

 <p>CD-120500</p>	<p>NEW MEXICO CORRECTIONS DEPARTMENT</p> <p><i>"We commit to the safety and well-being of the people of New Mexico by doing the right thing, always."</i> Courage Responsibility Ethics Dedication - CREDibly serving the public safety of New Mexico</p>	
	<p>ISSUE DATE: 08/02/99</p> <p>EFFECTIVE DATE: 08/02/99</p>	<p>REVIEW/REVISED: 04/30/12</p>
	<p>TITLE: Education Bureau Reduction–In-Force</p>	

AUTHORITY:

- A. Section 22-10-14, NMSA 1978.
- B. Policy *CD-010100*.

REFERENCE:

New Mexico State Board of Education Regulation 80-1.

PURPOSE:

To establish the procedures to be followed in the event of a Reduction-in-Force (RIF) in the Education Bureau contract staff.

APPLICABILITY:

All certified and non-certified education contract employees.

FORMS:

None

ATTACHMENTS:

None

DEFINITIONS:

None

POLICY:

- A. The New Mexico Corrections Department has the authority to discharge certified school personnel during the term of their contracts or to terminate certified school instructors and non-certified education employees with rights created by Section 22-10-14 NMSA 1978, after notice and a hearing when a reduction in such personnel is required as a result of decreased enrollment or a decrease or revision of education program. Reduction-in-force is “just cause” for discharge of certified school personnel and termination of certified and non-certified employees, when established pursuant to this policy.
- B. The Department is vested with the discretion to determine the educational programs in the adult correctional facilities, whether state or privately operated. The Department, in its discretion, may revise the educational program or decrease the number of employees of the Bureau at any time and is solely vested with the discretion to determine when decreased enrollment, program needs, financial exigency or other causes justify a reduction in personnel.
- C. Any RIF plan adopted by the New Mexico Corrections Department shall be made available to all staff, by providing copies thereof in the education office of each facility and at the Education Bureau Chief’s office within five working days after approval of the Cabinet Secretary. A RIF plan may be implemented by bureau, institution and/or program.
- D. Each certified instructor or administrator discharged and each tenured employee terminated pursuant to this policy shall be entitled to the procedural rights provided under the applicable statues and regulations of the State Board of Education governing discharge of certified school personnel or the termination of tenured employees.



Gregg Marcantel, Secretary of Corrections
New Mexico Corrections Department

04/30/12
Date

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	<p>TITLE: Education Bureau Reduction–In-Force</p>	

AUTHORITY:

Policy *CD-120500*

PROCEDURES:

A. Situations Justifying Reduction-in-Force:

1. Situations which justify a RIF shall include, but are not limited to, the following:
 - a. Decrease in enrollment;
 - b. Decrease in revenue:
 - 1) Because of decrease in student enrollment;
 - 2) Because of loss or reduction in state, local or federal financial support;
 - c. Change in the educational program of the Bureau, as determined by New Mexico Corrections Department in its good-faith exercise of discretion;
 - d. Consolidation or de-consolidation involving the Department;
 - e. Court orders;
 - f. Legislative mandates.
2. The Department shall exercise its discretion in good faith, and determinations that a RIF is necessary shall be based on bona fide educational considerations and not be a subterfuge for discharging or terminating personnel without just cause or impermissible reasons.
3. A RIF may occur at any time during the calendar year when the New Mexico Department, in its discretion, determines that is it justified and the procedures prescribed herein are applicable and are followed.

In addition to the justifications stated in II.A.1 above, a RIF may be based upon projections of future enrollment, revenues or expenses, and the subsequent receipt of more revenue than expected or a subsequent savings of projected expenses shall not invalidate any actions taken previously in good-faith reliance on such projections or require the reemployment of any employees who were released on the basis of such projections.

B. Determination of Need for Reduction-in-Force:

Responsibility of Administration:

- 1 **Preliminary Report:** The Education Bureau Chief, with the assistance of the administrative staff, shall report to his/her supervisor and then to the New Mexico Corrections Department Cabinet Secretary, circumstances which may ultimately require a RIF in order that notice be given to personnel of the possibility of a RIF and so that consideration may be given to means by which a RIF may be avoided or the efforts mitigated, if possible.
- 2 **Preparation of Plan for RIF:** When the Education Bureau Chief concludes that a RIF is necessary, the Education Bureau Chief will present a Reduction-in-Force Plan to his/her supervisor and then to the Cabinet Secretary for consideration. The RIF Plan shall not identify individuals to be discharged or terminated, but shall focus upon the education program of the Bureau and how it may be modified to reduce the number of personnel while still providing the educational program required of the Bureau and the particular education needs of the Department. The RIF Plan shall include, but not be limited to:
 - a. A detailed description of the cause or causes requiring a RIF;
 - b. A description of all adjustments already made by the administration in an attempt to avoid a RIF, if any (e.g. reduction by attrition, cuts in non-tenured certified personnel, etc.)
 - c. A designation of the part or parts of the total educational program in which the RIF is proposed and the number of positions to be reduced in each program;
 - d. A discussion of alternatives (if any) considered by the Education Bureau Chief with an explanation as to why each alternative was rejected.

C. Selection of Personnel to be Released:

Based upon the RIF Plan approved by the NMCD Cabinet Secretary, the administration shall perform a study of the Bureau's personnel to determine which person or persons must be wholly or partially released in order to implement the plan. The following criteria shall be applied in making the selection:

1. Certified Personnel:

- a. **Certification-Licensure/Qualification:** The primary concern and the initial criterion to be applied in making the RIF selections is the official certification or licensure and qualification of certified staff to maintain a sound and balanced education program that meets statutory requirement and accreditation through the American Correctional Association. Those having the proper certification/licensure shall be given preference over those who do not have proper certification/licensure.
- b. **Substandard Certification/Licensure:** Substandard or alternative certification or licensure is inferior to full certification or licensure and a person who is fully certified or licensed for the available position(s) shall be retained in preference to a person holding a substandard or alternative certificate or license. A person having an alternative license or a "waiver" of certification or licensure requirement shall be treated as having substandard certification or licensure for the purpose of this policy.
- c. **Additional Training and Experience:** Training and experience in activities that are to be retained as part of the Bureau's overall program for its students may be considered as a qualification requirement, in addition to certification or licensure status, in making selection of personnel to be released under this policy.
- d. **Tenure Status/Seniority:** Where certification/licensure qualifications status and additional training and experience are equal between two or more certified Bureau instructors being considered for release, tenured certified school instructors shall be retained in preference to certified school instructors who have been employed by the Bureau for less than three consecutive school years.

- e. **Other Selection Criteria:** If two or more certified/licensed individuals are equal or equivalent in certification/licensure and qualification and tenure status (if any) and it is necessary to decide which shall be discharged or terminated, the following selection criteria shall be applied.
- 1) *Service in Bureau:* Each certified/licensed individual considered for release shall be awarded one point for each year of full-time service during the most recent period of uninterrupted service with the Bureau, prior to the current year, excluding approved leaves.
 - 2) *Education:* the amount of credit for education shall be determined based on degree and additional hours:
 - (a) B.A. 4 points
 - (b) B.A. + 15 hrs. 5 points
 - (c) B.A. + 45 hrs. or M.A. 6 points
 - (d) M.A. + 15 hrs. 7 points
 - (e) Post M.A. and M.A. + 45 hrs. 8 points
 - 3) *Performance:* The current supervisor of each tenured certified school instructor considered for release or each certified person considered for release shall rate the relative performance of each such person on a rating form to be prepared by the Education Bureau Chief or under his/her direction. Such rating forms will be based on the Bureau's performance appraisal.

If different individuals considered for a RIF have different supervisors, the supervisors may consult with each other and/or with the Education Bureau Chief to ensure that the rating system is applied uniformly. There shall be no requirement of observation of performance by a supervisor specifically for the purpose of completing the rating form; however, each supervisor shall review prior performance evaluations of the individuals considered for a RIF for a period of three years, if available. Where a supervisor lacks familiarity with an individual's performance (e.g., a new supervisor) the Education Bureau Chief may assign the evaluation to a present or past administrator or supervisor who has greater familiarity with the individual's performance. The Education Bureau Chief may devise such other measures as he or she sees fit to deal with situations

- 4) *Selection Based on Scores*: The Education Bureau Chief shall total the points for service, education and performance. The person(s) with the lowest score shall be the person(s) released. The computations of the Education Bureau Chief, plus the rating forms on the persons considered for release, shall be available for review by the person released.
- f. **Transfer/Reassignments**: If, as a result of the application of the selection criteria, a person is selected to be released from the affected program, but such person (“the affected person”) is also certified or licensed and qualified for another program(s) within the Bureau, the person shall be considered for a transfer or reassignment to such facility program.

The fact that there are one or more other certified or licensed employees within the program affected by the RIF who scored higher than the affected person, and that such person(s) may be certified or licensed and qualified to teach or administer in other programs in the Bureau, shall not require that the higher scoring persons be transferred or reassigned to the other program or programs, even if there is a vacancy in the other program or programs. The transfer/reassignment obligations shall not arise until after the selection of the person or persons to be released from a program affected by the RIF and shall only apply to the person or persons selected for release. Consideration of transfer or reassignment of the affected person shall be governed by the following criteria:

- 1) *Existing Vacancy*: If, upon the effective date of the release due to a RIF, there is an existing vacancy in another program for which the affected person is certified or licensed and qualified, he or she shall be transferred or reassigned to that vacant position. There shall be no obligation to create a vacancy to accommodate such person.
- 2) *No Existing Vacancy*: Where the affected person is certified or licensed and qualified for another program or programs in the Bureau, but all such positions are currently filled, the selection criteria described in Procedure II.C, subject to the modifications described below, shall be applied to determine whether the affected person will be transferred or reassigned to another program and another person, currently employed in another program, shall be released.

- (a) Qualifications: If the person is fully certified or licensed for a position in another program or an administrative position, but has not actually taught in such program or held such an administrative position during any part of the preceding three school years, such person shall not be considered qualified for transfer or reassignment to the other position.
- (b) Performance: If neither the Education Bureau Chief nor the current supervisor of the program has observed the person being considered for transfer or reassignment performing the duties of the other program, it is impossible for the relative performance of the person being considered for transfer or reassignment and the person or persons currently teaching or administering in the program to be rated based on direct observation.

Under such circumstances, the Education Bureau Chief or his/her designee shall make a judgment as to the likely performance of the person being considered for transfer or reassignment and assign the performance score that will be used in the selection process comparison to the person or persons currently employed in the other program. The Education Bureau Chief or his/her designee shall consider the affected person's performance in other programs and his/her knowledge of all persons in the program in question in making the judgment, and may consult with other knowledgeable persons in making this determination.

- 2. Non-Certified Personnel: Seniority shall be the sole criterion in determining which non-certified personnel must be wholly or partially terminated in order to implement the Plan. More senior tenured non-certified personnel shall be retained in preference to less senior tenured non-certified personnel teaching the same subject material.

E. Procedures for Release:

Each certified instructor or administrator discharged and each tenured employee terminated pursuant to this policy shall be entitled to the procedural rights provided under the applicable statutes and regulations of the State Board of Education governing the discharge of certified school personnel or the termination of tenured employees. The written decision of the Board, to the extent required by statute and regulation, shall clearly specify that the release resulted from a RIF and not from any cause personal to the person released.

F. Appeal:

Appeals to an independent arbitrator from release pursuant to this policy are governed by the provisions of Section 22-10-14.1 or 22-10-17.1, NMSA 1978, respectively, and any applicable regulations of the State Board of Education.

G. Recall of Released Staff:

1. Right of Recall: For a period of one calendar year after the effective date of the discharge or termination of any employee pursuant to this policy, the Board shall offer to such person any position(s) which becomes available for which such person is qualified by experience, training and/or certification/licensure, provided that such person has complied with the requirements specified below.
2. Requirement of Expression of Interest in Recall: Every person discharged or terminated under this policy who wishes to be considered for recall in the event that an opening occurs, must file with the Education Bureau Chief within 30 days after the effective date of the discharge or termination, a written statement indicating a desire to be considered for recall and providing an address at which the person may be contacted. Such person may notify the Education Bureau Chief of any change in address within ten days after changing residences in order to ensure proper notification in the event of recall.
3. Selection of Person(s) to be Recalled: In the event that more than one interested person who was discharged or terminated within the calendar year prior to recall is qualified for the position by experience, training and/or certification/licensure to which a person will be recalled, the selection criteria of this policy will be applied to determine which person is to be recalled. The points accrued for "Service in Bureau" and "Performance" shall be the same as when a certified person was discharged or terminated, but additional points for any additional education earned after the discharge or termination shall be credited and considered.
4. Notification of Recall and Acceptance: Any person selected for recall hereunder shall receive written notification of the recall by certified mail at the address provided. The recalled person must accept the position offered through recall in writing. Such acceptance must be received in the Education Bureau Chief's office within ten calendar days after mailing of the recall notice to the person. Rejection of the offer, in writing or by failure to respond in a timely manner, shall result in forfeiture by the recalled person of any further recall rights under this policy. Thereafter, an offer of recall will be made to the next person qualified to be recalled, or if there is none, the position will be filled by another applicant.

5. Rights of the Recalled Person: Any person recalled pursuant to this policy shall have all accrued unused sick leave restored and be given credit for all years of actual service in the Bureau for salary purposes.

6. Loss of Rights after One Year: After the one-year recall period has expired, any person discharged or terminated under this policy shall no longer have any right to be recalled. Such persons who wish to be re-employed thereafter shall file an application for employment and will be treated, as would any other applicant for a vacant position.



Gregg Marcantel, Secretary of Corrections
New Mexico Corrections Department

04/30/12
Date