

FAQs Regarding Involuntary Adjustments and Layoffs

White Collar/Food Service Agreement Articles 12 and 13

(April 20, 2009)

1. **Is seniority the sole criterion in determining who is subject to an involuntary adjustment of work or layoff?** Not completely. The length of the work year, daily hours, and affected classification also impact how adjustments are established for *Education Support Professionals (ESPs)*, the classified employees represented in the White Collar/Food Service Agreement. However, after attrition is considered, “initial probationary, temporary and substitute ESPs in the affected classification at the site shall be laid off” before the District involuntarily adjusts, transfers, or lays off regular employees (Article 12-1).
2. **What should I do if my supervisor tells me I have to be transferred or laid off?** Ask if it is official and when you can expect to receive something in writing. Until then, it is not considered an official Human Resources action. Members can address questions to their Association Representatives, who in turn consult with TEA staff.
3. **Do we have to be notified by a specific date?** Not by a specific date, but within a timeframe. For involuntary adjustments, ESPs are to “receive at least ten (10) days written notice prior to the effective date.” For layoffs, the stated timeframe is “as far in advance as possible, but at least two (2) weeks in advance.” In both cases, the Association is also supposed to be notified.
4. **If my position at a site is being eliminated, will I automatically be laid off?** No, not automatically, although it could be a possibility. Other issues have to be taken into consideration: seniority, number of hours and length of work year, if there are other comparable positions in the same classification at your site, if there are other comparable positions in the District that are vacant or have less senior ESPs, etc.
5. **Does that mean that an ESP can “bump” another ESP with less seniority?** Yes, but it must be carried out according to WC/FS Article 12-2, <http://www.tucsonea.org/08-09%20WCFS%20TUSD%2012.pdf>.
6. **A supervisor simply can’t transfer or layoff a person who s/he doesn’t like?** Absolutely not. Forced transfers and layoffs should never be used as a substitute for proper evaluation or discipline of an employee. Especially in a dire situation like we’re facing for the 2009-2010 school year, it is crucial to use an objective, verifiable process to address the “economic or efficient operation of the District.”
7. **So what is the difference between the need for a transfer and a layoff?**
 - a. Layoffs are conducted when the number of employees District-wide need to be reduced, i.e., there are too many people for the positions the District is able to sustain and/or if positions/programs/departments are reduced or eliminated.
 - b. Transfers occur when there is no position available – or there are too many people for positions – at a site. Sometimes this issue is addressed through a reduction of hours at the site rather than a transfer away from the site. (The reduction of hours refers to the position, not the person; another ESP may have transfer rights to that position from another site.)

8. **Can an ESP be placed in a different grade when being transferred or recalled from a layoff?** Yes, but only a lower grade. Otherwise, it would be considered a promotion. When a person is placed in a lower grade, it is considered an involuntary demotion, in which case the person is placed on the lower grade at the step closest to, but no more than the current hourly rate.
9. **Are there any rights to return to a site or a previous position if an ESP has been involuntarily transferred or has had hours of work adjusted?** Yes, for up to twelve months. The process is delineated in 12-4.
10. **Which ESPs can be laid off?** ESPs hired after July 1, 2004 can be laid off.
11. **Are ESPs who have been laid off eligible for unemployment insurance benefits?** Yes, but they should apply only after their work – including summer work – is completed. Information will be made available for that process when laid off.
12. **What are the recall rights for ESPs who've been laid off?** (Please read more detailed information in WC/FS Article 13-2 and 13-3 located at: <http://www.tucsonea.org/08-09%20WCFS%20TUSD%2013.pdf>.)
 - a. Recall rights are maintained for up to a year, unless ESPs formally remove themselves from the list (resign from the District) and/or do not respond to the District as required.
 - b. All “temporary/substitute assignments shall be offered to laid off ESPs on recall, in order of seniority, before any other person is offered a temporary/substitute assignment within the affected classification,” per 13-2-A.
 - c. Recalled ESPs are to be notified by certified mail at the address on file in the Human Resources Department and/or Food Service Central Office. (The ESP is responsible for maintaining a current address with HR and/or FS.) If the ESP does not contact the District's Executive Director of Human Resources within five (5) days from date the recall notice is signed for, he/she shall be considered to have resigned from the District and lose all recall rights. “If the recall letter is returned as unclaimed, the District's obligation ceases” (13-2-C).
 - d. If the ESP accepts the offer of recall, he/she shall be available to work within ten (10) days of acceptance.
13. **What happens to seniority and accumulated leave for someone who is laid off?** When recalled ESPs return to work, all benefits including the appropriate step at the time of the layoff, shall be reinstated.
14. **What happens with health insurance when ESPs are laid off?** While on layoff status, an ESP shall be allowed to continue any of his/her District insurance programs at his/her own expense, per the federal law called COBRA, and is available for up to 18 months after layoff or separation. However, for the first nine months, current federal stimulus money will cover 65%, and the employee 35%. After that, the employee will be responsible for the full 100% for the remaining nine months allowable. (Under most circumstances, the employee health insurance is usually paid for by the 20th pay period, but continues through the end of the fiscal year, June 30th.)