

**Separation Benefit Program****A. Purpose**

The purpose of School District 145's Certificated Staff Separation Program (Separation Program) is to provide a benefit for certificated staff who have given long-term service to the district.

**B. Eligibility and Definition**

A Certificated Employee under a teaching contract with the District for which application is made to participate in the Separation Program (hereinafter referred to as Certificated Employee) with ten years of credited service in School District 145 and is fifty-five (55) years of age on or before September 1 of the Certificated Employee's final contract year are eligible for a separation benefit under this Separation Program. In addition to the above requirements, to qualify effective with the 2009-10 and 2010-2011 school years, a certificated employee will be required to have an earned Master's degree from an accredited institution of higher learning as approved by the district. Those Certificated Employees with less than full-time contracts will accrue years of credited service in proportion to their full-time equivalency. For example, a half-time employee would need to be under contract for two years to gain one year of credit.

Authorized leaves of absence without pay by the district, beyond 30 days in any one semester, will remove that semester (one-half year) from credited service. Also, time during which a Certificated Employee is not employed by the District due to a reduction-in-force situation, where the Certificated Employee is subsequently recalled to a teaching position with the District will not count as credited service. Any employee whose contract has been terminated, canceled, or non-renewed for cause will be ineligible for the separation benefit. Further, an employee who has received written notice of possible termination for reasons other than reduction-in-force or who has received written notice of possible cancellation shall not be eligible and may not participate in this program, unless it is determined that said employee's contract shall not be canceled or terminated or the decision to terminate or cancel is subsequently set aside. Certificated employees receiving long-term disability benefits are not eligible to participate in this program. A certified employee who has resigned and whose resignation has been accepted by the Board prior to filing an application to participate in the Separation Program shall not be eligible and may not participate in this program.

The date of official separation for any eligible, certificated employee shall be considered in accordance to the Nebraska Public Employees Retirement Systems rules and regulations.

**C. Notification**

The Superintendent shall deliver to all eligible certificated employees a copy of this Separation Program and the Application form at least forty-five (45) days prior to the application deadline and provide eligible employees any additional information required by law. A copy of the Separation Program policy and the Application form shall also be made available at the Superintendent's office.

**D. Enrollment Requirements**

1. Resignation: Participants in the program shall resign their employment with the School District effective at the close of the school year during which such participant has submitted an application under this Separation Program.

2. Application Date: Each eligible employee who wishes to participate in the Separation Program must properly complete, execute, and submit an Application form and deliver the form to the Office of the Superintendent between March 1, 2010 and March 8, 2010 for the 2009-2010 fiscal year, and between January 1, 2011 and January 15, 2011 for the 2010-2011 fiscal year (“Application Date”). FAILURE TO SUBMIT THE APPLICATION WITHIN THE TIME FRAME SPECIFIED SHALL RESULT IN THE REJECTION OF SUCH APPLICATION.

The Superintendent shall review the employee’s record to determine if the employee is qualified to participate under section B above. If qualified and if selected for participation, the Board of Education shall approve the Application and Agreement, except as may be otherwise provided herein, at such time as deemed appropriate.

#### **E. Limitation on Number of Participants**

The Board of Education of the School District, in its sole and absolute discretion, reserves the right to limit the number of participants in this SEPARATION PROGRAM in any fiscal year based on financial exigencies, availability of funds, budget, expenses, revenue, and other school finance issues, including but not limited to the repeal or amendment of the exemption to the property tax levy limitations set forth at Neb. Rev. Stat. § 77-3442(2)(d) (Laws of 2008). The Board of Education shall allow up to six (6) Certificated Employees to participate in the Separation Program each fiscal year unless the Board of Education establishes a different number of participants for such fiscal year on or before January 15 of each such fiscal year.

#### **F. Criteria for Selection**

In the event the total number of employees making application for participation in any one fiscal year exceeds the maximum number of employees to be allowed to participate as determined by the Board of Education for such fiscal year, the selection of the employees allowed to participate in the Separation Program shall be based upon the following criteria in descending order of priority:

1. Previous Application Denied: First priority for participation shall be granted to those individual(s) who have applied the immediately preceding fiscal year for the Separation Program and were not selected for participation under the terms of such Separation Program.

2. Highest salary: Second priority for participation shall be granted to the individual employee with the highest scheduled salary for the school fiscal year in effect during the employees' last year of employment. For purposes of this paragraph:

(a) Eligible Employees' salaries will be compared only to other teachers' Eligible Employees' salaries making application for participation in this Separation Program during the school fiscal year for which the application is submitted.

(b) "Scheduled salary" shall be defined as the 1.0 FTE salary listed on the negotiated salary schedule for the Employee's lane/step in his/her final contract year adjusted for the Employee's FTE plus salary paid for extended contract days based upon such salary schedule placement. This definition excludes salary paid for extra duties or responsibilities, reimbursement of expenses, or fringe benefits.

3. Number of Years of Service: Third priority for participation shall be granted on the basis of those employees having the greatest number of years of service to District 145 - Waverly Public Schools regardless of FTE; such service need not be uninterrupted or consecutive years of service.

4. Tiebreaker: If two (2) or more individuals tie on criteria 1, 2, and 3, the names of those persons who are tied shall be placed in a container and names will be drawn blindly from the container for each opening in the Separation Program.

## **G. Administration and Funding**

The Certificated Staff Separation Program will be administered and funded in total by the School District 145 Board of Education. The Board of Education reserves the right to discontinue or amend the Certificated Staff Separation Program at any time without having to specify the reasons therefore.

## **H. Separation Benefit Compensation**

Separation compensation will be calculated as a percentage (4.15%) of the scheduled base salary (BA, Step 1) of the year of resignation multiplied by the credited years of service; provided that the maximum amount to be awarded to the separating Certificated Employee per this calculation shall not exceed (1) THIRTY-SIX THOUSAND DOLLARS (\$36,000) for applications received for separation agreements effective at the end of the 2009-2010 contract year and subsequently approved by the Board of Education; and, (2) EIGHTEEN THOUSAND DOLLARS (\$18,000) for applications received for separation agreements effective at the end of the 2010-2011 contract year and subsequently approved by the Board of Education. Only full or half years will be used to calculate total credited years of service. Half years will be counted only in which the employee has worked under contract for at least 60 days.

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## **I. Payment of Separation Compensation**

The separation benefit compensation total amount will be paid in two payments; the first payment to be paid between September 1 and December 31 of the year of separation and the second payment between September 1 and December 31 of the year following the separation.

Separation compensation may be subject to federal income tax withholding, Internal Revenue Service requirements, and/or any other applicable state or federal regulations regarding separation benefit compensation.

**J. Beneficiary Designation**

In order for the application to be considered complete, a beneficiary must be designated. Upon the death of the participant employee before all benefits are paid, the beneficiary shall receive benefits pursuant to the terms of this policy.

**K. Waiver and Release of Claims**

Employees who participate in the Separation Program shall be required to waive and release the School District from claims and rights as provided in the Separation Program Agreement form adopted as a part of this Separation Program policy. The Superintendent shall give the requisite notices to eligible employees as required by law in order for the Release and Agreement to be fully enforceable.

**L. Term of Program**

The Separation Program shall expire and be of no force and effect as of end of the 2010-2011 fiscal year for the District on August 31, 2011.

Policy Adopted: 05/04/92  
Policy Revised: 11/07/94  
Policy Revised: 05/01/00  
Policy Revised: 09/02/03  
Policy Reviewed: 07/05/05  
Policy Revised: 08/02/05  
Policy Revised: 01/04/10

SCHOOL DISTRICT 145  
WAVERLY, NEBRASKA

**SCHOOL DISTRICT 145 PUBLIC SCHOOLS  
SEPARATION PROGRAM  
AGREEMENT 200\_\_-20\_\_ FISCAL YEAR**

This Separation Program (“SEPARATION PROGRAM”) Agreement is offered and made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between Lancaster County School District 55-0145, a/k/a School District 145 Public Schools (“School District”), and \_\_\_\_\_ (“Certificated Employee”) \_\_\_\_\_ (address), \_\_\_\_\_(city), \_\_\_\_\_(state).

**WHEREAS**, the School District has established an SEPARATION PROGRAM under the terms of the SEPARATION PROGRAM, Policy No. 4750, for the purpose of encouraging eligible certificated employees who are considering an early leaving decision to accelerate their retirement plans; and,

**WHEREAS**, the Certificated Employee is desirous of voluntarily participating in the SEPARATION PROGRAM and in voluntarily resigning from employment; and,

**WHEREAS**, the Certificated Employee has completed and submitted to the Board of Education an Application for participation in the SEPARATION PROGRAM, which application has been accepted by the Board of Education of the School District 145 Public School District at a regular or special meeting on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**WHEREAS**, the Certificated Employee acknowledges that:

A. Forty-five (45) or more days prior to the Certificated Employee’s execution of this Agreement, the Certificated Employee received the SEPARATION PROGRAM Policy and Application form and a Memorandum from the Superintendent, which provided the Certificated Employee with information as to the class, unit, or group of individuals covered by the SEPARATION PROGRAM, eligibility factors for such program, time limits applicable to such program; the job titles and ages of all individuals eligible or selected for the program, and the ages of all individuals in the same job classification or organizational unit who are not eligible or selected for the program.

B. The Certificated Employee has been advised in writing to consult with an attorney prior to executing this Agreement;

C. The Certificated Employee has had forty-five (45) or more days to consider participation in the SEPARATION PROGRAM;

D. The Certificated Employee understands that the Certificated Employee has the right, for a period of at least seven (7) days following the execution of the SEPARATION PROGRAM Agreement, to revoke the Agreement, and that the SEPARATION PROGRAM Agreement does not become effective or enforceable until the revocation period has expired; and,

E. The Certificated Employee's participation in the SEPARATION PROGRAM is knowing and voluntary and the Certificated Employee was not coerced in any manner to participate in the SEPARATION PROGRAM.

**NOW, THEREFORE**, in consideration of the mutual covenants, conditions, and stipulations set forth in this Agreement, the Certificated Employee and the School District hereby agree as follows:

**1. CERTIFICATED EMPLOYEE'S RESIGNATION:** The Certificated Employee, by signing this Agreement, hereby voluntarily, unconditionally, and irrevocably resigns from the Certificated Employee's employment with the School District effective at the end of the 20\_\_-20\_\_ school year. The Certificated Employee waives any and all notice of action by the Board of Education to accept the resignation and to terminate the Certificated Employee's continuing contract and employment with the School District. The Certificated Employee waives any and all rights the Certificated Employee may have under Neb. Rev. Stat. ' ' 79-824 to 79-839 (the teacher tenure law), or other laws as they now exist or as they may be amended in the future relating to continued employment. The Certificated Employee authorizes the School District to advertise for, and contract with, a replacement certificated employee, if deemed appropriate, for the ensuing 20\_\_-20\_\_ school year. The Certificated Employee authorizes the School District to approve and accept this Agreement immediately upon its submission.

The School District, by approving and signing this Agreement, hereby unconditionally and irrevocably accepts the Certificated Employee's resignation, ending all employment relations between the School District and the Certificated Employee, effective at the end of the 20\_\_-20\_\_ school year.

**2. EARLY RETIREMENT BENEFITS:** In consideration of the Certificated Employee's resignation, and of other covenants and conditions set forth in this Agreement, the Certificated Employee shall receive the following SEPARATION PROGRAM benefit of \$\_\_\_\_\_(Scheduled base salary of \$\_\_\_\_\_ x .0415 x \_\_\_\_ credited service or a maximum \$36,000 for the 2009-2010 fiscal year and \$18,000 for the 2010-2011 fiscal year whichever is less). The separation benefit compensation total amount will be paid in two payments; the first payment to be paid between September 1 and December 31 of the year of separation and the second payment between September 1 and December 31 of the year following the separation.

**3. BENEFICIARY DESIGNATION:** The Certificated Employee hereby designates the following named person or persons to be the Certificated Employee's beneficiary in case of the Certificated Employee's death.

Name	
Address	
Social Security No.	

Any monies due the Certificated Employee will continue to the beneficiary until the total benefit distribution is paid in full pursuant to the provisions of this Agreement.

**4. TAX CONSEQUENCES:** The payments made pursuant to the SEPARATION PROGRAM are made to buy-out the tenure rights (i.e., continuing contract rights) of certificated staff, and in effect, make payments to secure the release of unexpired contracts of employment, and to pay a negotiated amount of money in exchange for permanent certificated employees giving up their constitutional and contractual rights to tenure and relinquishing such tenure rights, and are subject to applicable federal and state income and employment taxes, including FICA, FUTA and Medicare taxes.

**5. WAIVER AND RELEASE OF CLAIMS:** By entering into this Agreement the Certificated Employee hereby releases, waives, acquits, and forever discharges the School District, all past, present, and future members of the Board of Education of such School District in their official and individual capacities, the Administrators, and all other officers, agents, and employees of the School District, in their official and individual capacities, from any and all claims, however characterized, whether for damages, costs, expenses, compensation, penalties, wages, benefits, reinstatement, attorneys' fees, or attorneys' fees under 42 U.S.C. ' 1988, or the like, with respect to, arising out of, or in relation to the Certificated Employee's employment with the School District, including, but not limited to, claims or rights:

a. under the Age Discrimination in Employment Act (ADEA), the Older Workers Benefit Protection Act (OWBPA) ( 29 U.S.C. ' 621 et seq.), and the Act Prohibiting Unjust Discrimination in Employment on the Basis of Age (Neb. Rev. Stat. ' 48-1001 et seq.);

b. under the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. ' 1001 et seq.);

c. under Title VI (42 U.S.C. § 2000d et seq.; 34 CFR §100 et seq.), Title VII (42 U.S.C. §2000e, et seq.) and Title IX of the Civil Rights Act of 1964 (20 U.S.C §1681; 34 CFR 106.1 et seq.);

d. under the Civil Rights Act of 1866 and 1871 (42 U.S.C. ' 1981, through and including 42 U.S.C. ' 1988);

e. under the Americans with Disabilities Act (42 U.S.C. §12101 et seq.; 28 CFR §35.101 et seq.), Section 504 of the Rehabilitation Act (29 U.S.C. §791, et seq.; 34 CFR §104, et seq.), and the Family Medical Leave Act of 1993 (29 U.S.C. ' 2601 et seq.);

f. under the Nebraska Fair Employment Practices Act (Neb. Rev. Stat. §48-1101 et seq.), the Nebraska Equal Opportunity in Education Act (Neb. Rev. Stat. §79-2,116 et seq.), the Industrial Relations Act, including unfair labor practices claims under that Act (Neb. Rev. Stat. §48-801 et seq.), and civil rights claims under Neb. Rev. Stat. § 20-168 and other state and local laws;

e. under the Wage Payment and Collection Act (Neb. Rev. Stat. §48-1228 et seq.), including claims or rights to be paid for any unused leave, but excluding rights to salary earned and unpaid for the final year of employment;

f. of or relating to discrimination on the basis of race, ethnic background, color, religion, sex, age, disability, handicap, marital status or national origin, or other protected status, free speech, and unlawful retaliation, before the state or federal EEOC or NEOC, or any other agency or department or state or federal courts under any state or federal constitution, law, rule, or regulation;

g. for breach of contract or tort, including but not limited to negligence, libel, slander, and breach of confidentiality or privacy;

h. of whatsoever nature arises under any other state, federal, or local constitution, statute, regulation, or ordinance arising out of the Certificated Employee's employment with the School District, this Agreement, the SEPARATION PROGRAM, or the Certificated Employee's resignation from such employment.

This waiver and release is given in exchange for good and valuable consideration (the SEPARATION PROGRAM severance benefit) beyond that to which the Certificated Employee is otherwise entitled to pursuant to law or agreement.

## **6. LEGAL NOTICES:**

a. **Consult Attorney.** The Certificated Employee is advised to consult with an attorney before entering into the SEPARATION PROGRAM by signing this Agreement.

b. **Time to Consider.** The Certificated Employee is given a period of at least forty-five (45) days within which to consider the SEPARATION PROGRAM policy and the Agreement. The Certificated Employee acknowledges that the Certificated Employee has had sufficient time to consider the waiver and release of claims and all other matters contained in this Agreement. In the event the Certificated Employee signs this Agreement prior to the forty-five (45) day time period, the Certificated Employee hereby states and affirms that: (1) the Certificated Employee's decision to accept such shortening of time is knowing and voluntary; (2) the Certificated Employee's decision to accept such shortening of time was not induced by the School District through fraud or misrepresentation, and (3) the Certificated Employee's decision to accept such shortening of time was not induced by the School District through a threat to withdraw or alter the offer prior to the expiration of the forty-five (45) day time period, or by providing different terms to employees who sign the release prior to the expiration of such time period.

c. **Right to Revoke.** The Certificated Employee has the right, for a period of seven (7) days following the execution of this Agreement, to revoke this Agreement. This Agreement shall not become effective or enforceable until the revocation period has expired.

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**Certificated Employee**

STATE OF NEBRASKA            )  
  )  
COUNTY OF LANCASTER        )        **ss.**

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, duly commissioned and qualified in the aforesaid county, personally appeared \_\_\_\_\_, personally known to me to be the identical person who signed the above and foregoing Agreement, and that such person acknowledged the execution of the Agreement to be the person’s voluntary act and deed.

\_\_\_\_\_  
Notary Public

**ACCEPTANCE**

The above Separation Program Agreement is hereby accepted and approved.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**LANCASTER COUNTY SCHOOL DISTRICT 55-0145, a/k/a  
SCHOOL DISTRICT 145 PUBLIC SCHOOLS**

**BY:** \_\_\_\_\_  
President or Other Duly Authorized School Official

**SCHOOL DISTRICT 145 PUBLIC SCHOOLS  
SEPARATION BENEFIT PROGRAM  
APPLICATION FORM 20\_\_-20\_\_ FISCAL YEAR**

**[NOTICE: Application must be received during the specified dates of the year the Certificated Employee is participating in the Separation Benefit Program; between March 1, 2010 and March 8, 2010 for the 2009-2010 fiscal year, and between January 1, 2011 and January 15, 2011 for the 2010-2011 fiscal year]**

The undersigned, being a current Certificated Employee under a teaching contract of the Lancaster County School District 55-0145, a/k/a School District 145 - Waverly Public Schools, Waverly, Nebraska, is desirous of voluntarily participating in the School District 145 Public Schools Separation Program (SEPARATION PROGRAM) and is voluntarily resigning from employment under the terms of such SEPARATION PROGRAM in effect as of the date of this Application.

**1. Applicant:** \_\_\_\_\_ (“Certificated Employee”)  
\_\_\_\_\_ (address), \_\_\_\_\_(city), \_\_\_\_\_(state).

**2. Date of Application:** This Application is offered and made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**3. Acknowledgments:** The Certificated Employee acknowledges that:

a. Forty-five (45) or more days prior to the Certificated Employee’s execution of this Application, the Certificated Employee received (1) the SEPARATION PROGRAM Policy No. 4750, (2) the separate Application and Agreement forms and (3) a Memorandum from the Superintendent with regard to the SEPARATION PROGRAM policy which provided the Certificated Employee with information as to the class, unit, or group of individuals covered by the SEPARATION PROGRAM, eligibility factors for such program, time limits applicable to such program; the job titles and ages of all individuals eligible or selected for the program, and the ages of all individuals in the same job classification or organizational unit who are not eligible or selected for the program;

b. The Certificated Employee has been advised in writing to consult with an attorney prior to executing this Application and the Agreement form;

c. The Certificated Employee has had forty-five (45) or more days to consider participation in the SEPARATION PROGRAM and the terms of the SEPARATION PROGRAM Policy and the Application form and Agreement form;

d. The Certificated Employee understands that the Certificated Employee has the right, for a period of at least seven (7) days following the execution of the SEPARATION PROGRAM Agreement, to revoke the Agreement, and that the SEPARATION PROGRAM Agreement does not become effective or enforceable until the revocation period has expired;

e. The Certificated Employee's participation in the SEPARATION PROGRAM is knowing and voluntary and the Certificated Employee was not coerced in any manner to participate in the SEPARATION PROGRAM;

f. The Certificated Employee has NOT received written notice of possible cancellation, termination or non-renewal for reasons other than reduction in force

g. The Board of Education of the School District, in its sole and absolute discretion, has reserved the right to limit the number of participants in this SEPARATION PROGRAM in any fiscal year based on financial exigencies, availability of funds, budget, expenses, revenue, and other school finance issues, including but not limited to the repeal or amendment of the exemption to the property tax levy limitations set forth at Neb. Rev. Stat. § 77-3442(2)(d) (Laws of 2008).

**4. Statement of Eligibility:** The certificated employee hereby affirms that he/she is or will:

a. Employed by the School District (School District 145 Public Schools) as of the date of acceptance of the person's application in the position of a fully certified employee (a) covered by the Negotiated Agreement between the School District 145 Public Schools and the School District 145 Education Association (hereinafter sometimes referred to as "Eligible Employee" or "Employee" or "Teacher");

b. A full-time or part-time employee with a full time equivalency (FTE) of .50 FTE or more, **OR** a part-time employee who is on a leave of absence in part and work part-time as of December 1 of the Employee's final contract year;

c. Be fifty-five (55) years of age on or before September 1 of the Employee's final contract year; and,

d. Have at least ten (10) creditable years of continuous service (or its equivalent) in the School District including their final year of employment.

**5. Acceptance of Benefits:** The Certificated employee hereby acknowledges that in consideration of the Certificated Employee's resignation, and of other covenants and conditions set forth in the Application and Agreement provided by the School District, the Certificated Employee shall accept the early retirement benefits provided in the SEPARATION PROGRAM.

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**Certificated Employee**

STATE OF NEBRASKA        )  
  )  
  )        ss.  
COUNTY OF LANCASTER    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, duly commissioned and qualified in the aforesaid county, personally appeared \_\_\_\_\_, personally known to me to be the identical person who signed the above and foregoing Application, and that such person acknowledged the execution of the Application to be the person's voluntary act and deed.

\_\_\_\_\_  
Notary Public

**ACCEPTANCE**

The above Separation Program Application is hereby accepted and approved.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**LANCASTER COUNTY SCHOOL DISTRICT 55-0145, a/k/a SCHOOL DISTRICT 145 PUBLIC SCHOOLS**

**BY:**  
\_\_\_\_\_  
\_\_\_\_\_  
President or Other Duly Authorized School Official