



The ABC's of staff reduction

By the New York State Association of School Attorneys

Under current economic conditions, many school boards are considering reducing staff. This area of the law is complex, and mistakes can be costly. A school board has broad latitude to abolish, reorganize, or consolidate administrative and teaching positions. However, the board must have a bona fide reason to abolish a position, and abolition must not be used as a subterfuge to terminate unwanted tenured teachers and administrators.

A school board must act in good faith and with reasonable judgment in abolishing positions for economic or educational reasons. Before taking action, it is important to review the applicable rules regarding staff reductions with your school attorney. Below are the basics.

Eliminating teacher positions

When a school board abolishes a teaching position for economic reasons, it must discontinue the services of the teacher with the least seniority within the tenure area of the position abolished. Seniority rights are determined by calculating the length of actual paid service within a tenure area in the school district or BOCES. Regular substitute service rendered any time prior to a probationary appointment should be included when computing a teacher's seniority. Time spent on an unpaid leave of absence may not be included when calculating seniority. A teacher may accrue seniority in more than one tenure area at the same time, provided that the teacher spends at least 40 percent of his or her time in each tenure area.

Tenure areas differ based upon a teacher's date of hire. Teachers hired before Aug. 1, 1975 are governed by the old tenure areas, also known as "horizontal tenure areas". These areas include categories such as elementary, middle school, and high school, regardless of particular subject areas. Tenure areas for teachers hired on or after Aug. 1, 1975 are governed by Part 30 of the Rules of the Board of Regents. These tenure areas are known as "vertical" or subject tenure areas, and include elementary and secondary academic areas (e.g., social studies 7-12) and special subject areas (e.g., special education K-12).

Before abolishing a teaching position, a school board must consider adjusting teaching schedules in order to continue the services of a teacher within his or her area of certification. However, the board is not required to shuffle the schedules of teachers outside the tenure area of the particular teacher whose position is being abolished.

Finally, a formal resolution must be adopted, identifying the position to be abolished by tenure area, and the least

senior teacher within that tenure area must be provided notice that his or her position is being abolished. The Education Law does not require that a teacher whose position is abolished be provided with advance notice of termination. However, notice requirements may be contained in the applicable collective bargaining agreement.

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Mistakes to avoid in layoffs

Common mistakes when excessing teachers

- Failing to consider effect of unpaid leave of absence on seniority credit. *Example:* A teacher hired in January 2005 can have less seniority than one hired in September 2005 if the teacher hired first took a one-year unpaid leave of absence.
- Reducing staff by actual position abolished rather than by tenure area. *Example:* The abolition of a high school English teaching position may result in the excessing of a middle school English teacher if he or she is the least senior in the academic tenure area of English 7-12.
- Reducing by building assignment rather than by tenure area. *Example:* A sixth-grade teacher assigned to a middle school is still in the elementary tenure area, so abolition of a middle school sixth-grade position can result in the excessing of a kindergarten teacher in a primary school if he or she is the least senior in the K-6 elementary tenure area.
- Failing to consider "bumping rights" pursuant to Part 30 of the Regents' Rules. *Example:* An excessed teacher in one tenure area who has prior experience in another tenure area can "bump" a less senior teacher in that second tenure area.
- Failing to give teacher credit for seniority in dual tenure areas. *Example:* Pursuant to Part 30, teachers can accrue seniority in two tenure areas simultaneously by working at least 40 percent of their day in each.

Common mistakes when excessing administrators

- Failing to identify tenure area in the board resolution appointing administrator and/or granting administrator tenure. *Example:* Appointing an individual simply as a "principal" can create a broad tenure area that includes both elementary and secondary buildings, resulting in the excessing of a secondary principal even though an elementary position had been abolished.
- Abolishing an administrative position to avoid the 3020-a process. *Example:* Eliminating position of problematic administrator for other than economic reasons to avoid a 3020-a hearing.
- Failing to recognize differences in rules applicable to administrators versus teachers. *Example:* Part 30 of the Regents' Rules does not apply to administrators; therefore, there are no delineated statewide tenure areas for administrators and administrators do not enjoy "bumping" rights.

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Teachers appointed pursuant to Part 30 of the Rules of the Board of Regents may have "bumping rights." If a teacher whose position is eliminated has served in a different tenure area, that teacher can "bump" back to his or her previous position and displace another teacher who has less seniority in the prior tenure area. If a district creates a new position at the same time as it abolishes an existing position, the teacher who would have been excessed may claim entitlement to a new position based upon its similarity to his or her old position. In such cases, the district must provide the teacher with a pre-termination hearing to offer proof of the similarity of the positions.

An excessed teacher must be placed on a preferred eligible list of candidates for appointment to a similar position. The teacher is entitled to have his or her name remain on the list for seven years following the abolition of his or her position. A teacher on the list is entitled to reappointment to a position within the tenure area in which he or she served, with no reduction in salary or increment. While on the list, a teacher must be offered any available regular substitute position that is to last at least five months. Where the list includes several different teachers, reappointment must be offered in order of seniority. Note that seniority for recall purposes is determined by total length of service within the district rather than service in a specific tenure area.

Eliminating administrative positions

As is the case with teachers, when a board of education abolishes an administrator's position, the board must terminate the administrator with the least seniority within the tenure area of the position to be abolished. However, unlike with teachers, there are no defined guidelines for determining administrative tenure areas. Part 30 does not delineate administrative tenure areas. Instead, administrative tenure areas are determined by each school board. A board may maintain a single "district-wide administrator" tenure area or it may establish more defined administrative tenure areas.

Your school attorney can review personnel practices, board policies and board appointment resolutions to determine what administrative tenure area(s) have been established. While administrators are not afforded the same Part 30 bumping rights as teachers, an administrator whose position is abolished may have a right to a newly created similar position without a reduction in salary.

Where there is a possibility that the duties of the position being abolished and the duties of a newly created position are similar, the administrator has the right to a pre-termination hearing.

An administrator whose position is abolished has the right to be placed on a preferred eligible list of candidates for appointment to a similar position within the administrator's tenure area. The administrator is entitled to be called back from the preferred eligible list for reinstatement for up to seven years after his/her position was abolished.

A reduction of staff is intended to achieve cost savings in difficult economic times. The last thing a district needs is to incur litigation costs. Awareness of the law and good communication with your school attorney is essential to ensure layoffs are done in accordance with the law and bring about actual budgetary savings.

Members of the New York State Association of School Attorneys represent school boards and school districts. This article was written by Robert H. Cohen, a partner in the law firm of Lamb & Barnosky, LLP. We gratefully acknowledge the New York State School Boards Association's permission to reprint this article.



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