

# Reduction In Force/ Layoffs

## Assistance Guide For School Employees

2011

Office of the General Counsel  
P.O. Box 9100  
Federal Way, WA 98063-9100

This publication is intended only to be a general guide that provides basic information for school employees who have been laid off. This booklet is not intended to provide legal advice on specific problems. It is subject to periodic updates, and should not be relied upon beyond the year of publication listed below. A legal opinion in any particular situation will depend on the facts of your situation. **Individuals need to make direct contact with their local association when they are RIFed/laid off.** Your local president is prepared to provide additional advice on your rights and to help you gain as many benefits as possible during this difficult time in your career.

## ***If You Receive a RIF/Layoff Notice***

Many districts send RIF/layoff notices in the spring to more certificated employees than necessary. Because the District may be uncertain of its finances or staff needs until the beginning of the next school year, the District may try to keep its options open by notifying more employees prior to the May 15 deadline than will ultimately be laid off, and then recalling some of them as its staffing needs become more certain. However, in the current economic climate, it is likely that there will far fewer recalls than have occurred in years past.

School districts must follow both Washington state statutes and your collective bargaining agreement to carry out a reduction in force. To challenge your layoff, you may be able to appeal to a hearing officer or file an action directly in court.

## ***Appeal to a Hearing Officer under State Law***

Teachers and other certificated employees with continuing contracts have the right to challenge a nonrenewal or layoff under RCW 28A.405.210. This statute provides that no certificated employee may be non-renewed unless he or she receives written notice of the probable cause for nonrenewal on or before May 15.

The determination of probable cause for nonrenewal (layoff) must be made by the Superintendent, and the notice must specify the cause or causes for nonrenewal. This notice must be served upon the employee personally or by certified or registered mail or by leaving a copy of the notice at the employee's regular residence with some person of suitable age and discretion who also is a resident at that location.

To challenge a determination of probable cause for nonrenewal, a continuing contract certificated employee can file a notice of appeal and request for hearing. Any such appeal must be filed ***within 10 calendar days*** of receipt of the notice of probable cause. The notice of appeal and request for hearing must be filed with the president, chair, or secretary of the board of directors of the District. (The school district superintendent acts as "secretary" of the board of directors.) The employee may choose either an open or closed hearing – an open hearing is one which anyone can attend. A closed hearing includes only the concerned parties. We advise a closed hearing.

**If you choose a statutory hearing, the district pays the cost of the hearing officer. You may represent yourself or hire an attorney to represent you.**

***A continuing contract certificated employee who receives a non-renewal notice due to enrollment decline or loss of revenue may request that the selection of a hearing officer be postponed until July 15th.***

***WE ADVISE THAT EMPLOYEES STIPULATE IN THEIR NOTICE OF APPEAL THAT THE SELECTION OF A HEARING OFFICER BE POSTPONED UNTIL JULY 15th.***

***This will maximize the potential for recalls to take place prior to a decision being issued by a hearing officer which may be adverse to the member.***

If you decide to file an appeal letter (page 4), we suggest that you make two copies of the letter. Hand-deliver one to your Superintendent's office and have the second copy stamped "Received" by them with their office stamp.

### ***Direct Appeal to Court Under State Law***

Instead of requesting a hearing before a hearing officer, a continuing contract employee who receives a notice of probable cause based upon lack of sufficient funds or loss of levy election may appeal directly to court. Under RCW 28A.405.380, such a direct appeal is commenced by filing a notice of appeal with the court and serving a copy to the secretary of the school board ***within 10 calendar days*** after the employee receives the RIF/layoff notice.

**If you choose to go to court you will be responsible for the filing fee (about \$200). You may represent yourself or hire an attorney to represent you.**

***SAMPLE LETTER TO SUPERINTENDENT***

***(Certificated Continuing Contract Employees Only)***

Date

Mr./Ms. \_\_\_\_\_, Superintendent

\_\_\_\_\_ School District

Street Address or PO Box

\_\_\_\_\_ WA 98xxx

Dear \_\_\_\_\_:

Pursuant to 28A.405.210, I request a hearing to determine if there is a sufficient cause to non-renew my teaching contract. I am willing to stipulate that the selection of a hearing officer be postponed until 10 days following July 15th, in accordance with this statute.

Please contact me after July 15 to discuss arrangements for the selection of a hearing officer.

I request an open/closed hearing. *(Choose one)*.

Sincerely,

(Member's signature, printed name, address and telephone number)

## ***Who Is a Provisional Employee?***

Washington law, not the school district, defines who is a provisional employee. The general rule is that employees in their first three calendar years of certificated employment with the district are provisional. However, an employee who has previously completed at least two calendar years of certificated employment in another Washington state school district will be provisional for only one calendar year in the new district. **A “year” under the statute does not refer to a school year, but to a 12-month period of time.** Thus, if you begin employment in December of one school year, the first year of employment will be finished in December of the next school year.

## ***Appeal Rights of Provisional Employees***

That statute provides that no provisional employee may be non-renewed unless the employee receives a notice of nonrenewal by May 15. If the state Legislature has not passed an appropriations act by May 15, then the notice may be delayed until June 1. The notice must be served upon the employee personally, or by certified or registered mail or by leaving a copy of the notice at the employee’s regular residence with some person of suitable age and discretion who also is a resident at that location.

Unlike continuing contract certificated employees, provisional employees are only provided with an opportunity for an informal meeting with the district superintendent. To do so, the provisional employee must file a request for such a meeting with the Superintendent ***within 10 calendar days*** after receiving the non-renewal notice. The meeting must be held within 10 days after the superintendent’s receipt of such a request, and the provisional employee must be given notice of the date, time and place of this meeting at least three days before the scheduled date. At the meeting, the employee has the opportunity to refute any facts upon which the nonrenewal was based and to argue for reconsideration of the non-renewal decision.

Within 10 days following the meeting, the superintendent must either reinstate the employee or submit to the district board of directors a written report stating the reasons for the recommendation of nonrenewal. The board of directors must consider the superintendent’s report at the next scheduled board meeting. A copy of the superintendent’s report must be delivered to the employee at least three days prior to the board meeting. The board must consider any written communication which the provisional employee files with the superintendent prior to the board meeting. The board of directors must give the provisional employee written notice of its decision within 10 days after the meeting at which the superintendent’s recommendation was considered. **The decision of the board of directors is not subject to any appeal.**

If you decide to file an appeal letter (page 7 for provisional employees), we suggest that you make two copies of the letter. Hand-deliver one to your Superintendent's office and have the second copy stamped "Received" by them with their office stamp.

***SAMPLE LETTER FOR PROVISIONAL EMPLOYEES***

(Date)

Mr./Ms. \_\_\_\_\_, Superintendent  
\_\_\_\_\_ School District  
Street Address or PO Box  
\_\_\_\_\_ WA 98xxx  
Dear \_\_\_\_\_:

Dear \_\_\_\_\_:

Pursuant to RCW 28A.405.220, I request that you reconsider your decision not to renew my contract. I also request an opportunity to meet with you within 10 days after you receive this letter. Please notify me at least three days in advance of the date, time and place of the meeting.

Sincerely,

(Member's signature, printed name, address and telephone number)

## ***Resources, Information & Websites***

- Highly Qualified Teacher (HQT) concerns (scroll down to next page)
- Employment Security Department (unemployment benefits information): <http://www.esd.wa.gov/uibenefits/>
- Apply for unemployment benefits: 800.308.6122
- Washington State Worksource Online: <https://fortress.wa.gov/esd/worksource/Employment.aspx>
- Bremerton Work Source Office (resources/info): 360. 337.3810
- Port Angeles Work Source Office: 360.457.2100
- Shelton Work Source Office: 360. 427.2174
- Port Hadlock Work Source Office: 360.379.5036
- Tacoma Work Source Office: 253.593.7300
- How would a layoff affect your [retirement account](#)?
- WEA [joblink](#) career and job-hunting resources
- School employment statewide ([district websites](#))
- Teachers-Teachers.com: <http://www.teachers-teachers.com/>

## ***HQT (Highly Qualified Teacher) Concerns:***

### Can a teacher be fired for not meeting HQT requirements?

The OSPI 2009-10 Highly Qualified Teacher Resource Manual states, “Nothing in the federal law requires that a teacher be dismissed for not meeting the federal requirements. However, the district may choose to transfer the teacher to an assignment - as defined by the assignment/transfer policy in the teachers’ local collective bargaining agreement- where the teacher’s experience and preparation would meet the HQT requirements.” (Page 15, Question 13) The federal law has required all teachers of core academic subjects to meet the HQT requirements since the end of the 2006-07 school year. The current expectation is that all teachers hired or placed in a different teaching assignment meet the requirements at that time. School districts are under pressure to report 100% of their teachers meeting HQ annually.

### So what happens to an individual teacher who does not meet HQT requirements?

The teacher needs to be put on a mutually agreed upon plan to achieve highly qualified status. The Individual Teacher Plan for Achieving Highly Qualified Status is between the school district and the teacher (the form is in the OSPI HQT Resource Manual on pages 65-67). While the teacher is on this plan, the teacher is NOT considered HQ and must be reported as such. ESEA/NCLB Title II Part A funds should be used to assist the teacher with professional development, coursework, state tests, or other allowable avenues to meet the HQT requirements. NCLB also requires that after four consecutive weeks of a non HQ teacher teaching a class in a school receiving Title I funds, the district must notify the parents individually.

### What responsibility is placed on districts to ensure they meet HQT requirements?

Districts must report annually to OSPI. New this year is a series of HQT plans that school districts must complete. All districts, whether they receive Title II funds or not, must submit a HQT Plan that covers six components and is a required page of the iGrants application process. The HQT Improvement Plan is required for all school districts that do not meet HQT for two consecutive years. It is much more comprehensive in nature and comes with technical assistance from OSPI. The final district plan is called the HQT Accountability Plan and is the most restrictive. This plan is completed by districts not meeting HQ for three consecutive years and not making adequate yearly progress (AYP) for three consecutive years.

### What procedure does a teacher use to show he/she is HQ?

Depending on whether the teacher is new (less than 180 days of teaching experience) or not new to the profession and whether they are elementary or secondary, the requirements are different. Generally, teachers must hold at least a bachelor’s degree, hold full state

certification and demonstrate subject matter knowledge in the core academic subject. The most flexible way to achieve HQT status is through meeting the points-based [HOUSSE](#). This can be accomplished by documenting 100 points in various categories, such as years of teaching experience or college credits or work related experience, etc. in the core academic subject. A teacher can also take a state test in the core academic subject. This year we are transitioning from the Praxis II to the WEST-E but both can be used during the transition year. The important point to remember is that there are multiple ways to become HQ and that the teacher needs to have a voice in what route he/she will take. The teacher also needs fiscal support from Title II to accomplish this requirement. While OSPI wants the teacher HQ as soon as possible, nothing states a specific time period for this to occur.

Where can I get more information on HQT requirements?

The OSPI web site, [www.k12.wa.us](http://www.k12.wa.us), is a convenient place to find more information on HQT. Look under “Offices and Programs” at the top of the screen, choose “see all”, then scroll down the page to “Special Programs and Federal Accountability”. From that list, click on Title IIA. The successive screen choices are attached here.

What steps should teachers who are on the RIF list take regarding HQT?

Teachers on the RIF list should use the [manual](#) which has a very easy walk-through of HQ for each category that begins on page 39. For most teachers, their HQ status is pretty clear. For some...counselors, librarians, science and math teachers qualified at HS but not MS, they will need to cobble together the HQ evidence that gives them more content area or grade level flexibility. In the end, there are always a few that have such limited endorsements that they have to be declared not HQ. The district is still required to create a plan and notify parents regarding those teachers.