

4021

Early Retirement Incentive Program

A. PURPOSE

The Early Retirement Incentive Program (Program) is intended to benefit qualified certificated employees who are considering retirement. The Program's objectives include, but are not limited to, the following:

1. Offering financial incentives which will assist long-term employees who are considering retirement;
2. Reducing costs to the school district by replacing maximum salaried employees with lesser salaried employees; and
3. Providing a balance of employee experience.

B. QUALIFICATIONS

1. **Certificated Employee.** To participate in the Program, a person must be a teacher or administrator certificated by the Nebraska Department of Education, and employed by the School District in a capacity which requires such certification.
2. **Full-Time Equivalency.** Certificated employees who are employed 1.0 full-time equivalency (FTE) in an employment position that requires a certificate from the Nebraska Department of Education may participate in the Program, provided that the part-time employee's benefits under such a plan shall be pro-rated based on their FTE as of December 1st of the employee's final contract year.
3. **Eligibility Window.** The purpose of the Program is to have a one-year eligibility window for certificated employees, regardless of age, during the school year in which they meet the "Rule of 85," which determines eligibility to receive benefits from the Nebraska School Employee Retirement System without a reduction in benefits. If an otherwise eligible employee elects not to participate in the Program during this one window of eligibility, the employee will not be eligible to participate at any point in the future.
4. **Eligibility Requirements.** To be eligible for this Program, a certificated employee must meet all of the following requirements:

- (a) Meet the provisions of the "Rule of 85," which determines eligibility to receive benefits from the Nebraska School Employee Retirement System without a reduction in benefits (including being at least 55 years of age) during the application year, knowing that the ability to participate is limited to only that year;
- (b) Apply for the district's Voluntary Incentive Program during that year;
- (c) Have completed 15 total years of continuous, credited service in the employment of the School District, including service to Bruning and Davenport Public Schools prior to establishment of the Unified School District; and
- (d) Meet any other criteria established by the board of education upon authorizing the Program for that particular year (such as department or building eligibility).

Credited service shall be defined as continuous employment with the school district as a certificated employee through the employee's last year of service in an employment position that requires a certificate from the Nebraska Department of Education. Board-approved leave for military service, for a sabbatical or for a leave of absence, or any leave required to be granted according to law, shall not be included as credited years of service. In determining years of credited service with the district for the purpose of meeting the eligibility requirements of 15 total years of service, less than full-time employment would reduce the employee's full-time equivalent employment for a school year. For example, an employee employed on a half-time (.5 FTE) basis would be credited with half a year (.5) of full-time equivalent employment.

C. ENROLLMENT REQUIREMENTS

1. **Resignation.** Participants in the Program will resign their positions with the school district effective at the close of the school year in consideration for the benefits outlined in Section D below.
2. **Application.** Employees will be given notice of the availability of the Program within a reasonable time after the Board of Education's October meeting. During the year in which an employee wants to participate in the Program, the employee must submit a signed Application and Agreement form to the Board of Education on or

before December 1st, or by the date in December which is 45 days after receiving notice of the Program's availability for that year, whichever is later. The superintendent shall review the employee's record to determine whether the employee is eligible for the Program. The Board will notify the applicant on or before March 1st of its action on his or her application.

3. **Employee's Ineligibility.** An employee who has received written notice of possible contract termination or cancellation shall not be eligible to participate in this Program unless (1) the notice of termination or cancellation is withdrawn by the administration or (2), after a hearing before the board of education, the board determines that said employee's employment should not be canceled or terminated.

D. BENEFITS

1. **Calculation of Benefits:** The benefit to be paid under this Program shall be the teacher's salary in the last year of employment, multiplied by the number of years of credited service, multiplied by 2.5 percent. The salary used for this computation shall be the amount generated by the employee's actual placement on the salary schedule, but shall not include any compensation other than salary schedule placement, such as, but not limited to, extra-duty payments or extended contract payments. The total amount of the separation payment shall not exceed the amount of the base salary on step 1 of the BS column on the teacher salary schedule in the applicant's last year of employment. The applicant will also be paid \$25 for each day of unused sick leave as of the last day of employment.
2. **Payment of Benefit.** The benefit shall be paid to the employee 2 equal payments which shall be made by May of the calendar year following the teacher's last year of employment. For example, a teacher who resigns in May 2019 will receive his or her first payment by May 2020.
3. **Limitation on Payment.** The board of education shall, in its sole and unfettered discretion, determine whether to budget and fund any Early Retirement Incentive Program payments in a particular year, and shall determine the total amount of such payments, if any, that will be made available for such payments.

- 4. Source of Funds.** The school district shall pay the entire cost of the plan.
- 5. Administration.** This Program shall be administered by the board of education by and through the administration of the school district.
- 6. Beneficiary Designation.** In order for the application to be considered complete, a beneficiary must be designated.
- 7. Income Tax Consequences.** Payments pursuant to this plan have been determined to be taxable income for state and federal income tax purposes and will be treated as such. The school district will withhold such sums as are required by law, and payments will be reported as a taxable income.
- 8. COBRA Rights.** A separating employee will have the opportunity to continue health insurance benefits as may be permitted by the provisions of the Comprehensive Omnibus Budget Reconciliation Act or other applicable law. The employee shall be responsible for any payments required to participate in the COBRA program.

E. ADMINISTRATION

Application and Waiver. An employee who elects to participate in the Program, and the school district (through its board of education), shall execute the Application and Agreement, Exhibit "A" attached hereto. That Application and Agreement shall inform the employee that the Voluntary Separation Program is totally voluntary in nature and provides each employee at least 45 days to consider the ramifications of participation in the Program before making a decision. An employee may waive the 45 day consideration period. The Application and Agreement shall also include a specific Waiver and Release of Claims of the participants' rights under the Age Discrimination and Employment Act (ADEA), 29 USC * 621-63 and the Act Prohibiting Unjust Discrimination in Employment Because of Age, NEB. REV. STAT. *48-1001 *et seq.*, the Employee Separation Income Security Act of 1974 (ERISA), 29 USC * 1001 *et seq.*, and all other state and federal constitutions, statues and regulations that relate to the validity of the Program, and allows the employee to revoke the Release or Waiver at any time within seven (7) days after both the employee and the Board

have signed the contract, and advises the employee to consult with an attorney before signing the Application and Agreement.

An employee who submits an application to participate in the Program may withdraw the application within 7 days after it is approved by both parties, but not afterward without the written consent of the board of education. Each application will be reviewed on an individual basis. The board shall, in its sole discretion, determine the number of applications to be approved in any given year. If the Board receives more applications for voluntary separation than it approves, the Board shall approve the applications as follows:

- a. The Board will approve the application of the employee whose salary is higher, as determined by the employee's placement on the salary schedule index (excluding all unit pay).
- b. If the salaries of those involved are exactly the same, the Board will approve the application of the employee who first signed and returned his or her employment contract for the then current contract year.
- c. If the salaries and signing dates of those involved are exactly the same, the Board will approve the application of the employee which was submitted earlier.

An employee's application to participate in the Program is in itself not a resignation of a contract with the School District. However, the Board's approval of an employee's application will be considered the approval of the employee's voluntary resignation and termination of the employee's continuing contract. If the Board does not approve an employee's application, the employee's contract will continue in effect, and the employee will remain an employee by the School District unless he or she otherwise resigns or his or her contract is terminated for just cause.

F. TERM OF PROGRAM

This policy shall be reviewed annually and its availability granted and terminated at any time at the Board's sole discretion. The Board will generally determine no later than its regular October meeting the number of early retirement applications that will be accepted in the then current school year and any other eligibility

limitations or requirements (such as building or department requirements). This Program shall be offered only to eligible employees as defined herein, who satisfy the Program requirements prior to the applicable deadline, and who submit an ERIP Application and Agreement prior to the applicable deadline.

G. LIMITATIONS OF APPLICATIONS

The Board reserves the right to limit the number of voluntary separation applications granted during any single school year if the number of requests results in separation payments that exceed budget constraints and/or if multiple requests from employees within a single department could, in the opinion of the school administration, result in the excessive loss of continuity of instruction and effectiveness of that department. If multiple employees from the same department submit requests in the same school year, the priority of applicants granted will be determined in accordance with paragraph E.

Approved on: 7/12/2021

Revised on: _____

Reviewed on: _____

**EARLY RETIREMENT INCENTIVE PROGRAM
APPLICATION AND AGREEMENT**

This Agreement is made this ___ day of _____, 20___, between Bruning-Davenport Unified District Board of Education (School District and Board, respectively) and _____ (teacher).

RECITALS

1. The School District has established an Early Retirement Incentive Program (hereinafter referred to as the "Program") for the purpose of rewarding eligible certificated employees who are considering early separation or retirement in their employment plans;
2. Teacher desires to participate voluntarily in the Program;
3. Teacher has a full-time equivalency of 1.0 for the current school year;
4. Teacher has completed at least 15 consecutive years of credited service in the employment of the School District or its member school districts prior to the unification; and
5. Teacher meets the provisions of the "Rule of 85," which determines eligibility to receive benefits from the Nebraska School Employee Retirement System without a reduction in benefits (including being at least 55 years of age) during the application year.
6. The Program is available to certificated staff meeting the qualifications in this Application Agreement and the Board's policy.

TERMS OF AGREEMENT

The parties, in consideration of the mutual covenants and stipulations set forth above, hereby agree as follows:

- 1. INCORPORATION OF BOARD POLICY:** This Agreement is made pursuant to the Early Retirement Incentive Program Policy of the Board of Education. The provisions of that policy

existing at the time this Agreement is signed are incorporated by this reference and made a part of this Agreement.

2. TEACHER RESIGNATION: Subject only to the Board of Education's approval of the Teacher's application to participate in the Program, the Teacher voluntarily, unconditionally, and irrevocably (1) resigns his/her teaching position with the School District effective at the end of the current school year; (2) waives any and all further notice or action by the Board of Education to terminate the Teacher's continuing contract; and (3) waives any and all rights the Teacher may have under NEB. REV. STAT. 79-824 to 842, as those statutes now exist or as they may be amended. The Teacher further authorizes the Board of Education to advertise for and contract with a replacement certificated employee for the Teacher's position for the next school year. Approval of this Agreement by the Board of Education shall constitute an Acceptance of the Teacher's resignation. The Teacher agrees that he/she may not be eligible for part-time or full-time employment at the School District if the Board approves Teacher's application to participate in the Program. While the School District may decide to employ the Teacher in some capacity after retirement (i.e. substitute teacher), the teacher agrees that the School District has no obligation to rehire the Teacher in any capacity at the School District. NOTE: Returning to work anywhere that participates in the Nebraska Public Employee's Retirement System (NPERS) within 180 days of your retirement may impact your ability to receive payments through NPERS. Please contact NPERS for further information.

3. BENEFITS: In consideration for the Teacher's resignation set forth in paragraph 2 above, the Teacher shall receive the following benefits:

a. TOTAL AMOUNT OF BENEFITS: The benefit to be paid under this Program shall be the teacher's salary in the last year of employment, multiplied by the number of years of credited service, multiplied by 2.5 percent. The salary used for this computation shall be the amount generated by the employee's actual placement on the salary schedule, but shall not include any compensation other than salary schedule placement, such as, but not limited to, extra-duty payments or extended contract payments. The total

amount of the separation payment shall not exceed the amount of the base salary on step 1 of the BS column on the teacher salary schedule in the applicant's last year of employment. The applicant will also be paid \$25 for each day of unused sick leave as of the last day of employment.

b. PAYMENT OF BENEFITS: The benefit shall be paid to the employee 2 equal payments which shall be made by May of the calendar year following the teacher's last year of employment. For example, a teacher who resigns in May 2019 will receive his or her payments by May 2020.

4. BENEFICIARY DESIGNATION: In the event of the Teacher's death after the effective date of resignation, any sum of money otherwise due to the Teacher under the terms of this Agreement will be paid to the following designated beneficiary pursuant to the provisions of this Agreement.

Beneficiary: _____

Address: _____

Social Security Number: _____

5. TAX CONSEQUENCES: Payments provided for under the Program have been determined to be taxable income for state and federal income tax purposes, will be treated as such, and will be reported as taxable retirement pay. The social security percentage and any other required state and federal withholdings will be subtracted from each payment to the participant in the Program.

6. TEACHER'S VOLUNTARY ACT. The Teacher acknowledges that he/she has had forty five (45) or more days to consider the ramifications of participation in the Program or hereby waives the same; that his/her participation in the Program is voluntary; and that he/she was not coerced in any manner to participate in the Program. The Teacher acknowledges having been advised in writing by this Agreement to consult an attorney regarding his/her participation in the Program and execution of this Agreement.

7. WAIVER AND RELEASE OF CLAIMS: In consideration of the promises and payments specified in this Agreement, Teacher releases the School District and its officers, board members, administrators, employees, agents, representatives, successors, and assigns from all claims, demands, and actions, past or present, known or unknown, arising out of and/or related in any ways, either directly or indirectly, to his or her employment with the School District, the termination of his or her employment, and/or any actions or occurrences taking place up to and including the date of execution of this Agreement, including but not limited to claims or rights under the Nebraska Wage Payment and Collection Act, Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, the Civil Rights Act of 1866 and 1871, or any other Civil Rights Acts as amended, claims or rights under 42 U.S.C. * 1981, through and including 42 U.S.C. * 1988, the Americans with Disabilities Act, * 504 of the Rehabilitation Act, the Family Medical Leave Act of 1993, the Nebraska Act Prohibiting Unjust Discrimination Because of Age, all claims or rights relating to discrimination on the basis of age, race, color, religion, sex, disability, handicap, or national origin before the federal Equal Employment Opportunity Commission, the Nebraska Equal Opportunity Commission, and any state or federal court under any state or federal constitution, law, rule, or regulation, or claims or rights of whatever nature arising under any other state, federal, or local constitution, executive order, state, regulation, or ordinance arising from his or her employment or contractual relations with the School District or his or her resignation of employment. Teacher represents that no claims have now been filed against the School District. Teacher acknowledges that nothing in this agreement prohibits Employee from filing a Complaint with the Equal Employment Opportunity Commission or any other similar state agency, the Occupational Safety and Health Administration, the Secretary of Labor or otherwise participating in matters pending before those agencies. However, in the event Teacher files such a charge or complaint, he or she shall be entitled to no relief, no reinstatement, no remuneration, no damages, no back pay, no front pay and no compensation whatsoever from the School District as a result of such charge or complaint, since Teacher has released and extinguished any right to such relief under this agreement. Teacher also

releases all contract, tort, and common law claims, and claims for attorney's fees, costs and expenses. Teacher covenants not to institute any complaints or proceedings against the School District or any of the above-mentioned persons in the future with respect to any of the claims, demands, causes of action, or rights hereby released.

The Teacher understands and acknowledges that, by giving up claims against the School District, he/she also gives up any claims that he/she may have against its predecessors, successors, subsidiaries, and affiliates and any and all officers, directors, employees, and agents of the School District arising out of any actions, conduct, decisions, behavior, omissions, or events occurring up to the date hereof. Such waiver and release of claims does not cover rights or claims arising after the date of the execution of this contract. This Waiver and Release is given in exchange for consideration in addition to what the Teacher is already entitled to receive from the School District. The Teacher acknowledges having been advised in writing to consult with an attorney before signing this Voluntary Early Retirement Incentive Program Agreement. The Teacher further acknowledges having had sufficient time to decide whether or not to execute this Agreement, including the Waiver and Release of Claims.

8. REVOCATION AND CANCELLATION OF AGREEMENT: The Teacher may revoke this Agreement for a period of seven (7) days following its execution. In order to revoke the Agreement, the Teacher must submit a written statement to the Superintendent indicating that he/she is exercising his/her right to cancel the Agreement. This Agreement shall not become effective or enforceable until the revocation period has expired.

(The Next Page is the Signature Page)

Dated: _____ Teacher: _____

STATE OF NEBRASKA)

)ss.

_____ COUNTY)

Before me, a notary public duly qualified in and for Thayer County, personally came _____, known to me to be the identical person who signed the foregoing instrument, and acknowledged the execution thereof to be his/her voluntary act and deed.

Witness my hand and notarial seal this ___ day of _____, 20__.

Notary Public

Dated: _____

President, Bruning-Davenport Unified
School District Board of Education

ATTEST: Secretary, Bruning-Davenport Unified
School District of Education

STATE OF NEBRASKA)

)ss.

_____ COUNTY

Before me, a notary public duly qualified in and for _____ County, personally came _____, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed as President of the Bruning-Davenport Unified School District Board of Education, and further acknowledged that having the authority to bind said school district to the terms contained in this instrument and that his/her signature of the same is the voluntary act and deed of the Board of Education of the School District.

Witness my hand and notarial seal this ___ day of _____, 20__.

Notary Public