole determinant in most “reduction in force” policies. Seniority, which is directly linked to the tenure status of teachers, is a key component of most fair employment and dismissal policies, and as such, it has traditionally been listed as a basis for making decisions on who to dismiss when staffing must be reduced. This has resulted in reduction in force policies that are often referred to as “last in, first out.”

Of great concern to many policymakers is that neither tenure nor seniority represents a sound estimate of a teacher’s effectiveness in the classroom. Without taking the quality of teaching into consideration during layoffs, it is likely that districts could lose non-tenured and less-experienced personnel who are more effective in the classroom than their more experienced peers. As a result, some states have revised their “reduction in force” policies to include performance evaluation results in decision making, while others have gone one-step further to strictly prohibit the consideration of tenure or seniority in layoff decisions.

The following table highlights the primary factor to be considered in state “reduction in force” policies, in addition to any secondary and tertiary factors that are to be considered thereafter. It also draws attention to those states that strictly prohibit the consideration of tenure or seniority in layoff decisions, as well as those that permit tenure and/or seniority to be considered only when a tie-breaker is required for otherwise comparable teachers.

- **36 states have policies that guide “reduction in force” decisions.**
- **12 of these states require that evaluations be considered, ten of which require the evaluations to be the primary determinant.**
- **Five states strictly prohibit tenure and/or seniority from being considered.**
- **Five states permit tenure and/or seniority to be used as a tie-breaker.**

STATE	Factors Considered/Prohibited			SENIORITY/ TENURE TIE-BREAKER	NOTES
	TENURE	SENIORITY	EVALUATION		
Alabama ALA. CODE § 6-1-33					Must be based on objective data
Alaska ALASKA STAT. § 14.20.177	Primary factor				
Arizona ARIZ. REV. STAT. § 15-503	Prohibited	Prohibited			
Arkansas ARK. CODE ANN. § 6-17-2407					Must be based on objective data
California CAL. EDUC. CODE § 44955	Primary factor	Primary factor			
Colorado COLO. REV. STAT. § 22-63-202	Secondary factor	Secondary factor	Primary factor	X	
Connecticut CONN. GEN. STAT. § 10-151	Primary factor				
Delaware DEL. CODE ANN. tit. 14 § 1410					At discretion of board
Florida FLA. STAT. ANN § 1012.33		Prohibited	Primary factor		District need also considered
Georgia GA. CODE ANN. § 20-2-942	Primary factor				
Hawaii HAW. REV. STAT. §302A-609		Primary factor			
Idaho IDAHO CODE § 33-522	Prohibited	Prohibited			
Illinois 105 ILL. COMP. STAT. ILCS 5/24-12 ¹			Primary factor	X	
Indiana IND. CODE § 20-28-7.5; 20-28-9-1		Secondary factor	Primary factor	X	
Iowa					Dependent on collective bargaining agreements ²

STATE	Factors Considered/Prohibited			SENIORITY/ TENURE TIE-BREAKER	NOTES
	TENURE	SENIORITY	EVALUATION		
Kansas					Dependent on collective bargaining agreements ³
Kentucky KY. REV. STAT. ANN. § 161.011; 161.800	Primary factor	Primary factor			
Louisiana LA. REV. STAT. ANN. § 17:81.4 ⁴	Primary factor	Primary factor			School board may include other considerations as well
Maine ME. REV. STAT. ANN. tit. 20A §13201		Permitted to consider seniority			Dependent on collective bargaining agreements
Maryland					Dependent on collective bargaining agreements ⁵
Massachusetts MASS. GEN. LAWS ch. 71 § 42	Primary factor				
Michigan 2011 Mich. Pub. Acts 201	Prohibited	Prohibited	Primary factor ⁶	X	
Minnesota MINN. STAT. § 122A.40	Primary factor	Primary factor			
Mississippi					Not in statute/no documentation found
Missouri MO. REV. STAT. § 168.124. 1.	Primary factor	Tertiary factor	Secondary factor		
Montana					Not in statute/no documentation found
Nebraska NEB. REV. STAT. § 79-846	Primary factor		Evaluations permitted as a factor but not required		
Nevada NEV. REV. STAT. 288.151		Must not be based <i>solely</i> on seniority and may include consideration of a number of other factors ⁷			
New Hampshire N.H. REV. STAT. ANN. § 189:14A		Must not be based <i>solely</i> on seniority			
New Jersey N.J. STAT. ANN. § 18A:28-10.		Primary factor			

STATE	Factors Considered/Prohibited			SENIORITY/ TENURE TIE-BREAKER	NOTES
	TENURE	SENIORITY	EVALUATION		
New Mexico N.M. ADMIN. CODE tit. 6.67.3.8					At discretion of board
New York N.Y. EDUC. LAW. § 3013		Primary factor			
North Carolina N.C. Sess. Laws 2011- 145, Section 7.23(a)(2)			Primary factor		
North Dakota N.D. CENT. CODE §15.1-15-05 (2b)					At discretion of board
Ohio OHIO REV. CODE ANN. § 3319.17	Primary factor		Secondary factor	X	
Oklahoma OKLA. STAT. tit. 70 § 6- 101.31			Primary factor		
Oregon OR. REV. STAT. § 342.934		Primary factor (along with licensure status)			The district may retain a less senior teacher if they can determine that the teacher being retained has more 'competence and merit'
Pennsylvania PA. CONS. STAT. 24 § 11- 1125.1		Primary factor			
Rhode Island R.I. GEN. LAWS. § 16-13-6		Primary factor			
South Carolina					Not in Statute/no documentation found
South Dakota					Not in Statute/no documentation found
Tennessee TENN. CODE ANN. § 49-5- 511			Primary factor ⁸		
Texas TEX. EDUC. CODE ANN. § 21.157			Primary factor		
Utah UTAH CODE ANN. § 53A- 8-107		Prohibited	Primary factor		School needs also considered
Vermont					Not in Statute/no documentation found
Virginia					At discretion of board ⁹
Washington					Not in statute/no documentation found
West Virginia W. VA. CODE § 18A-4-7A		Primary factor			
Wisconsin WIS. STAT. § 118.23		Primary factor			
Wyoming					At discretion of board ¹⁰

¹ Refers only to districts with less than 500,000 inhabitants.

² Confirmed by Jean Hessburg, Iowa State Education Association.

³ Confirmed by David Schauner, Kansas Education Association.

⁴ HB 974 (2012) has passed the house and is currently being considered by the senate. If enacted, reduction-in-force decisions will be based solely upon demand, performance, and effectiveness, as determined by performance evaluations. The bill prohibits tenure and seniority to be included as a primary criterion to be considered.

⁵ Confirmed by Saurabh Gupta, Maryland State Education Association.

⁶ Individual performance must be the majority factor in making the decision, and must consist of but not be limited to, evidence of student growth; demonstrated pedagogical skills, management of the classroom, manner and efficacy of disciplining pupils, rapport with parents and other teachers, and ability to withstand the strain of teaching; and the teacher's attendance and disciplinary record. Other considerations should include significant, relevant accomplishments, and contributions and relevant special training.

⁷ Other factors used for consideration may include: employed in a position which is hard to fill; national board certification; performance evaluations; disciplinary record; criminal record; type of licensure held; type of degree attained; and whether the degree is in a subject area that is related to his or her position.

⁸ Evaluation should be of teacher's competence, compatibility, and suitability to properly discharge the duties required for the vacant position considered in the light of the best interest of the students in the school where the vacancy exists. The teacher's most recent evaluations may be a factor in such determination.

⁹ Confirmed by Dena Rosenkrantz, Virginia Education Association.

¹⁰ Confirmed by Kathy Scheurman, Wyoming Education Association.

Emily Workman, researcher, with the ECS Information Clearinghouse, updated this report. She can be reached at eworkman@ecs.org.

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