Seniority Rights and Preferred Eligibility

Q & A based on NYS Education Law and Commissioner’s Regulations

What are seniority rights?
Seniority insures rights to job security and priority within a school district based on length of actual paid service in a specific tenure area. Education law requires that seniority be used in determining the order in which teachers are dismissed in the event that teaching positions are abolished. Seniority is the sole criterion districts may use to decide which teacher will be exsessed.

How do tenure areas affect seniority rights?
Seniority within a specific tenure area is the determining factor in establishing seniority credit prior to excusing a teacher following a school board’s decision to abolish a position. A teacher who has several probationary or tenure appointments in separate tenure areas accrues seniority separately in each area, depending on the actual service performed. Once a teacher is excused and placed on a preferred eligible list for possible call back, seniority is determined by the length of service within the district rather than service in a tenure area.

Do part-time teachers receive seniority credit for part-time service?
Part-time service does not qualify a teacher for any seniority rights. However, part-time service rendered after a full-time probationary appointment is included in the calculation of seniority if the district requests the change in position but not if the reduction to part-time status is at the request of the teacher.

Does a teacher whose position is being abolished have the right to take the job of a less senior teacher?
If a position is abolished the teacher with the least seniority within the tenure area of that position in the school district must be the person dismissed. These rights allow a teacher whose position is eliminated in one area, and who had accrued seniority based on prior service in a different tenure area, to claim the position of another teacher serving in that previous tenure area provided the first teacher has more seniority in the tenure area than other teachers.

What rights of reappointment do excused teachers have?
A teacher who is excused because a teaching position has been abolished must be placed on a preferred eligible list (PEL) of candidates for appointment to a similar position for seven years after the position is abolished. Teachers are only entitled to reappointment within the tenure area in which they served even if they hold certification for positions in other tenure areas. A teacher who is re-appointed to a similar position within the district is entitled to appointment without reduction in salary or increment. School districts are required to make a reasonable effort to notify eligible persons of vacancies so that such persons may be offered the opportunity to accept or decline a position.
Must teachers on a PEL be offered substitute and/or part-time positions?
Teachers on the PFI must be offered regular substitute positions of at least a five-month duration. Teachers on the PEL must be offered a part-time position if one becomes available. Declining an offer of re-instatement does not extinguish the teacher’s preferred eligibility status.

How does retirement affect an excess teacher’s right to re-appointment from a PEL?
A teacher’s retirement terminates the teacher’s PEL rights.

Do teachers lose their right to remain on the PEL if they accept a position in a different tenure area?
A teacher does not waive any right to re-appointment within his or her tenure area by accepting a position in another tenure area in the district. A teacher who accepts a subsequent position in another tenure area in the district, and who thereafter voluntarily resigns from that subsequent position does not waive his or her recall rights to the initial position.

Do teachers lose their right to remain on the PEL if they refuse a particular offer of re-employment?
A teacher does not waive any right to reappointment from the PEL for refusing an offer of reemployment.

Is there any particular order for recalling excess teachers?
When several teachers have been excessed, they must be offered reappointment in order of seniority. When determining recall rights of teachers on PEL, the length of service in the system is used, not the length of service within a particular tenure area.

Should a district recall from the PEL a teacher who is not certified for the available position?
Teachers do not have the right to be reemployed from the PEL in a position for which they are not certified.